

The Judge's Consideration of the Phrase Urgent Reasons in Marriage Dispensation Cases : A Legal Realism Perspective

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Abstract:

This study examines the increasing number of marriage dispensation cases following the amendment of the minimum marriage age through Law No. 16 of 2019, which reveals a gap between regulatory objectives and social realities. The purpose of this research is to analyze judicial interpretations of the phrase "very urgent reasons" and to identify the social and moral considerations influencing judges' decisions in marriage dispensation cases. This study employs a qualitative method using a juridical-normative approach, conducted as library-based research. Legal materials were collected from legislation, court decisions, academic literature, and relevant legal documents, and were analyzed descriptively and analytically. The findings indicate that judges possess broad discretionary authority in interpreting "very urgent reasons," resulting in inconsistent applications due to the absence of clear normative parameters. Judicial reasoning is not limited to formal legal provisions but is strongly influenced by social conditions and moral considerations, particularly the aim of preventing greater harm to the parties involved. This demonstrates that legal practice in religious courts operates as a living law shaped by societal realities. The implications of this research highlight the need for clearer regulatory guidelines to ensure uniform judicial considerations that prioritize child protection and the prevention of early marriage. The contribution of this study lies in offering an analytical framework that explains judicial discretion in marriage dispensation cases. The originality of this research is found in applying an interpretive perspective to reveal the dynamics of legal reasoning within religious courts.

Keywords: Marriage Dispensation, Judicial Considerations, Legal Realism

1. Introduction

Early marriage is not a new phenomenon in Indonesia, especially in rural areas where there are often fundamental reasons for it¹. Indonesia faces a conflict of legal norms regarding the age limit for marriage following the enactment of Law No. 1 of 1974 on Marriage. The 1974 Marriage Law set the minimum age for marriage at 16 years for women and 19 years for men. Changes to marriage regulations through Law No. 16 of 2019 set a higher minimum age for marriage than the previous regulation, namely 19 years. However, this provision still allows for the possibility of applying for a marriage dispensation in certain circumstances, which has led to a significant increase in the number of dispensation requests in religious courts². This provision creates a fundamental discrepancy between the objective of raising the minimum age for marriage and the practice of granting exemptions, which actually increases the number of underage marriages. Article 7(1) of Law No. 1 of 2019 allows men and women under the age of 19 to submit an application in accordance with the applicable requirements. If these requirements are not met,

¹ Risdalina Siregar, SH, MH, Indra Kumalasari M, and Putri Habibah Siregar, "Implementation of the Judge'S Determination Regarding Marriage Dispensation Based on Marriage Law in Indonesia," *Jurnal Ilmiah Advokasi* 12, no. 3 (2024): 456–72, <https://doi.org/10.36987/jiad.v12i3.6227>.

² Siregar, SH, MH, Kumalasari M, and Siregar, 456.

the Religious Court has the authority to reject the request³. However, in practice, many people still engage in underage marriage for various reasons, even disregarding the provisions of Law Number 35 of 2014 on Child Protection. This situation suggests that the role of the Religious Court is limited to granting marriage dispensations⁴.

Based on data from the Ministry of Religious Affairs, the number of early marriages has declined in the last three years. In 2022, there were 8,804 couples under the age of 19 who got married. This number dropped to 5,489 couples in 2023, then decreased again to 4,150 couples in 2024⁵. Research conducted by AIPJ2 (Australia Indonesia Partnership for Justice) analyzed and grouped marriage dispensations in religious courts into six categories: 1) pregnant girls, 31%; 2) children who have had sexual relations, 16%; 3) children who love each other, 25%; 4) children at risk of violating religious values or avoiding adultery, accounting for 21%; 5) children at risk of violating social values, accounting for 8%; 6) children at risk of being in sexual relationships, accounting for 4%⁶. A report by the United Nations Children's Fund (UNICEF) in 2023 states that 25.53 million girls in Indonesia are married under the age of 18. However, this figure places Indonesia fourth in the world after India, Bangladesh, and China with the highest number of child marriages in the world⁷. The most common trigger and recognized as a "very urgent reason" is pregnancy outside of marriage (marriage by accident)⁸. Granting marriage dispensations to children under the age of 19 has psychological, economic, and social impacts. From a social perspective, there should be other alternatives without having to submit urgent reasons; from an economic perspective, they need a source of income even though it is still possible to obtain support from their parents. Psychologically, this situation affects the child's growth and development, including the health of the fetus, and indicates an unpreparedness to take on the role of parent. Therefore, when judges grant dispensations, the main consideration should be the interests of the child's development, not merely the reason of avoiding adultery⁹.

Research conducted by Aliya Karima et al. shows that based on the judge's considerations in the Kudus Religious Court Decision Number 134/Pdt.P/202/PA, after reviewing the petition and hearing the petitioner's testimony at this trial, the essence of the case is a request for a marriage dispensation for an 18-year-old girl to marry her prospective husband. The reasons given were urgent because the child had already had sexual relations and was even pregnant and had given birth to a 1-month-old baby. The concern that arose was that if the marriage was not carried out immediately, it was feared that the two would return to committing acts that are prohibited in Islamic teachings¹⁰. The judge tended to consider that refusing the marriage dispensation would result in more severe harm, such as the child not having a clear legal status or facing ostracism in society. This perspective places the protection of the child at

³ Arif Gosita, "Masalah Perlindungan Anak" (Jakarta: Akademika Prssindo, 1985), 19–21.

⁴ Taufik Hamami, "Pengadilan Agama Dalam Reformasi Hakim Di Indonesia" (Jakarta: PT. Tata Nusa, 2013).

⁵ Kementerian Agama Republik Indonesia, "Angka Kawin Anak Terus Turun Dalam Tiga Tahun Terakhir," 2025.

⁶ Australia Indonesia Partnership for Justice, "'Publikasi Analisis Putusan Dispensasi Kawin Di Indonesia', Kemitraan Australia Indonesia Untuk Keadilan 2 (AIPJ2) Bekerja Sama Dengan Mahkamah Agung Republik Indonesia (MA RI) Melakukan Analisis Putusan Dalam Permohonan Dispensasi Kawin," n.d.

⁷ Sali Susiana, "PERKAWINAN ANAK: FAKTOR PENYEBAB DAN UPAYA PENCEGAHANNYA," *Info Singkat XVII*, no. 14 (2025): 1.

⁸ Hary Abdul Hakim et al., "Pertimbangan Hakim Dalam Penetapan Dispensasi Perkawinan Perkara Perdata (Studi Kasus Putusan No.352/Pdt.P/2022/PA.Tmg)," *Borobudur Law and Society Journal* 1, no. 5 (2022): 5, <https://doi.org/10.31603/8302>.

⁹ Wildatus Sholehah and Lutfian Ubaidillah, "Analisis Yuridis Terkait Alasan Mendesak Dalam Pengajuan Dispensasi Kawin Dalam Pasal 7 Ayat (2) Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Indonesian Journal of Law and Justice* 2, no. 1 (2024): 6, <https://doi.org/10.47134/ijlj.v2i1.2949>.

¹⁰ Aliya Karima et al., "Kepentingan Terbaik Anak Pemohon Dispensasi Pernikahan Dalam Penafsiran Hukum Oleh Hakim," *Al-Syakhsyiyah: Journal of Law & Family Studies* 5, no. 2 (2023): 128, <https://doi.org/10.21154/syakhsyiyah.v5i2.7082>.

present (avoiding disgrace) above long-term protection¹¹. Another study mentions that the phrase “very urgent reasons” is not adequately explained, so the court, through the judge’s consideration, explores the norms and principles in Law Number 16 of 2019 and Perma Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Cases¹². Based on previous research, there is a gap in research that has not been addressed by previous researchers, namely examining the judge’s consideration of the phrase “urgent reasons” in marriage dispensation cases from the perspective of American Legal Realism. This study has limitations because it is normative and based on literature review¹³. This research has not empirically examined judges’ decisions in various regions, so that differences in judicial practice are not fully described.

This research aims to analyze the considerations of judges in the Religious Court in interpreting the phrase “very urgent reasons,” focusing on the contradiction between strict new regulations and the high practice of granting dispensations, the main triggering factor (marriage by accident), and the dilemma of judges in weighing short-term protection (avoiding disgrace) and long-term protection (children’s rights). The urgency of this research is to critically evaluate the fundamental discrepancies that arose after the enactment of Law No. 16 of 2019. Although the substance of the law aims to tighten the requirements for child marriage by raising the age limit, in fact, it has triggered a drastic increase in marriage dispensation requests, which implicitly negates the main objective of the law. This research is interesting because it examines in depth the judges’ considerations in the phrase “very urgent reasons” based on American Legal Realism theory. This research is expected to contribute to the development of Family Law through a comprehensive analysis of reactive jurisprudence in the Religious Courts, particularly in the interpretation of the phrase “very urgent reasons.” In addition, this paper is practically useful as a means of public education by increasing public understanding, especially among parents and teenagers, of the long-term effects of child marriage, both from psychological, economic, and health aspects. The structure used in this paper includes: introduction, methodology, marriage dispensation, judicial authority in decision-making, analysis of judicial considerations in marriage dispensation petitions after Law Number 16 of 2019 from a legal realism perspective, and a conclusion to the discussion.

2. Method

This research uses a qualitative research method with a legal-normative approach, which is an approach carried out by examining legal principles, norms, and regulations relevant to the subject matter being studied.¹⁴ The object of this study is the judge’s consideration of the phrase “very urgent reasons” in cases of marriage dispensation requests. This study applies a normative legal method, which is an approach that focuses on the study of written norms to produce secondary data sourced from primary, secondary, and tertiary legal materials. This method is used to compile various laws, regulations, theories, and legal provisions relevant to the research issue. This approach was taken by analyzing the rules, principles, and legal principles that are directly related to the research topic and the issues being studied. This type of research is library research. In this case, the researcher conducted a literature search of various relevant literature, including books, articles, court decisions, legislation, and scientific papers.

The nature of the research in this paper is descriptive analytical, a research method that involves collecting accurate data and then examining it systematically. The data collection technique in this study is to collect data through literature searches, books, and relevant scientific works, accompanied by a

¹¹ Mansari and Rizkal, “Peranan Hakim Dalam Upaya Pencegahan Perkawinan Anak: Antara Kemaslahatan dan Kemudharatan,” *El-Usrah: Jurnal Hukum Keluarga* 4, no. 2 (2021): 345, <https://doi.org/10.22373/ujhk.v4i2.10219>.

¹² Hasan Ashari, “REKONSTRUKSI PERTIMBANGAN ALASAN SANGAT MENDESAK PADA PERKARA DISPENSASI KAWIN DI PENGADILAN AGAMA,” *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 18, no. 2 (2024): 1087, <https://doi.org/http://dx.doi.org/10.35931/aq.v18i2.3389>.

¹³ Seok Joon Mun et al., “Multiplex Genotyping of SNPs in Genomic DNA via Hydrogel-Based Assay Mediated with MutS and Polyethylene Glycol,” *Biosensors and Bioelectronics* 241 (December 2023): 115670, <https://doi.org/10.1016/j.bios.2023.115670>.

¹⁴ Soerjono Soekanto, “Pengantar Penelitian Hukum” (Jakarta: Universitas Indonesia, 2007), 56.

search for legal materials from internet sources and social media that are related to the object of study. The researcher uses descriptive analysis, which is presenting and explaining the research results systematically based on the data obtained by the researcher. The data processing technique in this study goes through several stages, namely data collecting from literature searches, data reduction to obtain important points for discussion or conclusions. Next, the researcher presents the data in the form of narrative text. Then, the researcher interprets the data to provide in-depth findings, and the final stage is drawing conclusions.

3. Result and Discussion

3.1. Marriage Dispensation

The age limit for marriage in Law No. 1 of 1974 Article 7 paragraph (1) before the amendment stipulated that marriage could be conducted if the man was 19 years old and the woman was 16 years old. The existence of this article attracted attention because the ages mentioned in the article were still considered childhood. Therefore, the government evaluated and subsequently changed the age limit for marriage in the law. However, this change in regulation did not immediately eliminate the practice of early marriage in society. This situation has instead created new dynamics, both in terms of an increase in the number of marriage dispensation requests in court, the variety of reasons given, and the public's response to the age limit. Most of the requests were submitted due to pregnancy outside of marriage as well as economic and social factors, which show that the issue of early marriage is strongly related to the social and cultural realities of society¹⁵.

Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage in Article 7 paragraph (1) states that marriage is permitted if the man and woman have reached the age of 19¹⁶. The change in the wording of this article raised expectations that early marriage would decline. However, Article 7 paragraph (2) states that in the event of a deviation from the age requirement as referred to in paragraph (1), the parents of the man and/or the parents of the woman may request a dispensation from the court on the grounds of urgent necessity, accompanied by sufficient supporting evidence¹⁷. This provision seems to undermine expectations for change in Article 7 paragraph (1). The facts on the ground show that there is ambiguity in Article 7 of the Marriage Law that causes serious problems. As a result, a number of courts have experienced a significant increase in requests for dispensation from parents who want to marry off their underage children. In fact, the number of such requests is higher than before the regulatory change was implemented¹⁸.

The increasing number of marriage dispensations reflects a discrepancy between legal provisions and social conditions. Although legislation has set a minimum age for marriage, social practices in a number of regions still show a culture of compromise that views marriage as a way to maintain family dignity and avoid the social stigma associated with premarital pregnancy¹⁹. The emergence of this marriage dispensation rule is paradoxical, because after the regulation was passed, the number of marriage dispensation requests actually experienced a significant upward trend. Despite the renewal of the age

¹⁵ Muh. Zul Atsari Amri, Syarifuddin Said, and Yusri Muhammad Arsyad, "Dinamika Dispensasi Nikah Dibawah Umur Di Pengadilan Agama Pasca Disahkannya UU. 16 Tahun 2019 (Studi Kasus Pengadilan Agama Kab. Bulukmba)," *Media Hukum Indonesia (MHI)* 3, no. 2 (2025): 803–14, <https://doi.org/https://doi.org/10.5281/zenodo.15967191>.

¹⁶ "Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" Pasal 7 ayat (1).

¹⁷ Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 7 ayat (2).

¹⁸ Mughniatul Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 2, no. 2 (2020): 137, <https://doi.org/https://doi.org/10.37680/almanhaj.v2i2.478>.

¹⁹ Sri Dwiyantri et al., "Hubungan Dispensasi Nikah Dan Kehamilan Di Luar Nikah Setelah Revisi Batas Usia Kawin Dalam Undang-Undang No. 16 TAHUN 2019," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 4 (2025): 4590, <https://doi.org/https://doi.org/10.61104/alz.v3i4.1986>.

limit for marriage, the rule is not fully effective when minors can still legally marry with the permission of a judge²⁰.

Since the enactment of Law Number 16 of 2019 on October 14, 2019, data from the Religious Court Agency (Badilag) confirms a massive surge in marriage dispensation requests. Data from the Ministry of Women's Empowerment and Child Protection and the National Population and Family Planning Agency (BKKBN) show that from 2019 to the end of 2021, the number of cases of early marriage in Indonesia has increased by 30% annually. In Central Java Province, data from the local Ministry of Religious Affairs in 2021 recorded around 8,700 cases of early marriage in which couples who wanted to get married and obtain a marriage certificate were required to go through a trial or marriage dispensation case in the Religious Court. The spike in cases occurred during the COVID-19 pandemic, with the majority of those married under the age of 19 being women²¹. The peak occurred in 2022, with data released by the Religious Court Agency (Badilag) showing that there were approximately 50,000 applicants in Indonesia, with East Java Province contributing the highest number of child marriages in Indonesia at 10.44%, higher than the national average. There were 15,337 cases of child marriage dispensation applicants in East Java Province, or 29.4% of the national cases²². This phenomenon shows that positive law has created age restrictions, but social realities continue to produce urgent situations that require legalization by the courts. Although the sample data from the Supreme Court's 2021 decisions only recorded 385-390 registered cases, the overall volume of Badilag cases in 2022 confirms the high caseload that must be handled by the religious court system²³.

Research conducted by AIPJ2 (Australian Indonesia Partnership for Justice) analyzed and categorized marriage dispensations in religious courts into six categories: 1) pregnant girls, accounting for 31%; 2) children who have had sexual relations, accounting for 16%; 3) both children are in love, accounting for 25%; 4) children at risk of violating religious values or avoiding adultery, accounting for 21%; 5) children at risk of violating social values, accounting for 8%; 6) children at risk of being in a sexual relationship, accounting for 4%²⁴. The upward trend in marriage dispensation requests is not only caused by regulatory changes, but also exacerbated by external factors, particularly the timing of implementation, which coincided with the Covid-19 pandemic. The increase in marriage dispensation cases shows a significant trend, especially during the pandemic period. The Covid-19 pandemic situation has caused massive social and economic pressure. School closures and social isolation are believed to increase the risk of promiscuity and unplanned pregnancies among teenagers. These conditions indirectly exacerbate the issue of child marriage²⁵. In addition, most dispensation requests are submitted by teenagers who have dropped out of school or did not continue their education. Economic constraints have made parents feel

²⁰ Sebastian M. Toescu et al., "Spatiotemporal Changes in Along-Tract Profilometry of Cerebellar Peduncles in Cerebellar Mutism Syndrome," *NeuroImage: Clinical* 35 (2022): 103000, <https://doi.org/10.1016/j.nicl.2022.103000>.

²¹ Mahkamah Agung Republik Indonesia, "Signifikannya Perkara Dispensasi Kawin Terus Meningkat Di Masa Pandemi Covid-19," n.d.

²² Mohammad Teja, "Upaya Pencegahan Permintaan Dispensasi Anak Menikah Dini," Pusat Penelitian Badan Keahlian Sekretariat Jenderal DPR RI, 2023, [https://berkas.dpr.go.id/pusaka/files/isu_sepekan/Isu Sepekan---I-PUSLIT-Februari-2023-242.pdf](https://berkas.dpr.go.id/pusaka/files/isu_sepekan/Isu%20Sepekan---I-PUSLIT-Februari-2023-242.pdf).

²³ Roxane Vargue et al., "Evaluation of Safety of Fluoxetine for Cerebellar Mutism Syndrome in Children after Posterior Fossa Surgery," *Archives de Pédiatrie* 31, no. 4 (May 2024): 231–37, <https://doi.org/10.1016/j.arcped.2023.10.010>.

²⁴ Australia Indonesia Partnership for Justice, "Publikasi Analisis Putusan Dispensasi Kawin Di Indonesia", Kemitraan Australia Indonesia Untuk Keadilan 2 (AIPJ2) Bekerja Sama Dengan Mahkamah Agung Republik Indonesia (MA RI) Melakukan Analisis Putusan Dalam Permohonan Dispensasi Kawin."

²⁵ Abhilash Jayaraj et al., "Molecular Dynamics of Mismatch Detection—How MutS Uses Indirect Readout to Find Errors in DNA," *Biophysical Journal* 122, no. 15 (August 2023): 3031–43, <https://doi.org/10.1016/j.bpj.2023.06.006>.

unable to afford higher education for their children, so early marriage is seen as an alternative to reduce the burden on the family²⁶.

3.2. The Authority of Judges in Consideration for Determinations in Marriage Dispensation Cases

The increasing number of marriage dispensation requests must be handled carefully by judges, taking into account all the reasons presented and the potential consequences that may arise if the dispensation is granted. Judges are required to be proactive in investigating the various legal facts and social conditions underlying the case under review²⁷. As stated in Law Number 48 of 2009 concerning Judicial Authority Article 5 paragraph (1)²⁸. "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society". Regulatory-wise, there are no specific reasons that allow for marriage dispensation, so the decision to allow marriage dispensation is entirely based on the judge's legal reasoning regarding all existing legal facts. Judges are not merely mouthpieces of the law (*bouchedelaloi*) without regard to the social facts that occur²⁹. The purpose of marriage is to form a lasting life, which requires mental, physical, financial readiness, and a strong determination to continue living with one's partner. Therefore, maturity of mind and body is needed to achieve this readiness³⁰.

Muhammad Ibn 'Umar Nawawi al-Jawy argues that rules made by the government are considered *ijtihad* laws. The original law is *mubah*, meaning that there is no prohibition or command to carry it out. However, if the rule is based on considerations of public interest, then it is obligatory for the community to obey and carry it out. In adjudicating marriage dispensation requests, judges refer to Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 and other relevant regulations. In addition, judges also refer to Supreme Court Regulation (PERMA) No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Requests. This PERMA is an effort to create uniformity and enforce a judicial orientation that focuses on child protection. Marriage dispensation cases filed by applicants take the form of voluntary petitions rather than contentious lawsuits, in which the applicant has no opponent. Religious courts now require psychological assessments for children who are the subject of dispensation petitions through cooperation with the Integrated Service Center for Women and Children Empowerment (P2TP2A) at the regional level. The aim is to provide judges with objective and scientific input regarding the mental and emotional readiness of children for marriage³¹. However, in their legal considerations, judges do not grant all requests for marriage dispensation³². Religious court judges do not have guidelines on the meaning of "extremely urgent" in handling marriage dispensation cases that can be used as an indicator in deciding whether the marriage dispensation case under review is based on urgent reasons or not³³.

The explanation of Article 7 paragraph (2) of Law No. 16 of 2019 does not specifically explain the criteria referred to in the phrase "very urgent reasons," so that judges in providing legal considerations give rise

²⁶ Marlina, "Problematika Dispensasi Kawin," 2024, [https://jdih.mahkamahagung.go.id/storage/uploads/artikel/2024/2024-Problematika Dispensasi Kawin.pdf](https://jdih.mahkamahagung.go.id/storage/uploads/artikel/2024/2024-Problematika%20Dispensasi%20Kawin.pdf).

²⁷ Sulistyowati Irianto, "Metode Penelitian Hukum: Konstelasi Dan Refleksi" (Jakarta: Yayasan Obor Indonesia, 2009), 176.

²⁸ "Undang-Undang No. 48 Tahun 2009 Tentang Kekuasaan Kehakiman" Pasal 5 ayat (1).

²⁹ Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019, 138"

³⁰ Sudarsono, "Hukum Perkawinan Nasional" (Jakarta: Rineka Cipta, 2005), 7.

³¹ Bashori Alwi and Hudaifa Muslihatul Ummah, "Urgensi Aspek Psikologis Pada Pemeriksaan Dispensasi Kawin Perspektif Maqāṣid Al-Syārī'ah," *Al-Sulthaniyah* 14, no. 1 (2025): 180, <https://doi.org/https://doi.org/10.37567/al-sulthaniyah.v14i1.3695>.

³² Mochamad Fuad Hasan, "Penerapan Metode Hukum (Rechtsvinding) Oleh Hakim Pengadilan Agama Blitar Dalam Perkara Dispensasi Kawin," *Skripsi* (Malang: Universitas Islam Negeri Maulana Malik Ibrahim, 2012), 71.

³³ Hikmah et al., "Disparitas Penafsiran Hakim Tentang Makna Urgensi Dalam Alasan Dispensasi Kawin," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 19, no. 2 (2025): 863, <https://doi.org/10.35931/aq.v19i2.4816>.

to multiple interpretations in defining urgent reasons. The article only explains "a situation where there is no other choice and it is absolutely necessary to proceed with the marriage." And in the sense of "evidence," what is meant by "sufficient supporting evidence" is a certificate proving that the bride and groom are still under the age specified by law and a certificate from a health professional supporting the parents' statement that the marriage is urgently needed³⁴. This phrase in legal terminology is a classic example of a *vagenorm* (vague norm or open standard). The presence of this *vagenorm* is not a legislative flaw, but should be understood as a deliberate delegation of authority. Legislators effectively transfer the political and legal responsibility for defining acceptable "exceptions" from the legislative to the judicial sphere. Judges can no longer act as "mouthpieces of the law" (*labouchedelaloi*). They are explicitly forced to act as discoverers of law (*rechtsvinding*)³⁵.

Judges apply various approaches to interpretation, ranging from grammatical to sociological. However, their application is not yet fully based on objective parameters set by legislation. Interpretation plays an important role in understanding the implied meaning of a legal text. Through this process, judges have the authority to adjust or expand the meaning contained in legal provisions so that they can be applied appropriately in deciding and resolving cases. In the realm of constitutional law, interpretation by judges, or judicial interpretation, can serve as a method of constitutional change by expanding, limiting, or revising the meaning contained in the text of the Constitution³⁶. In the context of marriage dispensation cases, judges tend to give subjective considerations, such as economic limitations, which are still often used as the basis for granting dispensation, even though these reasons do not meet the criteria for urgency as stipulated in the applicable legal provisions³⁷. As shown in the research conducted by Alfian Patoni, Imam Bukhori, and Abd Hannan, their paper explains that in the Kraksaan Religious Court, the majority of marriage dispensation requests are submitted by lower-middle-class people with low educational backgrounds and limited economic conditions. These limitations indirectly influence the community's view of marriage, which is seen as a quick solution to the various social and economic problems they face³⁸.

There are nine theories of interpretation as proposed by Arif Sidharta. The nine theories are³⁹:

1. The literal interpretation theory (what does the word mean?). Interpretation that emphasizes the meaning of the written words.
2. The grammatical interpretation theory (what does it linguistically mean?). This interpretation focuses on understanding the literal meaning of the text in which the legal norm is contained.
3. Historical interpretation theory (what is the historical background of the formulation of a text?). Historical interpretation includes two meanings, namely interpretation of the history of law formulation and interpretation of legal history. The first meaning focuses on the background of the formulation of a legal text, including the dynamics and debates that accompanied it. Meanwhile, the second meaning seeks to understand the meaning of legal norms by tracing the social context and conditions of society in the past.

³⁴ "Penjelasan Pasal 7 Ayat (3) UU Nomor 16 Tahun 2019 Tentang Perubahan UU Nomor 1 Tahun 1974 Tentang Perkawinan".

³⁵ Sahar Parvizi and Fatemeh Ghodrati, "A Comparative Approach to the Legitimacy of Uterine Surrogacy in Jurisprudence in Iran and Some Muslim Countries in the Middle East, A Systematic Review," *Current Women's Health Reviews* 21, no. 2 (March 2025), <https://doi.org/10.2174/0115734048256307231124074455>.

³⁶ Afif Khalid, "Penafsiran Hukum Oleh Hakim Dalam Sistem Peradilan Di Indonesia," *Al-Adl* VI, no. 11 (2014): 11.

³⁷ Nindya Azmi, "Alasan Sangat Mendesak Sebagai Syarat Dispensasi Perkawinan (Studi Penafsiran Hakim Pengadilan Agama Kabupaten Pematang Dalam Mengabulkan Putusan Dispensasi Kawin)," Skripsi (Pekalongan: UIN K.H. Abdurrahman Wahid, 2025), 103.

³⁸ Alfian Patoni, Imam Bukhori, and Abd Hannan, "Analisis Pemberian Dispensasi Nikah Di Pengadilan Agama Krasaan Perspektif Hukum Positif," *Rawang Rencang: Jurnal Hukum Lex Generalis* 6, no. 6 (2025): 9, <https://doi.org/https://doi.org/10.56370/jhlg.v6i6.1210>.

³⁹ Bambang Sutiyo and Sri Hastuti, "Aspek-Aspek Perkembangan Kekuasaan Kehakiman Di Indonesia" (Yogyakarta: UII Pres, 2005), 131–34.

4. Sociological interpretation theory (what is the social context of the event to be legally judged?). The social conditions at the time a legal text was drafted can be an important reference in the interpretation process, because the dynamics and events occurring in society often influence lawmakers in formulating these rules.
5. Socio-historical interpretation theory (asbabunnuzul and asbabulwurud, what is the social context behind the formulation of the text?). Unlike sociological interpretation, socio-historical interpretation focuses on the historical context of society that helped shape and influence the formulation of a legal text.
6. Philosophical interpretation theory (what is the philosophical thought behind the ideas formulated in the text?). Interpretation that focuses on philosophical aspects.
7. Theological interpretation theory (what does the articles would like to achieve by the formulated text?). Interpretation that focuses on the elaboration or formulation of legal rules according to their purpose and scope.
8. Holistic interpretation theory. This interpretation connects a legal text with the overall spirit and substance underlying the text.
9. Thematic-systematic holistic interpretation theory (what is the theme of the articles formulated, or how to understand the articles systematically according to the grouping of the formulation?).

A judge in making a decision or ruling on a case must be based on the ability to think and act independently, but still within the corridor of legal and moral responsibility. Thus, ideally, judges produce decisions that are professionally accountable without compromising their objectivity. Awareness of the moral principles underlying human existential freedom, especially for judges, must be the main foundation before carrying out their judicial functions⁴⁰. Judicial independence is one of the important principles in the concept of the rule of law. This principle of judicial independence is enshrined in Article 1 paragraph 1 and Article 3 of Law No. 48 of 2009 on Judicial Authority, which prohibits interference by other parties in judicial matters, except as provided for in the 1945 Constitution. Through the freedom they possess, judges are required to use objective considerations in responding to the public's demands for justice. For a judge, it is clear that every decision handed down must be in line with public expectations, so that objectivity becomes the main principle in determining legal decisions. From the perspective of freedom theory, the process of decision-making by judges must be based on careful consideration, grounded in their existential freedom as individuals who continue to function within the limits of social freedom recognized and granted by the legal system⁴¹.

Differences in judges' interpretations of the phrase "urgent reasons" give rise to a number of problems. First, it has the potential to violate the principle of legal certainty. Every individual who wishes to marry should be able to understand and predict the outcome of the applicable application. However, with differences in interpretation, individuals feel confused and unclear about what is required to meet the "very urgent reasons" requirement. Second, these differences in interpretation contribute to discrimination. For example, if judges in a certain region are more likely to accept reasons related to certain social or economic conditions, this can create inequality where parties from certain backgrounds gain an advantage over others. This kind of situation contradicts the principle of justice, which should be the main foundation for the application of law⁴². Some of the main reasons for applying for a marriage exemption are pregnancy outside of marriage and concerns about committing adultery because the man and woman have been in a relationship for a long time and love each other. In addition, it is also common for parents to encourage their children to get married in order to reduce the family's financial burden. The high rate of approval of these requests implies that the age limit of 19 years set by law is merely symbolic.

⁴⁰ Ahmad Kamil, "Kebebasan Hakim Dalam Perspektif Filsafat" (Yogyakarta: Sinar Grafika, 2010), 170.

⁴¹ Supandriyo, "Asas Kebebasan Hakim Dalam Penjatuhan Pidana" (Yogyakarta: Arti Bumi Intaran, 2019), 57–58.

⁴² Hikmah et al., "Disparitas Penafsiran Hakim Tentang Makna Urgensi Dalam Alasan Dispensasi Kawin.", 865.

If almost all requests are considered urgent, then the law is de facto ineffective in reducing the number of child marriages.

3.3. Analysis of Judicial Considerations in the Phrase "Urgent Reasons" in Marriage Dispensation Applications in Indonesia : A Legal Realism Perspective

The implementation of Law No. 16 of 2019 has created a paradox. This regulation was expected to effectively reduce the number of child marriages, but the opposite has happened. Requests for marriage dispensations have skyrocketed in Indonesian religious courts. This phenomenon shows that formal legal changes do not necessarily change the norms that exist in society. The phenomenon of marriage dispensations after Law No. 16 of 2019 is a clear manifestation of the clash between two normative systems, namely state law and the law that lives in society (living law). From a sociological perspective, Law No. 16 of 2019 is a formal law that attempts to engineer social conditions by establishing a general definition of "child" (an individual under 19 years of age) and when a person is considered mature enough to marry. This condition creates an ideal stage for analyzing this issue from the perspective of Legal Realism. This theory rejects the formalistic view that law is merely a rule that is mechanically applied by judges. Legal Realism argues that real law is born from what is decided by judges in court. One of the prominent patterns of reasoning in the ruling that was granted was the use of logic based on the fiqh rule, namely: "Dar'ul mafasid muqaddamun 'ala jalbil mashalah," which means that rejecting harm/damage must take precedence over achieving good (maslahat)⁴³. In practice, judges prioritize the rejection of immediate harm. The judge rationalized that allowing couples who are already in a close relationship without the bond of marriage would open the door to greater sin. Thus, the phrase "very urgent reasons" is effectively reinterpreted through a moral-religious lens. Although PERMA has provided guidelines, their implementation is highly dependent on the judge's interpretation and depth of fact-finding.

The decision-making process by judges is greatly influenced by non-legal factors. A judge's decision does not arise from a vacuum filled only with formal legal logic, but is shaped by social background, personal values, economic conditions, and political pressure⁴⁴. Judges in countries that adhere to the civil law system generally base their decisions on written legal provisions or applicable laws and regulations. Unlike the common law system, judges in this system are not bound by precedent or previous decisions. They have the discretion to make independent decisions as long as they are based on codified legal norms. However, judges are allowed to make legal discoveries in the event of a legal vacuum, either because there are no regulations for a specific case or because the existing provisions do not provide normative clarity. The school of legal realism plays an important role in the process of interpreting and applying law in the civil law system. Factors such as social norms, public policy, and the dynamics of social development also influence how the law is implemented in court decisions⁴⁵. American legal realism was first attributed to a group of legal thinkers in the 1920s, 1930s, and 1940s who were inspired by the challenges of legal reasoning and adjudication that were dominant in the courts⁴⁶.

The school of legal realism argues that legislation is not the primary source of law, but rather the social reality constructed by judges in their assessments, which is the primary source of law. Therefore, judges play an important role in legal realism. The freedom given to judges then reached its peak in the Freirechtslhere school of thought, which ultimately became known as the strongest opposition to legal

⁴³ Abdul Hamid Hakim, "Mabadi Awwaliyyah Fi Ushul Fiqh Wa Al-Qawa'id Fiqhiyyah : Terjemahan oleh Sukanan dan Khairudin," t.t., 46.

⁴⁴ Indah Purnama Sari and Ayu Trisna Dewi, "Perbandingan Hukum Pragmatic Legal Realism Di Dalam Sistem Hukum Civil Law Dan Common Law," *Warta Dharmawangsa* 18, no. 1 (2024): 125–26, <https://doi.org/10.46576/wdw.v18i1.4260>.

⁴⁵ Sudikno Mertokusumo, "Hukum Acara Perdata Indonesia," Edisi Ketu (Yogyakarta: Liberty, 1988).

⁴⁶ Brian Bix, "Jurisprudence : Theory and Context" (London England: Westview Press, 1996), 151.

positivism⁴⁷. In legal realism, the understanding of law is not limited to legal texts or documents, but goes beyond that. Broadly speaking, there are two branches of realism: American Legal Realism and Scandinavian Legal Realism. American Legal Realism emphasizes empiricism-pragmatism, while Scandinavian Legal Realism emphasizes empiricism-psychology. Both are based on realism but are influenced by different perspectives in viewing reality⁴⁸. However, in this paper, the author uses American Legal Realism Theory as the analytical tool for discussion. Quoting John C. Gray, "All law is judge-made law," which means that law is the decision of the judge. This phrase explains that judges create laws and discover and apply rules that are accepted directly from law books⁴⁹. In the context of marriage dispensation issues in Indonesia, the absence of objective parameters in interpreting the phrase "urgent reasons" forces judges to apply various approaches. This condition provides more space for judges to play an active and independent role in determining and deciding the law of a case in court. In addition, judges are also encouraged to be more innovative in applying the law when formal law cannot provide a definite answer, not merely limited to the interpretation or application of rules that have been established by the law-making authorities⁵⁰.

One of the figures of American Legal Realism, Oliver Wendell Holmes, argued that judges in the context of law often face the symptoms of the development of society in a realistic manner. He viewed that legal certainty contains a certain relativity, which arises because judges inevitably take into account the social facts surrounding society, and do not rely solely on a major premise. Therefore, before issuing a verdict, judges must thoroughly examine all the facts⁵¹. Holmes often encountered dilemmas and problems regarding truth and justice in handling legal cases. For example, the truth in formal legal rules is then contrasted with the truth that exists outside of formal legal rules. Between these two things, there is often a demand to "prioritize" which one should be used as an ideal decision⁵². According to Holmes' view, legal rules are only factors that should be considered in weighty decisions. As stated by Surya Prakash Sinha: "Moral factors, matters of benefit, and the primacy of social interests, for example, are factors that are no less important in making 'substantive' decisions. So it is not taboo, if for the sake of a functional and contextual decision, official rules have to be set aside (especially if those rules have adverse effects)"⁵³.

Based on the above explanation, it can be concluded that the analysis of American Legal Realism reveals the fact that the law that applies in Indonesian Religious Courts in marriage dispensation cases is a law formed by social-pragmatic realities, not normative law as regulated in legislation. The judges' sense of justice is strongly based on moral-social values that can only be countered or at least balanced by strong objective data. Forcing judges to read and consider independent psychological and economic assessments will create cognitive dissonance. This will force judges to grapple with the factual data of the holistic "best interests of the child," not just "avoiding disgrace." There needs to be a revision of the regulations on marriage dispensation and a detailed explanation of the meaning of the phrase "very urgent reasons" to avoid diverse and non-objective interpretations by judges in granting marriage dispensation cases, so that judges can be more selective in granting marriage dispensation cases.

⁴⁷ Darji Darmodiharjo and Sidharta, "Pokok-Pokok Filsafat Hukum : Apa Dan Bagaimana Filsafat Hukum Indonesia" (Jakarta: PT Gramedia Pustaka Utama, 1999), 100.

⁴⁸ Zainal Arifin Mochtar and Eddy O.S Hiariej, "Dasar-Dasar Ilmu Hukum : Memahami Kaidah, Teori, Asas, Dan Filsafat Hukum" (Depok: PT. RajaGrafindo Persada, 2023), 257.

⁴⁹ Sari and Dewi, "Perbandingan Hukum Pragmatic Legal Realism Di Dalam Sistem Hukum Civil Law Dan Common Law.", 127.

⁵⁰ Muhamad Izazi Nurjaman et al., "Teori Legal Realism: Konsep Dan Eksistensinya Dalam Hukum Ekonomi Syariah Di Indonesia," *Al Mashalih - Journal of Islamic Law* 4, no. 2 (2023): 86, <https://doi.org/10.59270/mashalih.v4i2.210>.

⁵¹ Mochtar and Hiariej, "Dasar-Dasar Ilmu Hukum : Memahami Kaidah, Teori, Asas, Dan Filsafat Hukum.", 260

⁵² Mochtar and Hiariej, 261.

⁵³ Surya Prakash Sinha dalam Jonaedi Efendi dan Johnny Ibrahim, "Metode Penelitian Hukum : Normatif Dan Empiris" (Jakarta: Kencana, 2016), 67.

4. Conclusion

Judges have full authority to interpret and determine the fulfillment of the element of “urgent reasons” as referred to in Article 7 paragraph (2) of Law Number 16 of 2019. This authority stems from the principle of judicial independence as stipulated in Law Number 48 of 2009 concerning Judicial Authority. However, due to the absence of specific normative explanations regarding the criteria for “urgent reasons,” the application of the law in court varies. Judges often use social, moral, and religious considerations. As a result, the granting of marriage dispensations is high and indicates that the minimum age for marriage set by law has not been effective in preventing child marriage. Based on an analysis of American Legal Realism theory, judges' decisions in marriage dispensation cases are not entirely based on formal legal logic, but are more influenced by non-legal factors such as social conditions, moral values, cultural pressures, and empathy for the applicant. In practice, judges often interpret “very urgent reasons” through a moral-religious approach that emphasizes the principle of *dar'ul mafasid muqaddamun 'ala jalbil mashalih* (avoiding harm is more important than attracting benefit). This shows that the law that applies in religious courts is a living law shaped by social reality. Therefore, there needs to be a regulatory affirmation of the objective limits of “urgent reasons” so that judges have uniform assessment standards that are in line with the main objectives of child protection and the prevention of early marriage. For further research, it is recommended to examine more deeply the implementation of Supreme Court Regulation (PERMA) Number 5 of 2019 in various regions, conduct a comparative analysis between the positive law and Islamic law approaches in determining marriage dispensations, and examine using an interdisciplinary approach between law and child psychology.

Declarations

Author Contribution Statement

Ilma Maulana Ahmad led the formulation of the research concept, designed the methodology, analyzed the data, and wrote the original draft and revised manuscript. Muhammad Alvin Saputra provided critical revisions to the legal analysis section and ensured the consistency and integrity of the arguments throughout the paper. Zahrotul Habibah contributed to data collection, literature review, and assisted in the preparation of supporting research materials.

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