

**LEGAL POLICY ADDITION OF THE MINIMUM AGE LIMIT FOR MARRIAGE IN LAW
NUMBER 16 OF 2019 AND RELEVANCE WITH EFFORTS TO PRESS THE APPLICATION
FOR MARRIAGE DISPENSATION**

Achmad Bagus Syaifullah, M. Fauzan Zenrif, Burhanuddin Susamto

Universitas Islam Negeri Maulana Malik Ibrahim Malang
Jalan Gajayana No. 50, Malang, Jawa Timur
E-mail: bagussyaefullah@gmail.com, zenrif@syariah.uin-malang.ac.id,
burhanuddin@syariah.uin-malang.ac.id

Abstract: This study aims to analyze the addition of the minimum age limit for marriage in law No. 16 of 2019 and its relevance to efforts to suppress requests for marital dispensation. This study used the library research method with a statutory and conceptual approach. The results of the study show that the formulation of changes to the minimum age limit for marriage in Law Number 16 of 2019 has implemented efforts to prevent early marriage. If viewed from the perspective of *hikmatut tasyri'*, it contains an affirmation that the change represents the maintenance of *maqashid sharia*. Efforts to increase the minimum age limit for marriage are closely related to the impact of the surge in marriage dispensations received by the religious courts. The marriage dispensation actually applies to legal subjects who do not meet the minimum age criteria and if this minimum age limit is changed to a higher one, the relevance of the dispensation application will also increase. It can be seen that efforts to prevent early marriage are realized in the implementation of the minimum age limit, but the agenda of minimizing dispensation is the responsibility of justice enforcers, namely the panel of judges. Considerations given in the marriage dispensation judicial process are expected to prioritize physical, mental, sociological, and economic conditions.

Keywords: Marriage Dispensation, Legal Politics, *Maqashid Syar'iyah*

Abstrak: Penelitian ini bertujuan menganalisis penambahan batas minimal usia perkawinan dalam undang-undang No 16 tahun 2019 dan relevansinya dengan upaya menekan permohonan dispensasi perkawinan. Penelitian ini menggunakan metode penelitian library reserch dengan pendekatan perundang-undangan dan konseptual. Hasil penelitian menunjukkan bahwa bahwa perumusan perubahan batas usia minimal perkawinan dalam Undang-undang Nomor 16 Tahun 2019 telah menerapkan upaya pencegahan perkawinan usia dini. Jika ditinjau dari *hikmatut tasyri'* memuat penegasan bahwa perubahan tersebut merepresentasikan penjagaan terhadap *maqashid syariah*. Upaya menaikkan batas usia minimal perkawinan berkaitan erat dengan dampak lonjakan dispensasi kawin yang diterima oleh pengadilan agama. Dispensasi kawin sesungguhnya berlaku untuk subjek hukum tidak memenuhi kriteria usia minimal dan apabila batas usia minimal ini diubah menjadi lebih tinggi, maka relevansinya permohonan dispensasi pun ikut naik. Hal ini terlihat bahwa upaya pencegahan perkawinan dini memang terealisasikan dalam keberlakuan batas usia minimal, namun agenda meminimalisir dispensasi menjadi tanggung jawab penegak keadilan yaitu majelis hakim. Pertimbangan yang diberikan dalam proses peradilan dispensasi kawin diharapkan mengedepankan kondisi fisik, mental, sosiologis, dan ekonomi.

Kata Kunci: Dispensasi Perkawinan, Politik hukum, *Maqashid Syar'iyah*

INTRODUCTION

As social beings, humans will always need other humans to fulfill their daily needs. One of them realizes the continuity of offspring to create social relations built from the household through marriage. Marriage itself is intended to form a happy and eternal family based on Belief in the One and Only God. Marriage is understood as an act of worship, just like prayer and pilgrimage, which have their terms and conditions. Marriage is a sunnah worship that the Qur'an and Hadith prescribe because it aims to obtain offspring to protect the Islamic religion and maintain self-respect, inner peace, and joy in the heart. (Basyarahil, 2004). However, there is no absolute age limit stipulated in Islamic law; the state, which has the authority to formulate laws and regulations, must consider the benefit of society from various aspects in adjusting individual situations and conditions.

In Indonesia's system of laws and regulations, the requirements for legal subjects so that the state recognizes their marriage must comply with the provisions of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Among them is the stipulation of a minimum age limit which has led to many requests for dispensation for marriage as a relief, in addition to setting a higher age limit, namely 19 years than before, to establish the readiness of the prospective bride and groom. This change is aimed at upholding children's

rights and guaranteeing the protection of the human rights of children.

Previously, in Law No. 1 of 1974, the determination of the minimum age for marriage triggered the increase in the number of early marriages. Especially the issue of child marriage is still a challenge for the Indonesian state, which should be able to provide guarantees for children's rights to survival, growth, and development, as well as the right to protection from violence and discrimination, as stated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. On the other hand, its implementation contains various consequences affecting people's lives. Consequences are part of the consequences of enacting or creating a rule that encourages humans to be shackled or limited by the existence of a set of rules. So that, in this case, raises accountability for any rules that are violated.

There is a Constitutional Court Decision Number 22/PUU-XV/2017 filed *judicial review* against Article 7 paragraph (1) because it is considered to take away the rights of the child as a guarantee of human rights in Article 28 B of the 1945 Constitution (1945 Constitution of the Republic of Indonesia). One of them is that the difference in the minimum age of marriage between women and men creates gender inequality that hinders the fulfillment of constitutional rights for minors. The guarantee given by the state in this article is that everyone has the

right to form a family and continue offspring in a legal marriage, in which the state guarantees the survival of children in growing and developing, avoiding violence and discrimination. Moreover, the position of minors tends to be less able to aspire to civil, political, social and cultural rights, the more out of control child marriage is, even though the impact that will be caused is a risk to physical and mental conditions.

In fact, the renewal of the determination of the minimum age limit for marriage is quite capable and adequate as an effort to prevent early marriage, but in fact applications for dispensation of marriage have increased. Especially with the Covid-19 pandemic which is directly related to family economic factors. From January to June 2020, the Ministry of Women's Empowerment and Child Protection reported that there were 34,000 requests, of which 97% were granted with 60% consisting of children under 19 years of age. This request has increased compared to 2019 which only reached 23,700 requests for dispensation of marriage. In addition, according to data from the Ministry of PPPA and BKKBN, cases of early marriage in Indonesia continue to increase by 30% every year. (Directorate General of Religious Courts, 2022). The government's target is to minimize the number of underage marriages in 2018 from 11.21% to 8.24% for 2024 as specified in the 2021 DPR RI Secretariat General Budget Review Center. This is

necessary as an effort to function oversight of the implementation of child protection.

Based on the UNICEF report, the factors that influence early marriage include the following. (1) low education, women aged 20-24 who are married at the age of 18 are four times less likely to finish high school compared to those who are married after the age of 18; (2) rural areas, girls in rural areas are twice as likely to marry before the age of 18 compared to girls from urban areas; (3) control over sexuality, this factor is related to the rise of women who are forced to enter into marriages due to uncontrolled sexuality so that they are not ready to settle down at all. This factor is also related to family honor; (4) households with lower expenditure interval limits; (5) Girls from households with lower spending intervals are almost three times more likely to marry before the age of 18 than girls from households with higher spending intervals.

These factors do not only appear on purpose, but early marriage also arises as a reason that was not planned, bearing in mind that society's point of view is that it is better to cover up disgrace than to think long-term about a child's education, economy, physical and mental health. From the description of the problem, the authors discuss the philosophical, juridical, and sociological aspects of changing the minimum age limit as a form of effort to overcome marriage at this age. This is inseparable from applying the concept of

relief contained in the marriage dispensation regulations, which tend to grant many requests for early marriage. Finally, public awareness of the importance of the physical and mental maturity of the prospective bride and groom needs to be addressed due to the ease of submitting requests for dispensation from marriage, which many courts grant. Therefore, the author also analyzes the marriage dispensation process, which is seen as ignoring the age limit for marriage as a human benefit.

From the problems previously described, this study aims to analyze the legal politics of the formulation of the minimum age limit for marriage in Law Number 16 of 2019 and the relevance of the formulation of the minimum age limit for marriage to minimize requests for dispensation from marriage in religious courts. This research contributes to the body of knowledge in the field of marriage law, in addition to being material for further study for legal practitioners. This research shows that the law issued is inseparable from the politics of the government. Then the results of this study can be used as input before reviewing or concluding the legal directions set by the government.

This research has a distinction from other studies; to find out about this, an exploration was carried out on previous research using the Google Scholar index page. The result is that there are three research focuses that are different from the research being studied, namely: (1) focus

on the description of the regulations (Heryanti, 2021; Ilma, 2020; Juneldi, 2020; Nasution, 2019); (2) focus on analyzing its effectiveness (Alghifari et al., 2021; Amri & Khalidi, 2021; Halilurrahman, 2021; Kurniawati, 2021; Mahmudah et al., 2022; Yulia & Amanda, 2021); (3) focus on the sociological review (Lathifah, 2021; Luthfi, 2022; Magfiratun, 2020). While this research focuses on a review of legal politics and *maqashid* Syariah, this distinction will certainly target novelty in the form of another perspective from the study of increasing the age limit for marriage.

METHOD

This research uses normative juridical research methods. This study uses a statute approach and a conceptual approach. The statutory approach requires an understanding of the policy hierarchy and the principles contained in the meaning of the positive legal framework in Indonesia, namely using Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, sources of Islamic law, and other relevant regulations that have relevance to the minimum age limit for marriage. At the same time, the conceptual approach is intended to explore the ideas, ideas, and principles contained in a positive legal rule and Islamic legal literature from various opinions of previous scholars so that a legal concept can be drawn on the issue regarding the modified minimum age limit

for marriage in Indonesia. From this normative research method, data collection techniques are carried out by taking inventory of various laws and regulations, legal principles and principles, and theories related to the legal politics of changing the minimum age of marriage for their relevance to efforts to minimize early marriage.

In general, the research design can be described as follows:

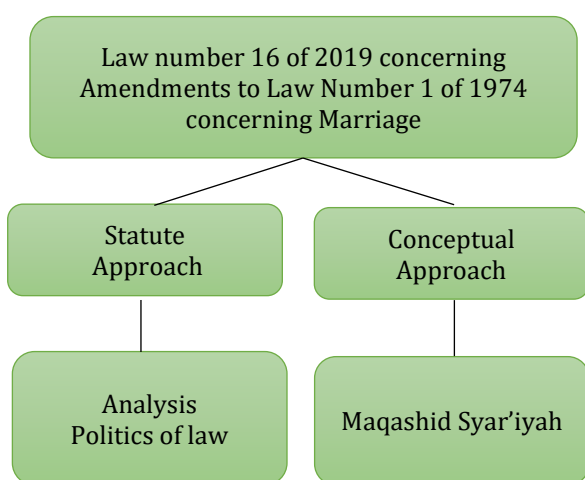


Figure 1. Research design

RESULTS AND DISCUSSION

As stated in the introduction, this study will focus on two things: the description and analysis of legal politics in Law number 16 of 2019 and their relevance to suppressing marital dispensation.

Legal Politics of Additional Minimum Age Limit for Marriage in Law Number 16 of 2019 concerning Marriage

Marriage is an inner bond between a man and a woman committed to forming a happy and eternal family or household, legally fulfilling the requirements, and

getting along according to the laws of each religion or belief. *Marriage* is a legal act requiring a legal subject to be given a minimum age limit to be considered legally competent. This means that the prospective bride, as a legal subject, must meet the requirements of adulthood and the conditions for marriage specified in the Marriage Law. The adult limit specified in several laws and regulations tends to vary according to legal actions, starting from 17 years as a requirement for civil citizenship identity, 21 years old or already married in civil law acts, 18 years as the minimum competency in criminal law, and finally the minimum age requirement for marriage changes to 19 years for both women and men.

The maturity criterion is the main basis for legal subjects being able to carry out and be accountable for their actions so that a minimum age limit regulation is stipulated along with criteria for a person's ability in each statutory regulation. (Muhammad, 2010). Likewise, for marriage legal actions, the minimum age limit previously determined in Law Number 1 of 1974 is distinguished between women and men. The minimum age limit for women is 16 years, while for men, it is 19. However, women's physical and mental vulnerability still needs to be qualified; even the age is still said to be underage, so the changes contained in Law Number 16 of 2019 equate the minimum age limit for marriage between women and men. This change is considered to avoid discrimination, *harm-*

an, and all aspects of child protection that will be examined further in the analysis network.

To understand the urgency of changing the minimum age limit for Marriage, the perspective of legal politics is used, which provides a series of concepts and principles as an outline in formulating plans and discourse for carrying out a job, leadership, and steps to act in the field of law. (Syaukani & Tohari, 2013). In other words, what is the will of the state in imposing restrictions on the age of Marriage that have been amended in Law Number 16 of 2019 based on established *rights and establish this right* This terminology shows several main aspects in expressing the intention of changing the minimum age limit for Marriage from what goals the country will achieve, what methods or steps are taken, under what conditions the changes are made, and reviewing the pattern of changes in these policies can achieve goals or vice versa. (Rahardjo, 2013).

The designation given to marriages carried out by prospective brides and grooms under 19 is said to be early marriages. Apart from the minimum age requirements for Marriage that are strictly regulated in the Marriage Law, the Child Protection Law enactment regulates parents' obligation to prevent all forms of conditions to avoid underage marriages. The affirmation of the UUPA embodies efforts to protect the rights of children who are still entitled to receive an education so that they are better prepared

to form strong and competent individuals to face the maturation process.

The vulnerability of minors is of particular concern for efforts to protect children through the minimum age limit for subjective reasons, namely the cost of recovery (*recovery*); the consequences of failure to provide child protection are very high; children have a direct influence on actions (*action*) or inaction (*one-action*) long term; children always experience separation or gaps in obtaining public services; children do not have the right to aspiration and power to influence the formulation of government policies; many children cannot get access to the protection and arrangement of children's rights; risk of child vulnerability to exploitation and abuse. (Supeno, 2010).

This condition drives the existence of judicial *review*, which was once submitted to the Constitutional Court for review of Article 7 of Law Number 1 of 1974 concerning Marriage in the Constitutional Court Decision Number 22/PUU-XV/2017. Reviewing the law is one of the juridical foundations representing the improvement of human rights protection as guaranteed in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This is because women who are still underage still need to be mature enough to be involved in their household affairs. The right to obtain an education as a form of self-development is expected to shape one's identity in the future, especially to prepare for Marriage. This juridical basis is a benchmark for

considering the rights of a child who should not carry out household problems. After the decision of Constitutional Court Number 22/PUU-XV/2017, the aspect of its application must be accommodated so that a change in the minimum age limit is formed in Law Number 16 of 2019. This process is included as one of several juridical foundations of forming law in the political configuration of policy formulation.

As reported by Komnas Perempuan, it is explained in detail that the factors that influence the high rate of early marriage, especially women who are seen as weak, are therefore vulnerable to becoming victims of discrimination. These factors found in the field include the practice of marriage, which is considered a form of *blessing* (expecting blessings) if married to a religious figure, unwanted pregnancy, or pregnancy out of wedlock due to wrong association. Hence, the only way is to marry the woman. (Murdijana et al., 2019). Some of these facts seem to be a series of endless causes and effects that cause one problem or another that are difficult to prevent, overcome, or deal with, even though the enforcement of binding regulations for the whole community. This condition is considered a sociological basis given the reality in society in response to the enforcement of marriage law.

In its literature, Islamic law does not specify a minimum age limit as a condition for marriage. The legal condition determined that only readiness for

puberty is allowed to enter into marriage. The legal conditions of marriage, according to Wahbah Zuhaili, include intelligence, puberty, and independence, and the woman to be married must be determined in full. (Az-Zuhaili, 2018). While other conditions consist of *mukalla* for someone charged with the obligation to carry out the law *syar'i*, as well as for someone who is said to be able to carry out his obligations. The Al-Qur'an and Sunnah, as the main legal basis for Islamic teachings, only emphasize that a person can enter into a marriage if he is appropriate and mature and can manage his household life properly. More than that, both husband and wife must know the rights and obligations of each that apply reciprocally.

Some arguments *naqli* the following is the author's review in examining the content of a person's ability to enter into marriage as a step in conveying the proper view of Shari'a law. (Umar, 1985). As the word of God. in the Qur'an:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ
 ءَأَنْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا
 تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَن يَكْبَرُوا ۚ وَمَنْ كَانَ
 غَنِيًّا فَلْيَسْتَعْفِفْ ۚ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ
 بِالْمَعْرُوفِ ۚ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهِدُوا
 عَلَيْهِمْ وَكَفَىٰ بِاللَّهِ حَسِيبًا

and test the orphans until they are old enough to marry. then if according to your opinion they have been intelligent (good at preserving wealth), then hand over their wealth to them. and do not eat the wealth of orphans beyond what is appropriate and (do not) rush (to spend) before they grow up. Whoever (among the caretakers) is able, then he should refrain (from eating the orphan's property) and whoever is poor, then he may eat the property according to what is appropriate. then when you hand over property to them, then you must have witnesses (about the handover) for them. and Allah is sufficient as a Watcher (over that testimony). (Q.S. an-Nisa: 6)

In addition to the verse that has been revealed above, there are other words of God namely:

وَأَنْكِحُوا الْأَيْمَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

and marry those who are single among you, and those who are eligible (to marry) from your male servants and your female servants. if they are poor, God will enable them with His grace. and Allah is All-Wide (His provision) and All-Knowing. (Q.S. an-Nur: 32)

These verses explain that a person can be said to be eligible for marriage when he is old enough and is mature or mature. Islamic law, in the opinion of the scholars, does not prevent legal subjects from entering into marriage as long as

they are mature and fit to marry. On the other hand, with the development of science and the increasingly complex social conditions of society, conditions of puberty alone are not enough to be assessed as a proper measure or able to deal with all household problems when married. Even though, the purpose of law formation, which is packaged as legal politics in Islamic religious teachings, is reconciled with the concept of wisdom embodied in form *maqashidul ahkam*. Every formulation of the law contains various benefits for all humankind. Likewise, along with the development of the times, human needs have also changed, and Islamic law, among others, is expected to be able to adapt stipulations based on the benefit of society in a responsive manner. This of course, means that apart from the enactment of Islamic law, the state puts forward the concept of *welfare state* will further reconsider, based on expediency, and correlate with *hikmatut tasyri'*.

The regulatory narrative that changes the minimum age limit for marriage has shown the government's perception of paying attention to the physical and mental condition of the prospective bride and groom. Readiness means showing the process of forming goodness for yourself. More than that, the Marriage Age Maturity program by BKKBN (National Population and Family Planning Agency) provides recommendations for a minimum age of marriage for women, namely 21 years,

and for men 25 years, which does not only look at physical readiness but also psychologically, economically and sociologically to prevent negative risks to the future of the bride and groom and their offspring. This recommendation considers aspects of protecting one's offspring and soul in harmony with the concept of *maqashid sharia* that promotes human welfare.

Among them, through *maqashid sharia*, the basis for changing the minimum age limit for marriage can reflect human values prioritizing balanced rights and obligations. Efforts to prevent discrimination are the main basis for positioning husbands and wives in the future, where injustice often occurs. This is influenced by the unpreparedness of the prospective bride and groom who depart from the age below the specified limit. Then from *hifdzu* also taking care of offspring, marriages that involve husband and wife have physical and mental readiness to form a better generation. The goal of protecting offspring will affect the future of a quality nation and uphold the honor of the Indonesian state. In addition, maintaining the relationship between husband and wife must also be considered as a support for the readiness of the prospective bride and groom. Suppose the prospective bride and groom understand each other's roles. In that case, a pattern of husband and wife relations is created that represents the term "*Muasharah bil*

ma'ruf," which means treating partners in the best way, not hurting each other, setting sexual intercourse karma, and other rules ('Atiyyah, 2001).

The recommendation from the BKKBN regarding the age of a person eligible to marry if it is formed in positive law has fulfilled the principle of *maqashid sharia*. Changes in the minimum age limit for marriage as an affirmation of efforts to accommodate five aspects of *maqashid sharia* to avoid *mafsadah* should even be refused to maintain religion, soul, mind, lineage, and property. These five aspects are interrelated to form the philosophical basis of the teachings of Islamic law, which places the highest position of human dignity for the benefit of the people.

Relevance of Changes in the Minimum Age for Marriage in Law Number 16 of 2019 to Prevent Requests for Dispensation of Marriage in the Religious Courts

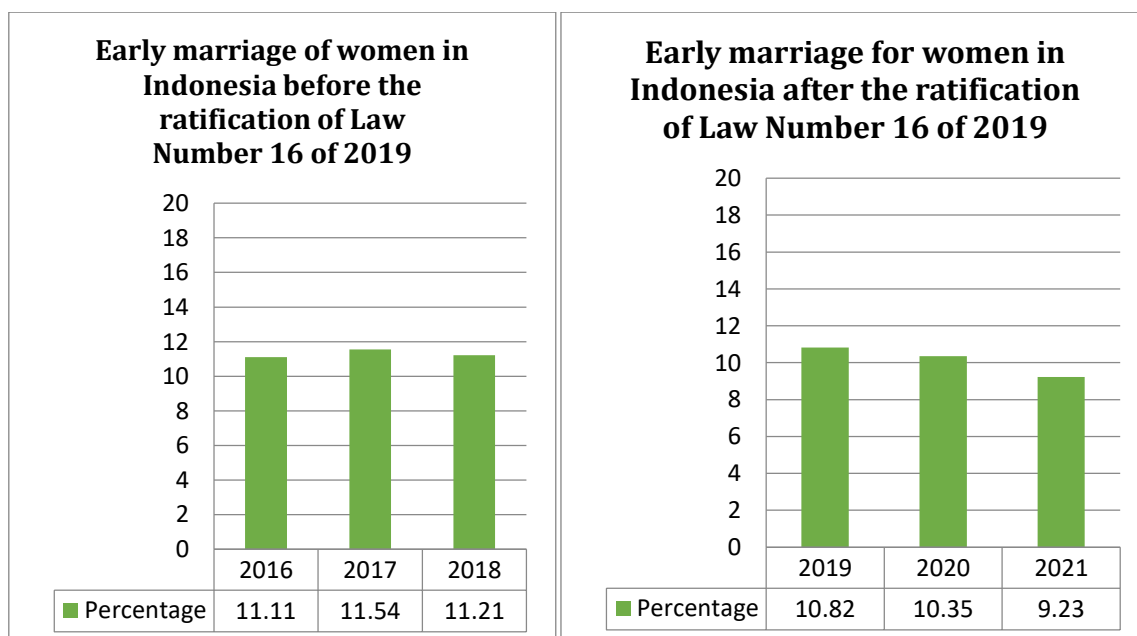
Dispensation in the Legal Dictionary is considered an exception from a series of regulations in general for a specific condition so that it has an exemption from obligations or prohibitions. (Sudarsono, 1992). In line with this, Christine S. T. Kansil defines *dispensation* as a stipulation stating that provisions do not apply to certain cases filed by a Petitioner. (Kansil, 2001). Meanwhile, according to Tjitosubodo and Subekti, the dispensation is realized as a deviation

from the order of the applicable regulations. From this explanation, it can be understood that dispensation comes from legal subjects who have certain interests in carrying out certain legal events and exceptions to the enforceability of binding regulations.

The essence of the dispensation is contextualized as a form of permit that relieves the legal subject. The concept of permission is included as a juridical instrument to form positive decisions or decisions that are constitutive or beneficial. The granting of this permit allows a person on the orders and decrees of the authorities to carry out certain conditions that deviate from the provisions of the terms and prohibitions of laws and regulations. Consideration in providing relief in the form of permits cannot be easily given to legal subjects

even though they can deviate from the prohibition. The inclusion of permits as relief or dispensation must still accompany every objective of the legal system to avoid harm, loss, and interference from other factors. (HR, 2017).

The waivers packaged in the dispensation are often used in marriages, where the waivers given are allowed to enter into marriages under the age of 19 from the minimum age requirement of the prospective bride and groom. Meanwhile, the following cases of early marriage from 2016 to 2018 before the enactment of Law Number 16 of 2019 as a change in the minimum age limit for women to 19 years in Article 7 are as follows.



Source: Susenas, Central Bureau of Statistics

Figure 1. Chart of Comparison of Early Marriage Cases for Minimum Age Changes for Women in Marriage

The data shows that women still dominate as perpetrators of early marriage, who are married to men older than their age. Comparisons between the enactment of Law Number 1 of 1974 and Law Number 16 of 2019 show that numbers tend to decrease with changes in the minimum age limit for marriage. That is, as expected in the prevention of early marriages, the reality that occurs is sufficient to stop children's opportunities to marry early, simply because of the ease of applying for marriage.

The most important legal impact on underage marriages regards the rights and protection of children as stipulated in Article 26 paragraph (1) of Law Number 23 of 2002 concerning Child Protection, where parents have obligations and responsibilities in caring for, nurturing, educating, and protecting children, growing children according to their abilities, talents, and interests and preventing marriages at a young age. The other impact on women is greater than for men who marry early. Many are still victims of discrimination, so they lose access to proper education. Education is the main means for humans to achieve a decent life, as well as the right of every individual to obtain welfare guarantees. In addition, the absence of women's readiness in the psychological aspect due to lack of attention to education is increasingly unable to strengthen a mother's mentality. The effect can be seen in the growth and development of

children who do not reach the target they should.

As reported by the Central Bureau of Statistics, early childhood marriage has relevance to the results of underage pregnancy rates. In 2020, 4.77% of women aged 16-19 have given birth. (Central Bureau of Statistics, 2020). The risks posed by childbirth for women aged 10-19 years can potentially experience the puerperal *endometritis*, *eclampsia*, and systemic *infections*, quoted from the World Health Organization (WHO). In addition, the risk of death for women who give birth under the age of 15 is greater than for women who give birth at 20 and over.

These various risks, impacts, and influences are strong considerations for reviewing the minimum age limit for women to enter into marriage. However, on the other hand, the concept of relief in the form of dispensation is often unable to support the flow of minimizing early marriage. More than that, the legal considerations the Panel of Judges put forward in handling the marriage dispensation application so far have only been based on legal facts originating from the two prospective brides, the bride's parents, and other witnesses. While the consideration of the harm he damage or damage globally can be viewed based on principle *maqashid sharia*, most likely to neglect the care of offspring (*al-nasl*) and honor (*al-'irdl*). The concept of dispensation must be studied further to be re-interpreted, and what kind of relief can

be given to legal subjects so that they continue to carry out their legal events

In the theory of state administration, according to Marcus Lukman, authorized government officials are described *desk-stress power* in assigning permits based on one's own initiative. (Lukman, 1996). This also allows for the authority of the Panel of Judges to grant a request for a marriage dispensation that should be able to consider the following matters. (1) conditions that allow the right to be accepted by the applicant; (2) The juridical consequences that may arise from the decision to grant or reject the application for a dispensation/permit are related to the limitations of the applicable laws and regulations.

In line with the concept of discretion, the Panel of Judges must understand the rules and values that live in society as the implementation of Law Number 48 of 2009 concerning Judicial Power. To resolve the case for the request for dispensation of marriage, the Panel of Judges is required to instill ten characteristics as written in the Code of Ethics and the Code of Conduct of Judges, including behaving in a fair, honest, wise, and prudent manner, independent, high integrity, responsible, highly disciplined, humble, upholds self-esteem, and acts professionally.

The process of the religious court in granting requests for marriage dispensation is still focused on subjectivity involving consideration of

values, norms and culture. The Supreme Court has responded to this issue by presenting a Supreme Court Regulation (Perma) and a Supreme Court Circular Letter (Sema). The aim is to provide guidance to the judges of the religious courts in handling requests for dispensation of marriage for minors through various considerations of child protection rights. The existence of this guideline applies to directing the considerations of the Panel of Judges in determining the ratification of a marriage dispensation, even though judges basically have discretionary powers *ordiscretion*. (Sibuea, 2010). If a consideration of the Panel of Judges makes use of discretion without prioritizing aspects of prevention from harm, then the change in the minimum age limit that has been specified in Law Number 16 of 2019 ends up far from being as effective as expected.

Setting a minimum age limit for marriage should be able to reduce early marriage, but in reality with the existence of regulations governing marriage dispensation, changes to the minimum age limit are considered not to have any impact on the goal of minimizing early marriage. This can be seen from the aspect of the applicability of the law which should be accompanied by the legal awareness of the community which does not stop assessing the concept of dispensation and immediately fully supports all forms of relief for deviations from the minimum age limit for marriage. The practice of early marriage is closely

related and cannot be separated from the economic motives of each prospective bride and groom. As reported by UNICEF, the majority of children living in remote and low-income rural areas are vulnerable to becoming victims of parents who want economic improvement after marriage. Although still unable to get out of the cycle of poverty (*the circle of poverty*), even worse than imagined. (Hanafi, 2011).

Basically, regulations are formed/formulated/amended/updated, prioritizing the principle of achieving legal effectiveness when it has been ratified so that it applies in society. Especially the power of philosophical enforcement in aligning legal ideals with positive value in accordance with the nature of the rule of law to guarantee prosperity, order and justice. (Sidharta, 2013). The level of community compliance with the application of the marriage dispensation tends to be ignored due to the ease of submission which takes into account past events where adultery has already occurred. This means that the Panel of Judges will not be able to move again if the majority of the prospective bride and groom who apply for a marriage dispensation have committed adultery and become pregnant out of wedlock. The enforceability of the law between efforts to protect children and dispensation for marriage has changed completely far from the awareness of the community itself. The substance of the law appears to only apply textually, not accompanied by

public awareness of the *harm*-that have not been faced due to early marriage.

Existence *harm* *mafsadah* which has the potential to be experienced as a result of the granting of a marriage dispensation request will cause a change in the legal nature of the sunnah of marriage to become *makruh*. Marriage can turn into *makruh* if the husband and wife do not have the ability to fulfill their respective needs according to their roles. Both in terms of biology, economics, and so forth. This possibility often occurs when the dispensation of marriage is still being granted without reviewing the aspects of whether or not the bride and groom are able to carry out their marriage. In fact, the teachings of Islamic law strongly recommend avoiding *itharm* by all means, including prevention through the effectiveness of mating dispensation.

The government together with the Ministry of Women's Empowerment and Child Protection (PPPA) formulated the policy directions and strategies for the 2020-2024 RPJMN through the composition of the National Strategy for the Prevention of Child Marriage (Stranas PPA) especially with regard to efforts to strengthen institutional and regulatory functions. This is intended as a form of guarantee for the implementation and enforcement of regulations related to the prevention of child marriage, in addition to the enforcement of marriage dispensation. This program is determined as a form of placing public welfare,

including the government's main agenda in the formation of regulations. Efforts to deal with marital dispensation do not only stop at submissions or requests, but also deal with aspects of empowering minors.

So, the mismatch between the nation's ideals of changing the minimum age limit and the discretion of the Panel of Judges to handle requests for dispensation from marriage has gone out of the context of the goals of child welfare, public order, and quality offspring that should be the nation's next generation. Therefore, if the enactment of laws and regulations has shown binding power and is difficult to adjust *state from which* It is the Panel of Judges who is obliged to review the eligibility of the applicant applying for a marriage dispensation. Accompanied by its authority in strengthening justice, benefit, and legal certainty in general courts.

CONCLUSION

From the results of the analysis described above, the authors can draw conclusions that the formulation of changes to the minimum age limit for marriage in Law Number 16 of 2019 has actually implemented efforts to prevent early marriage. Also included is a review of *fhikmatut tasyri'* contains an affirmation that the change in the minimum age limit represents protection against *maqashid sharia*. However, it is different when faced with the concept of dispensation from marriage as a response to not fulfilling the minimum age that has been raised to 19

years. Efforts to increase the minimum age limit for marriage are closely related to the impact on the increase in the dispensation of marriage received by the religious courts. This means that the dispensation for marriage actually applies because the legal subject does not meet the minimum age criteria, whereas if the minimum age limit is changed to a higher one, the application for dispensation will also increase. It can be seen that efforts to prevent early marriage are realized in the implementation of the minimum age limit, but the agenda of minimizing dispensation is the responsibility of justice enforcers, namely the panel of judges. The considerations given in the marriage dispensation trial process are expected to prioritize sociological and economic conditions, as well as physical and mental readiness in accordance with the recommendations of the BKKBN. In addition, recommendations or suggestions that can be determined by the author through the problems and answers indicate that the synergy between society, government and law enforcement needs to be improved again. This is because the public's view of the law and sociological conditions have not improved if the stakeholders (*stakeholder*) takes over the socialization process to encourage the level of effectiveness between law enforcement and its implementation related to public awareness

REFERENCES

'Atiyyah, J. (2001). *Nahwa Tafil Maqashid Syariah*. Dar Al-Fikr.

- Alghifari, A., Nuzha, N., & Nur, D. U. H. (2021). Efektivitas Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan dalam Menurunkan Angka Pernikahan Usia Dini di Kabupaten Polewali Mandar: Studi di Pengadilan Agama Polewali Mandar. *QISTHOSIA: Jurnal Syariah dan Hukum*, 2(2), 121–140. <https://doi.org/10.46870/jhki.v2i2.129>
- Amri, A., & Khalidi, M. (2021). Efektivitas Undang-Undang Nomor 16 Tahun 2019 Terhadap Pernikahan di Bawah Umur. *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan dan Pranata Sosial*, 6(1), 85–101. <http://dx.doi.org/10.22373/justisia.v6i1.10613>
- Az-Zuhaili, W. (2018). *Al Fiqhu Islami Wa Adillatuh*. Dar Al-Fikr.
- Badan Pusat Statistik. (2020). *Statistik Pemuda Indonesia 2020*. Badan Pusat Statistik.
- Basyarahil, A. A. S. (2004). *Tuntunan Pernikahan dan Perkawinan*. Gema Insani.
- Direktorat Jendral Peradilan Agama. (2022). *Signifikannya Perkara Dispensasi Kawin terus meningkat di Masa Pandemi Covid-19*. Seputar Peradilan Agama, Mahkamah Agung, Direktorat Jendral Peradilan Agama. <https://badilag.mahkamahagung.go.id/seputar-peradilan-agama>
- Halilurrahman, M. (2021). Efektifitas Undang-Undang Nomer 16 Tahun 2019 Tentang Batas Usia Pernikahan. *Jurisy: Jurnal Ilmiah Syariah*, 1(1), 30–42. <https://doi.org/10.37348/jurisy.v1i1.103>
- Hanafi, Y. (2011). *Kontroversi Perkawinan Anak Di Bawah Umur*. Mandar Maju.
- Heryanti, R. (2021). Implementasi Perubahan Kebijakan Batas Usia Perkawinan. *Jurnal Ius Constituendum*, 6(1), 120–143. <http://dx.doi.org/10.26623/jic.v6i1.3190>
- HR, R. (2017). *Hukum Adminsitrasi Negara*. Rajawali Press.
- Ilma, M. (2020). Regulasi Dispensasi dalam Penguatan Aturan Batas Usia Kawin bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019. *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam*, 2(2), 133–166. <https://doi.org/10.37680/almanhaj.v2i2.478>
- Juneldi, R. (2020). *Analisis pasal 7 ayat (1) Undang-undang Nomor 16 Tahun 2019 tentang perubahan atas Undang-undang Nomor 1 Tahun 1974 tentang perkawinan menurut perspektif hukum perkawinan islam [UIN Sunan Gunung Djati Bandung]*. <https://digilib.uinsgd.ac.id/31772/>
- Kansil, C. S. . (2001). *Kamus Istilah Aneka Ilmu*. Surya Multi Grafika.
- Kurniawati, R. D. (2021). Efektifitas Perubahan UU No 16 Tahun 2019 Tentang Perubahan atas UU No 1 Tahun 1974 Tentang Perkawinan Terhadap Penetapan Dispensasi Kawin (Studi Kasus di Pengadilan Agama Majalengka Kelas IA). *Journal Presumption of Law*, 3(2), 160–180. <https://doi.org/10.31949/jpl.v3i2.1505>
- Lathifah, Y. (2021). Perkawinan Di Bawah Umur dalam Tinjauan Sosiologi Hukum. *Jurnal Hukum dan Pembangunan Ekonomi*, 9(1), 113–127. <https://doi.org/10.20961/hpe.v9i1.47505>
- Lukman, M. (1996). *Eksistensi Peraturan Kebijaksanaan dalam Bidang Perencanaan dan Pelaksanaan Rencana Pembangunan di Daerah sera Dampaknya Terhadap*

- Pembangunan Materi Hukum Tertulis Nasional*. Universitas Padjajaran Bandung.
- Luthfi, M. (2022). Tinjauan Sosiologi Hukum terhadap Undang Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan. *Journal of Law (J-Law)*, 1(1), 60–72. <https://doi.org/10.56322/v1i1.17>
- Magfiratun, S. (2020). *Tinjauan hukum islam dan sosiologi hukum dalam batas usia minimal menikah: analisis Pasal 7 ayat (1) UU No 16 Tahun 2019 tentang perkawinan*. UIN Mataram. <http://etheses.uinmataram.ac.id/1400/>
- Mahmudah, U. D., Iftitah, A., & Alfaris, M. (2022). Efektivitas Penerapan Pasal 7 Undang-Undang Perkawinan Nomor 16 Tahun 2019 dalam Upaya Meminimalisir Perkawinan Dini. *Jurnal Supremasi*, 12(1), 44–58. <https://doi.org/10.35457/supremasi.v12i1.1838>
- Muhammad, A. (2010). *Hukum Perdata Indonesia*. Citra Aditya Bakti.
- Murdijana, D., Hodijah, S. N., Mukarramah, E., Prawitasari, S. A., Pramesari, D., & Sugiri, R. N. (2019). *Risalah Kebijakan Perkawinan Anak: Menutup Aib dan Tertutupnya Hak atas Pendidikan, Ekonomi dan Kesehatan Mental, Reproduksi serta Seksual*. Komisi Nasional Anti Kekerasan Terhadap Perempuan.
- Nasution, H. (2019). *Pembaharuan Hukum Keluarga Islam tentang Usia Perkawinan di Indonesia (Studi Atas Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan)*. Universitas Islam Negeri Sumatera Utara. <http://repository.uinsu.ac.id/8089/>
- Rahardjo, S. (2013). *Ilmu Hukum*. Citra Aditya Bakti.
- Sibuea, H. P. (2010). *Asas Negara Hukum, Peraturan Pemerintah, Asas-asas Umum pemerintah yang Baik*. Erlangga.
- Sidharta, A. (2013). *Refleksi Tentang Hukum*. Citra Aditya Bakti.
- Sudarsono. (1992). *Kamus Hukum*. Rineka Cipta.
- Supeno, H. (2010). *Kriminalisasi Anak Tawaran Gagasan Radikal Peradilan Anak Tanpa Pidanaan*. Gramedia Pustaka Utama.
- Syaukani, I., & Tohari, A. (2013). *Dasar-dasar Politik Hukum*. RajaGrafindo Persada.
- Umar, M. (1985). *Ushul Fiqh I*. Dirjen Kelembagaan Agama Islam Depag RI.
- Yulia, A. A., & Amanda, R. (2021). Efektivitas Batas Usia Nikah Menurut Undang-Undang Nomor 16 Tahun 2019 di Lampung Timur. *Syakhshiyah Jurnal Hukum Keluarga Islam*, 1(1), 38–48. <https://e-journal.metrouniv.ac.id/index.php/syakhshiyah/article/view/3490/2290>