

# Fulfillment of The Principle of The Best Interest of Children in The Granting of Child Marriage Dispensation in Indonesia

Gina Wulandari<sup>1\*</sup> and Tirtawening<sup>2</sup>

<sup>1,2</sup>Master of Notary, Faculty of Law, University Indonesia

---

## ARTICLE INFO

### Article history:

Received Jun 16, 2022

Revised Jul 21, 2022

Accepted Aug 11, 2022

### Keywords:

Child;  
Children's Rights;  
Marriage Dispensation.

---

## ABSTRACT

*The purpose of this paper is to analyze how the fulfillment of the principle of the best interests of the child in the consideration of the Panel of Judges to provide dispensation for child marriage. Indonesia occupies the 10th position with the highest child marriage rate in the world in 2020. The National Development Planning Agency states that 1,220,900 Indonesian children are married before an early age. The problem of child marriage is indeed one of the problems that has occurred for a long time, but until now it has not been able to be solved. One of the efforts made by the Government to suppress the high number of child marriages in Indonesia is by increasing the minimum age for marriage through Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law). The provisions in Article 7 paragraph (1) of the Marriage Law change the minimum age for marriage which was previously 16 years for women and 19 years for men to 19 years for women and men. However, the provisions in Article 7 paragraph (2) open the opportunity for marriages under the specified age to be carried out, namely requesting a dispensation from the Court on the grounds that it is very urgent.*

---

## ABSTRAK

Tujuan dari tulisan ini adalah untuk menganalisis bagaimana pemenuhan asas kepentingan terbaik bagi anak dalam pertimbangan Majelis Hakim memberikan dispensasi perkawinan anak. Indonesia menempati posisi ke-10 tertinggi angka perkawinan anak di dunia pada tahun 2020. Badan Perencanaan Pembangunan Nasional menyatakan bahwa 1.220.900 anak Indonesia menikah sebelum pada usia dini. Permasalahan perkawinan usia anak memang menjadi salah satu permasalahan yang telah terjadi sejak lama, namun hingga saat ini belum dapat dipecahkan. Salah satu upaya yang dilakukan Pemerintah guna menekan tingginya angka perkawinan anak di Indonesia yakni dengan menaikkan batas minimal usia perkawinan melalui Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (UU Perkawinan). Ketentuan dalam Pasal 7 ayat (1) UU Perkawinan mengubah batas minimum usia perkawinan yang sebelumnya 16 tahun untuk perempuan dan 19 tahun untuk laki-laki diubah menjadi 19 tahun untuk perempuan dan laki-laki. Namun, ketentuan dalam Pasal 7 ayat (2) membuka peluang untuk dilangsungkannya perkawinan dibawah usia yang ditentukan yakni meminta dispensasi kepada Pengadilan dengan alasan sangat mendesak.

*This is an open access article under the [CC BY-NC](https://creativecommons.org/licenses/by-nc/4.0/) license.*



---

### Corresponding Author:

Name of Corresponding Author,  
Department of Electrical and Computer Engineering,  
National Chung Cheng University,  
168 University Road, Minhsiung Township, Chiayi County 62102, Taiwan, ROC.  
Email: lsntl@ccu.edu.tw, Ginawulanda26@gmail.com

---

## I. INTRODUCTION

Every human being has various roles at once in his life, both in social life and personal life. In social life, a person can play the role of a public figure, entrepreneur, or worker. Whereas in personal life, a person can act as a grandson, child, husband/wife, in-laws/daughter-in-law, and parents at once. The relationship between these roles needs to be regulated in a rule to determine the limits regarding the rights and obligations of each party bound by the law. One of the legal rules regulated in civil law includes marriage law. The stigma that persists in society is that every human being is created in pairs by the creator. There is an institution that unites a pair of human beings called the institution of marriage. This institution gives legitimacy to the couple to be recognized both legally, religiously and customarily. After the marriage, a man will then be referred to as a husband and a woman will be referred to as a wife. The Institution of Marriage has a significant impact on changing the life of a human being starting from changes in obligations, rights, property, to roles in personal life. Through the institution of marriage, it is hoped that humans can get eternal offspring and happiness, so it requires careful planning to carry out a marriage. The question then becomes whether the purpose of the marriage can be achieved if the marriage is carried out without good planning and thinking. The answer is of course relative, it could be fine and it could be less good. So that it requires maturity from potential partners both psychologically and psychically.

One of the serious issues of marriage is regarding the minimum age of marriage. Age does not determine a person's maturity level psychologically, but the existence of these limits can avoid the occurrence of various problems in marriage caused by the lack of readiness of the bride and groom. The issue of marriage age limit to the granting of marriage dispensation by the court is quite rampant as a topic discussed in various studies. The Convention on the Rights of the Child does not provide a definitive definition of child marriage but UNICEF defines that Child Marriage is a marriage performed through civil, religious, customary law with or without official registration or consent where one or both spouses are children under the age of 18.(UNICEF, 2016) Boyden, Pankhurst dan Tafere defines child marriage as any union between individuals under the age of 18, this is the minimum legal age of marriage and the age of majority.(Jo Boyden; et. al, n.d.)

The issue of child marriage was one of the concentrations in the discussion at the International Convention in 2014, the Secretary-General of the United Nations put forward a recommendation in the form of abolishing child marriage which was then continued in 2015. A total of 116 countries supported this recommendation. The high attention to child marriage is a reaction to the high rate of child marriage. Although in the last thirty years the rate of child marriage has decreased from 33 percent in 1985 to 26 percent in 2010. But still, more than 700 million girls living today are married before reaching the age of majority of 18, of which one-third are married under the age of 15.(UNICEF, 2016) If this trend persists, UNICEF estimates that 142 Million girls will be married at an early age from 2011 to 2020.

In Indonesia, the number of child marriages is also quite high, occupying the seventh position in the world and second in ASEAN.(Trihendrawan, n.d.) In 2016, there were 22,000 Indonesian women between the ages of 10-14 years married. In addition, the teenage gestational age is also quite high.(Gibran Linggau, n.d.) In the period from 2008 to 2018, the number of child marriages in Indonesia experienced a slow decline, decreasing by 3.5 percent from 14.67 percent to 11.21 percent. (UNICEF, 2020) The five provinces that occupy the highest rates of child marriage are South

Kalimantan (12.52 percent), West Java (11.48 percent), East Java (10.85 percent), West Sulawesi (10.05 percent), and Central Kalimantan (9.85 percent). (Central Bureau of Statistics, 2020).

There are various problems behind the high level of early childhood marriage including early pregnancy, poverty, legal inconsistencies, to traditions and cultures that live in society. (Djamilah dan Reni Kartikawati, 2014) This shows that the problem of child marriage is still a problem on a large scale and a fairly wide scope. Based on various results of literacy studies, it was found that there were interactions of various factors that caused child marriage including social factors, economic factors, religious factors, educational factors, early pregnancy factors to tradition and cultural factors in society.

One of the government's efforts to reduce the number of child marriages in Indonesia is by making changes to the Marriage Law. The minimum age of marriage in Indonesia, which was originally 16 years for women and 19 years for men, was changed to 19 years for both women and men. This change was made through Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The change in the minimum marriage limit seems to be a breath of fresh air in an effort to reduce the number of child marriages. However, the Marriage Law still allows for deviations from the minimum age limit determined through the mechanism of marriage dispensation. The dispensation of marriage age may be requested to the court on very pressing grounds accompanied by sufficient supporting evidence. However, it is not explained exactly what the urgent reason is. This allows for multiple interpretations of urgent reasons to be requested for dispensation to the courts.

The difference in the appropriation of the urgent reasons for the application for marriage dispensation occurred in several court rulings. Some of them are the determination of the Ciamis Religious Court No. 917/Rev.P/2020/PA. Cms and the determination of the Cianjur Religious Court by No. 0376/Rev.P/2020/PA.Cjr. In both determinations, the Panel of Judges granted the application for dispensation of child marriage on the same grounds which did not favor the best interests of the child. The consideration of the Panel of Judges in granting the application for marriage dispensation does not take into account the rights of the child that will be violated by the existence of the marriage.

From the two rulings, it can be seen that efforts to reduce the number of child marriages in Indonesia by changing the minimum age of marriage are only a rule. This is due to the existence of a rule that allows deviations from the rule by applying for dispensation. However, there is no clearer rule on the conditions for the marriage dispensation to be granted. This causes the author to be interested in analyzing the court's determination on the granting of marriage dispensation to the bride and groom who are below the age limit of marriage.

## II. RESEARCH METHODS

The research method used in this study is normative legal research, namely research conducted on legal principles, legal systematics, the level of legal synchronization, legal history, and legal comparison. (Soerjono, 1989) Normative legal research has the characteristic of using library materials or secondary data, which consists of primary legal materials, secondary legal materials, and tertiary legal materials. (Soerjono, 1989) This research was conducted using the document study method, namely assessing legal products in Indonesia that regulate Marriage such as the Marriage Law and Supreme Court Regulation Number 5 of 2019 concerning Procedures for Adjudicating Marriage Dispensation Applications. This study also conducted a study of court determinations,

namely the determination of the Ciamis Religious Court No. 917 / Pdt.P / 2020 / PA. Cms and the determination of the Cianjur Religious Court with Number 0376/Pdt.P/2020/PA.Cjr. The determination of the Ciamis and Cianjur Religious Courts was chosen because West Java Province is one of the provinces that remains in the top five highest child marriage rates in Indonesia.

### III. RESULT AND DISCUSSION

#### 1. Marriage Law in Indonesia

Regarding marriage law, it is regulated in various legal rules such as religious law rules and civil law rules. Indonesia regulates marriage in Law Number 1 of 1974 concerning Marriage which is amended in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law). The definition of marriage in the Marriage Law is an inner birth bond between a man and a woman as a husband and wife with the aim of forming an eternally happy family (household) based on the Almighty Godhead. Based on the definition of marriage in the Marriage Law, there are several elements of marriage, including:

- a. The element of Religion / Belief can be seen from the sound of Article 1 of the Marriage Law which states "based on the Almighty Godhead".(Wahyono Darmabrata dan Surini Ahlan Sjarif, 2015) Article 2 paragraph (1) of the Marriage Law also states that marriage is valid if it is carried out according to the laws of each religion and belief. This confirms that the validity of marriage is determined by the religious law/beliefs of the bride and groom. Another article in the Marriage Law that shows elements of religion / belief is the origin of 8 letter f regulates the prohibition of interfaith marriage. In addition, Article 51 paragraph (2) of the Marriage Law specifies that the implementation of child guardianship must respect the child's religion/beliefs. From this it can be concluded that marriage in Indonesia is inseparable from religious / belief elements.
- b. The Biological Element in the Marriage Law can be seen from Article 7 paragraph (1) of the Marriage Law which regulates the minimum age limit to be able to carry out marriage, namely 19 years for men and 16 years for women. (Wahyono Darmabrata dan Surini Ahlan Sjarif, 2015) However, this provision has been amended by Law No. 16 of 2019 to 19 years for men and women. This is intended to ensure that everyone who enters into a marriage is biologically prepared.
- c. The sociological element in marriage can be seen from one of the purposes of carrying out marriage is to obtain offspring, while for the maintenance and education of children resulting from marriage is the right and obligation of parents. The high and low rate of population growth affects the welfare of the population which is a social problem.
- d. The Juridical element in marriage can be seen by itself where a marriage must be carried out in accordance with the provisions in the marriage law and other rules governing it.(Wahyono Darmabrata dan Surini Ahlan Sjarif, 2015)
- e. Elements of Customary Law in marriage can be seen from several articles, namely Article 31, Article 36, Article 37 of the Marriage Law on marital property and Article 43 concerning the legal relationship between the child and the mother.(Wahyono Darmabrata dan Surini Ahlan Sjarif, 2015)

From this definition, we can see that Indonesia views that marriage is a form of sacred bond between two human beings with the aim of having a happy and eternal family and holding a religious role to be the basis of marriage itself. Meanwhile, marriage according to Islamic law is marriage, which is a very strong contract or *mitsaqan gholidhzan* to obey Allah's commands and carry them out

is worship.(H. Abdurahman, 1995) Meanwhile, according to Christianity, marriage is a permanent partnership made with a commitment between a woman and a man.(Noerol Moearifah dan Mukayat Al-Amin, n.d.)

In Indonesian Customary Law, marriage is generally seen not only as a "civil union" but also as a "customary agreement" and "an agreement between relatives, family and neighbors". So that the occurrence of marriage is not only related to the relationship between a man and a woman but also the relationship of customs, inheritance, traditional and religious ceremonies. Thus it can be seen that from various legal points of view in Indonesia, marriage has different definitions but both have a fairly deep meaning.

The institution of marriage greatly affects a person's legal position. Although the definition of marriage is only between a man and a woman, this institution not only creates a legal relationship between the bound parties but also a legal relationship between the family of each husband and wife, a legal relationship between parents and the child born.(Noerol Moearifah dan Mukayat Al-Amin, n.d.) The result of marriage is not only on legal relations, but also their respective property and income. There are various problems regulated in the rules of marriage law, starting from before, when, to after the marriage is held in order to avoid or solve problems that arise because of it.

Before entering into a marriage, there are marital conditions that must be met. The legal conditions of marriage are divided into formal requirements and materiel requirements. Formal requirements are conditions regarding the procedure for continuing a marriage, both the conditions that precede and the conditions that accompany the continuation of marriage.(Darmabrata, 2021) Material terms are conditions regarding a person's personal self (prospective husband and wife) that must be met in order to be able to get married.(Darmabrata, 2021) The conditions of marriage are regulated in Chapter II of the Marriage Law, namely Article 6 to Article 12 of the Marriage Law. The conditions governing the person who will carry out the marriage or materiel conditions are divided into two, namely general materiel requirements, and special materiel requirements. General materiel requirements are the conditions that exist for a person who will carry out a marriage that a person must meet to be able to carry out a marriage.

This general materiel condition is often also referred to as the absolute condition of marriage. This is because if this condition is not met, then the parties cannot enter into a marriage. General (absolute) material terms apply to any marriage.(Darmabrata, 2021) The special materiel requirement of marriage is a requirement regarding a person's personal self to be able to carry out a marriage and applies to certain marriages. This requirement is often also referred to as the relative condition for carrying out a marriage, namely the obligation to ask permission in marriage, and certain prohibitions on carrying out certain marriages.

There are several general (absolute) material requirements in carrying out a marriage, including:(Wahyono Darmabrata dan Surini Ahlan Sjarif, 2015) Free Consent; Age/Age Limit; Not in marital status; Application of waiting time.

In addition to general materiel requirements, there are also special material requirements that must be met in order to be able to carry out marriages for certain marriages consisting of permission to carry out marriages and certain prohibitions on carrying out marriages. Regarding marriage permits, it is regulated in Article 6 of the Marriage Law which states that a person who is not yet 21 years old must get the permission of both parents. Article 8 of the Marriage Law regulates the prohibition on marriage, namely between the bride and groom having a blood relationship, semenda, susuan, relatives and wives, to relationships whose religion is prohibited from marriage.

In carrying out the marriage, it must be based on the free consent of the bride and groom, meaning that the two brides-to-be agree to bind themselves to the marriage without any element of coercion or deceit. This can be interpreted to mean that no one can force the bride or groom-to-be to bind themselves in marriage. Without free consent, marriage cannot be carried out. This is regulated in the provisions of Article 6 paragraph (1) of the Marriage Law which states that "Marriage must be based on the consent of the two brides-to-be". (Law Number 1 of 1974 concerning Marriage, n.d.) The explanation of this article states that "Since marriage has the intention that the husband and wife can form an eternal and happy family, and in accordance with human rights, the marriage must be approved by both parties to the marriage, without any coercion from any party." (Law Number 1 of 1974 concerning Marriage, n.d.)

The age limit in carrying out marriage is very important. In general, marriages are carried out by people who have grown up both physically and psychically. Because the responsibility that will be carried when building a family is very large. Emotional maturity is very necessary to be able to maintain the continuity of the household in a marriage. To maintain the health of husbands and wives and their offspring, the Marriage Law states that there needs to be a minimum age limit to be able to carry out marriages. The marriage age limit is regulated in Article 7 (1) of the Marriage Law, which is at least 19 years old for men and 16 years for women.

Although the provisions regarding the minimum marriage limit have been determined, the Marriage Law still provides a loophole for these provisions to be kept." (Law Number 1 of 1974 concerning Marriage, n.d.) The article does not specify the minimum limit for being able to apply for a marriage dispensation and how the dispensation may be granted by the court or the official in question. This uncertainty regarding the arrangement of the marriage dispensation resulted in various interpretations in determining the conditions for which a dispensation application could be granted.

The provisions regarding the minimum marriage limit regulated in Law No. 1 of 1974 concerning Marriage were amended by the promulgation of Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. Article 7 of this law states "Marriage is only permitted if the man and woman have reached the age of 19 years." However, this law still opens loopholes for deviations from the marriage age limit through the marriage dispensation mechanism in the Court. As a form of implementation of the marriage dispensation, the Supreme Court issued a Regulation of the Supreme Court of the Republic of Indonesia number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications (Perma Dispensation). The perma serves as a guideline for judges in adjudicating applications for marriage dispensation for underage brides-to-be. Judges in adjudicating applications for Marriage Dispensation must be based on several principles, namely: (Supreme Court Regulation Number 5 of 2019 Regarding Guidelines for Adjudicating Applications for Marriage Dispensation, n.d.) The best interests of the child; The right to life and development of children; Appreciation for the opinion of the child; Appreciation for human dignity and dignity; Non-discrimination; Gender equality; Equality before the law; Justice; Expediency; and Legal certainty.

In Perma No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, it then regulates the scope and administrative provisions, submission of applications and examination of cases which in essence explains the parties who are entitled to apply for dispensation and apply for dispensation. In the case of case examination, the Applicant is obliged to present the child to be asked for dispensation, the prospective husband/wife, and the

parents/guardians of the prospective husband/wife. The judge in the proceedings shall give advice to the Petitioner, Child, Prospective husband/Wife and parents of the parties. The advice given in relation to: (Regulation of the Supreme Court Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, n.d.) The possibility of cessation of the child's education; The continuity of children in pursuing compulsory education for 12 years; The unpreparedness of the reproductive organs; Economic, social and psychological impacts on children; and Potential for strife and domestic violence.

In the course of the proceedings, the Judge shall identify the child submitted for the application knowing and approving the marriage plan without any psychic, physical, sexual or economic coercion towards the child and/or family to marry or marry the child. The judge must also identify the psychological condition, health, and readiness of the child to carry out the marriage and build a household. (Regulation of the Supreme Court Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, n.d.) In the provisions of Article 16 of the Perma the guidelines for adjudicating applications for dispensation provide that the judge must consider the best interests of the child. The panel of judges should carefully and carefully examine the application for dispensation, explore the background and reasons for child marriage, and consider the psychological, sociological, cultural, educational, health, and economic conditions of the child and parents based on the recommendations of those who are experts in the field.

The provisions in Article 17 of the Perma provide that in determining the application for marriage dispensation, the Judge must consider the protection and best interests of the child in the legislation and unwritten law in the form of legal values, local wisdom, and the sense of justice that lives in society as well as international conventions and or agreements related to child protection.

## 2. The Principle of Best Interests for Children

The Convention on the Rights of the Child (CRC) or the Convention on the Rights of the Child agreed upon in the 44th session of the General Assembly of the United Nations which was further set forth in UN Resolution No. 44/25 on December 5, 1989. The Convention on the Rights of the Child is juridically and politically binding among various countries that regulate matters related to the Rights of the Child. Indonesia has ratified by issuing Presidential Decree Number 36 of 1990 dated August 25, 1990. Consequently, Indonesia is obliged to recognize and fulfill the rights of children as formulated by the Kha. There are various Children's Rights that must be guaranteed to be fulfilled not only by the state but also the family which is a basic group in society and the environment that plays a major role in the growth and welfare of children. The basic principles in the Convention on the Rights of the Child include:

- a. Non-discrimination, meaning that all rights recognized and contained in the KHA must be applied to every child without any distinction. This principle is a reflection of the principle of Universality of Human Rights ("Convention on the Rights of the Child/CRC (Convention on the Rights of the Child/CRC)," n.d.)
- b. The best interest for the child means that in all actions that concern the child, then the best for the anak must be the main consideration. (The Convention on The Rights of The Child, n.d.)
- c. The right to life, survival and development means that the inherent right to life of every child must be recognized and that the child's right to his survival and development must be guaranteed. This principle reflects the principle of invisibility in Human Rights. (The Convention on The Rights of The Child, n.d.)

- d. Respect for the opinion of the child means that the opinion of the child, especially when it comes to matters that affect his life, needs to be considered in every decision making. (“Convention on the Rights of the Child/CRC (Konvensi Tentang Hak- Hak-Hak Anak/KHA) Hak-Hak Anak/KHA),” n.d.)

The Principle of Best interests for children is one of the most crucial principles in the granting of marital dispensation. This principle is set out in article 3 point 1 of the convention on the rights of the child (CRC) which states In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (The Convention on The Rights of The Child). When looking at the concept of the best interests of the child as a whole, there is indeed no specific explanation in its application. Jean Zermatten put forward three elements in fulfilling the principle of the best interests of the child, namely: (Jean Zermatten, 2010)

- a. The best interest of the child is a rule of procedur, namely that in every decision taken and affects the child, the decision-making process must consider the positive and negative impact of the decision on the child.(Zermatten, 2010)
- b. The best interest of the child is a foundation for a substantive right i.e. there is assurance that the principle of the best interest of the child is applied in every decision to be made regarding a child. This guarantee can be a provision governing the legal obligation for decision-makers to consider the best interests of the child. (Zermatten, 2010)
- c. The best interest of the child is a fundamental, interpretive legal principle that is a fundamental and interpretive legal principle. This principle was developed to limit the uncontrolled power of adults over the child. (Zermatten, 2010)
- d. Case Study of Marriage Dispensation Based on Ciamis Religious Court Determination No. 914/Rev.P/2020/PA. Cms and Determination of Cianjur Religious Court No. 0376/Pdt.P/2020/PA. Cjr.

Ciamis Religious Court Determination No. 914/Rev.P/2020/PA. Cms is an injunction upon the application for marriage dispensation caused because the age of the two prospective brides and wives is still below the minimum age of marriage. The application was filed on November 16, 2020 by the Petitioner who is the biological father of the future bridegroom. (Pengadilan Agama Ciamis No. 917/Pdt.P/2020/PA.Cms, n.d.) In his petition, the Petitioner presented the case for filing an application for marriage dispensation for his child. The Petitioner essentially stated that the Petitioner was about to marry his son named Prospective Groom who was born on October 24, 2020 so that at that time he was only 18 years and 1 month old with the Bride-to-be who was born on November 8, 2004 and at that time was only 16 Years old.(Pengadilan Agama Ciamis No. 917/Pdt.P/2020/PA.Cms, n.d.) The marriage will be recorded before the Marriage Registrar of the Religious Affairs Office of Banjarsari District, Ciamis Regency.

The petitioner contends that the conditions for performing a marriage according to the provisions of Islamic law and laws and regulations have been met except for the requirement regarding the age of the applicant's child who has not reached 19 years. This caused the Kua of Banjarsari District, Ciamis Regency, to reject the marriage application of the bride and groom on November 13, 2020. The Petitioner postulates that the marriage is very urgent to continue because the relationship between the two brides-to-be is so close, that the Petitioner is very worried that there will be acts prohibited by the provisions of Islamic law if they are not married immediately. In addition, there is no prohibition on marriage between the two brides-to-be.

The applicant postulates that the Applicant's child is still in trace status and has worked as a laborer with a monthly income of Rp 2,000,000. The petitioner also postulated that the petitioner's family and the parents of the bride-to-be had agreed to the marriage plan and there was no objection to the marriage. (Ciamis Religious Court No. 917/Pdt.P/2020/PA.Cms, n.d.) On the basis of these arguments, the Petitioner appealed to the Chief Justice of the Ciamis Religious Court to grant the Petitioner's application and grant a marriage dispensation to his son named The bridegroom-to-be to marry his future wife.

In the said determination, it is also stated that the Judge has advised the Petitioner, the Petitioner's child who was asked for dispensation, the future wife and the parents/guardians of the prospective wife about the risks of child marriage resulting in the possible cessation of 12 years of education/compulsory education, unpreparedness of the reproductive organs, the economic, social, and psychological impacts on the child and the potential for domestic disputes and violence, so that the Petitioner as a parent/guardian is advised to postpone it until the minimum age of marriage as provided by the Marriage Act which is 19 years, but the Petitioner remains in his stance to marry the two brides-to-be.

In the trial, the Petitioner's son named The bridegroom-to-be was presented who essentially gave a statement that he had been in a love affair with the Bride-to-be for a long time. They have often gone out together and have never had intercourse.(Pengadilan Agama Ciamis No. 917/Pdt.P/2020/PA.Cms, n.d.) The bridegroom-to-be stated that he was ready to take responsibility and was able to marry the bride-to-be without any coercion from any party. The bridegroom-to-be also stated that he would try to prepare himself to be a good husband and promised to carry out his obligations and responsibilities.

The bride-to-be was also presented at the hearing and gave a statement essentially stating that it was true that she had been in a relationship with the Petitioner's child for a considerable considerable time. She also stated that she was ready to be a responsible wife and/or housewife. The parents of the bride-to-be were also presented at the trial and gave a statement that basically stated that the marriage was the wish of the two brides-to-be without any psychic, physical, sexual or economic coercion from the other party. In addition, he also confirmed that his son has been in a love relationship for a long time and has been so familiar. The parents of the bride-to-be also stated that they are ready to guide and assist the bride and groom regarding their educational, economic, social and health issues.

Determination of the Cianjur Religious Court under number 0376/Pdt.P/2020/PA. Cjr is also not much different from the determination of PA Ciamis. In this determination an application is filed by the parents of the child to whom the marriage dispensation will be requested. The petitioner in his petition explained that the petitioner's child was born on December 10, 2003 and the prospective husband of the petitioner's child was born on July 3, 2000. The petitioner applied for a marriage dispensation for his child because the Marriage Registrar of the Office of Religious Affairs (KUA) of Karang Tengah District, Cianjur Regency refused to marry the two brides-to-be because they were still under the stipulated drinking limit of 19 years.

The petitioner in his petition stated that although the age requirement of 19 years had not been met, the petitioner stated that the marriage was urgent to take place. The very urgent reason is partly because the two brides-to-be have such a close relationship, that the applicant is very worried that there will be acts prohibited by the provisions of Islamic law if they are not married immediately. The petitioner also stated that his son was already a wife and a housewife. Likewise, the future husband

of her child is ready to become the husband and head of the family (Penetapan Pengadilan Agama Cianjur Nomor 0376/Pdt.P/2020/PA.Cjr, n.d.).

To corroborate his plea, the Petitioner in both judgments also presented two witnesses. The determination of PA Ciamis presents Witness 1 who is the Village Device where the Applicant lives and Witness 2 who is a neighbour of the Petitioner. In the determination of PA Ciajur presented Witness 1, namely the uncle of the bride-to-be and Witness 2, namely the elder brother of the prospective bridegroom. In essence these witnesses gave testimony which essentially supported the arguments put forward by the Petitioner. The two witnesses explained that the relationship between the two brides-to-be was so close and difficult to separate that it caused unrest among the family and the surrounding community that there would be things that were prohibited by religion. There are fears that there will be worse things and become a disgrace to the family if they are not married immediately.

### 3. Analysis of Judges' Considerations in Determining 'Very Urgent Reasons'

The provisions regarding the age limit to be able to carry out marriage in Article 7 of Law No. 1 of 1974 have been amended by Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. Law 16 of 2019 changed the minimum age for marriage from the original 16 years for women to 19 years old. Although there is a change in the minimum age of marriage for the bride and groom, the provisions regarding the marriage dispensation still apply. Article 7 paragraph (2) of the Marriage Law adds to the reasons that can be requested for marriage dispensation, namely very urgent reasons and accompanied by sufficient supporting evidence. In both of the analyzed assignments, the reason for the application for marriage dispensation in the Petitioner's argument is that the marriage is very urgent to continue to be carried out because the relationship between the two brides-to-be is so close, that the Petitioner is very concerned that there will be acts prohibited by the provisions of Islamic law if they are not immediately married.

Based on the pleadings, the testimony of the bride-to-be, the evidence of the letter, and the testimony of the witnesses, the Panel of judges in its consideration put forward the facts obtained during the trial. Basically, it states that the two brides-to-be have been in a relationship for a long time which causes concern for the family and the surrounding community that there will be further things that are prohibited by religion and become a disgrace to the family if the two brides-to-be are not married immediately. The panel of judges also found that the Petitioner as a parent along with the parents of the future wife is ready to take responsibility for economic, social, health and educational issues of the child and is willing to participate in guiding the household of the Petitioner's child and his future wife if he is married later.

In order to avoid negative and unwanted things and greater damage, the Panel of Judges considered that this matter was sufficient to meet the criteria for very urgent reasons, namely in circumstances where there was no other choice and was very forced to have to hold a marriage as stated in the provisions of Article 7 paragraph (2) of Law No. 16 of 2019. The Panel of Judges also held that the granting of marriage dispensation by the court was in fact to avoid the occurrence of a greater *mudharat*. The Panel of Judges in its deliberations also saw that the marriage was the will of the two brides-to-be without any coercion from any party. The marriage plan is supported and approved by their respective parents and is committed to taking responsibility for economic, social, health, and educational issues for the bride and groom. Based on these considerations, the Panel of

Judges in its determination decided to grant the Petitioner's application and grant dispensation to the petitioner's child to marry his future wife.

Seeing the judge's consideration that the concerns of parents and the community will happen undesirable things because the two brides-to-be have established a very close relationship that will cause disgrace and slander to the family is not appropriate if it is said to be a very urgent reason for the marriage to be carried out immediately. Based on the explanation of Article 7 paragraph (2) of the Marriage Law, it is explained that what is meant by the very urgent reason is that there is no other option and it is very forced to have a marriage.

Seeing the explanation of this very urgent reason, it still does not give a clear explanation regarding the conditions for the marriage dispensation to be granted by the court. However, the reason for worrying about unwanted things happening that will cause disgrace to the family naturally cannot be said to be a very urgent reason. This is because this is not necessarily going to happen and is only an assumption or concern of the family. Moreover, in the descriptions of the two brides-to-be, they have never had intercourse during the relationship. Although the question of this is not something that should be asked to a minor.

In the explanation of Article 7 paragraph (2) of the latest Marriage Law, it is explained that what is meant by 'sufficient evidence' is a certificate proving that the age of the bride and groom under the provisions of the law and a certificate from a Health worker supporting the marriage statement is very urgent. From the explanation of the Article, it can be assumed that one of the urgent reasons in question is the existence of a pregnancy outside of marriage.

In the facts of the trial there is not sufficient evidence to be able to state that the application for marriage dispensation has very pressing grounds as mentioned in the explanation. The evidence presented is only in the form of a photocopy of the applicant's marriage certificate citation, a photocopy of the family card, a photocopy of the Applicant's ID card, a photocopy of the child's birth certificate submitted for dispensation, a photocopy of the prospective bride's certificate issued by the puskesmas and a marriage rejection letter from KUA Banjarsari and KUA Karangtengah. The written evidence did not have the opportunity to be used as evidence for the strong reason for the marriage to take place. The evidence is only to meet the mere administrative requirements.

#### 4. Analysis of The Fulfillment of the Principle of Best Interest for Children

The Panel of Judges in its deliberations held that the two brides-to-be had been dating and loved each other for a long time and that both had agreed to proceed to the marriage level. In addition, the Panel of Judges also considered the concerns of the family if the two brides-to-be were not married immediately, it would cause slander and problems in the future. This is very irrelevant and not in line with the spirit to prevent child marriage which is the spirit to fulfill the basic rights of children and the best interests of children as stated in Article 3 paragraph (3) of Perma Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications which aims to Increase the responsibility of parents in preventing child marriage. Child marriage is a form of violation of children's rights.

The fulfillment of children's rights is not only the responsibility of parents, but also the obligation of society and the state to ensure the fulfillment of the rights of all children. As stated in the consideration of the Child Protection Law that the child as a sprout, potential and the next generation of young people have a strategic role, characteristics and special traits so that they must be protected from all forms of inhumane treatment that result in violations of human rights.

The bridegroom candidates who are in the determination of PA Ciamis are still 18 and 19 years old in the determination of PA Cianjur. The bride-to-be in both appointments is still 16 years old. The court ruled to grant dispensation for marriage for both couples due to concerns from parents about a prohibited act. From the considerations it can be seen that this decision was taken out of the interests of adults. This is certainly not in line with the principles of fulfilling children's rights, namely the principle of Best interests for children and the right to life and development of children. Children their age should still be actively playing and learning and enjoying their childhood. The judge in his determination did not see the best interests of the child and instead ignored the right to life and development of the child. The judge only considered parents' concerns about the occurrence of things that provide disgrace to the family and society that in reality are not necessarily the case. It is clear that the interests of the child take precedence in the judge's consideration of granting the Petitioner's application.

In addition, in the General Explanation of the Marriage Law, it is explained that the principle adopted by the Marriage Law is that prospective husbands and wives must be mature in body and soul in order to realize the goal of a happy and eternal marriage, avoid the end of marriage due to divorce, and obtain good and healthy offspring. The Panel of Judges in its deliberations held that although the Petitioner's child was not yet 19 years old, the Petitioner's Child was mature and mentally mature so as to be able to carry out the rights and obligations in the household properly and responsibly. This is not supported by sufficient evidence as required in the Marriage Law. Although it is true that the bridegroom-to-be can already find their own income as a laborer with an income of Rp. 2,000,000 per month, this cannot be used as a benchmark that the bride and groom are mentally mature to carry out very large responsibilities as a husband and father if a child is born from the marriage.

Based on the facts of the trial, there is no visible fulfillment of general materiel requirements to be able to carry out marriage, namely the existence of several aspects that can determine a person can get married, including: Physical (physical) maturity; Spiritual (psychic) maturity; and Social Maturity.

Men and women who will carry out marriages are expected to be able to give birth to children. Based on the facts of the trial, the Panel of Judges in its consideration stated that the minimum age requirement of 19 years in the Marriage Law is an indication of the maturity and maturity of a person's soul to be able to carry out obligations in the household properly and responsibly and to maintain the health of the husband and wife and their offspring. In addition, the Panel of Judges also held that in the discourse of Islamic law there is no age limit in marriage, but due to the consideration of *taqyid al-mubah* (restriction of things that may be) for the benefit of it is recommended that marriage be performed after the age of baligh because a child is considered not physically or psychically ready to assume duties as husband/wife, even though he has reached the age of aqil baligh, so that marrying a minor child is considered not maslahat or can even cause mafsadat (damage).(Pengadilan Agama Ciamis No. 917/Pdt.P/2020/PA.Cms, n.d.)

This consideration is quite correct, but there is another consideration that states that the Panel of Judges in its consideration also expressed the opinion of the scholars stating that marriage becomes mandatory whenever there is a fear (*khasyyah/khauf*) of falling into adultery while the party concerned is able to carry out the marriage, considering that adultery is a *major sin (kaba'ir)* that must be avoided as an *ejawantah* from the act of preserving religion (*hifdz ad-din*) as well as

descendants (*hifdz an-nasl*) which is the goal (*maqashid*) of islamic sharia. (Pengadilan Agama Ciamis No. 917/Pdt.P/2020/PA.Cms, n.d.)

The Panel of Judges in its deliberations did not appear to consider the possible positive or negative impacts on the child who will carry out the marriage. The Panel of Judges considered the concerns of parents more than the possible impact of child marriage on the child's physical, psychological, and social readiness. In both of the judgments analyzed, there was no apparently compelling reason and sufficient evidence was a solid basis for granting the Petitioner's application for dispensation. The panel of judges ignored the fact that the physical condition of the bride and groom who are still relatively young, namely 18 and 16 years old, will pose a very risk to those that can threaten the health of the bride and groom and the child that will result from the marriage such as the risk of death during childbirth, reproductive health problems, death in infants, high rates of stunting to divorce. This is because the physical and psychic of the bride-to-be's child is not ready to reproduce and carry out marital responsibilities.

The Panel of Judges again ignored the absolute materiel requirement of marriage which must see spiritual or psychiatric (psychic) maturity in the prospective husband and wife at the age limit have been able to understand the consequences of the marriage, being able to take responsibility for fostering a happy family. Marriage is not only a birth bond, but also a husband-wife inner bond in a happy and eternal life fellowship. (Law Number 1 of 1974 concerning Marriage, n.d.)

In the provisions of Article 14 of Perma number 5 of 2019, it stipulates that the judge must identify the psychological condition, health, and readiness of the child to build a domestic life. This cannot be done simply by asking the readiness of the bride and groom as the judge did in the trial. To be able to identify this, it must be through the help of experts in their fields, namely psychologists, doctors/midwives, professional social workers, social welfare tenaa, integrated service centers for the protection of women and children (P2TP2A), to the Indonesian/Regional Child Protection Commission (KPAI/KPAD), but this is not done in the examination of cases. (Supreme Court Regulation Number 5 of 2019 Regarding Guidelines for Adjudicating Applications for Marriage Dispensation, n.d.)

The existence of social maturity is also one of the conditions that determine the age limit of marriage, namely that husband and wife is expected to have social maturity so that they can carry out social responsibility in community life. How can a child who is still essentially carrying out roles and duties as a child be given a fairly heavy social responsibility. The problem of child marriage is a very serious problem. This is because child marriage causes various negative impacts that are generally borne by women and children from the results of marriage. Such as forced marriage, pregnancy at a young age, domestic violence, sexually transmitted diseases, to have a psychological impact. In addition, child marriage can deprive every child of various rights that should be obtained, including the right to education, the right to be free from violence and abuse, the right to health, the right to be protected from exploitation and many other rights that are taken away when a child carries out obligations either as a husband or wife, mother or father to a sex partner.

#### IV. CONCLUSION

Based on the results of the presentation and analysis above, it can be concluded that the Panel of Judges in its consideration did not consider the possible impact of the marriage to be carried out by the child. In the determination there is no visible consideration in the best interests of the child. The panel of judges did not consider the requirements regarding physical readiness, spiritual

readiness, social readiness, and risks that could be harmful to the child of the bride and groom physically or psychologically in the event of a marriage. The petitioner in his argument could not prove that the grounds for being able to apply for a marriage dispensation i.e. 'very urgent reasons' could not be proved. The Judge's consideration of the very urgent reasons was based only on the concerns of parents and the community that unwanted things would happen because the two brides-to-be had a very close relationship that would cause disgrace and slander to the family. This family concern shows that it is true that the initiative to carry out the marriage came from the parents. This reason only concerns the interests of the parents and family of the bride-to-be without paying attention to how the interests of the two brides-to-be are.

In this determination, the judge only implemented the guidelines for adjudicating applications for marriage dispensation administratively. There is no consideration of the best interests of the child nor the very urgent reasons for the marriage to take place. There is a tendency that the requirement to grant an application for marriage dispensation is if the formal provisions in the guidelines for adjudicating marriage dispensation applications regulated in Perma number 5 of 2019 have been met. The material or substantive provisions in the examination of the application case are neither taken into consideration nor a condition for granting the application for marriage dispensation.

## Refference

- Convention on the Rights of the Child/CRC (Konvensi tentang Hak- Hak-Hak Anak/KHA) Hak-Hak Anak/KHA). (n.d.). Retrieved from 123dok website: [https://123dok.com/document/yd8mr6lq-modul-konvensi-hak-hak-anak-kha.html?utm\\_source=search\\_v3](https://123dok.com/document/yd8mr6lq-modul-konvensi-hak-hak-anak-kha.html?utm_source=search_v3)
- Darmabrata, W. (2021). *Hukum Perkawinan Perdata, Jilid I*. Jakarta: Rizkita.
- Djamilah dan Reni Kartikawati. (2014). Dampak Perkawinan Anak di Indonesia. *Jurnal Studi Pemuda*, 3(1), 3.
- Gibran Linggau. (n.d.). Indonesia Urutan Kedua Tertinggi Pernikahan Anak. Retrieved from <https://lifestyle.kompas.com/read/2015/12/13/110000623/Indonesia.Urutan.Kedua.Tertinggi.Pernikahan.Remaja>
- H. Abdurahman. (1995). *Kompilasi Hukum Islam di Indonesia*. Jakarta: CV. Akademika Presindo.
- Jo Boyden; et. al. (n.d.). Child Protection and Harmful Tradition Practices: Female Early Marriage and Genital Modification I Ethiopia. Retrieved from <http://www.tandfonline.com/loi/cdip20>
- Noerol Moearifah dan Mukayat Al-Amin. (n.d.). Perkawinan Menurut Islam dan Protestan. Retrieved from <http://103.114.35.30/index.php/Ah/article/viewFile/1055/pdf>
- Penetapan Pengadilan Agama Cianjur Nomor 0376/Pdt.P/2020/PA.Cjr.*
- Pengadilan Agama Ciamis No. 917/Pdt.P/2020/PA.Cms.*
- Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin.*
- Soerjono, S. (1989). *Pengantar Penelitian Hukum*. Jakarta: UI Press.
- The Convention on The Rights of The Child.*
- Trihendrawan, N. (n.d.). Indonesia Peringkat Tujuh Kasus Perkawinan Anak. Retrieved from <https://nasional.sindonews.com/read/1254271/15/indonesia-peringkat-tujuh-kasus-perkawinan-1509711401>
- Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.*

- UNICEF. (2016). *Kemajuan yang Tertunda: Analisis Data Perkawinan Usia Anak di Indonesia*. Jakarta: Badan Pusat Statistik.
- Wahyono Darmabrata dan Surini Ahlan Sjarif. (2015). *Hukum Perkawinan dan Keluarga di Indonesia*. Jakarta: Rizkita.
- Zermatten, J. (2010). The Best Interest of the Child Principle: Literal Analysis and Function. *Journal of Children's Right Internasional*, 18, 485.