



The Legal Effectiveness of Marriage Dispensation in the Religious Court of Batang, Central Java: A Case of Post-Law Number 16 of 2019

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Abstract

This research analyzes the factors contributing to the high number of marriage dispensation requests at the Religious Court of Batang Central Java following the enactment of Law Number 16 of 2019, which regulates the minimum age for marriage. A qualitative approach, employing deductive and inductive analyses, is utilized to comprehend the dynamics of this phenomenon. Positive transformation: Valuable data is collected through interviews, observations, and documentation, and skillfully transformed into insightful descriptive information. The research findings are anticipated to serve as a reference in the field of Islamic Family Law. The results indicate the ineffectiveness of legal provisions, evidenced by the substantial increase in marriage dispensation requests post the enactment of Law Number 16 of 2019. The judicial foundation for approving dispensation requests is rooted in the Quran, Hadith, Law Number 1 of 1974, Law Number 16 of 2019, Compilation of Islamic Law (HKI), and Supreme Court Regulation Number 5 of 2019. The practical implication underscores the need for a reevaluation of the marriage dispensation procedures to ensure better understanding among academics and the public. This research contributes innovatively by exploring the impact of Law Number 16 of 2019 on the phenomenon of marriage dispensation at the Religious Court of Batang, with a specific focus on legal effectiveness.

Keywords: Legal Efficacy, Law Number 16 of 2019, Marriage Dispensation

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Introduction

Marriage, the sacred union between a man and a woman, serves as the gateway to life within society. However, the phenomenon of underage marriages among communities has become a critical legal issue. Data from marriage dispensation applicants at the Religious Court of Batang reveals a significant increase in requests over the years: 145 in 2019, 439 in 2020, and 400 in 2021, totaling 984 applications (Subramanee, S. D., Agho, K., Lakshmi, J., Huda, M. N., Joshi, R., & Akombi-Inyang, 2022). Dispensation is granted to facilitate the marriage of individuals below the legally defined age, ensuring the maturity required for happy and lasting family life (Kohno, A., Techasrivichien, T., Suguimoto, S. P., Dahlui, M., Nik Farid, N. D., & Nakayama, 2020).

Following the issuance of Supreme Court Regulation (PMA) Number 5 of 2019 on the Guidelines for Adjudicating Marriage Dispensation Requests on November 21, 2019, new provisions were introduced, altering the examination procedures compared to the previous regulations (Syeh Sarip Hadaiyatullah, 2020). This study explores the legal practices surrounding the implementation of marriage dispensation at the Religious Court of Batang.

From a normative legal perspective, the minimum marriageable age is defined as adulthood, marked by various signs. Despite differences in interpretation, positive Indonesian law sets the minimum age at 19 for men and 16 for women. Notably, after 45 years, Law Number 1 of 1974 on Marriage underwent a revision, raising the minimum age for women from 16 to 19. The amendment, officially incorporated into Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 on Marriage, aims to curb underage marriages (Ilma, 2020).

The term "dispensation" etymologically refers to an exception from general rules under specific conditions. Remarkably, this legal revision has positively influenced societal legal awareness. Dispensation requests, submitted with urgent reasons and supporting evidence, commonly cite factors related to children, concerns about religious teachings, cultural and economic factors, legal issues, and community considerations (UNICEF, 2019).

Acknowledging the severity of marriage dispensation issues, the Supreme Court issued Technical Guidelines for handling dispensation cases through Supreme Court Regulation Number 5 of 2019 on the Guidelines for Adjudicating Marriage Dispensation Requests, effective from November 21, 2019. Although not part of Indonesia's legislative hierarchy, PERMA No. 5 of 2019 is recognized and legally binding, established to standardize the adjudication process in Religious Courts (Fadhli & Kahfi, 2023).

Protection of children's rights in the examination of dispensation requests is conducted in the best interest of the child. The process, guided by PERMA No. 5 of 2019, ensures a competent judge, a comfortable trial environment, the presence of the child during proceedings, advice to parents or guardians, prioritizing the child's best interests, and legal considerations by the judge for certainty, utility, and justice (Gultom, 2010).

Granting marriage dispensation, as a means of protecting children's rights, bears legal implications, influencing the prevalence of legal underage marriages or, conversely, leading to an increase in informal marriages and legal complexities. Nonetheless, in approving dispensation requests, judges must delve into societal values,

ensuring the urgent necessity required by the dispensation request at the Court (Adila & Chintya, 2023).

Several studies shed light on the dynamics of marriage dispensation cases involving minors. Mudawamah's research (2021) highlights that these requests often arise from urgent situations beyond relational shifts, such as compelling circumstances other than premarital pregnancy (Yuni, 2021). Ilma's study (2023) underscores the regulatory nature of dispensation, emphasizing its role as a solution to deviations from age limits governed by Law No. 16 of 2019 (Amirah & Eva, 2023). Lutfi's work (2022) explores juridical considerations, encompassing legal aspects, Islamic reasoning, and societal justice. Lutfi's research emphasizes the societal concerns driving parental worries about premarital relationships, revealing broader implications. In summary, these studies collectively assert that marriage dispensation requests are predominantly prompted by specific and urgent needs, emphasizing the pivotal role of Religious Courts in safeguarding the rights and well-being of the minors involved (Lutfi et al., 2022).

The research reveals a disconcerting trend in the ineffectiveness of legal provisions, particularly showcased by the substantial increase in marriage dispensation requests following the enforcement of Law Number 16 of 2019. The study grounds its analysis in the judicial foundation for approving dispensation requests, drawing from the Quran, Hadith, Law Number 1 of 1974, Law Number 16 of 2019, Compilation of Islamic Law (HKI), and Supreme Court Regulation Number 5 of 2019.

This research pioneers an innovative exploration into the impact of Law Number 16 of 2019 on the phenomenon of marriage dispensation at the Religious Court of Batang, specifically honing in on the aspect of legal effectiveness. The study not only sheds light on the prevailing challenges but also offers a critical evaluation of the existing marriage dispensation procedures, emphasizing the pressing need for a comprehensive reevaluation. The insights gained from this research are poised to serve as a crucial reference in the realm of Islamic Family Law, fostering a deeper understanding among academics and the public alike.

The practical implications of this research underscore the imperative for revisiting and reforming the marriage dispensation procedures to bridge the gap in understanding between legal scholars and the general populace. By addressing the root causes of the surge in dispensation requests, the findings aim to contribute towards a more effective and harmonious implementation of legal provisions, ensuring the protection of individuals involved in the marriage dispensation process.

Method

This research employs a qualitative approach with deductive and inductive analyses to investigate the phenomenon of marriage dispensation at the Religious Court of Batang following the enactment of Law Number 16 of 2019 (Soiferman, 2010). Data is gathered through interviews, observations, and documentation, and is analyzed by referring to the legal foundations of Islam, Law Number 16 of 2019, and relevant regulations. By employing a qualitative research method through in-depth interviews, observations, and document analysis, this study systematically investigates the Legal Effectiveness of Marriage Dispensation in the Religious Court of Batang, Central Java, particularly after the enactment of Law Number 16 of 2019. The application of this method allows researchers to gain profound insights into the legal impact of marriage dispensation in the specified region. (UNICEF, 2019)

Result and Discussion

Legal Framework: Examination of Law Number 16 of 2019

Following PERMA No. 5 of 2019, Article 1, paragraph (1), a child is defined as an individual who has not reached the age of 19 or has not entered into marriage according to legal regulations. Article 5 of this regulation specifies that marriage dispensation is the granting of permission by the Court to prospective spouses under the age of 19 to proceed with marriage. Marriage dispensation is considered a legal solution as those seeking it lack the formal legality to marry, prompting them to pursue legal recourse to ensure the recognition of their marriage. It is noteworthy that Islamic law does not specifically regulate marriage dispensation (Sriono et al., 2023)

In Law Number 1 of 1974, Article 7, Paragraph (1), the minimum age for marriage is stipulated at 19 years for males and 16 years for females. However, the Marriage Law provides flexibility through dispensation granted by the Religious Court, as specified in the event of deviations from Article 7, Paragraph (1) of Law Number 1 of 1974 (Sriono et al., 2023). Such dispensation is sought based on the joint request of the parents. According to the intention of Article 7, Paragraph (2) of the Marriage Law, dispensation requests arise due to the non-fulfillment of the statutory age requirements for marriage. To meet the criteria regarding the age stipulations, individuals below the minimum age must apply for dispensation from the local Religious Court (Dahlan, 2021).

The determination of the marriageable age is a significant matter, as it signifies the psychological and physical maturity required to embark on the journey of marriage. The absence of a definitive regulation on the age of marriage renders it an issue subject to *ijtihadiah* (interpretative reasoning). Consequently, the state has the authority to establish a marriageable age based on considerations of public welfare. Quoting the opinion of Muhammad Ibn Umar Nawawi al-Jawy, government-made regulations fall under *ijtihadiah* law, initially categorized as *mubah* (permissible) with no explicit prohibition or command to enforce. However, if such regulations are grounded in considerations of welfare, they become obligatory for the populace to adhere to and implement (Azizah, 2018).

The Marriage Law of 1974 originally specified 16 years as the age for females and 19 years for males. This was subsequently amended and equalized to 19 years for both genders through Law Number 16 of 2019. The crucial factor motivating this amendment was the constitutional challenge posed by the differentiation in marriageable age between genders, perceived as unconstitutional and in violation of the principle of legal equality, as stipulated in Article 28D (Murni, 2020), Paragraph (1) of the 1945 Constitution. Initially based on perceived generalization and biological maturity differences between genders, this age distinction is now viewed as reflective of discrimination, disregarding fundamental rights and neglecting the mental and physical well-being of women. In the current era, women are increasingly encouraged to engage in diverse forms of productivity and pursue education. Women possess equal fundamental rights as men, encompassing educational, social, civil, economic, and other constitutional rights as citizens (Dahlan, 2021).

Since the enactment of Law No. 16 of 2019 on November 15, 2019, there has been a significant increase in marriage dispensation applications. Data from the Religious Courts across Central Java indicate a substantial surge of 286.3%, with an

additional 1016 applications recorded in November 2019. A comparative analysis reveals that there were 355 cases in October 2019, escalating to 1371 cases by the end of November 2019. Chairman of the Semarang High Religious Court, Bahrudin Muhamad, unveiled this information during his address at the dissemination event of Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Cases on December 17, 2019, at Hotel Grasia Semarang (Alviani & Dewi, 2022).

This trend can be attributed to Article 7, Paragraph (2) of Law No. 1 of 1974, stating that "In the event of deviations from the age provisions as referred to in paragraph (1), the parents of the male and/or female party may request dispensation from the Court on urgent grounds, accompanied by sufficient supporting evidence." This article allows marriages involving underage individuals to deviate from the stipulated age requirements (Dahlan, 2021).

In practice, before the Chief Judge issues a decision, several considerations are taken into account. These considerations include determining whether the applicant has legal standing, assessing the congruence of reasons stated in the application between the applicant and the involved minor, and examining legal impediments for the applicant as stipulated in Law No. 1 of 1974 Jo. Law No. 16 of 2019, and evaluating the overall welfare and potential harm, devoid of coercion or mutual agreement between the prospective spouses (Kholis & Muhibbin, 2023).

The Judge's decision to grant marriage dispensation hinges on the rational assessment of the suitability of the prospective spouses. The Judge considers their capacity, readiness, and mental and physical maturity. The dispensation decision is founded on rational and feasible grounds, ensuring a judicious approach in granting marriage dispensation to the involved parties (Putri & Santika, 2022).

The legal framework for marriage age limits in Indonesia has undergone notable transformations, particularly with the enactment of Law No. 16 of 2019. Historically, the Marriage Law of 1974 specified different marriageable ages for women (16 years) and men (19 years). The amendment in 2019 aimed to rectify this disparity, aligning the minimum marriageable age for both genders at 19 years. This crucial change was prompted by the recognition that gender-based age distinctions in marriage violated the constitutional principle of equality under Article 28D, Paragraph (1) of the 1945 Constitution (Murni, 2020).

Originally grounded in biological maturity levels between males and females, these age distinctions are now seen as reflective of discrimination and the neglect of basic rights, including the mental and physical well-being of women. The progression of time has propelled women to actively engage in various forms of productivity and pursue education. Women possess the same fundamental rights as men, encompassing education, social rights, civil rights, economic rights, and other constitutional entitlements as citizens (Allendorf et al., 2017).

The determination of the legal age for marriage, as stipulated in Law No. 16 of 2019 and Article 330 of the Civil Code, is explicit. Article 7, Paragraph (1) of Law No. 1 of 1974 allowed marriages once individuals reached the age of 19 for men and 16 for women. However, Law No. 16 of 2019 amended this, stating that marriage is permitted only when both men and women have attained the age of 19. Article 330 of the Civil Code explicitly declares someone as an adult and legally competent at the age of 21 or

below 21 if already married. This provision is clear and easily comprehensible, allowing age verification through official documents containing personal data (Murni, 2020).

This normative shift in the Marriage Law extends to the age limits for marriage, particularly elevating the minimum age for women. The amendment aims to ensure psychological and physical maturity for a successful and fruitful marriage, reducing divorce rates, and promoting the birth of healthy and high-quality offspring. The increased age limit for women is expected to result in lower birth rates, minimizing the risks of maternal and infant mortality. Additionally, raising the age limit contributes to fulfilling children's rights, optimizing their growth and development through parental guidance, and providing access to the highest possible level of education (Murni, 2020).

It is crucial to note that Islamic law does not prescribe absolute age limits for marriage. The absence of religious provisions regarding minimum and maximum marriageable ages is assumed to provide flexibility for individuals to determine this aspect (Azizah, 2018). The Quran implies that those entering into marriage must be willing and capable, as emphasized in Surah An-Nur, verse 32.

In Indonesian civil law, the determination of adulthood relies on both quantitative and qualitative criteria. Quantitatively, it is measured by an individual's age limit, while qualitatively, it is gauged by their marital status. The benchmark for adulthood and the capacity to perform legal actions is set by the age limit, as stipulated in Article 330 of the Civil Code of Indonesia, which states: "An individual is considered an adult if they are 21 years old or have (ever) been married." This article explicitly declares that a person is deemed an adult and legally competent at the age of 21 or, if below 21, provided they have been married. This provision is straightforward and easily comprehensible, with age verification possible through all official documents containing personal data (Hamzani et al., 2021).

The enactment of Law No. 35 of 2014, amending Law No. 23 of 2002 concerning Child Protection, addressed the age limit for children. Article 1 of this law defines a child as an individual from the prenatal stage until they reach the age of 18. The legislation provides a definitive response to the age-related issues of children (Gunherani, 2023).

In Indonesia, legal regulations specify that marriage is permissible when the prospective spouses reach the age of 19 for both males and females. This regulation is outlined in Law No. 16 of 2019, amending Law No. 1 of 1974, Article 7, Paragraph (1), which states: "Marriage is only allowed if both men and women have reached the age of 19 (Murni, 2020).

The research methodology involves data collection through interviews, observations, and documentation, followed by deductive and inductive analyses. The analysis process includes interview transcription, data categorization, and the application of theoretical frameworks such as Islamic law, Law Number 16 of 2019, and court regulations. The research's validity is reinforced through data triangulation and verification by competent authorities. The practical implications of this research encompass recommendations for improving marriage dispensation procedures at the Religious Court of Batang, with the hope of making a significant contribution in the context of Islamic family law.

Case Study: Marriage Dispensation Cases in the Religious Court of Batang

Religious Courts, as the primary judicial institutions, are tasked and empowered to examine, adjudicate, and resolve cases at the first level involving individuals practicing Islam in the fields of marriage, inheritance, wills, gifts, and endowments, based on Islamic law as regulated by Law No. 50 of 2010 concerning Religious Courts. In fulfilling these core responsibilities, Religious Courts serve various functions, including providing technical judicial and administrative services for first-level cases, offering services in the administration of appellate, cassation, and judicial review cases, as well as other judicial administrative matters (Herklotz, 2020).

Additionally, they provide general administrative services to all elements within the Religious Court's jurisdiction and offer legal opinions and advice on Islamic law to Government Institutions within its jurisdiction, as requested. The courts also facilitate the resolution of requests for assistance in dividing inheritances outside of disputes among individuals practicing Islam, governed by Islamic law. Moreover, they handle various administrative tasks, including managing Birth Certificates, underhand inheritance for deposit/treasury withdrawals, pensions, and similar matters. Lastly, Religious Courts execute other service-related tasks, including legal counseling, implementing calculations for lunar observation, research services, and other related activities (Lukito, 1997).

The Religious Court of Batang, in fulfilling its legal mandate to serve the Batang Regency community in civil cases, presents data for the years 2019, 2020, 2021, and 2022, post the enactment of Law Number 16 of 2019. Among the various cases handled, marriage dispensation emerges as a prominent issue within the jurisdiction of the Religious Court of Batang. The following summarizes the reasons behind the high number of marriage dispensation requests and the considerations taken into account by the court: The Religious Court of Batang tends to grant dispensation requests relatively easily, as evidenced by the approval of all submitted applications (Fadhli & Kahfi, 2023).

Reasons provided by applicants for marriage dispensation include concerns about premarital relations or illicit activities, rejection of marriage by the local Religious Affairs Office (KUA), mutual agreement between the parties, financial independence of the individuals involved, and the readiness of the wife to become a homemaker. Considerations by the panel of judges include adherence to procedural requirements, the adequacy of reasons, compliance with existing laws, the formal proposal for marriage, the absence of legal impediments, meeting the criteria of maturity, concerns about the risk of engaging in illicit activities, financial independence, and the advice to reconsider the decision. Judges base their decisions not only on prevailing positive law but also on Islamic jurisprudence principles, prioritizing the prevention of harm over the pursuit of benefits. There is a notable consistency in the patterns, reasons, and considerations found in both the application letters and the court decisions, suggesting a potential tendency towards a standardized approach or copy-pasting of case details (Mutalip & Rozihan, 2020).

Table 1

Lawsuit Cases in the Religious Court of Batang from 2019 to 2021

No.	Classification	2019	2020	2021	Total
1	Polygamy Permit	2	0	3	5
2	Marriage Annulment	0	0	0	0
3	Neglect of Spousal	2	0	0	2

No.	Classification	2019	2020	2021	Total
	Duties				
4	Divorce by Talak	0	470	464	934
5	Contested Divorce	569	1573	1526	3668
6	Joint Property	1958	5	5	1968
7	Child Custody/Visitation	7	2	1	10
8	Child Support by Mother	1	0	0	1
9	Former Wife's Rights	0	0	0	0
10	Child Acknowledgment	0	0	0	0
11	Termination of Parental Authority	1	0	0	1
12	Termination of Guardian Authority	0	0	0	0
13	Appointment of Another Guardian	0	0	0	0
14	Mixed Marriage	0	0	0	0
15	Child Adoption	0	0	0	0
16	Islamic Economy	5	1	0	6
17	Inheritance	0	0	0	0
18	Will	0	0	0	0
19	Gift (Hibah)	0	0	0	0
20	Endowment (Wakaf)	0	0	0	0
21	Zakat, Infaq, Sadaqah (ZIS)	1	0	0	1
22	Marriage Validation (Istbat Nikah)	0	0	0	0
23	Others	0	0	5	5
24	Total	2546	2103	2007	6656

Table 2
Petition Cases from 2019 to 2021

No	Classification	2019	2020	2021	Total
1	Marriage Dispensation	145	439	400	984
2	Marriage Validation	21	10	10	41
3	Child Origin/Adoption	3	0	1	4
4	Marriage License	0	0	0	0
5	Compensation against Guardian	0	1	0	1
6	P3HP/Declaration of Heir	8	8	11	27
7	Rejection of Marriage by Civil Registrar	0	0	0	0
8	Guardianship	0	9	6	15
9	Wali A'dhol	4	6	7	17
10	Others	222	3	11	236
	Total	403	482	446	1331

The data presented above concludes the reasons for marriage dispensation petitions at the Religious Court of Batang, including fear of committing adultery, rejection by the Office of Religious Affairs (KUA), mutual agreement to marry, self-sustainability, and the readiness of the woman to be a homemaker. Despite the allowance for early marriage, there are notable benefits, such as reducing the impact of

free sex, ensuring the purity and cleanliness of each prospective bride and groom, economic stability for the woman's family, and fostering a sense of responsibility.

In addition, the Supreme Court emphasizes its commitment to preventing child marriages through the application of the best interests of the child principle. This is in line with the Law No. 16 of 2019, which sets the minimum age for marriage at 19. The Supreme Court issued Regulation No. 5 of 2019 as a guide for adjudicating marriage dispensation cases. The increase in the number of dispensation cases from 23,126 (2019) to 35,441 (2020) reflects the seriousness of the Supreme Court in addressing this issue.

Regulation No. 5 of 2019 stipulates administrative requirements for filing a marriage dispensation petition, including a written application, photocopies of the ID cards of both parents/guardians, Family Card photocopies, photocopies of the ID card/birth certificate of the prospective spouse, and photocopies of the last educational diploma or a certificate of the prospective spouse still attending school. The petition process at the Religious Court of Batang involves several steps, including paying the case deposit fee and completing administrative requirements by the parties involved before the trial commences.

Evaluation of Legal Effectiveness and Implications

Marriage between a husband and wife forms a social entity known as a family or household. A family, as a group of individuals united by marriage and blood ties, plays a crucial role in society as the smallest unit influencing the common welfare and serving as a primary focus of development. Family resilience, involving the legal and structural foundation of the family, physical resilience, economic resilience, socio-psychological resilience, and socio-cultural resilience, reflects the overall resilience of society. Therefore, family harmony and understanding the true meaning of that harmony are key factors in creating an environment that supports and ensures a balanced life.

To achieve strong family resilience, five main pillars identified by Faqihudin Abdul Kadir are required. These pillars involve a commitment to a strong marriage covenant, the principle of partnering, giving behavior, treating each other well, and the habit of discussing together. A proper understanding of the meaning of harmony, not as an end goal but as a dynamic process in marital life, will help create a peaceful and happy atmosphere. In this context, family resilience becomes a strong foundation for building sustained happiness through love and cooperation between husband and wife. The Marriage Law changed to Law No. 16 of 2019, which set the minimum marriage age at 19. Experts from various fields, including education, sociology, economics, medicine, and law, concluded five problems and logical consequences of the impact of underage marriages, including impacts on education, sociological impacts, economic impacts, legal impacts, and impacts on marital life.

Firstly, the impact analysis on education indicates that weak economic factors, dropping out of school, societal culture, technological advances, and a lack of understanding of women's health are the main causes of child marriages.

Secondly, the sociological impact analysis highlights the psychological effects of the mental unpreparedness of children in marriage, including changes in roles and problems in the family. Marriage can also be a hindrance to their education due to the responsibilities they must bear after marriage.

Thirdly, the economic impact analysis reflects that meeting household needs as parents can drive adolescents to work, but a lack of professional knowledge often results in low income, ultimately leading to divorce issues.

Fourthly, the legal impact analysis emphasizes the importance of official marriages as an effort to avoid social sanctions and protect the legal rights of children. The law establishes administrative requirements for the dispensation of marriage applications, including a letter of application, photocopies of both parents' ID cards, family cards, the ID/identity of the child, and the child's latest educational diploma.

Fifthly, after the dispensation is granted, the couple must understand the rights and obligations of husband and wife, provide housing, offer legal protection to the wife and child, nurture and care for the child, provide education, and take responsibility for the family's economy. Family resilience is reflected in good relationships and communication in society, involving parents in supporting the independence of young couples.

Conclusion

In conclusion, the examination of the legal effectiveness of marriage dispensation in the Religious Court of Batang, particularly post the enactment of Law Number 16 of 2019, unveils multifaceted implications on various dimensions of individuals' lives. The legal changes, raising the minimum age for marriage to 19, aimed at preventing underage marriages and their associated social challenges. The study reveals that socioeconomic factors predominantly drive dispensation cases in the Religious Court of Batang, with weak economic conditions, school dropouts, societal influences, and limited health awareness among the key contributors to underage marriages. Despite efforts in the legal framework to regulate and scrutinize dispensation applications, societal and economic complexities remain significant factors influencing such cases.

Furthermore, the study emphasizes the importance of comprehensive strategies beyond legal measures to address the root causes of underage marriages. Initiatives focusing on economic empowerment, education, and raising awareness about health issues, particularly among young women, are crucial to reducing the prevalence of dispensation cases. Additionally, fostering a supportive environment within families and communities, coupled with effective communication and education, can contribute to changing societal norms and attitudes toward early marriages. The Religious Court, as a key player in implementing legal provisions, should collaborate with other stakeholders to promote holistic approaches that address the broader socio-economic context, thereby enhancing the overall effectiveness of efforts to prevent and manage dispensation cases.

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