

## Understanding the Implications of Marriage Law Amendments: Marriage Dispensation Cases in Indonesian Religious Courts

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### Abstract

This article aims to determine the implications of changing Law Number 1 of 1974 to Law Number 16 of 2019 concerning Marriage Dispensations in Indonesian Religious Courts. Specifically, this research seeks to analyze the increase in cases of post-amendment dispensation and explore the factors contributing to the gap between legal mandates and community practices regarding early marriage. This research uses a qualitative approach with a juridical perspective using comprehensive data analysis from Religious Courts in various regions in Indonesia. The data sources include decisions from the Directory of Decisions of the Supreme Court of the Republic of Indonesia, which focus on requests for dispensation. The analysis involves data collection, selection, sorting, reduction, and conclusion, aiming to effectively meet research objectives and address research gaps. This study integrates legal norms and societal dynamics to comprehensively understand the failure of the Amendment and its implications for the marriage dispensation in Indonesia. The analysis revealed a significant increase in requests for dispensation after the amendment. This reflects the challenges in dealing effectively with early marriage. Cultural pressures, institutional inconsistencies, and societal complexity contribute to the rise in cases of dispensation, underscoring the need for a different approach to legal reform and societal practice. Despite efforts to equalize the marriage age and

prevent early marriage, the Amendment has not effectively addressed societal realities, resulting in a gap between legal mandates and actual practice.

**Keywords:** Marriage law; marriage dispensation; religious courts

## Introduction

Implementing marriage laws, particularly the Amendment from Law No. 1 of 1974 to Law No. 16 of 2019 in Indonesia, has sparked significant concerns. The increase in marriage dispensation cases post-amendment reveals discrepancies between legal mandates and societal practices. Despite the intent to equalize marriage ages for men and women, the surge in dispensation requests indicates a failure to address early marriage effectively.<sup>1</sup> However, changes to Law Number 16 of 2019 related to increasing the age of women from 16 years to 19 years have become a public problem.<sup>2</sup> Boedi and colleagues revealed that this increase might be detrimental for individuals in remote areas without legal documentation and the common practice of age falsification to reach the minimum age of marriage.<sup>3</sup>

The revision of the marriage law, which raises the minimum age limit for child marriage, and the implementation of child protection policies do not necessarily guarantee that the practice of child marriage can be avoided.<sup>4</sup> In line with this, Rahiem revealed that the increase in early child marriage had reached the tenth world ranking in Indonesia, one of which is the province of West Nusa Tenggara.<sup>5</sup> In addition, inconsistencies in policies and laws regarding the minimum age for marriage can result in gender discrimination and limit

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<sup>1</sup> Dede Kania, Siti Fatoni, and Mochammad Afriansyah, "Marriage Dispensation After the Decision of Constitutional Court Number 22/PUU-XV/2017," *Jurnal Hukum Islam* Volume 19 (2021); Melinda Rahmawati and Heni Ani Nuraeni, "Peran Dispensasi Kawin Dalam Peningkatan Angka Pernikahan Dini Di Wilayah Kotamadya Jakarta Barat," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 May (2021): 1–14.

<sup>2</sup> Darlin Rizki, Frina Oktalita, and Ali Sodiqin, "Maqasid Sharia Perspective in Changes the Marriage Age Limits for Women According to Law Number 16 of 2019," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 November (2022): 487–508.

<sup>3</sup> RM Boedi H et al., "Application of Third Molar Maturity Index for Indonesia Minimum Legal Age of Marriage: A Pilot Study," *The Journal of Forensic Odonto-Stomatology* 1 (2022): 12–19; Ahmad Rajafi, "Reconsidering the Age of Marriage in Indonesia," *Al-'Adalah* 12, no. 1 (2014): 1–10.

<sup>4</sup> Noverman Duadji and Novita Tresiana, "Analysis of Child Marriage and Related Policies in Indonesia: Sustainable Development Issue," *Problemy Ekonomiji*, 2022, <https://doi.org/10.35784/pe.2022.1.10>; Syahrul Mubarak Subeitan, Nurlaila Isima, and Muhamad Sauki Alhabsyi, "Dinamika Pengangkatan Anak Di Indonesia," *Al-Mujtabid: Journal of Islamic Family Law* 1, no. 1 (2021): 59, <https://doi.org/10.30984/jifl.v1i1.1617>.

<sup>5</sup> Maila D.H. Rahiem, "COVID-19 and the Surge of Child Marriages: A Phenomenon in Nusa Tenggara Barat, Indonesia," *Child Abuse and Neglect*, 2021, <https://doi.org/10.1016/j.chiabu.2021.105168>.

children's access to justice, protection, and services.<sup>6</sup> In other words, amendments to the constitution of the Republic of Indonesia have the opportunity to cause controversy in marriage regulations, especially within the age limit. Moreover, marriage dispensation is one of the bridges to reduce early marriage caused by an insufficient age limit or other problem factors.

This research contributes novel perspectives by comprehensively examining the failure of the Amendment to Law No. 1 of 1974, particularly focusing on marriage dispensation in Indonesian Religious Courts. In the context of marriage dispensation research in Indonesia, this research enriches the literature framework by presenting aspects that have not been fully explored by previous studies. Although the study conducted by Yuni<sup>7</sup> and Rais<sup>8</sup> has made a significant contribution by focusing on the reasons for the marriage dispensation and its legal aspects, this research offers a more comprehensive view regarding the failure to amend Law Number 1 of 1974 concerning Marriage, especially regarding marriage dispensations in Indonesia.

This new statement emerged from a deeper understanding of the legal impact and considerations of the Constitutional Court in marriage dispensation cases. In line with this, this study provides a more holistic perspective by covering these regulatory changes from legal, social, and cultural perspectives and exploring how these factors interact. In contrast to Marzuki et al.,<sup>9</sup> research that highlights regulatory differences and gaps in the legal framework of the marriage dispensation, this research emphasizes an unexplored aspect of the amendment's failure. In addition, this research fills this gap by examining the impact of legal changes on marriage dispensations amidst the diversity of policies and societal views in Indonesia.

Although Mustofa<sup>10</sup> and Rangkuti & Agustar<sup>11</sup> have made valuable contributions regarding minimum marriage age provisions and gender

<sup>6</sup> Yanuar Farida Wismayanti et al., "The Problematization of Child Sexual Abuse in Policy and Law: The Indonesian Example," *Child Abuse and Neglect*, 2021, <https://doi.org/10.1016/j.chiabu.2021.105157>.

<sup>7</sup> Lilik Andar Yuni, "Analysis of The Emergency Reasons in The Application of Marriage Dispensation at The Tenggarong Religious Court," *Samarah*, 2021, <https://doi.org/10.22373/sjhk.v5i2.9135>.

<sup>8</sup> Isnawati Rais, "Marriage Dispensation Due to Extramarital Pregnancy: The Study on the Decision by the Religious Court of South Jakarta (2010-2011)," *AHKAM: Jurnal Ilmu Syariah*, 2018, <https://doi.org/10.15408/ajis.v18i1.7490>.

<sup>9</sup> Marzuki Marzuki et al., "The Implementation of Underage Marriage Dispensation in Palu Religious Court," *Review of International Geographical Education Online*, 2021, <https://doi.org/10.33403/rigeo.800521>.

<sup>10</sup> Kholifatun Nur Mustofa, "Provisions of Minimum Age of Marriage in Indonesia: Amendments Efforts and Responses," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 52, no. 2 (2018): 289–312.

<sup>11</sup> Muhammad Yusuf Rangkuti and Armi Agustar, "Change in Act Number 16 Of 2019 As An Amendment to Law Number 1 of 1974 Islamic Law and Gender Perspective,"

perspectives, this research notes the important role of marriage dispensations in changes to marriage laws in Indonesia. The research gap lies in its deeper focus on the failure of amendments to the law that form the basis of the marriage dispensation, filling the gap in knowledge that needs to be explored previously. Therefore, this research makes a unique contribution by highlighting this aspect, thus becoming the basis for a more comprehensive understanding of the marriage dispensation in Indonesia.

This qualitative research adopts a descriptive approach with a juridical perspective, analyzing marriage dispensation cases post-amendment to Law No. 1 of 1974 in Indonesian Religious Courts. Data sources comprise decisions from the Supreme Court of Indonesia's Directory of Decisions, focusing on dispensation applications across ten Religious Courts representing diverse regions. The analysis involves data collection, selection, sorting, reduction, and conclusion, aiming to effectively fulfill the research objectives and address the research gap.<sup>12</sup> The study integrates legal norms, societal dynamics, and cultural influences to comprehensively understand the Amendment's failure and its implications on marriage dispensation in Indonesia.

## Discussion

### Rise in Applications: Increased Requests for Marriage Dispensation in Religious Courts

The general trend of the literature related to Amendment studies is to emphasize the purpose of the Amendment to see equality of rights,<sup>13</sup> which means that women are equal before the Law.<sup>14</sup> Meanwhile, Law No. 1 of 1974 concerning marriage is a social reality that lives in society. Social reality in society tends to have several factors: (a). A family is a group of people who relate to each other and form a family based on love. This has been rooted in Indonesian society since the pre-independence era.<sup>15</sup> (b). The community interacts and activities to create a unity of life and a culture that makes community identity. It has grown and developed in Indonesia because marriage at a young age has long

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Jurisprudensi: Jurnal Ilmu Syariah, Perundangan-Undangan Dan Ekonomi Islam 14, no. 1 (2022): 51–62.

<sup>12</sup> Matthew Miles, Michael Huberman, and Johnny Saldana, *Qualitative Data Analysis: A Methods Sourcebook*, 2014; Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2009).

<sup>13</sup> Gerard Magliocca, “Buried Alive: The Reboot of the Equal Rights Amendment” (Rutgers University, 2019). Gideon Nii, Okai Okantey, and Emmanuel Brenyah, “Sociocultural Implications of Infertility and Challenges in Accessing Assisted Reproductive Technology: Experiences of Couples from Two Health Facilities In,” *Marriage & Family Review* 57, no. 5 (2021): 375–96, <https://doi.org/10.1080/01494929.2021.1880529>.

<sup>14</sup> Bridget L. Murphy, “The Equal Rights Amendment Revisited,” *Notre Dame Law Review* 94, no. 2 (2019).

<sup>15</sup> Nabil Adlani, “Mengenal Realitas Sosial Dan Bentuk-Bentuk Dalam Sosiologi,” 2021.

existed<sup>16</sup>. (c). The tribes and customs in Indonesia are very different; some even believe that matchmaking can be done when their children are in elementary school and matchmaking since birth. The Amendment to the marriage law, which changes the age of marriage to 19 years, concerns parents that their children (girls) are trapped in promiscuity.

In general, this paper aims to complete the need for literature related to the Amendment to Law No. 1 of 1974, which changed the age of marriage from 16 years for women to 19 years. The specific objectives of this paper include three things: (a) How is the increase in cases of marriage dispensation applications in Indonesian Religious Courts? (b) What is the cause of the rise in applications for dispensation for marriage, which tends to increase marriage at a young age? In this study, these three things also map the failure of the ongoing amendments to the Marriage Law.

This paper rests on two essential arguments. (a). Amendment to Marriage Law No. 1 of 1974 did not solve the problem of early marriage in Indonesia. Instead, there was an increase in young marriages throughout Indonesia, as evidenced by increased requests for dispensation from marriage for the community. The District Religious Affairs Office could not process marriages between men and women who had yet to reach the age of majority. 19 years old. (b). The Court Institution needs help dealing with the wave of applications for dispensation for marriage due to unfamiliarity with changes in the age of marriage. So submitting the marriage process to the District Office of Religious Affairs cannot be processed because the prospective bride and groom still need to meet the requirements determined by law.

Marriage law illustrates that every marriage has agreements and regulations established by the Law of the Republic of Indonesia. Nuraeny and Kuswandi explained that marriage is an inner bond between a man and a woman to form a happy and harmonious family, carried out by the rules.<sup>17</sup> However, this aligns with maqashid al-syariah, which explains that marriage law aims to maintain marital harmony, serve the depth and breadth of the public interest (maslahah), and is conditional on needs (daruriyat).<sup>18</sup> However, Law Number 16 of 2019 stipulates that in the provisions of Article 28B of the 1945

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<sup>16</sup> Woro Mega Dwi Astuti, Jacinda Ilma Mayastika, and Dian Lutfiani, "Supreme Court Policy on Underage Marriage Dispensation Realizing Legal Certainty," *Jurnal Ilmu Hukum* Vol 8 (2021).; Mujahid Assagaf, "Pertimbangan Hakim Pada Perkara Dispensasi Nikah Di Lingkungan Pengadilan Agama Tutuyan," *Al-Mujtabid: Journal of Islamic Family Law* 3, no. 1 (2023): 36–50.

<sup>17</sup> Henny Nuraeny and Kuswandi, "Legal Protection for Contract Marriage Victims in Indonesia," *Journal of Legal, Ethical and Regulatory Issues*, 2019.

<sup>18</sup> Ahmad Rajafi, "The Contemporary Ushul Fiqh in Indonesia: An Idea and Practice," *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (2023): 19–34; M. Noor Harisudin and Muhammad Choriri, "On the Legal Sanction against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda's Maqasid Al-Shariah Perspective," *Samarah*, 2021, <https://doi.org/10.22373/sjhk.v5i1.9159>.

Constitution of the Republic of Indonesia, it is stated that everyone has the right to form a family and continue offspring through legal marriage. The state guarantees the child's survival, growth, and development rights.

Moreover, develop and have the right to protection from violence and discrimination.<sup>19</sup> In addition, the marriage law is considered valid if both partners have a marriage book through the Office of Religious Affairs (KUA). This means that the Law of religious marriage is a regulatory stipulation the community uses to carry out marriages by operational standards that apply in the country.

Marriage dispensation is a common challenge in finding certainty and peace to carry out a marriage comfortably. Marriage dispensation has a journey in the laws and regulations set with the age limit for marriage in Indonesia. In this case, the Amendment to the marriage law in Indonesia started from Article 7 paragraph (1) Number 1 of 1974, which states, "Marriage is only permitted if the man has reached the age of 19 years and the woman is 16 years old." However, this provision has been amended by Law Number 16 of 2019, which states, "Marriage is only permitted if a man and a woman have reached the age of 19 years".<sup>20</sup> The Law Amendment explains that the validity of a valid marriage increases a woman's age limit. In line with this, Jayusman and colleagues emphasized that this regulation must bring goodness and benefits to domestic life, especially for the bride and groom and their offspring, as well as the community and nation.<sup>21</sup> This Amendment to the Law guides the Indonesian people to dispense or carry out marriages by a predetermined agreement.

There has been an increase in applications for dispensation for marriage in the Religious Courts. Based on the Amendment to Law No. 1 of 1974, jo. Law Number 16 of 2019 in Article 7 amends the age of marriage between men and women, where the male is 19 years old, and the female is 16 years old. The

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<sup>19</sup> Kementerian Sekretariat Negara RI, "Uu N0.16/2019," *Undang-Undang Republik Indonesia No 16 Tahun 2019 Tentang Perubahan Undang-Undang No 1 Tahun 1974 Tentang Perkawinan*, no. 006265 (2019): 2–6.

<sup>20</sup> Muhammad Nasir et al., "The Contestation of Authority in Islamic Marriage Law in Aceh, Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 (2023): 369–88. Syahrul Mubarak Subeitan, "Forced Marriage: Implementation of the Mandatory Provisions of the Bride 's Consent in Indonesia," *JURIS: Jurnal Ilmiah Syari'ah* 21, no. 1 (2022): 77–87. Rani Dewi Kurniawati, "Efektifitas Perubahan UU No 16 Tahun 2019 Tentang Perubahan Atas UU No 1 Tahun 1974 Tentang Perkawinan Terhadap Penetapan Dispensasi Kawin (Studi Kasus Di Pengadilan Agama Majalengka Kelas IA)," *Journal Presumption of Law* 3, no. 2 (2021): 160–80. Rosdalina Bukido et al., "Harmonization of Customary and Islamic Law in the Gama Tradition of the Muslim Mongondow Community of North Sulawesi," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (2022): 239–54.

<sup>21</sup> Jayusman et al., "The Development of Indonesian Marriage Law in Jakarta Governor Regulation No. 185 of 2017," *Samarah*, 2021, <https://doi.org/10.22373/sjkh.v5i2.9166>.

marriage age is the same for men and women, namely, 19 years old. The Amendment's impact was an increase in marriage dispensation cases submitted to the Religious Courts in the Republic of Indonesia. As the data below:

Table 1: Data on Marriage Dispensation Cases from 2018 to 2021

No.	Court Name	Year	Amount of Dispensation
1	Manado Religious Courts	2018	4
		2019	27
		2020	46
		2021	71
2	Surakarta Religious Courts	2018	43
		2019	70
		2020	143
		2021	141
3	Padang Religious Courts	2018	11
		2019	31
		2020	61
		2021	72
4	Banjarmasin Religious Courts	2018	43
		2019	100
		2020	168
		2021	151
5	Bandung Religious Courts	2018	48
		2019	115
		2020	219
		2021	193
6	Gresik Religious Courts	2018	79
		2019	102
		2020	320
		2021	331
7	Kudus Religious Courts	2018	66
		2019	93
		2020	270
		2021	270
8	Purwokerto Religious Courts	2018	74
		2019	138
		2020	294
		2021	292
9	Maros Religious Courts	2018	40
		2019	70
		2020	237
		2021	188

10	Dompu Religious Courts	2018	33
		2019	40
		2020	133
		2021	123

Data Source: <https://putusan3.mahkamahagung.go.id/>

The table shows the Amendment of Law No. 1 of 1974 into Law No. 16 of 2019 Article 7 (marriage is only allowed if a man and a woman have reached the age of 19 years). The age limit for marriage between men and women is equal to 19 years. Marriages under the age of 19 apply to the Religious Courts for a marriage dispensation so that the Court allows a marriage to take place even though the age of the male and female have yet to reach 19 years. When compared to applications for a marriage dispensation (permit to carry out a marriage) before the Amendment to Law Number 1 of 1974, namely marriages that took place before October 14, 2019, when Law Number 16 of 2019 was ratified, cases of requests for dispensation for marriage were sporadic, as the table data above shows.

Compared with case data in 2018 and case data in 2021 after the Amendment to the marriage law, the Manado Religious Courts 1675%, Surakarta 228%, Padang 555%, Banjarmasin 251%, Bandung 302%, Gresik 319%, Kudus 309%, Purwokerto 281%, Maros 453%, Dompu 273%.<sup>22</sup> These ten religious courts choose to display data on the increase in cases of marriage dispensation in these specific ten religious courts in Indonesia from 2018 to 2021 due to representing diverse geographical regions across Indonesia. By including courts from various parts of the country, the data provides a more comprehensive overview of the nationwide trends in marriage dispensation cases. It also shows remarkably high percentage increases in marriage dispensation cases over the specified period. The increase in cases of dispensation shows the failure of the Amendment to Law No. 1 of 1974. There needs to be more clarity between the rules and their implementation in society. The data shows that after one year of amendments to the Marriage Law, there was an increase in cases in the Religious Courts, exceeding 200% of cases, and even the Manado Religious Courts exceeding 1000% of cases entered in the Court.

<sup>22</sup> "Case Data in Indonesian Religious Courts," accessed October 15, 2024, <https://pa-manado.go.id/statistik-perkara/>, <https://pa-surakarta.go.id/statistik-perkara/>, <https://pa-padang.go.id/statistik-perkara/>, <https://pa-banjarmasin.go.id/statistik-perkara/>, <https://pa-bandung.go.id/statistik-perkara/>, <https://pa-gresik.go.id/statistik-perkara/>, <https://pa-kudus.go.id/statistik-perkara/>, <https://pa-purwokerto.go.id/statistik-perkara/>, <https://pa-maros.go.id/statistik-perkara/>, <https://pa-dompu.go.id/statistik-perkara/>.

<sup>23</sup> Lon L. Fuller, *The Morality of Law* (Haven CT: Yale University Press, 1969). Magliocca, "Buried Alive: The Reboot of the Equal Rights Amendment." Nii, Okantey, and Brenyah, "Sociocultural Implications of Infertility and Challenges in Accessing Assisted Reproductive Technology: Experiences of Couples from Two Health Facilities In."

## **Age Determination: Increased Number of Marriage Dispensations Set Minimum Age**

The increased number of marriage dispensations determination of the age of marriage for both men and women to 19 years is: *First*, The emergence of new pressures (in line with the amendments) for women aged before 19 years to marry. Previously, women aged 16 years and over were legally allowed to marry. After the enactment of Marriage Law No. 16 of 2019, only women aged 19 years and over are allowed to marry.

*Second*, The institutional transparency of the Religious Courts in granting a dispensation to couples under 19 years of age. The emergence of amendments and the issuance of the Marriage Law were not followed by the institutional commitment of the Religious Courts to limit the occurrence of marriages (institutional inconsistency). The amendments to the Law are not followed by articles that allow the Religious Courts Institutions to widely refuse dispensation if the application submitted by a man and a woman has had a proper husband and wife relationship or the woman's side has been pregnant.

*Third*, The increase in marriage dispensations is caused by cultural pressures where young marriages have a cultural background. On the one hand, community values encourage marriage in groups of couples who need to be more absorbed in the education and work sectors. At the same time, the increasingly free and open association has made dispensation a way out of the problem of pregnancy out of wedlock. Marriage has become a solution for efforts to cover the family's disgrace in cases of pregnancy out of wedlock. Statistics show that nationally there are 14% (Yani Sadar) and 33% (Reckitt Benckiser) (<https://blokbojonegoro.com> January 14, 2020). Central Bureau of Statistics 10.18% of couples marry due to pregnancy. Furthermore, the parents are forced to apply for a marriage dispensation Religious Court with a pregnancy outside marriage. Yogyakarta area in 2020, 80% of the 700 marriage dispensations granted by the Religious Courts were due to pregnancies out of wedlock. Lombok, from January to September 8, 2020, there were 522 applications for marriage dispensation in the Religious Courts and 408 pregnancies (Elga Andini, <https://mmediaindonesia.com> March 18, 2021).

## **The Implications of Failed Marriage Law Amendments: Increased Dispensation Requests and Challenges in the Religious Courts**

The stipulation of marriage law amendments has increased applications for marriage dispensation in Religious Courts. The Amendment is an increase in the age limit for marriage from 16 to 19 years for women, which causes many young marriages and is not justified under statutory regulations. As a result of marriage at a young age, marriage failure occurs with increased divorce cases in Court. The failure of the Amendment became a problem for the Court Institution and the community. The increase in dispensation for marriage

occurred by several factors, namely cultural factors, economic and educational factors, environmental factors, and pregnancy out of wedlock. The dispensation has implications, such as failure to change stairs often occurring. Frequent fights because the husband does not have the skills, so they always expect the help of both parents and children born from early marriages do not get their parents' attention.

The high application for dispensation for marriage is a failure of the Amendment to Law No. 1 of 1974 became Law No. 16 of 2019, which in Article 7 Paragraph 1 stipulates the age limit for marriage for men and women is equalized to the age of 19 years.<sup>24</sup> Previously, the age limit for marriage was 16 years for women and 19 years for men (Law No. 1 of 1974). The Amendment has increased the application for dispensation for marriage in the Religious Courts throughout Indonesia; there are even areas where applications for marriage dispensation have reached 1675% in the city of Manado. At the same time, the purpose of the dispensation for marriage is to provide protection and keep the marriage going well, healthy, and maintained for good.<sup>25</sup> The conclusion is that the Amendment does not make a solution for the community in resolving family law in Indonesia, including marriage.

Failure to Amend Law No. 1 of 1974 with Law No. 16 of 2019 has equalized the right of marriage age for men and women.<sup>26</sup> It has not shown justice;<sup>27</sup> and even hurts the Indonesian people;<sup>28</sup> describe eight failures in forming laws. 1. There must be a regulation first, 2. The regulation must be promulgated appropriately, 3. The rules are retroactive, 4. The failure to create a comprehensive law, 5. The formation of laws that contradict each other, 6. The formation of rules that include impossible requirements is met 7. Changes in rules quickly cause ambiguity, 8. There needs to be more clarity between the

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<sup>24</sup> Muhamad Zamroni, *Prinsip-Prinsip Hukum Pencatatan Perkawinan Di Indonesia* (Surabaya: Media Sahabat Cendekia, 2018). Asriadi Zainuddin, "Legalitas Pencatatan Perkawinan Melalui Penetapan Isbat Nikah," *Al-Mujtabid: Journal of Islamic Family Law* 2, no. 1 (2022): 60–72.

<sup>25</sup> Melda Sufri, Zainal Said, and Aris, "Judge Consideration of Marriage Dispensation at Sinderang Rappang Religious Court: Socio Juridic Analysis," *AL-Ifjab: Journal of Islamic Studies and Society* Vol. 2, no. 1 (2021): 13–24; Naskur Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 1–23, <https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/12441/7391>.

<sup>26</sup> Magliocca, "Buried Alive: The Reboot of the Equal Rights Amendment."

<sup>27</sup> John Rawls, *A Theory of Justice*, Cet I (Cambridge: Harvard University Press, 1995). M Yasir Said, "A Review on Rawls Theory of Justice," *International Journal of Law Environment and Natural Resource* 1 (2021).

<sup>28</sup> Rosdalina Bukido et al., "Muslim Society's Response to the New Rule of Marriage Age," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (2023): 135–54; Elkhairati Elkhairati, "Pembatasan Usia Perkawinan (Tinjauan Undang-Undang Dan Maqashid Asy-Syari'ah)," *Al-Istinbath: Jurnal Hukum Islam* 3, no. 1 June (2018): 87–106; Fuller, *The Morality of Law*. Hannikainen, Ivan R, and Raff Donelson, "Fuller and The Folk: The Inner Morality of Law Revisited," *Oxford University Press*, 2020.

rules and their application. There are three things related to the Amendment, namely. 1. The Amendment ignores the Indonesian people whose marriage history has been in effect for a long time with an age separating men and women.<sup>29</sup> 2. The Amendment's failure should pay attention to the laws that live in the community. 3. The Amendment took place quickly, impacting the community incredibly.

The increase in requests for dispensation for marriage since the amendments to the marriage law have resulted in the difficulty of the Religious Courts rejecting public requests for justice in the form of stipulations for carrying out underage marriages, including the contestation and legal certainty in marriage dispensation.<sup>30</sup> Subsequently, the District Office of Religious Affairs can process marriage. In the year before the Amendment (October 2019), marriages could still be carried out if the woman was 16 years old. The issue of dispensation was scarce, so the authority of the Religious Courts with the marriage dispensation did not increase the number of cases that were entered in the Court even more, with some Religious Courts being second in the case. In a study conducted by Yuni.<sup>31</sup> This is in line with what was conveyed: the public has yet to understand the marriage law widely, so it needs intensive socialization.<sup>32</sup> In addition, the marriage law also raises unresolved pros and cons. From several existing studies, this paper is positioned more as a complement that discusses the dispensation of marriage with various problems in court practice.

With the failure of Amendment Number 1 of 1974, Government Regulation on the Implementation of Law No. 16 of 2019 regulates the process of submitting a marriage dispensation. The dispensation does not become an easy problem for people who file for divorce to the Religious Court, especially if the person applying for the dispensation comes from the family of a woman whose child has had sex (pregnant) before carrying out the marriage.<sup>33</sup> So the

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<sup>29</sup> Shigenori Matsui, "Fundamental Human Right and Tradisional Japanese Values': Constitutional Amendement and Vision of the Japanes Society," *Asian Journal of Comparative Law*, 2018.

<sup>30</sup> Muhammad Fauzinudin Faiz, Zezen Zainul Ali, and Muhammad Taufiq, "Underage Widows and Widowers before the Law: Problem, Contestation and Legal Certainty in Marriage Dispensation," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (2023): 223–34.

<sup>31</sup> Yuni, "Analysis of The Emergency Reasons in The Application of Marriage Dispensation at The Tenggarong Religious Court."

<sup>32</sup> Mansari et al., "Concretization of Urgent Reason and Sufficient Evidence in Providing Marriage Dispensation For Children By the Judge," *Nurani* Vol. 20, no. 2 (2020). Kurniawati, "Efektifitas Perubahan UU No 16 Tahun 2019 Tentang Perubahan Atas UU No 1 Tahun 1974 Tentang Perkawinan Terhadap Penetapan Dispensasi Kawin (Studi Kasus Di Pengadilan Agama Majalengka Kelas IA)."

<sup>33</sup> Inayah, 2017; Inayah. Sri Ahyani, "Pertimbangan Pengadilan Agama Atas Dispensasi Pernikahan Usia Dini Akibat Kehamilan Di Luar Nikah," *Jurnal Wawasan Yuridika* 34, no. 1 (2016): 31–47.

legal process is enforced first with the legal process regarding forced sexual intercourse with minors. If this is done transparently, the District Office of Religious Affairs does not recommend applying to the Religious Courts for a dispensation but with a criminal process implemented by the Sentolo indigenous people.<sup>34</sup> Other things regulated in the derivative Regulation of Law 16 of 2019, a dispensation application can be submitted if the person concerned has not had sexual relations like husband and wife so that the authority of the Court as a law enforcement agency can be well maintained in Indonesia.

## Conclusion

The analysis of marriage dispensation cases in Indonesian Religious Courts post-amendment reveals significant challenges and implications of failed legal reforms. Despite the intent to equalize marriage ages and prevent early marriage, the surge in dispensation requests underscores the Amendment's shortcomings in addressing societal practices effectively. The rise in dispensation cases reflects deep-rooted cultural pressures, institutional inconsistencies, and societal complexities surrounding marriage practices in Indonesia. The failure to amend Law No. 1 of 1974 with Law No. 16 of 2019 underscores the imperative for comprehensive legal reforms and enhanced societal understanding of marriage laws. Moving forward, addressing these challenges requires collaborative efforts between policymakers, legal institutions, and civil society to ensure equitable access to justice, protection, and services for all individuals, particularly vulnerable populations affected by early marriage practices.

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<sup>34</sup> Agus Sudaryanto and Sigid Riyanto, "Eksistensi Delik Adat Di Lingkungan Masyarakat Sentolo, Kabupaten Kulonprogo YOGYAKARTA," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 28, no. 1 (2016): 46–60.

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