

Legal Analysis of Marriage Dispensation Requests for Minors in Cases of Premarital Pregnancy (Case Study: Decision No. 82/PDT.P/2024/PA.PROB)

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ABSTRACT

This study investigates the dispensation of marriage for minors, a request for leniency granted by the Religious Court to prospective brides and grooms who are not yet of legal age to marry. This study intends to examine the basis for consideration used by judges in deciding and granting requests for marriage dispensation in Decision Number 82/Pdt.P/2024/PA.PROB, as well as examining the impact of marriage dispensation on mothers and children born, especially in the context of legal protection based on the Child Protection Law. In this study, a normative juridical approach is used to analyze the legal principles underlying the judge's decision and aspects of protecting children's rights. The findings suggest that the basis for judges' considerations is influenced by sociological and sharia factors, and assesses the principles of benefit and protection of the child's future. Furthermore, the impact of marriage dispensation on mothers and children carries the risk of violating children's basic rights, including the right to education, protection from violence, and the right to health, thus requiring serious attention from the legal protection system to ensure these rights are optimally protected. This research emphasizes the importance of a legal approach that prioritizes substantive justice and protection of vulnerable groups in the marriage dispensation decision-making process.

ABSTRAK

Penelitian ini mengkaji dispensasi kawin anak di bawah umur, yakni permohonan keringanan yang diberikan Pengadilan Agama kepada calon pengantin yang usianya belum mencukupi untuk melangsungkan perkawinan. Tujuan dari penelitian ini adalah untuk mengkaji dasar pertimbangan yang digunakan hakim dalam memutuskan dan mengabulkan permohonan dispensasi kawin dalam putusan Nomor 82/Pdt.P/2024/PA.PROB, serta menelaah dampak dispensasi kawin terhadap ibu dan anak yang dilahirkan, khususnya dalam konteks perlindungan hukum berdasarkan Undang-Undang Perlindungan Anak. Studi ini menerapkan pendekatan yuridis normatif guna menelaah prinsip-prinsip hukum yang mendasari keputusan hakim serta aspek perlindungan hak-hak anak. Hasil penelitian menunjukkan bahwa dasar pertimbangan hakim dipengaruhi oleh faktor sosiologis dan syar'i, serta menilai prinsip kemaslahatan dan perlindungan terhadap masa depan anak. Selanjutnya, dampak dispensasi kawin terhadap ibu dan anak mengandung risiko pelanggaran hak dasar anak, termasuk hak atas pendidikan, perlindungan dari kekerasan, serta hak kesehatan, sehingga memerlukan perhatian serius dari sistem perlindungan hukum untuk memastikan hak-hak tersebut terlindungi secara optimal. Penelitian ini menegaskan pentingnya pendekatan hukum yang mengedepankan keadilan substantif dan perlindungan terhadap kelompok rentan dalam proses pengambilan keputusan dispensasi kawin.

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1. Introduction

Marriage stands as a fundamental institution within society, carrying extensive legal ramifications. Indonesian legal frameworks govern marriage through two principal instruments: Law Number 1 of 1974 concerning Marriage, revised through Law Number 16 of 2019, and the Compilation of Islamic Law (KHI), serving as substantive law applied to Muslims in religious courts. Both regulations establish marriage validity requirements, addressing age restrictions and dispensation possibilities. Article 7(1) of the Marriage Law stipulates marriage proceeds only when both prospective spouses reach 19 years of age. Nevertheless, paragraph (2) permits parents or guardians to request court dispensation under exceptionally urgent circumstances. Such provisions emphasize that the Marriage Law grants restricted exceptions to age requirements, maintaining strict judicial oversight as child protection measures (Gunawan, 2024). Meanwhile, KHI Article 7(1) maintains age thresholds of 19 years for men and 16 years for women. Similar to the Marriage Law, KHI paragraphs (2) and (3) allow parents to request marriage dispensation from religious courts under pressing circumstances. Courts may grant dispensation when judges determine Islamic marriage requirements are fully satisfied, encompassing mental preparedness and spousal responsibility (Asman, 2024).

Marriage represents a legal event generating consequences for involved parties, including children born from such unions. Indonesian law establishes that beyond administrative requirements, marriage validity must satisfy religious provisions of prospective spouses. Article 2(1) of Law Number 1 of 1974 concerning Marriage supports the assertion that marriage achieves validity when conducted according to respective religious laws and beliefs. Primary marriage validity requirements involve fulfilling religious provisions serving as foundational teachings for prospective spouses. However, satisfying religious requirements alone proves insufficient. The state emphasizes marriage registration through Article 2(2) of the Marriage Law, stating every marriage must be registered according to existing legislation. Registration serves not merely administrative purposes but also state legitimization, granting marriages public legal force. Registration requirements play central roles in ensuring legal certainty, protecting spousal rights and obligations, and establishing children's status from such marriages. Understanding marriage validity requirements based on Marriage Law Article 2 becomes crucial when examining marriage relationship validity not only from religious perspectives but also within state legal frameworks, particularly regarding increasing underage marriage dispensation requests throughout society.

Beyond the Marriage Law, technical regulations concerning marriage age appear in Government Regulation Number 9 of 1975 concerning Marriage Law Implementation. Although not directly updated following Law Number 16 of 2019 enactment, foundational principles follow statutory provisions—namely, a minimum age of 19 years. Government Regulation also governs administrative and technical requirements for marriage registration implementation. Islamic legal perspectives do not numerically regulate marriage age limits. However, Islam requires puberty, rationality, and household responsibility capability as marriage permission foundations. Therefore, KHI employs age approaches of 16 years for women and 19 years for men, while maintaining dispensation opportunities given strong reasons. Discrepancies between Government Regulation and KHI age provisions with recent Marriage Law amendments create distinct judicial practice challenges. Consequently, judges in dispensation request cases must conduct assessments based not solely on age but also on physical, mental, and social readiness of prospective spouses.

Children wishing to marry before reaching 19 years legally cannot proceed without obtaining court permission or dispensation. Courts function as legal age limit guardians, protecting children's rights while preventing adverse early marriage impacts. Without

dispensation decisions, child marriages legally cannot meet statutory requirements, despite potential religious validity. During dispensation request processes, judges must hear opinions from both prospective spouses while considering exceptionally urgent reasons such as pregnancy conditions, family pressure, or social factors. Judges must also objectively assess whether prospective husbands and wives possess sufficient maturity and capability to fulfill marriage responsibilities. Kirani et al. (2025) note that marriage dispensation for minors due to pregnancy outside wedlock requires careful and thorough consideration of multiple factors, including couple emotional and spiritual maturity, stable economic capacity, and family and community support. Assessment proves crucial for preventing marriages characterized by coercion, formality, or social problem escape. When marriages occur outside legal channels—for instance, unregistered marriages between minors—legal disadvantages arise, particularly for women and children born from such unions. Therefore, court roles in dispensation processes become vital for ensuring child legal protection and preventing dispensation from becoming child marriage legalization loopholes.

Pregnancy outside wedlock represents one of the most common reasons for marriage dispensation requests. Hasyim (2023) confirms that courts predominantly decide marriage dispensation requests resulting from promiscuity due to pregnancy outside wedlock. Communities adhering strongly to religious and customary norms consider pregnancy outside wedlock shameful, requiring immediate "resolution" through marrying couples despite insufficient age. Dispensation requests become "solutions" for closing broader social issues. However, such approaches frequently overlook psychological readiness and moral responsibility of young couples. Forced marriage for "child status" provides no guarantee for healthy, harmonious family formation. Beyond formal legal solutions, dispensation also considers best interests for children—both unborn children and marrying couples. Judges face demands to balance moral, humanitarian, and legal values. Decisions granting dispensation involve not merely marriage validity but also impact child futures, unborn children's rights, and prospective household sustainability. Therefore, dispensation due to pregnancy outside wedlock requires extremely careful, selective provision prioritizing holistic child protection principles.

From Islamic law and KHI perspectives, pregnancy outside wedlock may constitute sharia reasons for immediate marriage to prevent more severe social damage (*sadd al-dzari'ah*) and achieve collective benefit. Nevertheless, material and formal legal approaches alone prove insufficient for resolving problem complexity, as many cases involve not only legality aspects but also sociological, psychological, and moral dimensions attached to parties. Consequently, full commitment from law enforcers, particularly religious court judges, becomes necessary for conducting thorough and wise considerations in every marriage dispensation request. Beyond statutory texts, law enforcement must stand upon child protection spirit, women's rights fulfillment, and healthy, responsible family development. As progressive law enforcement, marriage dispensation requests may indeed be granted under certain conditions. However, such grants must remain grounded in prudence principles, proportionality, and best interest of the child principles. Law must serve as protection instruments rather than mere legal formalities justifying social practices potentially misaligned with substantive justice. Research findings strengthen views that although marriage dispensation possesses valid legal foundations, practices require continuous evaluation for alignment with Law Number 16 of 2019 spirit, KHI, and Islamic legal principles prioritizing justice, benefit, and vulnerable group protection. Research Questions:

- 1) What constitutes the foundation for granting marriage dispensation requests in Decision 82/Pdt.P/2024/PA.PROB?
- 2) How does marriage dispensation impact mothers and newborns in relation to Child Protection Law?.

2. Methodology

Research methodology explains the approach and techniques used to conduct legal studies. The method follows systematic and structured steps to examine or analyze legal problems, whether from legal terminology, judicial practices, or social phenomena affecting the general public. Legal research methodology aims to discover, develop, or improve existing legal knowledge, producing better understanding of law and its application effects in society (Rizkia & Fardiansyah, 2023). The study employs a normative research method, addressing legal problems by referring to appropriate and relevant legal opinions on the examined legal issues. The research purpose is to explain legal problems in detail and clarity. Using such methodology, sources derive from case study approaches on similar legal documents or materials, applicable legislation or law, and comparisons for proper behavior in society to avoid violating prevailing regulations.

The research utilizes primary and secondary legal sources. Primary legal materials include Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 on Marriage, Child Protection Law, KHI, and Supreme Court Regulations on Guidelines for Adjudicating Marriage Dispensation Requests. Secondary legal materials are drawn from journals and literature relevant or related to legal problems regarding "marriage dispensation requests for underage children due to pregnancy outside wedlock (case study of decision number 82/Pdt.P/2024/PA.Prob)" for victims, as well as previous case studies related to marriage dispensation requests for underage children due to pregnancy outside wedlock. Legal material collection techniques used are analysis from references and literature (library research). The method explains how to collect legal materials from various sources such as legal documents, scientific articles, books, or case studies related or appropriate to the study material. Materials that have been prepared and analyzed are then reprocessed and explained by the author descriptively based on results from previously collected legal materials.

3. Results

3.1 Legal Basis for Granting Marriage Dispensation in Decision Number 82/Pdt.P/2024/PA.Prob

The marriage dispensation request was filed by the biological parents of Rian Putri Puspitasari, a 17-year-old girl, seeking permission for her marriage to Ali Husen, a 36-year-old man who had impregnated her. The request arose after the Office of Religious Affairs (KUA) refused to register the planned marriage, citing that the female's age remained below the legal minimum marriage age of 19 years as stated in Article 7 paragraph (1) of Marriage Law No. 16 of 2019, amending Law No. 1 of 1974. Before the amendment through Law Number 16 of 2019, provisions regarding minimum marriage age were stated in Article 7 paragraph (1) of Law Number 1 of 1974 on Marriage, which read: "Marriage is only permitted if the male party has reached 19 years of age and the female party has reached 16 years of age." Such provisions emphasized different marriage age limits between males and females, considered reflective of social realities at that time but later viewed as gender-unequal and potentially harmful to girls, particularly regarding reproductive health, education, and legal protection.

Those provisions often faced criticism for opening loopholes to child marriage practices, especially for females who were legally allowed to marry at 16 years old. Although marriage dispensation requests through courts existed, many child marriages still occurred without strict legal control, often caused by customary pressure, economic factors, or pregnancy outside wedlock (Suryani & Kudus, 2022). Based on such reasons, changes occurred in marriage age limits from an initial minimum of 19 years for males and 16 years for females to a minimum of 19 years for both.

An urgent and substantial factor forming the basis of the request was that Rian

Puspitasari was pregnant at 20-21 weeks. The pregnancy was acknowledged as resulting from intimate relations with her prospective husband, Ali Husen, with whom Rian had been in a romantic relationship for approximately 9 months. During the trial, it emerged that throughout their courtship, Rian and Ali had engaged in marital-like relations several times, specifically five occasions. Such incidents showed their relationship had become very close, both physically and emotionally. Both appeared mutually bound and difficult to separate, not due to pressure or coercion, but because genuine feelings had developed between them.

Rian parents admitted they had actually tried persuading their daughter to be patient and postpone marriage until reaching the appropriate age according to regulations. However, Rian remained insistent on marrying immediately. Her reason was clear: she was already pregnant and felt a strong emotional bond with Ali, her prospective husband. For Rian, marriage was the best choice to take responsibility for her situation and secure the future of the unborn baby.

One primary background for granting marriage dispensation in decision 82/Pdt.P/2024/PA.PROB was the applicant's daughter's pregnancy outside marriage bonds. Within Indonesian social settings, especially among communities still holding strong religious and cultural values, pregnancy outside marriage represents an extremely sensitive matter. Such situations are considered violations of religious norms, morality, and family honor. If marriage were not immediately conducted, serious social consequences would follow:

- 1) The child to be born could potentially be regarded as a child outside wedlock, who sociologically might face discrimination in society
- 2) The dignity and good name of the extended family, from both female and male sides, would be tarnished in the eyes of surrounding communities
- 3) Women pregnant without husbands risk experiencing psychological pressure and social exclusion

In Islamic law, honor or 'ird constitutes an essential part of *maqāṣid al-syarī'ah* (objectives of sharia). Therefore, protecting personal and family honor forms part of legal protection principles. Consequently, marriage between a pregnant woman and the man who impregnated her is viewed as a legitimate and appropriate step to close the door to corruption (*sadd al-dzari'ah*), as well as an effort to rectify the situation (*islah*) that occurred. In Decision Number 82/Pdt.P/2024/PA.Prob, the Judge granted the marriage dispensation request by considering that the applicant's child, aged 17 years, was pregnant at 20 weeks due to marital-like relations with her prospective husband, who had reached adulthood at 36 years, so such circumstances were assessed as very urgent reasons as stated in Article 7 paragraph (2) of the Marriage Law. The Judge referred to Article 16 of Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Requests and assessed that the marriage would be conducted without coercion based on mutual consent without transactional features, and supported by both families. The Judge also believed the prospective couple was ready emotionally, socially, and economically, with parental guidance in married life.

Additionally, the judge referred to Article 53 of the Compilation of Islamic Law (KHI) which permits marriage of women pregnant outside wedlock with the man who impregnated them without waiting for the carried child to be born. Therefore, to prevent family disgrace, social damage, and ensure legal protection for the carried fetus, the judge decided to grant marriage dispensation as a solution that was beneficial and aligned with Islamic legal principles prioritizing harm prevention. As stated by Rahmawati & Ismayawati (2023), granting marriage dispensation due to pregnancy outside wedlock falls under urgent conditions so that the child born receives legal certainty.

Marriage conducted as a result of pregnancy outside wedlock not only aims to

realize relationship legitimacy but also serves as social protection and moral restoration, both for the pregnant woman and for the prospective child. Abror (2019) also affirmed that marriage dispensation exists to accommodate those wishing to marry before reaching the age of majority determined by the State. Therefore, granting dispensation requests in such cases represents law enforcement oriented toward formal circumstances while prioritizing humanitarian values and benefit.

KHI as a material law source within the Religious Court environment explicitly provides provisions regarding marriage for women already pregnant outside marriage, stated in Article 53 KHI, which reads:

- 1) A woman pregnant outside wedlock can be married to the man who impregnated her
- 2) Marriage with a pregnant woman as referred to in paragraph (1) can be conducted without waiting for the birth of her child
- 3) With the conduct of marriage while the woman is pregnant, no repeat marriage contract is required after the carried child is born (Kuswulandari & Dianti, 2024)

Such provisions provide a normative basis for judges to grant dispensation even though prospective bride's age has not reached 19 years as stated in Article 7 paragraph (1) of the Marriage Law. In the case at hand, the female party was pregnant due to relations with the man who impregnated her and both agreed to conduct the marriage. Therefore, based on KHI provisions, such marriage is valid and can be performed, even recommended to be immediately conducted to protect honor, future, and legal status of the prospective child.

4. Discussion

4.1 Analysis of Marriage Dispensation Granting

Although KHI provides legitimacy for marriage due to pregnancy outside wedlock, it should be emphasized that granting marriage dispensation by courts is not automatic. Judges must still conduct careful legal considerations, including exploring motives and psychological readiness of prospective couples. The purpose is so that marriages conducted are legally and religiously valid while capable of creating harmonious and responsible households. Therefore, granting dispensation should not be based solely on pregnancy reasons but must include thorough consideration of social and legal consequences of such marriage. In practice, judges also consider protection for prospective underage mothers. Early pregnancy carries high risks for the health of mothers and babies to be born. Therefore, before granting dispensation requests, courts should involve medical personnel and psychologists to assess physical and mental conditions of prospective couples. Involvement of professional personnel will provide more objective perspectives to judges regarding prospective couples' readiness in undergoing married life, which is not only about the validity of a marriage but also relates to long-term responsibility.

Furthermore, from a child protection perspective, marriage due to pregnancy outside wedlock can create risks to the continuity of education, economy, and social life of prospective mothers. Early marriage tends to halt children's education and experience restricted access to decent employment, potentially adding to family social burdens. Therefore, although normatively such marriage is permitted, the state remains obligated to prioritize child marriage prevention principles as regulated in Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 on Marriage and Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection.

Additionally, it should be noted that KHI in Article 53 states that women pregnant outside wedlock are permitted to marry the man who impregnated them without waiting for the iddah period to end, and such permission exists to protect family honor and child

status. However, although such norms provide flexibility in Islamic law, their implementation must still be supervised so as not to become loopholes justifying premarital sexual relations practices and normalization of child marriage. Therefore, synergy is needed among court officials, religious leaders, and communities in educating regarding moral values, law, and reproductive health.

Marriage validity due to pregnancy outside wedlock according to KHI is indeed recognized and recommended to be conducted to avoid social stigma and for legal protection of the carried child. However, implementation of marriage dispensation policies must be carried out selectively and responsibly. Judges have central roles in ensuring that every dispensation granted truly reflects protection of children's rights, not merely to fulfill social pressure or tradition. Such approach aligns with progressive legal principles that place substantial justice and humanity above legal formalism.

4.2 Impact of Marriage Dispensation on Mothers and Children Born in Relation to Child Protection Law

Marriage dispensation is a legal avenue taken by parents to legitimize marriage of children under 19 years of age, as regulated in Article 7 paragraph (2) of Law No. 16 of 2019 on Amendments to Law No. 1 of 1974. Reasons for filing dispensation usually relate to pregnancy outside wedlock. Although legally permitted, such practices harbor various serious problems especially for children who become wives and mothers at early ages. Article 1 paragraph (1) of Law No. 35 of 2014 on Child Protection states that children refer to individuals under 18 years of age, including those still in the womb. Therefore, mothers to be married through marriage dispensation still fall under the child category and are entitled to legal protection. When children are made wives and mothers simultaneously, structural violations of their basic rights occur (Marhayani, 2024).

Impacts on married girls are very broad. They lose their adolescence, right to education, and right to develop freely. Yet, Article 9 paragraph (1) of the Child Protection Law states that every child has the right to receive education and self-development according to their interests and talents. Marriage dispensation often ignores such basic rights. Impacts of marriage dispensation on mothers, especially women who marry early due to pregnancy outside wedlock, are very complex and multidimensional. Biologically, adolescent bodies are not mature enough to bear pregnancy or childbirth, placing them at high risk of experiencing complications such as preeclampsia, anemia, premature delivery, even maternal and infant death. Additionally, psychologically, young mothers tend to experience stress, anxiety, postpartum depression, and other emotional pressures due to mental unpreparedness and loss of adolescence. Social stigma from surrounding environments worsens the situation, creating shame and social isolation (Wagiarto Ramdan, Ahmad Muzakki, 2025).

Psychologically, children who become mothers too early are vulnerable to experiencing mental pressure, stress, even postpartum depression. Not few of them are unprepared to carry out parental roles, resulting in poor parenting patterns toward children born. Such situations include types of indirect violations of children's rights. Impacts on girls married early are very complex. Physically, their bodies are not mature enough to bear pregnancy or childbirth. Many cases show that early pregnancy increases health risks such as anemia, premature birth, even maternal and infant death. Such evidence proves that marriage dispensation is not a safe solution but high-risk. Children born from dispensation marriages also face various risks. They grow in environments that socially, economically, and emotionally are not yet stable. Their parents who are still children lack readiness and independence to run households and care for children optimally.

Article 13 of the Child Protection Law emphasizes that every child has the right to receive protection from exploitation, discrimination, violence, and other harmful treatment. In reality, many children resulting from early marriages actually experience

violence and neglect in families due to parents' lack of mental readiness. Protection must also be provided to children in the womb. Article 4 of the Child Protection Law states that children, including those in the womb, have the right to live, grow, develop, and obtain protection from discrimination or violence. Such provision means the state has responsibilities even before children are born (Sulastri et al., 2023).

Many marriage dispensations are filed only to avoid social stigma due to pregnancy outside wedlock. In such cases, children are actually made objects of problem-solving, not legal subjects who are protected. Yet, all policies concerning children must prioritize the principle of the best interest of the child. From such perspectives, the state has great responsibility. Article 21 of the Child Protection Law firmly states that the state, government, and society bear obligations and responsibilities to respect, protect, and guarantee children's rights. Candra (2018) also affirmed that child protection requires roles of the state, society, family, and parents. Such provision means every marriage dispensation decision must consider child protection holistically, not merely legal formalities.

Child protection according to Law Number 35 of 2014 on Child Protection (UUPA), which refines Law No. 23 of 2002, prioritizes principles of non-discrimination, best interests of children, and rights to live, grow, and develop. With such frameworks, girls and boys have equal rights to receive protection from various forms of discrimination, mistreatment, exploitation, or violence. The Child Protection Law explicitly emphasizes that every child, regardless of gender, has rights to decent living, education, legal protection, health, and safe environments. Girls are generally more vulnerable to sexual violence, early marriage, and pregnancy outside wedlock, so the Child Protection Law provides special attention to them. In Article 59 paragraph (2) letters d and j, it is stated that the state must provide special protection to girls who are victims of violence and sexual crimes, as well as children pregnant outside wedlock. Such protection includes medical services, counseling, continuing education, and psychosocial assistance so that girls' rights are not lost just because of situations befalling them. The state also encourages parental roles to prevent child marriage as affirmed in Article 26 paragraph (1) letter c (Justisi & 2017, n.d.).

Meanwhile, boys also have their own vulnerability potential, such as becoming victims of physical violence, economic exploitation, to social pressure related to gender roles. Many boys are forced to become family breadwinners at early ages and trapped in hazardous work, contrary to Article 76I of the Child Protection Law. They also often experience bullying or masculinity pressure that hinders their emotional development. Therefore, protection for boys not only covers legal protection but also includes fulfillment of rights to education, character building, and mental health strengthening.

The state must also ensure that children who become young mothers continue receiving their rights, such as alternative education, health services, psychological assistance, and social guidance. If these are not provided, then marriage dispensation potentially becomes a form of child rights violation legalized by the state. Children resulting from early marriages are also entitled to clear legal status. According to Article 28 of the Child Protection Law, every child has the right to know their origins and parents' identity. Marriage dispensation conducted after a child is conceived aims to provide legality to such child's status, but that should not be made the sole reason for conducting early marriage.

Legal protection theory is a basic concept in legal science emphasizing that every citizen has the right to receive protection from law to guarantee their rights as individuals or as part of society. Such theory is crucial in private and public law settings, including protection for children, consumers, victims, and citizens in general. It should be noted that the best solution for child pregnancy is not always marriage. The state should provide social protection programs, reproductive health education, and family counseling. Such approach is far more humane and protects children's rights

holistically, compared to merely legitimizing marriage dispensation. Such approach aligns with Satjipto Rahardjo's view that law must be progressive and used as a tool to free humans from suffering. The state is not sufficient merely regulating formally but must actualize legal protection substantively (Rahardjo, 2018).

If left without supervision and post-marriage protection, negative impacts of marriage dispensation will continue repeating and creating cycles of poverty, violence, and gender inequality. Therefore, legal approaches must side with children, not just procedures. Satjipto Rahardjo sharply criticized frozen law unresponsive to social realities, because such law tends only to obey texts without siding with substantial justice. Therefore, applied legal approaches must side with children and their futures, not merely fulfill formal juridical requirements.

Marriage dispensation brings significant impacts on mothers still categorized as children and on children conceived or born. Based on Law Number 35 of 2014 on Child Protection, the state has constitutional responsibility to ensure such children's rights are not neglected. In Satjipto Rahardjo's legal protection perspective, the state must not only appear as a norm validator but must emerge as an active protector working based on concern for humanity and social justice. Every marriage dispensation request must be treated not only as an administrative legal process but also as a social alarm that children's rights are threatened. The state must ensure that granting dispensation is accompanied by concrete, sustainable, and child-sided protection commitments. Such approach aligns with Satjipto Rahardjo's teaching that law is intended for humans, and that law's main function is defending the weak, not legitimizing oppressive social pressure.

5. Conclusion

Based on the research findings and analysis of Decision Number 82/Pdt.P/2024/PA.PROB regarding marriage dispensation requests due to pregnancy outside wedlock, it is known that granting underage marriage dispensation remains a legal reality frequently encountered in society, particularly when premarital pregnancy conditions are considered social and moral emergencies. The Judge also referred to Article 16 of Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Requests, stating that the marriage was conducted based on mutual consent, without coercion, transactional features, or other legal prohibitions that would prevent it, and was fully supported by both families. The Judge believed that the prospective couple had demonstrated emotional, social, and economic readiness to build a household, and that the parents were prepared to guide them in married life. The Panel of Judges in the case decided to grant the request by referring to sharia principles written in Article 53 of the Compilation of Islamic Law (KHI) as well as Indonesian positive law provisions, namely Article 7 paragraph (2) of Law Number 16 of 2019.

However, from the perspective of progressive law by Satjipto Rahardjo, law must not merely exist as a formal instrument regulating procedures, but must become a tool of liberation and protection for vulnerable groups, namely girls and children to be born. Law must live within society, be responsive to social realities, and prioritize substantive justice values. Marriage dispensation conducted merely to cover social disgrace without long-term protection considerations actually risks perpetuating cycles of inequality and structural violence against children and women.

The state has constitutional obligations to protect children as affirmed in Law Number 35 of 2014 on Child Protection. Therefore, every marriage dispensation request must be accompanied by strict supervision, thorough evaluation of the psychological, biological, and social readiness of prospective couples, as well as provision of ongoing protection programs post-marriage. Law must not stop at formal legalization, but must

guarantee justice, dignity, and the future of children as citizens.

The research findings demonstrate that marriage dispensation due to pregnancy outside wedlock cannot be adequately responded to solely through normative juridical approaches, but also requires interdisciplinary approaches and concrete social protection. The principle of the best interest of the child must become the primary foundation in every legal decision concerning children, consistent with Satjipto Rahardjo's view that law should be used to defend the weak, not strengthen oppressive social pressures. Marriage dispensation can only be justified if conducted with prudential principles, benefit considerations, and sustainable legal protection.

References

- Abror, K. (2019). *Dispensasi perkawinan di bawah umur*. DIVA Press. www.blogdivapress.com
- Asman, A. (2024). Masa depan terancam: Dispensasi perkawinan dan dampak negatif pada anak dan keluarga. *Journal of Dual Legal Systems*, 1(2), 1–14. <https://doi.org/10.58824/jdls.v1i2.223>
- Candra, M. (2018). *Aspek perlindungan anak Indonesia: Analisis tentang perkawinan di bawah umur*. Prenadamedia Group.
- Gunawan, A. (2024). Dispensasi kawin hamil diluar nikah dan dampaknya terhadap kedudukan anak. *Journal of Sharia and Law*, 3(4), 1–15.
- Hasyim, P. (2023). Pertimbangan hakim terhadap dispensasi nikah terhadap anak dibawah umur akibat hamil diluar nikah. *Jurnal Hukum Keluarga Islam*. <https://ejournal.iainpare.ac.id/index.php/hukamaa>
- Kirani, K. P., Saputri, A., Tifani, B. H., Putra, K. A. B., Bhumi, M. Y. W., Musyafa, H. I., & Hidayah, A. N. (2025). Tinjauan hukum Islam dan Undang-Undang Perkawinan terhadap dispensasi nikah bagi anak di bawah umur karena kehamilan di luar nikah. *Jurnal Hukum Progresif*, 8(6).
- Kuswulandari, D. D., & Dianti, F. (2024). Akibat hukum penerapan Pasal 53 Kompilasi Hukum Islam (KHI) mengenai perkawinan bagi wanita hamil sebagai dasar dispensasi perkawinan anak di bawah umur. *Syntax Literate: Jurnal Ilmiah Indonesia*, 7(9), 15668–15681. <https://doi.org/10.36418/syntax-literate.v7i9.14643>
- Marhayani, C. (2024). Analisa yuridis tentang definisi anak dalam hukum positif di Indonesia. *Jurnal Legalitas*, 2(2). [https://doi.org/10.58819/jurnallegalitas\(jle\).v2i2.122](https://doi.org/10.58819/jurnallegalitas(jle).v2i2.122)
- Musyafa, D. M. (2017). Perlindungan hukum terhadap anak dalam proses penyidikan menurut Undang-Undang Nomor 11 Tahun 2012. *Jurnal Ilmu Hukum Galuh Justisi*. <https://jurnal.unigal.ac.id>
- Rahardjo, S. (2018). *Teori hukum: Strategi tertib manusia lintas ruang dan generasi* (C. Yuniarto, Ed.; 5th ed.). Genta Publishing.

- Rahmawati, L., & Ismayawati, A. (2023). Implementation of constitution protection for children on minor marriages resulting from pregnancy marriages out of wedding (Case study in PA Kudus). *International Collaboration Conference on Law, Sharia and Society*.
- Ramdan, W., Muzakki, A., & Baidillah, B. (2025). Dampak dispensasi nikah sebab kehamilan diluar nikah terhadap hak perempuan dan anak perspektif HAM dan hukum Islam: Studi kasus Putusan Hakim Nomor 49/Pdt.P/2024/PA.Prob. *Jurnal Ilmiah Syariah*, 5, 1–23.
- Rizkia, N. D., & Fardiansyah, H. (2023). *Metode penelitian hukum (normatif dan empiris)* (E. Jaelani, Ed.; Vol. 1). Widina Media Utama.
- Sulastri, Ramadhani, D. A., & Sakti, M. (2023). Perlindungan hukum terhadap hak pengembangan diri anak akibat dispensasi perkawinan. *Jurnal Hukum dan Pranata Sosial Islam*, 5(2). <https://doi.org/10.37680/almanhaj.v5i2.2816>
- Suryani, D., & Kudus, W. A. (2022). Fenomena menikah muda dikalangan remaja perempuan di Kelurahan Pipitan. *Jurnal Pendidikan Sosiologi dan Humaniora*, 13(2), 260–273. <https://doi.org/10.26418/j-psh.v13i2.54437>