



Contested Puberty: Judicial Discretion, Moral Regulation, and the Persistence of Child Marriage in Indonesia

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Abstract: The 2019 revision of Indonesia's Marriage Law raised the minimum marriage age to 19, yet produced a striking paradox: rather than reducing child marriage, it precipitated a sharp increase in marriage dispensation applications in religious courts. This article argues that the reform displaced the site of legitimation for child marriage—shifting authorization from administrative registration to judicial approval through dispensation mechanisms—revealing not merely a failure of legal implementation, but a deeper process through which the state and judiciary actively reproduce the legal boundaries of adulthood and child protection. Drawing on a socio-legal framework, this study employs critical discourse analysis of two complementary sites: the normative constructions embedded in the Marriage Law—particularly the ambiguous phrase "urgent reasons"—and the judicial reasoning inscribed in religious court dispensation decisions. An empirical examination of trends in national post-reform dispensation supplements this dual-object analysis. Together, these methods trace a discursive struggle between two competing normative orders: state-led discourses of child protection and gender equality on one side, and moral-religious discourses mobilized by judges in interpreting puberty, social readiness, and family honor on the other. The findings reveal that broad judicial discretion functions as an institutional mechanism through which child marriage continues to obtain legal legitimacy despite the formally elevated minimum age, which this article terms the "judicial backdoor." Judges routinely authorize dispensations by invoking moral-religious considerations such as pregnancy, the imperative to prevent *zina*, and avoidance of social stigma, thereby subordinating child rights protections to communal moral norms. Without standardized criteria for "compelling grounds" and a child rights-based evaluative framework, legal reform risks functioning as a symbolic gesture that leaves the patriarchal structures underpinning child marriage substantively intact. This article contributes to broader debates on legal

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pluralism, judicial discretion, and the challenges of implementing gender-sensitive reform in socio-religious contexts.

Keywords: Child Marriage; Judicial Discretion; Marriage Dispensation; Legal Pluralism.

Introduction

Marriage law reform in Indonesia reached a crucial turning point in 2019, with the amendment of Law No. 1 of 1974 to Law No. 16 of 2019, raising the minimum marriage age for women from 16 to 19 years.¹ Normatively, this reform is positioned as a progressive step to align national law with international human rights standards, particularly in efforts to eliminate the practice of child marriage, which has systemic impacts on gender inequality.² Furthermore, this new marriage age regulation is also considered consistent with the *Maqasid al-Sharia*.³ This increase in the age limit not only represents state intervention in the private sphere but also reflects a normative project to reconstruct the concept of female maturity through legal instruments. However, legal reform never operates in a socially neutral space; rather, it interacts with deeply rooted cultural and religious value systems within Indonesian society.⁴ Thus, changes to the marriage age norm must be understood as an arena of contestation between a global logic of child rights protection and local social practices that tend to uphold traditional definitions of puberty and readiness for marriage. Within the context of Indonesia's legal pluralism, the effectiveness of this reform is heavily determined by how these formal norms are negotiated within social practices and judicial institutions.⁵

¹ Ibnu Radwan Siddik Turnip, Zainul Fuad, and Nurhayati Nurhayati, 'The Current Development of Marriage Age Provisions in Indonesia and Malaysia: A Socio-Historical Approach', *Jurnal Ilmiah Al-Syir'ab*, 20.1 (2022), p. 105, doi:10.30984/jis.v20i1.1813; Ahmad Dakhoir and Sri Lumatus Sa'adah, 'Meta-Juridical Analysis on the Legal Arguments beyond Changes in Indonesian's Marriage Age Rule', *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 18.1 (2023), pp. 80–101, doi:10.19105/al-lhkam.v18i1.7162.

² Rahmi Hidayati and others, 'Dynamics of Child Marriage in Suku Anak Dalam Community', *Justicia Islamica*, 20.2 (2023), pp. 261–80, doi:10.21154/justicia.v20i2.5975.

³ Darlin Rizki, Frina Oktalita, and Ali Sodikin, 'Maqasid Sharia Perspective in Changes the Marriage Age Limits for Women According to Law Number 16 of 2019', *Al-Istinbath: Jurnal Hukum Islam*, 7.2 (2022), p. 501, doi:10.29240/jhi.v7i2.4016.

⁴ Syahrudin Hidayat, Abdul Ghofur, and Ummul Baroroh, 'The Norm of Marriage Age Limit and Cultural Contestation of Child Marriage Law in Rural Communities', *Jurnal Hukum Islam*, 21.1 (2023), pp. 55–82, doi:10.28918/jhi_v21i1_03.

⁵ Ria Anggraeni Utami and others, 'Rethinking Early Marriages in Indonesia: Advocating for Reform to Tackle Domestic Conflict, Violence, and Rights Infringements', *Indonesian Journal of Advocacy and Legal Services*, 5.1 (2023), pp. 35–64, doi:10.15294/ijals.v5i1.66569.

Although driven by strong normative ambitions, the implementation of this reform reveals a significant empirical paradox.⁶ National data indicate that the increase in the minimum marriage age has been accompanied by a sharp surge in requests for marriage dispensations in religious courts, effectively creating an alternative pathway to maintain child marriage practices.⁷ This phenomenon underscores the gap between "law in books" and "law in action," while also indicating a partial failure of regulatory design to anticipate social responses to legal changes. Existing literature tends to focus on regulatory reform⁸, progressive *ijtihad* within the Compilation of Islamic Law (KHI)⁹, judges' perspectives on changes to the marriage age¹⁰, and societal responses.¹¹ Additionally, studies have extensively highlighted the legal-political dynamics surrounding the marriage age limit¹², analysis through the lens of *maslahah mursalah*¹³, efforts to balance the supremacy of law and the objectives of Sharia¹⁴, as well as "urgent reasons" in regulations regarding the marriage age limit and

⁶ Nurul Miqat and others, 'The Development of Indonesian Marriage Law in Contemporary Era', *De Jure: Jurnal Hukum Dan Syar'iah*, 15.1 (2023), pp. 54–66, doi:10.18860/j-fsh.v15i1.17461.

⁷ Syufa'at Syufa'at, 'Marriage Dispensation in Underage Marriage: A Case Study at the Purwokerto Religious Court', *Al-Manahij: Jurnal Kajian Hukum Islam*, 16.1 (2022), pp. 91–102, doi:10.24090/mnh.v16i1.4229.

⁸ Asman Asman, 'FAMILY LAW REFORM IN INDONESIA: ANALYSIS OF AGE OF ADULTHOOD IN MARRIAGE', *Journal of Shari'ah Law Research*, 9.1 (2024), pp. 1–26, doi:10.22452/jslr.vol9no1.1.

⁹ Abdul Rahim Abdul Rahim and others, 'Minimum Marriage Age in the Compilation of Islamic Law: A Progressive Ijtihad Based on Maslahah Fardiyyah and 'A'liyyah', *Jurnal Hukum Islam*, 23.2 (2025), pp. 381–410, doi:10.28918/jhi.v23i2.02; Gandi Liyorba Indra, M. Yasin Al Arif, and Abdul Qodir Zaelani, 'The Ideal Age For Marriage in The Compilation of Islamic Law (KHI) and Psychology', *Al-'Adalah*, 20.1 (2023), p. 1, doi:10.24042/adalah.v20i1.11598.

¹⁰ Very Julianto and others, 'Judges' Perspectives on Changes in the Legal Minimum Age at Marriage in Indonesia', *Journal of Family Studies*, 31.1 (2025), pp. 94–117, doi:10.1080/13229400.2024.2419870.

¹¹ Rosdalina Bukido and others, 'Muslim Society's Response to the New Rule of Marriage Age', *Al-Istinbath: Jurnal Hukum Islam*, 8.1 May (2023), p. 135, doi:10.29240/jhi.v8i1.5521; Rosdalina Bukido and others, 'Reception of Marriage Age Limit in Marriage Law in Indonesia', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7.1 (2023), p. 146, doi:10.22373/sjkh.v7i1.15245.

¹² Siti Kafidhoh and others, 'Dynamics Of Legal Politics Regarding Marriage Age Limits In Indonesia: Between Religious Norms And Social Change', *Jurnal Hukum Islam*, 22.2 (2024), pp. 405–36, doi:10.28918/jhi.v22i2.06.

¹³ Zaitun Abdullah and Putri Ayu Maharani, 'Unveiling the Enigma: Exploring Regulated Marriage Age Limits from the Lens of Maslahah Mursalah', *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 24.1 (2024), pp. 119–38, doi:10.19109/nurani.v24i1.22370.

¹⁴ Achmad Fausi and Asmuni Asmuni, 'Determination of the Minimum Age Limit for Marriage: Balancing Legal Supremacy and the Objectives of Sharia in Indonesian Marriage Law', *Mazhab*, 23.1 (2024), pp. 117–54, doi:10.21093/mj.v23i1.7611.

marriage dispensations.¹⁵ Several other studies address the contextualization of the marriage age limit in Indonesia as part of strengthening family resilience¹⁶, while also examining its impacts on both the rise in early marriage and premarital pregnancy¹⁷, as well as its implications for health, education, and demographic aspects.¹⁸ Existing studies are relatively scarce in examining the normative dimensions of the legal text itself as the source of implementation challenges. Specifically, the "compelling reasons" clause in Article 7(2) of Law No. 16 of 2019 is highly ambiguous, thereby affording broad scope for judicial discretion in determining the legitimacy of underage marriages.¹⁹ This research gap is significant because judicial discretion is not merely technical but also serves as a mechanism for producing legal meaning that can reconfigure the boundaries of age, puberty, and maturity in practice. Therefore, an analysis is needed that links the normative uncertainty in the legal text with the empirical patterns of granting marriage dispensations.

Addressing this gap, this study aims to critically analyze the discursive constructions of women, puberty, and maturity in the revised Marriage Law and how these constructions are operationalized through judicial practice. Using a socio-legal approach that integrates critical discourse analysis and empirical analysis of national marriage dispensation data, this study positions judges as central actors in the process of negotiating legal meaning. This research specifically explores how the concepts of "urgency" and "maturity" are interpreted in dispensation rulings and how these interpretations affect the protection of girls' rights. Furthermore, this study evaluates the extent to which regulatory ambiguity contributes to the reproduction of young women's social and biological vulnerabilities in the context of early marriage. By combining doctrinal analysis and empirical data, this research not only identifies patterns of

¹⁵ Asmuni Asmuni and Rezha Nur Adikara Rezha Nur Adikara, 'Application of Very Urgent Criteria in The Marriage Dispensation Norms for the Protection of Children: Analysis of Jasser Auda's Theory', *Jurnal Hukum Islam*, 22.1 (2024), pp. 25–56, doi:10.28918/jhi_v22i1_2.

¹⁶ Iwan and others, 'Reconceptualizing the Marriage Age Limit in Indonesia: Efforts to Strengthen Family Resilience in North Sumatra', *Al-Manabij: Jurnal Kajian Hukum Islam*, 18.1 (2024), pp. 161–78, doi:10.24090/mnh.v18i1.11090.

¹⁷ Yuly Sulistyorini, Arief Wibowo, and Diah Indriani, 'The Increasing Rate of Marriages and Premarital Pregnancies in Adolescents during the Transitional Period of Changes to the Marriage Law', *Journal of Public Health in Africa*, 14.2 (2023), p. 6, doi:10.4081/jphia.2023.2553.

¹⁸ Anita Raj, 'When the Mother Is a Child: The Impact of Child Marriage on the Health and Human Rights of Girls', *Archives of Disease in Childhood*, 95.11 (2010), pp. 931–35, doi:10.1136/adc.2009.178707; Shatha Elnakib and others, 'Understanding the Impacts of Child Marriage on the Health and Well-Being of Adolescent Girls and Young Women Residing in Urban Areas in Egypt', *Reproductive Health*, 19.1 (2022), p. 8, doi:10.1186/s12978-021-01315-4.

¹⁹ Sakirman Sakirman and Yulia Rizki Amanda, 'Effectiveness of Marriage Age Limit According to Law Number 16 of 2019 in East Lampung', *MIL.Rev : Metro Islamic Law Review*, 1.2 (2022), p. 164, doi:10.32332/milrev.v1i2.6206.

judicial practice but also uncovers the underlying normative logic. The main contribution of this study lies in its effort to bridge legal textual analysis with institutional practices within a framework of legal pluralism.

This article argues that reforms to the minimum marriage age in Indonesia tend to be symbolic as long as the state maintains a normative loophole through the "compelling reasons" clause, which lacks clear operational parameters. The surge in dispensations following the reform indicates that the discourse on puberty and maturity remains dominated by moral-religious considerations that often sideline a rights-based approach.²⁰ In this context, the "judicial backdoor" serves as a mechanism for the legal system to adapt to social pressures while simultaneously reproducing patriarchal values within the judicial institution. Without reform of the judges' interpretive framework and standardization of the criteria for dispensations, legislative changes risk losing their transformative power and may instead reinforce discriminatory practices in new forms.²¹ This demonstrates that the law does not automatically become a tool for emancipation but can be reproduced to maintain existing power structures. Therefore, the success of family law reform in Indonesia depends heavily on the state's ability to control judicial discretion and ensure that legal interpretations align with the principles of gender equality and child protection. This study confirms that the failure to close judicial loopholes reflects structural resistance to a more egalitarian social transformation.

Method

This study employs a sociological-legal approach to examine the debate surrounding the legal definitions of puberty, maturity, and eligibility for marriage following the enactment of Law No. 16 of 2019, Amending the Marriage Law. This study employs Critical Discourse Analysis (CDA) to examine how legal norms and judicial practices shape and reproduce conflicting understandings of child protection, gender equality, religious morality, and family honor. Data were obtained from three primary sources: legislation, including Law No. 1 of 1974, Law No. 16 of 2019, and Supreme Court Regulation (PERMA) No. 5 of 2019; marriage dispensation rulings issued by Religious Courts following the 2019 reforms; and national statistical data on applications for and rulings on marriage dispensations from 2019 to 2024. The analysis was conducted through three interrelated stages: first, examining the normative construction of age and maturity in legal texts, particularly the ambiguous phrase "compelling reasons";

²⁰ Ibnu Amin and others, 'The Concept of Baligh Perspective of Fiqh and Positive Law', *Al-Istinbath: Jurnal Hukum Islam*, 7.2 (2022), p. 455, doi:10.29240/jhi.v7i2.5268.

²¹ Irma Suryani and others, 'Between Culture and Safety: The Paradox of Protecting Domestic Violence Victims in Mediation at the Batusangkar Religious Court, Indonesia', *Nusantara: Journal of Law Studies*, 5.1 (2026), pp. 331–58, doi:10.66325/nusantaralaw.v5i1.168.

second, analyzing judicial reasoning to identify the dominant discourse used by judges to legitimize underage marriage; and third, interpreting national dispensation trends to assess the empirical consequences of the reform. To enhance analytical rigor, this study employs methodological triangulation by integrating normative legal analysis, judicial discourse analysis, and statistical evidence, thereby enabling a comprehensive understanding of the gap between law on paper and law in practice, as well as the role of judicial discretion in mediating the relationship between state law, religious norms, and social values in contemporary Indonesia.

Results and Discussion

Textual Ambiguity: "Urgent Reasons" as a Backdoor

The reform of the minimum marriage age in Law No. 16 of 2019 contains significant internal contradictions, in which the normative victory at the textual level is actually undermined by linguistic ambiguities institutionalized in the dispensation clause. Specifically, Article 7(1), which sets a minimum age of 19 for both men and women, represents a progressive advancement within the framework of child protection and gender equality.²² However, this progress is substantially negated by Article 7(2), which opens the door to dispensations through the phrase "urgent reasons" without a clear operational definition. This lack of clarity renders the provision a vague legal standard that inherently creates legal uncertainty while expanding judicial discretion.²³ In practice, this ambiguity functions as a "judicial backdoor" that allows the age limit for marriage to be renegotiated within the judicial process.

Textually, a comparison between Law No. 1 of 1974 and Law No. 16 of 2019 reveals a significant shift in the formulation of the age limit, yet an adequate restructuring of the dispensation provisions did not accompany this. Under the previous regime, the lower minimum age implicitly reflected tolerance for early marriage. The 2019 revision sought to correct this situation but retained the dispensation mechanism without providing limiting parameters for what constitutes "compelling reasons." Furthermore, the provisions regarding "sufficient evidence" and the obligation to "hear the statements of both parties" do not include strict evaluation standards. In court proceedings, "evidence" is often reduced to parental statements or proof of pregnancy, while "statements from the parties" tend to be dominated by family narratives focused on

²² Nurul Aini Octavia, Wardatun Nabilah, and Martia Lestari, 'Deviation Of Marriage Age Issues in Indonesia (Integration Review of Maqashid Sharia and Positive Law)', *Istinbath: Jurnal Hukum*, 20.02 (2023), pp. 1–20, doi:10.32332/istinbath.v20i02.10009.

²³ Mansari Mansari and others, 'CONCRETIZATION OF URGENT REASON AND SUFFICIENT EVIDENCE IN PROVIDING MARRIAGE DISPENSATION FOR CHILDREN BY THE JUDGE', *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 20.2 (2020), pp. 195–206, doi:10.19109/nurani.v20i2.5898.

preserving social honor. Consequently, the voice of the girl as a legal subject is often marginalized; in many cases, it serves merely to formalize a decision already predetermined by her parents.²⁴

This ambiguity is further exacerbated by the disconnect between Law No. 16 of 2019 and Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Marriage Dispensation.²⁵ Although this PERMA explicitly instructs judges to consider the best interests of the child²⁶, its hierarchical position subordinate to the law renders it unable to close the normative gap created by the phrase "urgent reasons." Within this framework, the law constructs the condition of "urgency" not as a threat to the future of the girl, but as a threat to family morality, such as pregnancy out of wedlock or concerns about adultery. This indicates a shift in orientation from protecting children's rights to moral control based on socio-religious norms.

From the perspective of the construction of legal subjects, Law No. 16 of 2019 reveals ambivalence in its positioning of girls aged 16–18. On the one hand, they are categorized as children under child protection law, which implies a need for special protection. On the other hand, through the dispensation mechanism, they are treated as individuals mature enough to enter the institution of marriage and assume domestic responsibilities. This ambivalence reflects a normative inconsistency that is not only legally confusing but also has the potential to reproduce structural vulnerabilities for young women. Thus, the law not only fails to protect but also actively legitimizes practices that should be prevented.²⁷

This finding aligns with the literature in socio-legal studies, which highlights that ambiguous legal norms tend to become arenas of contested meaning, where institutional actors, such as judges, play a central role in determining the direction of implementation.²⁸ In the context of legal pluralism, this ambiguity allows for the interaction of state law, religious norms, and cultural values in the decision-

²⁴ Muhammad Fauzinudin Faiz, Zezen Zainul Ali, and Muhammad Taufiq, 'Underage Widows and Widowers before the Law: Problem, Contestation and Legal Certainty in Marriage Dispensation', *JURIS (Jurnal Ilmiah Syariah)*, 22.2 (2023), p. 223, doi:10.31958/juris.v22i2.9097.

²⁵ Wardatun Nabilah and others, 'Between Protection and Permissiveness: A Fiqh Siyasa Reexamination of Marriage Dispensation in Indonesia', *JURIS (Jurnal Ilmiah Syariah)*, 24.1 (2025), p. 137, doi:10.31958/juris.v24i1.11882.

²⁶ Ashabul Fadhli and others, 'Out-of-Court Assistance Based on the Principle of the Best Interests of the Child: Study on Examination Process of Marriage Dispensation Cases', *JURIS (Jurnal Ilmiah Syariah)*, 23.1 (2024), p. 67, doi:10.31958/juris.v23i1.10281.

²⁷ Wardatun Nabilah, Dewi Putri, and Deri Rizal, 'Jasser Auda's System Approach in The Rules of Marriage Dispensation in Indonesia (Review of Maqashid Syariah)', *The Indonesian Journal of Islamic Law and Civil Law*, 5.2 (2024), pp. 265–81.

²⁸ Sarip Sarip and others, 'Legal Dialectics: Age Limits for Marriage and Political Rights in Indonesia', *Jurnal Hukum Novelty*, 13.1 (2022), p. 49, doi:10.26555/novelty.v13i1.a19018.

making process.²⁹ However, rather than producing a progressive synthesis, such interactions often reinforce the dominance of conservative values that harm women.³⁰ In other words, the judicial discretion resulting from unclear norms is not neutral but tends to be biased toward existing social structures.

This underscores that the primary weakness of the marriage age reform in Indonesia lies in its inconsistent normative design.³¹ Although it appears progressive on the surface, the presence of the "compelling reasons" clause without an operational definition leaves the reform vulnerable to deconstruction in practice. This linguistic ambiguity not only creates legal uncertainty but also opens the door to the reproduction of patriarchal values within the judicial system. Therefore, without a clearer definition and clear evaluation standards, the dispensation norm will continue to function as a legal mechanism that undermines the primary objectives of the reform: child protection and gender equality.³²

Statistical Paradox: The Surge in Judicial Dispensations

Key findings from the statistical analysis reveal a stark paradox between the normative goals of legal reform and the empirical reality following its implementation.³³ Rather than reducing the rate of child marriage, the 2019 increase in the minimum marriage age was actually followed by a drastic surge in requests for marriage dispensations in religious courts. National data shows that the number of requests for dispensations increased from approximately 23,126 cases in 2019 to over 64,211 cases in 2020³⁴, and remained at high levels in subsequent years, including approximately 61,449 cases in 2021. Meanwhile, in 2022, there were 50,673 underage marriage dispensations granted. Although this represents a decrease compared to 2020, the figure remains very high when

²⁹ Otong Sulaeman and others, 'Negotiating Gender Justice in Minangkabau Marital Disputes: Between Adat, Islamic, and State Law', *Juris: Jurnal Ilmiah Syariah*, 24.1 (2025), pp. 39–49, doi:10.31958/juris.v24i1.11848.

³⁰ Arifki Budia Warman and others, 'From Communal to Individual: Shifting Authorities of Family Dispute Resolution in Minangkabau Society', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.2 (2023), pp. 161–84, doi:10.18326/ijtihad.v23i2.161-184.

³¹ Nabilah and others, 'Between Protection and Permissiveness: A Fiqh Siyash Reexamination of Marriage Dispensation in Indonesia'.

³² Husnul Fatarib and others, 'Progressive Legal Reasoning in Contemporary Islamic Legal Reform: Negotiating the Maqāṣid and Hermeneutic Approaches', *JURIS (Jurnal Ilmiah Syariah)*, 24.2 (2025), pp. 277–94, doi:10.31958/juris.v24i2.16123.

³³ Salma Mursyid and Nasruddin Yusuf, 'Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 6.2 (2022), p. 975, doi:10.22373/sjkh.v6i2.12439.

³⁴ Dwi Hadya Jayani, 'Dispensasi Perkawinan Anak Meningkatkan 3 Kali Lipat Pada 2020', *Databoks*, 2021.

compared to the 2019 record.³⁵ This surge cannot be understood as a mere fluctuation but rather as an indication of a "judicial explosion" reflecting society's adaptation to legal changes through institutional channels.

The presentation of annual trend data reveals a consistent pattern: a sharp increase immediately following the implementation of new laws. The year 2020 marked the peak of the surge, which then declined slightly but remained far above pre-reform levels. When visualized as a bar chart, it is evident that the curve of exemption requests forms an exponential surge pattern that does not return to the initial baseline. Furthermore, the extremely high approval rate indicates that religious courts do not function as an effective filtering mechanism. Instead, these institutions tend to act as facilitators of the legalization of early marriage, providing legal legitimacy to a practice that the law is normatively intended to prevent.

Further analysis of the reasons for filing for dispensation shows that the majority of cases are driven by factors such as pregnancy out of wedlock or concerns about adultery.³⁶ In many cases, these reasons account for more than 80% of total applications. This indicates that the dispensation mechanism is not only used as a legal solution but also as a tool to address strong social and moral pressures. In other words, religious courts serve as arenas where state legal norms interact with moral-religious norms, and in many cases, the latter are more influential in shaping judicial decisions.³⁷ External factors such as the COVID-19 pandemic also play a significant role in exacerbating the surge in marriage dispensations.³⁸ School closures, increased unsupervised free time, and economic

³⁵ 'Cegah Pernikahan Di Bawah Umur Demi Kualitas Generasi Penerus Yang Lebih Baik', *Mpr.Go.Id*, 2023 <<https://mpr.go.id/berita/Cegah-Pernikahan-di-Bawah-Umur-demi-Kualitas-Generasi-Penerus-yang-Lebih-Baik>>.

³⁶ Mulyadi Antori, Sukiati Sukiati, and Imam Yazid, 'Resolving Marriage Dispensation Cases for Pregnant Women Due to Adultery as Urgent Grounds: An Analysis of Practices in the Simalungun Religious Court', *Jurnal Ilmiah Mizāni: Wacana Hukum, Ekonomi Dan Keagamaan*, 11.2 (2024), p. 300, doi:10.29300/mzn.v11i2.5117; Taufiqur Rohman and others, 'Preventing Violations of Religious and Social Norms: Judicial Interpretation of "Urgent Reasons" in Marriage Dispensation at the Wonosari Religious Court, Indonesia', *Journal of Islamic Law*, 4.2 (2023), pp. 218–36, doi:10.24260/jil.v4i2.1535.

³⁷ Agus Purnomo and others, 'Dimensions of Maqāṣid Al-Sharī'Ah and Human Rights in the Constitutional Court's Decision on Marriage Age Difference in Indonesia', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7.3 (2023), p. 1397, doi:10.22373/sjhk.v7i3.13283.

³⁸ Andrian Liem and others, 'Factors Associated with Child Marriage during the COVID-19 Pandemic in Indonesia', *Contemporary Islam*, 18.3 (2024), pp. 457–78, doi:10.1007/s11562-023-00545-6; M. Hendri Agustawan and Nazhifatum Mutahhirah, 'Socio-Legal Analysis of Early Marriage Phenomenon during the COVID-19 Pandemic in Jombang Regency', *ASKETIK*, 7.1 (2023), pp. 89–100, doi:10.30762/asketik.v7i1.962; Anju Nofarof Hasudungan, 'Increasing Child Marriage in Indonesia during the Covid-19 Pandemic: What Causes It?', *Salus Cultura: Jurnal Pembangunan Manusia Dan Kebudayaan*, 2.2 (2022), pp. 151–61, doi:10.55480/saluscultura.v2i2.62.

pressures on families heightened the risk of early marriage. In this context, recently implemented legal reforms interacted with an unexpected social crisis, resulting in previously unforeseen effects. The pandemic not only accelerated existing trends but also exposed structural weaknesses in policy designs that were insufficiently adaptive to social dynamics.

Regional disparities also emerged as a key finding in this analysis. Provinces such as East Java, Central Java, West Java, and South Sulawesi had significantly higher rates of marriage dispensations than other regions.³⁹ A combination of local cultural factors, educational levels, and differing religious interpretations can explain these variations. In regions with more conservative social norms, the pressure to uphold family honor tends to be stronger, thereby driving the use of dispensation mechanisms to address it. This indicates that the law's implementation is not uniform but is heavily influenced by local contexts.⁴⁰ Additionally, the data shows that the majority of individuals named in dispensation requests are women. This underscores the existence of a double standard in sexual morality, where women are more frequently subjected to social control than men. Women almost entirely bear the burden of the consequences of out-of-wedlock pregnancy or moral concerns, while men are relatively less often the primary focus of legal proceedings. Thus, although the law formally sets the same age limit, its practical impact remains discriminatory.

These findings suggest that legal reforms not accompanied by profound social change tend to produce a substitution effect, in which old practices do not disappear but shift into different forms. In this context, marriage dispensations function as a substitution mechanism that allows the practice of child marriage to continue within a legal framework. This also reinforces the argument that law cannot be understood in isolation from its social context, and that the effectiveness of regulations depends heavily on the alignment between legal norms and the values prevalent in society. The surge in marriage dispensations post-2019 serves as empirical evidence of the partial failure of legal reforms to achieve their child protection objectives. Rather than curbing the practice of early marriage, these reforms have created a new legal pathway that reinforces its continuity. The high approval rate for such requests indicates that religious courts are not fulfilling their expected oversight function but are instead serving as institutions of legitimation. Therefore, without more comprehensive policy interventions—including the standardization of dispensation criteria and a shift

³⁹ Binti Mufarida, '4 Provinsi Ini Catatkan Angka Dispensasi Nikah Tertinggi Di Indonesia', *Sindonews. Com*, 2023.

⁴⁰ Farida Ulvi Naimah and others, 'Internalization of Local Traditions in Child Marriage from the Perspective of Maqasid Al-Ushrah', *El-Mashlahah*, 14.2 (2024), pp. 237–58, doi:10.23971/el-mashlahah.v14i2.7942.

in judicial paradigms—this legal reform will continue to produce a paradox between legal norms and reality.

Contested Maturity: Biological, Moral, vs. Legal Puberty

The concept of "puberty" in the context of marriage law in Indonesia is not a neutral biological category, but rather an arena of discursive contestation involving various regimes of knowledge and power.⁴¹ Formally, the state, through Law No. 16 of 2019, sets 19 as the threshold for "legal puberty," serving as the minimum indicator of maturity for entering the institution of marriage. However, in practice, this legal threshold is systematically renegotiated by judicial actors through dispensation mechanisms, which create space for the dominance of "moral puberty" over "legal puberty." Meanwhile, "biological puberty"—often marked by menstruation in women—remains an implicit reference in the social construction of readiness for marriage. Thus, there is a conflict between three regimes of puberty: biological, moral, and legal, each of which has a different basis of legitimacy but interacts dynamically in judicial practice.

In the Indonesian context, findings indicate that "moral puberty"—which refers to an individual's readiness to avoid behavior deemed religiously deviant, such as adultery—often becomes the dominant consideration in marriage dispensation rulings.⁴² In many cases, the courts do not merely assess chronological age or biological conditions but also internalize socio-religious norms that position marriage as a moral solution to potential deviance. This indicates that the state, despite having formally established a higher age standard, has failed to deconstruct the social paradigm that assumes biological maturity automatically implies readiness for marriage. In other words, once a girl begins menstruating, the state's responsibility to protect her often shifts to the family's responsibility to "secure" her moral standing through marriage.

This phenomenon can be understood through the distinction between social maturity and legal maturity. Legal maturity refers to the age limit set by positive law, while social maturity is shaped by the norms, values, and social expectations embedded in society. In judicial practice, these two concepts do not always align, and in many cases, judges tend to place greater weight on social maturity.⁴³ This is evident in the interpretation of the principle of "the best interests of the child,"

⁴¹ Ane Fany Novitasari, Thohir Luth, and Nur Chanifah, 'The Maturity in Marriage Law', *Russian Law Journal*, 11.2 (2023), pp. 553–59.

⁴² Lilik Andar Yuni, 'Analysis of The Emergency Reasons in The Application of Marriage Dispensation at The Tenggara Religious Court', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 5.2 (2021), p. 976, doi:10.22373/sjhc.v5i2.9135.

⁴³ Ashabul Fadhli and Arifki Budia Warman, "'Alasan Khawatir" Pada Penetapan Hukum Dispensasi Kawin Di Pengadilan Agama Batusangkar "Reasons for Concern" on Marriage Dispensation Decisions in Batusangkar Religious Court', *Al-Ahwal*, 14.2 (2021), pp. 146–58, doi:10.14421/ahwal.2021.14203.

which should be oriented toward long-term protection—such as access to education and healthcare—but is often reduced to protection against short-term social risks, such as stigma or community pressure. Consequently, early marriage is positioned as a rational solution within a specific moral framework, even though it is empirically proven to be detrimental to women.

This situation reflects the operation of biopower as articulated by Michel Foucault⁴⁴, in which the state and legal institutions regulate the bodies and sexuality of individuals through regulatory mechanisms. However, in this case, such regulation is not entirely emancipatory; rather, it functions as a tool for negotiating control between the state and social-religious norms. The bodies of young women become the locus of intervention, where decisions regarding when they are deemed "ready" to marry are not entirely determined by the law, but by the interplay of various discursive regimes. Thus, the law not only regulates but also produces meanings regarding puberty and adulthood.

The implication of this contestation is the objectification of women within the legal process. Young women are positioned as "at-risk" subjects—both biologically and morally—thereby requiring intervention to prevent greater harm. In this discourse, women's agency is diminished, as the decision to marry is often based on the considerations of parents and judges, rather than on the individual's free choice. Early marriage is then framed as a protective measure, yet in many cases it is actually a form of reproducing gender inequality. The language of protection used in legal rulings often obscures the underlying discriminatory practices. In many contexts, legal reforms raising the marriage age do not automatically change social practices, as local norms retain significant power in shaping societal behavior. Therefore, the success of reforms depends not only on changes to legal texts but also on the transformation of the underlying discourse.

Puberty, in the context of Indonesian marriage law, is a category subject to discursive contention. The dominance of moral puberty over legal puberty reflects the state's failure to enforce established legal standards. As long as the definition of maturity remains determined by conservative socio-religious norms, reforms regarding the marriage age will continue to face resistance in practice. Thus, an approach is needed that is not only normative but also transformational, reconstructing the meanings of puberty and maturity within a more just and rights-based framework. The following table summarizes the contestation between biological puberty, moral puberty, and legal puberty within the context of Indonesian marriage law.

⁴⁴ Michel Foucault, *Power/Knowledge: Wacana Kuasa/Pengetahuan*, ed. by Yudi Santosa (Bentang Budaya, 2002).

Table 1. Contested Conceptions of Maturity: Biological, Moral, and Legal Puberty in Indonesian Marriage Law

Aspect	Biological Puberty	Moral Puberty	Legal Puberty
Definition	Maturity marked by biological and reproductive changes, such as menstruation in girls.	Maturity measured by an individual's moral and religious readiness to avoid behavior considered deviant, such as adultery.	Maturity determined by the minimum age established by positive law.
Source of Legitimacy	Biological science and human reproductive development.	Religious norms, social values, and community moral expectations.	State regulations, particularly Law No. 16 of 2019.
Primary Indicators	Menstruation, physical puberty, and reproductive capacity.	Ability to uphold moral standards and comply with socio-religious expectations.	Minimum marriage age of 19 years.
Key Actors	Families, communities, and traditional understandings of biological maturity.	Religious leaders, families, communities, and judges through moral interpretations.	The state, legislators, and judicial institutions.
Primary Orientation	Physical and reproductive readiness.	Prevention of moral deviance and preservation of family honor.	Protection of children's rights, health, education, and long-term welfare.
Role in Judicial Practice	Serves as an implicit reference in assessing readiness for marriage.	Frequently becomes the dominant consideration in marriage dispensation decisions.	Functions as the formal standard but is often renegotiated through marriage dispensation mechanisms.
Relationship to Marriage Dispensation	Used to support claims that an individual is physically ready for marriage.	Serves as the principal justification for early marriage to prevent perceived social and religious risks.	May be overridden through court-approved marriage dispensations.
Concept of Maturity Represented	Physical Maturity	Social and Moral Maturity	Legal Maturity

Main Criticism	Does not guarantee psychological, social, or economic readiness for marriage.	It may overlook children's rights and reproduce patriarchal norms.	The broad application of marriage dispensations weakens its effectiveness.
Implications for Women	Positions women's bodies as indicators of marital readiness.	Encourages early marriage as a moral solution to perceived social risks.	Seeks to protect women and children, but its effectiveness is constrained by judicial practices.
Theoretical Perspective	The body as a marker of biological adulthood.	Social construction of maturity and mechanisms of moral regulation.	A state instrument for regulating marriage within a child-protection framework.
Power Relations (Foucault)	The body becomes an object of surveillance and classification.	Morality functions as a mechanism of social discipline.	Law operates as a form of <i>biopower</i> , regulating bodies and sexuality through age-based marriage regulations.

Source: Author's interpretation

This table illustrates that although the state has formally established 19 years as the legal threshold for marriage, judicial practices regarding marriage dispensations reveal the continuing dominance of moral puberty, often reinforced by assumptions about biological puberty. Consequently, legal protections for girls are not always effectively realized, as statutory age requirements are frequently renegotiated in light of moral and social considerations within the judicial process.

Moral Anxiety and Judicial Paternalism

The significant surge in requests for marriage dispensations following the reform of the legal marriage age cannot be separated from the broader social construct of moral panic in Indonesian society.⁴⁵ Research findings indicate that the rise in the number of dispensations is not solely due to legal changes, but rather a collective response to deep-seated concerns regarding adolescent sexual behavior. In this context, adolescent romantic relationships are often perceived as a threat to the moral order, positioning marriage as a preventive solution to

⁴⁵ Arifki Budia Warman and others, 'Reforming Marriage Registration Policies in Malaysia and Indonesia', *Bestuur*, 11.1 (2023), pp. 61–74, doi:10.20961/bestuur.v11i1.66320.

avoid social disgrace. Parents, as the primary actors in seeking dispensations, act not only on rational considerations but are also driven by strong normative pressure from their social environment and religious communities.

This moral panic is then institutionalized through judicial practices, where judges play a central role in affirming and legitimizing these concerns. In many rulings, judges employ arguments such as "avoiding a greater harm" to justify granting dispensations.⁴⁶ This phrase, rooted in Islamic legal principles, is often used to justify decisions that formally contradict the spirit of child protection. However, applying this principle in this context reveals a shift in meaning, where "harm" is interpreted as a moral or social risk rather than a long-term impact on the girl's well-being.

The judge's role in this context can be understood through the concept of judicial paternalism, where the judge acts as an authoritative figure making decisions in the best interests of those deemed vulnerable.⁴⁷ In many cases of marriage dispensations, the judge functions as a *pater familias* who feels a moral responsibility to "save" the girl from potential social stigma or religious sin. However, this paternalism does not always result in substantive protection, as the decisions made often disregard the child's basic rights, such as the right to education and personal development. Thus, judicial paternalism actually risks reinforcing the very inequalities that legal reforms aim to address.

The paradox of protection becomes starkly evident in this context.⁴⁸ On one hand, marriage dispensations are granted on the grounds of protecting children from social risks, such as out-of-wedlock pregnancy or community pressure. Yet on the other hand, these decisions actually place young women in more vulnerable situations, including dropping out of school, economic dependence, and reproductive health risks. Thus, the protection provided is illusory and short-term, while the negative impacts are structural and long-term. From this perspective, the granting of dispensations can be understood as a form of structural violence, where legal institutions indirectly contribute to the reproduction of injustice.⁴⁹

⁴⁶ Adella Astari and Sa'adatul Maghfira, 'Legal Assessment Of Marriage Dispensation Applications: Insights From The Painan Religious Court', *AlUshuliy: Jurnal Mahasiswa Syariah Dan Hukum*, 4.1 (2025), pp. 61–73, doi:10.31958/alushuliy.v4i1.15715.

⁴⁷ Agustín Hanapi, Sarina Aini, and Cut Endang Puspa Sari, 'Bridging Fiqh and Positive Law: A New Paradigm for Child Legality and the Best Interest of the Child in Indonesia', *Juris: Jurnal Ilmiah Syariah*, 23.2 (2024), pp. 293–308, doi:10.31958/juris.v23i2.10712.

⁴⁸ Nabilah and others, 'Between Protection and Permissiveness: A Fiqh Siyasa Reexamination of Marriage Dispensation in Indonesia'.

⁴⁹ Irma Suryani and others, 'The Possibility of Talaq Performers Criminalization in Indonesia: An Essential Lesson from India', *Journal of Human Rights, Culture and Legal System*, 4.3 (2024), pp. 593–620, doi:10.53955/jhcls.v4i3.282.

This analysis also shows that the state, through the courts, not only fails to challenge moral panic but actually reinforces it. Instead of providing education or more progressive interventions, such as comprehensive sexuality education or social protection, the state opts for legalization through dispensations. This reflects the limitations of institutional capacity to address complex social change, as well as a tendency to use the law as a tool for moral stabilization rather than for social transformation. In this context, judges do not operate in a vacuum but are influenced by social norms, institutional pressures, and available interpretive frameworks. Therefore, changes in judicial practice cannot be achieved solely through legal reform but require broader cultural change.

The Persistence of Patriarchal Legal Culture

The partial failure of marriage age reform in Indonesia cannot be understood solely as a matter of regulatory design, but must be viewed within a broader framework: the deeply rooted patriarchal legal culture within society and state institutions. Drawing on Lawrence Friedman's analytical framework, a legal system consists of three main elements: legal structure, legal substance, and legal culture.⁵⁰ In this context, although changes have occurred at the level of legal substance through legislative revisions and at the level of legal structure through the courts' role, the patriarchal legal culture remains the dominant factor shaping the direction of implementation. This patriarchal legal culture is reflected in how society and legal authorities view women's roles within the institution of marriage.⁵¹ Marriage is still regarded as the primary mechanism for preserving women's and families' honor, so the pressure to marry off daughters remains high even though the minimum age has been raised.⁵² Under these conditions, the law does not function as a tool for social transformation but rather as an instrument that adapts to existing values. The mechanism for marriage dispensations serves as a concrete example of how the legal system provides a "loophole" to maintain old practices within a new legal framework.

The failure of social transformation is also evident in the top-down nature of reforms, which lack a corresponding grassroots-level paradigm shift. The revision of Law No. 16 of 2019 was not accompanied by systematic efforts to change public perceptions regarding marriage, sexuality, and gender roles. Consequently, the new legal norms lack sufficient social legitimacy to replace the

⁵⁰ Imron Rosyadi, Helmy Ziaul Fuad, and Ashlaha Baladina Zaimuddin, 'Criminalization of Unregistered Marriage in Indonesia: A Legal System Analysis Based on Friedman's Theory', *Al-Adalah*, 22.1 (2025), pp. 147–80, doi:10.24042/adalah.v22i1.22779.

⁵¹ Arifki Budia Warman and others, 'PERPETUATING WOMEN'S SUBORDINATION: Husband-Wife Relation in Pop Fiqh Literature', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 16.2 (2023), p. 259, doi:10.14421/ahwal.2023.16204.

⁵² May Nela Sari and others, 'Public's Legal Awareness on Marriage Age Limit', *Jurnal Integrasi Ilmu Syariah (Jisrah)*, 5.1 (2024), pp. 75–82, doi:10.31958/jisrah.v5i1.12141.

old ones.⁵³ In this situation, the public tends to seek ways to accommodate old practices through available mechanisms, such as marriage dispensations. This phenomenon also reflects an ambivalence within Indonesia's marriage law. On the one hand, the state seeks to project a progressive image internationally by adopting human rights standards.⁵⁴ On the other hand, the state maintains normative flexibility that allows discriminatory practices to persist. Marriage dispensations function as a "gray area" within the legal system, where progressive norms can be renegotiated without explicitly violating the law. This indicates that legal reforms do not always result in substantive change, particularly when shifts in legal culture do not support them.

From the perspective of structural discrimination, these findings indicate that women remain the most disadvantaged group within the marriage legal system.⁵⁵ Although they formally enjoy better protections, in practice they remain subject to social and legal control. This reflects a tension between progressive legal norms and conservative social practices, which ultimately results in more covert forms of discrimination. This underscores that the persistence of early marriage practices through marriage dispensation mechanisms is a manifestation of the resilience of patriarchal legal culture in Indonesia. Legal reforms without accompanying changes in legal culture will yield only symbolic changes, incapable of significantly altering social reality. Therefore, efforts to advance women's status through the law must involve deeper transformations at both the institutional and social levels.

Conclusion

This study concludes that the revision of the Marriage Law No. 16 of 2019 in Indonesia represents a socio-legal paradox that reflects the tension between the state's legal modernization ambitions and the persistence of patriarchal legal culture. Although raising the minimum marriage age to 19 was intended to strengthen child protection and gender equality, the existence of the "compelling reasons" clause in Article 7(2) creates a normative loophole that allows judicial practice to undermine these objectives. A significant surge in marriage dispensations indicates that this reform has not eliminated the practice of child

⁵³ Nailur Rahmi, Arifki Budia Warman, and Amri Effendi, 'Building Legal Compliance: A Study on the Practice of Unregistered Marriages in Tanjung Raya Subdistrict, Agam Regency, West Sumatra, Indonesia', *Samarab: Jurnal Hukum Keluarga Dan Hukum Islam*, 9.1 (2025), pp. 416–37, doi:10.22373/sjkh.v9i1.28306.

⁵⁴ Anak Agung Istri Ari Atu Dewi and others, 'The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia', *Sriwijaya Law Review*, 6.2 (2022), pp. 268–85, doi:10.28946/slrev.Vol6.Iss2.1885.pp268-285.

⁵⁵ Elimartati and others, 'From Custodians to Bystanders : Tigo Tungku Sajarangan ' s Responses to Unregistered Marriages Practices in Minangkabau', *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 18.1 (2025), pp. 47–64, doi:10.14421/ahwal.2025.18203.

marriage but has instead transformed it into a legal channel, thereby underscoring the gap between "law in books" and "law in action." Within a theoretical framework, this study offers the concept of "Contested Puberty" to explain how the definition of maturity is negotiated in the courtroom, where biological maturity and moral-religious anxieties often override state legal standards, while also affirming that women remain positioned as objects of moral control rather than autonomous legal subjects.

Furthermore, these findings confirm that top-down legal reforms without a paradigm shift at the institutional and social levels result only in symbolic compliance. Broad judicial discretion, supported by the absence of clear operational parameters, has given rise to paternalistic practices that reproduce gender inequality under the guise of legal legitimacy. Therefore, more systemic interventions are needed through the tightening and standardization of the definition of "compelling reasons" by the Supreme Court, the repositioning of marriage dispensations as a strictly limited exception, and the integration of cross-sectoral policies encompassing sexuality education, economic empowerment, and the transformation of social norms. Without efforts to close judicial loopholes and reconstruct legal culture, marriage age reform in Indonesia will remain trapped in a symbolic logic that fails to realize substantive protection and gender equality.

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Author Contributions Statement

AW conceived and designed the study, developed the theoretical framework, and drafted the manuscript. RFH collected and analyzed the data, conducted the socio-legal interpretation, and contributed to manuscript revision. MA, WA and NJ contributed to the literature review, data interpretation, and critical revision of the manuscript. All authors discussed the findings, revised the manuscript critically, and approved the final version for publication.

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Conflict of Interest

The authors declare that there is no conflict of interest regarding the publication of this article.

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