



Antinomy of Multiple Interpretations of Very Urgent Reason in The Marriage Dispensation in Indonesia

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Histori Artikel	Abstrak
<p>Masuk: 16 Nov 2023 Review: 15 Jun 2024 Diterima: 24 Jul 2024 Terbit: 25 Jul 2024</p>	<p>Keberadaan dispensasi nikah menunjukkan sikap pemerintah yang tidak sepenuhnya membolehkan pernikahan dini, namun membatasinya melalui putusan hakim. Di sisi lain, dengan dibukanya peluang terjadinya pernikahan dini melalui dispensasi nikah sering kali menimbulkan konflik nilai. Konflik nilai ini kemudian disebut sebagai antinomi yang akan mempengaruhi hakim dalam mengambil keputusan untuk mengabulkan permohonan dispensasi nikah dengan alasan kemaslahatan atau menolak dengan alasan untuk mencegah pernikahan dini. Penelitian ini merupakan penelitian normatif empiris dengan teknik pengumpulan data melalui studi lapangan dan studi kepustakaan yang berfokus untuk mengkaji mengenai antinomi dalam pengaturan dispensasi nikah di Indonesia berdasarkan data primer dan sekunder yang telah ditentukan. Data primer diperoleh dari wawancara dengan hakim pengadilan agama dan data sekunder berasal dari literatur, kamus, undang-undang dan putusan pengadilan di Indonesia yang berkaitan dengan dispensasi nikah maupun antinomi. Penelitian ini menggunakan pendekatan konseptual, pendekatan perundang-undangan, dan pendekatan kasus dengan metode deskriptif-kualitatif. Hasil dari penelitian ini ditemukan bahwa alasan adanya dispensasi nikah di Indonesia untuk menyediakan jalan keluar bagi calon suami-istri yang terpaksa melangsungkan perkawinan sebelum berusia 19 tahun karena alasan sangat mendesak. Dalam penelitian ini juga ditemukan bahwa terdapat setidaknya dua konflik antar nilai (antinomi) sebagai akibat tidak diaturnya parameter dan pedoman hakim yang jelas mengenai alasan sangat mendesak, yaitu antara kepastian hukum dan keadilan serta antara kemanfaatan dan objektivitas hakim. Untuk menekan adanya antinomi yang terlalu ekstrem maka setidaknya pemerintah harus mengatur beberapa hal sebagai parameter dan pedoman yang memlimitasi hakim dalam memaknai alasan sangat mendesak, antara lain</p>



keadaan-keadaan tertentu yang mutlak tidak dapat diberikan dispensasi, batasan usia minimal pemberian dispensasi nikah bagi pernikahan yang belum terjadi kehamilan sebelumnya, serta hakim harus memastikan calon pengantin masih di bawah umur untuk mengerti mengenai hak, kewajiban, serta risiko sebagai suami-istri. Oleh karena itu, penelitian ini memberikan kontribusi terhadap perkembangan ilmu pengetahuan, khususnya di bidang hukum, dengan menemukan adanya antinomi sebagai akibat dari luasnya kewenangan hakim dalam menafsirkan alasan-alasan yang sangat mendesak dalam pengaturan dispensasi nikah di Indonesia serta memberikan solusi untuk mengatasi adanya antinomi yang terlalu ekstrim atas permasalahan tersebut.

Kata Kunci: Antinomi; Dispensasi Nikah; Multi Interpretasi.

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Abstract

The existence of marriage dispensation shows the government's attitude that does not fully allow early marriage, but limits it through a judge's decision. On the other hand, the opening of opportunities for early marriage through marriage dispensation often creates a conflict of values. This conflict of values is then referred to as an antinomy that will influence judges in making decisions to grant marriage dispensation applications on the grounds of benefit or refuse on the grounds of preventing early marriage. This research is an empirical normative research with field study and literature study data collection techniques that focus on examining antinomy in the regulation of marriage dispensation in Indonesia based on predetermined primary and secondary data. Primary data is obtained from interviews with Religious Court Judges and secondary data comes from literature, dictionaries, laws and court decisions in Indonesia relating to marriage dispensation and antinomy. This research uses a conceptual approach, a statutory approach, and a case approach with a descriptive-qualitative method. The results of this study found that the reason for the existence of marriage dispensation in Indonesia is to provide a way out for prospective husband and wife who are forced to marry before the age of 19 for very urgent reasons. This study also found that there are at least two conflicts between values (antinomies) as a result of the absence of clear parameters and guidelines for judges regarding urgent reasons, namely between legal certainty and justice and between expediency and judge objectivity. To suppress the existence of antinomies that are too



extreme, at least the government must regulate several things as parameters and guidelines that limit judges in interpreting very urgent reasons, including certain circumstances that absolutely cannot be granted dispensation, the minimum age limit for granting marriage dispensation for marriages where no previous pregnancy has occurred, and judges must ensure that the prospective bride and groom are underage to understand the rights, obligations, and risks of being husband and wife. Therefore, this research contributes to the development of science, especially in the field of law, by discovering the existence of antinomy as a result of the broad authority of judges in interpreting the reasons that are very urgent in the regulation of marriage dispensation in Indonesia and providing solutions to overcome the antinomy that is too extreme on these issues.

Keywords: Antinomy; Marriage Dispensation; Multi-Interpretation.

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Introduction

The maturity of a couple affects their success in forming a family. Couples who marry when they are mature, both physically and mentally, tend to be successful in building a household. Unlike couples who marry when they are immature, they have a higher likelihood of disagreements that eventually lead to divorce (Mahrus et al., 2023). However, in certain circumstances, such as prior pregnancy, marriage must be carried out immediately in order to maintain the good name of the family and the couple. As a solution to this problem, the Government of the Republic of Indonesia has issued Law No. 1 of 1974 concerning Marriage along with its amendment Law No. 16 of 2019 (hereinafter referred to as the Marriage Law) which regulates an institution called marriage dispensation. Marriage dispensation is an authorization from the state (judge) given to a prospective husband and wife who are not yet 19 years old to enter into marriage (Mashdurohatun et al., 2023). Marriage dispensation shows the government's attitude that does not fully allow early marriage, but limits it through a judge's decision. On the other hand, the opening of the early marriage faucet through the marriage dispensation institution often creates a conflict of values. This conflict between values is then referred to as an antinomy (Feis, 2020).



Antinomy is a contradictory concept used to analyze the values in a regulation. According to Sudikno Mertokusumo as quoted by Zainal Arifin Mochtar and Eddy O.S. Hiariej, that antinomy in law can also occur in generally accepted legal principles (Mochtar & Hiariej, 2023). There are legal values and principles that are in fact different, but do not negate each other. The difference between these values and principles then becomes an antinomy that shows the dynamics of law in society. In short, antinomy in the level of legal theory and practice is an unavoidable reality so that a middle ground must be taken to balance the relationship of attraction between these different principles and values (Vermeule, 2023).

Antinomy in the regulation of marriage dispensation is important because it will influence judges in making decisions. In another paradigm, antinomy can also occur between two or more regulations in one regulatory regime, which is then referred to as norm antinomy. When there is an antinomy of norms in a regulation, it is the judge who must decide to determine the attitude towards the antinomy, such as the antinomy between the applicable procedural law in Italy and the Charter of Fundamental Rights of the European Union. Then, the Italian Constitutional Court then decided to use Italian procedural law rather than the EU Charter (Massa, 2023).

Antinomy also exists in the regulations governing marriage dispensation in Indonesia. The government, through Article 7 of the Marriage Law, does not provide clear parameters or criteria regarding the very urgent reasons that can be used as a consideration for judges to grant marriage dispensation to applicants. The government has indirectly given judges a wide space to interpret the reasons for being very urgent given that there is no clear limitation on the meaning of the phrase.

There are several previous studies that also discuss the implications of very urgent reasons in the regulation of marriage dispensation in Indonesia. First, a study entitled "Dynamics of Judges' Considerations in Determining Marriage Dispensation in Enrekang Religious Court" by Nur Alam found that judges based on four factors in interpreting very urgent reasons in determining marriage dispensation, namely psychological, health, education, and economic factors (Alam, 2021). This study has a difference with the research conducted by Nur Alam, namely that this study does not examine the factors of judges in interpreting very urgent reasons in determining marriage dispensation in a particular court, but explores the various considerations of judges used to interpret very urgent reasons to find conflicting values in the judge's



determinations. Second, a study entitled "Interpretation of the Meaning of 'Imperative Reason' in Marriage Dispensation Denial" conducted by Beni Kurniawan and Dinora Refiasari has similarities with this study, namely both finding that the breadth of interpretation of the imperative reason has led to disparities in decisions among judges in deciding marriage dispensation applications and has also formulated judge guidelines to reduce these disparities (Kurniawan & Refiasari, 2022). However, the research conducted by Beni Kurniawan and Dinora Refiasari has not examined the antinomy arising from the multiple interpretations of the very urgent reason. Third, a study entitled "Looking at the Problems of Marriage Dispensation in Efforts to Prevent Child Marriage after the Revision of the Marriage Law" by Ahmad Muqaffi et al, which analyzes that the broad interpretation of very urgent reasons in regulations regarding marriage dispensation has led to legal uncertainty and disparity in decisions (Muqaffi et al., 2021). The research conducted by Ahmad Muqaffi et al has a difference with this research because the research conducted by Ahmad Muqaffi et al has not examined the values that intersect with each other as a result of the broad interpretation of very urgent reasons in the regulations regarding marriage dispensation. To complement some of these previous studies, it is necessary to further study the antinomy that arises as a result of the broad meaning of the very urgent reason in the regulation of marriage dispensation in Indonesia. Therefore, this research contributes to the development of science, especially in the field of law, by discovering the existence of an antinomy as a result of the broad authority of judges in interpreting very urgent reasons in the regulation of marriage dispensation in Indonesia.

Based on the description above, this research aims to analyze the purpose of marriage dispensation in Indonesia and the antinomy of multiple interpretations of very urgent reasons in the regulation of marriage dispensation in Indonesia. The existence of this antinomy has the potential to result in disparities in judges' decisions related to marriage dispensation and affect the objectivity of judges in deciding marriage dispensation applications. Thus, a special study is needed to find solutions to these problems.

Methods

This research uses empirical normative research methods with data collection techniques of field studies and literature studies. The normative empirical research method was chosen because this research focuses on examining antinomy in the regulation of marriage dispensation in Indonesia based on



predetermined primary and secondary data (Soekanto & Mamudji, 2015). The data analysis method in this research is carried out by linking primary data in the form of interviews with religious court judges with secondary data in the form of books, journals, dictionaries, laws and court decisions in Indonesia relating to marriage dispensation and antinomy. This research is a descriptive-qualitative research, namely by processing the data obtained and then connecting it with principles, theories and laws and regulations to draw research conclusions (Saldana et al., 2014). The approaches used in this research are conceptual approach, statutory approach, and case approach. These three approaches were chosen because this research analyzes the conflicting values contained in the regulation of marriage dispensation in Indonesia by basing it on the theory of antinomy and using court decisions as a representation of the existence of antinomy in the interpretation of very urgent reasons by judges in marriage dispensation applications in practice. Details of the research method can be read in Figure 1.

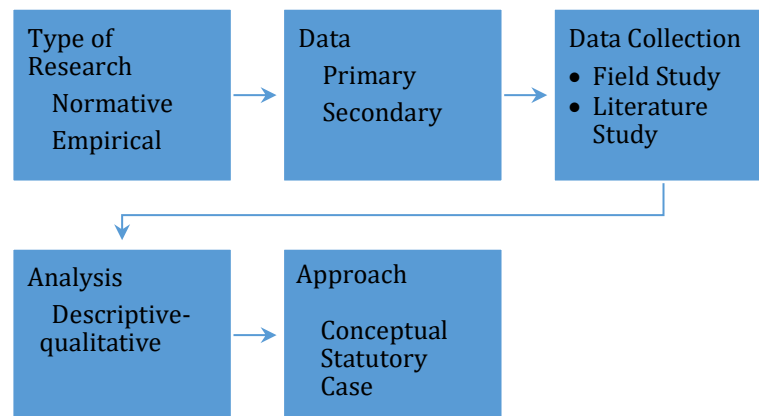


Figure 1. Methods

Result and Discussion

Reasons for Marriage Dispensation in Indonesia

The government changed the marriage age limit from 19 years for husband candidates and 16 years for wife candidates to 19 years for both of them not without reason. The government changed the minimum age limit for marriage after the Constitutional Court Decision of the Republic of Indonesia Number 22/PUU-XV/2017, which in its consideration states that differentiating the minimum age limit for marriage between prospective husbands and prospective wives is discrimination against the protection and fulfillment of children's rights as stipulated in Article 28B paragraph (2) of the 1945



Constitution. The difference in the minimum age for marriage prior to the Constitutional Court Decision was considered to be discrimination against women because the higher age limit for marriage posed a greater risk to women of not having their basic rights fulfilled, such as the right to education and access to health services. The government also considers that 19 years is a mature age for marriage so that it is hoped that by marrying at the minimum age of 19 the goal of marriage to form a happy and eternal family can be achieved (Al-Asy'ari, 2019).

Indonesia is one of the countries with the highest rate of early marriage in the Southeast Asia Region. Indonesia ranks second out of eleven countries in the Southeast Asian Region as the country with the highest rate of early marriage in 2021, which is more than 50,000 (Habibi, 2022). There are several factors that influence the high rate of early marriage in a country. The first factor is the low level of education. Women who have a low level of education or drop out of school tend to have free time that allows them to do things that are unproductive and less useful so that their parents will immediately marry the woman to avoid unwanted things (Susanti & Sari, 2018). The second factor is economic. Poor families with children, especially girls, tend to marry off their children as soon as possible when they reach adolescence. This is so that the responsibility for the girl immediately shifts to the husband so that it will reduce the economic burden on the family (Hardianti & Nurwati, 2020). The third factor is religious understanding. Religious understanding has a significant role in shaping a paradigm in society. There is a paradigm in society that marriage is a recommendation so that it must be carried out immediately (Marwa, 2021). In fact, a marriage can become forbidden if it is carried out by someone who is deemed unable to take responsibility so that it is feared that he will abandon his wife and family (Rifandanu & Febrianti, 2023). The fourth factor is the environment and culture of the community. There is a paradigm that has developed in some communities that early marriage is a natural thing. This normalization of early marriage is an impetus for underage couples to get married immediately. The high rate of early marriage in Indonesia is also caused by other factors, such as stigmatization in society and the lack of socialization about child marriage (Prabawati & Rusdiana, 2019).

In addition, there are also certain circumstances that require marriage to be carried out immediately even though the prospective husband and prospective wife have not reached the minimum age for marriage. These certain circumstances are then known as very urgent reasons, which are dominated by the reason that there has been a previous pregnancy or at least



there has been a relationship like husband and wife before marriage (Počuča et al., 2023). The Marriage Law through Article 7 paragraph (2) has provided a way out for prospective husband and wife who are forced to enter into marriage before the age of 19 for very urgent reasons, namely through marriage dispensation. The parents of the prospective husband or wife can apply for marriage dispensation to the court, religious court or district court in accordance with their absolute competence. After hearing from the applicant, the court then decides whether or not to grant marriage dispensation to the prospective husband and/or wife.

The government faces a dilemma in formulating regulations that address early marriage. On the one hand, the government has an obligation to provide protection to those who are threatened to not be fulfilled if early marriage is legalized (Salim et al., 2022). However, the government is aware that early marriage is a social reality that cannot be denied and the government also cannot obstruct a person's human right to marry. To overcome this problem, the government then took a middle way by regulating the minimum age limit for people who want to get married, but still opened up opportunities for couples who were not old enough to get married on condition that there was a marriage dispensation determination from the court.

Antinomy of Multiple Interpretations of Urgent Reasons in the Regulation of Marriage Dispensation in Indonesia

The government through legislation does not explicitly set out the limitations and parameters of the 'very urgent reasons' that judges use to decide marriage dispensation cases. The government only provides a general description of very urgent reasons as set out in the Explanation of Article 7 (2) of the Marriage Law as well as Supreme Court Regulation No. 05 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications (hereinafter referred to as Perma Dispensasi Nikah). The elucidation of Article 7 paragraph (2) of the Marriage Law explains the definition of urgent reasons in general, which is a situation where there is no other choice and it is very compulsory for a marriage to take place. Meanwhile, the Perma Dispensasi Nikah only regulates the general principles and guidelines for granting marriage dispensation, which must emphasize the protection of children's rights or be based on the principle of the best interests of the child (Kurniawan & Refiasari, 2022). This shows that the government (in a broad sense) authorizes judges to interpret the reasons for urgency based on the judge's own perspective and concrete cases that occur in practice. The absence of clear boundaries and parameters as a benchmark for judges in interpreting the reason for extreme



urgency has led to an antinomy. There are at least two antinomies as a result of the lack of clear boundaries and parameters regarding the reasons for being very urgent as a reason for granting a marriage dispensation application.

First, Legal Certainty and Justice. Legal certainty is a value that protects everyone, especially justice seekers, against arbitrary actions from the authorities (Alexy, 2015). Legal certainty seeks to realize clear and consistent law enforcement by law enforcers. In addition, legal certainty also requires the existence of laws or regulations that are not multi-interpretive (Judiasih et al., 2017). The value of legal certainty does not seem to have been accommodated in the regulations on marriage dispensation in Indonesia. The granting of authority to judges to interpret the reasons for urgency broadly demonstrates the degradation of the value of legal certainty for the parties. Different judges may have different interpretations of the urgency grounds, even in similar cases. The difference in judge's views regarding this very urgent reason can be seen in Decision No. 5/Pdt.P/2021/MS.Skl and Decision No. 30/Pdt.P/2019/PA.Buol. In the first decision, the Singkil Syariah Court Judge granted an application for marriage dispensation between a prospective husband and a prospective wife whose status was not yet working, had never had relations as husband and wife, and the prospective wife was 17 years old. The judge's consideration used as the reason for accepting the dispensation application was because the prospective husband and wife often went together so that if they were not married immediately, they would commit acts that were not permitted by religion. Meanwhile, in the second decision, the Buol Religious Court Judge rejected the marriage dispensation between the prospective husband and the prospective wife with the status of the prospective husband already working, between the prospective husband and the prospective wife have never had a relationship like husband and wife. The consideration of the Buol Religious Court's Judge rejected the marriage dispensation application because the prospective wife was too young, namely 15 years old. Based on these two decisions, there are differences in the judge's views regarding the reasons for urgency. In the first decision, the judge was of the view that the urgent reason had been fulfilled when there was a concern that if they did not get married immediately, the prospective husband and prospective wife would commit acts that violated religious provisions, such as *khalwat* and having sex before married, even though the prospective husband and prospective wife did not yet have a job. Meanwhile, in the second decision, the judge considered that the urgency to get married has not been fulfilled when the age of the prospective husband and/or prospective wife is still too



young even though the prospective husband has a job, has proposed to his prospective wife, and there is concern that unwanted things will happen.

On the other hand, marriage dispensation gives judges the space to realize justice for marriage dispensation applicants. According to John Rawls as cited by Castan, there are two principles of justice (Castan, 2018). First, the principle of upholding populist justice by providing equal opportunities for basic freedoms for everyone. Second, being able to reorganize the economic disparities that occur so as to provide mutual benefits. In relation to John Rawl's first principle of justice, marriage dispensation has provided equal opportunities for everyone, including people who are not yet 19 years old, to marry and form a family as a manifestation of human rights as regulated in the 1945 Constitution of the Republic of Indonesia. In addition, if in an application for dispensation it has been found that the prospective wife who is still underage is pregnant, then it is likely that the judge will grant marriage dispensation to the prospective husband and/or wife in the interests of the child who is still in the womb. The judge will use his or her authority to interpret the reason as very urgent to provide justice to the child because after all, children should not be punished for the mistakes made by their parents.

Second, Expediency and Objectivity of Judges. Benefit in the context of law argues that the law was essentially created for society so that the existence of law must be useful for society at large. Law is a tool to provide benefits to society (Tiwari, 2023). Judges in deciding marriage dispensation applications must also look at the aspect of benefit for the parties. Religious court judges often use the postulate *Dar'ul Mafasid Muqaddamun 'Ala Jalbil Masholih* as one of the bases in deciding cases submitted to him, including marriage dispensation. The postulate means that it takes precedence to reject misfortune over taking benefit (Hakim, 2020). This postulate can then be used by judges to interpret the very urgent reasons in the regulations regarding marriage dispensation in order to fulfill the value of benefits for the parties. On the other hand, the multiple interpretations of the very urgent reason also degrade the objectivity of judges in deciding marriage dispensation applications. Judges will tend to use their subjectivity to constituent the marriage dispensation application submitted to them. As stated by Hazewinkel Suringa quoted by Yuber Lago et al, the subjective view of judges causes legal inequality between judges' decisions because there are conditions in which one judge will accept something as the correct solution, while another judge rejects the solution. This fact is then referred to as decision discrepancy (Lago et al., 2023).



The conflict between the value of expediency and the objectivity of judges can be seen in the judge's view of the existence of pregnancy in advance (unwanted pregnancy) as a very urgent reason to grant marriage dispensation. According to empirical research conducted by Sri Wiyanti Eddyono et al, it was found that unwanted pregnancy is a circumstance that cannot be disputed by judges not to grant marriage dispensation. This has become a consensus among judges because granting marriage dispensation for couples who have been pregnant before is considered the most appropriate option to avoid gossip and ostracism from the community to the prospective husband, prospective wife, and their families (Eddyono et al., 2021). However, in its development, this consensus can then be negated if the judge considers that there is a greater benefit to be achieved. This can be seen in one of the decisions of the Bau-Bau District Religious Court in 2020, which basically refused to grant marriage dispensation to the applicant's child even though there had been a previous pregnancy. The Bau-Bau District Religious Court judge rejected the application for marriage dispensation because it was found that the applicant's future husband was a convicted murderer, so it was feared that the applicant's future husband would abuse the applicant's child and the child that she has conceived if their marriage was later legalized (Zain, personal communication, November 04, 2023).

So it can be seen that the antinomy that occurs in the regulation of marriage dispensation in Indonesia is caused by the broad authority of judges to interpret the reasons for being very urgent. The author argues that to suppress this antinomy, clear parameters or guidelines must be formulated for judges to interpret the reasons for being very urgent in deciding marriage dispensation applications. Clear parameters and guidelines are a middle way to balance the push-pull relationship between different values. Clear parameters and guidelines also aim to ensure legal certainty and avoid disparity in decisions (Mashdurohatun et al., 2023). The parameters and guidelines for judges regarding urgent reasons at least contain several things. First, certain circumstances that absolutely cannot be granted marriage dispensation. These circumstances include the holding of an engagement or certain traditional processions prior to the marriage so that the family feels embarrassed if the marriage is not immediately carried out (Rohman et al., 2023). Second, the minimum age limit for granting marriage dispensation for marriages where no previous pregnancy has occurred. The application of the minimum age limit for marriage dispensation for prospective couples who are not yet pregnant aims to protect the interests of children from the practice of early marriage due to coercion from the family and society, such as to raise the



status of the family and to repay the favor received by the family. Third, judges must ensure that prospective brides and grooms who are underage understand the rights, obligations and risks of being husband and wife. According to Reshandi Ade Zain, the urgency of understanding the responsibilities and risks of being a husband and wife is related to the reality that the bride and groom will face after the marriage. Understanding the rights, obligations, and risks of being husband and wife is also in line with the judge's obligation to hear the opinion of the prospective bride and groom as stipulated in Article 7 paragraph (2) of the Marriage Law.

Conclusion

Based on the description above, it can be concluded that the reason for the existence of marriage dispensation in the framework of marriage law in Indonesia is as a way out for prospective husband and wife who are forced to marry before the age of 19 for very urgent reasons. In addition, marriage dispensation is also a solution to the dilemma experienced by the government in addressing the problem of early marriage. Indonesian legislation only determines the parameters and guidelines for judges in the form of general principles to interpret urgent reasons in marriage dispensation applications, which then causes an antinomy. There are at least two antinomies as a result of not setting clear parameters regarding the reasons for urgency, namely between legal certainty and justice and between usefulness and objectivity of judges. This research also provides a solution as well as providing input to the government to formulate regulations regarding clear parameters on the reasons for urgency to suppress the extreme antinomy in marriage dispensation. There are several things that must at least be set as parameters and guidelines to limit judges in interpreting the reason for extreme urgency, namely certain circumstances that absolutely cannot be granted dispensation, the minimum age limit for granting marriage dispensation for marriages where there has been no previous pregnancy, and judges must ensure that the prospective bride and groom are underage to understand the rights, obligations, and risks of being husband and wife.

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