



Tension between Islamic Law and Human Rights in Child Marriage Cases in Indonesia

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Article info:	Abstract
<p>Keywords: Child marriage, Human rights, Islamic law, Indonesia, Muslim communities</p>	<p>This study aims to build a strong knowledge base so that the transformation process can proceed inclusively and sustainably, in line with social dynamics, developments in religious interpretation, and constitutional demands and human rights commitments that have become part of Indonesian civilisation. This study applies a qualitative approach with a library research strategy that prioritises the analysis of legal documents, religious interpretations, state policies, as well as scientific publications and reports from international and national organisations related to the issue of child marriage by integrating several main frameworks to support comprehensive and multidimensional analysis. The results indicate that the tension between Islamic law and human rights in cases of child marriage in Indonesia shows that without the political courage to enforce comprehensive child protection and update religious interpretations to be responsive to reality, the state will only continue to repeat ambiguous compromises that harm the younger generation. A paradigm shift, cross-actor collaboration, and a commitment to placing children's rights at the foundation of social justice and national progress are needed for Indonesia to break free from the cycle of injustice and achieve a society that values universal human values and traditional wisdom justly.</p>
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<div data-bbox="240 1565 418 1632" data-label="Image"></div> <p>*Author correspondence email: titinazhar24@gmail.com Available online at: https://journal.mahkotascience.org/index.php/insani Copyright (c) 2025 by Insani: Jurnal Pranata Sosial Hukum Islam</p>	

Introduction

The contextualisation of Islamic law in Indonesia cannot be separated from the long history between religion and the state. On the one hand, the modern Indonesian state has asserted itself as a state based on the rule of law that recognises and respects religion. On the other hand, the state also has a constitutional commitment to guarantee, protect and fulfil the human rights of its citizens, including the rights of children. When positive law, such as Law No. 1 of 1974 on Marriage (revised through Law No. 16 of 2019), stipulates that the minimum age for marriage is 19 years for both men and women. This decision is not solely the result of religious norms or traditions but also reflects the state's efforts to respond to civil society demands and international human rights standards. However, these regulations are often viewed by some religious groups as a form of secularisation, even westernisation of the law, which is considered to threaten the authority and originality of Islamic law.

The tension between Islamic law and human rights in cases of child marriage is increasingly apparent when national regulations have to contend with grassroots practices that are still strongly influenced by local religious interpretations and specific socio-economic interests.¹ In many areas, especially in rural areas and traditional Muslim communities, child marriage is still widely practised for various reasons. These reasons, in addition to economic and cultural factors, are often framed in religious justifications, such as preserving family honour, avoiding adultery, or accelerating the maturity of girls. This situation creates a dilemma for the state, which, on the one hand, must protect children's rights, but on the other hand, must also respect freedom of religion as a constitutional right. The state is faced with a difficult choice: should it consistently enforce the minimum age for marriage in the best interests of children, or should it allow room for compromise with religious values and traditions that are alive in society?

The shift in discourse from 'rights' to 'obligations' in many arguments defending child marriage is also a source of tension. Within the framework of Islamic law, marriage is often seen as a form of worship and a solution to various moral problems, so biological age is considered a prerequisite.² This narrative clashes with the logic of human rights, which prioritises the protection of children's rights from the negative impacts of early marriage. Empirical research shows that child marriage contributes to high rates of maternal and infant mortality, school dropout, intergenerational poverty, and increased risk of domestic violence.³ This data has become ammunition for human rights activists and civil society groups to continue pushing for stricter regulations, improved education, and a paradigm shift at the community level. However, advocacy that overly emphasises human rights narratives is often met with defensiveness from religious groups who feel that their identity and autonomy are threatened.

In many public spaces, debates between groups in favour of tightening the marriage age and those who defend flexibility based on religious interpretations often lead to

¹ Zumiyati Sanu Ibrahim et al., "Islamic Law and Human Rights: Convergence or Conflict?," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 24, no. 2 (2024): 431–48, <https://doi.org/10.19109/nurani.v24i2.19595>.

² Andrea Büchler and Christina Schlatter, "Marriage Age in Islamic and Contemporary Muslim Family Laws. A Comparative Survey," *Electronic Journal of Islamic and Middle Eastern Law (EJIMEL)* 1, no. 2 (2013): 37–74, <https://doi.org/10.5167/uzh-78204>.

³ Kathya Lorena Cordova-Pozo et al., "Trends in Child Marriage, Sexual Violence, Early Sexual Intercourse and the Challenges for Policy Interventions to Meet the Sustainable Development Goals," *International Journal for Equity in Health* 22, no. 1 (2023): 250, <https://doi.org/10.1186/s12939-023-02060-9>; Suiqiong Fan and Alissa Koski, "The Health Consequences of Child Marriage: A Systematic Review of the Evidence," *BMC Public Health* 22, no. 1 (2022): 309, <https://doi.org/10.1186/s12889-022-12707-x>.

polarisation and mutual rejection.⁴ In this context, reconciling these two major camps poses a particular challenge. Is it possible to find common ground between universal human rights principles and the particularities of Islamic law values deeply rooted in Indonesian Muslim society?

A legalistic approach alone, which prioritises the revision of laws and the tightening of administrative regulations, does not seem to be sufficient to address the structural problem of child marriage in Indonesia. Many studies show that legal rules are only effective when supported by changes in values, culture, and social practices.⁵ In the case of child marriage, the absence of changes at the level of values and religious interpretations will only render regulations cosmetic and easily circumvented through legal loopholes, such as by applying for marriage dispensations in religious courts. Data from the Supreme Court shows that the number of marriage dispensation requests has increased sharply after the revision of the Marriage law in 2019, indicating that the tension between national legal norms and socio-religious practices at the local level remains very strong.

Several other recent studies have also mapped various dimensions of tension between Islamic law and human rights in the issue of child marriage in Indonesia, through normative legal, sociological, gender and child rights approaches. Several previous studies found that the number of applications for marriage dispensation rose significantly after the revision of the Marriage law.⁶ These studies analysed data from religious courts in Indonesia and concluded that legal loopholes and religious justifications are often used to circumvent age restrictions on marriage. These studies prove that tension between state law and religion remains strong in judicial practice.

By examining the dynamics of tension between Islamic law and human rights in child marriage cases in Indonesia as outlined above, this study aims to understand how the tension between these two normative domains manifests in social practices, policies, and public discourse in contemporary Indonesia. This study does not merely seek to identify points of conflict between Islamic law and human rights from a normative-theoretical perspective. It traces how society, religious actors, the state, and civil society groups interact, negotiate, and resist or adapt to evolving regulations and interpretations. The essence of this study lies in the effort to find and formulate common ground between the universal principles of human rights – particularly the protection of children – and the particularities of religious values, without negating the authority or vital role of either party.

Methods

This study applies a qualitative approach with a library research strategy that prioritises the analysis of legal documents, religious interpretations, state policies,

⁴ John P Bartkowski and Jen'nan Ghazal Read, "Veiled Submission: Gender, Power, and Identity among Evangelical and Muslim Women in the United States," *Qualitative Sociology* 26, no. 1 (2003): 71–92, <https://doi.org/10.1023/A:1021456004419>.

⁵ Saldi Isra, Ferdi Ferdi, and Hilaire Tegnan, "Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia," *Hasanuddin Law Review* 3, no. 2 (2017): 117–40, <https://doi.org/10.20956/halrev.v3i2.1081>; Paula Castro, "Legal Innovation for Social Change: Exploring Change and Resistance to Different Types of Sustainability Laws," *Political Psychology* 33, no. 1 (2012): 105–21, <https://doi.org/10.1111/j.1467-9221.2011.00863.x>; Syinta Amelia, "Progressive Legal Approach to Modern Community Law Enforcement in Indonesia," *Pancasila and Law Review* 4, no. 1 (2023): 1–12, <https://doi.org/10.25041/plr.v4i1.2729>.

⁶ Suaib Abdullah, "Polemic and Existence Marriage Dispensation given Marriage Law," *Estudiante Law Journal* 1, no. 3 (2019): 726–40, <https://doi.org/10.33756/eslaj.v1i3.13318>; Lilik Andar Yuni, "Analysis of The Emergency Reasons in The Application of Marriage Dispensation at The Tenggara Religious Court," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 976–1002, <https://doi.org/10.22373/sjhk.v5i2.9135>.

scientific publications and reports from international and national organisations related to the issue of child marriage. Primary data was collected through an in-depth review of laws, government regulations, the compilation of Islamic law, fatwas from Islamic organisations, court rulings, and human rights policy documents in force in Indonesia. In addition, data sources also come from previous research results, advocacy reports, national statistics, and relevant mass media archives. By examining documents systematically and critically, this study can record the dynamics of regulatory changes, the contestation between Islamic law and human rights, and institutional and public responses to the issue of child marriage, without falling into subjective bias. The analysis process is conducted thematically, through the steps of identification, categorisation, and critical interpretation of various document sources to uncover patterns of argumentation, normative conflicts, and negotiations and adaptations of meaning in social practices and policies.

Theoretically, this study integrates several main frameworks to support a comprehensive and multidimensional analysis. Berger and Luckmann's theory of the social construction of law is used as a basis for reading how norms and regulations – whether based on Islamic law or human rights – are formed, produced, and debated in the social sphere, so that law is understood as the result of the construction and negotiation of social values.⁷ Abdullahi An-Na'im's theory of the intersection of law and religion is used to examine the dynamics of the relationship, hybridity, and tension between Islamic norms and state policies, as well as the processes of adaptation, compromise, or resistance that take place at the institutional and community levels.⁸ Additionally, Jack Donnelly's theory of human rights as a social discourse is employed to unpack the internalisation, resistance, and transformation of human rights values within the local Indonesian context.⁹

Result and Discussion

The Contradictions between Islamic Law and International Human Rights Standards

The fundamental conflict between Islamic legal interpretations that permit child marriage based on puberty and international human rights principles that prohibit it lies in the philosophical roots and normative objectives of each.¹⁰ In many interpretations, Islamic law views law as an instrument for maintaining social harmony, securing lineage, and enforcing morality.

The age of puberty was adopted as a legal instrument considered consistent with the social and communal needs of classical times. Meanwhile, international human rights are based on the universality of individual rights, with the logic that protecting

⁷ Peter Berger and Thomas Luckmann, "The Social Construction of Reality," in *Social Theory Re-Wired* (Routledge, 2016), 110–22, <https://doi.org/10.4324/9781315775357>; Thomas Döbler, "The Social Construction of Reality: A Treatise in the Sociology of Knowledge: Von Peter L. Berger & Thomas Luckmann (1966)," in *Schlüsselwerke: Theorien (in) Der Kommunikationswissenschaft* (Springer, 2022), 171–86, https://doi.org/10.1007/978-3-658-37354-2_11.

⁸ Abdullahi Ahmed An-Na'im, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (University of Pennsylvania Press, 2010); Abdullahi A An-Na'im, "Islamic Foundations of Religious Human Rights," in *Religious Human Rights in Global Perspective* (Brill Nijhoff, 1996), 337–59, https://doi.org/10.1163/9789004637146_018; Abdullahi Ahmed An-Na'im, "Toward an Islamic Hermeneutics for Human Rights," *Human Rights and Religious Values: An Uneasy Relationship*, 1995, 229–42.

⁹ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press, 2013); Jack Donnelly, "Cultural Relativism and Universal Human Rights," in *International Law of Human Rights* (Routledge, 2017), 173–92, <https://doi.org/10.4324/9781315092492-7>; Jack Donnelly, "Sovereign Inequalities and Hierarchy in Anarchy: American Power and International Society," *European Journal of International Relations* 12, no. 2 (2006): 139–70, <https://doi.org/10.1177/1354066106064505>.

¹⁰ Achmad Fauzi and Asmuni Asmuni, "Determination of the Minimum Age Limit for Marriage: Balancing Legal Supremacy and the Objectives of Sharia in Indonesian Marriage Law," *Mazahib* 23, no. 1 (2024): 117–54, <https://doi.org/10.21093/mj.v23i1.7611>.

children is an absolute value that cultural, religious, or traditional reasons cannot compromise. The principle of non-derogable rights – rights that cannot be reduced – is the basis that every child, without exception, must be guaranteed their rights without discrimination.

This difference is theoretical and has real implications for legal and state policies. In Indonesia, this contradiction is evident in the evolution of regulations on the minimum age for marriage, which has always been caught between the pressure of religious groups and the demands of civil society advocating for human rights standards. Law No. 1 of 1974 on Marriage initially set the minimum marriage age at 16 years for women and 19 years for men, with relatively broad loopholes for exemptions. These loopholes were exploited under the guise of religion, culture, and socio-economic conditions, resulting in Indonesia consistently ranking among the countries with the highest rates of child marriage in the world.¹¹ Following extensive advocacy and pressure, the revision of law no. 16 of 2019 equalised the minimum marriage age to 19 years for both men and women. However, religious courts' dispensation clause for marriage remains widely open, leaving the contradiction between Islamic law interpretation and human rights unresolved, merely shifting from the legislative realm to the judicial and social practice domains.

Arguments supported by sharia supporters often place religious authority above state law. They claim that international rules are merely products of Western secularisation and are irrelevant to the context of Indonesian Muslim society. Many of them emphasise that Islamic law never burdens individuals beyond their capabilities, and that the age of puberty is a fair limit set by God, not the result of political or social compromise.¹² They also frequently cite arguments that early marriage is preferable to falling into adultery, and use historical figures from Islam as justification for this practice. In this narrative, sharia is positioned as the arbiter of more sharia and the only valid standard for social welfare. At the same time, human rights principles are seen as a threat to religious authority and local cultural sovereignty.¹³

Conversely, human rights advocates and child protection groups assert that any form of tolerance or justification of child marriage is a serious violation of the state constitution and international commitments.¹⁴ They argue that religious arguments cannot be used to sacrifice children's fundamental rights. Empirical evidence on the harmful effects of child marriage is always used as a key argument to demand regulatory changes and close loopholes in marriage dispensations.

In this narrative, religion is considered to be subordinate to the principles of social justice and the protection of vulnerable groups. It needs to be reinterpreted in line with the times and universal human values. The contradiction between these two systems does not stop at the level of discourse and regulation, but extends to institutional practices and cultural norms.

Religious courts, as the institutions responsible for enforcing Islamic family law in Indonesia, often become arenas of compromise between the demands of Islamic law and

¹¹ Gandi Liyorba Indra, M Yasin Al Arif, and Abdul Qodir Zaelani, "The Ideal Age For Marriage in The Compilation of Islamic Law (KHI) and Psychology," *Al-'Adalah* 20, no. 1 (2023): 1–18, <https://doi.org/10.24042/adalah.v20i1.11598>.

¹² Nasaruddin Mera et al., "Child Custody Rights for Mothers of Different Religions: Maqāṣid Al-Sharī'ah Perspective on Islamic Family Law in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1645–68, <https://doi.org/10.22373/sjhk.v8i3.23809>.

¹³ Nur Insani et al., "Islamic Law and Local Wisdom: Exploring Legal Scientific Potential in Integrating Local Cultural Values," *Kanun Jurnal Ilmu Hukum* 26, no. 1 (2024): 101–24, <https://doi.org/10.24815/kanun.v26i1.32930>.

¹⁴ Neha Mishra, Tonny R Kirabira, and Judith N Onwubiko, "Intersection of Law, Religion, Customs, and the Problem of Child Marriage in Global South: A Comparative Study of India, Nigeria and Uganda," in *The Indian Yearbook of Comparative Law 2020* (Springer, 2023), 247–74, https://doi.org/10.1007/978-981-99-5467-4_14.

human rights.¹⁵ Data from the Supreme Court shows that the number of requests for marriage dispensation increased sharply after the revision of the law, demonstrating the strength of religious and cultural arguments amid efforts to reform national law. Marriage dispensation is often granted based on religious arguments and concerns about 'adultery', without seriously considering 'psychological condition and future of the girl.

Behind the normative contradictions, there are also fundamental differences in terms of power relations, social structures, and mindsets. In many Muslim communities, religious authorities still play a central role in shaping public opinion and social practices.¹⁶ The legitimacy of fatwas, spiritual teachings, and pesantren traditions is often stronger than state legal norms, let alone international human rights instruments, which are considered foreign. This causes resistance to human rights-based policies to come from above and from the grassroots.

The narrative of 'threats to religion and culture' has become an effective tool for opposition to reform efforts that are considered contrary to Islamic law. This contradiction is also influenced by the development of globalisation and the dynamics of identity politics in Indonesia. In the last two decades, there has been a sharp polarisation between conservative and progressive groups in their interpretation of the relationship between religion and the state.

The issue of child marriage is often used as a political commodity by both religious and state elites to gain mass support. Legal politics, which should be based on the protection of citizens, is often caught in a tug-of-war between maintaining social stability (based on religious tradition) and meeting international standards.

As a result, progressive legal reforms often stall midway or are implemented partially, with compromises that allow discriminatory practices to continue. The impact of these normative and policy contradictions is felt most acutely by children, especially girls, in areas with high levels of poverty and low levels of education.

They are the most vulnerable to exploitation, violence, and neglect of their human rights. In concrete cases, many girls are forced into marriage by their parents or communities under the guise of religion, even though they are not psychologically or biologically ready for married life. Many of them end up trapped in a cycle of poverty, dropping out of school, becoming victims of domestic violence, and experiencing life-threatening reproductive health complications. This phenomenon underscores that the unresolved normative debate between Islamic law and rights ultimately results in Sharia-al-worlddd victims, reinforcing inequality and the perpetuation of structural injustice across generations.

Several progressive Islamic thinkers have attempted to offer a middle ground through a reinterpretation of *maqāṣid al-shari'ah*, or the principles of Islamic law that place the protection of life, reason, lineage, and property as the primary foundations of Islamic law. They argue that the substance of Islamic law does not conflict with the protection of children's rights interpreted literally, rather than merely textually. By prioritising the *maqāṣid al-shari'ah*, the minimum age for marriage can be raised in line with scientific developments and the protection needs of children today, without being considered a deviation. How is sharia approach still faces significant resistance at the

¹⁵ Khoiruddin Nasution and Syamruddin Nasution, "Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (2021): 347-74, <https://doi.org/10.14421/ajis.2021.592.347-374>.

¹⁶ Dewa Agung Gede Agung, Ahmad Munjin Nasih, and Bayu Kurniawan, "Local Wisdom as a Model of Interfaith Communication in Creating Religious Harmony in Indonesia," *Social Sciences & Humanities Open* 9 (2024): 100827, <https://doi.org/10.1016/j.ssaho.2024.100827>.

grassroots level, as it requires a paradigm shift in thinking, education, and the courage of religious institutions to engage in more progressive and contextual *ijtihad*.

In such a situation, the big question that continues to arise is: where does the state stand in facing the contradiction between human rights and sharia rights? Is the state brave enough to take a firm stance to uphold the principle of child protection above religious arguments that allow child marriage, or will the state continue to choose an ambiguous compromise to maintain political stability and superficial social harmony? Reality shows that the state often takes a pragmatic position, granting dispensations, delaying law enforcement, or even allowing the discourse of 'cultural relativism' to extend to side protecting children's rights explicitly. The state's action reveals that the issue of child marriage is not merely a debate between two legal systems, but a reflection of the tug-of-war between traditional forces, religious authority, political interests, and the broader aspirations of universal human rights protection. Every policy born from this tug-of-war carries long-term consequences for the quality of Indonesia's human resources, particularly children. If this contradiction persists without the courage to take a firm stance, the constitutional and international mandate to protect children will remain an unattainable utopia. Ironically, the primary victims of this contradiction are children whom the state, religion, and society should protect. Yet, they become the subject of unresolved political, ideological, and interpretative compromises.

Analysing the conflict between sharia principles that permit child marriage based on puberty and international human rights standards that prohibit such practices before the age of 18 is not merely a matter of differing normative arguments. Beyond that, this contradiction is a battlefield of epistemological, ideological, and practical struggles that demand honesty, courage, and a vision for change. Efforts to resolve this issue are not merely about revising laws or imposing administrative bans, but require a paradigm shift, reinterpretation of sacred texts, and strengthening the state's commitment to ensuring every child's right to protection and a decent future. Without fundamental changes to the philosophical roots of these differences, the contradiction between sharia and human rights will recur, creating a cycle of injustice passed down from generation to generation, becoming one of the greatest paradoxes in the journey of Indonesia as a religious and constitutional nation.

The Instrumentalisation of Religion in the Legislative Process and Judicial Review

The tension between claims of religious moral authority and claims of the universality of human rights has become increasingly sharp when this issue enters the realm of judicial review at the Constitutional Court. As the guardian of the Indonesian constitution, the Constitutional Court often faces ethical, political, and legal dilemmas when receiving requests for judicial review of laws regulating the minimum age for marriage. In judicial review hearings, the battle of arguments between pro and con groups often brings in expert witnesses from both sides: religious scholars who present sharia arguments versus human rights experts, child psychologists, and public health experts who present scientific data and international convention principles. In many cases, the hearings become a sharp dialectical space, where constitutional judges must not only assess legal-formal aspects but also weigh political sensitivities, public sentiment, and the risk of social tension that may accompany their decisions.

The arguments of those opposing judicial review of marriage age restrictions generally revolve around three main aspects. First, they assert that Islamic law has provided a regulatory mechanism through the requirement of puberty, and that the state

should not usurp the authority established by God and interpreted by religious scholars. Second, they question the universality of human rights as a Western agenda that is considered contrary to local wisdom and national identity. Third, they warn of the risk of social disintegration and moral decay if the state regulates the private sphere, including family and marriage, too extensively. They also often use victim narratives – such as women who are ‘forced to marry young for fear of sin’ – to legitimise the status quo, while rejecting progressive interpretations that are considered too liberal.¹⁷

The group petitioning for judicial review to change the marriage age law utilised all legal instruments, human rights, and empirical data to show that child marriage is a violation of basic rights and a structural crime against girls. They presented a humanitarian narrative, statistical data on the adverse effects of child marriage, and international rulings mandating states to protect vulnerable groups. Interestingly, however, this group did not simply discard religious arguments, but instead constructed a new synthesis: citing modern interpretations of religious scholars, presenting progressive fatwas from a number of Islamic authorities, and emphasising *maqāṣid al-shari'ah* (the objectives of Islamic law) as the basis for raising the minimum age of marriage. Their efforts to dismantle the hegemony of conservative interpretations with religious arguments that are more responsive to contemporary realities mark a new chapter in legislative and judicial politics in Indonesia, where religion is no longer monopolised by a single interpretive pole.

In the judicial review process at the Constitutional Court, the phenomenon of the instrumentalisation of religion often results in ambiguous legal compromises. The Court, in its rulings on the age of marriage, often takes a middle ground: acknowledging the importance of child protection and the state's obligation to meet international human rights standards, while still allowing room for religious and cultural considerations as part of the nation's constitutional identity. This compromise is evident in the ruling affirming the increase in the marriage age limit, yet still leaving room for dispensation through religious courts on the grounds of ‘specific and urgent reasons.’ The Court's position reflects the political reality of Indonesia's legal system, which is constantly caught between religious conservatism, state pragmatism, and global human rights agendas. Instead of providing certainty and full protection for children, such legal compromises prolong a grey area where religious and state moral authorities claim legitimacy, yet neither dares to take a firm stance that fully upholds children's rights.

The instrumentalisation of religion in legislative advocacy and the testing of laws also has long-term implications for the formation of political identities and patterns of civil society participation in Indonesia. When religious issues are constantly used as tools for political mobilisation, the public becomes accustomed to interpreting every agenda for change as a battle between “the people” and “outsiders,” between “religious purity” and “foreign threats.” This polarisation is exacerbated by the development of social media, where public discourse is often reduced to black-and-white debates, ignoring the complexity of legal, social, and cultural realities. When religious authority is pitted against human rights authority, the space for critical dialogue, scientific argumentation, and rational compromise becomes increasingly narrow.

Behind the legislative and judicial review processes, which are rife with the instrumentalisation of religion, there are equally complex negotiations behind the scenes between religious elites, bureaucrats, and civil society actors. Many compromises are not

¹⁷ Nur Insani et al., “Empowering Muslim Women: Bridging Islamic Law and Human Rights with Islamic Economics,” *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (2024): 88-117, <https://doi.org/10.18860/j-fsh.v16i1.26159>.

the result of rational argumentation but rather of pragmatic needs to maintain political stability and superficial social harmony. In these negotiations, religion often functions as a 'bargaining chip' to reach agreements, resulting in legal norms that are not entirely progressive but rather full of exceptions, loopholes, and ambiguities. This further emphasises that the instrumentalisation of religion is not merely a matter of belief but a strategy of power in the legal and political spheres.

The tension between the claims of religious moral authority and the universality of human rights not only divides society but also creates legal confusion at the implementation level. On the one hand, law enforcement officials, judges, and state bureaucrats are required to enforce regulations by Constitutional Court rulings and international conventions.¹⁸ On the other hand, they must also respond to pressure from religious groups demanding respect for local values and fatwas issued by religious scholars. This situation often results in the implementation of child protection policies being half-hearted, fragmented, and inconsistent. Many public officials prefer to play it safe by compromising or even condoning child marriage rather than risk being labelled anti-Islam or agents of secularism. Legal ambiguities arising from the instrumentalisation of religion also impact the effectiveness of child protection advocacy in Indonesia.

Child protection agencies, women's organisations, and civil society groups working on the ground often encounter significant cultural and religious resistance, particularly in rural areas and communities that are highly compliant with religious authority. Educational efforts and campaigns for regulatory change are often labelled as foreign agendas, forcing human rights-based advocacy to compete with the 'moral guardian' narrative promoted by conservative groups. In this paradoxical and tense situation, legislative discourse and judicial review related to child marriage have become the largest socio-political laboratory for the Indonesian nation in determining the direction of the relationship between religion, the state, and human rights. The important decisions made in this process not only affect the fate of thousands of children every year but also shape patterns of power relations, legal authority, and collective national identity.

The instrumentalisation of religion in the legislative and judicial review processes cannot be separated from the long history of the dialectic between religion and the state in Indonesia. This phenomenon is not merely a reflection of the relationship between two authorities, but also a test of the political and legal maturity of the nation in managing pluralism, protecting citizens, and advancing social justice. If the contradictions and tensions arising from the instrumentalisation of religion are left unchecked without reflective criticism and policy innovations that favour vulnerable groups, this nation will remain trapped in a cycle of compromise that never truly resolves the root of the problem. It is precisely at this juncture that the courage to engage in critical dialogue, advance more contextual interpretations of religion, and uphold the principles of universal human rights becomes an imperative that cannot be postponed, to address the challenges of the times and ensure a more just future for every child in Indonesia.

The State's Dilemma in Protecting Children and Respecting Freedom of Religion

¹⁸ Yanto Sufriadi, "The Progress of Indonesian Law Enforcement Reform after 25 Years of the Reform Movement," *Asian Affairs: An American Review* 51, no. 1 (2024): 28–54, <https://doi.org/10.1080/00927678.2023.2268491>.

When the state is reluctant to take a firm stance in the name of respect for family autonomy and religious traditions, what happens is the perpetuation of masculine power, the marginalisation of girls' voices, and the normalisation of violations of their basic rights. Religious freedom in this context becomes a shield for old power structures that harm vulnerable groups. The state, instead of being a protector, risks becoming a silent facilitator of gender discrimination, especially when legal instruments provide broad room for interpretation and there are no effective oversight mechanisms or sanctions for violations of children's rights that occur within the framework of religion and family.

This situation is further complicated by the fact that national law, religious law, and international law are not merely three parallel layers of norms, but often clash and weaken each other in their implementation. On one hand, the state must comply with Constitutional Court rulings and international conventions on child protection, but on the other hand, it does not want to lose legitimacy in the eyes of the religious majority who hold firmly to tradition. Law enforcement officials, judges, and state bureaucrats in the field are also often confused, caught in a dilemma between enforcing child protection regulations and social pressure from religious leaders, families, and local communities.

Not infrequently, officials choose the safest political middle ground, which is to 'submit' to the voice of the majority and ignore the complaints of victims, rather than face the risk of stigmatisation or horizontal conflict. In daily practice, reporting cases of child marriage, domestic violence, or gender-based violence in highly religious environments almost always ends in informal settlements, 'family reconciliation,' or 'restorative justice' based on custom and religion, which often sacrifice the best interests of children and women.¹⁹ This policy grey area creates a legal ecosystem prone to inconsistency and opens opportunities for selective law enforcement.

Children's rights—which should be universal and non-derogable under any circumstances—become relative and contextual, depending on local interpretations, the strength of networks, and the negotiation capacity of families or communities.²⁰ The state often hides behind the pretext of 'respecting local wisdom,' 'maintaining social harmony,' or 'avoiding political unrest' to justify the weakness of legal intervention. On the other hand, international pressure for states to more firmly uphold human rights standards is often met with rhetoric of nationalism, anti-foreign intervention, and claims of cultural uniqueness. These two narratives continue to clash in the public sphere, resulting in patchwork policies that are full of compromises and often do not side with victims.

One clear example of this dilemma is how courts apply marriage dispensation rules. In many cases, courts focus more on religious arguments, economic urgency, or 'family shame' than on psychological considerations and the future of girls. Many dispensation requests are granted without a thorough examination of the conditions of the prospective spouses, especially girls, or careful consideration by psychologists and social workers. As a result, the state merely serves as a 'stamp of legality' for practices that are already socially and religiously conditioned at the family and community levels. In several Supreme Court rulings, the primary consideration is often maintaining 'social stability,' not the absolute protection of children's rights. This process reveals how state

¹⁹ Suud Sarim Karimullah et al., "Rethinking Gender In Islamic Law," *Musāwa Jurnal Studi Gender Dan Islam* 23, no. 1 (2024): 99–113, <https://doi.org/10.14421/musawa.2024.223.99-113>.

²⁰ Michael Bohlander, "Joining the 'Galactic Club': What Price Admission?—A Hypothetical Case Study of the Impact of Human Rights on a Future Accession of Humanity to Interstellar Civilisation Networks," *Futures* 132 (2021): 102801, <https://doi.org/10.1016/j.futures.2021.102801>.

policies, even in the judicial realm, continue to operate within the confines of a compromise between religious norms and demands for human rights protection.

It is also important to note that this state dilemma is not static, but constantly changing in line with political dynamics, civil society pressure, and international developments. In recent years, global pressure to abolish child marriage has grown, in line with the Sustainable Development Goals (SDGs) and periodic reporting on the implementation of human rights conventions. At the national level, advocacy by civil society, academics, and women's organisations has slowly succeeded in forcing the state to revise regulations, strengthen social protection systems, and expand gender equality education campaigns. However, changes at the normative level are often not matched by changes at the grassroots level.

In many regions, child marriage remains high, even increasing during times of economic crisis or pandemic, when families and communities choose shortcuts by exploiting legal loopholes and religious legitimacy to cope with the pressures of life.²¹ The state, in this position, is still grappling with an old dilemma: trying to appear progressive on the international stage, yet remaining permissive and compromising in the face of local pressures. This dilemma also reveals that legal policy is never merely a matter of legislative or administrative technique, but always a matter of values and power distribution. The state as a modern institution is often faced with the challenge of formulating substantive justice that transcends religious, cultural, and social class boundaries, yet it is not easy to escape the trap of identity politics and the logic of compromise.

In this position, the state requires political courage and a sharp moral vision to assert the protection of children as a fundamental right that cannot be diminished for any reason, while opening space for critical dialogue and more progressive religious reinterpretation.²² Without such bold steps, the state will only continue to maintain the status quo, making children and women the eternal victims of ambiguous policy compromises. The most important implication of this dilemma is the perpetuation of structural injustice and the reproduction of cycles of discrimination that seem to have state approval. When the state fails to take a firm stance, the message received by the public is that violations of children's rights, gender-based exploitation, and the sacrifice of women's futures in the name of religion or family are not only tolerated but even legalized.²³

A state that is weak in protecting children's rights will, in turn, pay a high price in the form of a generation that loses its potential, grows up traumatised, and struggles to compete in an increasingly competitive global order that favours principles of equality.²⁴ Therefore, the dilemma faced by the state in balancing child protection and respect for religious freedom can no longer be resolved through half-hearted compromises or

²¹ Ewa Batyra and Luca Maria Pesando, "Trends in Child Marriage and New Evidence on the Selective Impact of Changes in Age-at-Marriage Laws on Early Marriage," *SSM-Population Health* 14 (2021): 100811, <https://doi.org/10.1016/j.ssmph.2021.100811>.

²² Javad T Hashmi, "Overcoming Religious Illiteracy: Towards a More Inclusive Approach to Islamic Bioethics," *Journal of Islamic Ethics* 5, no. 1-2 (2021): 278-329, <https://doi.org/10.1163/24685542-12340063>.

²³ Suud Sarim Karimullah, "Children's Rights in Islam: Towards Gender Equality and Youth Justice," *Muadalah* 11, no. 2 (2023): 87-98, <https://doi.org/10.18592/muadalah.v11i2.11113>.

²⁴ Riyan Erwin Hidayat et al., "Integrating Islamic Humanitarianism and Modern Ulama Perspectives: Child Protection in Indonesia's Policy Framework," *Khazanah: Jurnal Studi Islam Dan Humaniora* 22, no. 1 (2024): 143-66, <https://doi.org/10.18592/khazanah.v22i1.12688>.

ambiguous normative harmonisation.²⁵ Concrete steps are needed, including the formulation of policies that firmly prioritise the best interests of children, the strengthening of oversight and law enforcement mechanisms, and the opening of dialogue with religious authorities to encourage more contextual, fair, and humanistic interpretations. The state must also ensure that freedom of religion and family autonomy are not used as justifications to perpetuate discriminatory practices, exploitation, or violence against children and women.²⁶ The state's commitment to child protection must be placed as an absolute priority, without sacrificing critical dialogue spaces and religious interpretation reforms that can address contemporary challenges.

From a broader perspective, this dilemma facing the state must be seen as a test of the maturity of democracy and the state's capacity to manage pluralistic values and legal systems. The state's courage to uphold the basic rights of children and protect vulnerable groups is a key measure of the quality of policy and constitutional integrity of the nation.²⁷ Indonesia, a large, diverse, and religious country, certainly faces greater challenges, but it also has tremendous potential to become a pioneer in harmonising human rights protection and respect for religious freedom—not through ambiguous compromises, but through the integration of progressive, contextual, and equitable values.

This dilemma should not be avoided, but rather used as an opportunity to affirm a new direction for legal and social policy development that favours the future of the nation's young generation. The state can no longer hide behind narratives of compromise, tradition, or 'false harmony' that only add to the long list of victims of half-hearted policies.

The protection of children's rights—including the right to life, education, health, and freedom from exploitation—must be a primary consideration in every policy, while respect for religious freedom must be understood as a space for renewal and dialogue, not a space immune to criticism and change. Only with a firm, intelligent, and inclusive stance can the state end the grey areas of policy and prove that child protection and respect for religious freedom can coexist as two pillars of a just and civilised nation.

Conclusion

The tension between Islamic law and human rights in cases of child marriage in Indonesia reflects a deep conflict between traditional heritage, religious interpretation, and demands for universal protection of children's rights. Throughout the legislative process, public debates, and judicial practices, the state appears trapped in a dilemma between fulfilling its international commitments to children's rights and the necessity of maintaining social harmony rooted in religious authority. The legal compromises that emerge from this tug-of-war often result in ambiguous policies: on the one hand, they affirm the normative protection of children, but on the other hand, they leave room for dispensations and loose interpretations that allow child marriage to continue. As a result, the state tends to maintain the status quo, where children—especially girls—remain in the most vulnerable position, becoming victims of exploitation, discrimination, and the absence of certainty regarding the protection of their rights in the name of religion, culture, or political stability.

²⁵ Afthon Yazid, Suud Sarim Karimullah, and Arif Sugitanata, "Comparative Study On Childfree Marriage In Some Selected Countries," *Jurnal Al-Hakim: Jurnal Ilmiah Mahasiswa, Studi Syariah, Hukum Dan Filantropi* 5, no. 2 (2023): 267–84, <https://doi.org/10.22515/jurnalalhakim.v5i2.7869>.

²⁶ Suud Sarim Karimullah, "The Urgency of Building Legal Awareness on Care of Children in the Family," *Amsir Law Journal* 3, no. 2 (2022): 76–86, <https://doi.org/10.36746/alj.v3i2.66>.

²⁷ Suud Sarim Karimullah, *Cinta Dalam Bingkai Hukum* (Jakarta: Bhuana Ilmu Populer, 2024).

Resolving this tension cannot be achieved by choosing one side and sacrificing the other, but rather requires the courage to build a new synthesis rooted in respect for children's rights as the cornerstone of justice and the future of the nation, without negating the richness of tradition and spirituality. The state, together with civil society and religious authorities, is called upon to move away from symbolic compromises towards a paradigmatic transformation—by strengthening spaces for critical dialogue, encouraging progressive *ijtihad* in the interpretation of sharia, and ensuring that child protection becomes the foundation of every legal and social policy. This tension is a test of the maturity of democracy, political integrity, and the nation's commitment to the most vulnerable groups. Indonesia will only be able to escape the trap of history if it dares to place child protection not as a side issue, but as a mirror of civilisational quality and a sign of genuine progress towards social justice.

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