




Reconceptualization of Marriage Dispensation Provisions In Religious Courts (Solution To Reduce The Number of Early Marriages In Indonesia)

Uswatun Hasanah^{1*}, Mhd. Syahnan², Dhiauddin Tanjung³

¹ Faculty of Sharia and Law Syekh Ali Hasan Ahmad Addary State Islamic University, Padang Sidimpuan, Indonesia.

^{2,3} Doctoral Program in Islamic Law, Postgraduate Program at the State Islamic University of North Sumatra, Medan, Indonesia

 : uswatunhasanhu604@gmail.com

Corresponding Author*



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Abstract

Introduction: In the Marriage Act has been formulated several principles of marriage, one of which is the principle of marriage in terms of age of marriage. In accordance with the provisions, it is confirmed that the age of marriage for men and women is 19 (nineteen) years. Furthermore, if there are irregularities regarding the parties who have not reached the specified age, it is permissible to apply for a marriage dispensation to the Religious Court.

Purposes of the Research: This study aims to determine and analyze the rules of the game in terms of marriage in which to conceptualize the provisions of the marriage dispensation with the aim of reducing early marriage in Indonesia.

Methods of the Research: The research method used is normative legal research with a statute legal approach and a conceptual approach.

Results of the Research: The problem of early marriage is usually included in the category of children where the child is someone who is not yet eighteen years old, including children who are still in the womb. Therefore, it is necessary to consider the physical and spiritual maturity that makes it possible to carry out her duties as a wife and as a mother as well as possible, if it is used as the best benchmark for a daughter to carry out a marriage. in accordance with the circumstances in Indonesia the lowest limit for a girl is 18 years.

1. INTRODUCTION

Marriage is a very important thing in human life, even a basic need. Without marriage, a person's life will be imperfect and against his nature as a human being. As it is known that marriage is also sunnatullah for his servants to multiply and preserve their lives. The state guarantees the right of its citizens to form families and continue offspring through legal marriage, guarantees the right to children, the right to survival, growth and development and the right to protection from violence and discrimination. This is a state guarantee to citizens through the Constitution of the Republic of Indonesia in 1945. The substance of this protection is then embodied in Law Number 16 of 2019 amending Law Number 1 of 1974 on marriage. In fact, marriage is an essential issue for human life, because in addition to marriage as a means to form a family, marriage not only contains elements of human

relations with humans but also involves civil relations, marriage also contains elements of the sacrality of human relations with God.¹

One of the goals of marriage is to create a happy and eternal family. Law No. 1 year 1974 on marriage has also formulated several principles of marriage one of which is the principle of marriage in terms of age of marriage. In accordance with the provisions of Law Number 16 of 2019, amendments to Law Number 1 of 1974 concerning marriage, confirm that the age of marriage for men and women is 19 (nineteen) years. Furthermore, if there are deviations regarding the parties who are not of the specified age, it is permissible to apply for a marriage dispensation to the Religious Court. Article 1 of Law No. 1 of 1974 on Marriage explains that marriage is an inner bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on The one God. Marriage is a sacred thing and important. So, if someone wants to get married, it is required to be able to prepare everything with a mature, good physical, mental, or social economy.

In Article 7 Paragraph (1) of Law 1 of 1974 on marriage explained that one of the conditions for the marriage is if the age of the prospective groom reaches the age of 19 (nineteen) years and the prospective bride reaches the age of 16 (sixteen) years which is then changed to 19 (nine twelve) for both through Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 regarding the provisions in Article 7 Paragraph 1. In the following paragraph it is also explained that if there is a deviation of the provisions in Paragraph 1, it can be requested for a dispensation to the court by the second parents of male or female parties. The change regarding the age limit departs from the decision of the Constitutional Court Number 22 / PUU-XV/2017 which states that age limit unconstitutional marriage contrary to the provisions contained in Law Number 35 of 2014 on Child Protection which states that children are individuals under the age of 18 years and parents mandatory to prevent early marriage. Thus, although the child has not met the age limit set by the government, but both people his parents can apply for a marriage dispensation to the court to be granted a dispensation.

Along with the enactment of Law Number 16 of 2019 on marriage revising the age of marriage to 19 for couples male and female candidates, the Supreme Court of the Republic of Indonesia issued a regulation Supreme Court Number 5 of 2019 on guidelines for judging applications Marriage dispensation where the purpose of the marriage dispensation itself is to tighten the requirements in filing a child dispensation case (read inhibit early marriage). However, as the story unfolds, the number of entered and decided by the judge the number more and more, even the number doubled double to 3-4 times compared with the Perma period is not yet in force. In addition, with the many cases of marriage dispensation received and terminated by religious courts cause religious courts are often labeled as a party.

Thus, the question arises whether the addition of the number of numbers this is due to the not yet optimal implementation of Perma number 5 of 2019 or is it a result of increasing the age of marriage to 19 years for both men and women by the government through the enactment Law Number 16 Of 2019?. Is it true that the religious court facilitate or even legalize early marriage?, what is the attitude of the court religion in examining marriage dispensation cases after the issuance of court regulations Supreme number 5 of 2019 regarding guidelines for judging marriage dispensation applications?, and how

¹ Wasman dan Wardah Nuroniyah, *Hukum Perkawinan Islam di Indonesia Perbandingan Fiqh dan Hukum Positif*, (Yogyakarta: Citra Utama, 2011), p. 29.

different examination of marriage dispensation cases in Indonesia before and after the publication of the regulation?

It is known that the application for marriage dispensation is very high in religious courts, it is known that in 2015 there were 13,518 cases, in 2016 there were 13,612 cases, in 2017 it decreased to 13,095 cases and in 2018 it increased to 13,815 cases. However, with the amendment of Law No. 1 of 1974 became law No. 16 of 2019, especially changes to the marriage age limit did not reduce the number of marriage dispensations in religious courts. In fact, the change made the number of marriage dispensation applications experience a significant increase in 2019 by 23,126 applications, increasing to 64,211 applications in 2020. It can be understood if the change of marriage age limit resulted in a high number of applications for marriage dispensation in religious courts. Thus, it is of interest for the author to raise the Journal related to the provisions of the marriage dispensation in the religious courts and to reconceptualize the provisions of the marriage dispensation with the aim of reducing the number of early marriages in Indonesia.

2. METHOD

The research method used to understand this problem is normative juridical, which is research based on the regulation of Law Number 16 of 2019 amendments to Law Number 1 of 1974 on marriage, Constitutional Court decision Number 22/ PUU-XV/2017 and Law Number 35 of 2014 on Child Protection in this pressure field with marriage dispensations that support each other. The legal method of norms is a way of knowing the norms and rules of law in the regulation of applicable law (positive law), related to topics related to law.

3. RESULTS AND DISCUSSION

3.1 Early marriage in National Law and Islamic law

In the legislation in Indonesia regulates marriage as stated in law No. 1 of 1974 states that " marriage is an outward bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the supreme deity."Meanwhile, in the compilation of Islamic law (KHI) it is stated that marriage is a very strong contract or *mitsaqan ghalidzan* to obey the commands of Allah and carry it out is worship. In Law No. 1 of 1974 Article 7 states that " marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years. However, the law was amended to law No. 16 of 2019 stated that marriage is permitted if the male and female parties have reached the age of 19 years. In this case, it can be understood that if the marriage is carried out by a man and a woman in the age of less than 19 years, it can be said that the marriage is underage (early age), because the age does not comply with the restrictions that have been established by the government through the law. This means that the marriage allowed by the government is only 19 years of age for both men and women. However, if the parties who want to get married and do not meet the age limit that has been set, it can be referred to as early marriage.

This is certainly in line with the requirements that must be met by both parties both for prospective husbands and prospective wives. Among them is that they must meet the age limit in marriage. However, when it has not met the age limit that means that men and women are under 19 years old, then it is said to be underage marriage.² As it is known that

² *Ibid*, p. 18.

early marriage is a contemporary term. Early is associated with time, that is, very early in a certain time. For people who lived at the very beginning of the 20th century or earlier, the marriage of a woman at the age of 13-14 years, or a man at the age of 17-18 years was common, not special. But for today's society, it's a strange thing. Women who marry before the age of 20 or men before 25 are considered unnatural, "too early" terms.

Actually, if we look in the references of jurisprudence or Islamic law there is no provision regarding the age of marriage. The majority of scholars say that parents or guardians are allowed to marry their daughters at any age. However, there are several considerations that must be considered, one of which is *maslahat*. Because of this consideration, there are scholars who deny the occurrence of early marriage. It can be done, but it is better to leave it. As it is known that when a girl is still relatively small and not ready either physically or mentally to assume the duties as a wife, even though she has menstruation or puberty *aqil*. When a woman marries a child, there is no benefit in it, and it can even cause harm to the child. This consideration of *maslahat-mafsadah* is also accepted in the Shafi'i madhhab. As it is known that the marriage of the Prophet Muhammad with Siti Aisyah. There are several narrations that reveal that at that time Aisha was 6 years old and when she reached 9 years old she lived with the Prophet. However, at that time, the Prophet was already 50 years old. It is mentioned in a book of women's jurisprudence that if an orphan woman has reached the age of 9 years, then she may be married. If he consents, then the marriage is valid.

عَنْ عَائِشَةَ { أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَزَوَّجَهَا وَهِيَ بِنْتُ سِتِّ سِنِينَ ، وَأَدْخَلْتُ عَلَيْهِ وَهِيَ بِنْتُ تِسْعِ سِنِينَ

It means: "from Aisha (narrated) that the Prophet married her when she was a child aged 6 years and the Prophet met her as a wife at the age of 9 years and she lived together at the age of 9 years too " (Hadith Shohih Muttafaq 'alaihi). The opinion of the jurisprudence is supported by Hasan and Ibrahim an-Nakhai argues that there is no prohibition for parents to marry their young or small or large or adult daughters whether widowed or not, although both do not like it. There is even an opinion of Abu Hanifa who said that there is no prohibition for parents to marry their daughters who have not reached puberty. Because when they reach puberty, they are allowed to marry whomever they please. Abu Hanifah said that parents are allowed to marry their daughters who have not reached puberty. Because if later they are adults, it is allowed to marry whoever they want without asking parental permission. Thus, it can be understood that the presence of early or underage marriage is a marriage that does not meet the age limit set by the government. And when they were married, they had a son, and he had a son, and he had a son. 1 of 1974 jo. Law No. 16 of 2019 on marriage "marriage is permitted only if the male party is already 19 years old and the female party is already 16 years old" (Article 7 Paragraph 1) and is changed to the age of 19 for both men and women in law no. 16 of 2019. (B) in addition to ignoring the rights of children, one of them is the right to education. Because later, when they get married they cannot resume their education.

3.2 Impact of Early Marriage.

Some of the effects of early marriage are:

- 1) Early Marriage Violates The Rights Of Children.³ This means that early marriage, when viewed from various aspects, is very detrimental to the interests of children, one

³ Dwi Rifiani, Pernikahan Dini Dalam Perspektif Hukum Islam, *de Jure dalam Jurnal Syariah dan Hukum*, no 3 No.2, 2011, p. 127.

of which is the right to education. As is known, when children and parents choose to do early marriage, of course they have sacrificed the interests of their children to no longer continue their education. Many of them even dropped out of school because they were married. This is certainly a very sad problem because many Indonesian children drop out of school. Of course, the number of children's stupidity will increase. When you build a house, you build it with knowledge. If knowledge is not possessed, it will be difficult to build a harmonious, happy and prosperous household. So, it is important for us to encourage the world of education so that our generation will be a smart and proud generation.

- 2) Impact On The Law. This means that if you have an early marriage, it means that you have ignored some laws such as the Marriage Law No. 16 of 2019 Article 7 Paragraph 1 that the marriage age limit is 19 years for both men and women. Ignoring the law No. 23 of 2002 on Child Protection (Article 26 paragraph 1) that "parents are obliged and responsible for the upbringing, maintenance, education and protection of children.⁴ The mandate of the law aims to protect children so that they still have the right to live, grow, develop and be protected from acts of violence, exploitation and discrimination. With age restrictions, the marriage law intends to manipulate to restrain the rate of marriage that leads to the rate of population increase. Child marriage is a crime against children.
- 3) Biological and psychological impact. This means that biologically, the reproductive organs of children who have just stepped on puberty are still in the process of reaching maturity so they are not ready to have sex with the opposite sex, especially if they get pregnant and give birth. Because if forced, it will experience extensive trauma and tearing that will harm the reproductive organs and even endanger the child's life. However, the psychic impact is that the child is not ready and does not understand about sex, it is possible that it will result in psychic trauma in the child's soul. In fact, if you give birth later will take care of her child. And many are not ready for such things that would be surprised to even get depressed. From the psychological side, as the opinion of psychologist Anna Surti Ariani explains, advocating or allowing early marriage is a form of violence against children. If one parent allows their child to marry at an early age, it can be said that the parent has committed an "act of violence against the child". In other words, children under the age of 21 can be categorized as "not ready" for marriage.
- 4) Impact On Health. At the age of 15-19 years , women have twice the potential to die in childbirth than 20-25 years old, below that (15 years) the potential to die can be five times greater. Young women who are pregnant, according to research, will experience several things, such as bleeding, miscarriage, and long or difficult labor. This condition causes the mother who will give birth can die. From the health side, early marriage will harm women's reproductive organs because the younger the marriage, the longer the time span to reproduce. The results also showed that one of the factors causing cervical cancer is sexual activity at an early age, because young women have immature cervical conditions cervical cancer (cervical cancer). Another risk that arises is vaginal trauma. This will cause infection due to weak tissue tissue that has not been strengthened by this estrogen hormone.⁵

⁴ Safrin Salam, "Dispensasi Perkawinan Anak Di Bawah Umur: Perspektif Hukum Adat , Hukum Negara & Hukum Islam," *Pagaruyuang Law Journal* 1, no. 1 , 2017, p. 110–24.

⁵ Dwi Rifiani, Pernikahan Dini Perspektif Hukum Islam, *de Jure, Jurnal Syariah dan Hukum*, 3 no 2, 2011.

- 5) Social Impact. This means that this impact is related to socio-cultural factors in society that tend to position women as a complement to men's lives only. This condition is only to preserve the patriarchal culture that will mostly give birth to violence and leave pain for women.

This is the impact that occurs in early marriage that has a lot of impact on physical, mental and psychological development. In fact, in early marriages children are classified as not ready for marriage. Unpreparedness of children to marry can be seen from 5 aspects of growth and development of the child itself includes:

- 1) physical aspect, where the Physical of a child in adolescence is still in the process of developing. In other words, having sex will be vulnerable to the arrival of various diseases, especially for women.⁶
- 2) from the cognitive aspect, where at the age of children and adolescents, they in terms of insight is not too broad, the ability of problem solving and decision making has not developed sufficiently mature. When there are problems in a marriage, they tend to have a hard time solving them.
- 3) the language aspect, where a child and also a teenager are not always able to communicate their thought patterns carefully (clearly). This can be a big problem in a marriage.
- 4) social aspect, the point is that if married in adolescence, the social life of children will tend to be limited and lack of support in the environment.
- 5) emotional aspects, this can be seen from the emotions of adolescents in the category of "labile". If children and adolescents are married then when getting into trouble it will be easier to depression and this is risky to him as a teenager, and children born in marriage. In addition, with emotional lability, married children/adolescents quarrel more often, so their marriage is less happy.

This unpreparedness for marriage, must have an effect on kelangengan in the household. Thus, early marriage also greatly affects the divorce rate in young couples. Research by Mies Grijns and Hoko Horii in West Java shows that 50% of early marriages end in divorce, even when the age of majority is only one or two years. This is due to the incompatibility of spouses and the inability to run the house hold together.

Thus, seeing the various impacts that occur in early marriage, it will certainly have an impact on the integrity of the family. In this case based on the results of interviews that researchers conducted with the perpetrators of marriage that the integrity of their households are still maintained. Although there are many problems, even quarrels and fights cannot be avoided. However, some of them can still maintain the integrity of the household. One of the things they think about is children. When they think of their selfishness it is the child who will be the victim. In addition, the advice of parents is also still being heard. Because parents try to reconcile their children when there is a conflict between them.

3.3 Definition of marriage dispensation in Marriage Law in Indonesia

Marriage Dispensation According To R. Subecti and tjitrosudibio dispensation means deviation or exclusion from a rule.⁷ A dispensation is an exception to the general rule for a

⁶ Erizka Permatasari, "Ulasan lengkap : Hukumnya Menikah di Usia Dini," hukumonline.com/klinik, 2021,

⁷ O. S, Eoh. *Perkawinan Antar Agama Dalam Teori dan Praktek* (Jakarta: Raja Grafindo Persada, 1996), p. 82.

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particular circum stance.⁸ The dispensation referred to herein is an exception to the application of the provisions of the Marriage Law given by the court or other officials appointed to a marriage to be performed because one or both prospective bride and groom have not reached the minimum age to enter into a marriage.

In Article 7 Paragraph (1) of Law No. 1 of 1974 is a general rule about the minimum age limit of marriage is 19 years for men and 16 years for women. However, there is a revision to law No. 16 year 2019 the age limit for marriage for men and women is 19 years. The existence of these rules because marriage is an agreement between a man or woman as husband and wife, must be done by those who are mature enough both psychologically and biologically. This can be achieved by reaching the age limit of marriage.

Thus, it is very important to realize the purpose of marriage itself and also prevent the occurrence of young marriages that result in divorce and unhealthy offspring. However, the Marriage Law still gives concessions, namely the deviation from Article 7 Paragraph (1) of Law No. 1 of 1974 jo. Law No. 16 of 2019, for the achievement of marriage, there must be a marriage dispensation from the religious court based on the request of the parents of both parties as referred to in Article 7 Paragraph (2) of law no. 1 of 1974 jo. Law No. 16 of 2019 which reads: "in case of deviation from paragraph (1) of this article may request a marriage dispensation to the court or other officials appointed by both parents of the man and the woman". Deviation from the provision is also justified by The Marriage Law, if the Religious Court after examining in the trial and believes that against the things that make it possible to grant a marriage dispensation with a determination. This dispensation is in the form of permission as a basis for the Office of Religious Affairs (KUA) or civil registry to marry prospective spouses.⁹ And each event/ circumstance in each case will be considered by the religious court, because the law does not mention anything that can be used as a reason for granting a marriage dispensation.

Marriage dispensation from the point of view of religious courts according to the Supreme Court regulation regarding guidelines for adjudicating marriage dispensation applications.¹⁰ In Article 1 Paragraph 5, The Marriage dispensation is said to be the granting of a marriage license from the court for prospective spouses who have not reached 19 years of age according to the provisions of the minimum age for legal marriage.¹¹ Furthermore, in Article 3 states that the purpose of the issuance of marriage dispensation is to refer to the fulfillment of the principles in Article 2, one of which is, the best interests of the child, the right to life and development of children, and respect for human dignity. Finally, in Article 8, it is said that the application for marriage dispensation for each prospective husband and wife who are under the legal marriage age limit, is submitted to the court located at the domicile of one of the parents/guardians of the prospective husband and wife. Based on the understanding of the articles that have been mentioned, it can be said that the marriage dispensation is an application for marriage registration in a special court for prospective spouses who are under the age of marriage specified by the marriage law. With the various considerations that have been fully mentioned in Article 2 and achieve the objectives stated

⁸ Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia* (Surabaya: Balai Pustaka, 1989), p,209.

⁹ Sonny Dewi Judiasih, *Perkawinan Bawah Umur di Indonesia Beserta Perbandingan Usia Perkawinan dan Praktik Perkawinan Bawah Umur di Beberapa Negara* (Bandung: Refika Aditama, 2018), p. 37.

¹⁰ Mahkamah Agung Republik Indonesia, "Lampiran Peraturan Mahkamah Agung Republik Indonesia No. 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin" (Jakarta, 2019)

¹¹ Melinda Rahmawati dkk, *Peran Dispensasi Kawin Dalam Peningkatan Angka Pernikahan Dini Di Wilayah Kotamadya Jakarta Barat*, dalam *Al-Istinbath*, Jurnal Hukum Islam 6 no. 1 Mei 2021, p.8

in Article 3, this application is processed in accordance with the rules and administrative requirements that have been contained in the regulation. In the process of submission, this application is submitted to the Office of the Religious Court at the residence of one of the parents/guardians of the prospective husband and wife.

Abdul Jalil wrote that the marriage dispensation was submitted by the parents to the Religious Court.¹² If the prospective bride non-Muslim religious application submitted to the District Court. Safrin Salam wrote that the application for marriage dispensation submitted to the Religious Court taking into account the benefit of the people and getting legal clarity on the status of marriage is allowed in religion.¹³ This is considered to be the best solution to be able to provide legal certainty and maintain the common good and avoid slander on the spouses. This marriage dispensation is given not only for Islamic marriages, but for all marriages that will be legalized by state law. This marriage dispensation is held to obtain the constitutional rights and legality of marriage for married couples.

In order to carry out the process of adjudicating the marriage dispensation application has not been regulated expressly and in detail in the legislation and for the sake of smooth implementation of the judiciary, the Chief Justice of the Republic of Indonesia established the Supreme Court of the Republic of Indonesia Regulation Number 5 of 2019 on guidelines for adjudicating marriage dispensation applications. This Perma was established on November 20, 2019 and promulgated on November 21, 2019 to be known and applied to all levels of society. The Presence Of Perma No. 5 of 2019 is a response from the Supreme Court to revise the UUP (Marriage Law) by issuing a marriage dispensation Perma in order to realize an examination of marriage dispensation cases that are oriented to the interests of children by considering moral, religious, customary and cultural aspects, psychological aspects, health aspects, and the impacts caused. The Perma stipulates that judges adjudicate marriage dispensation cases based on the principles contained in Article 2 of Perma No. 5 year 2019:¹⁴ 1) Best interests of the child; 2) The right to life and development of children; 3) Appreciation of the child's opinion; 4) Appreciation of human dignity and dignity; 5) Non-discrimination; 6) Gender equality; 7) Equality before the law; 8) Justice; 9) Expediency; and 10) Legal certainty.

Child marriage dispensation after the issuance of PERMA number 5 of 2019 until now, marriage dispensation is still a problematic case in terms of marriage in religious courts. The authority of religious courts to process applications for marriage dispensation is often considered as the cause of many child marriages in Indonesia, because in fact marriage dispensation does not only cause benefits but also harm. But the fact is that only a marriage dispensation can provide legality for marriages performed underage, of course, through a process of examination and consideration by a judge. Efforts to abolish child marriage are a response to the growing body of evidence that shows the scale and scope of the problem. Although the age limit for entering into marriage has been raised, child marriages continue to occur even as the numbers soar. Because if the age of the child has not reached the minimum limit in accordance with Article 1 of Law Number 16 of 2019, a marriage dispensation can still be submitted to the court as stipulated in Article 7 Paragraph (2) of the

¹² Abdul Jalil, "Fenomena Seksualitas Anak Muda: Studi Kasus Tentang Dispensasi Kawin Pada Pos Bantuan Hukum Pengadilan Agama Di Sleman, Yogyakarta," *Jurnal Studi Pemuda* 3, no. 1, 2014, p. 49-60

¹³ Safrin Salam, "Dispensasi Perkawinan Anak Di Bawah Umur: Perspektif Hukum Adat, Hukum Negara & Hukum Islam," *Pagaruyuang Law Journal* 1, no. 1, 2017, p.110-24.

¹⁴ <https://peraturan.bpk.go.id/Home/Details/122740/uu-no-16-tahun-2019>, diunduh pada 02 Juli 2022 pukul 20.00 Wib.

law. PERMA No. 5 of 2019 also regulates several important things such as judges must first provide advice to the parties about the risks that will occur if they have an early marriage, for example the risk of stopping education, the risk of reproductive health disruption, being entangled in the circle of poverty, the unstable psychological condition of children, and the potential for domestic violence. This Perma also regulates how judges behave in court, for example judges should not make statements related to gender stereotypes, denigrate, blame and/or intimidate women who face the law.

3.4 Factors For Filing A Marriage Dispensation In A Religious Court

As for the factors that affect the application for marriage dispensation, including the presence of factors from within (internal) and factors from outside (external):

- 1) The Internal Factors Of Increasing The Application For Marriage Dispensation
 - a) Personal Desire Factor: As it is known that one of the factors that resulted in the dispensation of marriage is the personal desire of the parties. This desire is usually because they are already dating and know each other.
 - b) Factors of Primary Education: Including the world of Education also felt the impact of the implementation of learning in the network (online). The online learning system also ultimately gave birth to many surprising problems, such as difficulty accessing the internet. This happened when Covid-19 came and resulted in many who did not want to go to school because they were online.
 - c) Low Economic Factor: So many factors that make the cause of marriage (early) underage as a result in terms of these factors, the economic factor is one of the reasons the family in registering at the time of marriage, so that the prospective party who filed for early marriage on average the cause factor is due to economic factors.
 - d) Parental Factors: The parental factor is the biggest factor in early marriage. Even early marriage can also be caused due to the influence and even parental coercion.
 - e) Married by Accident or pregnant out of wedlock: The reason is mostly because Married by Accident or pregnant out of wedlock. The occurrence of pregnancy outside of marriage, because children have relationships that violate the norm, forces them to enter into early marriage, in order to clarify the status of the conceived child.
- 2) External Factors Increased Application For Marriage Dispensation
 - a) Factors of Amendments To The Legislation: The increasing standard of marriage age in the law is one of the causes of the increasing number of early marriages and an increase in marriage dispensation applications in religious courts. In Law No. 16 of 2019, it says that marriage is only allowed when men and women have reached the age of 19 years. In the provisions of the law in force in the Republic of Indonesia, to perform a marriage must meet the provisions as contained in Article 7 of Law No. 1 of 1974 on marriage as follows:¹⁵ with regard to this principle, one of the standards used is the determination of the age of marriage. According to Law No. 1 of 1974 on marriage Article 7 Paragraph (1), the measure of maturity is implemented with the age limit that must be met as a condition of a person to marry. The age limit is 16 (sixteen) years for prospective brides and 19 (nineteen) years for

¹⁵ Lihat Pasal 6 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan

men.¹⁶ The age limit for marriage is very important. A marriage requires biological and psychological maturity.¹⁷

- b) Social Factors: This factor usually comes from the community, for example the social aspect that supports early marriage or the submission of marriage dispensation is Marlojong or elopement. Marlojong's image was like a daughter who would be married was brought to her future husband's House and lived in the House. However, this situation occurs usually because the women are too set a high dowry and the prospective husband does not afford it. Until the occurrence of marlojong.
- c) Religious Understanding Factors: In Panyabungan it was found that there are parents who have a religious understanding that their children should be married at an early age. This is certainly to protect the child from promiscuity. This is usually by kyai who has a high religious understanding.
- d) Mass Media Factors: Factors increasingly modern mass Media mass media is developing sophisticated. It is a lot of teenagers abusing mass media for negative things.
- e) Local customs or cultural factors: Local customs and Customs Customs that certain communities believe increasingly add to the percentage of early marriages. For example, the belief that one should not refuse a marriage proposal to his daughter even though she is under the age of 18 (eighteen) years, because it will be considered insulting to the party who applied so that it causes the parents to marry his daughter.

3.5 Reconceptualization of marriage dispensation provisions in religious courts : solutions to reduce the number of early marriages in Indonesia

In matters that concern the authority of religious courts, there are several matters that are very closely related to the rights of children, including the case of marriage dispensation application. The application for marriage dispensation is a case of application submitted by the applicant for the court to give permission to the applicant for dispensation to be able to hold a wedding, because there are conditions that are not met by the bride and groom, namely the fulfillment of the age limit of marriage. As an effort to bridge between the natural needs of human beings with the achievement of the essence of a marriage, The Marriage Law No. 1 of 1974 has established the basis that must be met in marriage. One of them is in terms of age of consent.

Law No. 1 of 1974 on marriage is a regulation that regulates marriage law in Indonesia, including regulating the purpose of marriage, the terms of marriage and other matters concerning marriage. Article 7 1. Marriage is only permitted if the male has reached the age of 19 (nineteen) years and the female has reached 16 (sixteen) years. 2. In the case of retention of Paragraph (1) of this article may request a dispensation to the court or other officials appointed by both parents of the man and the woman.¹⁸ After 45 years, law No. 1 year 1974 on marriage finally experienced a refreshment. Article 7 Paragraph (1) which originally stated that the minimum age limit for women to marry was 16 years was later changed by

¹⁶ Ahmad Rofiq, *Hukum Islam di Indonesia*, (Rajawali Press, Jakarta), 2003, p. 77

¹⁷ Muh. Hatta, Batasan Usia Perkawinan dalam Perspektif Ulama Klasik dan Kontemporer, *Jurnal Al-Qānūn*, Vol. 19, No. 1, Juni 2016, p. 68 lihat juga Ruzaipah, "Penetapan Usia Kedewasaan Dalam Sistem Hukum Di Indonesia," *Jurnal Misaqan Ghalizan*, 1, no. I, 2021, p.1-20.

¹⁸ Sri Ahyani, "Pertimbangan Pengadilan Agama Atas Dispensasi Pernikahan Usia Dini Akibat Kehamilan Di Luar Nikah," *Jurnal Wawasan Yuridika* 34, no. 1 2016, p. 31

raising it to 19 years on a par with men. This amendment accommodates the decision of the Constitutional Court No. 22 / PUU-XV/2017 on the application for judicial review of Article 7 Paragraph (1) because it is considered unconstitutional and discriminatory. The changes are officially enshrined in law no. 16 of 2019 on amendments to law No. 1 of 1974 on marriage Article 7 that the age of marriage is equalized between men and women to 19 years. The government hopes that the change in the marriage law can reduce the number of marriages of minors.¹⁹

This prompted the change of the Marriage Law because the Constitutional Court considered that Indonesia was in the emergency phase of child marriage. UNICEF research Data in 2016 states that Indonesia is ranked 7th of the countries in the world that have the highest rate of early marriage and ranked 2nd in ASEAN after Cambodia. This reality is of course very worrying for the younger generation, especially for their growth and development and eliminate the basic rights that they should have such as the right to education, health care, civil rights, the right to be free from discrimination and violence and other rights. The state must be able to guarantee the protection of children from the practice of underage marriage. Whereas in the *Ius Constitutum*, actually the government through the child protection law has regulated that every parent is responsible and obliged in the Prevention of marriage at the age of children. Act No. 16 of 2019 regarding the amendment of the Marriage Law Article 7 Paragraph (1) states that marriage is only permitted when a man and a woman have reached the age of 19 years. The change in the sound of this article raises expectations that there will be a decrease in the number of early marriages that were previously still carried out. However, Article 7 Paragraph (2) states that if there is a deviation against the age provision, the parents of the man or woman are allowed to apply for a marriage dispensation to the court for urgent reasons and accompanied by supporting evidence. There is great hope when there is a change in law No. 1 of 1974 became law No. 16 in 2019, it is expected that the number of early marriages may decrease. However, it turned out that the increase in the standard age of marriage in the law is one of the causes of the increase in the number of early marriages and an increase in applications for marriage dispensation in the religious courts. One example of such an increase occurred in several religious courts in North Sumatra, including:

No.	Nama Pengadilan	Tahun 2017	Tahun 2018	Tahun 2019	Tahun 2020
1	PA Panyabungan	11	15	19	63
2	PA Padangsidempuan	0	7	3	8
3	PA Sibolga	9	0	3	14
4	PA Medan	9	6	16	24

¹⁹ Pramono, Suwito Eko., Melati, Inayah Sari., Kurniawan, Edi. "Fenomena Pernikahan Dini Di Kota Semarang: Antara Seks Bebas Hingga Faktor Pengetahuan." *Jurnal Riptek* 13, no. 2 2020, p.107 lihat juga Maswandi, Jamilah, Ariman Sitompul, The Power of Proof In Victims of Sexasual Abuse. *SASI*, 28, no. 3, 2022, p. 394

From the table, we can see the increase between 2019 and 2020, known in the year after the change in the Marriage Law. Then this requires a reconceptualization of the provisions of the dispensation of marriage in religious courts, including the age of marriage. Article 7, which reveals that the age of marriage for men and women reaches 19 years, this is actually too high a figure. Although it is said that age is a mature age for marriage. However. As it is known that in law No. 23 of 2002 regarding child protection in Article 1, it is stated that a child is someone who is not 18 (eighteen) years old, including children who are still in the womb. Therefore, it is necessary to take into account the physical and spiritual maturity that allows it to carry out its duties as a wife and at the same time as a mother as well as possible, if taken the best benchmark for a girl to run a marriage in accordance with the circumstances in Indonesia the lowest limit for a girl is 18 years because there is age 18 a woman has reached tingkat biological maturity of a woman.²⁰

4. CONCLUSION

The increase in the number of applications for marriage dispensation is actually a problem in Indonesia. The increase occurred after the amendment of Law No. 1 of 1974 became law No. 16 of 2019 Article 7 which is about the limitation of the age of marriage to 19 years. The high limit is the soaring number of marriage dispensation applications. It is hoped that there will be a reconceptualization of these provisions by equating the age limit with the age limit of children according to the Child Protection Law, namely the age of 18 years. In addition, tighten the requirements for obtaining a marriage license by showing proof of having a job as a source of income. The economy can be one of the causes of divorce. This is certainly expected to reduce the number of early marriages in Indonesia, and so that every child can get their rights one of which is to obtain education for the future.

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²⁰ Sutan Marajo Nasaruddin Latif, *Problematika Seputar Keluarga dan Rumah Tangga*, Pustaka Hidayah, Bandung, 2001, p. 23.

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