

POLICY WORKING PAPER
ANALYSIS OF THE IMPLEMENTATION OF
SUPREME COURT REGULATION (PERMA)
NO. 5 OF 2019 ON GUIDELINES FOR ADJUDICATING
MARRIAGE DISPENSATION APPLICATIONS



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Preface

The Supreme Court Regulation (Peraturan Mahkamah Agung – PERMA) Number 5 of 2019, concerning Guidelines for Adjudicating Marriage Dispensation, aims to ensure a judicial system that protects children's rights. Marriage dispensation, sought by individuals under 19 who wish to marry, ensures the marriage process adheres to legal considerations and meets applicable regulations. However, implementing PERMA Number 5 of 2019 presents complexities that require an in-depth study to strengthen the role of judges and stakeholders in the effort to eliminate child marriage.

This policy working paper provides a comprehensive analysis of the urgency of strengthening PERMA Number 5 of 2019, guided by the principle of the best interests of the child. The analysis draws upon document studies from INFID's research in collaboration with the Gender-Responsive Higher Education Alliance (Aliansi Perguruan Tinggi Responsif Gender – PTRG) on child marriage dispensation in Indramayu District, West Java, and Central Lampung District, Lampung, focusing on child marriage policies and other related studies. The analysis examines marriage dispensation data, such as causative factors, court conditions, and the process of marriage dispensation.

The study reveals the importance of strengthening the implementation of PERMA Number 5 of 2019 in several ways. First, clarifying the meaning of recommendations in Article 15 as mandatory rather than optional. Second, urgency indicators should be established to guide judges. Third, positioning the best interests of the child as the primary basis for judges in deciding marriage dispensation cases. Therefore, inter-institutional coordination and consolidation are crucial. As an evidence-based advocacy organization, INFID hopes this policy working paper can serve as a reference for reviewing child marriage within the context of marriage dispensation. Stakeholders can also consider the provided recommendations to enhance the effectiveness of PERMA Number 5 of 2019 implementation from the perspective of the best interests of the child.

INFID extends its gratitude to all parties involved in preparing this policy working paper. May this synergy continue to grow in realizing justice and protection for Indonesian children.

Jakarta, 6 December 2024

Executive Summary

This policy paper examines the issue of Child Marriage Dispensation within the context of child protection in Indonesia. The discussion focuses on the Supreme Court Regulation (Peraturan Mahkamah Agung – PERMA) Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. The regulation on marriage dispensation is inseparable from changes to the minimum age requirement for marriage. Under Law Number 1 of 1974 on Marriage, the minimum marriage age was 16 years for females and 19 years for males. This was later amended to 19 years for both males and females under Law Number 16 of 2019, which amended Law Number 1 of 1974 on Marriage. This policy aims to protect children from the negative impacts of child marriage, which are often associated with health issues, education barriers, and social welfare challenges.

The International NGO Forum on Indonesia Development (INFID) conducted a study on judicial decisions in Religious Courts, focusing on the best interests of the child, in Indramayu District, West Java, and Central Lampung District, Lampung. During this process, INFID and the Gender-Responsive Higher Education Alliance (Aliansi Perguruan Tinggi Responsif Gender – PTRG) uncovered several key findings. First, the age of the applicants (prospective brides) generally ranged between 16–19 years. According to Law Number 1 of 1974, this age group met the previous marriage and official registration requirements. This group accounted for more than 70% of the applications in Indramayu District (Indramayu Religious Court)¹ and Central Lampung District (Gunung Sugih Religious Court)². Second, strong gender norms significantly influence Indramayu and Central Lampung societal structures. Patriarchal realities tend to prioritise males in education. If they are no longer in school, they are expected to work to provide for themselves, their wives, and their families. Society attaches a sense of honour to men as individuals who must have the ability to earn a living and support their families. As a result, men are compelled to work, regardless of the type of job available to them.

Third, marriage dispensation is closely linked to factors such as poverty and access to education. Marrying children is often seen as a way to alleviate the family's economic burden, with the expectation that daughters will be financially supported by their husbands. Poverty limits education access, narrowing children's opportunities to continue their studies. Low education levels and poverty are

1 The number of Marriage Dispensation applications at the Indramayu Religious Court has decreased over the past three years, from 2021 to 2023. In 2021, there were 654 cases, which dropped to 574 cases in 2022, and further declined to 514 cases in 2023.

2 The number of Marriage Dispensation applications at the Gunung Sugih Religious Court in Central Lampung has shown an upward trend over the past three years, from 2021 to 2023. In 2021, there were 148 cases, which increased to 174 cases in 2022, and further rose to 231 cases in 2023.

significant drivers of child marriage. Fourth, cultural and traditional factors that encourage marrying off daughters as quickly as possible also reinforce the practice of child marriage in Central Lampung District. Social norms and community perceptions of shame and honour serve as justification for marrying off children at a very young age. These perceptions include the belief that early marriage upholds family honour and parental wishes and prevents premarital relationships and immoral behaviour. Fifth, issues such as pregnancy, concerns about preserving honour, parental wishes, and instances of falsified pregnancy certificates are problems commonly experienced by women, particularly young girls.

Key Issues

In its study, INFID and the PTRG identified several primary issues in implementing PERMA Number 5 of 2019 to protect children's rights in Indonesia, namely:

1. PERMA Number 5 of 2019 is an internal regulation within the Supreme Court. Its implementation requires coordination and consolidation among various parties or institutions as a last-resort measure for preventing child marriage.
2. The provisions of PERMA Number 5 of 2019 as a guideline for handling marriage dispensation cases have yet to be adequately disseminated to relevant stakeholders. A comprehensive understanding of child marriage prevention regulations remains underdeveloped within the community and among government agencies and law enforcement institutions.
3. There are misconceptions regarding several concepts and procedures for issuing recommendations in PERMA Number 5 of 2019. The recommendation concept is often misinterpreted as support for child marriage. Furthermore, recommendations are generally perceived as optional due to the clause 'may' in the PERMA. In cases from the Indramayu Religious Court, marriage dispensation decisions did not include recommendations as mandated by PERMA. In the Gunung Sugih Religious Court, recommendations were integrated into the application documents, with effective collaboration established between the Child Protection Agency (Lembaga Perlindungan Anak – LPA) and the court. LPA is authorized to issue recommendations following an assessment. Recommendations are treated as optional and alternative, not cumulative. As a result, some decisions include only LPA recommendations, while others include letters from midwives or social services agencies.
4. Judicial independence in deciding cases poses challenges to implementing the principle of the child's best interest.
5. The decisions on child marriage are accompanied by power imbalances and parental dominance, where parents often assert authority over their

children. Consequently, the child's voice is not genuinely considered during the handling and examination of child marriage cases.

6. Programs, activities, and movements to prevent and address child marriage are still conducted in a fragmented and intra-sectoral manner. In some cases, institutions tend to blame each other and shirk responsibility

Policy Paper Objectives:

1. To present concise and comprehensive data and fact-based information on child marriage within the context of marriage dispensation for minors as outlined in PERMA Number 5 of 2019. The data is sourced from quantitative and qualitative research conducted by INFID in collaboration with the Research Team from the PTRG in Indramayu District and Central Lampung District.
2. To provide recommendations to law enforcement institutions, particularly the Supreme Court (Mahkamah Agung – MA), as well as other government agencies related to the issue of child marriage. These include the Ministry of Women's Empowerment and Child Protection (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak – KPPPA), Ministry of Education and Culture (Kementerian Pendidikan dan Kebudayaan – Kemendikbud), relevant local agencies, Civil Society Organizations (Organisasi Masyarakat Sipil – OMS), educational institutions, educators, and parents. The goal is to strengthen the effectiveness of PERMA Number 5 of 2019 implementation. The recommendations can be enriched with findings from studies conducted by INFID in Indramayu District and Central Lampung District.

Recommendation:

1. Law Enforcement Institutions
 - 1.1 Supreme Court of the Republic of Indonesia (Mahkamah Agung – MA):
 - a. Define a concrete understanding of the concept of 'the best interest of the child' and the criteria for urgency as regulated in PERMA Number 5 of 2019;
 - b. Conduct outreach to judges in Religious Court (Pengadilan Agama – PA) and District Court (Pengadilan Negeri – PN) regarding the implementation of PERMA Number 5 2019;
 - c. Collaborate with government agencies and child rights advocacy organizations to develop a Monitoring and Evaluation (Monev) mechanism for applying PERMA Number 5 of 2019, particularly within the PA and PN jurisdictions.
 - 1.2 Religious Court (Pengadilan Agama – PA):

Engage in intensive coordination with village governments/village heads/ local leaders to support child marriage prevention efforts by handling marriage dispensation applications

2. Government Ministries: (specifically, Ministry of Religious Affairs (Kementerian Agama – Kemenag), Ministry of Women’s Empowerment and Child Protection (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak – KPPPA), Ministry of Education, Culture, Research, and Technology (Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi – Kemendikbudristek), local Education Offices, Cooperatives Office, Social Affairs Offices, and Village Governments/Village Heads):

- a. Strengthen commitment to implementing gender mainstreaming in national development;
- b. Apply and enhance Gender Responsive Budgeting (GRB), particularly in programs aimed at preventing child marriage;
- c. Take responsibility for establishing an integrated monitoring and evaluation system to assess the implementation of gender mainstreaming across all sectors and levels of government.

2.1 Ministry of Religious Affairs (Kementerian Agama – Kemenag):

- a. Provide theological strengthening, mainly through counselling or introductory remarks during marriage ceremonies or related events, to advocate alternative measures to eliminate child marriage, including addressing marriage dispensation or marriage legalisation (isbat nikah) cases in Indonesia;
- b. Intensify coordination with village governments and Religious Courts (Pengadilan Agama – PA) regarding marriage dispensation applications;
- c. Monitor and evaluate the implementation of marriage legalisation (itsbat nikah) to prevent child marriages.

2.1 Education Offices:

Prepare budget allocations to support education for children whose marriage dispensation applications are denied (under 19 years old). These allocations should focus on educational opportunities for children affected by child marriage.

2.2 Cooperative Offices

Implement various economic empowerment activities targeted at children (especially females) whose marriage dispensation applications are cancelled or denied in rural areas.

2.3 Social Affairs Offices

Implement various social empowerment activities targeted at children

(especially females) whose marriage dispensation applications are cancelled or denied in rural areas.

2.4 Village Governments:

- a. Maximize preventive measures by allocating village funds for programs aimed at preventing and addressing child marriage cases, including budget allocations to support children whose marriage dispensation applications are denied. These funds can be used for educational assistance or economic empowerment/skills development
- b. Conduct targeted outreach and education for children and parents on the 'dangers of child marriage.'

3. Civil Society Organizations (OMS)::

- a. Act as community partners to facilitate participatory empowerment initiatives;
- b. Partner with the government to perform a monitoring role by providing constructive input during the formulation of child marriage prevention policies and ensuring consistent and fair implementation of these policies across regions

4. Educational Institutions and Educators:

- a. Encourage teachers (especially those at the primary school level) to become agents of change by providing education on the dangers of child marriage and the importance of delaying marriage;
- b. Facilitate capacity-building programs for students, including socialisation about reproductive health, to eliminate stigma and promote open discussions among students.

5. Parents:

- a. Enhance parenting quality to foster harmonious relationships and empower children to avoid early pregnancies outside marriage;
- b. Actively listen to children's perspectives, particularly regarding education about reproductive health and the consequences of child marriage.

List Of Abbreviation

BPS	: Central Bureau of Statistics / Badan Pusat Statistik
CEDAW	: Convention on the Elimination of All Forms of Discrimination Against Women
CRC	: Convention on the Rights of the Child
DUHAM	: Universal Declaration of Human Rights / Deklarasi Umum Hak Asasi Manusia
GRB	: Gender Responsive Budgeting
HAM	: Human Rights / Hak Asasi Manusia
ICESCR	: International Covenant on Economic, Social, and Cultural Rights
INFID	: International NGO Forum on Indonesian Development
KEMENAG	: Ministry of Religious Affairs / Kementerian Agama
KEMENPPPA	: Ministry of Women's Empowerment and Child Protection / Kementerian Pemberdayaan Perempuan dan Perlindungan Anak
KEMENDIKBUDRISTEK	: Ministry of Education, Culture, Research, and Technology / Kementerian Pendidikan, Kebudayaan, Riset dan Teknologi
LPA	: Child Protection Agency / Lembaga Perlindungan Anak
MA	: Supreme Court / Mahkamah Agung
MONEV	: Monitoring and Evaluation / Monitoring dan Evaluasi
OMS	: Civil Society Organizations / Organisasi Masyarakat Sipil
PA	: Religious Court / Pengadilan Agama
PERMA	: Supreme Court Regulation / Peraturan Mahkamah Agung
PTA	: Religious High Court / Pengadilan Tinggi Agama

PTRG	: Gender Responsive Higher Education / Perguruan Tinggi Responsif Gender
PUG	: Gender Mainstreaming / Pengarusutamaan Gender
PUSKAPA UI	: Center on Child Protection and Wellbeing at Universitas Indonesia / Pusat Kajian dan Advokasi Perlindungan dan Kualitas Hidup Anak Universitas Indonesia
PN	: District Court / Pengadilan Negeri
RPJMN	: National Medium-Term Development Plan / Rencana Pembangunan Jangka Menengah Nasional
SD	: Elementary School / Sekolah Dasar
SEMA	: Supreme Court Circular Letter / Surat Edaran Mahkamah Agung
SLTP	: Junior High School / Sekolah Lanjutan Tingkat Pertama
SLTA	: Senior High School / Sekolah Lanjutan Tingkat Akhir
SMP	: Junior High School / Sekolah Menengah Pertama
SUSENAS	: National Economic Survey / Survei Ekonomi Nasional
TK	: Kindergarten / Taman Kanak-Kanak
TPKS	: Crime on Sexual Assault / Tindak Pidana Kekerasan Seksual
UU	: Law / Undang-Undang
UUD	: Constitution / Undang-Undang Dasar



CHAPTER 1

INTRODUCTION

A. Background Issues

The Economic Survey (Survei Ekonomi Nasional – SUSENAS) conducted by the Central Statistics Agency (Badan Pusat Statistik – BPS) of Indonesia as of March 6, 2024, indicates a decreasing trend in marriages for individuals under the age of 18. In 2020, 10.35% of females married before reaching 18 years of age, which decreased to 9.23% in 2021 and further improved to 6.92% in 2023, exceeding the target set by the National Medium-Term Development Plan (Rencana Pembangunan Jangka Menengah Nasional – RPJMN). This survey was conducted among women aged 20-24 who married before 18. This statistic serves as a representation of child marriage and simultaneously reflects efforts to eliminate child marriage by 2030. It is an indicator that informs policy-making aimed at protecting children from child marriage.¹

Despite the decline in the number of females marrying before 18, this trend does not align with the conditions observed in the judiciary, particularly in Religious Courts (Pengadilan Agama – PA) and District Courts (Pengadilan Negeri – PN). Data regarding marriage dispensations have shown a significant increase from 2019 to 2021. This notable increase is influenced by the amendment of the minimum marriage age established by Law No. 16 of 2019, amending Law No. 1 of 1974 on Marriage.

Another legal effort is the issuance of Supreme Court Regulation (Peraturan Mahkamah Agung – PERMA) No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation. According to the provisions of Article 2, point (a), one of the principles outlined in this

¹ INFID, INFID Research Report, on: Study on Dispensation for Child Marriage in Indramayu District, West Java and Central Lampung District, Lampung. 2024

PERMA prioritises the child's best interests. The primary objective of this PERMA, as stated in Article 3, point (b), is to ensure the implementation of a judicial system that protects children's rights. Therefore, PERMA No. 5 of 2019 can serve as a legal reference for judges in adjudicating cases related to marriage dispensation requests, applicable to judges in both PN and PA.

The enactment of Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage, represents a concerted effort to eliminate child marriage. This is explicitly articulated in the recitals, point (b): “that child marriage has detrimental effects on the growth and development of children and will lead to the violation of children's basic rights, such as the right to protection from violence and discrimination, civil rights, health rights, educational rights, and social rights.” Furthermore, it continues with the provision of Article 7, paragraph (1): “Marriage is only permitted when both males and females have reached the age of 19 (nineteen) years.” The revision of the age requirements for marriage has established the same minimum age for both females and males, thus aimed at preventing child marriage in Indonesia. As stated in the explanatory section, increasing the marriage age for females may reduce birth rates and lower the risks of maternal and child mortality. Consequently, these various efforts aim to fulfil children's rights, optimise their growth and development, facilitate parental support, and provide children access to the highest possible education².

The marriage age limit has been regulated in Article 7, paragraph (1) of Law No. 16 of 2019, amending Law No. 1 of 1974 on Marriage, which states, “Marriage is only permitted when both males and females have reached the age of 19 (nineteen) years.” In relation to the changes regarding the marriage age limit, several research centres, communities, and academics, including government institutions such as the Central Statistics Agency (BPS) and the Supreme Court of the Republic of Indonesia (Mahkamah Agung – MA), have conducted studies on this matter, particularly concerning marriage dispensation. The studies and analyses undertaken encompass various aspects related to child marriage, especially concerning its causes, impacts, and prevention efforts. The key points of discussion from numerous studies can be summarized as follows:

2 Explanation of Law No. 16 of 2019 on the Amendment to Law No. 1 of 1974 on Marriage.

No	Name of Organisation/ Coalition/Community/ Academic Groups	Key Points Related to Marriage Dispensation and Child Marriage
1	Coalition 18+	<p>1. Five common reasons for submitting a marriage dispensation in the Religious Court are:</p> <ol style="list-style-type: none"> (1) The child has been dating or engaged; (2) The application was rejected by the Office of Religious Affairs (Kantor Urusan Agama – KUA); (3) The prospective husband is already employed; (4) Parental concerns (to avoid committing adultery); and (5) The prospective wife is considered ready for marriage. <p>2. A case of Marriage Dispensation was denied because the reasons presented were deemed not to be urgent by the judge during the deliberation.</p>
2	PLAN Indonesia	<p>Several judges for granting marriage dispensation include:</p> <ol style="list-style-type: none"> 1. Urgent circumstances (unwanted pregnancy, previously engaged in a religious marriage); 2. Cultural factors and societal pressures; 3. The female child is considered to have reached puberty and is ready for marriage; 4. The child has been dating or engaged; and 5. Delaying the marriage would result in more harm than benefit.

3	PUSKAPA UI	The reason cited by judges for granting Marriage Dispensation in the Religious Court is the factor of unwanted pregnancy (Kehamilan Tidak Diinginkan – KTD).
4	Indonesia's Women's Coalition	<ol style="list-style-type: none"> 1. A child psychologist is needed to accompany the child during marriage dispensation hearings to provide considerations based on the best interests of the child. 2. Establish a checklist guide that can be a standard reference for all judges. 3. It is recommended that judges handling Marriage Dispensation applications have a Decree from the Chief Justice of the Republic of Indonesia as a Child Judge, along with certificates for Marriage Dispensation training, training and technical guidance on Women Facing the Law, and certificates in the Child Criminal Justice System or in adjudicating Marriage Dispensation requests. 4. Strengthen the evidentiary requirements for granting Marriage Dispensation. Adequate supporting evidence should include (1) Certificates of physical and mental health, including reproductive health; (2) A statement consenting to delay the first child's pregnancy until the female party, who is under 19 years of age, is deemed ready regarding reproductive health; (3) A statement from the parents and the child to be married, committing to continue the child's education after marriage; (4) A statement from the school or other educational institutions willing to accept children who have married for schooling; (5) A statement from the school or other educational institutions willing

		to accept children who have married for schooling; (5) A statement from the school or other educational institutions willing to accept children who have married for schooling; (6) A statement of financial capacity to ensure the fulfilment of the child's needs.
5	The Ministry of Women Empowerment and Child Protection, in collaboration with the Center for Study and Advocacy for Child Protection and Quality of Life at the University of Indonesia (PUSKAPA UI), published a Policy Brief regarding Child Marriage in 2023	Recommending the importance of a continuum-based policy that includes <ul style="list-style-type: none"> a. Prevention, b. Handling that provides protection services during pregnancy, c. Up to post-pregnancy support for children who become parents

Among the studies mentioned above, there has been no specific investigation into the marriage dispensation decisions issued by the Religious Courts with an approach focused on the best interests of the child. Therefore, INFID and the PTRG Team conducted a study titled “Study on Marriage Dispensation in Indramayu District, West Java, and Central Lampung, Lampung.”

The selection of Indramayu District and Central Lampung District was based on the prevalence of child marriage over the past three years, from 2021 to 2023, as summarized below.

Throughout 2022, the Indramayu Religious Court District received 572 (five hundred seventy-two) marriage dispensation requests. Out of that number, 564 (five hundred sixty-four) requests were granted by the Religious Court judges. Several factors underlying the marriage dispensation requests for children in Indramayu District include unwanted pregnancies, parental concerns regarding their children's social interactions, and efforts to avoid adultery. Meanwhile, the factors influencing marriage dispensation requests for children in Central Lampung include school dropouts, poverty, and social norms that still view child marriage as acceptable.

The marriage dispensation cases, both accepted and rejected by the Indramayu Religious Court District from 2021 to 2023, are as follows:

Year	Total Marriage Dispensation Cases	Marriage Dispensation Decisions Granted	Rejected Cases
2021	654	638	4
2022	574	564	0
2023	514	489	2

The table above indicates that the number of marriage dispensation cases at the Indramayu Religious Court, West Java, has decreased over the three-year from 2021 to 2023. On average, there are at least 2-3 child marriage cases at the Indramayu Religious Court each day.

The data regarding marriage dispensation cases from the Gunung Sugih Religious Court in Central Lampung over the last three years (2021-2023) are as follows:

Year	Total Marriage Dispensation Cases	Marriage Dispensation Decisions Granted	Rejected Cases
2021	148	145	0
2022	174	170	3
2023	233	231	4

The data above indicates that the number of Marriage Dispensation cases from the Gunung Sugih Religious Court area has tended to increase over the three-year period from 2021 to 2023. On average, at least one child marriage case is submitted to the Gunung Sugih Religious Court each day.

Additionally, divorce petitions are another frequently filed case in several PAs in Central Lampung. Marriage validation cases (*itsbat nikah*) and Marriage Dispensation requests are also common in various PAs in Lampung City. Moreover, the number of Marriage Dispensation cases has significantly increased following the amendment of the minimum marriage age according to the provisions of Article 7 of Law No. 16 of 2019, amending Law No. 1 of 1974.

The findings from the research conducted by INFID and the PTRG Team serve as the basis for this policy document. In summary, the study examined 50 (fifty)

decisions regarding Marriage Dispensation requests from the Indramayu Religious Court and 42 (forty-two) decisions from the Gunung Sugih Religious Court in Central Lampung. All these decisions were issued between 2021 and 2023 and were accessed through documentation from the Religious Courts.

B. Policy Paper Objectives

The main objectives of this policy paper are:

1. To provide concise and evidence-based information related to child marriage in Marriage Dispensation for children, sourced from quantitative and qualitative research findings;
2. To offer recommendations to law enforcement institutions, particularly the Supreme Court, as well as other government institutions involved in child marriage issues, including the Ministry of Women Empowerment and Child Protection, the Ministry of Education and Culture, relevant local government agencies, Civil Society Organizations, educational institutions and educators, and parents and other related organizations, to strengthen the effectiveness of implementing Supreme Court Regulation No. 5 of 2019. Recommendations are supplemented with findings from the studies conducted by INFID in Indramayu District and Central Lampung District

C. Expected Outputs

Some expectations for this policy paper are as follows:

1. Providing compilation of data and information regarding the age of child marriage in the context of Marriage Dispensation, as outlined in Supreme Court Regulation No.5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications.
2. Providing the formulation of policy recommendations aimed at strengthening the effectiveness of implementing Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, with a perspective focused on the best interests of the child.

D. Drafting Method and Time Limit

The drafting of this policy paper employs a document study method based on research conducted by INFID in two districts (Indramayu District and Central Lampung District), as well as laws in Indonesia (particularly those related to human rights and child protection), policies concerning child marriage, and other study results. The preparation of this policy paper was carried out over two months (October-November 2024).

E. Writing Stages

The process of writing this policy paper includes the following stages:

1. Call for Consultant;
2. Brief meeting for writing preparation;
3. Data collection;
4. Writing process;
5. Internal Peer Review;
6. Writing revisions;
7. External Peer Review; and
8. Report Finalization.



CHAPTER II

ANALYSIS OF THE URGENCY TO STRENGTHEN THE IMPLEMENTATION OF PERMA NUMBER 5 OF 2019

A. Data on Marriage Dispensation in Indramayu District and Central Lampung District

Research by INFID and the PTRG Alliance shows that there are important factors that cause the number of child marriage cases to increase. The factors causing child marriage are closely related to several aspects of the two districts: geographical, demographic, economic, cultural, and religious.

1. General Condition of Indramayu District

Administratively, Indramayu consists of 31 sub-districts with 317 villages and had a population of 1,920,505 people (965,924 men [50.3 per cent] and 954,581 women [49.7 per cent]) in the first half of 2023. The composition is balanced between male and female groups. A total of 284,781 or 29 per cent of the male population is in the 0-19 age range, while 269,727 or 28 per cent of the female population is in the same age range (Penyusun, 2024).

Being at the tip of West Java brings Indramayu together with two cultures: Javanese and Sundanese. The culture that grows and develops in Indramayu is distinctive, resulting from cultural acculturation between Java and Sunda (Tim, 2021; K. Umam, 2015). Administratively, Indramayu is in West



Java Province and belongs to the Pasundan culture, but most Indramayu residents speak the Javanese language typical of Indramayu.

Geographically, Indramayu borders the northern sea of Java. The tremendous maritime potential makes many Indramayu residents work as fishers. Rice fields dominate 56.61% of Indramayu's land. The large area of rice fields in Indramayu is why the central government has designated Indramayu as a national food barn (Tim, 2021). Indramayu residents economically depend on the agricultural sector, especially rice and fisheries.

Indramayu's nature is textually rich. However, this does not guarantee that the people of Indramayu are prosperous. Indramayu has a poverty index of 2.20 and a poverty severity index of 0.62. Indramayu is also the first district to send migrant workers abroad yearly (BP2MI, 2022). The percentage of poor families in Indramayu is also the second highest after Kuningan District, at 13.04 per cent (Penyusun, 2024). Indramayu is one of the districts vulnerable to human trafficking (Bintari & Djustiana, 2017; Mulyana et al., 2019).

This economic aspect also seems to affect Indramayu's education sector. Indramayu residents spend an average of 5.99 years in education. Many Indramayu residents' access to education stops at elementary school age. In 2023, 643,417 people (34%) completed primary school, and 294,354 (15%) completed secondary school. The total school enrollment from kindergarten to high school as of November 2023 was 324,075. 165,520 (51%) were male, and 158,55 (49%) were female (Penyusun, 2024).

Regarding religion and culture, religious practices in Indramayu often blend or go hand in hand with local traditions and culture. The traditions of earth offering and jabu macul are examples of the combination of Islamic teachings with the traditions of the agrarian society practiced by the people of Indramayu (F. Umam, 2021; K. Umam, 2015; Yuniarto et al., 2024). Religious norms strongly influence people's social lives, including important decisions in every cycle of human life (Fitriyani et al., 2020; Mubarok, 2020). The majority of Indramayu's population adheres to Islam. The number of Muslims in Indramayu is 1,914,989 people, or 99%. Based on data from the Ministry of Religious Affairs' Pesantren Personnel and Administration Information System (SIKAP), faith-based educational institutions such as pesantren and madrasah thrive in the Indramayu area and contribute to the religious education of children and youth.

2. General Condition of Central Lampung District

In 2022, the population of Central Lampung District reached 1,522,426 people, consisting of 777,692 men (51.08%) and 744,734 women (48.92%). Central Lampung District also has a high natality rate and, conversely, a low mortality rate. In addition, the age composition of the population of Central Lampung is categorized as expansive because the number of productive ages reaches 68.35% of the total population (Penyusun, 2023). The pyramid-shaped population composition in Central Lampung District illustrates that most of the population is young, which is called the demographic bonus.

The demographic bonus in the Central Lampung region provides an opportunity for the availability of quality human resources. The challenge lies in education and health. The net enrollment rate per level of education shown by BPS data, Central Lampung, in 2023, showed that the dropout rate at the high school level reached almost 31%. Meanwhile, net enrollment at the junior high school level is 78.29%, or around 21.71% of children who do not continue high school (Penyusun, 2023a). If these opportunities and challenges are not managed well, the abundance of productive numbers will seriously threaten Lampung Tengah District. In the 2023 Central Lampung District Gender and Children Profile book, this situation is the basis for preparing appropriate government policies and programs (Penyusun, 2023).

The people of Central Lampung come from various ethnic groups, such as Javanese, Lampungese, Balinese, Sundanese, and Bataknese. The majority of Central Lampung's population comes from the Javanese and Lampung tribes. The diversity of tribes that occupy Central Lampung can be traced historically as a destination area for population migration, either official transmigration or independent migration (Mediawati, 2019; Muzzaki, 2015). Migrants migrate with customs and religions from their respective homelands. Java with its Javanese religion and philosophy of life (Fusvita, 2019; Setiawan, 2016), Minang with its matrilineal values and kinship system (Elfira, 2019; Firdawaty, 2019), as well as Bali with its Balinese religious village order (Humaedi, 2014; Monika Ata & Agus S. Ekomadyo, 2018). Diverse cultural practices from various ethnic groups coexist with inevitable outbursts of conflict. However, social harmony is maintained in Central Lampung District.

Central Lampung's economic growth is highly dependent on the agricultural sector. Most of the population depends on farmers in gardens and rice fields. Rice production in Central Lampung District is the highest in Lampung Province (Humas, n.d.), and it is one of the indicators that the agricultural sector supports the community's economy. Fluctuations in farm commodity prices and unhealthy market access have led to low agricultural productivity. The economic dependence

of the community on this sector affects the poverty rate in Central Lampung, which reaches around 15% of the total population.

In terms of religion, the majority of the population of Central Lampung adheres to Islam at around 75%, while the rest adheres to Christianity, Hinduism, and Buddhism. Traditional and semi-modern pesantren thrive in Central Lampung. Data from the Ministry of Religious Affairs' Pesantren Personnel and Administration Information System (SIKAP) application recorded 157 pesantren in Central Lampung. Houses of worship of various religions are also scattered in various regions. More than 1000 mosques, around 50 churches, and temples are spaces for religious ritual activities that are part of the community's daily life (Admin, 2024).

After looking at the general conditions of each district, we can then examine the legal handling of Marriage Dispensation applications from each district as follows:

3. Condition of the Indramayu Religious Court

The Indramayu Religious Court is listed as a Class 1A and included in the Bandung High Religious Court (Pengadilan Tinggi Agama – PTA) jurisdiction. The jurisdiction of the Indramayu Religious Court covers 31 sub-districts, which are grouped into 3 zone groups (radius 1-3) according to the distance travelled to the Indramayu Religious Court. This zoning grouping is related to the determination of case fee rates. Based on the annual report of the Indramayu Religious Court in 2023, 16 judges serve in the Indramayu Religious Court, consisting of three female and 13 male judges. One male judge is IV/c, one female judge is IV/b, and 14 others are IV/d. Three female judges are in the age range of 60-63 years old. At the same time, most male judges are in the age range of 56-61 years.

The Indramayu Religious Court is listed as one of the three courts in the Bandung High Religious Court region with the highest number of cases. The following is the number of cases handled by the three Religious Courts with the highest number of cases in the Bandung High Religious Court region in the last three years based on the 2023 Annual Report. The three highest cases resolved by the religious court Indramayu are contested divorce, divorce, and Marriage Dispensation.

4. Condition of the Gunung Sugih Religious Court

Based on the court class system, the Gunung Sugih Religious Court is categorized as class IB (Compilation Team, 2023). This classification is based on the number of cases, location, and history. In order from the lowest class in Religious Courts, there are three: Class II, Class IB, and Class IA. The Gunung Sugih Religious Court upgrade from class II to class IB was approved in 2017 after meeting the qualification standards for judicial and non-judicial aspects (Compilation, 2023b).

Judicial aspects relate to the number and quality of cases. In contrast, non-judicial aspects usually relate to court governance, such as case administration, general administration, and service facilities.

The Gunung Sugih Religious Court is one of Lampung's busiest courts, with over 3,000 cases in the last two years. Every day, 12 cases, or 260 cases a month, are filed at the Gunung Sugih Religious Court. In 2023, the four existing tribunals resolved incoming cases, including the presiding and deputy tribunals. So, in a day, the Gunung Sugih Religious Court held an average of 50 hearings. At the time of the researcher's visit to the Gunung Sugih Religious Court in June 2024, there were 70 hearings scheduled for that day.

Regarding the type of case, a contested divorce is still the most common, as in almost all Religious Courts in Indonesia and several Courts in other Muslim countries (Wijayati, 2020). Divorce, marriage certificate (*itsbat nikah*) and marriage dispensation are the most frequently filed cases (Penyusun, 2023b). The number of *itsbat nikah* and marriage dispensation cases increased in line with policies that became enabling factors. The circular letter of the Supreme Court of the Religious Chamber regarding the reasons for *itsbat nikah*, the mobile court for *itsbat nikah* cases, and the mass marriage program were the driving factors in the number of *itsbat nikah* cases. The program to open access to justice for Central Lampung residents through *itsbat nikah* in mobile court was also conveyed by an LPA social worker and one of the Village Heads in Central Lampung (Eko, n.d.; Umi, n.d.). Marriage Dispensation cases experienced a significant increase after the change in the minimum age of marriage.

In addition to the amount of caseload handled, court class is also related to the echelonization and career of judges. At the beginning of their careers, young judges will be placed in Class II Courts and promoted in stages to the class of court above by considering rank/class, length of service, performance, and achievement (Hermasyah, 2017). As a class IB court, judges placed in the Gunung Sugih Religious Court are categorised as medium-career judges, with rank IIIa-IVb, with more than five years of service. In 2023, the Gunung Sugih Religious Court had eight judges, including the chief and deputy. Consisting of 3 female judges and five male judges. They were divided into four judges who handled over 3000 cases in 2023 (Penyusun, 2023b).

5. The Process of Implementing Marriage Dispensation in Indramayu District

In the last three years (2021-2023), the number of Marriage Dispensation cases in the Indramayu Religious Court has decreased. Religious Court judges interpret the declining number of Marriage Dispensation cases in the Indramayu Religious

Court as evidence of the success of education on the dangers of child marriage in the community. However, the facts on the ground are different. Many unregistered child marriage practices are easily found in the Indramayu community, one of which is seen in the *itsbat nikah* data.

Generally, Marriage Dispensation applications in Indramayu District are submitted by both parents. The Indramayu Religious Court anonymised and did not include the applicant's address to maintain the privacy and personal confidentiality of the parties applying for Marriage Dispensation. The sample data of applicants for Marriage Dispensation at the Indramayu Religious Court can be described in several points as follows:

First, the identity of the applicant in the decision of the Indramayu Religious Court is only written APPLICANT (in capital letters and in bold). There is no mention of a single applicant or both parents. Female relatives submitted the majority of applications. More than 82% of Marriage Dispensation applications in the Indramayu Religious Court were submitted by parents of girls. Parents of boys filed the remaining 18%. This conclusion was drawn based on the testimony in the sitting of the case, which mentioned the purpose of marrying off the biological child who was not of age with a male respondent.

Second, the occupational profile of Marriage Dispensation applicants in Indramayu identified six occupation types. However, the information from the decision was not sufficient to map the data in a disaggregated manner. The applicant's identity could not be identified as father, mother or both.

The profile of the Respondents/Prospective Wives in Indramayu District reveals that most of the candidates for Marriage Dispensation were 16-18 years old. As many as 74% of the respondents' wives were in the age range of 16-18 years, and according to previous regulations, namely the provisions of Law No. 1 of 1974 on marriage, they were still allowed to marry. Looking at the numbers, this age group has contributed significantly to the increase in Marriage Dispensation cases after the revision of the Marriage Law, Law No. 16/2019. 24% of respondents were prospective wives in the age group of 12-15 years. In this age range, girls have a high risk in terms of physical readiness, including their reproductive organs. Meanwhile, the group of respondents who were over 19 years old was 2%. There is insufficient data to explain access to and participation in education, a basic right of children for both girls and boys. For data on employment and income, 96% of the prospective wives who applied for Marriage Dispensation had no income because they did not work.

Regarding the profile of the Respondent/Prospective Husband in Indramayu District, most prospective husbands were of marriageable age with the following

provisions: 29 applications out of 50 prospective husbands were over 19 years old or had met the age requirement for marriage. This was followed by 38% in the age group of 16-18 years and 4% in the age range of 12-16 years. These data show that Marriage Dispensation is applied by women under the age of 19 and a significant number of men/candidate husbands under the age of 19. As to the decision of the Indramayu District Religious Court, the profession of prospective husbands generally work in the informal sector, with diverse professions such as traders, casual daily labourers, private employees, self-employed, fishers, and farm labourers.

The decision-making process produced in the legal process for Marriage Dispensation applications, especially in Religious Court Indramayu, must go through several stages of application. The stages must still consider the best interests of the child. These stages are as follows:

First, the parties applying for marriage dispensation bring a letter of introduction from the sub-district (Article 4 letter a of Minister of Religious Affairs Regulation No. 20/2019) and register their marriage at the Religious Affairs Office to obtain a model N1 form.¹ The administrative requirements for registering a marriage are submitted to the Religious Affairs Office to obtain the appropriate forms needed, one of which is form N7.²

Second, before going to the Religious Court, the applicant requests a recommendation from a psychologist, LPA/professional social worker, midwife or doctor, P2TP2A Office, or Indonesian/Regional Child Protection Commission. The recommendation to apply for Marriage Dispensation in Perma No. 5/2019 has been addressed differently in each Religious Court. In Indramayu, the recommendation letter for Marriage Dispensation cases is optional and not recorded in the decision. The Indramayu Religious Court, in collaboration with the DP3AKB of Indramayu District, opened a child counselling room at the court office. Before the trial, the respondent of a Marriage Dispensation case enters the DP3AKB counselling room at the Religious Court. The counsellor advises the respondent to postpone the marriage until they reach the age of 19 and explains the rights they may lose if they continue the marriage. The counselling conducted in the room was not documented in writing or mentioned in the decision. From the child counselling reports, DP3AKB Indramayu District encountered many parents who wanted to marry children for various reasons. This causes the counselling session to be less than optimal because many parents want child marriage.

Third, attend the hearing. The Marriage Dispensation Applicant brings a KUA

1 N1: marriage introduction, N2: marriage request, N4: consent of the bride and groom, N5: parental consent form, N7: refusal. Regulated in the Decree of the Director General of Bimas Islam No. 473 of 2020.

2 N7, is a letter of rejection of an application for a marriage will because one or both of the prospective husband or wife is under the age of 19.

(form N) letter and completes the files according to applicable regulations. The trial is generally conducted in 2-3 sessions, with special procedural laws applicable as mandated by Article 11 of Supreme Court Regulation No. 5/2019. A single judge conducts the trial, no judge's attributes are used, and the language is appropriate to the child's condition and age.

Then, regarding the acceptance process of Marriage Dispensation applications in the Indramayu Religious Court, namely in the last three-year period (2021-2023), 88% of applications were granted. As many as 44 out of 50 decisions mentioning the condition of unwanted pregnancy made many parents in Indramayu District want to marry off their children quickly.

6. The Process of Implementing Marriage Dispensation in Central Lampung District

The number of marriage dispensation requests in the Gunung Sugih Religious Court is the highest in the entire area of the Bandar Lampung High Religious Court. In three years, from 2021-2023, the Marriage Dispensation trend has increased. The data showing the increasing trend of Marriage Dispensation applications in the Gunung Sugih Religious Court also shows the legal compliance of the applicants. Compliance to apply for Marriage Dispensation is evident when they intend to marry off their children who have not yet reached the age of 19. However, child marriages that take place without going through the Marriage Dispensation procedure are also common in Central Lampung, and most of these are not documented as having gone through the Marriage Dispensation application process. In interviews, the LPA Assistance Team mentioned that when they went to the field, they found many young families whose marriages were conducted in a 'siri' manner. Umi, one of the village heads in Central Lampung, stated in an interview that out of seven child marriages in her village, only two applied for Marriage Dispensation, while the remaining five performed 'siri' marriages. The number of unrecorded child marriages is significantly higher than the data available from the Religious Court or the Ministry of Religious Affairs.

The findings regarding the identity of the applicants at the Gunung Sugih Religious Court show that most of the Marriage Dispensation applications were made by both parents or only one of them. The details of the applicant data are as follows:

First, both parents submitted the application or only one of them. In most cases, the application is included by both parents, referred to as APPLICANT I and APPLICANT II. There were a few single applicants, likely because some couples had either died or separated. Marriage Dispensation cases were generally filed by

female applicants' families, with a percentage of 83% and the remaining 17% filed by male families.

Second, regarding the profile of the educational background of Marriage Dispensation applicants. The applicants for marriage dispensation generally had an elementary school education, with a junior high school education, among both mothers and fathers. The number of applicants with an elementary school education accounted for over 52% or more than 20 people. Meanwhile, 24% of ten mothers and fathers applicants had a junior high school education. Meanwhile, only five out of 42 applicants had attained a high school or university education.

Third, regarding the applicants' occupations and activities. Of the 42 applicants, the majority were farmers for the fathers and housewives for the mothers. Self-employment was another profession many of the applicants pursued. The court rulings mentioned the type of work without any explanation of the average income. In several decisions, there was also information in the trial facts about clauses highlighting the ability of the applicant (parents of the prospective wife) and the parents of the prospective husband to assist the respondent's family. The judge considered the economic condition of the parents to measure the applicant's ability to help meet the needs of their child's new family. PERMA No. 5/2019 Article 3 point (c) explicitly states that the PERMA aims to increase parental responsibility in preventing child marriage. The educational background and type of employment of the applicants identified reflect that parents generally make Marriage Dispensation applications with a low educational background and occupations such as farmers or in the informal sector. The type of employment is not necessarily a measure of economic capability.

Regarding the profile of the Respondent/Prospective Wife in the Gunung Sugih Religious Court, most are from 16-19 years old. Respondents under 16 are still relatively numerous, accounting for 21% or 9 out of 42 total respondents. Furthermore, the Gunung Sugih Religious Court respondents generally fall into the high school age category. However, some rulings described respondents as having dropped out of school and were only elementary or junior high school graduates. The data on the education level of the respondent-wife who attended elementary and junior high school align with the education participation rate in Central Lampung District. BPS data states that 31% of the population stopped attending junior high school.

Meanwhile, the profile of the Respondent/Prospective Husband in the Gunung Sugih Religious Court is mainly from the age group of more than 19 years. 55% of the respondent/candidate husbands have met the age requirement for marriage, with only their prospective spouses under 19. The age group of 16-19 years amounted to 40%. Additionally, some respondents for marriage dispensation were under the

age of 16. The education profile of the respondents for the wife-to-be tends to be relatively higher. Most of the respondents were junior high school graduates. In several decisions, researchers found that the educational background of the wife-to-be surpassed that of the husband-to-be.

The majority of respondents worked in the informal sector with an unpredictable monthly income. Information on the occupation of the husband-to-be can be found in almost all decisions except for those where the husband-to-be was either not yet working or unemployed. There were 11 decisions in 2021-2022 that did not clearly state the nominal income. In 2023, all of the decisions mentioned and explained the type of work and provided details on the average amount of income ranged between IDR 1,000,000 - and IDR 3,500,000.

Deciding on the Marriage Dispensation application at the Gunung Sugih Religious Court is essentially the same as the stages at the Indramayu Religious Court. A slight difference is that the recommendation for Marriage Dispensation at the Gunung Sugih Religious Court is considered a mandatory part of the Marriage Dispensation application. Its decision includes the recommendation results from one of the parties as stated in Article 15 PERMA Number 5 of 2019. Recommendations become one of the judges' bases in deciding Marriage Dispensation cases. The Gunung Sugih Religious Court recommendations result from collaboration between various agencies and policymakers in the context of women's and children's protection. In practice, the parties applying for Marriage Dispensation are assessed by LPA social workers, either by visiting the families of both parties. Sometimes, the applicants visit the LPA office in Bandar Jaya, Central Lampung District. According to the opinion of one of the Legal Counsel/Attorneys at the Gunung Sugih Religious Court, the court atmosphere was described as more relaxed. This procedure can be found explained in several Gunung Sugih Religious Court rulings. In the trial, the judge hears the testimonies of the parties separately. Starting from the child, the parents, and also the witnesses. Children and parents are given advice and information about the risks of child marriage, including a general overview related to the future of the child's education, the health risks to reproductive organs, economic, social, and psychological impacts, as well as the potential for disputes and domestic violence (KDRT) that may occur in child marriage. This counselling becomes part of the minutes in handling the Marriage Dispensation application, which, if not implemented, can annul the decree.

The number of Marriage Dispensation applications received by the Gunung Sugih Religious Court for the last three years (2021-2023) constitutes 83% of all cases in the Gunung Sugih Religious Court's jurisdiction. Almost half of the Marriage Dispensation applications are due to unwanted pregnancies. There are several

notable findings related to the reasons for applying for Marriage Dispensation at the Gunung Sugih Religious Court. The reasons for mutual love and sexual relations also appear in the application. The reason for unwanted pregnancy, in particular, besides appearing repeatedly and significantly in the Marriage Dispensation decision documents, was also confirmed by statements from the Village Head in Central Lampung, LPA social workers, and activists from the Women's and Youth House in Central Lampung. LPA social workers in Central Lampung stated that around 50% of the applicants are pregnant.

B. Marriage Dispensation Decisions Analysis in Indramayu and Central Lampung District

From the various discussions on the results related to the implementation of Supreme Court Regulation No. 5 of 2019 in the two districts, several findings have emerged, which serve as reflections for this policy paper:

1. The age of female applicants generally falls within the 16-19 age group, which aligns with the provisions of Law No. 1 of 1974 on Marriage. Due to changes in the marriage age requirements, with both females and males now set at 19 years, this age group has significantly contributed to the rising number of marriage dispensations.
2. Strong gender norms in Indramayu and Gunung Sugih underlie most marriage dispensation requests. The patriarchal society tends to prioritise males for educational access or employment if they are no longer in school. Males are expected to earn a living regardless of job type, and as such, a working male, irrespective of age, is considered eligible for marriage. In contrast, females do not require specific criteria, even if they are underage, as they are seen as the responsibility of their husbands upon marriage.
3. There is a close relationship between poverty, access to education, and child marriage. Poverty leads to limited educational access, thus narrowing the opportunities for children to continue their education. Low education and poverty trigger child marriages. In a village in Central Lampung, low educational levels lead to recurring social issues, including child marriage dispensations. Social workers from child protection agencies in Central Lampung also highlight that many young girls do not attend school, remaining at home to assist their parents, which pressures families to marry them off.
4. Judicial independence in making decisions is a problem for implementing the best interests of the child. The structure of child marriage cases shows that the best interests of the child are often interpreted differently. Judges may perceive the interests of the child involved in the dispensation. However, at other times, they consider the unborn child or the general welfare of the

child beyond the marriage dispensation request. The urgency of requests varies widely, with unwanted pregnancies commonly cited as a pressing reason to marry off individuals, alongside mutual love, fear of adultery, and engagements.

5. The presence of a single judge handling marriage dispensations is ambivalent. On one hand, it creates a comfortable environment for the child; on the other hand, it limits perspectives, especially in decisions lacking recommendations. Classifying marriage dispensation cases as simple matters needs reconsideration due to their complexity and implications.
6. There is a misconception about the concepts and procedures regarding recommendations in Supreme Court Regulation No. 5 of 2019. The concept of recommendations is often misunderstood as mere support for marriage. It is typically seen as optional due to the phrasing 'may' in the regulation. In Indramayu, marriage dispensation decisions did not include recommendations as mandated, whereas the Gunung Sugih court integrated recommendations into the application process, aided by a cooperative relationship with child protection agencies.
7. The definition of urgency in Law No. 16 of 2019 and Supreme Court Regulation No. 5 of 2019 lacks clear and operational explanations. It is up to the judges to evaluate and analyse based on trial facts supported by stakeholder recommendations. An analysis of decisions in both courts shows three forms of urgency cited as arguments for granting marriage dispensations: unwanted pregnancies, sexual relations, and close relationships with fears of repeating behaviour that violates religious and social norms. These conditions are mentioned explicitly in legal rulings and the parties' statements.
8. Generally, consent in child marriage—a key point in Supreme Court Regulation No. 5 of 2019—is accompanied by imbalanced power relations and the tendency of parents to perceive themselves as having authority over their children's lives and futures. The child's voice is often formalistic, merely fulfilling procedural requirements. In assessments conducted by child protection agencies, social norms may also inhibit the expression of children's voices due to concerns about community morals and reputation.
9. It is essential to interpret the best interests of the child in factual decisions, balancing procedural and substantive aspects. For example, in hearings at both courts, single judges do not wear judicial robes, creating a more comfortable atmosphere for the child. Providing separate testimonies also allows children to express their desires and wishes with minimal power relation barriers with adults. In Indramayu, a counselling stage occurs before the trial process. At the same time, in Central Lampung, recommendations from child protection

agencies are preceded by assessments to ensure the child's and their parents' well-being.

Program, kegiatan, dan gerakan untuk pencegahan dan penanganan perkawinan anak telah dilakukan meskipun bersifat sporadis dan sektoral. Masing-masing menyatakan telah melakukan upaya untuk berkontribusi pada program pemerintah menekan angka perkawinan anak sesuai tugas dan fungsi masing-masing. Kerja masing-masing instansi tidak saling terhubung dan terkoneksi. Jika kerja-kerja ini dilakukan secara sistematis, simultan, dan saling terhubung, maka keberhasilan dan dampaknya akan mudah diukur sekaligus dievaluasi.

C. Urgency of Strengthening the Implementation of Supreme Court Regulation No. 5 of 2019

With its rules and requirements, Supreme Court Regulation No. 5 of 2019 is expected to reduce the number of child marriage cases. This regulation serves as the government's last bastion in protecting children from underage marriage, although there are still gaps in its implementation. To optimise the implementation of Supreme Court Regulation No. 5 of 2019, it is important for the government and relevant stakeholders to undertake the following actions:

1. According to the provisions of Article 15 point d, one of the judges' authorities in the Religious Courts when examining marriage dispensation requests, is to “request recommendations from psychologists or doctors/midwives, professional social workers, social welfare staff, Integrated Service Centers for the Protection of Women and Children (P2TP2A), and the Indonesian/Regional Child Protection Commission (Komisi Perlindungan Anak Indonesia/Daerah – KPAI/KPAD)”. However, the reality on the ground is as follows:

In the Indramayu Religious Court, the recommendation letter is optional and is not recorded in the decisions. Although the Indramayu Religious Court has collaborated with the Department of Women Empowerment, Child Protection, and Family Planning (Dinas Pemberdayaan Perempuan, Perlindungan Anak dan Keluarga Berencana – DP3AKB) by providing child counselling rooms at the court, all inputs or counselling results from DP3AKB are not documented and are absent from the legal decisions. Additionally, the recommendation often includes health certificates or pregnancy statements issued by midwives or doctors representing the Health Department.

In contrast, at the Gunung Sugih Religious Court, recommendations are an integral part of the marriage dispensation applications. This is evident in the analysis of sample marriage dispensation decisions (particularly for the period

2021-2023) at the Gunung Sugih Religious Court, where the decisions reference the results of recommendations from one of the parties, as stated in Article 15 point (d) of Supreme Court Regulation No. 5 of 2019. Recommendations serve as a basis for the judges when deciding on marriage dispensation requests. Recommendations from the Child Protection Agency (Lembaga Perlindungan Anak – LPA) in Central Lampung result from collaboration among various departments and stakeholders focused on protecting women and children. In practice, the assessment of the parties submitting marriage dispensation requests is conducted by social workers from the LPA, either through home visits to the families of the applicants/respondents or, in some cases, by having the applicants/respondents visit the LPA office in Bandar Jaya, Central Lampung.

The differing conditions in how the two Religious Courts respond to recommendation letters in the marriage dispensation application process are related to the local culture and habits of each region/county regarding this issue. For example, one reason for not including recommendations from DP3AKB in the copies of marriage dispensation decisions at the Indramayu Religious Court is that many parents of the applicants want their children to marry for various reasons. As a result, the counselling sessions and their documentation become less effective. Thus, in the Indramayu Religious Court, the main factor for not prioritizing or making recommendations mandatory is the intense pressure from parents of applicants who desire their children's marriages to proceed.

In contrast, the situation at the Gunung Sugih Religious Court in Central Lampung is quite different, where all recommendations provided by various Gunung Sugih Religious Court partners concerning marriage dispensation requests are documented in the copies of the decisions.

These differences in how recommendations are treated as one of the requirements for marriage dispensation requests stem from the clause 'may' in Article 15 of Supreme Court Regulation No. 5 of 2019. This clause leads to varied interpretations of whether recommendations are considered part of the application documents or are optional, depending on the circumstances. Even when needed, the agencies providing recommendations may differ. For instance, the Indramayu Religious Court does not require clear recommendations from DP3AKB. At the same time, the Gunung Sugih Religious Court mandates recommendations from the LPA and, in some cases, also requires health certificates and/or pregnancy statements.

2. Clarifying the Subjective Meaning of Urgency

Urgency reasons are a subjective assessment by judges related to the facts of the trial, with an analysis that prioritises avoiding harm over gaining benefits. Judges are authorised to identify the law applicable to the specific events they encounter. This is consistent with the provisions of Article 5, paragraph (1) of Law No. 48 of 2009 on Judicial Power, which states: “Judges are obliged to explore, follow, and understand the values of law and the sense of justice that exist in society.” In marriage dispensation applications, urgent reasons are narratively described as factual depictions between the applicant's child and the prospective husband or wife. The judge will evaluate the evidence and facts presented in the ruling. The purpose of these urgent reasons and sufficient evidence is to prevent child marriage; the judge will grant or reject the marriage dispensation solely based on the sufficiency of the evidence (Mansari, 2023).

3. Considering the Best Interest of the Children

The child's interests must be the foundation for judges when deciding marriage dispensation cases. This perspective should not only focus on religious and biological considerations but also take into account the child's future, as children are the future of the nation.

Child marriage poses significant health risks for young girls who, biologically, are not prepared for reproduction. Even if pregnancy and childbirth occur in a healthy state, there are still many health risks, such as stunting, unstable psychological conditions, and various other issues.

These conditions will impact the quality of human resources in Indonesia. Only with quality HR can Indonesia pursue the vision of becoming a Golden Indonesia by 2045 and be competitive on a global scale. Child marriage is one of the reasons for the weak quality of Indonesia's human resources, as children who are victims of child marriage are often deprived of access to education, making meaningful participation in various aspects of life difficult.

Moreover, the best interests of the child must also consider the fundamental rights of children as stipulated in the Child Protection Law and international regulations, which are threatened by child marriage.

4. Strengthening the Implementation of National and International Law

Indonesia has undertaken a series of efforts to reduce the incidence of child marriage through its laws and regulations. First, Article 1, paragraph (1) of Law No. 16 of 2019 on Marriage states that the minimum age for marriage

is 19 (nineteen) years. Second, Law No. 12 of 2022 on Sexual Violence Crimes (TPKS Law) addresses forced marriage (sexual violence against children) in the provisions of Article 4, paragraphs 1 and 2.

In addition to the above policies and legislative regulations, there are also several international regulations related to efforts to protect children's rights in Indonesia. First, the Convention on the Rights of the Child was ratified by the Indonesian government in 1989. The Convention on the Rights of the Child affirms that children have the right to protection from harmful practices. Article 1 defines a child as any human being under 18.³

Second, the Indonesian government has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) through Law No. 7 of 1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. Implementing the CEDAW convention requires states to eliminate all forms of discrimination against women. The CEDAW convention emphasises equality and equity between women and men, encompassing equal rights, opportunities, and access to benefits in all areas of life and activities.⁴

Third, the Indonesian Government has ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR) through Law No. 11 of 2005 on the Ratification of the International Covenant on Economic, Social, and Cultural Rights. Through this covenant, Indonesia, as a member state of the United Nations that has ratified it, has obligations and responsibilities to promote and protect human rights. It also reminds individuals of their responsibilities to work hard in the advancement and arrangement of human rights, particularly those concerning other individuals and society. Furthermore, it recognizes that, according to the Universal Declaration of Human Rights (UDHR), the aspirations of humanity to enjoy civil and political freedoms, as well as freedom from fear and want, can only be achieved if conditions are created for everyone to enjoy their economic, social, and cultural rights, as well as their civil and political rights.

Fourth, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography has also been ratified by the Indonesian government under Law No. 10 of 2012. This protocol emphasises the need to protect children from acts of economic exploitation

³ Source: : <https://www.unicef.org/indonesia/id/konvensi-hak-anak-versi-anak-anak>.

⁴ Ibid

and from work that is hazardous or interferes with their education, as well as harm to their physical, mental, spiritual, moral, and social development. Early child marriage can be regarded as a form of exploitation, which has the potential to harm their well-being.



CHAPTER III

CONCLUSION & RECOMMENDATION

A. Conclusion

Child marriage is a complex issue as it is related to children's rights protection, health, education, and social welfare. The negative impacts of child marriage, such as physical and mental health risks, disruption to education, economic challenges, and the nation's future, can be long-term and latent. On the other hand, child marriage is also intertwined with culture, tradition, and religion; hence, efforts to prevent child marriage are necessary through various aspects, including education, increasing community awareness, and strengthening regulations that protect children's rights. As an effort to reduce the rate of child marriage, the Indonesian government issued a series of policies, including PERMA Number 5 of 2019. This regulation is used as the Indonesian government's last resort in preventing child marriage.

INFID's research captured the complex picture of issues in implementing PERMA Number 5 of 2019. As a guideline for judges in deciding marriage dispensations, implementing this PERMA requires coordination and consolidation from several parties or institutions. Unfortunately, this PERMA has not been widely socialized to the relevant stakeholders. In deciding on marriage dispensation cases, judges need the involvement of several agencies and institutions. Similarly, the regulations that serve as the legal umbrella to support the national strategy for preventing child marriage have also not been well socialised.

This policy paper examines the urgency of strengthening the implementation of PERMA Number 5 of 2019. The study findings indicate that (a) The recommendations outlined

in Article 15 are still optional and not mandatory. Making the recommendations mandatory is critical to provide judges with considerations in deciding marriage dispensation cases; (b) Urgency is a subjective assessment by judges associated with the trial facts. In this case, it is essential to compile urgency indicators as a reference for judges in the trial; (c) Judges and stakeholders need to understand the best interests of children comprehensively. This understanding impacts the quality of Human Resources (HR), reproductive health, and the fulfilment of children's rights.

Programs, activities, and movements for the prevention and handling of child marriage have been carried out. However, in practice, these efforts remain sporadic and sectoral. Each agency claims to have made efforts to contribute to the government's program to reduce the rate of child marriage according to their respective duties and functions. The work of each agency is not interconnected. If these efforts were carried out systematically, simultaneously, and in coordination, their success and impact would be easier to measure and evaluate.

The two areas that are the focus of INFID's research represent other regions in Indonesia regarding the practice of child marriage. It is hoped that some of the positive results of this research can also be used as references or guidelines for other regions that want to eliminate child marriage practices so that the best rights for children can be realized.

B. Recommendation

Based on the conclusions above, the following recommendations have been made from this policy paper:

1. Law Enforcement Institutions:
 - 1.1 Supreme Court of the Republic of Indonesia (Mahkamah Agung – MA)::
 - a. Define a concrete understanding of the concept of 'the child's best interest' and the criteria for urgency as regulated in PERMA Number 5 of 2019;
 - b. Conduct outreach to judges in Religious Court (Pengadilan Agama – PA) and District Court (Pengadilan Negeri – PN) regarding the implementation of PERMA Number 5 2019;
 - c. Collaborate with government agencies and child rights advocacy organizations to develop a Monitoring and Evaluation/Monev mechanism for applying PERMA Number 5 of 2019, particularly within the PA and PN jurisdictions.

1.2 Religious Court (Pengadilan Agama – PA):

Engage in intensive coordination with village governments/village heads/ local leaders to support child marriage prevention efforts by handling Marriage Dispensation applications.

2. Government Ministries: (specifically: Ministry of Religious Affairs (Kementerian Agama – Kemenag), Ministry of Women’s Empowerment and Child Protection (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak – KPPPA), Ministry of Education, Culture, Research, and Technology (Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi – Kemendikbudristek), local Education Offices, Cooperatives Office, Social Affairs Offices, and Village Governments/Village Heads):

- a. Strengthen commitment to implementing gender mainstreaming in national development;
- b. Apply and enhance Gender Responsive Budgeting/GRB, particularly in programs aimed at preventing child marriage;
- c. Take responsibility for establishing an integrated monitoring and evaluation system to assess the implementation of gender mainstreaming across all sectors and levels of government.

2.1 Ministry of Religious Affairs (Kementerian Agama – Kemenag):

- a. Provide theological strengthening, mainly through counselling or introductory remarks during marriage ceremonies or related events, to advocate alternative measures to eliminate child marriage, including addressing marriage dispensation or marriage legalisation (itsbat nikah) cases in Indonesia;
- b. Intensify coordination with village governments and Religious Courts (Pengadilan Agama – PA) regarding marriage dispensation applications;
- c. Monitor and evaluate the implementation of marriage legalisation (itsbat nikah) to prevent child marriages.

2.2 Education Offices:

Prepare budget allocations to support education for children whose Marriage Dispensation applications are denied (under 19 years old). These allocations should focus on providing educational opportunities for children affected by child marriage

2.3 Cooperative Offices:

Implement various economic empowerment activities targeted at children (especially females) whose Marriage Dispensation applications are cancelled or denied in rural areas.

2.4 Social Affairs Offices:

Implement various social empowerment activities targeted at children (especially females) whose Marriage Dispensation applications are cancelled or denied in rural areas..

2.5 Village Governments:

- a. Maximize preventive measures by allocating village funds for programs aimed at preventing and addressing child marriage cases, including budget allocations to support children whose Marriage Dispensation applications are denied. These funds can be used for educational assistance or economic empowerment/skills development.
- b. Conduct targeted outreach and education for children and parents on the 'dangers of child marriage'.

3. Civil Society Organizations (OMS):

- a. Act as community partners to facilitate participatory empowerment initiatives;
- b. Partner with the government to perform a monitoring role by providing constructive input during the formulation of child marriage prevention policies and ensuring consistent and fair implementation of these policies across regions.

4. Educational Institutions and Educators:

- a. Encourage teachers (especially those at the primary school level) to become agents of change by providing education on the dangers of child marriage and the importance of delaying marriage;
- b. Facilitate capacity-building programs for students, including socialisation about reproductive health to eliminate stigma and promote open discussions among students.

5. Parents:

- a. Enhance parenting quality to foster harmonious relationships and empower children to avoid early pregnancies outside marriage;
- b. Actively listen to children's perspectives, particularly regarding education about reproductive health and the consequences of child marriage.



CHAPTER V

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