



MARRIAGE DISPENSATION FOR UNDERAGE DUE TO PREGNANCY OUT OF WEDLOCK FROM THE PERSPECTIVE OF LAW NO. 16 OF 2019 AND SHAFI'I FIQH

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E-ISSN : 3109-9777

Received: September 2025

Accepted: September 2025

Published: Oktober 2025

Abstract :

This research discusses underage marriage dispensation due to out-of-wedlock pregnancy from the perspective of Law No. 16 of 2019 and Syafi'i Fiqh (Case Study in Sumber Jeruk Village, Kalisat District, Jember Regency). This research focuses on the marriage dispensation process in Sumber Jeruk village according to applicable laws and Islamic law, specifically Syafi'i jurisprudence. The researcher formulates two problems: how is the process of underage marriage dispensation due to premarital pregnancy in Sumber Jeruk village from the perspective of Law No. 16 of 2019, and what is the Syafi'i jurisprudence view on underage marriage dispensation due to premarital pregnancy in Sumber Jeruk village? The type of research used is qualitative research with a case study approach. The research results show that according to Law No. 16 of 2019, Article 7 paragraph (1), marriage is only permitted if the man and woman have reached the age of 19. Therefore, underage marriage refers to a marriage performed by a man and a woman who are both still below the minimum age limit set by law. Meanwhile, Islamic law does not specifically state the minimum age for marriage as it does in the marriage law; it only states that the requirements for marriage in Islam are being of age and of sound mind.

Keywords : Dispensation, marriage, underage, out of wedlock pregnancy, Law Number 16 of 2019, Shafi'i Fiqh

INTRODUCTION

One important aspect of life regulated by Islam is marriage (Banoo & Ahmed, 2024). Marriage in Islam is not merely a bond between two individuals, but also a commitment aimed at creating harmony, love, and tranquility within the family. Marriage is one of the acts that is considered sunnah, and every human being is encouraged to perform this Sunnah (Banoo & Ahmed, 2024). Marriage is done to minimize the occurrence of adultery and is one of the processes to obtain righteous offspring.

The age limit for marriage has been regulated in the Marriage Law Number 16 of 2019 concerning marriage. A good marriage is one between two partners who are of a suitable age. (Wallerstein, 2019) However, if one of the couples wishing to marry is underage, the next step is to apply for a marriage dispensation so that their marriage can be registered by the religious affairs office (KUA). This is because if it is known that one of the partners is not yet of marriageable age, the religious affairs office (KUA) has the right to refuse the marriage and ask both partners to apply for a marriage dispensation at the local religious court. (Yu & Hara, 2023) The importance of the Religious Court's decision is to carry out clear legal processes or rules for the future of a couple



who wish to marry, so they do not fall into sirri marriage (secret marriage). Even more concerning is that both partners might fall into free association without the bond of a legitimate marriage, both religiously and legally. (Nasir, 2020)

The high number of marriages resulting from out-of-wedlock pregnancies in several regions of Indonesia, particularly in Sumber Jeruk Village, has involved five individuals who experienced such events. In fact, this kind of marriage is forbidden in Islamic law. Therefore, the question arises why there are still marriage dispensations in such conditions, even tho the law has set the minimum age for marriage at 19 years, and why the case in Sumber Jeruk village was chosen.

The answer is because emergency conditions such as out-of-wedlock pregnancies were considered, and it had to go thru court rather than being granted freely. Additionally, it was easier to collect data and conduct in-depth analysis because the social, cultural, and character conditions of the local community were better understood. This phenomenon is a relevant topic for research that can broaden the author's horizons specifically, and provide deeper knowledge to readers generally (Wickert et al., 2021). This research aims to explain in detail the impact of underage marriage, with the title "Underage Marriage Dispensation Due to Extramarital Pregnancy: A Perspective on Law No. 16 of 2019 and Syafi'i Fiqh (Case Study in Sumber Jeruk Village, Kalisat District, Jember Regency)."

RESEARCH METHOD

The research method used in the study titled "Marriage Dispensation for Underage Due to Out-of-Wedlock Pregnancy from the Perspective of Law No. 16 of 2019 and Syafi'i Fiqh (Case Study in Sumber Jeruk Village, Kalisat District, Jember Regency)" is a qualitative research method with the type of field research. This research focuses on a deep understanding of social and legal phenomena occurring in society, particularly the practice of granting marriage dispensations to minors due to premarital pregnancy. This method was chosen because it allows researchers to comprehensively and contextually explore the meanings, perspectives, and practices of the community and law enforcement officials (Naeem et al., 2023).

The research approach used is a juridical-sociological approach. This approach combines the study of applicable positive legal norms, in this case Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, with the social realities occurring in the community of Sumber Jeruk Village. Thru this approach, researchers not only examine legal rules normatively but also understand how these rules are applied, interpreted, and received by society within a specific social and cultural context (Negara, 2023).

Additionally, this research also employs a normative jurisprudence approach, specifically from the perspective of Shafi'i jurisprudence, to examine Islamic legal views on marriage dispensations for underage individuals due to premarital pregnancy. This approach is important because the majority of the

Sumber Jeruk village community is Muslim, and many still use Syafi'i jurisprudence as their primary reference in family law. Therefore, the Syafi'i jurisprudence approach is used to assess the compatibility between marriage dispensation practices and the principles of Islamic law.

The data sources in this study are divided into two categories: primary data and secondary data (Schneider et al., 2023). Primary data was obtained directly from the field thru in-depth interviews with relevant parties, such as parents applying for marriage dispensation, underage couples, religious figures, village officials, and the judges of the Religious Court who decided the case. Meanwhile, secondary data was obtained thru a literature review of laws and regulations, Syafi'i jurisprudence literature, Islamic family law books, and relevant official documents such as court decisions.

Data collection techniques were carried out thru interviews, observations, and documentation (Khoa et al., 2023). Interviews were used to obtain in-depth data on the reasons for applying for marriage dispensation, the judge's considerations, and public views on the phenomenon. The observation was conducted by directly observing the social situation and marriage practices in the Sumber Jeruk village community. Meanwhile, documentation was done by collecting supporting documents such as court decision copies, marriage records, and village archives related to marriage dispensation cases.

The data analysis process was carried out using descriptive-qualitative analysis, which involves describing and interpreting the collected data, and then linking it to relevant theories, laws, and Syafi'i jurisprudence perspectives (Achjar et al., 2023). The analysis stages include data reduction (sorting and simplifying data), data presentation (organizing data in a systematic narrative form), and drawing conclusions (verifying research findings). This analysis allows researchers to find patterns, meaning, and relationships between positive law and Islamic law within the context of the cases being studied (Hamzani et al., 2023). To ensure data validity, this study uses triangulation techniques, including both source and method triangulation. Source triangulation is done by comparing interview results from different informants, while method triangulation is done by combining interview results, observations, and documentation. With this technique, researchers can ensure that the data obtained is valid, consistent, and reliable.

The research location in Sumber Jeruk Village, Kalisat District, Jember Regency, was purposively selected because this area has a relatively high number of underage marriage dispensation cases due to premarital pregnancy. The results of this research are expected to contribute theoretically to the study of Islamic family law and positive law in Indonesia, as well as provide practical contributions to society and judicial institutions in handling similar cases more wisely and in accordance with the principles of justice and the values of Islamic law.

FINDINGS AND DISCUSSION

According to Law No. 16 of 2019, Article 7 paragraph (1), marriage is only

permitted if the man and woman have reached the age of 19. Therefore, underage marriage refers to marriage performed by a man and woman who are still below the minimum age limit set by law. Additionally, both prospective brides and grooms generally do not yet possess the mental fortitude to navigate married life (Javdani, 2019).

From the perspective of Law No. 16 of 2019, child marriage due to out-of-wedlock pregnancy should be prevented because it can harm the child's future. However, the reality on the ground shows that this practice still occurs due to various social, cultural, and legal factors. Therefore, a preventive approach (education, supervision, and guidance) and strict law enforcement are essential.

Underage Marriage Due to Out-of-Wedlock Pregnancy: A Perspective from Law No. 16 of 2019 has the following impacts:

a. Biological Impact

Underage marriage has serious biological consequences, especially for women who are not physically ready to conceive and give birth (Yoosefi Lebni et al., 2023). Pregnancy at a young age increases the risk of complications such as preeclampsia, premature birth, and maternal or infant death. From the perspective of Law No. 16 of 2019, the age limit of 19 years is set to prevent these biological risks because it is considered the age of reproductive maturity.

b. Psychological Impact

Marriage due to out-of-wedlock pregnancy often causes mental stress for the couple, especially teenage girls. They tend to experience stress, depression, guilt, and a loss of identity. This condition is exacerbated by social stigma and the sudden role change from teenager to wife and mother (Yin et al., 2020). Law No. 16 of 2019 aims to protect adolescents from psychological burdens they are not yet able to bear.

c. Social Impact Socially

Underage marriage due to premarital pregnancy leads to stigma and negative perceptions from society. The perpetrator's family often faces social pressure and negative moral judgment. This can disrupt social relationships and lower family honor in the eyes of the community. Within the framework of national law, this phenomenon is a concern for the government because it involves child protection and the social dignity of families.

d. Economic Impact

Young couples generally do not yet have economic independence. As a result, they are dependent on their parents or struggle to meet the basic needs of their families. This condition can trigger new poverty and hinder household well-being. Law No. 16 of 2019 affirms that economic readiness is one of the rational bases for restricting the age of marriage to prevent marriage from leading to socio-economic problems.

e. Impact of Education

Unmarried pregnancy often forces teenagers to drop out of school. Disrupted education has a long-lasting impact on the future, reducing job opportunities and narrowing self-development prospects. In the context of child protection, marriage laws aim to prevent early marriage so that children

retain their right to education as mandated by Child Protection Law No. 35 of 2014.

f. Impact on children and legal challenges

Children born from underage marriages due to out-of-wedlock pregnancies are vulnerable to social stigma and legal uncertainty, especially if the marriage was not performed thru legal procedures. Additionally, parenting patterns are often suboptimal due to the emotional immaturity of young parents. Law No. 16 of 2019 emphasizes the importance of legal clarity and parental readiness in guaranteeing children's rights. Legally, cases of underage marriage due to out-of-wedlock pregnancy pose a dilemma between child protection and the granting of marriage dispensations by religious courts. Law No. 16 of 2019 does indeed open up the possibility of dispensation, but with very strict conditions and consideration of the child's best interests. The main challenge lies in the implementation of the law on the ground, which is often influenced by cultural factors, social pressure, and societal moral perceptions (Böhm et al., 2022).

Meanwhile, Islamic law does not specify a minimum age for marriage as stated in the marriage law. However, Islamic law does require that a person be of sound mind and reach puberty to get married. Imam Shafi'i allows anyone to get married at any age. However, Imam Shafi'i advises that someone who wishes to marry should be in a state of puberty. According to Imam Shafi'i, a person is considered to have reached puberty when they are 15 years old for women, while the standard for men is when they have wet dreams or ejaculate and have grown pubic hair. Among his hadiths are:

يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغْضُ لِلْبَصَرِ، وَأَحْصَنُ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ
بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ

Meaning: "O young people, whoever among you is able to bear the expenses, let him get married. For marriage is more capable of lowering the gaze and protecting the private parts. And whoever is not able, let him fast. For fasting can be a shield against lust for him." (Narrated by Bukhari & Muslim).

Imam Shafi'i has a specific view regarding marriage dispensation, which allows marriage in certain situations, such as premarital pregnancy (Fidyani et al., 2024). According to him, marriage dispensation can be granted if there is an urgent need or a greater interest, such as to protect the honor of women and the welfare of the children born. Imam Shafi'i also held the opinion that an adulterer is permitted to marry the woman who is pregnant as a result of their actions, because adultery does not prohibit their marriage.

This is in accordance with the hadith that allows a fornicator to marry the woman with whom he committed fornication, even if she is not in her waiting period (Marwazi, 2025). This view is also held by the Hanafi and Maliki schools of thought, which consider marriage between an adulterer and the victim of adultery to be valid. Nevertheless, for a husband whose wife is pregnant due to adultery, sexual relations before childbirth are considered makruh (disliked).

Marriage with a woman who is pregnant due to adultery is valid according to Imam Shafi'i, regardless of whether the man caused the pregnancy or not (Aziz & Faizin, 2025). Proving that the law and the marriage are valid. And having intercourse until the baby is born is considered makruh (disliked). Based on the hadith.

يَجُوزُ يَنْكِحُ الْحَامِلُ مِنَ الزَّانَا سِوَاءَ الزَّانِي وَغَيْرُهُ وَوَطُوعُهَا جُنَيْدٌ مَعَ الْكَرَاهَةِ

Meaning: "It is permissible to marry a woman who is pregnant from adultery, whether the person marrying her is the one who committed adultery with her or someone else, and having intercourse with her at that time is considered disliked."

Imam Shafi'i also permits marrying a pregnant woman who conceived thru adultery, whether with the man who committed adultery or with a man who did not, on the grounds that a woman pregnant from adultery is not considered among those forbidden for marriage or intercourse, and that every pregnant woman is permissible for intercourse.

In the view of the Shafi'i school of thought, if a woman becomes pregnant outside of marriage, several important points need to be considered regarding Islamic legal aspects. Here are the main points based on opinions within the Shafi'i school of thought:

1. Marriage of a Pregnant Woman Outside of Marriage Permissible to Marry

A woman pregnant due to adultery is still permitted to marry, whether with the man who impregnated her or with another man (Anfasa & Ja'far, 2024). However, according to the stronger opinion (qaul ashah) in the Shafi'i school of thought, this marriage is valid under the condition that there is no denial of Islamic law, such as considering adultery permissible. The marriage is performed according to the pillars and conditions of a valid marriage.

Waiting Period (Iddah): A woman who is pregnant due to adultery is not subject to a waiting period because the purpose of the waiting period in Islam is to ensure the womb is clear of the previous husband's fetus. In cases of adultery, the pregnancy clearly results from the act.

2. Child's Lineage

A child born out of wedlock cannot be attributed to their biological father based on the Prophet's hadith (peace be upon him) which states

الْوَلَدُ لِلْفَرَّاشِ، وَلِلْعَاهِرِ الْحَجَرُ

The child is attributed to the mother who gave birth to him, and the adulterer has no rights whatsoever over the child. (Narrated by Bukhari and Muslim). The child is only attributed to his mother. The biological father has no inheritance rights to the child, and vice versa.

3. Relationship with the Biological Father

In the Shafi'i school of thought, a man who impregnates a woman outside of marriage is not considered a guardian for the child, as there is no legitimate lineage according to Islamic law (Iqbal, 2023). If the man wishes to take responsibility for the child, this can be done thru social guardianship or moral acknowledgment of responsibility, but not within the context of legal lineage.

CONCLUSION

The process for marriage dispensation for underage individuals due to out-of-wedlock pregnancy, from the perspective of Law No. 16 of 2019, is as follows: Initial occurrence in the village community, consultation with village officials, submission of an application to the Religious Court. Required documents: Parents' and child's ID cards and family cards, child's birth certificate, village introduction letter, pregnancy certificate from a midwife/doctor, statement of consent to marry from both parties, and the trial process.

In Islamic law, there is no specific mention of the minimum age for marriage as stated in the marriage law. However, Islamic law does require that a person be of sound mind and reach puberty in order to get married. Imam Shafi'i allows anyone to get married at any age. However, Imam Shafi'i advises that someone who wishes to marry should be in a state of puberty. According to Imam Shafi'i, a person is considered to have reached puberty when they are 15 years old for women, while the standard for men is when they have wet dreams or ejaculate and have grown pubic hair. The author also needs to offer some suggestions to those involved in the case, including that perpetrators of child marriage should adhere to the rules and conditions that are already in effect in Indonesia, as stated in the Marriage Law, and consider the impact on themselves and their child's future.

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