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Legal Problems of Minor Marriage in the Perspective of Customary, Islamic, and Civil Law

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ABSTRACT:

This study explores the legal complexities of *minor marriages* in Indonesia through the lenses of customary law (*adat*), *Sharī'ah*, and civil law. Although *child marriage* rates have declined, the practice endures due to cultural traditions, economic factors, and legal ambiguities. The research analyzes the social legitimacy of *minor marriages*, identifies conflicts within plural legal systems, and assesses their impact on children's rights. Employing a doctrinal legal method, it reviews secondary sources such as laws, court decisions, and expert interviews. Findings show that *adat* law emphasizes socio-biological signs of *bulūgh* (maturity) over age, legitimizing early marriage while often overlooking child welfare. Classical *Sharī'ah* jurisprudence permits underage marriage but clashes with modern human rights standards. Civil law prescribes minimum age limits but allows *dispensasi nikah* (marriage dispensations), weakening child protection. The study highlights regulatory inconsistencies, notably between marriage dispensations and the *Undang-Undang Perlindungan Anak* (Child Protection Law), underscoring the urgent need for legal harmonization. Recommendations call for stricter enforcement of age limits, coordinated multi-sectoral interventions, and cultural sensitization to align laws with the *maslahah* (best interests) of children. Addressing these challenges is critical to resolving legal ambiguities and strengthening child rights protection within Indonesia's plural legal framework.

Keywords: Child marriage, customary law, Islamic law, civil law, marriage dispensation, children's rights, Indonesia.

INTRODUCTION

Children are a gift and mandate from God Almighty that must be maintained and protected, as every child possesses *karāmah* (dignity) and *ḥuqūq al-insān* (human rights) that must be respected and guaranteed. Children do not belong solely to their parents but also to the

future leaders of the nation, who have the right to achieve their aspirations. Unfortunately, behind the rights to play, learn, and grow happily, many children—especially girls—are forced to bear the burden of *nikāḥ al-aṣghār* (underage marriage). Marriage at a young age not only ends childhood prematurely but also exposes children to health risks, school dropouts, and persistent poverty.

Nikāḥ al-aṣghār remains a widespread social phenomenon globally, including in Indonesia. Although efforts to reduce this practice continue, child marriage severely impacts children's health, education, and future prospects. According to the Ministry of Women's Empowerment and Child Protection (*Kementerian PPPA*), the child marriage rate dropped from 10.35% in 2021 to 6.92% in 2023, surpassing the 2024 RPJMN target of 8.74%, reflecting joint progress by government, communities, and development partners. However, regional disparities persist; for example, in West Sulawesi, tradition and economic pressures compel nearly 20% of adolescent girls to marry before physical or mental maturity.

The Central Statistics Agency (*BPS*) reports that in 2020, 3.06% of Indonesian youth from the bottom 40% economic group married before age 15, compared to 1.85% and 0.91% in the middle and top economic tiers, respectively. The World Health Organization (*WHO*), as cited by *BPS*, identifies pregnancy and childbirth in women aged 10–19 as carrying elevated risks of eclampsia, puerperal endometritis, and systemic infections compared to women aged 20–24.

This phenomenon creates complex challenges, especially within Indonesia's pluralistic legal framework, where *ta'addud al-anḏimah al-qānūniyyah* (legal pluralism) does not always align with *ḥuqūq al-ṭufūl* (children's rights) and *maṣlaḥat al-aṭfāl* (best interests of the child). Indonesia recognizes three legal systems governing marriage: the religious legal system, positive national law, and customary (*'urfī*) law.

In *'urfī* law, underage marriage is often legitimized by hereditary traditions. For instance, among Javanese, Sundanese, or Bugis communities, marriage before age 16 is perceived as part of local wisdom to maintain family honor or strengthen clan ties. Customary law emphasizes *nubūgh* (maturity) based not on chronological age but on socio-biological indicators such as working ability and self-sufficiency, and does not explicitly prohibit *nikāḥ al-aṣghār*.

In Bali, customary law traditionally lacks a clear minimum age for marriage. Maturity is commonly recognized through biological markers, such as menarche for girls and *ngembakin* (voice change) for boys, often commemorated by the ceremony *ngerajasewala*. Nonetheless, the Balinese Customary Village Assembly (*Majelis Adat Desa*) has adopted regulations setting marriage, divorce, and inheritance provisions in accordance with applicable national laws, including age limits.

Islamic law, the primary reference for most Indonesians, approaches marriage differently. The Compilation of Islamic Law (*Kompilasi Hukum Islam* or *KHI*) states that marriage is a strong *mithāq ghalīz* (contract) to obey Allah's commands, constituting an act of worship. Article 15 of

KHI adopts age limits consistent with Article 7 of Law No. 1 of 1974, setting marriage ages at 19 for men and 16 for women, conditional upon parental consent if under 21. Classical *fiqh* often uses *bulūgh* (puberty) as a criterion: girls who menstruate are considered eligible for marriage even if under 16. The Indonesian Ulema Council's fatwa commission (*Ijtimā' Ulama*) holds that (i) Islam does not stipulate a fixed minimum age, (ii) eligibility for marriage is based on *ahliyah al-ada' wa al-wujūb* (legal capacity), a reflection of *sinn al-rushd* (age of maturity), and consequently, (iii) marriage under the legal age is valid if conditions are met but *ḥarām* (forbidden) if it causes *mafsadah* (harm). For effectively realizing *'urf al-fama* (public welfare), the fatwa recommends adherence to the age limits in national law.

Regarding positive law, Indonesia has sought to protect children through legislation. The Marriage Law originally allowed girls to marry at 16, a threshold criticized for insufficient child protection. Subsequent reforms, including Law No. 16 of 2019 amending Law No. 1 of 1974 and the Constitutional Court Decision No. 22/PUU-XV/2017, raised the minimum age for women to 19, equalizing it with men. Nonetheless, the *dispensasi nikah* (marriage dispensation) mechanism permits courts to authorize underage marriage, undermining child protection efforts. Supreme Court data from 2023 reveal thousands of dispensation requests annually, primarily justified by premarital pregnancy or economic hardship, with courts frequently granting applications, even for girls as young as 15. For example, Religious Court Decision No. 451/Pdt.P/2024/PA. IM granted dispensation for a minor to marry a 19-year-old groom, illustrating this legal gap.

Fundamentally, marriage aims to establish a happy, enduring household (*bayt*) grounded in faith in God Almighty and to procreate. *Nikāḥ al-aṣghār* impedes these objectives and brings more harm than benefit. It contravenes the *maqāṣid al-sharī'ah* (higher objectives of Islamic law) by endangering the child's soul (*nafs*) and future.

Protection of children in underage marriage is a shared responsibility between family, state, and society. The consequences encompass reproductive health risks, educational discontinuity, and entrenched poverty. Thus, it is vital to evaluate the efficacy of various regulations—both statutory and normative in customary and Islamic law—in safeguarding children's rights and preventing *nikāḥ al-aṣghār*. This article analyzes the protection offered by these three legal systems, identifies challenges, and proposes recommendations to strengthen the existing legal framework.

RESEARCH METHODS

The form of research used was doctrinal law research, which involved examining literature materials or secondary data by conducting an inventory of legal principles and doctrines related to *nikāḥ al-aṣghār* (underage marriage) with court dispensation to identify and address legal problems. Doctrinal research was conducted to examine the issues surrounding the Law of

Marriage of Minors from the perspectives of *'urf* (customary), *Sharī'ah* (Islamic), and civil law. This method was chosen because of its focus on the validity of underage marriage across these three legal perspectives, as well as the legal implications regarding the obligations of husbands and wives toward children born from such marriages and the practice of granting marriage dispensations.

This article fell into the category of qualitative research, with data collection based on literature studies. The primary source of data was secondary or literature data, which included primary, secondary, and tertiary legal materials such as laws and regulations, books, and articles. The primary legal materials used had binding authority, while the secondary legal materials were non-binding but provided explanations of the primary legal materials.

The types of data used in this study consisted of secondary data, including primary legal materials such as Law No. 1 of 1974 concerning Marriage, Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, Law No. 35 of 2014 concerning Child Protection, the *Kompilasi Hukum Islam* (Compilation of Islamic Law), Fatwa of the Indonesian Ulema Council (MUI) No. 11/2012, and the Constitutional Court Decision Number 46/PUU-VIII/2010. Data collection methods included document studies and interviews with resource persons, namely Dr. Muhammad Sofyan Pulungan, S.H., M.A., a lecturer in Customary Law at the Faculty of Law, University of Indonesia, and Neng Djubaedah, S.H., M.H., Ph.D., a lecturer in Islamic Law at the Faculty of Law, University of Indonesia.

RESULTS AND DISCUSSION

The validity of underage marriage from the perspective of customary, civil, and Islamic law

A. Customary Law Perspective

In the Indonesian customary law system, the concept of maturity is not fixed on chronological age numbers, but on the ability of individuals to carry out socio-economic roles and biological signs that are considered markers of maturity. This concept is rooted in indigenous peoples' views that emphasize independence, responsibility, and integration into community structures. This section will discuss child marriage based on customary law based on:

1. Maturity: Definition in Customary Law

Maturity in customary law is not determined by chronological age figures, but rather by the individual's ability to fulfill socio-economic roles and communally recognized biological signs. Maturity is concrete and can be observed directly, so it does not only depend on age, but rather on a person's ability to carry out his responsibilities.

For example, a person who is already able to work and provide for his own needs, even though he is only 15 years old, can be considered an adult under customary law. On the other hand, in the perspective of western law, maturity is more often measured based on a certain age

that has been set in laws and regulations. However, even though it is based on law and science, the age limit of maturity in various western legal rules is inconsistent.

In Javanese society, for example, a person is considered an adult when he is able to build a house (omah) separate from his parents, even though he is still young. Marriage is often a marker of this transition, as reflected in the results of interviews with indigenous leaders: "Marriage is the way indigenous peoples perceive a person as an adult. Even though he is 15 years old, if he is married, his status changes to adult". Meanwhile, in Bali, women's maturity is marked by their first menstruation (men's menstruation), while men are considered adults after experiencing a change in voice (ngembakin). Then it was confirmed through the ngerajasewala ceremony, a traditional ritual that involves the entire community. In Batak society, male maturity is closely related to the ability to manage huta (customary territory) and pay sinamot (dowry) in marriage, which not only indicates individual maturity but also readiness to take on social responsibility. This diversity of definitions reflects the flexibility of customary law in adapting to local values, while affirming that maturity is a cultural construct that serves to ensure the integration of the individual into the fabric of society.

2. Social Legitimacy and the Function of Marriage

Marriage in customary law is not only interpreted as a personal bond between two individuals, but also functions as a social strategy to strengthen cohesion between clans, maintain the sustainability of cultural heritage, or prevent conflicts in society. In the Minangkabau society which adheres to the matrilineal system, marriage is seen as an instrument to ensure that the lineage and inheritance (sako) remain in the mother's tribe. Underage married girls are often intended to ensure that the lineage remains within the mother's tribe. Meanwhile, in the Bugis community, early marriage is used to avoid siri' (shame) due to premarital relations, especially in the event of pregnancy. In Balinese customs, if a Balinese woman marries a Balinese outsider, she must have the approval of the traditional head so that her status in the community structure is not threatened. Thus, marriage in customary law is not just a private affair, but a complex mechanism that establishes social harmony, preserves cultural identity, and reaffirms the collective order that has been held for generations.

Criticism of the social legitimacy of child marriage in customary law lies on the side that often ignores the negative impacts that harm the rights and welfare of children, especially women. In terms of reproductive health, adolescent girls who are married underage are at high risk of serious complications such as obstetric fistula, a medical condition that causes permanent birth defects due to childbirth before the body is biologically ready. In addition, the practice also has a detrimental effect on education, where 60% of women who marry before the age of 18 are forced to drop out of school, burying their potential for economic independence and exacerbating the cycle of poverty. Furthermore, child marriage reinforces systemic gender inequality, as women are positioned as "guardians of family honor" who must bear the moral and

social consequences, while men are not burdened with similar responsibilities. This criticism emphasizes that social legitimacy in the name of customary must be reviewed so as not to sacrifice the basic rights of children in order to maintain traditions that are no longer relevant to the principles of justice and humanity.

3. Conflict of Cultural Legitimacy with National Law Applicable in Society

Although customary law has strong cultural legitimacy in society, the practice of child marriage often clashes with national laws aimed at protecting children's rights. Law No. 16 of 2019 on Marriage sets a minimum age limit of 19 years for all genders, while Law No. 23/2002 on Child Protection expressly states that children are individuals under 18 years old who are entitled to special protection, including from the practice of early marriage. This tension between customary norms and national laws is evident in cases such as in West Sulawesi, where 20% of adolescent girls are forced to marry before the age of 16 due to customary and economic pressures.

In fact, legally, this marriage is invalid without a court dispensation, which is supposed to be a strict exclusion mechanism. This conflict not only creates legal dualism at the societal level, but also sacrifices the future of children forced into early marriage, where the rights to education, reproductive health, and self-development are often neglected in order to preserve traditions or solve family economic problems.

Then, several indigenous communities began to make adjustments to reduce the practice of child marriage in line with demands for the protection of children's rights and national legal pressure. At the Bali Customary Village Council (MDA): Through Decree No. 04/KEP-PSM.IV/MDA-BALI/VIII/2023, MDA Bali adopted the marriage age limit in accordance with Law No. 16/2019. Meanwhile, the Dayak community in Kalimantan has undergone a significant transformation by replacing the tradition of ngayau (head hunting), which used to be a symbol of maturity, to a minimum high school education requirement as a prerequisite for marriage. These changes not only reflect adaptation to modern values but also emphasize the importance of knowledge and independence in building a household.

However, these adaptations are not always effective. In remote areas, such as the interior of Papua, child marriage is still carried out under the pretext of "avoiding the customary curse" in the event of an out-of-wedlock pregnancy.

B. Perspective of Islamic Law

Islamic law faces challenges in addressing child marriage. How to balance the sacred text (nash) with the benefits (maslahah) of modernity. Traditionally, underage marriage is permissible based on hadith and the concept of puberty (biological maturity). However, modern demands require a contextual reinterpretation, considering human rights and child protection through the principles of maqasid al-sharia. In Indonesia, the debate between conservative scholars who adhere to the text and progressive scholars who prioritize humanitarian ijihad reflect this

complexity. The problem is no longer just legal or illegal, but how Islamic law can respond to the real impact of early marriage on children's health, education, and future in the era of globalization.

1. Theoretical Basis: Maqasid al-Syariah and Benefits

Islamic law focuses not only on the text (nash), but also on the universal purpose of the sharia (maqasid al-sharia), which protects five basic rights: religion (din), soul (nafs), intellect (aql), posterity (nasl), and property (mal). The concept of maslahah (benefit) is the key to adapting the law to the changing times, including in the issue of child marriage. Scholars such as Imam Al-Ghazali define maslahah as an act that "benefits and rejects mudharat", while Ibn Qayyim al-Jauziyyah emphasizes the flexibility of Islamic law to be relevant to social dynamics. This view shows that maslahah is universal and contextual, ensuring that the sharia remains beneficial to humans without neglecting its primary purpose.

2. Child Marriage in the Perspective of Classical Fiqh

In pre-Islamic times, early marriage was the norm prevalent in Arab society, especially in harsh desert environments. Child marriage is seen as a strategy to strengthen alliances between tribes, ensure economic protection, and ensure the continuity of the lineage. In this context, early marriage is not only personal, but also has a strong socio-political dimension.

Classical scholars such as Imam Shafi'i emphasized that physical readiness (puberty) marked by puberty is the main requirement for marriage, not merely chronological age. This view is based on the belief that biological maturity indicates a person's readiness to perform the role of husband or wife. Nevertheless, the book *Fath al-Qarib* by Ibn Qasim al-Ghazi provides room for child marriage on the condition that there is a clear maslahat (goodness or benefit), such as avoiding adultery or poverty. This statement reflects the flexibility of classical jurisprudence in responding to emergency situations, although it is often interpreted broadly to open up opportunities for abuse. There are different views on the age of puberty in Islam, where according to the Shafii madhhab, the age of puberty is 15 years, while in the Hanafi madhhab it is 18 years.

3. Contemporary Criticism of the Classical Approach

Modern thinkers such as Abdullahi Ahmed An-Na'im reject the justification of child marriage on the pretext of sharia. He argued that maqasid al-sharia should be understood through the lens of human rights (HAM), where child protection is a priority. This criticism is reflected in several legal developments in Indonesia. For example, the Fatwa of the Indonesian Ulema Council (MUI) No. 11/2012 prohibits the recognition of the nasab relationship between the child resulting from adultery and the biological father but still requires the father's economic responsibility to meet the needs of the child.

This fatwa is an attempt to balance religious norms with the principles of social justice, although it has attracted controversy from conservative scholars. On the other hand, the

Constitutional Court Decision No. 46/PUU-VIII/2010 allows children out of wedlock to prove a civil relationship with their biological father through DNA testing, although it contradicts several jurisprudence opinions that reject the recognition of legal relations in adultery cases. This ruling shows how positive law can intervene in religious traditions to protect children's rights, while also confirming the ambivalence between the demands of sharia and the needs of modern law. Both examples underscore the need for contextual reinterpretation of classical doctrine, especially in response to complex contemporary challenges.

4. Conflict between Sharia and Human Rights

The practice of child marriage often creates tensions between Islamic law and international human rights standards, especially in the context of child protection. Indonesia, as a country that ratified the Convention on the Rights of the Child (CRC) through Law No. 10/2012, expressly prohibits marriage under the age of 18. However, the implementation of this regulation often clashes with the interpretation of Islamic law which still opens up space for marriage dispensation based on the principle of benefit or emergency. On the other hand, the Islamic Declaration on Human Rights (Cairo Declaration) in Article 5 states that marriage must be based on the consent of both parties but does not explicitly prohibit child marriage. This creates ambiguity, as "consent" in the context of minors is often influenced by family, cultural, or economic pressures, rather than free will.

UNICEF data (2023) shows this complexity: 14% of Indonesian women are married before the age of 18, with the highest rates in West Nusa Tenggara (22%) and West Sulawesi (19%). This phenomenon indicates that although national laws have adopted international human rights standards, practices on the ground are still influenced by local religious and customary norms. This conflict not only highlights the gap between regulation and social reality but also demands a reinterpretation of Islamic law that is in line with human rights principles, especially in terms of the protection of children's rights to education, health, and freedom from exploitation. This harmonization effort is key to ensuring that sharia values do not collide with global commitments in ensuring the future of the younger generation.

5. Contextual Ijtihad and Legal Reform

Progressive scholars such as Muhammad Abduh and Rasyid Ridho pushed for the reform of Islamic marriage law to be in line with the principles of modern welfare. In Indonesia, this is realized through Law No. 16/2019 which raises the age limit for women to marry from 16 to 19 years old, equating it with men. This reform reflects the state's commitment to protecting children while showing how the interpretation of Islamic law can be adapted to human rights. Organizations such as NU and Muhammadiyah support this rule, although it still opens dispensation for "emergency" cases.

A clear example can be seen in the Decision of the Indramayu Religious Court No. 451/Pdt.P/2024/PA. IM, which allows marriage dispensation for women 18 years old because

they are pregnant. The judge reasoned to avoid social stigma and the existence of family consent. However, this ruling was criticized for ignoring the principle of "the best interests of the child". This case illustrates the dilemma of Islamic law reform in Indonesia: on the one hand it wants to be modern, on the other hand social pressure and the loosening of "emergency" criteria weaken child protection. The challenge is to ensure dispensation is only used as a final solution, not a loophole for early marriage.

C. Civil Law Perspective

The regulation of underage marriage in Indonesian civil law is in a sharp vortex of ambivalence. On the one hand, Law No. 16/2019 on Marriage affirms the minimum age limit of 19 years as an effort to protect children's rights. On the other hand, Article 7 paragraph (2) of the same law opens a gap in marriage dispensation through court determination, creating a paradox between legal protection and social compromise. This practice not only reflects the tension between national norms and cultural realities but also raises fundamental criticisms about the extent to which the state can safeguard the best interests of children amid economic pressures, customs, and societal stigma. The marriage dispensation, which should be the ultimate remedium (the last solution), often turns into an emergency that perpetuates the cycle of vulnerability of children, especially women, in the circle of early marriage.

1. Legal Basis and Mechanism of Marriage Dispensation

The marriage dispensation in Indonesian civil law is regulated through Article 7 Paragraph (2) of Law No. 16/2019, which allows marriages under the age of 19 based on "urgent interest" (urgency) after obtaining a court determination. This mechanism has become controversial because it is considered contrary to the principle of child protection, although on the other hand it is necessary to accommodate certain socio-cultural realities. The dispensation process begins with an application from parents or guardians to the Religious Court or District Court according to the applicant's religion/belief. Furthermore, the judge conducts a thorough examination which includes verification of the reasons for the application, the mental readiness of the bride-to-be, and the economic condition of the family. In their considerations, judges are obliged to prioritize the welfare of children by evaluating the social, health, and educational impacts that may arise. Supreme Court data in 2023 reveals that 85% of dispensation requests were granted, with the dominant reasons being premarital pregnancy (65%), family economic pressure (20%), and local customary/traditional demands (15%). This figure reflects the complexity of legal and cultural challenges in dealing with child marriage, where urgent interests often trump efforts to protect the basic rights of children.

2. Conflict between the Marriage Law and the Child Protection Law

The relationship between Law No. 16/2019 on Marriage and Law No. 35/2014 on Child Protection creates a counterproductive regulatory ambivalence. On the one hand, the Marriage Law opens a loophole for marriage dispensation on the grounds of "urgent interest", while the

Child Protection Law prohibits all forms of marriage under the age of 18 without exception, as stipulated in Article 26. This tension is evident in law enforcement practices, such as the case study in Surabaya in 2022, where the District Court denied a marriage dispensation for a 17-year-old girl based on the Child Protection Law. However, in the same region, the Religious Court granted a similar dispensation due to pregnancy considerations, prioritizing "disgrace avoidance" and the principle of emergency in Islamic law.

3. Economics and Social Pressures as Dominant Factors

Marriage dispensation is often triggered by profound structural factors, such as poverty and gender inequality, which encourage families to make pragmatic decisions even when they are contrary to the principles of child protection. In rural Java, for example, the practice of marrying girls is a strategy to reduce the economic burden on the family, while at the same time utilizing dowry as an additional source of income. Meanwhile, in Lombok, the social stigma against premarital pregnancy was the main driver, with 78% of dispensations proposed to avoid family disgrace. Although the bride-to-be is often mentally and emotionally unprepared, the pressure to maintain the "honor of the family" trumps consideration of the child's well-being. Data from the Central Statistics Agency (BPS) in 2023 reinforces this picture, showing that 40% of marriage dispensations in Indonesia are filed by families from the lowest economic quintiles, who are trapped in a cycle of poverty and powerlessness.

4. Criticism of the Practice of Dispensation

The practice of marriage dispensation often ignores the principle of the best interests of the child, resulting in serious consequences such as school dropout (60% of women under 19 years old) and reproductive health risks, such as anemia and preeclampsia. Inconsistencies in law enforcement are also a problem, with verdicts varying between regions—for example, 90% of dispensations are granted in West Sumatra, while in DI Yogyakarta only 50%. In addition, early marriage strengthens women's dependence on men, especially in patrilineal societies. For example, in Sumba, women who marry young lose their inheritance rights to customary lands, exacerbating gender injustice and poverty. This criticism shows that marriage dispensation, which is supposed to be an emergency solution, is often a tool of exploitation that harms the basic rights of children, especially women.

5. Comparison with International Regulations

Indonesia is still lagging a number of countries in handling child marriage, both in terms of regulation and implementation. The Philippines, for example, has set an absolute age of marriage age of 18 years without dispensation through Law No. 11596/2022, affirming its strong commitment to child protection. Meanwhile, Morocco implements a stricter mechanism, where dispensations are only allowed after approval from a multidisciplinary committee made up of judges, psychologists and social workers, ensuring decisions are based on holistic considerations.

Ethiopia has gone even further by imposing a total ban on marriage under 18 since 2019, along with criminal sanctions for violators. This comparison shows that Indonesia still has a large gap in regulations, especially related to the marriage dispensation which is often abused.

Legal Implications for Husbands and Wives' Obligations to Born Children

Based on Customary Law, in Decision No. 451/Pdt.P/2024/PA. IM, the Indramayu Religious Court granted marriage dispensation for women aged 18 years and 1 month on the grounds of premarital pregnancy. From a customary law perspective, early marriage is often legitimized by the need to maintain family honor or avoid social stigma, especially in areas with strong patriarchal structures. Although some indigenous communities such as the Balinese and Dayaks have adopted a national age limit (19 years), practices in other areas such as West Java (Indramayu) may still be influenced by traditions that prioritize quick solutions to the problem of premarital pregnancy.

In Javanese customary law, marriage is considered a marker of social maturity, regardless of chronological age. However, modern adaptations have prompted some communities to prioritize education and economic independence. Unfortunately, economic pressure and social stigma in Indramayu may encourage families to use marriage dispensation to "fix disgrace", even if it is contrary to the principle of child protection. The legitimacy of customary in this case can be criticized for sacrificing children's rights to reproductive health and education, as well as reinforcing gender inequality.

In the context of customary law, when a person is married, he is considered an adult and customarily has full responsibility for the family he has formed, including the children born (Susanto, 2010). If the couple is not socially and economically ready, responsibilities can be temporarily transferred to the extended family, especially in the patrilineal or matrilineal system (Wawancara dengan Dr. Muhammad Sofyan Pulungan, 2025). For example, if a girl comes from a matrilineal society, then the responsibility for the child born can be borne by the mother's family (Soekanto & Mamudji, 2019). Nevertheless, moral and social responsibilities remain inherent in the married couple themselves, as marriage marks a transition of maturity in customs (PPIM UIN Jakarta, 2023).

In the patrilineal or matrilineal system, this responsibility can even extend to the husband or wife's family, depending on the lineage adhered to (Shodikin, 2015). In addition, customs also contain cosmic principles, where violations of customary values such as pregnancy outside marriage are considered to damage the balance of nature and society (Wawancara dengan Neng Djubaedah, 2025). In conditions like this, indigenous peoples will immediately encourage marriage to restore harmony (Badan Pusat Statistik [BPS], 2023a). This explains why in some cases, judges in religious courts consider social and customary aspects more than formal religious provisions (Pengadilan Agama Surabaya, 2022).

For example, although Islamic law does not allow marriage while pregnant, judges can grant marriage dispensation considering social pressures and solutions offered by customs (Pengadilan Negeri Surabaya, 2022; Tirtayasa, 2024). Meanwhile, from a criminal law perspective, child marriage without an official dispensation can be categorized as a criminal offense based on Article 288 of the Criminal Code, especially if it results in injury or death (Undang-Undang Nomor 35 Tahun 2014). However, if you have obtained an official permit in the form of marriage dispensation, then marital status is considered legally valid (Undang-Undang Nomor 10 Tahun 2012). This shows that despite the pluralism of law in society, positive law still demands administrative legality (Ridhoi, 2021).

From this description, it can be concluded that customary law provides a more flexible space for the practice of child marriage with strong inherent cultural and social considerations (BPS, 2023b). However, in the context of the state of law, synchronization between customary law and national law is important so that there is no inequality in law enforcement and the protection of children's rights (Tirtayasa, 2024).

Meanwhile, in the discussion of Islamic Law regarding children out of wedlock and children resulting from adultery, both have fundamental differences, where children out of wedlock are children born without a marriage bond, while children resulting from adultery can be born in or outside a valid marriage. Islamic law does not recognize the fate of the father over the child out of wedlock, although in modern legal practice, DNA tests can be evidence of blood relations that have implications in civil matters. According to the Compilation of Islamic Law (KHI), the age limit for marriage is 19 for men and 16 years for women, with dispensations allowed through court approval. In his deliberations, the judge emphasized the aspects of religious benefits (*mashalih al-din*) and protection of posterity (*mashalih an-nasal*). The judge argued that allowing two persons of the opposite sex to associate without a marital bond could give rise to a presumption of religious offense, even encouraging adultery that damages offspring (*an-nasal*) and eliminates religious sense (*al-din*). In addition, children born out of wedlock are considered to suffer social and psychological losses, so the marriage dispensation is considered an effort to "resist greater harm than attracting goodness", according to the rules of *fiqh*iyah. Therefore, the judge considered that the marriage must be held immediately to maintain the honor of the family and save the fate of the children.

Furthermore, in Article 53 of the Compilation of Islamic Law ("KHI") it is emphasized that women who become pregnant out of wedlock can be married to the man who impregnates her, without the need to repeat the contract after the child is born. This provision follows the opinion of Imam Shafi'i, different from the Maliki school which prohibits marriage in the condition of pregnancy. Thus, KHI provides legal space for marriage in pregnancy conditions to avoid slander and maintain public morality. However, even though the marriage is carried out, children born

from extramarital relationships do not have a sharia nasab relationship with the man. The child only has a nasab relationship with his mother and his mother's family.

In this case, the Constitutional Court decision Number 46/PUU-VIII/2010 expands the right of an out-of-wedlock child to have a civil relationship with his biological father if there is scientific evidence such as DNA test results. Even so, the relationship is not an inheritance relationship but only allows for a grant or obligatory will. This view is confirmed by MUI Fatwa Number 11 of 2012, Although children resulting from adultery do not have a nasab relationship with their biological father, but men who cause the birth of children through extramarital relationships have a moral and legal obligation to bear the support, education, needs and care of the child until adulthood. This confirms that responsibility for children remains attached, even though there is no inheritance between the two. In addition, if the couple is legally married, then the husband's obligation to the child still applies, even though the child is not recognized according to the law.

Although his status as an out-of-wedlock child according to sharia remains, Islam emphasizes that children should not be victims and must still receive legal protection and the right to a decent life. This ruling refers to the concept of emergency (urgent condition) in Islamic jurisprudence, where premarital pregnancy is considered a reason to avoid adultery and maintain family dignity.

However, this approach has been criticized because it is contrary to the principles of maqasid al-shariah, which emphasizes the protection of the soul (nafs), intellect (aql), and heredity (nasl). Pregnancy in adolescence poses a high risk to the health of the mother and baby, such as childbirth complications or anemia. In addition, school dropouts that may occur will damage the future of children, contrary to the purpose of sharia to ensure human welfare. The MUI Fatwa No. 11/2012 and the views of progressive scholars such as Quraish Shihab affirm that classical texts must be reinterpreted considering the modern context. In these cases, the judge was considered to have focused too much on the formal aspects (avoiding adultery) without considering the long-term impacts, such as intergenerational poverty and women's economic dependence.

Meanwhile, in terms of Positive Law, the marriage dispensation is regulated in Article 7 paragraph (2) of Law 16/2019, which allows marriage under the age of 19 with court permission on the condition that (1) urgent reasons, (2) the requesting is the parents of the man and/or the parents of the woman, and (3) sufficient supporting evidence. In this ruling, the Indramayu Religious Court granted the marriage dispensation with the consideration that the bride-to-be was pregnant, and the marriage was considered a solution to avoid social stigma and administrative difficulties for the child to be born.

The judge in his consideration stated that even though the minimum age limit has not been met, dispensation can be granted if there are strong reasons, one of which is premarital pregnancy which is considered an urgent condition (Pengadilan Agama Indramayu, 2024). The

judge in his consideration also argued that "if the condition of the applicant's child and the prospective husband of the applicant's child is left in an uncertain situation, it will only cause *kemafsadatan* (something not good) for both, so the way to avoid such misunderstanding and to realize the good for both parties is to grant a dispensation to carry out the marriage" (Mahkamah Konstitusi, 2010). Because of this reason, the judge uses the condition of very urgent reason which means a situation where there is no other option and is forced to take part in the marriage (Majelis Ulama Indonesia, 2012). In addition, the court considered that both the bride and her family had agreed to the marriage, and the future husband was considered capable of providing for his family, even though there was no concrete evidence related to financial stability (Lakpesdam NU, 2024).

This ruling has sparked debate in terms of child protection as stipulated in Law No. 35 of 2014 concerning Child Protection, which emphasizes that marriage under 18 years old can hinder children's growth and development and increase reproductive health risks (Centre for Reproductive Rights, 2013). Studies show that child marriage is strongly correlated with structural poverty and lack of education in rural areas, which increases vulnerability to early marriage (Hasan, 2021; Idrus, 2018). Furthermore, cultural traditions and local customs also play a significant role in perpetuating early marriage practices, such as in Bugis and Sumba societies (Franco, 2020; Idrus, 2018).

According to Kementerian Pemberdayaan Perempuan dan Perlindungan Anak (2023), the prevalence of child marriage in Indonesia has decreased, but remains a challenge due to regional disparities. The latest report shows that the child marriage rate dropped to 6.92% in 2024, surpassing the RPJMN target (Kemen PPPA, 2024). However, inconsistencies in court rulings in various regions, where some courts have rejected dispensations on the grounds of child protection, have raised questions regarding legal certainty (Grijns, 2020). Legal experts argue that despite the existence of Kompilasi Hukum Islam (Kementerian Agama RI, 2018), the interpretation of "urgent reasons" for marriage dispensation is too broad and subject to judicial discretion, which may contradict child protection principles (Candra, 2017).

Additionally, fatwas and customary law add complexity to the regulation of underage marriages. For instance, the *Majelis Desa Adat Bali* (2023) issued guidelines on marriage and inheritance based on Balinese customary law, which sometimes differ from national regulations. This duality of law, along with religious interpretations (Madjid, 2020), creates a challenge in ensuring children's rights and protection (Majelis Ulama Indonesia, 2012). Internationally, organizations like the Centre for Reproductive Rights (2013) recommend strict measures to prevent child marriage due to its harmful impact on reproductive health and gender equality.

Although the judge in this decision considered the welfare aspect by prioritizing social and religious solutions, a more cautious approach needs to be applied, especially in balancing

children's rights with applicable legal values. In this case, there is no consideration of the long-term impact on the bride-to-be, including health, education, and economic independence risks.

CONCLUSION

Child marriage in Indonesia reflects the complex tensions arising from the coexistence of customary, Islamic, and civil legal systems, each interpreting maturity and marriage eligibility differently and often conflicting with the Child Protection Law's minimum age of 18. Customary law frequently prioritizes functional maturity and social norms, legitimizing early marriages in patriarchal contexts despite health and education risks. Islamic law struggles between classical jurisprudence permitting puberty-based marriage and *maqāṣid al-sharī'ah* principles emphasizing child welfare, resulting in inconsistent fatwas and court decisions that sometimes favor immediate social concerns over long-term well-being. Civil law, while raising the legal marriage age to 19 in Law No. 16/2019, permits widespread marriage dispensations—mostly approved due to premarital pregnancy or economic pressure—revealing systemic ambivalence toward child protection. This pluralism enables collaboration between local leaders and courts in authorizing underage marriages, as in the 2024 Indramayu case, undermining health and rights safeguards. To address these issues, reforms should harmonize laws by abolishing dispensations under 18, engaging customary and religious leaders in anti-child marriage advocacy (e.g., NTB's "One Village One Caregiver" program), and implementing economic support programs like cash assistance and skills training to reduce vulnerabilities. Future research should investigate the effectiveness of these integrated interventions at community levels and explore mechanisms for independent oversight to ensure enforcement aligns with Indonesia's obligations under the Convention on the Rights of the Child, thus protecting children's rights against legal contradictions and socio-economic pressures.

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