



CHILD MARRIAGE DISPENSATION FROM THE PERSPECTIVE OF CHILD PROTECTION

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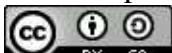
Abstract

Child marriage dispensation in Indonesia is regulated under Law No. 16 of 2019 and can only be granted under urgent circumstances. Social phenomena, such as premarital pregnancy and cultural pressures, create a dilemma between legal compliance and the protection of children's rights. This study aims to analyze the judicial practice of child marriage dispensation at the Surabaya Religious Court through case studies of Decision No. 5/Pdt.P/2025/PA.Sby and No. 2194/Pdt.P/2024/PA.Sby. The research employs a qualitative descriptive approach, analyzing court documents, limited interviews with relevant parties, and reviewing literature on law and child protection. The findings reveal differences in judges' considerations. In case 5/Pdt.P/2025, the dispensation was granted due to the child's pregnancy, with primary considerations on protecting the child and the unborn, reducing social stigma, and ensuring the continuation of the child's education. Conversely, case 2194/Pdt.P/2024 focused on social and cultural family reasons without urgent biological conditions, resulting in limited attention to the child's educational and psychological needs. Both cases highlight the lack of professional psychological assessment, minimal involvement of child protection agencies, and variation in interpreting "urgent reasons." The study emphasizes the need for clearer operational guidelines, transparent documentation of judicial reasoning, and a multidisciplinary approach to consistently uphold the best interests of the child principle. These findings can inform national policy reform, strengthen post-decision monitoring, and enhance public awareness regarding child marriage dispensation.

Keywords: child marriage dispensation, best interests of the child, Religious Court, child protection

Abstrak

Pemberian dispensasi perkawinan anak di Indonesia diatur dalam Undang-Undang Nomor 16 Tahun 2019 dan hanya dapat diberikan jika terdapat alasan mendesak. Fenomena sosial, seperti kehamilan pranikah dan tekanan budaya, memunculkan dilema antara kepatuhan hukum dan perlindungan hak anak. Penelitian ini bertujuan menganalisis praktik yudisial dispensasi perkawinan anak di Pengadilan Agama Surabaya melalui studi kasus Putusan Nomor 5/Pdt.P/2025/PA.Sby dan Nomor 2194/Pdt.P/2024/PA.Sby. Metode penelitian menggunakan pendekatan kualitatif deskriptif dengan analisis dokumen putusan pengadilan, wawancara terbatas dengan pihak terkait, dan tinjauan literatur hukum serta perlindungan anak. Hasil penelitian menunjukkan adanya perbedaan fokus pertimbangan hakim. Dalam kasus 5/Pdt.P/2025, dispensasi diberikan karena kehamilan anak, dengan pertimbangan utama perlindungan anak dan calon bayi, pengurangan stigma sosial, serta upaya menjaga



pendidikan anak. Sebaliknya, kasus 2194/Pdt.P/2024 menekankan alasan sosial dan budaya keluarga tanpa adanya kondisi biologis mendesak, sehingga perhatian terhadap hak pendidikan dan psikologis anak lebih terbatas. Kedua kasus menyoroti keterbatasan pemeriksaan psikologis profesional, minimnya keterlibatan lembaga perlindungan anak, dan variasi interpretasi “alasan mendesak”. Studi ini menekankan perlunya pedoman operasional yang lebih rinci, dokumentasi pertimbangan hakim yang transparan, serta pendekatan multidisipliner untuk memastikan prinsip *best interests of the child* diterapkan secara konsisten. Temuan ini dapat menjadi dasar reformasi kebijakan nasional, penguatan pengawasan pasca-putusan, dan edukasi masyarakat mengenai dispensasi perkawinan anak.

Kata kunci: dispensasi perkawinan anak, *best interests of the child*, Pengadilan Agama, perlindungan anak

I. INTRODUCTION

Marriage is a social institution that unites two individuals, a man and a woman, physically and spiritually, with the hope of forming a happy, eternal family based on the One Almighty God (Wahyuni, 2023). In the context of Indonesian society, the meaning of marriage is not merely personal or domestic, but also holds a key position as the foundation of social order and the continuity of the nation's generations (Darmawan, 2022). The state recognizes marriage as a legal event that gives rise to rights and obligations for husband, wife, and children born of the union. Therefore, regulations related to marriage are strictly formulated to protect legal certainty, religious values, and the interests of the wider community (Fauzan, 2021).

Practically, marriage requires physical, mental, and economic readiness from the prospective bride and groom. Unpreparedness in one or more of these elements often triggers various social problems, such as domestic violence, early divorce, or a poor quality of family life (Safa'at, 2020). Therefore, the state implements regulations to ensure that marriages occur at the right time and are based on adequate consent and preparation (Astuti, 2022).

The main regulation in Indonesia regarding marriage is Law Number 1 of 1974 concerning Marriage, which affirms the principle of monogamy, equal rights and obligations of husband and wife, and the obligation to officially register marriages. However, the minimum age norms in Law Number 1 of 1974 concerning Marriage, namely 16 for women and 19 for men, have drawn criticism as they are deemed inconsistent with the principles of child protection and the psychosocial maturity of prospective brides and grooms (Yulianti & Fitria, 2020). This difference in minimum age between men and women violates the principle of non-discrimination. In response, the state amended the regulations through Law Number

16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which stipulates that both men and women can marry upon reaching the age of 19. This marks the achievement of gender equality in the marriage age provisions. Law No. 16/2019 is expected to reduce child marriage and strengthen the protection of the rights to education, health, and physical and mental maturity of prospective brides and grooms.

With this change, Article 7 paragraph (1) of Law No. 16/2019 states that marriage is only permitted if the man and woman have reached the age of 19. Furthermore, Article 7 paragraph (2) opens a marriage dispensation mechanism: in the event of a deviation from the minimum age requirement, parents can submit a request to the court for urgent reasons, accompanied by supporting evidence. The implementation of this mechanism through judicial instruments for Muslims through the Religious Courts, and for adherents of other religions through the District Courts represents a formal state effort to regulate exceptions in a controlled and selective manner (Huda, 2021). The implementing regulation, Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications ("Perma 5/2019"), emphasizes that judges must listen to the opinions of prospective brides and grooms, consider psychological and health aspects, and seek recommendations from relevant institutions before granting the request.

However, the reality on the ground shows that changes in legal norms alone do not automatically change people's mindsets and social practices. Data from the Central Statistics Agency (BPS) in 2024 showed that the percentage of women aged 20–24 who married or cohabited before the age of 18 remained at 5.90% (BPS, 2024). Factors that trigger child marriage include family economic conditions, premarital pregnancy, cultural norms, low reproductive literacy, and social pressure to marry as a quick fix (Nurlaelawati, 2021).

In the context of a large city like Surabaya, this phenomenon remains a serious problem. Although Surabaya is known as an urban city with relatively advanced access to education and social services, data from the Surabaya Religious Court shows an increase in applications for marriage dispensations in recent years. Several triggering factors include premarital pregnancies, cultural pressure to marry quickly to "preserve the family's good name," and low levels of reproductive health literacy and sex education for adolescents. Cultural norms in some conservative suburbs of Surabaya often encourage parents to marry off their children when a pregnancy occurs outside of marriage or when the family faces

economic difficulties. This situation demonstrates that legal regulations, while strengthened, are insufficient without a comprehensive socio-cultural approach. (Yulianti & Fitria, 2020)

Furthermore, evaluations indicate that the implementation of Law No. 16/2019 and Perma 5/2019 has not been fully effective. Several studies indicate that after the enactment of Law No. 16/2019, there has actually been an increase in applications for marriage dispensations, indicating that the exception mechanism is still widely used, raising concerns that the minimum age requirement has become merely a formality. On the other hand, the implementation of socialization and supervision at the village or sub-district level remains weak, so new norms have not yet fully penetrated the public mindset. Therefore, strengthening understanding, supervision, and changing social paradigms are crucial to realizing the objectives of the law.

Furthermore, from a child protection perspective, the concept of "best interests of the child" serves as a universal guideline and a crucial foundation for all policies concerning children. The state, local governments, and society have a collective obligation to fulfill children's basic rights, including the right to life, growth, development, education, and freedom from violence and discrimination, as mandated by Law No. 17/2016 and the ratification of the Convention on the Rights of the Child (CRC). In the context of marriage dispensations, courts are required to consider the long-term impacts on the child's education, reproductive health, and well-being before permitting child marriage. Otherwise, the dispensation article could serve as a loophole that harms children and implements policies that contradict the mandate of child protection.

Empirical evidence shows that the practice of child marriage negatively impacts various aspects: the reproductive health of young mothers and babies, limited access to education, and limited long-term economic opportunities. Therefore, changing legal norms through Law No. 16/2019 is a crucial instrument for reducing the number of child marriages. However, without consistent implementation, synergy between institutions, and a shift in societal paradigms, law alone is insufficient. In the long term, this policy is expected to support improving the quality of human resources and reducing poverty through preventing child marriage. The regulation of the minimum marriage age of 19 is expected to align with the physical and mental maturity of prospective brides and grooms and support their ability to build a more optimal household (Fadilah, 2021).

Thus, the practice of granting child marriage dispensations in Indonesia, particularly as reflected in various court decisions, still leaves serious issues at odds with social interests, cultural norms, and child protection principles. The mechanism of Article 7 paragraphs (1) and (2) of Law No. 16/2019, although designed as a controlled exception, is often interpreted broadly, potentially ignoring the mandate of Law No. 17/2016, which prioritizes the best interests of children.

Based on the explanation above, this study aims to analyze the legal provisions and mechanisms for granting child marriage dispensations for children under 18 years of age in Indonesia, while also examining the alignment of the practice of granting child marriage dispensations with child protection principles, particularly the best interests of children, as reflected in the decision of the Surabaya Religious Court.

II. THEORITICAL STUDIES

In the context of Indonesian law, marriage is defined as a bond between a man and a woman aimed at establishing a happy and eternal family based on the One Almighty God, as stipulated in Law Number 16 of 2019. Experts such as Nurdin, Arifin, and Putri agree that marriage serves not only as a physical and spiritual relationship between two individuals, but also as a social and cultural institution that serves as the foundation for family formation and the sustainability of society. Thus, marriage has interconnected moral, spiritual, and social dimensions, making it a crucial instrument in maintaining family harmony and well-being.

Marriage dispensation, as stipulated in Article 7 paragraph (2) of Law Number 16 of 2019, is a special permit granted by the court to prospective brides and grooms who have not reached the minimum age of 19. Experts such as Saputra, Latifah, and Mustika view dispensation as an exception to general provisions aimed at balancing the social needs of society with the normative provisions of marriage law. However, this policy is also considered to have serious consequences because it has the potential to open up opportunities for child marriage, which negatively impacts children's education, psychological well-being, and reproductive health. Therefore, the implementation of marriage dispensations requires multidimensional considerations to remain in line with child protection principles.

The definition of a child, according to Law Number 35 of 2014, is every individual under the age of 18, including unborn children. Experts such as Nurhalimah, Suharti, and Rahayu emphasize that children are the nation's future generation, still in the growth and

development stage, making them highly vulnerable to rights violations and exploitation. Children need protection, affection, and guidance from their families and communities to develop optimally. Therefore, children are not merely passive legal subjects but individuals with basic rights that must be guaranteed by the state.

Child protection is a fundamental concept that affirms the obligations of the state, families, and communities to ensure the fulfillment of children's rights and protect them from all forms of violence, discrimination, and neglect. According to Hidayat, Lestari, and Wahyuni, child protection encompasses aspects of education, health, care, and prevention of exploitation, carried out continuously. The primary goal is to create a safe and supportive environment for children's physical, mental, and social development. Therefore, legal policies concerning children, including the granting of marriage dispensations, must always prioritize the principle of the child's best interests as the primary basis for every legal decision.

III. RESEARCH METHODS

This research uses normative legal methods, focusing on the analysis of positive legal regulations related to child marriage dispensations and child protection principles (Marzuki, 2017). A historical approach is used to trace the evolution of marriage and child protection regulations in Indonesia, from Law No. 1 of 1974 to Law No. 16 of 2019, as well as the second revision of Child Protection Law No. 17 of 2016, including its impact on the practice of marriage dispensations in Surabaya District Court Decision No. 5/Pdt.P/2025/PA.Sby.

Legal sources consist of primary materials (statutory regulations and court decisions), secondary materials (legal literature, expert opinions, journals, and media), and tertiary materials (legal dictionaries and encyclopedias). Data collection was conducted through library research, while analysis employed a qualitative approach using systematic, historical, and teleological interpretation methods to assess the conformity of legal provisions on marriage dispensations with child protection principles (Marzuki, 2017).

IV. RESEARCH RESULTS

A. Legal Provisions and Mechanisms for Granting Marriage Dispensations for Children Under 18 in Indonesia

Marriage in Indonesia is regulated by Law No. 1 of 1974 concerning Marriage, which was amended by Law No. 16 of 2019. This amendment raised the minimum age for marriage to 19 for both men and women, in an effort to reduce the practice of child marriage and

emphasize child protection and gender equality. Constitutional Court Decision No. 22/PUU-XV/2017 confirmed that the previous difference in age limits (16 for women and 19 for men) contradicted the principles of child protection. This legal adjustment also aligns with the principle of the best interest of the child as stipulated in the Convention on the Rights of the Child.

Article 7 paragraph (1) of Law No. 16/2019 sets the minimum age for marriage at 19, while paragraph (2) opens the way for marriage dispensations through the courts or designated officials. Dispensations are extraordinary in nature, granted only in urgent circumstances for objective reasons. This mechanism aims to protect children from early marriage without careful consideration. Supreme Court Regulation (Perma) Number 5 of 2019 serves as a technical guideline for judges in assessing dispensation requests, emphasizing the child's best interests and considering psychological, health, educational, and social aspects. Judges are required to hear statements from the child, parents, and related parties before making a decision.

Dispensation requests can be submitted by parents or guardians of prospective brides and grooms under 19 years of age to the Religious Court (for Muslims) or the District Court (for non-Muslims). Supporting documents such as a Family Card, Birth Certificate, and village certificate are required. During the hearing, the judge assesses the merits of the request from a substantive, psychological, and social perspective. The request can be rejected if the grounds do not meet child protection principles, such as the risk of pregnancy, social pressure, and impact on education. The court is also required to conduct mediation to find alternatives to early marriage.

The dispensation mechanism is closely related to Law No. 35/2014 concerning Child Protection and Law No. 17/2016, which emphasizes the protection of children from violence and exploitation. Every child has the right to grow and develop optimally without social or economic pressure, therefore, child marriage without adequate protection is considered a violation of children's rights. This legal-protective approach positions the court as the last line of defense in preventing marriages that are detrimental to a child's future (Astuti, 2022).

In addition to normative aspects, the dispensation mechanism considers socio-psychological aspects. Many requests are filed due to out-of-wedlock pregnancies, social pressure, or parents' unpreparedness to face societal stigma. Judges assess the child's

psychological readiness and reject dispensation if the child is not mentally ready. This approach aligns with the principles of restorative justice, emphasizing child recovery and protection. The involvement of third parties, such as the Child Protection and Child Protection Agency (DP3A) and psychologists, provides recommendations, strengthens the objectivity of decisions, and minimizes bias (Wahyuni, 2023).

Courts are required to include clear judicial reasoning in every decision. Judges explain the normative basis, the facts of the trial, the urgency of the situation, the child's readiness, and the risks of early marriage. This ensures that dispensation is not merely an administrative procedure, but a judicial instrument to ensure substantive justice. Current legal mechanisms focus on the best interests of children and the prevention of early marriage as a form of human rights protection (Yulianti & Fitria, 2020).

In practice, dispensation often creates a dilemma between legal norms and social reality. Many parents apply for dispensation due to economic factors or out-of-wedlock pregnancies (Nurlaelawati, 2021). Judges assess the child's physical, mental, and emotional readiness, supported by the results of a psychological examination or recommendations from the Child Protection and Child Protection Agency (DP3A). This approach aligns with Supreme Court Regulation No. 5/2019, which emphasizes protecting the child's future. In addition to individual considerations, social and moral implications are also considered. Judges balance positive law and local wisdom, but religious and customary norms must not conflict with the principle of child protection.

Children have the right to be heard in court (child participation), so that their voices inform legal considerations. Judges consider the long-term consequences of early marriage, such as the risk of domestic violence, school dropout, and structural poverty. Granting dispensation must be multidimensional, prioritizing the child's education, health, and welfare, demonstrating a shift from a formalistic paradigm to a protective one (Fauzan, 2021).

The surge in dispensation requests following Law No. 16/2019 highlights implementation challenges. Badilag data records thousands of applications annually, indicating that society has not fully accepted the changes in norms. Legal reform needs to be accompanied by community-based legal and social education. Changing public mindsets regarding the ideal age for marriage is also crucial, through schools, religious leaders, and

local media. Dispensations must be understood as emergency exceptions, not social solutions (Rahayu, 2020).

The involvement of the DP3A (Religious Empowerment and Child Protection Agency) and non-judicial institutions should be strengthened to provide social and psychological recommendations. This cross-sector collaboration prevents the misuse of dispensations and aligns with Law No. 17/2016. Transparency and accountability must be implemented, with normative considerations, trial facts, and the results of the child's examination recorded in the decision. This also educates the public and strengthens public trust (Nurlaelawati, 2021).

The principle of substantive justice demands that decisions protect children's rights and prioritize their interests in cases of conflict within their families. Dispensations should be a last resort (*ultima ratio*), not a normative solution. Many applications are filed due to social pressure, so dispensations are interpreted more as a moral solution than as a means of child protection. Judges face a dilemma between legal norms and socio-cultural factors, especially in rural areas. Training and mentoring of judges in child protection principles is an urgent need (Nurlaelawati, 2021).

Administrative aspects are also crucial. Applications must be accompanied by documents such as a letter from the village head, birth certificate, and a recommendation from a counselor or psychologist. Incomplete documentation reduces the effectiveness of the examination and child protection. The examination process emphasizes the judge's role in exploring the child's motives and psychological readiness, in accordance with the principle of the best interests of the child. Court decisions must consider various perspectives, including psychologists, the Child Protection and Empowerment Agency (DP3A), and educational institutions, to ensure comprehensiveness (Nurlaelawati, 2021).

Coordination between institutions such as the Ministry of Religious Affairs, the DP3A, and religious courts needs to be strengthened through data integration. Application data is crucial for analyzing social trends and determining preventive policies. Without coordination, dispensation is merely a legal formality without real protection. National strategies need to be community-based, addressing rural communities and adapting to local values. Legal education raises awareness that dispensation is an emergency exception, not a quick fix (Nurlaelawati, 2021).

Based on the explanation above, the legal framework for marriage dispensations in Indonesia is comprehensive. Law No. 16/2019 raises the minimum age and strengthens child protection. The biggest challenges lie in implementation, oversight, and public awareness of the law. Dispensations must be implemented transparently, based on the child's best interests, and prioritized as the ultimate ratio. Strengthening the capacity of judges, cross-sector collaboration, legal outreach, and public education are strategic steps to ensure that the law becomes more than just text, but a concrete instrument for protecting the younger generation.

B. Compliance of the Practice of Granting Child Marriage Dispensations with the Principles of Child Protection, Specifically the Best Interests of the Child, as Reflected in the Surabaya District Court Decisions Number 5/Pdt.P/2025/PA.Sby and 2194/Pdt.P/2024/PA.Sby

The practice of granting child marriage dispensations in Indonesia is regulated by Law Number 16 of 2019, which opens up the possibility of dispensations for children under 18 if there are legitimate compelling reasons. This provision aligns with the principle of the best interests of the child as stipulated in the Convention on the Rights of the Child, ratified through Presidential Decree No. 36 of 1990. Dispensations are exceptional, not automatic rights, and can only be granted after the court has comprehensively assessed the child's condition, including physical, psychological, social, and educational aspects. The Surabaya Religious Court Decision No. 5/Pdt.P/2025/PA.Sby exemplifies the application of this norm. In this case, a 16-year-old was permitted to marry due to a premarital pregnancy, which was deemed a compelling reason. The panel of judges emphasized the child's best interests as the primary factor, including legal protection for the unborn child and reducing potential social stigma.

In comparison, the Surabaya Religious Court Decision No. 2194/Pdt.P/2024/PA.Sby presents a different situation. The request for dispensation was filed not for pregnancy, but for social and cultural reasons within the family. In this case, the judge emphasized adherence to local cultural norms and the family's interests, even though risks to the child's rights, particularly education, remained. Both decisions highlight the dilemma between the application of formal law and the prevailing social realities in society, particularly in East Java. This difference in focus raises questions about the consistency of the application of the principle of the best interests of the child in judicial practice.

In its legal considerations, Decision 5/Pdt.P/2025 emphasized that pregnancy constitutes a compelling reason to grant a dispensation to protect the child and the unborn child from social stigma and health risks. The court attempted to balance the child's interests with prevailing social values, although this decision generated academic controversy regarding the normalization of early marriage. In contrast, in Case 2194/Pdt.P/2024, the compelling reasons were more social and cultural in nature, resulting in relatively minimal emphasis on the child's long-term interests. This comparison demonstrates the varying interpretations of the concept of "compelling reasons" and demonstrates the need for more detailed operational guidelines to ensure the child's interests remain the primary focus.

Both decisions emphasize that dispensation is exceptional. In Decision 5/Pdt.P/2025, the judge instructed parents to continue supporting their children's education even after marriage, emphasizing moral and social responsibilities. In Decision 2194/Pdt.P/2024, the same emphasis is not given, thus increasing the risk of children losing access to education. This demonstrates the importance of post-decision monitoring mechanisms, including the involvement of family counselors and child protection agencies, to ensure children's rights are fully protected.

From an international legal perspective, Decision 5/Pdt.P/2025 aligns with the principle of "best interests of the child." Although a formal psychological examination was not conducted, the judge sought to ensure the child's long-term well-being. In contrast, Case 2194/Pdt.P/2024 demonstrated a more formalistic application, focusing on compliance with legal procedures without supporting psychosocial data. This situation demonstrates the inconsistency between international standards and local practices, necessitating the strengthening of harmonized interpretations of the principle of "best interests of the child."

The principle of child protection requires consideration of physical, psychological, educational, and social aspects. In 5/Pdt.P/2025, the judge reviewed the child's mental readiness through an interview, even though a professional psychologist's report was not available. Meanwhile, in 2194/Pdt.P/2024, the trial placed greater emphasis on cultural norms and family honor. This difference poses a risk of inconsistency in court practice. Without a substantive approach, legal decisions risk being pragmatic and short-term, making evaluating the child's examination mechanism crucial.

In legal practice, judges face social pressures stemming from local cultural values. In 5/Pdt.P/2025, the value of family honor was considered but still balanced with the child's interests. In 2194/Pdt.P/2024, cultural pressures were more dominant because there was no pressing biological reason. This indicates the risk of cultural bias in decision-making, requiring judges to strengthen legal principles and child protection to ensure more objective decisions. A multidisciplinary approach and supervision by child protection agencies are relevant.

Transparency in judges' argumentation is crucial in the practice of dispensation. Decision 5/Pdt.P/2025 explicitly cites social and moral reasons, while 2194/Pdt.P/2024 is shorter and less well-documented. Good documentation can strengthen judicial accountability and enable academic and public evaluation of the implementation of child protection principles. With clear documentation, jurisprudential precedent becomes more focused and consistent.

Implementing the principle of the best interests of the child requires attention to the child's future. In 5/Pdt.P/2025, education, health, and economic aspects are considered, albeit in less detail. In 2194/Pdt.P/2024, the focus is more on the child's education and psychological well-being. This indicates that the substance of child protection in the dispensation still needs to be strengthened through psychosocial data. Without this data, decisions tend to be pragmatic and short-term.

From a formal legal perspective, both decisions are valid because they follow the procedures stipulated in Article 7 paragraph (2) of Law No. 16/2019. However, the interpretation of "urgent reasons" differs: 5/Pdt.P/2025 emphasizes pregnancy, while 2194/Pdt.P/2024 emphasizes social and cultural factors. This difference indicates the need for more detailed operational guidelines to ensure consistency in decisions and prevent misuse of dispensations.

The juridical-sociological approach demonstrates the influence of social norms on judges' decisions. In East Javanese culture, marriage is considered a mechanism for maintaining family honor. In 5/Pdt.P/2025, cultural pressures are balanced by the interests of the child; in 2194/Pdt.P/2024, cultural influence is more dominant. This emphasizes the importance of judicial supervision and accountability in dispensation cases, so that decisions are not solely influenced by local social values.

The involvement of social and child protection institutions in the dispensation process remains limited. In 5/Pdt.P/2025, the examination was limited to interviews with parents; in 2194/Pdt.P/2024, the application emphasized administrative procedures. These limitations demonstrate the need for multidisciplinary oversight to ensure children's rights are protected. An integrative approach, including the involvement of psychologists and counselors, can strengthen the principle of the best interests of the child.

The judge emphasized dispensation as a last resort, not an automatic right. In Decree 5/Pdt.P/2025, parental responsibility for children's morals and education remains emphasized; in Decree 2194/Pdt.P/2024, greater attention is paid to psychological well-being and education. This highlights the need for legal education to ensure the public understands the function of dispensations and to prevent the normalization of child marriage.

Consistent application of the principle of best interests of the child remains a challenge. In Decree 5/Pdt.P/2025, psychological examinations are limited; in Decree 2194/Pdt.P/2024, they are more formalistic without in-depth psychosocial assessment. This creates inequalities in child protection across cases. Strengthening the SEMA guidelines and training judges can minimize inconsistencies, allowing the principle of best interests of the child to be more effectively internalized.

Child protection after dispensation is also crucial. In Decree 5/Pdt.P/2025, judges emphasize parental responsibility, albeit without a formal monitoring mechanism. In Decree 2194/Pdt.P/2024, post-decision supervision is not prominent. Institutional reform, cross-sector collaboration, and ongoing monitoring are needed to effectively implement the principle of best interests of the child.

Evaluation of dispensation practices shows that formal law and children's interests are not always aligned. In Decree 5/Pdt.P/2025, social interests dominate; in Decree 2194/Pdt.P/2024, child rights protection is prioritized. This indicates the need for more detailed implementation guidelines and harmonization of legal principles, children's rights, and local culture. Post-dispensation monitoring, transparent documentation, and a multidisciplinary approach are key to successful child protection.

Overall, practice at the Surabaya Religious Court confirms that dispensation must be understood as a final step in a legal context. Factual, psychological, educational, and social considerations of the child are the primary foundation. Systemic reform, public education,

and clear operational guidelines are needed to consistently implement the principle of best interests of the child. A multidisciplinary approach, transparent documentation, and post-dispensation monitoring will strengthen child protection and prevent the misuse of dispensations as a social shortcut. Both decisions demonstrate the challenges and opportunities in implementing child protection principles: the focus on the unborn child and family honor in 5/Pdt.P/2025, and the focus on children's education and psychological well-being in 2194/Pdt.P/2024. Harmonizing formal law, judicial practices, and child protection principles is key to the successful implementation of dispensations in Indonesia.

V. CONCLUSION

Legal provisions regarding marriage dispensations in Indonesia have undergone significant changes through Law No. 16/2019, which sets a minimum age of 19 for both men and women, strengthening child protection within the context of family law. However, the practice of granting dispensations in religious courts demonstrates that the law has not been fully effective in curbing child marriage due to social, economic, and cultural influences. Judicial mechanisms require compelling evidence and justification, but limited resources and post-decision oversight limit the protection of children's rights. The Surabaya District Court decisions Nos. 5/Pdt.P/2025/PA.Sby and 2194/Pdt.P/2024/PA.Sby demonstrate that judges balance social interests and family honor with the principle of the child's best interests, but their implementation remains formalistic and varies across cases.

Therefore, institutional and regulatory reforms are needed to ensure child protection. It is recommended that the government strengthen oversight, involve psychologists and counselors, and increase public awareness of the risks of child marriage. The judiciary needs child psychology training and national technical guidelines, while policymakers need to periodically evaluate Law No. 16/2019 and Law No. 17/2016. Future researchers can examine the psychosocial impacts of child marriage across disciplines to support more child-friendly legal policies.

REFERENCES

Astuti, R. (2022). *Psikologi Perkembangan Anak*. Jakarta: Kencana.

Badan Pusat Statistik. (2024). *No Title*. Retrieved from <https://www.bps.go.id/statistics-table/2/MTM2MCMMy/proporsi-perempuan-umur-20-24-tahun-yang-berstatus-kawin-atau-berstatus-hidup-bersama-sebelum-umur-18-tahun-menurut-provinsi.html>

Darmawan, B. (2022). *Sosiologi Perkawinan: Perspektif Keluarga Indonesia*. Bandung: Alfabeta.

Fadilah, N. (2021). *Psikologi Perkawinan Dini dan Dampaknya*. Jakarta: Rajawali Pers.

Fauzan, Muhammad. (2021). *Perkawinan Anak dalam Perspektif Hukum dan HAM*. Yogyakarta: Deepublish.

Huda, Nurul. (2021). Kontradiksi Hukum Dispensasi Kawin dengan Prinsip Perlindungan Anak. *Jurnal Ilmiah Kebijakan Hukum*, 15(2).

Marzuki, Peter Mahmud. (2017). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.

Nurlaelawati, Euis. (2021). Dispensasi Perkawinan di Pengadilan Agama: Sebuah Studi Sosio-Legal. *Al-Jami'ah: Journal of Islamic Studies*, 59(1).

Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin. (n.d.). *No Title*.

Putusan Pengadilan Agama Surabaya Nomor 2194/Pdt.P/2024/PA.Sby tentang Permohonan Dispensasi Perkawinan Anak.

Putusan Pengadilan Agama Surabaya Nomor 5/Pdt.P/2025/PA.Sby tentang Permohonan Dispensasi Perkawinan Anak.

Rahayu, L. (2020). *Dispensasi Perkawinan dalam Dinamika Sosial*. Yogyakarta: Pustaka Belajar.

Safa'at, Rachmad. (2020). *Hukum Perkawinan Indonesia: Politik Hukum dan Perlindungan Anak*. Malang: UB Press.

Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

Wahyuni, S. (2023). *Perkawinan dalam Perspektif Sosial Budaya Kontemporer*. Surabaya: Airlangga University Press.

Yulianti, & Fitria. (2020). Analisis Yuridis Pemberian Dispensasi Kawin di Bawah Umur. *Jurnal Hukum Universitas Lampung*, 8(2).