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Marriage Dispensation After the Amendment of the Minimum Marriage Age: A Study of Religious Court Decisions in South Sulawesi

Dispensasi Nikah Pasca Perubahan Batas Usia Perkawinan: Studi Putusan Pengadilan Agama di Sulawesi Selatan

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Abstract

The amendment of the minimum marriage age through Law Number 16 of 2019, which equalized the minimum age for both males and females at 19 years, was designed to reduce child marriage in Indonesia. However, empirical evidence reveals a dramatic surge in marriage dispensation applications at Religious Courts across the country, including in South Sulawesi. This article examines trends in marriage dispensation rulings at South Sulawesi Religious Courts following the legislative amendment, analyzing judges' legal considerations and their alignment with child protection principles. Findings indicate that judges tend to grant applications on the basis of social emergency considerations such as premarital pregnancy and cultural values of family honor, while the best interest of the child receives insufficient attention. The article concludes that standardized judicial guidelines, strengthened judicial capacity in child protection and gender justice, and multisectoral prevention interventions are urgently needed to ensure that the marriage age reform achieves its intended protective objectives.

Keywords: marriage dispensation; minimum marriage age; Religious Court; South Sulawesi; child marriage

Abstrak

Perubahan batas usia perkawinan melalui Undang-Undang Nomor 16 Tahun 2019 yang menyamakan batas usia minimal menjadi 19 tahun bagi laki-laki dan perempuan bertujuan mengurangi pernikahan anak. Namun, realitas empiris menunjukkan lonjakan permohonan dispensasi nikah di Pengadilan Agama di

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seluruh Indonesia, termasuk di Sulawesi Selatan. Artikel ini mengkaji tren putusan dispensasi nikah di Pengadilan Agama Sulawesi Selatan pasca perubahan undang-undang, dengan menganalisis dasar pertimbangan hukum hakim dan kesesuaiannya dengan prinsip perlindungan anak. Temuan menunjukkan bahwa hakim cenderung mengabulkan permohonan atas dasar kedaruratan sosial seperti kehamilan pranikah dan nilai kehormatan keluarga, sementara kepentingan terbaik anak kurang mendapat perhatian. Artikel menyimpulkan perlunya pedoman yudisial yang terstandarisasi, penguatan kapasitas hakim, serta intervensi pencegahan multisektoral untuk memastikan reformasi batas usia perkawinan mencapai tujuan perlindungan yang dimaksudkan.

Kata Kunci: *dispensasi nikah; batas usia perkawinan; Pengadilan Agama; Sulawesi Selatan; pernikahan anak*

Introduction

Child marriage remains one of the most pressing social problems in Indonesia, with far-reaching consequences across the domains of health, education, and women's empowerment. Data from the Central Bureau of Statistics (Badan Pusat Statistik) indicate that Indonesia ranks among the top ten countries in the world by absolute number of child marriages, despite decades of prevention efforts. Against this backdrop, the enactment of Law Number 16 of 2019 as an amendment to Law Number 1 of 1974 on Marriage represented a significant policy milestone: the law equalized the minimum marriage age for both males and females at 19 years, eliminating the previous provision that permitted girls to marry at 16. This normative reform was framed as a decisive state intervention to reduce child marriage and protect the rights and wellbeing of adolescent girls.

Despite the positive reception of this legislative change by child rights and women's rights advocates, its implementation in practice has generated a troubling paradox. Rather than substantially reducing child marriage, the amendment has been followed by a dramatic surge in marriage dispensation applications to Religious Courts across Indonesia. Data from the Directorate General of Religious Court Administration of the Supreme Court document a sharp increase in dispensation applications since 2019, with South Sulawesi among the provinces recording the highest application numbers. This situation reveals that a

marriage age restriction policy, when not accompanied by robust prevention instruments, may inadvertently create an alternative pathway to child marriage that acquires a veneer of judicial legitimacy, thereby undermining the very reform it was intended to advance.

South Sulawesi possesses distinctive sociocultural characteristics in relation to child marriage. As a province with a large Muslim population and deeply rooted marriage traditions, child marriage in this region frequently draws justification from the customary values of the Bugis-Makassar culture, which place the concept of family honor (*siri'*) at the apex of its value hierarchy. Marriage, particularly in the context of premarital pregnancy, is regarded as an urgent mechanism for restoring family honor, such that pressure to immediately marry off a pregnant adolescent girl frequently overrides considerations of the long-term consequences for the child's health and education. Rahman (2021) observes that the value of *siri'* in Bugis-Makassar culture exerts a powerful influence on parental decisions to file dispensation applications, reflecting the complex intersection of customary norms, religious values, and state law.

From a legal perspective, marriage dispensation is an exception mechanism governed by Article 7(2) of Law Number 16 of 2019, which allows parents or guardians to petition the court for permission to marry off a child who has not yet reached the minimum age requirement. The Religious Court, which has jurisdiction over Muslim couples, holds the authority to grant or reject such petitions based on considerations that in practice vary considerably from one court to another. Hasyim and Huda (2022) argue that the absence of uniform evidentiary standards and consistent judicial guidance renders marriage dispensation rulings vulnerable to judicial subjectivity and sociocultural pressures in the court's local environment, producing outcomes that may not serve the best interests of the children concerned.

Theoretically, the study of marriage dispensation intersects with several relevant analytical frameworks. First, child protection theory grounded in the United Nations Convention on the Rights of the Child (CRC), adopted into

Indonesian law through Law Number 35 of 2014 on Child Protection, affirms that the best interest of the child must be the primary consideration in every decision concerning a child. Asnawi (2020) develops the concept of the gender-responsive religious judge, which requires judges in dispensation cases to go beyond assessing social emergency and to proactively evaluate the long-term consequences of early marriage for the development of adolescent girls, including their physical health, psychological wellbeing, and educational trajectories.

Second, procedural justice theory holds that the quality of judicial decisions is determined not only by the substance of the outcome but also by the fairness, transparency, and accountability of the decision-making process. Applied to marriage dispensation, procedural justice demands thorough examination of the child's circumstances, including the child's own voice, health risk assessments, and evaluation of alternatives to marriage. Sururin (2021) argues that the practice of conducting dispensation hearings in a brief and minimally evidentiary manner is an indicator of weak procedural justice that fails to adequately protect the child's interests in the face of parental authority and social pressure, and that this weakness is systemic rather than incidental.

Third, the sociology of adjudication perspective views courts not as institutions operating in a value-neutral space but as organizations shaped by the social, cultural, and structural contexts in which they are embedded. In the context of South Sulawesi, Religious Court judges operate in a social environment rich in customary and religious values that exert particular pressures on the decision-making process. Sumner and Kusmaryanto (2019), in their comparative study of religious courts in eastern Indonesia, found that the social proximity between judges and local communities frequently influences judicial dispositions in marriage cases, even when this influence is not explicitly articulated in the legal reasoning of the judgment.

This article analyzes marriage dispensation decisions from several Religious Courts in South Sulawesi over the period 2019–2023 to identify patterns in the legal considerations employed by judges, the consistency of child protection

principles in judicial reasoning, and the policy implications of these findings. Employing a decisional analysis approach combined with a normative-sociological review, this article seeks to make a concrete contribution to the development of a more just religious adjudication practice for children, while offering policy recommendations relevant to the context of South Sulawesi and Indonesia more broadly.

Discussion

Analysis of marriage dispensation decisions at South Sulawesi Religious Courts following the 2019 legislative amendment reveals significant patterns with respect to application and approval trends, the legal considerations employed by judges, and the policy implications of these conditions. These three aspects are deeply interconnected and together produce a comprehensive picture of the challenges involved in implementing the minimum marriage age reform at the ground level.

1. Trends in Marriage Dispensation Applications in South Sulawesi

Data from the High Religious Court of South Sulawesi document a dramatic surge in marriage dispensation applications following the enactment of Law Number 16 of 2019. Prior to the amendment, dispensation applications were relatively infrequent because the minimum age of 16 for women meant that many planned marriages did not require court authorization. After the amendment, virtually all marriages involving women under 19 years of age require a dispensation, meaning that many unions previously contracted without judicial oversight now require court processing. Paradoxically, this has substantially increased the workload of Religious Courts without necessarily producing a commensurate reduction in child marriage, transforming the court into a processing center rather than a genuine gatekeeper.

In terms of geographic distribution within South Sulawesi, dispensation applications are concentrated in regencies with high poverty rates and limited educational access, including interior areas of Luwu Raya, Jeneponto, and

Bantaeng. This distribution suggests a strong correlation between structural poverty, limited access to education, and the propensity for child marriage. Rahman (2021) found that in these regencies, child marriage is frequently perceived as a family economic adaptation strategy, wherein marrying off a daughter is viewed as reducing the household's financial burden while potentially yielding compensation in the form of *uang panai*' (bride payment) that can be used to meet family needs. This economic dimension is critical to understanding why legislative reform alone is insufficient.

A particularly significant observation from available data is the exceptionally high rate of dispensation approval at various South Sulawesi Religious Courts, ranging from approximately 80 to 95 percent. This approval rate substantially exceeds that recorded in several other provinces that apply more stringent evidentiary standards. Hasyim and Huda (2022) note that the high approval rate does not simply reflect a large number of cases that genuinely meet the requirements for dispensation; rather, it also indicates a judicial tendency to default to approval as a response to social pressure, particularly in cases involving premarital pregnancy, where rejection is perceived as generating greater social problems than approval. This observation raises fundamental questions about the adjudicative culture surrounding dispensation petitions.

There are also indications that a proportion of marriage dispensation applications in South Sulawesi are submitted with grounds that have been constructed or exaggerated to meet the urgency threshold required by the legislation. This practice demonstrates how the dispensation mechanism, which is intended to be a narrowly limited exception, functions in practice as a relatively accessible alternative pathway to child marriage. This reality invites serious questions about the effectiveness of the minimum marriage age policy when its exception mechanism is not accompanied by sufficiently rigorous screening procedures, and when the court hearing the application lacks the resources and guidelines to conduct meaningful scrutiny.

2. Judges' Legal Considerations in Marriage Dispensation Decisions

Analysis of marriage dispensation decisions from South Sulawesi Religious Courts identifies several dominant patterns in judicial legal reasoning. The first and most frequently cited consideration is premarital pregnancy, which judges treat as an emergency condition demanding the immediate legalization of marriage to protect the legal status of the child to be born. In this reasoning, the interests of the unborn child are positioned as more pressing than the right of the adolescent girl being married to delay marriage and continue her education. Asnawi (2020) critiques this reasoning as a form of judicial justification that implicitly normalizes premarital pregnancy as a gateway to child marriage, thereby creating a perverse incentive structure that may inadvertently encourage rather than discourage premarital relations.

The second pattern is the reliance on the voluntary consent of the parties involved, specifically the prospective spouses and their parents or guardians. Judges frequently cite the parties' statements of readiness and willingness as one of the bases for granting dispensation. However, Sururin (2021) questions the quality of consent obtained from a minor within a context of intense family and social pressure, emphasizing that willingness induced by social circumstances cannot be equated with the free and fully informed consent required by human rights principles. The absence of psychological assessment mechanisms for minors in the dispensation process at South Sulawesi Religious Courts constitutes a significant procedural gap that deserves specific regulatory attention.

The third pattern is the invocation of religious and customary considerations emphasizing that marriage will preserve family honor and prevent further moral transgressions. These considerations reflect the influence of the *siri'* value in Bugis-Makassar culture, which permeates the judicial reasoning of Religious Court judges in the region. Sumner and Kusmaryanto (2019) identify this as an instance of how religious courts in eastern Indonesia function not merely as formal legal institutions but also as mediators of cultural values that reproduce existing social norms, including norms of child marriage. Yet religious and customary

considerations cannot legitimately serve as the sole or primary basis for overriding the child protection principles that have been explicitly mandated by legislation.

What is conspicuously absent in the reasoning of most analyzed decisions are considerations directly related to the best interest of the child, including the impact of early marriage on the child's reproductive health, the realistic possibility of the child continuing education after marriage, the child's psychological readiness to sustain a married life, and the availability of alternatives to marriage. The near-absence of these considerations from the majority of decisions examined indicates that child protection principles have not yet been adequately internalized within the adjudicative practice of marriage dispensation in South Sulawesi, representing a systemic failure that demands institutional remedy.

3. Policy Implications and Recommendations

The conditions identified in the analysis of marriage dispensation decisions in South Sulawesi carry urgent policy implications at several levels. At the judicial level, the Supreme Court needs to issue more specific judicial regulations or guidelines concerning the evidentiary standards and considerations required in marriage dispensation cases. Such guidelines should mandate psychological and medical examination of underage prospective spouses, require direct hearing of the child's own voice in proceedings, and integrate comprehensive risk assessment before any application can be granted. Without uniform standards, the disparity in decisions between courts will continue to impede the realization of consistent justice for children and undermine the coherence of the national legal framework.

At the prevention level, conditions in South Sulawesi demonstrate that legal instruments alone are insufficient to address child marriage. Interventions must target the structural roots of the problem, including improving access to and quality of education in regencies with high dispensation application rates, strengthening economic empowerment programs for poor families, and implementing comprehensive reproductive health programs for adolescents. Hasyim and Huda (2022) recommend a multisectoral approach involving Religious Courts, the Ministry of Religious Affairs, the Office of Women's Empowerment, and

religious and customary leaders in coordinated child marriage prevention. This approach understands child marriage not merely as a legal problem but as a symptom of deeper socioeconomic conditions requiring systemic remediation.

At the cultural level, systematic efforts are needed to deconstruct the cultural narrative that links family honor with the imperative of early marriage for girls. The value of *siri'* as a philosophical foundation in Bugis-Makassar culture needs to be reinterpreted contextually so that family honor is no longer constructed through the subordination of women and the restriction of their access to education and autonomy. Religious and customary leaders play a crucial role in this reinterpetive process, given the symbolic authority they command within their communities. Rahman (2021) calls for the active involvement of ulama and adat leaders in South Sulawesi in constructing an inclusive and gender-just narrative of honor as a component of the long-term effort to prevent child marriage and transform the sociocultural conditions that sustain it.

Finally, it must be affirmed that the effectiveness of the minimum marriage age policy depends critically on the consistency of its enforcement through a dispensation mechanism that genuinely restricts, rather than facilitates, child marriage. When the dispensation mechanism operates as an easily opened back door, the objectives of marriage law reform will never be realized. Asnawi (2020) and Sururin (2021) concur that the judicial transformation toward genuinely child-centered adjudication requires not only regulatory change but also a transformation of legal culture among Religious Court judges, achievable through sustained education and training on children's rights and gender justice as integral components of judicial capacity development.

Conclusion

The amendment of the minimum marriage age through Law Number 16 of 2019 has produced a surge in marriage dispensation applications at South Sulawesi Religious Courts, paradoxically exposing implementation gaps in the effort to prevent child marriage. Analysis of judicial decisions reveals that judges tend to grant applications on the basis of premarital pregnancy and *siri'* values as

social emergencies, while the best interest of the child receives insufficient weight in legal reasoning. This condition reflects an urgent need for the standardization of judicial guidelines in marriage dispensation cases, the strengthening of judicial capacity in child protection and gender justice perspectives, and multisectoral interventions targeting the structural and cultural roots of child marriage in South Sulawesi, so that the reform of marriage law can produce genuine and lasting protective impact for adolescent girls and children across Indonesia.

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