

IMPLEMENTATION CONSTITUTION PROTECTION CHILD ON MINOR MARRIAGES RESULTING FROM PREGNANCY MARRIAGES OUT OF WEDDING (CASE STUDY IN PA KUDUS)

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Abstract

This study aims to explain the considerations of judges in deciding Dispensation for Marriage due to pregnancy out of wedlock, knowing the review of Law number 35 of 2014 concerning Child Protection for underage marriages due to pregnancy out of wedlock at the Kudus Religious Court. Researchers used a type of field research (field research) with a qualitative approach. Sources of data obtained through data related to research subjects (primary data) and data sources related to literature related to research objects. The results of the study show that the granting of a marriage dispensation due to pregnancy out of wedlock is categorized as an urgent situation which will later provide clear legal certainty for the child to be born. The existence of a Marriage Dispensation is a legal solution but it is felt that it is not very educational for the next generation. The Law on Child Protection in response to underage marriages is actually contrary to Law Number 16 of 2019 concerning Marriage, because marriages are carried out under the age of 19 for both men and women, but if the request for underage marriage is granted due to pregnancy out of wedlock by considering the rights of children that have been regulated in Law Number 35 of 2014 concerning Child Protection and considering the rights of children in the womb of the prospective bride, underage marriages due to pregnancy out of wedlock are not entirely contrary to the Law Child Protection Act

Keywords: Marriage, Pregnancy out of wedlock, Child Protection

Abstrak

This research aims to explain the judge's considerations in deciding on marriage dispensation due to pregnancy out of wedlock, knowing the review of Law number 35 of 2014 concerning Child Protection against underage marriage due to pregnancy out of wedlock at the Kudus Religious Court. Researchers use field research *with* a qualitative approach. Data sources obtained through data related to the research subject (primary data) and data sources related to literature related to the research object. The research results show that the granting of Marriage Dispensation due to pregnancy outside of marriage is categorized under circumstances urge Which later will give certainty law Which clear for the child to be born. The existence of a Marriage Dispensation is a legal solution but it is felt that it is not very educational for the next generation. The Child Protection Law in addressing underage marriage is actually contradictory with Constitution Number 16 Year 2019 about Marriage,

because marriage is carried out under the age of 19 for men and women, will but If granted application marriage in lower age due to pregnancy out of wedlock taking into account the rights of children that have been regulated in Constitution Number 35 Year 2014 about Protection Child and considering the rights of the child in the womb of the prospective bride, underage marriage due to pregnancy out of wedlock is not completely contrary to the Child Protection Law.

Say Key: *Marriage, Pregnant in Outside Marry, Protection Child*

Introduction

The marriage age provisions contained in Law Number 1 of 1974 need to be adjusted again. So that's it an updated law was born, which re-set the minimum age limit for marriage. The minimum age limit for marriage was originally regulated by Law Number 1 of 1974 in Article 7 Paragraph (1) "marriage is only permitted if the man is 19 years old and the woman is 16 years old". However, then the provisions of Article 7 Paragraph (1) were amended by the new marriage law, namely Law Number 16 of 2019, an amendment to Law Number 1 of 1974 concerning Marriage, so that it states that marriage is permitted if a man and a woman has reached the age of 19 years (Hilda, 2021).

The marriage law itself has provided opportunities for carrying out underage marriages as stated in Law Number 1 of 1974 concerning Marriage Article 7 Paragraph (2) that violations of paragraph (1) chapter This can request dispensation to court or other officials appointed by both parents of the male and female parties. Regarding the Marriage Dispensation, it can be seen from the table below at the Kudus Religious Court. This data collection is based on 2018-2021.

Table 1.1
Data Application Dispensation Marry Court Holy Religion

NO.	APPLICATION	2018	2019	2020	2021	AMOUN T
1.	Dispensation Marry	64	93	270	270	697

A person who needs this Legal Institution is basically just a matter of age, where in this case a person wants to carry out a marriage but is hampered by not being old enough. Protection Child in a way special has accommodated based on provision Law Number 35 of 2014 states that efforts to protect children need to be implemented from the time they are in the womb until they are 18 years old. Child Protection Issues Which Lots faced by one among them namely marriage

underage, where there is a fact of inconsistency in the Legislative Regulations between Law Number 1 of 1974 concerning Marriage and the Child Protection Law in terms of establishing provisions limit age a child (Levana, 2021: 211). Dispensation Marry is an application to obtain marriage permission for prospective couples who have not yet met the age limit for marriage. The Marriage Dispensation itself is an exception to the provisions of Article 7 Paragraph (1) of the Law Number 16 of 2019 amends Law Number 1 of 1974 concerning Marriage. When submitting an application for a marriage dispensation to the Religious Court, you must fulfill several requirements as stated in PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensations Article 5 Paragraph (1) (Bayu, 2020).

As happened at the Holy Religious Court. The Religious Court is currently the only institution that has absolute legitimacy based on the provisions of Law Number 1 of 1974 concerning Marriage in granting permits for deviations from the marriage age limit intended for people who adhere to the Islamic religion. Based on the description above, the author feels interested in studying it more deeply which will be outlined in a thesis entitled "Underage Marriage Due to Pregnancy Out of Wedlock in the Perspective of the Child Protection Law (Case Study at the Kudus Religious Court)".

METHOD

This type of research is field research (*Field Research*) which studies surrounding phenomena (Dedy, 2008). This field research uses observations in the form of case studies, namely research carried out in detail and in depth to obtain data regarding underage marriages due to pregnancy out of wedlock at the Kudus Religious Court.

The approach used in this study is a qualitative approach. Approach qualitative Which procedure his research sourced from writing, expressions, human behavior that can be observed (Suharsimi, 2006). The technique in the qualitative approach uses case study techniques in order to find out in more depth and detail about a problem that the author wants to research (Burhan, 2006).

Discussion

Consideration Judge in Decide Dispensation Marry consequence Pregnant in Extramarital Affairs at the Kudus Religious Court.

Kudus Religious Court in examining and deciding related cases with acceptance Application Dispensation Marry own the procedures and legal basis that have become guidelines for the Judges of the Kudus Religious Court in handling Marriage Dispensation Applications, with this legal basis determining whether the Application will be granted or rejected.

The basis for the judge's consideration in granting the request for marriage dispensation is as explained by Mrs. Azizah Dwi Hartini, one of the judges at the Kudus Religious Court. State that:

"The basis used by the judge in granting permission for a marriage dispensation application must meet existing requirements, such as bringing a rejection letter from the KUA. In case Which nature urge like This child in lower age pregnant in outside marry because of promiscuity, with this incident the parents immediately asked for a Dispensation Application Marry on Court Religion. If Already like That What Want to rejected? What want to find the sin of letting it go do they mingle more freely without marriage ties? If the reason is very urgent, the woman has become pregnant out of wedlock, it will be prioritized over other reasons. So, in the case of underage women who become pregnant out of wedlock, the judge gives permission by referring to the Law on Marriage, where there are no limits governing what reasons must be granted or rejected. From there the judge saw that the applicants had fulfilled the requirements set by the Kudus Religious Court" (Dwi Hartani, 2022).

Application Dispensation Marry on basically can given on urgent reasons. According to Constitution Number 16 of 2019 concerning changes to the Law Number 1 Year 1974 about Marriage on Chapter 7 Paragraph (2) What is meant is reason urge ie something circumstances Which No There is choice other and very forced must a marriage takes place , and there is supporting evidence Which Enough like letter information Which prove that age of the bride and groom woman Still in lower provision Which has arranged in Law Invitation and certificate from health workers supporting the person's statement old that marriage the very urgent And must immediately done. In Law Number 35 of 2014 concerning Protection. Children in Article 26 Paragraph (1) letter c states that parents are obliged and responsible for preventing underage marriages. In this case, underage women have been in a dating relationship and it is very difficult to separate them result pregnancy in outside marry, with based on For these reasons, the judge granted the application for Marriage Dispensation, so that the Marriage Dispensation was an effort to protect the child. Then, when granting a marriage dispensation, the judge considers the following things:

- a. In the matter of submitting the application, it is correct to submit it to the Kudus Religious Court according to the place of residence of the applicant, and knowing the applicable law in Indonesia that a person can only get married when they reach the age of 19 for men and women as determined based on Law Number 16 2019 about top changes Constitution Number 1 of 1974 concerning marriage.
- b. Whereas during the trial the judge gave advice to the prospective bride and groom and the parents of the prospective bride and groom regarding the risks of child marriage relating to education, reproductive health, economy, social, And mental as well as problematic House

children, even though they have been advised by the judge, all parties will still remain in their position to carry out the marriage.

- c. That the male and female candidates basically stated that plan marriage both of them based on desire themselves Because each other love No Because exists coercion from parents .
- d. During the trial, two witnesses were presented who gave evidence information Which principal that candidate The bride is pregnant because of the actions of the prospective groom.
- e. That in order to carry out a marriage, it must achieve its stated goals loaded as in Constitution Number 1 Year 1974 about Marriage on Chapter 1 ie Which form family eternal based on the one and only God.
- f. That age candidate bride Woman Not yet even 19 Year so they do not meet the marriage age requirements. These provisions are based on Law Number 16 of 2019 concerning amendments to Constitution Number 1 Year 1974 about Marriage precisely in Article 7 Paragraph (2). Requests for age dispensation can be based on urgent circumstances accompanied by supporting evidence.
- g. The marriage wishes of the prospective bride and groom have been approved by the applicants as the parents of the prospective bride are pregnant.
- h. That the petitioners requested the application under the provisions of Article 53 Paragraph (2) KHI without having to wait for their child to give birth first.
- i. That fact based on pregnancy that then Assembly Judge can be used as an urgent or emergency reason which can violate the age limit provisions in marriage for the prospective bride .
- j. is of the opinion that it is urgent that the marriage of the applicant's children take place immediately so as not to increase further misery. In line with the fiqh rules below:
It means: (reject prosperity more main than gain benefits).
- k. To prevent other damage, namely to prevent prospective brides and grooms from marrying under their hands.

Ibu Azizah Dwi Hartani as a Judge of the Holy Religious Court submitted based on the rules of jurisprudence as above that marriage can be seen as preventing the occurrence of acts that violate the law and norm morality which prolonged. Concluded in rule This jurisprudence is to attract benefits between a male and female prospective bridegroom which already weave relationship very tightly until can

worried that there will be continuous sins if you don't get married.

If the marriage is not carried out, it is feared that something that violates the law and moral norms could happen. This marriage dispensation is a form of child protection so that children can continue to grow, develop, participate and avoid fetal murder pregnant in outside marriage. Like Which has explained Mother Azizah Dwi Hartani, one of the judges at the Kudus Religious Court, gave the following statement during the interview:

"In handling the Marriage Dispensation, the judge will definitely ask about the readiness of the prospective bride and groom that they will soon get married as well as ensure that from candidate bride man And Woman there is no pressure to get married. Hearing the statements from the witnesses, the judge asked about the truth of the statements made by the applicant parties. The judge who decides on Marriage Dispensation always advises applicants who wish to marry off their underage children to still guide, supervise his son although child the has have their own family, because minors are still vulnerable to being selfish towards each individual, and cannot think long and hard when faced with a problem. "Therefore, apart from the judge giving advice to children who are about to get married, the judge also gives advice to parents to always look after their children and help solve problems if there is a problem" (Dwi Hartani, 2022).

In fact, the judge had tried to prevent the marriage from taking place because he saw that the child was not yet old enough, but the facts obtained at the trial showed that the prospective bride was already pregnant. As stated by Mrs. Azizah Dwi Hartani, one of the judges at the Kudus Religious Court when giving a statement during an interview as follows:

"The facts show that the prospective bride is currently carrying two bodies or is pregnant. As the judge who adjudicates, this interest is for the benefit of the prospective bride, the baby being conceived, and for the family as a manifestation of sad al-dzariah to avoid the possibility of further harm arising. The judge's concern for the applicant parties is also a reference in deciding on the Marriage Dispensation, because if the applicant parties find it difficult to carry out marriage it could be para party applicant do marriage sirri or underhanded marriage which is not valid before the law, especially if the prospective bride is pregnant out of wedlock so the marriage must be carried out immediately. When it comes to marriage children of the applicant parties "If you postpone it, you will definitely feel very embarrassed for your neighbors and it will become a bad conversation in the community" (Dwi Hartani, 2022).

With regard to the physical, psychological, biological and emotional aspects of the parties' children applicant For build House ladder. Mother Azizah Bi Hartani

The judge at the Religious Court stated during the interview as follows:

"Boys and girls who are adults can be seen when they are questioned during the trial and they are able to carry out adult work and minors who are considered to be biologically mature can be seen when they are able to have sexual relations which results in the bride and groom "Pregnant women and adults, in terms of body posture, can be seen when a child's body posture has matched that of an adult" (Dwi Hartani, 2022).

There are several factors that cause underage marriage, these factors are as follows:

- a. Of their own volition, underage marriages occur based on the will of those who already feel that they belong to each other.
- b. Economics, poverty has an influence on life, so that having married children will reduce the burden on the family a little lighter.
- c. Education, low levels of education make parents and the community tend to marry off quickly child they in lower limit age Which has determined by Law. There are also other factors, such as fear that the child will become an old maid.
- d. Getting pregnant out of wedlock is easy because of the very rapid development of technology And it's easy For accessed sometimes make child fall into promiscuity so that undesirable things happen. Although as good as whatever one's way Parents protect their children from the outside world, but they will still be affected even slightly.

The judge's consideration also took into account legal protection against underage marriage. This protection has been regulated in Law Number 35 of 2014 concerning Child Protection in Article 1 Paragraph (2) which states that child protection is all activities to guarantee and protect children and their rights. so that still life, grow, develop, And participate in a way optimally in accordance with human dignity, as well as receiving protection from violence.

With the existence of Law Number 35 of 2014 concerning Child Protection, the guarantee of protection of children's rights can be fulfilled. An explanation from Mrs. Azizah Dwi Hartani as one of the Religious Court Judges stated:

"Protection law very important For rights child especially in regarding marriage, because of frequent problems consequences arise from marriage underage, namely there is a fight in the household caused by a very young age" (Dwi Hartani, 2022).

Child protection is divided into 2 (two) parts, namely: First, juridical child protection which includes protection in the field law civil And protection in law public. Second

Non-juridical child protection which includes internal protection field education, field social, And field health. In lower this is the description Mother Azizah Bi Hartani as Judge Court Religion Holy related to the protection of children in underage marriages:

"Protection of children against underage marriages can be seen in general in the judge granting the Marriage Dispensation Application on the grounds that the prospective bride has become pregnant out of wedlock, which will benefit the children who will marry underage themselves and the children in the womb. The child in the womb will later be born with marital status Which legitimate And will get deed birth with status child father is not just mother's son" (Dwi Hartani, 2022).

In the concept of child protection, it is not only related to the protection of the child's body and soul, but also includes the protection of all rights and interests that can guarantee normal growth and development both physically and mentally. spiritual, physical, and social. On In essence, the protection of children's rights refers to statutory regulations whose policies guarantee the fulfillment of children's rights based on groups of vulnerable and *dependent children* .

Judging from the provisions of Law Number 35 of 2014 concerning Child Protection in Article 26 Paragraph (1) letter c, it expressly prohibits underage marriages, whereas in Law Number 16 of 2019 concerning Marriage Article 7 Paragraph (2) There are irregularities in the permissibility of underage marriages provided that the application for marriage dispensation is submitted in urgent circumstances. The application for marriage dispensation has been regulated in PERMA Number 5 of 2019.

At first glance, there are contradictions between the Child Protection Law and the Marriage Law. With contradictions in certain articles in the Law, it is necessary to be careful when seeking a solution to the Marriage Dispensation due to pregnancy out of wedlock.

A. Analysis Data Study

1. Analysis of Judges' Considerations in Deciding on Marriage Dispensation due to Unwed Pregnancy at the Kudus Religious Court.

Referring to PERMA, judges certainly do not go beyond the corridors set out in PERMA. When deciding and adjudicating applications dispensation marry in CHAPTER II Chapter 2 PERMA has stated that in adjudicating applications for marriage dispensation the judge is based on the principles: Good interests of the child, the child's right to life and growth and development, respect on opinion child, award on dignity And dignity, non-discrimination, gender equality, equality before the law, justice, usefulness and legal certainty (Saida, 2019).

Apart from that, a judge will carry out *ijtihad* to confirm the law in various cases Which has many interpretations. The judge can *ber ijtihad* with perfect if judge have knowledge

extensive knowledge in the fields of law and social sciences, knows the Qur'an, Sunnah and ijma' qiyas well, knows the jurisprudence and laws and regulations that are in force in Indonesia (Abdul, 2007) .

In consider Dispensation Marry consequence pregnant in outside The judge at the Kudus Religious Court based his marriage on the facts obtained during the trial, apart from that, the judge at the Kudus Religious Court referred to PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications.

There is a basis for the judge's considerations regarding whether the Marriage Dispensation Application will be granted or rejected during the trial, the basis for these considerations is as follows:

a. Consideration in law

- 1) PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications Article 5 Paragraph (1), namely:
 - a) Letter Permononan Dispensation Marry
 - b) Letter rejection from KUA
 - c) Notification letter of lack of marriage data from KUA
 - d) Photocopy ID card
 - e) Photocopy K.K
 - f) Photocopy DEED child para party applicant
 - g) Photocopy certificate education final child para party applicant.

If the conditions mentioned above have not been met, the Registrar will return the Marriage Dispensation Application file to the parents who have submitted the Application to complete the data that has not been met first, then if data in on has fulfilled all so Application The marriage dispensation will be registered in the Register after paying the down payment for the case.

The judge when deciding on the Marriage Dispensation Application must be appropriate based on objective Which has loaded in PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. These objectives are:

- a) By applying the principles that have been regulated as intended in Article 2, namely the principle of the best interests of the child, the principle of the child's right to life, growth and development, the principle of respect for the child's opinion, the principle of respect for dignity, the principle of non-discrimination, the principle of gender equality, the principle of equality in front of law, the principle of justice, the principle of expediency, the principle of public interest.
- b) And guarantee the implementation of a justice system that protects children's rights (Ilma, 2019).

- 2) No There is prohibition For Marry in accordance Constitution Number 1 of 1974 concerning Marriage in Article 8, namely:
 - a) There is no prohibition against the prospective bride and groom from getting married, because they are not related by blood in the straight down or straight up lineage .
 - b) There is no marital relationship with either the in-laws or the in-laws
 - c) No relate because of breast milk

The requirements contained in Law Number 1 of 1974 concerning Marriage in Article 8 are cumulative, which means they must be fulfilled. If the requirements have been met then the marriage can be carried out, however if one of the conditions has not been met then the marriage cannot be carried out.

- b. Consideration judge in outside law
 - 1) Ready physically _
 - 2) There is no element of coercion and the bride and groom love each other, as stated in Law Number 1 of 1974 concerning Marriage Article 6 Paragraph (1)
 - 3) Pregnant out of wedlock, in Law Number 1 of 1974 concerning Marriage Article 7 Paragraph (2) regarding deviations contained in Article (1) can submit an Application for Marriage Dispensation to Court Religion with reason child applicant has been pregnant out of wedlock, so this very urgent reason can be a strong factor in granting the Application for Marriage Dispensation.

In carrying out a marriage, administrative requirements must be met nor substantive. Giving Dispensation Marry in The situation of pregnancy out of wedlock is categorized as an urgent situation which will have a huge impact on the applicant and at the same time provide clear legal certainty. The role of the judge in granting Marriage Dispensation is needed by the community in order to obtain benefits, convenience and provide a solution to a problem for applicants who request Marriage Dispensation (Abror, 2018).

The judge's other consideration was to give dispensation to child Which has pregnant, on application This judge on The Kudus Religious Court often gives permission to carry out marriages. Based on the results of the interview, the judge stated that the basis for granting permission to request a marriage dispensation was to consider the legal consequences of the child being conceived.

Circumstances This judge must know law Which life in society as well consequence If No quick given certainty law from problem

This And judge Also must Can understand justice from every individual. From the sense of justice felt by individuals which is not necessarily the same as the sense of justice felt by families and other families. Deciding on the Application for Marriage Dispensation, the judge can position and describe the circumstances currently happen, so that judge Can choose the fairest principles of justice to make a decision.

From the large number of cases, the judge really has to dig up the facts related to the issue to be decided. Through existing evidence and witnesses, we can provide clarity on a law that is still not appropriate, and adapt the law to something concrete because regulations cannot cover all events that occur in society. If the contents of the law are unclear, the judge is obliged to interpret it to produce a decision that is as fair as possible according to the problem.

Decision Court Which done by judge will become a sign for they Which litigious that they Already Want to And obedient against the law. Even though the application for marriage dispensation is a nonconformity about limitation age child to Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage and not being able to implement preventive measures that have been mandated in Law Number 35 of 2014 concerning Child Protection.

The principles regulated in the Law on the Formation of Legislative Regulations, there are also theories that serve as a reference in the formation of statutory regulations, one of which is the *Lex Specialis Derogat Lex Generalis* Principle. When referring to the principle of *Lex Specialis Derogat Lex Generalis*, in this case the phrase *Lex Specialis* is Law Number 35 of 2014 concerning Child Protection, while the phrase *Lex Generalis* is Law Number 1 of 1974 concerning Marriage. When discussing marriage in Indonesia Of course Constitution Number 1 year 1974 concerning Marriage is the main reference which is considered to be the legal basis for the implementation of marriage in Indonesia. Starting from the definition of marriage, to the procedural requirements for carrying out a marriage (Abdus, 2019).

However with case dispensation marriage Which related regarding child protection, then in determining the legal basis for implementation, we want to prioritize the law which regulates the protection of children's rights, because In essence, the rules governing the implementation of child protection are the Child Protection Law. Therefore, it is necessary to pay attention to the principle of *Lex Specialis Derogat Lex Generalis* (Abdus, 2019).

Legal considerations by a judge for candidates who are pregnant outside marry ie more in point weigh it on protection against

child which will born by candidate bridegroom girl, candidate baby those who will be born have the right to life and get the right to legal protection (Lutfi, 2021).

Fulfillment of Child Protection attaches children's rights to the child's social status in social life as a form of protection for the interests of children experiencing problems. social. Based on Chapter 26 Paragraph (1) item c Constitution Number 35 of 2014 concerning Child Protection where parents are obliged to prevent underage marriages. Based on these provisions, the implementation of underage marriages must be prevented as much as possible, but preventing underage marriages has become difficult to implement with the existence of marriage dispensations at the Religious Courts.

Law Number 1 of 1974 concerning Marriage provides limit age somebody so that can do marriage namely in age 19 Year for man And Woman, according to writer in a way indirectly provides protection and ensures that the marriage can run well, be healthy, and maintain its longevity. This article contains the principle of maturity of the prospective bride and groom so that an ideal marriage can be achieved at a mature age. The law has set a marriage age limit, although someone who has not reached the specified age can still enter into a marriage provided they obtain permission from their guardian and from the Religious Court which is referred to as a request for marriage dispensation as regulated in Article 7 Paragraph (2) (Rani, 2018).

In this law there is absolutely no prohibition on carrying out such marriages in Islamic law or customary law. There is a fact that the hadith of the Prophet Muhammad only indicates the command to marry when a person is capable, which means that even if a person has reached the age of 20 years or more than what is stipulated in the law, but is not yet capable, it is not permissible to marry with the solution of fasting first until he is able (Beni, 2008).

The existence of Article 7 Paragraph (2) regulations opens up opportunities for society to commit deviations in the form of underage marriages for various reasons. This needs to be paid attention to the impact of underage marriage.

2. Review Analysis of Law Number 35 of 2014 concerning Protection Child to Marriage in Lower Age consequence Pregnant Outside of Marriage at the Kudus Religious Court.

Law Number 1 of 1974 concerning Marriage Article 1 states that marriage is bond born inner between a

men and women as husband and wife, with the aim of forming a happy and eternal family based on the Almighty Godhead.

Based on Law Number 1 of 1974 concerning Marriage, the legal requirements for a marriage are if it is carried out according to respective laws and beliefs, and recorded according to the Laws and Regulations.

Underage marriage which is in the spotlight is a person's age limit. There are still differences, there is no similarity regarding the age limit for being considered a child. The Civil Code regulates the age limit for children at 21 years, Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage regulates the age limit for children at 19 years, while in the Law Number 35 year 2014 about Protection Child sets the age limit for children at 18 years.

From the emphasis on distinctions that have been regulated, in Law Number 35 of 2014 concerning Child Protection there is more emphasis on children's rights in general when the child is in condition problem marriage in lower age consequence pregnant in out of wedlock.

On Application Marriage Dispensation against rights a child Besides having benefits, there are also problems that will arise after granted Dispensation Marry. Marriage in lower Age has a negative value from any perspective.

The normative marriage of a boy and a girl who has not yet reached the age of 18 clearly violates the provisions of the law. Number 35 Year 2014 about Protection Child. As is problem like This according to writer there is a number of matter which must be considered comprehensively in providing protection to a child. The existence of Law Number 35 of 2014 concerning Child Protection must be used as reference material in deciding on applications for marriage dispensation due to pregnancy out of wedlock by upholding the principle of the best interests of a child (Bahroni, 2019) .

In the Constitution Number 35 Year 2014 about Child Protection and Law Number 1 of 1974 concerning Second Marriage You're welcome have objective separately. Constitution Number 35 of 2014 concerning Child Protection has the aim of ensuring the fulfillment of the best life for a child, while Law Number 1 of 1974 concerning Marriage also has its own aim, namely to realize the best marriage based on age maturity even though there are provisions that allow marriage under age.

Law Number 35 of 2014 concerning Child Protection as an umbrella law For protect rights a child Which must

fulfilled. Even though the law does not regulate anything more more about rights a child Which carrying out an underage marriage as a result of being pregnant out of wedlock, however, a child who marries underage as a result of being pregnant out of wedlock is still a child who has rights that must be fulfilled, likewise the rights of children in the womb of the prospective bride must be fulfilled so that born from a valid marital status.

Marriage under age Actually contradictory with Constitution Protection Child, but from problem This If marriage under age Because pregnant in outside marry No quick For married then there are children's rights which actually conflict with the Child Protection Law. Children's rights that must be fulfilled are as follows:

- a. The right to life, to maintain the child's right to live by receiving adequate health standards and good care.
- b. The right to think and express, underage marriages are of course no longer able to think and express according to their age because a child is required to carry out various obligations of a wife, so by being granted a marriage dispensation for being pregnant out of wedlock it is hoped that this right will be fulfilled.
- c. The right to receive protection, a prospective wife who is pregnant and a child who is in the womb until the child is born has the right to receive protection, physical and psychological protection. Dispensation on basically can given reason Which urge,

According to Law Number 16 of 2019 concerning Marriage in Article 7 Paragraph (2), what is meant by urgent reasons is a situation where there is no other choice and it is very necessary for the marriage to take place and what is meant by sufficient supporting evidence is a certificate proving that the age of the bride and groom is still a minor in accordance with the provisions of the law and a certificate from a health worker supporting the parents' statement that it is very urgent for the marriage to take place. The legal considerations explained above are given for the interests of both partners and for the best interests of the marriage (Lutfi, 2021).

The marriage dispensation is an effort to protect underage marriages, which means that the existence of this marriage dispensation is to protect underage marriages, even though in reality underage marriages are strongly opposed because underage marriages are more harmful than beneficial. The protection provided by the marriage dispensation for underage marriages does not stop there, judges in giving decisions must also follow the guidelines related to providing decision to marriage in lower age like Which has

listed in PERMA Number 5 of 2019, thus this aims to For in the future If given dispensation marry so Married couples can build a household well and can avoid the negative impacts of underage marriage (Zufron, 1998).

Marriage Dispensation can be implemented if the child's rights can be fulfilled. In PERMA Number 5 of 2019 by applying the principles as intended in Article 2, namely the principle of the best interests of the child, the principle of the child's right to life, growth and development, the principle of respect for opinions, principle award dignity And dignity, principle non-discrimination, the principle of gender equality, the principle of equality before the law, the principle of justice, the principle of benefit, the principle of public interest (Mardi, 2017).

Whereas If in in problem marriage in lower age due to pregnancy out of wedlock is not implemented immediately, it will violate children's rights as regulated in Law Number 35 of 2014 about change on Constitution Number 23 Year 2002 about Protection Child on Chapter 1 Paragraph (2) Which protection child aims to guarantee the fulfillment of children's rights so that they can live, grow, develop, participate optimally in accordance with their dignity as human beings, and receive protection from violence and discrimination. If No quick held impact on on The prospective wife will feel embarrassed and experience stress and depression because psychologically the prospective wife is not ready to become a mother, and this will also have an impact to family Which will seen low in social life because the pregnancy was caused by adultery.

CONCLUSION

Based on from discussion in on there is a number of conclusion that can be taken are as follows:

1. When a judge grants a request for a marriage dispensation, it is based on legal rules, which means that when the judge makes a decision it must be in accordance with the legal arguments and evidence presented. When granting a decision, the judge also looks at the specific law overriding the general law. The judge's basis for determining the consequence dispensation pregnant in outside marry truly in circumstances Which very urgently as regulated in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage Chapter 7 Paragraph (2), Which Where If application No granted, there will be more harm than good.
2. Based on the Child Protection Law, responding to underage marriages is actually contrary to Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, because marriages are carried out in lower limitation age 19 Year for man And Woman, will but

If granted application marriage in lower age consequence pregnant outside marry with consider rights child Which has arranged in Law Number 23 of 2002 concerning amendments to Law Number 35 of 2014 concerning Child Protection Article 1 Paragraph (2) such as children's rights to live, grow and develop, participate optimally in accordance with their dignity as human beings, receive protection from violence, discrimination, And Also consider The rights of the child in the womb of the prospective bride must be fulfilled so born from status marriage Which legitimate, so underage marriage due to pregnancy out of wedlock is not completely contrary to the Child Protection Law

List References

- Abror, Khoirul. *Dispensation Marriage in Lower Age*. Yogyakarta: DIVA Press. Ali, Zainuddin. *Legal Research Methods*. Jakarta: Sinar Graphics, 2016.
- Ali, Zainuddin. *Methodology Study Law*. Jakarta: Ray Graphics, 2015. Al-Qur'an Al-Karim.
- Arikunto Suharsimi. *Research Procedures A Practical Approach*. Jakarta: PT. Rineka Cipta, 2006.
- Bahroni, Ahmad. "Dispensation Marry in Overview Constitution Number 35 Year 2014 about Protection Children" *Journal Transparency Law*, 2, 2019.
- Chandra, Mardi. *Aspects of Indonesian Child Protection Analysis of Child Marriage*, Jakarta: Pranamedia Group, 2017.
- Daulay, Haidar Son. *Empowerment Islam in Indonesia*. Jakarta: Rineka Create, 2009.
- Fatmawati, Nia. "Dispensation Marriage In Lower Age Consequence Pregnant In Outside Marry" *Diponegoro Law Reviews*, 5. 2016.
- Febriyanti Neng Hilda. "Public Legal Awareness of Underage Marriage in View from Law Number 16 of 2019 concerning Marriage" *Journal of Pancasila and Citizenship Education*, 4. 2021.
- Fitria, Olivia. "Age Limits in Marriage Based on Law Number 1 of 1974" *Lex Jurnalica*, 12. 2015.
- Hartini, Siti. "The Concept of Legal Protection for Women as Children in Determining Dispensations Due to Unwed Pregnancy" *National Conference for Law Studies: Legal Development Towards the Era of Digital Society*, 13. 2020.
- Hoerudin, Ahrum. *Religious Courts (Discussion of the Definition, Filing of Cases, and the Authority of Religious Courts after the Enactment of Law Number 7 of the Year concerning Religious Courts*. Bandung: Citra Aditya Bakti, 1999.
- Ilma, Mughniatul. "Dispensational Regulations in Strengthening the Marriage Age Limit Regulations for Children After the Birth of Law Number 16 of 2019" *Journal of Islamic Law and Social Institutions*, 2.
- Junawaroh. "Pregnant Women Out of Marriage Perspective of Islamic Law (Study of the Law of Marriage, Mentalaq, Iddah Period)" *Journal of Islamic Civil Law*, 21. 2020.

- Kurnia. *Constitution Republic Indonesia Number 1 Year 1974 about Marriage and Compilation of Islamic Law* . Surabaya: Kesindo Utama, 2010.
- Mahmud, Mathlub Abdul Najib. *Sakinah Family Law Guide* . Solo: Intermedia Era, 2005.
- Maulana Bani Sharif. "Protection of Women in Marriage Law in Indonesia: Discourse Update Constitution Marriage In The Problem of Marriage Age Limits" *Yingyang: Journal of Islamic Studies on Gender and Children*, 14. 2019.
- Muhajir. "Procedures and Completion of Underage Marriage Dispensation in Religious Courts" *Madinah: Journal of Islamic Studies* , 6. 2019.
- Vomiting Ana Latifatul. "Wedding Early In Indonesia (Perspective Enforcement And Protection)" *Widya Juridica Journal Law* , 2. 2019.
- Musfiroh, Mayadani Rohmi. "Marriage early and Effort Protection Child in Indonesia" *De Jure: Journal of Law and Syariah* , 8. 2016.
- Nuraeni, Reni. "Marriage Dispensation in Law Number 1 Year 1974 and Act Number 35 Year 2014" *Istinbath: Journal Thinking Law Islam* , 13. 2018.
- Prabowo, Bagus Agung. "Judges' Considerations in Determining Dispensations" *Ius Quia iustum Law Journal* , 20. 2013.
- Prasetya, Budi. "Perspective Constitution Marriage To Marriage In Lower Age" *Journal Scientific Untag Semarang* , 6. 2017.
- Puniman, Ach. "Marriage Law According to Islamic Law and Law Number 1 of 1974" *Yustitia Journal* , 19. 2018.
- Sapphira, Levana. "Protection Law To Child Which Do Underage Marriage Without Marriage Dispensation from the Court" *Journal of Notary Science*, 4, 2021.
- Santriati, Amanda Tikha. "Protection Right Education Child Displaced According to Constitution Protection Child" *El-Wahdah: Journal Education* , 1. 2020.
- Subekti. *Book Constitution Law Civil* . Jakarta: PT. Pradnya, 1999.
- Surianto. "Analysis of Child Marriage at an Early Age in View of Law Number 1 Year 1974 And Constitution Number 35 Year 2014" *Journal Of Law and Policy transformation*, 5. 2020.
- Tarigan, Azhari Kamal. and Nuruddin, Amir. *Civil Law in Indonesia: A Critical Study of Development Law Islam from Fiqh, Constitution 1/1974 until KHI* . Jakarta: Kencana, 2006.
- Wasono, Bayu. *Marriage Dispensation Consequence Pregnant outside Marry*. Bogor: Guepedia, 2020.
- Yulianty, Rezky. "Pregnancy out of wedlock from the perspective of the Compilation of Islamic Law (KHI) and Islamic Fiqh in the Office of Religious Affairs" *Islamic Criminal Law*. 13.