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Comparison of Judge's Determinations Regarding Marriage Dispensation (Study of Determination Number 73/Pdt.P/2020/PA.Sak and 201/Pdt.P/2023/PA.Sj)

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Abstract

The amendment to the Marriage Law through Law Number 16 of 2019 aims to suppress the high rate of child marriage by raising the minimum age to 19 years. However, the absence of restrictive limits on the phrase "urgent reasons" in Article 7 paragraph (2) creates a legal loophole triggering a disparity in judges' decisions at the Religious Courts. This study aims to analyze the inconsistency of judges' legal reasoning regarding marriage dispensation applications, specifically in cases with a premarital history without pregnancy. This normative legal research utilizes a statute approach and a comparative case approach. The results reveal a sharp disparity in applying the legal discovery method (Rechtsvinding). The judge in Determination Number 73/Pdt.P/2020/PA.Sak applied a socio-religious interpretation, prioritizing the Sadd ad-dzari'ah principle to prevent adultery, thus granting the application. Conversely, the judge in Determination Number 201/Pdt.P/2023/PA.SJ progressively rejected the application, emphasizing that psychological unpreparedness, structural poverty potential, and divorce risks constitute far greater harm. This interpretative disparity directly violates the legal certainty principle (Rechtssicherheit), triggers forum shopping practices, and proves that permissive decisions contradict the Best Interest of the Child principle mandated in PERMA Number 5 of 2019. Therefore, the Supreme Court is recommended to promptly issue a derivative regulation (SEMA) providing an authentic interpretation of urgent reasons. Judges are also required to position the child's educational rights and future welfare as absolute parameters, overriding mere subjective parental moral concerns.

Keywords

Best Interest of the Child, Decision Disparity, Legal Discovery, Marriage Dispensation, Urgent Reasons

I. Introduction

The amendment of Law Number 1 of 1974 to Law Number 16 of 2019 regarding Marriage represents a progressive legislative measure to curb child marriage rates in Indonesia.¹ By elevating the minimum marital age for women from 16 to 19, this statute seeks to guarantee the fulfillment of children's rights, mitigate reproductive health risks, and prevent emerging socio-economic hurdles caused by domestic instability. This aligns with the perspective that legal protection for children must be prioritized within every educational and social environment to ensure their fundamental rights are fulfilled.² Nevertheless, the spirit of this legal reform encounters severe challenges in its implementation, specifically concerning marriage dispensation provisions.

Article 7 paragraph (2) of Law Number 16 of 2019 creates a legal loophole by permitting deviations from the age threshold given "urgent reasons" backed by sufficient evidence.³ A juridical issue emerges because the phrase "urgent reasons" lacks a limitative statutory definition, thereby granting judges excessively broad discretionary power. The absence of standardized parameters renders the interpretation of "urgent reasons" highly subjective, hinging on the moral perspective of individual judges. Consequently, this has the

¹ A. Amri and M. Khalidi, "Efektivitas Undang-Undang Nomor 16 Tahun 2019 Terhadap Pernikahan Di Bawah Umur," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan dan Pranata Sosial* 6, no. 1 (2021): 86, <https://doi.org/10.22373/justisia.v6i1.10424>.

² Cahya Wulandari et al., "Justice for Child Victims of Violence in the Pesantren Environment (Study of Decision Number 5642 K/Pid.Sus/2022)," *The Digest: Journal of Jurisprudence and Legisprudence* 6, no. 2 (2025): 135-150, <https://doi.org/10.15294/digest.v6i2.33563>.

³ Sandya Hilana Aisyah et al., "Permohonan Dispensasi Perkawinan Perspektif Sadd Dzari'ah," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 2, no. 1 (2024): 20, <https://doi.org/10.61104/alz.v3i3.1408>.

potential to trigger disparities in court determinations, which ultimately undermines legal certainty (*Rechtssicherheit*).

To provide a juridical clarification, petitions for marriage dispensation inherently fall under the realm of voluntary jurisdiction (non-contentious proceedings).⁴ Therefore, the legal product issued by the judge is not a verdict (*putusan*), but rather a determination (*penetapan*). Doctrinally, a determination is a written declaration formulated and delivered by a judge in an open court session as a result of evaluating a voluntary petition. Through this judicial instrument, the judge establishes the legal groundwork and certainty for the petitioner regarding underage marriage authorization. This disparity phenomenon becomes blatantly apparent when examining dispensation cases involving premarital relations without pregnancy, revealing a sharp collision of legal paradigms among Religious Court judges. On one side, certain judges are inclined to grant the petition by invoking the *Sadd ad-dzari'ah* principle (blocking the means to evil) to prevent adultery, as demonstrated in Determination Number 73/Pdt.P/2020/PA.Sak. Conversely, other judges reject identical petitions, reasoning that the threats of premature divorce and economic unreadiness pose a far greater harm (*mudharat*) than the mere potential of extramarital intercourse, as reflected in Determination Number 201/Pdt.P/2023/PA.SJ.

Although discourses surrounding marriage dispensation post-revision of the Marriage Law have been extensive, prior literature still leaves a glaring research gap. For instance, Mulyani's study (2021) focuses purely on a sociological overview of macro-level child marriage prevention without dissecting judicial reasoning.⁵ On the other hand,

⁴ Dian Latifiani, *Hukum Acara Perdata dalam Praktik Peradilan Secara Elektronik*, (Semarang: UNNES Press, 2023), hlm. 193-194

⁵ M. Luthfi, "Tinjauan Sosiologi Hukum Terhadap Undang Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang Undang Nomor 1 Tahun 1974 Tentang

while Fadhli and Warman's research (2021)⁶ touches upon the 'fear of adultery' argument, it remains dogmatically singular, capturing only one court without any comparative analysis. Diametrically opposed to such literature, this study presents a head-to-head comparison of two judicial determinations (Determination Number 73/Pdt.P/2020/PA.Sak and 201/Pdt.P/2023/PA.SJ).⁷ that share 100% identical material facts—namely, the petitioners had engaged in premarital relations but were not pregnant—yet produced completely contradictory rulings. If previous studies were merely trapped in partial analyses of court decisions, the novelty of this article lies precisely in its audacity to deconstruct the direct clash of two legal discovery methods (*Rechtsvinding*) in interpreting the boundaries of 'urgent reasons'.

This article aims to elaborate on the disparity in applying the legal discovery theory (*Rechtsvinding*) within these two determinations, alongside its implications for legal certainty and child protection. The analytical framework is built upon the Theory of Legal Discovery, Gustav Radbruch's Theory of Legal Certainty, and the *Best Interest of the Child* principle mandated in Supreme Court Regulation (PERMA) Number 5 of 2019.⁸ Through this comparative approach, the study is expected to contribute theoretical insights for reforming religious court procedural law, ultimately achieving legal uniformity in adjudicating future marriage dispensation cases.

Perkawinan," *Journal of Law (J-Law)* 1, no. 1 (2022): 65. <https://doi.org/10.51933/jlaw.v1i1.782>.

⁶ S. Mulyani, "Menilik Problematika Dispensasi Nikah dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan," *Journal of Islamic and Law Studies* 5, no. 2 (2021): 45. <https://doi.org/10.18592/jils.v5i2.5312>.

⁷ A. Fadhli and A. B. Warman, "Alasan Khawatir' pada Penetapan Hukum Dispensasi Kawin di Pengadilan Agama Batusangkar," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (2021): 150. <https://doi.org/10.14421/ahwal.2021.14202>.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2017), 35.

II. Method

This study employs a normative (doctrinal) legal research methodology. The selection of this method is grounded in the rationale that the primary focus of the inquiry is not to measure the societal effectiveness or social behavior toward the law, but rather to dissect, analyze, and critique the inconsistencies in judicial legal reasoning within written legal products, specifically court determinations.⁹ The approaches applied in this research encompass the statute approach, the case approach, and the comparative approach. The comparative approach is specifically utilized to contrast two judicial determinations adjudicating identical legal facts, thereby pinpointing the exact locus of disparity in legal interpretation.¹⁰

The data sources for this study rely entirely on secondary data, which comprises primary, secondary, and tertiary legal materials. The primary legal materials analyzed include Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 on Marriage, Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, along with two jurisprudential products, namely Religious Court Determination Number 73/Pdt.P/2020/PA.Sak and Determination Number 201/Pdt.P/2023/PA.SJ. Meanwhile, secondary legal materials are acquired through exploring academic literature, legal textbooks, and contemporary journal articles relevant to the discourse on marriage dispensation and the theory of legal discovery.

The collection of legal materials is conducted through literature and documentary studies, specifically by inventorying and classifying judicial documents and regulations related to the issue of "urgent

⁹ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2013), 302.

¹⁰ Penetapan Pengadilan Agama Nomor 73/Pdt.P/2020/PA.Sak.

reasons" in marriage dispensations. Subsequently, the technique for analyzing these legal materials employs a prescriptive normative-qualitative method. The reduced legal materials are then deductively analyzed using the Theory of Legal Discovery and the *Best Interest of the Child* principle as touchstones to evaluate the validity and coherence of the judges' considerations in both determinations.

III. Results and Discussion

Description of Legal Facts in Marriage Dispensation Cases

Following the enactment of Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 on Marriage, the minimum age limit for marriage for both men and women was equalized to 19 (nineteen) years. Factually, this regulatory change resulted in a massive surge of marriage dispensation applications within the Religious Courts. In deciding these voluntary cases, the Religious Courts are granted absolute competence to receive, examine, and decide on the applications, guided by the Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. Based on this regulation, judges are required to explore trial facts to prove the existence of "urgent reasons" and ensure the absence of psychological or physical coercion against the child. In practice, however, the interpretation of the phrase "urgent reasons" frequently engenders jurisprudential disparity among panels of judges, even when the adjudicated cases share a similar construction of material facts.

This research utilizes two first-instance jurisprudential products as the primary objects of study. The selection criteria for these two determinations are based on the identical background of material facts

submitted by the petitioners, namely marriage dispensation applications grounded on the reason that the child has engaged in premarital relations, yet is not in a state of pregnancy. The first document is the Religious Court Determination Number 73/Pdt.P/2020/PA.Sak (hereinafter referred to as Determination 73).¹¹ The second document is the Religious Court Determination Number 201/Pdt.P/2023/PA.SJ (hereinafter referred to as Determination 201).¹² To present the data systematically and comprehensively, the comparative details regarding case identity, legal facts, proposed urgent reasons, and the rulings of both documents are elaborated in Table 1 below:

Table 1: Comparison of Legal Facts and Decisions on Marriage Dispensation Cases

Aspect of Comparison	Determination No. 73/Pdt.P/2020/PA.Sak	Determination No. 201/Pdt.P/2023/PA.SJ
Legal Facts	The petitioner (female) is under 19 years of age, has engaged in premarital relations, and is not pregnant.	The petitioner (female) is under 19 years of age, has engaged in premarital relations, and is not pregnant.
Urgent Reasons	Parental anxiety regarding acts violating religious norms (adultery).	Parental anxiety regarding acts violating religious norms (adultery).

¹¹Penetapan Pengadilan Agama Nomor 201/Pdt.P/2023/PA.SJ.

¹² Dian Latifiani, "The Darkest Phase for Family: Child Marriage Prevention and Its Complexity in Indonesia," *JILS (Journal of Indonesian Legal Studies)* 4, no. 2 (2019): 250. <https://doi.org/10.15294/jils.v4i02.34731>.

Judge's Consideration	Employing the fiqh maxim of Sadd ad-dzari'ah (blocking the path to harm) to prevent further sins of adultery.	The risks of early divorce, mental unpreparedness, and economic instability are deemed as a far greater mudharat (harm).
Ruling	Granted the marriage dispensation application.	Rejected the marriage dispensation application.

Comparative Analysis of Judges's Jurisdiction in Determining Marriage Dispensation

Based on the data presented in Table 1, a highly distinct disparity is evident regarding the judges' application of the law. The data indicates that in the first case (Determination 73), the act of premarital relations without pregnancy was deemed sufficient to fulfill the constitutional requirements of the phrase "urgent reasons," resulting in the application being granted. This is explicitly recorded in the legal reasoning of the panel of judges on page 11 of Determination 73, which states:

"Considering that the Petitioners' child has established a romantic relationship with her prospective husband and has engaged in marital-like relations. That to prevent greater harm and avoid prolonged acts violating religious norms (adultery), the Panel of Judges opines that this marriage dispensation application deserves to be granted

for the child's benefit based on the fiqh maxim Dar'ul mafasid muqaddamun ala jalbil mashalih (averting harm takes precedence over acquiring benefits)."

Conversely, in the second case (Determination 201), the identical legal facts did not automatically shift the judges' consideration regarding the child's unpreparedness to build a household, thereby leading to the rejection of the application. The panel of judges in this case adopted a more rigid and futuristic legal construction. In their legal reasoning on page 14, the judges asserted:

"Considering that although the Petitioner's child is acknowledged to have engaged in premarital relations, based on the trial facts, the Petitioner's child is not in a state of pregnancy. The Panel of Judges assesses that the parents' anxiety cannot be used as an absolute urgent reason, considering the child's very young age, lack of psychological maturity, as well as vulnerability to the risks of early divorce and domestic violence (KDRT). That rejecting this application is deemed to provide greater benefit (maslahat) for the child's future compared to legalizing an underage marriage bond."

To compare the construction of legal reasoning from the two aforementioned determinations in a more structured manner, the details of these differences are presented in Table 2 below:

Table 2: Comparison of Judges' Considerations in Determining Marriage Dispensation

Aspect of Comparison	Determination No. 73/Pdt.P/2020/PA .Sak	Determination No. 201/Pdt.P/2023/P A.SJ
Approach to Legal Discovery	Dogmatic and teleological interpretation (Islamic Law).	Systematic and futuristic interpretation (Child Protection)
Primary Maxim / Principle	Fiqh Maxim of Sadd ad-dzari'ah (averting/blocking the path to harm).	The Best Interest of the Child principle).
Focus of Consideration	Saving the child's religious morality from further sins of adultery.	Saving the child's future from the risks of domestic violence, early divorce, and psychological unpreparedness.
Interpretation of "Urgent Reasons"	Premarital relations are absolutely deemed as an emergent reason that must be legalized.	Premarital relations without pregnancy do not absolutely constitute an urgent reason if the child is not mentally prepared.

Referring to Table 2 above, it is clearly evident how the disparity in rulings stems from two colliding constructions of legal reasoning. In the first case, the judge tended to focus on resolving social and religious disgrace, thereby granting the petition for the sake of averting harm

(*Dar'ul mafasid*). Conversely, in the second case, the judge took a proactive step to reject the application by considering the destructive risks in the future. This comparative disparity in judicial considerations indicates the persistently high complexity of law enforcement regarding child marriage prevention in Indonesia. As emphasized by Dian Latifiani, the prevention of child marriage frequently faces intricate juridical dilemmas, so judges, as the bastion of justice, must consistently adhere to the *Best Interest of the Child* principle to prevent children from becoming victims and entering the darkest phase of family institutions.¹³ The existence of specific regulations, such as Supreme Court Regulation Number 5 of 2019, should essentially be adhered to by the panel of judges to manifest absolute legal certainty, rather than merely facilitating the legalization of underage marriages.¹⁴ A futuristic legal interpretation purely oriented toward child protection is absolutely necessary to ensure that the marriage dispensation instrument is not abused. Grounded in the urgency of such protection, the ruling disparity arising from two identical facts will subsequently be analyzed more deeply using the analytical tool of the legal discovery theory (*Rechtsvindning*) and the *Best Interest of the Child* principle in the discussion sub-chapter.¹⁵

The phenomenon of colliding legal bases between classical *fiqh* maxims and modern child protection regulations demonstrates that the religious justice system is currently in a phase of paradigm transition.

¹³ Dian Latifiani et al., "Increasing The Urgency Of Understanding The Age Of Marriage In Order To Manifest Children's Educational Rights At Ponpes Ar Rosyid Pematang," *Law Science Research* (2025): 2.

¹⁴ Woro Mega Dwi Astuti, Jacinda Ilma Mayastika, dan Dian Latifiani, "Supreme Court Policy On Underage Marriage Dispensation Realizing Legal Certainty," *UNIFIKASI: Jurnal Ilmu Hukum* 8, no. 2 (2021): 255. <https://doi.org/10.25134/unifikasi.v8i2.4631>.

¹⁵ Dian Latifiani, et al., "The Urgency of Understanding the Age of Marriage To Realize The Quality Of Education For Cadets In Puguh, Boja, Kendal," *Semarang State University Undergraduate Law and Society Review* (2025).

The judge presiding over Determination 73 still firmly held onto the traditional family law judicial style, which emphasizes the resolution of domestic morality disputes. Meanwhile, the judge in Determination 201 had adopted a responsive and Human Rights (HAM)-oriented judicial approach. This unsynchronized transition is the root causality of why justice-seeking communities are often bewildered when facing double standards from the courts. The fact that both determinations were issued during the era of Law Number 16 of 2019 and PERMA Number 5 of 2019 proves that the existence of new material law is not yet strong enough to intervene in the legal culture and the mentality of law enforcement officials within the courtroom.

Implication of Disparity in Determinations for Legal Certainty and the Principle of the Best Interest of the Child

In deciding marriage dispensation applications, judges cannot be viewed merely as mouthpieces of the law (*la bouche de la loi*). Judges possess an absolute obligation to perform legal discovery (*Rechtsvinding*) when confronted with petitioners' arguments that clash with the urgency of child protection. As observed in the comparative rulings in the previous chapter, the ensuing disparity is not purely caused by a legal vacuum, but rather arises from differing interpretative methods and legal reasoning constructions formulated by the respective panels of judges.

In the first determination, the panel's *Rechtsvinding* process visibly emphasized a sociological and grammatical interpretation. The legal reasoning was built upon religious norms, particularly the application of the *Sadd ad-Dzari'ah* maxim as a preventive measure to avoid adultery. In this construction, parameters of maturity and marital readiness tended to be measured through a biological lens. However,

juridically, the dominant weight placed on this socio-religious aspect frequently collides with the urgency of family law reform. Responding to this dynamic, the Supreme Court has actually provided a restrictive instrument via Supreme Court Regulation Number 5 of 2019. This regulation was limitatively designed to compel law enforcement to tighten marriage dispensation procedures, ensuring that preventive effectiveness is realized and the rate of underage marriage is suppressed.¹⁶

Conversely, in the second case, the judges' legal discovery demonstrated the application of teleological and futuristic interpretative methods. The judges expanded the scope of their consideration beyond the present trial facts by projecting the long-term implications of marriage on the child's psychological, educational, and reproductive readiness. These considerations, which specifically address the future and the right to education, have a direct correlation with child protection efforts. Conceptually, a comprehensive understanding of the marital age limit is highly essential to guarantee the quality and fulfillment of children's educational rights. Without adequate maturity, child marriage risks eroding these fundamental rights and placing the child in a vulnerable position. It is this distinct emphasis in the *Rechtsvinding* method that ultimately triggers the disparity in determinations. Furthermore, judicial inconsistency and technical inaccuracies in legal documents can lead to non-executable judgments, which ultimately undermine the principle of legal certainty in the Indonesian justice system.¹⁷

¹⁶ Muhammad Rifky Yusuf, "Efektivitas Hukum terhadap Pemberlakuan PERMA No 5 Tahun 2019 dalam Mengatasi Perkawinan di Bawah Umur," *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 4, no. 2 (2022): 412. <https://doi.org/10.37680/almanhaj.v4i2.1706>.

¹⁷ Natalia Diah Ayu Puspita and Maria Acynta Christy, "Inaccuracy of the State Attorney in Drafting a Lawsuit that Causes a Non-Executable Judgement: Case Study in Civil Case No. 06/Pdt. G/2015/PN.Bbs," *The Digest: Journal of Jurisprudence and Legisprudence* 5, no. 1 (2024): 33-60, <https://doi.org/10.15294/digest.v5i1.3339>.

The analysis of this disparity becomes increasingly relevant when dissected using Gustav Radbruch's Theory of Legal Objectives, as promised in the introduction. Radbruch posits that law must simultaneously pursue three fundamental values: justice (*Gerechtigkeit*), utility (*Zweckmassigkeit*), and legal certainty (*Rechtssicherheit*). Within the construction of Determination Number 73/Pdt.P/2020/PA.Sak, the panel of judges was evidently trapped in a partial illusion of "utility." The judges presumed that granting the application was a beneficial act to liberate the child from the snare of adultery. Yet, this approach inadvertently sacrificed the "legal certainty" pillar of Law Number 16 of 2019 itself and ignored the essence of "justice" regarding the child's future rights. On the contrary, in Determination Number 201/Pdt.P/2023/PA.SJ, the judges succeeded in reaching an equilibrium among Radbruch's three values. Rejecting the application not only imperatively upheld the certainty of the age limit but also provided genuine utility and justice by saving the child from the threats of structural poverty and psychological exploitation. The tension between the certainty of statutory texts and sociological utility often becomes a stumbling block for judges when conducting child-protection-oriented *Rechtsvinding*.

This aforementioned shift in *Rechtsvinding* focus is precisely what spawns ruling disparities. The judges in the second case progressively dared to dismantle formalistic boundaries to shield the child from long-term hazards. This proves that judicial discretion in legal discovery plays a profoundly vital and decisive role. This uncertainty is further exacerbated when the judge's discretion is not based on uniform philosophical parameters, resulting in legal products.¹⁸ That fails to guarantee equitable legal certainty for the

¹⁸ Muhammad Nasta'in, "Disparitas Putusan Hakim dalam Perkara Dispensasi Kawin dan Potensi Penyelundupan Hukum," *Jurnal Yudisial* 16, no. 2 (2023): 215. <https://doi.org/10.29123/jy.v16i2.604>.

child's future. Without a unified paradigm centered on fulfilling children's rights, the marriage dispensation instrument will perpetually remain a legal loophole easily exploited to legitimize underage marriage practices under the guise of avoiding harm. Therefore, a judge's *Rechtsvinding* in these voluntary cases should ideally always culminate in the holistic protection of children's fundamental rights.

Analyzing beyond merely the differences in methodological approaches, this disparity in determinations inherently generates a novel juridical problem regarding legal certainty in society. When a panel of judges firmly rejects an application in one case, yet another grants it under identical factual constructs, it potentially triggers the practice of *forum shopping* or legal smuggling. Marriage dispensation applicants can exploit this loophole by seeking or manipulating their domicile to obtain a ruling from a court perceived as more permissive. This condition indirectly degrades the authority of judicial institutions and erodes the effectiveness of the state's aggressively promoted national child marriage prevention regulations.¹⁹

Furthermore, the discretionary authority of judges in deciding these voluntary cases demands moral and juridical accountability that far exceeds typical contentious disputes. A judge's determination does not merely legitimize the administrative status of an underage marriage; it directly constructs the social reality and the child's future. In the context of legal discovery, judges are challenged to move beyond mere textual formalities toward a progressive judicial paradigm. If *Rechtsvinding* is not framed by unified philosophical parameters that favor children's human rights, this disparity will continuously recur and become a detrimental precedent within the Indonesian judicial system.²⁰

¹⁹ Titik Triwulan Tutik, "Diskresi Hakim dalam Penemuan Hukum (*Rechtsvinding*) pada Perkara Voluntair," *Jurnal Hukum dan Peradilan* 10, no. 1 (2021): 45. <https://doi.org/10.25216/jhp.10.1.2021.31-50>.

²⁰ Pasal 2 huruf b Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin.

The application of the marriage dispensation instrument inherently cannot be separated from the best interest of the child principle. As a fundamental principle recognized in both international and national legal instruments, this principle obligates every decision-making process by judicial institutions to prioritize the child's future and well-being. Specifically, this principle has been explicitly adopted as the primary guideline for judges in adjudicating marriage dispensation cases.²¹ This means that judges' considerations must no longer focus solely on resolving momentary pragmatic issues such as the argument to avoid adultery but must comprehensively calculate the long-term impacts of marriage on the child's physical, psychological, educational, and future aspects.

Based on the comparison of the two previous determinations, a striking contrast is evident in the implementation of this principle. In the first determination that granted the petition, the panel of judges appeared to set aside the best interest of the child principle. The constructed legal logic was purely oriented toward preventing biological and moral harm, yet failed to identify far more massive future harms, such as the loss of educational rights, reproductive health vulnerabilities, and potential structural poverty. Such an approach diametrically contradicts the essence of child protection, as the state, through the court, indirectly legitimizes the deprivation of children's fundamental rights in the name of legal formality.²²

Conversely, in the second determination that rejected the petition, the panel of judges progressively grounded the *best interest of the child* principle into the essence of their legal reasoning. The judges did not merely act as mouthpieces of the law but positioned the judicial

²¹ Pasal 13 ayat (1) Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.

²² Sulistyowati Irianto, *Perempuan dan Hukum: Menuju Hukum yang Berperspektif Kesenjangan dan Keadilan*, (Jakarta: Yayasan Obor Indonesia, 2019), 142.

institution as the guardian of child rights. By considering the petitioner's mental, psychological, and economic unpreparedness, this determination proves that delaying child marriage is the most rational and equitable step. Moving forward, the best interest of the child principle must absolutely serve as the sole mandatory parameter in every judge's *Rechtsvinding* in marriage dispensation cases, in order to tightly close the legal smuggling loopholes hiding behind the subjective interpretation of the phrase "urgent reasons."

The strengthening of the *Best Interest of the Child* principle in rejecting marriage dispensation applications also possesses profoundly strong constitutional legitimacy. The 1945 Constitution of the Republic of Indonesia, through Article 28B paragraph (2), explicitly mandates that every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination. Granting a marriage dispensation solely because the child has engaged in premarital relations is tantamount to stripping away these constitutional rights. Empirically, underage marriage triggers structural discrimination, where young girls are forced to bear domestic and reproductive burdens before their biological and mental organs are prepared. Furthermore, sociological arguments in the form of societal rejection of children pregnant out of wedlock should be responded to by the state through the strengthening of social rehabilitation systems, not through the legal instrument of marriage that actually legitimizes the child's suffering under a valid legal umbrella.

More profoundly, the problem of applying the best interest of the child principle frequently collides with the legal sociology of the society itself. In many trials, the "fear of adultery" argument is often utilized by the petitioners' parents as a determinant instrument to pressure the judges' conviction. Parents position marriage as the only instant resolution for their failure in parenting and supervising their children. If the panel of judges accommodates this argument without

rigorous judicial activism, the court subconsciously reduces the sacred value of marriage into a mere institution for legalizing premarital biological relations. This clearly betrays the philosophy of the *best interest of the child* principle, as it is ultimately the child who must bear the burden of social and structural sanctions resulting from their mental and financial unpreparedness to build a household.²³

Therefore, the best interest of the child principle must serve as the primary analytical tool in interpreting the juridical loophole of the phrase "urgent reasons" in Article 7 paragraph (2) of Law Number 16 of 2019. "Urgent reasons" can no longer be interpreted superficially as an effort to cover up family disgrace or avoid the sin of adultery. In a progressive legal paradigm, urgent conditions must be interpreted restrictively, namely only when there are absolutely no other alternatives that better guarantee the child's safety and future other than through marriage. As long as the child still has the opportunity to continue their education and develop their potential, the "urgent reasons" argument must be absolutely disregarded by the panel of judges to protect the child's own future.

On a macro level, the disregard for this principle not only affects individual legal subjects but also implicates the state's obligations under international law. Indonesia has ratified the Convention on the Rights of the Child, which obligates all state organs, including the judiciary, to actively prevent the practices of exploitation and child marriage. When courts easily grant marriage dispensation applications without rigid *best interest* parameters, it represents the state's failure to fulfill its global human rights protection commitments.²⁴

²³ Keputusan Presiden Nomor 36 Tahun 1990 tentang Pengesahan *Convention on the Rights of the Child* (Konvensi Tentang Hak-Hak Anak),

²⁴ Ana Latifatul Muntamah, Dian Latifiani, dan Ridwan Arifin, "Pernikahan Dini di Indonesia: Faktor dan Peran Pemerintah (Perspektif Penegakan dan Perlindungan Hukum bagi Anak)," *Widya Yuridika: Jurnal Hukum* 2, no. 1 (2019): 8. <https://doi.org/10.25139/wy.v2i1.1578>.

Following up on the state's macro-level obligations, the active role of various elements of national power becomes highly crucial in minimizing the prevalence of child marriage. The judicial institution does not stand alone but is an integral part of the child protection system in Indonesia. Sociologically and juridically, the synergy of firm law enforcement from the government and the judiciary is the primary instrument in prevention. If law enforcement officials act permissively and open the dispensation doors wide without a strict *best interest* filter, the aspiration to realize comprehensive legal protection for children will only become a mere illusion. Therefore, judges, as the frontline vanguard, must shift their paradigm from merely being legality stamp-providers to actors who actively prevent the exploitation of children's futures.

IV. Conclusion

This study concludes that the disparity in judicial determinations between case Number 73/Pdt.P/2020/PA.Sak and Number 201/Pdt.P/2023/PA.SJ is rooted in fundamental differences in applying the legal discovery (*Rechtsvinding*) method. The judge who granted the petition tended to employ a pragmatic socio-religious interpretation, prioritizing the *Sadd adz-dzari'ah* maxim to avoid adultery and social disgrace. Conversely, the judge who rejected the petition progressively applied a teleological-futuristic interpretation, placing the child's psychological maturity and right to education above momentary morality concerns. This inconsistency generates legal uncertainty (*Rechtssicherheit*) with widespread impacts: for the child, it diminishes the guarantee of future protection; meanwhile, for the parents and prospective husband, the ambiguity of the "urgent reasons" parameter triggers legal speculation and *forum shopping* practices. Systemically, this disparity weakens marriage law enforcement in

Indonesia, where the minimum marital age limit in Law Number 16 of 2019 threatens to become a mere formality without uniform executorial power. Therefore, synergy between limitative regulations from the Supreme Court and judges' courage in exercising judicial activism is absolutely necessary to ensure that marriage dispensation no longer serves as a loophole for legal smuggling that sacrifices the best interest of the child.

Based on these findings, it is highly recommended that the Supreme Court of the Republic of Indonesia immediately issue derivative regulations, either in the form of a Supreme Court Circular (SEMA) or a revision to PERMA Number 5 of 2019, to provide an authentic interpretation and limitative boundaries for the phrase "urgent reasons." Standardizing these parameters is crucial to close the space for wild discretion and prevent *forum shopping* practices across various Religious Courts. In line with this, Religious Court judges are urged to abandon conservative paradigms that merely prioritize momentary moral anxieties caused by potential adultery. Judges are challenged to implement judicial activism by establishing psychological maturity, the right to education, and the *Best Interest of the Child* principle as absolute filters before granting applications.

Complementing law enforcement instruments in the courtroom, future researchers and local governments are advised to study and formulate an integrated post-trial monitoring mechanism. The rejection of a marriage dispensation by the court must be accompanied by active intervention from social services and child protection agencies. This aims to ensure that prospective child brides are not diverted into unregistered marriages (*underhand marriages / nikah siri*) by their families, thereby comprehensively protecting the children's fundamental rights and futures.

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