

## Aligning Legal Effectiveness with Children's Interests: A Study of Marriage Dispensation Decisions in Religious Courts of Amuntai

Ahdiyatul Hidayah<sup>1</sup> and Mesfer Ali M. Alaklabi<sup>2</sup>

<sup>1</sup> STAI Rasyidiyah Khalidiyah Amuntai, Indonesia

<sup>2</sup> Imam Muhammad Ibn Saud Islamic University, Riyadh, Arab Saudi

### ABSTRACT

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#### \*Correspondence Address:

[ahdiyatul123@gmail.com](mailto:ahdiyatul123@gmail.com)

This article delves into the significance of the legal effectiveness theory in the context of applying the principle for the well-being of children, specifically within the decisions of marriage dispensations in Religious Courts. The focus is on promoting the welfare of children by means of marriage permits, which are legal policies allowing marriages to take place below the legally stipulated age, subject to certain conditions. Emphasizing the principle of the child's best interests in this scenario is crucial, considering the potential impact on the well-being and development of the children involved. This research is grounded in the theory of legal effectiveness, which underscores the efficient and equitable achievement of legal goals. A qualitative approach is employed, involving interviews with Religious Court judges who handle marriage dispensation cases. The findings reveal that the principle of the child's best interests significantly informs the judges' deliberations. Judges endeavor to ensure that marriage dispensations are granted only when deemed the optimal choice for the child's welfare. This study offers a nuanced understanding of how legal effectiveness contributes to safeguarding children's rights and interests within the realm of marriage dispensations. The practical implication of these findings underscores the imperative to continually develop legal policies and court practices that prioritize the interests and welfare of children.

**Keywords;** Legal Effectiveness, Principle of Child Interests, Marriage Dispensation, Religious Courts.

## Introduction

Marriage stands as the foundational pillar which shapes the structure of both family and society. Nevertheless, there are instances where the necessity for a marriage dispensation arises, offering a legal remedy to address cases requiring special considerations (Jahariari., 2021). The granting of a marriage dispensation creates a legal avenue that allows for exceptions to the age requirements stipulated by law.

In this context, paramount attention must be given to the principle of the child's best interests. Children who are involved in marriage dispensation cases necessitate particular protection and focus. Legal decisions should be structured to ensure that their well-being and interests are not overlooked (Haris, Implementation of Marriage Dispensation in Review of Law Number 23 of 2002 concerning Child Protection in Takalar Religious Court, 2018).

One of the most relevant theory in this scenario is the theory of legal effectiveness. This theory underscores the significance of efficient and equitable way of achieving legal goals. When applied to marriage dispensations, the effective utilization of this theory can guide the decision-making process by meticulously considering the interests of the child (Jannah, 2023).

Legal regulations which govern the age, at which individuals can marry, aim to ensure that those entering into marriage are physically and mentally prepared. The intention is for couples to establish a household and realize the dream of a happy family, thereby minimizing the occurrence of disputes that may lead to divorce (Ridwan, 2015). The desired age limit is set for individuals who exhibit visible physical and mental maturity, with reproductive organs ready to undergo the transformative process of fertilization upon marriage. This, in turn, is expected to impact the quality of the offspring produced (Sahuri Lasmadi, 2020).

Several factors contribute to changes in marriage age, including the disparity between the marriage age limits for women and men and efforts to reduce maternal and child mortality rates (Heryanti, 2021). These changes are also linked to broader societal issues such as the deprivation of children's rights, child labor, domestic violence, divorce, child trafficking, school dropouts, stunting, unemployment, cervical cancer in women, sexual violence, poverty, environmental slums, a decline in the quality of the generation, and, significantly, the consideration of reproductive health for children (Heryanti, 2021).

Prior research has illuminated diverse perspectives on an individual's marriage age. Firstly, the fuqaha's considerations in determining marriage and adulthood ages encompass factors such as physical signs and chronological age. Secondly, Indonesia's positive law establishes the minimum marriage age that is influenced by the prevalence of Indonesian Muslims adhering to the Shafi'i madzhab, which has become the rising occurrence of underage marriages, and the advocacy for legal protection for Indonesian women concerning marriageable age. Thirdly, the marriage age is also influenced by the Marital Age Maturity program of the National Population and Family Planning Board (BKKBN), that sets the age at 21 for women and 25 for men based on their readiness, in terms of health and emotional development. Fourthly, the maqasid al-shari'ah perspective posits a marriage age of 20 for women and 25 for men, emphasizing the ability to fulfill marriage purposes such as establishing a harmonious and compassionate family, preserving lineage, maintaining familial relationships, upholding religious values, and being prepared for economic, social, medical, and psychological dimensions. More importantly, this perspective does not mandate strict adherence to legal statutes (Aminudin, 2018).

Marriage is a profoundly significant undertaking for those are involved. It requires strict adherence to the stipulations outlined in marriage laws to secure legal protection and certainty. Governed by Law No. 16 of 2016, the regulations specify a minimum age

of 19 years for both men and women. However, this study reveals a noteworthy phenomenon which states that despite the enactment of Law No. 16 of 2019, the volume of marriages in the Office of Religious Affairs (KUA) exhibits minimal change, suggesting consistency in registration figures compared to the period preceding the law's implementation. Conversely, there is a discernible surge in dispensation cases within the Religious Courts (PA), which signal a rise in such instances. Additionally, numerous underage marriages go unregistered with KUA. The effectiveness of implementing Law No. 16 of 2019 in both KUA and PA remains questionable. It is attributed to inadequate law enforcement engagement, a lack of awareness, insufficient supporting facilities, and a general public unawareness of the stipulated age limit for marriage regulation (Azizah, 2021).

Nevertheless, local legal culture, particularly in the Amuntai community, continues to influence practices like underage marriages which are often referred to as child marriages. Parents may perceive marrying off their children quickly as a protective measure against potential negative outcomes when they leave their place of residence (Setiawan, 2022). Consequently, cases seeking dispensation from the Amuntai Religious Court are prevalent, particularly for individuals who have not yet met the legal age for marriage. Reasons for seeking dispensation vary, including unexpected pregnancies, family coercion, economic hardships, and disruptions in the social environment (Setiawan, 2022).

Given this context, the author contends that there is a pressing need for a comprehensive examination of the correlation between the established legal framework and the principle of legal interest concerning marriage dispensation for children. Such a study aims to shed light on the perspectives of judges in making optimal decisions for children and ultimately assess the efficacy of the law within a specific region.

## **Method**

Researchers employed literature studies and internet searches as research methods, utilizing technology tools and search engines to collect data which encompass information from various eras. This literature studies comprised a compilation of references, including books, journal papers, articles, and other scholarly works cited in the research. Therefore, the sources for literature studies encompassed research journals, books, and online news (Ruslan, 2004). This study adopted a normative approach, specifically a method that is aligned with legal studies. This approach involved library studies, wherein researchers delved into existing legal substance rules, encompassing both statutory and Islamic laws. The process entailed studying, understanding, and examining these legal provisions to inform the research (Ruslan, 2004).

## **Results and Discussion**

The principle of the best interests of the child assumes a pivotal role in marriage dispensation decisions, as the court is obligated to weigh the welfare and well-being of the child while reaching conclusions regarding marriage-related matters. This necessitates a thorough analysis of the unique circumstances surrounding the child. It encompasses factors like emotional and mental maturity, overall well-being, familial conditions, available social support, and the potential repercussions of granting dispensation (Rahman, 2023).

Legal effectiveness assumes a pivotal role in discerning the well-being of children when rendering decisions on marriage dispensation. This pertains to the efficacy of legal decisions and regulations surrounding marriage dispensation. It also emphasizes the need to guarantee the safeguarding and protection of the best interests of children.

DATA ON MARRIAGE DISPENSATION IN AMUNTAI CLASS IB RELIGIOUS COURT IN 2022	
Incoming Matters	117
Granted	108
Rejected	6
Revoked	2
Aborted	1

Source: Amuntai Religious Court

As indicated by the data presented earlier, derived from 2022, it is evident that judges within the Amuntai Religious Court consistently uphold the principle of prioritizing children's interests as a foundational consideration in marriage dispensation decisions. This principle is rooted in the belief that children possess the right to be shielded from harm, and their overall well-being takes precedence in all legal determinations affecting them. Consequently, judges meticulously assess the potential impact of their rulings on a child's physical, emotional, and psychological health. The Amuntai Religious Court is committed to ensuring that its decisions not only meet legal standards for effectiveness but also align with the best interests of the child. This concerted effort by judges aims to guarantee that marital dispensation rulings are crafted in a manner that safeguards and promotes the welfare of children.

### Understanding Children in Legislation

A child is considered a divine gift entrusted to those who bear the responsibility of nurturing and protecting them, ensuring their right to grow and develop in a manner similar to other children (Ali, 2022). Recognizing the paramount importance of children's rights, the state has established specific regulations to govern the behavior and attitudes of both children and parents. These regulations are imbued with legally binding elements that are aimed at safeguarding the best interests of each child (Hutahaean, 2013)

Upon delving into legal regulations concerning the age of marriage, disparities in perspectives on a child's age became apparent. To elucidate this matter further, the following points delineate what it means to classify someone as a child, as outlined by various legal provisions, including (Haris, Implementation of Marriage Dispensation in Review of Law Number 23 of 2002 concerning Child Protection in Takalar Religious Court, 2018):

1. According to the Criminal Code, in Article 330, paragraph (1), "A person is not considered an adult if they are not yet 21 years old, unless married before reaching 21 years."
2. The Criminal Code, in Article 45, specifies that "a child is not considered an adult if the person is not yet 16 years old."
3. Republic of Indonesia Law Number 23 of 2002 concerning Child Protection, Article 1, paragraph 1, defines a child as "someone who is not yet 18 (eighteen) years old, including children that are still in the womb."
4. Republic of Indonesia Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking, Article 1, paragraph 5, identifies a child as "someone who is not yet 18 (eighteen) years old, including children still in the womb."
5. Law Number 44 of 2008 concerning Pornography, Article 1, paragraph 4, defines a child as "someone who is not yet 18 (eighteen) years old."

Law Number 16 of 2019 outlines specific provisions concerning the minimum age for individuals to enter into a marriage contract, as articulated in Article 7, paragraph (1). According to this law, marriage is only permissible if both the man and woman involved have reached the age of 19 (nineteen) years (Kurniawati, 2021)

Despite these explicit provisions, it is evident in practice that some individuals still seek to enter into marriage even when the age of the prospective bride and groom falls short of the stipulated requirement, as detailed in Article 7, paragraph (1) of Law Number 16 of 2019.

### **Granting Marriage Dispensation in Amuntai Religious Court and Its Relevance to Indonesia's Child Protection Law**

As per the definition in the Big Indonesian Dictionary, dispensation is characterized as the act of granting permission or providing relaxation from a prohibition. Consequently, marriage dispensation entails the granting of relief or permission for individuals below the age of 19 to enter into marriage, while adhering to the stipulated provisions (Poedarminta, 2011).

Dispensation, defined as permission to be exempted from prohibitions, embodies a sense of freedom or relief from actions that are typically restricted. The exception, granted in the context of marriage, is rooted in the belief that matrimony is an essential principle for the establishment of an everlasting happy family unit. Within this framework, it is crucial to determine a specified age limit demarcating men and women to enter marriage. The marital contract, symbolizing the union of a couple, signifies a relaxation of societal norms. This mediation for marriage is typically initiated by the parents or legal guardians of the prospective bride and groom (Janah, 2020).

Examining marriage dispensation through a civil law lens reveals its intention to regard individuals below the legal marriage age as sufficiently mature and rational to enter into matrimony (Ramdania, 2020). In the context of civil law, a parallel concept aligns with the dispensation of marriage based on maturity. In civil code terms, a minor is defined as someone who has not been married and is under the age of 21, as articulated in Article 330. Notably, individuals who are married but under 21 are deemed adults; consequently, those divorced yet under the age of 21 are still considered adults. The overarching goal of maturity, in this context, is to eliminate constraints preventing someone under 21 from being recognized as an adult (Permana, 2019).

From a child protection standpoint, the issuance of marriage permits for children is grounded in the fundamental principles of child protection, as dictated by Pancasila (the 1945 Constitution of the Republic of Indonesia), and the foundational tenets of the Convention on the Rights of the Child. These principles encompass non-discrimination, prioritizing the best interests of children, recognizing their right to life, survival, and development, and respecting their opinions (Yunus, 2018). Specifically, the principles that govern the issuance of marriage permits (as outlined in Perma Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications) are intricately aligned with the best interests of the child. These principles emphasize the child's right to life, growth, and development, along with due respect for their opinions, human dignity, non-discrimination, gender equality, equality before the law, justice, expediency, and legal certainty (Yusup, 2021).

The Amuntai Religious Court devotedly endorses amendments to regulations pertaining to the minimum age for marriage, which is now set at 19 years for both prospective brides and grooms. In alignment with the provisions of Law Number 16 of 2019, which comprehensively addresses alterations in the age of marriage, the Amuntai Religious Court does not only implement these changes proportionally but also wholeheartedly supports the elevation of the minimum age limit for marriage. This adjustment aims to ensure that individuals entering into matrimony are both physically and mentally prepared for the responsibilities of married life in order to foster a more conducive environment for their marital journey (Rahman, 2023).



Nevertheless, following the adjustment in the marriage age, the Amuntai Religious Court confronted new challenges, notably a surge in the number of Marriage Dispensations. This increase is attributed to various factors, including educational shortcomings, rising instances of promiscuity, unplanned pregnancies, and a general lack of awareness among the public regarding changes in marriage laws and age limits. An on-the-ground perspective reveals additional contributors to the heightened dispensation rates, such as parents facing financial constraints, a desire among parents to expedite their children's marriages due to concerns about potential spinsterhood, limited access to education leading to increased drop-out rates, and environmental factors fostering uncontrolled promiscuity. Additionally, the influence of social media is noted for prematurely thrusting children into adulthood, sometimes rendering them unaware of the repercussions of their actions and leading to illicit relationships and unplanned pregnancies.

Enshrined within Law Number 23 of 2002 regarding Child Protection are four fundamental principles outlined in Article 2 of the Child Protection Law:

1. Non-discrimination,
2. The paramount consideration of the child's best interests,
3. Recognition of the child's entitlement to life, survival, and comprehensive development, and;
4. Upholding respect for the rights and dignity of children.

Children deserve protection from factors that can negatively impact their physical and psychological growth and development. Early marriages pose a risk to this protection as parental responsibilities may be transferred to their spouses, which reduces the ability of parents to safeguard their children effectively. It is imperative to shield children from marriages inappropriate for their age, as they may face physical and mental risks that hinder their overall well-being and growth (Simatupang, 2021). According to Law No. 23 of 2002 on Child Protection, criminal consequences are outlined for individuals who commit crimes or violate regulations related to children. Specifically, Article 28 addresses underage marriage and stipulates severe penalties, including imprisonment ranging from 3 to 15 years and fines ranging from Rp. 60,000,000.00 to Rp. 300,000,000.00 for anyone attempting to seduce, deceive, lie, or engage in obscene acts with a child (Gosita, 2019)

The aspiration to safeguard children is inherently tied to enhancing the nation's welfare and realizing the goal of ensuring children's rights for a better life. Clearly, it underscores the substantial role that parents play in fostering the growth of their children. Consequently, when parents contemplate the decision to marry their children, a comprehensive consideration of various aspects related to the child is imperative (Kia, 2018). In the context of marriage dispensations, all stakeholders, including family members and court judges, must prioritize the best interests of the child. It is advisable to make decisions that proactively prevent potential regrets for the child, ensuring that no party involved feels unfairly disadvantaged.

According to the stipulations outlined in Article 26 (paragraph 1, letter c of Law Number 23 of 2002 concerning Child Protection), a clear and explicit prohibition is articulated against marriages involving individuals below the age of 18.

In practice, the implementation of Article 7, paragraph (2) of Law Number 1 of 1974 concerning child marriages becomes viable in cases of irregularities. These irregularities entail the permissibility of marrying underage children provided there are substantial reasons and the fulfillment of specific marriage requirements. Unfortunately, the existence of this article is at times exploited by individuals seeking to get married, which is often without due consideration for the potential future impacts. This situation has inevitably led to contradictions within the legal framework. Addressing such issues requires thoughtful solutions to ensure the best outcomes in navigating these complexities.

Each individual, especially those under 18 years of age, possesses the inherent right to grow and develop. This includes the fundamental rights to life and protection from any form of violence or discrimination. These rights extend to education, ensuring that every child has the opportunity to learn and flourish. Ideally, parents are envisioned as the primary advocates for their children and should offer continuous support and socialization to instill positive values and norms. However, due to several factors which include economic constraints and deeply rooted cultural traditions, often hinder parents from fulfilling this crucial role (Nasution, 2009).

The government and its administrative bodies are actively engaged in enhancing community human resources through consistent updates on legal regulations concerning marriage. This proactive approach stems from the recognition of numerous instances of early marriages, some of which tragically result in maternal fatalities, and is geared towards curbing the escalating birth rates. The ongoing revisions to these regulations aim for continual improvement that incorporates a nuanced understanding of legal considerations related to children's psychology. Consequently, the focus extends beyond mere personal maturity and includes a comprehensive evaluation of biological readiness when contemplating marriage.

Here, the Marriage Law seeks to mitigate the rapid progression of human development, whereas the Child Protection Law is designed to safeguard children and uphold their rights to live and pursue diverse accomplishments (Sudrajat, 2011). This challenge necessitates sustained efforts, considering the numerous cases impacting children. The objective is to proactively protect children from violence, child trafficking, and other criminal activities. The ongoing fight for these goals remains crucial to ensure the well-being and security of children in our society.

Hence, it is imperative for children to assert their rights and foster a sense of independence. Every child is entitled to harbor aspirations for their envisioned future. Aligned with the stipulation in Child Protection regulations (point d) which foster a sense of responsibility in children to nurture high aspirations for their comprehensive growth and development (physically, mentally, and socially), while instilling noble character traits. Simultaneously, ongoing efforts are essential to ensure the provision of protection, guaranteeing the realization of welfare and safeguarding the rights of children (Wasiati, 2020).

In this notion, grounding decisions on the principle of the best interests of the child enables the court to ensure that marriage dispensations are granted only when deemed the optimal choice for the welfare and interests of the children in question. This represents a crucial stride towards safeguarding children's rights within the realm of marriage dispensations.

### **Professionalism of Judges in Integrating the Principle of Children's Interests in Marriage Dispensation Decisions at the Amuntai Religious Court**

In their day-to-day operations, judges encounter a challenging dilemma whenever a marriage dispensation application is presented. On one hand, their commitment to uphold the law as a judicial institution is unwavering. On the other hand, judges find themselves in conflict due to the realization that the applicant may feel compelled to marry without any viable alternatives (Rosyadi, 2020).

In certain scenarios, when the petition outlines the reasons behind an incident anticipated to befall the prospective woman, the court, in most cases, renders a decision based on the presumed advantages articulated in the petition. In essence, this approach seeks to mitigate potential harm and prioritizes the pursuit of benefits while minimizing adverse consequences.

Hence, the judge is tasked with a comprehensive evaluation, considering legal, philosophical, sociological, as well as the health and psychological well-being of the child when determining whether to grant or deny a marriage exception request. In scrutinizing the petition for marriage annulment, the singular judge did not only need to

verify that the application satisfied the criterion of "very urgent reasons" but also confirmed the presence of substantial evidence. Approval of a marriage application hinges on the fulfillment of these conditions by the applicant. Conversely, if any of these prerequisites remain unmet, or none at all, the judge must possess the fortitude to reject the application (Rosyadi, 2020).

The author contends that legal reasons imply that if the judge accords permission, such as a dispensation to the prospective couple, there arises apprehension about potential adverse repercussions for the unborn child. This measure serves as a safeguard for both the prospective mother and the unborn child, while ensuring accountability for the actions committed by the parties involved.

While not explicitly delineated, the essence of Child Protection Law is unmistakably integrated into the practices of judges in the Religious Courts. Throughout the proceedings, judges delve into inquiries concerning the educational pursuits of the prospective bride and probe whether she intends to continue her education or halt it altogether. This interrogation is deemed crucial because of the heightened vulnerability of young pregnant girls to health risks like premature birth, low birth weight, childbirth complications, and potential fatality for both mother and baby. Consequently, in the adjudication of marriage dispensations, judges are obliged to meticulously adhere to fundamental child protection principles which encompass non-discrimination, prioritizing the best interests of children, upholding the right to life, survival, and development, and respecting children's opinions (Marwiyah, 2023).

In alignment with the best interest's principle outlined in Article 16 of Supreme Court Regulation Number 5 of 2019, it is mandated that the judge meticulously evaluates the child's optimal path, demonstrating heightened awareness and thorough consideration of the case. This involves scrutinizing the reasons and life background of the child, investigating potential impediments to marriage, gauging the child's comprehension of marriage concepts, and confirming their genuine agreement to proceed with marriage matters. The judge is required to attentively listen to statements from applicants, including candidates, parents, or pertinent witnesses. Subsequently, an assessment of the child's health, local social and cultural engagement, and family economic status becomes imperative. The judge's deliberation extends to ensure that the child's parents possess the capability to manage the child's affairs comprehensively, which encompass economic, social, health, and educational facets (Derry Angling Kesuma, 2022).

From a cultural standpoint, the persistence of child marriages remains evident. This is largely attributed to the perception that religious norms lack explicit specifications on the age limit for marriage, leaving ambiguity about when an individual is deemed an adult who is eligible for marriage. Additionally, economic factors come into play, with instances where prospective brides are already pregnant, and prospective grooms may not yet be employed (Halik, 2017). In such cases, both sets of parents are often willing to assume financial responsibility. In summary, the enduring prevalence of child marriage can be largely attributed to the intertwining influences of cultural and economic factors.

In this instances, the judge meticulously assesses both the interests of children in marriage and the risk factors associated with underage marriage. In navigating this delicate balance, the judge aims to choose the option with the least severe negative impact. Consequently, in certain instances, underage marriage may be contemplated, aligning with the principles of fiqh as delineated in the book "Al-Asbah Wa al-Nazhaair," specifically on page 161, serving as a guiding reference and consideration for the judge.

Essentially, when faced with two potential negative impacts, the decision is inclined toward the option with the lesser harm, thereby avoiding the one with greater detriment. The judge grounds the decisions in the statutory regulations of the Republic of Indonesia and apply laws that are pertinent to the specific case of



marriage dispensation. This legal approach is consistently employed by the judge as a foundational basis for their decisions (Syafi'i, 2021).

The Panel of Judges meticulously considers a range of legal factors when deliberating on whether to grant a marriage dispensation request. Legal facts presented by the parents, bride, groom, and court witnesses have played a pivotal role in shaping the judge's decision-making process (Syafi'i, 2021). To proactively reduce the incidence of dispensation requests, extensive socialization and preventive efforts against child marriage have been undertaken. The judge consistently emphasizes marriage regulations, delivering instructions and announcements in court before rendering a final decision. This proactive approach is aimed at encouraging individuals to reflect on their actions and consider legal implications before engaging in actions that may contravene the law.

The judge actively incorporates recommendations and insights concerning marriage regulations, driven by the responsibility to champion the well-being of the community, particularly in safeguarding children's rights. The act of marriage is considered a transition into adulthood, and law enforcers are committed to persistently disseminating the significance of adhering to the designated age for marriage. This effort is rooted in the broader context of societal interests which aim at encouraging thoughtful consideration among parents of young children before making decisions that significantly impact their child's life (Rahman, 2023).

Khairi Rosyadi, one of the judges at the Amuntai Religious Court, stated in an interview that the Supreme Court is now regulated by Law Number 16 of 2019. The Supreme Court then issued Regulation (PERMA) Number 5 of 2019 concerning Procedures for Hearing Marriage Dispensation Cases. "After that, this PERMA will become a guideline for accepting and resolving marriage dispensation cases." (Rahman, 2023)

The judge at the Amuntai Religious Court emphasized that the application of Law Number 16 of 2019 in the Religious Courts is meticulously governed by PERMA No. 5 of 2019. It outlines comprehensive guidelines for the scrutiny and adjudication of marriage dispensation cases. Echoing these sentiments, Judge H. Mahyuni concurred with the consistent application of Law no. 16 of 2019 at the Amuntai Religious Court that was underpinned by the provisions articulated in PERMA No. 5 of 2019.

In addition to adhering to the provisions of Law no. 16 of 2019 and PERMA No. 5 of 2019, judges draw upon Islamic law, encompassing the teachings of the Al-Qur'an, Sunnah, and related literature. From an Islamic perspective, marriage is not forbidden at a young age; in fact, it is deemed natural and highly recommended. Islam views marriage as a safeguard against adultery, considering it a virtuous path. Marrying at a young age is not inherently negative. For some parents, it serves as a proactive measure to shield their children from potential moral pitfalls, while preserving the ethical fabric of the upcoming generation (Al-Azhar, 1985).

According to Soetjipto Rahardjo, legal security serves the purpose of protecting an individual's interests by empowering them to act in their best interests. Thus, one of the functions, as well as objectives, of the law is to provide guidance and protection to the community. Therefore, legal security for children involves safeguarding their rights by ensuring fair access to those rights. The application of child protection in marriage dispensation cases, based on children's rights, can be categorized as follows (Faisal, 2018)

- a) Marriage Dispensation as a manifestation of the Best Interests of the child;
- b) Marriage Dispensation as a facilitator of the right to life, survival, and development of children;
- c) Marriage Dispensation as a means of respecting children's opinions.

Hence, the decision plays a crucial role in providing legal certainty to justice seekers. In his determination, the judge does not require the parties to seek permission

for dispensation, and in the absence of such permission, the parties may only submit a cassation (Dispensation, 2019).

### **Implementation of Legal Effectiveness Theory on Judges' Considerations in Providing Marriage Dispensations and the Best Interests of Children in the Amuntai Religious Courts**

Alterations in the marriage age significantly impact the volume of marriage dispensation cases presented in Religious Courts, such as the Amuntai Religious Court. According to Khairi Rosyadi, a judge at the Amuntai Religious Court, "The adjustment in the marriage age limit has notably influenced the surge in marriage dispensation cases at our court. The initial minimum age of 16 years for prospective brides has been elevated to 19 years." This adjustment has resulted in a substantial increase in requests for marriage dispensation cases" (Dispensation, 2019).

The author contends that granting marriage dispensation from the standpoint of the Child Protection Law violates several articles, notably Article 3 of Law Number 23 of 2002. Consequently, underage marriage should be avoided and regarded as the last resort. Judges endowed with the authority to approve marriage dispensations must carefully consider the child's best interests for the future. In cases where urgency, such as unwed pregnancy which compels underage marriage, the judge must ensure the preservation of the child's rights.

The author posits that insufficient public legal awareness contributes to the persistence of underage marriages. Many individuals are unaware of the recent legal changes pertaining to the minimum age limit for marriage. These modifications were instituted with the well-being of prospective couples in mind. The lack of awareness in society hinders the filing of marriage permission cases in court.

This illustrates, in line with the information gathered by the author, that the judge's decision in marriage dispensation cases significantly impacts the success or failure of implementing Law Number 16 of 2019. The author employs the theory of Legal Effectiveness to assess this influence and consider various factors, including:

1. **Legal Structures:** These encompass the courts and their judges, along with related entities. A law relies on a dependable, competent, and independent police force to function effectively.
2. **Legal Substance:** This constitutes a vital system that determines the validity of a legal rule. As a component of the justice system, legal substance encompasses written and unwritten legal rules, norms, humanitarian principles, and, notably, court decisions.
3. **Legal Culture:** Referring to an individual's behavior or attitude towards the law, legal culture encompasses values, beliefs, thoughts, and expectations. The utilization or misuse of the law is influenced by legal culture and social forces. Legal culture is intertwined with people's legal awareness that may create conditions for the development of a positive legal culture. It can be observed in institutions like the Religious Courts and the judges within them, reflecting beliefs, opinions, thinking patterns, and behaviors derived from society or law enforcement.

The above three elements share a tightly interwoven relationship that can be exemplified to the operation of a mechanic. In this comparison, the structure corresponds to a machine, unveiling the type of substance the machine will produce. This analogy leads to the deduction that legal culture is akin to the individuals and

entities that can decide when to activate or deactivate a machine and the discernment involved in selecting the appropriate machine for a given purpose (Limpo, 2018).

Soerjono Soekanto underscored the significance of the issues highlighted above as integral components of law enforcement aspects that demand careful consideration. Neglecting these factors could impede the attainment of the desired standards in law enforcement (Soekanto, 1983).

In the author's perspective, Law No. 16 of 2019 has yet to achieve effective operation in society, as evidenced by the escalating number of marriage dispensation cases at the Amuntai Religious Court. The judge's rulings in these dispensation cases play a pivotal role in influencing the intended objective behind altering the age limit for marriage. These decisions are meticulously made, considering various factors, including the benefits and emergency conditions of the applicants. The Amuntai Religious Court consistently offers guidance and outreach initiatives prior to delivering a case decision. From the author's standpoint, the judge's approach to decide these cases aligns with the overarching goal of adjusting the age of marriage.

This demonstrates the effective efforts of the Amuntai Religious Court in reducing the incidence of underage marriages, thereby curbing the prevalence of child marriages and decreasing the influx of dispensation cases to the Court.

## Conclusion

Premature matrimony can detrimentally infringe upon the rights of children by thrusting them abruptly into the realms of adulthood. Consequently, in the context of child protection, early marriage is deemed undesirable. In cases where parents seek to wed an underage child, the proper course of action is to file for a marriage dispensation through the religious court.

The submission of marriage regulation to the Religious Court is aimed at obtaining legal validation and confirmation for unions involving individuals who are not yet of legal age. Therefore, a judge should carefully consider child protection principles, including non-discrimination, prioritizing the child's well-being, ensuring the child's right to life and development, and respecting the child's perspective.

Typically, judges at the Amuntai Religious Court conscientiously weigh the principles of child protection and legal certainty in their deliberations. When approving a marriage dispensation request, the decision is predominantly guided by an assessment of benefits, which aim at preventing greater losses in case of denial. Furthermore, the judges also factor in the child's best interests, including the continuation of their education, economic well-being, and reproductive health.

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