

Regulatory Reform of Child Marriage Dispensation in Indonesia: Advancing a Women's Protection Framework

Nur Fadilah^{1*}, Hana Maulida², Ibrahim Touré³, Khadija Diallo⁴

¹ Universitas Islam Negeri Sunan Gunung Djati, Bandung, Indonesia

² Universitas Islam Indonesia, Yogyakarta, Indonesia

³ University of Freiburg, Breisgau, Germany

⁴ University of Canberra, Canberra, Australia

*Corresponding author email: nurfaadilaa@gmail.com

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Abstract

This study examines the normative contradictions embedded in the regulation of child marriage dispensation in Indonesia and develops a regulatory reform model grounded in the protection of women's rights. Employing a normative juridical methodology, the research adopts qualitative content analysis, legal reasoning, and comparative legal analysis to identify normative inconsistencies and formulate a more responsive legal framework for safeguarding women and girls. The findings reveal that the child marriage dispensation mechanism constitutes a form of regulatory contradiction, as it preserves a legal exception that undermines the effectiveness of the broader legal framework designed to prevent child marriage and protect women from structural vulnerabilities. The study further demonstrates that the judicial role in dispensation proceedings has evolved beyond that of a conventional interpreter of law to that of a social risk assessor, requiring judges to evaluate not only statutory requirements but also the risks associated with reproductive health, educational discontinuity, poverty, gender-based violence, psychological maturity, and social preparedness. Building upon these findings, the study proposes the Gender-Responsive Justice Regulatory Model (GRJRM). This novel conceptual framework integrates feminist legal theory, substantive gender justice, substantive equality, and risk governance into the regulation of child marriage dispensation. The model repositions women's lived experiences and gender-specific vulnerabilities as the central normative foundation of regulatory decision-making through multidisciplinary assessment, risk-based evidentiary standards, and strengthened safeguards for women's rights throughout the adjudicative process. By shifting the focus of regulatory reform from procedural compliance to substantive protection, the proposed framework advances comparative family law scholarship. It offers a constitutionally and human rights-oriented paradigm for reforming the dispensation of child marriage in Indonesia.

Keywords: *Dispensation for child marriage, Gender-responsive justice, Protection of women, Social risk assessor, Substantive equality*



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INTRODUCTION

Child marriage remains one of the most complex legal, social and human rights issues in Indonesia, despite the various regulatory reforms that have been implemented over the past decade (Parhi et al., 2025). This phenomenon is not only linked to the practice of marriage at an age when individuals are not yet biologically or psychologically mature, but also reflects structural issues concerning gender-based power relations, poverty, unequal access to education, patriarchal cultural constructs, and the ineffective implementation of policies to protect children and women (Karimullah, 2023). From a modern legal perspective, marriage is not merely a private institution governing the relationship between men and women, but rather a public institution that protects citizens' constitutional rights, particularly those of vulnerable groups.

The urgency of this issue has intensified following the enactment of Law No. 16 of 2019, which amended the minimum marriage age for both men and women to 19 years. This reform represents a progressive step aimed at eliminating discrimination regarding the minimum marriage age whilst strengthening the protection of girls. However, this change in the law has not automatically led to a reduction in the practice of child marriage. On the contrary, the mechanism for granting marriage dispensations, which has been retained in the national legal system, has evolved into a legal instrument that is increasingly utilised.

National data from recent years show that applications for marriage dispensations have risen significantly since the change to the minimum marriage age came into force (Mursyid & Yusuf, 2022). This phenomenon indicates that the restriction on the minimum age has not been accompanied by substantial reform of the dispensation mechanism. Consequently, the protective standards established by raising the minimum marriage age risk being undermined during implementation. This situation highlights a regulatory paradox: whilst the state seeks to tighten the requirements for the minimum age of marriage through legislation, it simultaneously maintains an exemption mechanism that, in practice, is relatively easy to access through the judicial process.

This paradox demonstrates that the issue of marriage dispensations cannot be understood solely as an administrative matter within family law, but rather constitutes a legal policy issue closely linked to the effectiveness of protection for women. In many cases involving dispensations, those most affected are girls, who find themselves in a more vulnerable social, economic and psychological position than boys. The decision to apply for a dispensation is often influenced by unplanned pregnancy, family pressure, cultural norms regarding family honour, the practice of arranged marriages, poverty, or limited access to education. In such situations, a girl's consent to marriage does not always reflect free will as intended by the principle of consent in human rights law (Maloko et al., 2024).

Normatively speaking, Indonesia has a relatively comprehensive legal framework for the protection of women and children (Alifiyah & Anshori, 2023). The Constitution guarantees every citizen's right to fair legal protection, whilst the Child Protection Act

emphasises the state's obligation to prevent child marriage. Indonesia has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), which consistently urge States Parties to eliminate the practice of child marriage as a form of discrimination against women. Furthermore, the Sustainable Development Goals (SDGs), specifically Target 5.3, explicitly position the elimination of child marriage as part of the global agenda for achieving gender equality (Hayatullah et al., 2026). Nevertheless, harmonising these various instruments with the practice of granting marriage dispensations still faces numerous challenges.

At the implementation level, judges' considerations often place greater emphasis on resolving case-by-case social issues than on conducting an in-depth assessment of potential violations of women's rights that may arise from granting such dispensations. This phenomenon indicates that marriage dispensations have evolved into an area of judicial discretion with far-reaching legal and social consequences (Suyahman et al., 2025). Judges do not merely perform the function of mechanically applying the law; they also determine whether a child will lose the opportunity to receive an education, face reproductive health risks, enter into an unequal marital relationship, or even experience a cycle of intergenerational poverty (Karimullah & Sugitanata, 2024; Suwarni et al., 2024).

The quality of legal reasoning in every dispensation ruling has direct implications for the effectiveness of women's protection. If legal considerations are based solely on pregnancy, family pressure, or moral considerations, then the protective function intended to be realised through the change in the minimum age for marriage will lose its substantive meaning. Conversely, if judges prioritise the protection of women, then the dispensation mechanism can truly function as a very limited exception and not become an alternative route to legitimising child marriage (Parhi et al., 2025).

Research on marriage dispensations has developed rapidly in both national and international literature. Most early studies focused on a normative analysis of changes to the minimum age for marriage following Constitutional Court Ruling No. 22/PUU-XV/2017 and the enactment of Law No. 16 of 2019 (Mursyid & Yusuf, 2022; Nurfieni, 2023). These studies generally concluded that equalising the minimum marriage age is a crucial step towards eliminating gender discrimination in marriage law. However, these studies tend to stop at analysing changes in legal norms without evaluating how the dispensation mechanism actually shapes new dynamics in legal practice.

As the number of applications for dispensations has risen, studies have emerged examining the factors behind the high number of applications for marriage dispensations. Various studies indicate that poverty, low levels of education, pregnancy outside marriage, local culture and social pressure are the main determinants driving families to apply for dispensations (Masyhud et al., 2025; Sahli & Dewi, 2025). These findings enrich our understanding of the sociological dimensions of child marriage and demonstrate that this issue cannot be resolved solely through a formal legal approach (Kurniawan et al., 2025). However, the majority of studies still treat social factors as independent variables without linking them in depth to the design of the dispensation

regulations themselves. Consequently, the relationship between legal structures, the judicial system and the protection of women has not received adequate attention.

Other studies have subsequently focused on analysing judicial practice by examining judges' rulings. Several researchers have found that the considerations taken by judges in granting dispensations vary widely, ranging from reasons of pregnancy and the family's financial readiness to moral and religious considerations (Kasim & Daud, 2022; Lenggono, 2025). This variation indicates the absence of a truly uniform standard of legal reasoning in interpreting the concept of 'compelling reasons' as referred to in the legislation (Karimullah, Basuki, et al., 2024; Nisa et al., 2022). Although the Supreme Court has issued Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Marriage Dispensations, its implementation still shows disparities between cases and across regions. Some studies have even identified that the best interests of the child are often narrowly interpreted as an attempt to avoid the social stigma resulting from pregnancy outside marriage. In contrast, the best interests should encompass long-term protection of the girl's health, education, psychological development and future.

From a gender perspective, several studies have highlighted that child marriage is a manifestation of power imbalances between men and women (Morrow et al., 2023; Sarfo et al., 2022). These studies show that women are more frequently the ones to bear the negative consequences, such as dropping out of school, high-risk pregnancies, domestic violence, economic dependence, and limited participation in development (Insani et al., 2024). However, the majority of studies still position women as objects of protection without developing a regulatory framework that explicitly makes the protection of women the primary focus of reforms to marriage dispensations (Fattah et al., 2025). Gender analysis generally stops at identifying impacts, whilst discussion regarding the redesign of regulations capable of preventing the reproduction of gender inequality remains relatively limited.

Developments in the international literature also show a similar trend. Various studies on child marriage in South Asia, Africa and the Middle East frame the practice of child marriage as the result of an interaction between poverty, social norms, gender inequality and the weak capacity of state institutions (Karimullah, Mukhid, et al., 2024). Several comparative studies show that countries which have successfully reduced child marriage rates have not only raised the minimum age limit but have also tightened exemption mechanisms, strengthened judicial oversight, provided social protection services, and ensured the involvement of women's and children's protection agencies in the decision-making process (Karimullah, Ruchiat Nugraha, et al., 2023; Kholid et al., 2025). These findings indicate that the effectiveness of regulations is determined not solely by changes to substantive norms but also by the quality of the institutional design that implements those norms. Nevertheless, such comparative studies have not yet been extensively elaborated in the Indonesian context, which is characterised by legal pluralism, cultural diversity, and a unique institutional structure of religious courts.

Based on the development of this research, several knowledge gaps remain to be explored further. Firstly, the majority of studies remain descriptive, focusing on causal

factors, statistics on dispensations, or partial analyses of judges' rulings; consequently, they have not yet established a conceptual model for the reform of marriage dispensation regulations. Secondly, previous studies have tended to treat legal analysis, gender, and the protection of women as separate frameworks, thereby failing to produce a truly integrative approach.

Thirdly, few studies examine marriage dispensations as a matter of legal policy design, to be evaluated based on the effectiveness of women's protection, rather than solely on procedural compliance with statutory provisions. Fourthly, there are still few studies that systematically link national law, international human rights standards, the principle of gender equality, and judicial discretion within a single, comprehensive framework for regulatory reform. Fifthly, previous studies have not comprehensively proposed a direction for restructuring the dispensation regulations that balances the interests of child protection, respect for social values, and the state's obligation to eliminate discrimination against women.

These gaps indicate that the main issue no longer lies in whether or not the minimum age for marriage should be raised, but rather in how to redesign the dispensation mechanism so that it truly becomes an 'extraordinary mechanism' that can only be used in genuinely urgent circumstances, with strict, transparent, accountable and women-protection-oriented standards of proof. Such regulatory reform requires a paradigm shift from a legalistic to a rights-based approach, whereby every decision on a dispensation must be assessed for its potential impact on women's rights to education, reproductive health, gender equality, social welfare, and their future. This paradigm shift also demands strengthened coordination between the judiciary, local government, institutions for the protection of women and children, healthcare professionals, psychologists, social workers and educational institutions, so that the decision-making process does not rely solely on judicial considerations.

This study is based on the assumption that the reform of regulations governing marriage dispensations must be positioned as part of a broader national legal reform agenda oriented towards substantive justice for women. Such an approach not only evaluates the adequacy of positive legal norms but also examines how regulatory design can provide effective protection by harmonising principles of human rights, family law, child protection, and gender equality policies. This study aims to critically analyse the effectiveness of the regulations on marriage dispensations within the Indonesian legal system, to identify normative and implementation weaknesses that could potentially undermine the protection of women, and to formulate a direction for the reform of marriage dispensation regulations based on the protection of women through an integrative approach combining national law, human rights principles and a gender equality perspective.

METHODS

This study employs a normative legal approach with a prescriptive legal research design, enriched by conceptual, statutory, case-based, comparative, and human rights and gender-based approaches, as the study aims to evaluate the effectiveness of the

regulations governing marriage dispensations within the Indonesian legal system whilst formulating a model for regulatory reform based on the protection of women (Karimullah & Aliyah, 2023). The study focuses on the normative construction of marriage dispensations, the implementation of legal considerations in court rulings, and the formulation of legal policies oriented towards the protection of women, which is operationally defined as the degree to which legal norms align with the principles of the best interests of the child, gender equality, non-discrimination, and the protection of human rights.

Data collection was carried out through a systematic literature review, accompanied by the retrieval and classification of legal documents using an analytical matrix based on indicators of women's protection. The validity of the data was then ensured through source triangulation, theoretical triangulation, and a critical analysis of the consistency between regulations and court rulings. All data were analysed qualitatively using content analysis, legal reasoning and comparative legal analysis to identify normative weaknesses, inconsistencies in implementation, and gaps between positive law and standards for the protection of women (Blackham, 2022). These findings were subsequently synthesised through prescriptive analysis to formulate a model for reforming marriage dispensation regulations that is more responsive to the principles of gender justice, the protection of women's rights, and legal certainty.

RESULTS AND DISCUSSION

Marriage Dispensations as a Form of Regulatory Contradiction within the System of Women's Protection

From the perspective of legal systems theory, a regulatory framework is said to possess integrity if all its norms mutually support the achievement of the same objective. This concept aligns with Ronald Dworkin's (1982) view of law as integrity, which positions the law as a system of values that must be constructed through coherence between principles, such that no rule can be interpreted in isolation from the moral objectives that the legal system as a whole seeks to realise. In the context of marriage dispensations, this principle of legal integrity faces a serious challenge due to the coexistence of two normative orientations that move in opposite directions. On the one hand, the state sets a minimum age for marriage as a form of protection for women and children. On the other hand, the state continues to grant discretion through the mechanism of dispensations, which in practice often serves as a legal loophole enabling child marriage to take place (Mohsi et al., 2025).

This contradiction becomes even more apparent when analysed through the lens of the paradigm of women's protection that has developed within international human rights law. The ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) places Indonesia in a position where it is obliged to eliminate practices that result in discrimination against and the subordination of women, including child marriage. From a CEDAW perspective, it is not sufficient for the state merely to establish formal legal norms prohibiting discrimination; it must also eliminate all legal

mechanisms that, directly or indirectly, perpetuate gender inequality (Orta, 2025). Consequently, the existence of marriage dispensations must be assessed not only based on their procedural legality, but also in terms of their impact on the fulfilment of women's rights. If a legal mechanism systematically creates opportunities for girls to lose their rights to education, reproductive health, employment opportunities and the freedom to determine their own future, then that mechanism has the potential to substantially conflict with the state's obligation to eliminate discrimination against women.

A similar paradigm has also emerged in the rights-based regulation approach, which places the protection of rights at the centre of legal policy-making. Under this approach, the effectiveness of a regulation is not measured solely by compliance with legal procedures. Instead, it is measured by its ability to prevent violations of the rights of the communities it is intended to protect. The state has, in essence, developed various policies aimed at reducing child marriage rates through improved access to education for girls, protection of reproductive health, economic empowerment of families, prevention of sexual violence, and the strengthening of child protection services. All these policies demonstrate that the state recognises a causal link between child marriage and an increased risk of maternal mortality, school dropout, intergenerational poverty, domestic violence, and low-quality human development. However, the existence of marriage dispensations actually opens the door to the very consequences that these policies were originally intended to prevent. From a modern regulatory perspective, this situation reveals an inconsistency between the regulatory objective and the regulatory instrument, thereby rendering the effectiveness of women's protection suboptimal.

This normative contradiction does not remain at an abstract level, but manifests itself in judicial practice. Although Supreme Court Regulation No. 5 of 2019 sets out guidelines for examining applications for dispensation, the judges' reasoning in various rulings still reveals a predominance of a casuistic approach oriented towards short-term problem-solving. Pregnancy outside marriage, concerns about social stigma, family pressure, and customary reasons are often presented as urgent circumstances justifying the granting of a dispensation. This approach actually places greater emphasis on resolving social consequences that have already arisen than on analysing whether marriage is the option that best protects women's interests. In many cases, considerations regarding reproductive health, psychological readiness, the continuity of education, the risk of domestic violence, or economic dependence have not been given the same weight in the argument as moral or social considerations (Adu et al., 2022; Türkkan & Odacı, 2024). Consequently, the dispensation process serves more as a mechanism for legalising a situation that has already arisen than as a protective instrument that genuinely assesses the girl's best interests.

This phenomenon indicates that the concept of compelling reasons underpinning dispensations still allows for a very broad scope of interpretation. From the perspective of legal certainty theory, overly open-ended norms will lead to disparities in application, as judges have considerable discretion in determining the standard for

what constitutes a 'compelling reason' (Crawford, 2024). However, the more fundamental issue lies not in the breadth or narrowness of the scope of interpretation, but in the paradigm used to interpret such circumstances. If urgent circumstances are understood solely as the need to resolve family social issues, then the protection of women will always be subordinated to the interests of preserving family honour or avoiding social stigma. Conversely, if urgent circumstances are interpreted through a rights-based paradigm, then every application for dispensation must be assessed through a multidimensional analysis of its impact on all the rights of women that are at risk of being lost as a result of child marriage.

Regulatory contradictions can also be analysed through the lens of feminist legal theory. This theory is based on the assumption that the law often appears formally neutral but, in practice, reproduces unequal power relations between men and women. Marriage dispensations are a clear example of how legal instruments designed as exceptions can result in impacts disproportionately borne by women (Karimullah, 2022; Karimullah & Aliyah, 2023). Although the rules on dispensations apply to both men and women, the biological, psychological, social and economic consequences are predominantly experienced by girls. The risks of early pregnancy, reproductive health complications, dropping out of school, limited employment opportunities, domestic burdens, and vulnerability to domestic violence demonstrate that the impact of dispensations is gendered. Therefore, an analysis of dispensation is insufficient if conducted through a formal equality approach, which merely assesses the existence of equal treatment before the law; rather, it must employ a substantive equality approach that evaluates whether a norm genuinely provides equal protection for women. From this perspective, the existence of dispensation indicates that the legal system still tolerates social structures that place women in a more vulnerable position (Sianipar et al., 2025).

This normative contradiction also reveals a shift in the state's function from a protective state towards an accommodative state. A protection-oriented state ought to act as an institution that prevents women from entering situations that could potentially infringe upon their rights. In contrast, an accommodative state tends to legitimise social conditions that have already developed within society. When dispensations are more frequently used as a solution to out-of-wedlock pregnancies, cultural pressures, or family moral considerations, the state is, in essence, accommodating these social pressures through legal instruments. However, within the paradigm of the modern rule of law, the law should have a transformational function, that is, to change discriminatory social structures, rather than merely adapting to existing social practices. Therefore, maintaining dispensations in their current form and mechanisms risks perpetuating the cycle of gender inequality that various women's protection policies are actually seeking to eliminate.

From a legal-philosophical perspective, the main issue is not whether marriage dispensations have a legal basis, but whether their existence can still be morally justified within a legal system that makes the protection of women a constitutional objective (Wiranti et al., 2025). Gustav Radbruch emphasised that the law must integrate the

values of certainty, justice and utility proportionately. In the context of marriage dispensations, legal certainty is indeed reflected in the existence of formal mechanisms regulated by legislation. However, if these mechanisms consistently produce outcomes that run counter to substantive justice for women, then the moral legitimacy of such regulations must be called into question.

The mechanism of marriage dispensations within the current Indonesian legal system still exhibits a fundamental regulatory contradiction. The state has established a comprehensive regulatory framework to protect women through raising the minimum age of marriage, safeguarding reproductive health, preventing gender-based violence, eliminating discrimination, and fulfilling children's rights (Fathony et al., 2024). At the same time, it continues to maintain legal mechanisms that allow child brides to enter the institution of marriage through relatively broad exceptions. This situation indicates that marriage dispensations are not yet fully consistent with the state's paradigm of building a system for the protection of women. Therefore, regulatory reform must not be limited to refining judicial procedures or tightening administrative requirements, but must instead be directed towards reconstructing a legal paradigm that places the protection of women as a fundamental principle in every decision regarding dispensations.

Dispensations can only be justified as truly extraordinary legal remedies, subject to very strict standards of proof, involving multidisciplinary assessments, prioritising risk analysis regarding women's rights, and ensuring that the granting of a dispensation is a last resort after all other protective alternatives have proven incapable of safeguarding the best interests of women and children. Thus, the integrity of the national legal system can be restored by harmonising the objective of protecting women with the regulatory instruments used to achieve it, so that the law no longer produces normative contradictions but becomes a means of transformation towards substantive gender justice.

The Shift in the Judge's Role from Law Interpreter to Social Risk Assessor

The transformation of family law in Indonesia following the amendment of Law No. 16 of 2019 has not only altered the minimum age for marriage. It has also fundamentally changed the nature of the judiciary's role in cases concerning marriage dispensations. Whilst in the classical legal paradigm judges are positioned as law interpreters tasked with interpreting and applying legal norms to the facts presented by the parties, in the practice of marriage dispensation judges actually perform a far more complex function than merely conducting legal adjudication. Judges no longer merely determine whether the formal requirements of an application have been met; rather, they must assess the various social, health, psychological, economic and developmental consequences for the child that will arise from every judgement handed down. In other words, a judgement on a marriage dispensation is not merely a process of legal discovery, but also a process of risk governance regarding the child's future, particularly that of girls (Susanti, 2024). This shift indicates that the role of judges in marriage dispensation cases has evolved into that of a social risk assessor, a judicial

actor tasked with identifying, evaluating and weighing up various multidimensional risks before determining whether a marriage is worthy of legal legitimisation.

This shift in function is a logical consequence of the development of the welfare state paradigm, which positions the judiciary as part of the social protection system. In a modern constitutional state, judges are no longer viewed as *'la bouche de la loi'* as taught by Montesquieu, that is, merely a mouthpiece of the law that applies rules mechanically, but as an institution bearing a constitutional responsibility to guarantee the protection of human rights through substantive rulings (Krause, 2000; Spector, 2003). This shift is in line with the development of the theory of responsive law put forward by Nonet and Selznick, which positions the law as an instrument that must be responsive to society's needs and not limited to formal compliance with regulatory text (Asa et al., 2021). In the context of marriage dispensations, a strictly textual application of the law is inadequate, as the matter under consideration is not merely the legality of the application. Still, the future of a child who is about to enter the institution of marriage, with various consequences that would be difficult to reverse should the decision taken be incorrect. Therefore, judges are required to engage in predictive legal reasoning, that is, to anticipate the social impacts that may arise once a judgement becomes legally binding.

The perspective of socio-legal studies holds that judicial decision-making in cases concerning the protection of vulnerable groups never occurs in a sterile normative space. Judges are constantly confronted with complex social realities, cultural values, moral pressures, the family's economic circumstances, and the psychological dynamics of the parties involved (Karimullah, 2024). Empirical studies on marriage dispensations in Indonesia indicate that judges frequently face a dilemma between upholding the objective of child protection and resolving existing social issues, particularly when applications are made as a result of pregnancy outside marriage or pressure from social norms (Gumilar, 2025; Halim, 2025). Consequently, the decision-making process is no longer solely oriented towards the interpretation of legal norms but also involves an assessment of the risks that may arise if the dispensation is granted or refused. This situation demonstrates that judges are, in fact, already performing a risk governance function, even though this function has not yet been conceptually recognised within the Indonesian legal system.

In risk governance theory, every public decision-maker has a duty to identify sources of risk, assess the level of threat, evaluate potential consequences, and determine the form of intervention best capable of minimising long-term harm. This concept has so far developed in the fields of public health, the environment, public policy and social protection. Still, it has not yet been widely integrated into the study of family law. The characteristics of cases involving marriage dispensations demonstrate all the fundamental elements of risk governance. Judges must assess the probability of negative impacts, the child's vulnerability, the family's capacity to mitigate risks, and the effectiveness of various alternatives to marriage.

The first risk that judges must assess is to reproductive health. Public health literature consistently shows that teenage pregnancy is correlated with an increased risk of maternal mortality, low birth weight, obstetric complications, pre-eclampsia,

anaemia, and long-term reproductive health problems. Adolescent girls have not yet fully reached reproductive maturity biologically and are therefore more vulnerable to complications during pregnancy and childbirth. From the perspective of women's legal protection, these risks must not be viewed as natural consequences of early marriage, but as a form of vulnerability that should be prevented through state policy. Therefore, when a judge rules on an application for a dispensation without conducting an adequate assessment of the prospective bride's reproductive health, the judge is, in fact, deciding with a high degree of uncertainty.

The second risk relates to educational continuity. Various studies indicate that child marriage is one of the main determinants of school dropout rates among girls. The loss of access to education not only reduces opportunities to secure decent employment but also limits girls' capacity to make independent decisions within the household (Ayu et al., 2026). Education serves a protective function by enhancing health literacy, economic capabilities, political participation, and future child-rearing capacities. Therefore, when a girl enters into marriage before completing her secondary education, the consequences are not merely individual but also affect the quality of human development across generations. In this context, judges are in fact not merely determining whether a marriage may or may not take place, but are also determining the potential loss of the right to education guaranteed by the Constitution (Siregar et al., 2026). An assessment of the risk of dropping out of school should form an integral part of the process for examining requests for dispensation. It should not simply be replaced by a statement from the parents that the child will continue their education after marriage, without any objective mechanism to verify it.

The third risk concerns the dimension of structural poverty. The link between child marriage and poverty has been well-documented in various international studies. Early marriage tends to result in low educational attainment, limited access to formal employment, increased economic dependence, and low household productivity (Suleman et al., 2023). This cycle is then passed on to the next generation through low investment in children's education and health. Therefore, every marriage dispensation actually has implications for long-term economic development (Rifa'i et al., 2026). Judges in dispensation cases must not merely ensure that the prospective husband has a job, but must also assess whether these economic conditions are sufficient to guarantee the family's sustainable livelihood.

The fourth risk is the increased potential for gender-based violence within the household. Women who marry whilst still children have relatively weaker bargaining power within the marital relationship due to limited education, economic dependence, and underdeveloped interpersonal negotiation skills (Sakinah et al., 2026). These conditions increase their vulnerability to physical, psychological, sexual, and economic violence. Modern legal perspectives regard protection from violence as a fundamental right that the state must guarantee. Therefore, when a judge grants a dispensation without assessing the power dynamics between the prospective spouses, a history of violence, the family's psychosocial circumstances, or other factors that could potentially trigger domestic violence, the decision-making process does not fully comply with the

precautionary principle in the protection of women. In other words, judges are not merely resolving legal disputes but also predicting the likelihood of future victimisation.

The next dimension is psychological readiness. In many cases involving dispensation, indicators of readiness are still understood in simplistic terms, such as the ability to express consent to marry or the willingness to lead a married life. This approach is no longer adequate when examined from the perspective of developmental psychology. Emotional maturity encompasses the ability to manage conflict, make rational decisions, cope with social pressures, communicate effectively, and fulfil parenting responsibilities. All these aspects develop gradually and do not always align with biological maturity. Therefore, the evaluation of psychological readiness requires a professional assessment by a psychologist or an expert competent in identifying adolescent development. Judges fundamentally lack the scientific competence to assess all these dimensions independently. The model for examining dispensation applications must integrate a multidisciplinary approach as part of the evidentiary process.

In addition to psychological aspects, judges must also evaluate the social readiness of the parties involved. Social readiness encompasses the ability to build family relationships, access healthcare services, maintain employment, manage domestic roles, understand rights and obligations within marriage, and adapt to a new social environment. Studies on dispensation practices in Indonesia indicate that social reasons such as pregnancy, engagement, or concerns about social stigma remain dominant factors in judges' deliberations (Asni & Iqbal, 2025). However, these studies also highlight that a focus on short-term solutions to social problems often overlooks long-term risks to the rights of children and women.

An analysis of these six dimensions of risk reveals that the structure of judges' deliberations has, in fact, moved beyond the function of legal interpretation. Judges no longer merely answer normative questions regarding whether the conditions for a dispensation have been met, but must also answer predictive questions regarding what is likely to happen once a dispensation has been granted. This decision-making approach is identical to the risk assessment process in public policy, where every decision is based on an evaluation of the probability of harm, the severity of the impact, mitigation capacity, and available intervention alternatives.

Based on this analysis, this study develops the concept of the 'Social Risk Assessor Judge Model' as a new theoretical framework within Indonesian family law. This model positions the judge granting a marriage dispensation as a risk-based judicial decision-maker who simultaneously performs four main functions: identifying all the multidimensional risks that may arise from child marriage; measuring the level of vulnerability of each party based on scientific evidence; assessing the effectiveness of protective alternatives to marriage; and determining whether the granting of a dispensation is truly the last resort that best protects the rights of women and children. In this model, the quality of a judgement is no longer measured solely by the accuracy

of the application of legal norms, but also by the quality of the risk assessment underpinning the judge's deliberations.

This conceptualisation simultaneously broadens our understanding of the judiciary's role in a modern state governed by the rule of law. Judges are no longer viewed merely as interpreters of the law but as institutions that play an active role in social risk governance. This shift is significant because cases concerning marriage dispensations are, in essence, not merely about the legality of marriage but represent the state's decision regarding the distribution of risks related to women's health, education, welfare, and future. Therefore, the reform of marriage dispensation regulations should be directed towards establishing a risk-assessment-based vetting system that requires the involvement of healthcare professionals, psychologists, social workers and women's protection agencies as part of the evidentiary process. Through this approach, judges do not merely perform judicial functions in the traditional sense, but become central actors ensuring that every dispensation is genuinely based on a scientific evaluation of social risks and not merely on the resolution of moral or administrative issues. This model offers a new paradigm in socio-legal studies, positing that judges granting marriage dispensations act as social risk assessors; consequently, the quality of protection for women no longer depends on the breadth of judicial discretion, but rather on the judicial system's ability to manage risk objectively, in a multidisciplinary manner, and with a focus on the fulfilment of human rights.

Regulatory Reform Based on Gender-Responsive Justice

Developments in modern law demonstrate that the success of a regulation is no longer measured solely by normative certainty or procedural consistency, but by its ability to deliver justice that is genuinely experienced by the groups most affected (Tyler & Allan Lind, 2001). This paradigm shift has given rise to the concept of gender-responsive justice. This approach places women's lived experiences at the heart of the design, implementation and evaluation of the law. Within this paradigm, women are no longer positioned as passive objects of protection, but rather as legal subjects whose life experiences, vulnerabilities and the structural barriers they face must be central considerations in the formulation of public policy. This approach is becoming increasingly relevant in the context of marriage dispensations in Indonesia because, although the rules on dispensations formally apply to both men and women, the biological, psychological, social and economic consequences are in reality borne disproportionately by girls. Therefore, the fundamental question that needs to be asked is no longer whether the dispensation mechanism complies with legal procedures, but whether the design of these regulations is truly responsive to women's lived experiences as the group most vulnerable to the impacts of child marriage.

Conceptually, gender-responsive justice has emerged from a critique of the liberal legal paradigm, which holds that formal equality is sufficient to achieve justice (Karimullah, Nugraha, et al., 2023). This approach assumes that the law is neutral. Thus, applying the same rules to everyone is considered to fulfil the principle of equality. However, Feminist Legal Theory demonstrates that the law's neutrality is often illusory,

as it is shaped by social structures that remain influenced by patriarchal power relations. Consequently, regulations that appear neutral can have vastly different impacts on men and women.

Catharine MacKinnon (1991) explains that the law often reflects men's experiences as a universal standard, rendering women's experiences invisible. In the context of marriage dispensations, the legal mechanism does not distinguish between applicants' genders. However, the risks arising after a dispensation is granted are borne far more heavily by women, ranging from early pregnancy, reproductive health complications, disruption to education, domestic burdens, economic dependence, to increased vulnerability to domestic violence (Karimullah, Ruchiat Nugraha, et al., 2023; Yazid et al., 2023). Therefore, applying the same norms does not automatically result in equal justice.

This paradigm subsequently evolved into the concept of substantive equality, which is now one of the key principles in international human rights law. Unlike formal equality, which emphasises only equal treatment, substantive equality requires states to remove the structural barriers that prevent certain groups from enjoying their rights on an equal footing. Consequently, states are obliged to take into account the social, biological and economic differences that affect an individual's ability to enjoy their rights. This approach has formed the basis for interpreting various international instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which not only prohibits direct discrimination against women but also requires states to abolish rules or practices that indirectly perpetuate inequality. In the context of marriage dispensations, this means that an evaluation of the regulations is not sufficient if conducted solely through a test of procedural legality; rather, it must assess whether the dispensation mechanism provides substantive protection for women's rights.

When analysed from this perspective, the regulations governing marriage dispensations in Indonesia still demonstrate a predominantly procedural orientation. The amendment to Law No. 16 of 2019 did indeed eliminate discrimination in the minimum marriage age between men and women by setting the same age limit, namely 19 years. However, the existence of the dispensation mechanism indicates that a paradigm shift in regulatory design has not fully accompanied this reform. Judges are still granted broad discretion under the phrase urgent reasons, whilst the regulations do not yet explicitly require a gender impact assessment before a dispensation is granted. Consequently, women's experiences often feature in rulings merely as background facts of the case, rather than as a key parameter in determining whether or not a dispensation should be granted (Zaidah et al., 2025).

This phenomenon indicates that the regulations governing dispensations are still framed within a gender-neutral regulatory framework. Although they do not make a normative distinction between men and women, the regulations have not taken into account the reality that women bear far greater risks once a marriage has taken place. From the perspective of gender-responsive justice, this situation constitutes a form of indirect discrimination, that is, a situation where rules that appear neutral produce

disproportionate effects on certain groups. Therefore, the primary issue does not lie in the formulation of different legal norms for men and women, but rather in the failure of the regulations to accommodate women's experiences as the basis for legal policy.

This situation can be better understood through a comparative analysis of various countries. International experience shows that legal reforms concerning child marriage are moving towards increasingly strict restrictions on exceptions to the minimum age (Vilán, 2022). A comparative study of 193 countries reveals that although many countries have raised the minimum age for marriage to 18 years, the effectiveness of this protection is still hampered by various exceptions, such as judicial dispensations, parental consent, and recognition of customary and religious laws. The study emphasises that legal loopholes are one of the main causes of the persistently high prevalence of child marriage across various jurisdictions.

The Philippines provides an example of reforms that are more focused on the protection of women through the elimination of legal loopholes for child marriage under certain conditions (Saimima et al., 2025). This approach not only raises the standard of legal protection but also integrates criminal policy, social protection and women's empowerment as part of a national strategy to prevent child marriage. Conversely, Indonesia still maintains dispensations as an exception mechanism which, in practice, is frequently utilised, particularly in cases of pregnancy outside marriage (Halim, 2025). A comparative study of Indonesia and the Philippines shows that the existence of dispensations creates inconsistencies between the objectives of child protection and the implementation of the law on the ground, meaning that reforms to the minimum age have not yet fully resulted in substantive change.

A comparison with India also reveals an interesting dynamic. India has relatively strict regulations under the Prohibition of Child Marriage Act (Chadha & Tiwari, 2022). However, their effectiveness is still influenced by the coexistence of personal laws, customary practices, and regional variations in implementation. A comparative study of India, China and Indonesia shows that the main challenge lies not only in the existence of legal norms, but also in the gap between normative commitments and policy implementation. Indonesia faces a distinctive problem because the discretion of religious courts through dispensations remains the primary route for legalising child marriage, particularly in cases of pregnancy outside marriage.

Australia also offers important lessons regarding the limitations on exceptions to child marriage. Although Australian law still recognises very limited exceptions in exceptional circumstances, the standard of proof applied is far stricter and prioritises the best interests of the child (Henaghan et al., 2023). A comparative study of Indonesia and Australia shows that the Australian system places greater emphasis on protecting the child's psychological development, social readiness and well-being than merely resolving moral or family issues. Conversely, practices in Indonesia still predominantly rely on short-term approaches to resolving social conflicts.

This comparison demonstrates that regulatory reform based on gender-responsive justice cannot stop at changing the minimum age limit. Reform must begin with a paradigm shift: the primary aim of regulation is not to facilitate the resolution of family

issues, but to prevent the loss of women's rights. From this perspective, every mechanism for granting dispensations must be viewed as a potential restriction on women's constitutional rights. Consequently, its justification must meet very high standards. Such an approach is consistent with the principle of proportionality in human rights law, namely that any restriction on a person's rights may be imposed only if it is strictly necessary, pursues a legitimate aim, and no alternative measures are available that would better protect those rights.

A women-centred approach also changes the way we understand the impact of dispensations. Until now, women have often been positioned as the party who 'needs to be married off immediately' in the event of an out-of-wedlock pregnancy. This perspective actually reproduces a patriarchal worldview that treats women's bodies as the source of social problems that must be resolved immediately through the institution of marriage. Conversely, gender-responsive justice views pregnancy not as an automatic reason to expedite marriage, but rather as a situation that requires social protection, reproductive health services, psychological support, and the continuation of education.

The implication of this paradigm is the need to reconstruct the evidentiary mechanisms in dispensation cases. It is not sufficient for judges merely to examine parental consent, the age of the prospective bride and groom, or urgent reasons, as has traditionally been the case (Haerozi et al., 2023). Before a dispensation is granted, a multidisciplinary assessment must be conducted to evaluate reproductive health, psychological readiness, continuity of education, vulnerability to violence, the family's economic circumstances, and the availability of alternative forms of protection beyond marriage. This approach reflects the principle of substantive equality, as it takes into account women's specific experiences in the decision-making process, rather than merely as a consequence of the handing down of a judgement.

In addition to procedural changes, regulatory reform also requires a shift in institutional orientation. The courts can no longer be the sole institution determining the future of girls (Mun'im et al., 2024). The dispensation mechanism must integrate the roles of clinical psychologists, reproductive health doctors, social workers, women's and children's protection agencies, and educational institutions into the evidentiary process. This integration is not intended to undermine the independence of judges, but rather to ensure that every ruling is based on adequate scientific evidence regarding the risks the woman will face.

Reforms based on gender-responsive justice also require new evaluation indicators to assess the effectiveness of regulations. Until now, the success of policies has often been measured by the number of dispensations granted or refused. This measure is administrative in nature and does not reflect the quality of protection provided. Under the new paradigm, the effectiveness of regulations must be measured by their ability to prevent girls from dropping out of school, reduce the rate of teenage pregnancies, minimise reproductive health complications, curb domestic violence, increase women's economic participation, and expand access to education and social services. Thus, the

success of regulations is measured by their impact on women's lives, not merely by compliance with legal procedures.

CONCLUSION

The mechanism for granting dispensations for marriage within the Indonesian legal system continues to reflect a regulatory contradiction between the state's commitment to safeguarding women and the persistence of legal instruments that still permit child marriage. Consequently, legal reform is no longer sufficient if it merely focuses on raising the minimum marriage age; it must instead be directed towards reconstructing a regulatory paradigm based on the protection of women, gender justice, and substantive equality. The study's findings indicate that judges in dispensation cases have, in essence, undergone a shift in function from being interpreters of the law to social risk assessors who evaluate various multidimensional risks relating to women's reproductive health, education, poverty, violence, psychological readiness and social readiness; therefore, the dispensation system ought to be reformulated through a risk governance approach that integrates multidisciplinary assessment and a gender-responsive justice perspective.

This study enriches the fields of family law and socio-legal studies by developing a conceptual framework that links feminist theory, substantive equality, legal protection and risk governance as a new foundation for the reform of marriage dispensation, whilst complementing previous studies which have generally focused on normative or procedural aspects. In practical terms, the findings of this study provide an academic basis for legislators, the Supreme Court and stakeholders to reconstruct the regulations on marriage dispensations so that they are more oriented towards the protection of women's rights through stricter standards of proof, evidence-based risk assessment and harmonisation with international human rights instruments. Nevertheless, this study remains limited to normative and conceptual analysis; it has not yet tested the implementation of the proposed model through an empirical approach to judicial practice or the experiences of women as subjects of law. Consequently, future research should develop multidisciplinary studies based on empirical data, cross-national comparative analysis, and policy impact assessments to test the effectiveness of the proposed reform model, so that the updating of the regulations on marriage dispensations not only provides legal certainty but is also capable of transforming the Indonesian legal system into an instrument that substantively guarantees justice, dignity and the protection of women.

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