



MARRIAGE DISPENSATION AND THE BEST INTERESTS OF THE CHILD: A JUDICIAL ANALYSIS OF URGENT REASONS IN THE PURWODADI RELIGIOUS COURT

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Abstract

This research examines the legal framework and judicial practices surrounding marriage dispensation (*dispensasi kawin*) in Indonesia, with a case study of the Purwodadi Religious Court in 2024. The study is motivated by the increasing number of dispensation applications despite the enactment of Law No. 16 of 2019, which raised the minimum age of marriage to 19 years, and the Supreme Court Regulation (Perma) No. 5 of 2019, which mandates that dispensations be granted only for “urgent reasons” and with due regard to the principle of the best interests of the child. Using a qualitative descriptive-analytical method with an empirical juridical approach, data were collected through field observations, interviews with judges and court officials, and an examination of court decisions. The findings reveal that while the legal framework seeks to restrict child marriage, in practice, 95.9% of dispensation applications in Purwodadi were approved in 2024. The predominant grounds for approval were premarital pregnancy, fear of zina (fornication), and strong socio-cultural pressure to maintain family honor. Judges often interpreted “urgent reasons” in a narrow sense, prioritizing immediate moral or social concerns rather than long-term considerations for the child’s welfare. Theoretically, this reflects a gap between the normative objective of legal protection—to uphold the rights and welfare of children—and the judicial application, which tends to reinforce cultural norms favoring early marriage. While judges’ decisions may align with Islamic objectives such as *hifz al-nasl* (protection of lineage), they risk undermining other *maqāsid al-shari’ah* principles, such as *hifz al-nafs* (protection of life/health) and *hifz al-‘aql* (protection of intellect). This study concludes that the dispensation mechanism, though legally permissible, functions as a loophole that weakens child protection. Stronger judicial guidelines and cross-institutional collaboration are needed to ensure that the principle of the best interests of the child is consistently upheld in dispensation cases.

Keywords: Marriage Dispensation, Urgent Reasons, Best Interests of the Child, Purwodadi Religious Court, Child Protection.

Abstrak

Penelitian ini mengkaji kerangka hukum dan praktik peradilan terkait dispensasi kawin di Indonesia dengan studi kasus pada Pengadilan Agama Purwodadi tahun 2024. Meskipun Undang-Undang Nomor 16 Tahun 2019 dan Peraturan Mahkamah Agung (Perma) Nomor 5 Tahun 2019 secara normatif bertujuan membatasi perkawinan anak dan menegaskan bahwa dispensasi hanya diberikan untuk alasan mendesak dengan memperhatikan asas kepentingan terbaik bagi anak, hasil penelitian menunjukkan bahwa praktik peradilan masih didominasi oleh faktor sosial budaya. Data empiris memperlihatkan bahwa 95,9% permohonan dispensasi di Purwodadi dikabulkan, dengan alasan utama berupa kehamilan di luar nikah, kekhawatiran terjerumus pada perbuatan zina, serta tekanan sosial untuk menjaga kehormatan keluarga. Temuan ini mengindikasikan adanya kesenjangan antara tujuan normatif hukum yang berorientasi pada perlindungan anak dengan praktik peradilan yang lebih mengutamakan solusi jangka pendek untuk menghindari aib sosial. Secara teoritis, hasil penelitian ini memperkuat tesis bahwa efektivitas hukum sangat dipengaruhi oleh budaya hukum masyarakat, sebagaimana dijelaskan oleh Soerjono Soekanto. Dari perspektif *maqāsid al-*

sharī'ah, keputusan hakim memang melindungi nasab (*hifz al-nasl*), tetapi berpotensi mengabaikan perlindungan jiwa (*hifz al-nafs*), akal (*hifz al-'aql*), serta masa depan anak. Oleh karena itu, diperlukan pedoman yudisial yang lebih ketat, klasifikasi alasan mendesak yang lebih jelas, serta kolaborasi lintas lembaga untuk memastikan asas kepentingan terbaik bagi anak benar-benar terwujud dalam setiap putusan dispensasi kawin.

Kata kunci: Dispensasi Kawin, Alasan Mendesak, Kepentingan Terbaik Anak, Pengadilan Agama Purwodadi, Perlindungan Anak.

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INTRODUCTION

Marriage in Islam is a sacred bond between a man and a woman, established to create a harmonious family filled with love, mutual responsibility, and the continuation of human lineage. Beyond fulfilling biological needs, marriage serves to preserve dignity, maintain social order, and establish a prosperous household within the framework of religion and morality (Mesta, 2021).

However, in practice, marriage often encounters challenges, particularly in cases of child marriage, which has become a significant contributor to divorce rates. The immaturity of both emotional and economic aspects among young couples frequently leads to conflict, domestic violence, and eventually divorce (Catur, 2018; Kayyis, 2019).

A case recorded at the Purwodadi Religious Court illustrates this problem. In 2023, a petition for marriage dispensation was filed for a girl aged 15 years and 10 months and a boy aged 17 years and 3 months, as the girl was already three months pregnant. The court granted the request, and the couple married. Yet, less than a year later, they filed for divorce (Case No. 2339/Pdt.G/2024/PA.Pwd) due to persistent quarrels and incompatibility. This case reflects how underage marriage often results in the dissolution of marriage rather than family stability.

Scholars have highlighted that the impact of child marriage extends across economic, health, and social dimensions. Economically, young couples usually lack financial stability and struggle to support their families. From a health perspective, underdeveloped reproductive organs increase the risk of complications, maternal mortality, and infant death (Triantono, 2020). Socially, couples are often stigmatized and considered unprepared for parental roles, which reinforces household disharmony (Rovi, 2019).

In response to this phenomenon, the Government of Indonesia revised the marriageable age through Law No. 16 of 2019, which sets the minimum age for both men and women at 19 years. Nevertheless, the availability of marriage dispensation has led to a sharp increase in court petitions. The Supreme Court's 2024 annual report recorded 35,529 applications for dispensation, most of which were granted. In the Purwodadi Religious Court, out of 562 petitions filed in 2024, 539 (95.9%) were approved, with primary reasons being premarital pregnancy and the fear of committing zina (fornication).

The main issue lies in the interpretation of what constitutes “urgent reasons” (*alasan sangat mendesak*) as stipulated in Law No. 16 of 2019. Since the law does not define this term explicitly, judges often rely solely on pregnancy or moral concerns as grounds for approval. This raises questions about whether such rulings align with the principle of the best interests of the child, as mandated in the Child Protection Law and in the *Committee on the Rights of the Child, General Comment No. 14 (2013)*.

Several studies have examined the issue of marriage dispensation, but with different emphases compared to this research.

First, a thesis by Nur Ikhsan entitled “*The Effectiveness of the Implementation of Marriage Dispensation as an Effort to Reduce Divorce Rates in Early Marriages in Semarang City*” highlights the practice of marriage dispensation as a preventive measure against the high rate of divorce among underage couples. In that study, dispensation was mainly perceived as a solution to avoid social disgrace, especially in cases of premarital pregnancy, where marriage was often forced to safeguard family honor. In contrast, the present research places the emphasis on dispensation as a mechanism to uphold the principle of the best interests of the child. Rather than being driven by social pressure or stigma, the analysis in this study focuses on how urgent and compelling reasons—particularly those related to the child’s rights—form the legal and moral basis for granting dispensation. This perspective brings a broader consideration of children’s protection, covering legal, psychological, social, and future-oriented aspects.

Second, a thesis by Fatullah entitled “*The Dilemma of Regulating Marriage Dispensation in Indonesia (An Islamic Law Analysis of Law No. 16 of 2019 and Supreme Court Regulation No. 5 of 2019)*” explored the legal framework governing marriage dispensation in Indonesia and compared it with the perspective of Islamic law, which normatively does not stipulate a minimum age for marriage for either men or women. The main focus of that research was the normative divergence between Indonesian positive law and Islamic legal principles concerning marriage age. In contrast, this study does not merely compare statutory provisions, but instead concentrates on how judges interpret the element of ‘very urgent reasons’ as mandated in Supreme Court Regulation No. 5 of 2019. The analysis thus extends into judicial practice and the reasoning process of judges when granting dispensation requests, with particular attention to how such decisions reflect the protection of children’s best interests.

From this comparison, it is clear that while previous research has addressed marriage dispensation either from the perspective of social impact or from a normative legal standpoint, the present study contributes a distinct focus by analyzing judicial interpretation and decision-making, especially regarding the notion of “very urgent reasons” in relation to children’s rights protection.

This situation illustrates the tension between legal norms designed to protect children and social practices that legitimize child marriage through judicial dispensations.

Consequently, early marriages remain prevalent and continue to generate adverse consequences, including domestic violence and long-term socio-economic vulnerabilities.

From the background above, two main issues can be identified.

First, the legal framework on marriage dispensation in Indonesia requires critical examination. Although Law No. 16 of 2019 increased the minimum marriageable age, the legal loophole of dispensation has undermined the effectiveness of this regulation. The absence of a precise definition of “urgent reasons” allows wide judicial discretion, leading to a very high approval rate of dispensation petitions.

Second, the judicial perspective and reasoning in handling dispensation cases need to be analyzed further. Judges often prioritize immediate solutions—such as preventing zina or addressing premarital pregnancy—without adequately assessing the long-term implications for children’s welfare. This raises concerns about whether judicial decisions genuinely reflect the principle of the best interests of the child or merely accommodate social pressure and parental demands.

METHOD

A. Research Method

Legal research is a scientific activity based on specific methods, systems, and reasoning aimed at studying one or more legal phenomena through systematic analysis (Zainuddin, 2009:18). This study employs a qualitative descriptive-analytical method with an empirical juridical approach.

A qualitative descriptive method seeks to systematically and deeply portray the legal phenomena under study, in this case, the implementation of marriage dispensation in accordance with existing legislation. The research does not merely explain the law normatively, but also examines how these norms are interpreted and applied by law enforcers, particularly judges at the Purwodadi Religious Court.

Thus, the research object includes statutory regulations on marriage dispensation, analyzed in relation to judicial interpretation of the term “urgent reasons” as regulated under the Supreme Court Regulation (Perma) No. 5 of 2019.

The empirical juridical approach is employed, meaning that law is not only studied as written norms, but also as legal behavior in practice. This research is categorized as field research, since it observes how marriage dispensation regulations are actually implemented, particularly through interviews with judges as key informants. The approach highlights the gap between normative law and practical law, especially regarding the extent to which the principle of the best interest of the child is upheld in dispensation rulings.

B. Sources of Data / Informants

This qualitative research uses primary and secondary data.

- Primary Data: obtained directly from field research through observation and interviews.

The main informants include:

No	Name	Position	Description
1	Alfi Zuhri, S.Ag.	Vice Chairman, Purwodadi Religious Court	Key Informant
2	Farhan Munirus Su'aidi, S.Ag. M.H.	Judge	Main Informant
3	Ira Setiyani, S.H.	Deputy Registrar for Petition Cases	Supporting Informant
4	Sarah Siti Nuryati, S.H.	Legal Counsel	Supporting Informant
5	Ngadiyani bin Suwoko	Applicant	Supporting Informant
6	Muhammad Zainal Arifin, S.H., M.H.	Islamic Counselor, KUA Purwodadi	Supporting Informant

Interview questions are designed to explore topics such as the reasons behind applications for marriage dispensation, the definition and assessment of “urgent reasons,” the role of social and economic factors, and the application of the best interest of the child principle in judicial decisions.

- Secondary Data: includes three categories of legal materials:
 1. Primary legal materials: binding sources such as legislation and court rulings, including:
 - Law No. 16 of 2019 (amendment to Law No. 1 of 1974 on Marriage).
 - Supreme Court Regulation (Perma) No. 5 of 2019.
 - Court Decisions No. 20/Pdt.P/2024/PA.Pwd and No. 22/Pdt.P/2024/PA.Pwd.

2. Secondary legal materials: explanatory sources such as textbooks, doctrines, academic articles, and journals on marriage dispensation and child protection.
3. Tertiary legal materials: supporting references such as legal dictionaries and terminological glossaries (e.g., KBBI and legal terminology dictionaries).

C. Data Collection Techniques

Data collection methods include:

1. Observation: Conducted directly in the field to obtain a concrete picture of how marriage dispensation cases are processed at the Purwodadi Religious Court. Observations are recorded systematically to ensure objectivity and reliability.
2. Interviews: Semi-structured interviews with judges, applicants, legal counsel, and other relevant parties to gather in-depth insights on the interpretation and application of “urgent reasons” in marriage dispensation cases.
3. Documentation: Analysis of written sources such as laws, court decisions, archives, reports, and academic references to strengthen findings and ensure validity.

D. Data Analysis Technique

The data is analyzed using a qualitative analysis method. This involves describing findings as accurately as possible by systematically collecting and interpreting both primary and secondary data.

The main focus is on judicial rulings concerning marriage dispensation cases at the Purwodadi Religious Court in 2024. The analysis applies deductive reasoning, linking case findings to existing legal theories and doctrines. This ensures that conclusions are not based merely on the researcher’s perception but on conceptual and theoretical facts (Amir, 2020:9).

The ultimate goal is to formulate conclusions that address the research questions, particularly regarding the interpretation of “urgent reasons” and the implementation of the best interest of the child principle in judicial practice.

Theoretical Framework

1. Legal Protection Theory

Satjipto Rahardjo (2000) emphasizes that the essence of law is to provide protection for human interests, particularly for vulnerable groups such as children. In the context of marriage dispensation, the legal protection theory requires that every judicial decision must not only resolve immediate disputes but also guarantee the safeguarding of fundamental rights of children, including their right to health, education, and development.

2. Child Rights Theory and the Principle of the Best Interests of the Child

The Convention on the Rights of the Child (CRC, 1989), ratified by Indonesia through Presidential Decree No. 36 of 1990, establishes that the best interests of the child (*the best interests of the child*) must be a primary consideration in all actions concerning children (Article 3). This principle is also reinforced in Law No. 35 of 2014 concerning Child Protection, which obliges the state and society to ensure that children grow and develop optimally. In the judicial context, the Committee on the Rights of the Child, General Comment No. 14 (2013) provides detailed guidance on how courts should operationalize this principle in adjudicating cases that affect children's rights.

Thus, the granting of marriage dispensation should not only address social or moral pressures but must also ensure that the child's long-term welfare—psychological readiness, health, education, and future opportunities—are adequately protected.

3. Theory of Legal Effectiveness

Soerjono Soekanto (1983) explains that the effectiveness of law depends on five interrelated factors: the legal substance, legal structure, legal culture, facilities, and society. Although Law No. 16 of 2019 and Supreme Court Regulation No. 5 of 2019 aim to restrict child marriage, the persistence of high dispensation approval rates reflects a gap between legal substance (the rules), legal structure (the judiciary), and legal culture (social norms). Judges often adopt interpretations that reflect community values—such as avoiding zina and preserving family honor—rather than strictly applying the statutory objective of child protection. This indicates that the cultural factor continues to dominate the implementation of dispensation law.

4. Maqāṣid al-Sharī'ah (Objectives of Islamic Law)

From the perspective of Islamic legal theory, marriage should fulfill the objectives of safeguarding religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), lineage (*ḥifẓ al-naṣl*), intellect (*ḥifẓ al-'aql*), and wealth (*ḥifẓ al-māl*). The dispensation mechanism, if applied narrowly, risks undermining these objectives by exposing children to premature responsibilities that endanger their physical and psychological well-being. Instead, the maqāṣid framework requires judges to consider whether granting dispensation truly protects the child's

lineage and dignity or, conversely, endangers other essential rights such as health and education.

Findings on Legal Policies Regulating Marriage Dispensation in Indonesia

The study reveals that the legal framework governing marriage dispensation in Indonesia is primarily rooted in Law No. 16 of 2019, which amended Law No. 1 of 1974 on Marriage. Article 7(1) of this amendment stipulates that marriage is only permissible if both the male and female parties have reached the minimum age of 19 years. However, the same provision opens the possibility of exceptions through the mechanism of *dispensasi kawin* (marriage dispensation), which can be granted by the Religious Court for Muslim citizens or by the District Court for non-Muslims, upon submission of a petition by the parents of the underage parties.

In addition to the Marriage Law, the Supreme Court Regulation (Perma) No. 5 of 2019 provides more detailed procedural guidance for judges in adjudicating dispensation cases. The regulation emphasizes that dispensations should only be granted in situations deemed as “urgent and compelling” (*alasan sangat mendesak*) and requires judges to carefully consider the principle of the best interests of the child (*kepentingan terbaik bagi anak*). This includes taking into account health, education, psychological well-being, and social factors that may affect the child’s future.

Despite these provisions, statistical data shows a continuous increase in dispensation cases, such as those recorded in the Purwodadi Religious Court in 2024, where 539 out of 562 petitions (95.9%) were granted. The most common reasons submitted include pre-marital pregnancy, fear of potential zina (fornication), and social pressures from the community. This high approval rate suggests that, in practice, the legal standard of “urgent reasons” has often been interpreted broadly by the courts, thereby creating a gap between the normative objectives of the law and its actual implementation in society.

Therefore, while the legislative framework has sought to restrict child marriage by raising the minimum marriageable age, the availability of dispensations has simultaneously created a legal loophole. This tension reflects the ongoing dilemma between formal legal policy aimed at child protection and socio-cultural realities that continue to normalize early marriage as a means of addressing issues such as unwanted pregnancy, social stigma, or economic vulnerability.

Findings on Judges’ Perspectives and Considerations in Deciding Marriage Dispensation Cases at the Purwodadi Religious Court

The research findings indicate that judges at the Purwodadi Religious Court tend to grant the majority of applications for marriage dispensation, with a granting rate of 95.9%

in 2024. The dominant considerations underlying these decisions include premarital pregnancy, fear of committing zina (fornication), and strong socio-cultural pressures to preserve family honor. In many cases, marriage dispensation is perceived as the most practical solution to prevent greater social problems, such as stigma, shame, or the potential abandonment of children born out of wedlock.

From the judges’ perspective, the granting of marriage dispensation is often framed as an effort to protect the applicants from moral harm (*mafsadah*), particularly the stigma attached to pregnancies outside of wedlock. However, this reasoning demonstrates that judicial interpretation of “urgent and compelling reasons” (*alasan sangat mendesak*) tends to be narrowly associated with immediate social and moral concerns, rather than long-term welfare considerations for the child.

Interviews with judges further reveal that although Supreme Court Regulation (Perma) No. 5 of 2019 explicitly requires the principle of the best interests of the child (*kepentingan terbaik bagi anak*) to be a guiding standard, in practice this principle is often subordinated to the urgency of addressing pregnancy or preventing zina. For instance, while health, psychological maturity, and educational prospects are recognized as important aspects, they are frequently overshadowed by the pressure to legitimize pregnancy through marriage.

The findings highlight a gap between the normative legal framework—which aspires to safeguard children’s rights and welfare—and the judicial practice that often prioritizes short-term moral and social considerations. This suggests that the principle of child protection has not been fully actualized in dispensation rulings, raising critical questions about the effectiveness of current judicial interpretations in upholding children’s holistic well-being.

Alignment of Research Problems, Findings, and Theoretical Framework

Research Problem	Research Findings	Relevant Theories	Explanation of Alignment
1. What are the legal policies regulating marriage dispensation in Indonesia?	- Legal framework based on Law No. 16 of 2019 (raising marriage age to 19). - Supreme Court Regulation (Perma) No. 5 of 2019 guides judges	- Legal Protection Theory (Satjipto Rahardjo). - Theory of Legal Effectiveness	- The law aims to protect children, but in practice, its effectiveness is undermined because the dispensation

Research Problem	Research Findings	Relevant Theories	Explanation of Alignment
	to grant dispensation only for “urgent and compelling reasons” and to prioritize the best interests of the child. - However, empirical data shows 95.9% of applications in Purwodadi (2024) were granted, indicating a legal loophole.	(Soerjono Soekanto).	mechanism is frequently used. - Shows the gap between legal substance (law text) and legal structure & culture (court practice & community norms).
2. What are the judges’ perspectives and considerations in deciding marriage dispensation cases in Purwodadi?	- Judges generally grant applications due to premarital pregnancy, fear of zina, and social pressure. - The principle of the best interests of the child is acknowledged but often subordinated to immediate moral/social concerns. - Judicial interpretation of “urgent reasons” tends to focus on short-term solutions (avoiding shame) rather than long-term child welfare.	- Child Rights Theory & Best Interests of the Child Principle (CRC, 1989; Law No. 35 of 2014; General Comment No. 14, UNCRC). - Maqāṣid al-Sharī’ah (objectives of Islamic law: protection of lineage, life, intellect, etc.).	

DISCUSSION

4.1 Legal Policies Regulating Marriage Dispensation in Indonesia

The legal framework governing marriage dispensation in Indonesia is established under Law No. 16 of 2019, which amended Law No. 1 of 1974 on Marriage. The amendment

raised the minimum marriageable age for both men and women to 19 years, reflecting the state's commitment to protecting children from the harmful consequences of early marriage. However, Article 7(2) of the Law provides a legal exception through the mechanism of *dispensasi kawin* (marriage dispensation), whereby parents may petition the court to allow underage marriage on the basis of "urgent and compelling reasons." For Muslim citizens, jurisdiction lies with the Religious Court, while for non-Muslims, the District Court has authority.

In addition, the Supreme Court Regulation (Perma) No. 5 of 2019 was enacted to provide clear procedural guidelines for adjudicating dispensation cases. This regulation emphasizes that applications must be examined carefully, ensuring that dispensation is not granted automatically but rather only under circumstances that meet the threshold of "urgent reasons" and where the principle of the best interests of the child is upheld. Judges are instructed to consider multiple dimensions—including health, psychology, education, and the child's future prospects—before granting approval.

Nevertheless, empirical findings from the Purwodadi Religious Court demonstrate that 95.9% of applications submitted in 2024 were granted. The majority of these cases were justified by reasons such as premarital pregnancy, fear of zina (fornication), and social or cultural pressure to preserve family honor. This reveals a significant gap between the normative objectives of the law, which seeks to protect children's rights, and the practical reality, where dispensations are routinely granted to address immediate social problems.

From the perspective of Legal Protection Theory (Satjipto Rahardjo, 2000), the law should safeguard the interests of vulnerable groups, particularly children. Yet, the frequent approval of dispensations suggests that protection is often directed more toward family honor and societal morality than toward the holistic welfare of the child. This aligns with Soerjono Soekanto's Theory of Legal Effectiveness (1983), which posits that the success of law depends not only on its substantive content but also on legal structure, culture, and facilities. In the case of marriage dispensation, the legal culture—dominated by community norms regarding zina and family shame—has overshadowed the statutory objective of child protection.

Thus, the first research finding demonstrates that the legal framework, while well-intentioned, contains a structural loophole. The dispensation mechanism, meant as an exceptional measure, is instead widely used, thereby diluting the protective spirit of the 2019 amendment.

4.2 Judges' Perspectives and Considerations in Deciding Marriage Dispensation Cases

The second research finding concerns the perspectives of judges at the Purwodadi Religious Court in deciding dispensation cases. Interviews and case data reveal that judges commonly rely on considerations such as premarital pregnancy, the prevention of zina, and strong socio-cultural pressures. These factors are perceived as urgent enough to justify early marriage, particularly when viewed as a means to prevent greater moral or social harm.

From a legal standpoint, judges invoke the principle of “urgent reasons” as stipulated in Perma No. 5 of 2019. However, their interpretation often emphasizes short-term solutions—legitimizing pregnancy or avoiding shame—rather than evaluating the broader and long-term implications for the child. For example, while judges acknowledge issues such as educational disruption, psychological immaturity, and health risks, these are frequently subordinated to the immediate need to preserve family dignity and social order.

This practice raises important questions about the extent to which the principle of the best interests of the child, enshrined in both the Convention on the Rights of the Child (CRC, 1989) and Law No. 35 of 2014 on Child Protection, is being meaningfully applied. According to the CRC Article 3, all actions concerning children must prioritize their best interests. The Committee on the Rights of the Child (General Comment No. 14, 2013) further elaborates that this principle requires a holistic evaluation of the child’s situation, not merely addressing immediate concerns.

Yet, findings indicate that in Purwodadi, this principle has often been interpreted narrowly, reduced to the prevention of zina or the avoidance of stigma. This demonstrates a judicial orientation shaped more by cultural and religious norms than by comprehensive child rights considerations.

From the standpoint of *Maqāṣid al-Sharī‘ah*, judges’ reasoning can be understood as an attempt to uphold *ḥifz al-nasl* (protection of lineage) by legitimizing pregnancy through marriage. However, such decisions risk undermining other objectives, including *ḥifz al-nafs* (protection of life/health) and *ḥifz al-‘aql* (protection of intellect), given that child marriage often leads to health risks, interrupted education, and psychological burdens. Therefore, the judicial practice of broadly granting dispensations, though culturally rationalized, may contradict the holistic objectives of Islamic law.

4.3 The Gap Between Normative Law and Judicial Practice

The combined findings from both research problems highlight a persistent gap between the normative framework of child protection and the judicial practice of dispensation approval. While the law intends to restrict underage marriage, its dispensation mechanism has effectively created a legal pathway that normalizes the very practice it sought to limit. Judges, bound by cultural expectations and immediate social

realities, interpret “urgent reasons” in a manner that often prioritizes short-term moral solutions over the long-term welfare of children.

This gap illustrates Soerjono Soekanto’s thesis that the effectiveness of law requires harmony between legal substance, structure, and culture. In the case of marriage dispensation, the legal substance (Law No. 16/2019 and Perma No. 5/2019) is protective, but the legal culture of the community and judicial reasoning continue to favor early marriage as a solution to premarital pregnancy and stigma.

Therefore, the study reveals a critical dilemma: the law’s protective intent is undermined by its own exception clause, and judicial interpretation of this clause tends to reinforce rather than challenge socio-cultural norms that perpetuate child marriage.

4.4 Implications for Child Protection and Legal Reform

These findings suggest several implications. First, there is a need for stricter judicial guidelines to ensure that the best interests of the child are not subordinated to cultural pressures. Second, legal reform might be considered to limit the broad use of dispensations, ensuring that they remain truly exceptional. Third, greater collaboration between courts, schools, health institutions, and religious authorities is essential to provide alternatives to marriage, such as education and counseling, for children facing premarital pregnancy.

From a theoretical perspective, aligning legal practice with the principle of child protection and the *maqāṣid al-sharī‘ah* would ensure that judicial decisions do not merely address immediate social harm but also secure the holistic welfare of children.

This study concludes that while the legal framework of Law No. 16 of 2019 and Supreme Court Regulation No. 5 of 2019 was designed to protect children by limiting early marriage, in practice the marriage dispensation mechanism has become a legal loophole, as evidenced by the approval of 95.9% of applications in the Purwodadi Religious Court in 2024. Judges predominantly interpreted “urgent reasons” through the lens of premarital pregnancy, fear of zina, and social pressure, thereby prioritizing short-term moral and cultural concerns over the holistic welfare of children. This gap between normative law and judicial practice reveals that while decisions may preserve family honor and lineage (*hifz al-nasl*), they often undermine other objectives of child protection, such as health, education, and psychological development. To ensure that the principle of the best interests of the child is consistently upheld, stricter judicial guidelines, clearer criteria for urgent reasons, and stronger cross-institutional collaboration are necessary.

In conclusion, while Indonesia has developed a legal framework to safeguard children’s rights by regulating marriage age and requiring “urgent reasons” for dispensation, its implementation remains largely administrative and has not fully

prevented child marriage. In practice, the Purwodadi Religious Court tends to approve most applications, reflecting limited substantive protection for children. Judges interpret “urgent reasons” variably—ranging from premarital pregnancy and socio-cultural pressures to references to *maqāṣid al-sharī’ah*—yet decisions are generally justified under the principle of the best interests of the child. These rulings balance factual urgency, the readiness of the applicants, and prevailing legal, religious, and social norms, but often prioritize immediate social concerns over long-term child welfare.

CONCLUSION

This study finds that although Indonesia has established a comprehensive legal framework to protect children—through Law No. 16 of 2019, Supreme Court Regulation No. 5 of 2019, and the ratification of international child rights instruments—the implementation has not yet been fully effective. In practice, the role of the Religious Courts in granting marriage dispensations often becomes merely administrative, focusing on procedural approval rather than providing substantive and holistic protection for children’s rights, particularly in preventing underage marriage.

Furthermore, the research reveals that judges hold differing interpretations of what constitutes “urgent reasons” for granting a dispensation. These interpretations generally include concerns over potential legal violations, socio-cultural pressures, and religious considerations informed by the principles of *maqāṣid al-sharī’ah*. Such variations indicate a degree of flexibility that allows judges to adapt their reasoning to the unique context of each case. Nevertheless, the prevailing tendency is for judges to approve applications when the reasons presented appear consistent with the principle of the best interests of the child. Decisions are typically shaped by the urgency of the factual circumstances, the perceived readiness of the prospective spouses, and the broader demands of legal, religious, and social norms, and are often accompanied by judicial verification and counseling.

REFERENCES

- Akbar, A. (2022). Dinamika penafsiran prinsip kepentingan terbaik dalam perkara ḥaḍānah dan riddahnya pihak pengasuh. *Jurnal Al-Maqasid*, 8(2), 200–214.
- Ali, Z. (2009). *Metode penelitian hukum*. Jakarta: Sinar Grafika.
- Anwar, M., & Wijaya, M. R. (2019). Fungsionalisasi dan implikasi asas kepentingan terbaik bagi anak yang berkonflik dengan hukum: Studi putusan Pengadilan Tinggi Tanjung Karang. *Jurnal Hukum*, 2(2), 265–292.
- Hermanto, A., & Nurjanah, S. (2022). *Hukum perkawinan Islam progresif di Indonesia*. Malang: CV Literasi Nusantara Abadi.

- Hidayatullah, S. S., & Huda, N. (2020). Praktek hukum acara dispensasi kawin. *E-Journal Raden Intan Lampung*, 150–168.
- Husnaini, R. (2019). Dampak pernikahan usia dini: Analisis feminis pada pernikahan anak perempuan di Desa Cibunar Kecamatan Cibatuk Kabupaten Garut. *Jurnal Aqidah dan Filsafat Islam*, 4(1), 63–77.
- Kanang, A. R. (2018). Perspektif perlindungan anak di Indonesia. *Jurnal Al-Risalah*, 18(1), 1–21.
- Kompilasi Hukum Islam.
- Monteiro, J. M. (2023). *Metode penelitian dan penulisan hukum*. Malang: Setara Press.
- Mulyani, S., Rahayuningsih, F. B., Usman, M., Panggabean, H., Riyanti, O. S., & Hasymi, Y. (2022). *Problematisa dan solusi perkawinan anak di Indonesia*. Yogyakarta: Nuta Media.
- Nita, M. W. (2021). *Hukum perkawinan di Indonesia*. Lampung: CV Laduny Aliftama.
- Nuroniyah, W. (2022). *Hukum perlindungan anak di Indonesia*. Bima: Yayasan Hamjah Diha.
- Pengadilan Agama Purwodadi. (2024). *Salinan Penetapan Nomor 20/Pdt.P/2024/PA.Pwd*.
- Pengadilan Agama Purwodadi. (2024). *Salinan Penetapan Nomor 22/Pdt.P/2024/PA.Pwd*.
- Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2019 tentang Dispensasi Kawin.
- Raharjo, S. (2000). *Ilmu hukum*. Bandung: PT Citra Aditya Bakti.
- Sanjaya, H. U., & Faqih, A. R. (2017). *Hukum perkawinan Islam*. Yogyakarta: Gama Media.
- Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.
- Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.
- Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.
- Yuniarto, C. (2018). *Pernikahan dini dalam perspektif hukum perkawinan*. Bandung: Nusa Media.