



Indonesian Journal of Islamic Law, Vol. 7, No. 1, 2024: 63-88

ISSN: P-3089-5839, E-2615-7543

DOI: <https://doi.org/10.35719/ijil.v7i1>

Early Marriage and Domestic Violence: The Dilemma of Granting Marriage Dissolution Permission at the Jember Religious Court

M. Irwan Zamroni Ali*

Pascasarjana UIN Kiai Haji Achmad Siddiq Jember, Indonesia

email: alayirwan1@gmail.com

Kizza Magufuli

Makerere University, Uganda

email: maguf@mak.ac.id

Abdalla El Souwaim

Al-Neelain University, Sudan

email: abdalla@neelain.ac.id

**corresponding author*

Article history: Received: March 31, 2023, Revised: July 01, 2024; Accepted May 05, 2024:
Published: June 30, 2024

Abstract

The judge when examining a marriage dispensation case is in a dilemmatic position in considering the deterioration of the dispensation application being allowed and rejected. Granting a marriage dispensation application on the one hand can solve the problem. However, on the other hand, it can trigger domestic violence (KDRT). This research will analyze the practice of marriage dispensation at the Jember Religious Court and its implications for the potential for domestic violence. Therefore,



© 2024. The author (s). IJIL is licensed under a Creative Commons Attribution-Share Alike 4.0 International License (CC BY-SA 4.0)

this research is a field study located at the Jember Religious Court. The data collection method uses interview, observation, and documentation techniques. The data analysis process used the Miles and Huberman model, namely data reduction, data presentation, and conclusion drawing. The results of the analysis found that: 1) In general, the practice of marriage dispensation in the Jember Religious Court has implemented Perma No. 5 of 2019 as an examination guideline. The strategy carried out by the Jember Religious Court to accelerate the examination process is to assign one of the judges who focuses on handling dispensation cases. In addition, the number of marriage dispensations at the Jember Religious Court is very high. Generally, people apply for dispensation, because they have been dating or engaged for a long time. 2) The practice of marriage dispensation at the Jember Religious Court has no impact on the number of divorces on the grounds of domestic violence. Generally, dispensation couples divorce for economic reasons, continuous disputes and arguments, and abandonment of one of the parties. From the data in the directory of Supreme Court decisions, especially in the Jember Religious Court, cases of divorce on the grounds of domestic violence are dominated by couples who marry at a sufficient age, and the marriage period has lasted a long time, even the marriage has produced offspring.

Keywords:

Marriage Dispensation; Domestic Violence; Jember Religious Court

Abstrak:

Hakim ketika memeriksa perkara dispensasi kawin berada pada posisi dilematis dalam mempertimbangkan kemudharatan permohonan dispensasi diizinkan dan ditolak. Mengabulkan permohonan dispensasi kawin pada satu sisi dapat menyelesaikan masalah. Namun, pada sisi lain, dapat memicu adanya kekerasan dalam rumah tangga (KDRT). Penelitian ini akan menganalisis praktik dispensasi kawin di Pengadilan Agama Jember dan implikasinya terhadap potensi KDRT. Oleh karena itu, penelitian ini merupakan penelitian lapangan yang berlokasi di Pengadilan Agama Jember. Metode pengumpulan data menggunakan teknik wawancara, observasi dan

dokumentasi. Proses analisis data menggunakan model Miles dan Huberman, yaitu reduksi data, penyajian data, dan penarikan kesimpulan. Hasil analisis ditemukan bahwa: 1) Secara umum praktik dispensasi kawin di Pengadilan Agama Jember telah menjalankan Perma No. 5 Tahun 2019 sebagai pedoman pemeriksaan. Strategi yang dilakukan oleh Pengadilan Agama Jember untuk mempercepat proses pemeriksaan yaitu dengan menugaskan salah satu hakim yang fokus untuk menangani perkara dispensasi. Selain itu, angka dispensasi kawin di Pengadilan Agama Jember sangatlah tinggi. Umumnya, masyarakat yang mengajukan dispensasi, karena telah berpacaran atau bertunangan dalam waktu yang lama. 2) Praktik dispensasi kawin di Pengadilan Agama Jember tidak berdampak terhadap jumlah perceraian dengan alasan KDRT. Umumnya, pasangan dispensasi yang bercerai karena alasan ekonomi, perselisihan dan pertengkaran secara terus menerus, dan meninggalkan salah satu pihak. Dari data direktori putusan Mahkamah Agung khususnya di Pengadilan Agama Jember, perkara cerai dengan alasan KDRT didominasi oleh pasangan yang menikah di usia cukup umur dan masa perkawinan telah berlangsung lama, bahkan perkawinan tersebut telah menghasilkan keturunan.

Kata Kunci:

Dispensasi Kawin, Kekerasan Dalam Rumah Tangga,
Pengadilan Agama Jember

Introduction

Efforts to reduce the number of child marriages are inversely proportional to the reality that has occurred in this decade. Since Indonesia was hit by the COVID-19 pandemic, the number of child marriages has increased by 300 percent when compared to the figures in 2019. The data was conveyed by the Coordinating Minister for Human Development and Culture (Menko PMK) Muhadjir Effendy on Monday, June 27, 2022 (Admin, n.d.).

Normatively, couples who are not of legal age can marry through dispensation to the court. This provision is very clear, where the bride and groom are not old enough to get married, the parents of the male party or the female party must submit a dispensation

application to the court for urgent reasons with sufficient supporting evidence (Ali and Puspita 2023). This is written in Article 7 paragraph (2) of Law No. 16 of 2019 concerning Marriage.

The term 'urgent' means that there is no other reason for the marriage to take place. Therefore, the term urgent is not given a specific limitation, so the consideration of the panel of judges is the sole determinant of whether or not the marriage is allowed to take place. It is the responsibility of the judge to be extra careful in exploring the law so that the element of urgency is found (Budiono 2022).

Unfortunately, the marriage law has become a loophole for underage couples to get married through the dispensation route. This solution in the form of marriage dispensation has resulted in marriage institutions being invaded by underage couples and their parents to get married through the dispensation route. The number of applications for dispensation is even higher than before the changes to the marriage law.

The Komnas Perempuan (Women's National Commission) report shows the results of BADILAG data in 2019 there were 23,126 cases of marriage dispensation granted, then in 2020 it increased to 64,211 cases, and in 2021 it decreased by 7.01% or decreased by 4,502 cases (Perempuan 2022). Although in 2021 the number fell, in general, the data is still higher than in 2019. 2019 was the year in which the marriage law No. 16 of 2019 came into effect.

Dispensation for marriage is the only way out for a bride and groom who are not old enough to enter into marriage. However, marriages that are carried out at an immature age can cause several problems, due to unstable emotional levels, so it is very easy for quarrels to break up the marriage. Mature age and a mature soul are part of the elements of creating a lasting and happy family (Bawarni and Mariana 1993). Even though early marriage is carried out through the dispensation route in court, all the impacts that occur as a result of underage marriage are still potentially experienced by those who enter into early marriage.

In general, there are several potential impacts for underage couples, even though they have received dispensation from the court. From a psychological point of view, underage couples do not have the mental capacity to fulfill their roles in a household (Allen et al. 2014).

It is easy for arguments, quarrels, including domestic violence, and even divorce to arise. Psychologically unprepared households are prone to stress, depression, trauma, and other psychological disorders. These disorders can be caused, for example, by unpreparedness for sexual intercourse and unpreparedness to fulfill family needs (Djamilah and Kartikawati 2014).

In the social aspect, early marriages tend to divorce. This is because young couples do not yet have a mature mindset and unstable emotions, so it is easy to quarrel, problems with economic needs, infidelity, and even once again including domestic violence (KDRT) is not easy to avoid (Ilma 2020). The judge as the main determinant or gateway whether or not underage couples can carry out marriage is in a dilemmatic position in considering between 2 (two) matters of wickedness, namely the wickedness caused by early marriage and the wickedness if the dispensation application is rejected.

When the judge grants a dispensation license to a couple, the judge has assessed that the harm that will arise is greater if the dispensation application is rejected, compared to the harm caused by underage marriage. From the many studies that have been conducted, marriage dispensation cases appear in several regions mostly because there has been an unexpected pregnancy (KTD) or pregnancy outside of marriage. When faced with this reality, judges tend to grant marriage dispensation applications because they are considered to have fulfilled the element of urgency (Mulyadi and Nugraheni 2017). The reason for being pregnant outside of marriage is the main factor in a dispensation application being granted by the judge. Pregnancy outside of marriage in the practice of marriage dispensation is a serious problem and difficult for judges to refuse. The judge will grant the marriage dispensation application after considering the benefits and harms that will occur from the results of his decision. One of the considerations is the psychological impact and the future of the child will be disrupted if the judge does not grant it (Judiasih, Dajaan, and Nugroho 2020).

The research data shows that there are several considerations of judges, especially in the Batang Religious Court, in granting marriage dispensation applications by considering several things, including: First, if rejected, it is possible that adultery will occur, which is not in line with the goals of Islam, namely (*hifdu al-din*); Second, if rejected, it is possible that it will violate other laws, one of which is an

underhand marriage which is clearly detrimental to the wife and children from the results of the marriage; Third, the potential for the practice of neglecting children outside of marriage which is clearly not in line with the goals of Islam, namely protecting the soul and offspring (*hifdu al-nafs* and *hifdu al-nasl*); Fourth, if rejected, couples who have become pregnant outside of marriage have the potential to experience mental disorders due to insults, reproaches, gossip from the wider community; Fifth, if not granted, the psychological impact of couples and their families who are disturbed due to public insults, it is feared that it will trigger acts beyond reason, such as suicide and the like. This is not in line with the Islamic goal of protecting the mind and soul (*hifdu al-aql* and *hifdu al-nafs*); Sixth, the spouse of the dispensation applicant is certainly capable of providing for the family as mandated by the Marriage Law and the Compilation of Islamic Law (KHI) (Zubaeri, Aizaturrohman, and Rofiq 2022).

On the one hand, granting a dispensation application may solve the problem. However, on the other hand, the adverse consequences of early marriage remain potential and difficult to avoid. Potential for disputes and domestic violence (DV) (Mahkamah Agung 2019). Concerning the potential for disputes and domestic violence, the judge advised that domestic life is not as easy as imagined, there are many trials, tests, obstacles, obstacles while living a married life, so it requires preparation of needs from various aspects of life. If there is no readiness or one of the elements is not ready, it can trigger domestic disputes to the occurrence of domestic violence which can lead to the dissolution of marriage (Hidayatullah and Huda 2020).

Domestic violence (KDRT) caused by early marriage from the results of marriage dispensation is a phenomenon that occurs. This is as revealed by Anisa Rahmatika Nurazizah in the results of her research which found that 5 (five) family members in Binangun Village, Binangun District, Cilacap Regency who were married underage had experienced Domestic Violence (KDRT), 3 (three) families received psychological violence from their husbands and 2 (two) families received physical violence from their husbands (Nurazizah 2021).

Every action has positive and negative impacts, as well as marriages conducted through dispensation which have physical,

biological and psychological impacts. One of them is the frequent occurrence of domestic violence (KDRT) due to immature thinking (Wibisana 2017). The phenomenon of domestic violence (KDRT) which leads to divorce as a result of marriage dispensation also occurs as a result of research on marriage dispensation at the Salatiga Religious Court in 2018 which shows that approximately 40% survived and 60% experienced divorce for various reasons, one of which was domestic violence (Choirunnisa 2021).

Reviewing divorce, in Jember Regency itself, according to the Public Relations Officer of the Jember Religious Court, Achmad Nabani, on one occasion mentioned that the divorce rate in 2022 had reached 4,786 as of Tuesday, October 10, 2022. This figure already shows a 6% increase compared to the previous year (Admin 2022). From here, it can be seen that the practice of marriage dispensation by judges in general leaves many problems, one of which is the potential for domestic violence, which is then the main issue in this research. The occurrence of domestic violence leading to divorce due to the practice of dispensation has shown that the objectives of Law No. 16 of 2019 concerning Marriage itself are not fulfilled, namely the realization of a good marriage without ending in divorce (DPR RI 2019). So, indirectly, the implementation of the marriage law has not been in line with the objectives of the marriage law itself. Therefore, this research is important to see how the potential for domestic violence as a result of marriage dispensation.

Methods

This research is qualitative research that aims to explore the phenomenon of the research subject. In this research, starting from the data by functioning a theory as an explanatory tool that ultimately gives rise to a new theory, this is then the difference with the quantitative approach. In the research process, the researcher has determined the research location which is located at the Jember Religious Court, precisely on Jl. Cendrawasih No. 27, Krajan, Jemberlor, Patrang District, Jember Regency, East Java. This is explained in the background of the problem, that this research will analyze the potential occurrence of domestic violence (KDRT) due to the practice of marriage dispensation at the Jember Religious Court.

The research subjects are the parties who are informants in this research. The informant is a person who knows many things and is the

main source of data in this research. Therefore, in accordance with the issues raised in this study, the author determines the research subject is an official/employee, including judges who work in the Jember Religious Court.

Result and Discussion

Marriage Dispensation Practices at the Jember Religious Court

As is known, the age of marriage in Indonesia was originally only permitted if the prospective husband was 19 years old and the prospective wife was 16 years old, as stated in Article 7 paragraph (1) of Law No. 1 of 1974 concerning Marriage (Faiz, Ali, and Taufiq 2023). This provision was rolled out with a lot of pressure for judicial review, one of which was because there was disharmony between the Marriage Law and the Child Protection Law, especially on the term adult, where in the Child Protection Law, it is stated that a person is classified as a child if he is not yet 18 years old (Mareta and Achmad 2022).

Finally, the provision on the minimum age limit for marriage found a bright spot, after the Indonesian government agreed to revise Law No. 1 of 1974 concerning Marriage, as revised into Law No. 16 of 2019 concerning Marriage. The change in norms also revised the minimum age of marriage for men and women to 19 years old (Nawawi et al. 2022). Although the minimum age for marriage has been regulated, the state provides an opportunity to deviate from this age provision. This is stated in Article 7 paragraph (2) of Law No. 16 of 2019 as follows:

"In the event of a deviation from the age provisions as referred to in paragraph (1), the parents of the male party and/or the parents of the female party may request dispensation from the Court on the grounds of extreme urgency accompanied by sufficient supporting evidence." (DPR RI 2019).

Dispensation to marry is a license granted by the court to couples who wish to marry but have not met the material requirements of a minimum age limit of 19 years for the prospective husband and/or wife (Setiawan and Wahyudi 2021). Therefore, the court is the only

place for underage couples to apply for marriage dispensation to marry at an age prohibited by law.

A new phenomenon has finally emerged as a result of the revision of the marriage law, one of which is the increasing number of marriage dispensations in Indonesia. Based on a report from Komnas Perempuan (Women's National Commission) which shows the results of BADILAG data in 2019 there were 23,126 cases of marriage dispensation granted, then in 2020 it increased to 64,211 cases, and in 2021 it decreased by 7.01% or decreased by 4,502 cases (Perempuan 2022). Although in 2021 the numbers dropped, in general, the data is still higher than in 2019. 2019 was the year in which the marriage law No. 16 of 2019 came into effect.

The high rate of marriage dispensation also has an impact on the Jember Religious Court, namely the high rate of marriage dispensation applications from the last 3 (three) years. This is a result of observations made by researchers which are processed in the form of the following table:

Table 1: Dispensation requests at the Jember Religious Court in 2020

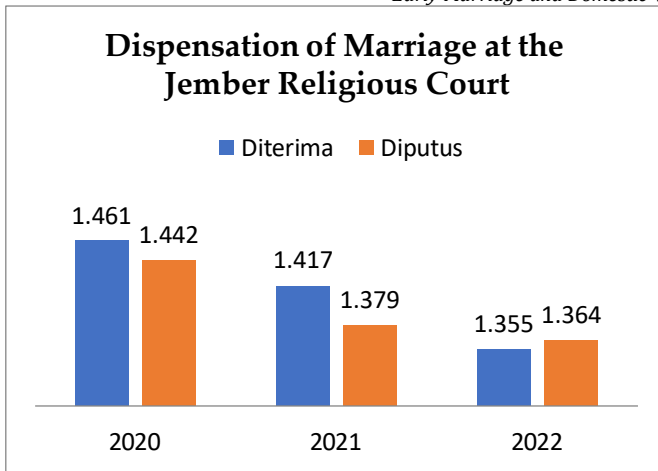
No.	Month	Dispensation cases received	Dispensation cases decided
1	January	137	89
2	February	67	100
3	March	101	89
4	April	68	86
5	May	38	35
6	June	188	113
7	July	193	216
8	August	99	120
9	September	120	128
10	October	158	126
11	November	182	172
12	December	110	168
Total		1.461	1.442

Table 2: Dispensation Requests at the Jember Religious Court in 2021

No.	Month	Dispensation cases received	Dispensation cases decided
1	January	136	110
2	February	138	116
3	March	142	179
4	April	75	66
5	May	105	91
6	June	201	184
7	July	102	155
8	August	62	61
9	September	88	64
10	October	147	109
11	November	113	150
12	December	108	94
Total		1.417	1.379

Table 3: Dispensation Requests at the Jember Religious Court in 2022

No.	Month	Dispensation cases received	Dispensation cases decided
1	January	89	100
2	February	113	107
3	March	112	111
4	April	62	68
5	May	125	104
6	June	184	159
7	July	105	132
8	August	88	99
9	September	102	86
10	October	159	158
11	November	118	125
12	December	98	115
Total		1.355	1.364



The data on marriage dispensation above is very different from the data on marriage dispensation before the issuance of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. This is as explained in the following table:

Table 4: Recapitulation of Data on Marriage Dispensation Cases at the Jember Religious Court in 2017, 2018 and 2019.

No.	Years	Cases Entered	Cases Decided
1	2017	117	112
2	2018	159	146
3	2019	355	334
Total		631	592

Although the data on marriage dispensation at the Jember Religious Court from 2020 to 2022 has experienced a downward trend, this number is still very high when compared to the data on marriage dispensation before the revision of the Marriage Law in 2019. This drastic change in numbers is due to the increase in the minimum age for marriage that must be reached to 19 years for prospective husbands and wives. The age below 19 is the age at which some people are generally accustomed to getting married.

The high rate of marriage dispensation in PA Jember has been realized by almost all judges in PA Jember as reviewed in the data exposure in the previous chapter, especially since Jember Regency is an area with a large population, namely 2.54 million people based on

the results of the 2020 population census. With a land area of 3,293.34 km², the population density of Jember is 770.26 people per km² (BPS Jember 2021). The age of marriage is limited to maintain the dignity of a woman, as well as to equip a home to be happy and have good family resilience (Hanafi 2011). It's just that with the high number of marriage dispensations, it can at least show that the community does not heed these regulations due to various factors, ranging from community mindset, pregnancy outside of marriage, and low education, to economic and other factors (Rofik 2021).

The practice of marriage dispensation in the Jember Religious Court refers to Law No. 16 of 2019 concerning Marriage and Supreme Court Regulation (Perma) No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications (Fadhli and Warman 2021) The changes in the marriage law also changed the practice of hearing marriage dispensation cases conducted by a single judge. This is as explained in Perma No. 5/2019 Article 1 paragraph (11) which states that the examination of marriage dispensation is conducted by a single judge. This is in consideration of maintaining the psychological condition of the child. The examination of marriage dispensation at the Jember Religious Court has used a single judge, but the judge in charge of examining the marriage dispensation case does not yet have a certificate as a child judge. However, the decision of the case is still valid in the eyes of the law.

This is as referred to in Article 20 of Perma No. 5/2019 which explains the classification of judges who have competence as a juvenile judge/certified as a juvenile judge, have expertise related to women in conflict with the law, or have examined marriage dispensation. However, if there is no such judge, then any judge can examine the dispensation case. In general, the practice of marriage dispensation in the Jember Religious Court has complied with Supreme Court Regulation No. 5 of 2019 as the technical legal basis for trials in marriage dispensation cases. For example, Article 12 paragraph (2) requires judges to provide advice to the parties about the risks of underage marriage.

Other advice given by the Judges of the Jember Religious Court includes ensuring the child's place of residence after the marriage, asking for the commitment of both parents to help the child's economy

after the marriage, asking both parents to be patient if they live with their son-in-law or child after marriage, and other advice that is attitude-based (Sholehah 2023). In addition, the Chairman of the Jember Religious Court, H. Faiq, has a special strategy in the process of examining marriage dispensation applications, namely by appointing one of the judges specifically to examine marriage dispensation cases. This is because Jember Regency as a 'Pandhalungan' area often receives marriage dispensation applicants who speak Madurese, while the judges at the Jember Religious Court are only certain people who understand and speak Madurese fluently.

Therefore, the judge who is usually assigned to examine dispensation cases is the judge who best understands the Madurese language, so that the dispensation case examination process can run smoothly. In addition, the basis behind the appointment of certain judges to examine marriage dispensation cases at the Jember Religious Court is based on their performance (Faiq 2023).

Based on data on marriage dispensation received at the Jember Religious Court in 2022, there were 1,355 cases, of which 1,364 cases were granted, and only 26 cases were not granted. So approximately 98.08% of the 1355 marriage dispensation cases were accepted, and 1.92% were rejected. For more details as the following table:

Table 5: Data on Marriage Dispensation Case Submissions at the Jember Religious Court in 2022

Month	Entered	Verdict	
		Accepted	Rejected
January	89	100	0
February	113	107	3
March	112	111	2
April	62	68	2
May	125	104	2
June	184	159	4
July	105	132	6
August	88	99	0
September	102	86	1
October	159	158	4

November	118	125	0
December	98	115	2
Total	1.355	1.364	26

Notes:

* Remaining marriage dispensation cases in 2021 that must be resolved in 2022 = 37 cases

* Remaining marriage dispensation cases in 2022 that must be resolved in 2023 = 2 cases

The number of marriage dispensations received at the Jember Religious Court is quite high because there are emergency and *shar'i* reasons, such as being engaged or dating for a long time and fear of committing adultery, as well as fulfilling the formal and material requirements in the Marriage Law or Perma No. 5 of 2019. The reason for being pregnant outside of marriage, especially in the Jember Regency, is a reason that rarely occurs. In addition, the age grade of 16 years is the minimum age used by the Jember Religious Court. Anything below this age is likely to be rejected unless there is an emergency.

Islam does not strictly limit the minimum age for marriage. Islam only regulates puberty for the prospective bride and groom who will get married. So it is very natural if the term adult still causes multiple interpretations. Psychic, mental, and mental maturity, as a characteristic of an adult, cannot be determined by age alone (Zubaeri 2020). The consideration of the judges of the Jember Religious Court in examining the dispensation of marriage, namely adhering to the following fiqh rules:

دَرْءُ الْمَقَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

Meaning: "Rejecting harm is preferable to benefiting." (Ali 2021)

If a person is faced with benefit and harm, then his actions should be directed towards rejecting the harm, even if this may cut off the benefit for some people. This is because Shariah is more concerned with what is prohibited than it is with what is commanded. Hence the scholars stipulated:

- a) To enforce the prohibition of trade in haram goods such as alcohol, drugs, and prostitution. This is because the damage caused by trading in these goods outweighs the benefits.
- b) To prohibit a homeowner from opening a window through which others can look into a forbidden area of a neighbor's house, even if there is some benefit in doing so. (al-Hariri, n.d.).

The application of *maslahat* in granting applications for dispensation of marriage in the Jember Religious Court does not mean allowing or permitting the behavior behind the permissibility of dispensation of marriage, such as long dating or pregnancy outside of marriage and the like. However, to protect the dignity of women, protect the rights of children still in the womb and other *maslahat*. Therefore, the *maslahat* must meet the criteria of *maslahat*, including The *maslahat* must be aimed at Islamic law, the *maslahat* is rational and certain (not conjecture/doubt), the *maslahat* is accepted by the majority of people (Jauhar 2009).

Implications of the Practice of Marriage Dispensation at the Jember Religious Court on the Potential for Domestic Violence

The Marriage Law has set the minimum age at which a person can marry, which is 19 years old for the prospective husband and prospective wife. However, this limit seems to show the lack of firmness of the state by providing opportunities for deviations from the age provision through dispensation in court. One of the objectives of this provision is to avoid underage marriage. However, the potential for violations of these rules is very vulnerable, plus the state does not regulate sanctions and laws for couples who marry at the age regulated by law (Judiasih 2018).

The practice of marriage dispensation at the Jember Religious Court is very high. As data has been obtained, in 2022 as many as 1,364 marriage dispensation cases were accepted and 26 were rejected. This means that 98.08% of marriage dispensation cases in the Religious Court can be accepted and the remaining 1.92% of cases are rejected.

Of course, in examining the marriage dispensation case, the judges of the Jember Religious Court cannot be separated from the ratio decidendi principle, namely legal considerations. (Mujahidin

2014). *The ratio decidendi* made by the Judge in the case of an application for marriage dispensation must refer to Perma No. 5 of 2019 as a guideline for examining marriage dispensation.

This provision is formulated in such a way as to avoid violations, one of which is that the party applying is not the parent or guardian of the prospective bride and groom, but another person and not the family of the prospective bride and groom. This is important so that the occurrence of forced marriage or marriage outside the knowledge of the family can be completely avoided. Therefore, the application for marriage dispensation can only be made by the parents or guardians.

For the author, marriage resulting from the dispensation of marriage by age is classified as a type of underage marriage, namely marriage that is held under the age of 19 years. Therefore, the negative impacts that can occur in underage marriages are also likely to be experienced by the couple from the marriage dispensation application. This is because the negative impact of early marriage can occur because it is seen in terms of the age of the husband/wife pair, not in terms of the type of marriage.

In general, there are several negative impacts of underage marriage, including; Health risks, this is because the physique of a prospective mother is still not mature enough to undergo pregnancy and loss of education, generally those who marry underage, will eventually choose to drop out of school. The high number of school dropouts also increases the low level of education in the region; Mental weakness, underage couples tend to experience mental disorders, because they still have an unstable attitude in dealing with their life problems in building a household (Yunianto 2018). This is what can trigger domestic violence (Djamilah and Kartikawati 2014).

Domestic Violence (KDRT) is explained in Article 1 point 1 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, referred to as any action that causes a person, especially a woman, to suffer or be miserable physically, sexually, psychologically and or domestic neglect, as well as threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household (*UU No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga*, n.d.).

Some of the factors behind the occurrence of domestic violence include; the perpetrator has difficulty controlling emotions, the perpetrator experiencing pressure/stress in dealing with family problems, chaotic family life, family economic crush, and many others (Putri 2009). This can also occur for marriage dispensation couples because they still have an unstable attitude, so they are vulnerable to being in a depressed/stressed position. In addition, marriage dispensation couples also tend to experience economic crush, because they do not yet have a proper job, coupled with other problems.

For this reason, to minimize the negative impact on underage couples, in every examination of an application for dispensation of marriage in court, judges are required to always provide advice to the applicant parties. The judge's obligation to provide this advice is imperative and failure to do so may result in the dispensation decision being null and void (Rohmadi et al. 2024).

The advice delivered by the judge at the trial in marriage dispensation cases aims to enable the prospective husband/wife and parents/in-laws to understand the risks of marriage, namely:

- a. Educational opportunities end;
- b. The obligation to take 12 years of compulsory education is not fulfilled;
- c. Immature reproductive organs
- d. Economic, social and psychological impacts on the child; and
- e. Potential for discord and domestic violence.

In line with the above, some of the impacts that haunt dispensation couples include the high potential for domestic violence that can end in divorce (Anggraeni and Humaeroh 2021). The important factor that causes underage marriages to be prone to conflict does not lie in their age, but in their mental side in dealing with family problems. In addition, underage marriage and divorce (*cerai gugat* and divorce *talak*) have relevance between the two, this can be seen from the divorce data which is generally carried out by couples aged 21-30 years (Wibisana 2017).

The number of divorce cases (divorce and contested divorce) in the Jember Religious Court is also quite high, along with the high rate of early marriage. This is shown in the following table:

Table 6: Data on Divorce Cases (Divorce, Plaintiff) at the Jember Religious Court in 2020, 2021, and 2022

Years	Talak divorce	Plaintiff's divorce	Total
2020	1.604	4.205	5.809
2021	1.544	4.289	5.833
2022	1.489	4.568	6.057

The data above shows how high the divorce rate is in Jember District. In fact, in 2022, the Jember Regency ranked second with the highest divorce rate in the East Java Province. In addition, field data shows that the highest type of divorce is a contested divorce. This means that more wives request divorce earlier than their husbands (Admin 2023).

The reasons behind the occurrence of divorce in Jember Regency include economic problems, continuous disputes and arguments, and leaving one of the parties. For more details, the following author presents a table of some of the causes of divorce in Jember Regency.

Table 7: Some Causes of Divorce in Jember Regency in 2020, 2021 and 2022.

Years	Causes of Divorce				Total
	Economic	Disputes and Quarrels	Leaving One of the Parties	Domestic Violence	
2020	2.714	2.948	228	8	5.890
2021	2.785	2.880	163	31	5.859
2022	4.014	1.661	88	77	5.840

From the data released by the Jember Religious Court, that the highest divorce rate in Jember Regency is caused by economic factors, disputes and arguments, leaving one of the parties, and other causes, such as domestic violence, apostasy, drunkenness, adultery, gambling, sentenced to prison, polygamy and the like. Divorces in the Jember Religious Court caused by domestic violence are relatively small compared to other causes of divorce. So, the practice of marriage dispensation in the Jember Religious Court which ends in divorce due to domestic violence factors is less likely to occur, when viewed from the small number of causes of divorce due to domestic violence.

The author's view above is also corroborated by the statements of the three Judges of the Jember Religious Court, namely Moh. Hosen, H. Raharjo, and Nur Sholehah, that during their tenure they have not found any dispensation couples who divorced because of domestic violence. As for those that have been found dispensation couples who ended up divorced for other reasons, such as the economy, disputes, and the like. This is as stated by Moh. Hosen as follows:

"Yes, there is no guarantee that domestic violence will not occur. I also did not find any dispensation couples who divorced because of domestic violence in other assemblies. There are dispensation couples who divorce because of other things, such as maintenance and the like." (Hosen 2023)

In several divorce cases that occurred at the Jember Religious Court, there were indeed several divorce cases where the marriage was the result of marriage dispensation, except that the divorce was not caused by domestic violence, but by other things. This was explained by the Judge of the Jember Religious Court, Nur Sholehah as follows:

"Yes, there have been several divorces that have occurred in underage couples. However, the most common conflicts are not actually due to domestic violence, but rather problems with housing, maintenance, and continuous disputes." (Sholehah 2023)

Judge H. Raharjo also confirmed that during his time at the Jember Religious Court, he had not found any cases of divorce due to

domestic violence where the marriage was the result of marriage dispensation from the court.

"There are, but not many. Generally, they divorce because of the economy/non-fulfillment of livelihood, if domestic violence is not found."(Raharjo 2023)

Judges in examining divorce cases whether there is an element of domestic violence or not, stick to Government Regulation (PP) No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning marriage. Article 19 letter (d) states that a marriage can be divorced for several reasons, including one party committing cruelty or serious abuse that endangers the other party.

In addition to considering Article 19 letter (d), judges also consider Article 19 letter (f) to prove cases of domestic violence in divorce cases. It is explained that the husband and wife experience continuous quarrels and disputes and there is no hope of living together again in one household. Other considerations also refer to Article 116 letters (d) and (f) of the Compilation of Islamic Law (KHI), which are as follows: One of the parties commits cruelty or serious maltreatment that endangers the other party, Between husband and wife there are continuous disputes and quarrels and there is no hope that they will live in harmony again in the household.

Also, the judge considered the evidence of the two witnesses from the applicant to be following the provisions contained in Article 22 of PP No. 9 of 1975 and Article 76 of Law No. 7 of 1989, Article 147 HIR, Article 171 paragraph (1) and Article 172 HIR. Where in essence the witness must see directly that mistreatment has occurred.

The factors of divorce due to domestic violence, especially in the Jember Religious Court, are economic factors, failure to fulfill family responsibilities, competition between husband and wife, and persecution that causes continuous quarrels and disputes. (Dani 2022). Meanwhile, the criteria for domestic violence as a reason for divorce faced by judges of the Jember Religious Court are generally domestic violence in the form of physical violence, while domestic violence in the form of psychological, economic, and sexual violence is rarely found, especially if there is a District Court decision that states that

there has been domestic abuse, then the Jember Religious Court judges are easier and faster to decide divorce cases because of the domestic violence.

Then, the results of observations made by researchers by reviewing the directory of Supreme Court decisions on the website [https:// putusan3. mahkamahagung.go.id](https://putusan3.mahkamahagung.go.id). The author has not found the results of divorce decisions due to domestic violence at the Jember Religious Court with couples resulting from marriage dispensation. Generally, the parties who divorce for reasons of domestic violence are couples who marry above the minimum age of marriage, even if the age of marriage has lasted a long time and already has children.

With that, when viewed from the number of marriage dispensations, the number of divorces, and several reasons for divorce that occurred in the Jember Religious Court for the last 3 (three) years, namely 2020, 2021, and 2022. Plus the results of a review of the directory of Supreme Court decisions, especially in the Jember Religious Court. Thus, the dispensation of marriage in the Jember Religious Court has little implication for the chances of domestic violence ending in divorce. However, the dispensation of marriage in the Jember Religious Court has an impact on the high likelihood of divorce for other reasons, such as the economy, disputes, and arguments that occur continuously.

Conclusion

The practice of marriage dispensation in the Jember Religious Court has generally implemented Perma No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. The number of marriage dispensation applications at the Jember Religious Court is very high, due to the impact of raising the minimum age for marriage. One of the causes is the habit of people who tend to marry under the age of 19, low levels of education, and economic factors. The Jember Religious Court has a special strategy to make the process of examining marriage dispensation quick, simple, and low-cost, namely assigning one judge specifically to focus on examining marriage dispensation cases. The judges who examine marriage dispensation cases do not yet have certificates as juvenile judges. Generally, the reason often used by applicants is that they have been in a long dating relationship or fiancée, not pregnant outside of marriage. The age of 16

years is the minimum grade used by Jember Religious Court Judges in examining marriage dispensation cases. Below this age, it is likely to be rejected, unless there are emergency and *shar'i* reasons.

The potential for domestic violence (KDRT) to lead to divorce for marriage dispensation couples in the Jember Religious Court is very small. This is based on the findings of the panel of judges at the Jember Religious Court who stated that, generally, divorces that occur for marriage dispensation couples in the Jember Religious Court are for economic reasons or maintenance, continuous disputes, and residence, not because of Domestic Violence (KDRT). Of the various reasons for divorce in the Jember Religious Court, the reasons for domestic violence are fewer than economic reasons, disputes and quarrels, and leaving one of the parties. In addition, divorce for reasons of domestic violence in the Jember Religious Court is dominated by couples who marry above the minimum age of marriage, even if the age of marriage has been going on for a long time and already has children, not the result of marriage dispensation.

Bibliography

- Admin. 2022. "Angka Perceraian Di Kabupaten Jember Tembus 4.786 Kasus." *Suaraindonesia.Co.Id* (blog). 2022. <https://suaraindonesia.co.id/news/peristiwa-nasional/6346104439932/Tahun-2022-Angka-Perceraian-di-Kabupaten-Jember-Tembus-4786-Kasus>.
- . 2023. "Kasus Cerai-Di Jember Capai-9160 Pada 2022 Didominasi Faktor Ekonomi." *Www.Liputan6.Com* (blog). 2023. <https://www.liputan6.com/surabaya/read/5174987/kasus-cerai-di-jember-capai-9160-pada-2022-didominasi-faktor-ekonomi>.
- . n.d. "Menko PMK Angka Perkawinan Anak Naik Hingga 300 Persen Saat Pandemi." *Inews* (blog). Accessed April 2, 2022. <https://www.inews.id/news/nasional/menko-pmk-angka-perkawinan-anak-naik-hingga-300-persen-saat-pandemi>.
- Ali, Zezen Zainul. 2021. "The Urgency of Patriotism in Maintaining the Unity in the Republic of Indonesia in the Perspective of

- Maslahah." *El-Mashlahah* 11 (2): 116–26.
<https://doi.org/10.23971/elma.v11i2.2958>.
- Ali, Zezen Zainul, and Mega Puspita. 2023. *Pembaharuan Hukum Keluarga Di Asia Tenggara: Dari Negara Mayoritas Sampai Minoritas Muslim*. Yogyakarta: Jejak Pustaka.
- Allen, Jessica, Reuben Balfour, Ruth Bell, and Michael Marmot. 2014. "Social Determinants of Mental Health." *International Review of Psychiatry* 26 (4): 392–407.
<https://doi.org/10.3109/09540261.2014.928270>.
- Anggraeni, Nita and Humaeroh. 2021. "Problematisasi Tindak Pidana Kekerasan Seksual Dalam Sistem Hukum Di Indonesia." *Al Ahkam* 17 (2). <https://doi.org/10.37035/ajh.v17i2.5429>.
- Bawarni, Susi Dwi, and Arin Mariana. 1993. *Potret Keluarga Sakinah*. Surabaya: Media Idaman Press.
- BPS Jember. 2021. "Hasil Sensus Penduduk 2020 Kabupaten Jember." Badan Pusat Statistik Kabupaten Jember.
- Budiono, Arief. 2022. *Praktik Profesional Hukum Gagasan Pemikiran Tentang Penegakan Hukum*. Surakarta: Muhammadiyah University Press.
- Choirunnisa, Ayu. 2021. "Dampak Dispensasi Nikah Terhadap Tingkat Perceraian Di Pengadilan Agama Salatiga Kelas 1B (Studi Di Pengadilan Agama Perkara Tahun 2018)." Skripsi, Salatiga: IAIN Salatiga.
- Dani, Laila Nailur Rahma. 2022. "Analisis Pertimbangan Hakim Pada Kasus Kekerasan Dalam Rumah Tangga (KDRT) Yang Mengakibatkan Perceraian Berdasarkan Kompilasi Hukum Islam (Studi Kasus Di Pengadilan Agama Jember)." Skripsi, Jember: UIN Kiai Haji Achmad Siddiq.
- Djamilah, and Reni Kartikawati. 2014. "Dampak Perkawinan Anak Di Indonesia." *Jurnal Studi Pemuda* 3 (1).
- DPR RI. 2019. *Undang-Undang Nomor 1 Tahun 1974 Jo Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan*.
- Fadhli, Ashabul, and Arifki Budia Warman. 2021. "'ALASAN KHAWATIR' PADA PENETAPAN HUKUM DISPENSASI KAWIN DI PENGADILAN AGAMA BATUSANGKAR." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14 (2): 146.
<https://doi.org/10.14421/ahwal.2021.14203>.
- Faiq, Nurul. 2023. Wawancara di Jember.

- Faiz, Muhammad Fauzinudin, Zezen Zainul Ali, and Muhammad Taufiq. 2023. "Underage Widows and Widowers before the Law: Problem, Contestation and Legal Certainty in Marriage Dispensation." *JURIS (Jurnal Ilmiah Syariah)* 22 (2): 223. <https://doi.org/10.31958/juris.v22i2.9097>.
- Hanafi, Yusuf. 2011. *Kontroversi Perkawinan Anak Di Bawah Umur (Child Marriage)*. Bandung: CV. Mandar Maju.
- Hariri, Ibrahim Muhammad Mahmud al-. n.d. *Al-Madkhal Ila al-Qawaid al-Fiqhiyyah al-Kulliyah*.
- Hidayatullah, Syeh Sarip, and Nurul Huda. 2020. "Praktek Hukum Acara Dispensasi Kawin." *Jurnal Hukum Ekonomi Syariah* 12 (1).
- Hosen, Moh. 2023. Wawancara di Jember.
- Ilma, Mughniatul. 2020. "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019." *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 2 (2).
- Jauhar, Ahmad Al-Mursi Husain. 2009. *Maqasid Al-Syari'ah*. Jakarta: Zauhar.
- Judiasih, Sonny Dewi. 2018. *Perkawinan Bawah Umur Di Indonesia*. Bandung: Refika Aditama.
- Judiasih, Sonny Dewi, Susilowati S. Dajaan, and Bambang Daru Nugroho. 2020. "Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur Di Indonesia." *Jurnal Ilmu Hukum Kenotariatan* 3 (2).
- Mahkamah Agung. 2019. *Peraturan Mahkamah Agung (PERMA) No. 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin*.
- Mareta, Vina, and Muh Jufri Achmad. 2022. "Perlindungan Terhadap Pengabaian Hak Asuh Anak Akibat Perceraian." *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 2 (1): 484–502. <https://doi.org/10.53363/bureau.v2i1.146>.
- Mujahidin, Ahmad. 2014. *Pembaharuan Hukum Acara Peradilan Agama*. Bogor: Ghalia Indonesia.
- Mulyadi, Wisono, and Anjar Sri Ciptorukmi Nugraheni. 2017. "Akibat Hukum Penetapan Dispensasi Perkawinan Anak Di Bawah Umur (Studi Kasus Di Pengadilan Agama Pacitan)." *Jurnal Privat Law* 5 (2). <https://doi.org/10.20961/privat.v5i2.19394>.

- Nawawi, M Anwar, Sulastris Sulastris, Relit Nur Edi, and Agus Setiawan. 2022. "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia." *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22 (1): 117-34. <https://doi.org/10.18326/ijtihad.v22i1.117-134>.
- Nurazizah, Anisa Rahmatika. 2021. "Dampak Perkawinan Di Bawah Umur Terhadap Kekerasan Dalam Rumah Tangga (KDRT) (Studi Kasus Di Desa Binangun Kecamatan Binangun Kabupaten Cilacap)." Skripsi, Purwokerto: UIN Prof. K.H. Saifuddin Zuhri.
- Perempuan, Komnas. 2022. "Lembar Fakta Dan Poin Kunci Catatan Tahunan Komnas Perempuan Tahun 2022 (Bayang-Bayang Stagnansi: Daya Pencegahan Dan Penanganan Berbanding Peningkatan Jumlah, Ragam Dan Kompleksitas Kekerasan Berbasis Gender Terhadap Perempuan)." Jakarta.
- Putri, Dwi Ika. 2009. *Kajian Viktimologis Terhadap Kejahatan Kekerasan Dalam Rumah Tangga*. Makassar: Fakultas Hukum Universitas Hasanuddin.
- Raharjo. 2023. Wawancara di Jember.
- Rofik, M. Khoirur. 2021. *Pernikahan Di Bawah Umur: Problematika Dan Tantangan Hukum*. Semarang: CV Rafi Sarana Perkasa.
- Rohmadi, Zezen Zainul Ali, Fajar Apriani, Helena Octavianne, and Cinderia Permata. 2024. "Judges' Considerations in Granting Marriage Dispensation Licenses in Indonesia: Islamic Family Law Perspective." *El-Usrah: Jurnal Hukum Keluarga* 7 (1): 326-45. <http://dx.doi.org/10.22373/ujhk.v7i1.22597>.
- Setiawan, Yolinda Eka Fania, and Eko Wahyudi. 2021. "Implementasi Dispensasi Kawin Di Pengadilan Agama Surabaya." *Jurnal Revolusi Indonesia* 8 (1).
- Sholehah, Nur. 2023. Wawancara di Jember.
- UU No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga. n.d.
- Wibisana, Wahyu. 2017. "Perkawinan Wanita Hamil Di Luar Nikah Serta Akibat Hukumnya Perspektif Fikih Dan Hukum Positif." *Jurnal Pendidikan Agama Islam* 15 (1).
- Yunianto, Catur. 2018. *Pernikahan Dini Dalam Perspektif Hukum Perkawinan*. Bandung: Penerbit Nusa Media.

M. Irwan Zamroni Ali, et al.

Zubaeri, Ahmad. 2020. "Subyek Hukum: Masalah Kedewasaan Dalam Hukum Islam Pasca Revisi UU Perkawinan." *An-Nawazil: Jurnal Hukum Dan Syariah Kontemporer* 2 (1).

Zubaeri, Ahmad, Aizaturrohmah, and M. Khoirur Rofiq. 2022. "Pemeriksaan Perkara Dispensasi Kawin Oleh Hakim Tunggal Di Pengadilan Agama Batang Perspektif Masalah." *An-Nawa: Jurnal Studi Islam* 4 (1).