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Marriage Dispensation and Child Protection in Indonesia: Harmonizing the Sexual Violence Crimes Law with KUA Marriage Registration

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Abstract

The regulation of marriage dispensation within the Indonesian legal system continues to present implementation challenges, particularly following the enactment of the Minister of Religious Affairs Regulation Number 30 of 2024 concerning Marriage Registration and Law Number 12 of 2022 on the Crime of Sexual Violence. Law Number 16 of 2019 and Supreme Court Regulation Number 5 of 2019 continue to provide legal grounds for granting marriage dispensations through court decisions, whereas Law Number 12 of 2022 prioritizes child protection by prohibiting forced marriage and practices related to child marriage. These differing regulatory orientations place the Office of Religious Affairs (Kantor Urusan Agama KUA) in a dilemma, as it is legally obligated to register marriages based on court-issued dispensation decisions while simultaneously supporting the national policy on child protection. This study aims to analyze the legal framework governing marriage dispensation, examine the normative disharmony between the Minister of Religious Affairs Regulation Number 30 of 2024 and Law Number 12 of 2022, and formulate a regulatory harmonization model capable of ensuring legal certainty for the KUA while strengthening child protection. This study employs a normative legal research method using statutory, conceptual, and legal synchronization approaches. The data were collected through library research and analyzed qualitatively by applying the principles of lex superior derogat legi inferiori, lex specialis derogat legi generali, and legal harmonization. The findings reveal that the issue does not arise from a direct conflict of legal norms but rather from differing policy orientations that create uncertainty in implementation. The KUA is only authorized to register marriages based on court-issued marriage dispensation decisions. Therefore, regulatory harmonization is required through legislative synchronization, standardized criteria for granting marriage dispensations, strengthened inter-agency coordination, and the optimization of the KUA's preventive role to ensure legal certainty and enhance child protection.

Keyword: Marriage Dispensation; Child Protection; Sexual Violence Crimes Law; Office of Religious Affairs (KUA); Legal Harmonization.

Abstrak

Pengaturan dispensasi perkawinan dalam sistem hukum Indonesia terus menghadirkan tantangan dalam pelaksanaannya, terutama setelah diberlakukannya Peraturan Menteri Agama Nomor 30 Tahun 2024 tentang Pencatatan Perkawinan dan Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual. Undang-Undang Nomor 16 Tahun 2019 dan Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tetap memberikan landasan hukum untuk pemberian dispensasi perkawinan melalui putusan pengadilan, sedangkan Undang-Undang Nomor 12 Tahun 2022 mengutamakan perlindungan anak dengan melarang perkawinan paksa dan praktik-praktik yang berkaitan dengan perkawinan anak. Perbedaan orientasi regulasi ini menempatkan Kantor Urusan Agama (KUA) dalam dilema, karena secara hukum diwajibkan untuk mendaftarkan perkawinan berdasarkan putusan dispensasi yang dikeluarkan pengadilan, sekaligus mendukung kebijakan nasional mengenai perlindungan anak. Penelitian ini bertujuan untuk menganalisis kerangka hukum yang mengatur dispensasi perkawinan, mengkaji ketidaksesuaian normatif antara Peraturan Menteri Agama Nomor 30 Tahun 2024 dan Undang-Undang Nomor 12 Tahun 2022, serta merumuskan model harmonisasi peraturan yang mampu menjamin kepastian hukum bagi KUA sekaligus memperkuat perlindungan anak. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan yuridis, konseptual, dan sinkronisasi hukum. Data dikumpulkan melalui penelitian pustaka dan dianalisis secara kualitatif dengan menerapkan prinsip-prinsip lex superior derogat legi inferiori, lex specialis derogat legi generali, serta harmonisasi hukum. Temuan penelitian menunjukkan bahwa permasalahan ini tidak timbul dari konflik langsung antar norma hukum, melainkan dari perbedaan orientasi kebijakan yang menimbulkan ketidakpastian dalam pelaksanaannya. KUA hanya berwenang untuk mencatat perkawinan berdasarkan putusan dispensasi perkawinan yang dikeluarkan oleh pengadilan. Oleh karena itu, diperlukan harmonisasi regulasi melalui sinkronisasi perundang-undangan, kriteria standar dalam pemberian dispensasi perkawinan, penguatan koordinasi antarlembaga, serta optimalisasi peran preventif KUA guna memastikan kepastian hukum dan meningkatkan perlindungan anak.

Kata Kunci*:* Dispensasi Perkawinan; Perlindungan Anak; Undang-Undang Tindak Pidana Kekerasan Seksual; Kantor Urusan Agama (KUA); Harmonisasi Hukum.

Introduction

Marriage is a legal institution that serves not only as a means of forming a family but also as an instrument for protecting the rights of husbands, wives, and children. Therefore, the state strictly regulates the requirements for marriage through Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019. These amendments set the minimum age for marriage at 19 years for both men and women as part of the state's commitment to reducing the rate of child marriage and improving the quality of human resources. Nevertheless, the law still provides for exceptions through a marriage dispensation mechanism, which may be granted by a court if there are compelling reasons supported by sufficient evidence.[1]

As a follow-up to these provisions, the government issued Minister of Religious Affairs Regulation No. 30 of 2024 on Marriage Registration, which governs the procedures for registering marriages for Muslims. The regulation stipulates that prospective spouses who have not yet reached the age of 19 must submit a court-issued marriage dispensation as an administrative requirement for marriage registration at the Office of Religious Affairs (KUA).

[1] Ilham Aji Rmadhan dkk., "Dispensasi Nikah Dalam Perspektif Hukum Positif Dan Hukum Islam: Analisis Terhadap Perlindungan Hak Anak Di Indonesia," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 4, no. 3 (2026): 5454–62, https://doi.org/10.61104/alz.v4i3.6234.

This regulation indicates that the state still provides legal leeway for marriages below the minimum age limit through a dispensation mechanism decided by the judiciary.On the other hand, the paradigm of child protection has undergone significant development following the enactment of Law No. 12 of 2022 on Criminal Acts of Sexual Violence (TPKS Law). Through Article 10, this law stipulates that forced marriage constitutes a form of sexual violence, including when committed against a child or used as a means to resolve a sexual violence offense. Furthermore, the UU TPKS defines a child as any person under the age of 18, making child protection one of the primary focuses in the drafting of this law.

The coexistence of these two legal frameworks raises implementation issues that are worth examining. On the one hand, marriage law still allows for marriages involving individuals under the age of 19 through court dispensations, while on the other hand, the state continues to strengthen policies to prevent child marriage through instruments for child protection and the eradication of sexual violence. This situation does not necessarily indicate a direct conflict of norms, but it does reveal a lack of harmony in the regulations that has the potential to create uncertainty in the enforcement of the law, particularly during the marriage registration process.

This discord is most acutely felt by the Office of Religious Affairs (KUA), as the agency authorized to register marriages for Muslims. By virtue of its authority, the KUA is required to register a marriage once all administrative requirements have been met, including the issuance of a marriage dispensation by the court. However, at the same time, the KUA is also an institution responsible for fostering harmonious families, preventing child marriage, and protecting the rights of women and children. As a result, KUA officials find themselves in a dilemma between upholding the principle of legality based on court rulings and supporting child protection policies—which are the driving force behind the TPKS Law.

Research on marriage dispensations generally focuses more on judges' considerations in granting dispensations, the factors contributing to child marriage, and the effectiveness of changes to the minimum marriage age. Meanwhile, studies that specifically analyze the conflict between Government Regulation No. 30 of 2024—which serves as the administrative basis for marriage registration—and child protection policies under Law No. 12 of 2022, as well as its implications for the authority of the KUA, remain relatively limited. Therefore, this study offers a new perspective by positioning the KUA as a state administrative institution situated between two legal frameworks with differing orientations: the KUA is in a position where it must implement marriage administration regulations while simultaneously adhering to child protection provisions.

Based on the above discussion, this article examines two main issues: first, the regulatory inconsistencies between Government Regulation No. 30 of 2024 on Marriage Registration and Law No. 12 of 2022 on Sexual Violence Crimes regarding provisions on marriage dispensations and child protection; and Second, how this inconsistency affects the

authority and implementation of marriage registration by the Office of Religious Affairs, as well as what model for regulatory harmonization can be achieved. The results of this study are expected to provide a conceptual contribution to the development of marriage law in Indonesia, particularly in formulating harmonization between policies on marriage dispensations, marriage registration, and child protection. Furthermore, this study is expected to serve as input for policymakers in drafting more synchronized regulations, thereby reducing the legal uncertainty faced by the Office of Religious Affairs in carrying out its marriage registration duties.

Research Methods

This study is a normative legal research project that aims to analyze the inconsistencies in the regulations governing marriage dispensations within the Indonesian legal system, specifically the relationship between Law No. 16 of 2019 Amending Law No. 1 of 1974 on Marriage, Law No. 12 of 2022 on Criminal Offenses of Sexual Violence, Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Marriage Dispensations, and Minister of Religious Affairs Regulation No. 30 of 2024 on Marriage Registration. The research focuses on the characteristics of legal issues arising from differing policy orientations: on one hand, regulations that allow for marriage dispensations as exceptions to the minimum marriage age; on the other hand, regulations that prioritize child protection. This difference in orientation creates implementation challenges for the Office of Religious Affairs (KUA) in registering marriages based on court-granted marriage dispensations. Therefore, this study uses legal materials as its primary research source.[2]

This study employs three approaches: the statutory approach, the conceptual approach, and the legal synchronization approach. The statutory approach is used to identify and examine legal provisions governing the minimum age for marriage, marriage dispensations, child protection, the authority of the KUA, and marriage registration. The conceptual approach is used to analyze legal doctrines and theories, particularly the theory of administrative authority, the theory of legal certainty, the theory of legal protection, and the theory of legislative harmonization as a basis for explaining the status of the KUA as a state administrative official. Meanwhile, a legal synchronization approach is used to assess the consistency of both vertical and horizontal relationships among legal regulations to determine whether there are conflicts of norms, overlapping authorities, or merely

[2] Alfan Maulana dkk., "Metode Penelitian Hukum Normatif Dalam Menjawab Tantangan Dinamika Peraturan Perundang-Undangan," *Jurnal Penelitian Ilmiah Interdisipliner* 9, no. 11 (2025), https://sejurnal.com/pub/index.php/jpii/article/view/2149.

differences in legal policy orientation regarding the regulation of marriage dispensations and child protection.[3]

The research data in this study consists of primary and secondary data. Primary data includes Law No. 16 of 2019, Law No. 12 of 2022 on Sexual Violence Crimes, Law No. 35 of 2014 on Child Protection, Supreme Court Regulation No. 5 of 2019, Regulation of the Minister of Religious Affairs No. 30 of 2024. Meanwhile, secondary data was obtained from books, scientific journal articles, and various other academic literature related to the research focus. Data collection was conducted through library research by reviewing various relevant laws and regulations, books, and scientific articles. Subsequently, all legal materials obtained were inventoried, classified based on the substance of the issues, and then analyzed and systematically organized in accordance with the research focus.[4]

Data analysis was conducted qualitatively using descriptive-analytical methods. The stages included an inventory of regulations related to marriage dispensations, marriage registration, and child protection, which were then analyzed through vertical and horizontal harmonization with the Marriage Law, the TPKS Law, the Child Protection Law, PERMA No. 5 of 2019, and PMA No. 30 of 2024. Subsequently, an interpretation was conducted based on the principles of lex superior derogat legi inferiori, lex specialis derogat legi generali, as well as the theories of authority, legal certainty, and legal protection. This analysis was aimed at formulating regulatory harmonization that provides legal certainty for the KUA while simultaneously strengthening child protection.[5]

Results and Discussion

1. Regulations on Marriage Dispensations in the Indonesian Marriage Legal System

A marriage dispensation is a legal mechanism that grants an exception to the minimum age for marriage under certain circumstances. It is intended to strike a balance between legal certainty, child protection, and the urgent circumstances faced by the prospective spouses. A dispensation is not granted automatically but must be approved by a court after the specified requirements have been met.

Regulations regarding the minimum age for marriage in Indonesia have undergone significant changes. Law No. 1 of 1974 previously set the minimum age at 19 years for men and 16 years for women. This disparity was subsequently deemed to have the potential to lead to discrimination and was deemed insufficient in providing protection for children.

[3] Muhammad Hendri Yanova dkk., "Metode Penelitian Hukum: Analisis Problematika Hukum Dengan Metode Penelitian Normatif Dan Empiris," *Badamai Law Journal* 8, no. 2 (2023): 394–408, https://doi.org/10.32801/damai.v8i2.17423.

[4] Sidi Wiraguna, "Eksplorasi Metode Penelitian Dengan Pendekatan Normatif Dan Empiris Dalam Penelitian Hukum Di Indonesia," *Lex Jurnalica* 22, no. 1 (2025), https://doi.org/10.47007/lj.v22i1.8801.

[5] Muhammad Darish Alfi Putra Nurhady dkk., "Harmonisasi Peraturan Perundang-Undangan Sebagai Upaya Mewujudkan Kepastian Hukum Di Indonesia," *Jurnal Ilmiah Penelitian Mahasiswa* 4, no. 4 (2026): 498–506, https://doi.org/10.61722/jipm.v4i4.2722.

Through Constitutional Court Decision No. 22/PUU-XV/2017, these provisions were adjusted and subsequently implemented through Law No. 16 of 2019, which set the minimum marriage age for both men and women at 19 years. This policy is aimed at strengthening child protection, preventing child marriage, safeguarding reproductive health, and ensuring the continuity of education.[6]

Although the age limit has been clearly established, Law No. 16 of 2019 still provides for an exception under Article 7, paragraph 2. In the event of a deviation from this age limit, the parents of the prospective bride and groom may apply to the court for a dispensation on the grounds of compelling circumstances, accompanied by sufficient supporting evidence. Thus, a dispensation is the result of a judicial review that must take into account legal, social, psychological, and health considerations, as well as the best interests of the child.[7]

These provisions are reinforced by PERMA No. 5 of 2019 on Guidelines for Adjudicating Petitions for Marriage Dispensations. This regulation establishes the best interests of the child, non-discrimination, gender equality, and the protection of children's growth and development as the guiding principles in the adjudication of such cases. Judges must also consider the parties' physical and psychological conditions, education, health, and economic circumstances, as well as their statements, before ruling on a request for a marriage dispensation.[8]

However, the implementation of these provisions still faces challenges, particularly regarding the lack of uniformity in interpreting the concept of "compelling reasons." Differences in interpreting these grounds can lead to variations in judicial reasoning and rulings across courts. This situation indicates that marriage dispensations should be treated as an exceptional mechanism reserved for extraordinary circumstances, not as a means to legitimize child marriage. Therefore, it is essential to apply consistent standards of judicial review while prioritizing the best interests of the child and the protection of children's rights.

2. Conflict of Provisions between Presidential Regulation No. 30 of 2024 and Law No. 12 of 2022 on Sexual Violence Crimes

The evolution of marriage law in Indonesia reflects a shift in focus from merely regulating the legality of marriage toward strengthening the protection of children's rights and human rights. This shift is reflected in Law No. 16 of 2019, PERMA No. 5 of 2019, and Law No. 12 of 2022 on Criminal Acts of Sexual Violence. The Sexual Violence Crimes Act (UU TPKS)

[6] Miftakur Rohman, "Dispensasi Perkawinan Dan Kebijakan Politik Hukum Di Indonesia," *MASADIR: Jurnal Hukum Islam* 3, no. 01 (2023): 556–71, https://doi.org/10.33754/masadir.v3i01.677.
[7] Arif Hidayat dkk., "Dispensasi Kawin Dengan Alasan Sangat Mendesak Di Mojokerto: Analisis Yuridis Atas Perma No. 5 Tahun 2019," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 16, no. 2 (2024): 483–98, https://doi.org/10.32505/jurisprudensi.v16i2.9416.
[8] Nurhilal Nazri Arif dkk., "Problematika Hukum Formil Terhadap Ketentuan Perma Nomor 05 Tahun 2019 Tentang Pengajuan Dispensasi Kawin Perspektif Maslahah Mursalah," *YUSTISI* 11, no. 2 (2024): 137–48, https://doi.org/10.32832/yustisi.v11i2.16670.

and Law No. 35 of 2014 establish the best interests of the child as a key principle, defining a child as a person under the age of 18. Meanwhile, Law No. 16 of 2019 sets the minimum age for marriage at 19 years. These differing age limits do not, in principle, indicate a direct conflict of norms, as each law has a distinct scope of regulation; however, they can raise issues when a child under the age of 18 is granted a dispensation to marry.[9]

Article 10 of Law No. 12 of 2022 explicitly defines forced marriage as a form of sexual violence. This provision covers marriages entered into through pressure or coercion against the victim, including marriages used as a means to resolve issues arising from sexual violence. Thus, the primary focus of Article 10 is not on the prohibition of marriage dispensations, but rather on the element of coercion that deprives a person of the freedom to make their own marriage choices.[10]

Therefore, granting a waiver through court proceedings does not automatically conflict with the TPKS Law, provided that the process is conducted in accordance with the law and continues to prioritize the best interests of the child. Conversely, a waiver can become problematic if it is used to legitimize a marriage that occurred due to family pressure, social or customary demands, or as an attempt to cover up sexual violence. In such circumstances, the granting of a dispensation has the potential to conflict with the principle of child protection.[11]

Essentially, a marriage dispensation is an exception mechanism intended only for specific circumstances and must be subject to court oversight. However, in practice, reasons such as pregnancy outside of marriage, social pressure, and cultural or customary factors can turn a dispensation into a legal loophole that potentially perpetuates the practice of child marriage.[12]

This situation highlights a discrepancy in approach between the mechanisms for granting marriage exemptions and child protection policies. Marriage law still allows for exceptions through the courts, whereas child protection policies place greater emphasis on preventing child marriage because it can have negative impacts on education, health, growth and development, and protection from violence.

From the perspective of "lex superior derogat legi inferiori," Ministerial Regulation (PMA) No. 30 of 2024, as a ministerial regulation, must comply with and may not conflict with the provisions of laws, including Law No. 16 of 2019 and Law No. 12 of 2022. The PMA

[9] Fahadil Amin Al Hasan dan Deni Kamaluddin Yusup, "Dispensasi Kawin Dalam Sistem Hukum Indonesia: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021): 86–98, https://doi.org/10.14421/ahwal.2021.14107.
[10] Tuti Munawarah, "Consistency of the Implementation of PERMA Number 5 of 2019 in the Marriage Dispensation Decision: A Child Protection Perspective," *Al-Rasīkh: Jurnal Hukum Islam* 15, no. 1 (2026): 87–104, https://doi.org/10.38073/rasikh.4575.
[11] Ramelan dan Nurtsani, "Disfungsi Dispensasi Kawin Dalam Pencegahan Perkawinan Anak Di Indonesia."
[12] Asman Asman, "Masa Depan Terancam: Dispensasi Perkawinan Dan Dampak Negatif Pada Anak Dan Keluarga," *Journal of Dual Legal Systems* 1, no. 2 (2024): 73–86, https://doi.org/10.58824/jdls.v1i2.223.

essentially serves to regulate the administrative aspects of marriage registration based on the authority granted by applicable laws and regulations.[13] Meanwhile, the principle of "lex specialis derogat legi generali" indicates that every regulation must be applied in accordance with its scope and regulatory purpose.[14]

Thus, the issue between Ministerial Regulation No. 30 of 2024 and Law No. 12 of 2022 is more accurately understood as a discrepancy in policy orientation rather than a direct conflict of norms. The Ministerial Regulation focuses on the administrative order of marriage registration based on court rulings, while the Law on the Prevention and Eradication of Violence Against Children emphasizes child protection and the prevention of forced marriage. This difference in orientation can create implementation challenges for the KUA, which must carry out court rulings while simultaneously supporting child protection policies. Therefore, regulatory harmonization is necessary to ensure that the implementation of marriage registration continues to provide legal certainty without disregarding the best interests and protection of children's rights.[15]

3. The Dilemma of Implementing Marriage Registration by the Office of Religious Affairs

The Office of Religious Affairs (KUA) is a technical implementation unit of the Ministry of Religious Affairs responsible for providing marriage administration services at the subdistrict level. Marriage registration serves not only as an administrative procedure but also as a means of providing legal certainty and state recognition of a marriage. Therefore, the KUA's duties must be carried out in accordance with laws and regulations and the principle of legality.[16]

In the context of marriage dispensations, the authority to grant a dispensation lies with the Religious Court, not the KUA. After the court issues a dispensation order, the KUA performs administrative functions by verifying the validity of the documents, the identities of the parties, and the completeness of the requirements before registering the marriage.[17] Thus, the role of the KUA in cases involving dispensations is administrative in nature and does not include the authority to review the substance of a court's decision.[18]

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[13] Nada Fajarwati dkk., "Implikasi Asas Lex Specialis Pada Penetapan Usia Nikah Dan Dispensasinya Di Indonesia," *Khatulistiwa Law Review* 5, no. 1 (2024): 14–24, https://doi.org/10.24260/klr.v5i1.5115.
[14] Hidayat dkk., "Dispensasi Kawin Dengan Alasan Sangat Mendesak Di Mojokerto."
[15] Muhammad Akmal Fattah dan Fitria Agustin, "Tinjauan Yuridis Perkawinan Di Bawah Umur Di Kalangan Mahasiswa Berdasarkan Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan," *Causa: Jurnal Hukum Dan Kewarganegaraan* 16, no. 7 (2026): 431–40, https://doi.org/10.6679/0y3g8v62.
[16] Galuh Saipul, "Peran Penghulu Terhadap Pencatatan Perkawinan," *ATTAQWA: Jurnal Hukum Islam* 1, no. 1 (2024): 30–38.
[17] Pijri Paijar, "Kewenangan Pegawai Pencatat Nikah Di Kantor Urusan Agama Dalam Menolak Kehendak Nikah (Studi Kantor Urusan Agama Kecamatan Rancabali)," *Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga Dan Peradilan Islam* 5, no. 2 (2024): 187–200, https://doi.org/10.15575/as.v5i2.31070.
[18] Saipul, "Peran Penghulu Terhadap Pencatatan Perkawinan."

PMA No. 30 of 2024 stipulates that a court-issued dispensation is one of the requirements for prospective spouses who have not yet reached the age of 19. Therefore, provided that such a dispensation is valid and the administrative requirements have been met, the KUA, in principle, will proceed with the registration in accordance with applicable regulations. This situation indicates that the KUA's authority is of a "bound" nature, as its exercise is limited and guided by statutory provisions.[19]

In practice, the marriage officiant verifies the granting of the dispensation, the identities of the prospective spouses, and other administrative documents before the marriage is registered. This division of authority demonstrates that the Religious Court plays a role in determining whether or not a dispensation should be granted, while the KUA carries out the registration process once the legal requirements have been met.

The issue arises when a dispensation is granted to prospective spouses who are still classified as children under child protection provisions. This situation places the KUA in a dilemma between its obligation to enforce court rulings based on the principle of legality and the need to support child protection policies and the best interests of the child. In this context, the issue is best understood as a difference in legal policy orientation, rather than a direct conflict of authority.[20]

The KUA's refusal to recognize a marriage that has received a court dispensation has the potential to create legal uncertainty because the KUA does not have the authority to annul or set aside that ruling.[21] From an administrative law perspective, the KUA may only act within the limits of the authority granted by law. [22] On the contrary, the registration of marriages based on a court order is a form of fulfilling an administrative obligation in accordance with the principle of legality; it does not mean that the KUA grants substantive approval of child marriage.[23]

Nevertheless, the KUA still has the capacity to carry out preventive functions through guidance, counseling, marriage education, and strengthening public understanding of the risks of child marriage. Therefore, harmonization between marriage administration

[19] Muhamad Jidan Fero dkk., "RESPONSIBILITAS PENGHULU TERHADAP PUTUSAN DISPENSASI KAWIN DI KUA SINDANGKERTA BANDUNG BARAT," *QANUN: Journal of Islamic Laws and Studies* 4, no. 4 (2026): 2148–59, https://doi.org/10.58738/qanun.v4i4.1427.

[20] Dice Indriani dkk., "Akibat Hukum Penetapan Hakim Dalam Perkara Dispensasi Kawin Pada Pasangan Muda Yang Hamil Diluar Kawin," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 6, no. 1 (2024), https://doi.org/10.20885/mawarid.vol.6.iss1.art6.

[21] A. Rahmaniar dkk., "Analisis Yuridis Empiris Pencatatan Nikah Siri Pasangan Di Bawah Umur," *Constitutional Law Review*, 30 Oktober 2022, 78–91, https://doi.org/10.30863/clr.v1i2.3995.

[22] Syafa Tria Putri dan M. Yazid Alhikam B. Bara, "PENYALAHGUNAAN WEWENANG OLEH PEJABAT DALAM HUKUM ADMINISTRASI NEGARA," *Jurnal Kebijakan Reformasi Hukum* 10, no. 1 (2026), https://ojs.ubesco.com/index.php/jkrh/article/view/1326.

[23] Sulistyarini, "Penguatan Norma Syarat Dispensasi Kawin Dalam Upaya Pencegahan Perkawinan Anak Berdasarkan Perspektif Teori Tujuan Hukum," *Justitia et Pax* 39, no. 1 (2023): 55–85, https://doi.org/10.24002/jep.v39i1.6580.

regulations and child protection policies is necessary to ensure legal certainty in marriage registration without neglecting the best interests of the child.[24]

Based on the above explanation, the KUA does not have the authority to assess or revoke the substance of a marriage dispensation order that has been issued by a court. Its authority is limited to verifying administrative requirements and registering marriages. An institutional dilemma arises because the KUA must enforce court rulings while simultaneously supporting child protection policies. Therefore, the necessary solution is not to grant judicial authority to the KUA, but rather to strengthen regulatory harmonization and the KUA's preventive role in preventing child marriage.

4. Regulatory Harmonization as a Means of Strengthening Legal Certainty and Child Protection

The issue of marriage exemptions cannot be resolved by amending a single regulation, as it involves various areas of law, namely marriage law, public administration, child protection, and criminal law. Therefore, regulatory harmonization is necessary so that all provisions can be applied consistently to ensure legal certainty and child protection.

Legal harmonization is an effort to align various regulations to prevent overlapping jurisdictions or conflicts in their application. In the context of marriage dispensations, harmonization is crucial because Law No. 16 of 2019 still allows for dispensations through court rulings, while Law No. 12 of 2022 on Sexual Violence Crimes and Law No. 35 of 2014 on Child Protection prioritize the interests and protection of children as their guiding principles. This lack of synchronization has the potential to turn marriage dispensations into a legal loophole that allows child marriages to continue.[25]

The first step in harmonization is to align the provisions of Law No. 16 of 2019, Law No. 12 of 2022 on TPKS, Law No. 35 of 2014 on Child Protection, PERMA No. 5 of 2019, and PMA No. 30 of 2024. Each regulation has a different scope, but substantively they are oriented toward legal certainty and the protection of rights, particularly children's rights.

The Marriage Law sets age limits and requirements for marriage; PERMA governs the court's procedures for granting dispensations; and PMA governs the registration of marriages by the KUA. Meanwhile, the TPKS Law and the Child Protection Law emphasize the protection of children from violence, coercion, and practices that harm the best interests of the child. Therefore, harmonization does not aim to eliminate marriage dispensations but rather to ensure that dispensations are granted only as an extraordinary measure after the child's best interests have been comprehensively considered.

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[24] Makkajareng, "Analisis Yuridis Penerapan Dispensasi Nikah Terhadap Perkawinan Di Bawah Umur Di Kantor Urusan Agama (KUA) Kecamatan Ngapa Kabupaten Kolaka Utara."

[25] Sitti Fatimah, "Harmonisasi Nilai-Nilai Maqāṣid al-Syarī'ah Dan Hukum Nasional Dalam Penetapan Usia Minimum Perkawinan Di Indonesia," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 6 (2025): 11636–47, https://doi.org/10.61104/alz.v4i1.4453.

Another issue lies in the lack of uniform interpretation of the phrase "extremely urgent reasons" in Article 7 of Law No. 16 of 2019. Although PERMA No. 5 of 2019 has directed judges to consider the child's psychological, health, educational, and economic conditions, as well as the child's opinion, the lack of more measurable indicators may lead to differences in deliberations and rulings across courts. This situation has the potential to perpetuate the high number of applications for and grants of marriage dispensations.[26]

More specific guidelines are needed regarding the granting of marriage dispensations by establishing medical, psychological, social, and legal indicators as the basis for a judge's consideration. Such standardization is essential to improve the consistency of rulings while strengthening the protection of the child's best interests.

The harmonization of regulations also requires coordination between the Religious Courts and the KUA. The courts have the authority to grant dispensations, while the KUA carries out the registration based on those rulings. Coordination can be achieved through joint operational standards, the electronic transmission of rulings, document verification, data exchange, and the evaluation of dispensation implementation. Thus, the division of authority becomes clearer and can prevent the perception that the KUA is an institution that grants permission for child marriage.[27]

In addition to performing administrative functions, the KUA plays a preventive role through religious counseling, marriage counseling, and family guidance. These functions need to be optimized to prevent an increase in requests for marriage dispensations. Guidance is not only intended for prospective brides and grooms but also for families who might seek a dispensation, covering topics such as reproductive health, psychological readiness, children's rights, the impacts of early marriage, and its legal consequences.[28]

Policies regarding marriage exemptions also need to be strengthened through stricter requirements and comprehensive review mechanisms. Ideally, a judge's decision should be supported by recommendations from psychologists, health professionals, social workers, or child protection agencies. Economic factors, social pressure, and parental concerns should not automatically be categorized as "compelling" reasons. Thus, marriage dispensations should remain an exception, not a means of normalizing child marriage.[29]

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[26] Fitriati Salamah dkk., "Implementasi PERMA No. 5 Tahun 2019 Dalam Meminimalisir Perkawinan Anak: Studi Di Pengadilan Agama Garut," *Jurnal Hukum Keluarga Dan Administrasi Keperdataan Islam* 1, no. 1 (2023), https://doi.org/10.15408/jhk-aki.v1i1.31180.

[27] Nurhilal Nazri Arif dkk., "Problematika Hukum Formil Terhadap Ketentuan Perma Nomor 05 Tahun 2019 Tentang Pengajuan Dispensasi Kawin Perspektif Maslahah Mursalah," *YUSTISI* 11, no. 2 (2024): 137–48, https://doi.org/10.32832/yustisi.v11i2.16670.

[28] Bashori Alwi dan Hudaifa Muslihatul Ummah, "Urgensi Aspek Psikologis Pada Pemeriksaan Dispensasi Kawin Perspektif Maqāṣid Al-Syarīʿah," *AL-SULTHANIYAH* 14, no. 1 (2025): 176–89, https://doi.org/10.37567/al-sulthaniyah.v14i1.3695.

[29] Ashabul Fadhli dkk., "Out-of-Court Assistance Based on the Principle of the Best Interests of the Child: Study on Examination Process of Marriage Dispensation Cases," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 1 (2024): 67–80, https://doi.org/10.31958/juris.v23i1.10281.

In the long term, there is a need for integrated guidelines among the Supreme Court, the Ministry of Religious Affairs, and relevant agencies to regulate standards for review, coordination, child protection, and the evaluation of dispensations. This harmonization is expected to provide legal certainty for the KUA while ensuring that every dispensation is truly oriented toward the best interests of the child.

Thus, regulatory harmonization is not intended to eliminate marriage dispensations, but rather to strengthen their implementation through standardization, institutional coordination, the preventive role of the KUA, and more effective oversight. Dispensations remain an exception mechanism that prioritizes the protection and future of the child.

Conclusion

This study shows that the Indonesian legal system still allows for marriage under the age of 19 through court dispensations, as stipulated in Law No. 16 of 2019 and PERMA No. 5 of 2019, which in turn serve as the basis for registration by the KUA pursuant to PMA No. 30 of 2024. Meanwhile, Law No. 12 of 2022 on the Prevention and Eradication of Violence Against Women and Children (TPKS) and Law No. 35 of 2014 on Child Protection emphasize the prevention of child marriage and the protection of children's rights. This situation does not directly indicate a conflict of norms but reflects differing policy orientations that may give rise to challenges in implementation.

The analysis shows that the KUA lacks the authority to reassess the substance of a dispensation decision already issued by the Religious Court. The KUA's authority is limited to administrative review and the registration of marriages based on the principle of legality. Thus, the dilemma faced by the KUA does not constitute an abuse of authority but rather a consequence of the lack of optimal synchronization between marriage regulations, registration administration, and child protection. Consequently, regulatory harmonization is needed through the synchronization of the Marriage Law, the TPKS Law, the Child Protection Law, PERMA No. 5 of 2019, and PMA No. 30 of 2024. These efforts can be achieved through the standardization of parameters for dispensations, strengthening coordination between Religious Courts and KUA offices, developing integrated implementation guidelines, and optimizing the preventive functions of KUA offices through marriage counseling and public education. These measures are expected to ensure legal certainty for KUA offices while strengthening child protection based on the principle of the best interests of the child.

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