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Judicial Analysis of Marriage Dispensation for Nikah Sirrī Practitioners from a Contemporary Rusyd Perspective (A Case Study of Kediri Religious Court Decree No. 79/Pdt.P/2022/PA.Kdr)

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Abstract: *Law Number 16 of 2019 sets the minimum marriage age at 19, yet allows dispensations for "urgent reasons". This research criticizes the Kediri Religious Court Decision Number 79/Pdt.P/2022/PA.Kdr, which granted a dispensation despite marginal contemporary maturity (rusyd) indicators. The judges prioritized moral risk mitigation (preventing zina via sadd al-dzari'ah) over the law's preventive goal of ensuring comprehensive maturity. This shift indicates that judicial focus has moved from child protection toward moral mitigation, effectively sidelining state-mandated standards for educational and financial readiness. Using a normative legal method with statutory and case approaches, this study analyzes the ratio decidendi of the aforementioned decision alongside PERMA Number 5 of 2019. Data were collected through literature studies of primary and secondary legal materials and analyzed qualitatively. The study examines the conflict between positive law standards and the priority of maslahah fiqhiyyah in determining "urgent necessity". The findings reveal that while the 2019 Law aims to protect children, its implementation through dispensations creates normative conflict. The dominance of moral urgency (specifically avoiding unregistered marriage nikah sirri) over contemporary maturity standards risks weakening legal effectiveness and triggering moral hazard. The study concludes that judicial considerations must be reformulated to balance moral-religious priorities with strict socio-economic evidence. This ensures marriage dispensation remains a true exception that serves the best interests of the child.*

Keywords: *Judicial Consideration, Marriage Dispensation, Unregistered Marriage, Maturity.*

Abstrak: *Undang-Undang Nomor 16 Tahun 2019 menetapkan batas usia nikah 19 tahun, namun tetap mengakomodasi dispensasi kawin dengan alasan "sangat mendesak". Penelitian ini mengkritisi Putusan*

Pengadilan Agama Kota Kediri Nomor 79/Pdt.P/2022/PA.Kdr yang mengabulkan dispensasi meskipun indikator kematangan (rusyd) kontemporer pemohon masih marginal. Hakim memprioritaskan mitigasi risiko moral (mencegah zina melalui prinsip sadd al-dzari'ah) sebagai alasan mendesak, alih-alih mengejar tujuan preventif undang-undang terkait kematangan komprehensif. Pergeseran fokus ini menunjukkan fungsi pengadilan berubah dari perlindungan anak menjadi mitigasi moral, yang secara efektif mengabaikan standar kesiapan pendidikan dan finansial yang diupayakan negara. Menggunakan metode hukum normatif dengan pendekatan perundang-undangan dan kasus, studi ini menganalisis ratio decidendi putusan tersebut serta relevansinya dengan PERMA Nomor 5 Tahun 2019. Data dikumpulkan melalui studi pustaka terhadap bahan hukum primer dan sekunder, kemudian dianalisis secara kualitatif. Penelitian ini menguji konflik antara standar hukum positif dengan prioritas maṣlaḥah fiqhiyyah dalam menentukan urgensi dispensasi. Hasil penelitian menunjukkan bahwa meskipun Undang-Undang Nomor 16 Tahun 2019 bertujuan melindungi anak, implementasi dispensasi menciptakan konflik normatif. Dominasi urgensi moral (khususnya menghindari nikah siri) di atas standar kematangan kontemporer berisiko melemahkan efektivitas undang-undang dan memicu moral hazard. Studi ini menyimpulkan perlunya reformulasi pertimbangan hakim untuk menyeimbangkan prioritas moral-agama dengan bukti stabilitas sosio-ekonomi yang ketat agar dispensasi tetap menjadi pengecualian demi kepentingan terbaik anak.

Kata Kunci: *Pertimbangan Hakim, Dispensasi Kawin, Nikah Siri, Kematangan.*

Introduction

Indonesian marriage law reached a significant turning point through Law Number 16 of 2019, an Amendment to Law Number 1 of 1974 concerning Marriage. This progressive regulation introduced a fundamental change by equalizing the minimum marriage age for both men and women to 19 years. This decision was driven by two major national agendas: child protection and improving the quality of households. Setting this age limit reflects the state's effort to ensure that prospective couples possess adequate physical, psychological, and

managerial maturity before entering marriage, aligning with international commitments to children's rights.[1]

Despite establishing a rigid chronological age requirement, Indonesian positive law still accommodates exceptions through the mechanism of marriage dispensation, specifically regulated in Article 7 paragraph (2) of Law Number 16 of 2019. The Religious Court may grant a dispensation under the absolute condition of an "urgent reason" accompanied by sufficient supporting evidence. In practice, urgent reasons are often linked to emergency conditions, such as out of wedlock pregnancy, and are decided based on the judge's deep consideration of the best interests of the child. While marriage dispensation serves as a social safety valve, it remains a controversial issue as it potentially reduces the law's primary objective of preventing child marriage.[2]

This 19 year chronological age requirement stands in direct contestation with the views of classical *fiqh munākaḥat*. Traditional fiqh does not recognize a single rigid age limit but instead requires the attainment of ahliyyah (legal capacity) through two flexible qualitative criteria: bāligh (biological maturity, marked by menstruation or nocturnal emission) and *rusyd* (intellectual and managerial maturity, or the ability to manage wealth and affairs). Law Number 16 of 2019 can be viewed as a legislative effort to concretize and standardize these concepts of *bāligh* and *rusyd* into a uniform national minimum age for the sake of legal certainty and the effective protection of children's fundamental rights.[3]

This normative conflict is clearly manifested in the Kediri Religious Court Decision Number 79/Pdt.P/2022/PA.Kdr. The dispensation was sought for an 18 year old child, clearly below the 19

[1] Dewan Perwakilan Rakyat Republik Indonesia, Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, pasal 7.

[2] Undang-Undang Nomor 16 Tahun 2019, pasal 7 ayat (2).

[3] Abdul Rasyid, *Fiqih Munakahat dan Isu-Isu Kontemporer* (Jakarta: Pustaka Ilmu, 2023), 115–117.

year threshold, leading to an initial administrative rejection by the Office of Religious Affairs (KUA). The decisive legal fact in the judge's consideration was the admission by the Petitioner and the prospective couple that they had performed an Islamic religious marriage (*nikah sirrī*) in January 2022, followed by the parents' serious concern regarding the possibility of immorality or adultery (*zinā*) if the official marriage was delayed. The prospective couple's readiness in terms of contemporary rusyd was marginal, as the Petitioner's child had only an elementary school education, and the prospective husband (22 years old) worked as a sales employee with a relatively minimal income.[4]

This Kediri Religious Court decision serves as a vital case study highlighting the judicial dilemma in enforcing Law Number 16 of 2019. The central argument of this research is that in interpreting the "urgent reason" criterion, the court tended to prioritize *maṣlaḥah fiqhiyyah* considerations, particularly the principle of *sadd al-dzarī'ah* (blocking the path to evil, namely *zinā*), as a step to legitimize a fait accompli. This decision indicates a shift in emphasis from the preventive goal of Law Number 16 of 2019 (achieving comprehensive maturity at 19 years) toward a mitigative function against moral risks.[5]

Therefore, this analysis is urgent. The fundamental goal of Law Number 16 of 2019 is to prevent harm (*darar*) and bring about greater benefit (*maṣlaḥah*) for society. This comparative analysis aims to criticize the extent to which the "urgent reason" criterion in positive law has been absorbed and influenced by the classical fiqh concepts of bāligh and rusyd. This research will also examine whether decisions dominated by moral reasons (the existence of *nikah sirrī*) have effectively ignored the contemporary rusyd indicators that the state should prioritize: educational, psychological, and financial stability.

Method

[4] Pengadilan Agama Kota Kediri, *Putusan Nomor 79/Pdt.P/2022/PA.Kdr*.

[5] Ahmad Syauqi, "*Prioritas Sadd al-Dzari'ah dalam Dispensasi Kawin*", Jurnal Hukum Keluarga Islam 5, no. 1 (2024): 45–48.

This section should not exceed 10% of the manuscript, written briefly, concisely, and clearly, but sufficient to allow others to replicate and build on the published results. This section contains an explanation of the research approach, research subjects, implementation of research procedures, use of materials and instruments, data collection, and analysis techniques. This is not a theory. Such a description allows the reader to evaluate the suitability of the method and the reliability and validity of the results.

In the case of statistical use, generally known formulas should not be written. Any specific criteria researchers use in collecting and analyzing research data must be fully described, including the quality of the instruments, research materials, and data collection procedures. Interventional research involving humans, and other research requiring ethical approval, must include the approving authority and appropriate ethical approval codes. Please remember that readers should be able to recreate your study based on the level of detail you provide.

Metode

The research method used to analyze the evolution of marriage law and the practice of marriage dispensation is normative legal research (*yuridis normatif*), which is descriptive-analytical in nature. This study employs several primary approaches: the statute approach, which analyzes the hierarchy and substance of Law Number 1 of 1974, Law Number 16 of 2019, and Supreme Court Regulation (PERMA) Number 5 of 2019; the case approach, which examines the Kediri Religious Court Decree Number 79/Pdt.P/2022/PA.Kdr to identify the ratio decidendi in granting marriage dispensations; the conceptual approach, which explores key concepts in positive law (the best interest of the child, chronological age) and Islamic law (*bāligh*, *rusyd*, *maqāṣid al-sharī'ah*, and *sadd al-dzarī'ah*); and a comparative approach that implicitly contrasts the age and maturity standards of positive law with those of classical fiqh.

This research utilizes secondary data consisting of primary legal materials, such as Law Number 16 of 2019, PERMA Number 5 of 2019,

and the aforementioned court decree; secondary legal materials including books and scientific journals related to child protection and fiqh munākaḥat; and tertiary legal materials like legal dictionaries and socio-economic data from Kediri City. Data collection was conducted through library research by tracing, inventorying, and identifying materials from these sources. Furthermore, the qualitative-normative analysis technique was applied through various legal interpretation methods. These include grammatical interpretation of the marriage law articles; teleological and sociological interpretation to analyze the legislative purpose versus socio-religious realities like *nikah sirrī*; synchronization and harmonization to examine conflicts between positive norms and Islamic legal concepts; and a deep analysis of the ratio decidendi to identify the jurisprudential patterns and value priorities used by judges in determining "urgent reasons".

Discussion

The evolution of law regarding age limits in Indonesian marriage legislation reflects the state's progressive efforts to protect children's rights and guarantee household stability. Law Number 1 of 1974 previously established differing marriage age standards: 19 years for men and 16 years for women. This disparity was later criticized for being discriminatory and inconsistent with the goals of child protection. A fundamental change occurred with the enactment of Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage. This new regulation established a uniform minimum marriage age of 19 years for both parties, following the mandate of the Constitutional Court Decision Number 22/PUU-XV/2017. The primary philosophical basis for increasing the age limit is the emphasis on high rates of child marriage, which often negatively impact maternal and child health, education, and socio-economic stability. This effort aligns with the principle of *maqāṣid al-sharī'ah*, specifically the rejection of *mafsadat* (*harm*) and the pursuit of greater *maṣlaḥah* (benefit) for society. Higher age limits aim to ensure that prospective couples possess

adequate physical, mental, educational, and economic maturity before entering marriage.[6]

Regarding the position of marriage dispensation in positive law, although it sets a rigid age limit, Law Number 16 of 2019 still accommodates a dispensation mechanism as an exceptional pathway. The legal basis is found in Article 7 paragraph (2), which states that in cases of deviation from the age requirement, parents may request a dispensation from the Court based on "urgent reasons" supported by sufficient evidence. This mechanism grants the Religious Court the authority to examine whether the urgency of the marriage far outweighs the harm arising from overriding the age limit.[7] To guide this judicial control, the Supreme Court issued Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Petitions.[8] This PERMA explicitly mandates judges to consider the principle of the Best Interest of the Child, which encompasses unwritten law, local wisdom, a sense of justice, and international conventions on child protection.

The case analysis regarding the legal reasoning (ratio decidendi) of the Kediri Religious Court Decree Number 79/Pdt.P/2022/PA.Kdr serves as a concrete example of how courts address the conflict between rigid statutory age limits and socio-moral urgency. The legal facts and readiness of the prospective couple in this case show that the petition was filed by Hadi Sugianto and Puji Rahayu for their daughter, Nurizkia Fanda Rahadi Putri, who was 18 years old below the 19 year threshold. Her prospective husband, Mega Wijaya bin Herianto, was 22 years old. A crucial legal fact was the rejection by the local Office of Religious Affairs (KUA) due to the age requirement. The facts presented as urgent reasons included: a deep relationship where the couple claimed to be inseparable; and the existence of an unregistered marriage (*nikah sirrī*) performed in January 2022. The Petitioner feared that Islamic law prohibitions, namely *zinā* (adultery) or immorality, would occur if the official marriage were delayed. Although the judge followed the formal

[6] Indonesia, Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Lembaran Negara Republik Indonesia Tahun 2019 Nomor 186.

[7] Indonesia, Undang-Undang Nomor 16 Tahun 2019, Pasal 7 ayat (2).

[8] Mahkamah Agung Republik Indonesia, Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin.

procedures of PERMA No. 5 of 2019 by advising the Petitioner to wait until the child turned 19, the Petitioner persisted with the application.[9]

A critique of the finding of "urgent reasons" reveals that the judge explicitly referred to the fact that the parties "had performed an Islamic religious marriage". This finding became the central point for granting the petition. The presence of *nikah sirrī*, combined with concerns over immorality (minimizing moral *mafsadat*), was viewed as a sufficient urgent reason to override the 19 year limit. This jurisprudential pattern indicates a tendency in Religious Courts to use the practice of *nikah sirrī* or out of wedlock pregnancy as the primary basis for meeting the "urgent" criteria, creating a "judicial necessity trap". While Law Number 16 of 2019 was designed for prevention and comprehensive maturity, the judiciary effectively legitimizes a fait accompli when the law is bypassed through *nikah sirrī* (legal evasion). This situation substantially weakens the law's effectiveness; the Religious Court, intended as a fortress for child protection, is forced to shift the role of marriage dispensation from a strict exception to a means of legalizing unregistered practices, driven by moral-religious protection priorities rather than the state's socio-legal protection.[10]

Beyond the moral aspect, the assessment of *rusyd* (intellectual and managerial maturity) of the prospective couple is a key factor. In a contemporary context, *rusyd* encompasses educational, psychological, and financial readiness. Regarding the educational aspect, the Petitioner's child only holds an elementary school (SD) diploma. Although a statement letter (P.8) was provided expressing her willingness to continue her education to a high school equivalent, this minimal level of basic education raises serious doubts regarding her cognitive and managerial capacity to manage a complex household which should be a primary indicator of mental *rusyd*.[11]

From an economic perspective, the prospective husband, Mega Wijaya, works as a sales employee with a monthly income of Rp. 2,000,000. In the context of modern law, financial readiness must be

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[9] Pengadilan Agama Kota Kediri, *Penetapan Nomor 79/Pdt.P/2022/PA.Kdr.*

[10] Indonesia, Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Lembaran Negara Republik Indonesia Tahun 2019 Nomor 186.

[11] Pengadilan Agama Kota Kediri, *Penetapan Nomor 79/Pdt.P/2022/PA.Kdr.*

measured against regional minimum living standards. A comparative analysis of economic readiness in Decree Number 79/Pdt.P/2022/PA.Kdr against the 2022 Kediri City Minimum Wage (UMK) shows that the prospective husband's income in July 2022 was below the city's minimum wage of Rp. 2,118,116.63. This condition indicates that the financial independence required to form a stable household, known as financial rusyd, has not been fully achieved despite the Panel of Judges noting the willingness of the groom's parents to provide assistance and guidance.[12]

These findings reinforce the argument that the judge's considerations were dominated by moral urgency (the existence of *nikah sirrī* and fear of *zinā*) rather than the long-term socio-economic stability mandated by the spirit of Law Number 16 of 2019. Such a decision risks shifting the economic burden of the new household onto the parents, which contradicts the goal of marital independence. Indonesian positive law, particularly Law Number 16 of 2019, adopts a rigid chronological age approach of 19 years as a mass benchmark for *rusyd*, applicable to all citizens for comprehensive protection. This approach is the result of health, psychological, and educational considerations, where pregnancy under the age of 17 increases the risk of medical complications impacting maternal and child mortality rates.[13]

The principle of valid marriage in Indonesia is affirmed in Article 2 of Law Number 16 of 2019, which requires marriages to be performed according to the laws of each respective religion and recorded according to applicable regulations. Thus, while *nikah sirrī* is considered valid under Islamic law, it fails to meet the positive law requirement for registration, which necessitates that the petitioner possesses *ahliyyah* (capacity) through the attainment of age 19 or a court dispensation. PERMA Number 5 of 2019 was issued to ensure that judges have strict guidelines in assessing dispensation petitions, requiring an in-depth

[12] Walikota Kediri, *Keputusan Walikota Kediri Nomor 188.45/444/419.033/2021 tentang Upah Minimum Kota Kediri Tahun 2022*. Lihat juga perbandingannya dalam *Penetapan Nomor 79/Pdt.P/2022/PA.Kdr.*

[13] Penjelasan Atas Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Tambahan Lembaran Negara Republik Indonesia Nomor 6401.

examination of the impacts on education, as well as economic, social, and psychological risks.[14]

In Case Number 79/Pdt.P/2022/PA.Kdr, the judge fulfilled these formal procedures. However, the core of the judicial consideration remained focused on the moral urgency resulting from the pre-existing *nikah sirrī*. This places the judge in a significant normative dilemma regarding the principle of "The Best Interest of the Child". While the Law aims for long-term protection (household stability, education, reproductive health), the judge is faced with the fact that denying the dispensation would create an immediate and tangible moral mafsadat: (1) ignoring a religiously valid *nikah sirrī*, and (2) pushing the couple toward *zinā* (immorality).[15]

The judge's decision to grant the dispensation shows that "The Best Interest of the Child" is interpreted through the lens of moral priority and immediate legality of an existing bond. In this interpretation, protecting the moral status and legality of a pre-existing marriage is deemed more urgent than long-term protection based on contemporary rusyd (higher education, financial stability). This creates a contradiction: while Law Number 16 of 2019 seeks to raise the quality of marriage, the court (by validating marriages based on *nikah sirrī* and marginal financial independence) effectively lowers those standards to accommodate pre-existing socio-religious realities.[16]

A comparative analysis is incomplete without reviewing the classical *fiqh* framework underlying these moral-religious considerations. *Fiqh munākaḥat* does not recognize rigid chronological age limits like positive law. In Islamic Law, *ahliyyah* (legal capacity) to perform a marriage contract is determined by two main requirements of maturity: *bāligh* (biological maturity) and *rusyd* (intellectual and

[14] Mahkamah Agung Republik Indonesia, Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin, Pasal 12.

[15] Pengadilan Agama Kota Kediri, *Penetapan Nomor 79/Pdt.P/2022/PA.Kdr*.

[16] Indonesia, Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Lembaran Negara Republik Indonesia Tahun 2019 Nomor 186.

managerial maturity). Etymologically, *nikāḥ* means *al-ḍam* (to unite) and *al-jam'u* (to gather), reflecting a bond that unifies.[17]

Scholars from the Four *Madhahib* (Shāfi'ī, Ḥanafī, Mālikī, and Ḥanbalī) agree that marriage is a bond recommended by the *sharī'ah*. *Nikāḥ* (marriage) means to combine, unify, adhere, and mingle.

فالنكاح في اللغة يعني الضم والجمع والالتحام والاختلاط

"Thus, *nikāḥ* linguistically means joining (*al-ḍamm*), gathering (*al-jam'u*), coalescing (*al-iltiḥām*), and mixing (*al-ikhtilāṭ*)".

The definition of *nikāḥ* in the books *I'ānat al-Ṭālibīn* and *Mughnī al-Muḥtāj* (Shāfi'ī school of jurisprudence) is as follows:

العبارة في كتاب إعانة الطالبين على حل ألفاظ فتح المعين: وهو لغة الضم والاجتماع .ومنه قولهم :تناكحت الاشجار اذا تمايلت وانضم بعضها الى بعض .وشرعاً :عقد يتضمن إباحة وطئ بلفظ إنكاح أو تزويج .العبارة في كتاب مغني المحتاج إلى معرفة معاني ألفاظ المنهاج: النكاح هو لغة الضم والجمع ومنه تناكحت الاشجار اذا تمايلت وانضم بعضها الى بعض[18]

The passage in the book *I'ānat al-Ṭālibīn 'alā Ḥilli Alfāẓ Fatḥ al-Mu'īn* states: "... And *nikāḥ* linguistically means combining (*al-ḍamm*) and gathering (*al-ijtimā'*). From this stems the expression: *tanākaḥat al-ashjār* (the trees intermarry), which refers to when trees sway and lean toward one another, joining together. Meanwhile, according to *sharī'ah* (*shar'an*), it is a contract (*'aqd*) that encompasses the permissibility of sexual intercourse (*ibāḥatu waṭ'in*) using the word *inkāḥ* (to wed) or *tazwīj* (to marry)..." The passage in the book *Mughnī al-Muḥtāj ilā Ma'rifat Ma'ānī Alfāẓ al-Minhāj* states: "*Nikāḥ* linguistically is joining (*al-ḍamm*) and gathering (*al-jam'u*). Among its

[17] Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, vol. 9 (Damascus: Dar al-Fikr, 2004), 6760.

[18] Abu Bakar bin Muhammad Shata ad-Dimyati, *I'anat at-Talibin 'ala Hilli Alfazh Fath al-Mu'in*, vol. 3 (Damaskus: Dar al-Fikr, 2005), 329. Lihat juga Muhammad bin Ahmad asy-Syirbini, *Mughni al-Muhtaj ila Ma'rifah Ma'ani Alfazh al-Minhaj*, vol. 3 (Beirut: Dar al-Kutub al-'Ilmiyyah, 1994), 131.

uses is (*tanākaḥat al-ashjār*), which is when trees sway and lean toward one another, joining together".[19]

Linguistically, *nikāḥ* means joining, gathering, or collecting (*al-ḍamm wa al-ijtimā' / al-jam'u*). The usage of the phrase *tanākaḥat al-ashjār* (the trees are in a state of *tanākuḥ*) is used to describe tree branches that sway and intertwine. Jurists (*fuqahā'*) use this linguistic example as a foundation to explain that the root meaning of *al-nikāḥ* is the meeting and unification of parts, which subsequently became the reason for naming the marriage contract as *nikāḥ* in *sharī'ah* terminology, as it unifies two individuals.

In contrast to Indonesian positive law, which mandates 19 years as the minimum age, Shāfi'ite fiqh only requires *bāligh* and *rusyd*. The requirements for maturity in fiqh are as follows:

1. *Bāligh*

Bāligh refers to the attainment of biological maturity, which is the primary determinant of legal responsibility (*taklīf*) for a Muslim. The main biological indicators of bāligh for females are the onset of menstruation (*ḥayḍ*) or pregnancy. For males, the indicator is the emission of semen (*iḥtilām*).[20] If no biological signs are present, the majority of scholars, including the Shāfi'ī school, establish the age of *bāligh* at 15 years according to the *Hijrī* calendar. This is supported by the *ḥadīth* of Ibn 'Umar, which indicates that the age of 15 was considered mature enough to bear responsibility (such as participating in the Battle of *Khandaq*).[21] In case number 79/Pdt.P/2022/PA.Kdr, the Petitioner's child was 18 years old (Gregorian), which far exceeds the age of *bāligh* according to classical fiqh. Therefore, from a fiqh perspective, she was already biologically capable of marriage.

2. *Rusyd*

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[19] Muhammad bin Ahmad al-Syirbini, *Mughni al-Muhtaj ila Ma'rifah Ma'ani Alfazh al-Minhaj*, vol. 3 (Beirut: Dar al-Ma'rifah, 1997), 238; Sayyid Bakri bin Muhammad Syatha al-Dimyathi, *I'anat al-Thalibin 'ala Hilli Alfazh Fath al-Mu'in*, vol. 3 (Beirut: Dar al-Fikr, n.d.), 253.

[20] Al-Syirbini, *Mughni al-Muhtaj*, 238.

[21] Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, vol. 9 (Damascus: Dar al-Fikr, 2004), 6760.

Rusyd is the condition of intellectual maturity that allows an individual to act independently and manage personal affairs, particularly property. The legal basis for *rusyd* is found in the Qur'an, Surah an-Nisā': 6, which links the test of *rusyd* to the ability to manage wealth after reaching the age of marriage.[22] Intellectual maturity (*rusyd*) is considered an essential requirement for a woman to act independently in her marriage affairs. The importance of *rusyd* is emphasized by scholars such as Ibn Rusyd. If *rusyd* is found in a woman, this capacity is deemed sufficient for the validity of the marriage contract, just as it is for the capacity to manage wealth.

The following are the classical fiqh proofs (*adillah*) which serve as the foundation for the concepts of *bāligh* and *rusyd* in *munākaḥat*:

1. Surah an-Nisā': 6

وَابْتَلُوا الْيَتٰمٰى حَتّٰٓى اِذَا بَلَغُوا النِّكَاحَۚ فَاِنْ اٰنَسْتُمْ مِّنْهُمْ رُشْدًا فَادْفَعُوْٓا اِلَيْهِمْ اَمْوَالَهُمْۚ وَلَا تَأْكُلُوْهَآ اِسْرَافًا وَّبِدَارًا اَنْ يَّكْبَرُوْاۗ وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْۚ وَمَنْ كَانَ فَقِيْرًا فَلْيَأْكُلْ بِالْمَعْرُوْفِۗ فَاِذَا دَفَعْتُمْ اِلَيْهِمْ اَمْوَالَهُمْ فَاَشْهِدُوْا عَلَيْهِمْۗ وَكَفٰى بِاللّٰهِ حَسِيْبًا[23]

"And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgement (*rusyd*), release their property to them. And do not consume it wastefully and hastily before they grow up. And whoever (of the guardians) is rich, let him abstain (from taking a fee); and whoever is poor, let him take a reasonable amount. Then when you release their property to them, take witnesses upon them. And sufficient is Allah as a Reckoner".

This verse mandates testing for intellectual maturity (*rusyd*) after reaching the age of marriage/puberty (*bāligh*) before handing over an orphan's wealth. In legal theory, this is analogized to the capacity required for a marriage contract.

2. The Jurisprudential View on Mental Capacity

[22] Qur'an, 4:6.

[23] Kementerian Agama Republik Indonesia, *Al-Qur'an dan Terjemahannya*, Q.S. An-Nisa (4): 6.

الرشد شرط كاف لصحة عقد النكاح كما هو كاف للتصرف في شؤون المال[24]

"Sound judgement (*ar-rusyd*) is a sufficient condition for the validity of a marriage contract, just as it is sufficient for disposing of financial affairs".

This statement reflects the fiqh perspective that equates the status of intellectual capacity (*ar-rusyd*) in marriage with that in financial matters. Just as an individual who attains rusyd is deemed mature enough to manage their own wealth (as indicated in Surah an-Nisā' verse 6) *rusyd* is also considered a sufficient requirement for the validity and permissibility of making decisions regarding one's own marriage contract (especially for a guardian or an individual managing their own affairs). The core of this principle is that the standard of mental maturity and decision-making required for financial interests is also the standard considered sufficient for marital interests, which are regarded as even more vital than mere property. This principle emphasizes that intellectual capacity is the key to all vital transactions in a person's life.

3. The Prophetic Tradition (*Hadīth*) on Age of Maturity

The following hadīth is used by scholars to establish the age limit of *bāligh* (adulthood) for males:

عَنْ ابْنِ عُمَرَ، أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَرَضَهُ يَوْمَ أُحُدٍ، وَهُوَ ابْنُ أَرْبَعَ عَشْرَةَ سَنَةً، فَلَمْ يُجِزْنِي. ثُمَّ عَرَضَنِي يَوْمَ الْخَنْدَقِ، وَأَنَا ابْنُ خَمْسَ عَشْرَةَ سَنَةً، فَأَجَازَنِي. قَالَ نَافِعٌ: فَقَدِمْتُ عَلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَهُوَ خَلِيفَةٌ، فَحَدَّثْتُهُ هَذَا الْحَدِيثَ. فَقَالَ: إِنَّ هَذَا الْحَدَّ بَيْنَ الصَّغِيرِ وَالْكَبِيرِ. وَكَتَبَ إِلَى وُلَاتِهِ أَنْ يَفْرِضُوا لِمَنْ بَلَغَ خَمْسَ عَشْرَةَ سَنَةً[25]

Translation: From Ibn 'Umar, that the Rasulullah ﷺ examined him on the day of (the Battle of) *Uḥud* when he was fourteen years old, and he did not permit me (to fight). Then he examined me on the day of (the Battle of) *Khandaq* when I was fifteen years old, and he permitted me. Nāfi' (the student of Ibn 'Umar) said: "I went to 'Umar bin 'Abd al-'Azīz during his caliphate and narrated this

[24] Ibn Rusyd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, vol. 3 (Beirut: Dar al-Kutub al-Ilmiyah, 2004), 125.

[25] Muslim bin Hajjaj, *Shahih Muslim*, hadits no. 1868.

hadīth to him". He said: "Indeed, this is the boundary between a child and an adult". Then he wrote to his governors to provide an allowance (salary) for whoever had reached the age of fifteen. *Hadīth* Attribution: Narrated by Imam Muslim in his Ṣaḥīḥ (No. 1868) and Imam al-Bukhārī (No. 4097).

Under Law Number 16 of 2019, judges are mandated to apply the 19 year age limit and utilize PERMA Number 5 of 2019 to examine urgency. The ratio decidendi in Decision Number 79/Pdt.P/2022/PA.Kdr demonstrates an implicit harmonization with the philosophy of fiqh. The Petitioner's child, aged 18, is already considered *bāligh* (biologically mature), and the judge acknowledged the pre-existing *nikah sirrī*. The use of arguments regarding the fear of immorality and the legalization of a religiously valid bond indicates that the priority of *maṣlaḥah fiqhiyyah* specifically the principle of *sadd al-dzarī'ah* (blocking the path to evil/adultery) overrides the long-term socio-economic protection goals of Law Number 16 of 2019. While positive law provides the procedural tools for marriage dispensation, the philosophy of *fiqh* (protecting religion from *zinā*) remains the driving force behind the finding of "urgent reasons".[26]

The analysis of the Kediri Religious Court Decree Number 79/Pdt.P/2022/PA.Kdr reveals a structural conflict between progressive positive legal norms and socio-religious realities. Positive law, through Law Number 16 of 2019, establishes the 19 year standard to achieve comprehensive *rusyd* (education, health, and economy). However, this decision shows that moral urgency triggered by *nikah sirrī* has created "urgent reasons" that are prioritized by the Panel of Judges. The judge effectively chose a path of mitigating moral risks (*mafsadat*) arising from *nikah sirrī*, even at the cost of compromising contemporary rusyd standards. The readiness of the prospective couple in this case is considered marginal: the Petitioner's child only completed elementary school, and the prospective husband's income falls below the 2022 Kediri City Minimum Wage (UMK). This underscores that marriage

[26] Indonesia, Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Lembaran Negara Republik Indonesia Tahun 2019 Nomor 186; Mahkamah Agung Republik Indonesia, Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin.

dispensation in this context functions as a tool to legalize a religious fait accompli rather than an exception based on genuine maturity.[27]

Jurisprudence that relies on *nikah sirrī* or pregnancy as the fundamental grounds for granting dispensations raises serious concerns regarding moral *hazard*. This practice may encourage couples to intentionally bypass positive law through *nikah sirrī* in the hope that the court will subsequently legalize it, as courts feel bound by the principle of *sadd al-dzarī'ah* (preventing *zinā*). If this condition persists, the increase in marriage age mandated by Law Number 16 of 2019 will lose its sanction power and overall effectiveness.

Therefore, the finding of "urgent reasons" should not be based solely on the existence of nikah sirrī driven by fears of immorality. While the moral dimension cannot be ignored, judges must demand convincing evidence regarding managerial competence and household stability, which in a modern context are measured through financial stability and a commitment to continued education. In case number 79/Pdt.P/2022/PA.Kdr, the financial evidence showing income below the minimum wage (sub-UMK) indicates that the prospective household is built on a fragile foundation.[28]

To strengthen the objectives of Law Number 16 of 2019 and PERMA Number 5 of 2019, the following policy recommendations are proposed:

1. Standardization of Non-Chronological *Rusyd* Testing: Religious Courts need to develop more sophisticated multidisciplinary assessment tools to evaluate *rusyd* (mental, emotional, and managerial maturity) beyond oral testimonies in court. This could involve a multidisciplinary team (psychologists, family counselors, or social workers) to provide an objective assessment of the prospective couple's readiness to face the complexities of domestic life.[29]

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[27] Pengadilan Agama Kota Kediri, *Penetapan Nomor 79/Pdt.P/2022/PA.Kdr*.

[28] Walikota Kediri, *Keputusan Walikota Kediri Nomor 188.45/444/419.033/2021 tentang Upah Minimum Kota Kediri Tahun 2022*.

[29] Mahkamah Agung Republik Indonesia, Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin, Pasal 12-15.

2. Establishment of Clear Economic Thresholds: Given the importance of financial independence as a contemporary indicator of rusyd, the court needs to set a measurable minimum income threshold. For example, a minimum of 1x the applicable Regency/City Minimum Wage (UMK) should be a primary prerequisite for a successful marriage dispensation. Exceptions should only be granted if there is a strong financial guarantee from a third party or a stable source of passive income.[30]

3. Prioritization of Education: In cases where the prospective couple has a low level of education (such as the elementary school graduate in this case), the approval of marriage dispensation must be strictly linked to a formal, binding, and measurable agreement (e.g., mandatory enrollment and attendance in a supervised High School Equivalency/Package C program), rather than a mere statement of intent to continue education.

The granting of a marriage dispensation is a decision with long-term consequences for a child's future. The ultimate goal of marriage age regulation in Indonesia is to ensure that marriages are based on optimal maturity and readiness. Therefore, marriage dispensation must be positioned as an emergency exit for truly urgent and unavoidable cases (such as pregnancy at a very young age), rather than a back door that legitimizes the evasion of the 19 year age requirement. By balancing the moral urgency of fiqh with contemporary rusyd standards (education and economy), the court can realize a true familial *maṣlaḥah* a household that is stable, independent, and educated, in accordance with the principle of the best interests of the child.

Conclusion

The legislative amendment of marriage law in Indonesia through Law Number 16 of 2019, which sets the minimum age at 19, represents the state's progressive effort to ensure child protection and household quality. However, the study of the marriage dispensation mechanism reveals a structural conflict. In the case of Kediri Religious Court Decree Number 79/Pdt.P/2022/PA.Kdr, the decision to grant the dispensation was driven by moral urgency triggered by the practice of *nikah sirrī*,

[30] Walikota Kediri, *Keputusan Walikota Kediri Nomor 188.45/444/419.033/2021 tentang Upah Minimum Kota Kediri Tahun 2022*.

which was interpreted as a priority of *sadd al-dzarī'ah* (prevention of adultery) based on fiqh philosophy. This emphasis resulted in the compromise of contemporary *rusyd* (educational and financial maturity), where the prospective couple was approved to marry despite having a low level of education (elementary school) and an income below the city's minimum wage. This jurisprudential practice risks creating moral hazard and substantially weakens the effectiveness of Law Number 16 of 2019. Therefore, courts must balance moral-religious urgency with strict and measurable multidisciplinary rusyd standards, while demanding strong evidence of socio-economic stability to ensure that marriage dispensation functions as a strict exception in realizing the best interests of the child.

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