

---

## Questioning about Law Number 16 of 2019 concerning Marriage Dispensation in PA Kotamobagu

Misbahul Munir Makka<sup>1</sup>, Rosdalina Bukido<sup>2</sup>, Faradila Hasan<sup>3</sup>

<sup>1,2,3</sup>State Islamic Institute of Manado (IAIN) Manado, Indonesia

---

### Article Info

#### Article history:

Received June 3, 2020

Revised October 9, 2020

Accepted December 9, 2020

#### Keywords:

Married

Marriage Dispensation

Underage marriage

### ABSTRACT

*This research aims to show the results of the issuance of Law No. 16 of 2019 and the increasing application for marriage dispensation at the Kotamobagu PA. Underage marriage is a common thing in society. Many things are a factor in underage marriage, one of which is pregnancy outside of marriage and is considered to approve the proposed marriage dispensation. This research is field research located in PA Kotamobagu. The results obtained are that although the issuance of Law Number 16 of 2019, cases of underage marriages are even increasing. This case is evidenced in PA Kotamobagu. In 2020 the application for marriage dispensation was higher than the previous year. One of the reasons for submitting a marriage dispensation made by the community is a pregnant woman out of wedlock, so the judge must approve the proposed marriage dispensation. In other words, this law has no impact on suppressing the number of underage marriages, and the increased age limit has increased the dispensation for marriage.*

*This is an open-access article under the CC BY license.*



---

### Corresponding Author:

Misbahul Munir Makka,

State Islamic Institute of Manado (IAIN) Manado, Indonesia,

Jl. Dr. S.H. Sarundajang, Kawasan Ringroad I, Malendeng Manado Kode Pos 95128, Sulawesi utara,  
Indonesia

Email: misbahulmakka66@gmail.com

---

## 1. INTRODUCTION

One of the most critical factors in preparing for marriage is age (Iqbal, 2020). Because someone will determine whether he is mature enough to act and act, marriage requires every candidate to have a mature attitude. For young people, it usually focuses on one's physical and mental maturity and the ability to carry out the responsibilities as a husband in the family, namely the age of entering marriage and family life, which is the benchmark for a young age. Unless other factors cause them to marry early, marriage is related to pregnancy; it is necessary to pay attention to her physical and mental maturity. She can carry out her duties as a wife and as much as possible pay attention to the duties of a mother. Suppose the highest standard of marriage for a girl is made following Indonesian conditions. In that case, the woman must be at least a few years old because a woman has reached the level of physical maturity at 18 years (Idayanti, 2014). Sometimes children under the age of 18 get married for a reason, so minors must get a decision from the court. This decision applies to Muslims in local religious courts and non-Muslims in local district courts. Islam explains that there is a period of puberty for both men and women to get married. Women who enter the age of nine years and have entered the stage of menstruation (menstruation) are declared *baligh*, and men if they enter fifteen years and are followed by dreams of *jimaHa'* (Hakim, 2000). This problem is a problem in Indonesia. In terms of limiting the age for marriage, the government provides limitations in Law Number 16 of 2019 concerning marriage where men and women must enter the age of 19 years to get married so that the restrictions on the age of Marriage from Islamic Law and the Law are different.

Various studies have discussed underage Marriage (Alfa, 2019; Desiyanti, 2015; Rifiani, 2011) and made a marriage dispensation to request that the prospective bride and groom get married (Ahyani, 2016; Hidayatulloh & Janah, 2020; Sari, 2011). However, the purpose of Law Number 16 of 2019 is to mature the age of marriage. In this case, it is closely related to the quality of the family. In this case, by raising the marriage age limit to 19 years, it can be said that a woman is ready to become a mother in the family. The age limit for marriage must also be accompanied by public awareness so that people can protect themselves from being forced to marry, one of which is through dispensation from the religious court (Tirmidzi, 2020).

Without seeing and thinking about the impact of underage marriages on children's rights, Kotamobagu City is an area where people are still adamant about carrying out underage marriages regardless of the impact that will occur in the future. The indicator in this study sees that people included in the jurisdiction of the Kotamobagu Religious Court must be aware of its importance.

## 2. RESEARCH METHOD

This research is field research using a normative-juridical approach. The data from the early marriage report from the Kotamobagu PA and the judge's views on marriage dispensing decisions for children.

This study uses the analytical technique of Miles and Huberman (1994), where the researcher collects data in the field in the form of data on the determination of marriage dispensation approved by the Kotamobagu PA judge. After that, the researcher also collected statements directly from the judges about why the marriage dispensation was given. So that from the data collection, the researchers were able to provide concrete conclusions to this research.

## 3. RESULTS AND DISCUSSION

Early marriage is a human rights issue that can affect children and women from the right to health, education, etc., and their right to live free from violence (Addaney & Azubike, 2017). A study stated that social justice is fundamental in early marriage decisions (Wahi et al., 2019).

Generally, the factors driving the occurrence of marriage at a young age in this research location include: economic factors, family factors, education factors, self-will factors, and customary local factors, and the most common factor is pregnancy (Bukido et al., 2019).

The main factor in child marriage is pregnancy caused by promiscuity (Wibisana, 2017). Other factors are the lack of knowledge of parents and children regarding the prohibition of underage marriage in the law, the legal umbrella in Law Number 16 of 2019, which allows underage marriage through a marriage dispensation application, the legal umbrella in the Act. The Marriage Law stipulates that children who are not yet 19 years old may marry on the condition that there is permission/approval from their parents/guardians. In other words, the effectiveness of the application of the Marriage Law on the regulation of the age limit for marriage has not been appropriately implemented. After the official's decision in marriage is no longer following the law, law enforcement is not practical.

### 3.1. Marriage Dispensation in PA Kotamobagu

The process of resolving the case for a marriage dispensation in the Religious Court is that the trial is opened and declared open to the public, then gives advice, examination, evidence, and determination. The judge's consideration in deciding the case for a marriage dispensation application at the Kotamobagu Religious Court is the benefit and harm. It is feared that if not married, it will increase sin, and there will be an underhand marriage which will disrupt legal processes that will occur next or harm the rights of the child to be born (Idayanti, 2014).

**Tabel 1. Number of Applications for Marriage Dispensation in PA Kotamobagu**

Years	Number of Cases
2017	59
2018	60
2019	58
2020	181

Source: Kotamobagu PA Annual Case Report January-December (2017-2020).

A drastic increase occurred in marriage dispensation in 2020, where the regulation of Law Number 16 of 2019 already existed. This table means that it can be said that the emergence of this regulation has made marriage dispensation an effective way for people who have not reached the age of marriage following the law to obtain age tolerance in terms of marriage.

Many couples come to religious PA to apply for a marriage dispensation when they have not yet reached the age of 19, most often when they are still in high school. (Interview with Nurafni Anom Hakim PA Kotamobagu, Kotamobagu February 5, 2020)

This change in law makes more and more applications for marriage dispensation in the PA because the couple has reached the age of 17 years (according to Law Number 1 of 1974) but has not yet reached the age of 19 and must apply for a marriage dispensation at the Kotamobagu Religious Court. So it can be seen that the change in the age limit for marriage is a revision of the previous regulation, which is considered irrelevant to the current condition of society, both in terms of physical, psychological, economic, educational, and cultural health. The rules regarding the age limit for marriage are now contained in Law Number 16 of 2019, namely, marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years.

Marriage dispensation is a solution to deviations from the marriage age limit, which should have been submitted for urgent reasons according to the provisions of Article 7 paragraph (2) of Law no. 16 of 2019. The spirit law reflects the firmness of the application for a marriage dispensation that cannot be filed for any reason. However, the absence of an explanation for these provisions makes the judges do not have standard guidelines. This provision has triggered many requests for dispensation for various reasons that are less urgent, resulting in the legality of underage Marriage (Ilma, 2020).

### 3.2. Judge's consideration factor in granting marriage dispensation

According to the judge, most of the proposed marriage dispensations were because the woman was pregnant, and to prevent the family dishonor; the two children had to be married off. This dispensation is one of the judges' considerations in granting marriage dispensation to underage couples.

Most people who come to the religious court are pregnant out of wedlock because it is a disgrace to the family, so they marry them off by filing a dispensation for married in PA first. (Interview with Abdul Munir Makka Registrar of Laws at PA Kotamobagu, 2 February 2020)

People come to PA to ask for a marriage dispensation letter because their child is already pregnant. Most often are children who have entered three months of pregnancy. This case is our

consideration for the judges to give a marriage dispensation. (Interview with Teddy Lahati Judge PA Kotamobagu, Kotamobagu March 9, 2020)

The judge did not immediately give permission when someone applied for a marriage dispensation. Judges have a classification of interests to permit to marry underage, among others, often alone even though they are not yet married until they get pregnant outside of marriage.

People who apply for marriage dispensation in the PA are not immediately allowed if the reasons given are common reasons such as feeling ready to get married or just wanting to. The judge will also reject the application. (Interview with Dany Pontoh Registrar of Lawsuits PA Kotamobagu, February 4, 2020)

We, as judges, also look at the reasons for the spouse or parent to apply for a marriage dispensation. We as judges often permit to marry underage if the woman turns out to be pregnant out of wedlock. (Interview with Nurafni Anom Hakim PA Kotamobagu, 5 February 2020)

In other words, according to the author, there is a need for regulations that support the prevention of marriage dispensation (Marriage due to pregnancy). Suppose the number of marriage dispensations is pregnant due to promiscuity. So there should be regulations regarding promiscuity, one of which is in Article 417 of the Criminal Code, which discusses adultery. The possibility that this regulation can be clarified and emphasized more about ways to suppress community interaction, especially teenagers, such as giving sanctions and others. That way, pregnancy out of wedlock can be slightly suppressed and reduce the number of underage marriages.

Our country's constitution guarantees to carry out marriages, having children, and living a decent life. Associated with various kinds of marriage problems in Indonesia, one of the most frequently discussed is early marriage. This problem is already a familiar topic of discussion and discussion. A person's maturity to marry is also relative from various points of view. A review of age is also very urgent to pay attention to because age can affect a person's psychological and biological conditions to carry out life after marriage.

This additional regulation is possible to prevent various attempts of promiscuity by the community. A regulation like this can reduce the number of underage marriages because they are pregnant outside of marriage.

### 3.3. Refusing underage marriage

Looking back at the existing rules in Indonesia, the Convention on the Rights of the Child (CRC) applies as international law, and CRC was ratified through Presidential Decree No.36 of 1990, to be subsequently ratified as the Child Protection Act (UU PA) No.23 of 2002. Ratification The Law aims to realize the protection and welfare of children. The PA law clearly states that the Unitary State of the Republic of Indonesia guarantees the welfare of each of its citizens, including the protection of children's rights, which are human rights. The Child Protection Law clearly states the obligations of parents and society to protect children and the obligations of parents from preventing marriage at the age of children (article 26) (Fadlyana & Larasaty, 2016). In the form of imprisonment and fines, criminal sanctions are regulated in articles 77-90 if child protection articles are found.

If you look at the NTB region, the policy on preventing child marriage has accommodated changes to Law No. 1 of 1974 concerning marriage with the stipulation of the Raperda on Prevention of Child Marriage in the 2020 Propemraperda (Karyati et al., 2019). This Raperda is one of the government's commitments to make a more comprehensive policy to reduce the high rate of child marriage in NTB.

There is a need for good cooperation from counseling and social services to overcome the increase in early marriages in the community. Cross-sectoral work with relevant government agencies, non-governmental organizations, and community leaders was built on a significant increase in cases of early marriage, which continues to increase in the Bantul Regency area. These activities can be coordinated through Islamic Religious Counseling or activities organized by BP4 (Wafiq & Santoso, 2017).

## 4. CONCLUSION

Since the issuance of Law Number 16 of 2019, the application for marriage dispensation at the Kotamobagu Religious Court has increased rapidly. The application for marriage dispensation at the Kotamobagu Religious Court is mainly caused by promiscuity which leads to women getting pregnant out of wedlock, so parents must marry them off to prevent disgrace in society.

The main factor in the dispensation of marriage is pregnancy due to promiscuity. In the author's opinion, it is necessary to have concrete rules in discussing promiscuity as a cause of pregnancy out of wedlock, such as the implementation of Article 417 of the Criminal Code and giving sanctions due to adultery (not just married) to prevent women from getting pregnant outside of marriage.

## ACKNOWLEDGEMENTS

The researcher expresses his gratitude to the Kotamobagu PA judges as resource persons to obtain data to answer this research. In addition, this research can also be made thanks to the results of several discussions with fellow researchers ranging from lecturers to fellow students.

## REFERENCES

- Addaney, M., & Azubike, O.-O. (2017). Education as a Contrivance to Ending Child Marriage in Africa: Perspective from Nigeria and Uganda. *Amsterdam LF*, 9, 110.
- Ahyani, S. (2016). Pertimbangan Pengadilan Agama Atas Dispensasi Pernikahan Usia Dini Akibat Kehamilan Di Luar Nikah. *Jurnal Wawasan Yuridika*, 34(1), 31–47.
- Alfa, F. R. (2019). Pernikahan dini dan perceraian di Indonesia. *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)*, 1(1), 49–56.
- Bukido, R., Irwansyah, I., Irawan, J. N., & Makka, M. M. (2019). Settlement Of Marital Disputes Efficacy Through Mediation In The Manado Religious Court. *Jurnal IUS Kajian Hukum Dan Keadilan*, 7(3), 374–383.
- Desiyanti, I. W. (2015). Faktor-faktor yang berhubungan terhadap pernikahan dini pada pasangan usia subur di Kecamatan Mapanget Kota Manado. *Jikmu*, 5(3).
- Fadlyana, E., & Larasaty, S. (2016). Pernikahan usia dini dan permasalahannya. *Sari Pediatri*, 11(2), 136–141.
- Hakim, R. (2000). *Hukum Perkawinan Islam*. Pustaka Setia.
- Hidayatulloh, H., & Janah, M. (2020). Dispensasi Nikah di Bawah Umur dalam Hukum Islam. *Jurnal Hukum Keluarga Islam*, 5(1), 34–61.
- Idayanti, D. (2014). Pemberian Dispensasi Menikah Oleh Pengadilan Agama (Studi Kasus Di Pengadilan Agama Kotamobagu). *Lex Privatum*, 2(2).
- Ilma, M. (2020). Regulasi Dispensasi dalam Penguatan Aturan Batas Usia Kawin bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 2(2), 133–166.
- Iqbal, M. (2020). *Psikologi Pernikahan: Menyelami Rahasia Pernikahan*. Gema Insani.
- Karyati, S., Lestari, B. F. K., & Sosman, A. (2019). Kebijakan Pencegahan Pernikahan Anak Di Provinsi NTB Pasca Berlakunya UU No. 16 Tahun 2019 Tentang Perubahan UU No. 1 Tahun 1974 Tentang Perkawinan. *JURNAL UNIZAR LAW REVIEW*, 2(2), 135–143.
- Rifiani, D. (2011). Pernikahan Dini Dalam Perspektif Hukum Islam. *De Jure, Jurnal Syariah Dan Hukum*, 3(2), 125–134.
- Sari, N. (2011). *Dispensasi nikah dibawah umur (study kasus di Pengadilan Agama Tangerang Tahun 2009-2010)*. UIN Syarif Hidayatullah Jakarta.
- Tirmidzi, T. (2020). Kajian Analisis Undang-Undang No. 16 Tahun 2019 Sebagai Perubahan Atas Undang-Undang No. 1 Tahun 1974. *USRAH: Jurnal Hukum Keluarga Islam*, 1(1).
- Wafiq, A., & Santoso, F. S. (2017). Upaya Yuridis Dan Sosiologis Kantor Urusan Agama Dalam Pencegahan Pernikahan Usia Dini. *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman*, 7(1), 17–30.
- Wahi, A., Zaleski, K. L., Lampe, J., Bevan, P., & Koski, A. (2019). The lived experience of child marriage in the United States. *Social Work in Public Health*, 34(3), 201–213.
- Wibisana, W. (2017). Perkawinan Wanita Hamil diluar Nikah serta Akibat Hukumnya Perspektif Fikih dan Hukum Positif. *Jurnal Pendidikan Agama Islam-Ta'lim*, 15(1), 29–35.