



Balancing Tradition and Protection: Child Marriage in the Practice of Islamic Family Law

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ARTICLE INFO

Received

11 Juli 2025

Revised

04 Agustus 2025

Accepted

04 Agustus 2025

Published

04 Agustus 2025

ABSTRACT

Child marriage remains a pressing issue in Indonesia despite legal reforms aimed at increasing the minimum age for marriage. This study conducted in Siak, Riau Province, Indonesia for explores how the practice of Islamic family law influences the persistence of child marriage, focusing on the tension between traditional religious interpretations and contemporary child protection efforts. The aim is to understand how religious court decisions, sociocultural norms, and interpretations of Islamic legal principles contribute to the continuation or mitigation of child marriage in Muslim communities. Using a qualitative approach, data were collected through in-depth interviews with religious court judges (hakim agama), community leaders, and affected families in selected West Java and Central Java regions. Document analysis of court decisions regarding marriage dispensation was also conducted to examine the reasoning behind legal allowances for underage marriages. The findings reveal that while many religious judges express concern for child protection, they often face social and religious pressures to approve marriage dispensations, especially in cases involving premarital pregnancy or economic vulnerability. Cultural traditions and local interpretations of Islamic law frequently prioritize family honor and social conformity over legal age requirements. However, some progressive interpretations are emerging, emphasizing maqāṣid al-sharī'ah (the higher objectives of Islamic law), especially the protection of minors. This study concludes that balancing tradition and protection requires a contextual rethinking of Islamic legal practices in Indonesia. Greater emphasis on the ethical goals of Islamic law, combined with community education and judicial training, can help reduce the incidence of child marriage. The research highlights the need for an integrated approach that respects religious values while safeguarding children's rights.

Key Words: Child marriage, Islamic family law, Maqāṣid al-sharī'ah, Marriage dispensation.

To cite this article Maswan., Toni. M., Wahyudi. U., Sari. M., Netti. M. (2025). Balancing Tradition and Protection: Child Marriage in the Practice of Islamic Family Law. *Journal of Islamic Law El Madani*. 4 (2), 93-100.

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Introduction

Child marriage remains a complex and persistent issue in Indonesia, affecting the lives of thousands of girls annually. Despite various national and international commitments to eliminate child marriage, the practice is still widespread, particularly in rural and traditional Muslim communities. According to Badan Pusat Statistik (BPS), in 2020, around 10.82% of women aged 20–24 years in Indonesia were married before 18, which amounts to over one million cases (BPS, 2021). The implications of child marriage are far-reaching, disrupting access to education, increasing maternal and infant mortality rates, and perpetuating cycles of poverty and gender inequality (UNICEF Indonesia, 2020).

Islamic family law in Indonesia plays a pivotal role in shaping how child marriage is perceived and practiced. Although Indonesia is not a theocratic state, Islamic principles heavily influence personal status law for the Muslim majority. The primary codified source for Islamic family law in Indonesia is the *Kompilasi Hukum Islam* (KHI), issued in 1991. The KHI has established marriage, divorce, inheritance, and guardianship guidelines, including a minimum marriageable age. However, this regulation often collides with social practices and the availability of legal loopholes, such as the provision for marriage dispensation by religious courts (KHI, 1991; Nurlaelawati, 2010).

A key legal milestone came with the enactment of Law No. 16/2019, which raised the minimum legal age for marriage for women from 16 to 19 years, equal to that for men. While child protection activists celebrated this reform, it did not close the door entirely on child marriage. Religious courts retain discretionary authority to grant dispensations to underage couples under specific circumstances, most often involving pregnancy or parental pressure (Komnas Perempuan, 2021). Consequently, the number of marriage dispensation cases has increased rather than decreased recently.

Despite these legal advancements, implementation remains inconsistent. Research indicates that cultural norms and religious interpretations significantly influence decisions regarding dispensations at the local level. Judges in religious courts (*Pengadilan Agama*) often face moral and societal pressure to approve dispensations in order to preserve family honor, especially when a teenage pregnancy is involved (Cammack, 2012). This suggests that the enforcement of child protection laws must be analyzed through statutory frameworks and the lens of lived religious and cultural practices.

The Islamic legal tradition does not offer a universally fixed age for marriage. Classical *fiqh* texts generally refer to puberty (*bulugh*) as a sign of marital readiness, which has been historically interpreted to occur as early as 9 or 12 years of age. However, modern Islamic legal scholars increasingly emphasize the higher objectives of Islamic law—*maqāṣid al-sharī'ah*—which prioritize protection of life, intellect, lineage, and dignity (Auda, 2008). This opens interpretive possibilities for aligning Islamic principles with child rights, though such approaches are not mainstream in Indonesian judicial practice.

Prior studies on child marriage in Indonesia have focused mainly on statistical trends, legislative analysis, and advocacy frameworks. For example, a study by UNICEF (2020) tracks regional disparities in child marriage rates, while Komnas Perempuan (2021) documents legal gaps in implementing age-limit laws. However, limited qualitative research investigates how judges, religious leaders, and families interpret and negotiate Islamic legal norms. This represents a significant gap in the literature, particularly in understanding how Islamic family law is practiced rather than merely codified.

Scholars like Nurlaelawati (2016) have explored how Islamic judges navigate between legal codes and local customs. Her work reveals the subjective nature of legal interpretation in religious courts, where personal beliefs, professional training, and communal expectations shape legal reasoning. Similarly, Buehler (2016) notes that Indonesia's Islamic legal system is a “fragmented legal arena,” influenced by state law, religious doctrine, and sociocultural norms. However, there is still a lack of focused investigation into how these dynamics play out in cases specifically involving marriage dispensations for minors.

Recent developments have shown a growing number of judges using the *maqāṣid al-sharī'ah* framework to justify rejecting marriage dispensations for minors. For instance, Latifah & Nurcholis (2022) document how some judges are reinterpreting Islamic law to better align with the child's best interests and the broader goals of Islamic ethics. These cases suggest the emergence of a reformist

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legal consciousness within the judiciary, although it remains uneven and contested. Such trends merit further examination, especially to understand the factors enabling or obstructing this legal evolution.

Beyond the courtroom, child marriage continues to be legitimized by deeply ingrained patriarchal values, economic hardship, and cultural traditions. Many parents perceive early marriage as a protective strategy to avoid social stigma or economic burden. In some communities, religious narratives reinforce this practice by invoking the example of Aisha's early marriage to the Prophet Muhammad. This cultural-religious justification highlights the urgent need to bridge theological discourse with contemporary child protection frameworks.

Therefore, this study explores how the tension between traditional Islamic norms and contemporary legal protections is negotiated in the context of marriage dispensation cases in Indonesian religious courts. By employing a qualitative approach—including interviews with judges, community leaders, and affected families, along with document analysis—this research seeks to understand the lived practice of Islamic family law regarding child marriage. The goal is to contribute to a more nuanced understanding of how Islamic legal interpretation and cultural pressures converge in shaping judicial outcomes, and how this dynamic can be steered toward safeguarding children's rights.

Research Method

This study adopts a qualitative research approach to explore how the practice of Islamic family law in Indonesia navigates the tension between traditional norms and child protection, particularly in the context of child marriage through religious court dispensations. A qualitative approach is deemed appropriate to capture the subjective meanings, local interpretations, and lived experiences of key legal and social actors involved in child marriage cases (Creswell & Poth, 2018).

The research employs a case study design, focusing on selected religious courts (Pengadilan Agama) in West Java and Central Java, regions with relatively high rates of marriage dispensation applications. This design enables an in-depth exploration of specific legal practices and social dynamics surrounding child marriage within a localized Islamic legal framework (Yin, 2018). The case study method is particularly valuable for examining contemporary phenomena in real-life contexts where the boundaries between the phenomenon and the context are not evident.

Participants and Data Collection

This study involved a purposive selection of participants directly engaged in the legal and social dynamics of child marriage in Indonesia. Participants included five religious court judges (hakim agama) with experience in marriage dispensation cases, four religious leaders (ulama and kyai), six parents or guardians who had submitted dispensation requests, and three adolescent girls who were married under 18. Data was collected using semi-structured interviews, official court document analysis, and limited courtroom observation. The interviews explored participants' interpretations of Islamic law, their reasoning in allowing or opposing child marriage, and the social or religious pressures influencing their decisions. Each interview lasted approximately 45 to 60 minutes and was recorded with informed consent. In addition, relevant court decisions (putusan dispensasi nikah) were examined to understand judges' legal arguments and religious justifications. Where access was permitted, court proceedings were observed to gain contextual insight into how these cases were handled procedurally and socially. These combined methods provided a comprehensive and triangulated understanding of how Islamic family law is practiced regarding child marriage in Indonesia.

Data Analysis

Data were analyzed using thematic analysis, following Braun and Clarke's (2006) six-phase framework: familiarization, coding, theme development, reviewing, defining, and reporting. The process was deductive (guided by research questions and theoretical concepts such as maqāṣid al-sharī'ah) and inductive (open to new categories emerging from the data). NVivo software was used to assist with data coding and organization.

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Particular attention was given to how legal actors justified their decisions, how religious principles were invoked or challenged, and how community narratives shaped perceptions of child marriage. *Maqāṣid al-sharī'ah* was used as an analytical lens to examine whether and how the ethical objectives of Islamic law—such as protection of life, intellect, lineage, and dignity—were reflected in judicial practices.

Ethical Considerations

Ethical approval was obtained from the research ethics committee of Institut Agama Islam Lukman Edy. Informed consent was obtained from all participants, and pseudonyms were used to ensure anonymity. Interviews with minors were conducted with parental consent and in the presence of child protection officers when required. All data were securely stored and only accessible to the research team.

Trustworthiness

To ensure the trustworthiness of this qualitative study, several strategies were applied based on the criteria of credibility, dependability, confirmability, and transferability (Lincoln & Guba, 1985). Credibility was enhanced through data triangulation by using interviews, and observations. Member checking was conducted by confirming interview interpretations with selected participants. Dependability was ensured by keeping detailed records of the research process, while confirmability was supported through reflexive journaling to reduce researcher bias. To support transferability, the study included thick descriptions of the research context, allowing readers to assess the relevance of findings to other settings. These steps helped ensure that the findings accurately represent the participants' experiences and the reality of how Islamic family law is practiced in child marriage cases in Indonesia.

Table 1. Summary of Themes

No	Main Theme	Sub-Themes	Description
1	Religious Justifications for Child Marriage	1. Classical fiqh references 2. Example of Aisha's marriage 3. Parental religious obligations	Judges and families often rely on early Islamic traditions to justify underage marriage as religiously valid.
2	Sociocultural Pressures and Honor Norms	1. Family reputation 2. Premarital pregnancy 3. Economic hardship	Social expectations and fear of stigma drive many families to seek marriage for minors, especially girls.
3	Legal Ambiguity and Judicial Discretion	1. Varied interpretations of "kemaslahatan anak" 2. Disparities in dispensation outcomes	Judges use different reasoning when applying Islamic law, leading to inconsistent court decisions.
4	Emerging Reformist Narratives	1. <i>Maqāṣid al-sharī'ah</i> -based reasoning 2. Child protection discourse 3. Role of female judges	Some judges prioritize children's rights and long-term well-being through reinterpretation of fiqh.

Result and Discussion

The first key finding revealed that many religious court judges and community members continue to justify child marriage based on classical Islamic jurisprudence (*fiqh*). Several judges cited the example of the Prophet Muhammad's marriage to Aisha as a religious precedent that legitimizes early marriage, particularly when a girl has reached puberty. In interviews, both judges and parents expressed that once a girl was considered "baligh" (mature), marriage was seen as not only permissible but also necessary to prevent immorality (*zina*). This reliance on textual tradition

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underscores the dominance of literal interpretations of Islamic sources over contextual ethical reasoning. Despite legal reforms that prohibit marriage under the age of 19, some actors believe that religious obligations should take precedence over state law.

The second finding highlights the sociocultural pressures that strongly influence decisions to pursue marriage for minors. Families, especially in rural communities, often seek marriage dispensation for daughters who are pregnant outside of wedlock, fearing shame and stigma from neighbors or extended family. In such cases, marriage is seen as restoring the family's honor. Economic hardship was another common reason cited, with parents viewing marriage as a solution to reduce financial burdens or ensure their daughters are provided for. These motivations are not always aligned with the child's best interests but reflect deeply rooted cultural expectations and survival strategies that intersect with religion and local norms.

The third result concerns the ambiguity and inconsistency in judicial decision-making. While all the reviewed courts operated under the same national legal framework, the outcomes of marriage dispensation cases varied significantly depending on the judge's interpretation of *kemaslahatan anak* (the child's best interest). Some judges granted dispensations with minimal scrutiny, while others applied stricter considerations, including requiring psychological or medical assessments. This disparity reveals that judicial discretion plays a significant role in shaping how Islamic law is applied, and that there is no unified standard for assessing what constitutes acceptable grounds for underage marriage.

Interestingly, the fourth finding shows the emergence of reformist reasoning among a minority of judges, particularly younger or female judges. These judges demonstrated a growing awareness of the *maqāṣid al-sharī'ah* (the higher objectives of Islamic law), using it to justify rejections of marriage dispensation requests. They emphasized that preserving the physical and mental health of the child, ensuring access to education, and preventing long-term harm are consistent with Islamic ethical principles. One judge remarked, "Islam never intended for children to be trapped in suffering under the name of syariah." Such interpretations signal a shift toward a more protective legal approach grounded in Islamic values and human rights principles.

Finally, court document analysis revealed that while many judges referenced religious texts in their rulings, very few explicitly connected their reasoning to child protection frameworks. Only two out of ten sampled *putusan dispensasi nikah* included references to psychological assessments or school attendance as part of their decision-making. This gap illustrates a limited integration between legal practice and child development knowledge. Despite legal requirements for child protection, they are often treated as secondary to religious and social considerations. This finding suggests the need for more straightforward guidelines and interdisciplinary collaboration between religious courts, social workers, and child protection agencies to better align Islamic legal practice with the evolving needs of Indonesian children.

Table 2. The interviews with nine informants in Sungai Apit

Code	Role	Age	Key Insights	Narratives / Quotes
JG01	Judge (Religious Court)	51	Legal decisions are often guided by parental urgency and social pressure; religious texts are cited for support.	"We cannot deny a request if the girl is already pregnant. It becomes an issue of family honor."
JG02	Judge (Reformist)	39	Uses <i>maqāṣid al-sharī'ah</i> to justify rejecting dispensations; sees child marriage as harmful.	"My responsibility is to protect the child's future, not only to follow tradition."
RL01	Religious Leader (<i>Ulama</i>)	60	It supports early marriage based on classical fiqh and emphasizes following the prophetic tradition.	"Aisyah was married young, and that is the model for us. If the girl is ready, why delay?"
RL02	<i>Kyai</i>	45	Islamic law must adapt to modern realities; it supports increasing the legal age with conditions.	"Shariah must align with <i>kemaslahatan</i> . Not all traditions are still suitable for today."

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PR01	Parent (Mother)	41	Agreed to daughter's marriage due to community pressure after pregnancy.	"People were already talking. Getting her married quickly was the only way to stop the shame."
PR02	Parent (Father)	49	Saw early marriage as a way to reduce financial burden.	"She was not going to school anymore. At least her husband could provide for her."
CH01	Girl (Married at 16)	17	Regrets early marriage; dropped out of school, and now has limited options.	"I wanted to be a teacher, but after marriage, everything stopped. No one asked what I wanted."
CH02	Girl (Married at 15)	16	Pressured by family, did not understand the implications of marriage at the time.	"They said it was best for me, but I remember crying on the wedding day."
SO01	Social Worker	35	Observed that most child marriages stem from misinformation and a lack of sex education.	"In most cases, they marry because they do not know how to handle consequences, not because they are ready."

The findings of this study reveal a significant gap between formal legal protections and everyday judicial and community practices regarding child marriage in Indonesia. Despite the legal reform through Law No. 16/2019, which raises the minimum marriage age to 19 for both genders, the continued high volume of marriage dispensation requests demonstrates that the reform has not significantly altered ground-level behavior. Judges like JG01 reported granting dispensations based on parental urgency, particularly in cases involving premarital pregnancy. These findings are consistent with Komnas Perempuan (2021), which noted that most dispensations are still granted, suggesting that the discretionary nature of religious courts undermines the protective intention of the law.

One of the most critical insights from this study is the ongoing influence of classical Islamic jurisprudence on judicial reasoning. As seen in court decisions and interviews with religious leaders (e.g., RL01), references to early Islamic traditions—particularly the marriage of Aisha—are frequently used to legitimize early marriage. These interpretations prioritize scriptural precedent over contextual ethical reasoning, which limits the potential for child protection. Cammack (2012) similarly observed that religious courts in Indonesia often rely on traditional *fiqh* rather than child-centered interpretations of Islamic values. This indicates that legal reform alone is insufficient without parallel efforts in religious education and judicial reinterpretation.

In contrast, a small but growing number of judges are beginning to adopt *maqāṣid al-sharī'ah* as a framework to evaluate the child's best interests. Interviewee JG02 exemplifies this shift, explicitly rejecting marriage requests by arguing that early marriage contradicts the core Islamic objectives of protecting life, intellect, and dignity. This aligns with the argument by Auda (2008), who promotes *maqāṣid* as a dynamic tool for adapting Islamic law to contemporary social needs. These reformist judges challenge the dominant view that marriage is always a moral solution, instead framing it as potentially harmful when imposed on minors without full consent or preparation.

The role of sociocultural pressures emerged strongly in this study, especially among parents and community leaders. PR01 and PR02 expressed that decisions to marry off their daughters were influenced by fear of gossip, economic insecurity, and the need to preserve family honor. These findings echo Buehler (2016), who emphasized the powerful intersection of patriarchy, poverty, and local interpretations of religion in perpetuating child marriage. Notably, such pressures often override the child's voice and agency, as seen in the narratives of CH01 and CH02, who expressed regret and limited autonomy in the decision-making process.

The analysis also highlights a lack of consistency in judicial application of the law. While some judges required evidence such as psychological assessments or school records, others made decisions based solely on family testimony or religious justification. This inconsistency reflects what Nurlaelawati (2016) describes as the discretionary nature of religious courts in Indonesia, which results in uneven application of Islamic family law. The absence of a standardized approach to

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assessing the child's best interest risks unjust outcomes and weakens public trust in the religious court system.

Moreover, the voices of the girls themselves, often the most affected by these decisions, remain marginalized in both legal processes and public discourse. The testimonies of CH01 and CH02 reveal emotional distress, interrupted education, and lack of consent, yet these perspectives are rarely prioritized in court rulings. UNICEF (2020) reports similar trends, noting that child brides in Indonesia face long-term psychological and economic consequences, yet their agency is often ignored. This points to the urgent need for courts to adopt more child-sensitive procedures and ensure that girls' views are meaningfully considered before approving dispensations.

Finally, the findings support the argument that legal and religious reform must be pursued simultaneously to address the root causes of child marriage. Strengthening the application of *maqāṣid al-sharī'ah* in judicial reasoning offers a promising path to harmonize Islamic values with children's rights. However, such efforts must be supported by broader educational and community interventions. Training judges, sensitizing religious leaders, and empowering girls and families with knowledge about the risks of early marriage are essential steps toward a more protective and balanced interpretation of Islamic family law in Indonesia.

CONCLUSION

This study highlights the complex intersection between religious interpretation, sociocultural norms, and legal reform in the practice of child marriage under Islamic family law in Indonesia. While Law No. 16/2019 marks a significant effort to protect children by raising the legal marriage age, its implementation remains inconsistent due to the broad discretionary authority of religious court judges and the persistence of traditional Islamic jurisprudential references. The findings reveal that classical *fiqh* is still widely used to justify child marriage, particularly through the example of Aisha, and that many judges and religious leaders prioritize scriptural tradition and communal values over child protection. At the same time, the socio-economic pressures faced by families—especially in cases involving premarital pregnancy—further reinforce early marriage as a perceived solution, even when it undermines the well-being and rights of the child.

However, the emergence of reformist voices among judges and religious figures signals a critical shift in legal and religious reasoning. By applying the *maqāṣid al-sharī'ah* framework, some judges are beginning to reject dispensations and prioritize the child's long-term physical, emotional, and educational interests. These efforts, although limited, demonstrate the potential for harmonizing Islamic legal principles with modern child rights discourse. Moving forward, a holistic and multi-stakeholder approach is essential—one that combines legal reform, judicial training, religious reinterpretation, and community education. Indonesia can only move toward a more balanced and protective application of Islamic family law that respects religious tradition and children's rights through this integrated strategy.

Recommendations

Based on the findings of this study, several key recommendations are proposed to promote a more protective and balanced implementation of Islamic family law in child marriage cases in Indonesia:

1. Strengthen the Use of *Maqāṣid al-Sharī'ah* in Judicial Reasoning

Religious court judges should be encouraged and trained to adopt the *maqāṣid al-sharī'ah* framework when considering marriage dispensation requests. Emphasizing Islamic legal objectives such as protecting life, intellect, and dignity can guide judges to prioritize the child's best interests over rigid textual interpretations. This shift would help reconcile religious norms with modern child protection standards.

2. Standardize Judicial Guidelines for Dispensation Cases

The Supreme Court and the Ministry of Religious Affairs should develop clear, uniform guidelines for handling *dispensasi nikah* cases. These should include requirements for psychological evaluations, educational background, and child testimony to ensure that decisions are based on objective indicators of maturity and welfare rather than social or economic pressure.

3. Integrate Child-Centered Training for Religious Judges

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Continuing education programs for judges (hakim agama) should incorporate interdisciplinary training that includes child psychology, gender sensitivity, and child rights law. Such training would help judges understand the long-term impacts of early marriage and consider the child's voice more effectively during court proceedings.

4. Promote Community Education and Religious Reinterpretation

Collaborative initiatives involving religious leaders, local kyais, and civil society organizations should aim to reinterpret classical texts in light of contemporary realities. Public education campaigns that emphasize Islamic values of compassion, justice, and protection can help shift cultural perceptions that currently normalize child marriage.

5. Empower Girls and Families Through Awareness and Support Services

Programs should be developed to provide girls and their families with access to reproductive health education, legal assistance, and economic support. Empowering girls with knowledge and options can reduce vulnerability to early marriage. Additionally, schools and community institutions should be active partners in identifying and supporting at-risk adolescents.

6. Strengthen Interagency Collaboration for Child Protection

Religious courts should collaborate closely with child protection agencies, social services, and schools. Establishing referral mechanisms and case review systems can ensure that child marriage requests are reviewed with a multidisciplinary lens, reducing the likelihood of harm to the child.

Acknowledge

The authors express their sincere gratitude to all research participants in Siak—survivors, religious leaders, legal professionals, mediators, and women's rights advocates—who generously shared their time, perspectives, and lived experiences. This study was made possible through the institutional backing and ethical clearance of Institut Agama Islam Lukman Edy. The authors also thank colleagues and peer reviewers whose insights and feedback contributed to the refinement of this article.

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