Legal Analysis of Marriage Dispensation Underage in Jagabita Village, Bogor, Using the Compilation of Islamic Law Approach

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ABSTRACT
The analysis focuses on the legal aspects surrounding marriage dispensations for individuals below the age of 19, as outlined in Law Number 16 of 2019, which amends Law Number 1 of 1974 concerning Marriage. According to Article 7, paragraph (1) of the Marriage Law, marriage is permissible only if both the man and woman have reached the age of 19. This provision underscores the necessity of establishing a minimum age for marriage, considering the significant legal implications associated with marital unions, such as alterations in rights and responsibilities. However, a potential ambiguity arises when Article 7, paragraph (1) is juxtaposed with Article 6, paragraph (2) of the same law. While Article 7, paragraph (1) sets forth a minimum age requirement for marriage, Article 6, paragraph (2) does not provide clear legal guidance for individuals seeking marriage before reaching the prescribed age. Despite the provision for dispensation in Article 7, paragraph (2) and Article 6, paragraph (2), some argue that granting dispensations may overlook future familial harmony and reduce the institution of marriage to mere physical fulfillment, contradicting principles of Islamic jurisprudence. Data collection involved observations and interviews with local residents who entered into underage marriages, as well as discussions with the head of the Religious Affairs Office (KUA) of Parung Panjang Subdistrict. The research adopts a socio-legal approach, integrating sociological and juridical perspectives, within a qualitative field research framework. The study aims to comprehend the regulation of marriage dispensation under both civil and Islamic law, examining the consequences of underage marriages in Jagabita Village, Bogor.

INTRODUCTION
Every human being born generally desires to have a life partner to establish relationships and to have offspring, which leads to marriage. Humans are created to be paired, and among them, there is a mutual desire to live together (Maulidizen, 2018c). This biological inclination can be properly channeled within the institution of marriage. A family built through a good marriage and based on sincere intentions is likely to be happy and prosperous. All these situations and conditions can materialize because the formation of a family is through a sacred institution called marriage.

Marriage is a sacred process in human life. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage states that marriage is a physical and spiritual bond
between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the belief in the One and Only God. Article 2 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage states that marriage is valid if conducted according to the laws of each religion and belief, and each marriage is recorded according to the applicable laws and regulations in Indonesia.

Before the enactment of marriage laws regarding marriage procedures for Indonesians, in general, it was regulated according to the religious and customary laws of each and after the enactment of the state law regulating marriage issues, conditions such as the age limit for marriage (material requirements), including the provision regarding the minimum age limit for marriage, are stipulated in Article 7 paragraph (1).

Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is contained in Chapter II on the conditions of marriage in Article 7 paragraph (1) of the Marriage Law. "Marriage is only allowed if the man has reached the age of 19 years and the woman has reached the age of 19 years. The minimum age limit for marriage is necessary because marriage is a legal event that will change the rights and obligations of an individual. These changes include changes to the rights and obligations of a child to become a husband or wife (Mustofa, 2019). This is what makes marriage require thorough preparation, both biologically and psychologically, including economic readiness to maintain a household to ensure the health of the husband, wife, and offspring.

However, a successful marriage cannot be expected from those who are physically or emotionally immature but rather from those who are mature in terms of responsibility and mental and physical maturity. Therefore, marriage must be approached with thorough preparation. To achieve the goal of marriage, a restriction on the age of marriage is necessary. The determination of the marriage age limit is crucial to create family welfare and harmony in the household.

Despite the established age limit for marriage, there are still deviations in Indonesia through underage marriages. This clearly contradicts the principles and conditions of marriage stipulated by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. In response to underage marriage, the Marriage Law provides a way out through dispensation from the court. With the provision of marriage dispensation, it raises the perception that Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 Article 7 paragraph (1) is not consistent with the provisions on the marriage age limit (Bastomi, 2016).

Islamic jurisprudence as one of the implements of judicial power has the main task of receiving, examining, adjudicating, and deciding or determining any case submitted to it. The religious court is authorized to determine marriage dispensation. Marriage dispensation requests are directed to the Religious Court that has jurisdiction over the residence of the applicant, and in the applicant's letter, the reasons, purposes, or needs for the application must be explained, as well as with whom the planned marriage is intended.

To determine the eligibility of prospective spouses who will marry underage, a short trial is conducted. In the determination of marriage dispensation, the judge considers, among other things, the abilities, readiness, and maturity of the prospective spouses mentally and physically. The judge's decision to grant marriage dispensation must be based on rational consideration and allows for granting marriage dispensation to prospective spouses. Basically, Islamic law does not strictly regulate the marriage age limit; however, the Qur'an suggests that those who marry must be ready and capable, as stated in Surah An-Nūr [24]: 32 “And marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty, and Allah is all-Encompassing and Knowing.”

According to M. Quraish Shihab, the term "fit to marry" is understood by scholars to mean mentally and spiritually capable of building a family. Likewise, the hadith of the Prophet Muhammad, which encourages young men to marry, provided they have the ability. In the Islamic legal perspective, marriage dispensation has a different meaning. In Islamic law, the concept of marriage dispensation can be interpreted as a condition that changes the condition of an original law. For example, in Islam, there is the method of maṣlahatu al-mursālah, which is a benefit without legal legitimacy, a position
without legal legitimacy in terms of the meaning of marriage dispensation in the construction of Islamic law. So, this maṣlaḥah concept can be used as one of the evidence in formulating Islamic law from the perspective of usul al-fiqh scholars regarding the meaning of marriage dispensation (Bakti, n.d.)

The purpose of marriage according to Islam is to fulfill religious guidance to establish a harmonious, prosperous, and happy family. In Indonesia today, underage marriage is a social issue that is heated and the focus of public attention. Underage marriages involve bride and groom couples who are physically or psychologically unprepared (Puspytasari, 2021). Besides the problem of marriage registration regulated by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the issue of the minimum age limit for prospective couples who will marry is still a problem in most regions in Indonesia due to various reasons.

This phenomenon is known as underage marriage. The social phenomenon of underage marriage that occurs in various regions in Indonesia is not much different; the main cause is the sexual behavior of adolescents engaging in premarital relations often ending in underage marriage. Underage marriage ultimately brings consequences from the marriage itself, whether positive or negative. The positive impact is the establishment of a family as the purpose of marriage, while the negative impact is the ease of divorce.

As we all know, the impact of underage marriage can affect various aspects, ranging from education, health, psychological, to demographic aspects. Underage marriage is not recommended as they are considered not yet capable of managing property (rusyd). Besides, they also do not yet need marriage. They are feared to be unable to fulfill the obligations that must be borne in life as husband and wife, especially in managing household finances, while for underage girls who are already widowed (either by the death of their husband or divorce), their guardian cannot remarry them, nor can anyone else (a guardian other than the father) marry them until they reach adulthood (Bakti, n.d.).

The reality on the ground shows that underage marriage does not bring family welfare and household happiness; underage marriage often ends in divorce. Many bridal couples in the first few years of their marriage are already shaky in navigating the ship of married life because they are not yet prepared to understand the meaning and wisdom of marriage, so they are unable to achieve the ideal marriage they aspire to. Various problems arise from underage marriage because the couples are not (Mawardi, 2012).

**RESEARCH METHOD**

The research method employed in this study is qualitative research. Qualitative research method is a research procedure that yields descriptive data in the form of written or oral words from individuals or observable behaviors. Qualitative research method is often referred to as a naturalistic research method because the research is conducted in natural conditions, also known as ethnographic method, as it was initially used more in cultural anthropology research. It is called qualitative method because the collected data and its analysis are more qualitative in nature. The research is directed towards obtaining facts related to the underlying causes of underage marriages within the surrounding community in the village of Jagabita, Bogor. The application of a qualitative approach is considered due to the possibility that the data obtained in the field will be in the form of facts requiring in-depth analysis. Therefore, the qualitative approach will encourage the attainment of deeper data, especially with the researcher’s involvement in the field. In qualitative research, the researcher becomes the main instrument in collecting data that can directly relate to the research instrument or object.

The approach used in this study includes: (a) Normative approach, which involves assessing whether behavior conforms to religious norms, (b) Juridical approach, which entails approaching the researched issue based on legal regulations, Compilation of Islamic Law, and others applicable as positive law in Indonesia, where the law serves as the basis for community living, adhered to as a law-abiding state, and (c) Islamic Legal Sociology, which examines Islamic society from its customs and the application of law in daily life.

Data collection methods include observation, interview, documentation, along with the following data analysis methods (1) Data collecting, the process of gathering data, (2) Data reduction, simplifying,
reducing, tidying, arranging, and eliminating incorrect data, (3) Data display, presenting data in verbal descriptive form, and (4) Data conclusion/verification, drawing conclusions from the research results presented, both in general formulation and specific ones.

**RESULT AND DISCUSSION**

**Juridical Analysis of Marriage Dispensation Underage in Jagabita Village, Bogor According to the Compilation of Islamic Law**

Marriage, fundamentally, is a behavior of creatures created by the Almighty God, not limited to just human beings but to all of His creations, even though there are principal differences between marriage conducted by humans and other creatures. Marriage is also one of the basic needs that must be fulfilled both in human life and the lives of other creatures. For a country and nation like Indonesia, having a national marriage law is essential, which accommodates principles and provides a legal basis for marriage that has been a guideline and applicable to all segments of Indonesian society.

According to the Compilation of Islamic Law, marriage is considered as one of the acts of worship (ibadah muamalah). Articles 2 and 4 of the Compilation of Islamic Law state, “Marriage is a wedding, namely a solemn covenant or miitsaan gholiidhan to obey the laws of Allah and implementing it is an act of worship aimed at realizing a household life that is sakinah, mawadah, and rahmah”. Marriage not only legitimizes a sexual relationship but also has a universal legal aspect in the social institutional system that is very important, as there are various groups and streams within society with various interests, requiring general order in society. The command and encouragement to marry do not set an age limit for marriage, but emphasize the maturity of individuals to marry.

Regarding various problems related to marriage that occur in society, to ensure legal certainty and justice for its citizens, the state seeks to provide facilities to accommodate and resolve all of these issues. This is to prevent more widespread problems stemming from marriage issues. One of them is regarding the granting of marriage dispensation for prospective married couples who, according to national law, do not meet the requirements to get married. The marriage dispensation given is related to the age of the prospective married couples who are not yet of the minimum age according to national law to get married (Ahyani, 2016).

As seen in some communities in Jagabita Village, Bogor, underage marriages are still common and many of them are not well-informed about the laws regarding marriage dispensation. Hence, underage marriage participants resort to altering their ages so they do not have to apply for marriage dispensation under age to the Religious Court. The distance to the Religious Court is quite far for them, and the process of applying for marriage dispensation to the Religious Court is burdensome.

**Impact of Underage Marriage in Jagabita Village, Bogor**

Marriage is fundamentally important in human life and has become a basic necessity for every normal individual. Without marriage, one’s life would be incomplete and would go against their nature, as Allah has created His creatures in pairs (Bachtiar et al., 2021). Prophet Muhammad reminded us that marriage is his Sunnah. Therefore, those who enter into marriage are following the tradition of Prophet Muhammad.

The minimum age restriction for marriage under Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is intended to ensure that individuals who are about to marry have the maturity of thought, soul, and adequate physical strength to build a family. This aims to prevent marital discord leading to divorce, as the married couple should have a mature understanding of the purpose of marriage, emphasizing both physical and spiritual happiness. However, underage marriage still frequently occurs in society, despite being legally prohibited.

As outlined, individuals who marry, especially at a young age, will inevitably bring about various impacts, including legal, educational, health, psychological, and economic impacts;

a. Legal Impacts
Violations of laws such as Law Number 16 of 2019 regarding Marriage, which sets the minimum age for marriage at 19 for both men and women. Violation of Law Number 23 of 2003 concerning Child Protection, which prohibits child marriage.

b. Educational Impacts

Underage marriage often leads to the discontinuation of education, hindering the individual’s ability to pursue further education. Many underage married individuals drop out of school, impacting various aspects including child education, family planning programs, and population management.

c. Health Impacts

Women marrying under the age of 15 face numerous health risks, including reproductive health issues and cervical cancer, due to premature physical development. Such marriages may lead to pregnancy-related health complications, as seen in the case of a 25-year-old woman who married at 15 and was advised by the Religious Court to delay pregnancy for health reasons.

d. Psychological Impacts

Marrying at a young age poses psychological burdens, as managing marital life and maintaining harmony requires maturity in thinking and acting. Young brides may experience regret for missing out on their school and adolescent years, potentially leading to domestic violence and trauma.

e. Economic Impacts

Economic pressures often drive parents to marry off their children, hoping to reduce the family’s financial burden. However, underage marriage often perpetuates the cycle of poverty, as young brides, lacking education and job opportunities, remain financially dependent on their families.

To mitigate the impacts of underage marriage, Law Number 16 of 2019 emphasizes prevention measures. This includes raising awareness about the consequences of underage marriage and explaining the true essence of marriage. Government institutions and community initiatives play a crucial role in achieving these objectives through effective socialization efforts.

Regulation of Marriage Dispensation Determination According to the Marriage Law

Changes in time have rendered longstanding regulations outdated and out of touch with societal needs. Free mingling has become rampant as people seem to disregard moral values, religion, and prevailing regulations, feeling free to do as they please without considering the consequences and impacts in the future. Cases of underage marriages serve as examples of this prevalent free mingling in contemporary times.

The current marriage laws are considered obsolete as they fail to keep pace with societal developments. They should be updated to meet the changing needs of society and the nation. For instance, Article 7, paragraph 2 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is deemed inadequate as not everyone should be granted marriage dispensation; only certain parties who are truly deemed eligible and understand the issues of marriage dispensation. A juridical review of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is based on the understanding that the age of marriage is crucial in family building. However, Article 7, paragraph 1 of this Law is considered to lack legal clarity for those who are about to marry if they have not yet reached the stipulated age. Therefore, there needs to be strict sanctions against prospective spouses who have not reached the legal age without a court dispensation.

Marriage dispensation is seen as sidelining the marriage process without considering the future harmony of the family. Marriage dispensation should be based on a deep understanding of the values of Islamic marriage law, which holds universal significance. However, despite the enactment of Law Number 16 of 2019, the number of marriages has increased sharply, indicating that changes in the law alone are not enough.

With the establishment of a minimum age limit for marriage according to Law Number 16 of 2019, the Office of Religious Affairs agrees with marriage dispensation because they see that the divorce rate is increasing. Marriage dispensation is considered an effort to reduce divorce rates. However, this also indicates that setting a minimum age limit alone is not enough to address underage marriage issues.
Other efforts are also needed to change societal behavior and ensure the protection of children and adolescents. From a legal perspective, the purpose of marriage is to establish a prosperous and happy family. However, achieving this goal is not as simple as it may seem at first glance. It requires careful thought and preparation, both physically and mentally, and both are correlated with a person's age, especially for women. The changes in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, particularly in Article 7 paragraph (1), are the result of considerations involving several aspects:

a. Juridical Aspect

In Islamic teachings, age determination is dynamic because it is considered that each individual matures differently. However, the Qur'an explains that underage marriage raises concerns about having offspring who are less prosperous. Modern Islamic scholars have interpreted similarly, concluding that the risks of underage marriage may not achieve the intended goals, as stated in Article 1 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which is to establish a prosperous, happy, and eternal family. This is viewed from the perspective of mental maturity, which is considered to be still unstable. While managing a household will inevitably be accompanied by domestic issues, addressing these issues is influenced by an individual's mindset, which will not be the same between those considered mature and those who are not yet mature, often leading to divorce.

b. Sociological Aspect

The birth of a law as a solution to problems within society, while changes to a law occur due to the absence of existing laws, as laws themselves are dynamic and follow the social development of society. For example, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage was established to address the prevalent issues at the time, namely the rise of polygamy and arbitrary divorces. With the development of Indonesian society, Law Number 1 of 1974 is considered inadequate in decision-making, leading to changes such as raising the minimum age limit from 19 years for males and 16 years for females under Law Number 16 of 2019.

c. Philosophical Aspect

Laws are born to regulate social interactions for the benefit of society and to reduce harm. As they are social in nature, the formulation of laws and regulations needs to involve all aspects of society so that the laws enacted are collectively obeyed. Meanwhile, changes in the Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage are aimed at realizing the aspirations of the Indonesian nation.

Regarding marriage dispensation in legislation, it regulates the age limit for individuals allowed to marry. Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage states that if someone (who is Muslim) has not reached the minimum age set by marriage law, they may apply for marriage dispensation to the Religious Court. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage provides tolerance, as seen in Article 7 paragraph (2), where deviations from paragraph (1) of this Article can request dispensation from the Religious Court or other designated officials appointed by both the parents of the groom and the bride (Maulidizen & Sahida, 2019).

In implementing a marriage dispensation, there are procedural guidelines established by law (Muchtar et al., 2022). In this regard, the marriage dispensation mentioned in Article 7 paragraph (2) of the marriage law has its implementation regulations under Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the implementation of marriage laws. However, it does not specify the procedure for applying for marriage dispensation. Meanwhile, for Muslims, regulations are outlined in the Minister of Religious Affairs Regulation Number 3 of 1975, which states:

**Article 12**

(3) Marriage must be based on the consent of both prospective spouses.

(4) A prospective spouse who has not reached the age of 21 must obtain permission as referred to in Article 6 (2), (3), (4), and (5) of Law Number 1 of 1974.
Article 13
(5) If a prospective husband has not reached the age of 19 and the prospective wife has not reached 16 years old and wishes to marry, they must obtain dispensation from the Religious Court.
(6) Applications for marriage dispensation for those mentioned in paragraph (1) of this Article shall be submitted by both the parents of the groom and the bride to the Religious Court in their place of residence.
(7) The Religious Court, after examining in a hearing and being convinced that there are grounds to grant marriage dispensation, shall issue a decree.
(8) A copy of the decree shall be made and provided to the applicant to fulfill the requirements for marriage.

The Religious Court may grant marriage dispensation after obtaining testimony from parents, close relatives, or guardians. Testimony may include the reasons stated in the application, valid documents, and witness statements (Maulidizen & Pratiwi, 2020). After hearing the testimony and obtaining legal facts during the trial, the result of the marriage dispensation application is as follows:

a. Marriage Dispensation Application is Rejected
The marriage dispensation application is rejected because the age of one or both prospective spouses is far below the minimum age required by the prevailing laws, which are 16 years for women and 19 years for men.
b. Marriage Dispensation Application is Approved
The marriage dispensation application is approved based on the judge’s considerations from various aspects, including the applicant’s reasons, valid documentary evidence, supporting witness testimony, and legal facts presented during the trial. The judge’s decision to grant marriage dispensation must be fair and in line with judicial principles (Magfirah et al., 2020).

Based on the analysis conducted, it can be concluded that the factors underlying underage marriage are environmental factors and the lack of parental supervision. The basis for the judge to grant underage marriage dispensation is the consideration of maslāḥat mursalah (public interest), as stipulated in Article 7 paragraph (2) of Law Number 1 of 1974, which states: “In case of deviation from paragraph (1) of this Article, dispensation may be requested from the court or other officials appointed by both the parents of the groom or the bride”. Based on an interview with one of the staff members of the Office of Religious Affairs, Mr. Sukron, regarding marriage dispensation issues, as an employee of the Office of Religious Affairs, he agrees with marriage dispensation due to its impact on society. Moreover, because the divorce rate is almost as high as the marriage rate, by minimizing the divorce rate, the Office of Religious Affairs always directs individuals to the Religious Court to request marriage dispensation (Maulidizen & Raihanah, 2019).

CONCLUSION
The matter of marriage dispensation in the legal regulations sets the age limit for individuals allowed to marry. Article 7 of Law Number 1 of 1974 concerning Marriage states that if someone (who is Muslim) has not reached the minimum age specified by marriage law, they may request marriage dispensation from the Religious Court. Law Number 1 of 1974 concerning marriage provides room for tolerance, as can be seen in Article 7 paragraph (2), where in case of deviation from paragraph (1) of this article, dispensation can be requested from the Religious Court or other officials appointed by both the parents of the groom or the bride. The concept of maslāḥah mursālah, found in the principles of fiqh and used as consideration in determining marriage dispensation requests, is to avoid greater harm rather than to bring benefit. In other words, when faced with two choices between avoiding harm or mafṣadah on one side and achieving benefit or goodness (deciding on a marriage dispensation request due to being underage according to prevailing laws and being pregnant is prioritized over rejecting a marriage dispensation request due to being underage according to prevailing laws). The practice of underage marriage in the village of Jagabita, Bogor Regency, causes several impacts on the perpetrators of such marriages. The impacts of underage marriage include: (1) Impact on education: Individuals who decide to marry at a young age may lose motivation to continue their education and schooling due
to the multitude of responsibilities they have to undertake after marriage, (2) Health impact: Women who marry at a young age are likely to experience health consequences, such as reproductive health issues commonly suffered by women who marry underage, including infections and cervical cancer, (3) Psychological impact: Marrying at a young age when not mentally prepared can lead to difficulties in maintaining household harmony due to unstable emotions and immature thought processes, and (4) Economic impact: The occurrence of underage marriage often has economic implications, as parents frequently encourage marrying off their children in the hope that it will alleviate the family’s financial burden, assuming that the married daughter will automatically become the responsibility of her husband.

REFERENCES


