

Resolving Marriage Dispensation Cases for Pregnant Women Due to Adultery as Urgent Grounds: An Analysis of Practices in the Simalungun Religious Court

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Abstract: In 2023, the Simalungun Religious Court adjudicated two cases involving marriage dispensations for pregnant women: Decision Number 26/Pdt.P/2023/PA.Sim and Decision Number 62/Pdt.P/2023/PA.Sim. The outcomes of these cases highlighted a significant divergence, with one ruling in favor of the dispensation request while the other denied it. This study aims to analyze both the Islamic and formal legal perspectives regarding marriage for pregnant women, evaluate scholarly views on marriage dispensations, and conduct a comparative analysis of the judicial considerations influencing these decisions. Employing a normative legal research approach, the findings indicate three key points: First, there exists a significant difference among Islamic scholars concerning the validity of marriages involving women pregnant from adultery; while Imam al-Shafi'i and Imam Abu Hanifah accept such marriages under specific conditions, Imam Malik and Imam Ahmad ibn Hanbal reject them, regardless of the identity of the husband. Second, marriage dispensations for pregnant women are compatible with Islamic law, as endorsed by several scholars. Legally, the framework for marriage dispensations is provided by the Marriage Law and Supreme Court Regulation (PERMA) No. 5 of 2019. Third, Decision Number 26/Pdt.P/2023/PA.Sim, which approved the dispensation, reinforces legal certainty, whereas Decision Number 62/Pdt.P/2023/PA.Sim, which denied it, raises potential issues regarding the predictability of legal outcomes.

Keywords: *Marriage Dispensation, Pregnant Women, Islamic Law, Legal Certainty*

Abstrak: Pada tahun 2023, Pengadilan Agama Simalungun memutuskan dua perkara yang melibatkan dispensasi nikah untuk wanita hamil: Putusan Nomor 26/Pdt.P/2023/PA.Sim dan Putusan Nomor 62/Pdt.P/2023/PA.Sim. Hasil dari kedua perkara ini menunjukkan perbedaan yang signifikan, di mana satu putusan mengabulkan permohonan dispensasi sementara yang lain menolaknya. Penelitian ini bertujuan untuk menganalisis perspektif hukum Islam dan hukum formal terkait perkawinan untuk wanita hamil, mengevaluasi pandangan akademis tentang dispensasi nikah, dan melakukan analisis komparatif terhadap pertimbangan yudisial yang mempengaruhi keputusan ini. Dengan menggunakan pendekatan penelitian hukum normatif, temuan menunjukkan tiga poin kunci: Pertama, terdapat perbedaan signifikan di antara ulama Islam mengenai keabsahan perkawinan yang melibatkan wanita hamil akibat zina; sementara Imam al-Shafi'i dan Imam Abu Hanifah menerima perkawinan semacam itu di bawah kondisi tertentu, Imam Malik dan Imam Ahmad ibn Hanbal menolaknya, terlepas dari identitas suaminya. Kedua, dispensasi nikah untuk wanita hamil sejalan dengan hukum Islam, sebagaimana didukung oleh beberapa ulama. Secara hukum, kerangka untuk dispensasi nikah diatur oleh Undang-Undang Perkawinan dan Peraturan Mahkamah Agung (PERMA) No. 5 Tahun 2019. Ketiga, Putusan Nomor 26/Pdt.P/2023/PA.Sim, yang mengabulkan dispensasi, memperkuat kepastian hukum, sedangkan Putusan Nomor 62/Pdt.P/2023/PA.Sim, yang menolaknya, menimbulkan potensi masalah terkait dengan prediktabilitas hasil hukum.

Kata Kunci: *Dispensasi Nikah, Wanita Hamil, Hukum Islam, Kepastian Hukum*

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Introduction

In the Indonesian judicial system, the Religious Court plays a crucial role in addressing disputes related to religious and civil matters, particularly for the Muslim community. Governed by Law No. 7 of 1989, which has been amended by Law No. 3 of 2006 and Law No. 50 of 2009, the Religious Court is one of the four state judicial bodies in Indonesia.¹ Its jurisdiction includes adjudicating civil matters involving Muslims, especially those concerning marriage, which is a significant aspect of Islamic law and social norms in Indonesia.²

A pressing issue within the Religious Court's practice is the application for marriage dispensation, particularly for women who are pregnant due to illicit relations. Marriage dispensation allows individuals who have not reached the legal marriageable age to seek permission to marry. This has become increasingly relevant following the enactment of Law No. 16 of 2019, which raised the minimum marriageable age to 19 years.³ This legal change has resulted in a notable increase in marriage dispensation applications across various Religious Courts, including the Simalungun Religious Court, where over 50 cases were reported from 2020 to 2023, predominantly involving underage pregnant women.⁴

The rise in marriage dispensation requests reflects a complex interplay of legal, social, and religious factors. While the law aims to protect minors and ensure their mental and physical readiness for marriage, many cases arise from urgent circumstances, such as out-of-wedlock pregnancies. The Religious Court often faces the dilemma of balancing the enforcement of legal age limits with the pressing needs of applicants, who may seek marriage as a means to legitimize their situation due to pregnancy.⁵ This situation is compounded by societal pressures and the stigma associated with out-of-wedlock pregnancies,⁶ which can lead to significant psychological stress for the individuals involved.⁷

Within the Simalungun Religious Court, divergent rulings have emerged regarding marriage dispensation applications for out-of-wedlock pregnancies. For instance, in case No. 26/Pdt.P/2023/PA.Sim, the judges granted the dispensation based on the argument that the minimum age limit is not a prerequisite for marriage according to Islamic law, provided there is consent from both parties and their parents. Conversely, in case No. 62/Pdt.P/2023/PA.Sim, the judges denied the application, asserting that pregnancy does not automatically necessitate marriage, especially when the applicant has not reached the required

¹ Taufiqurrahman, 'Marriage Dispensation in the City of Surabaya', *World Journal of Advanced Research and Reviews*, 2023, doi:10.30574/wjarr.2023.19.2.1713.

² Sanuri Sanuri, 'Marriage Dispensation in Indonesia on the Perspective of Maqāṣid Al-Usrah', *Al-Hukama*, 2021, doi:10.15642/alhukama.2021.11.1.26-56.

³ Salma Mursyid and Nasruddin Yusuf, 'Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi', *Samarah Jurnal Hukum Keluarga Dan Hukum Islam*, 2022, doi:10.22373/sjhk.v6i2.12439.

⁴ Nurul Nahda M. Panigoro, 'Dispensasi Kawin Karena Hamil Di Luar Nikah Ditinjau Dari Hukum Islam Dan Undang-Undang No. 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan (Studi Kasus: Penetapan Nomor

10/Pdt.P/2022/PA.Trk)', *Bandung Conference Series Law Studies*, 2023, doi:10.29313/bcsls.v3i2.7232.

⁵ Jumrah Jamil, 'Marriage of Pregnant Women Out of Wedlock According to the Shafi'i School and Compilation of Islamic Law', *Formosa Journal of Applied Sciences*, 2023, doi:10.55927/fjas.v2i11.6869.

⁶ Nur Affina Yanti Jamalludin, 'Religious Fallacies Caused by Misunderstanding of Islamic Teaching in Relation to Out of Wedlock Pregnancy Resolution', *Sains Insani*, 2023, doi:10.33102/sainsinsani.vol8no1.515.

⁷ M Nur Kholis, 'Several Judges' Considerations in Deciding Marriage Dispensation Cases', *International Journal of Social Service and Research*, 2023, doi:10.46799/ijssr.v3i9.531.

mental and physical maturity.⁸ These contrasting decisions highlight the challenges faced by judges in reconciling Islamic legal principles with national legal provisions, raising critical questions about the application of justice in such cases.⁹

This study aims to analyze the factors influencing judicial decision-making in marriage dispensation cases and explore the legal and social implications of these differences. By examining the dynamics of customary law, Islamic law, and national law, the research seeks to provide insights into how the Religious Court navigates the complexities of marriage dispensation, particularly in the context of modernity and the influence of religious values. The findings are expected to contribute significantly to the development of legal practices within the Religious Courts and offer policy recommendations for judges in handling similar cases, ultimately ensuring justice for all parties involved.¹⁰

Literature Review

Islamic Law and Formal Law Perspectives on Marriage of Pregnant Women Due to Zina

The marriage of pregnant women due to zina, or illicit sexual relations, presents a complex intersection of Islamic law and formal legal frameworks. This phenomenon, known as kawin hamil, raises significant questions regarding the legitimacy of such unions and the legal status of the offspring produced from these marriages. The primary aim of marriage in Islam is to ensure the legitimacy of offspring, which is

fundamentally challenged when the conception occurs outside a lawful marriage. Amir Syarifuddin emphasizes that children born from zina are considered illegitimate, regardless of subsequent marriages involving the mother or the biological father.¹¹

Islamic texts, particularly the Qur'an, unequivocally condemn zina, categorizing all sexual relations outside of marriage as sinful. Surah Al-Isra' (17:32) explicitly warns against unlawful sexual intercourse, labeling it as an immorality.¹² This foundational perspective shapes the discourse among Islamic scholars regarding the permissibility and validity of marriages involving pregnant women from zina. The differing views among the four major Sunni schools of thought—Shafi'i, Hanafi, Maliki, and Hanbali—illustrate the diverse interpretations and applications of Islamic law in this context.

From the Shafi'i perspective, marriages involving women pregnant from zina are deemed valid, provided that the necessary conditions of marriage, such as ijab and qabul (offer and acceptance), are met. This school does not require a waiting period (iddah) for such women, allowing them to marry immediately after childbirth. The Hanafi school similarly permits marriages to women pregnant from zina, particularly if the man responsible for the pregnancy is the one marrying her. However, if the marrying man is not the biological father, he must refrain from sexual relations until the child is born.¹³ Both schools, while permitting such marriages, express a degree of disapproval, viewing them as socially disreputable.¹⁴

⁸ M Nur Kholis, 'Several Judges' Considerations in Deciding Marriage Dispensation Cases', *International Journal of Social Service and Research*, 3, 9 (2023), doi:10.46799/ijssr.v3i9.531.

⁹ Sanuri.

¹⁰ Jamil.

¹¹ Muhammad Khalid Masud and Fadlurrohman Fadlurrohman, 'Sheek Yusuf Al-Makassari's Thoughts on Implementation of Islamic Law Through India', *Eduvest - Journal of Universal Studies*, 2022,

doi:10.36418/eduvest.v2i9.602.

¹² Masud and Fadlurrohman.

¹³ Alex Kusmardani, 'The Development of Ideas on the Reform and Transformation of Islamic Family Law Into Legislation in Islamic Countries', *Jurnal Syntax Imperatif Jurnal Ilmu Sosial Dan Pendidikan*, 2023, doi:10.36418/syntax-imperatif.v4i5.296.

¹⁴ Ade Daharis, 'The Role and Position of Women in the Family According to Islamic Law: A Critical Study of Contemporary Practices', *Literatus*, 2023,

Conversely, the Maliki and Hanbali schools adopt a more restrictive stance. The Maliki school mandates that women pregnant from zina must wait until childbirth before entering into a new marriage, equating their situation with those in ambiguous marital circumstances.¹⁵ The Hanbali school, represented by Imam Ahmad ibn Hanbal, asserts that a woman guilty of zina can only marry after completing a waiting period and demonstrating sincere repentance. This view underscores the importance of moral rectitude before entering into a new marital contract.¹⁶

The legal implications of these marriages extend beyond the couple to the status of the child. According to Islamic law, lineage is recognized only if established through a lawful marriage or acknowledged ambiguous circumstances. Children born from zina do not inherit rights from their biological fathers, which significantly impacts their legal status and entitlements.¹⁷ The Shafi'i and Hanafi schools maintain that while the marriages are valid, the offspring's lineage remains severed from the father, thereby denying them inheritance rights.¹⁸ This perspective is reinforced by the consensus among scholars that the maximum duration of pregnancy for establishing lineage is six months, beyond which the child's paternity may be definitively determined.¹⁹

In summary, the marriage of pregnant women due to zina is a multifaceted issue within Islamic law, characterized by varying interpretations and legal consequences. While some schools permit such unions under specific conditions, others impose restrictions that reflect a commitment to moral standards and the legitimacy of lineage. The implications for the children born from these unions highlight the critical intersection of family law and societal norms within the Islamic legal framework.

Methods

This study employs a normative legal research methodology, which is fundamentally library-based, to analyze existing legislation and applicable legal norms. This approach aligns with the views of Soerjono Soekanto, who emphasizes the importance of examining legal principles, systematics, and the historical context of law in normative research.²⁰ The focus on literature reviews and secondary data is critical, as normative legal research typically relies on library materials or secondary legal sources to explore legal issues comprehensively.²¹

Peter Mahmud Marzuki further elaborates on various approaches in legal research, highlighting the legislative, case, historical, comparative, and conceptual

doi:10.37010/lit.v5i2.1475.

¹⁵ Sidra, Rizwana Gul, and Abdus Samad, 'The Role of Muslim Family Law Ordinance 1961 in Protecting the Rights of Women, Case Studies From Mardan District', *Sir Syed Journal of Education & Social Research (Sjesr)*, 2021, doi:10.36902/sjesr-vol4-iss2-2021(508-514).

¹⁶ Wahyuni Retnowulandari, 'Gender Perspective in Customary and Islamic Inheritance Law', 2022, doi:10.4108/eai.3-8-2021.2315073.

¹⁷ Ani Maryani, Umar Ma'ruf, and Winanto Winanto, 'An Overview of Islamic Law in the Mechanism of Individual Distribution If the Wife of the Heir Is More Than One', *Sultan Agung Notary Law Review*, 2022, doi:10.30659/sanlar.4.2.456-464.

¹⁸ Issa Babatunde Oba, 'The Dynamics of Islamic Marital Jurisprudence in Islamic Courts: The Experience of

the Kwara State and Zanzibar', *Ijoresh Indonesian Journal of Religion Spirituality and Humanity*, 2023, doi:10.18326/ijores.v2i1.43-67.

¹⁹ R R Dewi Anggraeni and others, 'Legality of Khulu' Lawsuit for Wives in the Provisions of Legislation in Indonesia', *Jurnal Ilmiah Al-Syir Ah*, 2022, doi:10.30984/jis.v20i1.1817.

²⁰ Dwi Tatak Subagiyo, 'An Overview of Legal Measures to Prevent and Protect Unreasonably the Use of Traditional Medicine in Indonesia', *Journal of Law and Sustainable Development*, 2023, doi:10.55908/sdgs.v1i1i1.1782.

²¹ Adensi Timomor and Theodoros Pangalila, 'Legal Analysis Regarding Reviews Even If a Court's Decision Has Permanent Legal Force', *Technium Social Sciences Journal*, 2023, doi:10.47577/tssj.v44i1.8917.

methods.²² This study specifically adopts a comparative approach by examining marriage dispensation rulings in two distinct cases, which allows for a nuanced understanding of how different legal systems address similar issue.²³ The comparative method is particularly valuable in identifying variations in legal interpretations and applications across jurisdictions, thereby enriching the analysis of legal norms surrounding marriage dispensation due to zina.

Data collection was meticulously performed through literature review methods, encompassing primary data in the form of judicial decisions, secondary data from legal literature, and tertiary data such as encyclopedias and magazines.²⁴ The validity of the data was rigorously tested using descriptive, interpretive, and theoretical techniques, ensuring the reliability of the research findings.²⁵ This multi-faceted approach to data collection and validation is essential in normative legal research, as it enhances the credibility of the conclusions drawn from the analysis.

The data analysis process was conducted in three stages: data collection and reduction, data presentation, and conclusion drawing. The first stage involved systematically gathering relevant legal texts, judicial decisions, and scholarly literature, which is a hallmark of normative legal research. In the second stage, the collected data were organized and synthesized to facilitate comparison and analysis, allowing for a clearer understanding of the legal

implications surrounding the marriage of pregnant women due to zina. Finally, the conclusion drawing stage synthesized the findings to provide a coherent and comprehensive overview of the examined issues, reinforcing the importance of a structured analytical framework in legal research.²⁶

In summary, this methodological framework not only adheres to the principles of normative legal research as articulated by Soerjono Soekanto and Peter Mahmud Marzuki but also effectively addresses the complexities of legal norms surrounding marriage dispensation in the context of zina. The comparative approach, combined with rigorous data collection and analysis methods, ensures a thorough understanding of the legal implications involved.

Results and Discussion

Marriage Dispensation for Pregnant Women

In the context of Islamic law, marriage dispensation for pregnant women represents a significant intersection of religious principles and contemporary legal frameworks. The term "dispensation," as defined in the Kamus Besar Bahasa Indonesia, refers to an exemption from general regulations applicable in specific situations, which aligns with the Islamic concept of rukhsah, or ease in legal provisions. This notion is particularly relevant when considering the implications of marriage for pregnant women, where dispensations serve as exceptions to the general rules governing marriage age and

²² Doris Rahmat, 'Juridical Review of International and National Law Relationships', *East Asian Journal of Multidisciplinary Research*, 2023, doi:10.55927/eajmr.v2i1.2872.

²³ Muhammad Arif Sahlepi, 'The Comparative Law on the Crime of Sexual Violence Between Indonesia and the United Kingdom', *Jurnal Pembaharuan Hukum*, 2023, doi:10.26532/jph.v10i3.35287.

²⁴ Anis Widyawati, 'The Regulation of Integrity Zone

and the Corruption-Free Zone in Indonesia and Rusia', *Bestuur*, 2023, doi:10.20961/bestuur.v11i2.76306.

²⁵ Doris Rahmat, 'Law Enforcement in Criminal Cases Based on Restorative Justice by the Prosecutor's Office', *East Asian Journal of Multidisciplinary Research*, 2023, doi:10.55927/eajmr.v2i8.5761.

²⁶ Rahmat, 'Juridical Review of International and National Law Relationships'.

conditions.

Islamic jurisprudence does not stipulate a fixed minimum age for marriage; instead, it emphasizes maturity, which can be interpreted variably across different schools of thought.²⁷ For instance, the Syafi'i and Hanbali schools consider 15 years as the age of maturity, while the Hanafi school sets it at 17-18 years for males and 18 years for females.²⁸ The Quranic verses QS At-Thalaq: 4 and QS An-Nisa: 3 and 127 suggest that marriage can occur even before physical maturity, as long as societal norms and legal requirements are met. This flexibility allows for the interpretation that a pregnant woman may marry without waiting for childbirth, provided that the marriage conditions are fulfilled, as supported by the Syafi'i school.²⁹

In Indonesia, the legal framework surrounding marriage dispensations has evolved significantly, particularly with the enactment of Law No. 16 of 2019, which raised the minimum marriage age for women from 16 to 19 years. This law mandates that individuals under the age of 19 must seek permission from religious courts to marry, thereby formalizing the process of marriage dispensation. The Compilation of Islamic Law (KHI) further supports this by allowing for marriage under specific circumstances, including pregnancy, which does not conflict with Indonesian law.³⁰

Judges in Indonesian religious courts consider various factors when granting marriage dispensations, particularly in cases

involving pregnant women. The primary considerations include the potential benefits and harms associated with the marriage, aligning with the *maqāṣid al-sharī'ah*, which emphasizes the welfare of individuals and society.³¹ The increase in marriage dispensation applications post-2019 reflects a societal need to address the complexities surrounding underage marriages and pregnancies outside of wedlock.³²

Moreover, the legal implications of marriage dispensation for pregnant women are not merely procedural; they also carry significant social and ethical considerations. The judges' decisions are influenced by the need to protect the rights of the child and the mother, ensuring that the marriage serves the greater good of the community. This dual adherence to Islamic principles and national law illustrates a nuanced approach to marriage that seeks to balance tradition with contemporary societal needs.³³

In conclusion, the marriage dispensation for pregnant women within the Islamic legal framework and Indonesian law reflects a complex interplay of religious doctrine, legal stipulations, and social realities. The provisions allow for flexibility in marriage practices, particularly in cases of pregnancy, while ensuring that the welfare of individuals and families remains a priority

²⁷ Binarsa Binarsa, 'Legal Legality of Pregnant Marriage in Indonesia Study on the Application of Khi Article 53 in Mlati District Prospective Fatwa Abno Taymiyah', *Jurnal Indonesia Sosial Teknologi*, 2024, doi:10.59141/jist.v5i5.1078.

²⁸ Deris Arista Saputra, 'Maqashid Syari'ah Analysis of Pregnant Women's Marriage: A Review of Individual and Community Welfare', *Journal of Social Science (Joss)*, 2023, doi:10.57185/joss.v2i10.142.

²⁹ Lilik Andar Yuni, 'Analysis of the Emergency Reasons in the Application of Marriage Dispensation at the Tenggara Religious Court', *Samarah Jurnal Hukum Keluarga Dan Hukum Islam*, 2021,

doi:10.22373/sjkh.v5i2.9135.

³⁰ Udin Pasondong, 'Legitimacy of Marriage Dispensation in Religious Courts Based on the Law, Judges' Considerations, and Case Decisions', *Al-Bayyinah*, 2023, doi:10.30863/al-bayyinah.v7i2.4239.

³¹ Yusuf Baihaqi, 'Judges' Considerations in Agreeing to Marriage Dispensation Maqāṣid Syari'ah Perspective', *Kne Social Sciences*, 2024, doi:10.18502/kss.v9i2.14968.

³² Amrin Nurfieni, 'The Impact of Law Number 16 of 2019 Marriage Dispensation and Child Marriage Gap', *Indonesian Journal of Law and Islamic Law (Ijlil)*, 2023, doi:10.35719/ijlil.v5i2.330.

³³ Baihaqi.

Legal Reasoning of Judges in Marriage Dispensation Decisions at the Simalungun Religious Court

In the context of marriage dispensation decisions at the Simalungun Religious Court, judges are tasked with balancing legal mandates with social realities, particularly concerning underage marriages. The legal framework governing marriage in Indonesia, specifically Law No. 16 of 2019, sets the minimum marriage age at 19 years but allows for dispensations under certain circumstances, particularly in cases of pregnancy or other urgent needs.³⁴ This legal provision aims to protect minors while acknowledging the complexities of social and familial pressures that may necessitate early marriages.

The divergent rulings in cases such as Ruling No. 26/Pdt.P/2023/PA.Sim and Ruling No. 62/Pdt.P/2023/PA.Sim illustrate the nuanced legal reasoning employed by judges.³⁵ In the former, the judges granted the dispensation based on the prospective bride's pregnancy, emphasizing the urgency of the situation and the fulfillment of other legal requirements, such as family consent and the prospective husband's readiness.³⁶ This decision reflects a pragmatic approach, where the judges prioritized the immediate social and emotional implications of the marriage, considering the bride's status as

mukallaf, or capable of fulfilling her marital duties under Islamic law.³⁷

Conversely, in Ruling No. 62/Pdt.P/2023/PA.Sim, the judges denied the dispensation despite similar pressing circumstances. They underscored the principle that marriage must be consensual and free from coercion, noting that the prospective husband was willing to wait until the bride reached the legal age.³⁸ This ruling highlights the judges' commitment to upholding the legal framework and protecting the rights of minors, even in the face of societal pressures.³⁹ The judges' reasoning in both cases reflects a broader tension between legal standards and the socio-cultural context in which these decisions are made, illustrating the challenges faced by the judiciary in Indonesia.⁴⁰

The role of judges in these cases is not merely to apply the law but to interpret it in a manner that considers the best interests of the parties involved, particularly the minors. This requires a holistic understanding of the social dynamics at play, as well as the potential long-term implications of their decisions on the lives of the individuals concerned. The judges' legal reasoning thus embodies a complex interplay of legal principles, social values, and humanitarian considerations, necessitating a careful

³⁴ Ayu Asmara, 'Legal Protection Perspective of Underage Marriage', *Damhil Law Journal*, 2023, doi:10.56591/dlj.v2i2.1743.

³⁵ Maimunah Maimunah and others, 'Juridical and Sociological Considerations of Judges in Granting Marriage Dispensation After Enactment Law No. 16 of 2019', *Jurnal Ilmiah Al-Syir Ah*, 2021, doi:10.30984/jis.v19i2.1460.

³⁶ Mhd Yazid, 'Conservatism of Islamic Legal Arguments in Granting Marriage Dispensation at the Indonesian Religious Courts', *Al-Qisthu Jurnal Kajian Ilmu-Ilmu Hukum*, 2023, doi:10.32694/qst.v21i1.2489.

³⁷ M Anwar Nawawi and others, 'Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia', *Ijtihad Jurnal Wacana Hukum Islam Dan*

Kemanusiaan, 2022, doi:10.18326/ijtihad.v22i1.117-134.

³⁸ Mhd Yazid, 'Conservatism of Islamic Legal Arguments in Granting Marriage Dispensation at the Indonesian Religious Courts', *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, 21.1 (2023), doi:10.32694/qst.v21i1.2489.

³⁹ Josua Navirio Pardede, Wigati Taberi Asih, and Thogu Ahmad Siregar, 'Progressivism of Judges in Deciding Applications for Marriage Dispensation', *Lambung Mangkurat Law Journal*, 2021, doi:10.32801/lamlaj.v6i1.208.

⁴⁰ Rifki Fakhudin, Pramestya Raharjanti, and Muhammad Wahyu Saiful Huda, 'Relevance of Religious Court Decisions Regarding Dispensation in Child Marriage', *Indonesian Private Law Review*, 2022, doi:10.25041/iplr.v3i1.2567.

evaluation of each case's unique circumstances.⁴¹

In conclusion, the legal reasoning of judges in marriage dispensation cases at the Simalungun Religious Court illustrates the intricate balance between adhering to legal standards and addressing the socio-cultural realities of underage marriage in Indonesia. The divergent rulings underscore the importance of context in judicial decision-making, highlighting the need for judges to navigate the complexities of law, morality, and social expectations in their quest for justice

Comparative Analysis of Marriage Dispensation Decisions for Pregnant Women at the Simalungun Religious Court

The comparative analysis of marriage dispensation decisions for pregnant women at the Simalungun Religious Court, specifically focusing on Decision No. 26/Pdt.P/2023/PA.Sim and Decision No. 62/Pdt.P/2023/PA.Sim, reveals significant insights into the legal and social considerations surrounding marriage in the context of pregnancy. Both decisions underscore the fundamental principle that marriage is a spiritual and physical bond aimed at establishing a harmonious household, as enshrined in Indonesian law, particularly in the Compilation of Islamic Law and Law No. 1 of 1974 on Marriage.⁴² The legal framework mandates that both substantive

and formal conditions must be met for a marriage to be deemed lawful, including adherence to the minimum age requirements, which were revised to 19 years for both genders in Law No. 16 of 2019.⁴³

In both cases, the absence of consanguinity or other marital prohibitions, as outlined in Article 8 of Law No. 1 of 1974, was noted, affirming that parental consent remains a critical requirement.⁴⁴ This aligns with the broader understanding that parents are expected to support their children until they are ready to establish a family.⁴⁵ The pregnant status of the prospective brides in both decisions did not constitute a legal barrier to marriage, reflecting the diverse opinions among Islamic schools of thought regarding the legality of marriage for pregnant women resulting from unlawful acts.⁴⁶ The Shafi'i, Hanafi, Maliki, and Hanbali schools generally accept that pregnancy does not impede marriage as long as other legal requirements are fulfilled.⁴⁷

A notable divergence in the legal reasoning of the two rulings is evident. In Decision No. 26/Pdt.P/2023/PA.Sim, the judges emphasized the voluntary nature of the marriage, asserting that both parties entered into the union without coercion. Conversely, Decision No. 62/Pdt.P/2023/PA.Sim highlighted the prospective bride's feelings of compulsion, with the groom expressing a willingness to wait until she reached the legal age. This

⁴¹ Pardede, Asih, and Siregar.

⁴² Edy Setyawan, 'Legal Age for Marriage: SDGs and Masalah Perspectives in Legal Policy Change in Indonesia', *Al-Manahij Jurnal Kajian Hukum Islam*, 2023, doi:10.24090/mnh.v17i2.9506.

⁴³ Ismail Ismail and others, 'Legal Age Equality in Marriage According to Indonesian Positive Law in the Studies of Gender and Maqāṣid Al-Sharia', *De Jure Jurnal Hukum Dan Syar lah*, 2023, doi:10.18860/j-fsh.v15i1.17696.

⁴⁴ Salma Mursyid and Nasruddin Yusuf, 'Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi', *Samarah Jurnal Hukum Keluarga*

Dan Hukum Islam, 2022, doi:10.22373/sjhh.v6i2.12439.

⁴⁵ Efrinaldi Efrinaldi, 'Revealing the Enforcement of Mbasuh Dusun Tradition for Pregnant Women Outside of Marriage in Indonesia', *Al-Istinbath Jurnal Hukum Islam*, 2023, doi:10.29240/jhi.v8i2.8437.

⁴⁶ Srirahma Srirahma, 'Effectiveness of Article 53 on Marrying Pregnant Women in Compilation of Islamic Law', *Estudiante Law J*, 2022, doi:10.33756/eslaj.v4i2.18362.

⁴⁷ Isman Isman, 'Compilation of Islamic Laws Regarding Marrying Pregnant Women: The Case of Biau Regency, Central Sulawesi', *International Journal of Contemporary Islamic Law and Society*, 2023, doi:10.24239/ijcils.vol5.iss2.69.

distinction is critical as it reflects the court's sensitivity to the psychological readiness of the parties involved, particularly the bride, which is essential in assessing the legitimacy of the marriage.⁴⁸

Furthermore, the assessment of the groom's capacity varied between the two decisions. In Decision No. 26/Pdt.P/2023/PA.Sim, the groom was deemed competent, while in Decision No. 62/Pdt.P/2023/PA.Sim, he was not considered sufficiently capable. The judges in the former case cited societal stigma as a justification for immediate marriage, whereas the latter ruling prioritized the psychological readiness of the bride, indicating that pregnancy alone was insufficient justification for marriage. This reflects a nuanced understanding of the implications of marriage for young women, particularly in the context of societal pressures and expectations.⁴⁹

The application of Article 26 paragraph (1) of Law No. 35 of 2014 on Child Protection further illustrates the differing evaluations of the best interests of the prospective brides. Decision No. 26/Pdt.P/2023/PA.Sim suggested that the child's best interests were considered, while Decision No. 62/Pdt.P/2023/PA.Sim emphasized the need for parents to prevent early marriage, thereby discouraging the coercion of minors into marriage. This highlights the court's role in balancing legal requirements with the social realities faced by young women in Indonesia.⁵⁰

In conclusion, while both decisions adhere to the legal framework governing marriage in Indonesia, they exhibit significant differences in the application and emphasis of specific aspects, particularly concerning the psychological readiness of the parties involved and the societal implications of early

marriage. This analysis underscores the complexity of marriage dispensation decisions for pregnant women, reflecting a broader discourse on gender, law, and societal norms in Indonesia

Comparative Analysis of the Simalungun Religious Court Rulings on Marriage Dispensations for Pregnant Women

Dispensations in Islamic legal contexts are defined as administrative decisions that allow deviations from established rules to address specific obstacles that are otherwise prohibited. The implementation of such dispensations requires well-defined parameters to ensure alignment with the overarching regulatory objectives. This analysis focuses on the contrasting judgments of the Simalungun Religious Court regarding marriage dispensations for pregnant women, which reveal significant variations in legal interpretation.

The Simalungun Religious Court's decisions present a stark contrast in handling dispensations for pregnant women. In Case No. 26/Pdt.P/2023/PA.Sim, the court granted the dispensation, reasoning that age limits do not constitute a prerequisite for marriage under Islamic law, coupled with mutual consent from both parties involved. Conversely, in Case No. 62/Pdt.P/2023/PA.Sim, the court denied the request, asserting that premarital pregnancy does not automatically necessitate marriage, particularly when the petitioner's mental readiness and age are deemed inadequate.

Implications for Legal Certainty

These divergent rulings have profound implications for legal certainty. The decision to grant the dispensation provides legal assurance for the unborn child, as the parents' marital status is officially

⁴⁸ Efrinaldi.

⁴⁹ Efrinaldi.

⁵⁰ Efrinaldi.

recognized. In contrast, denying the dispensation creates uncertainty, placing the child born from such a union at risk of facing social stigma and legal ramifications as a child born out of wedlock. Such inconsistencies reflect varied judicial interpretations, which may influence the pursuit of justice for those involved and contribute to a broader atmosphere of unpredictability for petitioners in similar circumstances.

Application of the Concept of Maslahat

The principle of *maslahat*, or public interest, is central to Islamic jurisprudence and is essential in judicial decision-making. In Case No. 26/Pdt.P/2023/PA.Sim, the judge's consideration of public interest led to the approval of the dispensation to mitigate potential negative social consequences for both the family and the unborn child. This decision underscores the view that marriage represents a moral obligation, particularly in cases involving pregnancies resulting from illicit relationships, aiming to protect the family's honor and secure the child's future.

Conversely, in Case No. 62/Pdt.P/2023/PA.Sim, the judge denied the dispensation, emphasizing that marriage should not be coerced if the petitioner lacks adequate mental readiness and age. This ruling reflects a broader interpretation of public interest, aimed at preventing early marriages that could jeopardize future family stability. Such reasoning aligns with *maqashid al-shariah*, specifically in preserving lineage and life, by considering the long-term welfare of both the petitioner and the unborn child.

Recognition of Lineage for Children Born Out of Wedlock

The status of lineage for children born out of wedlock is another critical factor in the context of marriage dispensations for pregnant women. There is a general consensus among Islamic scholars that children born out of wedlock do not have a

recognized relationship with their biological fathers unless specific conditions are met. However, scholarly opinions vary regarding the recognition of lineage for these children, with scholars such as Imam Hanafi and Ishaq ibn Rahawaih advocating for the acknowledgment of lineage as a means of protecting children's rights and preserving family honor.

In Indonesian positive law, Constitutional Court Decision No. 46/PUU-VIII/2010 supports the recognition of a civil relationship between children born out of wedlock and their biological fathers, provided that evidence, such as scientific proof or DNA testing, is available. This legal framework enables children born out of wedlock to claim specific rights, including inheritance and support from their fathers. Therefore, the decision to grant a marriage dispensation in the context of pregnant women significantly influences the legal status of the child, particularly regarding lineage recognition and associated civil rights.

In summary, the contrasting rulings regarding marriage dispensations for pregnant women in the Simalungun Religious Court illustrate the complexities surrounding legal interpretations in Islamic law. The decisions not only impact the legal recognition of the parents' marriage but also have significant implications for the lineage and rights of the children involved. The analysis underscores the importance of consistency in judicial interpretations to ensure justice and legal certainty in matters of family law.

Conclusion

The diverse opinions of Islamic scholars regarding the legality of marriage for pregnant women resulting from illicit relationships reveal significant variances. Imam al-Shafi'i considers such marriages

valid, regardless of whether the father is the biological father or another man, without requiring the waiting period until the child's birth. Imam Abu Hanifah permits marriage to the biological father on the condition that no sexual relations occur until after the child is born, while allowing marriage to another man, provided that sexual relations are also postponed until the birth. In contrast, Imam Malik asserts that marriages involving a pregnant woman due to illicit relations are invalid, regardless of the man's identity, whereas Imam Ahmad ibn Hanbal deems it unlawful to marry a woman known to have committed adultery until her waiting period (iddah) has concluded. Concurrently, Indonesian positive law permits marriages for pregnant women outside of wedlock, whether to the biological father or another man.

The provisions governing marriage dispensations for pregnant women align with Islamic law, as the primary criterion for marriage is reaching puberty (baligh), and various schools of thought accept such unions. The Shafi'i school, prevalent in Indonesia, permits marriage for pregnant women by both the biological father and other men. Formally, the legal basis for marriage dispensations is outlined in the Marriage Law and the Supreme Court Regulation (PERMA) No. 5 of 2019.

The Simalungun Religious Court's ruling to grant the marriage dispensation application signifies a commitment to legal certainty for the petitioners. Conversely, a ruling that denies such a request poses risks to legal certainty for those seeking such dispensations. Each judicial decision must prioritize public interest, particularly regarding the lineage status of the unborn child, in accordance with the maqashid dharuriyyat (essential objectives of Islamic law).

To enhance the legal framework

surrounding marriage dispensations for pregnant women, several recommendations are proposed. First, it is suggested that the Supreme Court of the Republic of Indonesia and the Religious Chamber should further regulate marriage dispensations through Supreme Court Regulations or Circulars. Second, scholars in Islamic Family Law in Indonesia are encouraged to contribute innovative solutions to improve the family law system. Finally, constructive feedback from readers is welcomed to refine this research, acknowledging that there remain areas for improvement in both the writing and substantive content of the study.

Credit Authorship Contribution

Mulyadi Antori: Methodology, Investigation, Writing - Original Draft, and Supervision. Sukiati: Methodology, Resources, and Writing - Review & Editing. Imam Yazid: Methodology, Formal Analysis, and Writing - Review & Editing.

Declaration of Competing Interest

The authors declare no competing interests related to this study. No financial or personal conflicts of interest are present.

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