

## **Conservatism of Islamic Legal Arguments in Granting Marriage Dispensation at the Indonesian Religious Courts**

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### **Abstract**

This article discusses additional legal arguments used by judges in granting proposals for marriage dispensation at the Religious Courts. The article is based on the fact that many of these cases were granted by judges at the Religious Courts in the midst of child protection initiated by the state through Law no. 16 of 2019. This research discusses additional arguments used by judges in several Religious Courts in Indonesia in considering the best interest for children in marriage dispensation decisions. The data in this article was collected from judges' decisions regarding marriage dispensation in 2022. Using a legal philosophy approach, this article finds that additional arguments are a very decisive part for judges in granting marriage dispensation. In other words, the judge cannot grant a marriage dispensation without additional arguments. Among these arguments are the principles of *fiqh*, the Qur'an or interpretation, hadith, *fiqh*, and social conditions.

**Keywords:** *Child Protection; Legal Arguments; Marriage Dispensation.*

### **Abstrak**

Artikel ini membahas tentang argumentasi hukum tambahan yang digunakan oleh hakim dalam mengabulkan permohonan dispensasi nikah di Pengadilan Agama. Artikel didasari oleh fakta banyaknya perkara tersebut dikabulkan oleh hakim di Pengadilan Agama di tengah perlindungan anak digagas oleh negara melalui Undang-Undang No. 16 tahun 2019. Penelitian ini mendiskusikan argumentasi tambahan yang digunakan oleh hakim di beberapa Pengadilan Agama di Indonesia dalam mempertimbangkan hal terbaik bagi anak dalam putusan dispensasi nikah. Data dalam artikel ini dikumpulkan dari putusan-putusan hakim tentang dispensasi nikah pada tahun 2022. Dengan menggunakan pendekatan filsafat hukum, artikel ini menemukan bahwa argumentasi tambahan merupakan bagian yang sangat menentukan bagi hakim dalam mengabulkan dispensasi nikah. Dengan kata lain, hakim tidak dapat mengabulkan dispensasi nikah tanpa adanya argumentasi tambahan. Di antara argumentasi tersebut adalah kaidah fikih, alquran atau tafsir, hadits, pendapat fikih, dan kondisi sosial.

**Kata Kunci:** *Argumentasi Hukum, Dispensasi Nikah, Perlindungan Anak*



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## Introduction

The public was shocked by mass media reports regarding the massive application of dispensation for marriage in Ponorogo in early 2023. Hundreds of teenagers applied for dispensation for marriage on the grounds of pregnancies outside marriage (Ernis, 2023). The application raises the issue of child protection in Indonesia again in the context of family law. Islamic family law in Indonesia pays exceptional attention to the child's best interests. The latest effort by the government is to change the minimum age for marriage in Indonesia. Based on the rules of the latest law, UU. No. 16 of 2019, marriage can only be done if the age of the man and woman has reached 19 years. However, underage marriages can remain with a marriage dispensation mechanism at the Religious Courts. Throughout 2022, the Supreme Court's Religious Court Agency or *Badilag (Badan Peradilan Agama)* recapitulated 50,747 marriage dispensation cases that were decided at the Religious Courts in Indonesia (Badilag, 2022).

Many applications for marriage dispensation also indicate that underage marriages remain possible with legal procedures provided by the state. In other words, it is possible for a judge at a religious court to give a different legal determination from the provisions of the latest law. However, this difference can be given after the judge has considered all the evidence presented in the marriage dispensation case. In this case, the judge's legal considerations are essential in protecting children's rights. The judge can provide various legal arguments to grant or reject the application for marriage dispensation. This variety of legal arguments can occur because Indonesia adheres to a plural legal system through judicial institutions related to efforts to protect children. The plurality of laws in Indonesia in the context of child protection has resulted in judges' decisions in religious courts, not only relying on statutory norms in Indonesia (Horii, 2021).

Euis Nurlaelawati explained that judges in Religious Courts could refer to three legal categories in child protection. The law, compilation of Islamic law and international human rights law (Nurlaelawati & van Huis, 2019). Judges in the Religious Courts can adopt these three rules because they are based on Supreme Court Regulation No. 5 of 2019, later called *PERMA* No. 5 of 2019. It is explained that there are conditions under which a judge can grant permission for a marriage dispensation application. These conditions include legal values, local wisdom, and a sense of justice that exists in society. According to Article 7, paragraph (2) of Law No. 16 of 2019, these conditions must be based on urgent reasons. Such urgent reasons can only be proven through a judicial mechanism.

The Indonesian judiciary has an essential role through its judges in realizing the ideals of family law in Indonesia. Therefore, many studies have been conducted regarding the judge's decision, especially after the codification of Islamic law in Indonesia (Fauzi & Said, 2022). In the context of marriage dispensation, several studies have been conducted. Existing studies have

described how local norms are adopted by judges in marriage dispensation decisions (Horii, 2021). In addition to local norms, several studies have also examined forms of urgency in the judge's decision to grant a marriage dispensation (Andar Yuni, 2021). The two studies illustrate that the findings on judges' legal arguments are varied. Specifically, some studies find judges' progress in granting marriage dispensation cases (Pardede et al., 2021). Separately from highlighting the granting decision, studies also discuss the reasons for refusing the marriage dispensation (Iswantoro & Tobroni, 2022; Nawawi et al., 2022; Nidlom & Andrina, 2021).

Previous research has described the judge's decision at the Religious Court concerning the judge's argument for granting a marriage dispensation from various aspects. However, these studies have yet to focus on additional arguments originating from Islamic law used by judges. Therefore, this study will examine the arguments of Islamic law to enlighten the extent to which judges in the Religious Courts are sensitive to child protection in Indonesia by using Islamic legal sources.

## **Method**

This article will discuss the legal considerations of religious court judges regarding granting marriage dispensation using a normative-juridical approach. These decisions were collected randomly from decisions of religious courts throughout Indonesia, starting from 2020 to 2022. This timeframe was chosen because the latest marriage law was issued in 2019. Hence, this research focuses on decision data issued after the law. These decisions are accessed through the directory of the Supreme Court of the Republic of Indonesia, which the Religious Courts have uploaded. The number of decisions collected in this study was seven decisions from different courts. The seven decisions were chosen based on the granted category to see the arguments of religious court judges in Indonesia in granting a marriage dispensation.

The data that has been collected will be analyzed by taking several procedures. The data collected through documentation will be grouped and then interpreted so that several descriptions of the data are obtained. After the data is grouped, a code will be given to the data that has been grouped. Based on these codes, the findings in this study will be interpreted using an Islamic legal philosophy approach that focuses on aspects of the reasons and objectives of law that judges in religious courts understand. After that, inference will be made to the data that has been interpreted.

## **Result and Discussion**

The results and discussion will be presented in three sub-sections to explain the development of child protection in Indonesia. In the first stage, the explanation is focused on the age trajectory of marriage in Indonesia and its

relation to family law. This discussion is intended to illustrate how the spirit of child protection in Indonesia is intertwined with Islamic law. After that, the study will focus on the findings of Islamic law arguments, which are used as an additional by the judge in granting the proposal for a marriage dispensation. In the final section, an analysis related to the progressivity of child protection will be presented through the additional arguments used by the judge.

### **The Notion of Minimum Age for Marriage and Conservatism in Indonesia**

Concern for children's rights in Indonesia had emerged before independence. Initiatives for child protection emerged from women's organizations in the early 1930s. At a congress in 1938, the women's wing of the Indonesian Islamic Union Party raised this discourse as an issue that needed attention. The point of marriageable age was raised to protect girls who were considered not ready to bear the burden of being a wife and mother. Efforts to spread the discourse then also appeared through published journals and magazines. These journals and magazines were published between 1930 and before Indonesian independence. Among these journals and magazines are the *Pedoman Istri* Journal and *Doenia Kita* Magazine (Blackburn & Bessell, 1997, p. 126). In other words, the campaign against child marriage before independence can only be voiced by generating a discourse that child marriage is a practice that is disadvantageous to children, especially to girls.

This struggle continued until after independence, when the marriage law was made. After independence, the state has yet to explicitly pay attention to the age of marriage in statutory regulations. The government is more focused on controlling the marriage administration so that the rules concerning marriage are more focused on registration. In 1946 Law No. 22 of 1946, registering marriages, divorces, and reconciliation (*rujuk*) applies only to Java and Madura. The control states that the marriage must be supervised by a marriage registrar appointed by the Minister of Religion (Otto, 2010, p. 444). This regulation was then followed by Law No. 32 of 1954, which states that Law No. 22 of 1946 was enforced in all regions in Indonesia (Nurlaelawati, 2010). By only focusing on recording, the Old Order under the leadership of President Soekarno had not paid significant attention to children's rights. This attention was only discovered during the New Order era under Soeharto's leadership.

During the New Order era, state intervention in the age of marriage can be found in Law No. 1 of 1974. This effort has gone through ups and downs of debate between modernist groups and Islamic groups who consider a woman's readiness to marry is not determined by the age factor. More than that, setting the age of marriage is considered an indirect threat to Islamic law. Hori said that the draft marriage law initially included the age of marriage according to Western standards, 21 years for men and 18 years for women. With these provisions, the state is considered too far from Sharia, so the age drops to 19 years for men and 16 years for women (Horii, 2021).

Conservatism, in this case, became one of the challenges in the early days the protection of children was included in laws and regulations. Conservatism can be interpreted from various perspectives (Sebastian et al., 2021), but in this paper, conservatism is a view that prioritizes traditional views of Islamic law (*fiqh*) over child protection (Hayat, 2022). This view of traditional Islamic law is not only found in the issue of child protection but also other family law issues. Similar to efforts to codify the minimum age of marriage, provisions concerning polygamy and divorce are also being challenged by orthodox Islamic groups (Otto, 2010).

After Law No. 1 of 1974 was issued, in the context of family law in Indonesia, there has been protection for children with restrictions on the age of marriage. The age of marriage is regulated as a formula of reducing the practice of child marriage. In addition to reducing the number of polygamy and divorce, reducing child marriage was one of the main objectives of promulgating the Marriage Law (Cammack, 1989). Still, the age limit is not absolute; Article 7, paragraph (2) of the Marriage Law explains that marriage dispensation can be applied for deviation conditions. Judges may consider certain conditions to grant permission to underage couples to marry.

*Marriage dispensation* is an effort that can be taken to enter into underage marriages determined by the rules of the Marriage Law in Indonesia. The opportunity provided by law is an emergency if there is an urgent reason to enter an underage marriage. This urgent condition then raises the pros and cons in the context of child protection in Indonesia. On the one hand, the dispensation of marriage is an attempt to accommodate Islam's principle of maturity (*baligh*) because *fiqh* does not explicitly explain marriage age but rather physical and emotional maturity (Cammack, 1989). On the other hand, efforts to dispense marriage are considered a setback in protecting children in Indonesia because they are inconsistent in preventing underage marriages (Aditya & Waddington, 2021). Nevertheless, the dispensation of marriage from the state's perspective remains a middle way to provide opportunities for underage marriages due to certain conditions.

The fact of the marriage dispensation received concrete criticism through a Judicial Review proposal to the Constitutional Court. The age of marriage regulated in the Marriage Law has been scrutinized twice. First, the Judicial Review was filed in 2014, and second, in 2017. The Judicial Review in 2014 was rejected by the Constitutional Court so that the age of marriage remains according to the Marriage Law. Meanwhile, the Judicial Review in 2017 was granted by the Constitutional Court. The main point of the proposal in the Judicial Review is that the minimum age for marriage is 19 for men and 16 for women violates the principle of equality before the law and is against the Constitution. The Constitutional Court's decision led to the revision of Law No. 1 of 1974 with the issuance of Law No. 16 of 2019. This latest law only regulated the minimum age of marriage, 19 years for men and women.

Following this law, the Supreme Court also issued *PERMA* No. 5 of 2019 concerning guidelines for adjudicating applications for marriage dispensation. This regulation thoroughly regulates the procedures that judges must follow in adjudicating cases of the dispensation of marriage. In article 16 *PERMA* No. 5 of 2019, judges are asked to pay attention to various matters to realize the child's best interests in the examination process. Judges must be thorough in various matters, including scrutiny of the applicant's legal position, background or reasons for the proposal, marital obstruction, child consent, age difference between spouses, and psychological, sociological, cultural, educational, health and economic conditions. The judge was even inquired to consider professionals' recommendations regarding a child's physical and mental health.

Recommendations from professionals are a method of progress in legal norms in Indonesia regarding the protection of children. Before *PERMA* No. 5 of 2019, no rules focus on efforts to prove through scientific mechanisms. This evidence is considered to guarantee the safety of children, especially women. Maturity to marry with this norm guarantees that women will not experience the worst possibility from various aspects, such as health and mentality. In point g of Article 16 *PERMA* No. 5 of 2019, for example, it is stated that judges are asked to provide consideration based on recommendations from midwife. The recommendation is intended so that the woman is ensured that she is ready for pregnancy and childbirth. This health condition became the reason for the proposal for a judicial review submitted to the Constitutional Court in case No. 22/PUU-XV/2017.

From the explanation above, the dispensation of marriage is a legal product enacted between the tension between the sources of Islamic law adopted by the state and the spirit of child protection. On the one hand, the state accommodates human rights principles adopted from various international conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). However, on the other hand, the state also maintains local norms, which later become a challenge for child protection in Indonesia (Horii, 2021, p. 507). In other words, while marriage dispensation is permitted in Indonesia, child protection is also considered through statutory regulations, such as Law No. 22 of 2003 concerning Child Protection and Law No. 16 of 2019 concerning Marriage.

### **Supplementary Norm in the Judge's Decision on Marriage Dispensation**

Supplementary norms are very influential in judges' decisions in Religious Courts. Almost every judge's decision in the Religious Courts is strengthened by the additional legal argument, including marriage dispensation. The existence of additional legal arguments can be understood that judges can decide cases of marriage dispensation by providing other legal considerations outside the

statutory norms. These other considerations are regulated in *PERMA* No. 5 of 2019 in children's best interests. This section will explain the classification of the supplementary norms used by judges in granting proposals for dispensation from marriage.

### ***Fiqh* Principles: Emergencies and *Mafsadat* Perspective of Judges**

FK is a 17-year-old girl who has just finished junior high school. FK's parents applied for a marriage dispensation to the Tondano Religious Court to be granted a marriage dispensation with a man named AP, who is 26 years old. The woman's parents applied to the Religious Court because the local Office of Religious Affairs (*KUA*) refused to marry the bride and groom because FK was underage. In their proposal, the girl's parents stated that FK and AP had to be married because FK was already two months pregnant. The pregnancy is one of the reasons for applying for a marriage dispensation. The judge granted the proposal in decision No. 49/Pdt.P/2022/PA.Tdo. The judge stated that it is better to marry a pregnant woman than not to marry her.

The case above illustrates that the judge considers certain conditions to grant a marriage dispensation. This condition is not based on the applicable laws and regulations but refers to the judge's discretion. In the case above, pregnancy is considered an emergency condition, so the age limit is no longer used as an obstacle to marriage. In order to say that there is an emergency, the judge uses additional arguments in the form of *fiqh* rules. There are several *fiqh* principles used by judges regarding this emergency. The first type of rule is *fiqh* rules related to emergencies.

From several decisions collected, the *fiqh* principles regarding emergencies were: First, "*Addaruratu tubih al-mahdzurah*". This rule is used as a reference that emergency conditions allow doing something that is prohibited. Second, "*Izha ta'aradha dararani daf'u akhaffahuma*". If there are two emergencies, the lighter one is taken. Third, "*Al-akhzu Bi akhaffi al-Dhararaini Wajibun*". Taking an emergency lighter is required. Fourth, "*Addararu yuzalu*" means that disadvantages must be eliminated. Fifth, "*Al-Hajah tanzilu Manzilata al-Darurah 'Ammatan Kana Au Khassah*". Necessity (*al-Hajah*) is the same position as an emergency.

The five principles above are used for different reasons. The judge uses this principle based on the reasons put forward by the applicant, such as pregnancy which is generally found in marriage dispensation proposals (Isnawati, 2018, p. 159). Pregnancy is a reason for dispensation of marriage, which almost all judges grant. The judge considered the pregnancy as an emergency condition because it was related to the prevailing local norms. Marrying a pregnant woman is intended to cover the family's disgrace because pregnancy out of wedlock is considered to have violated religious norms and local customary norms. Therefore, marriage is a solution that must be taken to maintain honour.

Separately from pregnancy, there is another condition that, according to the judge, is an emergency. This condition is the closeness between underage couples. In a decision at the Sinabang Syari'iyah Court No. 124/Pdt.P/2022/MS.Snb found a very close couple. The closeness of the couple caused worry for the family. This legal fact was discovered by the judge at trial and then used as a consideration for granting a dispensation for marriage. The same consideration was also found in decision No.16/Pdt.P/2022/PA.Psp, where the judge stated that the children, in this case, must be married because their closeness is an emergency condition for marriage.

The next type of *fiqh* principle used by judges is the principle of "*mafsadat*" or "disadvantages", later called "*mafsadat*". Some of the principles found in several judges' decisions are based on the possibility that will occur in the future. Among the rules used by the judges is "*Dar'ul mafasid muqaddam 'ala jalb al-masalih*." Based on this rule, rejecting "*mafsadat*" or "disadvantages" takes precedence over taking "*maslahah*" or "benefit." A similar argument is "*Tasarruf al-Imam' ala Ra'iyatih Manuthun bi al-maslahah*." This principle means that *Imam's* or government's rule are based on benefit.

This "*mafsadat*" consideration can be seen in several decisions that have been collected. In case No. 31/Pdt.P/2022/PA.Thn. The Judge said that "*mafsadat*" needed to be avoided first. In this case, two things become "*mafsadat*" from the Judge's perspective. The possibility of adultery and the possibility of malicious gossip in society. To strengthen this opinion, the Judge also referred to Hamka's opinion in the *tafsir* book of *al-Azhar*, which states that if the door to adultery is closed, the door to the marriage must be opened. Based on this argument, marriage dispensation is considered a way that must be given to close the way of adultery.

In other cases, the judge also referred to the community's social conditions in interpreting *mafsadat*. This argument can be found in decision No. 0658/Pdt.P/2022/PA.Bdw. The Bondowoso Religious Court judge stated that underage marriages often occurred in the Bondowoso community. This fact occurs because the community has a habit of marrying off children who are not in school. If the dispensation of marriage is not granted, then the "*mafsadat*" that may occur is *sirri* marriage (unregistered marriage), according to the judge, harms marriage and children. Consequently, the legal values that live in the community are then used by the judge to grant a marriage dispensation. This argument can be found in the Decision of the Sukamara Religious Court No. 27/Pdt.P/2022/PA.Skr. The judge stated that waiting for the couple to reach the legal age to marry was impossible. Waiting until the age of 19 will do more destruction because the judge assumes that the couple's closeness makes it possible for an unrecorded marriage to occur.

From the explanation above, the *fiqh* principles used by judges revolve around emergency, *mafsadat*, and benefit arguments. From the judge's perspective, several forms of emergency can be found as the basis for granting a



marriage dispensation. Among them are conditions of pregnancy and closeness between underage couples. Meanwhile, the jeopardize those judges avoid in creating benefits are avoiding slander in the community, avoiding the potential for adultery, and avoiding the potential for unregistered marriages. From the judge's perspective on the *fiqh* principle used by judges, there is no perception of the child's best interests. The following describes several perspectives of judges regarding emergencies and *mafsadat*.

Tabel.1  
Emergencies and Disadvantages of Judge Perspectives in Granting Marriage Dispensation

| No. | Emergencies in the Judge's Perspective | <i>Mafsadat</i> in Judge's Perspective |
|-----|--|--|
| 1.  | Pregnancy without wedlock              | Potential for Adultery                 |
| 2.  | Closeness between Underage Couples     | Potential for Community Slander        |
| 3.  |  | Potential Unregistered Marriage        |

### ***Al-Quran, Hadith and Fiqh; Marriage Must Be Hastened***

Apart from using the *fiqh* principle as an emergency reason, the judge at the religious court also referred to the verses of the Koran and Hadith to grant the proposal for marriage dispensation. The Koran's verses and Hadiths, the primary sources in establishing Islamic law, remain a reference for judges in deciding cases. In almost every additional legal consideration, judges cite Koran's verses and hadiths as references, including in deciding cases of marriage dispensation. For Instance, this argument can be found at the Sungai Raya Religious Court 15/Pdt.P/2022/PA.Sry in 2022. Proposals for marriage dispensation are submitted for girls 18 years old and prospective husbands 20 years old. The couple is considered very close in this proposal, so they are likely to commit adultery. Under these conditions, the judge strengthened his decision by referring to the verse of the Koran in the *Surah An-Nur* verse 32.

"And marry those who remain single among you, and also those who are worthy (married) of your male and female slaves. If they are poor, Allah will give them ability with His grace."

Based on this verse, the judge argued that anyone fit to marry should be married off. However, this verse does not explicitly explain the legal age of appropriateness for someone to marry. This verse only provides legitimacy regarding the eligibility to marry.

The verse is then corroborated by a hadith quoted from the book *Subulus Salam*. The hadith referred to by the judge states that a young man who is fit to marry must marry, but if he cannot, then fast. Similar references are also used by judges at the Tahuna Religious Court in decision no. 31/Pdt.P/2022/PA.Thn refers to the book of Ibn Taimiyah entitled *Al-Fatawa*. Another hadith can be

found in the Decision of the Sungai Raya Religious Court No. 15/Pdt.P/2022/PA.Sry. The hadith was narrated by Tirmidhi, which stated that three things should not be postponed, praying when the time has come, organizing the funeral, and women who already have equal partners.

The Koran's verses and Hadiths referred to by the judges show that the judges tend to grant a marriage dispensation proposal. The tendency of the verses and hadiths used leads to the perception that if a couple is deemed worthy of marriage, then the couple must be married off. In addition to the Koran and hadith, judges also refer to *fiqh* books in the context of hastening marriage. Among the *fiqh* books referenced is *Fiqh al-Islam Waadillatuhu* by *Wahbah al-Zuhaily*. This argument can be found in the Decision of the Religious Court of Tahuna No. 31/Pdt.P/2022/PA.Thn.

"Marriage becomes mandatory when a person is sure that he will fall into adultery if he does not marry, and he can provide for his wife in the form of a dowry and maintenance and other marriage rights."

The judge stated that the marriage law becomes mandatory when the couple has the financial ability, and they will fall into adultery if they do not marry. From this *fiqh* point of view, the anxiety becomes one of the legal logics for judges in deciding cases of marriage dispensation.

### **Conservatism and Progress on Child Protection in Indonesia**

The dispensation of marriage, considered to benefit the child, generates new problems in the judge's decision at the Religious Courts. In a more concrete form, this problem can be found in various judges' decisions in the Religious Courts in Indonesia. On the one hand, judges of the Religious Courts admit that there is a disadvantage in permitting minors to marry. However, on the other hand, textual norms, be it interpretations of the Koran, Hadith, or *fiqh*, provide legitimacy for marriages to occur when they reach puberty (*baligh*). Based on the legitimacy of this textual sources, most judges understand that underage marriage does not violate the Sharia even though they are not yet 19 years old, according to Law No. 16 of 2019.

The findings of this research reflect that the concept of child protection adopted in the latest Marriage Law has not been optimally implemented. Inadequacy occurs because the judge has not considered the best interests of the child as a whole. Judges' decisions generally precede the principle of conformity with Islamic legal norms. This fact then confirms some studies which state that the conception of Islamic law, which does not yet provide a standard for age and health, both mental and physical, remains the primary reference (Iswantoro & Tobroni, 2022). This reference also confirms that judges accommodate local norms in legal considerations, urgent conditions in the form of closeness between partners, and pregnancy conditions (Andar Yuni, 2021; Horii, 2021).

This accommodation occurs because the contextualization of the interpretation of Islamic law has yet to be thoroughly carried out in the Religious Courts, particularly regarding child protection. *PERMA* No. 5 of 2019 has provided guidance that judges must consider several matters related to child protection in the marriage dispensation. However, at the realization stage, the circumstances considered are the pillars and conditions of marriage, as explained in the Islamic legal literature. In addition, in the benefits context, judges see more of the consequences if the marriage dispensation is refused, even though, in some cases, the applicant's reasons do not represent the actual conditions (Fadhli & Warman, 2021, p. 157). Therefore, the judge can be said to be too permissive towards the proposal for a marriage dispensation with the benefit perspective used.

Based on the decisions collected in this article, the argument of Islamic law in the form of benefit from the judge's perspective does not accommodate physical and mental health conditions and the continuity of education. These considerations only exist procedurally to advise couples getting married by reminding them of the dangers of underage marriage (T & Djabbar, 2021, p. 74). Therefore, this study, on the one hand, strengthens several studies that have been conducted, which found that marriage dispensation is an opportunity that can hamper child protection in Indonesia. On the other hand, the findings in this study also confirm the result of several studies that examine the rejection of proposals for marriage dispensation. The marriage dispensation is rejected when judges integrate Islamic law and human rights principles such as mental health (Iswantoro & Tobroni, 2022; Nawawi et al., 2022).

Based on the discussion above, this study recommends that marriage dispensation is an opportunity to be provided when there are very urgent reasons. These urgent conditions must be understood in a broader context by integrating the child's best interests with the contextualization of Islamic legal arguments. Moreover, to avoid a permissive interpretation of marriage dispensation, the Supreme Court can make concrete rules regarding the standardization of urgency for proposals for marriage dispensation in Indonesia.

## **Conclusion**

Several points will be concluded in this article. First, child protection in Indonesia is growing over time. In the context of family law, this development occurs through the codification and renewal of family law. Initiated by Law No. 1 of 1974 was later followed by Law No. 16 of 2019 and *PERMA* No. 5 of 2019. However, this rule has yet to be fully implemented in the Religious Courts. Second, judges' legal considerations in deciding cases of the dispensation of marriage are based on fiqh principles, texts, and social conditions framed within the framework of benefit. However, the benefit from the judge's point of view is prioritizing the marriage of minors rather than investigating in detail the

readiness of child-aged couples to marry. The judge's permissive attitude occurs because the textual arguments used have not been contextualized with the spirit of child protection in Indonesia.

The lack of detail in the judges was found only based on published decisions and analyzed using a juridical-normative approach. Therefore, this article is limited to data sources that are used to see the perspectives judges use in looking at children's best interests. Further research in the same study can be further explored more comprehensively. Among them is by investigating the understanding of judges, looking at ongoing trial practices, and conducting studies on the influence of judge education on the progressivity of family law in Indonesia.

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