

## Dynamics of Marriage Dispensation at The Sidenreng Rappang Religious Court After Law No. 16 of 2019: A Comparative Study of Family Law

Luthfiah. M<sup>1</sup>, Fikri<sup>2</sup>, Aris<sup>3</sup>, Rusdaya Basri<sup>4</sup>, Sunuwati<sup>5</sup>

Institut Agama Islam Negeri Parepare, Indonesia<sup>12345</sup>

[luthfiah.m@iain.pare.ac.id](mailto:luthfiah.m@iain.pare.ac.id)  
[fikri@iainpare.ac.id](mailto:fikri@iainpare.ac.id)  
[aris@iainpare.ac.id](mailto:aris@iainpare.ac.id)  
[rusdayabasri@iainpare.ac.id](mailto:rusdayabasri@iainpare.ac.id)  
[Sunuwati@iainpare.ac.id](mailto:Sunuwati@iainpare.ac.id)

### Abstract

*This study analyzes the social and legal dynamics of marriage dispensation practices at the Sidenreng Rappang Religious Court before and after the enactment of Law No. 16 of 2019 which raised the minimum age for marriage to 19 years. The study uses a qualitative approach with a case study method, data collection through observation, in-depth interviews, and documentation. Data analysis was carried out descriptively qualitatively using family law theory as a conceptual framework to understand the factors that influence dispensation decisions. The main findings show an increase in dispensation requests influenced by family economic limitations, low access to education, strong socio-cultural construction, the phenomenon of premarital pregnancy, and low supervision and legal literacy in the family. The motives of maintaining family honor and compliance with religious norms are also major factors. However, educational and preventive efforts from the courts, obstacles and culture are still significant. The scientific contribution of this study is to provide an in-depth understanding of the consistency of Law No. 16/2019 in the local context as well as recommendations for strategies for cross-institutional synergy in reducing early marriage practices sustainably.*

**Keywords:** *Marriage Dispensation, Social Facts, Law No.16/2019*

**\*Corresponding author:** [luthfiah.m@iain.pare.ac.id](mailto:luthfiah.m@iain.pare.ac.id)

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## 1. INTRODUCTION

Marriage is a fundamental social institution in the order of Indonesian society and at the same time a human right guaranteed by the state. (Mughniatul Ilma, 2021) It is a necessity that should not be obstructed by anyone as long as it is conducted in accordance with Islamic law and applicable national law. However, along with the development of increasingly complex human life, issues related to marriage have also evolved.(Fikri 2022). One prominent phenomenon is the practice of child marriage, particularly in areas with low levels of education and economy. According to UNICEF (2022), Indonesia ranks seventh highest in the world for the number of child marriages, with more than 457.600 girls married before the age of 15.

The phenomenon of child marriage not only reflects a crisis in the protection of children's rights but also brings multidimensional adverse effects.(Kurniawati 2021) Children who marry early are more likely to drop out of school, face higher reproductive health risks, and become trapped in a cycle of intergenerational poverty. These negative impacts hinder individual potential and the overall development of human resources. (UNICEF, 2022) (Fajar Rizki Aulia, 2020). Although regulations have been strengthened, challenges still exist in their implementation, particularly at the judicial level. One indicator of this is the high number of marriage dispensation requests submitted to the Religious Courts.(Wibowo 2024) This indicates that despite clear age restrictions, the dispensation pathway is still frequently utilized, reflecting the dynamics of law enforcement in the field. The gap between the established legal norms (Law No. 16 of 2019) and the social practices occurring in society, as reflected in the high rates of child marriage and dispensation requests, indicates the presence of structural and cultural resistance. This gap suggests that the national marriage legal system has not fully addressed the root causes of child marriage practices.(Judiasih, Dajaan, and Nugroho 2020) Therefore, in-depth research to comprehensively understand the social and legal dynamics behind the practice of marriage dispensation following the enactment of Law No. 16 of 2019 is urgently needed.(Khairunnisa

2022) This research is necessary to identify the driving factors, motives, and obstacles to the implementation of regulations, so that more effective and adaptive policy recommendations can be formulated to strengthen child protection and improve the quality of human resources in Indonesia.(Wahyudi, Triutami, and Hendriana 2025)

Academic studies have shown that the practice of child marriage is closely related to cultural, economic, and weak legal awareness factors. Studies conducted by the Central Statistics Agency and the Ministry of Women's Empowerment and Child Protection (BPS & KPPPA, 2021) reveal that social norms, family pressure, and perceptions of family honor are the main drivers of early marriage. On the other hand, public understanding of positive law, especially Law No. 16/2019 on the amendment of Law No. 1/1974, is still very limited. Although this law has raised the minimum age of marriage to 19 years for both men and women, empirical data shows that applications for dispensation of child marriage in religious courts have actually increased-as noted by the Indonesian Supreme Court (2020)(Damanik 2023; Sebyar 2022), which showed significant performance after the enactment of the law (Farid et al.2023).

The subsequent research titled "Analysis of Marriage Dispensation Policy in Indonesia Post Law No. 16 of 2019" examines the trends and declining national marriage dispensation rates, as well as the challenges of educating the public to prevent early marriage.(Yumna 2025) Data indicates a sharp increase in dispensations during the pandemic, followed by a gradual decline afterward; however, the practice of child marriage remains significant.

Theoretically, this research relies on a sociolegal approach that views law not solely as a normative text, but also as a social practice influenced by cultural and

economic structures. The enactment of Law No. 16/2019 has not been fully effective in reducing the number of child marriages, because there are still legal loopholes through dispensation, as well as the strong influence of local culture and community perceptions that normalize marriage at an early age.(Sembiring et al. 2023; Mayastuty 2024; Maâ and Muhaimin 2019). In other words, formal regulations have not been fully internalized in the practice of community life. (Kirana 2022).

Therefore, it is necessary to reconstruct the understanding of the meaning of marriage dispensation in the context of child protection.(Muhtadi 2023) The Religious Court as the executor of judicial power in the realm of the Islamic family has a strategic role, not only in applying the law, but also as the frontline in legal education to the community (Nurhayati 2021). By exploring the dynamics of dispensation applications at the Sidenreng Rappang Religious Court, this paper is expected to contribute to the development of Islamic family law discourse in Indonesia and become a reference in reformulating legal policies that are fair to children (Nurlaelawati & Salim, 2018).(Kristarina 2019)

## **2. METHODS**

This research uses a qualitative approach with a case study design that examines a phenomenon, event, or situation in depth and comprehensively on the practice of marriage dispensation at the Sidenreng Rappang Religious Court after the enactment of Law Number 16 of 2019. This approach was chosen because it is able to explain social and legal realities comprehensively through direct interaction with the subject and context of the research. The unit analysis in this study includes marriage dispensation decisions that have been decided by the Sidenreng Rappang Religious Court, including the legal narrative in the decision, the applicant's reasons, and the judge's considerations. The focus of the research is on a comprehensive

understanding of the juridical process and the socio-cultural considerations behind the granting of marriage dispensation at the court level. The data sources in this research consist of primary data and secondary data. Primary data was obtained through in-depth interviews with key informants, such as judges, clerks and authorized staff within the Sidenreng Rappang Religious Court. In addition, direct observation of disruption activities and the case administration process was also conducted as a form of empirical confirmation of the information obtained from the interviews. Meanwhile, secondary data was collected from official documents, such as copies of conclusions, case statistics, relevant laws and regulations, and other scientific references related to the research theme.

Data collection techniques were conducted through three main methods, namely: (1) direct observation of judicial practices related to marriage dispensation, (2) documentation of decision archives and other supporting data, and (3) semi-structured interviews with informants to obtain in-depth and contextualized data. After the data was collected, a data analysis process was conducted using the model of Miles and Huberman, which included data reduction, data presentation, and conclusion drawing. The analysis was conducted inductively to find patterns of argumentation, juridical logic, and the relationship between legal norms and the social context behind the marriage dispensation application. This process was carried out systematically and repeatedly to produce sharp, accurate and scientifically justifiable interpretations.

### **3. RESULT AND DISCUSSION**

#### **Analysis of the Social and Economic Impacts of Child Marriage**

Basically, setting the age limit for marriage aims to benefit and good, especially for the prospective bride and groom. Law No. 19 of 2019 concerning Marriage No. 4 Letter (d) explains that the principle of the prospective bride and groom must be mature in body and soul so that they can realize the purpose of marriage properly without ending in divorce and have good and healthy offspring. Limiting the age of marriage is also carried out with the intention of improving the quality of Indonesia's human resources. By limiting the age of marriage, it is hoped

that Indonesian children can get a longer education period so that they will be able to improve the quality of human resources in Indonesia. However, the law provides an opportunity for underage marriage through dispensation of marriage through the court. Based on Minister of Religious Affairs Regulation No. 5/2019, a religious court dispensation is a determination in the form of dispensation for a prospective husband who has not reached the age of 19 years and or a prospective wife who has not reached the age of 19 years issued by the Religious Court.

On the other hand, Article 26 of Law of the Republic of Indonesia No. 23/2002 on Child Protection obliges parents to protect their children from underage marriage. However, like the marriage law, it does not have provisions for criminal sanctions, making it almost ineffective in protecting children from the risks of underage marriage (Djamilah and Kartikawati 2014).

The increase in the number of dispensation cases at the Sidenreng Rappang Religious Court can be seen from the results of research that has been conducted. The data shows that over a period of time, there has been a significant increase in the number of dispensation cases filed with the court. This reflects changes in marriage patterns and legal demands in the local community. Factors such as social, economic and cultural changes may have contributed to this increase. Therefore, the increase in dispensation cases needs to be further analyzed to understand the underlying dynamics of social and legal change. The results of researchers' research with informants at the Sidenreng Rappang Religious Court related to the social facts of marriage dispensation before and during the enactment of Law No. 16 of 2019 at the Sidenreng Rappang Religious Court. The following is presented below:

”Regarding dispensation of marriage in the Sidenreng Rappang Religious Court before the enactment of Law No. 16 of 2019, namely when Law No. 1 of 1974 concerning Marriage was in force, Dispensation of Marriage at that time was actually very large, this was because the culture of the Sidenreng Rappang community at that time did not consider education as a hope for prosperity, but considered that marrying off their children would guarantee their lives and their children later, so they were

inclined to marry off their children even though they were still young, so they came to the Court asking for a Dispensation policy for Marriage permits. Meanwhile, at this time, namely during the enactment of Law No. 16 of 2019, dispensation of marriage at the Sidenreng Rappang Religious Court experienced a very significant surge in applications, of course, with a variety of different reasons, some were granted and some were rejected. Regarding the reasons, there are those who reason that they are pregnant outside of marriage, already like each other and if they are not married off, it will lead to bad things, and there are also calculous reasons that bring cultural reasons such as arranged marriage, not a few people who come think that they do not know about the age limit for marriage set by the government” (Shafar Arfah, 2023).

Referring to information found at the Sidenreng Rappang Religious Court, Marriage Dispensation both before the enactment and during the enactment of Law No. 16 of 2019 until now there have been many cases, but after the enactment of Law No. 16 of 2019 from year to year there has always been a very significant increase with various reasons submitted by the applicants for marriage dispensation. There is the view of Syaraswati Nur Awaliyah, one of the Judges of the Sidenreng Rappang Religious Court as follows:

“Marriage Dispensation especially in the Sidenreng Rappang Religious Court is of course well known that every year there is always an increase in applications both before the enactment of Law No. 16 of 2019 especially after the enactment of the Law, so it can be said that every year is always crowded with dispensation cases, speaking of dispensation actually in Sidenreng Rappang Regency experiencing a surge due to the lack of socialization and the role of the government in tackling the problem.”(Syaraswati Nur Awaliyah 2023)

Syaraswati Nur Awaliyah's opinion from the results of the interview above suggests that the Sidenreng Rappang Religious Court has always experienced a surge in applications for dispensation of marriage both before and during the enactment of Law No. 16 of 2019 which is due to the lack of socialization and the role of the

government in dealing with these problems. Handling underage marriage, especially with efforts to request marriage dispensation, not only requires the involvement of the government but also requires socialization and legal counseling among practitioners and academics. Furthermore, the involvement of legal practitioners provides information regarding the adverse effects on women's reproduction if married underage, while academics should be closer to sociological aspects to conduct legal studies, especially for parents who marry off their children even though they have not reached the age of 19.

As stated by Mindriani Amin, who is a Deputy Registrar of Law at the Sidenreng Rappang Religious Court, regarding the social facts of dispensation of marriage before and during the enactment of Law No. 16 of 2019 at the Sidenreng Rappang Religious Court are as follows:

“Marriage Dispensation has certainly always increased not only in the Sidenreng Rappang Religious Court, it is undeniable that in all Religious Courts in Indonesia it has certainly always increased after the enactment of Law No. 16 of 2019, this is due to changes in age that are far from the previous age set for the age limit for marriage, while only 16 years old yesterday there were many who applied for dispensation, especially now that it is 19 years old. The request for dispensation of marriage at the Sidenreng Religious Court is actually not dominant from the female side alone, many are also from the male side. This is also based on classic reasons that are requested to be granted immediately.”(Amin 2023)

According to Mindriani Amin, the Sidereng Rappang Religious Court has always experienced an increase in applications for dispensation of marriage both before the enactment of Law No. 16 of 2019 and during its enactment until now, this continues due to changes in age that are far from the previously determined age and in the Sidereng Rappang Religious Court, those who apply for dispensation are not only from the female side, however, it is undeniable that there are also male parties who apply for dispensation of marriage.

Regarding the social facts that occurred before and during the enactment of Law No. 16 of 2019 at the Sidenreng Rappang Religious Court, Heru Fachrurizal also has the following opinion:

“Regarding the social facts of marriage dispensation before and during the enactment of Law No. 16 of 2019 at the Sidereng Rappang Religious Court, of course, there has always been an increase, be it before or during its enactment until now, but of the many requests for marriage dispensation that have come in, not all of our requests have been granted, because we as task executors also have guidelines in carrying out our duties, of course we only grant those that we think are urgent judges to grant, meaning that not all urgent reasons can be fulfilled because everyone has a different understanding. This means that we don't only look at one side but we look at both sides, including health, education, mental health, and so on.”(Fachrurizal 2023)

In the interview with the judge of the Sidenreng Rappang Religious Court above, Heru Fachrurizal also believes that the Sidenreng Rappang Religious Court has always experienced an increase both before and during the enactment of Law No. 16 of 2019 but even though there are many requests that come in not all of these requests are granted, of course there are those that are rejected because there is not enough reason / evidence to be granted the application, because judges of course also have guidelines in carrying out their duties, so they do not decide arbitrarily even though the applicant's reason according to him is very urgent.

Based on the results of research at the Sidenreng Rappang Religious Court, there are at least two main trends that can be identified after the enactment of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. First, there was a very significant increase in the number of marriage dispensation applications following the establishment of the marriage age limit to 19 years for both men and women. This surge reflects that regulatory changes have not been fully matched by a transformation in people's legal understanding. People still see marriage as a solution to various social, economic and cultural problems,

resulting in requests for dispensation to avoid social conflict or fulfill deeply rooted cultural expectations.

The second tendency relates to the diversity of reasons for marriage dispensation applications submitted to the courts. The reasons submitted by applicants vary widely, ranging from pregnancy outside of marriage, the desire to marry because they love each other, cultural pressures such as arranged marriages, to ignorance of the age limit set by law. This indicates a gap in information and understanding of the law in the community. On the other hand, judicial officials, especially judges, do not necessarily grant all requests. They still prioritize the precautionary principle, paying attention to psychological aspects, mental readiness, reproductive health, and the continuity of children's education. Thus, it can be said that the government is trying to maintain a balance between the social conditions of society and the principles of child protection and family benefit.

This phenomenon also indicates a structural weakness in the implementation of legal policies, especially in terms of legal education to the community. The lack of socialization of new regulations and the lack of an active role of the government and related institutions in providing an understanding of the importance of the age of maturity in marriage are the main causes of the high number of marriage dispensations. Therefore, synergy between the government, judicial institutions, educational institutions and community leaders is needed to strengthen legal awareness at the grassroots level. An interdisciplinary and collaborative approach is key to encouraging changes in legal culture in line with the principles of child protection and the goal of developing quality human resources.

Based on the results of these interviews, that in the Sidenreng Rappang Religious Court before and during the enactment of Law No. 16 of 2019 until now has always experienced a very drastic increase, especially at this time, the minimum age for marriage is 19 years old for both men and women according to Law No. 16 of 2019. This is due to the urgent reasons submitted by the applicants for marriage dispensation, including the reasons for getting pregnant outside of marriage,

promiscuity, the strength of culture in arranged marriages and the lack of public knowledge about the minimum age of marriage. The reasons mentioned by law enforcers at the Sidenreng Rappang Religious Court are the perspective of *lex posterior derogat legi priori* which emphasizes that the new law defeats the old law, the next description of the old law in question is Law No. 1 of 1974 concerning marriage, Law No. 23 of 2002 concerning child protection, and the new law is Law No. 35 of 2014.

### **Challenges in the Implementation of Laws and Child Protection Policies**

According to *lex posterior derogat legi priori*, it is a legal principle in a positive legal system that implies that newer laws have a higher force than older laws, so they can replace or revoke older laws. In this context, *lex posterior* refers to newer laws, while *legi priori* refers to older laws.

This principle reflects the idea that in the event of a conflict between two applicable legal regulations, the newer regulation has greater power and can replace or revoke the older regulation. This aims to ensure that the law can always be updated in accordance with the development of society and the needs of the times.

However, it should be noted that this principle does not necessarily apply in all legal systems, and there may be exceptions depending on the specific provisions of a particular legal system. Some jurisdictions may have rules that limit or regulate the use of the principle of *lex posterior derogat legi priori*. Situating *lex posterior derogat legi priori* in marriage dispensation from several reasons found by legal practitioners, especially children are given dispensation to marry on the grounds of being pregnant outside of marriage even though the child is not old enough to carry out marriage, as well as children who are trapped in promiscuity “dead love”, meaning that there is no other way but for the two children to marry. When sharpened, the application of *lex posterior derogat legi priori* in Law No. 1 of 1974 has not yet presented the protection of children's rights, including the right to education and the right to health, especially providing the widest possible opportunity for children to attend formal education. Similarly, children who become pregnant

underage are very life-threatening, especially during childbirth, because there are more deaths of mothers who become pregnant under the age of marriage. The description shows that the new law strengthens the validity of Law No. 16 of 2019 and Law No. 35 of 2014 with various bad consequences arising from underage marriage, thus based on *lex posterior derogat legi priori*, Law No. 16 of 2019 can still be maintained. That way it is denied to be able to do a judicial review even with data on dispensation applications at the Sidenreng Rappang Religious Court.

Therefore, interpreting the meaning of *lex posterior derogat legi priori* shows that the Indonesian government passed and enacted Law No. 16 of 2019 as an amendment to Law No. 1 of 1974 emphasizing the aspect of protecting children's rights. Law No. 1 of 1974 is considered weak in protecting and upholding children's rights even though in the context after the enactment of Law No. 16 of 2019 with the increase in underage marriages or applying for marriage dispensation at the Sidenreng Rappang Religious Court. That context does not weaken the enforceability of Law No. 16 of 2019 which can definitely provide protection for children's rights.

Thus, the main adjustment made to the change in the age of marriage through Law No. 16 of 2019 shows its position as an increasingly strong law as emphasized in *lex posterior derogat legi priori*. That way, the main purpose of Law No. 16/2019 is inseparable from efforts to protect children's rights, especially the rights of girls. Another reason that can be shown by the enforceability of Law No. 16/2019, which is getting stronger with an increase in the marriage age limit, is that it can reduce the incidence of child marriage, which has a potential negative impact on the welfare and rights of children. By raising the minimum age of marriage, it is hoped that children will have a greater opportunity to enjoy their rights, prepare themselves maturely before entering married life, and reduce the risk of health impacts that may arise from pregnancy at an early age. Referring to *lex posterior derogat legi priori*, the validity of Law No. 16/2019 is not challenged and weakened by previous laws and regulations.

## KEADAAN PERKARA YANG DITERIMA PENGADILAN AGAMA SIDENRENG RAPPANG

Nomor	Jenis Perkara													Total	Keterangan																
	Tahun	Tim Puji/Janji	Pencapaian perkawinan	Pencapaian perkawinan oleh PPNG	Pembuatan perkawinan	Kelahiran anak kehamilan kebidanan	Cerai takak	Cerai gugat	Harta bersama	Penggunaan anak/ Halalohash	Melukai anak oleh ibu karena ayah tidak mampu	Itikad baik dengan mantan/kewajiban bekas suami	Penggunaan anak/ Pengangkutan anak			Pencabutan kekuasaan orang tua	Peralihan	Pencabutan kekuasaan wali	Pemintakan orang tua oleh wali oleh pengadilan	Ganti rugi terhadap wali	Akad usul anak	Periolakan kembali campur	Isbat nikah	Urn kawati	Dipensasi kawin	Wali istihaf	Hibah	Keruwatan	LAHILLAH	Pijah/ Pencapaian Ahi Waris	Wakaf
1	2015	-	-	-	-	-	183	575	7	2	-	-	1	-	-	-	-	-	-	40	-	98	1	14	9	-	14	-	-	-	936
2	2016	-	-	-	-	-	143	577	5	2	-	-	1	-	7	-	-	-	-	539	-	91	-	-	-	16	8	10	-	-	1339
3	2017	1	-	-	1	-	179	585	5	2	-	-	-	-	13	-	-	-	-	68	-	93	1	1	10	-	27	-	-	986	
4	2018	-	-	-	-	-	154	555	4	1	-	-	1	-	12	-	-	-	-	63	-	100	3	-	14	3	19	-	-	930	
5	2019	-	-	-	-	-	208	670	5	2	-	-	-	-	8	-	-	-	-	66	-	224	1	-	18	4	30	-	-	1237	
6	2020	-	-	-	-	-	162	605	2	-	-	-	-	-	24	-	-	-	-	62	-	631	4	-	6	4	23	-	-	1523	
7	2021	-	-	-	-	-	187	654	9	1	-	-	-	-	25	-	-	-	-	56	-	627	6	-	12	8	40	-	-	1671	
8	2022	-	-	-	-	-	146	574	5	-	-	-	1	29	-	-	-	-	-	67	-	715	2	-	5	29	24	-	-	1553	
9	2023																														
10	2024																														
11	2025																														

Ketua Pengadilan Agama Sidenreng Rappang Hd  
 Panitera Hd  
 SHAFAR ARFAH, S.H., M.H.

Gambar 1 (Keadaan Perkara pada Pengadilan Agama Sidenreng Rappang

### 4. CONCLUSION

Based on the results of this study, it can be concluded that the enactment of Law No. 16 of 2019 has a significant impact on the increase in the number of marriage dispensation applications at the Sidenreng Rappang Religious Court. This phenomenon is influenced not only by legal aspects but also by sociocultural and structural factors, such as pregnancies outside of marriage, low legal literacy among the community regarding the legal marriage age, and the strong local cultural norms that still restrict child marriage, particularly for girls.

Normatively, although Law No. 16/2019 has a higher legal authority, its implementation must consider the harmonization of legal norms and principles that

apply in Indonesia. To enhance the effectiveness of regulations and child protection, it is recommended that both central and local governments strengthen legal education programs and socialization regarding the legal marriage age and the risks of early marriage with an inclusive religious approach. Strengthening the institutional capacity of the Religious Court, including ongoing training for judges and staff, is also very important. Additionally, the provision of supporting facilities such as premarital counseling, free legal assistance, and psychological support for underage prospective brides and grooms should be part of local policies. Cross-sector harmonization between family law, child protection, and the religious justice system must be strengthened to close legal gaps that allow for marriage dispensation protection, ensuring that child protection can be optimized without being limited to cultural considerations alone.

Theoretically, this research makes an important contribution by enriching the discourse on the dynamics of marriage dispensation in Sidenreng Rappang through a more comprehensive understanding of the interaction between national legal norms and local sociocultural realities. This study also enriches the theory of judicial considerations in the context of family law by highlighting the sociocultural factors that influence dispensation practices. The implications of this research open up opportunities for more contextual and responsive policy development that meets local community needs, while also providing a scientific basis for inter-agency synergy in efforts to protect children and prevent early marriage sustainably. Thus, this research not only addresses empirical and theoretical perspectives but also strengthens the academic and practical foundations in managing marriage dispensations in the Sidenreng Rappang region.

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