

## Marriage Dispensation

### After the Decision of Constitutional Court Number 22/PUU-XV/2017

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#### Abstract

*This paper discuss the incrementally rising of case for marriage dispensation. In the wake of this phenomenon, the panel of judges are applying a strict procedure for marriage dispensation, and the implementation of the Constitutional Court Decision No.22/PUU-XV/2017 on the Determination of the Marriage Dispensation at the Indramayu Religious Court 2016-2019. This empirical juridical research uses a qualitative approach. Data are collected through a several methods, such as interviews, observation and document studies. The results showed that the increasing number of applications for dispensation for marriage was caused by promiscuity, low comprehension of religious teachings, culture, low economic and educational levels. As an effort to restricting the marriage dispensation, the consideration process held by Indramayu Religious Court panel of judge were carried out by considering the reasons behind every the dispensation application. A strict verification by panel of judges are also conducted to verify the legality of the pregnancy certificate and income statement. The whole process aims to conduct a thorough background check to validate and verify the dispensation application. Constitutional Court Decision No. 22/PUU-XV/2017 cannot be implemented effectively against the determination of marriage dispensation at the Indramayu Religious Court in 2016-2019. Keywords: Child marriage; Constitutional Court; Decision Marriage Dispensation,*

#### Abstrak

*Paper ini membahas tentang peningkatan jumlah permohonan dispensasi perkawinan, upaya majelis hakim dalam memperketat prosedur dispensasi perkawinan, dan pelaksanaan Putusan MK No.22/PUU-XV/2017 terhadap Penetapan Dispensasi Perkawinan di Pengadilan Agama Indramayu tahun 2016-2019. Penelitian yuridis empiris ini menggunakan pendekatan kualitatif. Teknik pengumpulan data menggunakan wawancara, observasi dan studi dokumen. Hasil Penelitian menunjukkan bahwa meningkatnya jumlah angka permohonan dispensasi perkawinan disebabkan oleh pergaulan bebas, rendahnya pengetahuan*

*agama, budaya, rendahnya tingkat ekonomi dan pendidikan. Upaya majelis Hakim PA Indramayu dalam memperketat dispensasi perkawinan dilakukan dengan mempertimbangkan alasan pengajuan permohonan dispensasi. Majelis Hakim juga melakukan pengecekan legalitas surat keterangan hamil dan surat keterangan penghasilan. Hal ini bertujuan untuk mengetahui kebenaran latar belakang permohonan dispensasi. Putusan MK No. 22/PUU-XV/2017 tidak dapat dilaksanakan secara efektif terhadap penetapan dispensasi perkawinan di Pengadilan Agama Indramayu pada tahun 2016-2019.*

**Keywords:** Pernikahan Anak; Mahkamah Konstitusi; Keputusan Dispensasi Nikah

## Introduction

Among the conditions of marriage regulated in Article 7 paragraph (1) of Law Number 1 of 1974 concerning marriage is the minimum limit for prospective brides, namely the age of 19 years for men and 16 years for women. This provision was later amended in Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning marriage, which became 19 years for both men and women. The basis for the amendment is the Constitutional Court's Decision No. 22/PUU-XV/2017 concerning Age Limits for Marriage.

Islam regulates the age criteria stated in the concept of *baligh*. Indeed, it seems there is no precise age limit in Islam because *baligh* in general. However, *fiqh* scholars have differences in interpreting the concept of *baligh* (Asrori, 2015). Imam Shafi'i set the age limit for *baligh* 15 years (Imam Syafi'i, 1991). According to Hanafi, puberty for women is 17 years while for men is 18 years (Mughniyyah & Al Muhammad Jawad, 2004).

Many marriages are carried out by married couples who are not yet mature. They certainly do not have the readiness both psychologically and physically. The husband and wife certainly do not know the nature of a marriage. On the other hand, prospective husband and wife know and understand the responsibilities in the form of rights and obligations of husband and wife in building a household.

Even though Indonesia has a firm legal basis regarding the age limit for marriage, underage marriage continues to increase significantly. West Java became the second-highest province in underage marriage in 2016, the age range of 15-18 years was 50.2% (Universitas Indonesia & KPPPA, 2016). The high number of underage marriages, it can also be seen in the number of submissions for marriage dispensation. Marriage dispensation grants permission

from the court for people who want to marry but have not reached the minimum age by law. Courts with jurisdiction to adjudicate marriage dispensation cases for Muslims are the Religious Courts and the District Courts for non-Muslim applicants (Prabowo, 2013). Based on submitting a marriage dispensation, Indramayu Religious Court occupies the first position in West Java with 1,235 points (Annual Report on Marriage Dispensation of Religious Courts in the Religious High Court Region of West Java in 2019).

Indramayu Regency has a tradition of marrying young, especially for women. Girls over the age of 20 are considered spinsters. In addition, there is also a "matchmaking market," where young men and women gather in one place to meet to become a social arena. Among the factors that influence the marriage of teenage girls, namely, the school has not become a priority, public perception of the value of young widows is better than old virgins (> 20 years), free sex, lack of parental supervision, low parental education and pregnancy out of wedlock. Data was obtained from Sumur Adem Village, Sukra District, Indramayu District in 2013, 57 couples got married, 12 of whom were young brides (Fitriyani et al., 2017).

The high number of marriage dispensation applications received because applicants under the age of marriage are pregnant out of wedlock. The reason is that many parents, especially wives who work abroad, become Indonesian Migrant Workers (TKI), especially in Taiwan. At the same time, her husband remarried another woman in a *sirri* (under the hand). As a result, children become less supervised, and many cross the line associated with the opposite sex. Another reason is that there is an arranged marriage agreement. Therefore, the The panel of Judges of the Indramayu Religious Court became a dilemma in applying the Constitutional Court's Decision No.22/PUU-XV/20177 on the case of marriage dispensation. The Panel of Judges of the Indramayu Religious Court believes that the Constitutional Court's decision can only prohibit without being able to provide a solution that is following the complex problems in the jurisdiction of the Indramayu Religious Court (Interview of Indramayum Religious Court Judge, Mr. Abdul Aziz, on July 03, 2019). The research that the author will examine is to analyze the aspects that affect the number of marriage dispensations and the role of the panel of judges in tightening the marriage dispensation procedure, as well as the impact of the Constitutional Court Decision No.22/PUU-XV/2017 on the Determination of Marriage Dispensations at the Indramayu Religious Court in 2016-2019.

## Research Methods

This study uses an empirical juridical method, which examines the applicable legal provisions and what has occurred in people's lives. In other words, research conducted on the actual situation or natural (real) conditions that have happened in the community intending to know and find facts. Facts and data are needed (Waluyo, 2002).

## Results and Discussion

### 1. Aspects Affecting the Number of Marriage Dispensations at the Indramayu Religious Court

The number of dispensation cases in carrying out marriage at the Indramayu Religious Court is due to the various aspects that influence it. Regarding these aspects, they include (Interview of Judge Indramayu Religious Court, Mrs. E. Kurniati, May 19, 2020):

#### a. Aspect of Moral Violation (Promiscuity)

Moral violations or promiscuity in prospective married couples are, in reality, due to a lack of guidance and supervision from parents, causing many underage children to have a relationship like a husband and a wife. The percentage reaches 75% -90% of the future wife has been pregnant first. The increase in cases of marital dispensation usually occurs at certain times, namely:

- i. The New Year, where young subjects celebrate the New Year with their lovers, things prohibited by religion happen.
- ii. Valentine's Day, in general, we know that is a day of love which Europeans usually celebrate. This is a western culture, which the Indonesian people, especially teenagers, have indirectly absorbed.
- iii. During the Rice Harvest Season, at that time the teenagers were pointed out after getting wages from the results of harvesting rice, then at night they brought their lover to the place to have a relationship like a husband and a wife (Interview of Judge Indramayu Religious Court, Mr. Abdul Aziz, July 03, 2019).

Based on the results of the interviews above, it can be understood that moral violations occur due to the lack of primary religious education and due to unfavorable environmental influences.

**b. Aspects of the Lack of Basic Religious Education**

Primary education about religion is an aspect that is very important and needed for prospective married couples to carry out a marriage. Religious primary education for families is the effort of parents as people who are responsible for guiding the development of children based on religious law so that children can develop optimally according to Islamic teachings that are sourced from the Qur'an and Hadith. The strategies for religious education in the family that need to be carried out by parents include:

- i. Basic Education About Religion through Example
- ii. Basic Education About Religion through Advice
- iii. Basic Education About Religion through Guidance
- iv. Basic Education About Religion through Habituation
- v. Basic Education About Religion through Law

Based on this description, it can be understood that the lack of primary education about religion is due to the lack of guidance and supervision of parents to their children because the majority of parents of prospective married couples who apply for a dispensation to carry out marriage at the Indramayu Religious Court work as Indonesian Workers (TKI), resulting in the child is entrusted to his grandparents.

In addition, there are many erroneous interpretations that some Muslim scholars also allow underage marriage because it follows the *sunnah* of the apostle. After all, history has recorded that Ayesha was married to the Prophet Muhammad at a very young age while Muhammad was in his 50s. In addition, early marriage is also considered to maintain religious norms, namely to prevent young couples from sexual sins due to promiscuity. Finally, some people interpret that the purpose of marriage is to justify biological relationships.

**c. Aspects of Internet Influence (Social Media)**

The influence of the Internet is one of the causes of the soaring application for dispensation in carrying out a marriage; this is in line with the view of the Indonesian Council of Religious Scholars (MUI) of Indramayu Regency that underage children are elementary to access pornography. As a result, children who are still underage have the will to have free sex.

On the other hand, the development of information technology makes it very easy and open for the public to access information related to pornographic content, both in print and electronic media.

The lack of public interest in watching or listening to the news on television makes the information they can get less. People use television as a means of entertainment after work or busyness is done. The most-watched television channel by the public is soap operas. Cellular telephone communication tools are the most accessible tools to use and are owned by many people. Many informants do not have cell phones (Arimurti & Nurmala, 2017). The concept of interaction by teenagers or minors nowadays cannot be separated from communication media, either through smartphones or other technologies. Most teenagers use technology for negative things, which in essence, children who are still underage are a critical phase because their curiosity about something is high, especially in this case is the aspect of sexuality. Ideally, it can be facilitated by parents to focus in a positive direction so that it is educational.

#### **d. Cultural Aspect**

In general, underage marriages have been formed from time immemorial in the traditions of society, which in this case is an ancestral cultural heritage. As a society with a Muslim majority, this Culture has a foundation, namely Islamic Law. If the children are old enough, then parents should marry them. Indeed, it is intended, so that prospective married couples do not do things that Islamic Law prohibits. Many parents believe that their obligation to their children is only to give names that have a good meaning, educate children with religious knowledge, and marry them (Noor et al., 2018).

Based on this, it can be understood that the cultural aspect is exceptionally influential on the number of applications for marriage dispensation at the Indramayu Religious Court because there is a public stigma that holding underage marriages is a common thing, and there is no prohibition. Even the community believes that if there is already a girl applying, it must be accepted because it will be challenging to get a mate if it is not accepted. And children who are married over the age of 16 are considered a family disgrace, and there is no shame in carrying out a marriage while pregnant.

Based on this explanation, it can be understood and analyzed by the author, namely that other aspects are very closely related to the cause of the rise of dispensation requests to carry out marriage to the Indramayu Religious Court, which include:

**a. Aspects of Economic Limitations**

This aspect is the most dominant in the surge in filing for dispensation in carrying out a marriage. Economic limitations and poverty cause parents to be unable to meet the needs of their children and pay for their schooling, so they decide to marry off their children in the hope that they are free of responsibility to pay for it and their children can get a better life (Mubasyaroh, 2016). As a result, parents have no other choice but to marry off their daughters to ease the family's economic burden.

**b. Aspects of Low Education Level**

The low level of education of prospective married couples affects the number of dispensation applications in carrying out a marriage. This is proven based on the results of the author's observations and analysis on several determination samples, which include: (1) No. 0536/Pdt.P/2016/PA.Im.; (2) No. 0291/Pdt.P/2017/PA.Im.; (3) No. 0338/Pdt.P/2018/PA.Im.; and (4) No. 0554/Pdt.P/2019/PA.Im.

The low level of education of married couples. The majority of prospective wives only received education up to the level of Junior High School (SMP, this has a very close relationship with underage marriage. On the other hand, a higher level of education can automatically protect children from underage marriage, especially for girls who are very vulnerable to the risk of reproductive disorders (Judiasih & Dewi, 2018).

The aspect of education, in this case, contributes quite a lot; most married couples marrying underage are children with low education, psychologically immature, and most people do not know the importance of education patterns that everyone must understand before starting a family so that the family he will take becomes a *sakinah, mawaddah, warahmah* families which will undoubtedly lead to happiness in the world and the hereafter.

**2. The Role of the Indramayu Religious Court Panel of Judges in Tightening the Procedure for Granting Marriage Dispensations**

In response to this condition, the Indramayu Religious Court Panel of Judges deemed it necessary to prioritize the child's interests by tightening the rules for the trial of marriage dispensation applications. In receiving, examining, adjudicating and deciding and resolving marital dispensation cases, the panel of judges is usually guided by Islamic Law. So often,

parents in applying for a marriage dispensation for their children give reasons such as to avoid acts that are prohibited by religion, because they have had very intimate relationships because they have been pregnant before.

Based on the reasons for the application for a marriage dispensation, in this case, the Panel of Judges is in a dilemmatic position (Tempo, 2019). However, the Panel of Judges at the Indramayu Religious Court continues to make every effort to tighten the procedure for granting a marriage dispensation and play an active role in tracing the background to the application for a marriage dispensation because to know whether there has been an agreement (matchmaking) between parents or guardians that is coercive the child so that the child is in a depressed state (Interview of Judge Indramayu Religious Court, Mrs. E. Kurniati, May 19, 2020).

In this regard, it can be understood that the Panel of Judges at the Indramayu Religious Court as law enforcement and justice should have an active role in the benefit of the applicant's children, namely prospective married couples who are still underage, namely by tightening the marriage dispensation procedure, which includes:

- a. Asking the parents or guardians of the prospective wife to include evidence in the form of a pregnancy certificate from a doctor, midwife or health center at the residence of the future wife. And must be rechecked regarding the integrity of the letter at the proof stage.
  - b. Listening to information from the prospective husband and wife regarding their own will to carry out a marriage, and it must be investigated in depth regarding the truth or not.
  - c. Ask the parents or guardians of the prospective husband to include evidence that the future husband has worked or not by attaching a certificate from the Village at the prospective husband's residence regarding his salary/wages per day/month. Must be rechecked related to the correctness of the certificate of salary/wages.
- 3. Impact of the Constitutional Court's Decision No.22/PUU-XV/2017 concerning the Age Limit for Marriage on Marriage Dispensation at the Indramayu Religious Court 2016-2019**

The emergence of a judicial institution, namely the Constitutional Court, to carry out "checks and balances" in the constitution building. This is because the Constitutional Court has to be the guardian of the constitution, which is included in the judicial field. So



that the Constitutional Court is expected to be able to carry out its primary duties and functions optimally so that it can be controlling for all state institutions, especially the internal Constitutional Court based on the constitution. When viewed from the side of the composition of legislation, state bodies have the authority to create laws and regulations. In essence, the Constitutional Court's decision has a higher position than the decisions of other state bodies. This is because it is final, so it cannot be corrected, compared or canceled by other state agencies.

Based on this description, Jimly Asshiddiqie is of the view, namely, prohibiting constitutional judges from commenting on decisions with permanent legal force from the Constitutional Court. This is to avoid biasing the "dissenting opinion" of the constitutional judges, which is also included in the Constitutional Court's decision. So that the Constitutional Court is a control mechanism that was formed to guard and maintain the 1945 Constitution as the highest law that is implemented or enforced in the administration of Indonesian constitutional life following the principles of constitutionalism characterized by the principles of the Rule of Law and democracy (Soimin Mashuriyanto, 2013).

However, in reality, a regulation that has been formed has not been able to accommodate all problems in the community environment in a complex manner, making it difficult for law enforcement officials to find solutions to these complex problems. The occurrence of very rapid developments and changes in the community has caused a polemic because of the impossibility that a regulation that is formed can accommodate all the community problems in a complex and even complete way.

Then, regulations cannot regulate in detail and cannot restrict ideally, thus causing ambiguity or blankness. Therefore, the law enforcement apparatus in charge of carrying out a regulation that has been formed must carry out an interpretation, extract a law, and construct to carry out *ijtihad* so that it can give birth to a new provision in its decision on all problems in the community.

Regarding this description, when viewed quantitatively, based on the UNICEF report that Indonesia is one of the countries with the second-highest number of underage marriages in ASEAN and the world. According to UNICEF's estimation view, more than 1,000,000 (one million) women who are now aged 20 to 24 years have married before the age of 18, which in

this case uses the projection of Indonesia's population and the prevalence of child marriages. This is in line with the survey results of the National Socio-Economic Survey (SUSENAS) in 2018, which stated that 11.2% of girls had married before the age of 18 and 0.5% had married before the age of 15.

From the description of the data, when viewed juridical, in 2017, the Constitutional Court has decided on a judicial review case of Article 7 paragraph (1) regarding the age limit for marriage, namely for women who have initially been 16 years, now 19 years, namely in Decision No.22/PUU- XV/2017. So, when viewed from the academic text of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning marriage, the background behind the birth of the law is the result of the Constitutional Court Decision No. 22/UU-XV/2017.

Thus, Al-Syatibi believes that the Constitutional Court's Decision No. 22/PUU-XV/2017, when analyzed with the *Maqashid Shari'ah* theory, consists of 5 main elements to achieve the benefit, namely, guarding religion, guarding the soul, guarding reason, safeguarding reason. In addition, protecting descendants and maintaining honor, and defending property. So to support these five primary elements is the Sharia that Allah SWT revealed because every legal verse, if studied and examined comprehensively, will find reasons that are, of course, to maintain these five primary elements (M & Zein, 2017).

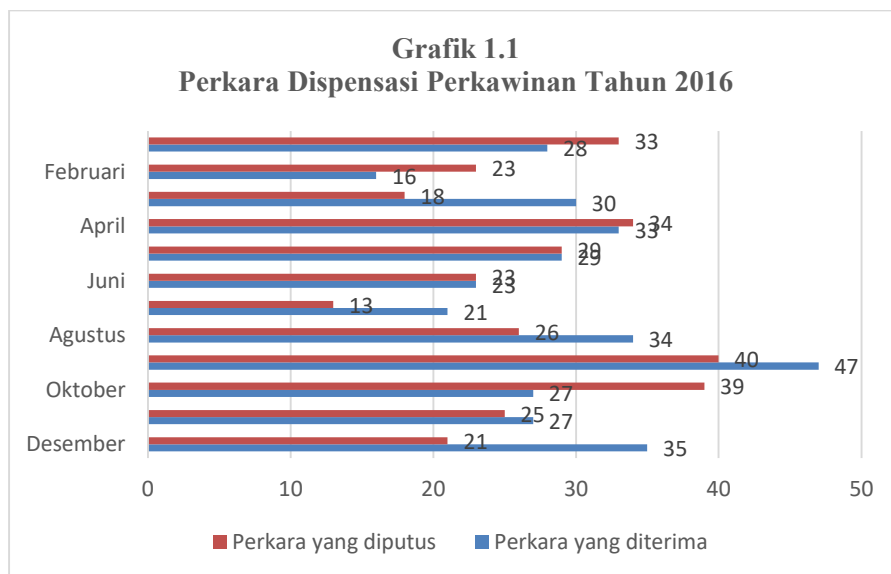
Furthermore, when viewed from the perspective of *Maqashid Syari'ah*, explained by Al-Syatibi that the Constitutional Court Decision No.22/PUU-XV/2017 has a position at the *Dharuriyat* level, namely preserving the soul and maintaining offspring. Therefore, keeping the soul (Hidzal-Nafs) in this case can be understood as a tool in mere self-defense but has an orientation towards improving and renewing the quality of life not only partially but can achieve a complete quality of life.

Underage marriage certainly cannot achieve the whole purpose of marriage. When viewed from biological function, it may be said to be completed, namely to avoid adultery. However, negative impacts remain unavoidable. The unpreparedness of the bride and groom psychologically and economically can lead to failure in Marriage (Kurdi, 2016). In addition, children who marry underage will lose the rights to grow and develop the right to education, and the vulnerability to sexual violence. Based on Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, every child has the right to survival, growth and

development, and the right to protection from violence and discrimination. Another impact, child pregnancy contributes to the high maternal mortality rate. In Indonesia, there are many malnourished babies and stunting children (icjr.or.id). The central bureau of statistics (BPS) released the percentage figure for early marriage in the country, which increased to 15.66% in 2018, compared to the previous year's 14.18%. The increase in early marriages is a separate note for the government, which is continuously trying to improve the Human Development Index.

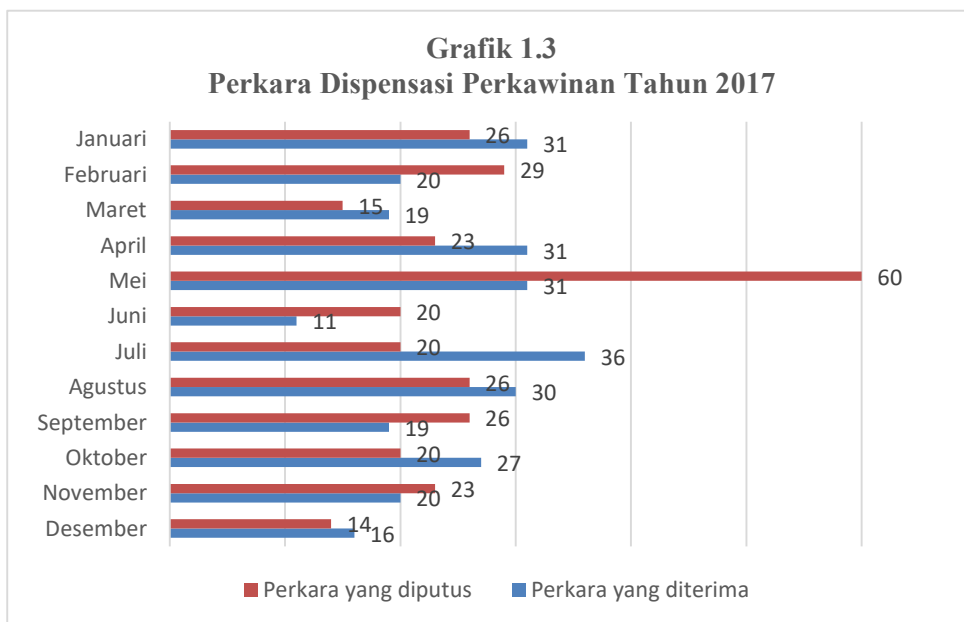
Based on this description, when viewed from the perspective of the concept and method of Maqshid Syari'ah, according to the author, the Constitutional Court Decision No.22/PUU-XV/2017 has accommodated and fulfilled the benefits that are relevant to the objectives of Maqashid Syari'ah, as in the rules of Fiqhiyyah namely: "rejecting harm is more important than getting benefit". Another fiqhiyyah rule also emphasizes that "if there are two conflicting choices, then choose the one that rejects harm first, because rejecting harm or difficulty is the same as achieving convenience or benefit". In this regard, this is in line with the objectives of Islamic Law—namely achieving benefit in the world and the hereafter (Djazuli, 2017). Furthermore, the Constitutional Court's decision is also an effort to fulfill child protection in its entirety, based on the principle of non-discrimination, the best interests of the child, the right to life, survival, and development, as well as the best award for children (Bambang Satriya, 2011).

The application of the Constitutional Court's Decision in the case of marriage dispensation at Indramayu Religious Court for four years, namely, from 2016 to 2019, the data can be presented in the following graph:

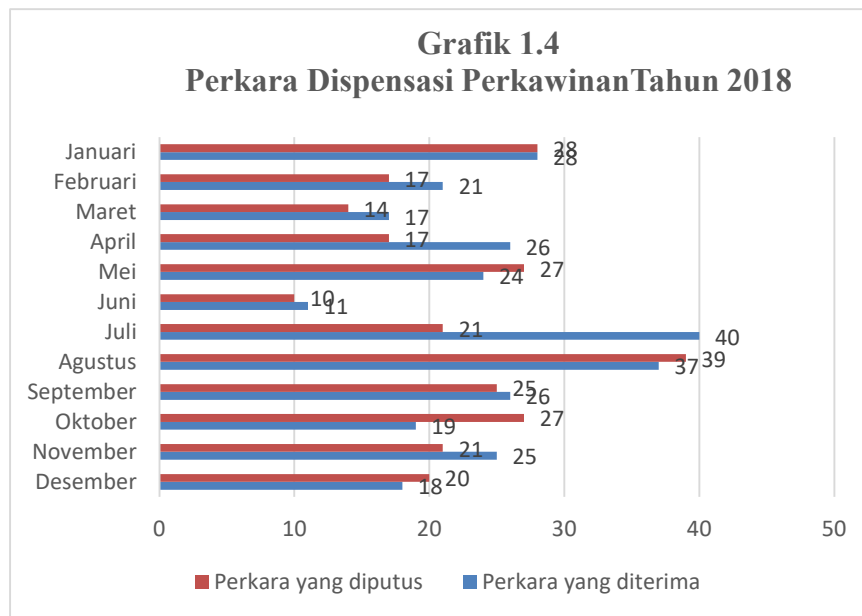


**Source:** Junior Registrar of Laws at the Indramayu Religious Court (2016 Annual Report of the Indramayu Religious Court).

One of the determination samples in 2016 in this study is Determination Number 0536/Pdt.P/2016/PA.Im whose legal considerations are sufficient reason to permit the applicant's application because he has had intimate relations, and even his future wife is five months pregnant. So in his decree, he granted the petition of the petitioner and granted dispensation to the child of the petitioner, who was 14 years and 0 months, to marry his future wife, who was 14 years and 8 months.



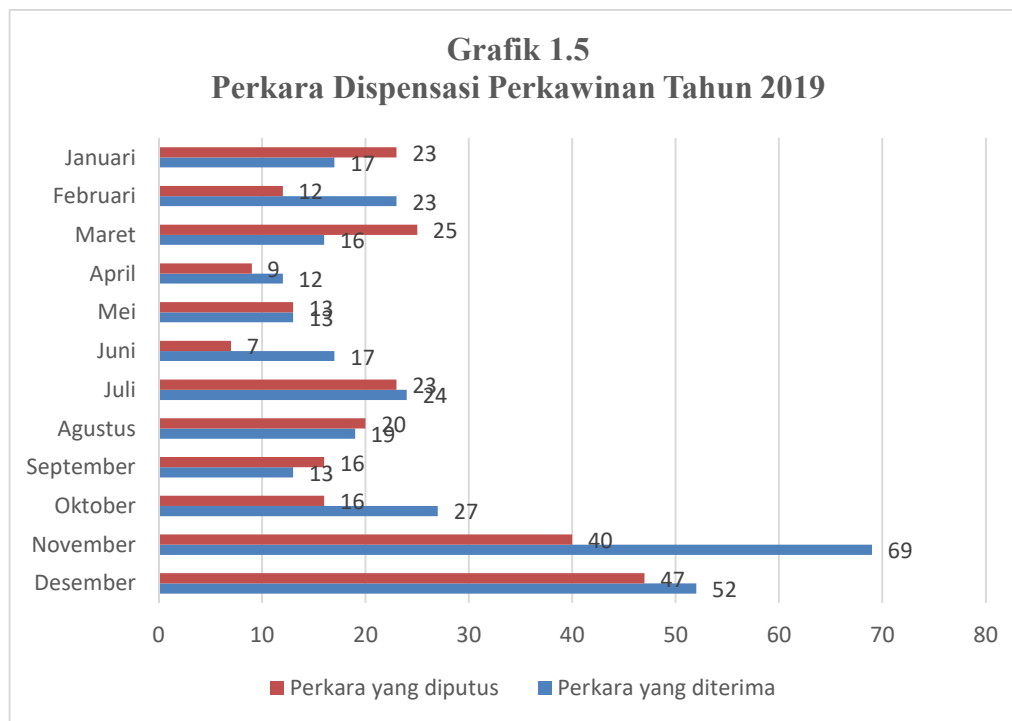
**Source:** Junior Registrar of Laws at the Indramayu Religious Court (2017 Annual Report of the Indramayu Religious Court).



**Source:** Junior Registrar of Laws at the Indramayu Religious Court (2018 Annual Report of the Indramayu Religious Court).

As for one sample of the Determination of the year in 2017 in this study, Determination Number 0291/Pdt.P/2017/PA.Im whose legal considerations are sufficient reason to grant the applicant's application permission because it is very intimate, and it is feared that an act prohibited by religion will occur. So, in his decree, he granted the applicant's request and granted dispensation to the applicant's child, who is 15 years and 0 months old, to marry his future husband, who is 20 years old.

While the sample in 2018 in this study was determined Number 0338/Pdt.P/PA.Im, whose legal considerations are that there is sufficient reason to permit the applicant's application because he has had intimate relations and even his future wife is five months pregnant, So in his ruling, the panel of judges granted the applicant's request and granted dispensation to the applicant's child who was 16 years and four months old to marry his future wife who was 16 years and one month old.



**Source:** Junior Registrar of Laws at the Indramayu Religious Court (2019 Annual Report of the Indramayu Religious Court).

So that one sample of Determination in 2019 is taken, namely Determination Number 0554/Pdt.P/2019/PA.Im. Whose legal consideration is that based on these facts, the court accepts the reason for the applicant's application to grant permission for the application because it is very intimate. So in his order, the panel of judges awarded the applicant's petition, who was 14 years seven months old, to marry his future husband, who was 15 years and eight months old.

Based on the presentation of data in graphic form, legal considerations and the decision of the Indramayu Religious Court Panel of Judges in determining the marriage dispensation in the last four years, it can be understood in reality that the Constitutional Court Decision No. 22/PUU-XV/2017 does not have such an influential, and this means that in minimizing the number of dispensations in marriage at the Indramayu Religious Court from 2016 to 2019, but on the contrary, it makes marriage dispensation cases even more fertile, because when the age is increased, the marriage dispensation increases significantly (Interview of Judge Indramayu Religious Court, Mrs. E. Kurniati, May 19, 2020).

When viewed in terms of the ultimate goal of legal effectiveness, it leads to the actualization of the *Maqashid Shari'ah* theory optimally, which is aimed at minimizing the number of dispensations to carry out marriage to the Indramayu Religious Court, as in Al-Syatibi's view regarding the *Maqashid Shari'ah* theory, that at first, the Constitutional Court Decision No.22/PUU-XV/2017 was to protect the soul (*hifdz nafs*) and protect offspring (*hifdz nasb*). Still, in reality, it could not be realized optimally, this is due to the Constitutional Court Decision No.22/PUU -XV/2017, which has just become a reference for the judges of the Indramayu Religious Court, is in 2019, not from 2017 (Interview of Indramayu Religious Court Judge, Mrs. E. Kurniati, May 19, 2020).

Furthermore, related to a level of legal effectiveness, Soerjono Soekanto is of the view that several elements affect effectiveness in law enforcement, while those that are relevant in this research include:

a. Legal Tool

Legal instruments are all legal rules, both private and public, which include material law and the ceremonial law, this is the legal basis for actualizing legal effectiveness, as it is understood that in this study, the point of the Constitutional Court Decision No.22/PUU-XV/ 2017 on the dispensation case to carry out marriage at the Indramayu Religious Court.

b. Law Enforcer

Concerning law enforcement, it can be understood that the law enforcers in this study are the Panel of Judges of the Indramayu Religious Court.

c. Community Legal Awareness

The combination of some knowledge that is understood by the community so that it is actualized to obey the law which reflects on the action and ending a dispute by referring to all legal rules that are following the conditions of society and applicable, then in this study are the parties, namely the parents, who filed for dispensation in carrying out marriage to the Indramayu Religious Court.

d. Culture

A traditional value in the form of stigma in society becomes an unwritten rule of law, while in this study is a culture of shame and disgrace for parents to their daughters if they marry over the age of 16.

Thus, if it is measured in terms of the level of legal effectiveness, regarding the application of the Constitutional Court Decision No.22/PUU-VX/2017 to the number of dispensations for the holding of a marriage at the Indramayu Religious Court in 2016 to 2019 that has not been achieved optimally, this causes due to several factors that hinder the effectiveness of law enforcement, the obstacles include:

e. Community Legal Awareness

The lack of legal awareness of the community, especially for applicants for marriage dispensation applications, which in this case are parents or guardians where there are still many who do not know and understand the importance of age maturity to carry out a marriage, lack of supervision over their children, which causes children to fall into promiscuity.

f. Law eEforcer

The Panel of Judges at the Indramayu Religious Court (Interview of Judge PA Indramayu, Mrs. E. Kurniati, May 19, 2020) in deciding the case of marriage dispensation which only continued to refer to Shari'ah Law in the form of Unwritten Law or *Fiqhiyyah* Rules and Law Number 1 the Year 1974 Regarding marriage, which reads:

الضَّرُورَاتُ تُبَيِّحُ الْمَحْظُورَاتِ الْاِتِّ مَحْظُورَاتِ

"The harm allows things that are prohibited" and

لَمْ شَقَّةٌ تَجْلِبُ التَّيْسِيرَ

"Difficulty brings ease."

Furthermore, it is stated in Law No. 1 of 1974 concerning Marriage, Article 7 paragraph (1) states: "Marriage is only permitted if the man has reached the age of 19 years and for the woman has reached the age of 16 years."



g. Culture

The solid and thick Culture in the community in the jurisdiction of the Indramayu Religious Court, namely the parents of the applicants for marriage dispensation that there is a stigma on parents who feel ashamed of their daughter marries over the age of 16 years because they are considered old virgins this is a disgrace to the good family.

This condition is caused by the lack of legal awareness of the community in the jurisdiction of the Indramayu Religious Court about the importance and urgency of the impact of underage Marriage, which in this case is the number of requests for dispensation for Marriage. So that this makes the Panel of Judges of the Indramayu Religious Court experience a dilemma in implementing the Constitutional Court Decision, thus, this causes the number of applications for marriage dispensation at the Indramayu Religious Court to be unstoppable from 2016 to 2019, so that it places the Indramayu Religious Court in the first position in receiving the most cases of marriage dispensation applications in the Religious High Court in West Java.

After the government succeeded in reviewing the Age limit in Law No. 1 of 1974 concerning Marriage, the government should also check Law No. 23 of 2002 concerning Child Protection. The two laws have differences regarding the minimum age for Marriage, people become confused and use one of these laws to legalize child marriage at a young age. In this case, ideally, if a policy in the law at least has similarities so that it does not cause confusion and of course sees various essential aspects not only from a health point of view but also from an economic point of view, education aspect, psychological aspect, and so on (Kartikawati, 2015).

## **Conclusion**

Aspects that affect the number of marriage dispensations at the Indramayu Religious Court include moral violations (promiscuity), minimal primary religious education, the influence of the Internet (social media), Culture, economic limitations, low levels of education.

The role of the Panel of Judges in tightening the marriage dispensation procedure at the Indramayu Religious Court is to explore in-depth the reasons behind the application for a marriage dispensation because it is feared that there has been (matchmaking) first and

continues to check the legality of evidence in the form of a pregnancy certificate from a doctor, midwife or health center. As well as a certificate of income/salary from the Village at the residence of the prospective bride and groom.

The impact of the Constitutional Court's Decision No.22/PUU-XV/2017 on Marriage Dispensation at the Indramayu Religious Court in 2016-2019 was not effective enough so that it did not have an optimal positive impact; this was due to the lack of legal awareness of the people in Indramayu regarding the age limit for marriage. Therefore, the Constitutional Court's decision can only be applied and become a reference for judges at the Indramayu Religious Court in 2019 in the form of Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning marriage and in PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Cases. However, in 2019 there are still many dispensations for weddings under the age of 16. This results from the thick and thick Culture of the people in Indramayu; namely, there is a belief that girls who marry over the age of 16 are a disgrace in the family.

### **Suggestion**

The Panel of Judges as Law Enforcement Officials must provide an understanding related to public legal awareness about marriage dispensation and its negative impact, so that it is not limited to prohibiting but as a preventive measure, namely by socializing legal awareness programs on the importance of the age limit for marriage, sex education and reproductive health for minors, expanding access to affordable education, especially in the field of religion, the synergy between relevant agencies to improve marriage management and administration.

In the procedure for granting a marriage dispensation permit, especially the proof stage. The panel of judges must explore in-depth the evidence by summoning the applicant's children and related witnesses to hear their statements at trial and checking the legality of pregnancy and health certificates from doctors, salary slips and unmarried statements from the local Village, completed with supporting letters in the form of psychiatric certificates from psychologists, certificates of not having sex disorders from the authorities and constantly attaching all such certificates in Trial Investigation Report in the Determination of Marriage Dispensation.

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## **Interview**

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