

MARRIAGE DISPENSATION AFTER LAW NO. 16 OF 2019: BETWEEN CHILD PROTECTION AND SOCIAL REALITY IN MONTONG GADING DISTRICT

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Abstract

This study aims to analyze the implementation of Law Number 16 of 2019 related to the marriage age limit, with a focus on the practice of marriage dispensation in Montong Gading District, East Lombok. Using a descriptive qualitative approach, data was obtained through interviews, observations, and documentation studies of KUA employees, parents, adolescents, and religious court judges. The results show that the practice of marriage dispensation is still widely used as a legal loophole to legalize child marriage, even though regulations have been tightened. The main factors driving the application for dispensation are social pressure, out-of-wedlock pregnancies, poverty, and low legal understanding. Meanwhile, the role of KUA as an administrative implementer is considered not optimal in prevention efforts, due to limited human resources and lack of collaboration with child protection institutions. The conclusion of the study emphasizes the importance of comprehensive reform, both in regulatory and implementive aspects, as well as the need for multidisciplinary involvement in every marriage dispensation process for the protection of children's rights. This research is expected to be a conceptual contribution to strengthening the role of local institutions in preventing early marriage.

Keywords: *Dispensation, Marriage, Child Protection, Family Law*



A. Introduction

Marriage is a very important social institution in human life, not only as a form of legality of the relationship between two people, but also as a manifestation of religious, social, and legal norms. In almost all social systems, both religiously and customarily, marriage is considered a crucial phase that marks the transition of the individual's status from personal life to social responsibility within the family. From a sociological perspective, marriage is not just a private affair, but also has an impact on the social, economic, and even demographic structure of a nation.¹

In the context of Indonesian law, attention to the issue of marriage, especially child marriage, has become part of the state's important agenda in protecting children's rights and creating quality future generations. The phenomenon of child marriage is not only a national problem, but also a global one. UNICEF notes that each year about 12 million girls in the world are married before the age of 18, which means that 1 in 5 girls globally experience early marriage.² This figure certainly has serious implications for education, reproductive health, and children's rights.

Indonesia as a country of law regulated in Article 1 paragraph (3) of the 1945 Constitution has an obligation to ensure that social practices in society are in accordance with the principles of justice,

¹ Koentjaraningrat, *Introduction to Anthropology* (Jakarta: Rineka Cipta, 2009), 103.

² UNICEF, "Child Marriage: Latest Trends and Future Prospects," 2021, <https://www.unicef.org/media/116661/file/Child-marriage-2021.pdf>.



humanity, and protection of vulnerable groups, including children. As a concrete step, the Indonesian government has passed Law Number 16 of 2019 as an amendment to Law Number 1 of 1974 concerning Marriage. One of the fundamental changes is the setting of the minimum age of marriage for both men and women to 19 years old, which previously differed between the two.³

This effort is driven by increasing awareness of the negative impact of child marriage, both in the physical, psychological, social, and economic dimensions. Studies have shown that girls who marry at an early age are more at risk of pregnancy complications, school dropouts, domestic violence, and limited access to decent work.⁴ Psychologically, emotionally immature children tend to have difficulty carrying out their roles as wives and mothers, because the development of their personality and social capacity is still in the search for identity.

In addition, the practice of child marriage is also closely related to the pattern of structural poverty and low legal literacy in the community. In many rural areas, child marriage is often seen as a pragmatic solution to reduce the economic burden on families or protect children from social risks such as promiscuity. In fact, the reality shows that child marriage actually increases the risk of economic marginalization and structural dependence in the long

³ Republic of Indonesia, *Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage* (Jakarta: State Secretariat, 2019).

⁴ Putri D. Astuti, "The Psychosocial Impact of Child Marriage," *Journal of Psychology and Social*, vol. 10, no. 2 (2020): 112–121.



term.⁵ This is where the importance of legal education and social advocacy lies in fostering collective awareness of the dangers of this practice.

In practice, although the age limit for marriage has been raised to 19 years, there is still a legal loophole in the form of a marriage dispensation permit mechanism that allows religious courts to grant marriage licenses to couples under that age, for certain reasons. This supposed exception marriage dispensation, in many cases, has become a path to legalize the practice of child marriage which is still firmly rooted culturally and socially. Therefore, the effectiveness of regulations is not enough only at the normative level, but must also be studied from its judicial implementation.

In the juridical context, the Religious Court has a central role in enforcing the marriage age regulation through the granting or refusal of marriage dispensation. Law Number 16 of 2019 does set an age limit of 19 years, but Article 7 paragraph (2) still provides space for parents or guardians to apply for marriage dispensation to the court if there is an "urgent reason" accompanied by convincing evidence. This provides a wide scope of interpretation for judges, while also opening up potential inconsistencies in the implementation of the law.⁶

⁵ Ahmad Mudzakkir, "Child Marriage in a Political Economy Perspective," *Journal of Socio-Religious Studies*, vol. 14, no. 1 (2022): 45–58.

⁶ Supreme Court of the Republic of Indonesia, *Guidelines for Adjudicating Marriage Dispensation Cases* (Jakarta: MA RI, 2020), 8–12.



Data shows that since the enactment of this new rule, applications for marriage dispensation have actually increased significantly in various regions. In East Lombok Regency, the Religious Court noted that in 2022 there were a number of marriage dispensation applications granted, although in principle it was contrary to the spirit of child protection. One of the fundamental problems is that the reasons given by the applicant are often not supported by sound sociological and psychological considerations for example, because of fear of family disgrace, long-term dating, or because of the family's economic pressure.

In the perspective of progressive law, as argued by Satjipto Rahardjo, the law should not be rigid on the text, but directed at the mission of substantive justice and the protection of vulnerable groups.⁷ Therefore, the decision on marriage dispensation should not only consider the formal aspect, but also consider the long-term impact on the child's life. This research is important to examine how judges at the East Lombok Religious Court interpret and consider applications for marriage dispensation in judicial practice, and the extent to which the decision represents the spirit of protection of children's rights.

This study aims to analyze the legal basis, judges' considerations, as well as the social and legal implications of the marriage dispensation decision issued by the East Lombok Religious Court. It is hoped that this research can make a conceptual

⁷ Satjipto Rahardjo, *Progressive Law* (Yogyakarta: Genta Publishing, 2009), 93.



contribution to the development of family law in Indonesia as well as normative input for improving child protection mechanisms in the religious justice system.

B. Method

This research uses a descriptive qualitative approach, with the aim of exploring and understanding in depth the meaning and reasons underlying legal and social practices related to marriage dispensation. As explained by Sugiyono, the qualitative approach is suitable for researching natural conditions, where researchers are the main instruments and data is collected through interviews, observations, and documentation.⁸

This type of research is descriptive and exploratory, because it not only reveals legal facts, but also examines social dynamics, individual interpretations, and sociocultural reasons behind the application for a marriage dispensation. Thus, the results of this study are expected to present a richer understanding, not limited to the normative aspects of the law, but also to the accompanying social and institutional implementation.

In addition, this approach also allows the use of the grounded theory method, which is an inductive process in building an understanding of social phenomena from below, as suggested by Gunawan.⁹ This approach is used to develop theoretical concepts

⁸ Sugiyono, *Qualitative, Quantitative, and R&D Research Methods* (Bandung: Alfabeta, 2015), 15.

⁹ Imam Gunawan, *Qualitative Research Methods: Theory and Practice* (Jakarta: Bumi Aksara, 2013), 64.



based on field findings, especially in looking at how the KUA, the community, and local authorities interpret the practice of marriage dispensation after the amendment of Law No. 16 of 2019.

1. Data Sources and Research Informants

In qualitative research, data sources are divided into two: primary data and secondary data.

- a. Primary data was obtained directly from informants through in-depth interview techniques. The main informants in this study are:
 1. Montong Gading District KUA Officer, who understands the procedure for applying for marriage dispensation.
 2. Religious and community leaders, who are moral references in child marriage cases.
 3. The parents of the marriage dispensation applicant, to explore sociocultural reasons and considerations.
 4. Adolescents who are subject to marriage dispensation, as subjects who are directly affected by the policy.
 5. Judge of the East Lombok Religious Court, as the decision-maker on the application for marriage dispensation.
- b. Secondary data in the form of legal documents, archives of dispensation applications, court decisions, marriage records from the KUA, as well as relevant legal books, journal articles, and media.

According to Lexy J. Moleong, the source of data in qualitative research is not limited by the quantity, but by the depth of



information obtained.¹⁰ Therefore, the selection of informants is carried out by the purposive sampling method, which is the deliberate selection of subjects based on considerations of relevance, experience, and direct involvement in the event or issue being researched.¹¹

2. Data Collection Techniques

Three main methods are used in data collection:

a. In-Depth Interviews

Interviews are conducted in a semi-structured manner so that researchers can dig into broader information, but remain within the corridor of the research focus. These interviews not only collect formal legal data, but also the perceptions, emotional reasons, and social constructs underlying the marriage dispensation application. This interview model follows the principle of triangulation of sources so that the information obtained can be compared and verified between informants.¹²

b. Observation

Observations were made on the administrative service process at KUA and the behavior of the parties involved in the application for marriage dispensation. This observation technique is passive participatory, where the researcher is present and records the

¹⁰ Lexy J. Moleong, *Qualitative Research Methodology*, Revised Edition (Bandung: Remaja Rosdakarya, 2007), 112.

¹¹ Sugiyono, *Qualitative Research Methods*, 61.

¹² Moleong, *Metodologi Penelitian Kualitatif*, 186.



dynamics that occur without being directly involved in administrative activities.¹³ The aim is to understand the social and cultural context that influences the practice of law.

c. Documentation Studies

Documentation includes the collection of legal documents such as copies of marriage dispensation decisions, application minutes, and KUA internal archives containing statistics on dispensation applications. Also includes literature references such as laws, legal journals, and textbooks.

3. Data Analysis Techniques

The collected data was analyzed using an interactive analysis model from Miles and Huberman, which includes three main components: data reduction, data presentation, and conclusion/verification.¹⁴ This technique was chosen because it provides flexibility in processing qualitative data that are narrative and thematic.

C. Results and Discussion

Montong Gading District is one of the administrative areas in East Lombok Regency consisting of eight villages and has a total population of nearly 48,000 people. This area has geographical characteristics in the form of dominant agricultural land and a social

¹³ Nana Syaodih Sukmadinata, *Educational Research Methods* (Bandung: Remaja Rosdakarya, 2008), 221.

¹⁴ Miles, Matthew B., dan A. Michael Huberman, *Qualitative Data Analysis* (London: Sage Publications, 1994), 10.



structure that is still strongly influenced by traditions and religious values. The Religious Affairs Office (KUA) of Montong Gading District, as the technical implementation unit of the Ministry of Religion, plays an important role in the management of religious affairs at the sub-district level, especially in terms of marriage registration, family development, zakat, waqf, and supervision of child marriage.

KUA Montong Gading has developed a fairly complete service system, including the implementation of digital applications such as SIMKAH (Marriage Management Information System), as well as implementing a participatory approach in community development through lectures, training, and religious forums. KUA's vision is to create a society of faith and noble character, and this is reflected in their efforts to overcome challenges such as child marriage, which is a central issue in this study.

1. Implementation of the Marriage Age Limit After Law No. 16 of 2019

Based on data from KUA Montong Gading, during 2023 there were only five cases of marriage that did not meet the age limit of 19 years. This shows that there are real efforts from institutions to reduce the rate of child marriage. However, challenges remain, especially from social factors such as poverty, low education, and the influence of technology.¹⁵

¹⁵ Data KUA Montong Gading, Laporan Statistik Perkawinan Tahun 2023.



The results of an interview with the Head of KUA, Suparlan, S.Hi., revealed that the fundamental reason behind child marriage in this region is economic pressure and out-of-wedlock pregnancies. In many cases, families choose to marry children as a strategy to avoid social disgrace, or as a way out of the domestic economic limitations. Suparlan also emphasized that the KUA has carried out an educational role through the socialization of the marriage age limit, as well as refusing marriage registration if the prospective bride and groom have not met the specified age limit, except with a dispensation permit from the Religious Court.¹⁶

Support for Law Number 16 of 2019 is also reflected in the implementation of the SIMKAH information system, which automatically rejects marriage registration if one of the prospective brides is not yet 19 years old. This mechanism not only improves administrative order, but also prevents manipulation of age data.¹⁷

2. Factors Inhibiting the Implementation of the Marriage Age Limit

Although the regulations have been updated, social realities show that the implementation of the marriage age limit in Montong Gading District still faces a number of structural and cultural obstacles. These inhibiting factors need to be examined so that intervention strategies can be designed in a more contextual way.

a. Low Legal Awareness of the Community

¹⁶ Interview with Suparlan, S.Hi., Kepala KUA Montong Gading, 20 Agustus 2024.

¹⁷ Kementerian Agama RI, *Petunjuk Teknis SIMKAH*, 2022.



Most people do not understand adequately that Law Number 16 of 2019 changes the minimum age limit for marriage. In fact, in some cases, people still refer to the old age limit (16 years for women). This low understanding is exacerbated by low levels of legal literacy and limited access to adequate information, especially in rural areas with limited communication infrastructure.¹⁸

b. Social and Cultural Reasons

One of the informants, the parents of the child who applied for the marriage dispensation, stated that "it is better for the child to be married than to be humiliated for having been dating for too long." This shows that the social norms in the region are still very conservative and view sexuality as a disgrace that must be covered by marriage, even though it is not yet at a legally or psychologically viable age. This mindset also encourages people to take advantage of legal loopholes in the form of marriage dispensations.¹⁹

c. Economic and Education Inequality

Poverty is also the dominant cause of child marriage. Families with economic limitations tend to see marriage as a way out to ease the financial burden on the household. Girls are positioned as "passable" subjects to reduce family dependents. In this context, an

¹⁸ Yuliana, "People's Legal Perception of the Age of Marriage," *Jurnal Hukum dan Sosial*, vol. 8, no. 1 (2021): 34–45.

¹⁹ Interview with the Parents of the Marriage Dispensation Applicant, 10 Agustus 2024.



educational approach alone is not enough; A comprehensive economic and social empowerment strategy is needed.²⁰

3. The Role of the Marriage Dispensation: A Gap or a Solution?

Since the enactment of Law Number 16 of 2019, the marriage dispensation mechanism has become the only legal route to marry children under the age of 19. However, in practice, marriage dispensation is often abused as a "shortcut" to legalize child marriage without considering the principle of child protection.

In interviews with the KUA and the Religious Court, it was found that most of the dispensation requests were granted without deep consideration of the psychological condition of the prospective bride. The reasons are often normative "have been in a relationship for a long time," "already pregnant," or "parental wishes" without involving a counselor, child psychologist, or assessment based on the best interest of the child.²¹ In fact, the Supreme Court through Perma No. 5 of 2019 has required judges to prioritize the principle of child protection and include psychological evidence in marriage dispensation decisions.²²

4. Evaluation of KUA's Role as a Strategic Partner in Child Protection

²⁰ Anwar M. Saleh, "Kemiskinan dan Pernikahan Dini," *Jurnal Ekonomi Sosial*, vol. 5, no. 2 (2020): 122–129.

²¹ Interview with the Judge of the East Lombok Religious Court, August 15, 2024.

²² Supreme Court of the Republic of Indonesia, *Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications* (Jakarta: MA RI, 2019), Articles 5–8.



The Office of Religious Affairs (KUA) has a unique position as a government institution that is in direct contact with the community in marriage matters. In the context of preventing child marriage, the role of KUA is not only administrative, but also educational and mediative. Based on observations and interviews in Montong Gading District, KUA has made a number of innovations, such as:

1. Socialization of marriage law through religious activities (lectures, sermons, RT/RW forums);
2. The application of SIMKAH to automatically screen the age of the bride-to-be;
3. Refusal of marriage registration without valid marriage dispensation documents from the court.

However, even though the KUA has carried out its formal functions, the preventive role of the KUA in preventing the application of dispensation is still limited. This is due to limited human resources, lack of special training on child protection, and the lack of systematic collaboration with psychologists, social workers, or Regional Child Protection Institutions (LPAD). In many cases, the KUA only acts as the executor of the procedure, not an active partner in the psychological and social evaluation process of the prospective minor bride.²³

²³ Results of Researchers' Observations in KUA Montong Gading, Juli–Agustus 2024.



In fact, according to the progressive legal approach, state actors at the grassroots level must play the role of "saviors" of society from morally deviant or socially adverse legal practices.²⁴

5. Social and Legal Implications of the Marriage Dispensation Decision

The marriage dispensation decision issued by the religious court has long-term effects both socially and legally. Legally, the marriage dispensation legalizes child marriage that previously contradicts the age provisions in the Marriage Law. However, socially, the ruling is often interpreted as legitimacy for the practice of early marriage, thus strengthening the public perception that marrying children before the age is negotiable through legal mechanisms.

Another legal implication is related to the status of child protection. With marriage, the child's legal status as a subject of protection changes: he is no longer considered as a child under the protection of the state, but as a wife or husband who has new legal responsibilities. This weakens the legal position of the child in the event of divorce, domestic violence, or neglect of other basic rights.²⁵

From a social perspective, many child marriages lead to early divorce, household economic instability, and psychological developmental disorders, especially for women. Therefore, a

²⁴ Satjipto Rahardjo, *Ilmu Hukum Progresif* (Yogyakarta: Genta Publishing, 2009), 88–90.

²⁵ Indonesian Child Protection Commission, *The Impact of Early Marriage on Children's Rights*, 2021.



systemic revision is needed in dispensation decision-making to truly consider multi-disciplinary aspects, not just administrative.

6. Discussion of Findings with Prior Literature

The findings of this study corroborate various previous studies on child marriage in Indonesia. Research conducted by Komnas Perempuan noted that the high rate of marriage dispensation cannot be separated from a strong patriarchal culture, as well as weak implementation of regulations at the local level.²⁶ This is in accordance with the findings in Montong Gading District, where the obstacle lies not in the absence of the law, but in the weak internalization of legal values among the community and implementing institutions.

Furthermore, UNICEF states that marriage dispensation should only be granted in exceptional circumstances supported by multidisciplinary assessments involving psychologists, medical personnel, and child protection experts.²⁷ However, the reality on the ground shows that court decisions are often based only on parental requests and do not touch on the overall dimension of child protection.

Moreover, from the perspective of progressive Islamic law, as explained by Jasser Auda, the protection of the maqashid shari'ah (the purpose of Islamic law) such as hifz al-nafs (safeguarding the soul), hifz al-'aql (safeguarding the intellect), and hifz al-nasl

²⁶ Komnas Perempuan, *Annual Record of Violence against Women*, 2022.

²⁷ UNICEF Indonesia, *Policy Brief: Reforming the Legal Age of Marriage*, 2020.



(safeguarding offspring) is a priority. In this context, marrying an underage child is a violation of the principles of protection of soul and reason.²⁸

7. Analysis

From all field data and interview results, it can be concluded that:

- a. KUA of Montong Gading District has tried to implement regulations on the age limit for marriage by implementing a digital system and legal socialization.
- b. Marriage dispensation remains a legal loophole that is often used by the community to circumvent the age limit rule.
- c. The marriage dispensation decision has not fully paid attention to the principle of child protection, both psychologically, socially, and juridically.
- d. Cultural, economic, and low education factors are the main drivers of child marriage practices in the region.
- e. The role of KUA is still more dominant as an administrative implementer than as an agent of social and legal transformation.

Therefore, policy interventions need to be directed not only at the regulatory level, but also at the implementation aspects, public education, and inter-agency synergy including the active

²⁸ Jasser Auda, *Maqashid Syariah as a Philosophy of Islamic Law* (Jakarta: Kencana, 2015), 74.



involvement of child psychologists, social services, and religious leaders in every dispensation request.

D. Conclusion

This study reveals the dynamics of the implementation of Law Number 16 of 2019 concerning the age limit for marriage in Montong Gading District, with a focus on the practice of marriage dispensation and the strategic role of the Office of Religious Affairs (KUA). The results show that although the age limit for marriage has been raised to 19 years for both men and women, the practice of child marriage still continues through the mechanism of marriage dispensation legalized by religious courts.

It was found that social factors such as low education, economic pressure, premarital pregnancy, and strong conservative cultural norms were the main drivers of marriage dispensation applications. In many cases, the reasons used to apply for dispensation are more normative and social than based on the best interest of the child. This shows that there is a gap between normative regulation and implementation in the field.

The Montong Gading Religious Affairs Office has tried to carry out its role by adopting the SIMKAH system which automatically rejects marriage if the age is not in accordance with regulations, as well as conducting legal education to the public. However, the preventive role of KUA is still limited due to the lack of involvement in the decision-making process for marriage dispensation. KUA



tends to be administrative implementers, not agents who are active in child protection advocacy.

Court issued marriage dispensation rulings, while legally valid, have an impact on weakening child protection status and often ignore the long-term risks that children must bear in social, psychological, and legal aspects. Thus, an ideal marriage dispensation system should involve multidisciplinary considerations, including the opinions of child psychologists, social workers, and community leaders.

This study concludes that regulatory revision is not enough if it is not accompanied by institutional practice reform and an in-depth sociocultural approach. The prevention of child marriage must be the shared responsibility of all stakeholders the courts, the KUA, families, and the wider community by making child protection a key principle in all legal and social processes.

Referensi

Auda, Jasser. *Maqashid Syariah sebagai Filosofi Hukum Islam*. Jakarta: Kencana, 2015.

Gunawan, Imam. *Metode Penelitian Kualitatif: Teori dan Praktik*. Jakarta: Bumi Aksara, 2013.

Kementerian Agama Republik Indonesia. *Petunjuk Teknis SIMKAH*. Jakarta: Direktorat Jenderal Bimas Islam, 2022.

Komisi Perlindungan Anak Indonesia. *Dampak Pernikahan Dini terhadap Hak Anak*. Jakarta: KPAI, 2021.

Komnas Perempuan. *Catatan Tahunan Kekerasan terhadap Perempuan*. Jakarta: Komnas Perempuan, 2022.



- Mahkamah Agung Republik Indonesia. Peraturan Mahkamah Agung No. 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin. Jakarta: MA RI, 2019.
- Miles, Matthew B., dan A. Michael Huberman. *Qualitative Data Analysis: An Expanded Sourcebook*. 2nd ed. Thousand Oaks, CA: Sage Publications, 1994.
- Moleong, Lexy J. *Metodologi Penelitian Kualitatif*. Edisi Revisi. Bandung: Remaja Rosdakarya, 2007.
- Rahardjo, Satjipto. *Ilmu Hukum Progresif*. Yogyakarta: Genta Publishing, 2009.
- Saleh, Anwar M. "Kemiskinan dan Pernikahan Dini." *Jurnal Ekonomi Sosial* 5, no. 2 (2020): 122–129.
- Sugiyono. *Metode Penelitian Kualitatif, Kuantitatif, dan R&D*. Bandung: Alfabeta, 2015.
- Sukmadinata, Nana Syaodih. *Metode Penelitian Pendidikan*. Bandung: Remaja Rosdakarya, 2008.
- UNICEF Indonesia. *Policy Brief: Reforming the Legal Age of Marriage*. Jakarta: UNICEF, 2020.
- Yuliana. "Persepsi Hukum Masyarakat Terhadap Usia Nikah." *Jurnal Hukum dan Sosial* 8, no. 1 (2021): 34–45.

