

CRITICAL ANALYSIS OF RELIGIOUS REASON AND POSITIVE LAW IN MARRIAGE DISPENSATION DECISION

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Abstract

This study aims to uncover how religious interpretation and legal practice influence each other and to what extent this influence hinders or encourages the protection of children's and women's rights. This study utilizes library research focused on integrative literature analysis by combining various theories. The results suggest that the normalization of marriage dispensation reveals a fundamental paradox between religious reasoning and positive law that fails to meet within the humanitarian horizon, where religion is trapped in a morality that justifies patriarchy and the law loses its critical power due to submission to social pressures and conservative interpretations. In this situation, judges, as dual interpreters, often mediate between faith and the constitution pragmatically, so that legal decisions turn into pseudo-moral legitimations that actually negate the principle of child protection. This phenomenon not only marks normative tensions but also demonstrates an epistemological crisis in which religion and law have both lost their prophetic function as liberating forces, and therefore demands a reconstruction of reason that places substantive justice and human dignity above texts, traditions, and the fear of sin.

Keywords: *Religion; Marriage Dispensation; Political Law; Early Marriage*

INTRODUCTION

The phenomenon of marriage dispensations has become one of the most dynamic legal and social issues in the context of the clash between religious reasoning and positive law in Indonesia. Religious reasoning in this context plays an ambivalent role. On the one hand, it serves as the basis for moral legitimacy for some communities to continue practicing early marriages, citing the need to maintain honor, avoid adultery, or fulfill the Sunnah of the Prophet. However, on the other hand, religious reasoning is often used selectively without considering the *maqasid al-syari'ah* (the moral purpose of Islamic law), namely, protecting religion, life, intellect, posterity, and property. In the context of these *maqasid* (objectives of God), early marriage, which has the potential to threaten girls' reproductive health, hinder their education, and increase their vulnerability to domestic violence, is in fact contrary to the religious spirit of protecting human well-being. However, conservative interpretations of religious texts often obscure the broader dimensions of *maqasid*, replacing them with a literal approach that tends to legitimize established social practices. (Ibrahim, 2014).

When analyzed from a positive legal perspective, marriage dispensations represent a compromise between legal ideals and social realities. The state, through religious courts, plays a controlling role and accommodates the needs of a society still within a traditional religious paradigm. However, this role is often ambiguous, as the majority of marriage dispensation requests are based on out-of-wedlock pregnancies, parental concerns about their children's relationships being too close, or social pressure for their children to marry quickly. The tension between religious reasoning and positive law in marriage dispensation decisions demonstrates an epistemological clash between modern legal rationality and traditional morality. Positive law, rooted in the principles of universal rationality and the protection of human rights, seeks to build a progressive social order based on objective values such as equality, psychological maturity, and reproductive health. (Parhi et al., 2025; Widiyanto et al., 2024). In contrast, traditional religious reasoning is rooted in a normative paradigm that places religious texts and socio-religious authority as the primary sources of truth. (Muniri et al., 2025) In classical Islamic legal systems, there is no fixed age limit for marriage, as the reference point is the signs of puberty, which can occur biologically at a very young age. Therefore, when modern legal values force a redefinition of the concept of adulthood, an epistemological friction arises between sharia obligations and state protection. From a positive legal perspective, the existence of marriage dispensations does

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provide flexibility in the implementation of the law, but this flexibility must not obscure the normative objectives of the minimum age for marriage regulation. The Supreme Court, in Circular Letter Number 5 of 2019, emphasized the need for judges to consider psychological, medical, social, and educational aspects before granting a dispensation. However, in practice, judges often face limited data, social pressure, and moral biases that prevent legal considerations from being entirely objective. Most dispensation requests are granted for moral emergencies such as pregnancy or a long-term relationship, without considering the long-term impact on the child's life. As a result, the law loses its transformative power and instead becomes a tool for reproducing the conservative values it seeks to transcend. A number of previous studies have revealed that the practice of marriage dispensation in Indonesia is a reflection of the clash between rational and universal modern legal values and cultural realities that are still dominated by conservative religious interpretations. (Azhari & Asmuni, 2025; Busyro et al., 2023; Ludfi, 2024) Meanwhile, other studies show that people living in rural areas still view early marriage as a solution to social problems such as poverty, concerns about promiscuity, and social pressure on women's single status. (Alves & Safei, 2024; Anam, 2024; Yoosefi Lebni et al., 2023) In this context, marriage dispensation becomes a legal mechanism used to align state law with local norms.

The study conducted by Lahilote et al. (2022) highlights the epistemological dimension of this issue by tracing the roots of religious reasoning in religious court practices. According to him, judges in marriage dispensation cases tend to interpret Islamic legal texts textually using classical Islamic jurisprudence arguments, such as the concepts of *baligh* and *tamyiz*, without considering social changes and the development of modern science on child psychology. Other studies have assessed that marriage dispensation in this context is a form of structural violence legitimized by law. The law, in its formal form, provides legal space for practices that essentially reinforce women's subordination. Based on these various studies, it can be concluded that the debate over marriage dispensation cannot be simplified as a mere legal or moral issue. It is an epistemological issue concerning how society interprets the concepts of justice, maturity, and moral responsibility within the framework of religion and the state. Previous research has shown a tendency for conservative religious reasoning to dominate religious court practices, which has implications for weak protection of children and women. Therefore, this literature review strengthens the argument that marriage law reform in Indonesia requires not only changes to legal norms but also a transformation of legal and religious epistemology.

From a theoretical perspective, this literature review also shows that the relationship between positive law and religious reasoning can be understood through the theory of legal pluralism, because state law and religious law interact in a complex way to shape legal practices in society. However, this theory also contains a paradox because legal pluralism can strengthen legal democratization, but can also perpetuate social inequality when one legal system is more dominant. In the context of marriage dispensation, legal pluralism in Indonesia often favors more conservative religious reasoning, while the universal principles of positive law that protect children and women are subordinated. The purpose of this study is to critically explore the dynamics between religious reasoning and positive law in the practice of marriage dispensation decisions, highlighting how their interaction shapes legal and moral rationality in Indonesia. The essence of this study lies in reconstructing the relationship between religion and law within a more humanistic and contextual framework. Religion should not be seen as a rigid source of moral legitimacy, but as an ethical system that must be continuously reinterpreted in accordance with social and humanitarian developments. Likewise, positive law should not stand in an ivory tower of formal rationality, but must be able to dialogue with local and spiritual values of society without losing its commitment to the principle of universal justice.

METHOD

This study uses a library research approach that focuses on integrative literature analysis by combining various legal, social, and religious theories to comprehensively understand the dialectic between religious reasoning and positive law in marriage dispensation decisions. This approach not only examines formal legal sources such as laws, court decisions, and religious fatwas, but also critically links them with the theories of legal pluralism, *maqasid al-shari'ah*, social constructivism, legal feminism, and progressive legal philosophy, thus producing an epistemological synthesis that transcends the dichotomous boundaries between religion and the state. A reflective literature analysis demonstrates that the practice of marriage dispensation constitutes a space for negotiation between legal rationality oriented toward universal justice and religious morality rooted in social-communal values. By integrating these theories, this study seeks to uncover the structures of knowledge and power underlying judges' deliberations, as well as the epistemic biases that reproduce gender inequality and the subordination of women in legal practices legitimized in the name of religious morality. Thus, this study does not simply position religion and law as two opposing entities, but rather as two systems of rationality that can be synergized through critical interpretation and progressive humanitarian awareness to realize substantive justice that transcends formal legality.

RESULTS AND DISCUSSION

The Conflict between Religious Reason and Positive Legal Principles in Child Protection

The conflict between religious reasoning and positive legal principles in child protection is one of the most complex epistemological areas in modern Indonesian legal discourse. On the one hand, Indonesian positive law is based on the principle of protecting children's rights as enshrined in the 1945 Constitution, the UN Convention on the Rights of the Child, and various derivative regulations such as Law Number 35 of 2014 concerning Child Protection and Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. On the other hand, religious reasoning, particularly within the framework of Islamic legal interpretation (fiqh), often displays an ambivalent face towards issues related to the age of marriage, the role of women, and family morality. (Karimullah et al., 2023) In this context, an ideological tension arises that is not only juridical in nature, but also touches on the epistemic and ethical realms, namely the debate between the secular legal worldview that upholds individual autonomy and the principle of non-discrimination, and the theocentric view that places God's will as the highest source of normative legitimacy.

Religious reasoning in Islam, especially that which originates from classical jurisprudence, often legitimizes the practice of early marriage on the grounds of maintaining family honor and avoiding adultery. (Uddin, 2023). In many Muslim societies, including some in Indonesia, this view remains deeply rooted in the collective consciousness. The arguments used are typically based on normative texts such as the hadith concerning the marriage of the Prophet Muhammad to Aisha, and moral principles that view marriage as an institution for maintaining honor and social stability. In this religious logic, biological age often takes precedence over psychological or social age, so marriage is considered valid and moral as long as both parties have met the biological criteria of puberty. From a positive legal perspective, such an approach is problematic because it ignores children's rights to grow, develop, and receive protection from violence and exploitation. Indonesian positive law, which constitutionally guarantees protection for children, prohibits all forms of marriage under the age of 19 for both women and men, on the grounds that early marriage negatively impacts a child's reproductive health, education, and social well-being. (Gunawan & Bahri, 2023) In this context, the state positions itself as the protector of the child's best interests, not as the guardian of family morality in a religious sense. Epistemic tensions arise when this principle clashes with the views of some religious groups who reject limiting the marriageable age on the grounds that it conflicts with God's law. When viewed through the lens of legal pluralism theory, the clash between religious reasoning and positive law actually reflects the reality that the Indonesian legal system is not monolithic. It is a complex configuration of various normative regimes: state law, customary law, and religious law. Legal pluralism emphasizes that law is not merely a product of the state but also an expression of a society's social and religious value systems. In religious court practice, for example, Muslim judges are often faced with the dilemma of upholding positive law established by the state and maintaining the authenticity of sharia reasoning, which they believe is part of their professional and spiritual identity.

In some cases, judges use religious grounds to grant marriage dispensations to minors, claiming to prevent adultery or maintain family honor. Epistemologically, this practice demonstrates how religious reasoning attempts to negotiate its space within secular legal structures, while also demonstrating the limitations of legal pluralism itself when dealing with human rights issues. Criticism of such practices can be presented through the maqasid al-shari'ah approach, namely the theory of the objectives of Islamic law that emphasizes the preservation of five fundamental aspects of life: religion, life, reason, progeny, and property. If maqasid is understood substantively and progressively, then child protection becomes an integral part of the objectives of sharia itself. Marrying off children at an early age for reasons of narrow morality actually contradicts maqasid, as it threatens the safety of the soul and mind, and hinders the child's social and educational development. However, in social practice, maqasid is often reduced to formal legitimacy for patriarchal structures that seek to maintain male dominance and control over women's bodies. This interpretation is conservative and ignores the contextual aspects of maqasid, which demand new ijtihad in line with changing times and the needs of modern humans.

Social constructivism provides an additional analytical framework for understanding why certain religious interpretations persist and even gain strong social legitimacy. From a constructivist perspective, law and religion do not exist as objective entities independent of social context, but rather are social constructions produced and reproduced through discursive practices. Thus, religious interpretations that justify child marriage cannot be separated from patriarchal and hierarchical social structures, as women are often viewed as symbols of family honor and objects of moral control. In this context, religious reasoning becomes an instrument for perpetuating unequal power relations between men and women. When judges or religious leaders use moral arguments to justify marriage dispensations, they are in effect reproducing a social construct that views women as a source of moral threat that must be protected through the institution of marriage, rather than as legal subjects with rights over their own future and life choices. Legal feminism then entered as a critical approach that dismantled the masculine assumptions hidden in religious interpretations and in the practice of positive law itself. Legal feminism starts from the premise that law, whether

derived from the state or religion, is never gender-neutral. It always emerges in a social context influenced by patriarchal power relations. In the context of the debate over child marriage, legal feminism demonstrates that women, especially girls, are the most disadvantaged. (Karimullah, 2023; Sugitanata, Hasan, et al., 2024) They are deprived of their rights to education, healthcare, and the opportunity to develop their potential. Within a progressive legal framework, this constitutes a form of structural injustice that cannot be tolerated simply for the sake of maintaining morality or family honor. Within the framework of progressive legal philosophy, as developed by Satjipto Rahardjo, law should not be understood as a fixed and closed system of norms, but rather as a tool for achieving social justice. Law must be alive and interact with evolving human values. In this context, judges are required not only to be mouthpieces of the law but also agents of social change sensitive to the values of substantive justice. If a religious judge predominantly uses religious reasoning in their decisions, they should interpret religious teachings in a spirit of protection and liberation, not within a legalistic framework that restricts children's freedom. However, the reality on the ground shows that such integration is still far from being realized. Many religious judges remain caught in a dilemma between theological adherence and professional obligations as enforcers of state law. In some marriage dispensation cases, judges' decisions demonstrate a tendency to use religious moral interpretations as legal justification. Pretexts such as preventing adultery or preserving family honor often outweigh the psychological and social considerations of children. However, this approach ignores the principles of child protection that underlie Indonesian positive law.

The Role of Judges as Interpreters of Religious Belief and Constitutional Obedience

In Indonesia's pluralistic and religious legal landscape, the position of judge is often a tug-of-war between two opposing yet inseparable epistemological poles: religious belief and constitutional obedience. When judges are faced with morally and socially sensitive cases, such as marriage dispensations for minors, the ethical and intellectual dilemmas they face are not merely technical legal issues but also existential ones. Judges in the modern legal system are essentially positioned as state organs tasked with upholding law and justice based on the constitution and statutory regulations. However, in Indonesia's sociological reality, judges are not entities devoid of personal values and beliefs. They live in a society that considers religion a primary source of morality and social legitimacy. In this context, every legal decision cannot be separated from the horizon of meaning shaped by religion, culture, and history. When a religious judge decides on a marriage dispensation case, he or she finds themselves in a paradoxical position: on the one hand, bound by a positive legal text prohibiting marriage under the age of 19, and on the other, facing moral pressure from a society that still views early marriage as a solution to prevent sin or maintain family honor.

Formally, Law No. 16 of 2019 states that marriage dispensation can only be granted by the court for urgent reasons, accompanied by strong supporting evidence. (Zaidah et al., 2025) This provision arose from the spirit of child protection and human rights fulfillment, as a form of state responsibility towards the younger generation. However, in practice, the number of marriage dispensations remains high. Many judges grant permission based on moral, social, or religious considerations. This phenomenon demonstrates the tension between legal-positivistic reasoning and religious reasoning. In legal reasoning, law is understood as a rational, autonomous system of norms free from the intervention of subjective values. Meanwhile, in religious reasoning, law is a manifestation of God's will that must be obeyed, even if it conflicts with man-made norms. When these two rationales meet in the courtroom, judges become dual interpreters, not only interpreting the text of the law but also interpreting the moral and spiritual meaning of their own decisions. This dilemma is further complicated by the fact that Indonesian law is not purely secular. The constitution recognizes religion as a source of values, but at the same time affirms the supremacy of state law. This means that judges must be able to navigate the gray area between the two.

In the context of marriage dispensation, a judge with strong religious convictions may feel that rejecting the parents' request would mean allowing the potential for adultery, which, in their religious view, is a grave sin. Conversely, following positive law would mean rejecting religious morality in favor of protecting the child's rights. This tension is not simply a matter of legality, but also of a judge's ethics and moral responsibility. He or she is faced with two forms of loyalty, both requiring sacrifice: loyalty to God and loyalty to the state. In such situations, the judge's decision is not simply a product of legal logic but also a reflection of a deeper value orientation. Within the framework of legal pluralism theory, the existence of religious reasoning in legal practice in Indonesia is unavoidable. The national legal system recognizes religious law as a source of law, particularly in civil matters such as marriage. However, legal pluralism does not mean that all value systems have equal weight in every decision. Positive law has a universally binding function within the framework of the rule of law, while religious law is particular and contextual. Judges who use religious reasoning predominantly in interpreting positive law have the potential to blur the boundaries between private morality and public obligations. (Ramadhan et al., 2023) In such situations, legal interpretation can become trapped in moral relativism, which is dangerous for substantive justice, as legal decisions

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become dependent on personal beliefs rather than on the principles of public rationality established by law. However, completely limiting religious reasoning is also not a solution. This will create a chasm between law and morality, ultimately distancing the law from society's sense of justice. This is where the need for a more dialogical epistemological approach arises, one that does not negate religious reasoning but instead places it within a rational constitutional framework. Judges must be able to articulate religious moral convictions in publicly verifiable legal language. This means that moral considerations may be an inspiration, but not the sole determinant, in decision-making. In other words, religious reasoning must be transformed into objective legal arguments, not merely subjective beliefs. From a legal philosophy perspective, this issue touches on the core relationship between law and morality. Legal positivism, as pioneered by Hans Kelsen, rejects the conflation of the two. For Kelsen, law must be understood as an autonomous system of norms, independent of moral and religious values. Within this framework, judges who interpret the law based on personal beliefs have stepped outside the realm of pure law. However, the progressive legal theory developed by Satjipto Rahardjo critiques this view. For Rahardjo, law is not merely text but also context. Law must exist within society and bring substantive justice. In this context, judges cannot be mechanistic. They must be able to use their conscience and moral values in interpreting the law. However, the morality in question is not particular morality, such as personal religious beliefs, but rather public morality based on humanity and social justice.

From the perspective of Islamic legal epistemology, religious reason itself is not monolithic. Religious interpretation is always historical and contextual. Many contemporary scholars reinterpret marriage law within the framework of the *maqasid al-shari'ah*, which is oriented toward human welfare. Within this *maqasid* framework, child protection (*hifz al-nafs* and *hifz al-nasl*) is a top priority. (Suleman et al., 2023) Therefore, a judge who understands the *maqasid* substantively will see that rejecting early marriage dispensation is not a violation of religion, but rather a manifestation of *sharia* values. However, if the judge remains grounded in a narrow, legalistic interpretation, he or she will easily fall into formal justifications that permit early marriage in the name of morality. Herein lies the epistemological dilemma: religion can be both a source of liberation and a source of justification for patriarchal practices that perpetuate injustice. The social constructivist approach explains why this dilemma is difficult to avoid. In the constructivist view, law and religion are not neutral normative systems, but products of social construction influenced by power and social structures. Judges living in patriarchal societies tend to internalize these values into their legal interpretations, whether consciously or unconsciously. In the case of marriage dispensations, many judges may feel they are acting morally, but in fact, they are unconsciously reproducing structures of gender inequality that disadvantage girls. Religious reasoning here is not merely a reflection of faith, but also a reflection of social ideology rooted in culture.

Within the framework of legal feminism, this issue receives a sharper critique. Legal feminism reveals that in many cases, marriage dispensation decisions are not gender-neutral. They often favor a patriarchal logic that positions women as objects of moral protection, rather than as autonomous legal subjects. From a feminist perspective, judges who grant dispensations on the grounds of preserving family honor are actually upholding a masculine morality that oppresses women. Legal feminism demands that judges understand justice not merely as compliance with formal rules, but also as siding with vulnerable groups. Thus, constitutional compliance must be read from a critical gender perspective, as the Indonesian constitution itself guarantees equality and protection for women and children. Religious reasoning that justifies practices detrimental to women, no matter how pure the intention, remains a form of symbolic violence that must be corrected through a reinterpretation of law and morality. Interestingly, however, this judge's dilemma cannot be simplified as a mere conflict between religion and the state. It also reflects a shift in the legal paradigm in a society transforming from a traditional system to a rational-modern one. In traditional societies, legal legitimacy derives from sacred sources, such as God, custom, or collective morality. In modern societies, legal legitimacy derives from rational and democratic procedures. Judges, living at the intersection of these two worlds, must play the role of epistemological mediators capable of bridging old values with the demands of modernity. When judges decide on marriage dispensations, they are actually engaging in highly complex hermeneutic work, interpreting positive legal texts through the lens of prevailing religious and social values.

From a legal hermeneutic perspective, every interpretation always involves the interpreter's horizon of experience and beliefs. No interpretation is truly objective. Therefore, a religious judge cannot be forced to abandon his or her faith in the courtroom. However, what is required of him or her is the reflective ability to recognize his or her position as an interpreting subject with public responsibility. He or she may bring religious values into consideration, but must ensure that the final decision remains grounded in the principles of universal justice guaranteed by the constitution. In other words, a judge's task is not to uphold religion through law, but to uphold justice that aligns with both religious and constitutional principles. In the context of Indonesian legal politics, this dual role of judges also shows the limitations of the positivistic paradigm in dealing with the nation's social and moral diversity. (Muhajir et al., 2023) When national law attempts to uphold universal principles of child protection, it

confronts a social reality still governed by religious and customary norms. Judges become actors who must operationalize these universal principles within particular contexts. Here, constitutional obedience should not be interpreted rigidly as adherence to the text of the law, but as fidelity to constitutional ideals, such as social justice and respect for human dignity. If religious reasoning can strengthen these ideals, then it is not a threat to the law but rather an ethical partner that enriches the interpretation of justice. However, if religious reasoning is used to justify injustice, it is the judge's duty to subordinate that religious interpretation to the principle of constitutional humanity. From the perspective of progressive legal philosophy, the judge's role here is as an agent of legal reform. He or she serves not merely as a mouthpiece for the law, but as a dynamic guardian of public morality. Living law is law that adapts to evolving societal values without losing its humanitarian orientation. A progressive judge will not view the conflict between religion and the constitution as a conflict, but rather as an opportunity to build a new synthesis. He or she will read the legal text with the spirit of *maqasid al-shari'ah*, which is oriented toward the public good, and read religious texts with a constitutional awareness that upholds human rights. In this practice, legal interpretation serves as a bridge between faith and reason, between divinity and humanity.

The Normalization of Marriage Dispensation as a Paradigm Crisis in Law and Religion

The normalization of marriage dispensations is a legal paradox that reflects an epistemic crisis in the Indonesian justice system. When exceptions become the norm, the law loses its transformative power. It ceases to be a tool for social change and becomes an instrument for confirming outdated, irrelevant values. In this context, marriage dispensations serve as a compromise between positive law and socio-religious norms that still maintain the view that early marriage is a solution to adolescents' moral crisis. However, behind this moral narrative lies a logic that positions girls' bodies and futures as instruments of atonement for the family's social sins. The state, through its judges, becomes a mediator that unconsciously reinforces this ideology. Upon closer examination, the roots of the normalization of marriage exemptions lie in systemic failures in two key areas: religious education and law enforcement. In religious education, the concepts of morality taught are often legalistic and masculine. (Suwarni et al., 2024) Children are taught to fear sin, not to love life. They are educated to obey norms without being taught to think critically about the meaning of justice, responsibility, and humanity. As a result, when faced with issues like teenage relationships, society tends to choose the quick solution of marrying off children to avoid sin, rather than strengthening character education, sexual literacy, or self-awareness. (Sugitanata, Aqila, et al., 2024).

Religion loses its liberating function and becomes an instrument of social control. When religious reasoning is reduced to a tool of moral control, it easily justifies practices that are in fact contrary to the values of the common good. Within the framework of the *maqasid al-shari'ah*, the goal of sharia is to protect religion, life, reason, offspring, and human honor. However, in social practice, the *maqasid* is reduced to a formal justification for early marriage, as if marriage automatically guarantees honor, when in fact it often becomes the gateway to new injustices. In the realm of law enforcement, marriage dispensations demonstrate the state's weak structural commitment to the principle of child protection. Judges, who should be the last bastion of justice, are often caught in a dilemma between constitutional obedience and religious moral pressures. Many Muslim judges feel that denying a dispensation request would mean allowing the potential for adultery to occur, which is contrary to their religious values. (Hadi, 2022) On the other hand, granting the petition would mean ignoring the principle of child protection guaranteed by law. In this situation, the judge used religious reasoning as a pragmatic justification to mediate two seemingly conflicting interests. However, such pragmatism is not neutral and instead confirms that the law has lost its courage to be transformative in addressing patriarchal culture.

The normalization of marriage dispensations is not a wise compromise between law and religion, but rather a sign that both have failed to fulfill their prophetic mission: to liberate humanity from structural injustice. This paradigm crisis is also a crisis of legal epistemology. In the positivist legal paradigm, judges are supposed to uphold norms without considering social pressure. However, in practice, law is never free of values. Every legal decision is the result of an interaction between text and context, between rules and interpretation. When the social context is still dominated by conservative religious reasoning, legal interpretation easily slips into a reproduction of the very values the law is intended to correct. Marriage dispensations reflect how state law has failed to dominate society's moral sphere. It has lost out to religious authorities, whom the public trusts more. When people are more afraid of violating religious norms than of violating state law, the moral legitimacy of the law is eroded. In such a situation, judges find themselves in a nearly impossible position of upholding state law in the face of a society that still considers religion to be the source of absolute truth. The result is a dysfunctional compromise: the law remains procedurally enforced but loses its ethical substance. From a sociological perspective, the normalization of marriage exemptions demonstrates the state's failure to create a social structure that protects children and women. When education, economics, and culture fail to provide a safe space for children to grow up, early marriage becomes a solution deemed

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rational by society. (Munirah, 2022) This is a flawed form of rationality, rooted in the logic of survival in the absence of a social protection system. Parents marry off their children not solely for moral reasons, but also due to economic pressure, social stigma, and legal ignorance. Therefore, the increase in marriage exemptions is not simply a reflection of moral decline, but rather the result of a system that does not provide dignified alternatives. In situations like this, the state's responsibility is not simply to tighten regulations, but to build a social ecosystem where girls no longer have to marry for security or social status. This phenomenon also reveals the dual nature of religion in modern society, as on the one hand, religion serves as a source of humanitarian values and justice, while on the other, it becomes an instrument of legitimacy for oppressive practices. The normalization of marriage exemptions highlights how religious interpretations often fail to adapt to social change. (Rifqi et al., 2025). Literal interpretations of religious texts are still used as references to justify early marriage, without considering the historical context and broader maqasid principles. When religious interpretation stops at the surface of the text and does not move towards substantive understanding, religion loses its emancipatory power. In this case, the marriage dispensation crisis is not just a failure of state law, but also a failure of social theology which is unable to read the times. Religion is trapped in the logic of the past and fails to respond to the challenges of modernity.

From a gender perspective, the normalization of marriage dispensations is a social tragedy that reinforces structural inequality between men and women. In many cases, marriage dispensations are granted because women become pregnant out of wedlock, while the men who impregnate them often escape legal and social responsibility. (Afiyah et al., 2024). Law and religion, which should protect the weak, instead side with a morality that blames the victim. By marrying off pregnant girls, society feels it has restored honor, when in reality, it is covering up wounds by perpetuating injustice. Women's bodies become an arena for compromise between law, religion, and social morality. The crisis of legal and religious reasoning here reaches its peak, as both fail to see women as legal subjects with rights to life and a future, not merely moral objects to be protected from sin. Society interprets early marriage as a moral act because existing religious and legal interpretations produce it as truth. (Barkah et al., 2023) Judges, religious scholars, and community leaders act as epistemic agents who maintain this structure of meaning through legal language and religious preaching. When they use terms like preventing adultery, safeguarding honor, or saving the future, they are actually creating a hegemonic narrative that obscures the reality of injustice. This crisis cannot be resolved simply by changing the law, as it is cultural and epistemological. A deconstruction of moral language itself is necessary so that society can see that marriage dispensations are not a solution, but rather a form of symbolic violence legalized by the legal and religious systems.

The law fails to protect because it lacks the courage to uphold the progressive values it promises. Religion fails to guide because it is trapped in static interpretations that are no longer relevant to social reality. Both operate side by side in a mutually reinforcing spiral of conservatism. In this situation, legal reform without theological reform will be futile, just as religious reform without the support of strong legal institutions will only result in moral rhetoric without real impact. This paradigm crisis demands a reversal of perspective, moving from a morality of control to a morality of liberation, from a law that coerces to a law that protects, from a religion that intimidates to a religion that humanizes. The normalization of marriage exemptions, if not addressed immediately, will become a demographic and moral time bomb. It not only threatens the future of girls forced into premature adulthood but also undermines the quality of the nation's generation as a whole. This crisis must be read not as an individual problem, but as a reflection of a failed social structure. It challenges us to re-examine the meaning of justice, morality, and welfare within a more humane paradigm. Within the framework of progressive legal philosophy, the task of law is to humanize human beings. Therefore, any pragmatic compromise that sacrifices children in the name of morality must be rejected as a form of civilizational decline. Law and religion are meaningful only to the extent that they protect the most vulnerable. If both fail, not only the legal and religious systems will collapse, but also the moral foundations of the nation itself.

CLOSING

The increasing number of marriage dispensations reveals a profound crisis in the relationship between religious reason and positive law in Indonesia, where both have lost their ethical orientation toward child protection and instead collude in normalizing injustice in the name of morality. The law, which should be an instrument of human emancipation, has become a tool of compromise against social pressures and conservative religious interpretations, while religion, which should guide the common good, is trapped in patriarchal logic and fear of sin, rather than love of life. In the tug-of-war between faith and the constitution, judges often become double interpreters, exchanging the principle of child protection for pseudo-moral legitimacy, making marriage dispensations not a legal act but an ethical compromise that challenges the integrity of justice itself. This crisis demands a more progressive and humane reconstruction of legal and religious reasoning so that they no longer compete in determining truth, but

rather synergize in upholding humanity as the highest value above texts, dogmas, and traditions.

REFERENCES

- Afiyah, I., Macsudov, V. G., Mahmudulhassan, M., & Muthoifin, M. (2024). Impact Analysis of Marital Dispensation: Economic Implications and Family Welfare in Social and Legal Context. *Solo International Collaboration and Publication of Social Sciences and Humanities*, 2(01), 25–36. <https://doi.org/10.61455/sicopus.v2i01.117>
- Alves, R. M. C., & Safei, L. M. (2024). Pengaruh Pernikahan Usia Dini terhadap Kondisi Ekonomi Masyarakat Sapa Timur. *Al-'Aqdu: Journal of Islamic Economics Law*, 4(2), 109–120. <https://doi.org/10.30984/ajiel.v4i2.3375>
- Anam, K. (2024). Prevention of Early Marriage in Building a Problem Family. *Al-Afkar, Journal For Islamic Studies*, 7(3), 1097–1110. <https://doi.org/10.31943/afkarjournal.v7i3.1565>
- Azhari, D., & Asmuni, A. (2025). Gender Equality in the Political Reform of Islamic Family Law in Contemporary Muslim Countries. *USRATY: Journal of Islamic Family Law*, 3(1), 87–99. <https://doi.org/10.30983/usraty.v3i1.8721>
- Barkah, Q., Cholidi, C., Rochmiyatun, S., Asmorowati, S., & Fernando, H. (2023). The manipulation of religion and the legalization of underage marriages in Indonesia. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7(1), 1–20. <https://doi.org/10.22373/sjhk.v7i1.13316>
- Busyro, B., Burhanuddin, N., Muassomah, M., Saka, P. A., & Wafa, M. A. (2023). The reinforcement of the 'dowry for groom' tradition in customary marriages of West Sumatra's Pariaman Society. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7(1), 555–578. <https://doi.org/10.22373/sjhk.v7i1.15872>
- Gunawan, S. O., & Bahri, S. (2023). Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives. *El-Usrah: Jurnal Hukum Keluarga*, 6(2), 362–380. <https://doi.org/10.22373/ujhk.v6i2.20262>
- Hadi, I. (2022). Tinjauan masalah atas pertimbangan hakim dalam memutus permohonan dispensasi perkawinan pada masa Covid-19 di Pengadilan Agama Giri Menang Lombok Barat. *Al-IHKAM Jurnal Hukum Keluarga Jurusan Ahwal Al-Syakshiyah Fakultas Syariah IAIN Mataram*, 14(2), 97–122. <https://doi.org/10.20414/alihkam.v14i2.6924>
- Ibrahim, Y. S. (2014). An examination of the modern discourse on Maqāsid al-Sharī 'a. *The Journal of the Middle East and Africa*, 5(1), 39–60. <https://doi.org/10.1080/21520844.2014.882676>
- Karimullah, S. S. (2023). Children's Rights in Islam: Towards Gender Equality and Youth Justice. *Muadalah*, 11(2), 87–98. <https://doi.org/10.18592/muadalah.v11i2.11113>
- Karimullah, S. S., Nugraha, A. R., Nisa, I. S., & Andini, Y. (2023). The relevance of feminism in promoting gender reform in the context of progressive Islam. *Jurnal Anifa: Studi Gender Dan Anak*, 4(2), 1–15. <https://doi.org/10.32505/anifa.v4i2.7187>
- Lahilote, H. S., Miftah, A. A., Yuliatin, Y., & Hidayati, R. (2022). Judge's Dilemma in Marriage Dispensation in the Religious Court. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 22(1), 52–60. <https://doi.org/10.30631/alrisalah.v22i1.979>
- Ludfi, L. (2024). Dispensasi Nikah dan Paradoks Kawin Anak di Madura: Studi Tentang Dampak Regulasi Terhadap Praktik Perkawinan Anak. *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakshiyah*, 7(2), 738–768. <https://doi.org/10.58824/mediasas.v7i2.270>
- Muhajir, M., Nisa, I. S., Munawar, A., & Karimullah, S. S. (2023). Agus Moh Najib's Thoughts on the Interconnection of Islamic Law and National Law. *Jurnal Ilmiah Al-Syir'ah*, 21(1), 86–103. <https://doi.org/10.30984/jis.v21i1.2321>
- Munirah, N. (2022). Pernikahan Dini di Kalimantan Selatan: Adat atau Tren? *Muadalah*, 10(1), 37–45. <https://doi.org/10.18592/muadalah.v10i1.8129>
- Muniri, M., Sulalah, A., & Azis, N. C. (2025). Abid Al-Jabiri's Epistemological Critique of Early Marriage in Case Based Learning: Contributions to Islamic Education. *AL-ISHLAH: Jurnal Pendidikan*, 17(3). <https://doi.org/10.35445/alishlah.v17i3.7185>
- Parhi, N. Z., Hudafi, H., Pangestu, R., & Elmurtadho, F. (2025). Tension between Islamic Law and Human Rights in Child Marriage Cases in Indonesia. *Insani: Jurnal Pranata Sosial Hukum Islam*, 1(1), 96–110. <https://journal.mahkotascience.org/index.php/insani/article/view/3>
- Ramadhan, F., Wahid, D. N., & Nizam, N. (2023). Hubungan negara dan agama: Telaah hukum dan putusan pengadilan. *JAPHTN-HAN*, 2(1), 1–36. <https://doi.org/10.55292/japhtnhan.v2i1.58>

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- Rifqi, M. J., Hilmy, M., Rohman, M. F., & Rohman, M. I. (2025). Child Marriage in Villages: Misuse of Ijbār, Structural Discrimination, and Best Interest of the Child Dismissal. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 20(1), 168–195. <https://doi.org/10.19105/al-lhkam.v20i1.15970>
- Sugitanata, A., Aqila, S., Aminah, S., & Abdurrasyied, M. H. (2024). The Challenge of Invisible Enemies and Risk Mitigation for Parents in Educating Children in the Modern Era. *Muadalah*, 12(2), 81–98. <https://doi.org/10.18592/muadalah.v12i2.13865>
- Sugitanata, A., Hasan, F., Kurniawan, M. R., & Aminah, S. (2024). Pemberdayaan Perempuan melalui Pendidikan Islam Progresif Suud Sarim Karimullah: Analisis Strukturalisme dan Implikasinya. *Muadalah*, 12(1), 1–13. <https://doi.org/10.18592/muadalah.v12i1.12151>
- Suleman, F., Arifuddin, Q., Saifudin, S., Khasanah, F., & Karimullah, S. S. (2023). The Review of the Masalah Mursalah Related to Early Marriage: Implementation and Orientation. *Jurnal Dinamika Hukum*, 23(3), 573–586. <https://doi.org/10.20884/1.jdh.2023.23.3.3783>
- Suwarni, S., Karimullah, S. S., Kaniah, K., Amanat, T., Safar, M., & Tjahyadi, I. (2024). Inclusive Sexual Education: Integrating Gender Approaches in Learning. *AL-ISHLAH: Jurnal Pendidikan*, 16(1), 416–427. <https://doi.org/10.35445/alishlah.v16i1.4690>
- Uddin, A. E. (2023). The Practice and Legitimacy of Misyār Marriage: A Critical Analysis within Islamic Law. *Yakın Doğu Üniversitesi İslam Tetkikleri Merkezi Dergisi*, 9(2), 254–270. <https://doi.org/10.32955/neu.istem.2023.9.2.06>
- Widiyanto, A., Zumrotun, S., & Saputra, H. (2024). The Prevention of Underage Marriage in Indonesia: State, Religious Authority and Human Rights. *Justicia Islamica*, 21(2), 401–422. <https://doi.org/10.21154/justicia.v21i2.9771>
- Yoosefi Lebni, J., Solhi, M., Ebadi Fard Azar, F., Khalajabadi Farahani, F., & Irandoost, S. F. (2023). Exploring the consequences of early marriage: a conventional content analysis. *INQUIRY: The Journal of Health Care Organization, Provision, and Financing*, 60, 00469580231159963. <https://doi.org/10.1177/00469580231159963>
- Zaidah, Y., Husna, H., & Mubarak, A. (2025). Legal Considerations of Marriage Dispensation Cases For Couples That Lead to Divorce. *Journal of Islamic and Law Studies*, 9(2), 206–222. <https://doi.org/10.18592/jils.v9i2.17824>