

Research Article

Marriage from the Perspective of Child Protection Law and Human Rights

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Abstract

This study analyzes the effectiveness of legal protection for children against early marriage in Indonesia, examining the issue through the lenses of human rights and family law. Despite the 2019 amendment to the Marriage Law raising the minimum age to 19, child marriage remains prevalent due to significant regulatory disharmony and judicial loopholes. Employing a normative-juridical method supported by empirical socio-legal data, this research investigates the conflict between the Child Protection Law and other statutes regarding the age of majority. The findings demonstrate that the "marriage dispensation" mechanism, intended for emergencies, is systematically exploited to legitimize underage unions, often driven by unintended pregnancies and parental pressure. Consequently, the state inadvertently facilitates violations of children's rights to development and safety. The study concludes that legal reform alone is inadequate; eradicating child marriage requires a synchronized strategy involving stricter judicial audits on dispensation requests, harmonization of conflicting laws, and comprehensive community engagement to dismantle patriarchal norms. This research underscores the urgency of shifting from a purely regulatory approach to a holistic, victim-centered protection framework that prioritizes the child's best interests.

Keywords: Child Marriage, Legal Protection, Human Rights.

INTRODUCTION

Children constitute an integral component of human survival and act as the future successors of a nation. To ensure their capacity to shoulder the responsibilities of nation-building, every child requires comprehensive protection

Erma Hari Alijana

and ample opportunities to develop physically, mentally, and socially without discrimination. The state's obligation to safeguard these rights is enshrined in the Convention on the Rights of the Child, which mandates that the state guarantees the rights of every child regardless of race, gender, religion, or social status (Gautama, 2000; Widiyanto et al., 2024). However, despite these international and constitutional guarantees, the realization of child protection in Indonesia remains far from optimal, often hindered by deep-seated social practices and the complexities of legal enforcement (Dellyana, 1988).

One of the most pervasive forms of violence against children that has garnered significant public attention is forced or early marriage. This phenomenon is frequently perpetrated by individuals within the child's closest circle, including parents or partners, often under the guise of solving social problems such as unplanned pregnancies. Academically, child marriage is increasingly categorized not merely as a marital union but as a form of sexual abuse and a violation of human rights (Ali et al., 2025). It deprives children of their fundamental liberties and exposes them to severe physical and psychological risks, directly contradicting the state's mandate to protect them from harm (Mufidah, 2006).

The prevalence of child rights violations in Indonesia presents a disturbing reality. Historical data from the National Commission for Child Protection (KPAI) indicated that between 2010 and 2014 alone, millions of cases were recorded, with sexual crimes constituting a significant portion (Komisi Perlindungan Anak Indonesia, 2015). While these reports show high numbers, recent systematic reviews suggest that these statistics likely represent only the tip of the iceberg due to the phenomenon of underreporting (Nur et al., 2023). Many cases of sexual abuse and forced marriage go unreported due to the victim's fear of the perpetrator, manipulation where the perpetrator accuses the victim of fabrication, or the family's reluctance to expose what they perceive as a disgraceful scandal (*aib*) to the public (Gunawan, 2023).

A critical legal challenge exacerbating this issue is the inconsistency regarding the definition of "adulthood" within the Indonesian legal framework. Various statutes provide contradictory age limits: the Civil Code (KUHPerdara) defines adulthood at 21 years; the Population Administration Law at 17 years; and the Child Protection Law (Law No. 35 of 2014) at 18 years. This regulatory overlap creates legal uncertainty and complicates enforcement (Mochtar & Huma, 2025). As noted in recent legal scholarship, these conflicting norms regarding the age of majority often hinder the effective application of justice and protection for minors, creating loopholes that are exploited to justify early unions (Kusmayanti et al., 2024).

The complexity of legal protection is further compounded by the specific regulations governing marriage. Although Law No. 16 of 2019 amended the Marriage Law to raise the minimum marital age to 19 for both genders, the provision for "marriage dispensation" remains a critical loophole (Hulu et al., 2025). This mechanism allows parents to request court permission for their underage children to marry based on "urgent reasons." Recent studies indicate that despite the legal amendment, the practice of dispensation effectively undermines

the law's protective intent, as courts continue to grant permissions largely driven by cases of pregnancy out of wedlock or parental coercion (Arif, 2025; Nakmofa et al., 2024).

The socio-cultural dimension of this issue reveals that child marriage is often a byproduct of unequal power dynamics. It is an act of violence where individuals in positions of power—physically or socially—impose their will upon the vulnerable (Mufidah, 2006). The impact of such unions is profound; research confirms that child marriage contributes significantly to increased divorce rates, domestic violence, and health risks, thereby perpetuating a cycle of poverty and instability (Fauzi, 2022). Furthermore, the dualism between positive law and religious interpretations often leads to situations where religious courts prioritize avoiding "social sin" (zina) over the child's developmental rights, creating a clash between legal obligations and religious observance (Jumrotunisak et al., 2024).

Given these multifaceted challenges, there is an urgent need for a more comprehensive approach to child protection that transcends mere statutory changes. The persistence of child marriage despite legislative reforms suggests that legal protection must be enforced through a synergy of strict government action, community involvement, and consistent judicial application (Syarif, 2023). This study aims to analyze the effectiveness of current legal protections for children against early marriage and human rights violations, specifically examining the paradox of marriage dispensations and the critical role of society in mitigating these offenses.

RESEARCH METHODS

This study employs a normative juridical research method, complemented by empirical elements (socio-legal research), to examine the effectiveness of legal frameworks in child protection. The research is descriptive-analytical in nature, aiming to provide a comprehensive overview of the implementation of positive legal norms—specifically Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage, and Law Number 35 of 2014 concerning Child Protection. These regulations are analyzed in conjunction with legal theories and the reality of child marriage practices in society. This approach was selected to scrutinize the gap between prevailing legal norms (*das sollen*) and social facts occurring in the field (*das sein*), particularly regarding the phenomenon of marriage dispensation.

The data sources utilized in this study encompass both secondary and primary data. Secondary data consists of primary legal materials (statutory regulations), secondary legal materials (expert opinions, legal journals, and related literature), and tertiary legal materials (legal dictionaries and encyclopedias). Data collection techniques were conducted in two stages: library research to inventory legal documents, and field research involving interviews with competent authorities to obtain empirical data. Subsequently, all collected data were analyzed using a descriptive-qualitative method to draw logical and accountable conclusions regarding child rights protection from the perspectives of family law and human rights.

RESULTS AND DISCUSSION

The Juridical Antinomy: Analyzing Conflicting Age Standards in Indonesian Law

The fundamental challenge in enforcing child protection in Indonesia lies in the lack of a unified legal definition of "childhood" and "adulthood." The Indonesian legal system acts as a complex intersection of Western civil law (inherited from the Dutch), Islamic law, and Customary (Adat) law, resulting in significant regulatory disharmony. The Child Protection Law Number 35 of 2014 explicitly defines a child as anyone under the age of 18, including those in the womb. This definition is intended to be the *lex specialis* (governing law) for all matters concerning minors, aligning with international standards such as the UN Convention on the Rights of the Child (CRC) ratified by Indonesia (Gautama, 2000).

However, in practice, this definition is frequently challenged by other prevailing statutes. The Civil Code (KUHPerdata), which remains a cornerstone of private law, stipulates the age of maturity at 21 years, or younger if the individual has been married. Similarly, the Child Welfare Law Number 4 of 1979 also sets the boundary at 21 years for unmarried individuals. Conversely, the Population Administration Law allows for independent legal actions, such as obtaining an identity card, at the age of 17. This fragmentation creates a legal grey area where a person can be considered a child under one law but an adult under another (Mochtar & Huma, 2025).

This inconsistency is most detrimental in the context of marriage. Before the amendment, the Marriage Law Number 1 of 1974 allowed girls as young as 16 to marry, directly contradicting the Child Protection Law. Although Law Number 16 of 2019 successfully raised the minimum marriage age to 19 for both genders, the existence of conflicting age markers in other sectors continues to weaken the social understanding of childhood. Legal scholars argue that as long as the state fails to synchronize the age of majority across all legal instruments—including labor, criminal responsibility, and civil rights—the protection of children from early marriage will remain fragile. The lack of regulatory cohesion allows conservative interpretations to exploit these gaps, prioritizing the "biological readiness" often associated with puberty over the "mental and social readiness" required by the Child Protection Law (Kusmayanti et al., 2024).

Furthermore, the legal culture in Indonesia often places the Marriage Law as a *lex specialis* regarding family matters, effectively bypassing the protections offered by the Child Protection Law. This creates a jurisprudential conflict where the right to form a family (often interpreted conservatively) overrides the child's right to protection from harmful practices. Without a Constitutional Court ruling or a legislative overhaul that establishes the Child Protection Law as the supreme reference for defining minority status in all contexts, this antinomy will continue to hinder efforts to eradicate child marriage (Dellyana, 1988; Ramadhani, 2020; Sunarti, 2024; Widiyanto et al., 2024).

The Paradox of Marriage Dispensation: Judicial Practice vs. Child Protection

The legislative intent of Law Number 16 of 2019 was to curb the prevalence of child marriage by setting a higher age threshold. However, the efficacy of this amendment is severely undermined by Article 7, Paragraph (2), which permits "marriage dispensation." This provision allows parents to request a court exemption for their children to marry under the statutory age of 19, provided there are "urgent reasons" supported by sufficient evidence. While theoretically intended as an emergency measure, recent empirical data suggests that dispensation has become a normalized bureaucratic procedure rather than an exception (Hulu et al., 2025).

Judicial decisions in Religious Courts (*Pengadilan Agama*) reveal a disturbing pattern where the "best interest of the child" is frequently misinterpreted. Judges often face a dilemma: rejecting the dispensation might lead to the couple engaging in *Nikah Siri* (unregistered marriage) or continuing an illicit relationship, which is viewed as a greater social and religious evil (*mudharat*). Consequently, courts frequently grant dispensations based on the principle of preventing Zina (adultery) or legitimizing a pregnancy that has already occurred. Research by Arif (2025) on decisions in the Mojokerto Religious Court highlights that judges often prioritize the "readiness of the couple" based on subjective assessments or parental insistence, rather than objective psychological or developmental criteria.

The Supreme Court attempted to regulate this through PERMA No. 5 of 2019, which mandates judges to seek advice from child psychologists or social workers before granting dispensations. However, the implementation of this regulation is inconsistent. In many remote areas, access to such professionals is limited, and judges revert to relying solely on the testimony of parents. The phrase "urgent reason" is legally ambiguous and is most often interpreted as "pregnancy out of wedlock." This creates a paradoxical situation where the law meant to protect children ends up facilitating their marriage to "cover up" a moral transgression. The court, acting as a state agent, essentially legalizes a violation of the child's rights under the guise of solving a moral crisis (Jumrotunisak et al., 2024).

Moreover, the high approval rate of dispensation requests signals a disconnect between the judiciary's perspective and the national goal of reducing stunting and poverty. By granting these requests, the state is complicit in perpetuating a cycle where children are forced into adult roles before they are physically or mentally capable. Legal analysts suggest that the dispensation mechanism needs a radical overhaul, potentially by removing the authority from the courts and placing it under a multi-disciplinary child protection committee that can offer alternatives to marriage, such as social support for the pregnant minor (Chaturathorn et al., 2025; Nakmofa et al., 2024; Reganata et al., 2026; Zachary & Nurhayani, 2025).

Socio-Cultural Determinants: The Role of Patriarchy, Poverty, and Social Stigma

Legal prohibitions alone are insufficient to address child marriage because

Erma Hari Alijana

the practice is deeply rooted in Indonesia's socio-cultural fabric. The phenomenon cannot be viewed solely as a legal violation but must be understood as a social strategy employed by families facing economic hardship and social pressure. In many communities, especially in rural areas, marrying off a daughter is seen as a way to reduce the family's economic burden. The perception remains that a girl's primary value lies in her role as a wife and mother, and delaying marriage is often feared to reduce her "marketability" (Mufidah, 2006).

A significant driver of early marriage is the concept of *Aib* (shame) and the preservation of family honor. In collective societies, the sexual purity of a daughter is intrinsically linked to the family's reputation. As noted in the introduction, parents often rush to marry off their children at the slightest suspicion of a relationship to avoid community gossip or the stigma of premarital sex. This is exacerbated by the lack of comprehensive sexual education. Children are often unaware of the consequences of their actions, and when a pregnancy occurs, parents view marriage as the only "responsible" solution to cover the shame (Gunawan, 2023).

Furthermore, there is a strong patriarchal dimension where power dynamics are heavily skewed against the female child. The child often has no say in the decision-making process. The pressure comes not only from parents but also from religious and community leaders who may endorse early marriage as a way to avoid sin. This creates a "culture of silence" where victims are manipulated into accepting the marriage. As highlighted by Nur et al (2023) in a systematic review, the determinants of child marriage are a complex web of low education, rural residency, and religious conservatism. The "manipulation" mentioned in the source text – where perpetrators or families accuse the victim of lying to cover up abuse – is a manifestation of this unequal power structure.

The social construction of gender also plays a critical role. Girls are socialized to be obedient and submissive, making it difficult for them to resist forced marriages disguised as "arranged" marriages. Even when the marriage is ostensibly "consensual" (e.g., "love marriage" among teenagers), it is often driven by a lack of alternative life pathways. When education is inaccessible or deemed irrelevant for girls, marriage becomes the only envisioned future. Therefore, addressing child marriage requires dismantling these patriarchal norms and providing viable economic and educational alternatives for girls (Dellyana, 1988; Fauzi, 2022).

Child Marriage as a Violation of Human Rights and a Form of Sexual Violence

From a human rights perspective, child marriage is a fundamental violation of the rights to liberty, security, and bodily integrity. The Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) classify child marriage as a harmful practice. In the Indonesian context, the discourse is shifting towards recognizing child marriage as a specific form of sexual violence. Academics argue that a child, by definition of their developmental stage, cannot provide full, free, and informed

Erma Hari Alijana

consent to marriage or sexual intercourse. Therefore, any marriage involving a child is inherently coercive (Ali et al., 2025).

This perspective is reinforced by the enactment of the Law on Sexual Violence Crimes (UU TPKS), which broadens the definition of sexual violence to include forced marriage. Forced marriage, including those facilitated by parents for cultural or economic reasons, deprives the child of their agency. The sexual acts that occur within such a marriage can be legally and theoretically classified as statutory rape, even if sanctified by a religious ceremony. The state's failure to prevent these unions constitutes a breach of its obligation to protect citizens from gender-based violence (Syarif, 2023).

The "sexual abuse" component is critical. As mentioned in the background data, a significant percentage of child rights violations involve sexual crimes. Child marriage is often used as a mechanism to legitimize pedophilic tendencies or to escape criminal liability for rape. By marrying the victim, the perpetrator avoids prosecution, and the victim is trapped in a lifelong relationship with their abuser. This "marry-your-rapist" phenomenon is a gross miscarriage of justice that prioritizes social stability over the victim's trauma. Legal protection must be reoriented to view these cases through a criminal law lens rather than a family law lens, ensuring that marriage cannot be used as a shield for sexual predators (Komisi Perlindungan Anak Indonesia, 2015).

The Multidimensional Impact: Health, Psychology, and Divorce Rates

The consequences of child marriage are catastrophic and multidimensional, affecting not only the individual child but society at large. Physically, the reproductive systems of girls under 19 are often not fully developed, leading to high risks of maternal mortality, obstetric fistula, and complications during childbirth. Furthermore, babies born to child mothers are at a significantly higher risk of stunting and malnutrition, perpetuating a generational cycle of poor health and poverty. This directly contradicts the government's national priority to reduce stunting rates (Gunawan, 2023).

Psychologically, child brides and grooms are forced to assume adult responsibilities for which they are mentally unprepared. This sudden loss of childhood leads to high rates of depression, anxiety, and trauma. The isolation from peers and the termination of education further exacerbate these mental health issues. The domestic environment in child marriages is frequently unstable; the lack of emotional maturity often leads to conflict and domestic violence. As noted in the source text, domestic violence (KDRT) is a common outcome, where the child has no bargaining power or exit strategy (Ojo, 2024).

Sociologically, child marriage is a major contributor to the soaring divorce rates in Indonesia. Research by Nakmofa et al (2024) in Buleleng Regency demonstrates a strong correlation between marriage dispensation and subsequent divorce. Couples married at a young age lack the emotional resilience and economic stability to sustain a marriage. When these marriages dissolve, the female is often left in a precarious economic position, often with children to support and without the education or skills to enter the workforce. This burden

Erma Hari Alijana

falls back on the state and society, creating a class of vulnerable young divorcees. Thus, the argument that early marriage prevents social ills (like adultery) is flawed, as it creates arguably worse social ills: broken homes, poverty, and traumatized generations.

Evaluating State Responsibility and the Urgency of Systematic Reform

The persistence of child marriage in Indonesia serves as an indictment of the current child protection system. While the regulatory framework has improved with Law No. 16 of 2019, the enforcement remains weak. The state has a constitutional mandate under Article 28B of the 1945 Constitution to guarantee the right of every child to survival, growth, and development. To fulfill this, the government must move beyond legislative changes to a more holistic, integrated approach involving the executive, judicial, and legislative branches (Widiyanto et al., 2024).

Firstly, strict monitoring of judicial discretion is essential. The Supreme Court must enforce tighter audits on judges who grant dispensations too liberally. The requirement for "urgent reasons" must be strictly defined to exclude pregnancy as an automatic justification, shifting instead to social protection and healthcare for the pregnant minor rather than marriage. Secondly, the role of local governments and agencies like the Office of Women's Empowerment and Child Protection (DP3A) must be strengthened. They should provide mandatory counseling that is not merely administrative but substantive, ensuring parents understand the legal and medical risks (Hulu et al., 2025).

Civil society and educational institutions also play a pivotal role. As suggested in the conclusion of the source draft, community-based protection mechanisms (*Perlindungan Anak Terpadu Berbasis Masyarakat*) are crucial. Communities must be educated to recognize early marriage as a violation of rights, not a tradition. Schools should integrate comprehensive reproductive health education to prevent the root causes of "urgent reasons" (i.e., unplanned pregnancies). Finally, criminal law enforcement against those who coerce children into marriage must be visible and severe to act as a deterrent. Only through this synchronized effort—harmonizing laws, tightening judicial oversight, and transforming cultural norms—can the state truly protect its children (Kusmayanti et al., 2024; Syarif, 2023).

CONCLUSION

This study concludes that despite significant legislative amendments to raise the minimum marriage age, child protection in Indonesia remains compromised by regulatory disharmony and judicial loopholes. The persistence of conflicting legal definitions regarding the age of majority across various statutes creates a systemic ambiguity that hinders effective enforcement. Furthermore, the "marriage dispensation" mechanism has emerged as a critical paradox; intended as an emergency measure, it is frequently exploited to legitimize underage unions, often under the pretext of cultural norms or "urgent reasons" such as pregnancy. Consequently, the legal framework, while theoretically robust, often fails in

Erma Hari Alijana

practice to shield children from the severe violations of their human rights, exposing them to long-term physical, psychological, and socioeconomic detriments.

To address this multifaceted issue, a mere revision of statutory age limits is insufficient; a holistic and integrated approach is urgently required. Legal reform must be reinforced by strict judicial oversight to ensure that marriage dispensations are granted only in truly exceptional circumstances, prioritizing the child's best interests over social stigma. Moreover, the state must actively collaborate with community and religious leaders to dismantle the socio-cultural root causes of child marriage, such as poverty and patriarchal values. Ultimately, protecting children from early marriage demands a synchronized effort involving legal harmonization, educational empowerment, and a shift in societal paradigms to ensure that every child can exercise their right to grow and develop optimally.

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Erma Hari Alijana

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