

## Socio-Legal Analysis of Early Marriage Phenomenon during the COVID-19 Pandemic in Jombang Regency

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**Abstract:** The enactment of Law Number 16 of 2019 Concerning Marriage is the government's efforts to reduce early marriage, but has not achieved the optimal effect. The number of early marriages is increasing, especially during the Covid-19 pandemic. This paper aims to analyze the factors behind the Increasing Phenomenon of Early Marriage in Jombang Regency During The Covid 19 Pandemic and to explain the Consideration of Jombang Religious Court Judge's Decision regarding the Application for Marriage Dispensation. This study was conducted empirically using a sociolegal approach, in which social action theory is an analytical tool. The results of this study indicate that the sharp increase in the rate of early marriage in the Jombang regency during the pandemic period is a complex issue involving many factors, including social problems, misuse of technology, the influence of social media, culture, and religion, as well as the lack of parental supervision. The judge's consideration regarding the application for marriage dispensation is to decide whether to grant the petition based on the impact of the gains that can be achieved and the harms that can be avoided.

**Keywords:** Early marriage, Pandemic, Marriage dispensation, Socio-legal, Jombang Regency.

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## Introduction

Marriage is the relationship between a man and a woman to pursue the ideal of life to maintain and preserve it (Hak et al. 2019). The purpose of marriage is to create a happy and eternal family. Thus, it is necessary to arrange from both sides, mentally and physically (Ardi and Maizura 2018). One of the marriage principles specified in the Law on Marriage is that the forthcoming husband and wife must be physically and mentally mature to accomplish the marriage and achieve the purpose of the wedding. Age often determines a household's physical and mental maturity.

On this basis, Law Number 1 of 1974 regulated the age limit for marriage. Paragraph 2 of Law Number 1 of 1974 stipulates that "men under the age of 19 and women under the age of 16 may not marry" this provision is considered controversial because the minimum age for women is contrary to the law on the protection of women and children which defines a child as someone under the age of 18 (Schupp and Kirmse 2022). The internationally recognized definition of a child is any person under the age of 18 years. (Evans 2012). This ultimately prompted some of the victims of child marriage or early marriage to submit a judicial review of this article for subsequent amendments to Law No. 1 of 1974 on marriage by Law No. 16 of 2019, where the minimum age limit of marriage for female equivalents to males is 19 years.

This regulatory change was implemented in response to Indonesia's emergency child marriage situation. The government hopes that amending the Marriage Act will diminish the number of early marriages. According to UNICEF research data in 2016, Indonesia ranks 7th in terms of the highest rate of child marriage compared to other countries in the world and 2nd in ASEAN after Cambodia (ABC 2019). This reality is disturbing for the young generation, especially for their growth and development, and the neglect of the fundamental rights to which they should be entitled, such as the right to education, health rights, civil rights, the right to be free from discrimination and violence, and other rights.

Unfortunately, the increase in requests for marital dispensation is not accompanied by strict rules, so most of these requests are granted by judges. The existing rules, Law No. 16 of 2019 and Supreme Court Regulation (PERMA) No. 5 of 2019, have a legal void allowing the approval of a marriage dispensation appeal. The reason is that Article 7, Paragraph 2, only provides that an application for a marriage dispensation may be made to the court on appropriate urgent grounds and with

sufficient evidence. This means that marital dispensation will continue even after the Marriage Act is amended, unless existing rules restrict the grounds for applying for matrimonial dispensation.

The number of marriage dispensation cases at the Jombang Religious Court during the 2019-2021 period showed a significant increase from before the outbreak of Covid 19 in 2019 until the end of 2021 when the Covid-19 pandemic began to subside. There is a significant increase from 2020 to 2021. In 2019, there were 196 cases, and in 2020, there were 409 cases ( a difference of 213), peaking in 2021 with 456 cases. During the Covid-19 pandemic, the government began implementing Large-Scale Social Restrictions (PSBB) in Indonesia on March 20, 2020, to generate policies from home (WFH) and school-from-home (online).

The government's enactment of large-scale social restriction (PSBB) policies to reduce the transmission of Covid 19 has impacted lives, especially in social and economic circumstances. Implementation of Law No. 16 of 2019 on Marriage, Amendment to Marriage Law No. 1 of 1974, which is expected to be one of the government's efforts to diminish the number of early marriages in the country, has not achieved optimal results and has even tended to increase during this pandemic. This situation during the pandemic has caused an imbalance in the community structure, leading to the dysfunction of the community's socialization. The author aims to examine the phenomenon of increasing early marriages during the Covid 19 pandemic in Jombang district by analyzing Social Action theory and to explain the Consideration of Jombang Religious Court Judge's decision regarding the application for marriage dispensation.

## Method

This research uses a socio-legal approach, in which the analysis is carried out using Max Weber's Social Action Theory. (W. Bedner 2012). This research is descriptive-analytical, a study that thoroughly and systematically describes the subject matter's object (Soekanto 2010). Primary data was obtained directly from interviews with informants who performed or participated in the occurrence of early marriage and with judges who examined and adjudicated cases of requests for marriage dispensation. Meanwhile, secondary data is obtained from primary legal documents, particularly

binding legal documents in the form of Law Number 16 of 2019 revision of Law Number 1 of 1974 concerning marriage and secondary legal documents, which are legal documents guiding and explaining primary legal documents, including textbooks, documents, articles, research results and other scientific works related to this research. The result of obtained data is collected in a descriptive form and then analysed by a qualitative descriptive method which is admitted in a logical and systematic description, then analysed to get clarity on solving the problem in this study, which was then drawn inductively to describe the data obtained in a more specific, transparent, and in-depth manner.

## **Result and Discussion**

### ***The Increasing Phenomenon Of Early Marriage In Jombang Regency During The Covid 19 Pandemic***

According to Islam, marriage's purpose is to fulfil religious instructions to establish a harmonious, prosperous and happy family. Marriage also aims to satisfy the demands of human nature (*menschelijke natuur*), protect humans from evil and damage, foster activity in seeking halal sustenance and increase a sense of responsibility. (Dewita Rahmania 2022). Early marriage is defined as marriage when the minimum age for marriage is under the provisions of the Amended Marriage Law No. 16 of 2019, which is 19 years old for men and women. The phenomenon of child marriage occurs a lot among people and is not a current phenomenon but has happened a lot since ancient times (Mustofa 2019). This phenomenon is also familiar to most people and has even been ingrained in a society, one of which is found in several villages in Jombang district. Couples under the age of 19 get married early due to certain factors.

Based on the research results, the factors behind the increase in early marriages during the pandemic consist of limited learning activities, increased time spent on play gadgets, and a lack of parental attention and supervision. Technological factors and social media influence are the main factors, especially mobile phone technology, which is equipped with various devices such as cameras and free Internet access, which they do not appropriately use. Their curiosity and desire to be respected for their existence as adults has made them use cell phones with cameras to access immoral photos and videos. These factors lead teenagers to promiscuity and affect unwanted pregnancies. Early marriage was chosen to hide the family's shame.

One of the informants also said that the drivers of early marriage were that while the bride was still underage, the groom was old enough to legally enter a biological relationship and start a family as soon as possible. Other factors were also found, such as being already bound by engagement and the fear factor of violating religious teachings, which is also the cause of the increase in early marriages, where there are parents who are not willing if their children to have a relationship with the opposite sex without marriage ties. In other words, having a relationship without marriage is considered adultery. In many cases, the child held the same opinion. To prevent this violation, early marriage appears to avoid adultery. The average age for deciding to marry early is 16 years or less than 19 years old, and this cannot be separated from the fact that some of them come from religious schools.

The results of an interview with the Public Relations of the Jombang Religious Court, M. Amir Syarifuddin, who is also a judge, explained that the increase in the number of marriage dispensations during the pandemic was due to a lack of parental supervision and pregnancies outside of marriage. Marriage dispensation is caused by a lack of parental control. For example, both parents work and the house is left empty; that is, what is sometimes misused, and it continues to affect cell phones. This also includes the impact of the previous law, which regulated the age of 16 years, considered an adult, so people's behavior has been arranged in this way. Indeed, society's culture allows it when there are current rules; culturally, they cannot adjust to those rules.

Max Weber's theory of social action will be used to analyse the phenomenon of early marriage during the Covid-19 pandemic in Jombang Regency. Social action is defined as intentional action for other people and for the actor, whose thoughts actively make interpretations of other people's behaviour, communicate with each other, and control each other's behaviour according to the purpose of the communication. As part of the social structure, society will carry out social actions to achieve the desired goals. In his theory of social action, Weber did not separate social systems from social institutions, and there was even the assumption that all social action requires structure and all structure requires social action so that the social system has a vital role in all social actions carried out by actors in everyday life (Ritzer 2010).

Weber uses the basic concept of rationality to classify types of social action. According to Weber, social action refers to the conscious considerations and choices by

which actions are performed. (Lusti Iva Khoriah 2020). Explicitly, the author will analyse the factors that led to an increase in early marriage during the Covid 19 Pandemic in Jombang by referring to Weber's categorisation of four types of actions that can be distinguished in the context of the motives of the perpetrators (Rahman 2011) :

1. Instrumental rationality (Zwerk Rational)

This type is a purely social action. Instrumental rationalists are actions with the highest level of rationality. This happens when we take action; we consider the goals that the action achieves and how those goals are achieved. Thus, a person, makes deliberations and decisions with an awareness of the purpose of his actions and the tools used to achieve those purposes (Nugroho 2014). An informant who is the groom explained that he consciously considered marrying an underage bride because he felt he was old enough, economically capable, and aimed to carry out a biological relationship legally and as soon as possible to be able to have a family.

2. Value-Oriented Rational (Wertrational)

This type does not look at danger or loss, but protects one's honor or gain value. A person cannot judge whether the means he chooses is the most suitable for achieving his goals or more ideal for achieving other goals (Fathonah 2020). Based on the results of the interviews and the data assemblage that has been concluded, some informants take social actions in a value-oriented rational form. This was demonstrated through the process by which some informants initially received negative responses from their parents to decide whether to marry early. Still, with the discussion and chronology and reasons for making the decision, the informant's parents finally accepted the decision to marry early. Some informants also did not consider the occurrence of dangers or losses when carrying out early marriages. However, considering the age of marriage for women is also critical. Psychologically, teenage mothers are not ready to become mothers in terms of the skills to take care of their children. In contrast, when referring to health, the National Population and Family Planning Agency (BKKBN) states that marriages carried out under the age of 20 are vulnerable to deteriorating women's reproductive health, such as cervical cancer and immature uterine cells, and are at risk of contracting the Human Papilloma Virus (HIV). Early marriage can also lead to higher birth and mortality rates in pregnant women. (Hanum and Tukiman 2015).

3. Affective Action

Feelings and emotions influence this type of action. These actions are often performed without careful planning or complete awareness. Some informants chose to marry early without cautious planning or full awareness. For someone who dares to form a family through marriage, all responsibility in supporting the family lies with the couple, not with anyone else, not even with their parents. (Halik 2017). The spiritual and rational values of the family have not yet reached the younger generation, preventing them from fully appreciating their various functions. This is also related to other views because of a lack of understanding of the concept of family function. Without being able to choose and plan, the occurrence of pregnancies outside marriage also made the informants responsible for their actions by marrying underage partners.

#### 4. Traditional Action

This type is an action determined by tradition or custom. The actors do something as defined by the rule without thinking about the relationship between goals and effort. Social activities considered excellent and valuable for others or a group are gradually considered a habit carried out jointly by all group members. These actions have become customs that have value in society. About underage marriage, it turns out that there are motives for parents who allow their children to marry early for reasons of socio-cultural values, where underage marriage is not considered as something contrary to the customs in Jombang, especially if a man has proposed to a woman. They will soon be married off because of fears of violating religious values or the consequences caused by social deviation behaviour before marriage, so underage marriages are held without attaching importance to the minimum age of marriage, as long as it does not conflict with customs or traditions.

Theoretically substantive, the reality of early marriage can be predicted as an institutional and social system problem. The family is an institution which is a network of processes of relations between humans and groups that are functionally patterned, including ideals, attitudes, and actions to meet the needs of humans and their groups. The family as an institution has components of values, standards, attitudes, and activities to meet their needs (Adibah 2017).

Family is a system of official rules and procedures for the accomplishment of specific tasks, detailed in the functions of the family, particularly: regulating sex, reproduction, socialisation, affective (emotional), status determination, protection, and

economic processes. A family cannot assume some of these functions until it is adequately prepared physically, biologically, psychologically and socioeconomically.

During the Covid 19 pandemic, systems and functions in a family are also affected, starting with the economic part of the family changing, children becoming less concerned, and the environment will replace even the role of the family. Children who lack parental attention can fall into promiscuity, and sexual freedom, leading to illegitimate pregnancy, which is the cause of child marriage (Musa et al. 2021). A lack of parental guidance and guidance prevents children from understanding the risks of early sex and giving birth at an immature age.

The regulations are not the problem, but the people who are not ready to implement them, so law enforcement has a vital role in changing the paradigm. The involvement of community leaders and stakeholders in preventing early marriage as influential figures in society. If those who want to marry underage are still of school age, it is the responsibility of the education and culture department to accompany them. If they drop out of school because they have to work, the labour office also has a vital role. If the personality and character of those who want to have a marriage period are not fully formed, social services must play a role in advocating for them.

The involvement of community leaders and stakeholders in preventing child marriage could be considered influential figures in society. Individuals as actors who tend to act on reason, offering constructive ideas in social integration and atomic actors. Many individual behaviours are in social system organisations. The individual's position in the social system will affect his role and function. Individuals are in a state based on generally imposed standards. Individual behaviour in social system organisations undergoes mutual exchange with its environment for social action to occur (I.B Wirawan 2012).

### ***Consideration of the Jombang Religious Court Judge's Decision Regarding The Application For A Marriage Dispensation***

Marriage dispensation is an effort for those who want to get married but have not met the age limit for marriage that has been set by the government so that parents of children who are not yet old enough can apply for marriage dispensation to the Religious Courts through a trial process first to obtain permission for marriage dispensation. In short, this marriage dispensation is a legal leniency for those who do



not meet the legal requirements of a favourable marriage. Therefore the law gives authority to the court to grant marriage dispensation (Zakiyudin 2022). Law No. 1 of 1974 has been amended with Law No. 16 of 2019 to regulate the age limit for marriage. Previously, the minimum age for marriage was 19 for men and 16 for women, but now it's 19 for both men and women (Zulaiha and Mutaqin 2021).

The number of marriage dispensation cases at the Jombang Religious Court during the 2019-2021 period showed a significant increase, seen from before the outbreak of the Covid 19 in 2019 until the end of 2021 when the Covid-19 pandemic began to subside. There was a significant increase from 2020 to 2021. In 2019 there were 196 cases, and in 2020 increased to 409 cases (there was a difference of 213) and peaked in 2021 with 456 cases (Agama 2022).

Based on these data, the number of applications for dispensation marriages in Indonesia has increased rapidly since the Marriage Law was amended. The high number of applications for marriage dispensation at the Jombang Religious Court is also consistent with the large number of divorce cases dominated by young couples. This shows that early marriage in the Application for Marriage Dispensation needs particular attention, bearing in mind that marriage at an early age is vulnerable due to the child's physical, mental and economic readiness, so it is prone to divorce.

An application for a marriage dispensation can be offered based on Article 7 paragraph (2) of the Marriage Law, which states that if there is a deviation from the age requirement, the parents of both the male and female are permitted to apply for a marriage dispensation to the Religious Court for urgent reasons and accompanied by supporting evidence. The phrase "urgent reasons and accompanied by supporting evidence" has potentially generated multiple interpretations so that the subjectivity of judges with their legal considerations will be decisive in the absence of clear regulations.

The judge's consideration is one of the essential aspects in determining the realisation of the value of a judge's decision which contains justice (*ex aequo et Bono*) and has legal certainty, so it must be addressed carefully (Mansari et al. 2020). Article 17 Perma No. 5 of 2019 stated that the judge, in determining the application for marriage dispensation, must consider the protection and best interests of the child in statutory regulations, unwritten law in the form of legal values, local wisdom, a sense of justice

that lives in society; and international conventions or agreements related to child protection.

Judges' considerations of the Jombang Religious Court in granting the application for marriage dispensation are based on several aspects: juridical, sociological, psychological, and health. The applicant for a marriage dispensation must be able to prove that the marriage is very urgent to take place to realise the objectives of Islamic law (maqasidu syariyyah) to protect the safety of offspring (hifzhu al-nasl) without endangering the safety of the soul of the child who is given the dispensation of marriage (hifzhu al-nafs) and sustainability education (hifzhu al-aql). These goals must be at the primary or principal level (al-daruriyyah), or at least a secondary level (al-hajiyyah). If marriage does not occur immediately, damage, such as adultery, will occur based on legal facts proven in court. Thus, granting the request for marriage dispensation will prevent more significant harm (mafsada) and bring more benefits to the two prospective brides so that they do not fall into adultery, which is prohibited by religion.

## **Conclusion**

The increasing phenomenon of early marriage in Jombang regency during the covid 19 pandemic consists of factors such as limited learning activities, misuse of technology, the influence of social media, and a lack of attention and parental supervision. These things make teenagers fall into promiscuity which impacts the occurrence of unwanted pregnancies, so to cover up the disgrace of the family, early marriage is chosen as a solution. The factor of concern is violating religious teachings and the impact of society's culture, which is ingrained and considered normal related to early marriage for women. Culturally, they have not been able to adjust to current rules.

Social action theory refers to conscious deliberation and decision-making about behaviour in terms of the factors that cause early marriage. The thesis considers the government's involvement through authorised departments and community figures in preventing early marriage in changing this pattern and paradigm as influential figures in society. The judges granted the applications for marriage dispensation submitted to Jombang Religious Court by considering the psychological readiness, health and economic conditions of the children, the benefits that could be obtained and the harm that could be avoided, and the maturity of the soul that is regarded as capable of having a family and the absence of a ban on marriage in Islamic law.

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