

# **Marriage Dispensation in the Competence of Agama Court and its Relation with the Protection of Children's Rights (A Case Study of the Class I-B Agama Court Kisaran)**

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## **Abstract**

One of the important authorities of Agama Court and a legal product that are often debated in the public sphere is the determination of marriage dispensation. On the one hand, the determination of marriage dispensation must consider the best interests of the child, but on the other hand, it is seen as perpetuating child marriage. This article examines the legal position of Agama Court in their authority to determine marriage dispensations at the Kisaran Class I-B of Agama Court. This article uses a normative legal research method by collecting data from library sources. Through this research, it was found that marriage dispensation is a legal space to ensure legal justice for the community to obtain legal certainty for marriages conducted under the age of 19, as stipulated in the Indonesian Marriage Law No. 1 of 1974, as Amended by Law No. 19 of 2024. The panel of judges uses guidelines for adjudicating marriage dispensation based on Perma No. 5 of 2019, which stipulates that principle the best interests of the child are the main consideration.

**Keywords:** Marriage Dispensation, Children, Best Interests Of Children, Religious Courts

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## Introduction

A marriage dispensation is an interesting legal issue. Marriage dispensation demonstrates the presence of the state, through the authority of the judiciary, in determining the legal status of marriages to be permitted into by parties who have not yet reached the age stipulated in the Law No. 1 of 1974 concerning Marriage Law[1], as Amended by Law No. 16 of 2019 (Hereinafter Marriage Law) [2]. A marriage dispensation is a legal breakthrough created by the state to ensure legal certainty, justice, and legal benefits for society. The practice of marriage dispensation in Indonesia has sparked legal debate. On the one hand, this practice must be implemented with the best interests of the child, while on the other hand, it has in fact given rise to child marriage practices that pose a significant risk to the future of households, families, and the well-being of society.

A marriage is a legal act that binds a man and a woman as life partners to form a household. The legal bond in marriage indicates a civil relationship between two parties bound in marriage between husband and wife. Unlike other civil relationships that refer to complete freedom for the parties, the bond of marriage is determined by law and legislation. This legal act gives rise to the rights and duties of each spouse. The legal act of marriage is regulated by statutory regulations to ensure that it is not only legally valid, but also capable of protecting the interests of the parties concerned, both as husband and wife, as well as the extended family members of each spouse.

The physical and mental maturity of members of society who will marry can be identified from the marriage requirements including parental permission and age limits. The Constitutional Court of the Republic of Indonesia (MKRI) has decided to set the age limit for marriage for men and women at 19 years. MKRI Decision No. 22/PUU-XV/2017 annulled the implementation of the age limit of 16 years for women and 19 years for men stipulated in previous legal norms, as contained in the provisions of Article 7 paragraph (1) of Law No. 1 of 1974 [3]. However, if there is a deviation from this age limit of 19 years or in other words, under the age of 19 years, then a marriage dispensation can be requested from the court.

A marriage dispensation is requested from the court because the age of the parties who will be married is under 19 years old, both male and female. On that basis, the legal interest of a marriage dispensation is to obtain legal recognition and certainty to carry out the legal act of marriage. Within this framework, the authority to examine, decide, and grant marriage dispensation requests submitted by members of the community rests entirely with the judicial institution. For Indonesians who are Muslim, the authority to grant marriage dispensations lies entirely with the Agama Court system. In practice, the Agama Court has authority based on clear and strong legal provisions.

Furthermore, the legal norms governing marriage dispensations stipulated in Marriage Law, provide a strong legal framework. To ensure the smooth running of legal processes and mechanisms, the Supreme Court issued Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications [4]. This provision further strengthens the state's role in positive legal intervention through equitable legal mechanisms to protect children's rights.

This paper examines the authority of the Agama Court in granting marriage dispensations and relates it to the protection of children's rights. This is important in order to examine the essence of marriage dispensations in an effort to ensure that the legal products of the Kisaran

Class I-B Agama Court respect and protect children's rights. Furthermore, as one of the judicial authorities in Indonesia, the position of the Kisaran Class I-B Agama Court is very strategic in the implementation of the protection of children's rights, which prioritizes the best interests of the child in determining marriage dispensations.

## **Literature Review**

In the perspective of national law, the legal act of marriage contains sacred ideals or spiritual values, namely happiness and eternity based on the One Almighty God, so that it is recognized that marriage is truly a physical and spiritual bond. In the provisions of Article 1 of Marriage Law, it is stated that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God (perkawinan adalah ikatan lahir bathin antara seorang pria dengan seorang wanita sebagai suami isteri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa).

In Islamic law perspective, as confirmed in Article 2 of Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI), marriage is a very strong contract or mitssaqan ghalidzan to obey Allah's commands and carrying it out is an act of worship (perkawinan adalah pernikahan, yaitu akad yang sangat kuat atau mitssaqan ghalidzan untuk mentaati perintah Allah dan melaksanakannya merupakan ibadah) [5]. In the perspective of the KHI, marriage is a manifestation of faith in Allah SWT. Marriage not only contains a primordial bond between humans, but is also an act of worship or a form of servitude to Allah SWT. Thus, marriage as stated in Article 3 of KHI must be aimed at realizing a household life that is tranquil (sakinah), affectionate (mawaddah), and merciful (rahmah) [5].

It must be understood that legal acts of marriage have legal implications in many other aspects of legal protection, such as private property, joint property, gifts, inheritance, and others. Therefore, compliance in carrying out legal acts of marriage becomes a *conditio sine qua non* (absolute condition) for the parties to obtain privileges over legal rights that must be protected and fulfilled, not only by the parties to the marriage, but also by state authorities [6]. Within this framework, national marriage law norms, as stipulated in the Marriage Law, emphasize that age limits and dispensations for marriage fall within the role and responsibility of parents and the authority of the courts. This is emphasized as follows:

- (1) Marriage is only permitted if the man and woman have reached the age of 19 (nineteen); (2) In the event of a deviation from the age requirement referred to in paragraph (1), the parents of the man and/or the parents of the woman may request a dispensation from the Court on the grounds of urgent necessity, accompanied by sufficient supporting evidence; (3) The granting of an exemption by the Court as referred to in paragraph (2) must take into account the opinions of both prospective spouses who will be getting married; (4) The provisions regarding the circumstances of one or both parents of the prospective bride and groom as referred to in Article 6 paragraph (3) and paragraph (4) also apply to the provisions regarding requests for dispensation as referred to in paragraph (2) without prejudice to the provisions referred to in Article 6 paragraph (6).

In the context of marriage dispensation, it is actually related to four dominant legal functions, namely (1) the facilitating function; (2) the repressive function; (3) the ideological function; and (4) the reflective function. In addition, the function of child protection in marriage dispensation is to save a child from the negative impacts of child marriage. Therefore, a fair law enforcement process is needed that is able to ensure the protection of children's rights in the mechanism for adjudicating marriage dispensation applications. However, dynamic social realities have a major influence in shaping the knowledge, experience, and expectations of society regarding the practice of child marriage. Agama Courts have a strategic role in efforts to minimize the practice of child marriage and tighten marriage dispensation [7].

The mechanism for obtaining marriage dispensation through the Agama Courts proposed by the parties, including parents, families, and the government, demonstrates the unique reasons for pressing for marriage dispensation to be properly tested by linking it to the best interests of the child, namely for the commitment of his new family and his future in the midst of community life. In a more strategic context, the determination of the marriage age limit of 19 years through the Constitutional Court Decision No. 22/PUU-XV/2017 must be interpreted as an effort to realize gender equality [3], [8].

## **Research Methodology**

The type of research in this study is normative legal research. This normative legal research is a method or way used in legal research by examining existing library materials such as books, journals, dictionaries, etc [9]. This type of normative legal research relates to the analysis of applicable laws and legal norms in the context of marriage dispensation applications in court. The approach used in this research is a statute approach. This approach is carried out by analyzing various laws, regulations, and regulations governing marriage dispensation in Agama Courts. The laws and regulations used include the Agama Courts Law, the Marriage Law, the Human Rights Law, the Child Protection Law, and Supreme Court Regulation Number 5 of 2019. Furthermore, this approach also utilizes laws and regulations concerning the ratification of international human rights instruments..

## **Results**

In its development, the essence of marriage law is to implement and enjoy the right to a household, which is seen as a fundamental right, namely human rights. It is acknowledged that marriage rights, from the perspective of international human rights law, have in their development given rise to transformations and even biases in thinking that tend toward ambiguity [10].

In fact, the right to establish a household is also known as the right to form a family, namely the right to choose and establish a life partner to raise children and achieve happiness. From the perspective of the 1948 United Nations Universal Declaration of Human Rights (UDHR), it is emphasized that the right to establish a household is a human right that cannot be reduced or set aside under any circumstances (non-derogable rights). The provisions of Article 16 of the UDHR state the following:

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights

as to marriage, during marriage and at its dissolution; (2) Marriage shall be entered into only with the free and full consent of the intending spouses [11].

Based on this provision, it is understood that marriage to form a family must be conducted based on free will and without coercion or pressure from any party. This free will reflects that marriage arises from the personal desires of each partner for the noble purpose of realizing the goodness of establishing a household. This emphasis on the age limit for adulthood demonstrates that child marriage is not encouraged, but rather should be prevented and prohibited. Therefore, the implementation of legal norms limiting the age of marriage must be understood as another form of legal protection by the state and society for children to avoid engaging in legal marital acts. In other words, fulfilling marriage rights from a human rights perspective is the state's effort to ensure that marriage must be respected as a choice based on freedom for everyone, while respecting the age limit for full adulthood.

The United Nations consider it crucial to follow up on Article 16 of the UDHR by strengthening the global community's commitment to preventing and eliminating child marriage [11]. This effort has resulted in international legal norms in the form of the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages [12]. This Convention is based on United Nations General Assembly Resolution 1763A (XVII), on November 7, 1962. In this regard, child marriage can only be carried out with the dispensation of an authorized official, and for fundamental reasons and in the interests of the couple. The provisions of Article 2 of the Convention state in full as follows:

States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses [12].

Within this corridor, the Agama Courts, as one of the executors of judicial power in Indonesia, have the constitutional position and authority to uphold law and justice based on the constitutional mandate and laws and regulations. Now entering its 142<sup>nd</sup> year since its inception on August 1, 1882, the Agama Courts are a legal and judicial practice that has a long history in the Indonesian legal and judicial system and is an integral part of the living and genuine legal practice in Indonesian society. The constitutionality of the PA in carrying out its judicial power function is to examine and decide cases related to the legal interests of Indonesian Muslims based on national legal sources.

The position and authority of the Agama Courts are regulated in Law No. 7 of 1989 concerning Agama Courts, as amended by Law No. 3 of 2006 and the latest amendment by Law No. 50 of 2009 (hereinafter referred to as the PA Law) [13], [14] Under the provisions referred to, the Agama Court has the authority to adjudicate cases involving marriage, inheritance, testament, and bequest, charitable (waqf) and alms (shadaqah), as well as other authorities based on applicable laws.

In this regard, the position and authority of the Agama Court in the field of marriage are based on the jurisdiction of Islamic personality within the scope of marital legal acts, including marriage dispensations. According to the Marriage Law, a marriage dispensation occurs when

there is a deviation from the minimum age limit for marriage, and is submitted to the Court by the parents of the groom and/or the parents of the bride for urgent reasons and supported by sufficient evidence.

In the Islamic teachings emphasize and reinforce the need to fulfill legal capacity in marriage to avoid the detrimental impacts of early marriage. Therefore, family planning and efforts to maintain reproductive health are essential efforts that require serious attention from all parties, including regulations regarding the age limit for marriage that can ensure reproductive health and the common good.

In the Quran, child marriage should actually be prevented because it results in legal incompetence, as stated in Surah an-Nisa verse 6 (3:6), which reads, "Test the orphans (in managing their wealth) until they are old enough to marry. Then, if you judge them capable (of managing their wealth), hand them over to them."

The same point is emphasized in Surah an-Nur verse 32, which reads: "Marry those who are single among you and those who are worthy of marriage from your slaves, both male and female. If they are poor, Allah will enrich them from His bounty. Allah is All-Encompassing and All-Knowing." This Quranic verse states that marriage is an important life solution, but within the appropriate capacity and maturity, both in age and other dimensions.

The essence of marriage dispensation reflects a certain conditionality within the legal sphere of society on the one hand, and the presence of the state, through the courts, in protecting and fulfilling the right to marry on the other. In this context, Agama Courts examine and rule on applications from Indonesian Muslim citizens through standard court procedures to examine the basis of the reasons and evidence presented. In other words, Agama Courts have the authority to ensure and determine the legal validity of deviations from the minimum age for marriage, based on the judge's considerations and convictions.

As previously emphasized, child marriage must be avoided. The state is obliged to ensure, through clear and firm policies and regulations, that all forms of child marriage are prohibited. Through various rational reasons, such as protecting health, education, and employment, child marriage has negative implications for the health and integrity of households, as well as for social order and even for a nation's civilization. Child marriage is a discriminatory global practice and is therefore prohibited and condemned by the international community.

In an effort to protect children, Indonesia has established Law No. 23 of 2002 concerning Child Protection, as amended by Law No. 35 of 2014 and most recently amended by Law No. 17 of 2016 concerning the Determination of Government Regulation in Lieu of Law (Perpu) No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection to Become Law (hereinafter Child Protection Law) [15]–[17]. In the provisions of Article 26 paragraph (1) of the Child Protection Law, it is emphasized that parents are obliged and responsible for: a. caring for, maintaining, educating, and protecting children; b. developing children according to their abilities, talents, and interests; c. preventing marriage at a young age; and d. providing character education and instilling moral values in children.

However, it must be acknowledged that, for a very long time, from the enactment of the 1974 Marriage Law to 2019, the legal age for marriage in Indonesia actually fell into the category of child marriage. The minimum age for marriage, stipulated in Article 7 paragraph (1) of the Marriage Law, is 16 for women and 19 for men. The provisions of the Child Protection Law further emphasize the prohibition of child marriage in Indonesia and the responsibility of

the family, society, and the state. Based on these provisions, the practice of child marriage has a long history in the development of marriage law in Indonesia. Furthermore, there is a clause that allows for marriage dispensations arising from deviations from the marriage age limit. Social factors, including religious understandings and practices, influence the behavioral climate and legal culture of society, resulting in a significant prevalence of child marriage.

To ensure legal justice for the community, a legal mechanism for adjudicating violations of the marriage age limit, as revised in the 2019 Marriage Law, was established and serves as the legal basis for marriage. Agama Courts play a crucial role in resolving legal violations of the marriage age limit. The Kisaran Class I-B Agama Court issues marriage dispensations based on the adjudication guidelines stipulated in Supreme Court Regulation No. 5 of 2019, which was enacted on November 20, 2019, one month after the 2019 Marriage Law came into effect.

The Kisaran Class I-B Agama Court examines and decides marriage dispensation applications based on key principles related to protecting children's rights, particularly the principle of the child's best interests. Judge classification is also determined by considering the judge's skills, knowledge, and experience in adjudicating marriage dispensation applications. This ensures the reality and expectations of the vulnerable age status of children applying for marriage dispensations.

## **Conclusion**

Marriage dispensation is one of the absolute powers of the Agama Courts. This authority is intended to address and resolve legal issues related to deviations from the marriageable age limit of 19 years, as stipulated in Law No. 1 of 1974 concerning Marriage, as amended by Law No. 19 of 2019. This deviation reflects a constantly changing social reality. The panel of judges at the Kisaran Class I-B Agama Court, within its authority, considers the principle of the best interests of the child as the primary consideration when examining and ruling on marriage dispensation requests.

The Class I-B Agama Court's marriage dispensation determination is a legally binding legal instrument and serves as the legal basis for the community. In its mechanism, the Class I-B Agama Court is subject to the procedural law and adjudication guidelines stipulated in Supreme Court Regulation No. 5 of 2019. The court continues to be encouraged to more thoroughly ensure that child marriage is stopped. Marriage dispensation signifies the responsibility of the parties, especially parents, family and society to help young couples to undergo the marriage they desire based on strong legal considerations and permitted by the panel of judges in the court.

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