

CHILD PROTECTION POST THE NEW MARRIAGE LAW : HOW INDONESIAN RELIGIOUS COURT INTERPRETING THE URGENCY IN CHILD-AGE MARRIAGE

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Abstract

The amendment of the Law of Marriage in 2019 introduces the new concept of Dispensation of Marriage by providing some additional provisions: the obligations to provide the urgency of marriage and the specific supporting evidence in proving the urgency. This article aims to examine the interpretations of judges in Religious Court on defining the urgency of child-age marriage and the implementation of the supporting evidence in cases of Dispensation of Marriage. Based on the identification, the author analyzes the main questions about the protection of children's rights on those interpretations. Based on the normative legal research that examines the Rulings of Religious Court on the case of Dispensation of Marriage, this article uses the Nonprobability Sampling techniques, specifically the purposive sampling which refers to certain criteria, the author finds the inconsistencies in the interpretation of the urgency of marriage and the implementation of providing the supporting evidence, which influenced by 2 (two) factors, the Formal Regulation and the principle of judge's independence. As a result, the author suggests detailed regulations regarding the supporting medical evidence, as well as the improvement of comprehensive and equal understanding for judges about the concept of child protection. Comparing to previous studies, this article shows its originality through a broader object study and comprehensive research analysis with more emphasis on juridical aspect, therefore that arguments and conclusions are built on a strong analytical foundation.

Keywords: *Child-age Marriage; Dispensation of Marriage; Religious Court*

1. INTRODUCTION

In addition to the transformation of the minimum age requirement of marriage through Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage (*hereinafter referred to as The New Marriage Law*), the legal concept of the Dispensation of Marriage developed in comprehensively as well. Defined as the granting of a marriage permit by the court to a prospective spouse who has not reached 19 years old as the minimum age of marriage¹, the Dispensation will allow the couple to have a legal and registered marriage even

¹ Article 1 Number (5) of "Supreme Court Regulation Number 5 of 2019 Concerning Guidelines for Adjudicating Applications for Marriage Dispensation" (2019).

though they do not meet the legal age requirements. The New Marriage Law introduces the new concept of Dispensation of Marriage by providing some additional provisions which have not been regulated previously. In principle, this law sets the fundamental legal requirements of the Dispensation of Marriage, as can be found in article 7 :

(3) *In the event of the exemption of the minimum age limit provisions as referred to in paragraph (1), the parents of the prospective spouse may request a **dispensation** from the Court by providing the “very urgent” reason and proving by sufficient supporting evidence.*

Furthermore, this Law elaborates the provisions into more specific requirements, which are:

1. The condition for “very urgent” reasons is defined as a situation where there is no other choice and there are compelling circumstances for a marriage²,
2. The requirements for sufficient supporting evidence are defined in 2 (two) forms³ :
 - a. The certificate proving that the age of the prospective spouse is still under the provisions of the law, and
 - b. The medical certificate that supports the parent’s statement about the urgency of having marriage for their children

Based on these requirements, the common practice in which the Ruling of the Religious Court in the case of Dispensation is usually only decided based on the judge’s consideration without any strict obligation to prove the urgency of marriage, should not be continued⁴. The judge who examines the case of Dispensation of Marriage should ensure that every case shows urgency and is proved by the supporting evidence as stipulated in article 7 above.

In response to the amendment, especially for paragraph (2), the Supreme Court issues the Supreme Court Regulations No. 5 the year 2019 on the Guidelines for Adjudicating Applications for Dispensation of Marriage (*hereinafter referred to as Supreme Court Regulations No. 5/2019*), as the specific procedural law in case of Dispensation of Marriage. This regulation tries to fill the legal absence regarding the process of adjudicating the Dispensation of Marriage post the New Marriage Law. These regulations stipulate that the judicial process for Dispensation of Marriage should be executed based on the principles of the best interests of the child, the right to life and development of the child, respect for the opinion of the child, respect for human dignity, non-discrimination, gender

² Elucidation of Article 7 Paragraph (2) of Indonesia, “Law No. 16 of 2019 Concerning Amendments to Law No. 1 of 1974 Concerning Marriage” (2019).

³ *Ibid.*

⁴ Before Law No. 16/2019 was enacted, the requirements for the Marriage Dispensation were found in various Regional Regulations (Peraturan Daerah/Perda). These regional regulations stipulate additional requirements that are imposed on parents when applying for a Marriage Dispensation for their child in the form of: 1. Requirements to Seek the opinion of a child psychologist or counselor before applying for Marriage Dispensation. 2. Requirements to carry out a health check at a hospital or health center. 3. Requirements to conduct consultations with a certain integrated service agency. See Haniah Ilhami, “Relevansi Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 Dengan Adanya Dispensasi Kawin Dalam Upaya Mencegah Perkawinan Usia Anak,” *Jurnal Konstitusi Volume 17, Nomor 2, Juni 2020* 17 (2020), <https://doi.org/10.31078/jk1723>. the requirements for the Marriage Dispensation were found in various Regional Regulations (Peraturan Daerah/Perda)

equality, equality before the law, justice, and legal certainty. The application of these principles addresses the protection of children's rights, increases parental responsibility in preventing child marriage, and identifies the presence or absence of coercion behind the submission of a Dispensation of Marriage application. From the perspective of the justice system, Supreme Court Regulations No. 5/2019 also standardizes the process of adjudicating the case of Dispensation of Marriage in court.

As a guideline on adjudicating the Dispensation of Marriage, Supreme Court Regulations No. 5/2019 comprehensively regulates the provisions of the procedural law for this case for every phase of the trial, starting from the submissions of application, up to the declaration of the Ruling as the court's decision. Supreme Court Regulation No. 5/2019 also regulates in detail the provisions regarding the completeness of the application file, an authorized party/parties to apply the Dispensation to the court, language guidelines and attributes that must be used by the judge, the judge's obligations in conducting trial examinations, up to the qualification requirements of the judge who may adjudicate the case of Dispensation of Marriage.

Regarding the requirements of providing the urgency of marriage, this regulation stipulates the obligations of the judge to examine the substance of each case carefully⁵ by exploring the background of each prospective spouse⁶, hearing the testimony of all parties including the children themselves⁷, confronting the consent of the children about the marriage⁸, and even by considering the age-gap between the prospective spouse. By doing these obligations⁹, the Supreme Court Regulations No. 5/2019 tries to put the best interests of the child as the fundamental objective when deciding to execute the case of Dispensation of Marriage.

As the provisions have been explicitly regulated, nonetheless, still left several problems, specifically in the interpretation of the urgency of marriage and the consistency in using the supporting evidence to prove that urgency. The absence of clear definitions of the term **“very urgent”** as mentioned in the New Marriage Law arising the varied interpretations of the urgency itself. In some cases in Religious Court, for example, judges interpret the urgency of marriage as the condition where the girl is in pregnancy. In this case, the judge argues that the pregnancy shows the urgency of marriage, thus the Dispensation of Marriage should be executed on this matter¹⁰. However, in other cases, judges interpret the urgency of marriage as the condition of inseparable relations

⁵ Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.

⁶ Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.

⁷ Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.

⁸ Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.

⁹ Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.

¹⁰ As found in the Ruling of Muara Bulian Religious Court No. 26/Pdt.P/2020/PA. Mbl, Ruling of Baubau Religious Court No.46/Pdt.P/2020/PA.Bb., Ruling of Buntok Religious Court No.72/Pdt.P/2020/PA.Btk (n.d.).

between the children which it had raised the concern of each parent. In this case, the judges accept this condition as the urgency of marriage and executed the Dispensation, even though the girl was not pregnant¹¹.

The next issue is about the consistency in using sufficient supporting evidence to prove the urgency of marriage. Some court Rulings, for example, accept and decide the cases based on “very urgent” reasons even though the party of the case did not provide any sufficient supporting evidence. To prove the urgency, the judges accept only the statement of the parties in front of the court, either the statement that the girl is already pregnant¹², or the statement that the children have an inseparable relationship that leads the sexual relations without causing the pregnancy¹³, or even a condition where a baby has been born from sexual intercourse between the prospective spouse¹⁴. All of this information was stated in front of the court and accepted by the judge even though it was not completed with sufficient supporting evidence.

Those conditions are the main topics in this article. To answer the **first** question about the judge’s interpretation of the urgency of marriage, this article identifies those matters from the Rulings of Religious Court in the Dispensation of Marriage. This article continues the research on the **second** question on how the inconsistency of using sufficient supporting evidence in examining the case of Dispensation of Marriage is. In conclusion, the results of the analysis help the author to answer the **third** question regarding the legal protection of children post the New Marriage Law.

Identifying the urgency and the inconsistency, this article is compiled from **normative legal research**¹⁵ or also referred to as **doctrinal legal research**, research that focuses on examining the rule of law, principle, concept, or doctrine which involves a systematic exposition, analysis, and critical evaluation of the rule of law, principle or doctrine and the relationship between them. In analyzing the legal questions, this article applies the theory of **Effectiveness of Law**, a theory that examines and analyzes the success, failure, and factors that influence the implementation and application of the law¹⁶. Initiated by Anthony Allot in his article “*The Effectiveness of Law*” in 1981¹⁷, this theory formulates measures of legal effectiveness in 3 (three) degrees of compliance; (1) law is preventive, (2) law is curative, and (3) law is facilitative¹⁸. This theory is applied

¹¹ As found in the Ruling of the Muara Teweh Religious Court PA No.19/Pdt.P/2020/PA. Mtw, Ruling of Rantau Religious Court No.20/Pdt.P/2020/PA Rtu, and Ruling of Kandangan Religious Court No.27/Pdt.P/2020/P.Kdg (n.d.).

¹² As found in the Ruling of Kotabumi Religious Court No.1/Pdt.P/2020/PA.Kim, Ruling of Batulicin Religious Court No.207/Pdt.P/2020/PA.Blcn, the Ruling of Namlea Religious Court No.46/Pdt.P/2020/ PA.Nla (n.d.).

¹³ As found in the Ruling of Koto Baru Religious Court No.2/Pdt.P/2020/PA.Kbr, the Ruling of the Mempawah Religious Court No.13/Pdt.P/2020/PA. Mpw, Ruling of Banggai Religious Court No.19/Pdt.P/2020/PA.Bagi (n.d.).

¹⁴ As found in the Ruling of Sukoharjo Religious Court No.126/Pdt.P/2020/PA. Skh (n.d.).

¹⁵ Normative Legal Research is often referred to as a study of written legal regulations or existing legal materials. See Suratman dan Philips Dillah, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2015), 51.

¹⁶ Salim HS & Erlis Septiana Nurbani, *Penerapan Teori Hukum Pada Tesis Dan Disertasi : Buku Pertama* (Jakarta: RajaGrafindo Persada, 2018), 303.

¹⁷ Anthony Allot, “The Effectiveness of Law,” *Valparaiso University Law Review* 15, no. 2 (1981): 229–42.

¹⁸ Allot gives an example of each compliance, which is (1) designed to discourage behavior that is disapproved of, one can see if that behavior is indeed diminished or absent, (2) operating ex post facto to rectify some failing or

with a **case approach** by analyzing cases that have been decided and/or determined by the State Courts and Religious Courts that already have permanent legal force¹⁹. This approach will help researchers to explore the *ratio decendi* or the considerations behind the case.

To answer the questions in a measurable and systematic process, the research is divided into 2 (two) stages, as explained in the following description:

1. First Stage: the Identification of Rulings of Religious Court in the case of Dispensation of Marriage

This stage focuses to answer the first and second questions, by examining the authoritative primary legal materials, specifically the Rulings of Religious Court which are selected through non-probability sampling techniques. Non-probability sampling is a sampling that does not provide equal opportunities for each element of the population to be selected as a sample. This technique is used because the author determines the criteria for the sample, thus will not use all of the Rulings of Religious Court as a data source. Specifically, the research uses Purposive Sampling in which the author filters the source by certain criteria; (1) The Rulings taken from the Religious Courts, not the District Courts, (2) The Rulings decided to post the New Marriage Law, throughout 2020 in particular, (3) The Rulings choose the top 3 (three) provinces in terms of the number of the Dispensation of Marriage in Religious Courts in 2020, which are the East Java, Central Java, and West Java, and (4) The Rulings have been publicly published by the Supreme Court through the Decision Directory Page of Electronic Document Publication Decisions of all Courts in Indonesia. Based on that criteria, the author Based on these criteria, the authors calculate the samples on the Slovin formula and choose 104 Rulings of Religious Court which in detail divided into 41 Rulings of Religious Court in East Java, 17 Rulings of Religious Court in Central Java, 44 Rulings of Religious Court in West Java, and 2 Rulings of Religious Court in other regions.

2. Second Stage: Juridical Analysis of Identification Results

This stage focuses to answer the **third** question by elaborating on the findings from the previous stage. The author analyzes all data descriptive-analytically, within the scope of a legal systematic study that examines the basic principle of law, the legal society, legal subjects, rights and obligations, legal events, legal relations, and legal objects, to find child protection through the implementation of new marriage law. At this stage, findings from the previous stage are confirmed and compared with the secondary data

injustice or dispute, we can see how far it serves to achieve these ends, (3) providing formal recognition, regulation, and protection for an institution of the law, such as marriage or contracts, presumably the measure of its effectiveness is the extent to which the facilities are taken up by those eligible to do so and the extent to which the institution so regulated is insulated against attack. See Ibid. Also see D.T. Cahyaningsih, "Mengurai Teori Effectiveness of Law Anthony Allot," *Journal RechtsVinding Online* 2089–9009 (2020).

¹⁹ Peter Mahmud Marzuki stated that the case approach is not the same as a case study. A case study will study a specific case using various legal aspects, while the case approach is an attempt to examine several cases that have similar issues so that they become references to the issue in question. See Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenadamedia Grup, 2016), 134.

research, including primary legal materials and secondary legal materials, to find the correlation and relevance between *das sollen* (normative legal rules that explain how the law should apply), with *das sein* (the law in action).

This article provides a comprehensive description of the implementation of the requirements for very urgent reasons in the cases of Dispensation of Marriage, therefore it will evaluate and contributes to the development of the Indonesian legal system, particularly in the marriage law and procedural law in the Religious Courts. To explain the originality of this study, the author compares this article with other similar topics, which is the article by Mansari *et.al.*, “Concretization of Urgent Reason and Sufficient Evidence in Providing Marriage Dispensation for Children by Judge”, *Nurani: Jurnal Kajian Syari’ah dan Masyarakat*, Vol. 20, No.2, December 2020²⁰. Mansari *et.al.* describes the implementation of the Marriage Law of 2019 within the Mahkamah Syar’iyah Suka Makmur and the Mahkamah Syar’iyah Tapaktuan and concludes 4 (four) interpretations of very urgent reasons by the e Mahkamah Syar’iyah referred to. Compared this article, the difference is seen in the object and nature of the research, in which this article has research objects in a wider scope with a larger number, therefore this article is able to identify the very urgent reasons and their evidence more comprehensively. In addition, this article does not only describe the findings, but also proceed with a juridical study to examine the results of whether the results of the identification of the decisions of the Religious Courts are in accordance with the principles of justice, expediency and legal certainty. Another comparison is the article written by Ilma, Mughniatul, “Regulasi Dispensasi dalam Penguatan Batas Usia Kawin bagi Anak Pasca Lahirnya UU No.16 tahun 2019”, *Al-Manhaj : Jurnal Hukum dan Pranata Sosial Islam*, Juli 2020²¹. Mughniatul in his writings argues that the provisions on the Dispensation

²⁰ Mansari Et.all, “Concretization of Urgent Reason and Sufficient Evidence in Providing Marriage Dispensation for Children by Judge,” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 20, no. 2 (2020) Tulisan yang sama juga dipublikasikan dalam bahasa Indonesia pada <https://www.ms-blangpidie.go.id/148-uncategorised/artikel/720-konkretisasi-alasan-mendesak-dan-bukti-cukup-dalam-memberikan-dispensasi-perkawinan-bagi-anak-oleh-hakim> dengan judul Konkretisasi Alasan Mendesak dan Bukti Cukup dalam Memberikan Dispensasi Perkawina bagi Anak oleh Hakim. Data diakses pada 15 Maret 2021.

²¹ Mughniatul Ilma, “Regulasi Dispensasi Dalam Penguatan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No.16 Tahun 2019,” *Al-Manhaj : Jurnal Hukum Dan Pranata Sosial Islam* 2, no. 2 (n.d.): 133–66. there was a significant increase in the number of marriage dispensation requests. This is due to the age limit for marriage for women who were raised to 19 years. Changes to the regulation were made to overcome the emergencies of child marriages that occurred in Indonesia. Unfortunately, the increase in the number of dispensation requests was not accompanied by strict rules, so that the majority was granted by the judge. Existing rules, both Law No. 16 of 2019 and PERMA No. 5 of 2019 has a legal loophole that makes marriage dispensation permits still wide open using any reason. This means that the practice of underage marriages after the revision of the Marriage Law will continue to occur if the existing rules do not legitimize the reasons behind submitting a marriage dispensation request. The reasons for submitting a dispensation request must be limited to reasons that are very urgent to avoid multiple interpretations. Therefore, there is a need for rules on dispensation that clearly state the main reasons which can be submitted by the parties and also which can be granted by the judge. This is intended to create legal certainty and minimize the practice of underage marriages that occur due to the dispensation of marriage.” author: [{“dropping-particle”:””, “family”:”Ilma”, “given”:”Mughniatul”, “non-dropping-particle”:””, “parse-names”:false, “suffix”:””}], “container-title”:”Al-Manhaj : Jurnal Hukum dan Pranata Sosial Islam”, “id”:”ITEM-1”, “issue”:”2”, “issued”: {“date-parts”: [[“0”]]}, “page”:”133-166”, “title”:”Regulasi Dispensasi dalam Penguatan Batas Usia Kawin bagi Anak Pasca Lahirnya UU No.16 tahun 2019”, “type”:”article-journal”, “volume”:”2”}, “uris”: [“http://www.mendeley.com/documents/?uuid= fd237e22-bef8-433b-bcd3-7325d973d914”, “http://www.mendeley.com/documents/?uuid= 8e84dbc1-fc2c-47be-b09f-248224e7486b”]], “mendeley”: {“formattedCitation”:”Mughniatul Ilma, “Regulasi Dispensasi Dalam Penguatan Batas Usia

of Marriage in the 2019 UUP are incomplete because there is no standardization and limitations on the interpretation of very urgent reasons, resulting in many requests to the Court for a variety of reasons that are less urgent which result in the legalization of underage marriages. The author basically agrees with Mughniatul's opinion, but the author builds her argument through a study of the decisions of the Religious Courts, and followed by a juridical analysis related to the principles of justice, benefit, and legal certainty, therefore this article has a strong foundation, not just based on mere assumptions. Referring to the comparisons, this research has substantive differences from existing research so this research can be said to be original.

2. ANALYSIS AND DISCUSSION

2.1. The Interpretation of Urgency in The Case of Dispensation of Marriage

The requirement to provide the “very urgent” reason is a new provision in the Dispensation of Marriage system which was introduced through article 7 of the New Marriage Law. Previously, the requirements for applying the Dispensation of Marriage were only limited to fulfilling administrative requirements, including the Applicant's Marriage Certificate, National Identity Card (KTP), Family Card, Child Birth Certificate, and Marriage Registration Refusal Letter from the local Religious Affairs Office (KUA). After the New Marriage Law, the applicant for the Dispensation of Marriage was subjected to prove the existence of any “very urgent” condition that leads to no other choice for the parent but to perform the marriage for the children who do not meet the marriage age limit. In principle, this requirement was regulated to guarantee the best interests of the child, through the implementation of a justice system that protects children's rights²². In these additional requirements, the law tries to limit child-age marriage only for an emergency²³. Without a state of emergency, marriage between those who have not met the age limit should be avoided, as confirmed in the consideration of Supreme Court Regulation No. 5/2019 which expressly states that “marriage is only permitted for those who have met the age requirements”

As a new provision, this is not able to be implemented consistently for every case in court due to the absence of a specific definition and criteria to assess the condition of the urgency of marriage. Article 7 of the New Marriage Law which states that “...a *very urgent reason is defined as a situation where there is no other choice and it is very necessary*

Kawin Bagi Anak Pasca Lahirnya UU No.16 Tahun 2019,” <i>Al-Manhaj : Jurnal Hukum Dan Pranata Sosial Islam</i> 2, no. 2 (n.d).

²² Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.

²³ Child marriage is believed to have negative implications for the continuity of the nation's generation, including the potential for failure to continue education, the potential for increasing domestic violence, the potential for increasing maternal mortality, the potential for increasing child mortality, and the potential for economic losses. See Kementerian Perencanaan Pembangunan Nasional/ Badan Perencanaan Pembangunan Nasional (Bappenas), *Strategi Nasional Pencegahan Perkawinan Anak* (Jakarta: Kementerian Perencanaan Pembangunan Nasional/ Badan Perencanaan Pembangunan Nasional (Bappenas), 2020), 26–27.

to have a marriage...” is not sufficient enough to explain what and how the urgency of marriage should be proved in front of the court. As the procedural regulations, Supreme Court Regulations No. 5/2019 does not stipulate specific guidelines as a reference for determining the urgency of marriage as well.

These conditions affect the various interpretations by judges on the criteria of the urgency of marriage. This research studies 104 Rulings of Religious Court on the case of Dispensation of Marriage, and finds 3 (three) main conditions interpreted as the urgency of marriage, which are **first**; the urgency of marriage as the condition of the inseparable relation between the children in which it had raised the concern of each parent, **second**; the condition on which the upcoming bride has already been pregnant, and **third**; the girl had given birth to a child as a result of her sexual relationship with the prospective husband.

To elaborate, each interpretation is explained as follows:

- a. The urgency of marriage is interpreted as a condition of an inseparable relationship between the children which it had raised the concern of each parent

This interpretation is found in 64.5 % of the Rulings of Religious Court, which concluded from 26 Rulings of Religious Court in East Java, 5 Rulings of Religious Court in the Central Java region, 33 Rulings of Religious Court in West Java, and 3 Rulings of Religious Court in other regions. In all the Rulings that use this reason, the condition of an inseparable relation was explained from the beginning by the parent/guardian as the Applicant when submitting the application to the court. Furthermore, in the trial process, this condition was re-admitted by all parties, including the children as the prospective spouse, their parents/guardians, as well as the witnesses of the case. In the majority of cases, the urgency is reinforced by the testimony of the parties that the prospective husband and his family have proposed to the girl and her family and even have set a wedding date. The combination of these 2 (two) conditions is accepted by the judge as to the interpretation of the urgency of marriage, in which there is no other choice but to have the marriage even though the prospective spouse does not meet the legal requirement of the minimum age of marriage.

- b. The Urgency of marriage is Interpreted as the Pregnancy of the girl as the prospective wife

The pregnancy of the girl is the second most common interpretation with a percentage of 34.7 % from all Rulings examined, as found in 15 Rulings of Religious Court in East Java, 10 Rulings of Religious Court in Central Java, and 11 Rulings of Religious Court. In this interpretation, the girl has become pregnant from sexual relations with the prospective husband. However, in contrast to the previous interpretation, the reason for being pregnant does not always submit from the beginning of the application to the Court. In several rulings, for example, the Applicant initially only admitted that there had been an inseparable relation between the children, as found in the Ruling of Bangil

Religious Court No. 207/Pdt.P/2020/PA Bgl, Ruling of Purworejo Religious Court No. 344/Pdt.P/2020/ PA Pwr, Ruling of Salatiga Religious Court No. 194/Pdt.P/2020/ PA Sal and No. 201/Pdt.P/2020/PA Sal, Ruling of Depok Religious Court No. 88/Pdt.P/2020/ PA Dpk, and Ruling of Subang Religious Court No. 442/Pdt.P/2020/PA As. The pregnancy then was discovered by the judge during the examination at the trial, either from the confession of the prospective spouse or based on the statement of the witness.

- c. The Urgency of Marriage is interpreted as the condition when a child has been born from the relation between the prospective spouse

This is the least interpretation found in the research, which is only 0.9 % of all Rulings examined. In this Ruling, the judge does not only consider the conditions of the prospective spouse, but also the best interest of the children who have been born from the relationship between them. In this condition, the urgency is interpreted as an effort to provide legal protection to the child born from this relationship.

As it has been interpreted differently, however, the divergence of interpretations does not affect the imperativeness of this requirement. Refers to the provisions of the New Marriage Law which state that “... *the parents of the prospective spouse may request a **dispensation** from the Court by providing the “very urgent” reason and proved by the sufficient supporting evidence...*”, the requirements of having the urgency for the marriage is imperative and substantive for every case of applied to the court. This means that the Dispensation will be granted only if the party can state the reason for urgency in their case. The urgency should not only be presented as a formal reason in the application but should be proven in front of the court. The judge should examine the veracity of the urgency before deciding to grant the Dispensation. If later in the trial, the judge does not find the urgency, then the application is considered a legally defect and the application cannot be accepted.

The imperativeness of providing the urgency can be seen in several Rulings which reject the application for Dispensation for Marriage. In some Rulings, the judge rejected the application even though the applicant had stated the urgency of the marriage. In the Ruling of Muaradua Religious Court No. 12/Pdt.P/2020/PA Mrd, the Ruling of Klaten Religious Court No. 311/Pdt.P/2020/PA Klt, and the Ruling of Sengkang Religious Court No. 320/Pdt.P/2020/ PA Skg, for example, the judge refused and decided that the application for Dispensation for Marriage could not be accepted or *niet ontvankelijke verklaardeven* even if it had been submitted by showing the urgency in the application. The judge’s refusal was concluded from the in-depth examination of the children, in which the judge clarified that there was no urgency for the marriage. In the Rulings, the girl confessed in the hearing that she did not want to have a marriage. From this statement, the judge then decided that there was no urgency, therefore the case was rejected. In detail, those rejected cases are shown as follows:

Table 1. Rejected Dispensation of Marriage from Religious Court

	The reason used by the Applicant	Judge's Consideration to Reject the case
Ruling No. 12/ Pdt.P/2020/PA Mrd	Inseparable relation between children	The children have never had sex and the upcoming bride is not pregnant
Ruling No. 311/ Pdt.P/2020/ PA Klt	Inseparable relation between children	The children stated that they were not ready to marry and were willing to wait until they had met the requirements for the marriage age limit (19 years)
Ruling No. 320/ Pdt.P/2020/ PA Skg	The inseparable relationship between the children and the upcoming groom has been proposed to the family	- The girl is not pregnant - In their statement, the children as prospective spouses stated that the marriage plan was only an arranged marriage between their parents

Source: Processed from secondary data

The three Rulings above show the imperativeness of the provision to provide the urgency of marriage as the substantive requirement in the application of the Dispensation of Marriage. Not only must it be stated in the application, but the reasons for being urgent should also be able to verify by the judge through examination at trial. If the judge does not find the urgency, the application will be declared legally defect and rejected (*niet ontvankelijke verklaard*)

2.2. Inconsistency in Using The Supporting Evidence to Prove the Urgency

Regarding article 7 of the New Marriage Law, the provision to provide the urgency of marriage is followed by the obligation to complete the application of the Dispensation with sufficient supporting evidence. This article divides the sufficient supporting evidence into 2 (two) types which are, **first**; the evidence of age in proving that the prospective spouse does not meet the age requirement of marriage, and **second**; the evidence of the health condition in proving the urgency as stated by the parent in the application. In practice, the author finds an inconsistency in the implementation of this evidence, specifically on the second type of evidence. In some Rulings, for example, the requirement for this evidence is implemented imperatively, wherein the applicant is required to complete the application with a medical certificate from a hospital, or independent midwife, or the community health center. The certificate was considered by the judge to grant the Dispensation of Marriage. However, in other Rulings, the judge still grants the Dispensation of Marriage even though the applicant was not able to complete the application with that evidence.

In detail, the implementation of the provisions of the evidence explains as follows:

a. Supporting Evidence on the Age of prospective spouse

The requirement to complete the application with this evidence is regulated to prove the actual age of the prospective spouse is true and does not meet the minimum age requirement²⁴. As an administrative requirement, Supreme Court Regulations No. 5/2019 stipulates the type of evidence of age, which are²⁵ :

- 1) Identity card of the prospective spouse, either in the form of an Identity Card (ID) or a Birth Certificate
- 2) The latest education certificate and/or certificate of the current education institution of the children as a prospective spouse
- 3) Other documents that explain the identity and educational status of the child

The three documents are applied as facultative evidence, as the applicant does not have to provide all of that evidence. In certain cases, for example, if the prospective spouse is not yet 17 years old, then an ID card is not required, and the age will be proven by other evidence, such as an education certificate.

In practice, the author finds consistency in the implementation of this evidence. All Rulings in this research apply this evidence to prove that the prospective spouse indeed does not meet the age requirements. Furthermore, the evidence is then re-examined in the trial as the judge's consideration to decide and grant the Dispensation.

b. Supporting Evidence on Health Conditions

In supporting the statement of the urgency of the marriage, the New Marriage Law sets 2 (two) requirements on this evidence²⁶. **First**, the evidence should be issued by a healthcare practitioner, and **second**, the contents of the evidence should demonstrate the urgent medical condition of the prospective spouse which requires the marriage to be performed immediately. In the trial, this evidence is used by the judge to identify the child's psychological condition, health, and preparedness for marriage. Through this evidence, the judge will consider the urgency of the marriage from the medical perspective.

In contrast to the previous evidence which is implemented consistently, the evidence on health conditions has a different pattern of implementation. Differences were found both in the format of the medical certificate, as well as in the imperativeness of this evidence as to the basis for the judge's consideration. In the first form, the difference emerges as the consequence of the absence of specific provisions regarding the format of this evidence, both in the New Marriage Law and in Supreme Court Regulation No. 5/2019. Compared to the evidence of age in which the regulations already set the specific format, either in the form of an ID Card or other documents, the evidence on the health conditions is provided by the party in various formats, concluded as follows:

²⁴ Indonesia, Law No. 16 of 2019 Concerning Amendments to Law No. 1 of 1974 Concerning Marriage.

²⁵ Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.

²⁶ Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.

- 1) Certificate from the Hospital/ Health Center/ Midwife/ Maternity Hospital, which explains the pregnancy of the girl
- 2) Certificate from the Hospital / Health Center / Midwife / Maternity Hospital, which explains the girl is in good health
- 3) Psychological Assessment
- 4) Documents on Obstetric History
- 5) Ultrasound-printed pictures
- 6) Certificate of TT Immunization

Another inconsistency was also found in the implementation of using this evidence. In some Rulings, the applicant completes the application with several different documents at once to explain both the physical and psychological conditions of the children as a prospective spouse. In the Ruling of the Malang Regency Religious Court No. 1838/Pdt.P/2020/PA Kab. Mlg, Ruling of the Salatiga Religious Court No. 187/Pdt.P/2020/PA Sal, Ruling of the Salatiga Religious Court No. 194/Pdt.P/2020/PA Sal, and Ruling of the Salatiga Religious Court No. 223/Pdt.P/2020/PA Sal, for example, the applicant completes the application with 2 (two) different certificates, which explain the pregnancy of the girls as the prospective wife, and a psychological assessment certificate which informs that the prospective wife is psychologically prepared to have a marriage. While in other Rulings, the Applicant only provides the application with only 1 (one) document explaining the physical condition of the upcoming bride. These conditions are found in the Ruling of the Gresik Religious Court No. 39/Pdt.P/2020/PA GS which shows a medical certificate from the independent midwife informing the pregnancy of the girl, the Ruling of the Malang Regency Religious Court No. 2023/Pdt.P/2020/PA Kab.Mlg which was completed with the medical certificate from a doctor, as well as the Ruling of the Depok Religious Court No. 88 /Pdt.P/2020/PA Dpk which provides the evidence with the ultrasound printed picture of the upcoming bride. These two patterns, both the Rulings with physical and psychological certificates and the Rulings that only attach one type of medical evidence, are accepted by the judge and considered equally in deciding to grant a the Dispensation of Marriage.

The next inconsistency is found in the imperativeness of this evidence. Formally, Article 7 of the New Marriage Law stipulates the medical certificate as imperative evidence that should always be submitted in every application to prove the urgency of marriage. Furthermore, referring to the same article, the substance of this evidence should explain and prove the health condition of the prospective spouse, in which the condition brings them to immediate marriage, even though they do not meet the minimum age requirements. However, the author finds that in most Rulings of Religious courts, the judge still granted the Dispensation without any medical evidence at all. This is found in the Ruling of Bangil Religious Courts No.0002/Pdt.P/2019/PA BGL, the

Ruling of Gresik Religious Court No.47/Pdt.P/2020/PA GS, the Ruling of Purworejo Religious Court No.331/Pdt.P/2020/PA Pwr, and the Ruling of Sumedang Religious Court No. 452/Pdt.P/2020/PA Smdg. All of these rulings do not indicate the existence of a medical certificate in proving the urgency of marriage. In the judge's consideration, the judge will accept the condition stated by the applicant after being confirmed directly in the hearing of children and witnesses. Based on those statements, the judge will grant the Dispensation even though it is not completed with medical evidence.

On contrary, in other Rulings of the Religious Court, the absence of evidence of health condition affects the judge's consideration in deciding the case. In the Rulings of Subang Religious Court No. 400/Pdt.P/2020/PA, for example, the parent applied the dispensation without providing any medical evidence at all. In the hearing, the trial found that the girl was already pregnant. However, considering that the applicant did not provide the mandatory medical evidence, the judge then rejected the case, even though the pregnancy as urgency has been stated by the parties. Correlate to that case, the Rulings of Sengkang Religious Court No. 320/Pdt.P/2020/PA Skg rejected the case as well based on the consideration that the applied medical certificate did not explain any urgent health condition, thus only mentioning that the girl was in good health. Based on this information, the judge concluded that there was no urgency to marriage and that the case should be rejected.

In the meantime in the other case, the Rulings which were completed with a medical certificate also show the inconsistency regarding the substance of the information in that certificate. Referring to Article 7 of the New Marriage Law, the evidence of health condition should demonstrate the urgent medical condition of the prospective spouse which requires the marriage to be executed immediately. This research finds some Rulings use the medical certificate explaining that the prospective spouse is in a good health, without any further information regarding the urgency to have a marriage, as found in Ruling of Malang Regency Religious Court No. 2044/Pdt.P/2020/PA Kab Mlg, Ruling of Ciamis Religious Court No. 763/Pdt.P/2020/PA Cms, and the Ruling of Tasikmalaya Religious Court No.914/Pdt.P/2020/PA Tsm. In conclusion, the function of the evidence of health conditions in proving the urgency of marriage is not being fulfilled. In this case, the judge still grants the dispensation even though the evidence does not meet the substance requirements.

The contrast decision on the Rulings of Religious Court above shows the inconsistency in the implementation of sufficient supporting evidence, and the medical evidence in particular, as stipulated in the New Marriage Law. Some Rulings accept the case and granted the dispensation without any medical evidence, or the applied evidence did not meet the substance requirements. In other cases with the same condition, the case was rejected for the reason that the case did not meet the legal requirements.

2.3. Does the Interpretation of The Urgency in The Case of Dispensation of Mar-

riage Provide Child Protection?

Child protection is an objective of the New Marriage Law, specifically on the obligation to prove the urgency of marriage and completed with sufficient supporting evidence. In the national legal system, child protection is defined as all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally under human dignity and protection from violence and discrimination²⁷. Child protection guarantees are provided by the state to all children without exception, including children in special situations and conditions, one of which is children in conflict with the law. This article finds that in some cases, the interpretation of the urgency and the obligation of using supporting evidence has been able to provide guarantees for child protection. Refers to the measurement of child protection formulated by Maidin Gultom, the author applies those measures to the application of the Dispensation of Marriage in the New Marriage Law, and concludes with the following findings:

- a. The interpretation of the urgency of marriage and the obligations to provide sufficient supporting evidence focuses on providing benefits for children as the prospective spouse

The provision that requires the Dispensation of Marriage should prove the urgency of marriage is an effort to ensure that the choice to enter into marriage is the absolute last option and is given with the consideration that the marriage should save the child from the existing conditions that potentially harm his/her future. The benefit for children is the main consideration of the judge in every Ruling on the Dispensation of Marriage. In all Rulings, the judge implemented the following principle of Islamic Law :

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

Meaning: rejecting mafsadat (damage) takes precedence over searching for the mashalah (benefit).

This principle is always used in considering the urgency, both when there was inseparable relation between the children and the pregnancy of the girl. Heading these situations, the judge should choose the best interest of the child, between giving them the Dispensation to perform the legal and registered marriage, or not giving them Dispensation and they will continue their situation without being legally bound. Considering that the second choice will affect the worse condition for the couple, for example, if the couple decides to have an unregistered marriage²⁸, by applying this Islamic principle, the judge accepts and grant the dispensation.

²⁷ Article I number 1 of Indonesia, "Law No. 35 of 2014 Concerning Amendments to Law No. 22 of 2002 Concerning Child Protection" (2014).

²⁸ The unregistered marriages will injure the rights of the children and at the same time provide no guarantee of protection for them because it does not has legal force. See L Safira, S D Judiasih, and ..., "Perlindungan Hukum Terhadap Anak Yang Melakukan Perkawinan Bawah Umur Tanpa Dispensasi Kawin Dari Pengadilan," *ACTA DIURNAL Jurnal ...* 4 (2021): 210–25.

- b. The interpretation of the urgency of marriage and the obligations to provide sufficient supporting evidence prioritizes the perspective of regulated interests, not those of regulating interests

The additional requirements of Dispensation of Marriage place the interests of the child as the main focus in case considerations. The obligation to prove the urgency of marriage, for example, should be able to show that the condition of the prospective spouse is an emergency whereas they do not have any other choice but to have the marriage. Likewise, the provisions of supporting evidence should explain the condition of the child's actual age and health condition. In the trial, guarantees for the protection of the child are also provided through the judge's obligation to listen directly to the child's statement before the trial, including confirming the urgency applied by the parent/guardian of the child in the application to the court.

- c. The interpretation of the urgency of marriage and the obligations to provide sufficient supporting evidence tries to present the correct image of the child

This can be seen in the requirements for supporting evidence, especially the medical certificate which explains the urgency from the health perspective. This medical certificate describes an objective and real image of the child, both physically and psychologically. This description helps judges to consider the case, and whether to grant or reject the application. The urgency mentioned by the parent in his/her application will be confronted through this evidence, to guarantee that the given Dispensation of Marriage is really for the best interest of the child.

- d. The interpretation of the urgency of marriage and the obligations to provide sufficient supporting evidence helps in seeing the condition with insight into the problem-oriented, not target-oriented.

The obligation to prove the urgency of marriage through supporting evidence is an effort to explore the main problems in the case of Dispensation of Marriage. When submitting the application, the parent as the applicant can easily convey certain conditions which are recognized as the urgency of marriage. However, the obligation of supporting evidence requirements will confirm the conditions. Supported by the new obligation of judges to hear directly from the children whose parents are seeking the court's permission to marry them will help in determining the best interests of the child²⁹. Thus, the granting of the Dispensation of Marriage is the very last option to overcome the conditions faced by the parties and not merely the wishes of the parents or the families of the children as the prospective spouse.

However, to create an order, responsible and effective guarantee of child protection, the regulations should not be stipulated incidentally and should not be only complementary provisions³⁰. This also applies to regulations concerning the Dispensation of Marriage.

²⁹ Cate Sumner, *Policy Paper 19 Ending Child Marriage in Indonesia: The Role of the Courts* (Melbourne: Centre for Indonesian Law, Islam, and Society Melbourne Law School, 2020).

³⁰ *Ibid.*

To protect children, the rules regarding the requirements of proving the urgency of marriage and supporting evidence should be binding, intact, and consistently applied. On the requirement of proving the urgency, it should be a clear measurement in assessing the urgency itself and that measurement should consistently apply to all cases. The same principle should also apply to the provision of supporting evidence, in which it should be clarity about the format of the certificate and the substance informed in the certificate.

The inconsistencies found in this research are obstacles to the effort of child protection. In the author's opinion, the inconsistencies are influenced by 2 (two) factors, the formal regulation factor and the principle of the judge's independence, as explained as follows:

a. The factor of Formal Regulation

This factor specifically affects the inconsistencies in the requirements of supporting evidence which causes divergences between the evidence of age and the evidence of health condition, while the age evidence is used consistently but the health evidence does not have the same consistency. Article 5 Supreme Court Regulations No. 5/2019 stipulates the administrative requirements in the application of Dispensation which are:

- 1) Application letter;
- 2) Copy of the Identity Card of both Parents/Guardians;
- 3) Copy of Family Card;
- 4) Copy of the Child's Identity Card or and/or Child's birth certificate;
- 5) Copy of the Identity Card or Child Identity Card and/or birth certificate of the upcoming groom/wife; and
- 6) Copy of the child's latest education certificate and/or still-school certificate from the child's school.

Referring to this article, the regulations explicitly specify the format of age evidence, however, does not set the same specific rules regarding medical evidence. The absence of that specific requirements affects the divergence of formats on medical evidence in each Ruling, for example, some use a Pregnancy Certificate from a Hospital, some use a Health Certificate from a doctor³¹, some use Psychological Assessment³², and some even attach only a copy of the ultrasound photo of the girl³³. In addition, the regulations also do not set specific rules regarding legal consequences if the Applicant does not complete his application with the medical evidence. This absence affects inconsistency as well. In consequence, even though the New Marriage Law stipulates completing the case with medical evidence, in practice, the judge may grant the Dispensation without that evidence.

³¹ as used in the Ruling Malang Regency Religious Court No. 2023/Pdt.P/2020/PA Kab.Mlg (n.d.).

³² as used in the Ruling of Salatiga Religious Court No. 182/Pdt.P/2020/PA Sal (n.d.).

³³ *Ibid.*

b. The Factors of the principle of the independence of the judge

The independence of judges, as the basic principle in the procedural law of Religious Courts, affects the occurrence of inconsistencies, especially in the interpretation of the urgency of marriage. In his opinion, Franken divides the independency of the judge into 4 categories; Constitutional Independency (*Constitutionele Onafhankelijkheid*), Functional Independency (*Zakelijke of Functionele Onafhankelijkheid*), Personal Independency (*Persoonlijke of Rechtspositionele Onafhankelijkheid*), and Practical Independency (*Praktische of Feitelijke Onafhankelijkheid*)³⁴. Functional Independence which provides autonomy for judges to interpret the law when the law does not provide a clear understanding³⁵ is an implementation of this principle for judges in examining the case of Dispensation. This principle guarantees the autonomy of the judge to explore and discover any legal principles as the basis for consideration of decisions, as well as the autonomy to interpret the law in a justified way. This independency of interpretation will assist judges in finding the meaning of broad-term legal formulations which still have unclear definitions. Through this autonomy, which is also supported by a shift in the passivity of the judge principle towards the activity principle judges in the new marriage law³⁶, are expected to present protection and justice for the parties, including the children in particular.

Religious Court, as a judicial institution with specific competence, has the same autonomy of interpretation. In interpreting the case, the judge should have an understanding of the specifications of each case and its legal objectives. The case of Dispensation of Marriage has specific legal objectives which are to obtain the protection of individual rights, and the rights to the needs of human life which

³⁴ H. Franken, 1997, *Onafhankelijkheid en Verantwoordelijke*, Gouda Quhnt, 1997, h. 9-10 as mentioned in Firman Floranta Adonara, "Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi," *Jurnal Konstitusi* 12, no. 2 (2016): 217, <https://doi.org/10.31078/jk1222>. for the implementation of the legal state of the Republic of Indonesia, as requested Article 24 of the 1945 Constitution principle of judicial independence in carrying out his duties as a judge, it can give you the sense that judges in performing their duties of judicial power should not be bound by any and / or pressured by anyone, but free to do anything. The principle of judicial independence is an independence or freedom possessed by the judiciary for the creation of a decision that is both objective and impartial. The Indonesian judges understand and implement the meaning of judicial independence as a responsible freedom, freedom in order corridor legislation applicable to the principal duty of the judicial authorities in accordance procedural law and regulations in force without being influenced by the government, interests, pressure groups, print media, electronic media, and influential individuals.", "author": [{"dropping-particle": "", "family": "Adonara", "given": "Firman Floranta", "non-dropping-particle": "", "parse-names": false, "suffix": ""}], "container-title": "Jurnal Konstitusi", "id": "ITEM-1", "issue": "2", "issued": {"date-parts": ["2016"]}, "page": "217", "title": "Prinsip Kebebasan Hakim dalam Memutus Perkara Sebagai Amanat Konstitusi", "type": "article-journal", "volume": "12", "prefix": "H. Franken, 1997, *Onafhankelijkheid en Verantwoordelijke*, Gouda Quhnt, 1997, h. 9-10 as mentioned in", "uris": [{"http://www.mendeley.com/documents/?uuiid = 41356777-ac93-3ce6-9902-96c7dbe61814"}, {"http://www.mendeley.com/documents/?uuiid = 9d15aea9-9865-4b57-89b4-3970ccbd77d1"}]}, "mendeley": {"formattedCitation": "H. Franken, 1997, *Onafhankelijkheid en Verantwoordelijke*, Gouda Quhnt, 1997, h. 9-10 as mentioned in Firman Floranta Adonara, \"Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi,\" <i>- Jurnal Konstitusi </i> 12, no. 2 (2016)

³⁵ *Ibid.*

³⁶ Susanti in her article mentions 5 points in Supreme Court Regulations No. 5/2019 which stated the provisions that judges are expected to take an active role in deciding marriage dispensation. From advising to exploring local, national, and international laws and values, judges have an essential role in ending child marriage. See Laras Susanti, "When Children's Right at Stake, Shall Court Remain Silent? Analysis on The Implementation of Passivity of Judge: Principle in Child Marriage Dispensation in Indonesia," *Indonesian Law Review* 11, no. 1 (2021): 29-44.

must be fulfilled fairly based on nature as human beings based on the principles of human rights. In dealing with this case, the judge always faces two opposing sides, between the benefits and the disadvantages for the person in the case. Therefore, the judge should consider the minimum disadvantages and the most optimal benefit for the prospective spouse, to decide whether to grant or not to grant the request. For this reason, the judge in Religious Court usually applies the principles of Islamic law which state:

إِذَا تَعَارَضَ مَفْسَدَتَانِ رُوعِيْ أَعْظَمُهُمَا ضَرَرًا بِإِزْيَاقِ أَحَقِّهِمَا

Meaning: If there are two opposite damages, then the one with the more severe harm must be preserved by doing the lighter of the two.

This principle sets the measure for judges when faced with cases in which contradictory conditions are found.

The application of this principle influences the occurrence of different interpretations of the urgency of marriage. The judge's authority to interpret the term "very urgent" which has a broad meaning and is not limited by certain juridical criteria, gives the judge the autonomy to find the meaning by exploring the case through the statements of the parties and the evidence submitted. Under the legal objective of the Dispensation of Marriage as explained earlier, the measure of justice, in this case, is the achievement of the greatest benefit, by avoiding the potential for harm in the future.

This article finds the same condition. In almost all of the Rulings of Religious Court, both that accept and reject the Dispensation of Marriage, the principle of prioritizing to avoid "*mafsadat*" is always used as a judge's consideration. Through this principle, after hearing the statements of the parties and examining the evidence, the judge concludes that the conditions of the children, whether they had an inseparable relation or were even pregnant, prove the potential to cause harm in the future, therefore the Dispensation of Marriage is essential. Furthermore, in cases where the upcoming bride is already pregnant, the legal and registered marriage will provide benefits to the certainty of the legal status of the upcoming bride and upcoming baby.

To guarantee child protection, the conditions mentioned above must be a concern in the development of the legal system in the future. The legal protection of children's rights through regulation can be achieved if the legal material is following the spirit, values, principles, and legal rules regarding children. In addition, the enforcement of regulations must also be supported by the understanding of law enforcement officers about children's rights and their willingness to enforce them. For this reason, the author suggests 2 (two) steps that need to be considered in overcoming inconsistencies

in the interpretation of the urgency and the use of health evidence include, **first**, clear regulations on health evidence are essential which should explain at least 3 (three) information, (1) the format of evidence, whether in the form of a health certificate, pregnancy certificate, or other forms that can indicate an urgent condition, (2) the party authorized to issue the evidence, whether the hospital, midwife, independent practicing doctor, or another party, and finally (3) the substance that should be explained in this evidence. **Second**, a comprehensive and equal understanding of judges regarding the concept of child protection and rights is required, therefore the interpretation should reflect the emergency condition and the potential harm in the future if the Dispensation of Marriage is not given. Through this understanding, judges can remain flexible in exploring the validity of the conditions of each case, therefore the individual rights of children can be protected measurably according to their respective conditions.

3. CONCLUSION

The New Marriage Law introduces the new concept of Dispensation of Marriage by providing some additional provisions, the obligations to provide the urgency of marriage, and the specific supporting evidence on proving the urgency. In practice in Religious Court, the author finds 2 (two) inconsistencies in the implementation of that provisions. The first inconsistency was found in the interpretation of the urgency of marriage, where the authors found 64.5 % of the Rulings of Religious Court interpret the urgency as an inseparable relation between the children which raised the concern of the parent, 34.7 % interpreted the urgency of marriage as the condition of the girl was already in pregnancy, and 0.9 % Rulings of Religious Court interpret the urgency in case a child has been born as a result of the sexual relationship between a prospective husband and a prospective wife. However, the disparity of interpretation does not affect the imperativeness of providing this requirement. The second inconsistency is found in the implementation of providing sufficient supporting evidence, specifically in the type of medical evidence. The author finds various forms of medical evidence used to support the urgency of each case of Dispensation of Marriage. In addition, an inconsistency in the imperativeness of providing this evidence, considering that the New Marriage Law places this evidence as an imperative provision, however, in practice, the author finds many Rulings of Religious Court do not show this evidence but still decided to grant the Dispensation.

In the author's opinion, the inconsistencies are influenced by 2 (two) factors, the formal regulation factor in which there are no detailed regulations regarding the format, the authority to issue the certificate, and the substance information of medical evidence. In addition, the factor of the principle of the independence of the judge gives autonomy to judges in interpreting the condition case-by-case. In the conclusion, the author suggests that in the future, the development of regulation should focus on, **first**, providing

clear regulations on health evidence in which it should explain at least 3 (three) information, the format of evidence, whether, in the form of a health certificate, pregnancy certificate, or other forms that can indicate an urgent condition, the party authorized to issue the evidence, whether the hospital, midwife, an independent practicing doctor, or another party, and finally the substance that should be explained in this evidence. **Secondly**, a comprehensive and equal understanding of judges regarding the concept of child protection and rights is required, therefore the interpretation should reflect the emergency condition and the potential harm in the future if the Dispensation of Marriage is not given. Through this understanding, judges can remain flexible in exploring the validity of the conditions of each case, therefore the individual rights of children can be protected measurably according to their respective conditions.

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