



**Changes in Marriage Age Limits and Marriage Dispensations:
A Study of Causes and Impacts on the Religious Courts in North Sulawesi**

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Abstract: This study aimed to analyze the impact of the enactment of Law Number 16 of 2019, the causes of the application for marriage dispensations, and the judge's reasons for the marriage dispensation grant. This research was necessary due to the establishment of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 regarding Marriage—which aims for equality in the minimum age limit in marriage, namely 19 for both men and women—that increases the number of applications for marriage dispensations in Religious Courts. This study is empirical legal research with a phenomenological approach. The study found that the law's enactment brought some positive impacts, such as protection of the rights of minors, assurance of physically and mentally healthy offspring (as a result of maturely married couples), reduction of women's vulnerability to domestic violence, and suppression of marital problems. On the other hand, however, this law caused an increase in the application for marriage dispensations at all Religious Courts in North Sulawesi. Meanwhile, reasons for marriage dispensation requests included pregnancy out of wedlock, the influence of local customs/traditions, economic concerns, parents' will for child marriage, parents' effort in preventing their children from acts contrary to religious norms, uncontrolled socializing, and elderly parents' property bequeathment. Regarding the judge's judgment in granting marriage dispensations, considerations were made on a case-by-case basis. In conclusion, the law distinguishing the minimum age of marriage between men and women should be non-existent because it will only hinder the fundamental rights or constitutional rights of every citizen, as guaranteed in Article 28B paragraphs (1) and (2) of the Indonesian Constitution.

Keywords: marriage age limit, marriage dispensations, religious courts, north sulawesi

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Abstrak: Penelitian ini bertujuan untuk menganalisis dampak pemberlakuan Undang-Undang Nomor Tahun 2019, faktor penyebab permohonan dispensasi nikah, dan alasan hakim dalam memberikan dispensasi nikah. Penelitian ini perlu dilakukan sebab lahirnya Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, yang menginginkan adanya persamaan batas usia minimal dalam perkawinan, yaitu 19 tahun bagi laki-laki dan perempuan justru menambah jumlah permohonan dispensasi nikah di Pengadilan Agama. Penelitian ini merupakan penelitian yuridis-empiris dengan pendekatan fenomenologis. Penelitian ini menemukan, pertama, dampak positif dari undang-undang tersebut yaitu adanya perlindungan hak-hak anak di bawah umur, anak yang lahir dari usia pasangan suami-istri yang matang dapat sehat secara fisik dan mental, perempuan yang menikah di usia yang matang tidak rentan kekerasan dalam rumah tangga, dan pasangan suami-istri menikah di usia yang matang dapat dengan mudah keluar dari persoalan rumah tangga. Sementara dampak negatifnya adalah permohonan dispensasi nikah di semua Pengadilan Agama di Sulawesi Utara mengalami peningkatan. Kedua, faktor penyebab permohonan dispensasi nikah, diantaranya hamil di luar nikah, pengaruh adat/tradisi setempat, keinginan orang tua agar anaknya menikah mudah, faktor ekonomi, menghindarkan anaknya dari perbuatan-perbuatan yang bertentangan dengan norma agama, pergaulan yang tidak terkontrol, dan orang tua yang sudah lanjut usia ingin mewariskan hartanya. Ketiga, pertimbangan hakim dalam memberikan dispensasi nikah berdasar pada kondisi kasus dari pemohon. Kesimpulannya, undang-undang yang membedakan batas usia minimal perkawinan antara laki-laki dan perempuan merupakan perbedaan yang tidak perlu terjadi sebab ini hanya akan menghalangi hak dasar atau hak konstitusional setiap warga negara sebagaimana dijamin dalam pasal 28B ayat 1 dan 2 UUD 1945.

Kata Kunci: batas usia perkawinan, dispensasi nikah, pengadilan agama, sulawesi utara

Introduction

The Constitutional Court of the Republic of Indonesia has issued a Constitutional Court decision Number 22/PUU-XV/2017 to establish Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 regarding Marriage.¹ The court's representative expressed the consideration for such amendments as "but when the difference in treatment between men and women

¹ Darmadi, "Consistency Implementation of the Regulation on Young Marriage in Indonesia," *Legality: Jurnal Ilmiah Hukum* 28, no. 2 (2020): 18–195; Ibnu Radwan Siddik Turnip, Zainul Fuad, and Nurhayati Nurhayati, "The Current Development of Marriage Age Provisions in Indonesia and Malaysia: A Socio-Historical Approach," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (2020).

has an impact on or hinders the fulfillment of fundamental rights or constitutional rights of citizens, whether they are civil, political, economic, educational, social, and cultural rights, which should not be distinguished solely on the grounds of sex, such distinction is clearly a discrimination.”² It is further argued that the different treatment may hinder the fulfillment of citizens’ fundamental or constitutional rights. Effendy stated that such regulation not only promotes discrimination in the realization of the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution but also facilitates discrimination against the protection and fulfillment of children’s rights as guaranteed in Article 28B paragraph (2) of the Indonesian Constitution.³

The core issue was the difference in the minimum age for marriage between men and women as stated in Article 7 paragraph (1) of Law Number 1 of 1974 regarding marriage, where men were allowed to marry once they reached 19 while women reached 16.⁴ As illustrated, the minimum age of marriage for women is lower than for men, hence women were legally able to form families faster than men.

Further, Tobing claimed that the provision in Article 7 Paragraph (1) of law Number 1 of 1974 regarding marriage might promote child marriage among young girls⁵ since a person who has not reached 18 years old is classified as a child (in Article 1 Number 1 of law Number 35 of 2014 on amendments to law Number 23 of 2002 on Child Protection). It is also hoped that raising the marriageable age for women from 16 to 19 will lead to lower birth rates and a lower risk of maternal and child mortality.⁶ In addition, Holijah and Manaf said that this alteration in the age limit is very important since it allows women to be physically and psychologically ready to be wives or mothers (caring for their children). Indeed, physical and mental maturity for someone who is starting a family is essential. This is also in accordance with the principles of Islamic law, which views that marriage requires physical and mental readiness and that family is the starting point in realizing decent human beings.⁷

² Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan terhadap UUD 1945.

³ <https://www.pta-pontianak.go.id/berita/artikel/862-problematika-dan-solusi-pelaksanaan-undang-undang-no-16-tahun-2019-tentang-perkawinan>

⁴ Dian Latifiani, “The Darkest Phase for Family: Child Marriage Prevention and Its Complexity in Indonesia,” *JILS (Journal of Indonesian Legal Studies)* 4, no. 2 (2009): 241–58.

⁵ Rudyanti Dorotea Tobing, “Prevention of Child Marriage Age in the Perspective of Human Rights,” *Sriwijaya Law Review* 2, no. 1 (2018): 1–17.

⁶ Moh Indra Bangsawan et al., “Dispensation for Marriage and Sexual Health,” *International Journal of Multicultural and Multireligious Understanding* 9, no. 3 (2022).

⁷ Holijah and Jariyah Binti Abd Manaf, “The Importance of Increasing Minimum Age For Marriage In Indonesian Marriage Law,” *Al-’Adalah* 16, no. 2 (2019): 411–32.

Hence, factors causing the enactment of law Number 16 of 2019 concerning amendments to law Number 1 of 1974 on marriage can be summarized as follows. First, the state guarantees the right of its citizens to form families and reproduce through legal marriage, and it guarantees children the rights of survival, growth, and development, and the right to protection from violence and discrimination as mandated in the Indonesian Constitution. Second, child marriage negatively impacts the growth and development of the young bride/groom and will lead to the non-fulfillment of 'children's fundamental rights such as the right to protection from violence and discrimination, civil rights, health, education, and social rights. Third, it was obligated to implement changes to the provisions of Article 7 of law Number 1 of 1974 on marriage as the result of enacting the Constitutional Court Decision Number 22 / PUU-XV / 2017.⁸

From the justifications for the enactment of Law Number 16 of 2019, the law seems to be filled with values and dynamics that are in line with the purpose of its enactment. The crucial amendment was the minimum marriage age that allows both sexes to get married at the same age without being distinguished for their sex, which is incompatible with the previous law where different marriageable ages applied.⁹ Such difference, according to law Number 16 of 2019 concerning amendments to law Number 1 of 1974 regarding marriage, triggers discrimination between the two parties. Where in fact, the state has guaranteed the rights of its citizens without considering such sex differences.

The ratification of Law Number 16 of 2019 was on October 14th by President Joko Widodo and was enacted on October 15th by an acting official. The Minister of Law and Human Rights, Tjahyo Kumolo, expected that Law Number 16 of 2019 would get a positive response from society, and it is hoped that all levels of society can implement the provisions of the law very well.

The emergence of Law Number 16 of 2019 concerning amendments to law Number 1 of 1974 regarding marriage is the decision of the Constitutional Court of the Republic of Indonesia number 22/PUU-XV/2017, where one of the justifications being the call for equality between men and women in all aspects without any difference based on sex. The discrimination will only hinder the fundamental rights or constitutional rights of every citizen, which was guaranteed in Article 28B, paragraphs (1) and (2) of the 1945 Constitution. The equality in

⁸ Samsul Hadi, "Putusan MK No. 22/PUU-XV /2017 Tentang Permohonan Judicial Review Pasal 7 Ayat (1) UU No. 1 Tahun 1974 Tentang Usia Perkawinan Dalam Perspektif Masalah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 2 (2018); Salma and Nadila Awad, "Hak Nafkah Bagi Istri Yang Menggugat Cerai Dengan Alasan Kekerasan Dalam Rumah Tangga," *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 2 (2021): 105–112.

⁹ Trubus Wahyudi and Sutrisno, "The Juridical Review of The Implementation of Supreme Court Regulation Concerning Guidelines for Adjudicating Marriage Dispensation," *Jurnal Pembaharuan Hukum* 9, no. 2 (2022).

discussion is the parity of the minimum marriage age for men and women, which is 19.

Changes in the marriageable age to 19 for both men and women—which was previously stipulated in law Number 1 of 1974 regarding marriage as 19 for men and 16 for women—have significantly increased the cases of applications for marriage dispensations in various regions in Indonesia. This is indicated by several preliminary studies on the increase in child marriage. For example, a 2018 study in Gorontalo province by Wandu et al., reported 201 cases of child marriage.¹⁰

Meanwhile, in the context of this study, Religious Courts at both the regency and city levels in North Sulawesi have been filled with applications for marriage dispensations since October 2019. The Manado Religious Court recorded 21 cases in 2019, which increased to 44 by 2020.¹¹ The cases in Bitung Religious Court increased by almost 50%, from 30 in 2019 to 87 in 2020.¹² In South Bolaang Mongondow Religious Court, 21 cases were recorded in October–December 2019 and continued to increase to 75 in 2020.¹³ In the Lolak Religious Court, 82 cases were reported in 2019, and it surged to 328 in 2020.¹⁴ The Tondano Religious Court reported 50 cases in 2020; 36 were granted, six revoked, three were dropped, two rejected, one was not accepted, and one other removed from the registration list.¹⁵ In the Kotamobagu Religious Court, as many as 58 cases were recorded in 2019, increasing to 181 in 2020.¹⁶ The Amurang Religious Court reported 1 case in 2019 and 14 in 2020.¹⁷ Meanwhile, in the East Bolaang Mongondow Religious Court, 11 cases were reported in 2019, which surged to 50 in 2020.¹⁸

By looking at the data above, it can be understood that following the enactment of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 on marriage, the number of cases of the marriage dispensations in all Religious Courts in North Sulawesi province increased significantly. Thus, it can

¹⁰ Sastro Mustapa Wantu et al., “Early Child Marriage: Customary Law, Support System, and Unwed Pregnancy in Gorontalo,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 780–803.

¹¹ Religious Court of Manado. Religious Court Report, 2021.

¹² Religious Court of Bitung City. Religious Court Report, 2021.

¹³ Religious Court of South Bolaang Mongondow Regency, Religious Court Report, 2021.

¹⁴ Religious Court of Lolak, Religious Court Report, 2021.

¹⁵ Religious Court of Tondano, Religious Court Report, 2021.

¹⁶ Religious Court of Kotamobagu, Religious Court Report, 2021.

¹⁷ Religious Court of Amurang, Religious Court Report, 2021.

¹⁸ Religious Court of East Bolaang Mongondow Regency, Religious Court Report, 2021.

be presumed that Law Number 16 of 2019 has not been implemented effectively, the implementation is not in accordance with the provisions and objectives of the act. Indeed, an enacted law in Indonesia should solely benefit its citizens.

Previous literature suggests that one of the reasons for the enactment of Law Number 16 of 2019 was to reduce underage marriage cases. Such a reason is derived from the consideration that children born to underage parents generally experience undesirable things compared to those born to parents married at a marriageable age.

In Islam, one of the purposes of marriage is to prevent any conduct of adultery. This is in contrast with the previously stated issue that a person should not perform child marriage, with the sole concern being to prevent giving birth to physically weak children. Such concern does not constitute a powerful argument. However, it is undeniable that every law enactment has its benefits and drawbacks.¹⁹

In some *mazhab* (Islamic schools of thought), the minimum age for marriage has been specified. The 'Shafi'i and Hanbali schools hold that the minimum age to marry for both men and women is 15,²⁰ while the Maliki is 18 (for both men and women), and the Hanafi is 19 for men and 17 for women.²¹

The minimum age limit for marriage specified in the mentioned *mazhab* is not in line with law Number 16 of 2019, which sets the marriageable age as 19 for both men and women. The specified age limit for marriage in that *mazhab* is between 15 and 18 years old, which is a year less than the legal age limit in law Number 16 of 2019—which is 19 years.

This study is empirical legal research, which is a type of socio-legal research—often referred to as field research—examining the applied legal provisions by observing occurrences and phenomena happening in society.²² Based on such a purpose, the phenomenological approach was considered appropriate and thus applied in this study. A phenomenology is a research approach that does not employ temporary hypotheses in the process of analysis. It further has no presupposed theory(ies) and does not aim to test theories through

¹⁹ Loren Marks, "How Does Religion Influence Marriage? Christian, Jewish, Mormon, and Muslim Perspectives," *Marriage & Family Review* 38, no. 1 (2008): 85–111.

²⁰ Teungku Muhammad Hasbi Ash Shiddieqy, *Tafsir Al-Qur'an Al-Majid An-Nur* (Semarang: Pustaka Rizki Putra, 2000).

²¹ Huzaemah Tahido Yanggo, *Fiqh Anak Metode Islam Dalam Mengasuh Dan Mendidik Anak Serta Hukum-Hukum Islam Yang Berkaitan Dengan Aktivitas Anak* (Jakarta: Al Mawardi Prima, 2004).

²² Bas Schotel, "Legislation, Empirical Research and Juridical Law," *Theory and Practice of Legislation* 1, no. 3 (2013): 501–532.

a hypothesis.²³ This type of research and approach was used to find the primary data from judges in all Religious Courts in North Sulawesi related to the granting of marriage dispensations and their application, and secondary data from relevant literature related to this study's research problems. Data were collected through observations, interviews, documentation, and reference studies.

The Marriageable Age in Islam

According to Islamic law, one of the purposes of marriage is to prevent acts of adultery. This contrasts with the opinion opposing underage marriage solely to prevent the birth of physically weak children. Actually, such a reason for this consideration is not very significant. However, one thing that is undeniable is that behind the enactment of every law has its benefits and drawbacks.

The main amendment of the Marriage Act was equating the age limit for men and women to be 19 years old. Consequently, some parties advocate while others oppose the provision. For example, the Indonesian Ulama Council (MUI) disagreed with raising the age limit and asked the Constitutional Court to maintain the 16-year age limit for women. It further argued that Article 7 paragraph (1) of 1974 on Marriage contains religious values (Islam), so it must be declared constitutional and thus is not contrary to the Indonesian Constitution. As stated by Amidhan, MUI claimed that Islam does not regulate marriageable age.²⁴ Nevertheless, Islam characterizes several things in relation to *bāligh* (puberty), which often signals an appropriate age to marry. First, girls should be nine years old or older and have had their period. Second, boys should be nine years old or older and have experienced ejaculation. Third, boys and girls who have reached 15 without experiencing menstruation and ejaculation.²⁵ Hence, maturity in Islam is the age range between 9 to 15, while the former establishment of 16 years old as the marriageable age for women reflected both societal needs and Islamic values.²⁶

Such a perspective from MUI is based on the majority of Islamic jurists, and as stated by Yanggo and Anshary, Islam does not explicitly regulate the minimum age for marriage.²⁷ In addition, Islam also does not specify the signs of

²³ Sophie Loidolt, "Order, Experience, and Critique: The Phenomenological Method in Political and Legal Theory," *Continental Philosophy Review* 54, no. 2 (2021): 153–701.

²⁴ Loidolt.

²⁵ Kamran Hashemi, "Religious Legal Traditions, Muslim States and the Convention on the Rights of the Child: An Essay on the Relevant UN Documentation," in *International Law and Islamic Law* (Routledge, 2017), 535–568.

²⁶ Zezen Zaenal Mutaqin, "Culture, Islamic Feminism, and the Quest for Legal Reform in Indonesia," *Asian Journal of Women's Studies* 24, no. 4 (2018): 423–445.

²⁷ Huzaemah Tahido Yanggo and Hafiz Anshary, *Problematika Hukum Islam Kontemporer* (Jakarta: Pustaka Firdaus, 2002).

maturity for both the bride and groom. The absence of these specifications is seen as a form of mercy because maturity signs of marrying are determined through *ijtihādiyah* (logical reasoning), considering at what age a person is (logically) eligible to marry.²⁸ Therefore, the *fuqahā'* have different accounts on the age requirement. Some account that maturity is determined by several signs, namely *al-iḥtilām* (nocturnal emission), menstruation, voice changes, or *inbāṭ* (the growth of hair in the armpits or around the genitals). Experiencing these signs, a person is considered to have reached puberty naturally (*al-Bulūgh al-Ṭabi'ī*), and this kind of maturity is usually found in 12-year-old boys and 9-year-old girls.²⁹

In some schools of thought, however, the minimum age for marriage has been specified. The 'Shafi'i and Hanbali hold 15 as the minimum age of marriage for both men and women. This is due to such signs emerging differently in different people; therefore, maturity is determined by age. The age considered as mature is the same for men and women because maturity is determined by intelligence.³⁰ This is in contrast with the Hanafi and Maliki provisions; where maturity begins at the age of 19 for men and 17 for women, and 18 for both sexes, respectively.³¹

It can be concluded that the minimum age of marriage specified in those schools is not in line with Law Number 16 of 2019, which sets 19 as the minimum age of marriage for both men and women. The opinion of the imams of the *maḏhab* for marriageable age was set between 15 and 18, which is one year less compared to the legal age in Law Number 16 of 2019. The age limit for marriage is indeed a concern due to the differently regulated legal ages for marriage in different countries.

The majority of scholars state that Islam has no age limit to marry because the *fuqahā'* do not need any reason or (need no) puberty for marriage. However, there are also opposing views to this majority of scholars' accounts. For instance, the view of Abu Bakr al-Asham (w. 240 H), Ibn Shubramah, and Uthman al-Butti, who forbid the marriage of young boys and girls until they reached the age of puberty, referring to the Qur'an surah an-Nisa' paragraph 4 "until they are old enough to marry (*balagh al-nikāḥ*)". Ibn Hazm further (d. 1064 AD) argued that it was permissible for a young girl to marry as an implementation of *asar*, but for

²⁸ Yanggo and Anshary.

²⁹ Yanggo, *Fiqh Anak Metode Islam Dalam Mengasuh Dan Mendidik Anak Serta Hukum-Hukum Islam Yang Berkaitan Dengan Aktivitas Anak*.

³⁰ Shiddieqy, *Tafsir Al-Qur'an Al-Majid An-Nur*.

³¹ Yanggo, *Fiqh Anak Metode Islam Dalam Mengasuh Dan Mendidik Anak Serta Hukum-Hukum Islam Yang Berkaitan Dengan Aktivitas Anak*.

a boy, it is considered a false marriage and will invalidate it. This provision of Ibn Shubramah has been adopted as a state-governed law by Suriah.³²

Az-Zuhaili, in the interpretation of the verse above, mentioned that *balagh al-nikāh* is the age of *bāligh*, marked by someone having nocturnal emissions or reaching puberty—which is 15 years according to Imam 'Shafi'i and Imam Ahmad for men, while by menstruation or pregnancy for women.³³ However, Hatta claimed that the *mufassir* had different standpoints in interpreting this verse, with some arguing that the issue of marriageable age concerns not only physical but also psychological maturity.³⁴

Referring to the scholars' perspective on not having strict marriageable age, some *mufassir* disregard the argument that is equating the minimum age for marriage for both sexes as an attempt to eliminate discrimination against women. This is because, in Islamic tradition, the *fuqahā'* have never disputed the minimum age for marriage, yet parents at the time gave birth to great scientists and female figures. Even if there was, scholars were more focused on setting the age limit for *bāligh*, if the physical signs are not experienced by the child (as a requirement for marriage). However, if a girl experiences physical signs such as menstruation, scholars agree that the marriage will be religiously valid (regardless of her age), especially if the marriage was meant to make one more religious and prevent them from immoral conduct.

Reasons Behind the Increase of Marriage Dispensation in Religious Court

Several factors are causing the request for marriage dispensation and the reasons that underlie judges in granting marriage dispensation in North Sulawesi. Pregnant out of wedlock is one of the factors driving the judge to grant a marriage dispensation. This case is in line with a study by Grijns and Horii, which states that one of the factors of child marriage is adolescent sexuality. In addition, judges use their discretion to reach a compromise between state law and local norms.³⁵ In other words, the granting of marriage dispensation is carried out by considering the *maṣlahah* or benefits and the *mudharāt*³⁶ or harms. One thing that is feared is

³² Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, 4th ed. (Jakarta: Gema Insani, 2011).

³³ Az-Zuhaili.

³⁴ Moh Hatta, "Batasan Usia Perkawinan Dalam Perspektif Ulama Klasik Dan Kontemporer," *Al-Qānūn: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 19, no. 1 (2016): 66–88, <https://doi.org/http://jurnalafh.uinsby.ac.id/index.php/qanun/article/view/216>.

³⁵ Mies Grijns and Hoko Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society* 5, no. 2 (2018): 453–466.

³⁶ M Anwar Nawawi et al., "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022): 117–134.

that if marriage dispensation is not given, the couple will perform an unregistered marriage. In the end, the couple will return to the Religious Court to apply for a marriage *isbāt* or marriage certificate.

In the case of a marriage dispensation application, the judge does not immediately issue the dispensation but gives the prospective groom a simple test first by asking a few questions. For example, the judge will test how capable he is in memorizing surah Al-Fatiha because this is so important concerning the husband's duties, which is to be an *imām* or leader for his wife and children. The judge allows a retrial (second trial) if he cannot. Another consideration by the judge is seen from the financial side of the prospective groom. As a husband, he must be able to support his wife and children. Therefore, economics is one of the factors that must be met because there is a high possibility that a couple will apply for divorce due to experiencing inadequate finance.³⁷

There are several factors causing the marriage dispensation application to the Religious Court. Firstly, the parents desire to marry off their already dating children. Second, the parents wish to pass on the family business to their children quickly. Thirdly, pregnant out of wedlock. The step taken by the judge in the Religious Court is to look at the conditions or factors causing the marriage dispensation application. For example, suppose the parents have decided to marry off their child who is already dating, and there has not been an accident (not yet pregnant). In that case, the judge conducts mediation to explain to both parties' parents to be patient and wait until their child is 19 years old. In addition, the judge provides guidance regarding the family economy, the reality of the household, the husband's responsibilities as an imam and leader of the family. However, suppose it is a case of pregnancy out of wedlock. In that case, the judge is forced to issue a marriage dispensation to save the child born out of wedlock by advising both prospective couples to maintain the household's integrity and paying attention and not to return to the Religious Court in other cases (request for divorce).³⁸

Until these days, the submitted application for marriage dispensation to the Religious Court has never been rejected because, eventually, all applications will be accepted, and marriage dispensation will be granted. In the case of marriage dispensation, there is no mediation effort from the Religious Court (judges), merely giving advice sessions to both men and women. This reality happened because of some fundamental reasons. For example, in an application for marriage dispensation submitted to the Religious Court, a man and a woman

³⁷ Interview with Sutikno, Chairman of the Tondano Religious Court of Minahasa Regency, August 23, 2021.

³⁸ Interview with Masita Olii, Chairman of the Bitung Religious Court Bitung City, August 26, 2021.

who are about to marry are still 17 and 18. The woman, in this case, is not yet pregnant. In this case, the Religious Court will still grant marriage dispensation because both will perform the marriage properly and not violate the religious provisions (pregnant out of wedlock).³⁹ Another fact is that the request for marriage dispensation at 17 ends in filing an application for divorce in the following year when the applicant is only 18. If traced back to where it started, one of the causes is that both parties are still not ready to live a married life at a relatively young age.

In other considerations, the judge evaluates the *maṣlaḥah* and *mudharāt*. Consider whether the *mudharāt* is greater than the *maṣlaḥah*. In the case of marriage dispensation, the parents of both parties attended the trial and were questioned. Suppose in their statement, they convey the fact that their two children can no longer be guarded in terms of socializing and are worried the children would fall into things that could violate religious rules and norms; then, in this case, the judge accepts the request for marriage dispensation by referring to one of the rules of jurisprudence, that states: *دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَىٰ جَلْبِ الْمَصَالِحِ* means that “warding off harms takes precedence over bringing benefits”⁴⁰. On the other hand, if the children of both parties are still minors and do not have a steady income, both parents must give a firm statement in front of a single judge regarding their ability to pay for all of their children’s household, then the single judge in this case inevitably has to grant marriage dispensation based on the desire, readiness, and determination of both parents who are able to pay for the needs of their children⁴¹.

In fact, the application for marriage dispensation submitted to the Religious Court is not even a type of case because it has no opponent. The purpose of filing a marriage dispensation application is solely submitted, hence, the underage marriages get permission and are legally valid.⁴²

In the condition that the girl is still minor and already pregnant out of wedlock, the single judge who evaluates her may request a proof in the form of a certificate from the Competent Authority (Public Health Center or Hospital) containing an explanation of the gestational age of the girl.

The factors behind the marriage dispensation granted by the Religious Court are when the judge decides and allows it, or vice versa, by looking at the

³⁹ Interview with Masyrifah Abasi, Deputy Chairman of the Amurang Religious Court of South Minahasa Regency, September 1, 2021.

⁴⁰ Interview with Masyrifah Abasi, Deputy Chairman of the Amurang Religious Court of South Minahasa Regency, September 1, 2021.

⁴¹ Interview with Masyrifah Abasi, Deputy Chairman of the Amurang Religious Court of South Minahasa Regency, September 1, 2021.

⁴² Interview with Masyrifah Abasi, Deputy Chairman of the Amurang Religious Court of South Minahasa Regency, September 1, 2021.

impact that will be caused. The judge will decide whether to give or not give permission. Generally, the people who apply for the marriage dispensation are the parties who have brought the problem. Case in point: a girl is already pregnant out of wedlock, so conscience also comes into consideration. If the girl is already pregnant and the judge refuses, it will affect the child's fate to be born later. In this case, it will inevitably lead to a new problem: the child born without a father. In addition, in terms of inheritance, children born out of wedlock are only entitled to inherit from their mothers. Thus, in granting marriage dispensation, the judge still considers the widespread impact that will occur. The Religious Court believes that the parties who come to the court seriously bring problems, and then the Religious Court must resolve those existing problems.⁴³

In handling and investigating the marriage dispensation, the judge must ask both parents of the prospective couple, witnesses, and competent parties to attend the trial. These parties will be asked some questions to find information about their family relationship, whether the relationship of the prospective couple is known or supported by the family, whether the two families can accept it, whether there are people who will object to this marriage, and so on. In other words, the judge who handles this issue requires careful consideration by taking a closer look at the case faced by each party.⁴⁴ In fact, the Religious Court is trying to resolve the issue of marriage dispensation due to the parties that have brought the problem before.

In terms of giving consideration, the judge relies on the age of maturity or sign of a mature person, which will be revealed at the time of the trial. For example, the judge will glance at the problems and correlate them with the witnesses' testimony.⁴⁵ From the economic standpoint, the judge will ask several things related to the prospective groom's work and his independence in managing the household. Because freedom in marriage, including finance, is one of the judge's considerations when examining the application for marriage dispensation.

In examining the application for marriage dispensation, the judge always seeks the parties concerned to attend. The judge asks random questions to the related parties with the intention that the information received from them is genuinely comprehensive and not deliberately falsified or planned to trick the judge. If the judge believes that all the obtained data is supportive, he will declare his opinion firmly. The judge's opinion is contained in the legal consideration

⁴³ Interview Of Mal Domu, Judge of The Kotamobagu Religious Court, September 9, 2021.

⁴⁴ Interview Of Mal Domu, Judge of The Kotamobagu Religious Court, September 9, 2021.

⁴⁵ Interview Of Mal Domu, Judge of The Kotamobagu Religious Court, September 9, 2021.

based on the arguments taken, whether sourced from the books of jurisprudence, jurisprudential proposals, laws, or other regulations, in accordance with the request for dispensation handled by a single judge.

The social impact and the high number of cases of marriage dispensation occurred after Law Number 16 of 2019 was ratified. This is due to the lack of legal counselling about this law. The fact that happens in society is that when a marriage is performed at the Religious Affairs Office (KUA), they do not know the minimum age limit for marriage according to the new provision or Law Number 16 of 2019.

Application for marriage dispensation in Religious Court filed due to several factors, including pregnancy out of wedlock, social, and economic factors. The marriage dispensation by the Religious Court is granted by considering the *maṣlahah* and *mudharāt*. Therefore, the single judge who examines it will see from both perspectives whether it is lean toward the value of worship or child exploitation. This will be seen during the trial, particularly when the judge asks random questions to the parents of both parties and the prospective husband and wife. As a result, it can be detected that the things said and conveyed in the trial are true.⁴⁶

One of the impacts of Law Number 16 of 2019 concerning changes to the minimum age limit for marriage is an increasing number of marriage dispensations in Religious Courts. According to the judge, this happened because there was no socialization, and the community still needed an adjustment to the current law. For example, in the Lolak Religious Court coverage area, applications for marriage dispensation are filed by parents whose children have been proposed. This situation is based on the culture in Bolaang Mongondow. For example, if a man has proposed to a woman, they are both allowed to stay in the same room. Therefore, the efforts made by the Lolak Religious Court's judge were to advise parents and prospective brides that Islamic law does not allow this even though they are already engaged. In other words, a marriage is declared valid if *ijāb* and *qābūl* have occurred. Another frequent case in Bolaang Mongondow is if the locals have raided an unmarried couple, they are then asked to be married.⁴⁷

The judge's consideration for granting a marriage dispensation is by paying attention to the worship habits of and the job possessed by the prospective husband. In addition, the judge's efforts to encourage parents to continue supporting their children's households because they are still minors. Another

⁴⁶ Interview with Uten Tahir, Deputy Chairman of the Bolaang Uki Religious Court of South Bolaang Mongondow Regency, September 15, 2021.

⁴⁷ Interview with Alfian Muhammady, Judge of the Lolak Religious Court, Bolaang Mongondow Regency, September 22, 2021.

factor is that parents want to marry off their children because they are worried their child is committed to a relationship that will bring *mudharāt*. One of the reasons why applications for marriage dispensation have increased is the lack of outreach to the community and the lack of educated people who do not know about the change in the minimum age limit for marriage.⁴⁸

The Impact of Changes in The Minimum Age Limit for Marriage and The Increase in Marriage Dispensation

The impact of the enactment of Law Number 16 of 2019 concerning the change in the minimum age limit for marriage in Religious Court has increased the number of applications for marriage dispensation from the women applicant. For women, the previous minimum age limit to get married was 16 years old, but now it changed to 19 years old. In general, some of the factors that led to the filing of a marriage dispensation application to the Religious Court were pregnancy out of wedlock, have been dating for too long, the parents being afraid and worried that the children would violate existing religious and societal norms, and there are no educational institutions (universities) in East Bolaang Mongondow Regency. Consequently, those children who graduated from high school immediately want to get married.⁴⁹ During the trial, the judge also tried to advise parents to revoke the marriage dispensation application that had been filed and explained what would happen if their child married early; the children's rights would be taken away. Thus, the judge advised them to take a package for furthering their education.⁵⁰

The Religious Courts must carry out socialization regarding changes to the minimum age limit for marriage. According to Sharia, there is no minimum age limit for marriage; only after one reaches *bāligh* or puberty. Public ignorance towards Law Number 16 of 2019 has been causing the number of cases for marriage dispensation applications in Religious Courts to increase significantly. Cases of pregnancy out of wedlock and still classified as minors are the most common cause of cases filed for marriage dispensation, reaching 95% of the cases compared to other reasons. Regarding the major cases above, there is another thing that worries the judge: religious differences. Therefore, the effort made by the judge is to provide an explanation that requires the concerned parties to convert to Islam first and then apply for marriage dispensation. This is intended

⁴⁸ Interview with Muhamad Anwar Umar, Chairman of the Boroko Religious Court of North Bolaang Mongondow Regency, September 29, 2021.

⁴⁹ Interview with Asmawati Sarib, Deputy Chairman of the Tutuyan Religious Court of East Bolaang Mongondow Regency, October 6, 2021.

⁵⁰ Interview with Mufi Ahmad Baihaqi, Chairman of the Manado Religious Court, Manado City, November 29, 2021.

to avoid unwanted things, such as fighting over custody of children and one of the parties turning back into apostasy.⁵¹

The implications of this law include the increasing number of marriage dispensations, fights over child custody due to different religions, and the marriage will not last long. In an attempt to socialize Law Number 16 of 2019, all related parties must work together and cooperate reasonably. The goal is for this law to be accepted and implemented correctly by the community.

The marriage dispensation by the Religious Court is granted by considering the *maṣlahah* and *mudharāt*. In the case of marriage dispensation, the parents of both parties attended the trial and were questioned. If, in their statement, they convey the fact that their two children, both boys and girls, can no longer be guarded in terms of socializing and worried that they would fall into things that could violate religious rules and norms, therefore the judge, in this case, accepts the request for marriage dispensation by referring to one of the rules of jurisprudence, *دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ*. It means that “warding off harms takes precedence over bringing benefits”⁵². This rule is in line with the rules of jurisprudence, which states: *تصرف الامام علي الرعية منوط بالمصلحة*.⁵³ The rule explains that the government’s actions against its people or judges against justice seekers must be associated with bringing benefits.⁵⁴

Regarding the underage prospective husband and wife, the minimum age limit to get married is 19. The intent of Article 7 paragraph (1) of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 on marriage which declare that “marriage is only permitted if men and women have reached the age of 19”. For those who have not reached 19 years old yet are physically convincing and shown a mature mindset to marry someone, already dating and worry about continuing sinful act of adultery, then to avoid *mafsadah*, which will arise and will bring more *maṣlahah* for both families, it is necessary to perform the marriage immediately. Therefore, the judge declares his opinion in accordance with Article 7 paragraph (3) of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 regarding marriage, and it is necessary to grant marriage dispensation to marry off underage children in an attempt to obey the word of Allah SWT, as follows:

⁵¹ Interview with Mufi Ahmad Baihaqi, Chairman of the Manado Religious Court, Manado City, November 29, 2021.

⁵² Abd Wahhāb Khallāf, *Ilm Usūl Al-Fiqh* (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 1977).

⁵³ Tāj al-Dīn Al-Subky, *Al-Asybah Wa Al-Nazāir* (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 1991).

⁵⁴ Asmuni Abdurrahman, *Qa’idah-Qa’idah Fiqh* (Jakarta: Bulan Bintang, 1976).

وَأَنْكِحُوا الْأَيْمَىٰ مِنَ الصَّالِحِينَ مَنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُعْنِهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ
وَسِعٌ عَلِيمٌ

“And marry those among you who are single or the virtuous ones among yourselves, men or women if they are poor, God will empower them with his grace. for Allah is all-encompassing, all-knowing.” (QS. an-Nur [24]: 32).

On the other hand, if the children of both parties are still minors and do not have a steady income, both parents must give a firm statement in front of a single judge regarding their ability to pay for all of their children’s household. In this case, the single judge inevitably has to grant marriage dispensation based on the desire, readiness, and determination of both parents who can pay for the needs of their children.

One of the implications of enacting Law Number 16 of 2019 is the increasing number of marriage dispensations applications in North Sulawesi.

Table 1. Application for marriage dispensation in North Sulawesi (2019-2020)

No.	Name of Religious Courts	Number of Applications in 2019	Number of Applications in 2020
1.	Religious Court of Manado	21	46
2.	Religious Court of Bitung	30	87
3.	Religious Court of Bolaang Uki	21	75
4.	Religious Court of Lolak	82	328
5.	Religious Court of Tondano		50
6.	Religious Court of Kotamobagu	58	181
7.	Religious Court of Amurang	1	14
8.	Religious Court of Tutuyan	11	50

The data above shows that after the enactment of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 about marriage, it turns out the opposite phenomenon occurs. It means that in all Religious Courts in North Sulawesi, the number of marriage dispensation cases has increased significantly compared to before the enactment of Law Number 16 of 2019.

Etymologically, *nikah* (marriage) means (gathering, uniting, intercourse, and contract). Meanwhile, in terms of terminology, Imam Shafi’i defines marriage as a contract by which sexual relations between men and women are legal. Imam Hanafi defines marriage as a contract that legalizes sexual relations between a man and a woman as husband and wife. Imam Malik describes marriage as a contract for sexual intercourse and entertainment and a law that allows men to

enjoy the inner aspects of the women they marry. According to Imam Hanafi, marriage is a pleasant contract with a woman that uses the word marriage or *tazwij* to validate it.⁵⁵

Subekti states that marriage is a legally valid relationship between a man and a woman for a long time. It is an important event in a person's life, involving not only the groom and the bride but also the parents, brothers, and sisters of both parties, even every family member.⁵⁶

From the explanation above, it can be concluded that marriage is a strong contract, containing legal provisions regarding the permissibility of sexual relations using the marriage vows that mean building a household that is *sakinah* and obeying and worshipping God.

There are at least five types of marriage laws viewed from Sharia Law. First, it is *sunnah* for those who wish to get married, are qualified to get married, and already have the resources to perform a marriage. Second, it is *makruh* for those who are not fit to get married, do not to get married, still not fulfil the requirements for marriage, and are physically disabled, impotent, permanently ill, centenarian and have other physical deficiencies. Third, it is obligatory for those who are fit to get married, wish to get married and have the resources to get married, and fear that they will fall into sin if they do not get married. Fourth, it is haram for those who cannot fulfil the conditions to perform a marriage or believe marriage will not achieve the goal of Islam. On the contrary, they believe marriage will ruin their partner's life. Fifth, it is *mubāh* for those who are not encouraged to get married, and that marriage will not harm anyone.⁵⁷

The state regulates marital affairs, which aims to handle the administration and marriages performed in the country. Indonesia has regulations or laws governing marriage, which serve as a legal basis for positive marriage law. Below is the legal basis of marriage that currently applies. The first is the Book I of the Civil Code, from Chapter IV to Chapter IX. Second, Law Number 1 of 1974 concerning marriage. Thirdly, Law Number 7 of 1989 concerning the Religious Courts. Fourth, Government Regulation No. 9 of 1974 concerning the enactment of Law Number 1 of 1974 about marriage. Fifth, Government Regulation No. 45 of 1990 concerning amendments and additions to Government Regulation No. 10 of 1983 about marriage and divorce permits for civil servants. Sixth, Presidential

⁵⁵ Mardani Mardani, *Hukum Keluarga Islam Di Indonesia* (Jakarta: Kencana, 2016), 94.

⁵⁶ R. Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2005), 234.

⁵⁷ Mardani, *Hukum Perkawinan Islam Di Dunia Islam Modern* (Yogyakarta: Graha Ilmu, 2011), 80.

Instruction No. 1 of 1991 concerning the compilation of Islamic law in Indonesia (Article 1-170 KHI). Seventh, Act No. 16 of 2019.⁵⁸

Before moving to the marriage stage, it is necessary to pay attention to the fundamental things of implementing this act, namely the conditions and pillars of Muslim marriage. First, for the prospective groom, the conditions are that the man must be a Muslim, he should be clearly identified, can ask for a proposal, and there are no obstacles to marriage. Secondly, for the prospective bride, the conditions are that the woman must be a Muslim, she should be clearly identified, can be asked for approval, and there are no obstacles to marriage. Third, the marriage guardian, the conditions are male, an adult has the right of guardianship, and there is no obstacle to marriage. Fourth, witnesses' marriage, the requirements are that at least two men attend the *ijāb-qābūl*, be able to understand the meaning of the marriage contract, be Muslims, and be adults. Fifth, *ijāb* and *qābūl*, the conditions are a marriage statement from the guardian. It is a statement of acceptance from the prospective groom, using the words marriage. Both *ijāb* and *qābūl* are said constantly without interruption. In addition, during *ijāb* and *qābūl*, the meaning must be clear, the person who does the *ijāb-qābūl* is not in the state of ihram, and during the *ijāb-qābūl*, a minimum of four people must be present.⁵⁹ Thus, the pillars and conditions of marriage must be fulfilled; otherwise, the performed marriage is not valid or is usually called a *fasid* marriage (a marriage that does not fulfil the conditions) and a *bāṭil* or false marriage (a marriage that does not fulfil the pillars).

When viewed from a historical perspective, the purpose of human marriage, especially in the days of ignorance, was because women's position was not equal to or lower than the merchandise that could be traded at any time. Moreover, newborn girls were killed because they were considered useless and a disgrace to the family.⁶⁰ Meanwhile, in terms of Islamic law, it can be broken down. First, it justifies sexual intercourse between a man and a woman to fulfil their biological needs, widely known as human nature. Second, establish or build a family *sakīnah*, *mawadah* and *wa rahmah* based on love and compassion. Third, obtain legitimate offspring for human survival.⁶¹

⁵⁸ P. N. H. Simanjuntak, *Hukum Perdata Indonesia* (Jakarta: Prenada Media Group, 2016), 91.

⁵⁹ Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 2015), 53; Syahrul Mubarak Subeitan, "Forced Marriage: Implementation of the Mandatory Provisions of the Bride's Consent in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (2022): 77–87.

⁶⁰ Beni Ahmad Saebani and Syamsul Falah, *Hukum Perdata Islam Di Indonesia* (Bandung: Pustaka Setia, 2011), 42–43.

⁶¹ Abdul Ghofur Anshori, *Hukum Perkawinan Islam* (Yogyakarta: UII Press, 2011), 175.

Conclusion

Based on the results and discussion, several conclusions were obtained. First, there are positive and negative impacts after the enactment of Law Number 16 of 2019. The positive impact is the protection of the rights of minors. Compared to marriages performed at the age of 19, child marriages will produce generations born from a relatively young couple that impact children's physical and mental health. Not only does it affect the children born, but girls who marry underage will be vulnerable to being victims of domestic violence, and at the same time, they do not know how to overcome or get out of the problems they face. While the negative impact caused is the increasing number of applications for marriage dispensation in all Religious Courts in North Sulawesi. One of the reasons behind the rising number of applications for marriage dispensation is the lack of socialization from the Ministry of Religious Affairs (Religious Extension Workers). As a consequence, the implementation of this law is not effective. Second, the other factors causing the request for marriage dispensation, including pregnancy out of wedlock, the influence of local customs/traditions, the desire of parents to get their children married at a young age, economic factors, avoiding acts contrary to religious norms, uncontrolled socializing, and elderly parents wishing to bequeath their property. Third, the causal factors and the reasons underlying the judges in granting marriage dispensation depend on the surrounding community's condition in the Religious Court involved. In general, it can be stated that in all Religious Courts, the case of pregnancy out of wedlock is the main reason for granting marriage dispensation, compared to other causes. In conclusion, the reasons behind the marriage dispensation granted are generally based on the conditions/cases encountered and requested by the applicants, which are all contained in the legal considerations of the judges.

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