

# **REVEALING THE DILEMMA OF MARRIAGE DISPENSATION REGULATIONS IN INDONESIA**

**Efrinaldi**

Universitas Islam Negeri Imam Bonjol Padang

Email: efrinaldi@uinib.ac.id

**Jayusman**

Universitas Islam Negeri Raden Intan Lampung

Email: jayusman@radenintan.ac.id

**M. Yenis**

Universitas Islam Negeri Imam Bonjol Padang

Email: yenis@uinib.ac.id

## **Abstract**

This article aims to reveal the regulation of marriage dispensation in Indonesia, which is regulated in Law No. 16 of 2019 concerning amendments to Law No.1 of 1974. Article 7 paragraph (2) states that if there is a deviation from the age provision, the parents of the man or woman can apply for marriage dispensation to the Court, for the sake of *al-mashlahat*. The focus of this research is how Islamic law analyzes the regulation of marriage dispensation in Law Number 16 of 2019. In this study, a normative legal research method is used, which is also called dogmatic legal research. The results show that Law No. 16/2019 brings the spirit of change regarding the regulation of marriage dispensation and the minimum age of marriage. In addition, Supreme Court Regulation No. 5 of 2019 is a special rule as a form of explanation of procedural law relating to marriage dispensation applications. In the perspective of Islamic Law, it brings *al-mashlahat*, with the regulation of marriage dispensation in certain circumstances. However, the minimum age of marriage in Islamic law is determined by *ihtilam*, *rusyd*, menstruation as physical signs and a certain age, which indicates maturity.

**Keywords:** Islamic Law, Indonesian, Marriage, Law, Dispensation

## **Abstrak**

Artikel ini bertujuan untuk mengungkap pengaturan dispensasi nikah di Indonesia, yang diatur dalam Undang-Undang No. 16 Tahun 2019 tentang perubahan terhadap Undang-Undang No.1 Tahun 1974. Dalam Pasal 7 ayat (2) dinyatakan bahwa apabila terdapat penyimpangan terhadap ketentuan umur, maka orang tua dari pihak pria maupun wanita dapat mengajukan permohonan dispensasi kawin ke Pengadilan, demi kemaslahatan. Fokus penelitian ini adalah bagaimana analisis hukum Islam tentang pengaturan dispensasi nikah dalam Undang-Undang Nomor 16 Tahun 2019 tersebut. Dalam penelitian ini digunakan metode penelitian hukum normatif, yang disebut juga penelitian hukum teoritis atau penelitian hukum dogmatik. Hasil penelitian menunjukkan bahwa melalui UU No. 16 Tahun 2019 membawa semangat perubahan tentang pengaturan dispensasi nikah dan batas minimal usia pernikahan. Selain itu, Peraturan Mahkamah Agung Nomor 5 Tahun 2019 merupakan aturan khusus sebagai bentuk penjelasan mengenai hukum acara berkaitan dengan permohonan dispensasi nikah. Kajian ini ditinjau dalam perspektif Hukum Islam membawa *mashlahat*, dengan adanya regulasi tentang dispensasi nikah dalam keadaan tertentu. Meski demikian, batas usia minimal perkawinan dalam hukum Islam ditentukan dengan *ihtilam*, *rusyd*, haid sebagai tanda-tanda fisik dan umur tertentu, yang menunjukkan kematangan.

**Kata Kunci:** Hukum Islam, hukum perkawinan Indonesia, dispensasi perkawinan.

## Introduction

Lately, in social reality the discussion regarding the minimum age limit for marriage in Indonesia has again become a controversial discourse. Determining the age of marriage is related to social affairs. So, it must be seen first what are the social norms that apply in society.

Directly and specifically in sharia law it is not explained regarding the appropriate age for men and women who will get married. Even the fiqh books allow marriage between men and women who are still small, whether this ability is stated directly or indirectly as in fiqh literature.

In Article 7 paragraph (1) of Law no. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage states that marriage is only permitted if the man is at least 19 years old and the woman is at least 16 years old. In Law No. 16 of 2019 Article 7 paragraph (2) states that if there is a deviation from the age provision, the parents of both men and women are allowed to apply for a marriage dispensation to the Court for reasons of benefit and accompanied by supporting evidence. The provisions of the article above provide an understanding that article 7 paragraph (1) should be set aside if there are other reasons that are urgent and more beneficial.

Restrictions and provisions on the age limit for marriage as stated in Law No. 16 of 2019 Article 7 paragraph (1) will seem in vain if in the end minors can legally marry with a marriage dispensation from the Court in the form of a stipulation as a legal product. Along with the increasing level of cases of marriage dispensation applications must be handled wisely by the judges by considering all the reasons put forward as well as the possible impacts if the marriage dispensation is granted. In this case, the judge is required to be professional (professional conduct) in exploring various legal and social facts in the case being handled.

As stated in Law no. 4 of 2004 as amended by Law no. 48 of 2009 concerning Judicial Power Article 28 paragraph (1) which reads: "Judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society". In the legislation, there are no specific reasons that allow the existence of a marriage dispensation, so the decision to allow a marriage dispensation is completely returned to the judge's legal considerations (legal reasoning) on all existing legal facts. Judges are not just mouthpieces of the law (Bouchedelaloi) without paying attention to the social facts that occur.

In addition to Law Number 16 of 2019 as an amendment to Law Number 1 of 1974 concerning Marriage, the Supreme Court has also issued Supreme Court Regulation (Peraturan Mahkamah Agung) No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation. The presence of Supreme Court Regulation No. 5 of 2019 is inseparable from the authority of the Supreme Court which is legally regulated by delegated legislation in Law 3 of 2009 concerning the Supreme Court.

There are two points of view that need attention to the birth of Supreme Court Regulation (Peraturan Mahkamah Agung) No. 5 of 2019. *First*, formally Supreme Court Regulation No. 5 of 2019 encourages the examination of marriage dispensation cases with a single judge. The application of a single judge for general courts is usually carried out in voluntary cases, while in the religious court environment, the examination of cases is always carried out by a complete panel of judges even though the case is in the form of an application. Examination of a case by a single judge is only carried out after obtaining permission from the Chief Justice of the Supreme Court of the Republic of Indonesia.

*Second*, substantially this Supreme Court Regulation (Peraturan Mahkamah Agung) requires that the examination of the dispensation of marriage be carried out in a comprehensive manner. The examination of the marriage dispensation must pay attention to various factors for the benefit of the child as a prospective bride, ranging from health factors, social economy and culture, it must even be seen from the presence or absence of violence in the form of coercion. In the opinion of the author, this second point of view tends to be on the content of the legal material on the dispensation of marriage, not on the procedural procedures (formal law). With this Supreme Court Regulation (Peraturan Mahkamah Agung) Number 5 of 2019, the Supreme Court wants to emphasize that the Marriage Dispensation case is not just a family law, but there are various dimensions that must be considered by the judge in making its determination (Sugiri & Ahmad, 2019, p.3).

From the description above, the author argues that child marriage is a complex issue, it is not enough to only be seen from one point of view, but must be viewed from the point of view of the objectives of Islamic law (*maqashid al-syariah*). There are three basic things that need to be considered in the reality of child marriage, namely the safety of the child's soul related to the purpose of protecting the soul (*hifzh al-nafs*), the continuation of children's education related to the purpose of protecting the mind (*hifzh al-aql*), and the safety of offspring, related to the purpose of protecting offspring (*hifzh al-nasl*).

Because child marriage is a complex issue, as the author described above, the court as an institution given the authority by law to assess whether or not the marriage is beneficial must consider based on legal facts extracted from various aspects, especially at this time, based on the Revision of the Marriage Law, the marriage age of men and women has been equalized to 19 (nineteen) years. The author views that the marriage dispensation case is an interesting issue, because after the birth of Law No. 16 of 2019, became a problem faced by the Indonesian people, especially justice seekers who were predominantly Muslim.

Referring to the main issues above, the main question that will be explored in this research is how is the dispensation of marriage in the dynamics of social change in Indonesia regulated in laws and regulations and examined in the perspective of Islamic law? In this context, this paper is very significant for elaborating the research problem above.

Furthermore, the literature review related to this research includes: Achmad Rif'an's research entitled "*Dinamika Perkembangan Ketentuan Batas Minimal*

*Usia Perkawinan Di Indonesia*" (The Dynamics of the Development of Minimum Marriage Age Provisions in Indonesia). This study concludes that there has been a debate over the provisions of the marriage age limit in Indonesia. Those who oppose are more guided by the provision that Islamic law does not regulate the age limit of marriage at all. Meanwhile, those who support this are based on social change. In addition, the factor of equal rights between men and women and the protection of women and children (Rif'an, 2017). Khairuna Malik Hasibuan's research is entitled "*Analisis Yuridis Terhadap Batas Usia Perkawinan Bagi Anak Perempuan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak*" (Juridical Analysis of the Marriage Age Limit for Girls According to Law No. 1 of 1974 concerning Marriage and Law Number 23 of 2002 concerning Child Protection). This study concludes that the Child Protection Law regulates children's problems in general. Meanwhile, when viewed from the provisions contained in the Marriage Law, this law specifically regulates marriage. From the difference between the two, it can be resolved by the legal principle of *lex specialis derogat lex generalis* (Hasibuan, 2012). Achmadi Asrori's research entitled, "*Batas Usia Menurut Fukaha dan Penerapannya dalam Undang-Undang Perkawinan Di Dunia Islam*" (Age Limit According to Fukaha and its Application in Marriage Law in the Islamic World). This study states that differences of opinion regarding the concept of *baligh* have resulted in different minimum age limits for marriage in a number of Islamic countries (Asrori, 2015). Akhmad Shodikin's research entitled "*Pandangan Hukum Islam dan Hukum Nasional Tentang Batas Usia Perkawinan*." (Views of Islamic Law and National Law on the Age Limit of Marriage). This study found that in Islamic law, the concept of minimum age limit for marriage is understood variously. Meanwhile, in national law, the concept of minimum age limit for marriage also varies. The age allowed for marriage for men is 19 years and for women is 16 years. However, if the prospective husband and prospective wife are not yet 21 years old, there must be permission from parents or marriage guardians (Tirmidzi, 2020). In contrast to previous research, this study aims to elaborate on the minimum age limit for marriage and the regulation of marriage dispensation in Indonesia, which is regulated in Law No. 16 of 2019 concerning amendments to Law No.1 of 1974.

### Research Method

In connection with this study, the author uses a normative law research model. In this study, the normative legal research method is used, which is also called theoretical legal research or dogmatic legal research, because it relates to the study of Law No. 16 of 2019 as an amendment to Law No. 1 of 1974 concerning Marriage. Meanwhile, in this study using a qualitative approach, because in research on the law does not use numbers or something that can be calculated but in the form of an explanation.

To collect research data, a literature study was conducted, by digging and tracing library collection materials and library document studies (Sugiyono, 2010,

p. 19). The study was intended to find out the review of Islamic law related to Law No. 16 of 2019 as an amendment to Law No.1 of 1974 concerning Marriage.

In this study, the data sources used consisted of three categories, namely primary data sources, secondary data, and tertiary data sources. Primary data sources are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, jurisprudence or official records. The primary data in this study focuses on Law No. 16 of 2019 as an amendment to Law No. 1 of 1974 concerning Marriage.

Secondary data sources are in the form of all publications on law that are not official documents, can be in the form of literature consisting of books in both print and internet editions. The tertiary data sources are all documents containing concepts and information that support primary legal materials and secondary legal materials such as websites, dictionaries, encyclopedias, and so on.

Data collection techniques are taken by collecting data needed for research purposes, in order to strengthen research. For this research, data collection techniques are needed by collecting a number of written texts in the form of books, documents, and related laws and regulations. After the data is collected, the next stage is the data analysis stage. This serves to convey the truths that can be used to answer the problems contained in the problem boundaries (Sugiyono, 2010, p. 243). The results of the data are reviewed and analyzed using the content analysis method, which is a method that includes all text analysis, regarding Law No. 16 of 2019 as an amendment to Law No. 1 of 1974 about marriage.

## **Result and Discussion**

### **Legal Synchronization Theory**

To prevent overlapping of the essence or substance of laws and regulations, the theory of legal synchronization emerged. The existence of legal synchronization is intended to create conditions of complementarity, intercorrelation, and specifications that demand the lower the degree or level of a statutory regulation, the nature and substance of the legal product must be more technical, detailed, and operational. Meanwhile, the purpose of the synchronization itself is to realize the regulatory basis for a particular field. This is expected to provide adequate legal certainty in the management of the field in an effective and efficient manner.

Synchronization of laws and regulations often creates conflicts regarding which laws and regulations are more appropriate to use for certain cases. Therefore, law enforcers need to pay attention to the principles of enactment of laws and regulations. In the legislation there are several principles of legislation, namely:

- a. The principle of *lex superior derogat legi inferior* (Legislation at a lower level must not conflict with laws and regulations at a higher level and so on in accordance with the hierarchy of norms and laws and regulations).
- b. The principle of *lex specialis derogat legi generalis* (laws that are special in nature override general laws and regulations).

- c. The principle of *lex posterior derogat legi priori* (Latest laws and regulations cancel the previous laws and regulations).
- d. The principle of the law does not apply retroactively (The laws and regulations that are made only apply to legal events that occur after the laws and regulations are born)

### **Maqashid Al-Sharīa Theory**

The concept of Maqāshid Al-Sharīa is essentially to realize the benefit of humans which is based on divine revelation (Imansyah et al., 2020). This concept certainly emphasizes that God's purpose in establishing the law is not just that. Determination of law in Islam must lead to benefit. In this case Imam As-Syatibi in the book *al-Muwwafaqat* explains (Asy-Syātībī, 1973) : "What is mu'tamad if we really look at the purpose of establishing sharia is the benefit of humans."

Therefore, the judge in granting the application for dispensation for marriage by looking comprehensively both in terms of benefits and harms. This is done because it is feared that if it is not given it will bring harm to the young couple. And the application for dispensation for marriage is also made to prevent adultery or to refuse other, greater damage (Hakim, 1976): "Refusing mafsadah (damage) takes precedence over taking benefit."

### **Marriage Regulation**

In addition to being a religious matter, marriage is also a legal act that has legal consequences, because in terms of holding a marriage, we must comply with the regulations regarding marriage established by the State. As stated in Article 2 of Law No. 1 of 1974 as it has been replaced by Law No. 16 of 2019 concerning Marriage.

1. Marriage is legal if it is carried out according to the law of each religion and belief.
2. Each marriage is recorded according to the applicable laws and regulations.

Marriage is a sacred gate that must be entered by every human being to form an institution called family. Islam's attention to the family is so great, because the family is the forerunner to the formation of a wider society. Family is the color giver in every society (Agustino, 2020). Whether or not a society is good depends on each family in the community (Abubakar, A., & Alya, 2020).

In addition, the material goals that will be fought for by a marriage agreement have a very close relationship with religion, so that not only has an external or physical element, but an inner or spiritual element also has an important role (Law No. 1 of 1974 on Marriage). So marriage is an agreement made by two people, in this case an agreement between a man and a woman with a material goal, namely to form a happy and eternal family (household) based on the One Godhead, as the first principle in Pancasila (Soimin, 1992, p. 6).

If simplified, the purpose of marriage must adhere to the principles as stated in Law no. 1 of 1974 as amended by Law no. 16 of 2019, among others (Nuruddin & Tarigan, 2019):

1. The purpose of marriage is to form a happy and eternal family.

2. The validity of a marriage depends on the provisions of the law of each religion and belief
3. The principle of monogamy
4. Prospective husband and wife must have matured in body and soul.
5. Makes divorce more difficult.
6. The rights and status of husband and wife are equal.

A marriage can be said to be valid if:

1. According to the laws of each religion and belief;
2. In an orderly manner according to sharia law (for those who are Muslim); and
3. Recorded according to legislation in the presence of a Marriage Registrar (Article 2) (Projohamidjojo, 2011).

A marriage can be said to be valid if it meets the specified conditions. In line with the principles and principles of marriage that have been mentioned above, the Marriage Law lays down strict conditions for the parties who will enter into a marriage. These conditions are regulated in Chapter II articles 6 to 12 of the Marriage Law No. 1 of 1974 as amended by Law no. 16 of 2019.

When viewed from the perspective of Islamic law, for a marriage to be valid, certain pillars and conditions are required that have been regulated in Islamic law (Isnaini, 2022). What is meant by the pillars of marriage is the essence of the marriage itself, so without the existence of one of the pillars, marriage is impossible to carry out, while what is meant by conditions is something that must exist in marriage but does not include the nature of marriage itself. If one of the conditions of the marriage is not fulfilled then the marriage is invalid (Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan).

The pillars of marriage in Islam are as follows:

1. There are parties who want to get married.
2. There is a guardian
3. There are two witnesses
4. There is a sighthat for the marriage contract (Fauzul, 2020).

### **Marriage Dispensation**

Dispensation is a deviation or exception from a rule. Dispensation of marriage has the meaning of easing a limitation in making a bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on God Almighty.

In Islamic law, this dispensation is commonly called rukhsah, which Sheikh Ismail Usman Zein in his book *al-Mawahib as-Saniyah* calls the etymological definition as ease (as-suhulah). Whereas in terms of syara', rukhsah is "Changes in the law from difficult things to easy because of excuses and based on the original law" (Fatullah, 2021).

Law Number 1 of 1974 concerning Marriage strictly regulates underage marriage, which must go through a court mechanism to obtain a marriage dispensation permit. However, the marriage to be held must obtain the approval of the two prospective brides to carry out the marriage, and obtain permission

from parents for couples who have not reached the age of 21 years. This is as stated in Article 6 Articles (1) and (2) of Law Number 1 of 1974. Article 6 paragraph (1): "Marriage must be based on the approval of the two prospective brides." Article 6 paragraph (2): "To carry out a marriage, a person who has not reached the age of 21 (twenty one) years must obtain the permission of both parents." If the permission of both parents is not obtained, then the Court may grant such permission based on the request of the person who will be marrying (Pasal 6 ayat (2) UU No. 1 Tahun 1974 Tentang Perkawinan).

Marriage dispensation is an exception in terms of marriage for both or one of the prospective groom or bride who is still underage (Efrinaldi et al., 2022). This marriage is allowed to take place under conditions that have been determined in accordance with applicable regulations. In the provisions of Article 7 paragraph 1 of the Marriage Law, it is stated that marriage is permitted if the male party has reached the age of 19 years, and the female party has reached the age of 16 years.

Law No. 1 of 1974 has set a minimum age limit for a person to be able to marry, namely: Article 7 paragraph 1: "Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen). ) year." This article contains principles to ensure legal certainty in marriage, namely the principle of voluntary, family participation, maturity and maturity of the prospective bride and groom both physically and mentally. Maturity and physical and mental maturity is very urgent to marry and form a family (Bahroni et al., 2019).

In realizing legal certainty there are three principles of law enforcement, namely 1) the principle of legal certainty (*rechtszekerheid*), 2) the principle of justice (*gerechtigtheid*), 3) the principle of benefit (*doelmatigheid*), which is a normative dimension. In the normative dimension, legal certainty is transformed as a rule that is promulgated with certainty because it regulates clearly and logically.

In legal theory, dispensation is interpreted as a state administrative decision that frees an act from regulatory powers that reject the act with the aim of breaking through obstacles that are normally not permitted. However, even though deviations from regulations through dispensations can be justified, their implementation must still be based on clear parameters so that there is no conflict between the granting of dispensations and the objectives of the regulations.

In general, a marriage dispensation is an application for permission that is submitted to the Religious Courts to be able to carry out a marriage to be carried out by a couple whose one or both of them have not reached the age set by the Marriage Law. According to Setiasih, marriage dispensation is an allowance given by the Court to prospective husbands and wives who have not reached the age to carry out marriages (Setiasih, 2017).

In essence, marriage dispensation is a step that can be taken by children who want to carry out marriage. The implementation of this marriage dispensation is based on the provisions in Article 7 paragraph (2) of Law Number 16 of 2019 concerning Marriage, that the implementation of marriage at a minor age (child



age) is allowed through an application for a marriage dispensation to the Religious Court.

To provide legal certainty In determining the application or deciding a case, the judge's reasoning is needed. The reasoning carried out by judges varies depending on the arguments being considered. The reasoning carried out requires the judge to be able to think juridically following his logic in carrying out his professional duties (Hidayat, 2012, p. 20).

### **Age Limit for Marriage According to Islamic Law in Indonesia**

The main purpose of determining age is that in addition to being the foundation used to carry out a marriage for the prospective bride and groom, there is also a value in it, namely to maintain the health of husband and wife and their offspring (Article 7 Paragraph (2) of Law No.1 of 1974 concerning Marriage).

As for the age limit according to the articles above, it is related to the aspect of benefit as explained in Chapter II of the Compilation of Islamic Law, where the law in limiting this age also aims to direct harmonious marriages where human needs are fulfilled and the realization of *maqasid as-sharia*.

In determining the age of marriage in Islamic law, there is never a marriage age limit for a person, both male and female. This is because there is no verse in the Qur'an that explicitly mentions the age limit for marriage and there is also no hadith of the Prophet that directly mentions the age limit, even the prophet himself married Siti Aisyah when she was only 6 years old and had sex with her after she was 9 years old (Syarifuddin, 2011, p. 66).

The Qur'an does not concretely determine the age limit for those who will get married. Limitations are only given based on the quality that they must marry as Allah SWT says :“And test the orphans until they are old enough to marry. Then if in your opinion they are intelligent (good at maintaining wealth), then hand over to them their wealth.” (Q.S. An-Nisa: 6).

The age for marriage in the verse above is after the desire to have a household arises, and is ready to become a husband and lead the family. This will not be able to run perfectly, if he has not been able to take care of wealth (Efrinaldi et al., 2022). Based on these general provisions, the jurists and jurists agreed to stipulate that a person is held accountable for his actions and has the freedom to determine his life after reaching puberty (Faizal & Qohar, 2021). *Baligh* means until or clear. Namely children who have reached a certain age where it becomes clear to him all the affairs/problems they face. His mind has been able to consider/ clarify what is good and what is bad.

In general, scholars are of the opinion that a person is called an adult, if he has had a dream of having sex for men, and has experienced menstruation for women. If these two signs have not been found, then the sign of maturity is seen in terms of age. In this case, the majority of scholars are of the opinion that the age of maturity is 15 years, while according to the Hanafi school, it is 18 years for men and 17 years for women (Aminudin, 2018).

The provisions for puberty for boys are marked by *ihtilam*, namely the release of sperm (semen), both in dreams and in a conscious state. Whereas for

girls, the provisions for puberty are marked by menstruation or menstruation or which in Shafi'i fiqh can occur at least at the age of 9 years. Provisions for girls can also be imposed because they are pregnant (pregnant). If there are no such indications then baligh/balighah is determined based on age. Abu Hanifah argues that the age of puberty for boys is 18 years, while for girls it is 17 years, while Abu Yusuf Muhammad bin Hasan, and al-Syafi'i mention the age of 15 as a sign of puberty for both boys and girls (Muhammad, 2001).

The problem of one's physical and mental maturity in the Islamic concept seems to be more emphasized on the physical aspect. This can be seen from the legal burden for someone (mukallaf). In Fiqh, there are three signs of puberty or adulthood, namely:

1. According to the Hanafi scholars, the age of fifteen years for both boys and girls is complete.
2. Dreams come out sperm (semen) for men.
3. Menstruation (menstruation) for women when they are nine years old (As-Subki, 2010, p. 190).

In the perspective of maqashid al-sharia theory, the minimum age limit for marriage in detail for men and women is within the framework of realizing *al-maslahah mursalah* (Rajab & Efrinaldi, 2009). *First*, if you look at *hifz al-din*'s point of view, then there is a regulation regarding the minimum age limit for marriage for men and women in Article 7 of Law no. 16 of 2019 it can be understood that the government has actually thought about the future and the benefit of its people in order to build a prosperous family, in line and in accordance with Islamic law. *Second*, from the side of *hifz al-nafs*, with the limitation of 19 years for both men and women, it is hoped that it can provide safety for the soul of his wife and offspring later, and can be considered as a form of protecting the soul (*hifz al-nafs*), because both husbands and wife, both of them should be able to help each other in building their household.

Third, the regulation on the minimum age of marriage for men and women in Article 7 of Law No. 16 of 2019 can also be considered as an effort to maintain reason (*hifz al-'aql*). This can be assessed based on:

1. By equating the minimum limits, husband and wife will have more opportunities to develop their minds (Ilma, 2020).
2. The education process for women before marriage is the responsibility of both parents. However, when she is married, it is the responsibility of her husband (M. Amri, 2018).
3. The existence of marriage does not mean to stop the development of reason, because the human mind continues to develop, which will go through different phases (Karyati et al., 2019).

*Fourth*, from the side of *hifz al-nasl*, by distinguishing 19 years for men and 19 years for women, it is hoped that the quality of generations (descendants) can be guaranteed (Sitorus, 2020). So as not to leave future generations in a weak and worrying state. Fifth, in terms of safeguarding property (*hifz al-mal*), the existence of a regulation regarding the minimum age limit for marriage for men and women in Article 7 of the Marriage Law, it can be seen that the government also considers

that prospective husbands must be able to provide protection for matters surrounding property. for his family (Tirmidzi, 2020).

### **Legal consequences of marriage dispensation according to Islam**

Marriages carried out under a predetermined age limit are a form of violation of the provisions of the existing Marriage Law. This marriage is known as underage marriage or also known as early marriage. In detail, the following are the consequences that can occur for perpetrators of underage marriage:

#### **1. Educational impact**

Children who marry at an early age will lose the right to education. Regulation of the Minister of Education and Culture No. 19 of 2016 concerning the Smart Indonesia Program in Article 2 letter a provides a provision that the compulsory education program is increased to 12 years. If it is estimated, compulsory education is completed approximately at the age of 19 years. So that children who marry at the age of less than 19 years are most likely to drop out of school or indeed not go to school anymore (Nugraha et al., 2019, p. 41).

#### **2. Biological and health impacts**

Biologically, the reproductive organs of minors are still in the stage of maturity so they are not ready to have sexual intercourse, get pregnant or give birth. Pregnancy at a young age has various risks, including a greater risk of miscarriage, susceptibility to high blood pressure and anemia, the potential for premature birth of babies, birth defects, and low birth weight babies. If this is forced, it will also result in trauma and depression, infection in the womb, bleeding during delivery, and the risk of death of the mother and baby. In addition, sex that begins at the age of under 15 years also increases the risk of cervical cancer ten times higher than those of mature age (Noor et al., 2018, p.120).

#### **3. Psychological impact**

Underage couples generally lack mental readiness in dealing with household roles and problems. This is what triggers quarrels, fights to domestic violence, even divorce. Mentally unprepared can also cause feelings of depression, trauma and anxiety disorders, for example due to the child's unpreparedness in sexual relations which ultimately causes a sense of trauma, unpreparedness in meeting various household needs which results in stress and depression, and so on (Nugraha et al., 2019).

#### **4. Economic impact**

Minors, the majority of whom do not have a steady income or do not have a proper job, become one of the problems for domestic life. Needs that cannot be met trigger conflict between partners (Imansyah et al., 2020). Even some young couples still depend on their parents for the economy. As a result, parents bear a double burden because apart from having to support their own family, they also have to support new family members. This results in an increasingly structured poverty. Economic problems are also often the cause of a couple's divorce (Tiswarni et al., 2020).

#### **5. Social impact**

From a social perspective, underage marriage also has the potential to increase the divorce rate. The reasons used vary, including economics, bickering, to infidelity. This happens because young couples have unstable emotions and immature mindsets so that small things can sometimes trigger big fights. In addition, this can also trigger domestic violence (domestic violence) where the wife is the most victimized due to an unbalanced relationship as a form of gender-biased patriarchal culture.

When viewed from the perspective of Islamic law, Islamic law creates social benefits for humans both now and in the future. Islamic law is broad and flexible, humanist, and always brings mercy to all humans in this world (Efrinaldi, 2019). Included in the realm of thought on this matter are the verses and hadiths of the Prophet that discuss the issue of marriage, because in principle all the actions of Muslims who have reached puberty cannot be separated from the syara' law as formulated in fiqhiyah rules: " (الأصل في الأشياء الإباحة) one of the rules of fiqh held by many scholars, including the Syafi'iyah, which means: "The original law of everything is permissible".

Even though it is said that early marriage is legally permissible according to Islamic law, it does not mean that it is absolutely permissible for all women in all circumstances. Because in some women there are several conditions that indicate that it is better for her not to marry at an early age (A. Amri & Khalidi, 2021).

### **Islamic Law Perspective on Marriage Dispensation**

In general, in responding to the law of underage marriage, the opinions of the fuqaha are categorized into 3 groups. First, the view of jumhur fuqaha, which allows underage marriage. However, this ability does not necessarily allow sexual intercourse. If it is connected with having sex, it will result in the existence of Allah, then it is forbidden, both underage and adult marriages. Second, the view expressed by Ibn Shubrumah and Abu Bakr al-Asham, states that underage marriage is absolutely forbidden. Third, the view put forward by Ibn Hazm. He distinguishes between marriages of little boys and little girls. If the marriage of a small daughter by the father is allowed, while the marriage of a minor son is prohibited.

In this case the Compilation of Islamic Law harmonizes with the regulations in Article 15 Compilation of Islamic Law as formulated in the fiqhiyah rules stating : Priest/government policies for the people must be based on *maslahah*."

Islamic law includes five principles, namely the protection of religion, life, lineage, property, and reason (Yusob, 2020). Of the five universal values of Islam, one of them is the religion of maintaining the line of descent (*hifdz al nasl*). Therefore, Sheikh Ibrahim in his book *al Bajuri* said that in order for the lineage to be maintained, sexual relations that get religious legality must go through marriage. If religion did not stipulate marriage, the genealogy (lineage) would be increasingly blurred. Between religion and the state there is a dispute in the meaning of underage marriage. Marriages that are carried out beyond the

minimum limit of the Marriage Law are legally illegitimate. The term underage marriage according to the state is limited by age. Meanwhile, in the concept of Islamic law, underage marriage is a marriage performed by a person who has not yet reached the age of puberty.

In the perspective of legal synchronization theory, which is intended to create a state of complementarity, intercorrelation, and specifications that require a lower level of legislation, with the aim of realizing a regulatory basis for a particular field, so that it is expected to provide adequate legal certainty in the effective and efficient administration of the field. In this context, the other side of underage marriage according to the Compilation of Islamic Law in accordance with Article 15 paragraphs (1) and (2) has set the age limit for marriage in accordance with the limits set by Law Number 16 of 2019 concerning Marriage. Therefore, under the age of marriage according to the Compilation Of Islamic Law is a marriage carried out by the prospective bride who is under the age limit according to Article 15 paragraph (1). In other words, according to the Compilation Of Islamic Law, marriage is related to the age limit as understood by Law Number 16 of 2019 concerning Marriage. The opinion of Ibn Shubrumah states that religion prohibits underage marriage (marriage before puberty). According to him, the essential value of marriage is to fulfill biological needs, and perpetuate offspring. While these two things are not found in children who have not reached puberty. He put more emphasis on the main purpose of marriage. Ibn Shubrumah tried to escape from the confines of the text. Understanding this problem from the historical, sociological, and cultural aspects that exist. So in responding to the Prophet's marriage with Aisyah RA, Ibn Syubrumah considered it a special provision for the Prophet Muhammad that his followers could not imitate. In addition, history has recorded that. 'Aisyah RA married the Prophet Muhammad at a very young age (Hidayah, 2021). Likewise, underage marriage is commonplace among friends. Some scholars have even stated that the permitting of underage marriage has become the consensus of Islamic law experts. The discourse that was launched by Ibn Shubrumah was very fragile and easily broken (Harlina, 2020).

## **Conclusion**

In the regulation of marriage dispensation in Indonesia through Law No. 16 of 2019 brings the spirit of change, towards the age limit of marriage so that the party who will enter into marriage is mature mentally, physically and mentally. In the perspective of legal synchronization theory, with the aim of realizing the regulatory basis for a particular field in a legislation, and it is expected to provide adequate legal certainty in the effective and efficient administration of the field, then with Supreme Court Regulation (Peraturan Mahkamah Agung) No. 5 of 2019 which is a special rule (*lex specialis*) made by the Supreme Court as a guideline for adjudicating marriage dispensation applications that have not been clearly regulated in Article 7 of Law No. 16 of 2019. This has implications for the future for the existence of standardization in the process of adjudicating marriage dispensation in court as well as guidelines for judges to be really serious and

careful in examining marriage dispensation cases in order to fulfill a sense of justice for justice seekers. This study, seen from the perspective of Islamic law, contains al-maslahah values in the rules limiting the age of marriage in law No. 16 of 2019, while in marriage dispensation provides an opportunity to become an alternative solution, which must be done to avoid the occurrence of harm (madharat), namely in order to realize *hifdz al-nasl*.

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