

## IMPLICATIONS OF MARRIAGE DISPENSATION IN INCREASING DIVORCE FILINGS

**Vica Zumrotun Nisa<sup>1\*</sup>, Isdian Anggraeny<sup>2</sup>**

Universitas Muhammadiyah Malang, Indonesia

Email : [pikajung011@gmail.com](mailto:pikajung011@gmail.com)<sup>1\*</sup>, [isdian@umm.ac.id](mailto:isdian@umm.ac.id)<sup>2</sup>

\*Correspondence

### ABSTRACT

<b>Keywords:</b> dispensation, divorce, legislation.	marriage divorce,	In principle, the limit on the age of marriage for citizens is to ensure that couples about to marry must have sufficient mental and physical maturity. The minimum age limit for marriage has been regulated by legal provisions and compilations of Islamic law, but there are still differences in determining the age limit. The Amended Marriage Law Number 16 of 2019 has stipulated that the minimum age for marriage for women is the same as for men, namely 19 (nineteen). The ratification of this provision must be a response to public unrest. This can happen because perpetrators of child marriage often lack mental and even economic preparation for a household, causing protracted conflicts. In writing this law, the author wants to examine the factors that cause underage marriages and the influence of underage marriages on the divorce rate in Mojokerto Regency to know the causes of underage marriages, underage marriages, and the impact of underage marriages against divorce. This study uses standard experimental research methods, and the data obtained will be analyzed using a qualitative descriptive method. The results of this study show that in Mojokerto Regency, early marriage is due to parental pressure, economic factors, and pregnancies outside of marriage. As a result, conflicts that cannot be sustained in these marriages often arise and end in divorce.
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### Introduction

Man is a creature God gives to meet the biological needs of the opposite sex. Therefore, some rules legalize such relationships through the bond of marriage. Humans are expected to channel sexual desire in a good and correct way by applicable law (Massadi et al., 2018). Marriage is derived from the word nikah, which, according to the language, means to gather and enter each other. It is used as the meaning of intercourse (wathi), also including the meaning of the marriage contract (Fadhli, Rahmiati, Rahmi, & Ramadhan, 2022). Marriage in Islamic law does not provide an age limit for its execution. In his research, it was stated that emotional maturity is an essential factor in maintaining the continuity of marriage at a young age, so emotional maturity is essential as a measurement of the age limit of marriage (Mubasyaroh, 2016).

Generally, feelings of sensitivity to the social environment result in a person's tendency to establish relationships with the opposite sex; this is experienced when growing up in adolescence, while some research results say that age when holding a marriage is a factor in maintaining marriage stability, apart from educational and economic factors. The younger a person marries, the greater the chance of divorce. (Najib & Hofi, 2022).

Thus, the government sets regulations regarding the age limit for marriage by considering emotional and financial readiness factors (Saderi, 2021). This is emphasized to realize the purpose of marriage as stipulated in Article 1 of Law Number 1 of 1974 concerning Marriage, namely to form a family if someone who holds a marriage is ready from emotional and financial aspects that can be realized with the maturity of one's age. Suppose someone who holds a marriage is ready for the emotional and financial aspects that can be realized with the maturity of one's age (Saidah, 2019).

Divorce is indeed a solution for husband and wife who have conditions that cannot be resolved familiarly; if continuing the marriage will harm both children, then they are forced to divorce. Article 7 paragraph (1) of the Marriage Law Number 1 of 1974 Juncto Article 15 paragraph (1) of the Compendium of Islamic Law stipulates that marriage is only allowed if the man is 19 years old and if the woman has reached the age of 16 years, That is, if for some reason a person under the age of 21 years or at least 19 years for men and 16 years for women marries, Then the law still has a way out (Siregar & Kelana, 2021).

Article 7 paragraph (2) confirms that in cases other than subsection (1) of this Article, it may apply for exemption from marriage. Regarding who may grant an exception by issuing Law No. 1 of 1974 paragraph (2), namely in the case of paragraph (1), can apply for an exception except through the court (Kurniawati et al., 2023).

The regulation regarding marriage dispensation is one of the reproaches of violation of the purpose of the regulation of the provisions in Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning marriage, with the discovery of many divorce cases after filing for marriage dispensation, this phenomenon occurred in the Mojokerto Religious Court recorded an increase in divorce cases in 2021 from January to November was 3,234 (Junanah, 2020). In contrast, previously, in 2020, there were 3,067 cases. The number of cases of child marriage in Mojokerto Regency is quite alarming. The case of early marriage is one of the triggers for the divorce of many young couples. This resulted in 1,201 young widows a year (Mahmudah, 2019).

Hamidah, deputy head of the Integrated Service Center for Women and Children Empowerment (P2TP2A) of Mojokerto Regency, said, "I often handle cases of early marriage and then shortly divorced. Often, marriage is only to legalize the children of their relationship before marriage."

Early marriage is said to be the cause of the increasing number of young widows in Mojokerto Regency. In just one year, there were 1,201 young widows. As a result, the couple gets married but is not ready to build a household psychologically and financially. The Head of the Women Crisis Center (WCC), Mojokerto, Yuni Shafera, S.H., stated that early marriage and immaturity will cause many problems. Because children or adolescents still have insights that are not too broad. In addition, they also do not have problem-solving and decision-making skills. So, if there are problems in marriage, solving them will tend to be complicated (Mahri, 2019). Children and adolescents are also not always able to communicate their thoughts.

The emotional aspect of adolescence still tends to be labile, which can trigger a fight. The impact is more prone to depression, and this is risky for him as a teenager and also affects the parenting style of children born in the marriage. Due to this marriage dispensation, many divorce rates occur among teenagers.

The results of previous studies it is still not specific to examine the number of divorce cases experienced by many young couples who are underage, only the factors that cause divorce in general, not showing the factors causing divorce by marriage dispensation. Thus, the discussion that the author will review is the factors causing the increase in applications for marriage dispensation in the Mojokerto Religious Court and the impact of marriage dispensation on the increase in divorce rates in the Mojokerto Religious Court.

### **Research Methods**

This research uses empirical research, a legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained through interviews and actual behavior obtained through direct observation. Experimental research is also used to observe the results of human behavior in the form of relics and records. Data collection is carried out by collecting primary and secondary legal documents. The legal documents are taken from binding legal sources in the form of laws, especially the Marriage Law Scheme formulated in 1999. The post-independence period was the enactment of Law Number 1 of 1974 concerning Marriage and related to the provision of age limits.

### **Results and Discussion**

#### **A. Factors Causing the Increase in Marriage Dispensation Applications at the Mojokerto Religious Court**

Law Number 16 of 2019 has been in regulations related to the minimum age limit for marriage to 19 years for both sexes. The change affected the Mojokerto Religious Court, namely the increase in marriage dispensation cases. However, if the age of the bride and groom has not reached the age limit set by the Law, they must obtain permission (marriage dispensation) from the local Religious Court. Thus, the purpose of the Law is to grant marriage dispensation so that things prohibited in the Shari'a do not occur. In the latest revision of the Marriage Law, Article 7 paragraph (2) of Law Number 16 of 2019 states that the application for dispensation is still carried out by parents from the male or female side, which can only be requested by the Court.

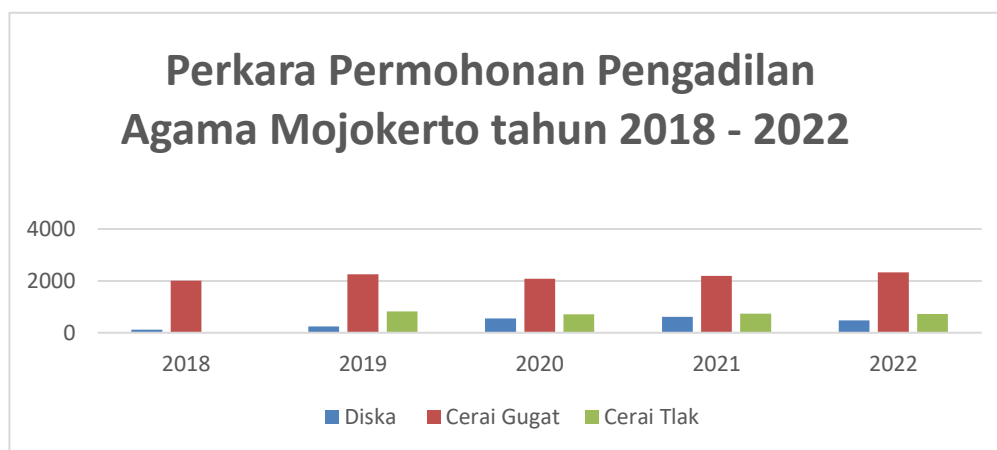
The phrase 'other official' in the previous Marriage Act was omitted because it was considered ambiguous. The large number of officials caused the ambiguity authorized to grant dispensations not only by the Court but also by employees of the Office of Religious Affairs (KUA) and Village Heads. If one official refuses a dispensation, another appointed official can grant it. This flexibility means that previous dispensations were granted without strict conditions. Therefore, the Court can only request dispensation as a form of legal certainty.

In the case of the dispensation of marital age, the dominant factor that is the leading cause of the application is the concern of parents who see their children in too close contact with their partners because there is a pregnancy before marriage. This is something that is considered embarrassing among the public. The judge considered that parents who apply for dispensation of marriage age for their children are people who are aware / understand the law. They chose to pursue legal remedies instead of marrying their children in a series of religious marriages without being accompanied by registration at the Office of Religious Affairs.

The reason the judge always grants applications for marriage dispensation is because of extramarital relations, considering that women who become pregnant without a husband will hurt the woman's mentality and also the future fate of the child conceived. This can result in the woman not wanting to hang out and being selfish. This can also happen to the child he will give birth to. Based on the data of marriage dispensation requests at the Mojokeerto Religious Court from 2018 to 2022 are as follows:

**Table 1**  
**Total Mojokerto Religious Court Application Matters 2018 – 2020**

No	Types of Things	2018	2019	2020	2021	2022
1	Marriage Dispensation	118	248	556	613	470
2	Cerai Gugat	2.010	2.253	2.083	2.189	2.322
3	Cerai Talak	734	820	705	741	726
	Sum	2.862	3.321	3.344	3.543	3.518



Based on these data, the number of applications for marriage dispensation in religious courts after the enactment of Law Number 16 of 2019 has increased quite sharply, and women dominate the submissions.

Economic Factors Parents have been increasing applications for marriage dispensation at the Mojokerto Religious Court for more and more years due to the community's low economic capacity. Economic factors of parents who cannot provide a decent livelihood for children cause parents to be unable to provide education to a higher level; this is the reason the applicants (parents) are no longer able to live the same burden

of life as the needs increase so that the last way for parents is to marry their children even though the laws and regulations are not allowed, So, in this case, the petitioners (parents) are seeking marital dispensation in court.

**a. Pregnancy out of wedlock**

Promiscuity by children results in pregnancy out of wedlock. According to Mr. Achmad Romli, S.H., the Registrar of Lawsuit Law, pregnancy first became the majority of applicants for marriage dispensation at the Mojokerto Religious Court. Lovers in dating relationships sometimes fail to have intimate relations like husband and wife that occur repeatedly so that they forget the consequences received, namely being pregnant and married. This happens because of factors such as a lack of religious understanding for the child who is less religious and a lack of attention from parents because the child is too free with his life. In contrast, the parents are busy with work due to several months of dating and get news that the child is pregnant.

For women who are not old enough to marry, it is highly recommended not to marry early; this is because it will result in the wrong for the health of the mother and the safety of her baby. After all, it is not uncommon for a person to conceive and give birth safely. In such a case, the judge cannot reject the marriage dispensation proposed by the applicant because it will have a harmful and destructive impact on the pregnant woman and the woman's family. After all, this is the party that suffers the most.

Article 53 of the Compilation of Islamic Law states that a woman who becomes pregnant out of wedlock can be married to the man who impregnated her. The marriage can take place immediately without waiting for the birth of her child. Article 53 of the IHL does not prohibit early marriage due to pregnancy out of wedlock. Besides that, the article can be interpreted that State law has created provisions related to the ideal age to marry: men and women must be 19. However, suppose the judge who decides the application for marriage dispensation has considered the benefits and benefits. In that case, if it does not grant the dispensation, there will be more significant harm, while if it is granted, it will minimize the harm for both parties.

**b. Factors of lack of education**

At school age or adolescence, a child should still be in the care of parents. There are still many things that are not known, and there are consequences experienced in the future if low education is not known. At that time, the child still has fun with his peers, plays, and looks for the desired entertainment. One of them is to find the opposite sex he wants to have a romance with or date. Especially in this increasingly modern era, information technology is very influential in everyday life; it will have a positive impact if you use technology correctly and vice versa. If you cannot use it correctly, it will only hurt the child, such as chatting on social media with girlfriends; other impacts tend to be closed and difficult to socialize.

The application for marriage dispensation at the Mojokerto Religious Court was due to low education. The applicant's child attended school to junior high school and elementary school only. Children at this age who have girlfriends use their gadgets for communication. As for parents who view their children often dating as useless, only

adding to sin and slander, parents prefer to marry off their underage children. From the factors described, there are several impacts of marriage if it is still carried out but is still underage, including:

1. Pregnant adolescents will more easily suffer from anemia during pregnancy and childbirth; this is one of the causes of high maternal and infant mortality.
2. Loss of the opportunity to get a higher education.  
Under certain conditions, children who engage in early marriage tend not to pay attention to their education, especially when married directly to obtain offspring. He will be busy caring for his children and family, which can hinder him from continuing his studies to a higher level.
3. Interaction with the peer environment is reduced. However, good status as husband and wife also contributes to social interaction with their environment. For early marriage couples, this can be influential in connecting with peers. They will feel awkward and reluctant to hang out with their peers.
4. Narrow opportunities for employment automatically perpetuate poverty (low family economic status due to lack of education).
5. Early marriage tends to be very difficult to realize the purpose of marriage properly. Moreover, eventually, it will bring suffering.
6. Early marriage is good and healthy because it is susceptible to disease.
7. Domestic violence will happen a lot
8. For children born, when the child grows up experiencing the process of pregnancy, there is nutritional competition with the fetus it contains, so that pregnant women's weight is often challenging to rise, can be accompanied by anemia due to nutritional deficiencies and at risk of giving birth to babies with low birth weight.
9. Disruption of reproductive health.  
Because pregnancy at the age of less than 17 years increases the risk of medical complications, both in the mother and in the child, pregnancy at a very young age was found to correlate with maternal mortality and morbidity. It is stated that girls aged 10-14 years are five times more likely to die during pregnancy.

The judge's decision in granting the petitioner's request for marriage dispensation which has a positive effect, as follows:

1. Clarify marital status;
2. Strengthening the power of a child's law to his father;
3. There is a positive acceptance from the community;
4. Avoid destructive perceptions and ridicule from society;
5. Save yourself from adultery.

Allah Almighty states in Sura Al-Isra' (17) verse 32:

ولا تقرب من الزنا إن الزنا عمل مقبوت. وطريقة سينة. المرجع

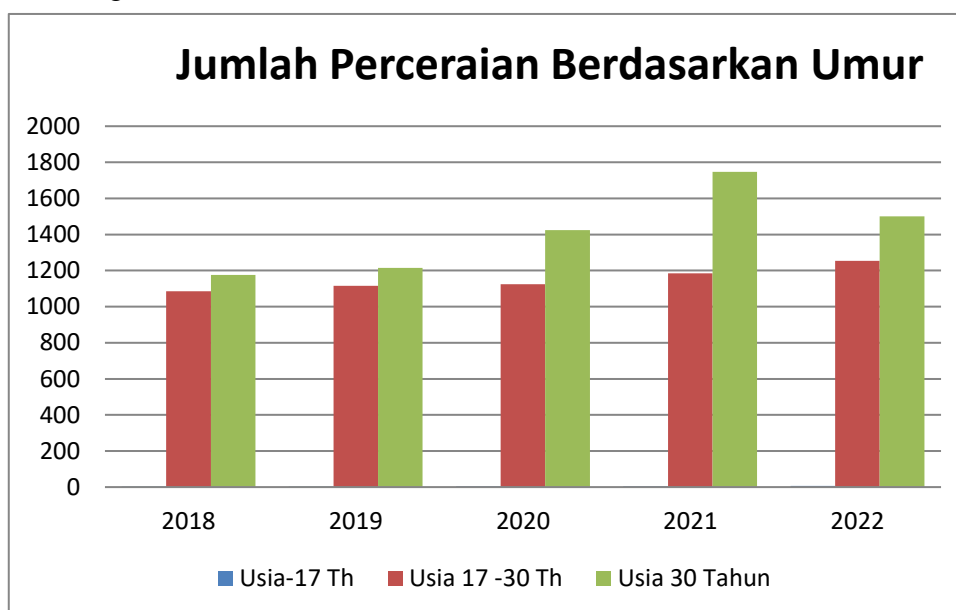
It means: "And do not approach adultery; Indeed adultery is a bad deed."

The judge's decision in granting the petitioner's request for marriage dispensation has a negative impact, among others:

1. The possibility of divorce in couples who marry underage is getting higher
2. The probability of death due to underage pregnancy is high
3. The high possibility of cervical cancer in mothers who are too young due to free sex activities or having sex with different partners
4. Tradition and culture are often used as excuses for underage marriage.

### **B. Impact of Marriage Dispensation on Increasing Divorce Rate in Mojokerto Religious Court**

Divorce caused by underage marriage seems to be expected in Mojokerto Regency or Mojokerto City. This condition resulted in several cases found by researchers at the Mojokerto Religious Court. Referring to the conditions as intended, the researcher focuses on the study by utilizing the decisions and various considerations of judges related to the research theme. Thousands of divorce cases occur in the Mojokerto Religious Court every year. In the table below, researchers obtained divorce rates based on age in the Mojokerto Religious Court.



From the graphic data above, it is stated that a divorce case from a combined divorce lawsuit and talaq divorce was carried out at the Mojokerto Religious Court. Compared to other East Java regions, divorce cases in the Mojokerto Religious Court are high.

This cause-and-effect relationship is undoubtedly far from the expectations outlined by PERMA because all actions outlined aim to ensure protection, education, welfare, child survival, growth, and development. These data may at least represent the number of immature marriages and do not overemphasize children's best interests in marriage. Hamidah, a Vice Chairman of the Integrated Service Center for Women and Children Empowerment (P2TP2A) of Mojokerto Regency, said that:

"Child marriage is one of the triggers for the high divorce rate of young couples. According to him, couples who marry early are not psychologically and financially ready

to build a household, and I often handle cases of early marriage and then shortly divorce. Often, marriage is to legalize the child they had before marriage."

Hamidah explained that the high cases of early marriage were triggered by several factors, including promiscuity, which is still accessible for teenagers to access pornographic content on the internet, and the lack of attention and supervision of parents. He said that child marriage had many negative impacts. One of them is the health impact on the babies they carry. According to him, babies born from early marriages tend to be less healthy because spouses of minors tend not to be ready to become parents.

To suppress cases of child marriage, Hamidah asked for the role of various parties in the Mojokerto Regency Government, one of which was the Health Office and the Mojokerto Regency Family Planning and Empowerment Population Control Office. According to data from the Mojokerto Religious Court, divorce cases throughout 2018 reached 2,992, and by August this year, divorce cases reached 2,427.

This divorce stems from a request for marriage dispensation by the child's parents not to marry based on the interests and income of the child's future husband. This is indicated by the low economic level of the family and the low level of family education. The judge's exception to the marriage must be made immediately for urgent reasons and in the interest of children by the Law and Perma. Looking also at the reasons for divorce stated in the case and the details of the trial from his statement, it can be seen that the child pair cannot minimize the possibility of problems in the family.

As mentioned earlier, the factors that led to the application of marriage dispensation include pregnancy out of wedlock, courtship outside borders, mutual love and inseparability, the influence of technology, and parents' concerns about their children if they commit adultery. At the same time, the factors causing divorce are moral crisis, irresponsibility, severe persecution, biological defects, unhealthy polygamy, jealousy, forced marriage, economy, child marriage, politics, lack of harmony, and third-party interference.

The minimum age of marriage in Indonesia, which caused much controversy in society, was finally revealed after 45 years by raising the minimum age of marriage for women to 19 years for men. The change was officially regulated in Law Number 16 January 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage (from now on referred to as Law Number 16 of 2019) issued on October 15, 2019, with the desire to amend Law No. 1 of 1974 could highlight the large number of underage marriages. Based on the survey results, until now, Indonesia is still in an emergency state of child marriage.

As many as 8.93% of women are married at the age of 15 to 19 years; even some married women in Indonesia give birth to their first child at the age of 18 years. This is what gave birth to Indonesia, ranked seventh country with the highest rate of child marriage in the world and ranked 2nd in ASEAN after Cambodia. Changes to the minimum age for marriage have raised hopes of a decline in child marriage in Indonesia, but it is still on the list.



The marriage exclusion clause stipulated in Article 7 paragraph (2) of Law No. 16 of 2019 creates the impression that the government has no legal certainty in abolishing child marriage. In the provisions of the last marriage law, there is no mention of sanctions or penalties for couples who marry young. The Junior Registrar of the Mojokerto Religious Court, Supardi, said that:

"In the period from January to August 2019, there were 90 child marriages called early marriages because the man or woman was a minor, namely under 16 years for women and under 18 years for men. Meanwhile, throughout 2018, the number of child marriages reached 117 cases".

Ironically, most early marriages occur due to pregnancy out of wedlock. Other triggers are parents worrying about their children violating religious norms and decency. The number of cases of child marriage in Mojokerto Regency is quite alarming.

The case of early marriage due to the dispensation of marriage is one of the triggers for the many divorces of young couples. This resulted in 1,201 young widows a year. According to him, most early marriages occur because of pregnancy out of wedlock. Other triggers are parents worrying about their children violating religious norms and decency. The Marriage Law adheres to the principle of making divorce difficult because it will bring dire consequences to the parties concerned.

To complicate the divorce, it is determined that having a divorce must have sufficient evidence or reasons that the husband and wife will not be able to live in harmony as husband and wife. One of the deeds that is lawful to do but is hated by Allah is divorce. However, divorce here is allowed if something will cause a bigger problem in the household. Explained about the reasons for the permissibility of divorce, as follows:

- a. One of the parties commits adultery or becomes a drunkard, stuffing, gambler, etc., which is difficult to heal.
- b. Either party leaves the other party for two consecutive years without the other party's permission and a valid reason or because of anything else beyond its means.
- c. Either party gets a five-year prison sentence or a harsher sentence after the marriage takes place.
- d. One party commits cruelty or severe persecution that endangers the other party.
- e. One of the parties gets a disability or hook due to being unable to carry out his obligations as husband or wife.
- f. Between husband and wife, there are constant disputes and quarrels, and there is no hope of living in harmony in the household.
- g. The husband violated ta'lik talaq.
- h. Conversion or apostasy that causes disharmony in the household.

## **Conclusion**

The conclusion of this study shows that changes in law related to marriage dispensation, especially the renewal of Article 7 of Law Number 16 of 2019, significantly impact the surge in marriage dispensation applications at the Mojokerto Religious Court. The social culture that regarded jurisprudence as an unshakable doctrine and parents' concern about slander against their children were essential factors in the decision to hold a Sirri marriage pending dispensation. In addition, the increase in divorces in the Mojokerto Religious Court from 2018 to 2022 was influenced by elements of infidelity, persecution, moral crisis, age limitations, and economic problems. Recommendations are given to the public to raise legal awareness, abide by marriage rules, and supervise the association of children. Although Islamic law does not explicitly provide for marriage dispensation, it is essential to observe the requirements of puberty and not to neglect moral responsibility. In this context, the Qur'an gives general guidelines on when one can be married, but research confirms the need for conformity to prevailing social and legal realities.

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