

# Marriage Dispensation: Perspective of Islamic Marriage Law and the Sustainable Development Goals

Afif Muamar,\* Tohayudin,\* Adang Djumhur,\* and  
Muhammad Feby Ridho\*\*

\* Institut Agama Islam Negeri Syekh Nurjati Cirebon, Indonesia

\*\* The University of Jordan

Email: [afif\\_muamar@syekhbnurjati.ac.id](mailto:afif_muamar@syekhbnurjati.ac.id)

**Abstract:** This article examines the implementation of marriage dispensation law in Religious Courts from the perspective of marriage law and the Sustainable Development Goals (SDGs), which often appear to be in conflict. Using a normative and sociological approach with qualitative analysis, this article finds that marriage dispensation, from the perspective of marriage law, is solely intended to serve the best interests of the child. It is a measure that must be carefully considered to ensure the child's protection, care, well-being, survival, and development. However, from the SDGs perspective, marriage dispensation may pose a threat or obstacle to achieving sustainable development goals, which aim to cultivate a reliable, resilient, and high-quality generation. The differing perspectives on marriage dispensation create an apparent contradiction between legal norms and sustainable development objectives. Nevertheless, these perspectives can be harmonized by recognizing that the goals of the SDGs and legal principles ultimately align. Thus, marriage dispensation should not always be viewed as a conflict between legal norms and societal realities. This divergence can be reconciled through court decisions that position marriage dispensation cases as *das sein* (facts/reality) and the SDGs' objectives as *das sollen* (ideals and aspirations).

**Keywords:** *Dispensation of marriage; marriage law; Sustainable Development Goals; best interests of the child; harmonization*

**Abstrak:** Artikel ini mengkaji penerapan hukum dispensasi kawin di Pengadilan Agama dari perspektif hukum perkawinan dan tujuan SDGs yang sering kali tampak saling bertentangan. Menggunakan pendekatan normatif dan sosiologis dengan analisis kualitatif, artikel ini menemukan bahwa dispensasi kawin dalam sudut pandang hukum perkawinan semata-mata untuk kepentingan terbaik anak, yaitu tindakan yang harus dipertimbangkan untuk memastikan perlindungan, pengasuhan, kesejahteraan, kelangsungan hidup dan tumbuh kembang anak. Sementara dalam perspektif SDGs, dispensasi kawin bisa menjadi salah satu ancaman atau penghambat bagi terwujudnya tujuan pembangunan yang berkelanjutan, yang hendak

mempersiapkan generasi yang handal, kuat dan berkualitas. Sudut pandang yang berbeda dalam melihat dispensasi kawin tersebut menjadikan keduanya seolah saling bertentangan. Namun demikian, keduanya sebenarnya bisa diharmonisasikan dengan menyatukan persepsi bahwa antara tujuan SDGs dan tujuan hukum adalah satu kesatuan. Dengan demikian, dispensasi kawin tidak selalu harus dipertentangkan antara norma hukum dan realitas yang ada dalam masyarakat. Kenyataan tersebut bisa dijembatani melalui keputusan pengadilan, yang mendudukkan kasus dispensasi kawin sebagai *das sein* (fakta/realita), dan tujuan SDGs sebagai *das sollen* (cita-cita dan harapan).

**Kata kunci:** *Dispensasi kawin; hukum perkawinan; tujuan Pembangunan Berkelanjutan; kepentingan terbaik anak; harmonisasi*

## Introduction

Law is a political product<sup>1</sup> formed by the three branches of state power: the legislative,<sup>2</sup> executive,<sup>3</sup> and judicial authorities.<sup>4</sup> Written regulations, which must be enforced by law enforcers and adhered to by all members of society, often struggle to keep pace with the evolving legal realities that develop more rapidly than the regulations themselves. Another recurring issue in the legal domain is the perceived contradiction between prevailing legal norms and state (government) policies. Therefore, harmonization between legal norms and state policies is necessary, grounded in the nation's philosophical foundation.

In the Indonesian context, the general standards that must be applied are those that align with the spirit, values, and philosophy of

---

<sup>1</sup> Miftakur Rohman, "Dispensasi Perkawinan Dan Kebijakan Politik Hukum Di Indonesia," *MASADIR: Jurnal Hukum Islam* 3, no. 01 (2023): 557, <https://doi.org/10.33754/masadir.v3i01.677>.

<sup>2</sup> Odang Suparman, "Konsep Lembaga Negara Indonesia Dalam Perspektif Teori Trias Politica Berdasarkan Prinsip Checks and Balances System," *Ahkam: Jurnal Hukum Islam Dan Humaniora* 2, no. 1 (2023): 60, <https://doi.org/10.58578/ahkam.v2i1.898>.

<sup>3</sup> Agus Trianto and et al., "Critical Legal Studies: Memahami Hubungan Antara Kepentingan Bisnis, Pemerintah Dan Hukum," *MENDAPO: Journal of Administration Law* 4, no. 2 (2023): 135, <https://doi.org/10.22437/mendapo.v4i2.24794>.

<sup>4</sup> Mashudi and et al., "Pemaksaan Konsep Trias Politica Pada Kedudukan Komisi Pemberantasan Korupsi Dalam Sistem Ketatanganan Indonesia," *UNES Law Review* 5, no. 4 (2023): 4527, <https://doi.org/10.31933/unesrev.v5i4.761>.

Indonesia, as well as the five fundamental pillars of Pancasila, the 1945 Constitution, Bhinneka Tunggal Ika, and the Unitary State of the Republic of Indonesia. This signifies that the standard for assessing the harmonization between legal norms and state policies, including policies related to the objectives of legal development, must be based on Indonesia's philosophy and these five pillars of Pancasila.

One of the aspects that need to be harmonized is the issue of marriage law, particularly regarding marriage dispensation, with the orientation of the Sustainable Development Goals (SDGs) that have been adopted by Indonesia since 2015. The agenda of SDGs was agreed upon by Indonesia along with other United Nations member countries to promote societal well-being through 17 development indicators. These indicators encompass policy aspects aimed at reducing poverty levels, strengthening law enforcement and gender advocacy, implementing policies in natural resources and environmental management, and striving to establish a fair and balanced global order.<sup>5</sup>

In this context, marriage dispensation is regarded as an effort to protect children. However, it is also considered a significant threat to the achievement of the 17 Sustainable Development Goals (SDGs).<sup>6</sup> To address the conflict between legal provisions or policies on marriage dispensation and the objectives of the SDGs,<sup>7</sup> it is essential to harmonize general standards between legal norms, objectives, and state policies. This harmonization ensures that legal perspectives and SDGs do not contradict but instead reinforce each other.

Previous studies have revealed the complexity of the impacts of marriage dispensation. An analysis of policies aimed at raising the minimum marriage age indicates that the primary objective of marriage

---

<sup>5</sup> Andrew Ng Kay Lup, et al., "Sustainable energy technologies for the Global South: challenges and solutions toward achieving SDG 7," *Environmentak Science: Advances* 2, no. 4 (2023), p. 570, <https://doi.org/10.1039/D2VA00247G>.

<sup>6</sup> Ahmad Alamuddin Yasin, et al., "Sustainability of Muslim Family Livelihoods in The Perspective of Sustainable Development Goals," *International Journal of Humanities Education and Social Sciences (IJHESS)* 2, no. 6 (2023): 1799, <https://doi.org/10.55227/ijhess.v2i6.427>.

<sup>7</sup> Carmen Pilar and Marrti Ballester, "Mutual funds and Gender Equality in Portofolio Firms: Toward the Sustainable Development Goals," *Corporate Social Responsibility and Environmental Management* 30, no. 2 (2023), p. 905, <https://doi.org/10.1002/csr.2396>.

dispensation is to protect the rights of individuals entering marriage. However, the implementation of this policy often presents its own challenges. A study by Salim et al. found that despite the increase in the minimum marriage age, gender power imbalances persist and thus lead to inequalities within marriage.<sup>8</sup>

A study conducted by Nur Laela Kusna revealed that social and local cultural factors also influence the effectiveness of the policy of marriage dispensation.<sup>9</sup> Meanwhile, the integration of the Sustainable Development Goals (SDGs) into legal policy reforms related to marriage age still needs to be strengthened.

Additionally, a study conducted by Darania Anisa found that although efforts have been made to align the policy of marriage dispensation with the Sustainable Development Goals (SDGs), challenges in implementation and impact assessment persist.<sup>10</sup> Therefore, limitations in evaluation methodology, such as the lack of comprehensive indicators, inconsistent assessment standards, insufficient data availability, and differences in interpretation among institutions, are the key factors hindering the realization of sustainable development targets.

Based on the explanation above and to avoid discussion bias, this study focuses on marriage dispensation cases in Religious Courts, excluding similar cases handled by General Courts. The primary objective of this research is to analyze the implementation of marriage dispensation law from the perspective of marriage law and to examine the harmonization between the marriage dispensation policy and the Sustainable Development Goals (SDGs). In line with these objectives, this study also seeks to provide an interpretation of the concept of

---

<sup>8</sup> Elycia Feronia Salim, et al., "Persamaan Syarat Usia Perkawinan sebagai Wujud Kesetaraan Gender dalam Meminimalisir Perkawinan Bawah Umur di Indonesia," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 5, no. 1 (2021), pp. 1–19, <https://doi.org/10.23920/acta.v5i1.519>.

<sup>9</sup> Nur Laela Kusna, "Analisis Efektivitas Hukum Atas Penanganan Dispensasi Kawin Pasca Berlakunya Undang-Undang No. 16 Tahun 2019 (Studi pada Pengadilan Agama Ponorogo)," (Tesis, IAIN Ponorogo, 2023), <http://etheses.iainponorogo.ac.id/id/eprint/24076>.

<sup>10</sup> Darania Anisa, "Perubahan Batas Usia Minimum Perkawinan sebagai Upaya Mencegah Diskriminasi Gender terhadap Perempuan," *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan dan Keperdataan* 9, no. 1 (2023), pp. 149–163. <https://doi.org/https://doi.org/10.24952/almaqasid.v9i1.7861>.

"harmonization of general standards" to clarify potential biases between the objectives of the SDGs and the legal interpretation of marriage law in assessing marriage dispensation cases in Religious Courts.

This research is normative in nature<sup>11</sup> and aims to harmonize general standards in the fields of marriage law and child protection law, ensuring a consistent interpretation of several Sustainable Development Goals (SDGs). Therefore, this study examines primary legal sources, including various laws and court decisions. The legal sources analyzed include Law No. 1 of 1974 on Marriage, Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage, and Law No. 23 of 2002 on Child Protection. Additionally, this research refers to Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications, Religious Court decisions on marriage dispensation cases, and The Annual Reports of the Religious Court Division of the Supreme Court from 2017 to 2021. Furthermore, marriage dispensation case data decided by Religious Courts and the Mahkamah Syar'iyah Aceh also constitute an essential part of this study.

This study also explores secondary data sources, including books and journal articles that discuss marriage law and marriage dispensation. In addition, this study refers to Presidential Regulation No. 59 of 2017 on the Implementation of Sustainable Development Goals (SDGs) Achievement and SDG reports related to gender equality and child protection, which serve as key references for this research.

This study adopts a legal and sociological normative approach, employing qualitative data analysis to gain an in-depth understanding of marriage law and child protection.<sup>12</sup> This approach not only focuses on examining existing legal norms but also analyzes how regulatory harmonization can support the achievement of sustainable national development goals.

---

<sup>11</sup> John W. Creswell, *Research Design: Pendekatan Kualitatif, Kuantitatif dan Mixed*, Terj, Achmad Fawaid. Yogyakarta: Pustaka Pelajar (Yogyakarta: Pustaka Pelajar, 2009).

<sup>12</sup> Zulfi Diane Zaini, "Implementasi Pendekatan Yuridis Normatif dan Pendekatan Normatif Sosiologis dalam Penelitian Ilmu Hukum," *Pranata Hukum* 6, no. 2 (2011), pp. 117–32. <https://doi.org/10.36448/pranatahukum.v6i2.102>.

To achieve the objectives of this study, various legal sources, including laws, regulations, court decisions, as well as official reports and statistical data from the Supreme Court and other relevant institutions are collected. The collected data is analyzed and linked to SDG indicators relevant to marriage dispensation, providing a comprehensive understanding of the relationship between marriage law regulations and efforts to achieve sustainable development.<sup>13</sup> Thus, this study not only identifies gaps between legal norms and SDG objectives but also proposes normative solutions that can serve as a reference for policy formulation to support sustainable development.

### **The Legal Concept of the Minimum Age for Marriage in Islamic Law**

The Qur'an and Hadith do not provide a specific explanation regarding the minimum permissible age for marriage. Consequently, the concept of "marriage dispensation," which refers to the restriction of the minimum age for men and women to marry, does not have identical interpretations among scholars. In this regard, differences of opinion among Islamic jurists (*fuqaha*) become increasingly apparent.

To address this uncertainty, there has been a growing need for a legal instrument that allows exceptions to the minimum marriage age requirement. However, scholars have not reached a consensus on such an instrument. The *fuqaha* have yet to agree on a clear definition of the minimum marriage age, except in matters related to *baligh* (attaining physical and mental maturity) or *mukallaf* (a person deemed legally responsible for their actions). As a result, debates over the appropriate minimum marriage age persist, and this issue continues to be discussed and examined within the framework of Islamic law and religious perspectives.

Scholars generally interpret the term *baligh* as "maturity" or "adulthood." However, this concept of maturity is often viewed primarily from the perspective of physical development and reproductive function, which generally defines the age range between

---

<sup>13</sup> Sergio Manuel Madero Gomez, et al., "Companies Could Benefit When They Focus on Employee Wellbeing and the Environment: A Systematic Review of Sustainable Human Resource Management," *Sustainability* 15, no. 6 (2023), p. 5435, <https://doi.org/10.3390/su15065435>.

nine and eighteen years old.<sup>14</sup> The indicators include bodily changes or physical maturity, the development of reproductive functions,<sup>15</sup> and the underdeveloped psychological orientation typically observed in children.<sup>16</sup>

Muhammad Rasyid Rida, a modern Islamic scholar, interprets the term *baligh* as adulthood and distinguishes it from *taklif*, which refers to an individual's awareness of the legal consequences arising from certain events.<sup>17</sup> Rasyid Rida's argument is reinforced by Abdul Wahhab Khallaf, who asserts that *taklif* is a person's intellectual capacity to fully comprehend the meaning and purpose of Islamic teachings.<sup>18</sup>

The differences in scholars' views regarding the age of *baligh* and *taklif* in the context of the minimum marriage age can be traced to one of the verses in the Qur'an, specifically Surah an-Nisa' (4:6).

“And test the orphans until they reach the age of marriage. Then, if you find sound judgment (are capable of managing their wealth) in them, hand over their property to them...”<sup>19</sup>

This verse establishes legal norms and provides guidance on a child guardianship and its termination. Meanwhile, a hadith narrated by Muslim regarding the marriage of the Prophet Muhammad to Aisha also contains a legal norm that is often used as a basis for permitting early marriage. In this hadith, Aisha states:

---

<sup>14</sup> ‘Abdullāh Muḥammad bin Aḥmad al-Anṣārī al-Qurṭubī, *Al-Jāmi’ li Aḥkām al-Qur’an (Tafsīr al-Qurṭubī)*, Jilid 3 (Cairo: Dār al-Kutub al-Miṣriyyah, 2006), p. 37.

<sup>15</sup> Jalāluddīn al-Maḥallī and Jalāluddīn al-Suyūṭī, *Tafsīr al-Qur’an al-Karīm*, Juz I (Beirut: Dār al-Fikr, 1998), p. 98.

<sup>16</sup> Kamarusdiana dan Ita Sofia, “Dispensasi Nikah dalam Perspektif Hukum Islam, Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam,” *Jurnal Sosial dan Budaya Syar’i* 7, no. 1 (2020), pp. 51-52, <https://doi.org/10.15408/sjsbs.v7i1.14534>.

<sup>17</sup> Moh. Ali Wafa, “Telaah Kritis Terhadap Perkawinan Usia Muda Menurut Hukum Islam,” *Jurnal Abkam* 17, no. 2 (2017), p. 394, <https://doi.org/10.37284/eajass.6.1.1201>.

<sup>18</sup> Abdul Wahhab Khallaf, *Ilmu Ushul Fiqh*, Translated by Moh. Zuhri dan Ahmad (Jakarta: Pustaka Amani, 2003), p. 188.

<sup>19</sup> QS. an-Nisa’ [4]: 6.

“The Prophet Muhammad married me when I was six years old, and he consummated the marriage with me when I was nine years old.”<sup>20</sup>

In the researcher's view, from a textual perspective, Surah An-Nisa (4:6) provides a case-specific indication regarding the interpretation of “sufficient maturity” in the context of a child under parental authority or guardianship.<sup>21</sup> In this context, Allah mandates that a child under the care of parents or guardians must be assessed by them regarding their competence as a legal subject for marriage and their ability to independently manage their wealth.

Meanwhile, the hadith narrated by Muslim concerning the marriage of the Prophet Muhammad to Aisha offers textual guidance on age as a reference or argument that, if considered holistically, can serve as a basis for determining the minimum marriageable age. Since neither Allah nor His Messenger explicitly set a fixed minimum age for marriage, aside from considerations of maturity for marriage and financial management, there remains an open space for *ijtihad* to respond to and address contemporary challenges.

### **Early Marriage and Marriage Dispensation Policy in Indonesian Legal Regulations**

Law Number 1 of 1974 on Marriage, along with its amendments through Law Number 16 of 2019, does not provide a clear definition of what is referred to as a marriage dispensation. Article 7, paragraph (1) of Law Number 1 of 1974 on Marriage states:

“Marriage is only permitted if the male party has reached the age of 19 (nineteen) years and the female party has reached the age of 16 (sixteen) years.”

---

<sup>20</sup> Abū Ḥusain al-Nīsābūrī al-Ḥāfiẓ Muslim Ibn Ḥajjāj al-Qushayrī, *Al-Jāmi' al-Ṣaḥiḥ al-Musammā bi Ṣaḥiḥ Muslim*, Jilid IV (Beirut: Dār al-Jīl, t.th.), p. 208.

<sup>21</sup> In the context of asset management and/or child guardianship, this is indicated by the mention of: (1) orphaned children, (2) a legal competence test (maturity), and (3) an assessment of competence for marriage and financial management. Meanwhile, in modern civil law, asset management and/or child guardianship include child custody and the management of an orphaned child's assets. However, child custody is limited to the obligation of caring for the child without extending to financial management. This is reflected in Article 50 of Law of the Republic of Indonesia Number 1 of 1974 on Marriage.



The provision of Article 7, paragraph (1) was amended through Law Number 16 of 2019, which stipulates that the minimum marriageable age for both men and women is 19 years. Meanwhile, the concept of marriage dispensation is explicitly formulated in Supreme Court Regulation Number 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications. Article 1, point (5) of this Supreme Court Regulation defines marriage dispensation as the court's authorization granted to a prospective husband or wife who has not yet reached the age of 19 to enter into marriage.

Before the enactment of Law Number 1 of 1974 on Marriage, there was no legal provision regulating the minimum marriageable age for Muslims, except for non-Muslims who were subject to Dutch colonial civil law. However, everything changed with the enforcement of Law Number 1 of 1974 on Marriage, which marked a significant milestone in the history of national marriage law by introducing new regulations on the minimum marriageable age with a strong emphasis on the protection of children's rights. This provision demonstrates that, from that point forward, the state began to take serious measures to ensure child protection within the context of marriage.

Furthermore, Supreme Court Regulation Number 5 of 2019 establishes the concept of marriage dispensation based on the best interests of the child. Article 1, point (6) of this regulation states that marriage dispensation may be granted to ensure the protection, care, welfare, survival, and optimal development of the child. This reflects a paradigm shift in which the child's best interests are prioritized in the consideration of granting marriage dispensation.

In judicial practice, marriage dispensation cases fall under the category of *voluntair* (petition) cases, which are non-contentious matters. These cases are filed without an opposing party, aimed at resolving specific legal issues without dispute, and are strictly limited to matters explicitly regulated by legislation.<sup>22</sup>

When the judiciary examines *voluntair* (petition) cases, it does not actually perform its function as a "true judiciary." Instead, it merely exercises an executive power, which is responsible for implementing

---

<sup>22</sup> M. Yahya Harahap, *Hukum Acara Perdata: tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2017), p. 29 and 32.

laws enacted by the legislative power.<sup>23</sup> This differs from contentious cases, which involve civil disputes in the form of lawsuits, where the court functions as a judicative power with the duty to uphold legal rules.

The legal outcome of a *voluntair* (petition) case takes the form of a judicial determination,<sup>24</sup> meaning that the ruling does not include a punitive decision but is instead declaratory or constitutive in nature. Meanwhile, in contentious cases, the party filing the case is referred to as the plaintiff or, in some cases, the petitioner (depending on the legal provisions). In contrast, in *voluntair* (petition) cases, the party submitting the request is simply referred to as the petitioner.<sup>25</sup>

Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, not only does not provide a clear definition of marriage dispensation but also does not specify the requirements and conditions that must be met for the marriage dispensation to be requested in court. The law only sets out a general provision stating that a marriage dispensation may be requested if there is an urgent situation and one or both prospective spouses are under 19 years of age.<sup>26</sup> This is stipulated in Article 7 of Law Number 16 of 2019, which states:

“Marriage is only permitted if both the male and female have reached the age of 19 (nineteen) years.”<sup>27</sup>

“In cases where there is a deviation from the age requirement as referred to in paragraph (1), the parents of the male party and/or

---

<sup>23</sup> Joseph Hugo Vieri Iusteli Sola Kira, “Implementasi Prinsip-Prinsip Negara Hukum dalam Kekuasaan Kehakiman,” *Jurnal Pendidikan dan Konseling* 5, no. 2 (2023), p. 4262, <https://doi.org/10.31004/jpdk.v5i2.14051>.

<sup>24</sup> Roihan A. Rasyid, *Hukum Acara Peradilan Agama (Edisi Baru)* (Jakarta: PT. RajaGrafindo Persada, 2006), p. 59.

<sup>25</sup> Yenny Sri Wahyuni and Ramadhana, “Pencabutan Petition Pada Perkara Cerai Talak (Analisis Putusan Hakim Nomor 217/Pdt. G/2020/Ms-Bna),” *El-Usrah: Jurnal Hukum Keluarga* 4.2 (2021), pp. 295-327. <http://dx.doi.org/10.22373/ujhk.v4i2.10155>.

<sup>26</sup> Ahmad Ropei, et al., “Rethinking the Minimum Age of Marriage Law in Indonesia: Insights from Muḥammad ‘Ābid al-Jābirī’s Epistemology,” *Asy-Syir’ah: Jurnal Ilmu Syariah dan Hukum* 56, no. 2 (2022), pp. 245-264. <https://doi.org/10.14421/ajish.v56i2.1111>.

<sup>27</sup> Article 7, Paragraph (1) of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 on Marriage.

the parents of the female party may request a dispensation from the Court on the grounds of an urgent necessity, supported by sufficient evidence.”<sup>28</sup>

To answer the question, “Under what conditions can a marriage dispensation be requested in court?” the Supreme Court issued Supreme Court Regulation Number 5 of 2019, which provides more detailed provisions. Article 2 of this regulation states that marriage dispensation is intended for and is based on the following principles: (a) the best interests of the child; (b) the right of life, growth, and development of the child; (c) respect for the child’s opinions; (d) respect for human dignity and worth; (e) non-discrimination; (f) gender equality; (g) equality before the law; (h) justice; (i) utility; and (j) legal certainty.

The purpose of marriage dispensation as stated in Article 3 is to (a) implement the principles as referred to in Article 2; (b) ensure the implementation of a justice system that protects children’s rights; (c) increase parental responsibility in preventing child marriage; (d) identify the presence or absence of coercion behind the submission of a marriage dispensation application; and (e) realize the standardization of the process of adjudicating marriage dispensation applications in court. By reading the principles of marriage dispensation as contained in Article 2 of Supreme Court Regulation Number 5 of 2019, it can be understood that granting marriage dispensation aims to provide the best interests of children to protect their rights in a humane and just manner.

The justifications for marriage dispensation requests can generally be classified into three categories: (1) the child is already pregnant before marriage;<sup>29</sup> (2) the child is not yet pregnant, but there is concern that pregnancy may occur due to having engaged in sexual

---

<sup>28</sup> Article 7, Paragraph (2) of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law of the Republic of Indonesia Number 1 of 1974 on Marriage.

<sup>29</sup> Kelompok Kerja Perempuan dan Anak MARI, *Buku Saku Pedoman Mengadili Permohonan Dispensasi Kawin* (Jakarta: Indonesia Research Society (IJRS), 2020), p. 38 and 49.

intercourse;<sup>30</sup> and (3) the child is not yet pregnant, but the mutual affection between the parties poses a risk of violating religious values (fornication) and moral standards (other deviant behaviors).<sup>31</sup> Based on these three general propositions, the issues underlying the emergence of marriage dispensation cases are not merely legal in nature; rather, they primarily stem from the negligence of both the child and the parents, as well as a failure of social control mechanisms in supervision and education.

From the perspective of marriage law and child protection law, marriage dispensation can be compared to a double-edged sword.<sup>32</sup> On one hand, if a marriage dispensation is requested because the child is already pregnant or has engaged in sexual relations despite not being pregnant, then from the standpoint of child protection law, the individuals involved may be considered to have committed acts of violence against the child, exploitation of the child, or deprivation of the child's right to a future,<sup>33</sup> which are offenses subject to legal sanctions under the Child Protection Law.

On the other hand, a marriage dispensation request in this context can also be seen as an attempt to avoid criminal liability under the Child Protection Law.<sup>34</sup> This is because Law Number 23 of 2002 on Child Protection is founded on four key principles: (1) non-

---

<sup>30</sup> Muhammad Syarif Hidayatullah, et al., "Eksistensi dan Standarisasi Pemeriksaan Perkara Dispensasi Kawin Berbasis Kepastian Hukum," *Syakhshiyah Jurnal Hukum Keluarga Islam* 3, no. 1 (2023), p. 82. <https://doi.org/10.32332/syakhshiyah.v3i1.6485>.

<sup>31</sup> Kelompok Kerja Perempuan dan Anak MARI, *Buku Saku Pedoman Mengadili Permohonan Dispensasi Kawin* (2020), p. 28.

<sup>32</sup> Imran, et al., "Aspects of Justice of Marriage Dispensation And Best Interests For Children," *Jurnal Hukum dan Peradilan* 13, no. 1 (2024), p. 63-88. <https://doi.org/10.25216/jhp.13.1.2024.63-88>.

<sup>33</sup> Edo Fernando, "Criminal Law Policy on the Protection of Children from Underage Marriage," *Indonesian Journal of Law and Society* 1, no. 1 (2020), pp. 75-100. <https://doi.org/10.19184/ijls.v1i1.16758>.

<sup>34</sup> Yanuar Hakim Nst, et al., "Perspective on Protection of the Rights of Minors in Marriage Dispensation in Religious Courts," *International Journal of Synergy in Law, Criminal, and Justice* I, no. II (2024), pp. 416-422. <https://doi.org/10.70321/ijslcj.v2i1.85>.

discrimination; (2) the best interests of the child; (3) the right to life, survival, and development; and (4) respect for the child.<sup>35</sup>

In the context of marriage law, marriage dispensation is regarded as a legitimate and honorable mechanism to protect children from the loss of dignity, future uncertainty, and potential exploitation.<sup>36</sup> However, in practice, judges handling marriage dispensation requests often face a dilemma. On one hand, they must consider applications that arise due to child abuse or pregnancy outside of marriage. On the other hand, they are also responsible for ensuring that their decisions do not further worsen the child's situation.

National data from 2022 recorded approximately 52,000 marriage dispensation cases submitted to the Religious Courts, reflecting the high rate of early marriage in Indonesia. Of this number, around 34,000 cases were filed based on the emotional relationship between partners, in which parents requested their children to be married immediately. Additionally, 13,547 applications were submitted due to pregnancy before marriage, while 1,132 applicants admitted to having engaged in sexual relations before marriage.

Economic reasons and arranged marriages are the primary factors behind marriage dispensation requests because many parents believe that children who have reached puberty, as indicated by menstruation in girls or physical signs of maturity in boys, are ready for marriage.<sup>37</sup>

Therefore, granting a marriage dispensation to a child and their prospective spouse is expected to provide legal protection and certainty for the child and their family, as well as to uphold the child's dignity within the social structure of the community.

---

<sup>35</sup> Article 2 of Law of the Republic of Indonesia Number 23 of 2002 on Child Protection.

<sup>36</sup> Nada Putri Rohana and Wilda Rahma Nasution, "Dinamika Pemberian Dispensasi Kawin Dibawah Umur Oleh Hakim Pasca Perubahan Undang-Undang Perkawinan," *Ajudikasi: Jurnal Ilmu Hukum* 7, no. 1 (2023), pp. 163-174. <https://doi.org/10.30656/ajudikasi.v7i1.6448>.

<sup>37</sup>[https://kemenpppa.go.id/page/view/NDM1Nw%3D%3D?utm\\_source=](https://kemenpppa.go.id/page/view/NDM1Nw%3D%3D?utm_source=Accessed on December 26, 2024)Accessed on December 26, 2024.

## **Sustainable Development Goals (SDGs) and the Issue of Marriage Dispensation**

The Sustainable Development Goals (SDGs) are a global and national commitment to improving societal well-being. The concept encompasses 17 goals, namely: (1) No Poverty; (2) Zero Hunger; (3) Good Health and Well-being; (4) Quality Education; (5) Gender Equality; (6) Clean Water and Sanitation; (7) Affordable and Clean Energy; (8) Decent Work and Economic Growth; (9) Industry, Innovation, and Infrastructure; (10) Reduced Inequalities; (11) Sustainable Cities and Communities; (12) Responsible Consumption and Production; (13) Climate Action; (14) Life Below Water; (15) Life on Land; (16) Peace, Justice, and Strong Institutions; and (17) Partnerships for the Goals.<sup>38</sup>

The Indonesian government has issued a legal regulation through Presidential Regulation of the Republic of Indonesia Number 59 of 2017 concerning the implementation of measures to achieve the Sustainable Development Goals (SDGs). This regulation aims to ensure the government's commitment to achieving the SDGs by aligning them with the National Long-Term Development Plan and the National Medium-Term Development Plan. The SDGs themselves represent an enhancement of the Millennium Development Goals (MDGs), offering a more comprehensive framework and involving a greater number of stakeholders in their formulation.<sup>39</sup>

Thus, to achieve a generation that is competent, strong, and high-quality as envisioned by the SDGs, a high-standard approach to marriage is required to produce equally high-quality offspring. However, early marriage or marriage granted through dispensation continues to spark debate over its impact on the quality of future generations. Therefore, harmonizing the legal provisions on marriage dispensation with sustainable development policies (SDGs) is

---

<sup>38</sup> Jytte Isaken, et al., "Communication partner training for healthcare workers engaging with people with aphasia: Enacting Sustainable Development Goal 17 in Austria, Egypt, Greece, India and Serbia," *International Journal of Speech-Language Pathology* 25, no. 1 (2023): 172, <https://doi.org/10.1080/17549507.2022.2145355>.

<sup>39</sup> Presidential Regulation of the Republic of Indonesia No. 59 of 2017 on the Implementation of the Achievement of the Sustainable Development Goals.

imperative to ensure alignment with the principles of child protection and societal welfare.

**Harmonization of Marriage Dispensation with the Sustainable Development Goals (SDGs)**

Based on the Annual Report of the Supreme Court's Religious Judiciary for the period 2017 to 2021, data on marriage dispensation cases adjudicated by the Religious Courts and the Aceh Sharia Court is available. This data is presented in the following table:

**Table 1.**  
**Marriage Dispensation Cases of the Supreme Court: 2017 – 2021**

Year	Marriage Dispensation Cases Decided	Average Cases per Year Before the Amendment to Law No. 1 of 1974 on Marriage	Average Cases per Year After the Amendment to Law No. 1 of 1974 on Marriage	Average Increase Before and After the Amendment
2021	61.443 Cases		62.337 Cases	26,03 %
2020	63.231 Cases			
2019	23.126 Cases	16.229,67 Cases		
2018	13.251 Cases			
2017	12.312 Cases			

**Sources:** Report on the Implementation of Activities of the Directorate General of Religious Courts of the Supreme Court in 2017, 2018, 2019, 2020, and 2021 (Jakarta: Supreme Court of Indonesia).

Based on the data above, the achievement of the SDGs faces significant challenges, particularly in two main areas. First, there is a high rate of underage marriage, which over the past five years has

averaged 62,337 cases per year. Second, there is a high rate of divorce, with an average of 429,790.4 cases per year during the same period. These conditions indicate that the issues of early marriage and household instability remain significant obstacles to achieving sustainable development.

A numerical analysis of the data reveals its potential to contribute substantially to increased levels of poverty, hunger, suboptimal health, limited access to quality education, gender inequality, job instability, and social disparity, thereby posing challenges and threats to the attainment of the SDGs.<sup>40</sup> However, when this data is viewed from the perspective of legal compliance, these figures are not necessarily a threat to the SDGs; rather, they can be interpreted as evidence of increased societal adherence to the law. In this context, a conceptual harmonization between the approach to the SDGs and the understanding of marriage law is required, particularly in viewing marriage dispensation cases as an integral part of the existing social and legal reality.

The decision of the Religious Court to grant a dispensation (permission) for a child to enter into marriage with their prospective partner represents a form of harmonization between *das sein* and *das sollen*. According to Sabian Utsman, *das sein* refers to law as a fact (law in action), whereas *das sollen* represents the law as an ideal or the standard envisioned by its creators.<sup>41</sup> Thus, the granting of marriage dispensation functions as a bridge connecting reality with legal idealism. In marriage dispensation cases, *das sein* serves as an emergency solution to address actual circumstances that conflict with established marriage law. Meanwhile, *das sollen* reflects the intentions of lawmakers who set the minimum marriage age at 19, thereby rendering marriage dispensation an exception to the established rule.

On the other hand, marriage dispensation requests can also be viewed from the perspective of legal compliance. Achmad Ali, citing the views of H.C. Kelman and L. Pospisil, categorizes legal compliance

---

<sup>40</sup> Arohi Dixit, et al., "Impact of climate change on water resources, challenges and mitigation strategies to achieve sustainable development goals," *Arabian Journal of Geosciences* 15, no. 14 (2022), p. 1296, <https://doi.org/10.1007/s12517-022-10590-9>.

<sup>41</sup> Sabian Utsman, *Metodologi Penelitian Hukum Progresif* (Yogyakarta: Pustaka Pelajar, 2014), p. 17.



into three forms: (1) compliance due to fear of sanctions; (2) compliance out of concern that one's good relationships with others might be damaged; and (3) compliance because one believes that the rule aligns with one's intrinsic values.<sup>42</sup> Based on this understanding, legal compliance can be interpreted as an individual's behavior toward the law that is both subjective and driven by specific motives. In this context, a marriage dispensation application from the court's perspective may be seen as an effort to harmonize the subjective aspects and underlying motives of legal compliance. Meanwhile, from the applicant's viewpoint, such an application can also be regarded as a form of legal compliance because it encompasses a subjective element, namely self-protection, as well as a motivated element aimed solely at obtaining legal legitimacy.

Based on the explanation above, the SDGs may view marriage dispensation as a threat to sustainable development; however, from a legal perspective, marriage dispensation can also be seen as a form of legal compliance. Both perspectives can be harmonized by uniting the idea that the goals of the SDGs and the objectives of the law can essentially be integrated. This unification is achieved through court decisions, which position marriage dispensation as *das sein* (a legal fact) and the goals of the SDGs as *das sollen* (ideals and aspirations).

## Conclusion

Based on the analysis above, it can be concluded as follows: First, from the perspective of marriage law, marriage dispensation is provided solely for the best interests of the child, meaning it is an action that must be considered to ensure the child's protection, care, well-being, survival, and development. In this context, marriage dispensation is a legitimate and honorable mechanism to safeguard children from the loss of dignity, an uncertain future, and potential exploitation. However, from the perspective of the Sustainable Development Goals (SDGs), marriage dispensation can be seen as a threat or obstacle to achieving sustainable development, which aims to prepare a generation that is competent, strong, and high-quality. Secondly, although the different perspectives on evaluating marriage

---

<sup>42</sup> Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence) Termasuk Interpretasi Undang-undang (legisprudence)* (Jakarta: Kencana, 2009), p. 352.

dispensation may seem contradictory, they can in fact be harmonized by uniting the view that the objectives of the SDGs and those of the law form a single whole. The unification of these perceptions is achieved through court decisions that classify marriage dispensation cases as *das sein* (legal facts) and the goals of the SDGs as *das sollen* (ideals and aspirations). In this context, the harmonization of legal norms with state policies regarding legal development aligns with the philosophy of the Indonesian nation and the five pillars of national life and governance.

### Conflicts of Interest

The authors declares no conflicts of interest with any party in writing this article.

### Bibliography

- Ali, Achmad. *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence) Termasuk Interpretasi Undang-undang (legisprudence)*. Jakarta: Kencana, 2009.
- Anisa, Darania. “Perubahan Batas Usia Minimum Perkawinan sebagai Upaya Mencegah Diskriminasi Gender terhadap Perempuan.” *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan dan Keperdataan* 9, no. 1 (2023): 149–163. <https://doi.org/https://doi.org/10.24952/almaqasid.v9i1.7861>.
- Creswell, John W. *Research Design: Pendekatan Kualitatif, Kuantitatif dan Mixed*, Terj., Achmad Fawaid. Yogyakarta: Pustaka Pelajar, 3rd ed. Yogyakarta: Pustaka Pelajar, 2009.
- Dixit, Arohi, et al. “Impact of climate change on water resources, challenges and mitigation strategies to achieve sustainable development goals.” *Arabian Journal of Geosciences* 15, no. 14 (2022): 1296. <https://doi.org/10.1007/s12517-022-10590-9>.
- Fernando, Edo. “Criminal Law Policy on the Protection of Children from Underage Marriage.” *Indonesian Journal of Law and Society* 1, no. 1 (2020): 75-100. <https://doi.org/10.19184/ijls.v1i1.16758>

- Gomez, Sergio Manuel Madero, et al. "Companies Could Benefit When They Focus on Employee Wellbeing and the Environment: A Systematic Review of Sustainable Human Resource Management." *Sustainability* 15, no. 6 (2023): 5435. <https://doi.org/10.3390/su15065435>.
- Harahap, M. Yahya. *Hukum Acara Perdata: tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*. Jakarta: Sinar Grafika, 2017.
- Hidayatullah, Muhammad Syarif, et al. "Eksistensi dan Standarisasi Pemeriksaan Perkara Dispensasi Kawin Berbasis Kepastian Hukum." *Syakhshiyah Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 82. <https://doi.org/10.32332/syakhshiyah.v3i1.6485>.
- [https://kemenpppa.go.id/page/view/NDM1Nw%3D%3D?utm\\_source](https://kemenpppa.go.id/page/view/NDM1Nw%3D%3D?utm_source). Accessed on December 26, 2024.
- Imran, et al. "Aspects of Justice of Marriage Dispensation And Best Interests For Children." *Jurnal Hukum dan Peradilan* 13, no. 1 (2024): 63-88. <https://doi.org/10.25216/jhp.13.1.2024.63-88>.
- Isaken, Jytte, et al. "Communication partner training for healthcare workers engaging with people with aphasia: Enacting Sustainable Development Goal 17 in Austria, Egypt, Greece, India and Serbia." *International Journal of Speech-Language Pathology* 25, no. 1 (2023): 172. <https://doi.org/10.1080/17549507.2022.2145355>.
- Kamarusdiana, and Ita Sofia. "Dispensasi Nikah dalam Perspektif Hukum Islam, Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam," *Jurnal Sosial dan Budaya Syar'I* 7, no. 1 (2020): 51-52. <https://doi.org/10.15408/sjsbs.v7i1.14534>.
- Kelompok Kerja Perempuan dan Anak MARI. *Buku Saku Pedoman Mengadili Permohonan Dispensasi Kawin*. Jakarta: Indonesia Research Society (IIRS), 2020.
- Khallaf, Abdul Wahhab. *Ilmu Ushul Fiqh*, Translated by Moh. Zuhri and Ahmad. Jakarta: Pustaka Amani, 2003.
- Kira, Joseph Hugo Vieri Iusteli Sola. "Implementasi Prinsip-Prinsip Negara Hukum dalam Kekuasaan Kehakiman." *Jurnal*

- Pendidikan dan Konseling* 5, no. 2 (2023): 4262.  
<https://doi.org/10.31004/jpdk.v5i2.14051>.
- Kusna, Nur Laela. "Analisis Efektivitas Hukum Atas Penanganan Dispensasi Kawin Pasca Berlakunya Undang-Undang No. 16 Tahun 2019 (Studi pada Pengadilan Agama Ponorogo)." *Tesis*, IAIN Ponorogo, 2023.  
<http://etheses.iainponorogo.ac.id/id/eprint/24076>.
- Law of the Republic of Indonesia Number 1 of 1974 on Marriage,
- Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 on Marriage.
- Law of the Republic of Indonesia Number 23 of 2002 on Child Protection.
- Lup, Andrew Ng Kay, et al. "Sustainable energy technologies for the Global South: challenges and solutions toward achieving SDG 7." *Environmentak Science: Advances* 2, no. 4 (2023): 570.  
<https://doi.org/10.1039/D2VA00247G>.
- al-Maḥallī, Jalāluddīn and Jalāluddīn al-Suyūṭī, *Tafsīr al-Qur'ān al-Karīm*, Juz I. Beirut: Dār al-Fikr, 1998.
- Mashudi, et al. "Pemaksaan Konsep Trias Politica pada Kedudukan Komisi Pemberantasan Korupsi dalam Sistem Ketatanganan Indonesia." *UNES Law Review* 5, no. 4 (2023): 4527.  
<https://doi.org/10.31933/unesrev.v5i4.761>.
- Nst, Yanuar Hakim et al. "Perspective on Protection of the Rights of Minors in Marriage Dispensation in Religious Courts." *International Journal of Synergy in Law, Criminal, and Justice* I, no. II (2024): 416-422. <https://doi.org/10.70321/ijslcj.v2i1.85>.
- Pilar, Carmen, and Marrti Ballester. "Mutual funds and Gender Equality in Portofolio Firms: Toward the Sustainable Development Goals." *Corporate Social Responsibility and Environmental Management* 30, no. 2 (2023): 905.  
<https://doi.org/10.1002/csr.2396>.
- Presidential Regulation of the Republic of Indonesia No. 59 of 2017 on the Implementation of the Achievement of the Sustainable Development Goals.
- al-Qurṭubī, 'Abdullāh Muḥammad bin Aḥmad al-Anṣārī. *Al-Jāmi' li*

- Aḥkām al-Qurʾān (Tafsīr al-Qurṭubī)*, Vol. III. Cairo: Dār al-Kutub al-Miṣriyyah, 2006.
- al-Qushayrī, Abū Ḥusain al-Nisābūrī al-Hāfiẓ Muslim Ibn Ḥajjāj. *Al-Jāmiʿ al-Ṣaḥīḥ al-Musammā bi Ṣaḥīḥ Muslim*, Vol. IV. Beirut: Dār al-Jīl, t.th.
- Rasyid, Roihan A. *Hukum Acara Peradilan Agama (Edisi Baru)*. Jakarta: PT. RajaGrafindo Persada, 2006.
- Report on the Implementation of Activities of the Directorate General of Religious Courts of the Supreme Court in 2017. Jakarta: Supreme Court of Indonesia, 2017.
- Report on the Implementation of Activities of the Directorate General of Religious Courts of the Supreme Court in 2018. Jakarta: Supreme Court of Indonesia, 2018.
- Report on the Implementation of Activities of the Directorate General of Religious Courts of the Supreme Court in 2019. Jakarta: Supreme Court of Indonesia, 2019.
- Report on the Implementation of Activities of the Directorate General of Religious Courts of the Supreme Court in 2020. Jakarta: Supreme Court of Indonesia, 2020.
- Report on the Implementation of Activities of the Directorate General of Religious Courts of the Supreme Court in 2021. Jakarta: Supreme Court of Indonesia, 2021.
- Report on the Implementation of Activities of the Directorate General of Religious Courts of the Supreme Court in 2017, 2018, 2019, 2020, and 2021 (Jakarta: Supreme Court of Indonesia).
- Rohana, Nada Putri, dan Wilda Rahma Nasution. “Dinamika Pemberian Dispensasi Kawin Dibawah Umur Oleh Hakim Pasca Perubahan Undang-Undang Perkawinan.” *Ajudikasi: Jurnal Ilmu Hukum* 7, no. 1 (2023): (163-174). <https://doi.org/10.30656/ajudikasi.v7i1.6448>.
- Rohman, Miftakur. “Dispensasi Perkawinan dan Kebijakan Politik Hukum di Indonesia.” *MASADIR: Jurnal Hukum Islam* 3, no. 01 (2023): 557. <https://doi.org/10.33754/masadir.v3i01.677>.
- Ropei, Ahmad, et al. “Rethinking the Minimum Age of Marriage Law in Indonesia: Insights from Muḥammad ‘Ābid al-Jābirī’s

- Epistemology,” *Ayy-Syir’ah: Jurnal Ilmu Syariah dan Hukum* 56, no. 2 (2022): 245-264. <https://doi.org/10.14421/ajish.v56i2.1111>.
- Salim, Elycia Feronia, et al. “Persamaan Syarat Usia Perkawinan sebagai Wujud Kesetaraan Gender dalam Meminimalisir Perkawinan Bawah Umur di Indonesia.” *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 5, no. 1 (2021): 1–19. <https://doi.org/10.23920/acta.v5i1.519>.
- Suparman, Odang. “Konsep Lembaga Negara Indonesia dalam Perspektif Teori Trias Politica Berdasarkan Prinsip Checks and Balances System.” *Abkam: Jurnal Hukum Islam dan Humaniora* 2, no. 1 (2023): 60. <https://doi.org/10.58578/ahkam.v2i1.898>.
- Trianto, Agus, et al. “Critical Legal Studies: Memahami Hubungan Antara Kepentingan Bisnis, Pemerintah dan Hukum.” *MENDAPO: Journal of Administration Law* 4, no. 2 (2023): 135. <https://doi.org/10.22437/mendapo.v4i2.24794>.
- Utsman, Sabian, *Metodologi Penelitian Hukum Progresif*. Yogyakarta: Pustaka Pelajar, 2014.
- Wafa, Moh. Ali. “Telaah Kritis Terhadap Perkawinan Usia Muda Menurut Hukum Islam,” *Jurnal Abkam* 17, no. 2 (2017): 394, <https://doi.org/10.37284/eajass.6.1.1201>.
- Wahyuni, Yenny Sri, and Ramadhana. “Pencabutan Petitum Pada Perkara Cerai Talak (Analisis Putusan Hakim Nomor 217/Pdt. G/2020/Ms-Bna).” *El-Usrah: Jurnal Hukum Keluarga* 4.2 (2021): 295-327. <http://dx.doi.org/10.22373/ujhk.v4i2.10155>
- Yasin, Ahmad Alamuddin, et al. “Sustainability of Muslim Family Livelihoods In The Perspective of Sustainable Development Goals.” *International Journal of Humanities Education and Social Sciences (IJHESS)* 2, no. 6 (2023): 1799. <https://doi.org/10.55227/ijhess.v2i6.427>.
- Zaini, Zulfi Diane. “Implementasi Pendekatan Yuridis Normatif Dan Pendekatan Normatif Sosiologis Dalam Penelitian Ilmu Hukum.” *Pranata Hukum* 6, no. 2 (2011): 117–32. <https://doi.org/10.36448/pranatahukum.v6i2.102>.