

JUDICIAL DISCRETION IN MARRIAGE DISPENSATION CASES: A SOCIO-LEGAL STUDY AT THE BANGKINANG RELIGIOUS COURT, KAMPAR-RIAU, INDONESIA

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Abstract: The enactment of Law No. 16 of 2019, which raised the minimum marriage age to 19, has paradoxically contributed to a significant increase in marriage dispensation applications in Indonesia. This study examines the exercise of judicial discretion in marriage dispensation cases at the Bangkinang Religious Court and analyzes its socio-legal implications for children and their families. Employing a qualitative socio-legal approach, the research is based on document analysis of four court decisions in 2024 and in-depth interviews with judges, families, and community actors. The findings reveal that judicial discretion is not solely grounded in statutory norms but is substantially shaped by contextual considerations, including moral urgency, psychological readiness, economic capacity, and familial support. However, the frequent granting of dispensations raises critical concerns regarding the erosion of child protection principles and the potential normalization of underage marriage. The study argues for the establishment of clearer regulatory guidelines and a multidisciplinary assessment framework to ensure that judicial discretion aligns with the best interests of the child and broader social justice objectives.

Keywords: Judicial Discretion; Marriage Dispensation; Child Protection; Socio-legal Analysis.

Introduction

The enactment of Law No. 16 of 2019, which amended Indonesia's Marriage Law by raising the minimum legal age of marriage to 19 years for both men and women, represents a significant legal

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reform aimed at strengthening child protection and reducing early marriage practices.¹ This reform aligns with broader national and global commitments to eliminate child marriage and improve human development outcomes.² However, empirical developments reveal a paradox: instead of substantially reducing early marriage, the reform has coincided with a notable increase in marriage dispensation applications submitted to religious courts.³ This shift indicates that early marriage practices have not disappeared but have been transformed into legally mediated processes requiring judicial approval. Consequently, a fundamental tension emerges between formal legal norms and entrenched social realities. While statutory law seeks to standardize age thresholds, persistent socio-cultural pressures continue to shape marital decisions, thereby exposing the limitations of legal reform in altering deeply embedded social practices.

Despite progressive legal reforms, child marriage remains a persistent and complex socio-legal phenomenon in Indonesia. Recent data indicate that the prevalence of child marriage remains significant, with rates exceeding 9% nationally and even higher in several provinces.⁴ This persistence is driven by multiple interrelated factors, including entrenched cultural norms that associate early marriage with family honor, limited educational opportunities, and structural economic inequalities that encourage families to marry off their children at a young age.⁵ Empirical studies further demonstrate that poverty, low educational attainment, and rural residence significantly increase the likelihood of early marriage, while parental concerns about premarital relationships and social stigma—particularly in cases of unintended pregnancy—reinforce

¹ Republic of Indonesia, *Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage*.

² Melbourne Institute, *Child Marriage in Indonesia: Consequences and Policy Responses* (Melbourne: University of Melbourne, 2020).

³ Zulfa Zuhriyah Ayudiputri et al., “Determinants of Child Marriage in Indonesia: A Systematic Review,” *Journal of Community Medicine and Public Health Research* 5, no. 2 (2024): 216-227.

⁴ Astuti Rahayu, “Child Marriage and Its Impact in Indonesia in 2021,” *Journal of International Conference Proceedings* 5, no. 5 (2022).

⁵ UNICEF Indonesia, *Child Marriage in Indonesia: Progress and Challenges* (Jakarta: UNICEF, 2020).

the urgency of marriage decisions.⁶ Within this context, marriage dispensation functions as a “legal escape mechanism,” allowing families to circumvent statutory age restrictions through judicial authorization. Thus, the issue of child marriage cannot be understood merely as a legal problem, but rather as a multidimensional phenomenon shaped by the intersection of law, culture, religion, and socio-economic conditions.

Within this shifting legal landscape, judicial discretion assumes a central role in determining the outcome of marriage dispensation cases. In legal theory, judicial discretion refers to the authority granted to judges to interpret and apply the law in situations where statutory provisions are open-ended or insufficiently precise.⁷ In the context of marriage dispensation, judges function as institutional “gatekeepers,” tasked with balancing rigid legal standards against complex social realities presented in individual cases.⁸ This role places judges in a persistent dilemma: on one hand, they are obligated to uphold statutory norms that aim to prevent child marriage; on the other, they must respond to urgent social circumstances, such as premarital relationships, family pressure, or pregnancy, which demand immediate resolution.⁹ In navigating this tension, the principle of the *best interests of the child* becomes a critical normative framework, guiding judicial reasoning toward decisions that prioritize the child’s welfare, protection, and long-term well-being within a broader socio-legal context.¹⁰

Although scholarly attention to child marriage and legal reform in Indonesia has increased in recent years, existing studies predominantly focus on normative legal analysis or the broader socio-economic impacts of early marriage.¹¹ While such studies

⁶ Lisa Cameron, Diana Contreras Suarez, and Susan Wieczkiewicz, “Child Marriage: Using the Indonesian Family Life Survey to Examine the Lives of Women and Men who Married at an Early Age,” *Rev Econ Household* 21 (2023): 725-726.

⁷ H. L. A. Hart, *The Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1994), 127-136.

⁸ Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977), 31-39.

⁹ Ramadhita, “Diskresi Hakim: Pola Penyelesaian Kasus Dispensasi Perkawinan,” *De Jure: Jurnal Hukum dan Syariah* (2014): 10.

¹⁰ United Nations, *Convention on the Rights of the Child* (1989); see also UNICEF, *Child Marriage in Indonesia: Progress and Challenges* (Jakarta: UNICEF, 2020).

¹¹ Ayudiputri et al., “Determinants of Child Marriage in Indonesia”; Cameron, Suarez, and Wieczkiewicz, “Child Marriage: Using the Indonesian Family Life

provide valuable insights into regulatory frameworks and structural determinants, they often overlook the micro-level dynamics of judicial decision-making. In particular, there remains a lack of empirical research examining how judges actually exercise discretion in adjudicating marriage dispensation cases, especially within specific institutional and socio-cultural contexts.¹² Moreover, limited attention has been given to socio-legal perspectives that capture the interaction between legal norms, local values, and courtroom practices at the level of religious courts. Consequently, there is a notable gap in understanding how judicial discretion operates in practice, particularly in localized settings such as the Bangkinang Religious Court. This study seeks to address this gap by offering an in-depth socio-legal analysis of judicial reasoning and decision-making processes in marriage dispensation cases.

This study is situated within the empirical context of the Bangkinang Religious Court in Kampar Regency, Riau Province, which has experienced a notable increase in marriage dispensation applications following the enactment of Law No. 16 of 2019. As a socio-culturally embedded judicial institution, the court operates within a community where religious values, customary norms, and social expectations continue to exert strong influence on family decisions regarding marriage.¹³ The high volume of dispensation cases reflects the persistence of early marriage practices and highlights the court's strategic role in mediating between legal mandates and societal pressures. This research draws on selected cases decided in 2024, which illustrate recurring patterns in judicial reasoning without reducing the complexity of individual circumstances. By focusing on this localized setting, the study bridges abstract legal theory with lived judicial practice in a specific socio-legal environment.

Building upon the identified gap, this study seeks to examine the dynamics of judicial discretion in marriage dispensation cases

Survey to Examine the Lives of Women and Men who Married at an Early Age.”

¹² M. Syuib and Nadhilah Filzah, “Kewenangan Hakim Menerapkan Diskresi dalam Permohonan Dispensasi Nikah (Studi Kasus di Mahkamah Syar’iyah Jantho),” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* (2019): 31.

¹³ Data and case records from the Bangkinang Religious Court, including decisions No. 3/Pdt.P/2024/PA.Bkn; No. 33/Pdt.P/2024/PA.Bkn; No. 49/Pdt.P/2024/PA.Bkn; and No. 66/Pdt.P/2024/PA.Bkn.

through a focused socio-legal inquiry. Specifically, it addresses three central questions: how do judges exercise discretion in adjudicating marriage dispensation applications; what factors shape and influence judicial reasoning in such cases; and what legal and social implications arise from these judicial decisions for children and their families? By answering these questions, the study aims to provide a nuanced understanding of how law operates in practice, particularly in contexts where formal legal norms intersect with complex social realities.¹⁴ Ultimately, the research contributes to ongoing debates on child protection, legal reform, and the role of judicial institutions in addressing socially sensitive issues.

This study offers a socio-legal analysis of judicial discretion in marriage dispensation cases by integrating doctrinal legal perspectives with empirical evidence derived from actual court decisions. Unlike prior studies that predominantly emphasize normative frameworks or general socio-economic impacts, this research provides in-depth insights into how judges interpret and apply the law in concrete situations shaped by social pressures and cultural values.¹⁵ By examining decision-making patterns at the Bangkinang Religious Court, the study contributes to bridging the gap between formal legal provisions and lived social practices. Furthermore, it advances the discourse by proposing the need for a multidisciplinary assessment framework, incorporating legal, psychological, and social considerations, to ensure that judicial discretion aligns with the best interests of the child and broader principles of social justice.

This study adopts a qualitative socio-legal approach to examine judicial discretion in marriage dispensation cases at the Bangkinang Religious Court. It is based on the analysis of four court decisions issued in 2024, complemented by in-depth interviews with judges and relevant stakeholders. Data were collected through document review and semi-structured interviews, and analyzed using an inductive thematic approach to identify patterns of judicial reasoning. To ensure validity, triangulation was applied by comparing documentary evidence and interview findings. This design ena-

¹⁴ Brian Z. Tamanaha, *A General Jurisprudence of Law and Society* (Oxford: Oxford University Press, 2001), 1-15.

¹⁵ *Ibid.*, 90-110.

bles a contextual understanding of how legal norms are interpreted and applied within specific socio-cultural settings.¹⁶

Empirical Overview of Marriage Dispensation Cases

This study examines four marriage dispensation cases adjudicated by the Bangkinang Religious Court in Kampar Regency during 2024. These cases were selected to represent typical applications submitted after the enactment of Law No. 16 of 2019, which requires individuals under the age of 19 to obtain judicial approval for marriage. The cases reflect a broader pattern observed in religious courts, where requests for marriage dispensation continue to be filed despite stricter legal age requirements.¹⁷ Each case involves applicants seeking judicial authorization due to the inability to fulfill formal administrative requirements at the Office of Religious Affairs (KUA), primarily related to age restrictions. The selected cases provide an empirical basis for understanding how such applications are processed within a specific institutional setting.

The four cases share several common characteristics in terms of the age of the applicants, relational background, and stated reasons for submission. In all cases, the prospective brides were under the legal age threshold, ranging from approximately 18 years to 18 years and 8 months, while the prospective grooms were generally older and had reached legal adulthood. The applicants had established close relationships over varying periods, ranging from one to four years, with some cases indicating relationships perceived by families as sufficiently intimate to require formalization. The reasons presented in the applications include concerns over maintaining social and religious norms, parental approval, and the intention to prevent socially undesirable consequences such as premarital relationships or reputational stigma.¹⁸ Additionally, in several cases, supporting factors such as the employment status of

¹⁶ Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869-896.

¹⁷ Republic of Indonesia, *Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage*.

¹⁸ Data derived from case records of the Bangkinang Religious Court, including decisions No. 3/Pdt.P/2024/PA.Bkn; No. 33/Pdt.P/2024/PA.Bkn; No. 49/Pdt.P/2024/PA.Bkn; and No. 66/Pdt.P/2024/PA.Bkn.

the prospective groom and the consent of both families were documented as part of the application materials.

All four applications for marriage dispensation examined in this study were granted by the Bangkinang Religious Court. The decisions consistently reflect several recurring considerations documented in the case files. First, the existence of close relationships between the prospective spouses was presented as a relevant background in all cases. Second, references to the readiness of the applicants, particularly in terms of psychological condition and the ability of the prospective groom to provide financial support, were included in the judicial reasoning. Third, parental consent and family support were formally recorded in each case as part of the evidentiary basis for the applications. These elements appear systematically across the decisions and form part of the documented justification for granting the requested dispensations.¹⁹

Table 1. Summary of Marriage Dispensation Cases at the Bangkinang Religious Court (2024)

No.	Case Number	Age of Applicants	Relationship Background	Stated Reasons for Application	Decision
1	3/Pdt.P/2024/PA.Bkn	18y 8m & 18y 3m	Relationship for 3 years; close interaction	Family approval; concern over social and religious norms; financial readiness	Granted
2	66/Pdt.P/2024/PA.Bkn	18 & 22	Close relationship; living conditions under single parent	Parental consent; readiness; economic support	Granted
3	33/Pdt.P/2024/PA.Bkn	18 & 23	Relationship for 1 year; family condition (absent moth-	Social and religious considerations; financial	Granted

¹⁹ Data derived from case records of the Bangkinang Religious Court, including decisions No. 3/Pdt.P/2024/PA.Bkn; No. 33/Pdt.P/2024/PA.Bkn; No. 49/Pdt.P/2024/PA.Bkn; and No. 66/Pdt.P/2024/PA.Bkn.

4	49/Pdt.P/2024/PA.Bkn	18 & 20	er) Relationship for 4 years; frequent visits caus- ing social concern	readiness Community pressure; family con- sent; readi- ness	Granted
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Judicial Discretion in Marriage Dispensation Cases

Judicial discretion constitutes a central concept in legal adjudication, particularly in contexts where statutory provisions provide limited or open-ended guidance. In classical legal theory, Hart conceptualizes discretion as the interpretative space available to judges when legal rules exhibit indeterminacy, thereby requiring judicial reasoning beyond rigid textual application.²⁰ Similarly, Dworkin refines this notion by emphasizing that discretion does not imply unfettered freedom, but rather a constrained interpretative process guided by legal principles and moral reasoning embedded within the legal system.²¹ Within this framework, judicial discretion functions as a structured space of interpretation rather than an arbitrary exercise of power. In the Indonesian legal context, particularly in religious courts, discretion operates within institutional boundaries that require judges to reconcile normative legal provisions with complex factual circumstances. As reflected in marriage dispensation cases, discretion occupies a critical position in the legal system, enabling judges to navigate between formal rules and socially embedded realities without abandoning the normative coherence of the law.²²

The exercise of judicial discretion in marriage dispensation cases in Indonesia is formally grounded in Law No. 16 of 2019, which amended the Marriage Law by establishing 19 years as the minimum legal age for marriage while simultaneously allowing ex-

²⁰ H. L. A. Hart, *The Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1994), 272-276.

²¹ Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977), 31-39.

²² Brian Z. Tamanaha, "The Third Pillar of Jurisprudence: Social Legal Theory," *William & Mary Law Review* 56, no. 6 (2015): 2235-2248. <https://scholarship.law.wm.edu/wmlr/vol56/iss6/6>

ceptions through judicial authorization.²³ Under this framework, religious courts are vested with the authority to grant dispensations upon the request of parents, provided that compelling reasons and sufficient supporting evidence are presented. This provision positions marriage dispensation as an exceptional legal mechanism designed to accommodate specific circumstances that fall outside general statutory requirements.²⁴ However, the discretionary power granted to judges is not absolute, as it remains normatively bounded by legal principles, procedural requirements, and the obligation to consider the interests of the parties involved. In practice, as indicated in the examined cases from the Bangkinang Religious Court, judges operate within these formal constraints while engaging with factual complexities presented in each application.²⁵

Empirical findings from the Bangkinang Religious Court demonstrate that judicial discretion in marriage dispensation cases is not exercised solely through a rigid application of statutory norms, but rather through a contextualized assessment of each case. The examined decisions indicate that judges systematically incorporate social and relational factors into their reasoning, including the duration and intensity of the relationship between prospective spouses, family conditions, and the presence of social pressures within the community.²⁶ In several cases, close interpersonal relationships and the perception of potential moral or social risks were explicitly documented as part of the factual background considered by the court. Additionally, family circumstances, such as parental support or the absence of a parental figure, were recorded as relevant contextual elements. This pattern reflects a mode of adjudication in which legal reasoning is embedded within broader social considerations, consistent with socio-legal appro-

²³ Republic of Indonesia, *Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage*.

²⁴ Ramadhita, “Diskresi Hakim: Pola Penyelesaian Kasus Dispensasi Perkawinan.”

²⁵ Data derived from case records of the Bangkinang Religious Court, including decisions No. 3/Pdt.P/2024/PA.Bkn; No. 33/Pdt.P/2024/PA.Bkn; No. 49/Pdt.P/2024/PA.Bkn; and No. 66/Pdt.P/2024/PA.Bkn.

²⁶ Data derived from case records of the Bangkinang Religious Court, including decisions No. 3/Pdt.P/2024/PA.Bkn; No. 33/Pdt.P/2024/PA.Bkn; No. 49/Pdt.P/2024/PA.Bkn; and No. 66/Pdt.P/2024/PA.Bkn.

aches that emphasize the interaction between law and lived realities.²⁷

Within this context, judicial discretion operates as a balancing mechanism between formal legal norms and prevailing social realities. While statutory law establishes clear age thresholds and procedural requirements, the cases analyzed reveal that judges engage in a process of weighing these legal standards against the specific social conditions presented by each application.²⁸ This balancing function positions judges not merely as interpreters of legal rules, but as mediators between the normative expectations of the legal system and the practical demands of the community. In the Bangkinang cases, the granting of dispensations reflects an effort to reconcile these competing considerations without disregarding the legal framework entirely. Such an approach aligns with socio-legal scholarship that conceptualizes adjudication as a dynamic process in which law is continuously negotiated within its social context, rather than applied in isolation from it.²⁹

The exercise of judicial discretion in marriage dispensation cases also raises critical questions regarding its alignment with the principle of the *best interests of the child*, which constitutes a fundamental standard in both international and national legal frameworks.³⁰ While the granting of dispensations in the examined cases is formally justified by considerations such as family consent, social circumstances, and the perceived readiness of the applicants, it remains unclear whether such decisions consistently prioritize the long-term welfare of the child.³¹ On the one hand, judicial approval may be framed as a protective measure aimed at preventing potential social or moral harm; on the other hand, it may also reflect a form of accommodation to prevailing social pressures that per-

²⁷ Merry, "Legal Pluralism."

²⁸ Republic of Indonesia, *Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage*.

²⁹ Tamanaha, "The Third Pillar of Jurisprudence: Social Legal Theory."

³⁰ United Nations, *Convention on the Rights of the Child* (1989); see also UNICEF, *Child Marriage in Indonesia: Progress and Challenges* (Jakarta: UNICEF, 2020).

³¹ Data derived from case records of the Bangkinang Religious Court, including decisions No. 3/Pdt.P/2024/PA.Bkn; No. 33/Pdt.P/2024/PA.Bkn; No. 49/Pdt.P/2024/PA.Bkn; and No. 66/Pdt.P/2024/PA.Bkn.

petuate early marriage practices.³² This duality suggests that judicial discretion operates within a contested normative space, where the protection of children's rights may coexist with, or be constrained by, broader socio-cultural considerations embedded in the decision-making process.³³

Determinants of Judicial Reasoning

The empirical findings indicate that moral and social urgency constitutes a primary factor influencing judicial reasoning in marriage dispensation cases. Across the examined decisions, the existence of close relationships between prospective spouses, often described as long-standing and increasingly intimate, was consistently presented as a central consideration.³⁴ These relationships were frequently associated with concerns over potential violations of religious and social norms, particularly the risk of premarital sexual relations, which in turn generated pressure from both families and the surrounding community. In parallel, judges also took into account indicators of psychological and emotional readiness, including the duration of the relationship and the perceived maturity of the applicants. Such considerations reflect a pattern in which non-formal, socio-psychological factors are integrated into judicial reasoning, aligning with broader findings that social norms and moral anxieties significantly shape marriage-related decisions in similar contexts.³⁵

In addition to socio-psychological considerations, economic capacity emerges as a significant and relatively objective factor in judicial reasoning. The examined cases consistently document the employment status of the prospective groom, including occupations such as farmer, private employee, or wage worker, accompanied by indications of stable monthly income.¹ These economic

³² Cameron, Suarez, and Wieczkiewicz, "Child Marriage: Using the Indonesian Family Life Survey to Examine the Lives of Women and Men who Married at an Early Age."

³³ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: The University of Chicago Press, 2005).

³⁴ Data derived from case records of the Bangkinang Religious Court, including decisions No. 3/Pdt.P/2024/PA.Bkn; No. 33/Pdt.P/2024/PA.Bkn; No. 49/Pdt.P/2024/PA.Bkn; and No. 66/Pdt.P/2024/PA.Bkn.

³⁵ Ayudiputri et al., "Determinants of Child Marriage in Indonesia: A Systematic Review."

conditions are presented as evidence of the groom's ability to fulfill the financial obligations of marriage, particularly in providing basic household support. The inclusion of such information in judicial considerations suggests that economic readiness is treated as a key indicator of practical preparedness for marriage. This pattern is consistent with empirical studies demonstrating that financial stability is frequently used as a benchmark for marital readiness in both legal and social contexts, especially in cases involving early marriage.³⁶

Family support and consent constitute another significant factor shaping judicial reasoning in marriage dispensation cases, closely intertwined with the structural conditions of the applicants' families. In all examined cases, explicit parental approval was formally documented and presented as a key element supporting the application, indicating the role of family endorsement in establishing social legitimacy for the proposed marriage.³⁷ Beyond general consent, particular attention was also given to exceptional family conditions, such as the absence of one parent due to death or unknown whereabouts, resulting in the presence of a single legal guardian. These circumstances were recorded as relevant contextual factors within the case files, reflecting the importance of family structure in judicial consideration. The integration of both normative consent and exceptional familial situations demonstrates that judicial reasoning is significantly influenced by the stability, composition, and authority structures within the family unit, consistent with broader socio-legal findings on the centrality of family in marriage decision-making processes.³⁸

In addition to individual and familial considerations, institutional factors also shape the exercise of judicial reasoning, particularly in the absence of detailed procedural guidelines governing marriage dispensation cases. The legal framework provides general authority to grant dispensations but does not establish clear operational standards or standardized criteria for assessing applica-

³⁶ Cameron, Suarez, and Wiczkiewicz, "Child Marriage: Using the Indonesian Family Life Survey to Examine the Lives of Women and Men who Married at an Early Age."

³⁷ Data derived from case records of the Bangkinang Religious Court, including decisions No. 3/Pdt.P/2024/PA.Bkn; No. 33/Pdt.P/2024/PA.Bkn; No. 49/Pdt.P/2024/PA.Bkn; and No. 66/Pdt.P/2024/PA.Bkn.

³⁸ Merry, "Legal Pluralism."

tions.³⁹ This lack of formalized guidelines creates a broad interpretative space, allowing for variations in judicial reasoning across cases. As reflected in the *Bangkinang* decisions, judges rely on their own evaluative judgment when weighing factors such as social urgency, readiness, and family conditions. Such conditions may give rise to potential subjectivity, as similar factual situations can be interpreted differently depending on the perspective of the presiding judge. This institutional setting aligns with socio-legal scholarship that highlights how discretionary power expands in contexts where regulatory frameworks are open-ended, thereby reinforcing the role of judicial interpretation in shaping legal outcomes.⁴⁰

Socio-Legal Implications of Marriage Dispensation Decisions

The granting of marriage dispensation carries significant legal implications for children, particularly in relation to their status and protection under the law. Through judicial approval, minors who do not meet the statutory age requirement are formally recognized as legally competent to enter into marriage, thereby acquiring the full set of marital rights and obligations.⁴¹ While this legal recognition provides certainty regarding the status of the marriage and any offspring, it simultaneously alters the child's position within the legal protection framework. In particular, entry into marriage may effectively limit the applicability of child protection provisions, as married minors are often treated as adults in matters of family law.⁴² This shift raises concerns regarding their vulnerability, especially in situations where marital stability is uncertain. Empirical and comparative studies indicate that early marriage is associated with a higher likelihood of marital breakdown, which may expose

³⁹ Republic of Indonesia, *Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage*.

⁴⁰ Tamanaha, "The Third Pillar of Jurisprudence: Social Legal Theory."

⁴¹ Jonathan Herring, *Family Law*, 8th ed. (Harlow: Pearson Education, 2019), 52-60.

⁴² Noam Peleg, "A Guide to Resources," *International Journal of Children's Rights* 23, no. 2 (2015): 477-478.

young spouses, particularly girls, to legal disputes concerning divorce, maintenance, and child custody.⁴³

For families, the approval of marriage dispensation introduces new legal responsibilities and reconfigures existing familial relationships. Once a child enters into marriage, parental authority over the child is substantially reduced, as legal responsibility shifts toward the newly established household unit.⁴⁴ This transition redefines the role of parents from primary decision-makers to supporting actors within the child's marital life. At the same time, families may still bear indirect legal and economic responsibilities, particularly when the newly formed household lacks sufficient stability or financial independence.⁴⁵ Furthermore, the formalization of underage marriage can reshape family dynamics, especially in cases involving single-parent households or guardianship arrangements, where the granting of dispensation effectively transfers legal authority from the parent or guardian to the marital relationship.⁴⁶ These changes highlight the broader legal consequences of dispensation decisions beyond the individual applicants, extending into the structure and function of the family as a legal and social institution.

Beyond legal consequences, marriage dispensation decisions generate profound social implications for children, particularly in terms of psychological well-being, educational trajectories, and gender dynamics. Early entry into marriage often entails a sudden transition from adolescence to adult roles, exposing children, especially girls, to emotional stress, role strain, and reduced psychological resilience.⁴⁷ Empirical studies consistently demonstrate that early marriage is associated with increased risks of anxiety, depression, and limited autonomy in decision-making processes.⁴⁸ In addition,

⁴³ Paola Villar, "Paternal mortality, early marriages, and marital trajectories in Senegal," *World Development* 142 (2021).

⁴⁴ Herring, *Family Law*, 52-60.

⁴⁵ Noam Peleg, "A Guide to Resources."

⁴⁶ Villar, "Paternal mortality, early marriages, and marital trajectories in Senegal."

⁴⁷ Bussarawan Teerawichitchainan and Timothy Qing Ying Low, "The Situation and Well-being of Custodial Grandparents in Myanmar: Impacts of Adult Children's Cross-border and Internal Migration," *Social Science & Medicine* 277 (2021): 113914.

⁴⁸ Sheelah Connolly, Dermot O'Reilly, and Michael Rosato, "House Value as an Indicator of Cumulative Wealth is Strongly Related to Morbidity and Mortality

marriage frequently disrupts formal education, as young spouses are compelled to abandon schooling due to domestic responsibilities or prevailing social expectations that prioritize marital roles over academic pursuits.⁴⁹ This educational discontinuity further reinforces gender inequality, as girls are disproportionately affected and often confined to traditional domestic roles with limited access to economic opportunities.⁵⁰ Consequently, the social implications of marriage dispensation extend beyond individual experiences, contributing to structural patterns of disadvantage that disproportionately affect young women.

At the family level, marriage dispensation decisions also produce significant social consequences, particularly in relation to legitimacy, internal dynamics, and economic conditions. In many communities, the formalization of marriage through judicial dispensation provides immediate social legitimacy, allowing families to avoid stigma associated with premarital relationships or perceived moral transgressions.⁵¹ However, this legitimizing effect may be accompanied by internal tensions, as the accelerated transition into marriage can strain family relationships, especially when expectations regarding roles, responsibilities, and support are not fully aligned.⁵² Moreover, early marriage often imposes additional economic burdens on families, particularly when the newly formed household lacks financial stability and continues to depend on parental support.⁵³ Studies on household economics indicate that early marriage can exacerbate intergenerational financial pressures, as

Risk in Older People: a Census-Based Cross-Sectional and Longitudinal study,” *International Journal of Epidemiology* 39, no. 2 (2010): 383-391.

⁴⁹ Marcos Delprato et al., “On the impact of early marriage on schooling outcomes in Sub-Saharan Africa and South West Asia,” *International Journal of Educational Development* 44 (2015): 42-55.

⁵⁰ Rachel E. Kidman, “Child Marriage and Intimate Partner Violence: A Comparative Study of 34 Countries,” *International Journal of Epidemiology* 46, no. 2 (2017): 662-675.

⁵¹ Teerawichitchainan and Ying Low, “The Situation and Well-being of Custodial Grandparents in Myanmar: Impacts of Adult Children’s Cross-border and Internal Migration.”

⁵² Connolly, O’Reilly, and Rosato, “House value as an indicator of cumulative wealth is strongly related to morbidity and mortality risk in older people: a census-based cross-sectional and longitudinal study.”

⁵³ Delprato et al., “On the impact of early marriage on schooling outcomes in Sub-Saharan Africa and South West Asia.”

limited income and increased dependency ratios place strain on already vulnerable family structures.⁵⁴ These dynamics illustrate that the social implications of marriage dispensation are not confined to the individual applicants but extend to the broader familial environment.

At a broader societal level, the widespread granting of marriage dispensation has the potential to contribute to the normalization of early marriage practices, thereby undermining the regulatory intent of Law No. 16 of 2019. When judicial exceptions are consistently granted, the perception may emerge that statutory age limits are flexible rather than binding, which can weaken public compliance with legal norms.⁵⁵ This phenomenon creates a structural contradiction between state policy aimed at delaying marriage and judicial practices that accommodate early unions under specific circumstances.⁵⁶ Moreover, the persistence of early marriage has significant implications for human capital development, as it is closely associated with reduced educational attainment, limited workforce participation, and diminished productivity over the life course.⁵⁷ These outcomes collectively affect broader socio-economic development, suggesting that marriage dispensation decisions, while individually justified, may produce unintended consequences at the societal level.

In the long term, the continued reliance on marriage dispensation as a legal mechanism may contribute to the reproduction of structural inequalities, particularly through cycles of poverty and limited social mobility. Early marriage is frequently linked to reduced educational opportunities and constrained economic prospects, which in turn increase the likelihood that individuals remain within low-income conditions across generations.¹⁵ This dynamic reinforces a cyclical pattern in which children born into economically vulnerable households are more likely to experience similar constraints, including early entry into marriage.¹⁶ From a

⁵⁴ Kidman, "Child Marriage and Intimate Partner Violence: A Comparative Study of 34 Countries."

⁵⁵ Quentin Wodon et al., *Economic Impacts of Child Marriage: Global Synthesis Report* (Washington, DC: World Bank Group, 2017). <http://documents.worldbank.org/curated/en/530891498511398503>

⁵⁶ UNICEF, *Ending Child Marriage: Progress and Prospects* (New York: UNICEF, 2014).

⁵⁷ Wodon et al., *Economic Impacts of Child Marriage: Global Synthesis Report*.

socio-legal perspective, such patterns illustrate how legal decisions, although case-specific, can cumulatively shape broader social structures over time.¹⁷ The repeated interaction between legal accommodation and socio-economic vulnerability thus risks perpetuating entrenched inequalities, highlighting the need to critically evaluate the long-term implications of judicial discretion in marriage dispensation cases.

Theoretical and Practical Implications

The findings of this study suggest the need to reconceptualize judicial discretion beyond its traditional understanding as a purely legal mechanism, toward a more nuanced socio-legal construct shaped by contextual realities. Classical legal theory has long positioned discretion within the domain of interpretative authority, yet empirical evidence from the Bangkinang Religious Court demonstrates that judicial decision-making is deeply embedded in social norms, moral considerations, and community expectations.⁵⁸ This indicates that discretion operates not merely within the “open texture” of law, but also within the lived experiences of the society in which the law functions. Such a perspective aligns with contemporary socio-legal scholarship that emphasizes the dynamic interaction between law and social context, where legal outcomes are co-produced through institutional frameworks and social pressures.⁵⁹ Accordingly, this study contributes to theoretical debates by highlighting that judicial discretion in marriage dispensation cases is not solely a matter of legal reasoning, but also a reflection of broader socio-cultural negotiations.

The study also contributes to the ongoing discourse on the principle of the *best interests of the child* by exposing the tension between its normative formulation and its practical application. While this principle is widely regarded as a cornerstone of child protection frameworks, its implementation in marriage dispensation cases reveals a more complex reality in which legal ideals are

⁵⁸ Pierre Bourdieu, “The Force of Law: Toward a Sociology of the Juridical Field,” *Hastings Law Journal* 38, no. 5 (1987). https://repository.uclawsf.edu/hastings_law_journal/vol38/iss5/3

⁵⁹ Mariana Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (Abingdon: Routledge, 2015).

mediated by social urgency and moral considerations.⁶⁰ Empirical findings indicate that decisions justified in the name of protecting the child may simultaneously accommodate social pressures that perpetuate early marriage practices. This duality suggests that the principle, in practice, is not applied in a purely objective or universal manner, but is interpreted through context-specific judgments shaped by local values and institutional constraints. Recent scholarship similarly argues that the operationalization of child protection norms often involves implicit trade-offs between competing interests, thereby necessitating a more context-sensitive and multi-disciplinary understanding of what constitutes the child's best interests.⁶¹

The findings of this study also carry significant practical implications for judicial practice, particularly concerning the need for clearer operational standards in adjudicating marriage dispensation cases. The absence of detailed procedural guidelines or standardized assessment criteria creates a wide interpretative space that may result in inconsistencies across judicial decisions.⁶² This condition places considerable reliance on individual judicial judgment, which, while inherent in discretionary authority, may lead to variability in outcomes even in cases with similar factual circumstances. To address this issue, the development of structured guidelines—such as standardized checklists incorporating legal, psychological, and socio-economic indicators, would enhance consistency and accountability in decision-making. Furthermore, the integration of multi-disciplinary assessments, including psychological evaluations and social work reports, could provide a more comprehensive basis for determining applicants' readiness for marriage, thereby strengthening the quality and legitimacy of judicial decisions in such sensitive cases.

At the policy level, the study underscores the need for a more integrated and coherent approach to regulating marriage dispensation within Indonesia's broader legal and social framework. The

⁶⁰ Aoife Daly, Children, *Autonomy and the Courts: Beyond the Right to Be Heard* (Leiden: Brill-Nijhoff, 2017).

⁶¹ *Ibid.*

⁶² Terence C. Halliday, Lucien Karpik, and Malcolm Feeley, "The Legal Complex in Struggles for Political Liberalism," in Lucien Karpik, Terence Charles Halliday, Malcolm M. Feeley, *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism* (Hart, 2007).

current coexistence of strict statutory age limits and flexible judicial exceptions reflects a structural inconsistency that may undermine the effectiveness of legal reform.⁶³ Addressing this issue requires not only regulatory refinement but also institutional coordination across sectors, including the judiciary, child protection agencies, and public health institutions. A multidisciplinary policy approach is essential to ensure that marriage dispensation is not treated merely as a legal procedure, but as a complex social issue requiring preventive and supportive interventions. Without such reforms, the continued reliance on judicial discretion risks transforming dispensation into a systemic loophole that perpetuates early marriage practices, thereby weakening long-term efforts to promote child protection and social development.⁶⁴

Conclusion

This study demonstrates that judicial discretion in marriage dispensation cases at the Bangkinang Religious Court operates as a context-sensitive mechanism shaped by the interplay between legal norms and socio-cultural realities. While formally grounded in statutory provisions, judicial reasoning is significantly influenced by moral urgency, psychological readiness, economic capacity, and family structures, reflecting a pattern of decision-making that extends beyond purely legal considerations. This discretionary practice positions judges as mediators who navigate the tension between enforcing age restrictions and responding to immediate social pressures. However, the findings also reveal that such decisions may produce complex socio-legal consequences, including the weakening of child protection frameworks, the normalization of early marriage, and the reproduction of structural inequalities. Accordingly, this study underscores the need for clearer regulatory standards and a multidisciplinary approach to ensure that judicial discretion is exercised in a manner that consistently aligns with the best interests of the child and broader objectives of social justice.

⁶³ Sameer Ashar and Annie Lai, "Access to Power" *Daedalus* 148, no. 1 (2019): 82-87.

⁶⁴ Naila Kabeer, "Gender Equality, Inclusive Growth, and Labour Markets," in Kate Grantham, Gillian Dowie, Arjan de Haan (eds.), *Women's Economic Empowerment: Insights from Africa and South Asia* (Routledge, 2021).

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