

Contemporary Islamic Family Law Studies: An Analysis of the Inconsistency of Marriage Age Limits Between Law and Social Reality at the Mojokerto Religious Court

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ABSTRACT

Purpose - This study examines the inconsistency of the marriage age limit as regulated in the Marriage Law and PERMA Number 5 of 2019 concerning Reasons for Adjudicating Marriage Dispensation Cases. In addition, this study also analyzes the views of judges at the Mojokerto Religious Court regarding the application of marriage dispensation. It explores the dynamics of social reality that influence the practice of contemporary Islamic family law.

Methods - This research is field research with an empirical juridical approach. Research is conducted by interviewing judges, lawyers, the community, and the Head of the Religious Affairs Office and analyzing laws and regulations. The analysis was carried out to identify inconsistencies in the rules for marriage age limits and marriage dispensation contained in Article 7 paragraph (2) of Law Number 16 of 2019 with PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications.

Findings - This study concludes several findings: first, the scholars' opinions on the age limit of marriage vary, but some scholars have agreed to determine it as a means of *mashlahah* to answer problems in the contemporary era. Second, there are legal inconsistencies between Article 7 paragraph (2) of Law Number 16 of 2019 and PERMA Number 5 of 2019, namely the age limit for marriage and the application for marriage dispensation.

Research Implications - The regulations on marriage dispensation have indeed been explained, but there is still a lack of clarity regarding the urgent reasons for applying. Therefore, detailed clarity is needed to answer these reasons so as not to cause legal disharmony and legal uncertainty.

Keywords: *Inconsistency; Marriage Dispensation; Marriage Age Limit; Contemporary Islamic Family Law*

Introduction

Dispensation to marry is a relaxation of the normative provisions regulated by law regarding the minimum age limit for performing a marriage,¹ stipulated in Article 7 paragraph (1) of Law Number 16 of 2019, which is 19 years of age for men and women. The Religious Courts can grant this concession after considering various factors underlying the application for dispensation to marry and determining a more mature decision by the judge.² Dispensation is applied by the parents of the prospective bride and groom to obtain official permission from the religious court. Judges must be careful when deciding dispensation applications, ensuring that each application is suitable for granting this marriage dispensation license.³

Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974, especially in Article 7, which explains the minimum age limit for carrying out marriage is 19 years of age for men and women. If under 19 years of age, parents must apply for marriage dispensation to the local Religious Court for urgent reasons.⁴ The lack of clarity regarding the urgent reason has resulted in many applications filed in the Mojokerto area.

Based on the overall application for dispensation of marriage submitted to the Mojokerto Religious Court from 2021-2023, it is as follows: Dispensation applications in 2021 reached 563 cases. With details, nine applications were revoked, one was rejected, and 553 applications were granted. Marriage dispensation applications in 2022 decreased by 72 cases to 491, with details of 13 applications withdrawn, three rejected, two void, and 473 applications granted. Meanwhile, during January 2023, there were 27 requests for marriage dispensation. This number decreased compared to January 2022, 45 applications, and January 2021, which was 66 applications.⁵

One of the reasons for the significant increase in marriage dispensation is that Article 7 paragraph (2) of Law No. 16 of 2019 still provides an opportunity for prospective brides who have not met the minimum age requirement for marriage to apply for marriage dispensation because it is “very urgent.”⁶ This Hall shows a problem of inconsistency in legislation related to the dispensation of underage marriage, which is caused by the incompatibility of Article 7 paragraph (2) of Law Number 16 of 2019 with PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications.

¹ Yasin Yetta, Ahmad Rajafi, and Syahrul Mubarak Subeitan, “Understanding the Implications of Marriage Law Amendments: Marriage Dispensation Cases in Indonesian Religious Courts,” *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (May 30, 2024): 121, <https://doi.org/10.29240/jhi.v9i1.8979>.

² Iwan et al., “Reconceptualizing the Marriage Age Limit in Indonesia: Efforts to Strengthen Family Resilience in North Sumatra,” *Al-Manahij: Jurnal Kajian Hukum Islam*, June 28, 2024, 161–78, <https://doi.org/10.24090/mnh.v18i1.11090>.

³ Nuri Huda, Interview with Judge of Mojokerto Religious Court, September 13, 2024.

⁴ Muhammad Fauzitudin Faiz, Zezen Zainul Ali, and Muhammad Taufiq, “Underage Widows and Widowers before the Law: Problem, Contestation and Legal Certainty in Marriage Dispensation,” *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (December 15, 2023): 223, <https://doi.org/10.31958/juris.v22i2.9097>.

⁵ Enggran Eko Budianto, “449 Remaja Usia SD-SMA Ajukan Pernikahan Dini Di Mojokerto Dalam Setahun,” *Detik.Com* (blog), February 23, 2023, <https://www.detik.com/jatim/berita/d-6550927/449-remaja-usia-sd-sma-ajukan-pernikahan-dini-di-mojokerto-dalam-setahun>.

⁶ Rohmadi Rohmadi et al., “Judges’ Considerations in Granting Marriage Dispensation Licenses in Indonesia: Islamic Family Law Perspective,” *EL-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (June 30, 2024): 326, <https://doi.org/10.22373/ujhk.v7i1.22597>.

The law contains provisions that in Article 7 paragraph (2) of Law Number 16 of 2019, in the event of a deviation from the age provisions as in paragraph (1), the parents of the male party and the parents of the female party may submit an application for dispensation to the Religious Court based on urgent reasons accompanied by sufficient evidence.⁷ Furthermore, Article 2 of PERMA Number 5 of 2019 explains that Judges handling Marriage Dispensation applications must be based on 10 things: a. The best interests of the child; b. The right to life and development; c. Respect for the child's opinion; d. Respect for the dignity of humanity; e. Respect for human rights; f. Protection from violence and discrimination; g. Protection from violence and discrimination; g. The best interests of the child; h. Benefit for the child; and i. Legal certainty. Respect for human dignity; e. Non-discrimination; f. Gender equality; g. Equality before the law; h. Justice; i. Benefit; and j. Legal certainty.⁸

The Marriage Law and PERMA provisions above are ambiguous and lack binding legal certainty. Article 7, paragraph (2) explains that if there is a deviation from the provisions, parents may apply to the Religious Court for dispensation to enter into marriage on urgent grounds. In contrast, PERMA No. 5 does not explain what urgent grounds mean, so there are inconsistencies in Article 7 paragraph (2).⁹ The inconsistency between Article 7 paragraph (2) and PERMA No. 5 causes various problems, including instability in applying the law and uncertainty in the governing law. Therefore, this law needs to be further clarified to avoid confusion. However, efforts to clarify these provisions have not been realized to date.¹⁰

In addition to inconsistent implementation of the law, early marriage (under the age of 19) also has various negative impacts, such as high divorce rates that tend to increase if the minimum age of marriage is not raised.¹¹ Underage marriage can also exacerbate the ongoing cycle of poverty, increase educational attainment, and cause poor health conditions in future generations.¹² In addition, early marriage also robs society of productivity, both in the short and long term, with negative impacts that extend to various social and economic aspects.¹³

Although the minimum age for marriage has been raised to 19 years, cases of child marriage in Indonesia continue to increase. Many couples choose to apply for marriage dispensation and perform marriages below the minimum age limit. Some even perform marriages secretly without official approval from the religious court, especially children of

⁷ DPR RI, "Undang-Undang Nomor 1 Tahun 1974 Jo Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan" (2019).

⁸ Mahkamah Agung, "Peraturan Mahkamah Agung (PERMA) Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Perkara Dispensasi Perkawinan," Nomor 5 Tahun 2019 § (2019).

⁹ Syahrudin Hidayat, Abdul Ghofur, and Ummul Baroroh, "The Norm of Marriage Age Limit and Cultural Contestation of Child Marriage Law in Rural Communities," *Jurnal Hukum Islam* 21, no. 1 (June 10, 2023): 55–82, https://doi.org/10.28918/jhi_v21i1_03.

¹⁰ Rosdalina Bukido et al., "Muslim Society's Response to the New Rule of Marriage Age," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (May 16, 2023): 135, <https://doi.org/10.29240/jhi.v8i1.5521>.

¹¹ Ahmad Dakhoir and Sri Lumatus Sa'adah, "Meta-Judicial Analysis on the Legal Arguments beyond Changes in Indonesian's Marriage Age Rule," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (June 1, 2023): 80–101, <https://doi.org/10.19105/al-lhkam.v18i1.7162>.

¹² Yetta, Rajafi, and Subeitan, "Understanding the Implications of Marriage Law Amendments."

¹³ Ahmad Rusyaid Idris, Muhammad Khusaini, and Syaiful Anwar Al-Mansyuri, "Contemporary Islamic Law in Indonesia: The Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage," *MILRev: Metro Islamic Law Review* 3, no. 1 (April 4, 2024): 1, <https://doi.org/10.32332/milrev.v3i1.8907>.

Madurese descent.¹⁴ This shows that although the minimum age limit for marriage has been revised, the policy has not been fully effective in reducing the number of child marriages in Indonesia.¹⁵

The leniency in applying for marriage dispensation also makes matters worse. These dispensations allow couples under the minimum age limit to enter marriage, even though they do not meet the age requirements. Efforts to raise the age of marriage have not yielded significant results in reducing the number of early marriages, mainly due to the laxity of dispensation regulations.¹⁶ These regulations need to be implemented more strictly to prevent child marriage, taking into account the negative social, psychological, and health impacts on children. Therefore, this study aims to examine the inconsistency of these regulations.

Some relevant previous studies, namely Dinar Rosyiddin Alifian Romadhon (2024), state that the difference in his research only examines the views of Islamic law on early marriage,¹⁷ Yasin Yetta et al. (2024) the difference in his study on integrating legal norms and community dynamics to comprehensively understand the failure of the amendment and its implications for marriage dispensation in Indonesia,¹⁸ Syufa'at (2022) the difference is in the marriage dispensation decision at the Purwokerto Religious Court in 2018 with 108 decisions,¹⁹ Nur Insani et al (2024) the difference is in the judge's consideration in carrying out his juridical function to adjudicate cases, and in the social stigma affecting the judge's decision-making process in many cases.²⁰

Furthermore, Sakirman et al. (2022) the difference is that it only examines the effectiveness of the age limit for marriage according to Law No. 16 of 2019 in East Lampung,²¹ Salmah Mursyid, and Nasruddin Yusuf (2022). The difference is in analyzing the impact of the enactment of Law Number 2019, the factors causing marriage dispensation applications, and the reasons for judges in granting marriage dispensation,²² the last research by Rohmadi et al. (2024) found out the *ijtihad* of judges in interpreting Article 7 Paragraph

¹⁴ Minarsih, Interview with a resident of Manduro, Mojokerto, December 12, 2024.

¹⁵ Nuruddin Nuruddin, Aisyah Wardatul Jannah, and Dwi Martini, "Evaluating the Effectiveness of Age Restriction on Marriage in Indonesia," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, December 31, 2023, 313–30, <https://doi.org/10.24090/volkgeist.v6i2.9844>.

¹⁶ Kholifatun Nur Mustofa, "ADJUDICATING UNDERAGE MARRIAGES AT RELIGIOUS COURTS: A Progressive Collaboration between Judiciary and Health Authority," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (December 30, 2023): 342, <https://doi.org/10.14421/ahwal.2023.16208>.

¹⁷ Dinar Rosyiddin and Alifian Romadhon, "Pandangan Hukum Islam Terhadap Pernikahan Dini," *Aafiyah: Jurnal Multidisiplin Ilmu* 2, no. 1 (2024), <https://edujavare.com/index.php/Aafiyah/article/view/234>.

¹⁸ Yetta, Rajafi, and Subeitan, "Understanding the Implications of Marriage Law Amendments."

¹⁹ Syufa'at Syufa'at, "Marriage Dispensation in Underage Marriage: A Case Study at the Purwokerto Religious Court," *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 1 (May 30, 2022): 91–102, <https://doi.org/10.24090/mnh.v16i1.4229>.

²⁰ Nur Insani et al., "Judicial Considerations in Child Marriage Dispensations: An Empirical Study of the Gorontalo Religious Court," *Jurnal Ilmiah Al-Syir'ab* 22, no. 1 (June 30, 2024): 41, <https://doi.org/10.30984/jis.v22i1.2066>.

²¹ Sakirman Sakirman and Yulia Rizki Amanda, "Effectiveness of Marriage Age Limit According to Law Number 16 of 2019 in East Lampung," *MILRev: Metro Islamic Law Review* 1, no. 2 (December 27, 2022): 164, <https://doi.org/10.32332/milrev.v1i2.6206>.

²² Salma Mursyid and Nasruddin Yusuf, "Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 975, <https://doi.org/10.22373/sjhk.v6i2.12439>.

2 of Marriage Law Number 16 of 2019 and found out the methods used by judges in deciding marriage dispensation cases.²³

Based on the background described above and the map of previous studies that discuss marriage dispensation. This research will focus on discussing the inconsistencies in implementing these regulations, which are part of the regulation dynamics and contemporary social reality. In addition, this research will also look at how Islamic family law portrays the concept of marriage age limit according to the ulama and its correlation with Indonesian law.

Methods

This research is included in normative legal research, which uses a statutory approach. This approach aims to identify inconsistencies in regulations related to marriage dispensation, which are contained in Article 7, paragraph (2) of Law Number 16 of 2019 with PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. In addition, this study uses judges' decisions and jurisprudence as a conceptual approach to further explore the problems of marriage dispensation. The nature of the research is descriptive qualitative, which provides a broad and in-depth description of a particular issue, symptom, fact, event, or reality. This type of research is designed to generate a deeper understanding of the inconsistency of marriage dispensation between regulations and contemporary social reality.

This study uses two legal materials: primary and secondary. Two primary legal materials are used, including First, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Here, the focus is on Article 7, paragraph (2), regarding the event of deviation from the age provisions as referred to in paragraph (1). The prospective bride must have reached the age of 19 years. Second is PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Cases. Here, the focus is Article 2, which provides guidelines for judges in deciding marriage dispensation cases.

Meanwhile, in secondary legal materials, three materials are used: Judges' decisions regarding underage marriage, Judges' jurisprudence regarding underage marriage, and legal dictionaries. In addition, data was also obtained through interviews with judges, lawyers, the Head of the Religious Affairs Office, and marriage dispensation applicants. The collected data were then analyzed through 4 stages: collection, data reduction, data interpretation, and conclusion drawing.

Result and Discussion

Marriage Age Limit According to Islamic Law and the Opinions of Ulama

The age limit for entering into marriage is one of the essential topics often discussed in Islamic law. Although the Qur'an does not explicitly set a minimum age for marriage, it does ensure the psychological maturity required for a responsible commitment.²⁴ Marriage in Islam is considered a sacred bond that demands responsibility and the ability to live a married

²³ Rohmadi et al., "Judges' Considerations in Granting Marriage Dispensation Licenses in Indonesia."

²⁴ Iswantoro Iswantoro and Faiq Tobroni, "Rationalization of Islamic Legal Considerations in Marriage Dispensation: A Lesson from Katingan, Central Kalimantan," *Al-Manahij: Jurnal Kajian Hukum Islam*, November 25, 2022, 301–14, <https://doi.org/10.24090/mnh.v16i2.7074>.

life.²⁵ Therefore, the discussion about the age limit of marriage is closely related to the readiness and maturity of each individual to build a household that is *sakinah*, *mawaddah*, and *rahmah*, which is obtained through mutual understanding and understanding between personal partners.²⁶

Islam considers the physical and mental preparation of a person to be one of the main requirements before entering into marriage.²⁷ This means that even though a person is already in puberty, they are not necessarily ready to live a married life. Some scholars emphasize that marriage requires emotional maturity and readiness to face household responsibilities, including building healthy relationships and fulfilling obligations as husband and wife. Therefore, the age limit for marriage is often associated with the concept of maturity and readiness of each individual (maturity).²⁸

The Qur'an and Hadith provide guidance on the importance of maturity before marriage. One of the verses often referred to is Surah An-Nisa, verse 6.

وَابْتَلُوا الْيَتَامَى حَتَّى إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ

Meaning: "Test the orphans until they are old enough to marry. Then when you think they are of sound mind, give them their property...."

The above meaning states that a person should be tested for maturity before being given responsibility over his property. This verse reflects the importance of reaching maturity before taking on significant responsibilities such as entering into marriage and running a household.²⁹ According to Rasyid Ridha, the age of puberty is when a child is considered to have reached sexual maturity, such as for women who have menstruated and men who have dreamed. At this age, a person can bear children and have offspring, so that his heart is moved to carry out marriage.³⁰ For this reason, puberty is often used as a reference age for marriage. However, puberty varies depending on physical and cultural conditions. Generally, girls are considered to have reached puberty when they are between 16 and 17 years old, while boys reach puberty between 17 and 18 years old. However, experts emphasize that the

²⁵ Suaib Abdullah, Nirwan Junus, and Dolot Alhasni Bakung, "Polemic and Existence Marriage Dispensation given Marriage Law," *Estudiante Law Journal* 1, no. 3 (2019): 726–40, <https://doi.org/10.33756/eslaj.v1i3.13318>.

²⁶ Amri Amri et al., "Representation of Family Law in the Digital Space: A Study of Discourse Analysis on Instagram Accounts," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 November (November 9, 2023): 507, <https://doi.org/10.29240/jhi.v8i2.6578>.

²⁷ Ashabul Fadhli and Arifki Budia Warman, "'ALASAN KHAWATIR' PADA PENETAPAN HUKUM DISPENSASI KAWIN DI PENGADILAN AGAMA BATUSANGKAR," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (December 31, 2021): 146, <https://doi.org/10.14421/ahwal.2021.14203>.

²⁸ Ismatulloh, "Konsep Sakinah, Mawaddah Dan Rahmah Dalam Al-Qur'an," *Jurnal Mazhab* 14, no. 1 (June 2015).

²⁹ Halimah Rosyidah, RR Viantika Kusumasari, and Dian Nur Adkhana, "Relationship Between The Age Of Pregnant Women And Premature Labor In Panembahan Senopati Regional Public Hospital, Bantul, Yogyakarta," *Bali Medika Jurnal* 6, no. 1 (2019), <https://doi.org/10.36376/bmj.v6i1.62>.

³⁰ Akram Ridha, *To Bring Back a Warmth to Our Home: Menghadirkan Kembali Kebangsaan Dalam Rumah Bangsa Kita* (Ziyad: Visi Media, 2007).

age of puberty is not the only indicator of readiness for marriage. They must be mentally and emotionally prepared for married life.³¹

Although Islam does not explicitly prohibit early marriage, many scholars oppose the practice because of its negative impacts. The impacts of early marriage include disruption of education, prolonged poverty, loss of employment opportunities, leaving the family before they are ready, increased likelihood of divorce, children not receiving full attention, developmental delays, and behavioral deviations.³² Islam emphasizes the importance of preventing everything that can cause harm or loss (*mudharat*), as in the *Qaidah Fiqh*. “Removing harm must take precedence over taking benefit.”³³

The age limit for marriage in Islamic law is based on the principle of individual maturity and readiness for married life. In the modern context, a more careful and mature approach is needed to ensure that marriage is not only based on age but also on physical, mental, and emotional readiness. Muslim countries have taken steps to set stricter age limits through national laws to protect children from early marriage and the negative impacts that may arise from it. Such as the examples of countries in the table below:³⁴

Table 1: Marriage Age Limits in Islamic Countries

No.	Country Name	Man	Woman
1.	Pakistan	18	16
2.	Morocco	18	15
3.	Türkiye	17	17

Source: Processed by the author

Meanwhile, according to several scholars, the age limit for marriage varies. Most scholars agree that puberty is the minimum requirement for marriage because a person is considered physically and biologically capable of marrying at that age. However, they also emphasize that mental, emotional, and responsible readiness are the most critical aspects that must be considered before marriage.³⁵

In the Hanafi school of thought, the minimum age for marriage is not strictly limited, but the age of puberty is considered a benchmark. For women, puberty is set at 18 years, while for men, it is between 17 and 18. However, the Hanafi school also emphasizes that

³¹ Ibnu Amin et al., “The Concept of Baligh Perspective of Fiqh and Positive Law,” *Al-Istinbath : Jurnal Hukum Islam* 7, no. 2 (December 1, 2022): 455, <https://doi.org/10.29240/jhi.v7i2.5268>.

³² Yusuf Yusuf, “DINAMIKA BATASAN USIA PERKAWINAN DI INDONESIA: Kajian Psikologi Dan Hukum Islam,” *JIL: Journal of Islamic Law* 1, no. 2 (August 2, 2020): 200–217, <https://doi.org/10.24260/jil.v1i2.59>.

³³ Darlin Rizki, Frina Oktalita, and Ali Sodikin, “Maqasid Sharia Perspective in Changes the Marriage Age Limits for Women According to Law Number 16 of 2019,” *Al-Istinbath : Jurnal Hukum Islam* 7, no. 2 (December 1, 2022): 501, <https://doi.org/10.29240/jhi.v7i2.4016>.

³⁴ Yulia Fatma, “BATASAN USIA PERKAWINAN DALAM HUKUM KELUARGA ISLAM (Perbandingan Antar Negara Muslim: Turki, Pakistan, Maroko Dan Indonesia),” *JURIS (Jurnal Ilmiah Syariah)* 18, no. 2 (December 30, 2019): 117, <https://doi.org/10.31958/juris.v18i2.1670>.

³⁵ Rina Shahriyani Shahrullah et al., “Dilemmas Faced by Judges When Granting Marriage Dispensations for Child Marriages in West Java, Indonesia,” *International Journal of Law, Policy and The Family* 37, no. 1 (January 10, 2023): ebad035, <https://doi.org/10.1093/lawfam/ebad035>.

marriage is about biological maturity and the ability to carry out responsibilities as a married couple. The Hanafi school's determination of the minimum age for marriage is not strictly limited, but the age of puberty is considered a benchmark. For women, puberty is set at 18 years of age, while for men between the ages of 17 and 18. However, the Hanafi school also emphasizes that marriage is about biological maturity and the ability to carry out responsibilities as a married couple.³⁶

Imam Nawawi argues that although the age of puberty determines whether or not someone is fit to marry, it is still necessary to consider whether the individual is truly mentally and physically ready to live a married life.³⁷ According to the Syafi'i School, in the book *Kasyifah as-Saja*, puberty is the release of semen for men and menstruation for women. It also looks at daily habits because maturity can be seen from age and habits. In this case, the age of puberty is 15 years. However, referring to age alone is not enough. Therefore, psychological maturity, spiritual preparation, physical maturity, economic readiness, and mental and spiritual readiness are needed.

Meanwhile, another opinion from Imam Nawawi is that although the age of puberty determines whether or not a person is eligible for marriage, it is still necessary to consider whether the individual is mentally and physically ready to live a married life. In this case, also according to the Shafi'i *Mazhab*, the book of *Kasyifah as-Saja*, *baligh* which meant the emission of semen for men and menstruation for women and looks at daily habits because maturity can be seen from age and habits. In this case, puberty is 15 years old. However, relying on age alone is not enough. Therefore, each needs psychological maturity, spiritual preparation, physical maturity, economic readiness, and mental-spiritual readiness.³⁸

Many contemporary scholars, such as Rashid Ridha, also emphasize the importance of adjusting the age of marriage and mental readiness to marry and have children. He argues that although Islamic law also allows marriage at a young age, in reality, early marriage can have negative impacts, such as dropping out of school or reproductive health problems, so that at an age that is still considered a child, it is not appropriate to marry.³⁹

Many contemporary scholars, such as Rasyid Ridha, also emphasize the importance of age adjustment and mental readiness for marriage and childbearing. He argues that although Islamic law also permits marriage at a young age, in reality, early marriage can have negative impacts, such as dropping out of school or reproductive health problems, so that at an age that is still considered a child, it is not appropriate to marry.⁴⁰ Apart from the opinion of Rashid Ridha, Ibn Shubramah also believes that Islam prohibits early marriage before reaching the age of puberty. According to him, the essence of marriage is to fulfill biological

³⁶ Iwan et al., "Reconceptualizing the Marriage Age Limit in Indonesia."

³⁷ M Anwar Nawawi et al., "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (September 1, 2022): 117–34, <https://doi.org/10.18326/ijtihad.v22i1.117-134>.

³⁸ Hidayati Aini and Afdal Afdal, "Analisis Kesiapan Psikologis Pasangan Dalam Menghadapi Pernikahan," *Jurnal Aplikasi IPTEK Indonesia* 4, no. 2 (September 10, 2020): 136–46, <https://doi.org/10.24036/4.24372>.

³⁹ Rosdalina Bukido et al., "Reception of Marriage Age Limit in Marriage Law in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (March 31, 2023): 146, <https://doi.org/10.22373/sjhk.v7i1.15245>.

⁴⁰ Syawaluddin Hanafi, "Legal Politics of Changes to Marriage Laws in Indonesia," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 1 (July 22, 2024): 68–85, <https://doi.org/10.32505/qadha.v11i1.8867>.

needs and maintain the continuity of offspring, which cannot be fulfilled by children who have not reached puberty. He also considers historical, social, and cultural aspects.⁴¹

In general, scholars agree that the age of puberty is not included in the basic requirements of Islamic law to perform marriage. However, there are differences in the application of the minimum age among the various schools of thought, and modern scholars tend to favor policies that increase the age of marriage to protect the physical, mental, and social health of prospective spouses. Although Islamic law allows early marriage, overall preparedness remains a top priority. This includes cognitive, financial, and emotional readiness so the marriage can be filled with peace, love, and affection for the couple.

Marriage Age Limit According to Law in Indonesia

Legally, determining the age of majority is very important because it relates to a person's ability to act and perform legal acts. However, in Indonesia, there is still no uniformity of regulations regarding the age of majority. Even among legal practitioners, there are differences of opinion regarding the appropriate age to witness in court.⁴² The difference in the age limit of adulthood occurs due to differences in expert views on the psychological condition of children, such as in the selection of witnesses in court. Some parties allow witnesses under 18 as long as they can provide information in the investigation, referring to the provisions of Law No. 11/2012 on the Juvenile Criminal Justice System.

"Children who become witnesses to criminal acts, hereinafter referred to as child witnesses, are children under 18 (eighteen) years who can provide information for investigation, prosecution, and examination in court regarding criminal cases that they have heard, seen, and experienced themselves."

The other party refused because this age is considered not mature enough in thinking and behavior, so ideally, a witness should be at least 21 years old and above. In contrast, at age 21, a person is said to be an adult and has legal capacity, which refers to the Civil Code (BW) Article 330. Which reads:

"Minors are those who have not reached the age of twenty-one years and have never been married before."⁴³

The article states that a person can perform legal acts if they are 21 or have entered into a marriage before reaching that age.

⁴¹ Musdhalifah Musdhalifah Musdhalifah, "Age Limits for Marriage In Classic And Contemporary Ulum Views; Analyst Study of Underage Marriage Practices in the Fisherman's Village of Saletreng Village, Situbondo Regency," *Al-'Adalah: Jurnal Syariah Dan Hukum Islam* 7, no. 2 (December 28, 2022): 406–21, <https://doi.org/10.31538/adlh.v7i2.2907>.

⁴² Ibnu Radwan Siddik Turnip, Zainul Fuad, and Nurhayati Nurhayati, "The Current Development of Marriage Age Provisions in Indonesia and Malaysia: A Socio-Historical Approach," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (June 30, 2022): 105, <https://doi.org/10.30984/jis.v20i1.1813>.

⁴³ Isroqunnajah Isroqunnajah, Agus Iqbal Hawabi, and Umdatul Khoirot, "Legal Capacity and Legal Authority of Adult Age in Indonesia: Medical, Psychological and Islamic Law Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (January 20, 2024): 105, <https://doi.org/10.22373/sjhk.v8i1.19834>.

According to Oka Mahendra, inconsistency in determining the age of adulthood indicates disharmony in legislation. As a result, various problems arise, such as differences in interpretation, legal uncertainty, and inefficiency in applying the law.⁴⁴ This causes the law to fail to regulate people's behavior, exercise social control, or resolve disputes effectively.

In “Law No. 1/1974” (before the amendment), the minimum age for marriage was set at 19 years old for men and 16 years old for women, which was later changed to 19 years old after the amendment. Meanwhile, “Law No. 23 of 2002 in conjunction with Law No. 35 of 2014 on Child Protection” states that a person is considered a child if they are under 18 years old. However, this law does not explicitly address the minimum age for marriage.

Article 15 paragraph (1) of the Compilation of Islamic Law stipulates that marriage may only be entered into by the prospective bride and groom who have reached the age specified in Article 7 of Law Number 1 Year 1974, namely a minimum age of 19 years for the prospective husband and a minimum age of 16 years for the prospective wife.⁴⁵ In addition, the Civil Code also states that a person's maturity is not only determined by age but also influenced by marital status. A person who has entered into a marriage even though they are not yet 21 years old is legally considered an adult.

Differences in the interpretation of the age of majority in various laws and regulations have caused problems in their implementation. Mardi Candra, in his book entitled “Aspects of Indonesian Child Protection: An Analysis of Child Marriage,” explains that some of the factors that cause these differences include the process of forming laws is carried out by different institutions and often at other times; changes in officials assigned to make laws due to term limitations; a sectoral approach that is more dominant than a systemic approach; weak coordination between the parties involved; and limited public participation in the legislative process.⁴⁶

The Phenomenon of Early Marriage in Mojokerto

There has been an increasing trend of marriage dispensation applications at the Mojokerto Religious Court in recent years. Dispensation to marry is a special license granted by the religious court to prospective spouses who have not reached the minimum age limit to perform marriage according to the law, which is 19 years of age for men and women, following Law Number 16 of 2019.⁴⁷ This increase in the number of applications is of concern to the community and the government, given that underage marriage is often associated with various social and legal problems.

An application for dispensation to marry is submitted by the parents of the prospective bride and groom who are not of legal age. One of the most common reasons is pregnancy outside of marriage, where marriage is seen as a solution to avoid social disgrace. In the context of the Mojokerto community, which still upholds local customs and culture, social

⁴⁴ Dian Latifiani, “The Darkest Phase for Family: Child Marriage Prevention and Its Complexity in Indonesia,” *Journal of Indonesian Legal Studies* 4, no. 2 (November 30, 2019): 241–58, <https://doi.org/10.15294/jils.v4i2.34708>.

⁴⁵ Nuansa Aulia, *Kompilasi Hukum Islam* (Bandung: Citra Umbara, 2017).

⁴⁶ Aini and Afdal, “Analisis Kesiapan Psikologis Pasangan Dalam Menghadapi Pernikahan.”

⁴⁷ Syufa’at, “Marriage Dispensation in Underage Marriage.”

pressure and stigma towards pregnancy outside of marriage are often the main drivers of these marriage dispensation applications.⁴⁸

The Mojokerto Religious Court has the authority to determine whether or not to grant a marriage dispensation application. In the decision-making process, judges will consider various factors, including the physical and mental health of the prospective bride and groom, readiness to build a family, and the social and psychological impact of early marriage.⁴⁹ However, it cannot be denied that in many cases, a dispensation to marry is still granted even though the prospective bride and groom have not reached the age stipulated by law.

One of the main reasons for the increasing number of marriage dispensation cases in Mojokerto is the lack of public understanding of the negative impact of early marriage. Many still think that early marriage is the best solution to the problem of pregnancy outside of marriage, without considering the long-term risks such as divorce, reproductive health problems, and limitations in terms of education and economy. There is a lack of education and counseling on the importance of delaying marriage until a more mature age so as not to aggravate the situation of risks that will occur in the long run.⁵⁰

Law Number 16 of 2019, which sets the age of marriage at 19 years for both women and men, is expected to reduce the number of child marriages. However, it appears that the changes have not effectively reduced the number of marriage dispensation applications in Mojokerto. The number of dispensation applications has increased since the new regulation.

One of the factors causing the high number of marriage dispensation applications is economic. Many families in Mojokerto from the lower middle class think that marrying their children can ease the family's financial burden. They see marriage as a solution to reduce the burden, especially if the child has stopped school or is already working at a young age.

When filing a marriage dispensation application at the Mojokerto Religious Court, the court usually holds a special hearing where the judge hears testimony from both parties, namely the prospective bride and groom and their parents. The judge also has the right to request the opinion of an expert witness or psychologist to assess the mental readiness of the prospective bride and groom. However, many judges feel a dilemma in deciding the case because, on the one hand, they must apply the law, but on the other hand, they must also consider social and cultural factors.⁵¹

Early marriage in Mojokerto is one of the many marriages, although, in 2022, there was a decrease of 72 cases.⁵² Data from the Mojokerto Religious Court shows that most marriage dispensation applications are submitted by parents who want to marry their underage children to avoid pregnancy outside of marriage or the social stigma attached to relationships outside of marriage.

Another factor influencing the increase in marriage dispensation is the lack of public understanding of the risks of early marriage, both from a health and social perspective. Many Mojokerto communities still see early marriage as a solution to problems, such as poverty or relationship instability, without considering the long-term impact. The lack of adequate

⁴⁸ Anis, Interview with Marriage Dispensation Lawyer, September 27, 2024.

⁴⁹ Latifiani, "The Darkest Phase for Family."

⁵⁰ Rohmadi et al., "Judges' Considerations in Granting Marriage Dispensation Licenses in Indonesia."

⁵¹ Isroqunnajah, Hawabi, and Khoirot, "Legal Capacity and Legal Authority of Adult Age in Indonesia."

⁵² Budianto, "449 Remaja Usia SD-SMA Ajukan Pernikahan Dini Di Mojokerto Dalam Setahun."

socialization on the importance of delaying marriage until adulthood also exacerbates the long-term risks of early marriage.⁵³

Although the government and non-governmental organizations have tried to provide education about the dangers of early marriage, implementation in the field is still not optimal. Many parents feel pressured by cultural norms and the surrounding environment, so they prefer to apply for marriage dispensation rather than wait for their children to reach the age permitted by law.

Although the government has established various policies and laws to overcome early marriage, such as the Stunting program, the Stunting Program is a government program to prevent malnutrition in children, which is closely related to early marriage.⁵⁴ In addition, the KUA itself often conducts socialization related to the impact of early marriage to provide understanding to underage children so that they do not marry under the minimum age limit. This activity is even scheduled in several KUAs every 6 months or at least once a year.⁵⁵

More concrete and structured steps are needed to reduce the number of marriage dispensation applications in Mojokerto. Education about the risks of early marriage, as well as stricter law enforcement against marriage dispensation applications without a firm basis, should be prioritized. Local government, community leaders, and religious institutions in Mojokerto need to work together to raise awareness that child marriage is not a solution but a problem that can hurt the future of the younger generation.

With the increase in the number of dispensation cases from 2019 to date, it is clear that child marriage remains a serious problem in Mojokerto. The government, the courts, and the community must continue to work to reduce the number through legal, educational, and cultural approaches.

Inconsistency of Marriage Age Limit Rules: Between Regulation and Contemporary Social Relations in Mojokerto Religious Court

Based on the formulation of the problem in this study, the government has set the age limit for marriage at 19 years, as stated in Law Number 16 Article 7 paragraph (1) after making changes to Law Number 1 Year 1974 concerning marriage, which previously set the age limit for marriage for men at 19 years and for women at 16 years. With this change, Law Number 16 Article 7 of 2019 now serves as the legal basis for the age of marriage in Indonesia.

In general, the marriage age limit stated in the latest Marriage Law applies nationally and applies to all Indonesian people without exception. Article 7 Paragraph (1) of Law Number 16 of 2019 states that the minimum age of marriage for men and women is 19 years. This age determination aims to protect children from early marriage, which can have negative

⁵³ Rudi Mayandra, "Regulation of Marriage Dispensation Against Marriage of Children Under The Age of Post Decision of The Constitutional Court Number 22 / Puu-Xv / 2017," *Syariah: Jurnal Hukum Dan Pemikiran* 20, no. 2 (2020), <https://doi.org/10.18592/sjhp.v20i2.4160>.

⁵⁴ Khadijah Dinda Putri Dewi et al., "Pengaruh Pernikahan Dini Terhadap Tingkat Pertumbuhan Stunting Di Kelurahan Terjun Kecamatan Medan Marelan," *Reslaj: Religion Education Social Laa Roiba Journal* 6, no. 1 (August 9, 2023): 817–27, <https://doi.org/10.47467/reslaj.v6i1.2209>.

⁵⁵ Muhammad Abidin, Interview with the Head of the Religious Affairs Office, August 21, 2024.

impacts both physically, psychologically, and socially.⁵⁶ Inconsistency refers to the discrepancy between one thing and another, even though there should be a connection between the two. In this study, we identify the inconsistency in Law Number 16 Article 7 paragraph (2) concerning Marriage with PERMA Number 5 of 2019. This article is a regulation with an equal position in the hierarchy of rules that contains other requirements from Article 1.

In contrast, PERMA Number 5 of 2019 contains guidelines for judges in deciding Marriage Dispensation. Still, it does not explain the reasons that can be used as a basis for applying for marriage dispensation.⁵⁷ Therefore, these regulations should complement and not contradict each other. But in reality, in Article 7, paragraph (2) which reads:

"In the event of a deviation from the age provisions as referred to in paragraph (1), the male parent and/or female parent may request dispensation from the Court for urgent reasons accompanied by sufficient supporting evidence."

This article differs from the age requirement, where parents can apply to the Religious Court for dispensation to marry for urgent reasons. The existence of paragraph (2) has led to different interpretations and sparked debate. This is reinforced by PERMA No. 5/2019 on Guidelines for Adjudicating Marriage Dispensation Applications, which supports Article 7 paragraph (2). The PERMA explains that if a child is to enter into a marriage under 19, the parents must apply for a marriage dispensation license to the local Religious Court. The aim is to ensure the child's best interests, including protection, care, welfare, survival, and growth and development.⁵⁸

With the PERMA, granting a dispensation to marry has become relatively easy, making the law on marriage age limit ineffective. Although Article 7, paragraph 2 of the Marriage Law states that permission for dispensation to marry can be granted for urgent reasons, PERMA Number 5 of 2019 does not explain clear criteria and limitations regarding what is meant by urgent reasons for children who will enter into marriage. This has the potential to cause disharmony for judges in deciding cases.

According to Mr. Arif Hidayat, parents usually put forward several reasons in applying for a marriage dispensation permit, one of which is because they are pregnant, have been dating for a long time, and cannot be separated, or because they have been matched.⁵⁹ However, there is no legal certainty regarding the urgent reasons for granting dispensation of marriage, so that in their decisions, the judges can make different decisions, and problems

⁵⁶ Hasyim Sofyan Lahilote et al., "Judge's Dilemma in Marriage Dispensation in the Religious Court," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 1 (June 30, 2022): 52–60, <https://doi.org/10.30631/alrisalah.v22i1.979>.

⁵⁷ Umi Supraptiningsih, "Pro and Cons Contestation on The Increase of Marriage Age in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (June 30, 2021): 232, <https://doi.org/10.22373/sjhk.v5i1.9136>.

⁵⁸ Nur Mohamad Kasim and Indra Saputra Daud, "Application of The Concept of Maslahah by Judges to Issuance of Marriage Dispensation Due to Pregnancy in Religious Courts," *Jambura Law Review* 4, no. 1 (February 2, 2022): 122–38, <https://doi.org/10.33756/jlr.v4i1.10999>.

⁵⁹ Arif Hidayat, Interview with Judge of Mojokerto Religious Court, October 16, 2024.

will arise.⁶⁰ Explanation of urgent reasons in the decision of a marriage dispensation case. Because there is no explanation and limitations in the urgent reasons allowed to apply for marriage dispensation, there will be differences in judges' decisions.⁶¹

Regarding the reasons for applying for urgent marriage dispensation, Mr. Amir Syarifuddin, one of the Judges of the Mojokerto Religious Court, believes that the uncertainty of urgent reasons will be detrimental to the party applying for marriage dispensation. For example, suppose someone applies for dispensation to marry because they are pregnant. In that case, the judge may have a different opinion regarding whether the pregnancy falls into the category of urgent reasons or not. So, the critical point in granting a dispensation to marry is for the child's welfare.⁶²

With the inconsistency of these decisions, there will always be differences in interpretation when applying laws that should be consistent in all regions. Some use it strictly, and some are lax when granting marriage dispensation. Granting dispensation to marry underage children often ignores the long-term impact on both girls and boys. Early marriage can hinder educational, economic, and social development and increase the risk of domestic violence. Children who marry under age tend to be more vulnerable to exploitation and health problems. To overcome this, the government has issued various policies to limit the granting of marriage dispensations. One of the efforts is to increase public awareness of the dangers of early marriage, starting from the surrounding environment, both from government agencies and independent counseling, and tighten the requirements and procedures for obtaining marriage dispensation in the Religious Courts.

Many parties have criticized the dispensation policy in Article 7, Paragraph 2 as contrary to the spirit of child protection. Although this law is intended to protect children from early marriage, in reality, the dispensation provision provides an opportunity for children to marry at a physically and mentally immature age.⁶³

The government needs to conduct a comprehensive evaluation of the implementation of Article 7 Paragraph (2) to align with the objectives of Article 7 Paragraph (1). One step that could be taken is to tighten the rules on the urgent reasons that can be used as the basis for granting dispensation and to increase supervision of religious courts in making marriage dispensation decisions.⁶⁴

In the future, policy changes may be needed to close the loopholes in Article 7 Paragraph (2), for example, by setting an absolute minimum age limit with no exceptions or by limiting dispensation to cases of genuine urgency, such as situations that threaten the life or safety of the child. A comprehensive and multisectoral approach is needed to address the problem of early marriage. Education, health, and social welfare must be part of efforts to

⁶⁰ Muhammad Ishom, "The Loose Interpretation of Dominus Litis Principle in Marriage Dispensation for Underage Marriage in Banten," *AHKAM: Jurnal Ilmu Syariah* 23, no. 2 (2023), <https://doi.org/10.15408/ajis.v23i2.29881>.

⁶¹ Taufiqur Rohman et al., "Preventing Violations of Religious and Social Norms: Judicial Interpretation of 'Urgent Reasons' in Marriage Dispensation at the Wonosari Religious Court, Indonesia," *JIL: Journal of Islamic Law* 4, no. 2 (August 30, 2023): 218–36, <https://doi.org/10.24260/jil.v4i2.1535>.

⁶² Musdhalifah, "Age Limits for Marriage In Classic And Contemporary Ulum Views; Analyst Study of Underage Marriage Practices in the Fisherman's Village of Saletreng Village, Situbondo Regency."

⁶³ Bukido et al., "Reception of Marriage Age Limit in Marriage Law in Indonesia."

⁶⁴ Andrian Liem et al., "Factors Associated with Child Marriage during the COVID-19 Pandemic in Indonesia," *Contemporary Islam* 18, no. 3 (October 2024): 457–78, <https://doi.org/10.1007/s11562-023-00545-6>.

prevent early marriage.⁶⁵ In addition, strict law enforcement against violations of the marriage age limit must also be improved.

Increasing public understanding of the negative impacts of early marriage is essential to prevent the misuse of dispensation provisions. Socialization involving religious leaders, the community, and the government can contribute to changing traditional mindsets that still support early marriage.⁶⁶ The inconsistency between Article 7 Paragraph (2) of Law Number 16 of 2019 concerning Marriage and PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Cases is a significant challenge in efforts to prevent early marriage.⁶⁷ The marriage dispensation stipulated in paragraph (2) is often the reason for deciding to perform early marriage because PERMA number 5, which regulates early marriage, does not explain in detail the urgent reasons for allowing early marriage.⁶⁸ Therefore, more serious efforts are needed from all parties to enforce consistent regulations to protect children from the negative impacts of early marriage.

Conclusion

The age limit for marriage, according to some scholars, varies. However, the majority of scholars agree that the age of puberty is the minimum requirement for marriage, such as the Hanafi school of thought that the age of puberty is when a person is between 17 and 18 years old. At that age, a person is considered physically and biologically capable of entering marriage, but scholars also emphasize that mental and emotional readiness is equally important.

The age limit for marriage is also regulated in Law Number 16 of 2019 Article 7 paragraph (1), which states that the age of marriage is 19 years for both men and women. In this article, there was a final change to Article 7 Number 1 of 1974, namely, the age of 19 for men and 16 for women. With this change, it is hoped that underage marriages will no longer exist, but in reality, underage marriages still exist. The parties to an underage marriage do not have a limit to be considered eligible for a marriage dispensation permit because, in Article 7 Paragraph (2), which contains if there is a deviation from Article 1, parents are required to request permission from the Religious Court to be able to marry their children for urgent reasons. However, this article does not explain the urgent reasons for applying for this marriage dispensation. PERMA Number 5 of 2019, concerning Guidelines for Adjudicating Marriage Dispensation Cases, only explains that marriage dispensation is aimed at the basis of the best interests of the child, the right to life and growth of the child, respect for the child's opinion, respect for human dignity, non-discrimination, gender equality, equality before the law, justice, expediency and legal certainty. So, in deciding the case between Judge 1 and the other, Judges have different reasons for determining the Marriage Dispensation case.

⁶⁵ Insani et al., "Judicial Considerations in Child Marriage Dispensations."

⁶⁶ Sarip Sarip et al., "Legal Dialectics: Age Limits for Marriage and Political Rights in Indonesia," *Jurnal Hukum Novelty* 13, no. 1 (July 22, 2022): 49, <https://doi.org/10.26555/novelty.v13i1.a19018>.

⁶⁷ F. R. Lang, "Regulation of Social Relationships in Later Adulthood," *The Journals of Gerontology Series B: Psychological Sciences and Social Sciences* 56, no. 6 (November 1, 2001): P321–26, <https://doi.org/10.1093/geronb/56.6.P321>.

⁶⁸ Nawawi et al., "Harmonization of Islam and Human Rights."

The researcher can conclude that there are still legal inconsistencies regarding Marriage Dispensation for children between Law Number 16 of 2019 Article 7 Paragraph (2) and PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Cases. Therefore, it is necessary to evaluate the Dispensation provision in Article 7 Paragraph (2). There needs to be stricter regulation of the urgent reasons for obtaining dispensation to marry and more substantial supervision of the courts in deciding dispensation cases. This will help strengthen the protection of children from early marriage following the purpose of Article 7 Paragraph (1).

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