

The Significance of Age Restrictions for Marriage Dispensation in Indonesian Religious Court Proceedings

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ABSTRACT; *This study examines the significance of age restrictions for marriage dispensation in Indonesian religious court proceedings. Background: Amid concerns regarding early marriages' adverse effects, age restrictions aim to safeguard individuals' rights and well-being, particularly women and children. Method: The study utilizes a juridical-normative approach, analyzing primary legal sources such as Law No. 16/2019 and Law No. 1/1974 on marriage, supplemented by credible secondary legal literature. Results and Discussion: The imposition of minimum age limits by religious courts plays a crucial role in protecting minors from the physical, emotional, and developmental risks associated with early marriages. It also contributes to gender equality and upholds legal certainty by recognizing marriages adhering to age restrictions. Additionally, the requirement for legal remarriage after attaining the minimum age ensures the validity of marital unions and prevents legal ambiguities. Age restrictions in marriage dispensation are pivotal for promoting justice, safeguarding individual rights, and upholding legal integrity within the Indonesian legal framework.*

Keywords: *Marriage Dispensation, Age Restrictions, Indonesian Religious Courts, Legal Integrity*

ABSTRAK; Penelitian ini mengkaji tentang signifikansi pembatasan usia dalam dispensasi nikah dalam proses peradilan agama di Indonesia. Latar Belakang: Di tengah kekhawatiran mengenai dampak buruk pernikahan dini, pembatasan usia bertujuan untuk melindungi hak dan kesejahteraan individu, khususnya perempuan dan anak-anak. Metode: Penelitian ini menggunakan pendekatan yuridis-normatif, dengan menganalisis sumber-sumber hukum primer seperti Undang-Undang Nomor 16 Tahun 2019 dan Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan, serta dilengkapi dengan literatur hukum sekunder yang kredibel. Hasil dan Pembahasan: Penerapan batasan usia minimum oleh pengadilan agama berperan penting dalam melindungi anak di bawah umur dari risiko fisik, emosional, dan perkembangan yang terkait dengan pernikahan dini. Hal ini juga berkontribusi terhadap kesetaraan gender dan menjunjung tinggi kepastian hukum dengan mengakui pernikahan yang mematuhi batasan usia. Selain itu, persyaratan untuk menikah kembali secara sah setelah mencapai usia minimum menjamin keabsahan ikatan perkawinan dan mencegah ambiguitas hukum. Pembatasan

usia dalam dispensasi pernikahan sangat penting untuk mendorong keadilan, menjaga hak-hak individu, dan menegakkan integritas hukum dalam kerangka hukum Indonesia.

Kata Kunci: Dispensasi Pernikahan, Batasan Usia, Pengadilan Agama Indonesia, Integritas Hukum

INTRODUCTION

The Indonesian government has recently heightened the age limit for marriage, reflecting a significant shift in policy aimed at safeguarding the rights and well-being of individuals, particularly young girls (Ali Trigiyatno et al., 2023). Under the previous Marriage Law, No. 1 of 1974, the legal age for marriage for males was set at 19 years, while for females it was 18 years (Arhjayati Rahim & Noor Asma, 2023). However, with the enactment of the updated Marriage Law, No. 16 of 2019, the minimum age for marriage for females was raised to 19 years, aligning it with the age requirement for males. Despite this legal amendment, individuals under the age of 19 may still proceed with marriage by first seeking a marriage dispensation from the religious court (Ashabul Fadhli & Ashabul Kahfi, 2023).

Marriage dispensation entails granting permission for an individual to marry even if they have not reached the minimum marriageable age (Azim Izzul Islami, 2023). Under certain circumstances, such as exigencies, marriage may be permitted even if one or both parties have not attained the specified age, essentially allowing them to waive the minimum age requirement (Yanto, 2022b). The revision of the Marriage Law was propelled by the acknowledgment by the Constitutional Court that Indonesia is in a state of emergency concerning child marriages (M Anwar Nawawi et al., 2022).

The urgency to address child marriages in Indonesia is underscored by alarming statistics. According to the Center for the Study and Advocacy of Child Protection in collaboration with UNICEF, Indonesia ranks among the top 10 countries globally with the highest prevalence of child marriages (Supriyadi Supriyadi et al., 2022). This concerning ranking underscores the imperative for legislative reform to curb the practice of child marriages and ensure the protection of children's rights (Yanto & Hikmah, 2023b).

The newly amended Article 7, paragraph (2) of the Marriage Law emphasizes that marriage dispensation may be granted under urgent circumstances. But what constitutes 'urgent circumstances'? The Marriage Law elucidates that urgent circumstances refer to situations where there are no other alternatives and marriage becomes an absolute necessity (Ahmad Muqaffi et al., 2022). However, merely claiming urgent circumstances is insufficient. Substantial supporting evidence is required. According to the new Marriage Law, sufficient supporting evidence includes certificates proving that the spouses are below the legal age requirement and medical certificates endorsing the parents' statement that the marriage is urgently needed (Faida Hilyasani et al., 2022).

Moreover, adequate evidence includes testimonies from other witnesses. The new Marriage Law also stipulates that the granting of dispensation by the Court should be based on the spirit of preventing child marriages, moral considerations, religious, customary, and cultural aspects, psychological aspects, health considerations, and the potential impacts (Yanto, 2021). In practice, marriage dispensation is often utilized to legalize marriages resulting from premarital pregnancies (T Jamaluddin et al., 2023). Underage individuals are married off with the submission of dispensation requests by their families, aiming to circumvent potential legal repercussions that law enforcement authorities might pursue (Muhammad Fauzinudin Faiz et al., 2023). According to data from the Ministry of Women's Empowerment and Child Protection, court records on requests for marriage dispensation for underage individuals in 2021 amounted to 65 thousand cases, decreasing to 55 thousand cases in 2022. The majority of these requests are attributed to pregnant female petitioners and parental pressure to expedite their children's marriages due to existing relationships or dating.

However, the absence of age limitations in granting dispensation for minors raises significant concerns. Dispensation can become an instrument that curtails children's rights to develop and learn according to their age, forcing them into marital life prematurely. Children under the influence of their parents may find themselves 'trapped' in marriages once dispensation is granted (Hikmah & Yanto, 2023).

Despite the requirement for deliberation in the Religious Court, the lack of clear age boundaries for dispensation poses a significant challenge. The Religious Courts need to establish explicit and firm guidelines regarding minimum age limitations. These

guidelines should ensure that dispensation is only granted in exceptional cases where urgent circumstances are genuinely present, and the rights and welfare of the underage individuals are thoroughly considered. Moreover, the Religious Courts must prioritize the best interests of the child and adhere strictly to legal and ethical standards in dispensation proceedings.

Previous research by Akhlis Azzamuddin Tifani et al (2018) explored the legal analysis of dispensation for underage marriage in Islamic law, focusing on a specific court ruling. Their research highlighted the absence of specific age restrictions for marriage in Islam, with emphasis placed on the requirements of maturity and capacity to consent. This literature underscores the complexity of dispensation cases and the multifaceted considerations involved in legal decision-making within the framework of Islamic law (Akhlis Azzamuddin Tifani et al., 2020). Another research by Muhammad Jazil Rifqi delves into the philosophical examination of the foundation and age requirements of marriage as stipulated in the Marriage Act No. 1 of 1974 in Indonesia. The study highlights that according to this law, men must reach the age of 19 and women 16 to marry legally. However, in cases where individuals fail to meet these age requirements, their parents are entitled to apply for marriage dispensation from the local Religious Court (Rifqi, 2018).

Building upon existing literature, this research aims to explore the significance of age restrictions for marriage dispensation within Indonesian Religious Court proceedings. While previous studies have examined the legal and philosophical aspects of marriage dispensation, this research seeks to introduce a novel perspective by focusing specifically on the implications of age restrictions within the religious court system.

Furthermore, this study will explore the broader societal impact of dispensation rulings, particularly in relation to issues such as child welfare, gender equality, and reproductive health. By examining the prevalence and patterns of underage marriages granted dispensation, this research will provide insights into the effectiveness of existing legal frameworks in safeguarding the rights and well-being of vulnerable individuals. This research will endeavor to identify potential areas for legal reform or policy intervention aimed at enhancing the protection of minors and promoting more equitable and just outcomes in marriage dispensation proceedings.

RESEARCH METHODS

This study employs a juridical-normative method, underpinned by a legislative approach, to investigate the significance of age restrictions for marriage dispensation in Indonesian Religious Court proceedings. By employing this methodological framework, the research aims to systematically analyze the legal dimensions of marriage dispensation within the context of Indonesian family law. The primary legal materials utilized in this study are derived from legislative enactments concerning marriage, including Law No. 16 of 2019 and Law No. 1 of 1974 concerning marriage. These statutes provide the foundational framework for understanding the legal requirements and procedures governing marriage dispensation in Indonesia.

Supplementing the primary legal materials are secondary legal sources sourced from credible legal literature (Benuf & Azhar, 2020). This includes scholarly articles, textbooks, and legal commentaries, which provide critical insights and interpretations of legal principles relevant to marriage dispensation. By incorporating both primary and secondary legal sources, this research aims to establish a comprehensive understanding of the legal landscape surrounding marriage dispensation in Indonesia (Muhammad Firdaus et al., 2023).

The data analysis in this study adopts a qualitative approach, allowing for a nuanced examination of the socio-legal dynamics at play in marriage dispensation proceedings (Yanto & Hikmah, 2023a). Through qualitative analysis, the study seeks to uncover the underlying rationales, considerations, and implications of age restrictions for marriage dispensation. This involves examining case law, legal principles, and judicial reasoning to discern patterns, trends, and divergences in the application of age restrictions within the Religious Court system .

RESULTS AND DISCUSSIONS

a. The Ideal Age for Marriage

The National Population and Family Planning Board (BKKBN) recommends the ideal age for marriage for both women and men as a means to mitigate the risks associated with early marriage, which can have significant psychological impacts on the prospective spouses (Robuwan & Yanto, 2023). According to BKKBN, the ideal age for women to

marry is a minimum of 21 years, while for men, it is a minimum of 25 years (Femilya Herviani et al., 2022). BKKBN's recommendation of the ideal marriage age is based on several considerations, including psychological maturity, which can influence parenting patterns and child-rearing practices. Furthermore, the maturity of both age and mentality can significantly impact the nutritional and overall health status of children born within the marriage.

Early marriage poses various risks, particularly for adolescent girls, including heightened health risks associated with early pregnancy (Haris Hidayatulloh et al., 2020). Additionally, there is a potential risk of cervical cancer among adolescent girls under 20 years of age who engage in sexual intercourse (Siti Amina, 2022). The Goldilocks Theory of Marriage Age, introduced by marriage and family therapist Carrie Krawiec at the Birmingham Maple Clinic in the United States, posits that the ideal age for marriage falls within the range of 28 to 32 years for both women and men. This theory suggests that individuals within this age range are better equipped emotionally, financially, and psychologically to navigate the complexities of marriage and family life.

In contrast, the legal framework in Indonesia, as outlined in Law Number 16 of 2019 amending Law Number 1 of 1974 concerning Marriage, stipulates that marriage is only permissible when both the man and woman have reached the age of 19. This represents a significant shift from previous regulations, which only set a minimum age requirement of 16 for women to marry. The revision was enacted through Law Number 16 of 2019, which came into effect on October 15, 2019 (Nabilla Amirah & Yusnita Eva, 2023). The disparity between the Goldilocks Theory and Indonesian legal regulations underscores differing cultural and societal perspectives on the ideal age for marriage. While the Goldilocks Theory emphasizes individual readiness and maturity, legal regulations prioritize standardization and protection of minors from the potential risks associated with early marriage (Robuwan & Yanto, 2023).

The new regulations stipulate that the minimum age for marriage is 19 years for both females and males. This aligns with the provisions set forth by the Ministry of Women's Empowerment and Child Protection (Kemen PPPA), as outlined in Law Number 35 of 2014 concerning Child Protection. According to this law, individuals under the age of 18 are classified as children (Leza Melta Rany et al., 2021). By setting the

minimum marriage age at 19 years, the regulations aim to ensure consistency with national child protection laws and safeguard the rights and well-being of minors. Recognizing individuals under 18 as children underscores the importance of protecting them from the potential risks and consequences associated with early marriage, including adverse effects on their physical, mental, and emotional development (Kholifatun Nur Mustofa, 2022). The Marriage Law, as specified in Law Number 16 of 2019, delineates key points and prerequisites pertaining to marriage. Firstly, it mandates that marriage is permissible solely if both the male and female individuals involved have attained the age of 19 years. This stipulation underscores the significance of ensuring that individuals embark on the marital journey when they have reached a level of maturity conducive to making informed life decisions.

Furthermore, the law permits dispensation in instances where there exists a deviation from the prescribed age requirement. Such dispensation can be sought through the court system, facilitated by the parents of either the male or female party, provided there are compelling reasons supported by substantial evidence (Hikmah et al., 2023). Crucially, any departure from the age limit necessitates the consent of the parents of one or both of the parties involved. Dispensation requests are processed through the Religious Court for Muslims and the District Court for others, if the prospective spouses are under the age of 19 (Kurnia Khairunnisa & Suprihatin, 2022). The term "compelling reasons" denotes circumstances where alternative options are nonexistent, rendering marriage an imperative course of action. On the other hand, "sufficient supporting evidence" refers to documentation validating that the age of the individuals concerned falls below the statutory requirement. Additionally, dispensation petitions must incorporate a medical certificate affirming the urgency of the marriage, as corroborated by the parents' assertion (Nabilla Amirah & Yusnita Eva, 2023).

Dispensation. The granting of dispensation by the Court necessitates a hearing of opinions from both prospective spouses intending to enter into marriage. Despite various underlying factors driving early marriages, ranging from economic motives to cultural traditions and unintended pregnancies, the prevalence of early marriage remains concerning due to its potential adverse effects on both maternal and child health (Sriono Sriono et al., 2023). Aside from the risk of stunting, early marriage can also inflict

psychological disturbances, as children may lack sufficient knowledge regarding pregnancy and exhibit improper childcare practices due to their emotional immaturity (Yanto et al., 2023).

The National Population and Family Planning Board (BKKBN) asserts that early marriage only leads to detrimental consequences, including mental disorders, child abuse, and divorce. From a health perspective, the long-term impacts of early marriage and pregnancy on women under 20 years of age can halt bone growth, with the most severe cases resulting in suboptimal bone density and the onset of osteoporosis (Supriyadi Supriyadi et al., 2022).

Psychologically, individuals from early marriages may experience emotional instability during pregnancy and childbirth, particularly when confronted with the responsibilities of parenthood at an immature age. The pressures endured by such households are susceptible to precipitating mental health disorders among those who have not fully matured during their formative years. Moreover, unpreparedness for household responsibilities can trigger numerous cascading issues, such as child abuse and divorce, within the family dynamic. Thus, the repercussions of early marriage extend beyond physical health concerns, encompassing profound psychological and societal implications that warrant careful consideration and intervention.

b. Marriage Age According to Islamic Law

The majority of Islamic scholars, or *jumhur*, do not consider age as a criterion for the validity of marriage contracts. Consequently, they deem marriages involving underage individuals as valid. This perspective is articulated by Sheikh Wahbah Az-Zuhayli, who stated:

ولم يشترط جمهور الفقهاء لانعقاد الزواج: البلوغ والعقل، وقالوا بصحة زواج الصغير والمجنون. الصغر
أما الصغر فقال الجمهور منهم أئمة المذاهب الأربعة، بل ادعى ابن المنذر الإجماع على جواز تزويج الصغيرة من
كفاء

"The majority of scholars do not require puberty and sanity for the validity of marriage contracts. They argue for the validity of marriage for minors and individuals with mental disorders. Regarding minors, the majority of scholars, including the scholars

of the four schools of thought, and Ibnul Mundzir claimed a consensus on the permissibility of marrying minors who are fit for marriage."

This perspective emphasizes that the majority of Islamic jurists do not mandate reaching the age of maturity or having soundness of mind as prerequisites for the validity of marriage contracts. Instead, they permit marriages involving minors, provided they are deemed fit for marriage. This stance highlights the flexibility within Islamic jurisprudence regarding marriage age and underscores the importance of contextual considerations in determining the validity of marriage contracts.

The views of the majority of Islamic scholars, or *jumhur*, regarding marriage involving minors stem from several narrations of hadiths concerning such unions. However, it's essential to note that some scholars reject marriages involving minors. Their perspective is grounded in Surah An-Nisa, verse 6, which limits the age for marriage. This is exemplified in the following excerpt:

المبحث الأول - أهلية الزوجين: يرى ابن شبرمة وأبو بكر الأصبم وعثمان البتي رحمهم الله أنه لا يزوج الصغير والصغيرة حتى يبلغا، لقوله تعالى { حتى إذا بلغوا النكاح } [النساء: 6/4] [فلو جاز التزويج قبل البلوغ، لم يكن لهذا فائدة، ولأنه لا حاجة بهما إلى النكاح. ورأى ابن حزم أنه يجوز تزويج الصغيرة عملاً بالآثار المروية في ذلك. أما تزويج الصغير فباطل حتى يبلغ، وإذا وقع فهو مفسوخ

"The first discussion pertains to the criteria for prospective spouses. Ibn Shabrumah, Abu Bakr Al-Asam, and Uthman Al-Bitti, may Allah have mercy on them, are of the opinion that underage boys and girls should not be married until they reach the age of maturity, based on the verse 'Until they reach the age of marriage' (Surah An-Nisa, verse 6). If marriage were to take place before reaching maturity, it would serve no purpose as both individuals are not in need of marriage. Ibn Hazm, on the other hand, argues for the permissibility of marrying underage girls based on several narrations of hadiths. However, the marriage contract of an underage boy is invalid until he reaches maturity. If such a marriage contract is conducted prematurely, it must be annulled."

This excerpt illustrates the differing opinions among scholars regarding the permissibility of marriage involving minors. While the majority of scholars allow such marriages based on certain hadith narrations, others emphasize the importance of maturity as stipulated in Surah An-Nisa, verse 6. These variations underscore the nuanced nature

of Islamic jurisprudence and the ongoing scholarly discourse surrounding the interpretation of religious texts in contemporary contexts.

From these statements, it can be inferred that scholars hold differing opinions regarding whether age should be a criterion for prospective spouses. This variance in perspective distinguishes between the approval and rejection of marriages involving minors. While the majority of scholars, or *jumhur*, accept marriages involving minors, it is crucial to consider especially the psychological readiness and maturity of the prospective spouses before embarking on the journey of marriage.

This highlights the importance of nuanced consideration when addressing the issue of underage marriage within Islamic jurisprudence. While some scholars may emphasize the absence of age as a strict criterion, it is essential to prioritize the psychological well-being and cognitive maturity of individuals before solemnizing their union in marriage. This nuanced approach underscores the need for a comprehensive understanding of Islamic principles and their application in contemporary contexts, ensuring that marriages are conducted in a manner that upholds the dignity and well-being of all parties involved.

c. The Importance of Minimum Age Restrictions in Marriage Dispensation by Religious Courts

The minimum age restrictions in marriage dispensation provided by Religious Courts hold significant importance in safeguarding the rights of individuals, particularly women and children, and ensuring that marriages are conducted in accordance with principles of justice and well-being as per Islamic teachings (Udin Pasondong et al., 2023).

The minimum age limit for marriage established by Religious Courts aims to shield children from marriages that are too premature, which can have adverse effects on their physical, emotional, and developmental health (Siska Wilia Sapitri et al., 2023). This protection is crucial to ensure that children can grow and thrive optimally without being burdened by marital responsibilities that are not aligned with their readiness (Siti Amina, 2022). Marriage dispensation granting exceptions to age restrictions can reinforce the practice of child marriage, which often occurs in conservative or traditional societies. Stringent minimum age restrictions set by Religious Courts serve as an essential tool in

preventing such practices and sending a clear signal that marriages at too young an age are not legally acceptable. Minimum age restrictions for marriage also reflect recognition of the physical and psychological maturity required for individuals to enter into marriage with full awareness and responsibility (Yanto, 2020). This includes readiness to face the challenges and responsibilities of marriage, as well as the ability to make informed decisions in family life.

Encouraging education and self-development. By stipulating minimum age requirements for marriage, Religious Courts serve as a catalyst for individuals, especially women, to prioritize education and personal development before committing to marriage. This emphasis is crucial for enhancing women's educational access, enabling them to realize their full potential, and mitigating gender disparities within society (Siti Amina, 2022). Upholding gender justice. The implementation of minimum age regulations for marriage dispensation by Religious Courts represents a significant stride towards ensuring gender justice within the institution of marriage. By enforcing uniform standards for both genders, Islamic principles of equality and fairness are upheld, thereby averting gender-based discrimination and oppression within marital contexts (Umi Habibah & Umi Habibah, 2022).

Legal certainty. Establishing clear-cut minimum age thresholds, such as 16 years, as prerequisites for marriage dispensation provides legal clarity for individuals contemplating marriage. This definitive standardization ensures that prospective spouses and the broader community comprehend the requisite criteria for a marriage to be lawfully recognized (Yanto, 2022a). Protection of Women's Rights. Explicitly stating the minimum age requirement in the marriage dispensation process is instrumental in safeguarding women's rights, particularly concerning their physical, mental, and social preparedness. Strengthening this age threshold empowers Religious Courts to ensure that women have the opportunity to attain full maturity before entering into matrimonial bonds, thereby protecting their well-being and autonomy (Leza Melita Rany et al., 2021). When marriage is solemnized in compliance with the minimum age requirements stipulated by law, the union is accorded legal recognition by the state. This recognition is paramount in providing legal protection and equitable rights to married couples, ensuring their access to various benefits and services provided by the government.

Obligation for legal remarriage. If an individual enters into marriage before reaching the minimum age required for dispensation, the marriage is recognized solely on religious grounds, without legal acknowledgment by the state. Consequently, individuals who marry below the minimum age threshold must undergo a legal remarriage process sanctioned by the state after reaching the designated age, such as attaining the age of 19 years. This measure is crucial to ensure the legal validity of the marriage in the eyes of the state and to prevent potential legal ambiguities or uncertainties in the future.

CONCLUSION

The imposition of age restrictions for marriage dispensation within Indonesian religious court proceedings serves as a critical safeguard for the rights and well-being of individuals, particularly women and children. By setting clear minimum age requirements, the courts aim to protect minors from the potential harms associated with early marriages, including physical, emotional, and developmental consequences. Additionally, these regulations uphold principles of justice and equality, ensuring that both genders are treated fairly within the institution of marriage. The legal recognition of marriages that adhere to the established age limits underscores the state's commitment to upholding the rule of law and safeguarding the interests of its citizens. Moreover, the requirement for individuals marrying below the designated age threshold to undergo legal remarriage post-attainment of the minimum age not only reinforces the validity of the marital union but also mitigates any legal uncertainties or ambiguities that may arise. Overall, these measures underscore the importance of age restrictions in marriage dispensation within the framework of Indonesian law, signaling a commitment to promoting the welfare and rights of all individuals involved in marital unions.

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