

Reconstructing Marriage Dispensations in Indonesia: Child Protection through Human Rights and *Maqāṣid al-Sharī'a*

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Abstract:

Marriage dispensations create tension between minimum marriage age requirements and child protection when pregnancy or social pressure overrides risk assessment. This study develops a reconstruction framework that integrates human rights and *maqāṣid al-sharī'a*. Normative legal research combines statutory, conceptual, illustrative case, and limited comparative approaches, examining Indonesian legislation, a Surakarta determination, a curated Soreang summary, and Egyptian provisions. Findings show that procedural compliance does not establish substantive protection. The cases illustrate divergent outcomes through harm-prevention reasoning, although unequal source completeness limits comparison. Egyptian provisions offer normative insight into registration accountability, medical examinations, and protective monitoring. The proposed framework assesses urgency, risk, and children's views, alternatives, and protection after determination. Recommendations emphasize individualized assessment, meaningful participation, coordinated services, and monitoring parental commitments within institutional mandates, whether applications are granted or denied. Pregnancy should not automatically justify dispensation. These normative findings establish neither nationwide judicial patterns nor the effectiveness of implementation, requiring further empirical investigation.

Keywords:

child marriage; children's rights; human rights; marriage dispensation; *maqāṣid al-sharī'a*

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Introduction

Child marriage is a protection issue where regulations regarding marriage age, social pressures, and the fulfillment of basic rights intersect. In Indonesia, the revision of the minimum marriage age to 19 for both males and females reinforces the goal of preventing marriage at an inappropriate age. However, provisions for marriage dispensations allow for exceptions to be granted through the courts. Tension arises when such exceptions are viewed merely as a solution to family pressures, pregnancy, or concerns regarding a child's romantic relationships, without a balanced assessment of the consequences for their education, health, and development. Thus, the issue lies not simply in the existence of dispensations, but in the appropriateness of the grounds, the judicial review process, and the consequences of the ruling in relation to the goal of child protection.¹

This study aims to analyze the relationship between marriage dispensation regulations and child protection obligations, and to formulate a direction for their reconstruction through the perspectives of human rights and *maqāṣid al-sharī'a* (the objectives of Islamic law). The research questions address how exceptions to the marriage age limit can be evaluated based on the best interests of the child; how human rights and *maqāṣid* principles assist in assessing the grounds for and consequences of dispensations; and how state and parental responsibilities should continue following the court's ruling. This focus distinguishes the assessment of a marriage's legality from the assessment of whether the child's rights are being fulfilled.

Previous studies indicate that marriage dispensations exist in a state of tension between child protection, socio-religious norms, and judicial discretion. Research conducted by Grijns and Horii (2018) in a West Java village demonstrates that the practice of child marriage is shaped by a compromise between state legal obligations and religious concerns; findings from before the

¹ Mikyas Abera, Ansha Nega Ahmed, and Yifokire Tefera Zele, "Age at First Marriage and Women's Psychosocial Wellbeing in the Amhara Region, Ethiopia," *BMC Women's Health* 25, no. 1 (July 3, 2025): 297, <https://doi.org/10.1186/s12905-025-03827-8>; Turufat Tukura and Sibilo Gashure, "Child Marriage Practice in the Eyes of Evangelical Church Leader and Elders in the Wonisho District of the Sidama Region, Southern Ethiopia," *Humanities and Social Sciences Communications* 12, no. 1 (2025): 1–8, <https://doi.org/10.1057/s41599-025-05056-8>.

2019 reform provide social context but do not reflect current court practices.² Through an analysis of 19 court rulings in Kraksaan and Sumenep, Fajriyah, Marhamah, and Anggriani (2023) found that the best interests of the child were not yet the primary consideration, while the child's aspirations, education, and reproductive health received insufficient attention.³ Ishom (2023) found that marriage dispensation hearings in Banten tended to rely on the statements of petitioners and their families as well as submitted documents, with limited involvement from child protection experts.⁴ Furthermore, Purwanti and Natalis (2026) demonstrated that the interpretation of "urgent reasons" was influenced by economic pressure, pregnancy, and social stigma, leading judges to prioritize immediate issues over the structural causes of child marriage.⁵ These four studies underscore the need to distinguish between social reasons for marriage and evidence that marriage is the option that best protects the child.

Other studies have broadened the scope of inquiry to include support services, the substantiation of health risks, and assessments of the child's well-being. Fadhlili et al. (2024), through research at the Bukittinggi Religious Court, found that out-of-court support integrating psychological assessments with legal and religious approaches could encourage petitioners to postpone marriage.⁶ Sekarrini, Prasetyo, and Kusumayati (2025), analyzing 249 cases across 13 religious courts in South Kalimantan, found that only 10.84% of cases involved health examinations for both prospective spouses, while approximately 71.49% were granted without comprehensive health checks.⁷

² Mies Grijns 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): 453–66, <https://doi.org/10.1017/als.2018.9>.

³ Ikilah Muzayyanah Dini Fajriyah, Siti Marhamah, and Septiani Anggriani, "The Pitfall of Child Marriage Dispensation: A Study of Court Judgments in East Java," *The Indonesian Journal of Socio-Legal Studies* 2, no. 2 (March 2023), <https://doi.org/10.54828/ijls.2023v2n2.5>.

⁴ Muhammad Ishom, "The Loose Interpretation of Dominus Litis Principle in Marriage Dispensation for Underage Marriage in Banten," *Ahkam: Jurnal Ilmu Syariah* 23, no. 2 (December 30, 2023), <https://doi.org/10.15408/ajis.v23i2.29881>.

⁵ Ani Purwanti and Aga Natalis, "Law as Text, Culture as Context: The Semiotics of Marriage Dispensation and Judicial Considerations in Indonesia," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 39, no. 2 (February 27, 2026): 729–60, <https://doi.org/10.1007/s11196-025-10370-0>.

⁶ Ashabul Fadhlili et al., "Out-of-Court Assistance Based on the Principle of the Best Interests of the Child: Study on Examination Process of Marriage Dispensation Cases," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 1 (June 14, 2024): 67–80, <https://doi.org/10.31958/juris.v23i1.10281>.

⁷ Loveria Sekarrini, Sabarinah Prasetyo, and Agustin Kusumayati, "Child Marriage Dispensation from a Reproductive Health Perspective: Why Do Judges Grant or Reject Applications?," *International*

Aprilianto et al. (2026), employing *tarjih maqāṣidī* (a purposive legal preference approach) in cases involving child pregnancy, demonstrated that the benefits of lineage recognition and stigma reduction must be weighed against risks such as reproductive health issues, educational disruption, psychological vulnerability, and intergenerational poverty.⁸ Thus, prior studies have already addressed the child's best interests, postponement alternatives, health examinations, and *maqāṣid*; the use of these perspectives is not, in itself, a novelty. A synthesis of these studies provides a foundation for research linking the assessment of urgency, the substantiation of risks, and the child's voice; comparing alternatives to marriage; and holding accountability for protection following the court ruling.

This article examines the nexus between the justification for an exception, the substantiation of protective measures, and accountability following the issuance of a judicial authorization. While previous studies have addressed the "best interests of the child," *maqāṣid*, support systems, and health risk assessments, this article does not claim to introduce these concepts. Instead, it develops a four-stage evaluative framework: identifying urgency, assessing evidence regarding risks and the child's own voice, comparing alternatives to marriage, and establishing an actionable protection plan. Through an analysis of two illustrative judicial decisions, the article demonstrates why the legal principle of "preventing harm" (*dar' al-mafāṣid*) does not yield uniform outcomes in the absence of a detailed examination of risks and alternatives. This contribution is normative and operational in nature, rather than an empirical claim regarding the success of the proposed model.

This framework does not offer an entirely new list of considerations. Instead, it structures the relationships between the grounds for an exception, evidence of risk, alternative protective measures, and responsibilities for follow-up action. The framework positions each stage as a foundation for the next: urgent circumstances must be supported by evidence; this evidence must be used to compare available options; and any chosen option must be accompanied by an explanation of how the remaining risks will be managed. Thus, its

Journal of Adolescent Medicine and Health 37, no. 6 (December 29, 2025): 411–20, <https://doi.org/10.1515/ijamh-2025-0108>.

⁸ Dwi Aprilianto et al., "Tarjih Maqāṣidī Approach to Marriage Dispensation in Cases of Child Pregnancy in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 20, no. 1 (April 14, 2026): 43–64, <https://doi.org/10.24090/mnh.v20i1.15882>.

contribution lies in how it organizes and traces the rationale for a decision, rather than in adding new formal procedural requirements.

The central argument is that a marriage dispensation can be justified only if the exception is evaluated in the best interests of the individual child. Parental consent, concerns regarding social stigma, or the perceived need to preserve family honor do not, in themselves, demonstrate that marriage is the option that best protects the child.⁹ A judicial decision must explain why the intended benefits cannot be achieved through safer alternatives and how risks—such as those concerning health, education, economic stability, and violence—will be addressed.¹⁰ Consequently, the legality of an exception must be intrinsically linked to its protective consequences.¹¹

This article contributes to fostering a dialogue between Islamic law and human rights, while also enhancing accountability in the granting of marriage dispensations.¹² Within this framework, the protection of progeny is not limited to the formal validation of a union; rather, it encompasses maternal health, the child's safety, and the capacity for proper caregiving. Furthermore, the state's responsibility does not conclude with the enactment of regulations or the granting of a marriage permit. This analysis establishes a foundation for structuring the relationships among the courts, parents, and providers of education, healthcare, and child protection services.¹³

This study employs a normative legal research methodology, utilizing statutory, conceptual, illustrative case, and limited comparative approaches. Primary sources include laws regarding marriage, child protection, and human

⁹ Hoko Horii, "Walking a Thin Line: Taking Children's Decision to Marry Seriously?," *Childhood* 27, no. 2 (May 28, 2020): 254–70, <https://doi.org/10.1177/0907568220901758>.

¹⁰ M. Nurul Irfan, Maskur Rosyid, and Ali Imron, "Child Marriage and the Quest for Legal Protection: Integrating Islamic Family Law and Islamic Criminal Law," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 19, no. 1 (January 7, 2026): 33–52, <https://doi.org/10.14421/ahwal.2025.19102>.

¹¹ Aprilianto et al., "Tarjih Maqāṣidī Approach to Marriage Dispensation in Cases of Child Pregnancy in Indonesia."

¹² M Anwar Nawawi et al., "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 1 (September 1, 2022): 117–34, <https://doi.org/10.18326/ijtihad.v22i1.117-134>.

¹³ Kholifatun Nur Mustofa, "Adjudicating Underage Marriages at Religious Courts: A Progressive Collaboration between Judiciary and Health Authority," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (December 30, 2023): 342–63, <https://doi.org/10.14421/ahwal.2023.16208>; Irfan, Rosyid, and Imron, "Child Marriage and the Quest for Legal Protection: Integrating Islamic Family Law and Islamic Criminal Law."

rights; the Law on Sexual Violence Crimes (UU TPKS); Supreme Court Regulation (PERMA) No. 5 of 2019; and Egyptian regulations concerning children and civil status. The full text of Surakarta Court Order No. 3/Pdt.P/2024/PA.Ska was examined directly, whereas Soreang Court Order No. 1/Pdt.P/2020/PA.Sor was analyzed via a curated summary provided by LeIP. The selection of these two cases was purposive—aimed at comparing instances where the petition was granted versus denied—rather than intended to yield a representative sample. The analysis identifies the underlying reasons, evidence, rights considered, and available alternatives and follow-up measures, subsequently evaluating them through the lenses of human rights and *maqāṣid*. Aggregate statistics serve as context by distinguishing between prevalence and case volume. The comparison with Egypt is limited to an examination of normative frameworks, without field research or assessments of implementation effectiveness. Limitations regarding the available case texts and summaries are noted in the respective analyses; the findings are not used to infer patterns across the entire court system.

The Tension Between the Minimum Marriage Age and Judicial Exceptions

An analysis of marriage dispensations requires distinguishing between the category of "child" and the category of prospective spouses who have not yet reached the minimum age for marriage. The Child Protection Law defines a child as someone under 18, whereas the minimum age for marriage is 19. Consequently, applications for dispensation are not entirely synonymous with child marriage: an 18-year-old prospective spouse still requires a dispensation but does not fall under the definition of a child according to the Child Protection Law. This distinction is necessary to ensure that data on applications and arguments regarding children's rights are not generalized without regard for the subject's age.¹⁴

¹⁴ Arif Sugitanata et al., "Violation of Women's Rights: The Kawin Magrib Tradition of the Sasak Muslim Community in Lombok, Indonesia," *Journal of Islamic Law* 4, no. 2 (2023): 197–217, <https://doi.org/10.24260/jil.v4i2.1772>; Theresia Rosari Cakraningtyas Sekar, "Dispensasi Kawin Pada Anak di Bawah Umur: Tinjauan terhadap Perspektif HAM Anak dalam Pengambilan Kebijakan (Studi Kasus di Kabupaten Jepara)," *Journal of Politic and Government Studies* 12, no. 2 (2023): 2; Melanie O'Brien, "Gender Dimensions of Forced Marriage in International Criminal Law," in *Gender and International Criminal Law*, ed. Indira Rosenthal, Valerie Oosterveld, and Susana Sácouto, 1st ed. (Oxford: Oxford University Press, 2022), 207–29, <https://ssrn.com/abstract=3973235>; Newman Wadesango, Symphorosa Rembe, and Owence Chabaya, "Violation of Women's Rights by Harmful

The variation in age limits within positive law reflects differing regulatory objectives. Rules concerning legal capacity, parental authority, marriage, and juvenile criminal justice should not be treated as interchangeable, singular definitions. For this article, the "under-18" threshold is used when discussing child protection. In contrast, the 19-year threshold is applied when discussing the requirement to obtain a dispensation. This simplification focuses the discussion on the consequences of these differing legal categories, avoiding an overly lengthy exposition on definitions that do not determine the research findings.¹⁵

Article 7, paragraph (1) of the Marriage Law, following the 2019 amendment, establishes a minimum age of 19 for both prospective spouses. Paragraph (2) allows parents to apply for a dispensation based on urgent grounds supported by sufficient evidence, while paragraph (3) mandates that the court hear the views of both prospective spouses. The explanation of Article (2) links the concept of urgency to situations where postponement is impossible, and the marriage must inevitably take place. Consequently, family preference alone does not sufficiently justify such an exception. A normative tension arises when social reasons are treated as legal grounds of urgency without addressing the immediate necessity, the sufficiency of evidence, or the availability of alternative protections. Criticism should focus on the evidentiary basis and the justification for the exception, rather than on the assumption that all applications for marriage dispensation involve identical circumstances.¹⁶

Social pressure helps explain why such exceptions can become a recurring solution. In the context of poverty, families may view marriage as a means to alleviate economic burdens. Regarding family honor, marriage might be chosen as a response to a couple's intimacy or a pregnancy. Anthropological and cultural literature highlights the importance of interpreting family decisions within broader social relationships. However, understanding the context must not devolve into justification; shifting economic burdens onto the child or

Traditional Practices," *Anthropologist* 13, no. 2 (2011): 121–29, <https://doi.org/10.31901/24566802.2011/13.02.09>; N. Jain, "Forced Marriage as a Crime against Humanity: Problems of Definition and Prosecution," *Journal of International Criminal Justice* 6, no. 5 (November 1, 2008): 1013–32, <https://doi.org/10.1093/jicj/mqn064>.

¹⁵ Asta I Gede Panjta, *Dinamika Hukum dan Perundang-Undangan di Indonesia* (Bandung: PT Alumni, 2008); Cik Marhayani et al., "Analisa Yuridis tentang Definisi Anak dalam Hukum Positif di Indonesia," *Jurnal Legalitas* 2, no. 2 (July 5, 2024): 60–72, <https://doi.org/10.58819/jle.v2i2.122>.

¹⁶ Marlina, *Peradilan Pidana Anak* (Bandung: PT. Refika Aditama, 2012), 10.

coercion in the name of family honor requires scrutiny of the consequences for the subject being protected.¹⁷

An illustration of the *Merariq* tradition in Lombok, drawn from the cited source, highlights the tension between social pressure and the child's best interests.¹⁸ Reports of families feeling they had no choice after a child was taken away demonstrate how social practices can narrow the scope for decision-making. However, statements from customary leaders indicating that child marriage can be averted through a collective resolution process also point to the existence of alternatives. This illustration does not represent the entire Sasak community, nor does it serve as evidence of judicial decision-making patterns. Its relevance lies in the reminder that claims of having "no choice" require scrutiny—including seeking social support that could enable the child to avoid a marriage detrimental to their well-being.¹⁹

Data published by official bodies show a decline in child marriage indicators. However, these figures differ from the number of marriage dispensation cases. The Ministry of Basic and Secondary Education reported that the proportion of women aged 20–24 who married before the age of 18 was 5.90 percent in 2024 and 4.56 percent in 2025.²⁰ UNICEF also confirmed the 2025 Susenas figure of 4.56 percent. This indicator captures the marital history of a specific age cohort rather than the number of new marriages or dispensation applications filed in a given year.²¹ Badilag reported 32,400 dispensation cases in 2024 and 19,790

¹⁷ Willard Van Quine, "Summary for Policymakers," in *Climate Change 2013 – The Physical Science Basis* (Cambridge University Press, 2014), 1–30, <https://doi.org/10.1017/CBO9781107415324.004>; Bani Syarif Maula, "Perlindungan Perempuan dalam Hukum Perkawinan di Indonesia," *Yinyang: Jurnal Studi Islam Gender dan Anak* 14, no. 1 (July 23, 2019): 14–38, <https://doi.org/10.24090/yinyang.v14i1.2825>.

¹⁸ Maria Platt, "'It's Already Gone Too Far': Women and the Transition into Marriage in Lombok, Indonesia," *The Asia Pacific Journal of Anthropology* 13, no. 1 (February 2012): 76–90, <https://doi.org/10.1080/14442213.2011.636063>.

¹⁹ Maila D.H. Rahiem, "COVID-19 and the Surge of Child Marriages: A Phenomenon in Nusa Tenggara Barat, Indonesia," *Child Abuse and Neglect*, 2021, <https://doi.org/10.1016/j.chiabu.2021.105168>.

²⁰ Eko B Harsono, "Peringatan Hari Keluarga Nasional 2026, Menguji Ketahanan Keluarga di Tengah Ironi Kekerasan terhadap Anak, 'Ayah Hadir Keluarga Harmonis,'" paudpedia.kemendikdasmen.go.id, 2026.

²¹ UNICEF Indonesia, "'Not My Daughter, Not This Time' A Father's Stand against Child Marriage in Central Lombok," [unicef.org](https://www.unicef.org/indonesia/child-protection/stories/not-my-daughter-not-time), 2016, <https://www.unicef.org/indonesia/child-protection/stories/not-my-daughter-not-time>.

cases up to September 2025.²² As the latter figure covers only a portion of the year, it is not suitable for direct comparison when calculating the annual rate of decline.

Human Rights and *Maqāṣid* as Benchmarks for Assessing the Best Interests of the Child

Human rights frameworks position the child as a rights-holder. At the same time, the state and parents bear the obligation to provide protection. This framework requires an assessment of how a given decision affects a child's rights to education, health, development, and protection from violence. Parental consent cannot substitute for the child's own voice; the review process must provide space for the child to express their wishes and for any potential external pressures to be identified. If a child's expressed wishes are shaped by fear, dependency, or threats to family honor, formal consent is insufficient to demonstrate a truly free choice.²³

Risks concerning health and education must be evaluated on an individual basis, supported by relevant evidence. While literature on psychosocial well-being and the impact of marriage on education helps identify areas of risk that warrant examination, findings from other countries cannot be automatically applied as a direct measure of the impact on any individual Indonesian child.²⁴ In this article, such literature is used conceptually: the court must assess health and psychological readiness, the continuity of the child's education, and access to support systems. In this way, human rights serve as a metric for evaluating the consequences of a decision, rather than merely as a normative statement about the importance of protection.

Maqāṣid al-sharʿa broadens this inquiry by focusing on the protection of religion, life, intellect, lineage, and property. The *maqāṣid* literature employed

²² Badilag, "Justice Suzanne Christie Berbagi Solusi Inovatif untuk Penguatan Akses Keadilan di Webinar Dialog Badilag," badilag.mahkamahagung.go.id, 2025, <https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/justice-suzanne-christie-berbagi-solusi-inovatif-untuk-penguatan-akses-keadilan-di-webinar-dialog-badilag>.

²³ Paul R Amato, "Father-Child Relations, Mother-Child Relations, and Offspring Psychological Well-Being in Early Adulthood," *Journal of Marriage and the Family* 56, no. 4 (November 1994): 1031, <https://doi.org/10.2307/353611>.

²⁴ Abera, Ahmed, and Zele, "Age at First Marriage and Women's Psychosocial Wellbeing in the Amhara Region, Ethiopia"; Erica Field and Attila Ambrus, "Early Marriage, Age of Menarche, and Female Schooling Attainment in Bangladesh," *Journal of Political Economy* 116, no. 5 (October 2008): 881–930, <https://doi.org/10.1086/593333>.

here provides a foundation for interpreting the law through the lens of its impact on well-being and justice.²⁵ In the context of marriage dispensations, this approach requires that the asserted *maṣlaḥa* (public interest or benefit) extends beyond the mere fulfillment of formal marriage requirements.²⁶ Assessments must account for potential risks to the child's safety, education, upbringing, and economic capacity. The absence of a uniform numerical age limit in *fiqh* discourse does not negate the necessity of comprehensively evaluating readiness and preventing harm.

Ḥifẓ al-naḥs (preservation of life) directs attention to reproductive health, safety, psychological well-being, and the risk of violence.²⁷ *Ḥifẓ al-'aql* (preservation of the intellect) demands the protection of opportunities for learning and the development of the child's capabilities. Both principles constrain arguments that prioritize only the immediate resolution of social issues. A marriage that mitigates stigma but increases health risks or halts education cannot be deemed beneficial (*maṣlaḥa*) simply because it achieves legal status.²⁸ Such analysis requires an evaluation of the severity and likelihood of risks regarding the specific circumstances of the child involved.²⁹

Ḥifẓ al-nasl encompasses the interests of child-rearing and the welfare of future generations; thus, it cannot simply be reduced to the formal validation of

²⁵ Iffatin Nur, Syahrul Adam, and M. Ngizzul Muttaqien, "Maqāṣid al-Sharī'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law," *Ahkam: Jurnal Ilmu Syariah* 20, no. 2 (December 30, 2020), <https://doi.org/10.15408/ajis.v20i2.18333>; Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought, 2008).

²⁶ Shella Oetharry Gunawan and Syamsul Bahri, "Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (December 30, 2023): 362, <https://doi.org/10.22373/ujhkv6i2.20262>; Fatum Abubakar, "Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan)," *Al-Ahkam Jurnal Ilmu Syari'ah dan Hukum* 4, no. 2 (December 31, 2019): 97–118, <https://doi.org/10.22515/ALAHKAM.V4I2.1667>.

²⁷ Irfan, Rosyid, and Imron, "Child Marriage and the Quest for Legal Protection: Integrating Islamic Family Law and Islamic Criminal Law."

²⁸ Aprilianto et al., "Tarjih Maqāṣidi Approach to Marriage Dispensation in Cases of Child Pregnancy in Indonesia"; Mariani Amberi, "Efforts to Prevent Child Age Marriage in The Study of Islamic Legal Philosophy and Indonesia Positive Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (March 31, 2023): 239–60, <https://doi.org/10.22373/sjhkv7i1.12404>.

²⁹ Ita Iya Pulina Perangin-angin, Rahayu Rahayu, and Nuswantoro Dwiwarno, "Kewajiban dan Tanggungjawab Negara Memberikan Perlindungan Hukum terhadap Perempuan Korban Revenge Porn di Indonesia," *Diponegoro Law Journal* 8, no. 1 (2019): 457–83, <https://doi.org/10.14710/dlj.2019.25345>.

a relationship status.³⁰ Pregnancy necessitates healthcare and protection for both the mother and the unborn child, regardless of marital status. *Hifẓ al-māl* directs scrutiny toward sources of livelihood, dependency, and the risk of neglect.³¹ Meanwhile, *hifẓ al-dīn* requires attention to the continuity of religious life, without presuming that every early marriage inevitably undermines it. These five objectives serve as areas of inquiry whose relevance must be demonstrated, rather than as automatic grounds for granting or rejecting every petition.³²

The intersection of human rights and *maqāṣid* yields an evaluative framework linking rights, risks, and protection obligations. In the framework developed in this article, the right to education aligns with *hifẓ al-'aql*; health and safety with *hifẓ al-nafs*; caregiving welfare with *hifẓ al-nasl*; and economic support with *hifẓ al-māl*. These connections represent a functional alignment in terms of protection, without equating the underlying principles and concepts of the two frameworks.³³ Human rights clarify who holds the rights and who bears the obligation to act, whereas *maqāṣid* assists in assessing benefits (*maṣlaḥa*) and harms (*mafsada*). The dialogue between the two allows for a more focused argument than simply stating that child marriage is contrary to human values.³⁴

Umami and Ghofur's study of Ibn 'Ashur's general *maqāṣid* places freedom and equality as part of the humanitarian orientation of law.³⁵ In this article, this

³⁰ Isnawati Hidayah et al., "The Role of Parental Child Marriage in Children's Food Security and Nutritional Status: A Prospective Cohort Study in Indonesia," *Frontiers in Public Health* 12 (December 10, 2024): 1–17, <https://doi.org/10.3389/fpubh.2024.1469483>.

³¹ Qodariah Barkah et al., "Abandonment of Women's Rights in Child Marriage; An Islamic Law Perspective," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 17, no. 2 (2022): 383–411, <https://doi.org/10.19105/al-ihkam.v17i2.6725>.

³² Aprilianto et al., "Tarjīḥ Maqāṣidī Approach to Marriage Dispensation in Cases of Child Pregnancy in Indonesia."

³³ David Johnston, "Maqāṣid Al-Sharī'a: Epistemology and Hermeneutics of Muslim Theologies of Human Rights," *Die Welt Des Islams* 47, no. 2 (2007): 149–87, <https://doi.org/10.1163/157006007781569936>.

³⁴ Ahmad Rasyidi Halim, M. Fahmi Al Amruzi, and Jalaluddin Jalaluddin, "Legal Formulation for Forced Marriage Prevention through the Decision of Wali Muijbir in Religious Courts and Its Relevance with Maqāṣid Syari'ah and Human Rights," *Mazahib* 23, no. 1 (June 6, 2024): 79–116, <https://doi.org/10.21093/mj.v23i1.6189>.

³⁵ Ulul Umami and Abdul Ghofur, "Human Rights in Maqāṣid al-Sharī'ah al-Āmmah: A Perspective of Ibn 'Āshūr," *Al-Ahkam* 32, no. 1 (April 28, 2022): 87–108, <https://doi.org/10.21580/ahkam.2022.32.1.9306>.

orientation is used to assess who bears the consequences of marriage. Benefits for family honor cannot automatically be considered benefits for girls facing pregnancy, school dropout, or dependency. Rohmawati, from the perspective of *maqāṣid al-sharīʿa cum-mubādala*, criticizes dispensational considerations that have not paid attention to women's biological and social experiences, as well as to children's rights to education and reproductive health.³⁶ Therefore, human rights and *maqāṣid* dialogue must examine the distribution of benefits and risks, including ensuring that children's voices have a real influence on the reasons for decisions.

When the protection of a child's well-being—encompassing their health, education, and personal wishes—points toward conflicting choices, this approach suggests weighing options based on the severity of the risks, the likelihood of their occurrence, and the feasibility of mitigating or recovering from them. Such an assessment must also clarify who stands to benefit and who might suffer harm. For instance, the need for pregnancy-related support does not automatically establish a need for marriage; an evaluator must determine whether such support can be provided without increasing the risks of school dropout, violence, or dependency.³⁷ The child's own views should inform the deliberation, with due regard for their level of maturity and the potential for external pressure. If an evaluator chooses a course of action that limits one of the child's interests, the rationale for the decision must explain why other alternatives would offer less effective protection.³⁸ This method situates potential benefits and harms within the specific, concrete circumstances of each case, rather than relying on a rigid, universal hierarchy of interests that applies automatically to every situation.

³⁶ Rohmawati Rohmawati, "Seeking Justice in Islamic Legal Pluralism: The Dispute of Child Best Interests in Marriage Dispensation in Indonesia," *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 19, no. 02 (January 17, 2025): 147–78, <https://doi.org/10.21274/epis.2024.19.02.147-178>.

³⁷ United Nations Committee on the Rights of the Child, "General Comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child," CRC/GC/2003/4, July 1, 2003, para. 31.

³⁸ United Nations Committee on the Rights of the Child, "General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)," CRC/C/GC/14, May 29, 2013, paras. 80–84, 97.

Assessing Compelling Reasons and Protection in Marriage Dispensation Hearings

Supreme Court Regulation (PERMA) Number 5 of 2019 provides protection-oriented guidelines for hearings. Provisions for counseling on the risks of dropping out of school, reproductive readiness, economic, social, and psychological impacts, and the potential for conflict or violence constitute a crucial part of the assessment. However, the provision of counseling must not be treated merely as a procedural formality. The court's ruling must demonstrate the connection among the explained risks, the child's circumstances, and the grounds for the decision. Procedural compliance must, therefore, have a bearing on the substantive assessment.

Two Illustrative Rulings: Establishing Urgency and Risk Weight

The Surakarta Religious Court Ruling Number 3/Pdt.P/2024/PA.Ska, dated January 15, 2024, granted a marriage dispensation to a prospective groom stated to be 17 years old. The prospective bride was recorded as being 17 years and 3 months old and five months pregnant. The hearing included testimony from the prospective spouses, their families, and witnesses, as well as documentation regarding counseling, health, and income. The court's reasoning emphasized the prospective groom's monthly income of IDR 1,500,000, the availability of parental support, the prospective bride's health, and concerns regarding the recurrence of acts prohibited by religion. The principle of preventing harm (*mafsada*) was invoked to support the decision to grant the dispensation.

The existence of documentation and the examination of relevant parties serve as the basis for assessing individual circumstances. However, in the author's view, the available reasoning does not provide a detailed comparison between marriage and the alternatives of pregnancy support and education, nor does it outline how the promised support would be monitored following the ruling. A finding of good health at the time of the hearing does not, in itself, address all the risks associated with married life; parental income and promises must also be linked to actual needs.³⁹ This critique concerns only the sufficiency

³⁹ Barkah et al, "Abandonment of Women's Rights in Child Marriage; An Islamic Law Perspective"; Sekarrini, Prasetyo, and Kusumayati, "Child Marriage Dispensation from a Reproductive Health Perspective: Why Do Judges Grant or Reject Applications?"

of the written justification; it does not imply that the judge failed to provide service, nor does it suggest that the parties' rights were subsequently violated.

For comparison, a curated summary by LeIP on a ruling from the Soreang Religious Court (Case No. 1/Pdt.P/2020/PA.Sor) indicates that the petition was denied for insufficient evidence to establish "highly urgent" grounds. Although the families remained in favor of the marriage—and the summary notes an absence of coercion—it reports that the judge provided counsel on the risks to the individuals' education, considered potential reproductive health risks and the possibility of violence, and framed these concerns within the context of CEDAW and the principle of avoiding harm (*mafsada*).⁴⁰ As the full date of the ruling, specific ages, and a list of evidence are not included in the summary, no speculative reconstruction has been attempted. This example illustrates the reasoning behind a denial, as documented by a curated source. However, the weight of this documentation differs from that of the complete copy obtained in the Surakarta case.

A comparison of these two cases reveals that applying the principle of preventing harm (*mafsada*) can lead to different outcomes, as the nature of the risks and the evidentiary bases differ. In the Surakarta Religious Court's ruling, factors such as pregnancy, the prospective husband's income, and the availability of parental support were cited to justify granting the request, alongside concerns about the potential negative consequences of delaying the marriage. However, the written reasoning does not provide a detailed assessment of whether such support is sufficient to meet the family's needs, nor does it weigh this against alternatives—such as support during pregnancy or the continuation of the child's education. Conversely, LeIP's summary of a ruling by the Soreang Religious Court highlights insufficient evidence to establish "urgent circumstances"—a finding that led to the rejection of the request—after counseling on the various consequences of child marriage. These differences are insufficient to conclude that one court offers greater protection to the child than the other, as the available documentation and the specific circumstances of each case are not comparable. The analytical takeaway is the necessity of clearly articulating the risks associated with both proceeding with or delaying a marriage, the evidence supporting such assessments, and the alternative

⁴⁰ Lembaga Kajian dan Advokasi Independensi Peradilan (LeIP), "Detail Analisis 04/PutHAM/Agama/2024: Nomor Putusan 1/Pdt.P/2020/PA.Sor," putusanpening.leip.or.id, n.d., <https://putusanpening.leip.or.id/id/pages/detail-analisis/04-putham-agama-2024>.

protective measures available. Within the framework of this article, human rights (HAM) help identify the specific rights at stake, while the *maqāṣid* assist in weighing the benefits (*maṣlaḥa*) and harms (*mafsada*) of each course of action. The absence of such details in the documents provides grounds for critiquing the adequacy of the written justification. However, it does not prove that the relevant examinations or services were never carried out.

In the case materials from Surakarta, the "urgency" phase indicates that pregnancy—along with concerns about the potential repetition of acts prohibited by religion—was part of the justification for granting the request. In the "risk and participation" phase, the court's ruling includes an examination of the prospective bride and groom, covering health documentation, counseling, and income. However, this examination should be distinguished from any explanation regarding how the child's own testimony influenced the final decision. Regarding the "alternatives" phase, the written considerations do not provide a detailed comparison between marriage and other options, such as pregnancy support or continuing the child's education. In the "follow-up" phase, the parents' stated commitment implies a promise of support. Yet the documentation lacks a clear mechanism to evaluate whether such support is actually implemented.

In the case materials from Soreang, the "urgency" phase reveals that the judge deemed the evidence presented to establish an "urgent" situation insufficient. In the "risk and participation" phase, the summary notes that the court provided counseling, confirmed the absence of coercion, and considered risks related to reproductive health and potential violence. Nevertheless, the summary does not offer enough detail to assess how the child's perspective influenced the decision to deny the request. Furthermore, the available information does not allow for a comprehensive evaluation of the alternatives considered or the protection plans established following the denial. Consequently, this article identifies these two aspects as limitations in the documentation, rather than as evidence that the court failed to take them into account.

The claim of an "urgent necessity" must be evaluated through three questions: First, does the situation presented truly require immediate intervention? Second, is there a clear, explainable link between the marriage and the resolution of that situation? Third, are there alternative solutions that would better protect the child? These questions are offered as an analytical tool to

clarify the assessment process, not as a substitute for existing legal provisions. Concerns about social interaction or stigma are insufficient justification if other alternatives—such as counseling, family support, access to healthcare, and continuing education—have not been considered.⁴¹ A child should not have to bear the consequences of marriage simply because their environment rejects other, more protective options.

While pregnancy requires specific attention, it should not serve as the sole or automatic basis for granting a marriage dispensation. Limiting marriage dispensations solely to cases of pregnancy can foster the assumption that marriage is the default solution for such situations; assessments must distinguish between the service needs of a pregnant child and the decision regarding whether marriage is necessary and safe.⁴² Potential instances of violence, coercion, exploitation, or power imbalances must be investigated.⁴³ A claim that a relationship was consensual does not, in itself, negate issues concerning protection or the legal liability of the parties involved.⁴⁴

Under national law, Article 10 paragraph (2) letter a of Law Number 12 of 2022 explicitly categorizes child marriage within the scope of forced marriage. This provision must be read in conjunction with the wording of paragraph (1), which addresses unlawful coercion, placing a person under another's control, or the abuse of power to compel or permit a marriage. Consequently, a marriage dispensation must not serve as a pretext for bypassing an examination into potential coercion and sexual violence. Establishing the criminal liability of specific parties requires proving the elements of the offense through authorized legal proceedings; the dispensation review process is not a substitute for such proceedings. Furthermore, Article 23 prohibits the resolution of sexual violence

⁴¹ Fadhli et al, "Out-of-Court Assistance Based on the Principle of the Best Interests of the Child: Study on Examination Process of Marriage Dispensation Cases"; Rahiem, "COVID-19 and the Surge of Child Marriages: A Phenomenon in Nusa Tenggara Barat, Indonesia."

⁴² Aprilianto et al, "Tarjīh Maqāṣidī Approach to Marriage Dispensation in Cases of Child Pregnancy in Indonesia"; Sherria Ayuandini et al, "Contemporary Pathways to Adolescent Pregnancy in Indonesia: A Qualitative Investigation with Adolescent Girls in West Java and Central Sulawesi," ed. Lakshmi Gopalakrishnan, *PLOS Global Public Health* 3, no. 10 (October 27, 2023): e0001700, <https://doi.org/10.1371/journal.pgph.0001700>.

⁴³ Irfan, Rosyid, and Imron, "Child Marriage and the Quest for Legal Protection: Integrating Islamic Family Law and Islamic Criminal Law"; Suiqiong Fan and Alissa Koski, "The Health Consequences of Child Marriage: A Systematic Review of the Evidence," *BMC Public Health* 22, no. 1 (February 14, 2022): 309, <https://doi.org/10.1186/s12889-022-12707-x>.

⁴⁴ Horii, "Walking a Thin Line: Taking Children's Decision to Marry Seriously?"

cases outside the judicial system, subject only to specific regulations concerning child offenders. International criminal law literature is referenced here solely to clarify the categories of coercion in their specific context, not to equate all cases of dispensation with international crimes.⁴⁵

Beyond the need for urgency, the assessment process must guarantee the continued fulfillment of rights. Any plan to continue schooling must include details on access, family support, and potential obstacles after the marriage. Economic support must be tested through demonstrated capability, rather than mere declarations of readiness.⁴⁶ Health and psychological assessments require the involvement of appropriate services whenever necessary.⁴⁷ From the perspective of *maqāṣid*, the promise of benefits cannot be accorded greater weight than clear risks in the absence of an adequate basis for assessment. From a human rights perspective, the existence of such a plan is essential for linking decisions to the obligation to fulfill rights.

Four-Stage Framework for Protection Review

The following framework represents the author's normative synthesis of the review provisions, the relevant scholarly debate, and the two illustrative cases. This framework helps clarify the rationale for the determination; it neither introduces new formal requirements lacking an authority basis nor supplants judicial discretion.

Table 1

A Four-Stage Framework for Assessing Child Protection in Marriage Dispensation		
Testing Phase	Evidence and Questions	Accountability in reasoning
Urgency	Urgency Specific circumstances, age, and the reasons why a delay is not feasible.	Explain the connection between the circumstances and the immediate need; distinguish the child's urgency from the family's pressures.

⁴⁵ Melanie O'Brien, "Don't Kill Them, Let's Choose Them as Wives": The Development of the Crimes of Forced Marriage, Sexual Slavery and Enforced Prostitution in International Criminal Law," *The International Journal of Human Rights* 20, no. 3 (April 2, 2016): 386–406, <https://doi.org/10.1080/13642987.2015.1091562>.

⁴⁶ Barkah et al., "Abandonment of Women's Rights in Child Marriage: An Islamic Law Perspective."

⁴⁷ Sekarrini, Prasetyo, and Kusumayati, "Child Marriage Dispensation from a Reproductive Health Perspective: Why Do Judges Grant or Reject Applications?"

Testing Phase	Evidence and Questions	Accountability in reasoning
Risk and participation	The child's voice, the possibility of coercion, health, education, care, and sources of income	Connect each piece of evidence to the rights and objectives of the <i>maqāṣid</i> ; explain insufficient evidence
Alternatives	Health support, family support, continuation of education, and protection from violence.	Compare the risks of marrying versus delaying marriage; explain why the alternatives are adequate or inadequate.
Follow-up plan	Supporting parties, educational and health support, referrals, and an agreed-upon evaluation schedule	Define responsibilities according to respective mandates; a service plan is not an abstract promise or a new form of criminal sanction

These four stages are interconnected; however, they do not function as a checklist of requirements that automatically dictate whether a request is granted or denied. If a claim of urgency lacks sufficient supporting evidence, the inquiry must clarify the concrete circumstances and the connection between the marriage and the need for immediate action. Should a child's testimony indicate duress, or if health and psychological information prove inadequate, the judge may seek further testimony and professional recommendations, in accordance with established procedural rules. Alternatives that offer greater protection for the child must be explicitly evaluated; if such alternatives are sufficient to address the situation at hand, the argument that marriage is an unavoidable, time-sensitive necessity becomes less compelling. Conversely, if a marriage dispensation is deemed justified, the court's reasoning must explain how any remaining risks will be managed and identify who will provide the necessary support. A follow-up plan clarifies responsibilities for the child's protection—it is neither an additional formal requirement nor a guarantee that all risks have been eliminated. Thus, this framework assists in constructing a coherent rationale for the court's decision. At the same time, the final ruling remains grounded in applicable law and the specific circumstances of the individual case.

Reconstructing State and Parental Accountability

The reconstruction of the dispensation process should focus on ensuring clarity in examinations, traceability of the reasoning behind decisions, and the continuity of protection. While establishing a minimum age requirement serves

as a preventive measure, its effectiveness hinges on the consistent application of any exceptions.⁴⁸ The state must ensure that educational, healthcare, psychological support, and legal aid services are accessible to children facing the pressures of marriage. In the absence of such support, the claim that marriage is the "only option" may merely reflect a lack of available services, rather than a truly unavoidable legal necessity.

The commitment of parents to continue meeting a child's needs following a marriage must be translated into a verifiable support plan. During the review process, the court may elicit and record information regarding the continuity of the child's education, healthcare financing, sources of economic support, and the individuals willing to provide care for the child, subsequently explaining how these factors relate to the basis for the court's determination. The parents and the prospective spouse shall outline the specific forms of support they are prepared to provide. At the same time, the follow-up services are directed to the appropriate institutions—such as educational institutions, healthcare facilities, government agencies responsible for child protection, or regional technical implementation units for child protection (UPTD PPA)—in accordance with their respective mandates. If monitoring is required, the coordination framework must specify the receiving institution, the nature of the follow-up, and the reporting channels to be used should the child's needs go unmet or if a risk of violence arises.⁴⁹ This framework serves as a proposed governance model for child protection; its implementation requires a clear legal basis, established coordination procedures, and safeguards for the confidentiality of the child's information. The court is not intended to serve as the sole provider of all post-marriage services. The formal recording of these commitments does not, in itself, confer on the court new supervisory authority or the power to impose new sanctions.

In the proposed framework, the receiving institution must designate a liaison officer—within the scope of its mandate—to coordinate the child's educational, health, and protection needs. Coordination procedures should establish the basis for information exchange, data access limitations, review

⁴⁸ Nuruddin Nuruddin, Aisyah Wardatul Jannah, and Dwi Martini, "Evaluating the Effectiveness of Age Restriction on Marriage in Indonesia," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 6, no. 2 (December 31, 2023): 313–30, <https://doi.org/10.24090/volksgeist.v6i2.9844>.

⁴⁹ Manahil Siddiqi et al., "Interventions to Address the Health and Well-Being of Married Adolescents: A Systematic Review," *Global Health: Science and Practice* 12, no. 4 (August 27, 2024): e2300425, <https://doi.org/10.9745/GHSP-D-23-00425>.

timelines, and protocols for instances where support fails to materialize. Reviews should focus on the child's concrete needs, such as continuity of schooling, access to healthcare, and the safety of their care environment. Economic constraints necessitate an assessment of the need for assistance. At the same time, any indications of violence or neglect require intervention through appropriate services and legal procedures. This proposal must be operationalized via instruments that are binding upon the relevant institutions, in accordance with their respective mandates; the act of granting or denying a dispensation does not, in itself, create new oversight authority.

Such protection must also extend to children whose applications for dispensation are denied. A denial does not automatically eliminate the pregnancy, family pressure, the threat of violence, or the risk of dropping out of school. Therefore, this article proposes that service needs be identified during the review process and addressed through referrals to the appropriate institutions—regardless of whether the application is granted or denied. Follow-up efforts should be directed toward meeting the child's needs and preventing further pressure, including pressure to enter into an unregistered marriage.

Strengthening accountability requires distinguishing between a failure to meet needs due to limited resources and instances of neglect, violence, or exploitation that meet the legal criteria for such offenses. The absence of specific sanctions for breaching promises within the existing examination guidelines does not imply a lack of protective measures. If a criminal offense is suspected, enforcement must be carried out in accordance with established legal provisions and procedures.⁵⁰ Any proposal to introduce new criminal sanctions requires a thorough assessment of the legal basis for such authority, the precise definition of the prohibited conduct, the elements of culpability, and the principle of proportionality; simply adding criminal penalties to a Supreme Court Regulation (PERMA) would be insufficient.⁵¹ The priority for

⁵⁰ Republic of Indonesia, "Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection," State Gazette of the Republic of Indonesia of 2014 No. 297, Supplement to the State Gazette No. 5606, arts. 76B, 76C, and 76I.

⁵¹ Republic of Indonesia, "Law No. 14 of 1985 on the Supreme Court," State Gazette of the Republic of Indonesia of 1985 No. 73, Supplement to the State Gazette No. 3316, art. 79 and its explanatory note. Republic of Indonesia, "Law No. 12 of 2011 on the Formation of Laws and Regulations," State Gazette of the Republic of Indonesia of 2011 No. 82, Supplement to the State Gazette No. 5234, art. 15(1).

reconstruction lies in implementing effective protection measures, with law enforcement as a component of measurable accountability.

Furthermore, marriage should not be assumed to negate the full scope of a child's need for protection.⁵² Variations in the legal definitions of maturity or capacity within specific regulations cannot be generalized to imply the forfeiture of all rights to education, health, and protection.⁵³ Any guidance provided should clearly articulate the legal consequences while emphasizing that the obligation to provide protection remains in effect. Consequently, the notion that a child loses all special rights upon marriage must be replaced by an assessment of which rights and obligations remain relevant under the applicable legal frameworks.

The comparison with Egypt clarifies that age restrictions can operate through various administrative mechanisms. Article 31-bis of Civil Status Law No. 143 of 1994—added via Law No. 126 of 2008—prohibits the registration of marriage contracts involving parties under the age of 18. This article also requires proof of a medical examination. It imposes disciplinary liability on registrars who violate the rule, without prejudice to other criminal provisions.⁵⁴ Meanwhile, the Child Law prioritizes the "best interests of the child" and establishes child protection committees.⁵⁵ Thus, the comparison focuses on registration thresholds, health documentation, and institutional accountability, rather than assuming Egypt employs a dispensation mechanism identical to Indonesia's. Article 97 establishes general and sub-committees for child protection. At the same time, Article 99-bis regulates family interventions and periodic supervisory visits when a child is at risk.⁵⁶ These mechanisms demonstrate the normative basis for monitoring, though they do not prove its implementation in every specific marriage.

⁵² Siddiqi et al., "Interventions to Address the Health and Well-Being of Married Adolescents: A Systematic Review."

⁵³ Republic of Indonesia, "Law No. 23 of 2002 on Child Protection," State Gazette of the Republic of Indonesia of 2002 No. 109, Supplement to the State Gazette No. 4235, as amended by Law No. 35 of 2014 and Law No. 17 of 2016, arts. 1(1), 8, 9, and 20.

⁵⁴ Arab Republic of Egypt, "Law No. 143 of 1994 on Civil Status," art. 31 bis, as added by Law No. 126 of 2008, reproduced in *Law No. 12 of 1996 Promulgating the Child Law, Amended by Law No. 126 of 2008*.

⁵⁵ Arab Republic of Egypt, "Law No. 12 of 1996 Promulgating the Child Law," as amended by Law No. 126 of 2008, arts. 3 and 97.

⁵⁶ Arab Republic of Egypt, "Law No. 12 of 1996 Promulgating the Child Law," as amended by Law No. 126 of 2008, arts. 99 bis and 99 bis (a).

These differences yield two normative lessons. First, age restrictions require clear accountability at the point of implementation, specifically for registration and evidence verification. Second, a ban on registration does not guarantee the elimination of unregistered marriages or the automatic fulfillment of children's rights. Rahmadhania et al. also identify unregistered marriage as a key issue in the Indonesia-Egypt comparison.⁵⁷ While the literature by Ropei et al. is useful for understanding maturity regulations in Muslim-majority countries, the age specifications cited in their abstract differ from the primary legislation; therefore, they were not used to determine the age limit.⁵⁸ Consequently, policy transfer to Indonesia focuses on ensuring traceable accountability and service coordination, while adhering to the existing national authority structure. A lesson to be drawn from the Egyptian arrangement is the need to designate an institution responsible for receiving risk information, coordinating interventions, and reviewing follow-up protection measures. In the Indonesian context, these functions should be integrated into existing institutions that already possess the relevant authority, rather than directly adopting the Egyptian committee structure or expanding the courts' powers without a legal basis.

Community-based prevention complements this legal reconstruction. The literature and reports consulted underscore the importance of the roles played by families, schools, health services, community organizations, and religious and customary leaders. Their involvement is essential to expanding alternatives for children, alleviating social pressures, and safeguarding educational opportunities.⁵⁹ Localized approaches must avoid portraying tradition or religion as the sole cause of issues; instead, the focus should be on changing

⁵⁷ Safrida Ramadhania, Ahmad Izzudin, and Ahmad antoni Hidayat, "Perlindungan Anak dalam Pernikahan di Bawah Umur: Studi Komparatif Indonesia, Mesir, dan Fikih Kontemporer," *Syakshiyah Jurnal Hukum Keluarga Islam* 5, no. 2 (January 6, 2026): 296–320, <https://doi.org/10.32332/d4d8xe79>.

⁵⁸ Ahmad Ropei et al., "Managing 'Baligh' in Four Muslim Countries: Egypt, Tunisia, Pakistan, and Indonesia on the Minimum Age for Marriage," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (June 30, 2023): 112–40, <https://doi.org/10.14421/ahwal.2023.16106>.

⁵⁹ Desak Putu Yuli Kurniati et al., "Community-Based Interventions for Preventing Child Marriage in Low- and Middle-Income Countries: A Systematic Review," *Asia Pacific Journal of Public Health* 38, no. 6–7 (September 26, 2026): 440–51, <https://doi.org/10.1177/10105395261437254>.

harmful practices and addressing the circumstances that leave families feeling they have no options regarding child protection.⁶⁰

Accordingly, the proposed reconstruction framework links the stages prior to, during, and after the dispensation review process. Before an application is filed, the state and community strengthen services and prevention efforts. During the review, the judge individually assesses the stated reasons, the child's views, evidence of risk, and available alternatives. Following the ruling, parental responsibilities and relevant services remain focused on the fulfillment of rights. This framework does not empirically validate a new model but rather provides a normative benchmark for evaluating whether the exception continues to serve as a protective instrument or, conversely, shifts the risk onto the child.

Conclusion

Marriage dispensations highlight the tension between age restrictions for marriage and the exceptions granted through the courts. A normative analysis suggests that the justification for such exceptions hinges on proving the existence of highly urgent circumstances, assessing the child's best interests on an individual basis, and ensuring continued protection following the court's ruling. This article proposes a four-stage framework that integrates the urgency of the situation, evidence of risks and the child's perspective, a comparison of available alternatives, and a protection plan. An examination of cases from Surakarta and Soreang reveals how the legal principle of "preventing harm" (*mafsada*) is applied in judicial reasoning, resulting in divergent outcomes. However, variations in case circumstances and the completeness of available documentation limit any definitive conclusions regarding the reasons for these differences or the quality of protection provided. Human rights frameworks clarify the rights and obligations of the parties involved. At the same time, the concept of *maqāṣid* helps weigh the consequences of each potential course of action. A normative comparison with Egypt underscores the importance of clearly defined responsibilities for those implementing the rulings, the necessity

⁶⁰ Maryse C. Kok et al., "Drivers of Child Marriage in Specific Settings of Ethiopia, Indonesia, Kenya, Malawi, Mozambique and Zambia – Findings from the Yes I Do! Baseline Study," *BMC Public Health* 23, no. 1 (April 28, 2023): 794, <https://doi.org/10.1186/s12889-023-15697-6>; Kanykey Bayalieva Jailobaeva et al., "The Role of Faith in Child Marriage: Empirical Evidence from Mozambique, Nepal, and the Philippines," *The Review of Faith & International Affairs* 22, no. 3 (July 2, 2024): 39–54, <https://doi.org/10.1080/15570274.2024.2375847>.

of medical evidence, and the need for coordinated protection—though the actual effectiveness of such measures remains unproven.

In practice, courts should explicitly link evidence of urgency, the child's views, potential risks, and alternative forms of protection in their reasoning. Pregnancy should not serve as an automatic justification for granting a marriage dispensation; meanwhile, any indications of violence, exploitation, or neglect must be addressed through the appropriate legal channels. Government authorities and service providers need to clarify the division of responsibilities, referral mechanisms, and follow-up support—covering education, healthcare, and child-rearing—regardless of whether a dispensation is granted or denied. From an academic perspective, future research should test the utility of this four-stage framework by analyzing a broader range of court rulings with consistent documentation. Furthermore, longitudinal studies are required to evaluate the fulfillment of rights after a ruling is issued, the implementation of family support, and the obstacles that may hinder service coordination.[a]

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