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Marriage Dispensation Following Amendments to the Marriage Law: A Study on the Legal Awareness of the Jember Regency Community

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Original Article

Abstract

Five years after the amendment of Law No. 16 of 2019, applications for marriage dispensations have risen sharply, particularly in Jember Regency, which recorded the highest rate in East Java. This article examines whether this phenomenon reflects an increase in legal awareness or merely administrative compliance with the ongoing practice of child marriage. Using a juridical-sociological approach, this study combines normative analysis of legal regulations and concepts with empirical data obtained through observation, interviews, and documentation. The findings reveal that although Supreme Court Regulation (PERMA) No. 5 of 2019 provides clear guidelines for judges, Pandalungan cultural influences and socioeconomic factors continue to sustain early marriage practices. The surge in cases demonstrates a form of instrumental legal awareness—people understand the law but utilize it to maintain traditional norms. This research recommends strengthening evidentiary standards, implementing mandatory psychosocial and medical assessments, and promoting community-based prevention strategies.

Keywords: *Marriage Dispensation, Marriage Law Reform, Legal Awareness, Jember Religious Court.*

Abstrak

Lima tahun pasca perubahan Undang-Undang Nomor 16 Tahun 2019, permohonan dispensasi kawin meningkat tajam, terutama di Kabupaten Jember yang mencatat angka tertinggi di Jawa Timur. Artikel ini menelaah apakah fenomena tersebut mencerminkan peningkatan kesadaran hukum atau sekadar kepatuhan administratif terhadap praktik perkawinan usia anak. Dengan pendekatan yuridis-sosiologis, penelitian ini memadukan analisis normatif atas peraturan dan konsep hukum dengan data empiris melalui observasi, wawancara, dan dokumentasi. Hasil penelitian menunjukkan bahwa meskipun PERMA No. 5 Tahun 2019 telah memberi pedoman jelas bagi hakim, faktor budaya Pandalungan dan kondisi sosial ekonomi tetap mendorong praktik nikah muda. Lonjakan perkara menunjukkan bentuk kesadaran hukum instrumental—masyarakat memahami hukum namun memanfaatkannya untuk melestarikan tradisi. Penelitian ini merekomendasikan penguatan syarat pembuktian, asesmen psikososial medis wajib, serta strategi pencegahan berbasis komunitas.

Kata kunci: *dispensasi kawin, reformasi hukum perkawinan, kesadaran hukum.*

1. INTRODUCTION

The amendment to Law Number 1 of 1974 through Law Number 16 of 2019 concerning Marriage marks a significant milestone in family law reform in Indonesia. The main substance of this amendment is the equalization of the minimum marriage age for men and women at 19 years. Normatively, this provision is intended as a strategic measure to reduce the incidence of child marriage and to protect children's rights to education, health, and social development. In practice, however, the number of marriage dispensation applications has increased sharply across various regions, including Jember Regency, which recorded the highest number of such cases in East Java. This situation reflects a disparity between the law's intended objectives and the social realities experienced by the community.

Conceptually, the law is expected to serve as an instrument of social engineering—shaping societal behavior toward greater justice and civility. The rise in marriage dispensation applications following the reform of the Marriage Law reveals a gap between normative regulations and public legal awareness. This phenomenon indicates that the law has not yet been fully internalized within the social consciousness and practices of society, particularly among communities that continue to uphold traditional values, such as the *Pandalungan* community in Jember. The *Pandalungan* community—a cultural blend of Javanese and Madurese traditions—possesses a distinct moral and value system in which customary norms often exert stronger influence than formal legal rules. Early marriage is frequently regarded as a manifestation of familial moral responsibility to preserve honor and address social issues, including premarital pregnancy.¹ This perspective illustrates the ongoing tension between local cultural values and national legal norms in social life.

The phenomenon of marriage dispensations in the *Pandalungan* cultural region illustrates how cultural values continue to dominate legal and social decision-making. When a child is considered socially “mature enough,” even without meeting the legal age requirement, families tend to seek dispensation through the Religious Courts. This aligns with research findings by Haris Hidayatulloh and Miftakhul Janah, which show that in many cases, marriage dispensations are viewed as a formal mechanism to legitimize long-standing social practices rather than as an expression of substantive legal awareness.² Therefore, the increase in marriage dispensation requests cannot be regarded merely as an administrative issue but rather as a reflection of the complex relationship among state law, religious law, and customary law within Indonesia's

¹ Nur Wakhidah et al., “Dampak dan Solusi Keberlakuan Aturan Pembatasan Usia Nikah di Indonesia,” *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 1 (2024): 24–42, <https://doi.org/10.62976/ijjel.v2i1.267>.

² Haris Hidayatulloh dan Miftakhul Jannah, “Dispensasi Nikah di Bawah Umur dalam Hukum Islam,” *Jurnal Hukum Keluarga Islam* 5, no. 1 (2020): 34–61, <https://journal.unipdu.ac.id/index.php/jhki/article/view/2128>.

pluralistic legal framework.³ In Islamic law, marriage is not determined by a specific age but by signs of maturity (*baligh*) and an individual's mental and spiritual readiness to assume household responsibilities. This explains why some view the 19-year age limit in positive law not as an absolute measure but as a form of administrative state intervention. Within the framework of national and international law—particularly Law No. 23 of 2002 on Child Protection and the Convention on the Rights of the Child—marriage under the age of 18 is categorized as a violation of children's rights and has the potential to cause serious social and health consequences.⁴ This tension between religious norms, customary law, and positive law is reconciled through the marriage dispensation policy stipulated in Supreme Court Regulation (PERMA) No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications.

In Jember Regency, this issue is complex because, in addition to being influenced by economic conditions and educational levels, the *Pandalungan* culture also provides a social foundation that reinforces the acceptance of early marriage practices. In an agrarian society deeply rooted in mutual cooperation and kinship ties, marrying at a young age is often perceived as a marker of social maturity and a means of preserving family honor. This perspective illustrates the distinction between formal legal awareness and legal consciousness derived from tradition.⁵ While the community acknowledges the validity of state regulations, it simultaneously upholds long-standing customs as an integral part of its cultural identity.

The novelty of this research lies in its exploration of the relationship between the rise in marriage dispensation applications following the amendment of Law Number 16 of 2019 and the level of legal awareness within the Jember community in the context of *Pandalungan* culture. Unlike previous studies, which primarily examined the legal reasoning of judges or the effectiveness of Supreme Court Regulation Number 5 of 2019, this research focuses on the socio-cultural dimensions that shape how communities perceive and apply the law in everyday life. The identified legal gap concerns the lack of studies connecting formal legal awareness with cultural legal consciousness grounded in local values—where the law often serves as a tool of social justification rather than as an instrument for transforming legal behavior. The relationship between these two research problems can be explained as follows.

First, in constructing judicial considerations following the issuance of PERMA Number 5 of 2019, this study confirms that judges in Jember base their decisions not only on legal aspects but also on the social and cultural values of the *Pandalungan*

³ Wakhidah et al., "Dampak dan Solusi Keberlakuan Aturan Pembatasan Usia Nikah di Indonesia."

⁴ Sonny Dewi Judiasih dan Susilowati Suparto Dajaan, "Kontradiksi Antara Dispensasi Kawin dengan Upaya Meminimalisir Perkawinan Bawah Umur di Indonesia," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (2020): 203–22, <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/221>.

⁵ Qorin Annida Salma dan Eko Wahyu Ramadani, "Tinjauan Perkawinan di Bawah Umur Menurut Perspektif Hukum Nasional dan Hukum Islam," *Rewang Rancang: Jurnal Hukum Lex Generalis* 6, no. 2 (2025): 1–16, <https://doi.org/10.56370/jhlg.v6i2.663>.

community, which continues to regard early marriage as a moral solution. Second, regarding the level of public legal awareness after the amendment to the Marriage Law, this study reveals that the increase in marriage dispensation applications reflects a more instrumental form of legal awareness. People tend to comply with legal provisions in an administrative sense but have not yet fully internalized their substantive purpose to prevent child marriage. Thus, this study offers a new perspective on the relationship between law and local culture in the implementation of universal national norms.

Academically, it is expected to contribute theoretically to the development of Islamic family law and Indonesian positive law through a socio-legal approach—viewing law not merely as written norms but as a living social system. Furthermore, the findings of this research are expected to serve as a foundation for formulating more contextual public policies—those that emphasize not only the legal-formal dimensions but also the cultural and social realities of local communities. Ultimately, this study seeks to identify the ideal balance among state law, religious law, and customary law in realizing a just and humanistic national legal system rooted in Indonesia's social realities, particularly within the *Pandalungan* community of Jember Regency.

2. RESEARCH METHODOLOGY

This study employs a socio-legal approach that integrates normative analysis of laws and regulations with empirical examination of social realities. This approach was chosen because the amendment to Law Number 1 of 1974 through Law Number 16 of 2019, which equalizes the minimum marriage age for men and women at 19 years, cannot be understood solely from a normative perspective. It also requires an understanding of the social, cultural, and religious contexts of the Pandalungan community in Jember Regency. From a socio-legal standpoint, law is viewed not only as written norms (law on the books), but also as living social practices that interact with local values (law in action).

This qualitative, descriptive-analytical study aims to illustrate the relationship between changes in national legal norms and the legal awareness of the Pandalungan community regarding the minimum marriage age. The research was conducted in Jember Regency, East Java Province, which has the highest number of marriage dispensation applications in East Java. The data consist of primary data obtained through in-depth interviews with Religious Court judges, community leaders, and marriage dispensation applicants, as well as secondary data comprising primary legal materials (the Marriage Law, the Child Protection Law, and Supreme Court Regulation No. 5 of 2019) and secondary legal materials (academic literature, journal articles, and data from the Central Bureau of Statistics).

Data were collected through document analysis, in-depth interviews, and field observations, and analyzed using interactive qualitative analysis, including data

reduction, data presentation, and conclusion drawing. Data validity was ensured through triangulation of sources and methods to maintain the consistency of findings. The analysis is grounded in the theory of legal consciousness and the concept of law as an instrument of social engineering, explaining how changes in formal legal norms are received, interpreted, and internalized within the social practices of the Pandalungan community.

3. RESULT AND DISCUSSION

3.1. Construction of Judicial Considerations in Deciding Marriage Dispensation Cases after PERMA No. 5/2019 on Guidelines for Adjudicating Marriage Dispensation Applications

In practice, courts adjudicating marriage dispensation applications refer to Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications. The Marriage Law stipulates that the granting of a dispensation request must be based on “urgent reasons.” Supreme Court Regulation No. 5 of 2019 adds the clause “best interests of the child,” which is further elaborated in Article 17 as follows:

“In determining a marriage dispensation request, the judge shall consider:

- 1) The protection and best interests of the child as provided in statutory and unwritten law, including legal values, local wisdom, and the prevailing sense of justice in society; and
- 2) Conventions and/or international agreements relating to child protection.”

Under this Regulation, the administrative requirement for a Certificate from a Health Professional is not mandatory, as it is under the Marriage Law. Article 15 states that “in examining a child who applies for a marriage dispensation, the judge may request recommendations from a psychologist or doctor/midwife, professional social worker, social welfare worker, Integrated Service Center for the Protection of Women and Children (P2TP2A), or the Indonesian/Regional Child Protection Commission (KPAI/KPAD).” The use of the word *may* provide linguistic flexibility, preventing it from becoming a strict administrative requirement for filing a marriage dispensation application with the court.⁶

This flexibility creates a loophole in judicial considerations when granting marriage dispensation requests. For example, if parents or family members are no longer able to guide or supervise their child’s social life after a long-term romantic relationship—fearing violations of religious or social norms—the judge may approve the application, reasoning that granting a marriage dispensation serves the best interests of both

⁶ Abdul Salam, Rusdin Muhalling, dan Abdul Gaffar, “Analisis Yuridis Pertimbangan Penetapan Hakim dalam Perkara Dispensasi Kawin Atas Dasar Mendesak,” *Kalosara Family Law Review* 2, no. 2 (2022): 189–208, <https://doi.org/10.31332/kalosara.v2i2.4264>.

children by preventing conduct prohibited by religion. Particularly for children who have dropped out of school, marriage is often viewed as the best option, as there is little expectation for further education or personal development. Parents, feeling helpless, regard marriage as a practical solution, believing it may bring happiness to their child in another form. Therefore, two differing ideals can be identified between Marriage Law No. 16 of 2019 and Supreme Court Regulation No. 5 of 2019:

- 1) The explanation of Article 7 paragraph (3) of the Marriage Law is oriented toward the spirit of preventing child marriage, taking into account morality, religion, customs, culture, psychological and health aspects, and their social implications.
- 2) Article 17(a) of the Supreme Court Regulation, on the other hand, is oriented toward the spirit of protection and the best interests of the child, as reflected in statutory and unwritten laws, encompassing legal values, local wisdom, and the prevailing sense of justice within society.

That is why 99% of marriage dispensation requests are granted by the court (judge), including in Jember Regency. Interpretations of the clause “in the best interests of the child” inevitably vary, influenced by differences in understanding, background, customs, and culture. In contrast, prioritizing the spirit of prevention for the best interests of the child may reduce the number of early marriages. The explanation of Article 7 paragraph (2) regarding exceptions to Article 7 paragraph (1) may be applied for reasons of extreme urgency.⁷ The article defines extreme urgency as a situation where no other alternative exists and marriage becomes absolutely necessary. To reinforce the meaning of extreme urgency, sufficient supporting evidence must be provided.

This includes, first, a certificate proving that the prospective bride or groom is under the legal age, and second, a certificate from a health professional supporting the parents’ statement that the marriage is urgently required.⁸ Both elements are of equal importance and hold the same legal weight; if one is missing, the supporting evidence for the claim of extreme urgency is considered insufficient. The granting of a dispensation by the court is therefore based on the spirit of preventing child marriage—considering moral, religious, customary, cultural, psychological, and health aspects, as well as potential impacts—because marriage is not a temporary desire but a long-term legal relationship between a man and a woman.⁹

The reason of being in a romantic relationship or feeling mutual love does not necessarily justify immediate marriage while disregarding the legal age limits set by law.

⁷ Imran et al., “Aspects Of Justice Of Marriage Dispensation And Best Interests For Children,” *Jurnal Hukum dan Peradilan* 13, no. 1 (2024): 63–88, <https://doi.org/10.25216/jhp.13.1.2024.63-88>.

⁸ Hardiyanto Putra Limonu, “Legal Considerations in Appointing a Marriage Guardian for a Child Born Out of Wedlock,” *Dambhil Law Journal* 4, no. 1 (2024): 97–112, <https://doi.org/10.56591/dlj.v4i2.2039>.

⁹ Subekti, *Pokok-pokok Hukum Perdata* (Jakarta: Intermassa, 2003), hal. 54.

Feelings of infatuation may be fleeting and could ultimately lead to regret. The longevity of a marriage cannot be measured solely by a period of dating before marriage. Many marriages have ended in failure due to unions formed at a young age based merely on affection or dating. It is also not uncommon to find divorce petitions filed after five years of courtship, where the legal marriage lasted only five months before separation. Cases of children being abandoned or left by both parents are also frequently encountered. Guardians or families of prospective brides and grooms often argue that the child has no supervision in their social life, making marriage seem like the best available option.¹⁰

The presiding judge must carefully consider whether the child for whom the marriage dispensation is sought truly lacks care and attention—who has been responsible for raising the child, what their daily life entails, and similar factors. Even when linked to the concept of extreme urgency and the absence of alternatives, such reasoning may still be challenged. Engaging in sexual intercourse or becoming pregnant outside of marriage constitutes reasons that can be categorized as leaving no other choice. Such circumstances present a new legal issue requiring careful consideration to ensure legal certainty.

This legal certainty provides at least two benefits: protection for the prospective bride and groom, and for the fetus in the mother's womb. It is essential to assess the readiness of the prospective couple, as readiness is reflected in physical and psychological maturity or puberty. Similarly, scholars and jurists have established that the benchmark for a woman's permissibility for intercourse is her readiness and its consequences—such as pregnancy, childbirth, and breastfeeding—which are indicated by the onset of puberty.¹¹

3.2. Public Legal Awareness in Jember Regency Regarding Marriage Dispensations after the Amendment to the Marriage Law

Following the amendment to the Marriage Law, which changed the minimum marriage age from 19 years for men and 16 years for women to 19 years for both, there has been a significant increase in marriage dispensation applications submitted to the courts. This trend is also evident in the Jember Class IA Religious Court. Based on the Jember Religious Court's annual reports, the number of marriage dispensation applications has risen sharply. In 2018, before the amendment, there were 132 cases recorded.¹² In 2019, when the new age provision took effect, the number increased to 349 cases.¹³

¹⁰ Redwan Yasin et al., "Guardian's Responsibility For The Welfare Of Children In Marriage: A Study According To Islamic Law," *MJLS: Malaysian Journal of Syariah and Law* 12, no. 3 (2024): 778–79, <https://doi.org/10.33102/mjls.vol12no3.765>.

¹¹ Yusuf Hanafi, *Kontroversi Perkawinan Anak di Bawah Umur (Child Marriage)* (Bandung: Mandar Maju, 2010), hal. 87.

¹² Laporan Tahunan Pengadilan Jember tahun 2018.

¹³ Laporan Tahun Pengadilan Jember tahun 2019.

Furthermore, in 2020, according to the Jember Religious Court's annual report, applications surged dramatically to 1,461 cases—a substantial increase compared to previous years, particularly before the amendment was enacted.¹⁴ In the subsequent years—2021, 2022, and 2023¹⁵—the number of applications never fell below 1,000, nor returned to pre-amendment levels. Consequently, Jember Regency has recorded the highest number of marriage dispensation applications in East Java.

The increase in the number of marriage dispensation applications, in terms of quantity, is influenced by changes in the minimum marriage age. In terms of quality, early marriages between the ages of 16 and 19 have also risen, although not as sharply as the increase caused by the age adjustment itself. What is particularly interesting is that, following the amendment to the Marriage Law, marriage dispensation cases in Jember Regency have surged dramatically, raising the question of whether this sharp rise reflects greater legal awareness or, conversely, a regression in the post-amendment era of the Marriage Law. Examining the spirit and purpose of Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage,¹⁶ it is clear that the provision allowing marriage only when both parties have reached the age of nineteen was intended to reduce stunting rates and the high incidence of early-age marriages and divorces caused by the couple's psychological immaturity.

Thus, the law's primary goal was to reduce the prevalence of early marriages. However, the reality has diverged from this objective—residents, particularly in Jember, are increasingly turning to the Religious Court to seek marriage dispensations. The increasing number of marriage dispensation cases can be interpreted as a form of legal awareness among the Jember community regarding legal administration. If legal awareness is conceptualized as the harmony between the desired order and peace—or, in this context, as the awareness to act in accordance with statutory provisions—then it can be concluded that the behavior of the Jember community in complying with Law Number 16 of 2019, amending Law Number 1 of 1974 on Marriage, by submitting a marriage dispensation application when the bride and groom are under nineteen years old, reflects an awareness to act in accordance with legal norms and maintain social order. As stated by Sudikno Mertokusumo, legal awareness means awareness of what we should or should not do, particularly in relation to others—an awareness of our respective obligations toward one another.¹⁷ Thus, the behavior of the Jember community in submitting marriage dispensation applications for couples under nineteen years of age can be interpreted as a form of compliance with the provisions of Law Number 16 of 2019 and therefore as an expression of the community's legal

¹⁴ Laporan Tahunan Pengadilan Jember tahun 2020.

¹⁵ Laporan Tahunan Pengadilan Agama Jember tahun 2021–2023.

¹⁶ Peraturan Pemerintah RI, “Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, Lembaran Negara Republik Indonesia Tahun 2019, Tambahan Lembaran Negara RI Nomor 6401.” (2019).

¹⁷ Sudikno Mertokusumo, *Meningkatkan Kesadaran Hukum Masyarakat*, 1 ed. (Yogyakarta: Liberty, 1981), hal. 78.

awareness.¹⁸ Furthermore, when viewed from the perspective of legal awareness indicators, Otje Salman identifies several key dimensions of legal consciousness, including:¹⁹

- 1) The first indicator is legal knowledge, referring to an individual's awareness that certain behaviors are regulated by law. The legal regulations in this context include both written and unwritten laws, encompassing actions that are either prohibited or permitted by legal norms.
- 2) The second indicator is legal understanding, which refers to the extent of information an individual possesses regarding the substance of a specific legal regulation. Legal understanding involves comprehension of the content, purpose, and benefits of a law for those whose lives are governed by it.
- 3) The third indicator is legal attitude, defined as a person's tendency to accept the law based on an appreciation of its usefulness or benefits when obeyed. This reflects a predisposition to form positive or negative judgments about the law.
- 4) The fourth indicator is legal behavior patterns, which measure the degree to which individuals or communities comply with applicable legal norms. This is the most critical indicator, as it reveals whether a regulation is effectively applied within society. Hence, the level of legal awareness in a community can be observed through its behavioral conformity to the law.

Thus, the surge in marriage dispensation applications at the Jember Religious Court aligns with Otje Salman's indicators of legal awareness. In terms of legal understanding, the Jember community demonstrates awareness of the legal provisions governing the minimum marriage age and the regulations concerning marriage dispensation. Furthermore, the community's legal attitude—its tendency to accept legal regulations—is reflected in the increasing number of marriage dispensation cases at the Jember Religious Court, indicating that such actions are perceived as beneficial or advantageous when carried out in compliance with the law.

4. CONCLUSION

The surge in marriage dispensation cases in Jember following the enactment of Law No. 16 of 2019 reflects a form of composite legal consciousness—recognition of the law without a corresponding transformation of social values. To achieve substantive justice, stricter requirements for proving urgent circumstances, mandatory multidisciplinary assessments, and cross-institutional collaboration to prevent child marriage are necessary. The increase in marriage dispensation cases can be interpreted

¹⁸ Siti Muslifah, Muhammad Aenur Rosyid, dan Iklil Athroz Arfan, "Loopholes in Law: Why Local Strategies Fail to Curb Child Marriage in Jember Regency," *Sakina Journal of Family Studies* 9, no. 3 (2025): 323–42, <https://doi.org/10.18860/jfs.v9i3.18220>.

¹⁹ Otje Salman, *Kesadaran Hukum Masyarakat Terhadap Hukum Waris* (Bandung: Alumni, 1993), hal. 109.

as a manifestation of the Jember community's growing legal awareness of administrative procedures. If legal awareness is understood as the harmony between the desired social order and peace—or, in this context, as the awareness to act in accordance with statutory provisions—then the behavior of the Jember community, which complies with Law No. 16 of 2019 amending Law No. 1 of 1974 on Marriage by submitting marriage dispensation applications for couples under nineteen years old, represents an awareness to act in accordance with legal norms. However, this reflects administrative legal awareness—knowing the rules and following procedures—without substantive change in underlying social values. This composite form of legal consciousness demonstrates instrumental legal recognition, where law is used to preserve rather than transform the practice of early marriage.

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