

RESEARCH ARTICLE

Muslim Child Marriage in Indonesia: Protecting Child Right Versus Preventing Zina and Preserving Offspring

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Abstract

Child marriage is undeniably a problem caused by many factors. It is a harmful practice towards children, especially toward girl, yet the practice is widespread and often supported by the society. Religious court is accused to be the fertilizer of the practice because its decision shows the easiness of granting marriage dispensation lawsuit. The court is demanded to reject the lawsuit, even in the condition of adolescent pregnancy because it will harm the child. Then, there are two sides causing the dilemma, a side that absolutely rejects the practice of child marriage to protect child rights. A side that allows child marriage in the sake of preventing zina and preserving offspring. It is concluded that child marriage is not a way to prevent zina. Because a child is not in ideal condition to have sexual intercourse nor to get pregnant. Permitting child marriage to prevent zina is a violence that is prohibited by the religious norm. While, permitting child marriage based on the adolescent pregnancy is a way to save the lineage of the unborn baby. However, the marriage may be canceled or divorced after the baby was born if it is considered harmful for the child.

Keyword: Child Marriage, Marriage Dispensation, Preventing Zina, Preserving Offspring.

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INTRODUCTION

Child Marriage is defined as a marriage of a girl or boy before the age of 18 and refers to both formal marriages and informal unions in which children under the age of 18 live with a partner as if married (UNICEF, n.d.). According to National Strategy on Preventing Child Marriage, child marriage increased school dropout, domestic violence, raising maternal mortality and infant mortality, and affect the economic condition of the marriage (Strategi Nasional Pencegahan Perkawinan Anak, 2020). It is considered as force marriage because pre-18 years old boy and girl are considered illegible to do something in their own will, they are unable to be legally responsible (United Nation Population Fund, 2012).

Through the marriage law no 1 Year 1974, Indonesia authority regulates age limitation for citizen to be eligible and permitted to get married (marriageable age). It is regulated that for being able to get married, a man must be 19 years old while a woman must be 16 years old. This regulation changed by The Marriage Law No 16 Year 2019 which regulates that both man and

woman could get married if they are 19 years old. Even though the marriage law regulates the age limitation, the marriage law also regulates possibility that somebody could marry under 19 years old if the court permitting the marriage (request for minor to marry).

The lawsuit demanding dispensation or called by Supreme Court Regulation No 5 Year 2015 as marriage dispensation is a lawsuit that allow male or/and female under age 19 to get married. If child marriage is a marriage of a girl or boy before the age of 18, then marriage that held based on marriage dispensation should not defined as child marriage If bride or/and groom of the marriage are 18 years old. However, many marriage dispensations are categorized as child marriage. The average age of a girl in a marriage dispensation case was 14.5, while the average age of a boy in a marriage dispensation case was 16.5 (Sumner, 2020). Therefore, it is understandable if National Commission on Violence against women equates marriage dispensation with child marriage (Komnas Perempuan, 2022).

Directorate General of The Religious Court reports there are 32.498 request of marriage dispensation in 2024. It is decreasing compared to 2020 which recorded 64.196 requests, but relatively increasing compared to 2019 which recorded 24.864 requests. Research on several religious court shows that most of the request are granted by the court. National Commission on Violence against women stated that 59.709 lawsuit of marriage dispensation are granted by the religious court in 2021 (Komnas Perempuan, 2022). It arises critics that judge did not support the agenda of preventing child marriage (Candraditya, 2023). Judge accused to be to tolerate upon marriage dispensation cases because it seems that judge assume marriage as a way to improve social stigma of pre-marriage pregnancy. Judge also assume that permitting child marriage will be protecting the child because it provides legal certainty (Anitasari, 2013).

The Marriage Law No 16 Year 2019 regulates that parents may file lawsuit to demand dispensation based on urgent reason supported by sufficient evidence. The marriage law explains urgent reason as a condition leave no other option except a marriage. Practically, it is translated by the court as -and many lawsuits granted in these conditions- pre-marriage pregnancy, pre-marriage sexual intercourse, dating which leads to sexual intercourse (Komnas Perempuan, 2022). Even more, some lawsuit granted by considering the prepared wedding party and the sent-out wedding invitation. Most of the case are granted with no pre-marriage pregnancy (Mahkamah Agung Republik Indonesia, 2020).

Those definitions of urgent reason or urgent condition used by the court is considered to be ambiguous and considered as board interpretation (Mahardiani, 2023). Those are making the marriage dispensation lawsuit seems to be easily granted and becomes a mere formality. Furthermore, the religious court are suggested to stop granting marriage dispensation especially in unwanted pre-marriage pregnancy case (Komnas Perempuan, 2019). Even though, more than 95 per cent of child marriage in Indonesia occur without a judge granting marriage dispensation as required under Indonesian law (Sumner, 2020). Still, marriage dispensation granted by the judge are considered as bad decision that foster child marriage.

Based on previous explanation, there are two sides on child marriage. A side that wants an absolute ban over child marriage and see marriage dispensation as an obstacle that prevent the agenda of child marriage elimination thus preventing the fulfilment of child's right. This side is represented by National Commission on Violence against women that many of its recommendation suggest the absolute age limitation and to stop marriage dispensation (Komnas Perempuan, 2019). In other hand, a side that accept marriage dispensation based on certain condition. It is represented

by the court especially religious court that granting marriage dispensation especially based on the spirit of preventing zina and preserving offspring. This research aims to explain, explore and compare both side's arguments then adjust those arguments with Indonesia context specifically the context of Indonesian Muslim community. It will try to provide with a recommendation for the dilemma between protecting child's right or preventing zina and preserving offspring.

METHODS

It is qualitative research build on literature study over several books, research, report and newsletter. Those resources are material to explain the effects of child marriage and the legal reasoning behind the marriage dispensation. This research did not use judge decision as one of its resources because several researches used on this research an analysis of judge decision on marriage dispensation. However, in order to describe the procedure of marriage dispensation, it will analyze the marriage law and Supreme Court Regulation No 5 Year 2015. Finally, after analyzing and comparing both side's argument, this research will suggest a recommendation based on legal behavior theory.

FINDINGS AND DISCUSSION

Child Marriage

International community agreed that child marriage prone to many harmful results, especially for the bride. However, it is not caused by the marriage itself, but to the common obligation that came in after marriage (Eddyono et al., 2016). It is a common practice that married couple is expected to be independent, like getting their own money, taking care of their child, and taking care of each other. The husband will seek for payment/income to support and fulfill the need of the family. While the wife will manage the house and take care of the child. A marriage also assumed to arise the obligation of the girl or the wife to serve the husband's sexual need.

Sexual activity in marriage often leads and purposed to impregnate the bride. While pre-18th years old girl commonly is not ideal to get pregnant, moreover it is physically dangerous to give birth in those age. Among the disabilities associated with early childbirth is obstetric fistula, an injury which leaves girls in constant pain, vulnerable to infection, and incontinent (United Nation Populatin Fund, 2012). Adolescent girls who become pregnant are more likely to be poor than their peers, with poorer nutrition and general health. This in turn increases the likelihood of fetal, perinatal and maternal death and disability by as much as 50 per cent (United Nation Populatin Fund, 2015).

Pregnancy-related deaths are also the leading cause of mortality among adolescent girl, especially among 15–19-year-old girl. Those girls aged under 15 years are five times more likely to die than those aged over 20. Infant deaths are also twice as high in babies who birth from very young mothers. Pregnant young women from poorer communities are eight times less likely to deliver with the assistance of a skilled birth attendant than young women from the wealthiest quintile of their community. A study among 15–19-year-old girls found that many felt pressurized by families to prove their fertility very early in the marriage. Child brides are also least likely to use reproductive services because of their limited decision-making powers and economic dependency. Many married girls either do not know about contraception or are unable to negotiate its use due to fear of violence from their spouses, who often tend to be older (International Planned Parenthood Federation and The Forum on Marriage and the Rights of Women and Girls, 2006).

Developing countries are not the only one who face child marriage and adolescent pregnancy. A developed country like United States is facing a similar problem. In 2018, a study analyzing marriage license data from 41 states found that at over 200,000 minors, 87% girls and 13% boys, were married in the United States between 2000 and 2015. A different study, looking at the mental health of child brides in America, estimated between 8.9% and 11.96% of women are married as minors in the United States (Hamilto, 2020).

In 2020, the teen birth in United States rate was 15.4 (births for every 1,000 females ages 15-19), down eight percent from 2019 and down 75 percent from the 1991 peak of 61.8. There were 158,043 births to females in this age group, which accounted for less than five percent of all births in 2020. And given the age of these mothers, in 2020 nine in ten (91.7 percent) of these births occurred outside of marriage. The teen birth rate has declined to a new low each year since 2009. Still, the teen birth rate in the United States remains higher than that in many other developed countries, including Canada and the United Kingdom. Moreover, not all teen births are first births. In 2020, roughly 15 percent of live births to 15 to 19-year-olds were at least the second child born to the mother (OASH, n.d.).

Some of federal states regulate a permission to deviate minimum marital aged. It is mostly allowed when there is parental consents and court authorization. Moreover, consent by one parent is sometimes enough to acquire a license for child marriage. Even when parental consent isn't on its own enough for approval of child marriage, it often drives the outcome in judicial approval processes instead of the wishes of the minor. Consistently, adults prefer and protect the desires of other adults instead of children. This occurs in the context of judicial consent exceptions as well. In a variety of ways, assigning judges the responsibility for approving marriages involving minors is problematic. Judges generally lack knowledge about the intricacies of child marriage, coercive control, and intimate partner violence that are at play in these situations (Hamilto, 2020).

Adolescent girls who become pregnant and gave birth of her child mostly obliged by her husband and her family to take care of the child. It results on the disability to continue her study because she has to concentrate taking care of her child. Theoretically, having child is not always become the obstacle for the mother to continue her study and to work. Especially in major city in Indonesia, spouse who both of the husband and wife have to work or to continue their study, hire a nurse to take care of their baby/child. Some parents use the daycare service so they can leave their child when they go to work and pick the child up after the work. It is possible when the spouse is come from rich family or have the stable economic condition to pay the service. This kind of spouse mostly well-educated and able to considerate the priority for their family.

In other hand, there are adolescent girls who become pregnant and gave birth of her child, came from poor family. Their marriage mostly is the result of their lack of knowledge, or they are forced by their parents. Their marriage assumed as a way to relief family burden. Because of their lack of knowledge, their parent's consent, and their lack of authority of herself, they have no choices other than to marry in early age. Therefore, while she does her role as wife and mother, she lacks of better choices then a woman who came from well-educated and rich family.

In conclusion, it is not solely the marriage that make child marriage violates child rights, it is the consequences that comes within the marriage. The obligation as husband and wife often forced boy and girl in marriage to dropout-off school, looking for money, and act as grown up despite their actual psychological condition. The girl often forced to get pregnant as a proof for her loyalty to her husband and also as result of the paradigm that wife should obey all requests by her husband. It is

also the result of poverty and lack of knowledge so she can't refuse nor have other choices to avoid those harmful effects.

The New Marriage Law

Considering the child marriage procedure in United States that requested parent's consent and judge authorization, the Indonesian Marriage Law No 16 Year 2019 and Supreme Court Regulation No 5 Year 2019, regulate similar regulation to allow child marriage. Both regulations implicitly regulate that consent of parents is a factor that determine the court authorization of child marriage. It is shown by article 7 verse (2) Marriage Law No 16 Year 2019 that authorize boy/girl parents to file lawsuit to demand dispensation. Article 6 verse (1) Supreme Court Regulation No 5 Year 2019 also regulate that the authority to file lawsuit of marriage dispensation is boy's/girl's parent. If boy's/girl's parent file the lawsuit, it occurs assumption of parent's consent. However, article 13 verse (1) obligate the judge to hear parent's opinion of this marriage. Moreover, the judge obligated to hear child's opinion and also child's partner's opinion. If the judge did not hear the opinion of those parties, the decision of the case will be considered unlawful.

Essentially there are two points that should be considered by the judge in exercising marriage dispensation lawsuit. First, the existence of urgent reason/urgent condition as demanded by article 7 verse (2) Marriage Law. Second, the conformity of the marriage with several value (spirit of preventing child marriage, morality, religiosity, custom and culture), psychological condition, health condition and the after effects of the marriage as regulated by the explanation of article 7 verse (3) Marriage Law. Those two points are translated into several procedure and points that regulated by the supreme court regulation no 5 Year 2019 which should be exercised by the judge in marriage dispensation case. Those points are categorized as tabulated below:

Table 1. Points Exercised by Judge on Marriage Dispensation Lawsuit

Points to exercised	Legal Basis
Bride's/Groom's Health Condition that urged the marriage.	Article dan Explanation Article 7 Verse (2) Mariage Law, Article 14 point b and Article 16 point c and point h Perma 5 Tahun 2019.
Bride's/Groom's Acknowledgment and Consent for the marriage.	Article 7 Verse (3) Marriage Law, Article 14 point a dan c, Article 16 point e and i Supreme Court Regulation No 5 Year 2019.
Physical, Psychological, and financial ability of the bride/groom	Article 14 point b and Article 16 point f dan point h Supreme Court Regulation No 5 Year 2019.
Parent's acknowledgment, consent, and commitment to guide for the child marriage.	Article 7 Verse (2) and Verse (4) Marriage Law, Article 14 point c, Article 16 point i and j Supreme Court Regulation No 5 Year 2019.

Marriage Conformity with the national law, international agreement, moral and religious value, custom and local culture, and justice value that live within society.	Explanation of Article 7 Verse (3) Marriage Law, Article 17 point a and point b Supreme Court Regulation No 5 Year 2019
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Souce: The Supreme Court Regulation No 5 Year 2019

Those points are a lot more comprehensive compared to the old Marriage Law. The Marriage Law No 1 Year 1974 only stated that marriage dispensation is filed before the court by child's parents (vide article 7 verse (2) Marriage Law No 1 Year 1974).

According to analysis over hundreds of judge decision published by AIPJ2 on 2018, only 31% marriage dispensation cases are granted in bride's pregnancy/adolescent pregnancy. Other cases are agued to be granted because the child having sex with her/his partner, or the child and his/her partner relationship are prone to sexual intercourse, or the relationship is leading towards against social and religious value, or because the child and his/her partner love each other (Mahkamah Agung Republik Indonesia, 2020). The exact percentages of those reason displayed below:

Table 2. Reason To Demand Marriage Dispensation

Reason To Demand Marriage Dispensation	Percentages
Bride's pregnancy/adolescent pregnancy	31%
The child and his/her partner love each other	25%
The relationship is leading towards against religious norm	21%
The child got sex with her/his partner	16%
The relationship is leading towards against social value	8%
The child and his/her partner relationship are prone to sexual intercourse	4%

Source: Supreme Court, Pedoman Mengadili Permohonan Dispensasi Kawin

However, the analysis is based on judge decision before the promulgation of Marriage Law No 16 Year 2019 and Supreme Court Regulation No 5 Year 2019. After the promulgation of those regulations, there is increasing amount of marriage dispensation lawsuit. Several report from news show that adolescent's pregnancy is one of main reason to demand marriage dispensation. This reason prone to make judge granting the marriage dispensation lawsuit (Frđ, 2023).

The Marriage Law explains that urgent reason is the condition that leave no choice and force the marriage to be held (Ashari, 2024). The explanation is remained ambiguous and to board to implement (Samsoeri, 2024). As mentioned on article 7 verse (2) Marriage Law, it is urgent reason supported by sufficient evidence. Sufficient evident is letter or certificate that proof the

bride's/groom's age and medical letter or medical certificate to support the argument that the marriage is urgent to do. Based on the explanation, it is reasonable to conclude that urgent reason regulated by the marriage law is supposedly related to a condition of health. Therefore, article 15 Supreme Court Regulation No 5 Year 2019 authorized judge in exercising marriage dispensation case to hear or to ask for psychologist's or doctor's recommendation. Pregnancy and sexual intercourse inevitably influence mental and physical health of child. Especially when it is an unintended pregnancy, it will cause huge mental damage to the child.

Pre-marriage pregnancy often caused society and parents to force child to get married. It is a cover-up action and to adapt with the living norm or religious norm that forbid sexual intercourse before marriage. Giving birth to child without a marriage is a disgrace, unholy, and a shame for the family. Therefore, child marriage is believed as forced marriage because the spouse is forced to marry his/her partner (United Nation Populatin Fund, 2012). Even though they agree to marry, they did not have enough information about marriage and often not in legal age to make legal decision. National Commission on Violence Against Women ask the religious court to stop granting marriage dispensation especially in unintended pre-marriage pregnancy case (Komnas Perempuan, 2019).

Preventing Zina and Preserving Offspring

There are debates between fiqh scholars whether marriage is considered as a must-do obligation (wajib) or it is only an allow-to do (mubah). The popular conclusion that stated marriage is a conditional-to do. It can be a forbidden-to do (haram) if by doing so, it will harm the wife. For instance, he cannot provide wife's need or he is not able to be responsible of his role as husband, or he has an ill that will affect and harm his wife. In other hand, marriage will be a must to do obligation (wajib) if he is able to provide alimony for his wife and if he did not marry, he prone to do sex without marriage (zina) (Sabiq, n.d.). Therefore, essentially marriage is not always valued as an act of worship. Marriage is not a forever-good to do, some marriage should never be happened.

Based on previous explanation on the common effects of child marriage and the explanation of position in Islam, it can be concluded that child marriage is essentially categorized as a forbidden (haram) marriage because it prone to harm the groom and especially the bride. Even though the groom comes from a wealthy family and could provide his bride's necessity, but his child-bride is not in the condition to serve him as wife and husband. Having sex and getting her pregnant most likely will harm her health as explained before.

Despite of the obvious harm effect of child marriage, still there are many marriages dispensation lawsuit demanded before the court, especially filed before religious court. As explained before, many reasons are argued before the court as the basis to grant the lawsuit (see Table 2.). Those reasons may be categorized into preventing zina (The child and his/her partner love each other, both child are in long term dating relationship, the relationship is leading towards against religious norm and social value, the child got sex with her/his partner, the child and his/her partner relationship are prone to sexual intercourse) and Bride's pregnancy/adolescent pregnancy (Bahrul Ulum & Ahmad Muzawwir, 2023). Again, most of those lawsuits are granted by the judge.

A marriage between zina offender is allowed in Islam. There are stories that Prophet's companion (*sahabah*) instructs zina offender to marry each other after punishing them and exile both of them after marriage (Hasanah, 2018). However, this should not be the reason to allow child marriage. Child marriage is not a solution for preventing zina. Just because the child and his/her partner love each other and their relationship are prone to sexual intercourse, it is not a good reason to marry the child. Marrying a child is a harmful act so it is forbidden (haram), while preventing

zina is a must-do obligation, if there is a mixture condition between a forbidden act (haram) and a must do act (wajib), it is valued as a forbidden act (Az-Zuhaili, 2011). It is like stated on *qaidah fiqhiyyah*:

إذا اجتمع الحلال و الحرام غلب الحرام

If halal and haram are assembling, the haram prevails (Haq et al., 2009a)

It is also applied in the condition when there is a sexual intercourse before marriage. The intercourse before marriage most likely will harm a child, so it must be stopped before it causes unfixed damage to the child like getting pregnant. This action is in accordance with the *qaidah fiqhiyyah*:

الضرار يدفع بقدر الإمكان

A danger should be stopped as much as possible (Haq et al., 2009b)

According to Article 76E Child's Protection Law No 35 Year 2014, having sexual intercourse with child is categorized as a criminal act. The law enforcer can use this article to punish and separate them to prevent another sexual intercourse. In Islamic Law, this is an act to protect child's life especially the life of the girl from complication of child marriage.

In other hand, marrying a pregnant girl is most likely a must-to do to save the baby's lineage/nasab, because it is the only way provided by the law (Rizqi Tri Lestari & Jejen Hendar, 2022). If she is giving birth before or without the marriage, the baby-born will absolutely lost its right to have the lineage from its father. Although there are fiqh-debates on the categorization of child that can be claimed as having a lineage from the father. Compilation of Indonesian Islamic Law regulates that legal child is born within legal marriage or caused by legal marriage (Vide article 99 point a Compilation of Indonesian Islamic Law). In fiqh, there are debates on how far the child is born from the ijab-kabul of marriage to be legal child. Popular opinion among syafi'is scholar, a child considered as legal child if she/he born at least six months after marriage (Rofiq, 2013). However, there are opinions from another scholar's that it can be claimed as legal child if the father came with a proof. While Imam Abu Hanifah stated that the child is a legal child to the father who marry the mother even a day before the child being born (Kurniawan, 2018). It seems that Compilation of Indonesian Islamic Law adapt the opinion of Imam Abu Hanifah.

However, having sexual intercourse with the girl after she gave birth is forbidden because it will harm her. The purpose of Marrying a pregnant girl is to save the lineage of the child (*hifdz nasl*) in her womb. After the birth of the child and the lineage is kept, the purpose of the marriage is vanished. In this case, marriage is only act as a way to save the baby, it should not be the way to another harm of the wife. Child married as a harm action is allowed only to prevent another harm or bad thing to arise, so it should be done sufficiently. Like in the condition of starvation that leads someone to death possibility, it is allowed to eat pork meat sufficiently. It should stop when the danger or the starvation is gone. This is what means by *qaidah fiqhiyyah*:

ما أبيح للضرورة يقدر بقدرها

Something that allowed to prevent danger, should be adjusted to the degree of the danger (Haq et al., 2009b)

Nonetheless, marriage dispensation lawsuit based on the pregnancy condition of the bride is not guaranteed granted by the court. The marriage between a pregnant girl and her partner should consider their will and her safety after marriage. The capability of her partner should be guaranteed so the marriage potentially will be safe for the pregnant girl. Thus, the supreme court no 5 Year

2019 authorized judge to exercise many factors that probably will affect the marriage condition. Judge also authorized to exercise the commitment of their parents. It is hoped that the parents can guide the spouse and help them to create an ideal marriage despite their lack of maturity. Besides, the parents should prevent any harmful act so the marriage will not damage both or on of spouse.

Multisectoral an Multilevel Approaches

Lawrence M. Friedman stated that there are three factors that influences legal behavior. First, there are sanctions or also known as threats and promises or cost and beneficiary or reward and punishment factors. People will obey the rule or will be doing in accordance with rule because it will give the benefit or to avoid punishment, penalties and pains. These do not always come from the government, sometimes it is consequents of doing so. For instance, obeying speed limits sometimes is because there are police officer near the place so past the speed limit most likely will end with a fine from the officer. Sometimes, obeying speeds limits is that people are afraid of an accident (Friedman, 1987).

Second, the influence of social world also called the factor of peer group. Reward and punishment are not always come from the government, it is also come from the society. For instance, every guerilla is hero for someone and a deadly enemy for someone else. A government may punish the guerilla, but in the guerilla's community they are rewarded by the member. Some acts are condemned by the government but rewarded by the society. In more simple way to describe, the power of society or peer group sometimes consist of nothing more than the fear: "what will the neighbors think?"(Friedman, 1987). Moreover, someone prone to do what his society do, he sees and copy the act which live in the society. If he lives in the society that put and treat women as second-class human being, he is likely will behave and treat women as second-class human being.

Third, the internal values or conscience and related attitude. Aside from reward and punishment or peer group's influence, someone always have their own believe. People do not always do what their believe say, but people respond to this force at least sometimes. Someone may ought to obey the rule, even though not in his personal interest, merely because he believes it is right thing to do (Friedman, 1987). Someone in bus may give his seat to a standing girl despite there is no rule that force him to do so, because he believes that is a good-deed.

Considering those factors, if we see child marriage as a legal behavior, there should be an interference through those factors. Thus, it will need a multilevel and multisectoral actions to maximize the result. First, the law enforcer should determine to enforce the legal punishment for child-sexual activity. Article 76E of Child Protection Law No 35 Year 2014 stated:

"Everyone is prohibited from committing violence or threats of violence, coercion, deception, perpetrate a series of lies, or persuade the Child to do or let obscene acts were committed"

The enforcement of this article sometimes faces a rejection from the society because the case is closed based on peace process between two families. Still, enforcing this article will give a deterrence effect for the society (Vidmar, 2002). Therefore, it is hoped will prevent another child/adolescent sexual-intercourse to appear.

Similar reason also applied in the marriage dispensation lawsuit. Judge should determine the spirit of preventing child marriage in deciding the final decision of the case. The rejection of the case will show to the society that child marriage is not an easy to grant. If there are a sexual activity before marriage, judge should be authorized to inform criminal prosecutor and police department to

see if it is appropriate to punish the offender through criminal justice system. Judge also should be authorized to inform related government institutions to provide a support and to consult with the child and the family.

In the shake of creating an ideal society or ideal peer group for the child, the government should interfere the flow of information provided to the child. The child and child's family should be aware of sexual and reproductive health and rights without stimulate the child to do sexual intercourse. As we can see in today society, it is a various way to access sexual-related content through a gadget and social media (Komnas Perempuan, 2022). Regrettably, this information is easy to access even for a child without parents' control. Actually, our society is not a kind which comfortable in publicly showing sexual activity, yet many sexual contents are accessible for kids through social media.

To interfere the internal values of society over child marriage, it is necessary to reinterpret the religious Islamic value (Wahyudi & Prastiwi, 2022). Commonly, the practice of child marriage is assumed to imitate prophet's marriage with Aisha (Eka Gifriana et al., 2022). It is a famous story that the prophet (PUBH) marries Aisha in her 6 years old and having sexual intercourse in her 9 years old (Al-Asqalani, n.d.). Even though there are scholars who deny the story, this hadist most likely becomes the legitimation to marry child (Hashmi, 2022). In modern era, this hadist should be interpreted accordingly with the principle of preventing damage (*dar'ul mafasid, la dharar wa la dhirar* ect.). The act of the prophet that postponing the sexual intercourse reflects that there is something that hold the prophet. Many scholars said it is because Aisha have not menstruated until 9 years old. So, in that era menstruate is a character of women's ability to have sex. This characteristic should not be the character for women on this modern day.

The medical science has developed and show that menstruate is not always means that women able to do sexual intercourse or to get pregnant. Even if they can have sex and get pregnant, it will reduce the chance of their life after giving birth. In Aisha case, there is no medical data on her reproductive organs. Nonetheless, every human race has their own unique characteristic. Asian people commonly known to be more small comparing to other races. In other hand, Arabian people are known as a race who has bigger body. While one of requirement to have safe birth is big pelvis bone so the baby can easily get born (Adrian, 2024).

A mature Asian sometimes have smaller body and maybe smaller pelvis bone then Arabian teenager. Consequently, Arabian teenager maybe have better chance to survive in giving birth then mature Asian. This explanation is not medically guaranteed to be right, but it intends to describe that many factors that may affects the ancient tradition on child marriage in Arabic continent at the time. There are many factors to explore on the reason of Prophet's marriage with Aisha, such as the tradition at the time and her condition. People from the past most likely have different condition comparing to our condition today. Moreover, prophet's marriage is essentially different with our marriage. Prophet is the messenger of God who guided by the God, while we just common people who try to follow his path.

For a Muslim, it is a believe that the prophet unlikely will intentionally harm his wife. Prophet's act to postpone the sexual intercourse show that even after marriage, the husband cannot freely have sexual intercourse with his wife if it will harm her. The story of Aisha marriage with the prophet should not be a basis of legalization to harm child. Child marriage maybe a normal practice in the past, but by many proofs that it harms the spouse, especially the bride, it should be a normal

act to stop the practice. In making this a normal act, the government should do a massive campaign on the harmful effect of child marriage.

Based on the above explanation, there are level and actor that should do their own part so it will make a comprehensive mechanism to prevent child marriage or at least to prevent the harmful effect in child marriage.

Table 3. Multilevel and Multi Actor Approach on Preventing Child Marriage

Actor	What To Do
Court (especially religious court for muslim child)	<ul style="list-style-type: none"> - Exercising marriage dispensation lawsuit in accordance with Marriage Law and supreme court regulation. - Applying a strict criterion of urgent reason, considering that essentially child marriage will harm the child and lead to forbidden activity. - Informing related government department to support the child and to control after the case decided by the judge.
Police and Prosecutor	<ul style="list-style-type: none"> - Examining the spouse to make sure there are no sexual activity toward the child. - Based on the examination process, Police and Prosecutor decide weather the case will be prosecuted before the court or not.
Government Department	<ul style="list-style-type: none"> - A massive campaign on the damaging effects of child marriage. - Socialization towards parents on the damaging effects of child marriage, especially on child sexual activity. - Assisting Child marriage cases, before and after the court, at least until the spouse are mature (legal age) - Making sure that the child basic needs are fulfilled so they have choices rather to marriage in early age. Including to make sure the bride finished her basic education (high school)
Religious Leaders	<ul style="list-style-type: none"> - Promoting child marriage as not normal marriage, because of the recent health condition prove that it most likely will harm the groom and bride. - Promoting that marriage is a worship that rise a bid responsibility, therefore the groom and the bride in early age most likely not able to hold it. - Promoting that marriage is not just a mere worship, it is also an act of taking care each other, it can lead to harm the partner if the husband and wife are not having mature mentality.
School and Parents	<ul style="list-style-type: none"> - To provide the child with positive activity so they did not think of marriage. - Promoting that they have potential successful future, and it is not always end in marriage. - Guide the child getting through their puberty and facing their sexual desire. - Educate the child on sexual and reproductive health and rights, so they will know the consequents of having sexual intercourse.

CONCLUSION

Filing marriage dispensation to prevent zina is not the answer of child's behavior. The marriage will only be a way to harm child because it legalizes child sexual-intercourse that medically proven as unhealthy practice. Child sexual activity should be condemned, not being legalize. Legalizing the practice through child marriage and did not condemn the practice, will fertilize the sexual activity among child. It becomes an example for another child and teenager.

In other hand, rejecting marriage dispensation lawsuit from pregnant girl/woman will cut the lineage of the father. This will harm the unborn baby who did not involve in the parents doing. In the shake of preserving offspring (*hifdz nasl*) of the unborn baby, a marriage between the parents is the only way left. Again, this marriage should not cause another harm for the child. Even though child is married, the government should assist the spouse in the marriage. If the marriage most likely cause harm towards the child-spouse, the government and related law enforcer should consider to assist the divorce lawsuit and separating the spouse.

REFERENCE LIST

- Adrian, K. (2024). *Panggul Sempit dan Pengaruhnya terhadap Proses Persalinan*. <https://www.alodokter.com/operasi-caesar-lebih-aman-untuk-ibu-hamil-dengan-panggul-sempit>
- Al-Asqalani, I. H. (n.d.). *Fathul Baari* (Vol. 32). Pustaka Azzam.
- Anitasari, D. (2013). *Penghentian Perkawinan Anak Terkendala Kelonggaran Dispensasi Kawin*. <https://ykp.or.id/penghentian-perkawinan-anak-terkendala-kelonggaran-dispensasi-kawin/>
- Ashari, H. (2024). Rekonstruksi Pertimbangan Alasan Sangat Mendesak pada Perkara Dispensasi Kawin di Pengadilan Agama. *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan*, 18(2). <https://doi.org/10.35931/aq.v18i2.3389>
- Az-Zuhaili, W. (2011). *Fiqih Islam Wa Adillatuhu vol 10* (Vol. 10). Gema Insani.
- Bahrul Ulum, & Ahmad Muzawwir. (2023). ANALISIS PERTIMBANGAN HAKIM LAMA PACARAN SEBAGAI ALASAN MENDESAK MENGABULKAN PERMOHONAN DISPENSASI NIKAH DINI Study Putusan Nomor: 354/Pdt.P/2022/Pa Bangkalan. *Al-Ibrah : Jurnal Pendidikan Dan Keilmuan Islam*, 8(2). <https://doi.org/10.61815/alibrah.v8i2.283>
- Candraditya, V. J. (2023). *Soroti Lonjakan Perkawinan Anak, PSI : Karena Dispensasi Perkawinan yang Terlalu Longgar*. <https://www.tribunnews.com/nasional/2021/07/23/soroti-lonjakan-perkawinan-anak-psi-karena-dispensasi-perkawinan-yang-terlalu-longgar>
- Eddyono, S. W., Anggara, Sidauruk, R. F., Napitupulu, E. A. T., & Kamilah, A. G. (2016). *Menyingkap Tabir Dispensasi Perkawinan*. Koalisi 18+.
- Eka Gifriana, H.B.Syafuri, & H. E. Zaenal Mutaqin. (2022). Dispensasi Nikah Usia Dini: Perspektif Masalah Mursalah (Analisis Yuridis Putusan Perkara Nomor: 1635/Pdt.P/2019/Pa.Srg). *Journal of Legal and Cultural Analytics*, 1(3). <https://doi.org/10.55927/jlca.v1i3.1284>
- Frd. (2023). *15 Ribu Anak Ajukan Dispensasi Nikah di Jatim, 80 Persen Hamil*. CNN Indonesia. <https://www.cnnindonesia.com/nasional/20230117151325-20-901499/15-ribu-anak-ajukan-dispensasi-nikah-di-jatim-80-persen-hamil>
- Friedman, L. M. (1987). *The Legal System: A Social Science Perspective*. Russell Sage Foundation.

- Hamilton, M. A. (2020). *2020 Report on Child Marriage in the United States*.
- Haq, A., Mubarak, A., & Ro'uf, A. (2009a). *Formulasi Nalar Fiqh Telaah Kaidah Fiqh Konseptual* (Syahrowardi & M. I. Robani (Eds.); 5th ed., Vol. 2). Khalista.
- Haq, A., Mubarak, A., & Ro'uf, A. (2009b). *Formulasi Nalar Fiqh Telaah Kaidah Fiqh Konseptual* (Syahrowardi & M. I. Robani (Eds.); 5th ed., Vol. 1). Khalista.
- Hasanah, R. (2018). Penetapan Dispensasi Kawin Akibat Hamil Pra-Nikah Ditinjau Dari Aspek Maqashid Syari'ah. *Aktualita (Jurnal Hukum)*, 1(1).
<https://doi.org/10.29313/aktualita.v1i1.3724>
- Hashmi, J. T. (2022). *Oxford Study Sheds Light on Muhammad's 'Underage' Wife Aisha*.
<https://newlinesmag.com/essays/oxford-study-sheds-light-on-muhammads-underage-wife-aisha/>
- International Planned Parenthood Federation and The Forum on Marriage and the Rights of Women and Girls. (2006). *Ending Child Marriage: A Guide for Global Policy Action*.
- Komnas Perempuan. (2019). *Perkawinan Anak: Menutup Aib dan Tertutupnya Hak Atas Pendidikan, Ekonomi dan Kesehatan Mental, Reproduksi serta Seksual*.
- Komnas Perempuan. (2022). *Bayang-Bayang Stagnasi: Daya Pencegahan dan Penanganan Berbanding Peningkatan Jumlah Ragam dan Kompleksitas Kekerasan Berbasis Gender Terhadap Perempuan*.
- Kurniawan, A.-H. (2018). *Status Nasab dan Hak Waris Anak di Luar Nikah*.
<https://islam.nu.or.id/bahtsul-masail/status-nasab-dan-hak-waris-anak-di-luar-nikah-CiiIy>
- Mahardiani, E. W. (2023). BATASAN ALASAN SANGAT MENDESAK PERMOHONAN DISPENSASI PERKAWINAN DALAM PASAL 7 AYAT (2) UNDANG-UNDANG NOMOR 16 TAHUN 2019 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN. *Brawijaya Law Student Journal*.
<https://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/5563>
- Mahkamah Agung Republik Indonesia. (2020). *Pedoman Mengadili Permohonan Dispensasi Kawin*. Mahkamah Agung.
- OASH. (n.d.). *Trends in Teen Pregnancy and Childbearing*. Retrieved January 25, 2023, from
<https://opa.hhs.gov/adolescent-health/reproductive-health-and-teen-pregnancy/trends-teen-pregnancy-and-childbearing>
- Rizqi Tri Lestari, & Jejen Hendar. (2022). Dispensasi Perkawinan Anak dibawah Umur menurut UU Perkawinan dengan Al Maqasyid Syariah. *Jurnal Riset Ilmu Hukum*.
<https://doi.org/10.29313/jrih.v2i1.655>
- Rofiq, A. (2013). *Hukum Perdata Islam di Indonesia*. Rajawali Pres.
- Sabiq, S. (n.d.). *Fikih Sunnah Vol 3*. Cakrawala Publishing.
- Samsueroi, D. J. P. (2024). *Analisis Penerapan Peraturan Mahkamah Agung RI (PERMA) Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin. Strategi Nasional Pencegahan Perkawinan Anak*. (2020).
- Sumner, C. (2020). *Ending Child Marriage in Indonesia*.
- UNICEF. (n.d.). *Child marriage*. Retrieved January 10, 2023, from
<https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage>
- United Nation Populatin Fund. (2012). *Marrying Too Young: End Child Marriage*.
- United Nation Populatin Fund. (2015). *Girlhood, Not Motherhood: Preventing Adolescent Pregnancy*.

- Vidmar, N. (2002). Retribution and Revenge. In *Handbook of Justice Research in Law* (pp. 31–64). Kluwer Academic Publisher.
- Wahyudi, T. H., & Prastiwi, J. H. (2022). Seksualitas dan Negara: Permasalahan Dispensasi Perkawinan Anak di Indonesia. *Aspirasi: Jurnal Masalah-Masalah Sosial*, 13(2). <https://doi.org/10.46807/aspirasi.v13i2.2988>.