

Preventing Violations of Religious and Social Norms: Judicial Interpretation of 'Urgent Reasons' in Marriage Dispensation at the Wonosari Religious Court, Indonesia

Pencegahan Pelanggaran Norma Agama dan Sosial: Interpretasi Hukum Hakim terhadap 'Alasan Mendesak' pada Dispensasi Nikah di Pengadilan Agama Wonosari, Indonesia

Taufiqur Rohman*

Universitas Islam Negeri Sunan Kalijaga Yogyakarta, Indonesia
20203012066@student.uin-suka.ac.id

Muhammad Mahsus

Universitas Islam Negeri Sunan Kalijaga Yogyakarta, Indonesia
19200010129@student.uin-suka.ac.id

Muhammad Abduh

Institut Agama Islam Tasikmalaya, Indonesia
muhammadabduhh57@gmail.com

Gioia Arnone

Vrije Universiteit Brussel, Belgium
gioia.arnone@vub.be

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**Corresponding Author*

Abstract: Early marriage in Indonesia has garnered attention from international forums, urging the eradication of this practice to safeguard children's rights. Despite national regulations raising the minimum age of marriage to 19 for both males and females, this practice persists due to legal loopholes allowing marriage dispensations granted by the court. Utilizing a socio-legal approach, this article analyzes 14 verdicts from the Wonosari Religious Court in 2022. The authors find that religious judges employ juridical, theological, psychological, and sociological argumentations in approving marriage dispensations based on three reasons presented by applicants. Among these reasons, two are granted not based on 'urgent reasons' but rather on interpretations of Islamic law and prevailing social norms. In-depth interviews with four religious judges handling these cases reveal variations in interpreting 'urgent reasons' in the context of marriage dispensations. The authors argue that the interpretation of 'urgent reasons' should prioritize the best interests of the child rather than merely considering potential violations of religious and social norms. This study provides profound insights into the dynamics of legal interpretation in the marriage dispensation decision-making process.

Keywords: Urgent Reasons, Legal Argumentation, Legal Interpretation, Marriage Dispensation, Indonesia.

Abstrak: Perkawinan dini di Indonesia mendapatkan sorotan dari forum internasional, yang mendesak penghapusan praktik tersebut demi melindungi hak-hak anak. Meskipun regulasi nasional kini telah meningkatkan batas usia minimum perkawinan menjadi 19 tahun bagi laki-laki maupun perempuan, praktik tersebut tetap berlangsung disebabkan oleh celah hukum yang memungkinkan dispensasi nikah melalui pengadilan. Dengan pendekatan sosial-legal, penelitian ini menganalisis 14 putusan Pengadilan Agama Wonosari pada tahun 2022. Para penulis menemukan bahwa hakim agama menggunakan argumentasi yuridis, teologis, psikologis, dan sosiologis dalam pengesahan dispensasi nikah berdasarkan tiga alasan yang diajukan oleh pemohon. Dari seluruh alasan yang diajukan, dua di antaranya diberikan bukan berlandaskan 'alasan mendesak,' melainkan berdasar interpretasi mengenai hukum Islam dan norma sosial yang berlaku. Wawancara dengan empat hakim agama yang menangani kasus-kasus tersebut menunjukkan adanya variasi interpretasi terhadap 'alasan mendesak' dalam konteks dispensasi nikah. Para penulis berargumentasi bahwa interpretasi mengenai 'alasan mendesak' seharusnya lebih mengedepankan kepentingan anak daripada sekadar mempertimbangkan potensi pelanggaran norma agama dan sosial. Penelitian ini memberikan perspektif mendalam tentang dinamika interpretasi hukum dalam proses keputusan dispensasi nikah.

Kata Kunci: Alasan Mendesak, Argumentasi Hukum, Interpretasi Hukum, Dispensasi Nikah, Indonesia.

A. Introduction

Early marriage is identified as a form of child exploitation that has garnered serious attention from various international conventions.¹ Article 16(2) of The Elimination of Discrimination against Women (CEDAW) affirms that child marriage and engagement need to be legally prohibited. Furthermore, Article 24(3) of CEDAW urges states to abolish traditional practices harmful to child health. Meanwhile, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) emphasizes the necessity to prevent early marriage practices that could be detrimental to child health.² Although the government has adjusted to international convention recommendations by setting the marriage age

¹ Tufail Muhammad and Pragathi Tummala, 'The Progress in Child Protection 30 Years after the CRC and the Impact of ISPCAN', *Child Abuse & Neglect* 119, no. 1 (September 2021): 105–34.

² Allen Kiconco and Martin Nthakomwa, 'Marriage for the "New Woman" from the Lord's Resistance Army: Experiences of Female Ex-Abductees in Acholi Region of Uganda', *Women's Studies International Forum* 68 (May 2018): 65–74.

limit at 19 for both men and women,³ early marriage rates in Indonesia have increased.⁴

There has been much debate regarding the rise in the minimum age for marriage in Indonesia through Law No. 16 of 2019 on Amendments to Marriage Law No. 1 of 1974.⁵ Granting marriage dispensations for children by the state has, paradoxically, opened up opportunities for an increase in early marriage practices,⁶ including in Wonosari.⁷ Marriage dispensation is defined as a decree from the religious court upon the request made by the parents of prospective couples who do not meet the set marriage age requirement.⁸ In 2022, the Wonosari Religious Court judges approved as much as 84 percent of marriage dispensation applications due to out-of-wedlock pregnancies.⁹ Additionally, marriage dispensation requests were also approved based on parental concerns about the possibility of engaged children committing adultery.¹⁰ It is confirmed by 14 verdicts from the Wonosari Religious Court granting marriage dispensations for children under 19. However, the latter reason does not align with the ten principles that should guide religious judges in adjudicating marriage dispensation requests.¹¹

Previous research indicates that the marriage dispensation policy has adversely impacted high divorce rates,¹² legal abuses,¹³ and the state's failure to

³ 'Law No. 16 of 2019 on Amendments to Marriage Law No. 1 of 1974', Article 7.

⁴ Rizky Irfano Aditya and L. B. Waddington, 'The Legal Protection Against Child Marriage in Indonesia', *BESTUUR* 9, no. 2 (24 November 2021): 127.

⁵ Umi Supraptiningsih, 'Pro and Cons Contestation on the Increase of Marriage Age in Indonesia', *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 1 (30 June 2021): 232–51.

⁶ Darmawan Darmawan et al., "Marriage Dispensation and Family Resilience: A Case Study of the Bener Meriah Shariah Court, Aceh Province," *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (December 31, 2022): 433–54.

⁷ Radar Jogja, 'Marak, Pernikahan Dini di Gunungkidul', accessed 8 August 2022, <https://radarjogja.jawapos.com/gunungkidul/65758887/marak-pernikahan-dini-di-gunungkidul>.

⁸ 'Law Marriage No. 1 of 1974', Article 7.

⁹ Yvesta Ayu, "632 Anak di Jogja Terpaksa Melakukan Pernikahan Dini," *Mojok.co* (blog), June 20, 2023, <https://mojok.co/kilas/632-anak-di-jogja-terpaksa-melakukan-pernikahan-dini/>.

¹⁰ Khoiril, Young Legal Registrar at the Wonosari Religious Court, September 22, 2022.

¹¹ 'Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Dispensation of Marriage, Article 2.

¹² Darmawan et al., 'Marriage Dispensation and Family Resilience', 433–54.

¹³ Any Ismawayati and Inna Fauziatal Ngazizah, 'Criminal Acts in Completing Early Marriage Requirements: Tuku Umur Practices in Islamic Communities in Central Java, Indonesia', *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 1 (27 June 2022): 449–67.

eradicate early marriage practices in Indonesia.¹⁴ It is due to discrepancies between the substance, structure, and marital law culture within Indonesia's Muslim society.¹⁵ In response, the Indonesian Supreme Court issued Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Dispensation of Marriage. This regulation aims to provide better protection for children from early marriage practices, both substantively and procedurally.¹⁶ However, there exists variation in the understanding of religious judges in implementing the Supreme Court Regulation No. 5 of 2019.¹⁷

Some religious judges refer to Islamic legal arguments and human rights in rejecting marriage dispensation requests.¹⁸ In contrast, others lean towards theological arguments in granting them.¹⁹ In this context, theological arguments are seen as a robust basis for approving marriage dispensation requests.²⁰ Such arguments interpret 'urgent reasons' as the legitimization of early marriage practices through dispensation.²¹ Unlike previous research, this article focuses on the legal interpretations of judges concerning 'urgent reasons' in marriage dispensation cases at the Wonosari Religious Court. The author argues that legal

¹⁴ Aditya and Waddington, 'The Legal Protection Against Child Marriage in Indonesia', 126-134.

¹⁵ Anthin Lathifah, Briliyan Ernawati, and Anwar Masduki, 'Problems with the Islamic Legal System Regarding Child Marriages in Indonesia during the Covid-19 Pandemic Period', *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 2 (2 December 2022): 155-76.

¹⁶ Laras Susanti Ms, 'When Children's Rights Are at Stake, Shall Court Remain Silent? Analysis on the Implementation of Passivity of Judge Principle in Child Marriage Dispensation in Indonesia', *Indonesia Law Review* 11, no. 1 (2021): 29-44.

¹⁷ Ashabul Fadhli and Ashabul Kahfi, 'The Judge's Considerations in Refusing an Application for Marriage Dispensation in Respect of Very Urgent Reasons', *El-Hekam* 8, no. 1 (30 June 2023): 190-203.

¹⁸ M. Anwar Nawawi et al., 'Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia', *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 1 (1 September 2022): 117-34.

¹⁹ Isnawati Rais, 'Marriage Dispensation Due to Extramarital Pregnancy: The Study on the Decision by the Religious Court of South Jakarta (2010-2011)', *AHKAM: Jurnal Ilmu Syariah* 18, no. 1 (January 12, 2018): 155-76.

²⁰ See: Salma Mursyid and Nasruddin Yusuf, 'Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi', *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (31 December 2022): 975-96; Mhd Yazid, 'Conservatism of Islamic Legal Arguments in Granting Marriage Dispensation at the Indonesian Religious Courts', *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 21, no. 1 (28 April 2023): 1-14.

²¹ Lilik Andar Yuni, 'Analysis of the Emergency Reasons in the Application of Marriage Dispensation at the Tenggara Religious Court', *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (26 December 2021): 976-1002.

interpretation of ‘urgent reasons’ should be conducted judiciously to prevent potential religious and social norms violations.

Table 1
Verdict on Marriage Dispensations at the Wonosari Religious Court
in 2022

No.	Verdict Number	Male Age	Female Age	Judge's Name
1.	019/Pdt.P/2022/PA.Wno	27	17	Novriandi
2.	282/Pdt.P/2022/PA.Wno	18	20	
3.	279/Pdt.P/2022/PA.Wno	17	18	Sapari
4.	292/Pdt.P/2022/PA.Wno	17	22	
5.	293/Pdt.P/2022/PA.Wno	26	17	
6.	297/Pdt.P/2022/PA.Wno	28	18	
7.	266/Pdt.P/2022/PA.Wno	23	18	Sri Sangdatun
8.	269/Pdt.P/2022/PA.Wno	24	18	
9.	273/Pdt.P/2022/PA.Wno	20	18	
10.	274/Pdt.P/2022/PA.Wno	23	18	
11.	012/Pdt.P/2022/PA.Wno	20	16	Yudi Hardoes
12.	014/Pdt.P/2022/PA.Wno	22	18	
13.	243/Pdt.P/2022/PA.Wno	23	13	
14.	244/Pdt.P/2022/PA.Wno	21	16	

Source: Data processed by the authors.

This article adopts a socio-legal research approach with field research conducted over three months, from August to October 2022, at the Wonosari Religious Court, Bantul District, Special Region of Yogyakarta (DI Yogyakarta), Indonesia. Initially, a literature study analyzed 14 verdicts of the Wonosari Religious Court on marriage dispensations in 2022 (see Table 1).²² These 14 verdicts were chosen because they granted marriage dispensation requests not based on ‘urgent reasons.’ Additionally, Wonosari, the capital of Gunungkidul District, has the lowest Human Development Index in DI Yogyakarta, standing at 70.96.²³ The authors subsequently conducted in-depth interviews with four judges who decided on these cases in October 2022. The collected data were then qualitatively analyzed.

²² Khoiril, Young Legal Registrar at the Wonosari Religious Court, September 22, 2022.

²³ BPS Provinsi D.I. Yogyakarta, ‘Indeks Pembangunan Manusia 2020-2022’, accessed 7 August 2022, <https://yogyakarta.bps.go.id/indicator/26/316/1/-metode-baru-indeks-pembangunan-manusia.html>.

B. Minimum Age of Marriage and Marriage Dispensation in Indonesia

In Indonesia, provisions regarding the minimum age for marriage are governed by the Marriage Law No. 1 of 1974 and Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI). These regulations establish the marriage age limit as 19 years for males and 16 years for females.²⁴ However, this age limit was revised to 19 years for both genders.²⁵ Changes in the minimum marriage age for females have increased early marriage rates in certain regions.²⁶ Table 1 highlights that most marriage dispensation applicants are parents of females under 19. This revision has also sparked various supportive and opposing responses within society.²⁷

Even though the marriage age limit has been raised, the government still provides a mechanism for marriage dispensations through the religious court for those below the prescribed minimum age. Applicants, particularly their parents, must provide 'urgent reasons' supported by robust evidence in their application.²⁸ However, the lack of detailed rules concerning the procedure for submitting marriage dispensation requests has been addressed by Supreme Court Regulation No. 5 of 2019. This regulation covers administrative requirements, case examinations, and criteria that judges must consider when making decisions. During the court proceedings, judges must listen to statements from various parties, including the applicants, minor applicants, prospective couples, parents, and witnesses. Additionally, judges are mandated to guide prospective spouses regarding the risks of early marriage and assess their knowledge, psychological, and physical conditions.²⁹

Supreme Court Regulation No. 5 of 2019 reaffirms ten principles that must be taken into account in marriage dispensation applications. These principles include the best interests of the child, the right to life and child development,

²⁴ See: "Marriage Law No. 1 of 1974," Article 7; "Presidential Instruction No. 1 of 1991 on Compilation of Islamic Law," Article 15.

²⁵ 'Law No. 16 of 2019 on Amendments to Marriage Law No. 1 of 1974', Article 7.

²⁶ Aditya and Waddington, 'The Legal Protection Against Child Marriage in Indonesia,' 127.

²⁷ Umi Supraptiningsih, 'Pro and Cons Contestation on the Increase of Marriage Age in Indonesia,' 249.

²⁸ "Law No. 16 of 2019 on Amendments to Law Marriage No. 1 of 1974," Article 7.

²⁹ "Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Dispensation of Marriage," Articles 10-16.

respect for the child's opinions and human dignity, non-discrimination, the application of gender equality, equality before the law, justice, benefit, and legal certainty. However, among all these principles, only two are frequently used as the foundation for judges' considerations: the best interests of the child and the child's right to life and development. The principle of the best interests of the child needs to be prioritized due to the negative impact of early marriage on family resilience, which often results in divorce.³⁰ Nonetheless, Lanzinger found that the principle of gender equality is often employed in judges' considerations.³¹ Meanwhile, Nawawi et al. identified several decisions that rejected marriage dispensations by combining the understanding of Islamic jurisprudence and human rights to safeguard children's rights.³²

Apart from the ten principles outlined in Marriage Law No. 16 of 2019,³³ judges also frequently interpret the 'urgent reasons' when deliberating on marriage dispensations. The 'urgent reasons' serve as the basis presented by applicants, particularly parents of underage prospective spouses, before the religious court. Fadli and Kahfi discovered diversity in marriage dispensation verdicts, whether granted or denied. According to them, the variations in these verdicts reflect judges' subjective interpretations of 'urgent reasons.'³⁴ Yuni classified several categories of 'urgent reasons,' including long-term relationships, out-of-wedlock pregnancies, frequent outings, and cohabitation with a partner.³⁵

C. Reasons for Marriage Dispensation Requests: Cases Description

Based on the 14 verdicts of the Wonosari Religious Court, the author identified three reasons presented by applicants when filing for marriage dispensation. These reasons involve couples seeking early marriage who have

³⁰ Darmawan et al., 'Marriage Dispensation and Family Resilience', 433–54.

³¹ Margareth Lanzinger, "The Relativity of Kinship and Gender-Specific Logics in the Context of Marriage Dispensations in the Nineteenth-Century Alps (Diocese of Brixen)," *Genre & Histoire*, no. 21 (June 1, 2018): 3036.

³² Nawawi et al., 'Harmonization of Islam and Human Rights,' 117–34.

³³ "Law No. 16 of 2019 on Amendments to Law Marriage No. 1 of 1974," Article 7.

³⁴ Fadhli and Kahfi, 'The Judge's Considerations in Refusing an Application for Marriage Dispensation in Respect of Very Urgent Reasons,' 190–203.

³⁵ Yuni, 'Analysis of the Emergency Reasons in the Application of Marriage Dispensation at the Tenggara Religious Court,' 976–1002.

engaged in premarital sexual relations, have been engaged for a prolonged period, and have been in romantic relationships for a significant duration. The first reason is present in a verdict issued by the religious court judge Yudi Hardoes. In contrast, the second and third reasons appear in multiple verdicts by Novriandi, Sapari, Sri Sangdatun, and Hardoes. Of these three reasons, only the first reason is acknowledged as an 'urgent reason' in line with the provisions of Marriage Law No. 16 of 2019.³⁶

The first reason pertains to couples who have engaged in premarital sexual relations. Two cases support this reason. The first case involves a 23-year-old male and a 13-year-old female,³⁷ while the second case involves a 21-year-old male and a 16-year-old female.³⁸ The parents of the female filed for marriage dispensation at the Wonosari Religious Court due to concerns over their child's prior sexual activity. The court proceedings led to the intending couples admitting their premarital sexual relations before the religious judges.³⁹

The second reason is that intending couples who seek early marriage have been engaged for a considerable period. This reason is documented in four cases involving couples with varying age ranges, such as a 22-year-old male with an 18-year-old female,⁴⁰ a 23-year-old male with an 18-year-old female,⁴¹ a 20-year-old male with an 18-year-old female,⁴² a 23-year-old male with an 18-year-old female,⁴³ a 17-year-old male with an 18-year-old female,⁴⁴ an 18-year-old male with a 20-year-old female,⁴⁵ a 17-year-old male with a 22-year-old female,⁴⁶ and a 26-year-old male with a 17-year-old female.⁴⁷ The majority of the parents of these couples cited this reason, stating that they faced difficulties in controlling and supervising

³⁶ "Law No. 16 of 2019 on Amendments to Law Marriage No. 1 of 1974," Article 7.

³⁷ "Wonosari Religious Court Verdict No. 243/Pdt.P/2022/PA.Wno."

³⁸ "Wonosari Religious Court Verdict No. 244/Pdt.P/2022/PA.Wno."

³⁹ Yudi Hardoes, Judge of the Wonosari Religious Court, October 25, 2022.

⁴⁰ "Wonosari Religious Court Verdict No. 014/Pdt.P/2022/PA.Wno."

⁴¹ "Wonosari Religious Court Verdict No. 266/Pdt.P/2022/PA.Wno."

⁴² "Wonosari Religious Court Verdict No. 273/Pdt.P/2022/PA.Wno."

⁴³ "Wonosari Religious Court Verdict No. 274/Pdt.P/2022/PA.Wno."

⁴⁴ "Wonosari Religious Court Verdict No. 279/Pdt.P/2022/PA.Wno."

⁴⁵ "Wonosari Religious Court Verdict No. 282/Pdt.P/2022/PA.Wno."

⁴⁶ "Wonosari Religious Court Verdict No. 292/Pdt.P/2022/PA.Wno."

⁴⁷ "Wonosari Religious Court Verdict No. 293/Pdt.P/2022/PA.Wno."

their children's interactions. In one case, the engaged couple had even lived together in the same household.⁴⁸

The third reason is that intending couples who seek early marriage have been in romantic relationships for a substantial period. Four cases support this reason, including cases involving a 20-year-old male with a 16-year-old female,⁴⁹ a 27-year-old male with a 17-year-old female,⁵⁰ a 24-year-old male with an 18-year-old female,⁵¹ and a 28-year-old male with an 18-year-old female.⁵² Using this reason, the parents of the females in these cases applied for marriage dispensation at the Wonosari Religious Court.

Among these three reasons, only the first reason is considered an 'urgent reason' under Marriage Law No. 16 of 2019.⁵³ This verdict is based on the fact that couples engaged in premarital sexual relations have violated religious norms, bolstered by the testimonies of parents citing limitations in their ability to supervise and control their children's behavior. Therefore, marriage is the best course of action for the children to prevent premarital sexual activity and establish a legitimate marital relationship. Moreover, the first reason aligns with several principles outlined in Supreme Court Regulation No. 5 of 2019.

On the other hand, the second and third reasons do not entirely ensure the best interests of the children seeking early marriage. Furthermore, the reasons that couples have been in romantic relationships or engaged for an extended period do not qualify as 'urgent reasons,' as they do not fulfill the necessary marriage age criteria regarding psychological, educational, economic, and reproductive health factors. Nevertheless, religious judges have differing perspectives in interpreting these 'urgent reasons.' Some judges argue that these reasons can still be considered 'urgent,' considering the potential risks of premarital sexual activity if their marriage dispensation requests are denied. This finding supports Yuni's research,

⁴⁸ "Wonosari Religious Court Verdict No. 273/Pdt.P/2022/PA.Wno."

⁴⁹ "Wonosari Religious Court Verdict No. 012/Pdt.P/2022/PA.Wno."

⁵⁰ "Wonosari Religious Court Verdict No. 019/Pdt.P/2022/PA.Wno."

⁵¹ "Wonosari Religious Court Verdict No. 269/Pdt.P/2022/PA.Wno."

⁵² "Wonosari Religious Court Verdict No. 297/Pdt.P/2022/PA.Wno."

⁵³ "Law No. 16 of 2019 on Amendments to Law Marriage No. 1 of 1974," Article 7.

which states that the duration of courtship, engagement, frequent dating, and cohabitation are considered 'urgent reasons' by some judges.⁵⁴

D. Legal Argumentations of Judges: Juridical, Theological, Psychological, and Sociological

In the decision-making process for marriage dispensation requests, judges are not only obligated to refer to applicable legal provisions. Still, they are also required to understand the values prevalent in society.⁵⁵ In analyzing the 14 verdicts of the Wonosari Religious Court presented in this article, judges not only use juridical arguments but also delve into theological, psychological, and sociological arguments.

Firstly, juridical arguments. There are seven juridical arguments employed by judges in these verdicts: Article 7 (2 and 3) of Law No. 16 of 2019 on Amendments to Marriage Law No. 1 of 1974, Articles 8-11 of Marriage Law No. 1 of 1974, Articles 39-44 of KHI, Article 1888 of the Civil Code (KUHPer), Stamp Duty Law No. 10 of 2020, *Herzien Inlandsch Reglement* (HIR), and Supreme Court Regulation No. 5 of 2019. The first regulation governs the legality of marriage dispensation for couples below the minimum marriage age.⁵⁶ The second and third regulations assess whether early married couples are ready for marriage and ensure no hindrances to the marriage. Judges use the fourth and fifth regulations to evaluate evidence presented by applicants that must meet formal requirements as authentic evidence. The sixth regulation evaluates whether witnesses meet formal requirements as evidence. The last regulation outlines administrative requirements, case examination, and verdict determination.⁵⁷ Judges frequently use this final argument to grant marriage dispensation requests for couples seeking early marriage.

In addition to those above seven juridical arguments, in the Wonosari Religious Court Verdict No. 243.Pdt.P.2022.Wno, judges also employ additional

⁵⁴ Yuni, 'Analysis of the Emergency Reasons in the Application of Marriage Dispensation at the Tenggara Religious Court,' 976–1002.

⁵⁵ 'Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Dispensation of Marriage, Article 16.

⁵⁶ "Law No. 16 of 2019 on Amendments to Law Marriage No. 1 of 1974," Article 7.

⁵⁷ 'Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Dispensation of Marriage, Articles 2-17.

juridical arguments. They refer to Article 26-point c of Law No. 23 of 2002 on Child Protection and Article 2 (2) of Regent Regulation No. 36 of 2015. These two regulations emphasize the importance of preventing early marriages, especially when intending married couples are aged 13.⁵⁸

Secondly, theological arguments. Judges use the Islamic legal maxim that guides the selection between two harms (*mafsadah*), where the more significant harm is to be avoided. This principle states: *idhā ta'ārada maḥṣadaṭānī rū'īya a'ẓamuhumā ḍararan bi-rtikābi akhaffihimā*. Religious judges identify two potential *mafsadahs* in cases of marriage dispensation for early marriage. The first *mafsadah* is related to the minimum age requirement, aiming to avoid the risks of psychological harm, limited education, reproductive health issues, and immature economic stability in intending early married couples. The second *mafsadah* is the potential occurrence of adultery, extramarital pregnancies, and increased secret marriages (*nikah sirri*) that could negatively impact societal structure. Among these two potential *mafsadahs*, judges are more inclined to avoid the harm associated with potential adultery, leading to the approval of marriage dispensation requests for early intending couples. Considering these potential harms does not contradict prevailing legal regulations.⁵⁹ This approach also aims to protect human rights, particularly children's rights.⁶⁰

Thirdly, psychological arguments. Judges consider counseling results conducted by counselors as a factor in their decisions. These counseling results form the basis for judges to assess the psychological readiness of intending early married couples. In Counseling No. 463/30/caten.2021, judges concluded that the intending couple was not psychologically and socially prepared for early marriage.⁶¹ This assessment is based on the conclusion that underage intending couples lack understanding about married life and are not psychologically prepared for marital commitment. This potential instability in the marital relationship could eventually

⁵⁸ "Wonosari Religious Court Verdict No. 243/Pdt.P/2022/PA.Wno."

⁵⁹ Rais, "Marriage Dispensation Due to Extramarital Pregnancy," 155–76.

⁶⁰ Nawawi et al., 'Harmonization of Islam and Human Rights,' 117–34.

⁶¹ "Wonosari Religious Court Verdict No. 012/Pdt.P/2022/PA.Wno."

lead to divorce.⁶² Judges also consider the physical condition, health, social environment, and knowledge about the married life of the intended couples.

Fourthly, sociological arguments. These arguments arise in all verdicts considering early marriage's negative impacts. Surprisingly, judges tend to overlook these negative impacts and assume that denying marriage dispensation requests could create new social problems or disrupt existing social order. This assumption indicates that sociological arguments also play a role in their decisions. According to Adila, these sociological arguments aim to fulfill the rights of society.⁶³

Based on these four legal arguments, it is evident that juridical arguments serve as the primary foundation for judges in approving marriage dispensation cases. Meanwhile, other legal arguments are used as supplementary or supporting factors. Interestingly, these additional arguments play a significant role in decision-making related to marriage dispensation. This perspective aligns with the opinion of Yazid, who states that judges cannot grant marriage dispensation requests without additional arguments such as Quranic verses, hadiths, Islamic legal maxims, and societal conditions.⁶⁴ It is also reinforced by Article 16 of Supreme Court Regulation No. 5 of 2019, which mandates judges to consider the psychological, social, cultural, educational, health, and economic conditions of the children and parents involved.⁶⁵

E. Judges' Legal Interpretation of 'Urgent Reasons': Prevention of Religious and Social Norm Violations

Law No. 16 of 2019 on Amendments to Marriage Law No. 1 of 1974 requires parents who seek marriage dispensation for their underage children to provide an 'urgent reason.' This law defines 'urgent reason' as a circumstance with no other option, and marriage is deemed highly necessary. The assessment of whether a reason qualifies as urgent lies within religious judges' jurisdiction as legal system

⁶² Darmawan et al., 'Marriage Dispensation and Family Resilience', 433–54.

⁶³ Arina Hukmu Adila, "Sociological Aspects of Judges in Granting Applications for Marriage Dispensation (Study of Determination Number: 0038/Pdt.P/2014/PA.Pt)," *Walisongo Law Review (Walrev)* 2, no. 2 (December 20, 2020): 159–68.

⁶⁴ Yazid, 'Conservatism of Islamic Legal Arguments in Granting Marriage Dispensation at the Indonesian Religious Courts,' 1–14.

⁶⁵ 'Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Dispensation of Marriage, Article 16.

actors. The verdict to grant or reject a marriage dispensation request depends on the subjective interpretation of judges. In the analysis of the 14 verdicts conducted, it is evident that religious judges have interpreted this 'urgent reason' to allow marriage dispensations.⁶⁶

As previously explained, three reasons form the basis of marriage dispensation requests by parents: intending young couples who plan for early marriage have engaged in adultery, engagement, and long-term romantic relationships. In this context, the 'urgent reasons' are found in the first reason, where the intending couples have engaged in intimate relationships akin to married couples. In this context, if marriage dispensation is not granted, adultery has a significant potential to continue. This viewpoint is emphasized by three religious judges who state that there is no alternative for the intending couples but to marry.⁶⁷ By rejecting marriage dispensation, they are likely to commit adultery again, and their parents will no longer be able to supervise their behavior.⁶⁸ Religious judges interpret the 'urgent reasons' to avoid the potential recurrence of adultery. In other words, judges' interpretation aims to prevent violations of religious norms prohibiting adultery.

On the other hand, the second and third reasons do not fall under the category of 'urgent reasons.' Although the intending couples have been engaged and in romantic relationships for a long time, there is no obligation for judges to grant marriage dispensation requests from their parents. However, the potential for *mafsadah* arising from these two reasons would violate the prevailing religious norms within the society. Religious judges consider the social and cultural context of Gunungkidul Regency, where engaged couples are considered free to date, spend time together, and engage in sexual activity.⁶⁹ Judges also consider parents' concerns regarding their children's behavior violating religious norms and negatively affecting the social structure of Gunungkidul society. Intending couples engaged in long-term romantic relationships could lead to negative societal impacts

⁶⁶ "Law No. 16 of 2019 on Amendments to Law Marriage No. 1 of 1974," Article 7.

⁶⁷ Yudi Hardoes, Judge of the Wonosari Religious Court, October 25, 2022; Muhammad Novriandi, Judge of the Wonosari Religious Court, October 21, 2022.

⁶⁸ Sapari, Judge of the Wonosari Religious Court, October 27, 2022.

⁶⁹ Sri Sangdatun, Judge of the Wonosari Religious Court, October 27, 2022.

if the situation continues without being resolved through marriage.⁷⁰ Therefore, the religious judge's interpretation of the 'urgent reasons' aims to prevent religious and social norms violations. This finding supports Yuni's research that classifies long-term romantic relationships, frequent dating, and cohabitation as 'urgent reasons' in marriage dispensation requests.⁷¹

While the second and third reasons are not categorically 'urgent reasons', religious judges' verdicts granting marriage dispensation hold legal certainty value. This value is acknowledged in Constitutional Court Verdict No. 30-74/PUU-XII/2014, which granted marriage dispensation requests for couples seeking early marriage. Religious judges also use this verdict as a precedent as a legal argument foundation in deciding to grant marriage dispensation requests. Rejecting these requests could potentially lead to more significant *mafsada*hs,⁷² namely religious and social norms violations.

Furthermore, religious judges' decisions to grant marriage dispensation requests are also based on the principle of the best interests of the child.⁷³ This principle lacks standardized indicators as its determination depends on specific cases and subjective interpretation by judges. In this context, religious judges interpret this principle to protect the behavior of intending couples from violating religious and social norms. Considering that the couples have engaged in intimate relationships resembling those of married couples and the social-cultural conditions of Gunungkidul society that accept such behavior, religious judges decide to grant marriage dispensation requests. This verdict is made to achieve the best interests of the child and prevent potentially more significant *mafsadah*. However, ultimately, granting marriage dispensation requests becomes one of the obstacles in the government's efforts to eliminate child marriage practices in Indonesia.⁷⁴

⁷⁰ Hardoes, Judge of the Wonosari Religious Court.

⁷¹ Yuni, 'Analysis of the Emergency Reasons in the Application of Marriage Dispensation at the Tenggarong Religious Court,' 976–1002.

⁷² "Indonesian Constitutional Court Verdict No. 30-74/PUU-XII/2014."

⁷³ 'Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Dispensation of Marriage, Article 2.

⁷⁴ Mies Grijns and Hoko Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society* 5, no. 2 (November 2018): 453–66.

F. Conclusion

The regulations concerning the minimum age for marriage in Indonesia have changed, impacting the practice of child marriage. Marriage dispensation as an exception mechanism to the age limit is granted through religious court proceedings, supported by various legal arguments encompassing juridical, theological, psychological, and sociological aspects. Three main reasons are presented in marriage dispensation requests, with only the first being recognized as an 'urgent reason.' Judges' interpretation of the 'urgent reasons' tends to focus on preventing violations of religious and social norms, thus allowing marriage dispensation in specific cases. However, the variation in judges' verdicts demonstrates subjectivity in decision-making. Consequently, efforts to combat child marriage in Indonesia continue to face challenges in the complex legal interpretation and the social consequences of early marriage practices.

This research holds theoretical implications by providing deeper insights into the dynamics of legal interpretation in the marriage dispensation decision-making process in Indonesia. These findings underscore the complexity of juridical, theological, psychological, and sociological considerations that interact within marriage law. From a practical standpoint, the results of this research can assist policymakers and judicial institutions in making more balanced decisions that align with the best interests of the child. However, this research has limitations due to its restricted focus on 14 verdicts from the Wonosari Religious Court, necessitating cautious generalization of the findings. Furthermore, despite addressing various aspects of consideration, this research does not involve the perspectives and direct experiences of marriage dispensation requestors. Therefore, further research could involve their viewpoints to deepen the understanding of the dynamics of the marriage dispensation process in Indonesia.

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