

Protecting Children's and Women's Rights: An Analysis of Islamic Family Law on Child Marriage in Indonesia

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Abstract: Child marriage in Indonesia persists despite the enactment of Law No. 16 of 2019, which raised the minimum marriage age to 19, partly because the dispensation mechanism allows exceptions to the statutory minimum. This study examines the protection of children's and women's rights in the context of child marriage through the lens of Islamic family law. It analyzes the relationship between legal norms and judicial practice, evaluates the consequences of child marriage through the framework of *Maqasid al-Shari'ah*, and identifies measures to strengthen legal protection. The study employs normative legal research using descriptive-analytical methods, based on library research and statutory, conceptual, comparative, and case approaches. Legal materials are analyzed qualitatively through systematic classification, interpretation, and deductive reasoning. The findings indicate that declining child marriage rates do not necessarily translate into substantive rights protection. Inconsistencies between the Compilation of Islamic Law and child protection legislation, together with the insufficiently precise definition of compelling reasons for granting marriage dispensations, create regulatory gaps that may undermine children's rights. Socio-cultural expectations, economic hardship, limited educational opportunities, and family pressures further reinforce vulnerability, threatening the protection of life, intellect, and lineage under *Maqasid al-Shari'ah*. This study argues that effective protection requires harmonized legislation, stricter and child-centered judicial scrutiny of dispensation requests, enhanced public education, and sustained support for children already in marriage. It contributes to Islamic family law scholarship by connecting regulatory inconsistencies and dispensation practices with the substantive realization of children's and women's rights.



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Introduction

In state law and Islamic family law, both aim to protect the best interests of children and women in marriage (Iqbal et al., 2025). Law Number 16 of 2019 raises the minimum age of marriage for women to 19 years, equivalent to men. This provision is in line with the Child Protection Law which defines a child as someone who is not yet 18 years old. In the perspective of Islamic family law, marriage is understood as a contract that requires physical, mental, and responsible readiness (*São Paulo*), so that it is in line with the purpose of the sharia (*Maqasid al-Shari'ah*) to preserve the soul (*hifz al-nafs*), Sense (*hifz al-aql*), and descendants (*hifz al-nasl*) (Alimuddin & Basri, 2024). The government also places marriage dispensation as a last resort, with Supreme Court Regulation Number 5 of 2019 requiring a thorough assessment of the child's psychological, health, educational, social, cultural, and

economic conditions, including the identification of coercive elements. Thus, the ideal normative framework requires that marriage only take place when the bride-to-be is mature in age and readiness.

In practice, it was found that child marriage is still going on even though regulations have been tightened. Data from the Central Statistics Agency shows that the prevalence of child marriage has dropped from 6.92 percent in 2023 to 5.90 percent in 2024, and this figure has exceeded the 2024 RPJMN target of 8.74 percent (Between East Java, 2026). This decline does not mean that the problem is over, because on a national scale, BPS (2020) recorded that one in nine women aged 20-24 years were married before the age of 18, or around 1.2 million people (Center for Standards and Public Policy, 2026). The government is still setting a prevalence target of 6.94 percent by 2030 through the National Strategy for the Prevention of Child Marriage (UNICEF Indonesia, BPS, PUSKAPA UI, Ministry of National Development Planning/Bappenas, 2020). On the other hand, the marriage dispensation, which should be a limited exception, has instead become the entrance to child marriage, with out-of-wedlock pregnancies and social pressure as the dominant reasons in the court's consideration. For example, the Ponorogo Religious Court received 198 applications for marriage dispensation in 2022 and the majority were filed due to out-of-wedlock pregnancies (Charolin Pebrianti, 2023). This condition shows the gap between protection norms and practices in the field, including the potential disharmony between child protection arrangements and the authority of judges to grant dispensations.

This gap has a serious impact, especially for girls. From a health perspective, child marriage is at risk of causing unready pregnancy and childbirth, premature birth, stunted children, to maternal and infant deaths, as well as reproductive health disorders and potential sexual violence (Listya et al., 2025). In terms of education and economy, early marriage often cuts off girls' access to school and strengthens the cycle of intergenerational poverty (Latifa et al., 2025). In terms of family law, the immaturity of the bride and groom is prone to triggering domestic conflicts, domestic violence, and early divorce that harm women and their children (Anwar et al., 2024). These impacts are contrary to the principle Maqasid al-Shari'ah because it actually threatens the safety of life, intellectual development, and the quality of offspring. Therefore, the study of Islamic family law on efforts to protect the rights of children and women to early marriage is important to formulate the strengthening of judicial norms and practices that are oriented towards the benefit

Several studies have been conducted before. Research by Scott, (2021) it shows that child marriage is a social phenomenon that still occurs in various societies and is often not revealed openly. In Islamic family law, this practice still causes differences of opinion. However, if in the context of contemporary society child marriage is proven to have more negative impacts, then restrictions or prohibitions can be considered in order to realize benefits and a better life. Research by Hanafiah, (2024) indicates that the implementation Maqasid al-Shari'ah can encourage more fair and responsive family law reform, especially for

children and women. This approach can also face social inequality and strengthen a family law system that is inclusive and in accordance with the needs of Indonesian society. Study by Achmad et al., (2025) showing that marriage in Islam is a sacred bond that contains the value of worship and responsibility in building a family that is *sakinah, mawaddah, and rahmah*. In Indonesia, marriage is regulated through national law and Islamic law, including the minimum age requirement of 19 years. This policy is part of the state's efforts to protect children's rights, although its implementation still faces obstacles in the form of cultural, economic, and low legal awareness. Therefore, synergy between the government, religious institutions, and the community is needed so that marriage can take place by paying attention to the welfare and future of children. Study by Nasoha et al., (2024) It stated that the protection of marriage under the age of 19 requires appropriate regulations, public education, women's empowerment, and cooperation from the government, social institutions, and society. In Islamic jurisprudence, scholars have different views on the age limit for marriage. These differences are related to the measure of maturity, especially based on the signs of puberty and individual readiness. Research conducted by Ahmad et al., (2025) Indicates that child marriage has the potential to conflict with *Maqasid al-Shari'ah*, especially in the protection of soul, intellect, and offspring. Therefore, family law needs to be strengthened so that child protection is more effective and marriage takes place after achieving physical and psychological maturity.

Previous studies on child marriage in Indonesia have mostly focused on juridical reviews of the mechanism of marriage dispensation, analysis of the determination of religious courts in a single region or one case, and progressive and psychological legal approaches to their impact. These studies are useful for photographing judicial practice, but generally treat child protection and women's protection as two separate issues, or only place the perspective of Islamic law as a normative complement. As a result, there have not been many studies that read the three elements in an integrated manner, namely children's rights, women's rights, and Islamic family law norms (*fiqh*, Compilation of Islamic Law, and *Maqasid al-Sharia'ah*), in a single framework of analysis with positive law after the amendment of the Marriage Law. In addition, the decline in national prevalence rates is often read as a policy success without testing whether protection norms are actually working at the practice level, particularly when pregnancy reasons and social pressures are still dominant in dispensation applications. This gap is what shows the need for a more integrative and evaluative analysis.

The *novelty* of this study lies in three things. First, this study integrates the protection of children's rights and women's rights as well as an object of analysis in the framework of Islamic family law, rather than separating them as the previous study tended. Second, this study uses *Maqasid al-Sharia* as a measuring tool to assess the conformity between norms (Law Number 16 of 2019, Supreme Court Regulation Number 5 of 2019, and Compilation of Islamic Law) with the practice of granting marriage dispensation, so that the analysis does not stop at the description of the rules. Third, this study reads the latest data, namely the trend

of the prevalence of child marriage decreasing from 6.92 percent in 2023 to 5.90 percent in 2024, critically by examining whether the decline reflects substantive protection or just administrative changes. Thus, this study offers a more complete and contextual model of protection analysis, which can be a reference for the development of Islamic family law studies and policy formulation.

This study aims to analyze the regulation of the protection of children's and women's rights to early marriage in Indonesian positive law and Islamic family law, as well as to identify the suitability and incompatibility between norms and practices, especially in the mechanism of marriage dispensation. More specifically, this study aims to examine the factors behind the ongoing nature of child marriage, evaluate its impact on girls' health, education, and safety rights through the perspective of Maqasid al-Syari'ah, and formulate protection efforts that can be applied normatively and practically. The results of the study are expected to make a theoretical contribution to the development of Islamic family law that is responsive to the protection of children and women, as well as a practical contribution for judges, policymakers, and society in suppressing the practice of early marriage.

This research is a *normative legal research* that is descriptive-analytical and carried out through library *research*. This type was chosen because the object of study is in the form of norms, principles, and doctrines that regulate the protection of the rights of children and women in marriage, both in positive Indonesian law and Islamic family law, so that the problems studied rely on the regulation and interpretation of the law, not on the measurement of behavior in the field. Descriptive-analytical nature is used to describe the arrangements and conditions of early marriage systematically, then assess its conformity with the principles of child and women's protection.

Research Methods

This study uses four complementary approaches. The statute *approach* is used to examine Law Number 1 of 1974 as amended by Law Number 16 of 2019, the Child Protection Law, Supreme Court Regulation Number 5 of 2019, and the Compilation of Islamic Law. The *conceptual approach* is used to examine the concepts of marriage, maturity (*bulūgh* and *rusyd*), children's rights, women's equality, and Maqasid al-Sharia'ah as a framework for assessing benefits. An internal comparative approach is used to compare classical and contemporary fiqh views with positive legal provisions, so that the common points and differences are visible. The *case approach* is used in a limited way to examine judges' considerations on several relevant marriage dispensation determinations to see how protection norms are applied in practice.

The source of data for this research is all in the form of secondary data which is grouped into three types of legal materials. Primary legal materials include laws and regulations, Supreme Court Regulations, Compilation of Islamic Law, the determination of religious courts, and international instruments that have been ratified by Indonesia.

Secondary legal materials include fiqh books, Islamic family law books, scientific journal articles, results of previous research, as well as statistical reports from the Central Statistics Agency, the Ministry of Women's Empowerment and Child Protection, and the Supreme Court.

Data analysis is carried out qualitatively by descriptive-analytical method through several stages. The first stage is data reduction, which is to sort out legal materials that are relevant to the focus on protecting the rights of children and women to early marriage. The second stage is the systematic presentation of data by grouping them based on themes, namely legal arrangements, views of Islamic family law, the practice of marriage dispensation, and the impact of early marriage. The third stage is legal interpretation through grammatical, systematic, and teleological interpretations of positive legal norms, as well as Maqasid al-Sharia's reasoning on Islamic legal norms to assess whether a provision or practice realizes the benefits of children and women. The last stage is drawing conclusions with the deductive method, which is drawing specific conclusions from general principles and norms, as well as formulating recommendations for protection efforts that can be applied normatively and practically.

Result and Discussion

Protection of the Rights of Children and Women in Marriage Law

The change in the marriage age limit through Law Number 16 of 2019 is basically a correction to the old legal design that normalizes inequality. Article 7 paragraph (1) of Law Number 1 of 1974 sets the age of 19 years for men and 16 years for women, so that women are considered ready to marry three years early (Firdausi et al., 2024). In Decision No. 22/PUU-XV/2017 read in December 2018, the Constitutional Court considered the distinction discriminatory because it closed women's access to education, health, and the right to grow, as well as contrary to the Child Protection Law which stipulates that a person is categorized as a child up to 18 years old (Zuhriah & Imam, 2022). With this in mind, the lawmakers equalized the age limit to 19 years. However, equalizing the numbers does not automatically result in substantive protection. The problem is that the lawmakers still open the door to deviation through Article 7 paragraph (2), so that the age limit that seems strict in the first paragraph becomes relative in the second paragraph. Analytically, the norm of the age limit in Indonesia functions more as a general negotiable rule than as a binding prohibition, and it is at this point that the effectiveness of protection is tested.

In the treasures of fiqh, the debate on child marriage is not uniform and cannot be read as a single attitude. The majority of classical scholars from the Shafi'iyah, Malikiyah, and Hanabilah circles give authority *ijbār* to the father or grandfather to marry a daughter who is still a virgin, whereas Hanafiyah allows the wali to marry a child with the right to choose (*Khiyār al-bulūgh*) after he grows up (Asman, 2024). The problem is that the classical reference was born in a different social context, when puberty was often the only measure of

readiness. QS. An-Nisā' verse 6 actually gives further clues by requiring *Rusyd*, namely the maturity of managing affairs, in addition to reaching the age of marriage

Test the orphans until they are old enough to marry. Then, if in your judgment they are clever, give them their property. Do not eat it (the orphan's property) beyond the limit of propriety and (do not haste (to spend it) before they are of age. Whoever is able, let him refrain (from eating the orphan's property) and whoever is poor, then let him eat it in a good way. Then, when you give the property to them, you should have witnesses. Allah is sufficient as a watcher.

Through Maqasid al-Shari'ah, the eligibility for marriage does not stop at biological ability, but at the awakening of the soul (*hifz al-nafs*), Sense (*hifz al-'aql*), and descendants (*hifz al-nasl*). The rule that leaders' policies towards the people must be profit-oriented reinforce this argument, and in line with that the 2017 Indonesian Women's Ulema Congress affirmed the obligation to prevent child marriage that has the potential to cause harm (Wadda & Ulya, 2025). The determination of the age limit by the state can be justified in shari'i as *Shari'iyah*, not as an intervention that is contrary to religion.

The next problem is the alignment between the norms that govern child marriage. Article 15 paragraph (1) of the Compilation of Islamic Law still contains a limit of 19 years for men and 16 years for women on the basis of benefits, even though the Compilation is only in the form of a Presidential Instruction and hierarchically is under the law. In principle *lex superior derogat legi inferiori*, the provision should no longer be used as a handhold, but in fact it is still alive in reference practice at the lower levels, including in some religious and community affairs offices (Wijayanti et al., 2024). The inconsistency is also seen in Article 26 paragraph (1) letter c of Law Number 35 of 2014 which burdens parents with the obligation to prevent marriage at a young age, while Article 7 paragraph (2) instead places parents as the party who applies for a dispensation. This contradiction creates a dual position for parents, namely as guardians of children as well as parties who request exceptions to the protection. Furthermore, Law Number 12 of 2022 concerning the Crime of Sexual Violence categorizes child marriage and forced marriage, including marrying the victim to the perpetrator of rape, as a form of forced marriage (Alfanada et al., 2023). The implication is important, because some dispensation applications submitted on the basis of pregnancy have the potential to intersect with criminal events that should be examined first, not resolved with marriage.

Marriage dispensation is the most vulnerable point in the protection system because this is where prevention norms meet social pressure. Article 7 paragraph (2) requires that there be a very urgent reason accompanied by sufficient supporting evidence, while the explanation describes the condition of no other option and a very forced situation. Such a formulation is open and leaves interpretation to the judge, so that pregnancy out of wedlock, fear of adultery, or environmental pressure can easily qualify as an urgent situation. Supreme Court Regulation Number 5 of 2019 seeks to patch this gap by affirming the principle of the

best interests of the child, the obligation of judges to listen to the opinion of the child, and the need to explore the psychological, health, educational, and economic conditions of children (Novita, 2024). From this it appears that PERMA improves the procedure, but it has not changed the logic that marriage is a way out of disgrace. The analytical question that needs to be asked is not just whether the judge has carried out the procedure, but whether the verdict really answers the best interests of the child or simply legitimizes the circumstances that have already occurred.

Assessing protection is not enough by reading the text, but also by examining what happens to girls' basic rights after marriage takes place. From a health aspect, the immature body faces the risk of premature pregnancy, premature birth, children born in stunted conditions, to threats to the safety of mothers and babies, so that child marriage is directly contrary to the principle of life protection (Nasriyah & Ediyono, 2023). From the aspect of education, marriage generally decides the sustainability of schooling, even though education is a prerequisite for economic independence and women's ability to make decisions about their lives (Saptandari et al., 2025). The law has not fully responded to this set of risks, as dispensation checks stop at the granting of permits and are not followed by monitoring mechanisms for the health, school continuation, and safety of children after marriage. These conditions show that protection is still preventive upstream, but weak in recovery and supervision downstream.

The best interests of the child can be seen as the meeting point between positive law and Islamic family law. This principle is not a foreign idea to the Shari'a, because *maṣlaḥah* and the rejection of harm (*dar'u al-mafāsīd*) are the foundations of the establishment of law, and both are as strong as the principles in the Convention on the Rights of the Child. However, this integration is only meaningful if several things are addressed, namely the reaffirmation of the position of the Compilation of Islamic Law so that it does not conflict with the law, the tightening of the meaning of the very urgent reason so that pregnancy does not automatically become the basis for dispensation, the placement of the child's voice as a decisive consideration, and the strengthening of the examination of elements of sexual violence before marriage is permitted. In addition, post-decision supervision and education, health, and assistance services for married children need to be part of the legal politics of protection. With these measures, the protection of the rights of children and women no longer stops at the age limit, but becomes a real guarantee of their safety, education, and future.

Factors and Impacts of Child Marriage Perspective of Maqasid al-Sharia'ah

1. Social and Cultural Factors: Marriage as a Guardian of Honor

Socio-cultural factors are often the most difficult determinants for regulation to touch because they work through accepted norms without question. Girls are seen as parties whose honor must be immediately "secured", so marriage is considered safer than letting them date or be gossiped about (Arif et al., 2025). This logic is most evident when pregnancies occur

outside of marriage, when the family and the environment place marriage as a way to cover up disgrace, not as a decision that is tested in terms of child readiness. In this framework, girls are positioned as objects of safeguarding the dignity of the family, not as legal subjects who have the right to their future (Yusrina & Sururie, 2022). Interestingly, this kind of pressure rarely stands alone because it is reinforced by fear of stigma, so seemingly "voluntary" decisions are often born out of a very narrow space of choice. Thus, an uncriticized culture of honor transforms marriage from a protective institution into a mechanism of justification for the vulnerability of children.

2. Economic Factors: Marriage as a Survival Strategy

From an economic perspective, child marriage often functions as a survival strategy for poor families to reduce the burden of dependents or to find a guarantee of livelihood for girls (Asare & Forkuor, 2024). Economic vulnerability makes parents consider short-term value (one mouth that no longer has to be fed) more important than long-term value in the form of children's education and independence. The problem is that this exchange is often wrong, because girls who marry early have the opportunity to inherit the same poverty because their education is stopped and their skills are limited.

3. Education Factors: Low Education as a Cause as well as a Result

Education has a two-way relationship with child marriage, and that's where the complexity lies. Low education, both for children and parents, narrows the horizon of life choices and increases the likelihood that children view marriage as the only available avenue, including because of a lack of knowledge about reproductive health that leads to unplanned pregnancies (Yulithya et al., 2025). At the same time, marriage almost always stops girls' schooling, so that low education becomes cause and effect at once, creating a circle that is difficult to break in reproduction and life skills, a much more fundamental intervention than stand-alone prohibition.

4. Family Factors and Religious Understanding

The role of the family and religious interpretations show that this issue is also ideological. Parents often hold the belief that marrying children is a form of responsibility as well as worship, especially if the religious understanding that is adopted places puberty as the only measure of readiness and considers postponing marriage as a risk of falling into forbidden acts. This kind of understanding needs to be read critically because it often relies on classical fiqh opinions without considering changes in the social context and medical knowledge. Authoritarian parenting patterns, low communication between parents and children, and lack of space for children to express their opinions make the decision to marry more determined by the family than by the child (Wiranata & Ashari, 2025). This condition is problematic because the willingness of the bride-to-be is an important element in the contract, while the consent of an immature child is difficult to call as a sincere willingness. Thus, strengthening religious understanding that is oriented towards benefit, not only on formal abilities, is an important part of prevention efforts.

5. Impact on the Protection of the Soul (Ḥifẓ al-Nafs)

In the principle of life protection, child marriage shows the most obvious clash in the aspects of health and safety. Physically immature bodies face greater risks during pregnancy and childbirth, ranging from premature birth, complications of childbirth, to the threat of death to mother and baby, as warned by public health experts. In addition to medical risks, the unequal relationship of age and power in the household opens up opportunities for physical, psychological, and sexual violence that are difficult to report because children are in full dependence on their spouse and family. In perspective *maqāṣid*, life protection is a primary need (*ḍarūriyyāt*) that should not be sacrificed for the sake of a lesser need, such as maintaining a reputation or avoiding social stigma (Shihan et al., 2023). This means that if a marriage, even if formally legal, actually endangers the safety of children, then the legitimacy of the sharia should be questioned. Thus, the child's right to health and safety is not only an issue of child protection in positive law, but also a direct mandate of the purpose of sharia.

6. Impact on the Protection of Reason (Ḥifẓ al-'Aql)

The impact on intellect is related to children's right to education and cognitive and emotional development. Children who marry at school age tend to stop learning, lose opportunities to develop their potential, and have to assume domestic roles and parental roles before their psychological capacity matures. This condition has the potential to cause mental stress, anxiety, and low self-confidence that narrow women's ability to make decisions about their lives. In the framework *ḥifẓ al-'aql*, the protection of reason does not only mean the prohibition of things that damage reason, but also the obligation to ensure the growth of reason through education and a healthy environment (Rizal et al., 2025). Therefore, marriage that systematically stops the learning process of girls is a form of neglect of the purpose of the sharia, even though it does not appear to be a visible violation of the law. The consequences extend to the next generation, because less educated mothers tend to have limitations in raising and educating children.

7. Impact on Offspring Protection (Ḥifẓ al-Nasl)

Offspring protection is often misunderstood as an encouragement to get married and have children soon, even though the purpose of this sharia emphasizes the quality of generations, not just the quantity of births. Child marriage actually risks lowering the quality of offspring because mothers who are not physically and psychologically ready are more susceptible to giving birth to children with suboptimal health conditions, including the risk of stunting, and it is more difficult to provide adequate parenting (Sukri & Fauzan, 2025). Households formed at an early age are also more susceptible to conflict and divorce, which ultimately harms the children born into them. In this context, the claim that early marriage protects offspring from adultery becomes less convincing because it closes one risk by opening up several broader risks.

When these factors and impacts are read together, it appears that child marriage is not a single event, but a chain of mutually reinforcing vulnerabilities. A culture of honor and

economic pressure encourage children to marry, then education stops, health is threatened, and the child born inherits similar conditions, so that the cycle repeats itself in the next generation. The perspective of Maqasid al-Sharia provides an important analytical tool because it allows us to judge a practice not only by its formal validity, but also by the tangible benefits it produces for the soul, intellect, and offspring. The results of the assessment show that prevention is not enough through age restrictions and tightening of dispensations, but must be accompanied by strengthening education, empowering family economies, religious education oriented towards benefit, and assistance for married children. From this point of view, efforts to protect the rights of children and women are part of the implementation of the goals of the sharia itself, not something contrary to it.

Efforts to Protect Child Marriage

1. Strengthening Regulations: From Numerical Equality to Norm Consistency

Strengthening regulations needs to start from the recognition that the main problem is not the lack of rules, but the inconsistency between rules. Law Number 16 of 2019 has set an age limit of 19 years, but the Compilation of Islamic Law, which still contains a 16-year limit for women, has not been formally revised, so it still has the potential to be used as a reference in practice (Salim & Tanjung, 2023). The most urgent step is vertical and horizontal harmonization, namely the renewal of the Compilation of Islamic Law to be in line with the law, as well as the alignment of Article 7 paragraph (2) with the obligation of parents to prevent child marriage in the Child Protection Law and with the prohibition of forced marriage in Law Number 12 of 2022. In addition, the formulation "*Reasons are very urgent*" It needs to be emphasized through measurable criteria, for example by explicitly stating that pregnancy or concerns about social stigma do not automatically qualify for it. Perspective Maqasid al-Shari'ah justifying this step because the certainty of norms is a prerequisite for the realization of benefits, while ambiguous norms tend to be used to justify harm. So that strong regulations are not the most numerous, but the most consistent and difficult to interpret to weaken the purpose of protection.

2. A More Selective Dispensation of Marriage: From Procedure to Substance

Efforts to make marriage dispensation more selective require a shift from procedural compliance to the quality of substantive considerations. Supreme Court Regulation Number 5 of 2019 has provided important tools, such as the need to listen to children's opinions, assess psychological and health conditions, and identify elements of coercion. The problem is that studies of court decisions show that the reasons for pregnancy and social pressure are still easily accepted, which means that the tool has not completely changed the way judges weigh them (Fauzi et al., 2026). In order for selectivity to be truly realized, several steps can be considered, namely the involvement of psychologists or social workers as mandatory referrals in assessments, initial examinations of possible sexual violence before the case proceeds, and the application of written considerations standards that explain why refusing

dispensation is not the best option for children. The decrease in the number of dispensation applications should not be read as a success until it is ensured that there is no shift to unrecorded marriage.

3. Increasing Public Legal Awareness and Strengthening the Role of Religious Leaders

Changing norms will not be effective if the community does not internalize the reasons behind the rules, so increasing legal awareness needs to be designed as an effort to change perspectives, not just socialization of articles (Aimang et al., 2025). Education that only conveys prohibitions tends to trigger avoidance, while education that explains health risks, loss of education, and long-term economic impacts is more likely to shift family decisions. In this context, religious leaders, Religious Affairs Office extension workers, teachers, and religious organizations hold strategic positions because their messages are easily received by the same communities as vulnerable groups. Campaigns that associate postponement of marriage with sharia values, such as the concept of *Rusyd* and benefits, will be more convincing than an approach that seems to be opposed to religion. Marriage guidance for the bride-to-be, reproductive health education in schools and Islamic boarding schools, and family dialogue forums can be concrete forums. Keep in mind that good awareness should not stop at parents, but it is necessary to reach out to the children themselves so that they understand their right to refuse and know where to report. Thus, legal awareness built through religious and educational channels becomes a social foundation for the effectiveness of regulations.

In another position, judges are also at a crucial point because they are the last party to determine whether a child marries, so that strengthening their role includes technical capacity as well as perspective. In terms of child protection, gender equality, and reading *Maqasid al-Shari'ah* It is important that consideration does not stop at literal interpretations of postulates or moral concerns (Muttakin & Nuha, 2025). Judges also need to establish the habit of examining the interests of children independently, including asking questions directly to children in a safe and non-intimidating way, and not just accepting parental information. In addition, the courage to reject applications needs to be supported by the system, for example through well-documented and learnable decisions, as well as evaluation forums between judges on effective consideration patterns. On the other hand, judges cannot be left to bear the burden alone, because refusal of dispensation without service support for children who are pregnant or in vulnerable situations can create new problems. The right approach is to make the judge's decision a referral door to mentoring, counseling, and further education services. From the perspective of Islamic family law, this role is in line with the function of judicial power as an executor of benefits that protects the rights of those who are powerless.

The discussion of protection efforts will be unequal if we only talk about prevention, because there are children who are married and still entitled to protection. This group is often forgotten because it is considered to have "completed its affairs after legal marriage. In fact, it is precisely in this phase that the health risks, school dropouts, and domestic violence are

most real. Assistance can include monitoring maternal and infant health by health centers, re-access to education through formal or equality channels, family counseling, and easily accessible violence complaint mechanisms. The involvement of the Office of Religious Affairs and women and children's service institutions can help ensure that this assistance is sustainable. Within the framework of this Maqasid al-Shari'ah, this assistance is the embodiment of *Jalb al-Maṣāliḥ* (seeking benefits) after *Dar'u al-Mafasid* (resisting damage) is no longer fully achievable (Purwanto, 2025). In other words, complete protection does not stop when the contract occurs, but continues as long as the child's rights still need to be guaranteed.

All of these efforts can be summarized in an integrated protection model that works on three layers, namely norms, enforcement, and society. At the norm layer, regulatory harmonization provides certainty that the purpose of protection cannot be weakened by conflicting rules. At the enforcement level, selective dispensation and judges with a protection perspective ensure that these norms live in decisions. At the societal level, education, economic strengthening, and mentoring ensure that children have real options other than marriage. These three are interdependent, because regulations without enforcement are symbolic, enforcement without community support can trigger avoidance, and community programs without a norm basis easily lose direction. Maqasid al-Sharia serves as a common measure that unites the three, namely whether a step really protects the soul, intellect, and offspring of girls. With this framework, protection efforts are no longer understood as restrictions on religion, but as the implementation of the goals of religion itself in the context of contemporary Indonesia.

Conclusion

This study concludes that the legal framework for the protection of children and women from early marriage has shown progress through the equalization of the marriage age limit and guidelines for adjudicating marriage dispensations, but these protections have not worked substantively. The causes lie in three things, namely the inconsistency between the Compilation of Islamic Law and the law, the formulation of very urgent reasons that are too open, and the lack of supervision of the condition of the child after marriage is permitted. From the perspective of Islamic family law, child marriage cannot be justified if it is clearly detrimental to the soul, intellect, and offspring, so that age restrictions by the state have a sharia basis as a policy to realize benefits. Socio-cultural, economic, educational, and family factors reinforce each other as a chain of vulnerability, so that protection is not enough through age restrictions, but must work simultaneously at the level of norms, law enforcement, and society.

Based on these findings, policymakers are advised to revise the age limit provisions in the Compilation of Islamic Law and formulate measurable criteria for urgent reasons so that pregnancy does not automatically become the basis for dispensation. The Supreme Court and

judges are advised to strengthen assessments involving psychologists or social workers, examine the possibility of sexual violence before proceeding, and prepare written considerations that are in the best interests of the child. Governments, religious leaders, and educational institutions are advised to expand value-based education and provide health assistance, education, and protection from violence for married children. For further research, it is recommended to conduct empirical studies through interviews with judges, extension workers of the Office of Religious Affairs, and families of the perpetrators, as well as research on the effectiveness of marriage dispensation guidelines and the shift in practices to unrecorded marriage.

References

- Achmad, A. S., Tuzzahro, L., Febrianty, N. H., & Oktavia, W. A. (2025). Perlindungan Hak Anak dalam Perkawinan Anak di Indonesia. *Journal Sains Student Research*, 3(6), 820-830. <https://doi.org/10.61722/jssr.v3i6.6879>
- Ahmad, A. F., Ash Syidiqi, T. I., Alyanita, P., & Haris, Y. S. (2025). Rekonstruksi hukum keluarga Islam dalam perspektif maqasid al-syari'ah: Upaya preventif pernikahan dini di Indonesia. *Usrah: Jurnal Hukum Keluarga Islam*, 6(4), 455-474. <https://doi.org/10.46773/Usrah.V6i4.2528>
- Nasoha, A. M. M., Hidayat, R., & Atqiya, A. N. (2024). Analisis tentang perlindungan hukum pernikahan dini pada usia di bawah 19 tahun menurut hukum Islam. *El-Faqih: Jurnal Pemikiran dan Hukum Islam*, 10(1), 172-188. <https://doi.org/10.58401/Faqih.V10i1.1126>
- Aimang, H. A., Haluti, F., & Djamal, R. (2025). *Edukatif berbasis multimedia: Peningkatan kesadaran hukum melalui edukasi berbasis sekolah*. CV Eureka Media Aksara.
- Alfanada, E., Hidayat, S., & Saipudin, L. (2023). Urgensi Undang-Undang Tindak Pidana Kekerasan Seksual (TPKS) dalam penanganan Kekerasan Seksual. *Juridische: Jurnal Penelitian Hukum*, 1(1), 14-30. <http://jurnal.bisakonsul.com/index.php/juridische/article/view/6>
- Alimuddin, A., & Basri, R. (2024). Tinjauan Maqasid Syari'ah Terhadap Perjanjian Perkawinan Sebagai Jaminan Keluarga Bahagia. *Al-Hukamaa: Jurnal Hukum Keluarga Islam*, 2(1), 37-47. <https://doi.org/10.35905/hukamaa.v2i1.10853>
- Anwar, W. A., Sururie, R. W., Fautanu, I., Wahyu, A. R. M., & Yaekaji, A. (2024). A Perkawinan Dini di Era Modern: Analisis Relevansi, Tantangan Penetapan dan Implementasi Batas Minimal Usia Nikah. *DIKTUM: Jurnal Syariah Dan Hukum*, 22(1), 45-69. <https://doi.org/10.35905/diktum.v22i1.10362>
- Antara Jatim. (2026). *Cegah perkawinan anak, KemenPPPA dorong pengetatan dispensasi kawin*. <https://jatim.antaranews.com/berita/1021441/cegah-perkawinan-anak-kemenpppa-dorong-pengetatan-dispensasi-kawin>
- Arif, M., Shaoan, M. M. R., Ismail, A., & Okafor, M. U. (2025). A Case Study of Patriarchy and girls Educational Exclusion in Tribal Balochistan. *Discover Sustainability*, 6(1), 972. <https://doi.org/10.1007/s43621-025-01552-8>
- Asare, L. A., & Forkuor, J. B. (2024). The social Consequences of Climate Change: a Qualitative Analysis of Early Girl Child Marriage as an Informal Adaptation Strategy Among Rural Communities in Northern Ghana. *Cogent Social Sciences*, 10(1), 2319703. <https://doi.org/10.1080/23311886.2024.2319703>

- Asman, A. (2024). Comparative Analysis of the Istimbath Methods of the Shafi'i and Hanafi Schools Regarding the Role of the Wali Mujbir in Marriage Law. *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum*, 9(1), 29-46. <https://doi.org/10.22515/alahkam.v9i1.9447>
- Fauzi, A., Ma'arif, K., & Hasmaryadi, H. (2026). Dispensasi Perkawinan Anak Pasca UU Nomor 16 Tahun 2019: Evaluasi Reformasi Hukum Keluarga Islam di Indonesia. *Jurnal Ragam Pengabdian*, 3(2), 7902-7920. <https://doi.org/10.62710/th9tff72>
- Firdausi, M. A., Iswahyuni, T., & Imaduddin, A. (2024). Batas Usia Perkawinan Menurut Undang-Undang Nomor 16 Tahun 2019 tentang Perkawinan dalam Melindungi Kesehatan Reproduksi Remaja Ditinjau dari Maqashid Syariah. *The Indonesian Journal of Islamic Law and Civil Law*, 5(2), 248-264. <https://doi.org/10.51675/jaksya.v5i2.919>
- Hanafiah, N. (2024). Relevansi Maqashid Syariah Dalam Kebijakan Perlindungan Perempuan Dan Anak Pada Hukum Keluarga Di Indonesia. *Integrated Education Journal*, 1(2), 112-125. <https://doi.org/10.67899/iej.v1i2.71>
- Wadda, H. R., & Ulya, Z. (2025). Hasil Musyawarah Keagamaan KUPI tentang Perlindungan Perempuan Dari Bahaya Pemakasaan Perkawinan Perspektif Maqasid Al-Shari'ah dan Feminist Theory. *Al-Qadlasya: Jurnal Hukum Keluarga Islam*, 5(01), 39-54. <https://ejournal.stismu.ac.id/ojs/index.php/alqadlasya/article/view/2585>
- Iqbal, M., Sinurat, S. T., Sitohang, S. R., Sitepu, A. M., Barus, E., Sitepu, A. P., ... & Sebayang, M. (2025). Analisis Pembagian Hak Asuh Anak Dari Pernikahan Siri Dalam Perspektif Hukum Islam Dan Negara di Indonesia. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(5), 6508-6515. <https://doi.org/10.61104/alz.v3i5.2279>
- Latifa, C., Andita, D. P., Shidqi, M. F., Aufa, F. S., Yulianti, O., Sabila, R. S. A., ... & Desmawan, D. (2025). Analisis Dampak Pernikahan Dini Dan Tantangannya Terhadap Human Capital Di India: Hambatan Tersembunyi Dalam Pembangunan Ekonomi. *Bursa: Jurnal Ekonomi Dan Bisnis*, 4(2), 43-54. <https://doi.org/10.59086/jeb.v4i2.720>
- Listya, E. P., Susanti, N. F., & Octaliana, H. (2025). Perkawinan dini, dampaknya bagi kesehatan reproduksi: Literature review. *Sehat Rakyat: Jurnal Kesehatan Masyarakat*, 4(2), 125-136. <https://doi.org/10.54259/sehatrakyat.v4i2.4240>
- Muttakin, K., & Nuha, M. A. Y. The Liberal-Rejectionist Approach in Hadith Studies: A Literature Review of the Concept and Impact on Societal Intellectual Discourses. *Jurnal Living Hadis*, 10(2), 201-226. <https://doi.org/10.14421/livinghadis.2025.6838>
- Nasriyah, N., & Ediyono, S. (2023). Dampak kurangnya nutrisi pada ibu hamil terhadap risiko stunting pada bayi yang dilahirkan. *Jurnal Ilmu Keperawatan dan Kebidanan*, 14(1), 161-170.
- Novita, N. (2024). Implikasi Penerbitan Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Terhadap Permintaan Dispensasi Nikah di Pengadilan Agama Solok. *Ekasakti Legal Science Journal*, 1(2), 110-119. <https://doi.org/10.60034/wwwc40n87>
- Pebrianti, C. (2023). *Ratusan anak di Ponorogo nikah dini, mayoritas karena hamil duluan*. detikJatim. <https://www.detik.com/jatim/berita/d-6514631/ratusan-anak-di-ponorogo-nikah-dini-mayoritas-karena-hamil-duluan>
- Purwanto, A. E. (2025). Kepentingan Terbaik Anak dalam Sengketa Harta Bersama: Analisis SEMA No. 1 Tahun 2022 dengan Teori Fath al-Zari'ah dan Sadd al-Zari'ah. *Abhats: Jurnal Islam Ulil Albab*, 6(2), 253-272. <https://doi.org/10.20885/abhats.vol6.iss2.art12>
- Pusat Standar dan Kebijakan Publik. (2026). *Wajib belajar 13 tahun mencegah pernikahan dini*. <https://pskp.kemendikdasmen.go.id/kabar/detail/wajib-belajar-13-tahun-mencegah-pernikahan-dini>
- Rizal, Z., Yusof, N., & Kharis, M. A. (2025). Reinterpretation of Hadiths on Religious Moderation: A Maqasidi Al-Shari'ah Perspective. *Mashdar: Jurnal Studi Al-Qur'an dan Hadis*, 7(2), 169-188. <https://doi.org/10.15548/mashdar.v7i2.13462>

- Salim, R. F., & Tanjung, D. (2023). Batas usia perkawinan perspektif Undang-Undang Perkawinan dan Kompilasi Hukum Islam. *Al-Afkar: Journal for Islamic Studies*, 6(1), 122–138. <https://doi.org/10.31943/afkarjournal.v6i1.465>
- Saptandari, P., Santoso, P., & Setyawan, H. N. (2025). Perkawinan Anak dalam Dinamika Pembangunan Kesejahteraan Sosial di Tingkat Komunitas di Desa Klungkung, Jember, Jawa Timur. *Biokultur*, 14(2), 143–157. <https://doi.org/10.20473/bk.v14i2.82241>
- Shihan, M., Amanullah, M., & Zaroum, A. M. A. (2023). The examination of the social dimension of shariah from the viewpoint of Maqasid al-Shariah: a case study of the preservation of intellect. *International Journal of Social Science and Human Research*, 6(02), 1038-46.
- Sukri, A., & Fauzan, A. (2025). Maqasid al-Shariah and child protection: A holistic approach to preventing early marriage. *Karsa Journal of Social and Islamic Culture*, 33(2), 600–636. <https://doi.org/10.19105/karsa.v33i2.21696>
- Umah, H. N. U. (2021). Fenomena pernikahan dini di Indonesia: Perspektif hukum keluarga Islam. *Jurnal Al-Wasith: Jurnal Studi Hukum Islam*, 5(2), 107–125. <https://doi.org/10.52802/wst.v5i2.11>
- UNICEF Indonesia, Badan Pusat Statistik, Pusat Kajian dan Advokasi Perlindungan dan Kualitas Hidup Anak Universitas Indonesia, & Kementerian PPN/Bappenas. (2020). *Perkawinan anak di Indonesia: Statistik terbaru perkawinan anak di Indonesia*. UNICEF Indonesia. <https://www.unicef.org/indonesia/id/laporan/perkawinan-anak-di-indonesia>
- Wiranata, K., & Ashari, W. S. (2025). Implikasi pernikahan dini terhadap pola asuh anak: Studi kasus di Desa Sumberpinang Kabupaten Jember. *Usrah: Jurnal Hukum Keluarga Islam*, 6(4), 393–415. <https://doi.org/10.46773/usrah.v6i4.2479>
- Wijayanti, S., Sari, Z. N., Salam, S., & Firdaus, A. A. (2024). Norm clash in lex superior derogate legi inferiori principle's implementation on circular letters and laws. *Reformasi Hukum*, 28(3), 234–250. <https://doi.org/10.46257/jrh.v28i3.732>
- Yulithya, N. D., Juliansyah, V., & Sabran, M. (2025). Pemerataan pendidikan wilayah sangat tertinggal melalui Program Indonesia Pintar di Kabupaten Bengkayang Provinsi Kalimantan Barat. *Jurnal Socius: Journal of Sociology Research and Education*, 12(2), 138–151. <https://doi.org/10.24036/scs.v12i2.857>
- Yusrina, K., & Sururie, R. W. (2022). Hakekat Perlindungan Anak dan Perempuan dari Kekerasan dalam Rumah Tangga. *El-Usrah: Jurnal Hukum Keluarga*, 5(2), 328–339. <https://doi.org/10.22373/ujhk.v5i2.14191>
- Zuhriah, E., & Imam, S. (2022). Strategi Penanggulangan Perkawinan Anak Pasca Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 Perspektif Teori Masalah. *De Jure: Jurnal Hukum dan Syar'iah*, 14 (1), 160-178. <https://doi.org/10.18860/j-fsh.v14i1.16076>