

Child Marriage in Indonesia: A Normative Analysis of Islamic Law and Nasional Marriage Law

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Abstract	<i>This study examines child marriage in Indonesia from the perspective of Islamic law and national marriage law. The research aims to analyze the normative foundations of child marriage in Islamic jurisprudence and Indonesian positive law, as well as to assess their implementation in judicial decisions concerning marriage dispensation. This research employs a normative legal approach, relying on statutory regulations, classical and contemporary Islamic legal sources, and relevant court practices. The findings indicate that although Islamic law does not stipulate a specific minimum age for marriage, it emphasizes maturity and readiness, which align with the objectives of Islamic law to protect life, intellect, and lineage. In contrast, Indonesian national law, particularly after the enactment of Law Number 16 of 2019, establishes a strict minimum marriage age as part of child protection efforts. However, the practice of granting marriage dispensations by Religious Courts reveals a legal tension between normative regulations and social realities. This study argues that the persistence of child marriage reflects structural, cultural, and socio-economic factors that challenge both Islamic legal ideals and national legal frameworks. The research contributes to contemporary legal discourse by highlighting the need for a more integrative approach that strengthens child protection while remaining sensitive to Islamic legal principles and judicial practice in Indonesia.</i>
Keywords	<i>Child Marriage , A Normative Analysis , Islamic Law</i>

Introduction

Marriage is widely recognized as a fundamental social and legal institution that regulates intimate relationships, family formation, and social order. Beyond its cultural definition as a permanent bond oriented toward companionship and mutual affection, marriage carries normative, legal, and moral consequences that shape individual rights and social responsibilities (Iqbal, 2018). In many legal systems, marriage functions not only as a private arrangement but also as a public institution subject to state regulation and religious norms, reflecting broader societal values concerning family, morality, and social stability.

In classical Islamic jurisprudence, marriage (nikah) is conceptualized as a legally binding contract that establishes reciprocal rights and obligations between spouses. Classical jurists, such as those cited by Az-Zuhaili, framed marriage within a contractual paradigm that reflected the socio-legal context of their time, emphasizing exclusivity and lawful intimacy (Az-Zuhaili, 2018). These formulations were developed within a historical framework in which gender roles and family structures were understood differently from contemporary perspectives.

In modern Islamic legal discourse, however, such classical formulations are increasingly reinterpreted through ethical and purposive approaches that emphasize mutual consent, responsibility, and human dignity. Rather than viewing marriage solely as a contract of lawful access, contemporary scholars highlight its function as a moral and social institution aimed at protecting welfare and preventing harm. This shift is particularly significant in discussions of early marriage, where questions of legal capacity, consent, and power imbalance become central to evaluating the legitimacy of marital arrangements under Islamic law.

Islamic teachings conceptualize marriage as an ethical institution that integrates spiritual commitment and social responsibility. Qur'anic discourse on marriage emphasizes tranquility, mutual affection, and compassion as foundational values that govern marital relations. These values reflect a dual orientation of marriage in Islam: devotion to God and responsibility toward fellow human beings. Rather than merely legitimizing intimate relations, marriage is intended to cultivate emotional stability, moral accountability, and social harmony.

Within this ethical framework, marital relations presuppose a level of psychological maturity and moral readiness that enables spouses to fulfill their reciprocal obligations. When these conditions are absent, particularly in cases involving minors, the ethical objectives underlying marriage risk being undermined. Consequently, the Qur'anic vision of marriage provides a normative basis for questioning practices of early marriage that fail to ensure the well-being and dignity of the individuals involved. (Religion, 2024).

In the Indonesian legal context, the Compilation of Islamic Law (Kompilasi Hukum Islam) serves as a codified framework governing Muslim family law. It characterizes marriage as a solemn and binding covenant, commonly described as *mitsaqan ghalizan*, underscoring the seriousness and moral weight of the marital bond. This formulation reflects an understanding of marriage not merely as a private contract, but as a legal and ethical institution that demands responsibility, commitment, and accountability from both parties.

By framing marriage as a profound covenant with clear moral objectives, the Compilation implicitly requires a level of maturity and preparedness that enables spouses to realize its intended purposes. In this regard, practices such as early marriage raise critical questions about whether the foundational objectives of marriage, including harmony, affection, and compassion, can be effectively achieved when one or both parties lack psychological and social readiness (Sanjaya, 2017).

In Indonesia, marriage is formally regulated by Law Number 1 of 1974, which constitutes the primary legal framework governing marital relations across the country. This statute reflects the state's recognition of marriage as a fundamental social institution requiring legal certainty and public oversight. By codifying the requirements, rights, and obligations associated with marriage, the law seeks to balance religious norms, social values, and state interests in maintaining social order (Amendments to Law No. 1 of 1974 concerning Marriage, 2019).

However, as Indonesian society continues to evolve, the implementation of marriage law has encountered increasingly complex challenges, one of the most persistent being the practice of early marriage. Despite regulatory efforts, underage marriage remains prevalent in various regions, revealing a gap between legal norms and social realities. This tension positions early marriage as a critical socio-legal issue that demands closer examination within both national law and Islamic legal perspectives.

In response to growing concerns over child marriage, Indonesia amended its marriage law through Law Number 16 of 2019, which raised the minimum legal age of marriage for both men and women to nineteen years. This reform was intended to strengthen child protection, ensure physical and psychological maturity, and align national legislation with international commitments on children's rights. The amendment reflects a legal shift toward viewing marriage not merely as a private or cultural matter, but as an institution that must safeguard the best interests of the child.

Despite this legal reform, early marriage continues to occur in many regions, often driven by cultural norms, economic pressures, and limited access to education (Jenuri, nd). Empirical data demonstrate that applications for marriage dispensation remain high, particularly in religious courts, indicating persistent tensions between statutory law and social practice. For instance, case records from the Panyabungan Religious Court show a notable increase in marriage dispensation applications, underscoring the challenges faced by judicial institutions in balancing legal standards, social realities, and religious considerations.

From both Islamic law and national legal perspectives, early marriage raises fundamental concerns regarding legal capacity, consent, and the protection of children's rights. While classical Islamic jurisprudence does not stipulate a fixed minimum age for marriage, it emphasizes readiness, responsibility, and the avoidance of harm (Rifani, 2011). Similarly, national law underscores the obligation of parents and the state to protect children's welfare, education, and development. These converging principles highlight the need for a critical examination of early marriage practices, particularly through judicial decisions, to assess whether existing legal mechanisms effectively uphold the ethical and protective objectives of both Islamic and national law.

Research methods

This study employs a normative legal research method, focusing on the analysis of legal norms governing child marriage in Indonesia from the perspectives of Islamic law and national marriage law. The research adopts a statute approach and a conceptual approach to examine relevant legal provisions, Islamic legal doctrines, and judicial practices within Religious Courts. The primary legal materials consist of statutory regulations related to marriage and child protection, including Law Number 1 of 1974 as amended by Law Number 16 of 2019, the Compilation of Islamic Law, and related judicial regulations. Secondary legal materials include classical and contemporary Islamic jurisprudence, scholarly books, journal articles, and prior research relevant to child marriage and Islamic family law. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to support conceptual clarification.

Data collection is conducted through library research by systematically reviewing and analyzing legal texts, academic literature, and relevant court practices concerning marriage dispensation. The analysis of legal materials is carried out using qualitative normative analysis, which involves interpreting legal norms, comparing Islamic legal principles with national legal provisions, and assessing their application within Religious Court practices. Through this method, the study seeks to identify areas of convergence

and tension between Islamic law and national law and to evaluate their implications for child protection in Indonesia.

Results and Discussion

Child Marriage from an Islamic Legal Perspective

Islamic law does not stipulate a fixed numerical age as a prerequisite for marriage. Instead, classical jurists emphasize the concepts of puberty (baligh) and legal capacity (ahliyah) as indicators of marital eligibility. Puberty is generally identified through physical signs, such as menstruation for females and nocturnal emission for males, or by reaching a certain age threshold recognized by juristic consensus. This approach reflects the classical understanding of maturity within the socio-historical context in which Islamic jurisprudence developed (As-Shabuni, 2024).

However, Islamic legal reasoning does not reduce marital legitimacy solely to physical maturity. Many jurists underline the importance of readiness, welfare, and the avoidance of harm in marital relations. Imam al-Shafi'i, for instance, allowed the conclusion of a marriage contract involving minors but advised that marital cohabitation should be postponed until the spouses attain adequate physical and psychological readiness. This distinction demonstrates that classical Islamic law already recognized the potential risks of premature marital relations, particularly for women, even when early marriage was formally permitted (Nurfajrina, 2022).

From a maqasid al-shari'ah perspective, early marriage must be assessed in light of the higher objectives of Islamic law, including the protection of intellect (hifz al-'aql), life and well-being (hifz al-nafs), and progeny (hifz al-nasl). When early marriage leads to educational disruption, psychological distress, health risks, or social vulnerability, it stands in tension with these fundamental objectives. Consequently, contemporary Islamic legal scholarship increasingly questions the permissibility of early marriage practices that undermine human dignity and welfare, despite their formal allowance in classical jurisprudence.

Classical textual evidence often cited to justify early marriage, such as Qur'anic injunctions encouraging marriage and prophetic traditions addressing youth sexuality, must be interpreted contextually. Qur'an Surah al-Nur (24:32), for example, encourages marriage among eligible individuals while simultaneously acknowledging material and social readiness. Similarly, the well-known hadith instructing capable youth to marry explicitly conditions marriage on the ability to bear responsibility, while recommending self-restraint for those who lack such capacity. These sources suggest that capability, rather than mere biological maturity, is a central criterion in Islamic legal reasoning (Bastomi, 2023).

Moreover, Islamic jurisprudence implicitly acknowledges that maturity encompasses more than physical signs of puberty. While jurists often associated adulthood with puberty, contemporary conditions reveal that physical maturity does not necessarily correspond with psychological, emotional, or social readiness. Medical and social considerations, particularly regarding pregnancy, childbirth, and child development, further reinforce the necessity of reassessing early marriage in light of present-day realities. Therefore, an Islamic legal evaluation of early marriage must move beyond literalistic interpretations and engage with ethical reasoning that prioritizes welfare, responsibility, and the prevention of harm.

Child Marriage in the Perspective of National Law

The Indonesian legal system positions marriage as a fundamental social institution regulated by the state to ensure order, welfare, and legal certainty. Law Number 1 of 1974 concerning Marriage defines marriage as a physical and spiritual bond between a man and a woman aimed at forming a happy and enduring family based on belief in God Almighty. This formulation reflects a normative vision of marriage that emphasizes permanence, responsibility, and moral commitment rather than mere formal legality.

This vision is reinforced by the Compilation of Islamic Law, which elaborates that marriage is intended to create a harmonious household characterized by affection and compassion. From a legal standpoint, these objectives presuppose a degree of physical, psychological, and social maturity that enables spouses to fulfill their marital roles. Consequently, early marriage raises a fundamental contradiction between the normative goals of marriage and the actual capacity of underage individuals to realize those goals in practice.

Historically, before the enactment of Law Number 1 of 1974, Indonesian marriage regulation was influenced by the Civil Code (KUH Perdata), which stipulated minimum marriage ages of eighteen for men and fifteen for women. The Civil Code further defined adulthood as the age of twenty-one, highlighting a clear distinction between biological maturity and legal capacity. This framework recognized that individuals below a certain age remained economically and socially dependent on their parents, thus lacking full autonomy in making marital decisions.

The enactment of Law Number 1 of 1974 sought to unify and modernize marriage regulation in Indonesia. However, the original provision allowing marriage for women at the age of sixteen generated persistent legal and ethical debates. This provision was increasingly viewed as incompatible with evolving standards of child protection, human rights, and constitutional guarantees, particularly as Indonesia strengthened its commitment to international human rights instruments.

In response to these concerns, Law Number 16 of 2019 amended the Marriage Law by equalizing the minimum marriage age for men and women at nineteen years. This amendment marked a significant legal shift toward protecting children's rights and promoting gender equality. It also signaled a growing recognition that marriage requires comprehensive readiness, encompassing physical health, psychological maturity, educational attainment, and economic stability.

Despite this reform, early marriage remains prevalent due to social, cultural, and economic pressures, particularly in rural and marginalized communities. Weak law enforcement and administrative oversight further exacerbate the problem. Empirical studies indicate that falsification of population documents and inconsistent verification by local officials enable underage marriages to proceed, revealing structural weaknesses within the legal system.

From a child protection perspective, Law Number 23 of 2002, as amended by Law Number 35 of 2014, defines a child as any person under the age of eighteen and imposes obligations on parents and the state to protect children from harmful practices, including early marriage. However, the absence of explicit criminal sanctions against parents who facilitate underage marriage significantly limits the deterrent effect of this legislation, rendering child protection norms largely declarative.

This normative weakness creates a paradox within Indonesian law: while early marriage is formally discouraged, the lack of enforceable sanctions allows it to persist with minimal legal consequences. As a result, the legal framework often fails to provide

effective protection for children, particularly girls, who are disproportionately affected by early marriage and its long-term social and health consequences.

Indonesia's commitment to international law further strengthens the argument against early marriage. As a party to the United Nations Convention on the Rights of the Child, Indonesia is obligated to guarantee children's rights to education, health, protection, and development. Early marriage directly undermines these rights by exposing children to premature domestic responsibilities, educational discontinuation, and heightened health risks (Candraningrum, 2016).

Within the national legal system, marriage dispensation functions as a legal exception that allows underage individuals to marry with judicial approval. While intended as an extraordinary measure, in practice, marriage dispensation has become a routine mechanism that legitimizes early marriage. Religious courts often face difficult dilemmas in balancing statutory norms, social realities, and perceived moral considerations, leading to inconsistent judicial outcomes.

From a constitutional perspective, early marriage raises serious concerns regarding legal certainty and fundamental rights. Article 28B paragraph (2) of the 1945 Constitution guarantees every child the right to survival, growth, and protection from violence and discrimination. Allowing marriage below the age of eighteen risks violating these constitutional guarantees by exposing children to structural vulnerability and limiting their future opportunities (Muntamah et al., 2019).

Therefore, early marriage within the framework of national law represents not merely a legal anomaly but a systemic challenge. It reveals tensions between statutory reform, judicial discretion, social norms, and constitutional values. Addressing early marriage effectively requires not only raising the legal age threshold but also strengthening enforcement mechanisms, redefining the role of marriage dispensation, and reaffirming the primacy of child protection as a constitutional and human rights imperative.

Indonesian Legal Reform Regarding Early Marriage in Criminal Law

Recent developments in Indonesian criminal law indicate a gradual but significant shift in the state's approach to regulating intimate relationships and protecting children. The enactment of the new Criminal Code (*Kitab Undang-Undang Hukum Pidana*), which officially came into force on January 2, 2026, reflects a broader transformation in criminal law philosophy. Although the new Criminal Code does not explicitly criminalize early marriage, it introduces provisions that indirectly relate to the protection of minors, moral order, and the regulation of sexual and marital relations (Ilahi, 2021).

The reform of the Criminal Code signifies a departure from the purely punitive and morality-based criminal law inherited from the colonial era. Instead, contemporary Indonesian criminal law increasingly emphasizes social protection, legal certainty, and the safeguarding of vulnerable groups, particularly children and women. This paradigm shift is crucial for understanding how early marriage is now situated within a wider framework of criminal responsibility and child protection, even when not explicitly named as a criminal offense.

Several new provisions in the Criminal Code address conduct previously left unregulated or ambiguously governed, such as cohabitation and adultery. While these provisions primarily aim to regulate extramarital sexual relations, their relevance to early marriage lies in the state's renewed concern with consent, age, and social harm. By introducing clearer boundaries around lawful sexual conduct, the Criminal Code implicitly reinforces the importance of age thresholds and legal capacity, which are central to debates surrounding early marriage.

In this context, early marriage can no longer be viewed solely as a private or cultural matter insulated from criminal law considerations. Instead, it intersects with criminal law principles related to the protection of minors from exploitation, coercion, and abuse. The absence of explicit criminal sanctions against early marriage does not negate the fact that criminal law reform increasingly frames children as rights-bearing subjects whose bodily integrity and psychological well-being must be protected.

Another important development in Indonesian criminal law reform is the integration of restorative justice principles. The new Criminal Code, alongside various implementing regulations, promotes restorative approaches that prioritize rehabilitation, reconciliation, and social reintegration rather than retribution alone (Zainal Asyiqin & Akbar, 2024). This shift is particularly relevant in cases involving children, where punitive responses may exacerbate harm rather than resolve underlying social problems (Prabowo et al., 2023).

From this perspective, the handling of early marriage-related cases may evolve toward prioritizing child protection and recovery over the punishment of parents or guardians. Restorative justice opens space for interventions that focus on preventing further harm, ensuring access to education, and restoring the child's social and psychological well-being (Abubakar, 2019). This approach aligns with the broader objectives of child protection law, even if it complicates demands for stricter criminalization.

In addition to the Criminal Code, the enactment of the Law on Sexual Violence Crimes (Undang-Undang Tindak Pidana Kekerasan Seksual) represents a major milestone in Indonesia's legal framework for protecting bodily autonomy and human dignity. The TPKS Law explicitly criminalizes various forms of sexual exploitation, coercion, and abuse, many of which disproportionately affect minors. While early marriage is not directly categorized as a sexual crime, its potential to conceal coercion and exploitation places it within the broader scope of concern addressed by this legislation (Ismail et al., 2023).

The TPKS Law reinforces the principle that consent must be meaningful, informed, and free from coercion. In the context of early marriage, this principle raises serious questions about whether minors can genuinely consent to marriage and its attendant sexual obligations. As criminal law increasingly centers consent as a core element of lawful relations, early marriage practices that involve minors become increasingly difficult to justify within a rights-based legal framework (Prameswari & Agustin, 2018).

Criminal law reform also reflects a growing emphasis on preventive strategies rather than reactive punishment. Contemporary criminal law scholarship in Indonesia highlights the importance of public education, legal awareness, and community engagement in addressing social problems such as early marriage. Preventive approaches seek to address the root causes of early marriage, including poverty, lack of education, and entrenched social norms, rather than merely responding after harm has occurred.

This preventive orientation aligns with global trends in criminal law reform, where early marriage is increasingly framed as a structural social problem rather than an isolated legal violation. Comparative legal studies demonstrate that many jurisdictions now combine minimum age regulations with criminal sanctions against those who facilitate child marriage, alongside robust administrative enforcement mechanisms. These trends underscore the need for Indonesia to strengthen its institutional response beyond formal legal prohibitions.

Another critical issue in the criminal law context is the enforcement of age verification and civil registration systems. Weak administrative controls and document

falsification undermine both marriage law and criminal law objectives. Criminal law reform increasingly recognizes that effective protection of children depends not only on substantive norms but also on procedural safeguards that ensure accurate determination of age and identity.

The interaction between criminal law and religious courts further complicates the legal landscape. Marriage dispensation decisions issued by religious courts may inadvertently neutralize the protective intent of criminal and child protection laws. When dispensations are granted routinely, they risk legitimizing practices that contradict the broader objectives of criminal law reform, particularly the prevention of harm to minors.

From a policy perspective, this tension calls for greater harmonization between criminal law, family law, and judicial practice. Criminal law reform alone cannot effectively address early marriage without corresponding reforms in marriage dispensation procedures and judicial reasoning. A fragmented legal response risks perpetuating legal uncertainty and undermining public trust in the legal system.

The constitutional dimension of criminal law reform further strengthens the argument for a more protective stance toward children. The Indonesian Constitution guarantees children's rights to protection, development, and freedom from violence and discrimination. Criminal law, as an instrument of social control, must operate in harmony with these constitutional guarantees rather than indirectly enabling practices that compromise them.

Ultimately, Indonesian criminal law reform reflects a broader transformation in how the state conceptualizes responsibility, protection, and social harm. While early marriage remains insufficiently regulated within criminal law, evolving legal principles concerning consent, child protection, and restorative justice provide a normative foundation for rethinking its legal treatment. Strengthening this foundation requires not only legislative refinement but also coherent enforcement, judicial restraint in granting dispensations, and sustained preventive efforts aimed at safeguarding children's rights and dignity.

Conclusion

This study demonstrates that child marriage in Indonesia arises from a complex interaction between Islamic legal norms, national marriage law, and social realities. From the perspective of Islamic law, although there is no explicit minimum age for marriage, the emphasis on maturity, readiness, and the objectives of Islamic law indicates that early marriage is only justifiable when it serves the best interests of the individuals involved and does not result in harm. Contemporary interpretations grounded in *maqasid al-shari'ah* support the limitation of child marriage as a means of protecting life, intellect, and lineage. From the perspective of national law, the amendment of the Marriage Law through Law Number 16 of 2019 reflects the state's commitment to strengthening child protection by establishing a uniform minimum age for marriage. However, the continued practice of granting marriage dispensations by Religious Courts reveals a normative and practical tension between legal ideals and social considerations. Judicial discretion, when exercised without a strong child protection framework, risks undermining the protective intent of the law. This research highlights that child marriage is not merely a legal or religious issue but a multidimensional problem requiring an integrated approach. Strengthening child protection in Indonesia requires not only clear legal norms but also consistent judicial interpretation, enhanced legal awareness, and contextual reinterpretation of Islamic legal principles in line with contemporary social realities. By examining Religious Court practices, this study contributes to a deeper understanding of

legal pluralism and offers a normative basis for aligning Islamic family law with national legal reform in addressing child marriage.

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