

The Justice Dilemma in Minor Marriages: Dispensation vs. Prevention

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CITE THIS ARTICLE AS

Chaturathorn, Suthida, Setyaning Wida Nurul Anggaretno, Harith Badrul, Jaxon Woods, and Ariana Oliveira. "The Justice Dilemma in Minor Marriages: Dispensation vs. Prevention". *Unnes Law Journal* 11, no. 2 (2025): 279-306. <https://doi.org/10.15294/ulj.v11i1.3290>.

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ABSTRACT. In Indonesia, the issue of minor marriages has long been a contentious subject, intersecting with complex legal, cultural, and ethical dimensions. The legal framework governing marriage, particularly the stipulations outlined in the Marriage Law No. 1 of 1974, sets the minimum marriage age at 16 for women and 19 for men, but exceptions have often been made under certain circumstances. The practice of granting dispensations for underage marriages through religious and civil courts, particularly in rural areas, raises significant concerns regarding child protection and gender equality. This paper explores the legal paradox of minor marriages in Indonesia, focusing on the tension between granting dispensations (legal exceptions) and the broader need for prevention policies to protect children's rights and ensure gender justice. Through an analysis of judicial practices, statutory regulations, and the socio-cultural context, the study examines how the legal system both enables and limits efforts to combat child marriage. It critiques the role of judicial discretion in granting dispensations to minor marriages and highlights the challenges faced by policymakers in harmonizing national law with international human rights standards, such as the Convention on the Rights of the Child (CRC). The paper argues that while legal dispensation offers a temporary solution, it inadvertently perpetuates systemic inequalities, particularly for young girls. The study calls for a reexamination of the legal framework to prioritize prevention, reinforce protections for children, and align Indonesia's marriage laws with international standards of justice and child welfare.

KEYWORDS. Minor Marriages, Legal Paradox, Child Protection, Dispensation, Indonesia

The Justice Dilemma in Minor Marriages: Dispensation vs. Prevention

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Introduction

Child marriage remains a critical issue in Indonesia, despite legal reforms designed to address and prevent the practice. The Indonesian Marriage Law (Law No. 1 of 1974) sets the legal minimum marriage age at 16 for women and 19 for men.¹ However, this law includes a provision for marriage dispensations, allowing minors to marry if granted by religious or civil courts under specific circumstances. This legal mechanism, while initially intended to address certain socio-cultural and familial needs, introduces a significant paradox: it allows judicial exceptions to bypass the protections the law seeks to offer minors, ultimately enabling the

¹ Katz, June S., and Ronald S. Katz. "The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems." *American Journal of Comparative Law* 1 (1975): 653-681; Sumiarni, Endang. "Historical Study of Marriage Law Between the Norms and the Problematics." *Revista de Gestão Social e Ambiental* 18.5 (2024): 1-19.

continuation of child marriages.² The tension between the intent of the law and its practical application raises fundamental questions about the effectiveness of Indonesia's legal safeguards and the broader socio-cultural forces that perpetuate child marriage.³

The legal gap in Indonesia's child marriage framework is manifested in the discretionary powers granted to judges in approving marriage dispensations. While the law stipulates the minimum age for marriage, it also permits courts to grant exceptions, thereby introducing ambiguity into the application of legal protections. The criteria for granting dispensations are not clearly defined, leaving room for judicial interpretation and inconsistency across regions.⁴ The Ministry of Women's Empowerment and Child Protection (KemenPPPA) has highlighted a troubling trend: the number of marriage dispensation requests has significantly increased, particularly during the COVID-19 pandemic. According to data from the Religious Courts Agency (*Badan Peradilan Agama*), dispensation requests rose from 25,280 in 2019 to 65,301 in 2020, with 63,350 requests recorded in 2021. The surge in dispensation requests, particularly in response to the socio-economic hardships exacerbated by the pandemic, underscores a significant gap between the law's intended protections and its application in practice.⁵

² Katz, June S., and Ronald S. Katz. "Legislating social change in a developing country: The new Indonesian marriage law revisited." *The American Journal of Comparative Law* 26, no. 2 (1978): 309-320; Miqat, Nurul, et al. "The Development of Indonesian Marriage Law in Contemporary Era." *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (2023): 54-66.

³ Zulaiha, Eni, and Ayi Zaenal Mutaqin. "The problems of the marriage age changing in Indonesia in the perspectives of muslim jurists and gender equality." *Hanifiya: Jurnal Studi Agama-Agama* 4, no. 2 (2021): 99-108; Hanafi, Syawaluddin. "Legal Politics of Changes to Marriage Laws in Indonesia." *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 11, no. 1 (2024): 68-85.

⁴ Latifiani, Dian. "The Darkest Phase for Family: Child Marriage Prevention and Its Complexity in Indonesia." *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 241; Farida, Elfia, Dyah Wijaningsih, and Aga Natalis. "Child Marriage in Indonesia: Challenges and Prevention Efforts in the Context of Children's Rights." *Pakistan Journal of Criminology* 16, no. 431 (2024); Ilahi, Andi Hidayat Anugrah. "The Evaluation of Early Marriage Law Renewal in Indonesia." *Unnes Law Journal* 7, no. 1 (2021): 129-152; Setiawan, Sarno, et al. "Community Empowerment on Establishment of Friendly-Village for Women and Children." *Indonesian Journal of Advocacy and Legal Services* 1, no. 1 (2019): 5-22.

⁵ Furthermore, it is emphasized that the issue of child marriage in Indonesia has become a significant concern within the Marriage Law. Previously, under Law No. 1 of 1974 on Marriage, the minimum age for marriage was set at 16 years for women and 19 years for men. However, in 2019, this law was amended through Law No. 16 of 2019, raising the minimum marriage age for women to 19 years, aligning it with the age for men. The

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This rise in dispensation requests reveals a deep normative gap between Indonesia's legal framework and cultural attitudes toward child marriage. Despite legal reforms, early marriage remains prevalent, particularly in rural areas where traditional practices continue to hold sway. In many regions of Indonesia, child marriage is seen as a socially acceptable solution to perceived crises such as poverty, family honor, or social stigma. For example, in provinces like East Java and West Nusa Tenggara, child marriages are often justified as a means of protecting girls from the risks of pre-marital sexual activity or financial instability. In these contexts, marriage dispensations are often seen as a necessary, if not ideal, legal mechanism to resolve familial issues. This persistence of cultural attitudes contributes to the continued high rates of marriage dispensation requests, despite the legal intent to protect children from early marriage.⁶

The social consequences of child marriage are disproportionately severe for girls, who face not only significant health risks but also social, educational, and economic disadvantages. Research has shown that girls married before the age of 18 are at a higher risk for complications during

aim of this change was to protect children's rights, prevent early marriages, and reduce the negative impact of child marriage on their physical health, mental well-being, and education. Despite these stricter provisions, there are still loopholes within the law that allow for marriage dispensations for younger individuals. A marriage dispensation can be granted by the court upon request from the parents or guardians, typically in cases of urgent circumstances, such as an unplanned pregnancy. The court considers factors like the health and welfare of the child involved before granting permission. However, this dispensation practice often serves as a workaround for child marriage, potentially exacerbating the issue as it does not address the root causes such as poverty, low education levels, and social norms that still accept early marriage. Child marriage poses significant risks to the physical and psychological health of the child, as well as obstructs their access to education and employment opportunities. Therefore, despite the legal provisions prohibiting child marriage, weak enforcement and prevailing local cultural norms continue to present significant challenges in protecting children from early marriage. See Rumble, Lauren, et al. "An empirical exploration of female child marriage determinants in Indonesia." *BMC Public Health* 18, no. 1 (2018): 407; Grijns, Mies, and Hoko Horii. "Child marriage in a village in West Java (Indonesia): Compromises between legal obligations and religious concerns." *Asian Journal of Law and Society* 5, no. 2 (2018): 453-466; Aditya, Rizky Irfano, and Lisa Waddington. "The Legal Protection Against Child Marriage in Indonesia." *Bestuur* 9, no. 2 (2021): 126-134; Marshan, Joseph Natanael, Mohammed Fajar Rakhmadi, and Mayang Rizky. "Prevalence of child marriage and its determinants among young women in Indonesia." *Child Poverty and Social Protection Conference*. SMERU Research Institute, 2013.

⁶ Kuswanto, Heri, et al. "Prevalence of and factors associated with female child marriage in Indonesia." *Plos one* 19, no. 7 (2024): e0305821; Judiasih, Sonny Dewi, et al. "Women, law, and policy: Child marriage practice in Indonesia." *Jurnal Notariil* 3, no. 1 (2018): 47-55.

pregnancy and childbirth, as their bodies are often not physically mature enough to handle the demands of pregnancy. In addition to physical health risks, child brides face disruptions in their education, with many dropping out of school to take on domestic responsibilities.⁷ According to the Indonesian Child Protection Commission (KPAI), over 60% of girls married under the age of 18 experience significant educational setbacks. These early marriages limit girls' socio-economic mobility, contribute to cycles of poverty, and exacerbate gender inequality. As these young girls are often unable to access adequate health care, education, or economic opportunities, child marriage becomes both a symptom and a perpetuator of systemic socio-economic disadvantages.

The gap in enforcement of Indonesia's child protection laws further exacerbates the persistence of child marriage. While the Child Protection Law (Law No. 35 of 2014) mandates that parents and the state prevent child marriages, its enforcement remains weak, especially in rural or remote areas. The continued issuance of marriage dispensations, despite clear legal provisions intended to protect minors, reveals a failure to implement child protection laws effectively. Local courts, particularly religious courts, continue to grant dispensations in response to requests from parents, often without fully considering the broader social, psychological, and health impacts on the minors involved. This failure in enforcement not only undermines the intent of the Marriage Law but also perpetuates a cycle in which child marriage is normalized, particularly in areas where traditional practices dominate.

The data on marriage dispensations further highlights the role of local courts in enabling child marriages. While marriage dispensation requests have been prevalent across Indonesia, certain cities have emerged as high contributors. Semarang, Bandung, and Surabaya have been identified as the top cities where religious courts are frequently granting dispensations, reflecting a concentration of requests in urban centers as well as regional

⁷ Kumala Dewi, Luh Putu Ratih, and Teguh Dartanto. "Natural disasters and girls vulnerability: is child marriage a coping strategy of economic shocks in Indonesia?." *Vulnerable Children and Youth Studies* 14, no. 1 (2019): 24-35; Pakasi, Diana Teresa. "Child marriage in Indonesia: Practices, politics, and struggles." *Masyarakat: Jurnal Sosiologi* 24, no. 1 (2019): 1; Retnowulandari, Wahyuni, et al. "The Prevalence of Child Marriage: Comparative Study of Indonesia and Other South Asian States." *Jambura Law Review* 6, no. 2 (2024): 339-366; Gunawan, Shella Oetharry, and Syamsul Bahri. "Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives." *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 362-380.

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diversity in the practice. This geographical pattern underscores the widespread nature of the issue, which is not confined to rural or impoverished areas but also persists in more developed regions. The increase in dispensation requests during the pandemic—particularly in the most affected cities—demonstrates the compounding impact of socio-economic pressures on child marriage. This shift highlights the need for a comprehensive understanding of the multiple layers of factors, including legal, cultural, and socio-economic, that contribute to the persistence of child marriage.⁸

This paper aims to critically examine the legal paradox of child marriage in Indonesia, focusing on the role of marriage dispensations as a key mechanism that undermines efforts to prevent the practice. Specifically, it explores the judicial discretion exercised in granting dispensations and how this practice conflicts with the broader goal of protecting minors from early marriages. By analyzing judicial decisions, legislative frameworks, and socio-cultural norms, this study seeks to identify the gaps in Indonesia's approach to child marriage and propose recommendations for a more robust and consistent application of marriage laws. The study will also address the broader implications of these gaps for children's rights, gender equality, and socio-economic development, contributing to the ongoing discourse on how best to combat child marriage in Indonesia.

The Implementation of Child Marriage Dispensation Requests and Its Implications

Following the amendment of the Marriage Law through Law No. 16 of 2019, which raised the minimum marriage age from 16 to 19 years, Article 7, Paragraph (1) does not completely preclude exceptions to this age requirement. Paragraph (2) of the same article permits deviations from the prescribed minimum age by allowing the parents or guardians of the prospective spouses to apply for a marriage dispensation. In order to request such a dispensation, parents must provide a rationale for permitting the marriage or demonstrate compelling circumstances that justify the need for

⁸ Eleanora, Fransiska Novita, and Andang Sari. "Pernikahan Anak Usia Dini Ditinjau dari Perspektif Perlindungan Anak." *PROGRESIF: Jurnal Hukum* 14, no. 1 (2020); Muqaffi, Ahmad, Rusdiyah Rusdiyah, and Diana Rahmi. "Menilik Problematika Dispensasi Nikah dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan." *Journal of Islamic and Law Studies* 5, no. 2 (2021).

the union.⁹ Furthermore, they are required to present sufficient evidence and factual support to substantiate their claims. Based on this information, the court—guided by the judge's discretion—may grant the dispensation, thereby authorizing the marriage despite the provisions of Paragraph (1). This authority to issue a marriage dispensation is vested in the court and other relevant authorized officials.¹⁰

The submission of a marriage dispensation request can be rejected by the competent authority, but parents can submit it to another official until they obtain dispensation approval. This ease indicates that marriage dispensation can be granted without strict conditions. In Paragraph (2), it is also not explained what reasons and evidence are required to submit a marriage dispensation request. However, providing reasons and evidence can somewhat reduce the likelihood of the marriage dispensation for a child being approved. Therefore, only the judge's consideration can determine the eligibility of the reasons for the child marriage dispensation request. The opportunity for child marriage dispensation is also available in PERMA No. 5 of 2019, and the content of this provision does not provide clarity on the limitations that must be applied to the urgent reasons that can be submitted.¹¹

⁹ Natsif, Fadli Andi. "Problematisasi Perkawinan Anak (Perspektif Hukum Islam dan Hukum Positif)." *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 5, no. 2 (2018): 175-186.

¹⁰ Lestari, Rizqi Tri, and Jejen Hendar. "Dispensasi Perkawinan Anak dibawah Umur menurut UU Perkawinan dengan Al Maqasyid Syariah." *Jurnal Riset Ilmu Hukum* 2, no. 1 (2022): 19-22.

¹¹ PERMA No. 5 of 2019 is a regulation issued by the Indonesian Supreme Court to provide clear guidelines for granting marriage dispensations to minors. This regulation was introduced after the 2019 amendment to Law No. 16 of 2019, which raised the minimum marriage age to 19 years for both men and women. Under certain circumstances, minors can still apply for a marriage dispensation, and the regulation outlines specific criteria judges must follow in considering such requests. The main goal is to ensure that dispensations are granted only when necessary, while safeguarding the welfare of the minor involved. The regulation mandates that the court must consider several factors before granting a marriage dispensation, including the physical and mental maturity of the individuals, the social and economic circumstances of their families, and their overall well-being. Expert assessments from doctors, psychologists, and social workers are required to ensure the child's best interests are upheld. The court has the final decision on whether to approve the dispensation, and the consent of the child's parents or guardians is required for the application. While PERMA No. 5 of 2019 is seen as a positive step in regulating early marriages, it has received criticism for not fully addressing the root causes of child marriage, such as poverty, cultural norms, and lack of education. Some argue that the regulation does not go far enough in preventing child marriages and that the dispensations still create a potential loophole. For it to be truly effective, ongoing enforcement and additional measures to address the social factors contributing to early marriage are essential. See Uyun, Qurratul Uyun, Maida

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This passage appears to discuss the process and criteria for granting marriage dispensations for children, highlighting that the rules may not have strict requirements and that the decision often relies on the judge's discretion. It also mentions that regulations may not provide clear boundaries for urgent reasons that can be submitted for dispensation.¹²

Through the marriage dispensation request, when related to the responsive theory, which focuses on the social objectives that must be achieved and the consequences or impacts of the application of the law, the law is no longer seen as rigid because it relies not only on the legal system aspect. The law is no longer solely associated with social issues arising from allowing marriage dispensation. As a result, a child or someone who has not reached the age of 18 can legally and religiously enter into marriage. The legality of this marriage is due to the rules on marriage dispensation approved by officials and the judiciary. After the change in the minimum age limit for marriage, cases of child marriage have increased, mainly through dispensation for underage children.¹³ This passage appears to discuss the concept of responsive law and its application to marriage dispensation. It suggests that changes in the legal system have led to an increase in child marriages, primarily due to the availability of dispensations for underage individuals.

The decision given by a judge through consideration, before it is finally established as a ruling in a court of law. In delivering a judgment, a judge must weigh the facts presented during the trial against the provisions of the law. The basis for a judge's consideration in granting child marriage

Hafidz, and Madah Rahmatan. "Best Interest for Children in Perma No. 5 of 2019 Concerning Guidelines for Trying Dispensation Marriage Application Cases." *At-Thullab: Jurnal Mahasiswa Studi Islam* 5, no. 2 (2023): 118-127; Yusuf, Muhammad Rifky. "Efektivitas Hukum Terhadap Pemberlakuan PERMA No 5 Tahun 2019 dalam Mengatasi Perkawinan di Bawah Umur." *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 4, no. 2 (2022): 409-418.

¹² Mariani, Mariani. "Reactualization of the Marriage Age Limit in Indonesia (in the Perspective of Maslahah Mursalah)." *Lambung Mangkurat Law Journal* 7, no. 1 (2022): 93-107.

¹³ Prabawati, Tiara Dewi, and Emmilia Rusdiana. "Kajian Yuridis Mengenai Alasan Pengajuan Dispensasi Kawin Dikaitkan dengan Asas-Asas Perlindungan Anak." *Novum: Jurnal Hukum* 6, no. 3 (2019): 1-10.

dispensation requests in the Religious Court, as highlighted by Hizbullah¹⁴, Ramelan and Nurtsani¹⁵, and Safira et.al¹⁶, that:

1. Completeness of administrative documents.
2. Compliance with the provisions and prohibitions of Article 8 of Law No. 1 of 1974 concerning Marriage.
3. Considering the principles of benefit and harm.

Although judges play a significant role in advising underage brides and grooms when granting marriage dispensations, numerous challenges can arise from early marriages, particularly those facilitated by dispensation. These marriages often come with long-term negative consequences, ranging from social and economic hardships to serious health and psychological impacts. One of the most common issues linked to child marriages is early divorce. According to Kunardi and Muzamil¹⁷, marriages resulting from child marriage dispensations frequently end in divorce at an early stage. This is often because the individuals involved have not reached a sufficient level of maturity to sustain a healthy marital bond. Instead, the inability to meet the legal age for marriage becomes a contributing factor to the dissolution of the marriage. Economic difficulties are often at the root of these divorces, as young couples generally lack the financial stability necessary for long-term marital success. Moreover, domestic violence is frequently reported, with women often becoming victims of abuse in these early marriages, further complicating the relationship dynamics.

The economic impact of child marriage is another significant consequence. Jamilah, et.al¹⁸ argue that child marriages create a vicious cycle of poverty, perpetuating socio-economic disadvantage across generations.

¹⁴ Hizbullah, Abdussalam. "Eksistensi Dispensasi Perkawinan Terhadap Pelaksanaan Perlindungan Anak di Indonesia." *Jurnal Hawa* 1, no. 2 (2019): 269-286.

¹⁵ Ramelan, Rafida, and Rahmi Nurtsani. "Menakar Fungsi Dispensasi Kawin dalam Pencegahan Perkawinan Anak di Indonesia." *Usroh: Jurnal Hukum Keluarga Islam* 8, no. 1 (2024): 11-27.

¹⁶ Safira, Levana, Sonny Dewi Judiasih, and Deviana Yuanitasari. "Perlindungan Hukum Terhadap Anak Yang Melakukan Perkawinan Bawah Umur Tanpa Dispensasi Kawin Dari Pengadilan." *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 4, no. 2 (2021): 210-225.

¹⁷ Muzzamil, HM Mawardi, and Muhammad Muhammad Kunardi. "Implikasi Dispensasi Perkawinan Terhadap Eksistensi Rumah Tangga di Pengadilan Agama Semarang." *Jurnal Pembaharuan Hukum* 1, no. 2 (2014): 209-218.

¹⁸ Jamilah, Sri, Muhammad Akbar, and Ilham Ilham. "Dampak Pernikahan Dini Terhadap Pendidikan Akhlak Anak di Desa Sari Kecamatan Sape Kabupaten Bima." *Pelangi: Jurnal Pemikiran dan Penelitian Pendidikan Islam Anak Usia Dini* 4, no. 2 (2022): 267-283.

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Both young husbands and wives often lack the education and financial independence necessary to support themselves or their families. Many of these individuals do not have steady employment or the skills to access stable income, which limits their ability to break free from poverty. The lack of education further hinders their opportunities for better employment, thereby solidifying their position in low-income brackets. This cycle of poverty not only affects the individuals involved but also affects the children they may have, creating a multi-generational pattern of economic instability.

Socially, the stigma surrounding child marriage can be devastating. Early marriages often involve situations such as unplanned pregnancies or the perception of premarital relationships, which can lead to long-lasting social exclusion and discrimination. For couples who marry due to dispensation, particularly those who face societal judgment for pregnancies outside of marriage, gaining acceptance within their communities can be exceedingly difficult. The stigma associated with such unions often follows them for years, creating immense social pressure that can strain both the marital relationship and the couple's broader social networks. In some cases, infidelity or domestic issues may arise, contributing further to marital instability and psychological distress for both spouses.¹⁹ These social consequences highlight the deep, complex challenges faced by young couples in dispensation marriages, underlining the importance of thoroughly considering the social ramifications when granting such marriages.

Health-related concerns are another critical consequence of child marriages. Underage brides are particularly vulnerable to physical harm due to the biological risks associated with early pregnancies. The physical development of young women often does not align with the demands of pregnancy, which can lead to complications such as uterine rupture, preterm births, and maternal mortality. Research shows that pregnancies in girls aged 17 or younger pose significant risks to their reproductive organs and overall health. Teenage mothers are also more likely to experience poor health outcomes, such as stunted growth in their children and premature birth,

¹⁹ See Wibowo, Heribertus Rinto, et al. "One household, two worlds: Differences of perception towards child marriage among adolescent children and adults in Indonesia." *The Lancet Regional Health–Western Pacific* 8 (2021); Rosita, Intan, Nurul Ilmi Idrus, and Muhammad Basir. "The Stigma of Child Marriage in Ajallasse Village, Cenrana District, Bone District." *Proceedings of the 5th International Conference on Linguistics and Cultural Studies 5 (ICLC-5 2024)*. Vol. 916. Springer Nature, 2025; Rahayu, Diah, et al. "Social Stigma in Adolescents Who Do Early Marriage at School Age." *International Journal of Social Science and Business* 5, no. 4 (2021): 561-568.

further compounding the health burden on both mother and child. These health risks underscore the importance of considering the physical well-being of underage brides when evaluating marriage dispensation requests and highlight the long-term consequences of early marriage for women's health.²⁰

In addition to physical health risks, child marriage often has a profound psychological impact on both parties involved. The emotional and mental toll on young husbands and wives is significant, as many of them are not prepared to handle the psychological challenges of married life. These young couples frequently face overwhelming emotional distress due to the responsibilities of marriage and parenthood at a time when they are still maturing mentally and emotionally. The inability to manage marital pressures often leads to severe psychological stress, which can result in decisions to divorce. For these individuals, the lack of emotional support and preparation for the complexities of adult relationships creates a high likelihood of psychological problems, including anxiety, depression, and a sense of isolation. It is crucial, therefore, to provide psychological support to minors involved in dispensation marriages to prevent such emotional distress and potentially reduce the high rates of divorce linked to these marriages.

In addition, child marriages present a significant obstacle to Indonesia's sustainable development goals. The government's efforts in programs such as Family Planning (*Keluarga Berencana* or KB) are often ineffective when child marriages remain prevalent, as these marriages contribute to higher birth rates and larger family sizes. The rapid population growth associated with child marriages places added strain on national resources, such as healthcare, education, and social services.²¹ This challenge makes it difficult to achieve the broader goals of poverty reduction and sustainable

²⁰ Delprato, Marcos, and Kwame Akyeampong. "The effect of early marriage timing on women's and children's health in Sub-Saharan Africa and Southwest Asia." *Annals of Global Health* 83, no. 3-4 (2017): 557-567; Singh, Susheela, and Renee Samara. "Early marriage among women in developing countries." *International Family Planning Perspectives* (1996): 148-175; Berliana, Sarni Maniar, et al. "Determinants of early marriage among female adolescent in Indonesia." *International Journal of Adolescent Medicine and Health* 33, no. 1 (2021).

²¹ Priohutomo, Sigit. "Mencegah pernikahan anak melalui Program KKBPK." *Seminar Nasional Kependudukan Banjarmasin*. 2018; Setiyawan, Agus, and Iskandar Wibawa. "Peranan Dinas Pemberdayaan Perempuan Perlindungan Anak, Pengendalian Penduduk dan Keluarga Berencana (DP3AP2KB) Kabupaten Jepara dalam Memberikan Rekomendasi Pernikahan Dini di Pengadilan Agama Jepara." *Jurnal Suara Keadilan* 22, no. 2 (2021): 129-147.

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development, as the burden on public services intensifies. In this way, child marriage not only undermines the individual well-being of those involved but also impedes national progress toward economic and social stability. The links between child marriage and development underscore the need for urgent action to address this issue, as its broader implications affect the stability and growth of the entire society.

It appears that in recent times, marriage dispensations granted by the Religious Court are seen as a regression from the efforts to prevent marriages involving underage individuals. This perception arises from the fact that, in their considerations, judges often focus solely on the provisions of Law No. 1 of 1974 concerning Marriage and also refer to Islamic law principles (Islamic jurisprudence). In doing so, they may not give sufficient attention to the rights of children that should be protected and guaranteed.

This issue raises concerns about the balance between legal and cultural factors in marriage dispensation decisions. It underscores the importance of considering not only legal and religious aspects but also the well-being and rights of underage individuals involved in such marriages. As societal norms evolve, there may be a need for re-evaluation and reform of the marriage dispensation process to ensure the best interests and rights of all parties, particularly children, are safeguarded.²²

The Silent Crisis: Why Efforts to Prevent Child Marriage Are Falling Short?

Indonesia, as a legal state, has made significant strides in protecting children through the enactment of Law No. 35 of 2014, which amends Law No. 23 of 2002 concerning Child Protection. This amendment strengthens the legal framework for safeguarding children's rights and ensuring their well-being. According to Article 1, paragraph (2) of Law No. 35 of 2014, child protection encompasses all measures necessary to guarantee that children can live, grow, and develop optimally. These measures also ensure that children are protected from violence and discrimination, and are given the opportunity to participate in society while upholding their dignity and humanity. This legal framework reflects the state's commitment to creating a safe environment for children, and highlights the importance of protecting

²² See Hizbullah, "Eksistensi Dispensasi Perkawinan Terhadap Pelaksanaan Perlindungan Anak di Indonesia."

their rights in all spheres of life. However, despite these provisions, child protection remains an ongoing challenge, particularly when it comes to child marriages, which continue to occur due to a range of socio-economic, cultural, and personal factors.²³

Ahmad Kamil emphasizes that child protection is not solely the responsibility of parents but requires a collective effort from society and the state.²⁴ This responsibility entails the continuous implementation of activities to safeguard children's rights and protect them from external influences that could disrupt their growth and development. In this sense, child protection serves as a reflection of societal justice and empathy towards children. The state must ensure that policies and practices align with the best interests of children, creating a protective framework that addresses both immediate needs and long-term vulnerabilities. Unfortunately, child marriages—where children, often under the legal age of 18, are married—remain a significant issue, undermining the core values of child protection. Such marriages often violate the rights of minors, depriving them of their childhood, education, and a future free from violence and exploitation.²⁵

Child marriages are driven by various socio-cultural and economic factors that influence both parents and minors. One of the primary drivers is economic hardship. Families experiencing financial constraints may perceive child marriage as a solution to their problems, believing it will alleviate the economic burden.²⁶ For instance, parents might arrange marriages for their children as a means to ensure their basic needs—such as food, clothing, and shelter—are met. The practice of child marriage is particularly prevalent in

²³ See Waqiah, Siti Qomariatul. "Diskursus perlindungan anak perempuan di bawah umur pasca perubahan undang-undang perkawinan." *An-Nawazil: Jurnal Hukum dan Syariah Kontemporer* 1, no. 2 (2019): 65-79; Mayasari, Dian Ety, and Andreas L. Atjengbharata. "Pengaturan Batas Usia Untuk Melakukan Perkawinan Ditinjau Dari Undang-Undang Perlindungan Anak." *DiH: Jurnal Ilmu Hukum* (2020): 237-246.

²⁴ Kamil, Ahmad. *Hukum Perlindungan dan Pengangkatan Anak di Indonesia*. (Jakarta: Raja Grafindo Persada, 2008).

²⁵ See Sopyan, Yayan, et al. "Child Exploitation by Parents in Early Marriage: Case Study in Cianjur West Java, Indonesia." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 3 (2023): 1921-1942; Disemadi, Hari Sutra, Sholahuddin Al-Fatih, and Mochammad Abizar Yusro. "Indonesian children protection against commercial sexual exploitation through siri marriage practices in maqashid al-shariah perspective." *Brawijaya Law Journal* 7, no. 2 (2020): 195-212.

²⁶ See Pourtaheri, Asma, et al. "Socio-ecological factors of girl child marriage: a meta-synthesis of qualitative research." *BMC Public Health* 24, no. 1 (2024): 428; Parsons, Jennifer, et al. "Economic impacts of child marriage: a review of the literature." *The Review of Faith & International Affairs* 13, no. 3 (2015): 12-22.

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areas where poverty is widespread, and social safety nets are weak. As a result, child marriage becomes a seemingly viable option, especially when educational opportunities are limited, and families struggle to provide for their children. This economic rationale often overrides concerns about the potential harm child marriage may cause to the minors involved, as economic necessity can cloud parental judgment. Moreover, the high dropout rates among children in economically disadvantaged areas contribute to this pattern, making marriage appear as a practical escape from financial uncertainty.

Education, or the lack thereof, also plays a significant role in perpetuating child marriages. Individuals with low levels of education, particularly in rural areas, are more likely to adhere to traditional, outdated views on marriage.²⁷ A limited education often means limited opportunities for personal development, which can result in less adaptability to changing social and economic conditions. A study by Amartya Sen on human development suggests that access to education is one of the most significant factors influencing personal agency and decision-making.²⁸ In the case of child marriage, the absence of education limits the ability of minors to critically evaluate their options and make informed decisions about their future. Low educational attainment not only affects the decision to marry early but also has long-lasting effects on the individual's capacity to contribute to the workforce, further perpetuating the cycle of poverty. Thus, addressing the root causes of child marriage requires not only legal interventions but also efforts to improve education and awareness within communities.

Another driving factor behind child marriages is personal desire, often framed within the context of love or romantic attachment. Adolescents, driven by their emotional and hormonal development, may choose to marry out of a personal desire for companionship or intimacy, disregarding the practical and legal consequences of early marriage. This desire to marry often overlooks critical factors such as financial stability, educational attainment, and psychological preparedness for the responsibilities that come with

²⁷ See Khoja-Moolji, Shenila. "Girls, Education, and narratives of progress: Deconstructing the discourse on child marriage." In *Educating Adolescent Girls Around the Globe*. (London: Routledge, 2015), pp. 62-79; Arthur, Megan, et al. "Child marriage laws around the world: Minimum marriage age, legal exceptions, and gender disparities." *Journal of Women, Politics & Policy* 39, no. 1 (2018): 51-74.

²⁸ Sen, Amartya. "Why and how is health a human right?." *The Lancet* 372, no. 9655 (2008): 2010.

marriage. According to scholars like Carol Gilligan, adolescents in particular may prioritize emotional connection over rational decision-making, especially when they have not been sufficiently educated about the long-term implications of marriage.²⁹ This emotional impulsivity can lead minors to marry before they are adequately prepared, setting the stage for future difficulties in both personal and social domains.

Peer pressure and social influence, particularly among adolescents, also contribute to the prevalence of child marriages. In environments where parental supervision is insufficient, adolescents may be influenced by the actions and choices of their peers, leading to decisions driven by social expectations rather than personal readiness. Peer pressure can be especially potent in situations where social norms favor early marriage or where extramarital pregnancies push minors into unions that they may not have otherwise considered. The pressures of maintaining social status, avoiding stigma, or adhering to group norms can create situations where marriage becomes an apparent solution, even if the individuals involved are not yet ready for the responsibilities marriage entails. In such environments, marriage dispensations may be sought in response to peer-induced pressures, further complicating efforts to prevent child marriage.

Cultural traditions and customs also play a significant role in perpetuating child marriages, particularly in rural areas where arranged marriages are more common.³⁰ These marriages are often seen as a way to strengthen familial ties or preserve social capital within communities. In such contexts, children, especially girls, may be viewed as assets to be exchanged in marriage rather than individuals with rights to education, personal development, and choice. This practice is often rooted in historical norms that view women as suitable for marriage at a younger age, contributing to the belief that an unmarried girl, particularly one in her late teens, is an *old maid*. Such traditions are deeply entrenched in the social fabric of certain communities and can result in the continuation of child marriages despite the legal reforms aimed at preventing them. As scholars like Catherine A.

²⁹ Gilligan, Carol. "In a different voice: Women's conceptions of self and of morality." *Harvard Educational Review* 47, no. 4 (1977): 481-517.

³⁰ See Rose, Guo Kasara. *Cultural Norms and Early Child Marriage*. Diss. Kampala International University, 2023; Janjua, Maria Muzaffar, and Anila Kamal. "Understanding the Role of Patriarchy in Perpetuating Child Marriages in Pakistan: A Qualitative Exploration." *Journal of Development and Social Sciences* 5, no. 4 (2024): 117-131; Baraie, Bahman, et al. "What socio-cultural factors encourage child marriage in Sanandaj, Iran? a qualitative study." *Child & Youth Services* 45, no. 1 (2024): 23-44.

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MacKinnon have argued, legal frameworks must challenge deeply ingrained cultural practices that violate human rights, yet in many instances, these cultural norms outweigh legal mandates, making enforcement of child protection laws difficult.³¹

Therefore, while Indonesia has made significant strides in enacting laws to protect children, child marriages continue to be a widespread issue driven by a combination of economic, educational, emotional, social, and cultural factors. The effectiveness of child protection laws in preventing such marriages depends on addressing these underlying factors through a comprehensive approach that includes education, economic support, community engagement, and legal enforcement. Scholars and policymakers must recognize that preventing child marriage requires more than just legal reforms; it demands a shift in cultural attitudes, the provision of socio-economic opportunities, and robust public awareness campaigns. Only through such multifaceted efforts can Indonesia hope to eliminate the practice of child marriage and secure the well-being and rights of its children.

Addressing these factors requires a comprehensive approach that involves education, awareness campaigns, community engagement, and legal reforms. Efforts should be made to empower individuals, especially young girls, with knowledge about their rights and options, while also challenging harmful traditional practices and promoting gender equality. Additionally, improving access to quality education and providing economic opportunities can help reduce the prevalence of child marriages.

To address this issue, the implementation of prevention of marriage for underage children is required. Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection, Article 26 paragraph (1) letter (c) imposes obligations and responsibilities on parents to prevent marriages at an early age, i.e., before reaching 18 (eighteen) years of age. In Article 20, not only parents and guardians are obliged and responsible for child protection, but the State within the scope of the Government, Local Government, and the community also play a role. As a form of the Local Government's participation in addressing the numerous cases of underage marriage, it is carried out in various stages, as follows:

1. *Personal Approach Stage*: This is carried out by marriage registrars during the marriage registration process. While this method is not

³¹ See MacKinnon, Catherine A. "Sexuality, pornography, and method:" Pleasure under Patriarchy." *Ethics* 99, no. 2 (1989): 314-346.

explicitly mentioned in marriage regulations, it is often practiced by officials who advise the prospective spouses about marriage.

2. *Data Collection Stage*: This is conducted by the government to determine the number of underage marriages in various regions.
3. *Socialization Stage*: This is carried out to inform people about the knowledge that underage marriage is a violation of children's rights and also against legal provisions. It is usually done through community activities as an effort to motivate parents and children that continuing education to a higher level is essential.
4. *Delaying Marriage Certificates*: This involves making it more difficult to obtain a marriage certificate or complicating the marriage registration process.
5. *Tightening and Strengthening Marriage Laws*: This includes setting age limits for marriage and the rules for marriage dispensations. If these regulations are enforced effectively by government institutions, it can discourage and instill fear in the community about violating marriage provisions.

These stages represent a comprehensive approach to preventing underage marriage, involving data collection, public awareness, legal measures, and administrative procedures.³²

The Hypocrisy of Child Marriage Law: Dispensation as a Barrier to True Protection

The disharmony between child marriage dispensation and the implementation of child marriage prevention is evident due to the high number of child marriages facilitated through marriage dispensation requests. In fact, Law No. 16 of 2019 on Child Protection, in Article 7 paragraph (2), addresses marriage dispensation for someone who has not reached the minimum marriage age, which contradicts and conflicts with Law No. 35 of 2014 on Child Protection, Article 26 paragraph (1) letter (c), regarding the responsibility and obligation of parents to prevent child marriages.

This disharmony highlights a discrepancy in the legal framework regarding child marriages. On one hand, there are provisions in place to

³² Muntamah, Ana Latifatul, Dian Latifiani, and Ridwan Arifin. "Pernikahan dini di Indonesia: Faktor dan peran pemerintah (Perspektif penegakan dan perlindungan hukum bagi anak)." *Widya Yuridika* 2, no. 1 (2019): 1-12.

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prevent child marriages, emphasizing the responsibility of parents, as stated in Law No. 35 of 2014. On the other hand, Law No. 16 of 2019 allows for dispensations, potentially permitting child marriages under certain circumstances. This incongruity in the law creates challenges in effectively addressing and preventing child marriages, as it appears to send conflicting messages and allows for legal loopholes that can be exploited to justify child marriages. Efforts should be made to reconcile these conflicting provisions and strengthen the protection of children from underage marriages.³³

This disharmony arises when there are conflicting or contradictory provisions or practices related to allowing child marriages under certain conditions (dispensations) and the simultaneous efforts to prevent such marriages. In many countries, there may be legal provisions that allow for exceptions to the minimum marriage age under specific circumstances, such as parental consent or judicial approval. These dispensations can create disharmony with the broader goal of preventing underage marriages, as they provide a legal pathway for underage individuals to marry.

Efforts to prevent child marriages usually involve raising the minimum marriage age, improving access to education, and increasing awareness about the risks and consequences of underage marriages. When these preventive measures clash with existing laws or practices that permit underage marriages in certain cases, it can create disharmony in the legal and societal approach to the issue. Addressing this disharmony often requires reviewing and revising laws and policies to ensure consistency in the goal of preventing child marriages and protecting the rights and well-being of children. It may involve repealing or amending laws that allow for child marriage exceptions and reinforcing laws that establish a clear minimum marriage age to align with international standards for child protection. Additionally, public awareness campaigns and education can help change societal attitudes and practices related to child marriages.³⁴

³³ Tampubolon, Elisabeth Putri Lahitani. "Permasalahan perkawinan dini di Indonesia." *Jurnal Indonesia Sosial Sains* 2, no. 5 (2021): 465434. See also Prabowo, Bagya Agung. "Pertimbangan Hakim dalam Penetapan Dispensasi Perkawinan Dini Akibat Hamil di Luar Nikah pada Pengadilan Agama Bantul." *Jurnal Hukum Ius Quia Iustum* 20, no. 2 (2013): 300-317; Ihzar, Muh Shohibul, et al. "Pernikahan Dini: Regulasi, Pandangan Ulama, Penyebab dan Solusi Terbaik." *Ethics and Law Journal: Business and Notary* 2, no. 3 (2024): 35-41.

³⁴ Hariati, Sri. "Eksistensi Peraturan Daerah Nomor 5 Tahun 2021 Tentang Pencegahan Perkawinan Anak Sebagai Upaya preventif Pernikahan Dini Menurut Perspektif Hukum Islam." *Collegium Studiosum Journal* 6, no. 1 (2023): 81-89.

The granting of marriage dispensation for minors is seen as lacking legal clarity and creates leniency in Article 7, Paragraph (1). This results in the possibility of marriages involving underage individuals being sanctioned by the courts through marriage dispensation requests. In reality, Indonesia has already established the minimum age for marriage, which is 19 years old for both males and females, as stipulated in Law No. 16 of 2019. This law does not sufficiently prioritize the protection of the rights of children who are violated within a marriage they enter into. Instead of preventing child marriages, marriage dispensations actually encourage the potential increase in cases of child marriages and hinder the implementation of measures to prevent marriages involving underage individuals.³⁵

On the other hand, Law No. 35 of 2014 regarding Child Protection faces obstacles in the implementation of Article 26, Paragraph (1), sub-section (c) due to the legalization of child marriages by the judiciary. This article aims to safeguard and ensure the rights of children that may be violated if child marriages are allowed to take place. It also assists parents in legal certainty to prevent their children from entering into early marriages. Child marriages pose a distinct disadvantage to the country, as they hinder the process of sustainable development and national progress due to the population surge resulting from child marriages. Children are the future generations and the foundation of the nation who will play an active role in advancing Indonesia.

The judiciary plays a significant role in the population surge because it often too easily grants marriage dispensation requests. Judges' considerations, viewing marriage as the best decision, do not align with preventing child marriages, as they lead to numerous issues within households and violations of children's rights. For instance, the right to life is compromised when there are fatalities due to pregnancy at a young age.³⁶ Disharmony exists in the implementation of child marriage dispensation and the prevention of marriages involving underage individuals because the

³⁵ Muqaffi, Ahmad, Rusdiyah Rusdiyah, and Diana Rahmi. "Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan." *Journal of Islamic and Law Studies* 5, no. 2 (2021); Suryanti, Irma, and Dewa Gde Rudy. "Disfungsi Dispensasi Kawin dalam Upaya Pencegahan Perkawinan Anak." *Jurnal Magister Hukum Udayana* 10, no. 2 (2021): 782-794.

³⁶ Iqbal, Muhammad, Holijah Holijah, and Khalisah Hayatuddin. "Peranan Hakim dalam Pencegahan Perkawinan di Usia Anak dan Perlindungan Kepentingan Terbaik bagi Anak Terkait Pengajuan Perkara Dispensasi Kawin di Pengadilan Agama Pangkalan Balai." *Doctrinal* 8, no. 1 (2023): 60-81; Ramelan, Rafida, and Rahmi Nurtsani. "Menakar Fungsi Dispensasi Kawin Dalam Pencegahan Perkawinan Anak di Indonesia." *Usroh: Jurnal Hukum Keluarga Islam* 8, no. 1 (2024): 11-27.

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provisions in both laws are not binding and clear. Consequently, the contradictory nature of the provisions between child marriage dispensation and child protection from marriages involving underage individuals leads to various new problems.

Conclusion

Marriage dispensation serves as a legal exception to the minimum age requirements for marriage, specifically in cases where deviations from Article 7, Paragraph (1) of the Marriage Law occur. The recent revision of the minimum marriage age—raising it to 19 for both males and females—has paradoxically led to a sharp increase in marriage dispensation requests rather than a reduction in child marriages. Judges, in granting these dispensations, often prioritize the legal provisions of the Child Marriage Law without adequately considering the potential violation of children's rights that these marriages may entail. As a result, marriage dispensation practices continue to undermine the protection of minors, despite the intention of the law to safeguard their welfare.

The prevalence of marriage dispensations can be attributed to several socio-economic and cultural factors, including economic constraints, low educational attainment, personal desires, peer pressure, and deeply ingrained cultural practices. These factors create an environment in which early marriages are seen as viable solutions, often disregarding the long-term consequences for the minors involved. The negative repercussions of child marriages are manifold and include early divorces, perpetuation of poverty, social discrimination, physical and psychological health risks, and impediments to national development. These outcomes are exacerbated by a legal system that, while attempting to regulate marriage, fails to protect children from these harmful consequences.

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Acknowledgment

None

Funding Information

None

Conflicting Interest Statement

The authors state that there is no conflict of interest in the publication of this article.

Generative AI Statement

None.

History of Article

Submitted : April 28, 2024

Revised : September 21, 2024; January 11, 2025; August 29, 2025

Accepted : September 22, 2025

Published : October 30, 2025

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