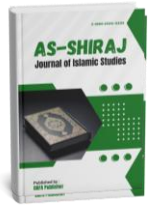
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Child Marriage: Protecting Children's Rights and Their Future

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Abstrak

Child marriage remains a significant issue in Indonesia because it concerns the protection of children's rights and future development. Although legislation establishes 19 as the minimum marriage age and permits dispensations under certain circumstances, its implementation raises concerns regarding the protection of children's best interests. This study aims to examine marriage dispensation regulations in Indonesia, analyze them from Islamic law and human rights perspectives, and assess the application of the best interests of the child principle in judicial decisions. This research employs a normative legal method using statutory and case approaches, supported by a literature review. The analysis examines three marriage dispensation decisions issued by the Religious Courts of Jember, Tahuna, and Taliwang. The findings reveal that judicial considerations and decisions vary depending on each case's circumstances. However, a child's willingness, parental support, and pregnancy should not independently justify granting a marriage dispensation. Educational continuity, physical and reproductive health, psychological maturity, and economic readiness must also be considered. This study emphasizes that granting marriage dispensation does not automatically guarantee the fulfillment of children's rights. Therefore, judges must conduct comprehensive and careful assessments to ensure that their decisions provide meaningful legal protection and safeguard children's long-term well-being and future.

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INTRODUCTION

When a court grants permission for a child to marry, does that permission automatically guarantee that the child's future will be protected? This question is crucial because marriage is not only a legally recognized relationship, but also a major decision that carries long-term consequences for a person's life. For individuals who have not yet reached adulthood and are ready to start a family, marriage can impact their educational attainment, health, psychological well-being, economic

independence, and even the opportunity to develop their potential. Therefore, the issue of child marriage should not be viewed solely as a matter of fulfilling marriage requirements, but should also be placed within the framework of protecting the rights and best interests of children.

Constitutionally, Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees the right of every person to form a family and continue their lineage through legal marriage. This guarantee must be understood in conjunction with Article 28B paragraph (2), which affirms the right of every child to survive, grow, and develop, as well as protection from violence and discrimination. Thus, the right to form a family must go hand in hand with the obligation to respect and protect children's rights. In the context of marriage, this protection is realized through the regulation of the minimum age limit for marriage as stipulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Article 7 paragraph (1) stipulates that marriage is only permitted if the man and woman have reached the age of 19 years. However, Article 7 paragraph (2) still leaves open the possibility of deviation through a request for a marriage dispensation to the court if there are very urgent reasons accompanied by sufficient supporting evidence. On the other hand, Law Number 35 of 2014 concerning Child Protection defines a child as someone who is not yet 18 years old. This difference in age limits needs to be taken into account when analyzing legal protection for parties applying for marriage dispensation.

Marriage dispensations are intended to provide solutions to specific circumstances that require judicial consideration. However, this exception mechanism can also be problematic if it is not based on a comprehensive assessment of the circumstances of the prospective bride and groom. Applications for dispensations can be submitted for various reasons, such as parental concerns about their child's social environment, long-term relationships, or out-of-wedlock pregnancies. These circumstances are often accompanied by social and family pressures, so marriage is seen as a solution to the problems faced. However, the compelling reasons presented by applicants do not always indicate that marriage is the most beneficial option for the child. Research by Rafida Ramelan and Rahmi Nurtsani on the dysfunction of marriage dispensations in preventing child marriage in Indonesia demonstrates the importance of paying close attention to the implementation of dispensations to ensure that these mechanisms do not undermine the goals of child protection.

To provide guidance in examining marriage dispensation applications, the Supreme Court issued Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. This regulation places the best interests of the child as one of the principles in adjudicating marriage dispensation applications. Judges are not only required to review the completeness of the administration and listen to the parents' reasons; they are also required to obtain information about the child, investigate the background of the application, and consider the child's educational, health, psychological, and social conditions. Judges must also consider the possibility of coercion and ensure that the decision taken does not neglect the child's rights and needs. Therefore, the examination of

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marriage dispensation must be an assessment process oriented towards child protection, not simply a procedure for obtaining a marriage permit.

This issue is also related to the various impacts of child marriage on the fulfillment of basic rights. Child marriage has the potential to hinder the continuation of education, increase health vulnerabilities, and affect children's psychological development and socioeconomic conditions. Research by Imam Sukadi, Charles Gustaf Rudolf Banoet, and Zakia Amilia on legal protection for underage girls affected by early marriage from the perspective of *maqashid sharia* (Islamic principles) discusses the importance of protecting girls who experience child marriage. From an Islamic legal perspective, this issue can be analyzed through maqashid sharia, which places the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), descendants (*hifz al-nasl*), and property (*hifz al-mal*) as part of the objectives of sharia. Therefore, the assessment of marriage dispensation must consider not only the intended benefits in the short term, but also the potential harm to the child's life in the future.

Several previous studies have discussed the application of the principle of the child's best interests in marriage dispensation cases. Research by Aliya Karima and colleagues examines how the principle of the child's best interests is interpreted by judges in marriage dispensation applications. This study highlights the importance of prioritizing the child's interests as the basis for legal considerations, rather than simply following the applicant's reasons. Meanwhile, Henry Nurhadi discusses judges' considerations regarding marriage dispensation applications based on Supreme Court Regulation Number 5 of 2019 through a study of decisions from the Semarang Religious Court. This study demonstrates the importance of examination guidelines in assisting judges in assessing marriage dispensation applications. Both studies provide a foundation for understanding the application of the principle of the child's best interests and judges' considerations in marriage dispensation cases.

However, studies on the principle of the best interests of the child still need to be developed through comparisons of several court decisions with different circumstances and outcomes. This research not only discusses how legal provisions regulate marriage dispensations or how child protection principles are interpreted, but also examines their application in three concrete cases. This focus is important because differences in the reasons for requests and the circumstances of prospective brides and grooms can influence judges' considerations. One interesting issue to examine is pregnancy as a reason for requesting a marriage dispensation. Pregnancy can be a compelling circumstance, but it alone does not prove that the prospective bride and groom are ready for marriage. Therefore, it is necessary to examine how judges combine this situation with considerations regarding readiness and the protection of children's rights.

Based on this, this study examines three Religious Court decisions: Decision Number 1775/Pdt.P/2025/PA.Jr from the Jember Religious Court, Decision Number 25/Pdt.P/2025/PA.Thn from the Tahuna Religious Court, and Decision Number 54/Pdt.P/2026/PA.Tlg from the Taliwang Religious Court. These three decisions were chosen because they show differences in the examination results of marriage dispensation requests. The Jember Religious Court and the Tahuna Religious Court granted the requests, while the Taliwang Religious Court rejected them. Furthermore,

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the cases in the Tahuna and Taliwang Religious Courts both concerned the pregnancy of the prospective bride, but resulted in different decisions. These differences provide room to analyze how judges assess urgency, the prospective bride's readiness, family support, and the potential impact of marriage on the fulfillment of children's rights and future.

Therefore, this study aims to analyze the application of the principle of the best interests of the child in the considerations of judges in applications for marriage dispensation through a comparison of three decisions of the Religious Courts. This study also aims to examine the relationship between positive legal provisions, the principle of benefit in Islamic law, and the protection of children's rights in the process of granting marriage dispensation. The novelty of this study lies in the comparison of the judges' considerations in three decisions with different outcomes, particularly in assessing pregnancy, the readiness of the prospective bride and groom, and the protection of the child's interests. Through this study, it is hoped to provide an understanding of the extent to which judges' considerations in marriage dispensation cases have reflected substantive protection of children's rights and futures.

METHODS

This research uses a normative legal research method, namely research that focuses on the study of legal norms, laws and regulations, and their application in a legal event. This research was conducted through a literature review by examining legal provisions regarding marriage dispensation and the application of the principle of the best interests of the child in court decisions. The approaches used include a statutory approach, a case approach, and a conceptual approach. The statutory approach is used to examine provisions regarding the age limit for marriage, marriage dispensation, and the protection of children's rights. The case approach is used to analyze the considerations of judges in three Religious Court decisions, while the conceptual approach is used to understand the principle of the best interests of the child and the concept of welfare in Islamic law.

The legal materials in this study consist of primary legal materials and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Law Number 35 of 2014 concerning Child Protection, Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Determining Applications for Marriage Dispensation, and the Convention on the Rights of the Child. In addition, this study uses three court decisions as research objects, namely the Jember Religious Court Decision Number 1775/Pdt.P/2025/PA.Jr, the Tahuna Religious Court Decision Number 25/Pdt.P/2025/PA.Thn, and the Taliwang Religious Court Decision Number 54/Pdt.P/2026/PA.Tlg. Secondary legal materials were obtained from books, scientific journal articles, and previous research results related to marriage dispensation, protection of children's rights, Islamic family law, and the principle of the child's best interests.

The three decisions were purposefully selected based on their relevance to the

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research focus. They were chosen because they yielded contrasting outcomes: two petitions were granted by the Jember Religious Court and the Tahuna Religious Court, while one petition was rejected by the Taliwang Religious Court. Furthermore, the Tahuna and Taliwang cases both involved the pregnancy of a prospective bride, allowing for a comparison of the judges' considerations in assessing circumstances that share certain similarities but result in different decisions. Legal materials were collected through documentation studies and literature searches. Court decisions and laws were collected and then reviewed to obtain information regarding the legal basis, case facts, judges' considerations, and decisions. Furthermore, scholarly literature was used to strengthen the conceptual foundation and analysis of the primary legal materials.

This study did not involve participants or respondents because all data were obtained from legal documents and available literature. Therefore, this study did not use interviews, questionnaires, or statistical testing. Ethical considerations were made by using sources responsibly, including references to original sources, and maintaining the confidentiality of children's identities in case documents. The analysis of legal materials was conducted qualitatively using descriptive-analytical and comparative methods. Each decision was analyzed based on applicable legal provisions and then compared to identify similarities and differences in the judges' considerations. The results of the analysis were then linked to the principle of the child's best interests and the concept of benefit in Islamic law to assess the extent to which the judges' considerations took into account the protection of children's rights and futures.

RESULTS AND DISCUSSION

1. Marriage Dispensation Regulations and the Protection of Children's Rights in Indonesia

The minimum age for marriage in Indonesia has been amended through Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Prior to this amendment, the minimum age for marriage was set differently for men and women, namely 19 years for men and 16 years for women. This difference in age limits then became problematic because it was considered not to provide equal protection, especially for women who married at a relatively young age. This change is also related to efforts to increase the maturity of prospective grooms and brides, both physically and mentally, so that the goals of marriage can be better realized. Through Article 7 paragraph (1) of Law Number 16 of 2019, the minimum age for marriage for men and women was equalized to 19 years.

The change in age limits demonstrates the state's efforts to prioritize the maturity of prospective brides and grooms as a crucial element in building a family. From an Islamic legal perspective, the discussion of marriageable age relates to the concepts of baligh and rusyd. Baligh is generally understood as a state of biological maturity, while rusyd relates to the ability to think and act maturely. Therefore, reaching the age of baligh does not necessarily mean a person is sufficiently ready for marriage. Setting age limits in positive law can be understood as an effort to provide protection and benefits, taking into account that marriage requires not only

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biological maturity but also mental readiness and responsibility.

However, Law Number 16 of 2019 still provides the possibility of deviation from the minimum age limit through a marriage dispensation mechanism. Article 7 paragraph (2) states that if there is a deviation from the age provisions as referred to in paragraph (1), the parents of the groom and/or bride may submit a request for dispensation to the court for very urgent reasons and accompanied by sufficient supporting evidence. This provision indicates that marriage dispensation is an exception to the general rule, not a permit that can be freely granted to prospective grooms and brides who are not yet 19 years old. Therefore, the existence of a request for dispensation does not automatically mean that the marriage must be granted by the court.

In cases of granting marriage dispensation to prospective Muslim brides and grooms, the Religious Court has the authority to examine and decide on the application. The examination process was then clarified through Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. This regulation serves as a guideline for judges in examining applications, starting from the application requirements, the parties whose statements must be heard, and the matters that must be considered before determining whether the application is granted or rejected. The existence of this PERMA is important because the examination of marriage dispensation is not sufficient to only look at the reasons put forward by the parents, but also needs to consider the circumstances and interests of the prospective bride and groom.

One key aspect in examining marriage dispensation applications is the application of the principle of the best interests of the child. This principle places the interests and protection of children as the primary consideration in every decision concerning their lives. In the context of marriage dispensation, judges need to consider the overall condition of the prospective bride and groom, including their physical, psychological, educational, social, and economic readiness. Children also need to be given the opportunity to express their opinions so that decisions are not based solely on parental wishes or environmental pressures. Therefore, the examination of marriage dispensation applications should not stop at fulfilling administrative requirements, but should also assess whether the marriage is truly in accordance with the interests of the prospective bride and groom.

This principle of protection is closely related to the position of children as rights holders that must be guaranteed by the state. Article 1 paragraph 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that a child is a person under the age of 18, including unborn children. This means that a person under the age of 18 retains their status as a child even if they have received a marriage dispensation and are married. Their rights as children are not automatically lost due to marriage. The state remains obliged to guarantee children's rights to life, growth, development, education, and protection from violence and discrimination.

However, it is important to distinguish that the minimum age for marriage and the age limit for children in the Child Protection Law are two different provisions. A

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person who is 18 years old, for example, still does not meet the minimum age for marriage stipulated in Law Number 16 of 2019, but is no longer categorized as a child based on the age limit in the Child Protection Law. This distinction is important so that discussions regarding marriage under the age of 19 do not automatically equate all prospective brides and grooms under 19 with children. Nevertheless, the provisions regarding the age limit for marriage still apply to both, so marriage before the age of 19 can only be carried out through a dispensation mechanism in accordance with legal provisions.

In practice, granting marriage dispensations remains problematic, primarily because the Marriage Law does not provide a detailed explanation of the definition of urgent reasons. This situation can open up room for different interpretations during case examinations. Premarital pregnancy, social pressure, family economic circumstances, and customary law can all be grounds for a request for dispensation. However, these reasons should not be considered sufficient to grant the request without further examination. The judge must still assess the specific circumstances of the prospective bride and groom and the supporting evidence presented, including their readiness for married life.

This issue is crucial because marriage at an immature age can impact the fulfillment of children's basic rights. Some risks that need to be considered include hindered education, health problems, psychological unpreparedness, economic hardship, and increased vulnerability to domestic conflict. Therefore, granting marriage dispensation should be viewed as an extraordinary measure that must be carefully examined, not as an automatic solution to social problems faced by families. Thus, the regulation of marriage dispensation in Indonesia is essentially not only related to granting permission to marry before the age of 19, but also concerns the responsibility of the courts and the state to ensure that the rights and interests of the prospective bride and groom are protected.

2. Marriage Dispensation from an Islamic Law and Human Rights Perspective

a. Marriage Provisions from the Maqashid al-Shariah Perspective

In Islamic law, marriage is viewed not only as a relationship between a man and a woman, but also as a bond aimed at establishing a peaceful, loving, and compassionate family life. Therefore, the implementation of a marriage must take into account the well-being of the parties involved, including their physical and mental readiness and ability to carry out household responsibilities. In the context of marriage leniency, this purpose of marriage should be one of the grounds for assessing whether granting marriage permission to someone who has not reached the minimum age for marriage is truly beneficial.

The perspective of maqashid al-sharia can be used to assess this issue. *Maqashid al-sharia* is the purpose of establishing Islamic law, which is essentially directed at realizing benefits and preventing harm. One division of the objectives of sharia known in Islamic legal thought is *al-dharuriyyat al-khams*, namely five basic needs that must be maintained, including the protection of religion (*hifz al-din*), life (*hifz al-nafs*), reason (*hifz al-'aql*), descendants (*hifz al-nasl*), and property (*hifz al-mal*). These five elements serve as the basis for assessing whether an action

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is in accordance with the objectives of sharia or actually has an impact that contradicts them.

In the issue of marriage leniency, protection of the soul (hifz al-nafs) relates to the physical and psychological safety and health of children. Marriage at an immature age can pose health risks, especially if the girl undergoes pregnancy and childbirth when she is not physically ready. Furthermore, emotional immaturity can affect a child's ability to cope with the conflicts and responsibilities of married life. Furthermore, protection of the mind (*hifz al-'aql*) relates to a child's right to education and intellectual development. Marriage that deprives a child of the opportunity to continue her education can hinder her development and future.

Meanwhile, protection of offspring (*hifz al-nasl*) is not only understood as an effort to safeguard the existence of offspring through marriage. Such protection also needs to consider the quality of family life and the condition of unborn children. Families built without the readiness and ability to carry out responsibilities have the potential to create problems for both partners and children. Therefore, protection of offspring must be balanced with protection of life, mind, and property.

Based on this perspective, granting a marriage dispensation should not be judged solely on the basis of a single objective, such as preventing adultery or preserving family honor. Judges must also consider potential harm to the child's health, education, psychological development, and well-being. Thus, the *maqasid al-syariah* (objectives of sharia) can be used as a basis for assessing that marriage does not automatically bring benefits simply because it is entered into through a legally valid bond.

b. Jurisprudential Principles on the Priority of Rejecting Mafsadat in Marriage Procedures

One principle of Islamic law that can be used to analyze the granting of marriage dispensations is *dar'u al-mafasid muqaddamun 'ala jalb al-mashalih*, which means that preventing harm should take precedence over acquiring benefits. This principle emphasizes that when an action has both potential benefits and risks of harm, both must be carefully assessed, taking into account the quality and magnitude of the potential impact. In its application, this principle does not mean that every action that carries a risk must be immediately prohibited, but rather requires a proportional assessment of the benefits and harms.

In marriage dispensation requests, marriage is sometimes viewed as a way to avoid adultery, maintain family honor, and provide clarity regarding the legal status of unborn children. These reasons may reflect the benefits sought through marriage. However, on the other hand, early marriage also has the potential to have negative impacts, such as health risks, psychological instability, educational obstacles, inability to meet family economic needs, and an increased likelihood of conflict and divorce.

Therefore, assessing a marriage dispensation request is not sufficient based solely on the parents' reasons. The judge must examine the child's readiness from

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various aspects, including physical and mental health, the prospective spouse's financial capacity, their continued education, and the child's free and informed consent. This readiness is crucial because marriage not only resolves current problems but also creates long-term responsibilities for both prospective spouses.

Furthermore, compelling reasons for a marriage dispensation request should be interpreted with caution. Circumstances such as pregnancy or parental concerns about their child's social life should not automatically be considered evidence that marriage is the only solution. Each situation needs to be examined based on the facts and other available solutions. Azim Izzul Islami explained that in the case of a pregnant child, for example, there is a legal mechanism for requesting parental consent to clarify the civil relationship. This demonstrates that resolving a child's problems does not always require marriage.

Thus, the principle of *dar'u al-mafasid muqaddamun 'ala jalb al-mashalih* can be used as a basis for assessing whether the benefits of granting a marriage dispensation outweigh the potential risks. If the marriage threatens the child's health, education, safety, and future, then the potential harms should be seriously considered. However, such assessment should still be based on the specific circumstances of each case, rather than on prohibiting or granting an absolute dispensation.

c. Marriage Dispensation from the Perspective of Human Rights and Child Protection

Besides being examined through Islamic law, the issue of marriage dispensation is also closely related to human rights principles, particularly children's rights. Children are individuals with the right to protection, to grow and develop, to receive an education, and to express their opinions on matters affecting their lives. Therefore, any decision regarding child marriage must consider the child's position as a rights holder, not simply as a party subject to parental decisions.

In the context of marriage dispensation, the principle of the child's best interests requires judges to prioritize the protection and well-being of the child. This means that the decision to grant or deny a marriage dispensation request must be based on an assessment of the decision's impact on the child's life, both in the short and long term. Judges must consider whether marriage will provide protection or pose risks to the child's health, education, psychological development, and social life.

Furthermore, Article 12 of the Convention on the Rights of the Child emphasizes the importance of providing children with the opportunity to express their views on matters affecting their lives. In requests for marriage dispensation, children's opinions must be heard and taken into account. However, the child's consent should not be the sole basis for granting the request. The judge must still assess whether the decision is based on the child's understanding and awareness or whether it is influenced by pressure from family, the environment, or specific circumstances.

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Protection of children's rights also includes the right to health and education. Early marriage has the potential to impact a child's opportunity to continue their education and achieve optimal physical and mental development. Therefore, granting a marriage dispensation must consider whether the child still has the opportunity to complete their education, whether their health permits them to live a married life, and whether there is adequate support to ensure their well-being.

Thus, a human rights perspective positions children as subjects with the right to protection and to have their opinions heard. Granting a marriage dispensation solely based on parental consent, concerns about public perception, or a desire to resolve the issue quickly may not always reflect the child's best interests. Such decisions must still comprehensively consider the child's rights.

d. The Meeting Point of Islamic Law and Human Rights in Child Protection

The perspectives of Islamic law and human rights basically converge in placing the protection and welfare of children as the main thing. In Islamic law, this goal can be understood through *maqasid al-sharia*, which emphasizes the protection of life, mind, offspring and property. Meanwhile, from a human rights perspective, child protection is realized through fulfilling the rights to life, growth and development, education and health, as well as the opportunity to express opinions.

These two perspectives can be used complementaryly in assessing marriage dispensation requests. *Maqasid al-Shariah* provides the basis for assessing whether a marriage brings benefits or harms. The principle of the child's best interests emphasizes that every decision must prioritize the welfare and fulfillment of the child's rights. Both view marriage not only from the perspective of legitimacy or immediate problem-solving, but also consider its impact on the child's life.

Therefore, granting marriage dispensations must be done selectively, taking into account the child's specific circumstances. Pregnancy, a long-standing relationship, or concerns about adultery cannot be the sole criteria for determining whether marriage is the best decision. Judges must ensure that their decisions do not disregard the child's physical and psychological readiness, educational continuity, economic capacity, and freedom from all forms of coercion.

Thus, Islamic law and human rights principles can serve as a mutually supportive foundation for realizing child protection in marriage dispensation cases. The success of this protection is measured not only by whether the marriage has obtained court permission, but also by the extent to which the decision protects the child's rights, safety, and future. This understanding provides an important basis for assessing how judges apply the principles of the child's welfare and best interests in every marriage dispensation decision.

3. Analysis of Judges' Considerations in Three Marriage Dispensation Decisions

Granting a marriage dispensation is the judge's authority, which must be implemented by considering urgent reasons and the child's best interests. Article 7 paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage stipulates that a dispensation may be granted if there

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are very urgent reasons accompanied by sufficient supporting evidence. This provision shows that the desire to marry or parental consent alone is not automatically a basis for granting a request. The judge still needs to assess the child's overall condition, including his or her physical, psychological, educational, social, and economic readiness.

In practice, judges' considerations regarding marriage dispensation requests can result in different decisions even when the circumstances are nearly identical. This is clearly seen in three decisions: Jember Religious Court Decision No. 1775/Pdt.P/2025/PA.Jr, Tahuna Religious Court Decision No. 25/Pdt.P/2025/PA.Thn, and Taliwang Religious Court Decision No. 54/Pdt.P/2026/PA.Tlg. These three decisions demonstrate differences in assessing the reasons for the request, the circumstances of the prospective couple, and the interests of the child requesting the dispensation.

a. Judge's Considerations in Jember Religious Court Decision Number 1775/Pdt.P/2025/PA.Jr

In Jember Religious Court Decision Number 1775/Pdt.P/2025/PA.Jr dated December 9, 2025, the judge granted the marriage dispensation request, taking into account the child's desire to marry, the relationship he or she has established with his or her prospective partner, and the parents' concerns about the possibility of actions violating religious principles. Furthermore, the relationship between the two prospective brides and grooms, which has led to plans for marriage, and the existence of religious considerations, were also among the reasons considered by the judge.

These considerations demonstrate that the judge has taken into account the social and religious circumstances underlying the request. The child's wishes and the parents' concerns can indeed be important information in the case's examination. However, from the perspective of the child's best interests, these two factors are not sufficient to prove that marriage is the best choice for the child. Parents' concerns about potential religious violations, for example, must be assessed based on actual circumstances and supporting evidence, not simply on assumptions.

This relates to the judge's obligation to ensure that their decisions truly consider the child's interests, not just the family's wishes. Rafida Ramelan and Rahmi Nurtsani explain that in marriage dispensation cases, the parents' position as petitioners can lead to the child's voice and interests being underrepresented. Social pressure, concerns about the family's reputation, and cultural considerations can potentially override the child's own needs.

Therefore, granting the petition in the Jember case must be assessed not only based on the child's wishes and family approval, but also on the judge's assessment of the child's readiness for married life. The desire to marry is a child's right to express their opinion, but it cannot be directly equated with readiness to face the responsibilities of marriage. This is crucial because marriage is not simply a relationship between two people but also has consequences for the child's education, health, psychological development, and social life.

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b. Judge's Considerations in the Determination of the Tahuna Religious Court Number 25/Pdt.P/2025/PA.Thn

Unlike the Jember case, the Tahuna Religious Court Decision Number 25/Pdt.P/2025/PA.Thn, dated November 24, 2025, identified the prospective bride's pregnancy as an important consideration in a marriage dispensation request. In this case, the judge considered the pregnancy, the bride's desire to marry, family support, and the prospective couple's condition and readiness. The judge then granted the request.

Premarital pregnancy is a situation that can raise legal, social, and family issues. From an Islamic legal perspective, Article 53 of the Quran stipulates that a woman who becomes pregnant out of wedlock may marry the man who impregnated her without having to wait for the child to be born. However, this provision regulates the possibility of marriage for pregnant women; it does not eliminate the age requirement for marriage or automatically grant a dispensation.

Therefore, it is necessary to distinguish between pregnancy as a basis for a petition and a child's readiness for marriage. Pregnancy can be an important fact for a judge to consider, but it does not necessarily prove that the prospective bride and groom are psychologically, physically, socially, or economically ready. In fact, when considering the child's interests, the judge must consider the rights of the prospective mother and her unborn child without disregarding the prospective mother's rights as a child still in need of protection.

Henry Nurhadi's research on Semarang Religious Court Decision Number 98/Pdt/2022/PA.Smg reveals a similar issue. In this case, the judge granted a marriage dispensation, taking into account the pregnancy, the child's wishes, and family approval. However, the study's authors criticized granting a dispensation under such circumstances as potentially violating the child's rights to education and development. This suggests that considerations to protect the unborn child should not lead to neglecting the interests and future of the expectant mother.

Furthermore, there is a discrepancy in the information regarding the prospective bride's age in the Tahuna case, namely 17 years old in the petition and 18 years old during the trial. This discrepancy is important to note because age is a crucial element in marriage dispensation cases. However, as long as the prospective bride and groom are under 19 years of age, they still require a dispensation under Article 7 of the Marriage Law.

Thus, the granting of the petition in the Tahuna case demonstrates that the judge took into account the circumstances of the pregnancy and family support. However, from a child protection perspective, assessing the readiness of the prospective bride and groom remains a crucial factor that cannot be replaced by the circumstances of the pregnancy or parental consent.

c. Judge's Considerations in Taliwang Religious Court Decision Number 54/Pdt.P/2026/PA.Tlg

Unlike the two previous cases, the Taliwang Religious Court, through Decision Number 54/Pdt.P/2026/PA.Tlg dated April 14, 2026, rejected the

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marriage dispensation request. In that case, the prospective bride was known to be approximately five months pregnant. Despite her pregnancy, the judge did not consider it grounds for automatically granting the dispensation.

One important consideration in this case was the examination results, which indicated that the prospective bride and groom were not yet fully prepared for married life. Both were still in high school, and the prospective groom did not yet have a steady income. Furthermore, reports from relevant institutions indicated that both parties lacked a thorough understanding of married life, the rights and obligations of husband and wife, reproductive health, and domestic violence issues.

These considerations demonstrate that the judge not only considers the circumstances underlying the request but also assesses the potential consequences of proceeding with the marriage. While pregnancy is certainly a significant concern, marriage also involves significant responsibilities. If the prospective bride and groom do not understand their rights and obligations and are not psychologically and financially prepared, granting a dispensation could potentially create new problems in their lives.

These considerations align with research by Achmad Baharuddin and Mochammad Fahd Akbar on the rejection of marriage dispensation in the Ngajuk Religious Court Decision Number 391/Pdt.P/2023/PA.Ngj. In that study, the rejection of the application was based on the psychological unpreparedness of the prospective bride and groom, including the results of a psychological examination indicating that neither was ready for marriage. The authors also linked this rejection to Imam Malik's concept of maslahah mursalah, which is a benefit that is real, general, and does not conflict with sharia provisions.

In the Taliwang case, the refusal of dispensation can be understood as an attempt to prevent greater harm to the prospective bride and groom. From a sharia perspective, this consideration relates to the protection of the soul (*hifz al-nafs*) and mind (*hifz al-'aql*), as unprepared marriage can affect the physical health, psychological well-being, and continuity of the child's education. Imam Sukadi, Charles Gustaf Rudolf Banoet, and Zakia Amilia also explain that early marriage can pose risks to a woman's physical and mental health and limit her educational opportunities and development.

Thus, the rejection of the petition in the Taliwang case demonstrates that pregnancy does not always require a dispensation. Judges still need to consider whether marriage truly provides the best protection for the child. If the prospective bride and groom are not yet ready to assume the responsibilities of a household, child protection can be achieved by rejecting the dispensation petition.

d. Comparison and Analysis of the Best Interests of the Child in the Three Determinations

The three decisions demonstrate differences in how judges assessed urgency and the child's best interests. In the Jember case, the judge granted the petition after considering the child's wishes, relationship with the prospective spouse, and

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parental concerns. In the Tahuna case, pregnancy was a primary consideration, along with the bride's wishes and family support. Meanwhile, in the Taliwang case, the judge rejected the petition despite the pregnancy, deeming the bride and groom insufficiently prepared.

A quite interesting difference is apparent when comparing the Tahuna and Taliwang cases. Both cases involved pregnant brides-to-be, but resulted in different decisions. This demonstrates that pregnancy does not always result in the same legal consequences in every marriage dispensation application. Judges are still obligated to examine the specific circumstances of each case, including the readiness of the bride and groom and the potential impact of the marriage on the child's life.

In this context, the judge's considerations should not be limited to whether marriage can resolve current family problems. The more important question is whether the marriage truly provides protection and guarantees the child's future. Resolving social problems through marriage is not necessarily the best solution if the child is not yet ready for married life.

Ni Putu Angelina Mahaputri and Made Aditya Pramana Putra explained that the lack of a uniform standard for urgent reasons can lead to differing interpretations among judges. These differences are evident in the assessment of evidence, the preparedness of the prospective bride and groom, and the weighting of the child's best interests against social or cultural pressures. This demonstrates the importance of applying consistent review standards so that granting dispensation does not rely solely on subjective assessments of specific circumstances.

On the other hand, implementing the principle of the child's best interests also requires considering the child's right to have their opinions heard. However, as explained in Henry Nurhadi's research, simply listening to a child's wishes does not in itself prove that all of the child's interests have been met. The child's wishes must be considered along with their psychological condition, education, health, and ability to understand the consequences of marriage. In this way, the child's opinion is respected without making it the sole basis for decision-making.

From the perspective of the *Maqasid sharia*, granting marriage concessions should also be aimed at achieving well-being and preventing harm. Protection of the soul (*hifz al-nafs*) relates to the safety and health of children, while protection of the mind (hifz al-'aql) relates to the continuation of their education and intellectual development. Meanwhile, protection of offspring (*hifz al-nasl*) is not only interpreted as an effort to maintain the status or existence of offspring; it also requires attention to the welfare of the unborn child and the family environment in which the child grows.

Based on this comparison, it can be understood that differences in the results of the determinations do not necessarily indicate a legal conflict. Differences in decisions are justified as long as they are based on the facts of the trial and clear legal considerations. However, if the assessment of urgency and the child's best interests is not conducted comprehensively, these differences have the potential to

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create uncertainty in the application of marriage dispensation law.

Therefore, these three decisions demonstrate that child protection in marriage dispensation cases cannot be measured solely by whether the application is granted or denied. More fundamentally, judges prioritize the child's interests in every decision. The child's wishes, pregnancy, and family consent are certainly circumstances to consider, but all must be assessed in conjunction with the readiness of the prospective bride and groom and the impact of the marriage on the child's rights. Therefore, marriage dispensations should be granted with caution as exceptions, not automatic solutions to every underlying problem.

4. Implementation of the Principle of the Best Interests of the Child and Its Implications for Children's Future

The application of the principle of the child's best interests is a crucial aspect in examining applications for marriage dispensation. This principle emphasizes that every decision concerning a child's life must prioritize the child's welfare, protection, and development, rather than solely fulfilling the parents' wishes or resolving current family problems. This aligns with Article 3 of the Convention on the Rights of the Child, which places the child's best interests as the primary consideration in all actions concerning children. Therefore, the granting of a marriage dispensation must be assessed not only on whether legal requirements are met, but also on the extent to which the decision guarantees the child's rights and protects their future.

One of the rights that needs to be considered is the child's right to education. Child marriage has the potential to hinder the continuation of education because children must face new responsibilities in household life. This situation can limit children's opportunities to develop the knowledge, skills, and abilities needed for their future. Data collected by the Central Statistics Agency (BPS) and UNICEF shows that child marriage is linked to educational issues, including the risk of dropping out of school. This indicates that child marriage is not only a change in a person's legal status but can also affect a child's chances of achieving a better life. In line with this, Article 28 of the Convention on the Rights of the Child guarantees every child the right to education and equal opportunities in accessing it.

The issue of education can be linked to Taliwang Religious Court Decision Number 54/Pdt.P/2026/PA.Tlg. In this case, the girl requesting the dispensation was known to be a high school student and pregnant. Furthermore, the prospective husband did not yet have a steady income, and exam results indicated that neither had adequate understanding or preparation for married life. This situation was one of the judge's considerations in rejecting the marriage dispensation request. This rejection can be understood as an effort to consider the child's condition more comprehensively, as pregnancy does not automatically eliminate a child's right to education or guarantee that marriage is the best choice for her life. Thus, the judge's decision is not only oriented towards the current problem but also considers the risks that may arise if the marriage continues.

In addition to education, health is also a crucial aspect in implementing the principle of the best interests of the child. Article 24 of the Convention on the Rights of the Child recognizes the right of children to the highest attainable standard of

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health. In the case of marriage dispensations, this provision is relevant for assessing whether children are physically ready and understand reproductive health. Child marriage, especially when accompanied by pregnancy, can raise health issues that require special attention. Therefore, the child's health must be carefully assessed and not simply used as a justification for expediting marriage. Child protection must remain a priority, including ensuring that children receive necessary health information and services.

This is again evident in the Taliwang Religious Court Decision Number 54/Pdt.P/2026/PA.Tlg. Although the girl in this case was pregnant, the judge still considered the examination results, which indicated a lack of psychological readiness, understanding of reproductive health, and knowledge of rights and obligations within the household. This consideration suggests that pregnancy cannot be the sole criterion for concluding that marriage is the best solution. Instead, such circumstances should prompt a more in-depth examination of the child's protection and health needs. Therefore, the rejection of the petition in this case can be seen as a form of caution by the judge in avoiding decisions that could potentially increase the child's vulnerability.

The next aspect is psychological and economic readiness. Marriage requires responsibility, emotional maturity, problem-solving skills, and a readiness to meet household needs. If children lack this readiness, marriage can potentially lead to economic dependency, marital conflict, and difficulty fulfilling responsibilities as a couple. In this regard, economic readiness should not be measured solely by the presence or absence of income, but also by the prospective partner's ability to realistically cover living expenses. Similarly, psychological readiness should be assessed based on the child's understanding of the consequences of marriage, not simply based on the child's stated desire to marry.

A comparison between Jember Religious Court Decision No. 1775/Pdt.P/2025/PA.Jr and Tahuna Religious Court Decision No. 25/Pdt.P/2025/PA.Thn shows that judges can grant dispensation by considering the circumstances and reasons presented in each case. In the Jember case, considerations included the child's wishes, the existing relationship, concerns about religious matters, and parental concerns. Meanwhile, in the Tahuna case, pregnancy, the partner's willingness, and family support were among the circumstances considered by the judge. Both decisions demonstrate the importance of considering each child's unique circumstances before making a decision.

However, from a child's best interests perspective, the child's wishes and parental support alone are not sufficient to prove that marriage is the best option for the child. Judges also need to ensure that the decision does not disregard the educational attainment, health, psychological maturity, and financial capabilities of the prospective spouses. This is crucial because a child's consent does not necessarily indicate that the child understands all the long-term consequences of marriage. Therefore, a thorough assessment of the child's readiness is essential so that the decision not only addresses immediate issues but also considers the child's life after marriage.

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Furthermore, the best interests of the child also relate to the child's right to express an opinion. Article 12 of the Convention on the Rights of the Child guarantees that children capable of forming their own views have the right to express their opinions freely in all matters affecting their lives. These opinions must be given due weight according to their age and maturity. In the case of marriage dispensation, this right is crucial so that the child is not only the object of parental decisions but also a party directly heard by the judge. However, listening to the child's opinions does not mean the judge must always grant their wishes. The judge must still assess whether these wishes are expressed freely, without pressure, and based on a sufficient understanding of the consequences of the marriage.

In relation to the three decisions discussed, the child's right to express an opinion must be placed alongside an assessment of the child's readiness and condition. In the Jember and Tahuna cases, the child's wishes or desires were part of the considerations supporting the application. Meanwhile, in the Taliwang case, the results of the examination of the child's condition and readiness were crucial in rejecting the application. This difference demonstrates that the child's opinion is a crucial element, but it cannot stand alone in determining the outcome of a case. Child protection requires that the child's opinion be considered alongside their educational, health, psychological, and socioeconomic circumstances.

Ultimately, the application of the principle of the child's best interests must be directed toward long-term protection. Granting a marriage dispensation does not automatically guarantee the fulfillment of a child's rights; just as a refusal of a request must also be accompanied by consideration of the child's circumstances and needs. These three decisions demonstrate that marriage dispensation cases have unique circumstances and therefore require individual assessment. Nevertheless, all decisions must be guided by the goal of child protection, not simply the resolution of the underlying problem.

Therefore, the best interests of the child must be the primary criterion in assessing applications for marriage dispensation. Judges need to ensure that every decision takes into account the child's rights to education, health, psychological development, economic preparedness, and freedom of expression. If these aspects are not adequately examined, granting a dispensation has the potential to create new vulnerabilities for the child, both in family life and in opportunities to develop their future. Therefore, child protection in marriage dispensation cases is not only achieved through compliance with legal procedures, but must be reflected in considerations and decisions that truly prioritize the child's welfare.

CONCLUSION

Based on the above discussion, it can be concluded that a marriage dispensation is an exception to the minimum age limit for marriage that can only be granted for urgent reasons and in the best interests of the child. From the perspective of Islamic law and human rights, marriage is not only about fulfilling biological needs and the relationship between a man and a woman, but must also consider the welfare, protection, and rights of all parties involved. Therefore, granting a marriage dispensation should not be solely oriented towards resolving family problems or

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urgent circumstances, but must also consider its long-term impact on the child's life.

An analysis of the Jember Religious Court Decision No. 1775/Pdt.P/2025/PA.Jr, the Tahuna Religious Court Decision No. 25/Pdt.P/2025/PA.Thn, and the Taliwang Religious Court Decision No. 54/Pdt.P/2026/PA.Tlg shows differences in judges' considerations in deciding marriage dispensation requests. These differences demonstrate that each case has circumstances and reasons that need to be assessed individually. However, the child's wishes, parental support, or pregnancy cannot be the sole basis for determining that marriage is the best option. Assessments of physical, psychological, educational, and economic readiness are still necessary to ensure that decisions taken do not neglect the child's rights and needs.

Therefore, the application of the principle of the child's best interests is fundamental in every examination of a marriage dispensation application. Child protection is not only achieved through compliance with legal procedures; it must be reflected in the judge's considerations, which take into account the child's rights to education, health care, freedom of expression, and the right to develop a decent life. This study confirms that granting a marriage dispensation does not automatically guarantee the fulfillment of the child's best interests. Therefore, judges need to conduct a thorough and careful assessment of each child's circumstances so that the resulting decision not only resolves the problem at the time of the application but also protects the child's future.

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