

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

The Relevance of Marriage Dispensation in Preventing the Harmful Impact of Early Marriage on Women in Semarang City

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Abstract. *Marriage requires emotional maturity and economic stability so that husband and wife are able to create a harmonious family. The existence of early marriages that often result in divorce makes the goal of marriage unable to be realized. Marriage dispensation is needed to control the increasing problem of early marriage and its consequences. However, marriage dispensation in Semarang City has not been running as expected. This study aims to determine and analyze the implementation of marriage dispensation as an effort to reduce the divorce rate in early marriages in Semarang City today. The study in this article aims to determine and analyze the obstacles and solutions in the problem of implementing marriage dispensation as an effort to reduce the divorce rate in early marriages in Semarang City today. The theories used are the theory of the legal system and the theory of law enforcement according to Islam. The research method used in this article is a type of analytical descriptive legal research. Based on the existing findings, it can be seen that the implementation of marriage dispensation as an effort to reduce the divorce rate in early marriages in Semarang City is currently not running effectively, this is because granting dispensation seems easy so that the number of early marriages in Semarang City is increasing. So, with the granting of marriage dispensation, even though it is permitted by law, judges should not easily issue marriage dispensation products, so caution is needed by providing more advice about the nature of marriage or the problems that will be faced when entering the real world of family.*

Keywords: *Dispensation; Early; Marriage; Relevance.*

1. Introduction

The reasons often cited in requests for dispensation include the relationship between the prospective groom and bride being so close that it is no longer possible to postpone the marriage, or even that the two have already engaged in extramarital relations. This leaves

The Relevance of Marriage Dispensation in...
(Reza Meilanda Lesmana)

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

parents concerned that their children will be increasingly drawn into actions contrary to Islamic law.¹

Religious Courts in adjudicating cases of applications for marriage dispensation often consider two harms, the harm that occurs as a result of child marriage or early marriage and the harm that will occur if the marriage dispensation is rejected. The Panel of Judges often accepts requests for marriage dispensation because they consider that the harm that will occur if the marriage dispensation is rejected is greater than the harm that occurs as a result of early marriage, where it is very likely that the offspring and honor of the prospective bride and groom will be damaged.

Dissolution of marriage is a legal term used in the Marriage Law to describe divorce, or the end of a marital relationship between a man and a woman who have been living as husband and wife. Couples who marry at a young age are generally not mentally and psychologically mature, so they may not be able to manage their emotions. They often decide to end their marriage without careful consideration.²

Child marriage is a very complex issue, and it cannot be viewed from a single perspective. There are fundamental and principled considerations regarding child marriage, including the child's safety, the child's continued education, and the safety of future generations. More importantly, the child's psychological maturity, which can impact future family relationships. This is crucial to reducing the divorce rate among children. The crucial role of dispensation as an effort to reduce divorce in early marriages has not yet been fully implemented. Of the 4,618 early marriages in Semarang, only 34 requested dispensation.³ This situation shows that the implementation of marriage dispensation as an effort to reduce the divorce rate in early marriages is not running optimally, especially in the city of Semarang.

2. Research methods

The type of research used in this study is descriptive analytical legal research. Descriptive analytical legal research is a method that serves to describe or illustrate the object being studied through collected data or samples as they are without conducting analysis or drawing general conclusions.⁴

¹Idris Ramulyo, *Indonesian Marriage Law*, Jakarta, Budi Aksara, 1996, p. 5.

²Ibid, p. 10.

³<https://jatengprov.go.id/publik/jokawin-bocah-tekan-pernikahan-dini-di-jateng/>, accessed on May 12, 2022.

⁴Sugiono, *Quantitative, Qualitative and R&D Research Methods*, Alfabeta, Bandung, 2009, p. 29.

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

3. Results and Discussion

3.1. Implementation of Early Marriage Dispensation in Semarang City

The role of marriage dispensations in efforts to reduce the divorce rate is a dilemma, because in some divorce cases filed by couples who have previously had a marriage dispensation, their marriage dispensation is generally because the marriage was not actually desired, only because of a previous pregnancy and to cover up the shame, they finally filed for a marriage dispensation. Although not all former marriage dispensation products return to court to obtain divorce.⁵ So it can be said that the role of marriage dispensation in efforts to reduce the divorce rate is not very effective because not a few couples who have received marriage dispensation then their marriage experiences problems and ultimately divorces due to factors of maturity/adulthood of the couple as well as economic factors of the couple.⁶

According to the author, the presence of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage and Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, as a new legal product and practically cannot ensure that with the existence of marriage dispensation, it can reduce the divorce rate, on the contrary it can increase the divorce rate because the mental and psychological instability of children in building a household is not yet stable. But of course this can be overcome with the hope of increasing the age limit for marriage according to the new revision of the Marriage Law, added if the process of examining marriage dispensation cases is carried out seriously, carefully and with complete deliberation so that the bride and groom can build a good household. However, if on the contrary, in the process of examining marriage dispensation cases is carried out easily, it will actually increase the divorce rate. So in principle, granting marriage dispensation must be done carefully with various factors in mind. According to the High Religious Court of Central Java Province, reports of dispensation cases in Semarang City reached 21 reports in 2022.⁷ This clearly shows that the number of reports of marriage dispensation issues in Semarang City is quite high, such a situation will clearly result in a high chance of divorce and damage to the future of those involved in early marriages due to the ease of granting marriage dispensation without paying attention to the aspect of caution in granting marriage dispensation.⁸

⁵ Rohmad Ariadi, Chairman of the Semarang City Religious Court, Electronic Interview, Semarang City, May 3, 2022.

⁶ *Loc. cit.*

⁷ [Aps.pta-semarang.go.id](https://aps.pta-semarang.go.id), accessed May 12, 2022.

⁸ Sri Endah Wahyuningsih, The Urgency of Reforming Indonesia's Material Criminal Law Based on the Values of Belief in the One Almighty God, *Journal of Legal Reform* Volume I No.1 January – April 2014, pp. 17-19.

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

3.2. The Relevance of Marriage Dispensation in Reducing Early Marriage in Semarang City

The Marriage Law regulates the minimum age requirements for men and women to enter into marriage. Deviations from the permitted age limits for entering into marriage are only possible by requesting dispensation from the court or other officials appointed by both parties, provided that the laws of their respective religions and beliefs do not specify otherwise. Provisions regarding the minimum age requirements for entering into marriage and dispensations for deviations are regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Previously, provisions regarding the minimum age limit for entering into marriage were regulated in Law Number 1 of 1974, with a minimum age limit of 16 years for women and 19 years for men. The provisions of Article 7 regarding age requirements and dispensations were then amended and updated in Law Number 16 of 2019 concerning Marriage Concerning Amendments to Law Number 1 of 1974 concerning Marriage, with a comparative table of changes as follows:

Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan	Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan
Pasal 7: (1) Perkawinan hanya diizinkan bila pihak pria mencapai umur 19 (sembilan belas) tahun dan pihak wanita sudah mencapai usia 16 (enam belas) tahun; (2) Dalam hal penyimpangan dalam ayat (1) pasal ini dapat meminta dispensasi kepada pengadilan atau pejabat lain yang diminta oleh kedua orang tua pihak pria atau pihak wanita	Pasal 7: (1) Perkawinan hanya diizinkan apabila pria dan wanita sudah mencapai umur 19 (sembilan belas) tahun; (2) Dalam hal terjadi penyimpangan terhadap ketentuan umur sebagaimana dimaksud pada ayat (1), orang tua pihak pria dan/atau orang tua pihak wanita dapat meminta dispensasi kepada Pengadilan dengan alasan sangat mendesak disertai bukti-bukti pendukung yang cukup

In its amendments, the Marriage Law regulates the minimum age for marriage to be equal for men and women, namely 19 (nineteen) years, up from 16 (sixteen) years for women. Similarly,

The Relevance of Marriage Dispensation in...
(Reza Meilanda Lesmana)

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

provisions regarding dispensations can now only be requested from the courts.⁹In Article 7 Paragraph (2) it is not explained regarding the requirements or things like what can be used as a basis or reason for submitting a marriage dispensation application to the Court, only in the explanation of Article 7 Paragraph (2) of Law Number 16 of 2019 concerning Marriage, what is meant by "very urgent reasons" is a situation where there is no other choice and it is very necessary for a marriage to take place and what is meant by "sufficient supporting evidence" is a certificate proving that the age of the bride and groom is still below the provisions of the law and a certificate from a health worker supporting the statement of the parents that the marriage is very urgent to be carried out. The provisions on the minimum age limit for marriage will result in the granting or permitting of permission for deviations from the age limit in carrying out a marriage. Dispensation is a form of leniency given for a prohibition regulated in the law.¹⁰Dispensation covers matters where the legislators have prohibited them, but due to important matters, they can be given freedom. According to the Big Indonesian Dictionary, dispensation is an exemption from a rule due to special considerations, an exemption from an obligation or prohibition.¹¹while the definition of dispensation in the legal dictionary written by Sudarsono is an exception to a general rule for a special situation, exemption from a prohibition or obligation. Law Number 1 of 1974 concerning Marriage and Law Number 16 of 2019 concerning Marriage do not provide a general or specific definition of marriage dispensation. The definition of marriage dispensation is regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation, Article 1 number 5 states that Marriage Dispensation is the granting of marriage permission by the court to prospective husbands/wives who are not yet 19 (nineteen) years old to enter into marriage.¹²

As the number of marriage dispensations in Indonesia increases, there are several major reasons for applying for marriage dispensations in the Religious Court, namely, the first is due to pregnancy outside of marriage, promiscuity in children that results in pregnancy outside of marriage is one of the reasons considered urgent for judges in granting dispensation requests, namely for the benefit of the child itself. The second reason is regarding the level of poverty in society, economic factors are often the reason behind underage marriages that occur, parents marry or match their children with older men by expecting a dowry or dowry from the

⁹Gunarto, Chintya Agnisya Putr, and Farris Nur Sanjaya, Effectiveness of Certificate Checks on Preventing Land Disputes in the Land Rights Transfer Process, Jurnal Akta, Vol 5 No 1 March 2018, pp. 267-269.

¹⁰Rohmad Ariadi, Chairman of the Semarang City Religious Court, Electronic Interview, Semarang City, May 3, 2022.

¹¹Gunarto and Dhona Anggun Sutrisna, Legal Review of Home Ownership by Foreigners Domiciled in Indonesia, Jurnal Akta, Vol. 4 No. 2 June 2017, pp. 239-241.

¹²*Loc, cit.*

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

prospective groom or simply to lighten the burden on the family. Families or parents sometimes feel that letting a child, especially a girl, get married reduces the burden of responsibility in terms of the family's economy because in the future the child will shift to the responsibility of the family of the man or husband who married her, this happens because the role of parents is very dominant in determining the marriage of a daughter, because of the assumption that children are property, so children, especially girls, must always be devoted/obedient to their parents.¹³ The very strong influence of customs, habits, and religion, the minds of society that are still not open or believe in old myths that if a girl does not marry within a certain period or age, she will be unsaleable or will not have a partner and will not marry in the future, or religions that allow marriage at an early age or when she has reached puberty.¹⁴

Another issue is that marriage is seen as an appropriate solution to unwanted pregnancies and to avoid sin, as well as societal "contemplation" regarding the future status of the child. Several cases of underage marriage have occurred, and the primary reason cited by parents or the prospective bride and groom is that it is a way to avoid adultery and negative public perception. Another reason is the perception that the sooner the couple marries, the better, especially since underage marriage is often reinforced by religious, legal, state, and customary norms.¹⁵

Geographical location is also a factor in requests for dispensations for underage marriage in Indonesia. People living in rural areas are more likely to marry at a young age than those living in urban areas. Furthermore, the perceived high cost of education is a reason for rural residents to forgo further education and instead choose to marry.¹⁶

Another thing is regarding gender inequality, gender inequality does not only occur due to the traditions and beliefs held by society, but is also caused by the systems and rules that are implemented which result in the instilling in society that the position of women is lower than that of men.¹⁷

The final issue, limited access to reproductive health information, is also among the majority of reasons for applying for marriage dispensations in Religious Courts. This limited access to reproductive health information among some members of the public is due to their ignorance of the potentially high risks of underage marriage. This lack of accurate information disclosure

¹³Ahmad Ali MD, "Legal Justice for the Poor," *Journal of Law and Justice*, (Yogyakarta) Edition 1, 2012, p. 132.

¹⁴*Loc, cit.*

¹⁵*Loc, cit.*

¹⁶*Loc, cit.*

¹⁷*Loc, cit.*

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

leaves adolescents unaware of the risks involved in making reproductive decisions.¹⁸ Various existing problems show that marriage dispensation is not able to reduce divorce and various negative impacts of early marriage, including reducing the number of early marriages in the city of Semarang.

4. Conclusion

The implementation of marriage dispensations as an effort to reduce the divorce rate in early marriages in Semarang City is currently ineffective. This is because the granting of dispensations seems easy, resulting in an increase in the number of early marriages in Semarang City. Therefore, with the granting of marriage dispensations, although permitted by law, judges should not easily issue marriage dispensations. Therefore, caution is needed by providing more advice on the nature of marriage and the problems that will be faced when entering the real world of family.

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¹⁸*Loc. cit.*

The Relevance of Marriage Dispensation in...
(Reza Meilanda Lesmana)



LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Regulation:

Presidential Instruction Number 1 of 1991 Concerning the Compilation of Islamic Law

Number 35 of 2014 Concerning Amendments to Law Number 23 of 2002 Concerning Child Protection

Supreme Court Regulation Number 5 of 2019 Concerning Guidelines for Adjudicating Marriage Dispensation Applications

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The Relevance of Marriage Dispensation in...
(Reza Meilanda Lesmana)