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Legal Reconstruction of Marriage Dispensations in Indonesia through a Theo-Juridical Approach in the Perspective of the Qur'an

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Abstract
The Legal Reconstruction of Marriage Dispensation in Indonesia through a Theo-Juridical Approach in the Perspective of the Qur'an aims to re-examine the practice of underage marriage within the context of Islamic law, particularly from the perspective of the Qur'an, and to recommend a form of legal reconstruction within the Indonesian legal system. Child marriage remains a persistent legal and social phenomenon across various regions in Indonesia, despite the revision of the minimum marriageable age through Law Number 16 of 2019. A legal loophole in the form of marriage dispensation, as stated in Article 7 paragraph (2), creates room for practices that contradict the principles of child protection. This study employs a normative-juridical method and thematic (maudhū'i) interpretation of Qur'anic verses related to marriage, family responsibility, and child protection. The findings indicate that the Qur'an emphasizes not only biological readiness but also intellectual maturity (rushd) as an ideal requirement for marriage. The practice of marriage dispensation is considered inconsistent with maqāṣid al-sharī'ah, particularly in the aspects of protecting life, intellect, lineage, and the dignity of children. This paper recommends legal reconstruction that includes statutory reform, strengthening of law enforcement structures, and transformation of legal culture in society based on Qur'anic values.

Keywords: Legal reconstruction, Marriage dispensation, The Qur'an.

Abstrak:
Rekonstruksi Hukum Dispensasi Perkawinan di Indonesia melalui Pendekatan Teo-Yuridis dalam Perspektif Al-Qur'an bertujuan untuk melihat kembali praktik perkawinan di bawah umur dalam konteks hukum Islam, khususnya dalam perspektif Al-Qur'an, dan merekomendasikan suatu bentuk rekonstruksi hukum dalam sistem hukum Indonesia. Perkawinan anak masih menjadi fenomena hukum dan sosial yang terus terjadi di berbagai daerah di Indonesia, meskipun telah ada revisi batas usia minimal perkawinan melalui Undang-Undang Nomor 16 Tahun 2019. Celah hukum berupa dispensasi perkawinan, sebagaimana tercantum dalam Pasal 7 ayat (2), membuka ruang bagi praktik-praktik yang bertentangan dengan prinsip-prinsip perlindungan anak. Penelitian

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ini menggunakan metode yuridis normatif dan penafsiran tematik (maudhū'i) terhadap ayat-ayat Al-Qur'an yang berkaitan dengan pernikahan, tanggung jawab keluarga, dan perlindungan anak. Temuan penelitian menunjukkan bahwa Al-Qur'an tidak hanya menekankan pada kesiapan biologis tetapi juga kematangan intelektual (rushd) sebagai syarat ideal untuk menikah. Praktik dispensasi nikah dinilai tidak sejalan dengan maqāṣid al-sharī'ah, khususnya dalam aspek perlindungan terhadap nyawa, akal, nasab, dan harkat dan martabat anak. Tulisan ini merekomendasikan rekonstruksi hukum yang mencakup reformasi perundang-undangan, penguatan struktur penegakan hukum, dan transformasi budaya hukum di masyarakat yang berlandaskan pada nilai-nilai Qur'ani.

Kata Kunci: Rekonstruksi hukum, Dispensasi nikah, al-Qur'an.

Introduction

Marriage is a social institution that holds a very important position in the lives of individuals and society. From an Islamic perspective, marriage is not merely a civil contract between two individuals to live together, but rather a sacred covenant (mitsaqan ghalizha) based on the intention of worship and moral responsibility to form a harmonious family, produce righteous offspring, and contribute positively to society.[1] Through marriage, humans are expected to achieve peace of mind (sakinah), mutual love (mawaddah), and mutual compassion (rahmah), as explained in QS. Ar-Rum: 21.[2] However, these ideal values can only be realized if both parties have achieved physical and emotional maturity and possess the psychological, social, and economic readiness to navigate married life.

However, in the social reality observed in various regions of Indonesia, many marriage practices deviate significantly from these ideal values. One of the most concerning phenomena is the prevalence of underage marriage, which involves individuals under the age of 19. In many cases, these marriages are conducted without considering the physical, psychological, or social readiness of the child getting married, whether as a wife or as a prospective mother and adult member of society. These marriages can be categorized as risky practices because they involve parties who generally do not yet have legal capacity and are not yet able to shoulder the heavy responsibilities of marriage.

This phenomenon cannot be viewed as a personal or family issue alone, but has become a structural problem rooted in the legal, economic, social, and cultural systems. According to a 2020 UNICEF study, Indonesia ranks eighth in the world in terms of the number of child marriages. Approximately 1 in 9 girls in Indonesia marry before reaching the age of 18.[3] This figure indicates that underage marriage involving children is not merely an individual case but a widespread and alarming

[1] Farida Ulvi Na'imah, "Internalisasi Tradisi Lokal Pada Hukum Perkawinan Anak Di Kabupaten Brebes Perspektif", (Tesis UIN Sunan Ampel, 2022). http://digilib.uinsa.ac.id/49920/

[2] Q.S. Ar Rum : 21.

[3] UNICEF. (2020). *Child Marriage: Latest Trends and Future Prospects*. New York: UNICEF.

social phenomenon. The factors driving this practice are complex and interrelated, ranging from poverty, limited access to education, gender inequality, to cultural and religious norms that remain permissive toward such marriages, particularly when it comes to "saving" the family's reputation or avoiding social stigma due to out-of-wedlock pregnancy.

Legally, Indonesia has taken a progressive step by enacting Law No. 16 of 2019, which revises Law No. 1 of 1974 on Marriage.[4] In this revision, the minimum marriage age for both men and women is set at 19 years old, whereas previously it was 16 years old for women. However, Article 7(2) still allows for marriage dispensations through religious or state courts, based on "urgent" reasons. Unfortunately, there is no clear definition or objective indicators of what constitutes an "urgent reason." This leaves significant room for subjective interpretation by judges and other legal officials.

In practice, many requests for marriage dispensations are granted solely on the basis of premarital pregnancy, long-term romantic relationships, family pressure, or fear of promiscuity. While these reasons may be considered "urgent" by some members of society, they do not reflect the principle of child protection, which should be a top priority in the national legal system and Islamic teachings. Furthermore, the tendency to legalize underage marriages through legal channels effectively makes the courts an institution that indirectly legitimizes practices that violate children's rights. This highlights a fundamental inconsistency between positive legal norms that claim to protect children and judicial practices and implementation on the ground that could potentially endanger children's futures.

From an Islamic legal perspective, marriage should be entered into by two people who meet the requirements not only biologically (baligh), but also intellectually and emotionally (rushd). Islam strongly emphasizes the need for readiness in living a married life, as indicated in QS. An-Nisa: 6,[5] which states that orphans should not be entrusted with the management of property until they demonstrate maturity in thought and action. Therefore, if maturity is required even in managing property, it is even more so in building a family. Thus, the practice of child marriage not only causes physical and social harm but also contradicts the substance of Islamic law, which is based on the principles of public welfare, justice, and protection of the vulnerable.

Given the above realities, this study is highly relevant in re-examining the practice of underage marriage in Indonesia, not only from the perspective of positive law, but more importantly, through the study of the Qur'an and maqashid al-syari'ah. The primary objective of this study is to develop a concept for the reconstruction of marriage law that is more responsive to principles of justice, child rights protection, and progressive sharia values. This study not only presents a critique

[4] Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan

[5] QS. An-Nisa: 6

of the weaknesses of the existing legal system but also offers an alternative model of a legal system that is more integrative between national law and Qur'anic norms that prioritize the welfare of the community, especially vulnerable groups such as children. Through a thematic interpretation approach and legal system theory, it is hoped that policies will emerge that are more just, humane, and oriented toward protecting the future generations of the nation.

Result and Discussion

Marriage in the Perspective of the Qur'an

The Qur'an, as the primary source of Islamic teachings, does not explicitly set a specific age or limit as a requirement for a valid marriage. However, the Qur'an provides very important and profound guidance regarding the indicators of a person's readiness to enter into married life. The Qur'an adopts a values- and principles-based approach, rather than a quantitative approach based on age, so each verse requires deep reflection on the real-life conditions of humanity. One of the most frequently cited verses in discussions about readiness for marriage is QS. An-Nisa: 6. In this verse, Allah SWT states:

اَيُّهَا النَّاسُ اتَّقُوْا رَبَّكُمُ الَّذِيْ خَلَقَكُمْ مِّنْ نَّفْسٍ وَّاحِدَةٍ وَّخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيْرًا وَّنِسَاۤءً ۚ وَاتَّقُوا اللّٰهَ الَّذِيْ تَسَاۤءَلُوْنَ بِهٖ وَالْاَرْحَامَ ۗ اِنَّ اللّٰهَ كَانَ عَلَيْكُمْ رَقِيْبًا

"And test the orphans until they reach marriageable age; then if you find them capable (of managing their affairs), hand over their property to them..."[6]

This verse, although it directly addresses the management of orphans' property, its meaning can be extrapolated into a principle of caution in entrusting significant burdens and responsibilities to someone who is not yet mature.[7] According to classical exegetes like Al-Qurthubi and Ibn Kathir, the term "maturity" does not merely refer to biological maturity (puberty), but encompasses intellectual, emotional, and spiritual maturity as well. In other words, a person is not considered worthy of bearing a great responsibility, whether it be the management of wealth or marriage, without first demonstrating signs of complete and integrated maturity.

Classical and contemporary scholars emphasize that rushd is an essential requirement for making important decisions in life, including marriage. This implies that the validity of marriage in Islam should not solely depend on age or physical factors, but also on the ability to think rationally, behave responsibly, and take accountability for decisions made. Therefore, this verse provides a strong normative foundation that marriage is only appropriate for individuals who have achieved comprehensive maturity. In a modern context, this means that someone who has not yet attained the ability to think, is unable to understand the meaning

[6] QS. An-Nisa: 6

[7] Isroqunnajah, *Perkawinan dan Perceraian*, (Inara Publisher : Malang, 2023), 3.

and responsibilities of marriage, and lacks psychological maturity should not be married, even if they have reached the age of puberty biologically.

Furthermore, QS. Ar-Rum: 21 reinforces this view by highlighting the primary purpose of marriage in Islam. Allah SWT states:

وَمِنْ اٰيٰتِه اَنْ خَلَقَ لَكُمْ مِّنْ اَنْفُسِكُمْ اَزْوَاجًا لِّتَسْكُنُوْٓا اِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَّوَدَّةً وَّرَحْمَةً ۗاِنَّ فِيْ ذٰلِكَ لَاٰيٰتٍ لِّقَوْمٍ يَّتَفَكَّرُوْنَ

"And among His signs is that He created for you mates from among yourselves, that you may find tranquility in them, and He placed between you affection and mercy."[8]

This verse provides a philosophical and spiritual description of marriage as a place of refuge, nurturing love, and developing empathy between spouses. The three important elements mentioned in this verse, namely sakinah, mawaddah, and rahmah, are the result of a relationship based on psychological maturity and emotional stability. It is impossible for someone who is still a child, with emotional and spiritual capacities that are not yet mature, to fully embrace and realize these three foundational principles.

This is where the relevance of rejecting the practice of child marriage becomes increasingly clear. For an ideal marital relationship is not merely about legality, but rather about achieving inner and spiritual balance that leads to shared happiness and the healthy growth of the family. An Children who have not come to terms with themselves cannot possibly be a comforting partner or be able to foster love and compassion in the family.

Another verse that reinforces this position is QS. Al-Isra': 31, which explicitly prohibits the killing of children out of fear of poverty:

وَلَا تَقْتُلُوْٓا اَوْلَادَكُمْ خَشْيَةَ اِمْلَاقٍۗ نَحْنُ نَرْزُقُهُمْ وَاِيَّاكُمْۗ اِنَّ قَتْلَهُمْ كَانَ خِطْـًٔا كَبِيْرًا

"*And do not kill your children for fear of poverty. We provide for them and for you.*"[9]

Historically, this verse was revealed to reject the pre-Islamic practice of killing female children for economic reasons or social stigma. However, in a contemporary context, this verse can be interpreted more broadly as a prohibition against any actions that could harm or waste a child's future. Contemporary scholars like Yusuf al-Qaradawi interpret marrying off children who are not yet mature as an action that can destroy their future, as it leads to dropping out of school, the risk of dangerous pregnancies, and a high likelihood of facing domestic violence.

QS. At-Tahrim: 6 also emphasizes the importance of family responsibility, especially that of parents, in safeguarding children's morality and safety from social and spiritual harm:

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْا قُوْٓا اَنْفُسَكُمْ وَاَهْلِيْكُمْ نَارًا وَّقُوْدُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلٰۤىِٕكَةٌ غِلَاظٌ شِدَادٌ لَّا يَعْصُوْنَ اللّٰهَ مَآ اَمَرَهُمْ وَيَفْعَلُوْنَ مَا يُؤْمَرُوْنَ

[8] QS. Ar-Rum: 21.

[9] QS. Al-Isra': 31.

"O you who have believed, protect yourselves and your families from the Fire..." (QS. At-Tahrim: 6) [10]

This verse conveys a strong message that a parent's responsibility is not limited to fulfilling their children's material needs but also includes preventive efforts to protect them from moral corruption and future ruin. In this context, forcing an immature marriage is equivalent to abandoning the religious responsibility that parents should uphold. In fact, in many cases, child marriage becomes a path to inequality, poverty, and the destruction of the family, which is clearly contrary to the fundamental values of Islam.

Thus, the four verses—QS. An-Nisa: 6, QS. Ar-Rum: 21, QS. Al-Isra': 31, and QS. At-Tahrim: 6—provide a comprehensive conceptual framework that marriage in Islam is not merely a matter of legal validity and the validity of the contract, but rather the fulfillment of a great responsibility that must be based on the maturity of the soul and mind. Therefore, the practice of child marriage that relies solely on biological age, cultural pressure, or narrow moral reasons is fundamentally contrary to the basic principles of the Qur'an and must be re-examined within the framework of maqashid al-syari'ah. The Qur'an seeks to protect, nurture, and ensure the optimal growth of children before they are fully prepared to embark on married life. Therefore, any policies and legal practices that still permit or facilitate child marriage must be seriously re-examined to ensure they do not contradict the Qur'an's noble vision of justice, compassion, and the continuity of generations.

Maqashid Al-Syari'ah and Child Marriage

Maqashid al-syari'ah, which literally means the purposes of sharia, is a fundamental framework in understanding and applying Islamic law substantively. This concept aims to identify the wisdom and benefits that Islamic law seeks to realize in each of its legal provisions. In classical and contemporary Islamic legal traditions, maqashid shari'ah functions as a normative scale and the ultimate goal of all legal products (ahkam) applied to mankind. Maqashid helps prevent people from applying laws that are only literal without regard to higher moral values and goals.

According to Imam al-Syatibi in his monumental work al-Muwafaqat, maqashid shari'ah is divided into five main principles known as al-daruriyyat al-khamsah, namely: preserving religion (ḥifẓ al-dīn), preserving the soul (ḥifẓ al-nafs), preserving the intellect (ḥifẓ al-'aql), preserving offspring (ḥifẓ al-nasl), and preserving property (ḥifẓ al-māl).[11] These five principles are considered basic needs that should not be violated or ignored because they are the foundation for individual and collective human life. Contemporary scholars such as Yusuf al-Qaradawi,[12] Wahbah az-Zuhaili, and Jasser Auda emphasize that these maqashid

[10] Q.S. At-Tahrim :6.

[11] Al-Syatibi, *Al-Muwafaqat fi Ushul al-Shari'ah*, Beirut: Dar al-Kutub al-'Ilmiyyah, t.t

[12] Yusuf al-Qaradawi, *Fiqh al-Awlawiyat*, Kairo: Dar al-Shuruq, 1995

are universal, contextual, and flexible in the face of changing times.[13] In the context of the practice of underage marriage, at least four of the five principles are clearly experiencing a slowdown. This practice is not just a social problem, but has entered the area of maqashid violations that have long-term impacts on individuals, families and society.

First, from the perspective of *ḥifẓ al-nafs* (protecting the soul), a number of empirical studies show that girls who marry at an early age are very vulnerable to physical health problems, especially related to pregnancy and childbirth. Immature reproductive organs can increase the risk of complications such as preeclampsia, low birth weight babies, bleeding, and death of mothers and babies. WHO research states that pregnancy and childbirth are the main causes of death for women aged 15-19 years in various developing countries, including Indonesia.[14] This fact confirms that the practice of underage marriage is contrary to the principle of preserving human life, a value that Islam puts forward as a top priority. The ushul fiqh rule states that *"al-dharar yuzal"* (all forms of harm must be eliminated). Therefore, marriages with a high risk to life should be prevented in order to realize maqashid al-syari'ah.

Second, within the framework of *ḥifẓ al-'aql* (protecting the mind), underage marriage causes disruption to the intellectual and mental development of the perpetrator of marriage. Children who marry at an early age generally drop out of school and lose the opportunity to pursue formal education. As a result, they do not have sufficient cognitive provision to understand the world.

The lack of formal education also makes it difficult for them to compete in the job market, which in turn increases their dependence on their spouse or family. Psychologically, children who marry underage tend to experience stress, depression and emotional instability because hey are forced to take on adult roles that they are not ready for. Islam highly values reason as a means of understanding religious teachings, distinguishing between right and wrong, and as a means of achieving maslahat. Therefore, child marriage that inhibits a person's intellectual potential is a clear violation of maqashid.

Third, in the aspect of *ḥifẓ al-nasl* (protecting offspring), child marriage has the potential to produce offspring in conditions that are far from ideal. Young parents tend not to have the knowledge and skills to educate, nurture, and maintain children's health. This leads to suboptimal care, and in some cases even leads to child neglect. This situation can create a vicious cycle of intergenerational poverty and unpreparedness, where children of parents who marry underage will face a similar fate. Islam emphasizes the importance of strong and quality regeneration through the command to marry in order to maintain lineage and prepare a strong generation, not just to fulfill biological urges.

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[13] Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuh*, Damsyik: Dar al-Fikr, 1985

[14] WHO. (2018). *Adolescent Pregnancy*. World Health Organization. Retrieved from https://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy

Fourth, in the context of *ḥifẓ al-māl* (protecting property), underage marriage also has an impact on economic inequality, both on a family and community scale. Children who are married off early tend to lack economic skills and are not yet financially independent. They will become an economic burden on the couple, the family and the state. In the long run, this phenomenon strengthens the structure of latent poverty, which is difficult to eradicate because human resources are not optimally prepared from the start. Islam views wealth as a means to maintain dignity, sustain life, and fulfill social obligations. Therefore, actions that increase the risk of poverty and dependency, especially structurally, are not in line with maqashid al-syari'ah.

If four of the five main elements of maqashid al-syari'ah have been harmed by a practice, then methodologically and ethically the practice must be considered a form of mafsadah that must be prevented or even eliminated. In the framework of fiqh siyasah (Islamic legal politics), the state has a moral and shar'i responsibility to close all forms of legal loopholes that can pave the way for collective damage *(sadd al-dzari'ah*). Marriage dispensation, which in positive law is still justified in the name of "urgent reasons", is a clear example of a legal loophole that is vulnerable to abuse. In fact, substantially, the dispensation is often not to save the child, but to save the name of the woman.[15]

Thus, the elimination of the practice of marriage dispensation and the tightening of the minimum age of marriage are concrete forms of contemporary ijtihad that are in line with maqashid al-syari'ah. In this context, the state has the authority through legal instruments to close potential harms and ensure that every marriage is carried out on the basis of physical and mental readiness, not because of cultural coercion or moral crisis.[16] The affirmation of maqashid in this issue also proves that Islam not only regulates legal aspects in a formalistic manner, but also encourages the protection of basic human rights, especially children, who are a trust and entrustment of Allah SWT.

Therefore, the formulation of national policies related to marriage age limits and the abolition of marriage dispensation must be placed within the maqashid framework, so that Islamic law remains alive, relevant, and in favor of the most vulnerable groups in society. Only in this way, shari'ah can function as a mercy for all nature and as a way to realize inclusive social justice.

Critical Analysis of Marriage Dispensation in Positive Law

Underage marriage is one of the most crucial issues in family law in Indonesia that has generated a long and multidimensional debate. This polemic

[15] Ikbal Fahri Hasan, "Analisis Penetapan Permohonan Dispensasi Kawin Di Pengadilan Agama Nabire Dalam Pemaknaan Klausa Alasan Mendesak Pada Pasal 7 Ayat 2 Undang-Undang Nomor 16 Tahun 2019", (Universitas Islam Indonesia, 2023).

[16] Rahmi Lestari dan Subekti, "Dispensasi Perkawinan dan Perlindungan Anak: Kajian terhadap Praktik Pengadilan Agama." *Jurnal Hukum dan Peradilan*, no. 2, (2022), 234.

not only takes place at the academic and policy levels, but has become a social reality that stretches from villages to big cities. The main problem lies in the tension between the desire to maintain religious values, culture and social norms with the state's obligation to ensure the protection of children's rights as affirmed in the constitution and international conventions. In this context, the legal mechanism in the form of marriage dispensation stipulated in Article 7 paragraph (2) of Law No. 16/2019 on the Amendment to Law No. 1/1974 is at the center of a very complex and ambiguous issue.[17]

Although the revision of the law has increased the minimum age of marriage to 19 years for both men and women as a form of equality and child protection, the provision regarding dispensation has been retained. This dispensation authorizes parents or guardians to apply to a religious court to allow children who have not met the minimum age to marry for certain reasons. Basically, this provision is intended to provide space in extraordinary or emergency conditions (force majeure), but in practice, the interpretation of the phrase "urgent reasons" is very different from that in the religious courts. This has resulted in the opening of the door to the legalization of child marriage in conditions that actually do not meet the category of legal or ethical emergency.

Based on field studies and jurisprudential data, most of the marriage dispensation cases granted in religious courts were based on premarital pregnancy, long-standing dating relationships, family pressure, and fears of social stigma or adultery. Unfortunately, these reasons reflect social and cultural pressures rather than objective considerations of the child's mental, physical and psychological readiness. Many judges, in their decisions, tend to consider the social norms developed in society rather than the principle of the best interest of the child. As a result, the practice of marriage dispensation, which should be an extraordinary exception, has turned into a normative route that is widely used to avoid social sanctions.

In response to the technical implementation of this article, Supreme Court Regulation (PERMA) No. 5/2019 was issued as a technical guideline for judges in adjudicating marriage dispensation cases.[18] This PERMA provides a number of procedural obligations, such as listening directly to the child's testimony, considering the results of psychological examinations, recommendations from religious counselors, and advice from medical personnel if necessary. The main purpose of this regulation is to ensure that dispensation is only granted if it is proven to be beneficial to the child, not merely to reduce social pressure. In reality, however, many studies show that PERMA is not optimally implemented.

[17] Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974.

[18] Peraturan Mahkamah Agung (PERMA) Nomor 5 Tahun 2019 tentang pedoman teknis bagi hakim dalam mengadili permohonan dispensasi kawin.

The judicial process in marriage dispensation cases is often very short, taking only one to two days. The examination process is not thorough and comprehensive. Psychological examinations, if conducted at all, are often not used as the main consideration by judges. The approach taken is more of an administrative formality, not the substance of justice and protection. This shows that the problem of marriage dispensation is not only at the level of legal substance that opens up loopholes for interpretation, but also concerns the structure of legal implementation that has not been effective, as well as the legal culture of the community and law enforcement officials who are still permissive and normative in addressing child marriage.

Furthermore, the legal culture of the community, which still sees marriage as a solution to many social problems, is a major driving factor in the perpetuation of this practice. In many cases, parents prefer to marry off their children rather than face the social stigma of out-of-wedlock pregnancies, teenage romantic relationships or economic pressures. In traditional societal constructs, maintaining family honor is a top priority that often trumps the rights and future of children. This shows that a repressive legal approach is not enough to eradicate the practice of child marriage. A paradigm shift and transformation of legal culture that touches the roots of the social and religious values of society is needed.

Therefore, the strategy for handling the practice of marriage dispensation must be carried out thoroughly, involving the three main elements of the legal system as described by Lawrence M. Friedman: legal structure (implementing apparatus and institutions), legal substance (normative rules), and legal culture (community values and perceptions). All three must be intervened simultaneously in order to realize a legal system that truly favors the best interests of children.[19] In addition, a critical analysis of the marriage dispensation mechanism must also consider the principles of child protection as contained in Law No. 35/2014 on Child Protection, specifically Articles 26 and 59, which emphasize that every child has the right to protection from violence, exploitation, discrimination and mistreatment.[20] In this context, the practice of child marriage facilitated through the dispensation mechanism essentially violates this principle of protection. Children lose their rights to education, health, psychosocial development, and participation in determining their own future.

Thus, the marriage dispensation mechanism can no longer be defended as a positive exception. In practice, this mechanism has become a legalization instrument for the violation of children's fundamental rights. The state, in this case the Supreme Court and lawmakers, need to thoroughly evaluate the existence and implementation of this article. Only with a comprehensive legal reform, both in

[19] Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, (New York: Russel Sage Foundation, 1975), 14.

[20] Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak.

terms of editorial and implementation structure, can the state fulfill its constitutional mandate to protect children as the most vulnerable citizens.

Legal Reconstruction Based on Lawrence M. Friedman's Theory

The complex problems inherent in the practice of underage marriage cannot be solved only with a normative-legalistic approach that relies on revising or adding articles to the law. Experience over the past two decades shows that textual legal changes do not necessarily have a significant impact if they are not accompanied by changes at the structural and cultural levels. In this context, Lawrence M. Friedman's legal system approach becomes very relevant because it touches on the three main pillars that sustain the law: legal structure, legal substance, and legal culture.[21] Moreover, given the strategic position of the state in the formation and implementation of legal policies, the political dimension of law needs to be included as the fourth pillar in order to create an effective and equitable legal system.

1. Legal Structure

The legal structure refers to the institutions and legal implementing apparatus that have the authority and responsibility in the implementation of laws and regulations. In the context of child marriage, the legal structure includes religious courts, the Office of Religious Affairs (KUA), the Office of Social Affairs, the Office of Women's Empowerment and Child Protection, schools, psychological service institutions, and local authorities such as local governments. Strengthening the role of these institutions is very important in preventing and dealing with the practice of child marriage, which is often practiced by women.

For example, in the process of applying for dispensation to marry, the role of religious court judges is central. Therefore, specialized training and certification is required for judges in handling cases involving children, particularly with regard to psychological protection, reproductive health and the social consequences of early marriage. This training should include an understanding of child development and gender justice, as well as being equipped with a toolkit of insights into children's rights within national and international legal frameworks.

Not only that, cross-sector coordination also needs to be strengthened. For example, before a marriage dispensation decision is rendered, judges need to obtain formal input from child psychologists, doctors, religious counselors and social workers so that the decision truly reflects the principle of the best interest of the child. An institutional form that can accommodate this approach is to establish an Integrated Child Protection Team in each religious court jurisdiction, which works independently to provide objective recommendations.

[21]Izzy Al Kautsar dkk, "Sistem Hukum Modern Lawrence M. Friedman: Budaya Hukum dan Perubahan Sosial Masyarakat dari Industri ke Digital", *Jurnal Sapientia Et Virtus,* no, 2 (2022) : 70.

2. Legal Substance

Legal substance refers to the norms and regulations that govern community behavior. In the case of child marriage, Article 7 paragraph (2) of Law No. 16/2019 is the tipping point that allows the practice to occur legally.[22] Although the law is well-intentioned by equalizing the marriage age of men and women to 19 years, the existence of the dispensation clause opens up ample room for abuse.

In practice, the phrase "urgent reasons" is not strictly defined, giving rise to subjective interpretations. Many dispensation requests are granted simply because of pregnancy outside of marriage, dating relationships that are considered to be longstanding, and parents' fear of social stigma.[23] Therefore, revision of this article is urgent, either by strengthening the indicator of "urgent reasons" or removing the clause altogether, as has been proposed by a number of child protection activists and civil society organizations.

If the deletion option is deemed politically unacceptable, then additional clauses should be included, such as the requirement that dispensation requests can only be granted after a multidisciplinary assessment covering psychological, medical, social and legal aspects. In addition, dispensation should only be granted if it is proven that it will not harm the child's future, and not as a legitimization of moral or customary violations.

On the other hand, the substance of the law also needs to include administrative and ethical sanctions for those who abuse the dispensation process, including for parents, guardians, or officials who are proven to manipulate data and information in the application process. This step aims to prevent the use of legal loopholes as a means of "legalizing" violations.

3. Legal Culture

Legal culture is the most profound dimension and requires time and a softer and more persuasive approach. Legal culture reflects the values, worldview, and attitudes of the community towards the law and its implementation.[24] In Indonesian society, the legal culture towards child marriage is still characterized by a high tolerance for the practice, especially in rural areas and communities that still uphold customary values or erroneous beliefs in religious texts.

Many parents and community leaders still think that marrying off children is the best way to avoid promiscuity, prevent adultery, or "save" family dignity. This view makes marriage an instant solution, whereas in reality, children who are married off early are more vulnerable to violence, early divorce, and structural poverty.

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[22] Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974.

[23] Luthfi Ansori, *Reformasi Penegakan Hukum Perspektif Hukum Progresif*, Jurnal Yuridisno. 2 (2017), 149.

[24] Satjipto Raharjo, *Hukum dan Perubahan Sosial*, (Bandung: Sinar Baru Algensindo, 2009), 28.

Therefore, changes in legal culture must be made through legal education and progressive religious approaches. The government, through relevant ministries and agencies, needs to collaborate with religious leaders, clerics, priests, traditional leaders, and women's communities in public campaigns that emphasize the importance of rushd (maturity of mind) in marriage, as affirmed in QS. An-Nisa: 6.[25]

Furthermore, the education curriculum in schools and pesantren should also integrate reproductive and healthy family education, so that adolescents understand their rights and the long-term impacts of early marriage. This approach will form a critical generation of young people who are able to make responsible life decisions, not because of pressure or ignorance.

4. Legal Politics

Legal politics is the orientation of state policy in the field of law, including in terms of law formation, implementation and reform. In the context of child marriage, legal politics that favor child protection must be a national priority. So far, some policies are still symbolic and have not touched the root of the problem.

The central and local governments must show real commitment through progressive and implementable regulations. One good example is the Surabaya Mayor's Regulation Number 32 of 2024 which regulates the prevention of child marriage through a cross-sectoral approach, RT/RW-based reporting, family assistance, and religious and reproductive health counseling. This model should be replicated at the provincial and national levels.[26]

In addition to local regulations, the government and the House of Representatives also need to encourage the drafting of the Child Marriage Elimination Bill, as a special regulation that comprehensively regulates marriage age limits, prevention mechanisms, sanctions, and the obligations of all stakeholders in protecting children's rights.[27] Such regulations will clarify the legal status of child marriage and provide a strong moral and political legal foundation for the future of child protection in Indonesia.

Conclusion

Underage marriage, although normatively restricted in the Indonesian legal system through Law Number 16 of 2019 which equalizes the minimum age of marriage to 19 years for men and women, in reality continues to take place significantly. This is mainly due to the existence of a legal loophole stemming from the provision of marriage dispensation as stipulated in Article 7 paragraph (2). This loophole allows parents or guardians to apply to the court to marry off their

[25] QS. An-Nisa: 6.

[26] **Peraturan Wali Kota Surabaya Nomor 32 Tahun 2024** tentang Pencegahan Perkawinan pada Usia Anak.

[27] Siti Nurhayati "Perkawinan Anak dan Politik Hukum Perlindungan Anak di Indonesia." *Jurnal Legislasi Indonesia*, no. 1, (2021), 234.

children who have not reached the minimum age under the pretext of "urgent reasons". In fact, in practice, these reasons are often misused to legitimize conditions that should be of concern to child protection, such as premarital pregnancy, cultural pressure, or fear of social stigma. Therefore, the practice of marriage dispensation is often a legal means to legalize systematic violations of children's rights.

Furthermore, the practice of underage marriage not only contradicts the principles of positive law that prioritize the protection of children and their rights to education, health and optimal development, but also fundamentally contradicts Qur'anic values and maqashid al-syari'ah. In Islam, law does not only emphasize legal-formal aspects, but aims to create justice, benefit, and prevention of damage (mafsadah). Therefore, when a practice such as child marriage is proven to cause harm to the soul (ḥifẓ al-nafs), intellect (ḥifẓ al-'aql), and offspring (ḥifẓ al-nasl), then the practice must be ethically and normatively prohibited and prevented. Maqashid al-syari'ah does not provide a place for policies that open space for real harm, especially to vulnerable groups such as children.

Legal reconstruction of child marriage is needed with a comprehensive and holistic approach, as suggested in Lawrence M. Friedman's legal system theory which includes three main elements: legal structure, legal substance, and legal culture. First, in terms of legal substance, it is necessary to revise the marriage dispensation provisions so that they do not open up too wide a space for free interpretation by the authorities and the community. More ideally, the dispensation provision should be abolished or strictly limited with objective indicators. Second, at the level of legal structure, it is necessary to increase the capacity of judges and other law enforcement officials, including religious instructors, so that they are able to understand and implement the principles of child protection consistently in the legal process. Third, from the legal culture aspect, the community needs to be given a correct understanding of children's rights in Islam, the value of emotional and spiritual readiness in marriage, and the importance of building a healthy and prosperous family, not just legally or culturally.

In the Qur'anic view, readiness for marriage is not solely determined by biological age or puberty, but also by intellectual, emotional and moral maturity. Interpretation of QS. An-Nisa: 6 explains that big responsibilities such as property management and, analogically, marriage, can only be given to someone who has reached the level of "rushd" or maturity of thought and action. Meanwhile, QS. Ar-Rum: 21 describes the ideal goal of marriage as a relationship that provides sakinah, mawaddah and rahmah - all of which are impossible to achieve if one party lacks mental stability, emotional intelligence and spiritual understanding.

Thus, to create a legal system that truly favors child protection and family strengthening, synergy between the state and society, including religious leaders, educators, and policy makers, is needed. The state must be actively present in

closing legal loopholes, providing assistance and education, and encouraging the transformation of community culture that has tended to be permissive of child marriage. On the other hand, the community must also internalize Qur'anic values as a collective moral basis in determining when and how someone deserves to enter the household ark. Legal reconstruction is not only a legal necessity, but also a moral and spiritual call to protect the future of Indonesian children as the next generation of people and the nation.

References

Al-Syatibi, *Al-Muwafaqat fi Ushul al-Shari'ah*, Beirut: Dar al-Kutub al-'Ilmiyyah, t.t

Farida Ulvi Na'imah, "Internalisasi Tradisi Lokal Pada Hukum Perkawinan Anak Di Kabupaten Brebes Perspektif", (Tesis UIN Sunan Ampel, 2022). http://digilib.uinsa.ac.id/49920/

Ikbal Fahri Hasan, "Analisis Penetapan Permohonan Dispensasi Kawin Di Pengadilan Agama Nabire Dalam Pemaknaan Klausa Alasan Mendesak Pada Pasal 7 Ayat 2 Undang-Undang Nomor 16 Tahun 2019", (Universitas Islam Indonesia, 2023).

Isroqunnajah, *Perkawinan dan Perceraian*, (Inara Publisher : Malang, 2023), 3Izzy Al Kautsar dkk, "Sistem Hukum Modern Lawrence M. Friedman: Budaya Hukum dan Perubahan Sosial Masyarakat dari Industri ke Digital", *Jurnal Sapientia Et Virtus,* no, 2, 2022.

Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, (New York: Russel Sage Foundation, 1975), 14.

Luthfi Ansori, *Reformasi Penegakan Hukum Perspektif Hukum Progresif*, Jurnal Yuridisno, 2017.

Peraturan Mahkamah Agung (PERMA) Nomor 5 Tahun 2019 tentang pedoman teknis bagi hakim dalam mengadili permohonan dispensasi kawin.

Peraturan Wali Kota Surabaya Nomor 32 Tahun 2024 tentang Pencegahan Perkawinan pada Usia Anak.

Al Qur'an, Surat Ar Rum : 21.

Al Qur'an, Surat. Al-Isra': 31.

Al Qur'an, Surat An-Nisa: 6.

Al Qur'an, Surat Ar-Rum: 21.

Al Qur'an, Surat At-Tahrim: 6.

Rahmi Lestari dan Subekti, "Dispensasi Perkawinan dan Perlindungan Anak: Kajian terhadap Praktik Pengadilan Agama." *Jurnal Hukum dan Peradilan*, no. 2, 2022.

Satjipto Raharjo, *Hukum dan Perubahan Sosial*,Bandung: Sinar Baru Algensindo, 2009.

Siti Nurhayati "Perkawinan Anak dan Politik Hukum Perlindungan Anak di Indonesia." *Jurnal Legislasi Indonesia*, no. 1, (2021), 234.

Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan

Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak.

UNICEF. (2020). *Child Marriage: Latest Trends and Future Prospects*. New York: UNICEF.

Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuh*, Damsyik: Dar al-Fikr, 1985

WHO. (2018). *Adolescent Pregnancy*. World Health Organization. Retrieved from https://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy

Yusuf al-Qaradawi, *Fiqh al-Awlawiyat*, Kairo: Dar al-Shuruq, 1995.