

Consistency of the Implementation of PERMA Number 5 of 2019 in the Marriage Dispensation Decision: A Child Protection Perspective

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Abstract

Child marriage is still a serious problem in the marriage legal system in Indonesia even though the age limit for marriage has been raised to 19 years through Law Number 16 of 2019. One of the loopholes that allows the practice of child marriage to continue to occur is the existence of a marriage dispensation mechanism that is decided by the court. This study aims to analyze the consistency of the application of PERMA Number 5 of 2019 in the marriage dispensation decision and the legal basis used by judges in considering the application. This study uses normative legal research methods with a legislative approach and a case approach. The results of the study show that judges are generally guided by Law Number 16 of 2019, Law Number 1 of 1974, fiqhiyyah rules, and PERMA Number 5 of 2019 which emphasizes the principles of the best interests of children, justice, utility, and legal certainty as stipulated in Article 2. However, the application of these principles is not completely consistent. In practice, the judge's judgment is often influenced by the *masalah* approach, especially in the case of out-of-wedlock pregnancies that are considered urgent reasons. As well as economic factors and visual health assessments. In addition, the Child Protection Law has not been consistently used as a basis for legal considerations. Therefore, it is necessary to strengthen the perspective of child protection in the practice of marriage dispensation justice in order to support the prevention of child marriage more effectively.

Keywords: Marriage Dispensation, PERMA No. 5 of 2019, Child Marriage, Child Protection, Judicial Consideration.

Abstrak

Perkawinan anak masih menjadi persoalan serius dalam sistem hukum perkawinan di Indonesia meskipun batas usia perkawinan telah dinaikkan menjadi 19 tahun melalui Undang-Undang Nomor 16 Tahun 2019. Salah satu faktor yang memungkinkan praktik tersebut tetap terjadi adalah mekanisme dispensasi kawin melalui pengadilan. Penelitian ini bertujuan menganalisis konsistensi penerapan PERMA Nomor 5 Tahun 2019 dalam putusan dispensasi kawin serta dasar pertimbangan hukum hakim. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan kasus. Hasil penelitian menunjukkan bahwa hakim umumnya berpedoman pada Undang-Undang Nomor 16 Tahun 2019, Undang-Undang Nomor 1 Tahun 1974, kaidah fiqhiyyah, serta PERMA Nomor 5 Tahun 2019 yang menekankan asas kepentingan terbaik bagi anak, keadilan, kemanfaatan, dan kepastian hukum sebagaimana diatur dalam Pasal 2. Namun penerapan prinsip-prinsip tersebut belum sepenuhnya konsisten. Dalam praktiknya, pertimbangan hakim sering dipengaruhi oleh pendekatan *masalah*, terutama dalam kasus kehamilan di luar nikah yang dianggap sebagai alasan mendesak. Serta faktor ekonomi dan penilaian kesehatan secara visual. Selain itu, Undang-Undang Perlindungan

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Anak belum secara konsisten dijadikan dasar pertimbangan hukum. Oleh karena itu, diperlukan penguatan perspektif perlindungan anak dalam praktik peradilan dispensasi kawin guna mendukung pencegahan perkawinan anak secara lebih efektif.

Kata Kunci: Dispensasi Kawin, PERMA No. 5 Tahun 2019, Perkawinan Anak, Perlindungan Anak, Pertimbangan Hakim.

INTRODUCTION

Child marriage is still a serious problem in various regions of Indonesia. Every year the number continues to increase,¹ to the point of placing Indonesia as the country with the 8th highest child marriage in the world.² BAPPENAS data shows that 34.5% of children have been married early. PLAN International's research corroborates the findings, namely that 33.5% of children aged 13–18 years have been married by the age of 15–16.³ BPS's *2020 Marriage Report* also states that 1 in 9 women aged 20–24 years old have been married before the age of 18 (around 1,220,900 women), and 1 in 100 men in the same age group have experienced child marriage.⁴

This phenomenon has a direct impact on child protection. The risks posed are multidimensional: reproductive health, school dropouts, economic vulnerability, to the potential for domestic violence and divorce. To respond to this situation, the state raised the minimum age of marriage to 19 years for men and women through Law Number 16 of 2019 as an effort to minimize child marriage.⁵ However, in classical jurisprudence literature there is no explicit age limit for marriage; some scholars even allow the guardian of *mujbir* to marry a girl who has not yet *reached puberty* as long as the marriage terms and conditions are met.⁶

Even though the age limit has been raised, Article 7 paragraph (2) of Law 16/2019 still opens the opportunity to apply for a marriage dispensation with urgent reasons. This provision is often abused.⁷ Australian *Indonesia Partnership for Justice* (AIPJ) data in 2018 recorded a significant surge in dispensation applications, which was 20 times more

¹ Yusuf, Muhammad Rifky. "Legal Effectiveness of the Implementation of PERMA No. 5 of 2019 in Overcoming Underage Marriage." *AL-MANHAJ: Journal of Islamic Law and Social Institutions* 4.2 (2022): 410. <https://doi.org/10.37680/almanhaj.v4i2.1816>.

² UNICEF-Indonesia-Child-Marriage-Factsheet-1-1.Pdf," n.d., accessed 20 November 2025, <https://www.girlsnotbrides.org/documents/1080/UNICEF-Indonesia-Child-Marriage-Factsheet-1-1.pdf>.

³ Ramadhita, Ramadhita. "Judge's Discretion: Pattern of Marriage Dispensation Case Settlement." *De Jure: Journal of Law and Sharia* 6.1 (2014): 59-61. <https://doi.org/10.18860/j-fsh.v6i1.3192>.

⁴ Statistics, Central Agency. "Prevention of Child Marriage." *Jakarta: Ministry of National Development Planning* (2020): 0-44.

⁵ Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

⁶ Wahbah az-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, Volume 7 (Damascus: Dar al-Fikr, 1985), p. Sec. 219.

⁷ Siti Rohmi Djalilah, "Marriage Dispensation and the Future of Children", *Journal of Islamic Law and Gender* 12 no. 2 (2021), pp. 78–80.

than in 2005 (631 to 13,880 cases).⁸ The surge is increasingly visible after the 2019 law changes were implemented. Data from the Bandung High Court of Religion in 2020–2022 shows that 90% of applications were granted.⁹ Research by Yayat et al. also showed 2,579 applications at PA Kuningan during 2020–2024, with an almost balanced balance between those accepted (1,282) and not accepted (1,297).¹⁰ This data confirms that the marriage dispensation is a legal entry point that expands the practice of child marriage.¹¹

The complexity of this issue prompted the Supreme Court to issue PERMA No. 5 of 2019 as a guideline for judges in handling marriage dispensation applications.¹² This PERMA affirms the principles of child protection, including the obligation of judges to listen directly to the child's testimony and consider psychological, health, and educational conditions before deciding on an application. The verdict is null and void if the judge does not comply with the procedure.¹³ Law Number 4 of 1979 concerning Child Welfare also strengthens that children have the right to nurturing, protection, and a safe environment for their growth and development.¹⁴ PERMA No. 5 of 2019 is a progressive step to ensure that the principle of *the best interest of the child* is truly implemented.

So far, the majority of the research has focused on an overview of how judges consider dispensation requests. Oktari Dwijaya highlighted that in pregnancy cases, the judge considers age, family relationships, and an analysis of benefits and harms before granting the application.¹⁵ Another study emphasizes the importance of *the best interest of the child* principle in the implementation of PERMA No. 5 of 2019. Hendra assessed

⁸ Gastón, Colleen Murray, Christina Misunas, and Claudia Cappa. "Child marriage among boys: a global overview of available data." *Vulnerable children and youth studies* 14.3 (2019): [10.1080/17450128.2019.1566584](https://doi.org/10.1080/17450128.2019.1566584).

⁹Gumilar, Gugun. "Legal Reasoning Judges in Determining Marriage Dispensation and Its Implications for Children's Rights in Indonesia." *SMART: Journal of Sharia, Traditon, and Modernity* (2025): 80. <https://doi.org/10.24042/kjf38b90>.

¹⁰ Hidayat, Yayat, Dina Madinah, and Annisa Islamiati. "The Judge's Decision in the Determination of Marriage Dispensation Cases That Are Not Accepted from the Perspective of Maqashid Syariah (Case Study Number 186/Pdt. P/2023/PA. Kng)." *AL-MASHALIH (Journal of Islamic Law)* 5.02 (2024): 115-128. <https://doi.org/10.59270/mashalih.v5i02.265>

¹¹ Al Hasan, Fahadil Amin, and Deni Kamaluddin Yusup. "Marriage Dispensation in the Indonesian Legal System: Ensuring the Best Interests of Children Through Judge's Decisions." *Al-Ahwal: Journal of Islamic Family Law* 14.1 (2021): 89. <https://doi.org/10.14421/ahwal.2021.14107>.

¹² Yusuf, Muhammad Rifky. "Legal Effectiveness of the Implementation of PERMA No. 5 of 2019 in Overcoming Underage Marriage." *AL-MANHAJ: Journal of Islamic Law and Social Institutions* 4.2 (2022): 411. <https://doi.org/10.37680/almanhaj.v4i2.1816>.

¹³ Huda, Afiful, and Wulan Permata Sari. "The Position and Role of the Supreme Court in Fostering Religious Courts as Part of the National Legal System:(Review of PERMA Number 5 of 2019)." *DIALOGUE: International Journal of Law* 9.1 (2025): 56. <https://doi.org/10.59689/vris.v9i1.1151>.

¹⁴ Quoted by Ninik Evianah, "The Importance of Child-Friendly Schools as a Form of Child Fulfillment and Protection," *Journal of Education and Counseling* 5.1 (2023), p. 3219.

¹⁵ Dwijaya, Oktari. "Judge's Considerations in Deciding the Case of Marriage Dispensation in Pregnancy (Case Study at the Sengeti Religious Court in Case No. 48/PDT. P/2018/PJurusanA. SGT.)." Diss. UIN Sulthan Thaha Saifuddin Jambi, 2020..

that the judge's decision could be a tool for legal reform based on child protection.¹⁶ Fatullah views this PERMA as a form of contemporary *ijtihad* that functions adaptive to the needs of modern child protection.¹⁷ However, research comparing the application of PERMA in judgments granted and rejected is limited, although this analysis is important to assess the consistency and quality of legal protection provided by the courts.

This research is here to fill this gap, focusing on two main questions: (1) how to apply PERMA No. 5 of 2019 in marriage dispensation decisions that are granted and those that are rejected; and (2) the extent to which there is consistency in the application of child protection principles in the two types of decisions. Conceptually, the research is based on three theoretical frameworks. First, the theory of child protection, which affirms the right of children to live, grow, and develop in a safe environment free from harmful practices.¹⁸ Second, the theory of substantive justice, which emphasizes the importance of real justice for vulnerable groups, so that judges' decisions not only rely on formal procedures but also consider the safety, welfare, and welfare of children.¹⁹ Third, *Judicial Reasoning Theory*, which explains how judges build *ratio decidendi* through *legal reasoning*, *socio-legal reasoning*, and *ethical reasoning*.²⁰ These three theories provide a framework to assess the extent to which the marriage dispensation decision is in line with the principles of child protection in PERMA No. 5 of 2019. The results are expected to make a theoretical contribution to the development of Islamic family law and become a practical evaluation for judicial institutions in preventing child marriage through the consistent application of PERMA.

RESEARCH METHOD

This research is a normative legal research that aims to analyze the consistency of the application of Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications in marriage dispensation decisions and examining judges' legal considerations from the perspective of child protection. This research uses a statute *approach* and a *case approach*. The legislative approach is carried out by examining various regulations related to marriage and child protection, including Law Number 1 of 1974 concerning Marriage which has been amended through Law Number 16 of 2019 concerning Amendments to the Marriage Law and the provisions in Law Number 35 of 2014 concerning Child Protection. Meanwhile, the case approach is carried out by analyzing court decisions related to marriage dispensation applications to assess the consistency of the application of PERMA in the judge's consideration. The legal materials used consist of primary, secondary, and tertiary legal materials obtained

¹⁶ Hendra. "Marriage Dispensation Reviewed from Law of the Republic of Indonesia number 35 of 2014 concerning Child Protection (Study on Determination Number 135/Pdt.P/2016/Pa. Sj at the Sinjai Religious Court Class II)." *Thesis* of the Postgraduate Program, UIN Alaudin Makassar, Makassar, 2017.

¹⁷ Fatullah. "*The Dilemma of Regulating Marriage Dispensation in Indonesia (An Analysis of Islamic Law on Law Number 16 of 2019 and Perma No. 5 of 2019)*." Diss. UIN Fatmawati Sukarno, 2021.

¹⁸ Article 1 number 2 of Law Number 35 of 2014 concerning Child Protection.

¹⁹ Rahardjo, Satjipto. *Legal Sciences*. Bandung: Citra Aditya Bakti, 2000.

²⁰ MacCormick, Neil. *Legal reasoning and legal theory*. Clarendon Press, 1994..

through literature studies. Furthermore, the legal material is analyzed qualitatively by descriptive-analytical method to explain the application of legal norms in the practice of marriage dispensation justice.

RESULTS AND DISCUSSION

Provisions of Marriage Age and Dispensation in the Indonesian Legal System

The regulation of the minimum age of marriage in Indonesia has developed significantly in line with the increasing attention of the state to child protection and efforts to overcome the practice of child marriage. Legally, marriage is legal if it is carried out according to the provisions of the religion or belief that is adhered to and does not contradict laws and regulations, including the requirements regarding age which are the benchmark for the maturity and readiness of the prospective bride. However, from an Islamic perspective, the age limit for marriage is not specifically regulated because the provisions are elastic and contextual (*likulli zaman wa makan*).²¹ Kamarusdiana and Ita Sofia stated that in Islamic law, marriage in principle only requires the attainment of puberty without setting a certain minimum age limit.²² Many scholars even refer to the marriage of the Prophet PBUH with Aisha r.a. as a proof of the ability to marry children at a young age, even though the social context at that time was different from current conditions.²³

Regarding the age limit meant by adulthood, according to the Imam of madhhab, there are differences of opinion. The following are the provisions of the marriage age based on the views of the Imam of the Madhhab.²⁴

Table 1. Age of Puberty (Baligh) in Islamic Law

Imam of the Madhhab	View of Puberty Age for Girls and Men
Imam Malik, Al-Laits, Ahmad, Ishaq, dan Abu Tsur	The growth of hairs around the genitals, and the Jumhur Ulama of the Maliki School of Medicine argues that the limit of the age of menstruation for women and men is 17 years or 18 years old
Abu Hanifah	The age of puberty is 19 years old or 18 years old for men and 17 years old for women.
Imam Shafi'I, Ahmad, Ibn Wahab and Jumhur Ulama	The age of puberty for males and females is calculated at the perfect age of 15 years. This condition is strengthened and relied on in monopause women at the age of 21 and menstruation at exactly 10 years of age, which occurs repeatedly in the daughters of the woman.

In Indonesia, the Indonesian Ulema Council (MUI) as an official institution has never issued a fatwa on the ideal age of marriage. However, in the trial of the material

²¹ Wafa, Moh Ali. "Marriage Law in Indonesia: A Study in Islamic Law and Material Law." (2018): 154.

²² Kamarusdiana, Kamarusdiana, and Ita Sofia. "Marriage dispensation in the perspective of Islamic law, law number 1 of 1974 and the compilation of Islamic law." *SALAM: Journal of Social and Cultural Syar-i* 7.1 (2020): 49-64.

²³ Fadal, Kurd. "Underage Marriage: The Perspective of the Maqashid of the Qur'an." *Journal of Islamic Law IAIN Pekalongan* 14.1 (2016): 73.

²⁴ *Ibid.*, p. 74.

test of the Marriage Law at the Constitutional Court on December 2, 2014, the Chairman of the MUI Amidhan Shaberah said that the minimum age limit for marriage as stated in Article 7 paragraph (1) is not contrary to the constitution. He referred to the view of the MUI which considers that the appropriate age limit for marriage is 16 years for women and 19 years for men. This shows that the debate over early marriage in Islamic law remains a complex and controversial issue, involving arguments for and against the practice.²⁵

In addition, the lack of unity of view regarding the age limit is also seen in Indonesia's positive law. Various laws and regulations stipulate different age categories according to the scope and purpose of their regulation. This diversity results in a lack of consistency in determining the age limit for children, the minimum age of marriage, and the definition of maturity. As a result, the interpretation and application of age-related norms have become diverse, which ultimately has implications for legal certainty in the issue of child marriage.

Table 2. Comparison of Children's Ages in the Indonesian Legal System

No.	Rules	Article	Age Limit	Remarks
1	CRIMINAL Code	Article 45	16 years old	A child is one who is not yet 16 years old.
2	Civil Code	Article 330 (1)	21 years old	Immature if you are not yet 21 years old, unless you are married.
3	Compilation of Islamic Law	Article 98 (1)	21 years old	Mature at the age of 21, if not disabled and unmarried.
4	Law No. 1 of 1974	Article 7 (1)	16 (P) & 19 (L)	Marital age: 16 years old girl, 19 years old boy.
5	Presidential Decree No. 36 of 1990	—	18 years old	Children are those who are not yet 18 years old, including in the womb.
6	Law No. 44 of 2008	Article 1 (4)	18 years old	The child is not yet 18 years old.
7	Law No. 21 of 2007	Article 1 number 5	18 years old	Children are those who are not yet 18 years old, including in the womb.
8	Law No. 16 of 2019	Article 7 (1)	< 19 years old	Marriage is allowed if it is 19 years old.
9	PERMA No. 5 of 2019	Article 1 number 1	< 19 years old	Children are those who are not yet 19 years old or unmarried.

Differences in interpretations regarding the adult age category encourage the state to set the age limit for marriage as a form of legal protection. Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage initially stipulated that marriage could only take place if the prospective groom was 19 years old and the prospective bride was 16 years old. This provision was then amended through Law Number 16 of 2019, which

²⁵ Holden, Livia, and Euis Nurlaelawati. *Cultural values and justice for women in Indonesian Religious Courts: Best practices*. 2019: 69.

equalized the minimum age of marriage for men and women to 19 years.²⁶ This requirement is also emphasized in Article 15 paragraph 1 of the Compilation of Islamic Law (KHI) which states that for the benefit of the family and domestic life, marriage can only be carried out by prospective husband and wife who have met the age limit as stipulated in Article 7 of Law Number 1 of 1974, which is at least 19 years old.²⁷

Furthermore, Article 7 paragraph (2) stipulates that if there is a deviation in the provisions in paragraph 1, a dispensation can be requested to the Court by both parents of the male or female side. This change in the age limit is a follow-up to the Constitutional Court's decision Number 22/PUU-XV/2017 which states that the age limit for marriage is unconstitutional contrary to the provisions contained in Law Number 35 of 2014 concerning Child Protection which states that children are individuals under the age of 18 years old and parents are obliged to prevent early marriage. Therefore, the application of the minimum age provision in Article 7 paragraph (1), as strengthened by the Constitutional Court Decision Number 22/PUU-XV/2017, must be a guideline in every marriage case.²⁸

However, even though the age limit has been raised to 19 years for the bride-to-be, the application for marriage dispensation continues to increase. Dispensations, which were supposed to be emergency and only granted in urgent circumstances, have in practice become loose. This condition creates a contradiction, because on the one hand the state seeks to prevent child marriage, but the courts at the same time open the gap for the practice to occur. According to data from the performance report of the task force and SIPP of the Batang Religious Court (PA), promiscuity is the dominant factor in the increase in marriage dispensation applications in the Religious Court.²⁹ For some people, dispensation is seen as a shortcut to legalizing underage marriage. Law No. 16 of 2019 and PERMA No. 5 of 2019 affirm that the minimum age limit of 19 years is related to physical, psychological, and health readiness, especially for women who will undergo pregnancy and maternal roles. This provision also applies to men as an indicator of maturity, age, and maturity.

The marriage dispensation is basically a form of exception to the general provisions regarding the age limit for marriage. Subekti and Tjitrosudibio define dispensation as a deviation or exception from a rule of law.³⁰ In the context of marriage, dispensation is a legal mechanism that allows children who have not met the age

²⁶ Al Hasan, Fahadil Amin, and Deni Kamaluddin Yusup. "Marriage Dispensation in the Indonesian Legal System: Ensuring the Best Interests of Children Through Judge's Decisions." *Al-Ahwal: Journal of Islamic Family Law* 14.1 (2021): 87. <https://doi.org/10.14421/ahwal.2021.14107>.

²⁷ *Ibid.*, p. 90.

²⁸ *Ibid.*, p. Sec. 87.

²⁹ Lia Auliyah, "Surprising Facts! 85 Couples Apply for Marriage Dispensation, These Are the 3 Biggest Reasons," https://pa-batang.go.id/fakta-mengejutkan-85-pasangan-ajukan-dispensasi-kawin-ini-3-alasan-terbesarnya/?utm_source=chatgpt.com, accessed January 1, 2026.

³⁰ Royhan A Rasyid, *Procedural Law of Religious Courts*, (Raja Grafindo Persada, Jakarta: 2005), p. Sec. 32.

requirement to marry with the court's permission.³¹ This mechanism is *an exception*, not a *general rule*, and is only intended for very urgent circumstances to protect children's rights. PERMA No. 5 of 2019 is here to fill the legal void while ensuring that every dispensation application is decided by considering the principle of the best interests of the child.

Application of PERMA No. 5 of 2019 in the Examination of Marriage Dispensation

In an effort to strengthen the implementation of laws and regulations in the context of preventing child marriage, especially at the stage of examining marriage dispensation applications, the Supreme Court stipulated Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. This regulation serves not only as a normative guideline, but also as an operational standard for Religious Court judges in handling marriage dispensation cases. Through the PERMA, the Supreme Court formulated a number of provisions and procedures that must be used as a reference by judges in checking, considering, and deciding marriage dispensation applications more carefully, and oriented towards the protection of children's rights and best interests.³²

First, the procedure for submitting an application for marriage dispensation, including administrative requirements (Article 5), the party who has the right to apply (Article 6), the authority to adjudicate if the prospective bride and groom are of different religions (Article 7), the application when the two prospective brides are both under (Article 8), and the obligation of the registrar to check the completeness of the administrative requirements (Article 9). Second, the procedure for examining the trial, includes: a) a single judge who has a decree of a juvenile judge/has participated in training, technical guidance for women who are dealing with the law/experienced in handling marriage dispensation cases, b) using language and methods that are understood, c) the judge and substitute clerk do not wear court attributes, d) the applicant is required to present the child who is requested to be compensated for marriage, prospective husband/wife, parents/guardians of the prospective husband/wife if they are unable to attend, the case is rejected, e) the judge gives advice to the child who is applied for marriage dispensation, prospective husband/wife, parents/guardians of the prospective husband/wife, if the person concerned does not give advice and consider it, then the decision is null and void. In addition, in the examination at the trial, the judge also identified the child's knowledge and consent to the marriage plan, the psychological condition/health/readiness of the child to carry out the marriage and foster the household, as well as psychological/physical/sexual/economic coercion on the child and/or family to marry the child. Third, legal considerations in determining the marriage dispensation, the

³¹ Zaidah, Yusna, Hatimul Husna, and Ahmad Mubarak. "Legal Considerations of Marriage Dispensation Cases For Couples That Lead to Divorce." *Journal of Islamic and Law Studies* 9.2 (2025): 206-222. <https://doi.org/10.18592/jils.v9i2.17824>.

³² Huda, Afiful, and Wulan Permata Sari. "The Position and Role of the Supreme Court in Fostering Religious Courts as Part of the National Legal System:(Review of PERMA Number 5 of 2019)." *DIALOGUE: International Journal of Law* 9.1 (2025): 53-54. <https://doi.org/10.59689/vris.v9i1.1151>.

judge considers the protection and best interests of the child in laws and regulations and unwritten laws in the form of local legal values/wisdom and a sense of justice that lives in society according to international conventions and/or agreements related to child protection.

In examining the marriage dispensation case, the judge is required to carefully relate the legal norms with the facts of the trial in order to obtain a complete picture of the condition of the child.³³ Prabowo argued that the judge experienced a dilemma when faced with an application submitted due to an out-of-wedlock pregnancy. Because he was charged with two conditions, namely enforcing the law based on the facts of the case and pressure from the customary and local community so that the marriage would be held immediately.³⁴ As a manifestation of good judgment, judges must base their decisions on exclusion from discrimination, gender equality, equality before the law, justice, utility, and legal certainty.³⁵ According to Susanto, the success of the judge's decision lies in the fulfillment of these three elements of objectivity, which are also the axiological dimension of a decision.³⁶

In PERMA No. 5 of 2019 Article 17 is discussed related to the meaning of "The best interest for children" which means decision-making that pays attention to the survival and growth and development of children.³⁷ Where the judge in determining the application for marriage dispensation considers (a) the protection and best interests of the child in laws and regulations and laws are not written in laws and regulations in the form of legal values, local wisdom, and a sense of justice that lives in society; and (b) international conventions and/or agreements related to child protection. So that this provision is given with consideration to protect children from social sanctions that occur in society by excluding them because they were pregnant and gave birth before marriage occurred.³⁸ On the other hand, the judge must also pay attention to whether the child is ready to foster a household both physically, psychologically, and economically.³⁹

Analysis of the Judge's Consideration of the Decision on the Application for Marriage Dispensation

³³ Lahilote, Hasyim Sofyan, et al. "Judge's Dilemma in Marriage Dispensation in the Religious Court." *Al-Risalah: Forum for Legal and Social Studies of Society*. 22.1 (2022): 55. <https://doi.org/10.30631/alrisalah.v22i1.979>.

³⁴ Prabowo, Bagya Agung. "Judges' Considerations in Determining the Dispensation of Early Marriage Due to Pregnancy Out of Wedlock at the Bantul Religious Court." *Journal of Law Ius Quia Iustum* 20.2 (2013):302. <https://doi.org/10.20885/iustum.vol20.iss2.art7>.

³⁵ Suryanti, Irma, and Dewa Gde Rudy. "Dysfunction of Marriage Dispensation in Efforts to Prevent Child Marriage." *Udayana Master of Law Journal* 10.2 (2021): 12.

³⁶ Susanto, Nur Agus. "THE AXIOLOGICAL DIMENSION OF THE CASE DECISION." *Journal of Judicial* 7.3 (2014): 214. <https://doi.org/10.29123/jy.v7i3.73>.

³⁷ Fransiska Novita Eleanora et al., *Textbook of Child and Women's Protection Law*, 2021.

³⁸ Karima, Aliya, et al. "The Best Interests of the Child of the Marriage Dispensation Applicant in the Interpretation of the Law by the Judge." *Al-Syakhsyyah: Journal of Law and Family Studies* 5.2 (2023): 129. <https://doi.org/10.21154/syakhsyyah.v5i2.7082>

³⁹ The Supreme Court. "Pocket Guidebook Adjudicating Marriage Dispensation Applications." *Supreme Court* (2020): 1-10.

The stipulation of Supreme Court Regulation (PERMA) Number 5 of 2019 as a legal framework in the marriage dispensation litigation process emphasizes the principle of the best interests for children through consideration of psychological conditions, health, marital readiness, as well as the child's social and cultural environment, including by involving professionals if necessary as a form of implementation of the Convention on the Rights of the Child.⁴⁰ Therefore, judges are required to apply comprehensive legal reasoning based not only on positive law, but also consider the principle of legal usefulness and make the Child Protection Law and the Human Rights Law as the main normative reference in assessing the urgency and feasibility of granting marriage dispensation.⁴¹

In deciding the marriage dispensation case, the judge must be based on a clear and definite legal basis.⁴² Three main aspects as the legal basis for judges' considerations, namely: First, the juridical aspect, namely legal considerations that must be in harmony with and not contradict the provisions of the applicable laws and regulations. In the case of marriage dispensation, in addition to being guided by PERMA Number 5 of 2019, the judge is also based on Law Number 48 of 2009 concerning Judicial Power which emphasizes that the court is prohibited from refusing to examine, adjudicate, and decide cases on the grounds of absence or unclarity of the law. Second, the sociological aspect, which emphasizes that the judge's decision must pay attention to social conditions and be acceptable to the community, especially the parties who apply for marriage dispensation. Third, the philosophical aspect, which requires that the decision be in harmony with the philosophical values that live in society and reflect the principle of substantive justice.⁴³

Theoretically, the judge's decision is a concretization of law and justice that plays a crucial role in law enforcement efforts in society. Monteiro stated that the judge's decision must consider all legal principles to achieve the goal of legal certainty, justice, and utility.⁴⁴ Soerjano Soekanto emphasized that in order for judges to be able to make fair decisions, they must see the legal realities that are developing in society, including people's habits and unwritten provisions that continue to develop.⁴⁵

However, in judicial practice, it is often criticized because the court is considered to contribute to the rise of child marriage, especially when requests for dispensation based on pregnancy are almost always granted, even though dispensation is essentially a deviation from the age limit of marriage as stipulated in Article 7 paragraph (1) of Law

⁴⁰ Hasyim Sofyan Lahilote dkk., "Judge's Dilemma in Marriage Dispensation in The Religious Court," *Al-Risalah* 22, no. 1 (2022), hal.

⁴¹ Aman, Gugun Gumiliar, "Legal Reasoning Judges in Determining Marriage Dispensation and Its Implications for Children's Rights in Indonesia," *Smart: Journal of Sharia, Tradition and Modernity* 5, no. 2 (2025). DOI: <http://dx.doi.org/10.24042/kjf38b90>.

⁴² Muliati, *Islamic Marriage Law*, (Tangerang: Pustaka Mandiri 2012), p. Sec. 111.

⁴³ Gumilar, Gugun. "Legal Reasoning Judges in Determining Marriage Dispensation and Its Implications for Children's Rights in Indonesia." *SMART: Journal of Sharia, Traditon, and Modernity* (2025). <https://doi.org/10.24042/kjf38b90>.

⁴⁴ Monteiro, Josef M. "Judges' Decisions in Law Enforcement in Indonesia." *Journal of Law Pro Justitia* 25.2 (2007): 138.

⁴⁵ Soekanto, Soerjono. *Legal Functions and Social Change*. Alumni, 1981.

Number 16 of 2019.⁴⁶ This article also affirms the condition of "urgent reasons," i.e. a situation when there is no other option but to marry. However, this phrase still needs a more in-depth study to be comprehensively understood, considering that the practice of child marriage and unregistered marriage often has significant social, legal, and psychological consequences.⁴⁷ Practice in the field shows that there are variations in the application of PERMA No. 5 of 2019, especially between the decision that grants and those that refuses. The following is a table of decisions on marriage dispensation applications from a number of decisions that were granted and rejected.

The granting of marriage dispensation by the court is in principle based on efforts to prevent child marriage by considering various aspects, including morals, religion, customs and culture, psychological conditions, health, and potential impacts. In general, the substantive reasons put forward in the application for marriage dispensation in various courts are relatively uniform, such as the existence of long-lasting emotional relationships, the fear of falling into promiscuity, the potential for violations of social, customary, and religious norms, the existence of legal extramarital sexual relations including out-of-wedlock pregnancies, and the condition of the bride-to-be's vulnerability, such as the status of an orphan or a child abandoned by her parents due to divorce.

Based on the table 3, most of the decisions in the marriage dispensation case that were granted showed that the judge was consistently oriented towards Article 7 paragraphs (1) and (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 which set the age limit for marriage to 19 years and opened up the possibility of granting dispensation on very urgent grounds accompanied by sufficient evidence. In his consideration, judges also often use the rules of fiqhiyyah *dar'u al-mafāsīd muqaddam 'alā jalbi al-maṣāliḥ* as a normative basis after positive law. In addition, the judge referred to the provisions of Law Number 1 of 1974, especially Article 6, Article 8, and Article 9 which regulate the consent of the prospective bride and groom and parental permission in marriage. In addition, the judge also made PERMA Number 5 of 2019 as a guideline by emphasizing the principles of the best interests for children, justice, utility, and legal certainty as stipulated in Article 2. These considerations are often strengthened by religious evidence, such as Surah An-Nur verse 32 and the hadith of the Prophet which advocates marriage for those who are able to afford it.

However, in practice, the application of child protection principles is not fully optimal. In a number of marriage dispensation rulings at the Bekasi Religious Court, the judge granted the application for various reasons, such as economic factors, parental encouragement, long-established relationships, and concerns about falling into promiscuity. Although these considerations refer to the principle of the best interests of

⁴⁶ Asmu'i Syarkowi, Marriage Dispensation: Why Do Religious Courts Grant It? <http://pa-lumajang.go.id/dispensasi-kawin-mengapa-pengadilan-agama-mengabulkan/>, 2017. access date December 20, 2025.

⁴⁷ Lahilote, Hasyim Sofyan, et al. "Judge's Dilemma in Marriage Dispensation in the Religious Court." *Al-Risalah: Forum for Legal and Social Studies of Society*. 22.1 (2022): 56. <https://doi.org/10.30631/alrisalah.v22i1.979>.

the child, the judge has not comprehensively assessed important aspects such as physical and mental maturity, social readiness, and reproductive health of the child. Judges' considerations tend to be based only on economic conditions and visual health assessments, so PERMA Number 5 of 2019 is positioned more as an administrative requirement than as a substantive guideline in decision-making, especially as mandated in Article 16.⁴⁸

Table 3. Decision on Application for Marriage Dispensation: Granted and Rejected

No.	Decision Number	Amar	Legal Basis of Judge's Consideration
1	39/Pdt.P/2018/PA. Wts	Rejected	Article 26 paragraph (1) letter c of Law No. 23 of 2002 Amendments to Law No. 35 of 2014 concerning Child Protection
2	157/Pdt.P/2019/PA. Bitg	Granted	Fiqhiyyah Rules / Maslahah Theory
3	00177/Pdt.P/2020/PA. Bks	Granted	Law Number 16 of 2019 Article 7 paragraph (1)-(2); QS. An-Nur:32; Hadith of the Prophet
4	0297/Pdt.P/2020/PA. Bks	Granted	Law No. 16 of 2019 Article 7 paragraph (1)-(2); Rules of Fiqhiyyah
5	0285/Pdt.P/2020/PA. Bks	Granted	Law No. 16 of 2019 Article 7 paragraph (1)-(2); QS. An-Nur:32
6	0244/Pdt.P/2020/PA. Bks	Granted	Law No. 16 of 2019 Article 7 paragraph (1)-(2); QS. An-Nur:32; Hadith of the Prophet
7	181/Pdt.P/2020/PA. Tas	Rejected	PERMA No. 5 of 2019; Law Number 35 of 2014 Article 9 paragraph (1)
8	0271/Pdt.P/2021/PA. Bks	Granted	Article 7 paragraphs (1) and (2) of Law No. 16 of 2019 Amendments to Law No. 1 of 1974; Rules of Fiqiyyah
9	0071/Pdt.P/2021/PA. Bks	Granted	Article 7 paragraphs (1) and (2) of Law No. 16 of 2019 Amendments to Law No. 1 of 1974; Articles 15 and 16 of the Compilation of Islamic Law
10	0297/Pdt.P/2021/PA. Bks	Granted	Article 7 paragraphs (1) and (2) of Law No. 16 of 2019 Amendments to Law No. 1 of 1974; Articles 15 and 16 of the Compilation of Islamic Law Rules of Fiqiyyah
11	0187/Pdt.P/2021/PA. Bks	Granted	Articles 8 and 9 of Law No. 1 of 1974; Article 39 Compilation of Islamic Law PERMA No. 5 of 2019
12	0078/Pdt.P/2021/PA. Kr	Rejected	Law Number 35 of 2014 on Child Protection
12	0284/Pdt.P/2022/PA. Bks	Granted	Article 7 paragraphs (1) and (2) of Law No. 16 of 2019 Amendments to Law No. 1 of 1974; PERMA No. 5 of 2019; Rules of Fiqiyyah

⁴⁸ AMARA, RIDHA CITRA. *Judges' Considerations in Determining Marriage Dispensation (Case Study of the Determination of Marriage Dispensation at the Bekasi City Religious Court in 2020-2022)*. BS thesis. Faculty of Sharia and Law UIN Syarif Hidayatullah Jakarta.

13	0805/Pdt.P/2022/PA. Bks	Granted	Article 7 paragraphs (1) and (2) of Law No. 16 of 2019 Amendments to Law No. 1 of 1974; Article 6 paragraphs (1) and (2) of Law No. 1 of 1974; Articles 15 and 16 of the Compilation of Islamic Law; Al-Qur'an surah An-Nur verse 32; Fiqiyah Rules; Hadith of the Prophet
14	0194/Pdt.P/2022/PA. Bks	Granted	Article 7 paragraphs (1) and (2) of Law No. 16 of 2019 Amendments to Law No. 1 of 1974; Articles 15 and 16 of the Compilation of Islamic Law; Rules of Fiqiyah
15	98/Pdt/2022/PA. Smg	Granted	Article 7 paragraph (2) of Law No. 16 of 2019 Amendments to Law No. 1 of 1974; Article 53 of the Compilation of Islamic Law; PERMA Number 5 of 2019
16	134/Pdt.P/2022/PA. Kds	Granted	Article 7 paragraph (2) of the Marriage Law; Article 2 letter c and Article 13 of PERMA No. 5 of 2019

In contrast, in Decision Number 98/Pdt.P/2022/PA. Smg at the Semarang Religious Court, the judge was not only guided by the provisions of the law, but also considered the fact of the trial that the bride-to-be was pregnant. In this case, the judge referred to Article 53 of the Compilation of Islamic Law which allows pregnant women out of wedlock to be married to the man who impregnates her. These considerations show that there is a curative approach, which is an effort to overcome social problems that have occurred, such as maintaining the status of children who will be born and avoiding social stigma. However, if it is associated with Law Number 35 of 2014 concerning Child Protection which sets the age limit for children under 18 years old, the decision raises debate because the two brides-to-be are still classified as children.⁴⁹ Meanwhile, Decision Number 157/Pdt.P/2019/PA. The Bitg at the Bitung Religious Court is considered not to fully reflect the principles of justice, legal certainty, and protection of the right to life and development of children as mandated in PERMA Number 5 of 2019. In the decision, the judge did not comprehensively explain the losses or *mafsadah* that the bride-to-be wanted to avoid, even though there was no indication of urgent circumstances such as pregnancy out of wedlock.

On the contrary, in several rulings rejecting marriage dispensation applications, judges implicitly showed a stronger orientation to the principles of PERMA Number 5 of 2019. The judge examined the parents and prospective bride and groom and assessed that the reasons submitted did not show an urgent situation. These considerations are also based on the protection of children's rights, especially the right to education and

⁴⁹ Nurhadi, Henry. "The judge's consideration of the application for marriage dispensation based on Article 2 of Perma No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications (Study of the Decision of the Semarang Religious Court No. 98/Pdt/2022/Pa. Smg)." *Journal of Law, Politics and Power* 2.2 (2022): 209-223. <https://doi.org/10.24167/jhpk.v2i2.5611>.

opportunities for optimal development. For example, in Decision Number 39/Pdt.P/2018/PA. Wts, the application was rejected because based on the information of the parties, there was no readiness from the two prospective brides to build a household.⁵⁰ Similarly, in Decision Number 0078/Pdt.P/2021/PA. Kr at the Krui Religious Court, the judge rejected the application because the reason for the fear of falling into adultery was not considered an urgent reason. What is meant by urgent reasons in the context of marriage dispensation is a condition that really aims for the benefit of children who are still at an early age, especially related to mental, economic, reproductive health, and guarantees for the fulfillment of children's educational rights.⁵¹

Overall, a number of these decisions show that the judges have not fully applied the principles of PERMA Number 5 of 2019 consistently. Although PERMA is used as a normative basis, judges' considerations in practice are more often influenced by *the maslahah approach*, especially in cases of out-of-wedlock pregnancies that are considered urgent reasons. As well as on the basis of economic conditions and visual health assessments to grant the marriage dispensation. This condition has the potential to weaken the purpose of restricting the age of marriage set forth in the Law. In addition, the use of the Child Protection Law as an explicit reference in legal considerations is still limited, so strengthening the perspective of child protection in every marriage dispensation decision is important so that the principle of the best interests of children can be implemented comprehensively.

The international community has long recognized the importance of protecting children's rights. In 1989 the United Nations ratified the Convention on the Rights of the Child, which codified the principles of child protection into regulations. The Indonesian government has a long history of protecting children's rights in marriage regulations. This can be seen in Law No. 16 of 2019 jo. Law No. 1 of 1974 sets the ideal age for marriage to be 21 years old. This is in line with the human rights of every child as protected by Law No. 39 of 1999 concerning Human Rights and Law No. 23 of 2002 concerning Child Protection.⁵²

CONCLUSION

Based on the results of the research and discussion, it can be concluded that the application of PERMA Number 5 of 2019 in the marriage dispensation decision has shown normative consistency, namely related to the principle of the best interests of children in Article 2. Meanwhile, in general, judges use Law Number 16 of 2019 as the main legal basis which is strengthened by the provisions of Law Number 1 of 1974, the

⁵⁰ Holden, Livia, and Euis Nurlaelawati. *Cultural values and justice for women in Indonesian Religious Courts: Best practices*. 2019: 76-82.

⁵¹ Supandi, L. "*Judges' Considerations in the Granting and Rejection of Marriage Dispensation at the Krui Religious Court: Maqashid al-Sharia'ah Perspective and Child Protection (Determination Study Number 0078/Pdt.P/2021/PA. Kr and Determination Number 77/Pdt.P/2022/PA. Kr)*." Thesis, Syarif Hidayatullah State Islamic University, Jakarta, 2023.

⁵² Andriani Adnani, "A Study on the Implementation of Legal Protection Policies for Children Victims of Sexual Violence in the Family in Indonesia," *Encyclopedia Education Review* 5, no. 1 (2023), p. Sec. 118.

rules of fiqhiyyah. Judges in deciding marriage dispensation cases consider juridical, sociological, and philosophical aspects in order to achieve substantive justice. However, implicitly the judge has not fully applied the principles of PERMA Number 5 of 2019 in judicial practice which tends to grant applications for marriage dispensation on the basis of *the maslahah* approach, namely on economic conditions and visual health assessments. Thus, it has the potential to weaken the purpose of restricting the age of marriage which shows that the use of the Child Protection Law as an explicit reference in legal considerations shows the need to strengthen the perspective of child protection in every marriage dispensation decision so that the principle of the best interests for children is truly implemented comprehensively.

Based on these findings, it is recommended that judges better integrate the perspective of child protection in every legal consideration of marriage dispensation decisions by making the Child Protection Law as one of the relevant normative foundations. In addition, judicial institutions need to strengthen the implementation of the guidelines in PERMA Number 5 of 2019 more strictly to ensure that marriage dispensation is really granted in very urgent conditions and in the best interests of children. On the other hand, the government and related institutions need to increase efforts to prevent child marriage through legal education, strengthening the role of the family, and optimizing child protection in judicial policies and practices. This study is limited to a document analysis of 16 marriage dispensation decisions and did not involve direct interviews with the examining judges, so the sociological aspects underlying the decisions could not be explored in depth. Therefore, future research is recommended to employ a socio-legal approach by conducting interviews with judges and examining the long-term psychological impact on children whose marriage dispensation requests were granted.

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