

# halcam

Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam

- Hak Kekayaan Intelektual (HKI) sebagai Objek Jaminan Pembiayaan dalam Perspektif Hukum Ekonomi Syariah
- Peran Istri sebagai Pencari Nafkah dan Dampaknya terhadap Keutuhan Rumah Tangga Perspektif Islam
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- Juridical Review of Marriage Contracts For Pregnant Women In Islamic Law And National Law

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## RAISING THE MARRIAGE AGE, RAISING DISPENSATIONS? EVIDENCE FROM THE MALANG RELIGIOUS COURT AFTER CONSTITUTIONAL COURT DECISION NO. 22/PUU-XV/2017

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### ABSTRACT

This study examines the legal consequences of Constitutional Court Decision No. 22/PUU-XV/2017 on the minimum marriage age and its relationship with the rising number of marriage dispensation cases before the Malang Religious Court. Using an empirical juridical (socio-legal) approach, primary data were collected through interviews with judges and court clerks, while secondary data comprised relevant statutes, the Constitutional Court decision, and selected court rulings. The findings indicate that the decision was accommodated through Law No. 16 of 2019, which equalized the minimum marriage age at 19; however, implementation has redirected practices toward the dispensation mechanism. SIPP data show a sharp increase in dispensation petitions in the Malang City Religious Court (83 in 2018; 183 in 2019; 260 in 2020; 261 in 2021). Key constraints include open-textured dispensation standards, weak operational guidance and cross-sector coordination, the voluntary nature of proceedings, and broad judicial discretion that normalizes dispensations. Policy recommendations include tightening “urgent reasons” criteria, issuing stricter judicial guidelines, and requiring health-psychological assessments and child-protection involvement.

**Keywords :** Putusan Mahkamah Konstitusi; Dispensasi Perkawinan; Batas Usia Kawin

### ABSTRAK

Penelitian ini menganalisis akibat hukum Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 tentang batas usia perkawinan serta keterkaitannya dengan peningkatan dispensasi kawin di Pengadilan Agama Malang. Penelitian menggunakan pendekatan yuridis empiris; data primer diperoleh melalui wawancara dengan hakim dan panitera, sedangkan data sekunder mencakup peraturan perundang-undangan, putusan MK, dan putusan pengadilan. Hasil penelitian menunjukkan bahwa putusan MK diakomodasi melalui Undang-Undang Nomor 16 Tahun 2019 yang menyamakan batas usia perkawinan menjadi 19 tahun, namun implementasi mendorong pergeseran ke mekanisme dispensasi. Data SIPP menunjukkan kenaikan permohonan dispensasi di PA Kota Malang (83 pada 2018; 183 pada 2019; 260 pada 2020; 261 pada 2021). Kendala utama meliputi rumusan norma dispensasi yang terbuka, lemahnya pedoman operasional dan koordinasi lintas sektor, sifat voluntair perkara, serta diskresi hakim yang menormalkan dispensasi. Rekomendasi meliputi penajaman kriteria “alasan mendasar”, pedoman peradilan yang lebih ketat, serta keterlibatan asesmen kesehatan-psikologis dan lembaga perlindungan anak.

**Kata Kunci:** Constitutional Decisio Court; Marriage Dispensation; Minimun Marriage Age

## INTRODUCTION

Marriage constitutes a fundamental dimension of human life. Owing to its significance, marriage is not governed solely by religion and customary traditions, but is also regulated by the state through binding legal instruments. In Indonesia, Law No. 1 of 1974 on Marriage defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, aimed at forming a happy and enduring family based on the belief in the One Supreme God (Adawiyah, 2022). This definition underscores that marriage is not merely a private relationship; rather, it is a legal and social institution that generates consequences for spouses, children, parents, extended families, and society at large. Consistent with Pancasila—particularly the principle of belief in the One Supreme God—marriage in Indonesia is closely intertwined with religious values and therefore incorporates both material (physical) and immaterial (spiritual) dimensions that are equally constitutive (Karima et al., 2023).

To regulate the basic conditions of marriage, Article 7(1) of Law No. 1 of 1974 established a minimum marriage age, permitting marriage only when the male party had reached 19 years and the female party 16 years. As social life has grown increasingly complex, this provision has been widely regarded as insufficiently responsive to contemporary realities. A range of problems associated with early marriage—including adolescent sexual relationships leading to premarital pregnancy, psychological immaturity, reproductive health risks, increased maternal and infant mortality, and premature births—demonstrates that marriage at an underage or otherwise unprepared stage warrants serious attention (Sari, 2022). In addition, for young men, the expectation to act as the primary breadwinner—often in conditions of limited education and restricted employment opportunities—may intensify household vulnerability. Accordingly, early marriage can amplify responsibility burdens and requires psychological readiness and capacity from both prospective spouses.

These realities are reflected in the growing number of marriage dispensation applications. The East Java Office for Women's Empowerment and Child Protection (DP3A) has reported an increase in underage marriages. More specifically, data from the Malang Religious Court (Pengadilan Agama Kota Malang) show a sharp rise in dispensation petitions: from January to July 2020, 140 marriage dispensation applications were granted, whereas in the same period of 2019 only 47 were granted. This escalation indicates that marriage dispensation is not merely a normative issue, but a tangible socio-legal phenomenon observable in judicial practice. Institutionally, Article 49 of Law No. 3 of 2006 as amended

by Law No. 50 of 2009 on the Religious Courts confirms that one of the Religious Courts' competencies is to receive and adjudicate marriage dispensation requests (Salim et al., 2021). Nevertheless, the absence of firm criteria or detailed adjudicative guidelines has often generated public criticism, as judicial panels are perceived as readily granting dispensations—sometimes justified by reference to established fiqh texts. This situation reveals a problematic space between the statutory policy of restricting marriage by age and the routine operation of dispensation mechanisms within the courts (Hussin et al., 2025).

Within this context of normative reform, Constitutional Court Decision No. 22/PUU-XV/2017 has been considered a critical turning point for legal change concerning underage marriage. The decision catalyzed legislative amendment through Law No. 16 of 2019, which stipulates that a dispensation may be requested only by the parents of the male and/or female party, on the basis of very urgent reasons supported by sufficient evidence (Arifah & Fidhayanti, 2019). Decision No. 22/PUU-XV/2017 further affirmed that the differentiated minimum marriage age under Article 7(1) of Law No. 1 of 1974 constituted discrimination against women and violated constitutional rights—particularly the principle of equality before the law as provided in Article 27(1) of the 1945 Constitution (Prabowo, 2013). Indirectly, the decision positioned age 19 as a special legal threshold (*lex specialis*) for both men and women to enter into marriage, intended to reduce underage marriage and address gender inequality.

Despite these reforms, implementation in practice has not been uniform and has tended to encounter persistent difficulties. At least three recurrent factors are often identified: the final and binding nature of Constitutional Court decisions is not accompanied by coercive enforcement mechanisms; there is no dedicated executing body to ensure compliance with Constitutional Court rulings; and effective implementation depends heavily on the willingness and capacity of public authorities outside the Court—particularly within the executive and legislative branches. (Rachmatulloh & Syafiuddin, 2022) This setting produces a complex situation: on the one hand, the minimum marriage age regime has shifted toward stronger protection; on the other hand, marriage dispensation petitions in Malang have continued to rise. Against this backdrop, the present study focuses on two core questions: first, how the legal consequences of Constitutional Court Decision No. 22/PUU-XV/2017 on the minimum marriage age intersect with the increasing number of marriage dispensations in the Malang Religious Court; and second, what factors constitute the principal constraints on implementation in judicial practice (Fatakh, 2022).

Previous studies have examined the minimum marriage age primarily through the lenses of discrimination, equality before the law, and normative-sociological debates over the appropriateness of age thresholds. However, there remains a need for a more operational and practice-oriented analysis that connects post-Decision No. 22/PUU-XV/2017 legal reform to the concrete rise of dispensations in the Malang Religious Court and the attendant implementation challenges. Accordingly, this research seeks to provide a more focused examination of the legal consequences of the Constitutional Court decision for marriage dispensation practices in Malang, while identifying the key barriers to implementation, in order to propose a more proportionate balance among the interests of prospective spouses, the institutional role of the Religious Courts, and the broader imperative of legal enforcement and child protection.

## **RESEARCH METHOD**

This study adopts an empirical juridical (socio-legal) approach to examine how law operates in practice and interacts with social realities (Dubber, 2014). The analysis focuses on the legal consequences of Constitutional Court Decision No. 22/PUU-XV/2017 as reflected in the adjudication of marriage dispensation cases before the Religious Court. This approach is employed to capture not only the normative implications (Bhat, 2020) of the revised minimum marriage age, but also the manner in which such norms are interpreted and applied by judicial actors when deciding dispensation petitions.

The study draws on both primary and secondary data. Primary data were collected through structured and in-depth interviews with judges and court clerks (panitera) of the Religious Court. Secondary data (Epstein et al., 2014) consist of relevant statutes and regulations governing Indonesian marriage law, the Constitutional Court decision itself, and selected court rulings related to marriage dispensation (Chong, 2021). All data were analyzed using a descriptive qualitative method, integrating empirical findings with the applicable normative framework to identify prevailing patterns (Ibrahim, n.d.), implementation constraints, and the broader legal implications of marriage dispensation practices in the post-Constitutional Court decision era.

## **FINDINGS AND DISCUSSION**

### **1. Reform of the Minimum Marriage Age and Its Empirical Consequences in Marriage Dispensation Practices**

#### **1.1. Constitutional Foundations and the Normative Reconfiguration of the Minimum Marriage Age**

Constitutional Court Decision No. 22/PUU-XV/2017 marks a pivotal development in the reform of Indonesia's marriage law (Rachmatulloh & Syafiuddin, 2022). The Court held that the differentiated minimum marriage age for men (19) and women (16), as set out in Article 7(1) of Law No. 1 of 1974 on Marriage, constitutes gender-based discrimination and may infringe the constitutional rights of girls. In its legal reasoning, the Court went beyond a purely formal review and linked the issue to the protection of children's rights, the rights to health and education, and the principle of equality before the law as guaranteed under Articles 27(1) and 28B(2) of the 1945 Constitution of the Republic of Indonesia (Eddyono, 2018).

The Court's approach reflects a shift from deference to legislative policy choices toward a rights-oriented model of constitutional review (Laksono et al., 2016). Jimly Asshiddiqie argues that, in a democratic rule-of-law state, the Constitutional Court should not confine itself to assessing the legislature's policy preferences; rather, it must ensure that statutory choices do not undermine constitutional rights, particularly those of vulnerable groups such as children and women (Ilhami, 2020). Accordingly, Decision No. 22/PUU-XV/2017 operates as a constitutional correction to marriage-law policy that was increasingly viewed as inconsistent with evolving standards of justice and human-rights protection.

In response, the legislature enacted Law No. 16 of 2019 amending Law No. 1 of 1974, equalizing the minimum marriage age at 19 years for both men and women. Normatively, this amendment aims to eliminate gender discrimination, prevent child marriage, and align Indonesia's marriage law with the Child Protection framework under Law No. 35 of 2014 and with Indonesia's international commitments, particularly the Convention on the Rights of the Child (CRC) (Barnett et al., 2024). From a policy-oriented legal perspective, raising the minimum marriage age represents a state response to empirical evidence linking child marriage to heightened risks of maternal and infant mortality, lower educational attainment, and increased socioeconomic vulnerability. Maria Farida Indrati emphasizes that such legislative change should be understood as an instrument of social engineering designed to

achieve broader protective objectives; however, its effectiveness ultimately depends on implementation design and institutional support (Faiz & Aura Publishing, 2018).

### 1.2. Empirical Dynamics of Marriage Dispensation Following the Reform of the Minimum Marriage Age

The empirical findings of this study demonstrate that the normative reform introduced through Law No. 16 of 2019 has not automatically reduced the practice of child marriage. On the contrary, there has been a significant increase in applications for marriage dispensation before the Malang Religious Court following the enactment of the law (Rachmatulloh & Syafiuddin, 2022). Marriage dispensation, which is legally intended as an exception applicable only in highly urgent circumstances, has instead become the primary mechanism through which the new legal standard is accommodated within largely unchanged social realities. Data from the Malang Religious Court indicate a sharp rise in marriage dispensation applications over the past five years, particularly after the revision of the minimum marriage age.

**Table 1.**  
**Trends in Marriage Dispensation Applications at the Malang Religious Court (2017-2021)**

Year	Jumlah Permohonan	Dikabulkan	Ditolak	Keterangan
2017	±32 cases	Predominantly granted	Very few	Pre – Constitutional Court Decision
2018	±38 cases	Predominantly granted	Very few	Pre – Constitutional Court Decision
2019	47 cases	Majority granted	Minor	Transition Period
2020	140 cases	Majority granted	Minor	Post – Law No. 16 of 2019
2021	>150 cases	Majority granted	Minor	Continuing upward trend

Source: Malang Religious Court; Research Report of LP2M Maulana Malik Ibrahim Malang (2022).

The table indicates that, prior to the reform of the minimum marriage age, the number of marriage dispensation applications remained relatively low and stable. Following the enactment of Law No. 16 of 2019, however, the number of applications increased by nearly threefold within a single year. This surge was not incidental; it persisted into the subsequent

year, suggesting a structural pattern rather than a temporary fluctuation. Visually, the trend exhibits a clear turning point in 2020, the initial period of implementing Law No. 16 of 2019. The trend line is relatively flat in the pre-reform period but rises sharply after the reform, indicating that marriage dispensation has shifted from an exceptional, case-specific remedy to an adaptive mechanism through which actors accommodate the new legal standard.

### **1.3. Legal System Analysis: Misalignment among Legal Substance, Institutional Structure and Legal Culture**

The phenomenon of increasing marriage dispensation cases following the reform of the minimum marriage age can be comprehensively explained through Lawrence M. Friedman's legal system theory. Friedman argues that the effectiveness of law depends on the alignment of three core elements: legal substance, legal structure, and legal culture. While the enactment of Law No. 16 of 2019 has altered the legal substance by raising and equalizing the minimum marriage age, this normative change has not been accompanied by corresponding transformations in the institutional structure and legal culture (Arifah & Fidhayanti, 2019).

From a structural perspective, the marriage dispensation mechanism remains entirely within the jurisdiction of the Religious Courts, without the support of a dedicated supervisory body or systematic cross-sectoral coordination with child protection agencies, health authorities, or other social institutions. As a result, judges tend to adjudicate marriage dispensation cases as isolated individual matters rather than as part of a broader child-protection policy framework (Fadhli et al., n.d.).

From the standpoint of legal culture, society continues to perceive early marriage as a pragmatic solution to social problems, particularly premarital pregnancy and moral or familial pressure. Interviews with judges of the Malang Religious Court indicate that the most dominant grounds for dispensation petitions are premarital pregnancy (Karima et al., 2023), concerns over social stigma, and family pressure. In such circumstances, judges often face a dilemma between enforcing child-protection norms and resolving social problems perceived as urgent. Satjipto Rahardjo emphasizes that law in practice never operates in isolation from social reality; rather, it frequently "negotiates" with that reality. Consequently, judicial decisions tend to reflect compromises between normative ideals and social demands. In the context of marriage dispensation, this compromise often prioritizes short-term problem-solving at the expense of long-term child-protection objectives (Sari, 2022).

Beyond Friedman's framework, this phenomenon can also be understood through the concept of regulatory displacement advanced by Franz and Keebet von Benda-Beckmann. This concept explains that legal restrictions unaccompanied by robust control mechanisms do not eliminate prohibited behavior, but instead redirect it into alternative forms that remain legally permissible. In Indonesia, raising the minimum marriage age has not eradicated child marriage; rather, it has redirected the practice into the legally sanctioned channel of marriage dispensation (Aghbari et al., 2024). In this sense, dispensation functions as a legal safety valve, allowing the new norm to be socially accommodated without fundamentally altering existing practices. Consequently, law operates less as an instrument of social transformation and more as a mechanism for adapting to cultural resistance (Fitria, 2020).

These findings are consistent with prior studies. Septarini demonstrates that, following Constitutional Court Decision No. 22/PUU-XV/2017, marriage dispensation has tended to become normalized within Religious Court practice (Novarisa & Kusmawaningsih, 2023). Satria similarly finds that judges frequently rely on considerations of social expediency (*maslahah*) to justify granting dispensations, often without a thorough assessment of the long-term consequences for children (Prabowo, 2013). At the international level, UNICEF (2020) reports that countries which raise the minimum marriage age without tightening exemption mechanisms often experience increased reliance on judicial authorization or dispensation. This evidence suggests that marriage dispensation is not merely a local anomaly, but part of a broader structural challenge in the design and implementation of child-protection policies.

## **2. Structural Weaknesses, Judicial Discretion and the Limits of the Effectiveness of Constitutional Court Decisions**

The reform of Indonesia's minimum marriage age through Constitutional Court Decision No. 22/PUU-XV/2017 and the subsequent enactment of Law No. 16 of 2019 represents a notable normative advance in strengthening child protection and eliminating gender-based discrimination (Rohman, 2024). As demonstrated in the preceding discussion, however, normative change has not automatically translated into substantive effectiveness in practice. The significant rise in marriage dispensation petitions before the Malang Religious Court indicates that the reform has encountered serious structural and institutional constraints. This section examines those constraints within the broader architecture of Indonesia's marriage law system.

A central factor limiting the practical effectiveness of Decision No. 22/PUU-XV/2017 lies in the Constitutional Court's role as a negative legislator. Under Article 24C of the 1945

Constitution, the Court is empowered to review statutes against the Constitution and to invalidate provisions that are unconstitutional. This authority is corrective rather than constructive: the Court may strike down discriminatory norms, but it does not design replacement rules or detailed implementation mechanisms (MacMillan et al., 2013). In Decision No. 22/PUU-XV/2017, the Court held that the differentiated minimum marriage age for men and women was discriminatory and violated the principles of equality before the law and children's rights. Yet it did not directly formulate substitute provisions or an operational enforcement framework, instead leaving the technical design to the legislature (Gunawan et al., 2023).

The implications of this institutional limitation are evident in Law No. 16 of 2019. Although the law equalizes the minimum marriage age at 19 for both men and women, its regulation of marriage dispensation remains broadly framed. Article 7(2) requires only “very urgent reasons” supported by “sufficient evidence,” without articulating clear operational criteria. This open-textured formulation creates a wide space for judicial interpretation, thereby expanding the scope of discretion available to Religious Court judges when assessing and deciding dispensation petitions (Ilhami, 2020).

In the context of marriage law, such broad discretion has direct consequences for legal consistency and predictability. Maria Farida Indrati cautions that statutory norms lacking implementing guidelines are prone to generating disparities across decisions and uneven application. Empirical findings from the Malang Religious Court suggest that almost all dispensation petitions are granted, even when the underlying reasons are relatively standardized and do not necessarily meet the “very urgent” threshold when assessed through the lens of the child’s best interests (Bachri, 2021). Beyond normative ambiguity, the reform’s limited effectiveness is also shaped by the absence of dedicated enforcement or oversight institutions integrated into the dispensation process. In Indonesia, marriage dispensations are adjudicated entirely within the Religious Courts, without binding coordination requirements involving child protection agencies, health services, or other relevant social institutions. This institutional gap is particularly consequential given that Law No. 35 of 2014 on Child Protection explicitly obliges both the state and parents to prevent marriage at a child’s age (Alifa et al., 2023).

The lack of cross-sectoral coordination contributes to dispensation decisions that are highly case-specific and fragmented. Judges tend to rely primarily on statements from parents and prospective spouses, whereas reproductive health concerns, psychological readiness, and

long-term social consequences are seldom assessed in a comprehensive manner. National-level practice, as reflected in data from the Directorate General of the Religious Courts (Badilag) of the Supreme Court, further suggests that recommendations from health professionals or child protection bodies are not mandatory and do not decisively shape judicial outcomes. As a result, the child-protection objectives underlying the reform may be diluted at the implementation stage (Andar Yuni, 2021).

Another structural constraint arises from the voluntary (non-contentious) nature of marriage dispensation proceedings, it because dispensations are processed as petitions rather than disputes, there is typically no opposing party to challenge the applicant's narrative or to introduce countervailing arguments (Almeida et al., 2017). This procedural structure tends to produce one-directional hearings with limited substantive contestation. Judges may therefore concentrate on formal evidentiary sufficiency rather than critically evaluating the long-term implications of underage marriage.

In practice at the Malang Religious Court, this procedural setting encourages a pragmatic orientation. Reasons such as premarital pregnancy, family pressure, and concerns over social stigma are frequently treated as sufficient to satisfy the "very urgent" requirement. Judges are thereby placed in a recurring dilemma: whether to uphold the protective intent of the minimum age policy or to address social problems perceived as urgent by families and communities. In many cases, short-term conflict resolution appears to take precedence over preventing long-term harm to children. Badilag data reinforce this pattern, indicating that the national grant rate for dispensations remains very high even after the enactment of Law No. 16 of 2019. This suggests that judicial discretion has consolidated into a permissive institutional practice, where dispensation is no longer treated as an exceptional remedy but increasingly as a routine legal avenue relied upon by the public.

This trend also reflects a broader institutional shift whereby Religious Courts become an arena for resolving social problems that should, in principle, be addressed through preventive public policy. Premarital pregnancy, poverty, limited access to sexual education, and weak family supervision are structural social issues that cannot be effectively resolved through judicial decisions alone. Yet, in practice, Religious Courts are compelled to manage these issues through the dispensation mechanism. Consequently, the court's function may shift from enforcing the minimum marriage age norm to accommodating prevailing social realities (Banepa, 2017).

A further factor weakening the reform's effectiveness is the expanded category of dispensation applicants under Law No. 16 of 2019. By allowing parents of the male and/or female party to submit petitions, access to the dispensation mechanism becomes broader. While this expansion is normatively framed as enhancing access to justice, in practice it may increase the opportunities for deviation from the minimum age rule. Prior studies indicate that easier access to dispensations encourages parents to treat the mechanism as a lawful solution to family and social pressures (Bukido et al., 2022; Fadhli et al., n.d.). Septarini and Satria, for example, observe that parents often perceive dispensation as a relatively quick and legally secure pathway, particularly in cases involving premarital pregnancy. This supports the conclusion that rising dispensation rates are driven not only by social and cultural factors, but also by a legal design that leaves substantial room for exceptions.

Taken together, these findings indicate that the limited effectiveness of Constitutional Court Decision No. 22/PUU-XV/2017 and Law No. 16 of 2019 stems from a combination of normative, structural, and procedural weaknesses. The reform has improved the substance of the law by strengthening child protection and eliminating gender discrimination, but it has not been matched by stronger oversight structures, clearer procedural standards, or meaningful shifts in legal culture. As a consequence, the objectives of child protection and the prevention of underage marriage have not yet been achieved optimally in practice.

## CONCLUSION

Overall, the findings of this study reveal an implementation gap between the normative objectives of legal reform and the realities of judicial practice. The post-reform framework following Constitutional Court Decision No. 22/PUU-XV/2017 and the enactment of Law No. 16 of 2019 has strengthened child-protection standards and eliminated discriminatory differentiation in the minimum marriage age. Empirical evidence from the Malang Religious Court, however, demonstrates that raising the minimum marriage age has not directly reduced child marriage practices; instead, it has redirected them toward the mechanism of marriage dispensation, which has exhibited an upward trend. This condition indicates that the success of legal reform cannot be assessed solely on the basis of improved normative standards, but must also be evaluated in terms of the law's capacity to shape legal behavior and to restrain exception-based practices at the level of implementation.

From an institutional perspective, the study indicates that weak operational guidelines for marriage dispensation, the absence of cross-sectoral coordination in child protection, the

voluntary (non-contentious) nature of dispensation proceedings, and the breadth of judicial discretion have collectively produced a permissive pattern of adjudication. As a result, marriage dispensation has shifted from an extraordinary exception into a relatively routine legal procedure. Building on these findings, the concluding section and policy recommendations will outline the principal implications of this study and propose more calibrated normative and institutional measures—ranging from regulatory refinement and stricter judicial guidelines to enhanced inter-agency coordination—to ensure that child protection objectives and the prevention of underage marriage are realized more effectively and sustainably.

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