

Between Protection and Permissiveness: A *Fiqh Siyasah* Reexamination of Marriage Dispensation in Indonesia

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Abstract: Child marriage is still an ongoing systemic problem in Indonesia, reflected in the high number of marriage dispensation applications in the Religious Courts each year. Although various studies have addressed this issue from the perspective of legal reform, procedural law, and Islamic legal theories such as *maqāṣid al-shari'ah* and *sadd al-dhāri'ah*, not many studies have highlighted the issue of justice within the framework of *fiqh siyasah*. This article aims to examine whether the regulation of marriage dispensation in Indonesia has reflected substantive justice for children, using a normative-critical approach through an analysis of three main legal instruments: Law No. 16/2019 on Marriage, Supreme Court Regulation No. 5/2019, and Child Protection Law No. 35/2014. Basing the analysis on the principles of *fiqh siyasah*-such as benefit, prevention of harm, and justice in legal governance-the study found a fundamental contradiction between the ideal of child protection and a legal structure that is permissive of the practice of child marriage. The administrative nature of the marriage dispensation mechanism and the lack of clear reasons tend to legitimize social and family failures rather than address them. This study recommends a reinterpretation of dispensation regulations within the ethical-political paradigm of Islamic law as well as systemic harmonization of family law regulations in Indonesia to ensure maximum protection for children.

Keywords: Justice; Marriage Dispensation; Child Protection; *Fiqh Siyasah*.

Introduction

Child marriage in Indonesia has not yet reached an end point (Rasyid et al., 2024). This is evidenced by the data on marriage dispensation cases which are still high every year. Data from the Religious Courts Data Center states that the number of marriage dispensation cases in 2021 was 62,918 cases (Pusatdata.badilag.net, 2024b), in 2022 there were 58,017 cases (Pusatdata.badilag.net, 2024c) and in 2023 there were 42,764 cases (Pusatdata.badilag.net, 2024d). Even though in terms of numbers, the number of marriage dispensation cases has always occupied the highest position in the case data in addition to applications for divorce, divorce and marriage validation/istbat nikah (Pusatdata.badilag.net, 2024a). UNICEF data ranks Indonesia eighth in the world (Ratnaningsih et al., 2022; UNICEF, 2024) and the highest in East and Southeast Asia in terms of the prevalence of child marriage under the age of 18 with 5,232,300 cases out of a total population of 32,100,000 women and children in Indonesia. (UNICEF, 2025)

The term "Justice" is widely discussed in various disciplines, including marriage law. The concept of justice both at the legal level and in other objects (Laksana, Musofiana, et al., 2025), is considered as something abstract and subjective, because there are no standard parameters. (Zawawi et al., 2025) While the concept of justice in Islam is often related to the divine aspect in the perspective of revelation known as maslahah. The concept of justice requires the use of reason in order to make comparisons between cases that have qath'i evidence in the word of God and the Sunnah of the Prophet to other cases that have not been legitimized by law. (Zahari & Safiai, 2025) Thus, as a result of ijtihad, Islamic law can always develop

and reach other cases more broadly with the principle of justice (Taqiyuddin, 2019), including the study of marriage dispensation.

The study of marriage dispensation has been researched from several aspects. So far, the study of marriage dispensation is still related to the reasons (Amalia et al., 2022; Fadhli & Warman, 2021; Kurniawan & Refiasari, 2022; Rohman & Cholil, 2019; Yuni, 2021) and factors (Imar, 2020; Noviantoro, 2019; Sebyar, 2022) of the occurrence of marriage dispensation applications, legal reform (Canda, 2021; Dewi, 2021; Kurniawati, 2021; Yusuf, 2022), procedural law practices (Marwiyah et al., 2023; Miranika, 2020; Mursida & Neneng Desi Susanti, 2022), law review (Bahroni et al., 2019; Ilma, 2020; Novindasari & Ilmiah, 2021; Octavia et al., 2023), human rights (Sriono et al., 2023) to paradigm shift (Fauzi, 2022; Najib et al., 2022). Meanwhile, the study of Islamic law regarding this marriage dispensation is still related to the study of maqashid sharia (Hasanah, 2018; Ma'rifah, 2019; Nabilah et al., 2024; Sanuri, 2021), maslahah (Kasim & Daud, 2022) dan sadd al-zariah (Mutakin et al., 2021; Umam, 2023). From the studies of marriage dispensation that have been conducted previously, no studies have been found that discuss the realization of justice in marriage and its relation to the contextualization of fiqh siyasah in the regulation of marriage dispensation in Indonesia.

This study aims to discuss how the realization of the value of justice in the existing rules regarding marriage dispensation in Indonesia. This study will be discussed in the perspective of *fiqh siyasah* which is related to several *fiqh* rules (Laksana, Huda, et al., 2025). With the research question of what are the regulations related to marriage dispensation and how is the form of justice in the regulation of marriage dispensation in Indonesia, this study is important to study because justice is highly demanded for its solution role in facing the challenges of humanitarian issues, including in the case of marriage dispensation.

Literature Review

Justice in the Context of *Fiqh Siyasah*

Fair in the study of *fiqh siyasah* has a meaning. According to Imam Ibn Taymiyah, justice is to carry out something as it should be and complete it. Meanwhile, according to As-Sa'diy, fairness is carrying out obligations and asking for rights as they should be. At least, there are four rules of *fiqh siyasah* related to the interests of justice, namely; first, the law is made to bring benefits and perfect them and eliminate harms and minimize them. The content of the meaning of this rule is an order to achieve pure maslahat (without reason) such as the command to believe in Allah and glory Him. (Bunyamin et al., 2025) Then, the command to achieve a real benefit (with a reason), such as the command to jihad in the cause of Allah, because there is a real benefit that takes precedence in it, namely the elevation of the religion of Allah and the destruction of the disbelievers. The next meaning is the prohibition of doing pure harm (without reason) such as practicing shirk and practicing sorcery. Another meaning is the prohibition of doing real damage. Such as the prohibition of drinking alcohol and gambling.

Second, justice is commanded in all aspects. The meaning of this rule is that Allah forbids doing wrong. In addition, Allah will not punish what the servant did not do. This is also forbidden to servants. Justice is the foundation of everything. Without justice, life will not be built. Third, the law can control while lust cannot control. This rule means that Sharia is built on two foundations that cannot be separated; namely sincerity solely because of Allah and following the instructions of the Prophet. The very essence of the implementation of Sharia is to release mukallaf from following lust. Therefore, the perfect believer is the one who follows the guidance of the Messenger; in the form of carrying out orders and leaving prohibitions. Fourth, Allah commands doing good to everything. This rule shows that Islam is a noble religion because Islam came as a mercy and guidance for the universe. (Nabilah & Hayah, 2022) Islam not only commands to do good to fellow human beings but all living things (Shalih, 2011).

Marriage Dispensation

Dispensation is a form of exception to the implementation of legal provisions or laws that should formally apply (Octavia et al., 2023). Marriage dispensation is an exception to the provisions of article 7 paragraph 1 of Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage which contains the minimum age of marriage for prospective men and women (Janah, 2020).

Based on the wording of Article 7 Paragraph (2) of Marriage Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage, dispensation of marriage or in the language of the law "dispensation of marriage" is an application that can be submitted by the parents of the male party and / or the parents of the female party due to urgent reasons and accompanied by sufficient evidence to carry out marriage but there is a deviation in the age provisions of the prospective bride and groom who have not reached the age of 19 (nineteen) years. This provision is also contained in Article 1 paragraph (5) of the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications (RI, 2019).

Although in the statutory regulations marriage must take place for the bride and groom who are 19 years old, in the consideration of the decision on the marriage dispensation application contained in the court, the judge may grant and grant the application for marriage dispensation with the following objectives; maintaining the best interests of the child (the applicant who will enter into marriage but has not yet fulfilled the administrative requirement of 19 years), respect for the child's opinion (this is known from the trial where the applicants were given direction and asked for their opinion regarding the desire to marry); avoiding discrimination, maintaining aspects of gender primacy, a form of equal treatment of children before the law, providing justice and a form of benefit for children, legal certainty, and rejecting greater harm if the marriage is postponed and waiting for the applicant to be 19 years old (Putusan & Agung, 2020). However, what is very unfortunate in the various regulations concerning marriage dispensation is that there are no restrictions stating the reasons that are justified to be able to apply for marriage dispensation.

Method

This research uses doctrinal legal methods with a normative-critical approach, analyzing legal texts (laws, PERMA, court decisions) through the perspective of *fiqh siyasah* and the legal philosophy of justice in Islam. This study is a literature study that takes sources using documentation techniques from regulations and laws related to marriage dispensation cases in Indonesia, namely Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications and Law No. 23 of 2002 which was later amended by Law No. 35 of 2014 concerning Child Protection. These three regulations and laws are analyzed by taking an inventory of articles related to marriage dispensation cases and examining them article by article in order to find a form of justice related to marriage dispensation cases in Indonesia using of *fiqh siyasah* perspectives.

Results and Discussion

Opportunities and Prevention of Marriage Dispensation in Indonesia

Regulations related to marriage dispensation in Indonesia seem confusing in terms of legal certainty. There are several regulations and policies that can be related to marriage dispensation cases. This ambiguity occurs because one regulation gives the impression of preventing and allowing marriage dispensation at the same time. This data can be seen in the following table.

Table 1. Prevention and Opportunities for Marriage Dispensation in Indonesia

Regulation	Age	Nature	Description
Law No. 16 of 2019 concerning the amendment of Law No. 1 of 1974 concerning Marriage Article 7 paragraph (1)	19 Years	Prevention	Marriage license age reference
Law No. 16 of 2019 concerning the amendment of Law No. 1 of 1974 concerning Marriage Article 7 paragraph (2)	Under 19 Years	Opportunities	Can apply for a marriage license, but with a court marriage dispensation decree

Supreme Court Regulation (PERMA) No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Requests	Under 19 Years	Opportunities	Guidelines for applying for marriage dispensation
Law No. 23 of 2002 which was later amended to Law No. 35 of 2014 concerning Child Protection Article 26 paragraph (c)	Under 18 Years	Prevention	Obligations and responsibilities of parents to prevent child marriage
Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 30 of 2024 concerning Marriage Registration Article 4 paragraph (1) letter (k)	Under 19 Years	Opportunities	Registration of marriage intention, one of which is to attach a marriage dispensation letter from the Court for Bride and Groom who is not yet 19 (nineteen) years old calculated on the date of execution of the marriage contract
Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 30 of 2024 concerning Marriage Registration Article 11 paragraph (2) letter (b)	19 Years	Prevention	The requirements for prospective husbands and wives are at least 19 (nineteen) years old
BKKBN Ideal Age of Marriage (published October 01, 2024). (BKKBN, 2024)	21 years old for women and 25 years old for men	Prevention	Ideal age of marriage for bride and groom

The higher number of marriage dispensation applications is thought to be due to the absence of specific restrictions governing the reasons why a person can apply for dispensation. Even though in the consideration of Supreme Court Regulation (PERMA) No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, it is stated that marriage can only be carried out for couples who have met the age requirements (i.e. 19 years old) and in certain circumstances the court can grant marriage dispensation in accordance with the laws and regulations, the rules regarding marriage dispensation in Indonesia are considered to only regulate administrative matters.

Article 7 of Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage, which contains the reasons for applying for marriage dispensation, states that marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. Meanwhile, in the event of a deviation from the age provisions as referred to in paragraph (1), the parents of the male party and/or the parents of the female party may request dispensation to the Court on very urgent grounds accompanied by sufficient supporting evidence. Furthermore, the granting of dispensation by the Court as referred to in paragraph (2) must hear the opinions of both prospective brides and grooms who will enter into marriage.

The absence of rules regarding what reasons are allowed to apply for dispensation in the above law is considered to reduce the concept of marriage dispensation. Whereas marriage dispensation is a form of limited state administrative decision to set aside a prohibition in a special case. Thus, it is hoped that the formulation of the permissible grounds for granting dispensation will be the most fundamental element to be carried out so that the purpose of dispensation will truly be to resolve cases that cannot be controlled and create public good.

In line with this, the Supreme Court Regulation (PERMA) No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications only lists the principles that judges must fulfill in adjudicating marriage dispensation applications, namely as follows: The best interests of the child (who has not reached the age of 19); The right to life and development of the child; Respect for the child's opinion; Respect for human dignity; Non-discrimination; Gender equality; Equality before the law; Justice; Benefit; and Legal certainty.

From this principle, it appears that the purpose of the reasons that can be put forward by dispensation applicants is not specified in detail. All the principles seem to rest on the "best interests of the child", the definition of which is still general. The best interests of the child can be interpreted in all aspects concerning the child, including actions taken by the government, the behavior of the community towards the child, the legislative body, and the judicial body. This interest needs to be considered because the child is expected to be the successor of the nation, parents, and family; and society is responsible for protecting and maintaining the human rights of the child in accordance with the obligations imposed by positive law in Indonesia.

Then, in Law No. 23 of 2002 which was later amended in Law No. 35 of 2014 concerning Child Protection, contains several points regarding children's rights and the obligations and responsibilities of parents. Children's rights are found in Article 9 paragraph (1) which states that every child has the right to receive education and teaching in order to develop his or her personality and level of intelligence in accordance with his or her interests and talents. Furthermore, Article 10 states that every child has the right to express and be heard, receive, seek, and provide information in accordance with their level of intelligence and age for their own development in accordance with the values of decency and propriety. The Obligations and Responsibilities of Parents are found in Article 26 which states that parents are obliged and responsible for nurturing, maintaining, educating, and protecting children; developing children according to their abilities, talents, and interests; preventing marriage at the age of children; and providing character education and instilling ethical values in children.

When looking at the main two points above and juxtaposed with the judge's consideration in deciding the marriage dispensation permit as explained in the previous section, of course this is very contradictory. If based on the age called "Child" in Law No. 34 of 2014 concerning amendments to Law No. 23 of 2004 concerning child protection, it is clear that the judge's decision is contrary to the law that mandates the prevention of child marriage (under the age of 18). Likewise, if based on Law No. 16 of 2019 on the amendment of Law No. 1 of 1974 Article 7 paragraph (2), regarding the ability of the parents of the male party and/or the parents of the female party to request dispensation to the Court on very urgent grounds accompanied by sufficient supporting evidence.

Most recently, the Ministry of Religious Affairs of the Republic of Indonesia in the Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 30 of 2024 concerning Marriage Registration still contains legal uncertainty regarding the age of marriage. Article 11 paragraph (2) letter b explains that the marriage requirement for prospective husbands and prospective wives is at least 19 years old. Meanwhile, Article 4 paragraph (1) letter k explains that one of the attachments in the registration of the will to marry is a marriage dispensation letter from the Court for Bride and Groom who are not yet 19 (nineteen) years old calculated on the date of the marriage contract (Peraturan Menteri Agama Republik Indonesia Nomor 30 Tahun 2024 Tentang Pencatatan Pernikahan, 2024). On the other hand, according to the National Population and Family Planning Agency (BKKBN), the ideal age for marriage is 21 years for women and 25 years for men. Child marriage is considered risky because couples tend not to be emotionally, financially or mentally prepared. This lack of readiness can lead to various challenges in married life, which ultimately increases the risk of divorce. In addition, marrying at a more mature age allows couples to build a stronger foundation in the relationship, both in terms of communication, economic stability, and planning for the future together. (BKKBN, 2024)

Injustice Issues Related to Marriage Dispensation

Injustice in marriage dispensation can be seen in three ways. *First*, the absence of a limitation of reasons. The absence of clear limitations on the urgent reasons for marriage dispensation opens a loophole for child marriage. *Second*, Contrary to the Child Protection Law. Judges' decisions often contradict the mandate of the Child Protection Law which prohibits marriage under 18 years of age. *Third*, Family Negligence Factors. The reason for granting permission to marry underage is often due to the negligence of the family environment in maintaining the rights and obligations of children. (Fakhria et al., 2024)

Dispensation of marriage itself has become a problem, when in essence this is done when the parties do not meet the age permitted for marriage. Furthermore, the absence of restrictions on the reasons for

marriage dispensation is also an issue (Naimah et al., 2024). The existing rules regarding dispensation of marriage (dispensasi kawin) are still administrative in nature. The Marriage Law, which is supported by the Child Protection Law, has not been able to prevent child marriage. Article 7 paragraph (2) of Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage seems to backfire in child protection because it seems that this article actually opens the door to child marriage (underage). Based on the analysis carried out, the author has not found a separate rule stating what urgent matters allow granting a marriage dispensation permit. The things that become considerations for granting permission to marry underage are caused by negligence of the family environment in maintaining rights and obligations (analysis of Article 9, Article 10 and Article 26 of Law No. 24 of 2014 concerning Child Protection).

Furthermore, the case of child marriage is of concern to several independent institutions and related organizations. The following is some data collected by the author from these institutions that highlight the problem of child marriage. First, the Annual Record of The National Commission on Violence Against Women (Komnas Perempuan). The National Commission on Violence Against Women (Komnas Perempuan) is an independent state institution that concentrates on upholding the human rights of Indonesian women. This institution, which was established on October 9, 1998, was born from the demand of the community, especially women, as a channel for demands to the government regarding issues of violence against women at the local, national, regional and international levels. In the Fact Sheet and Key Points of Komnas Perempuan's 2020 Annual Report (CATAHU), it pays special attention to child marriage. As data collected by Komnas Perempuan from the Data on Violence against Women from the Religious Courts Agency (Badilag), it was found that cases of dispensation of marriage (child marriage) were the ones that experienced an extreme increase, namely three times the previous year. Based on BADILAG data in 2019 there were 23,126 cases of child marriage and a sharp increase to 64,211 cases in 2020. Among the causes are due to the pandemic situation that affects the intensity of the use of gadgets and family economic problems as well as changes in the Marriage Law that raise the age of marriage to 19 years for women. This is certainly an important issue considering the pandemic situation that has not yet ended, which is not only a health problem but has spread to the issue of children and their protection.

Second, the high number of cases in the Religious Courts. Child marriage, as evidenced by the application for marriage dispensation by parents or guardians, is the fourth largest case in the case data records at the Religious Courts. Even from 2018 to 2020, there was a 400% jump in cases from 15,574 cases in 2018 to 63,226 cases in 2020. The important role of the family in preventing child marriage is certainly the main basis so that requests for marriage dispensation do not occur in the community. However, based on several analyses of court decisions on marriage dispensation permits, it is precisely the application for marriage dispensation that is requested by the parents or guardians because of the wishes of children who are afraid of falling into immorality. Thus, the point of the role of parents in the responsibility of preventing child marriage cannot be realized properly. Not to mention the marriage dispensation law, which still opens the door to filing a dispensation application. This certainly needs to be reviewed by the relevant parties.

Third, Indonesian Child Protection Commission (KPAI) recommendations. Furthermore, the Indonesian Child Protection Commission (KPAI) also supervised the issue of child marriage and the decision on the marriage dispensation application. KPAI stated that the higher number of applications for dispensation of marriage is one of the consequences of the increase in the age of marriage and this must be a concern in order to fulfill children's rights. Therefore, KPAI recommends the establishment of a task force for the prevention and handling of child marriage from regional apparatus for both registered and unregistered marriages. Here are some KPAI recommendations related to the issue of child marriage.

Recommendations to the President of the Republic of Indonesia to conduct a review of the Child Protection Law considering that several norms for the protection and fulfillment of children's rights have not been included in the Child Protection Law. These norms include cyber-based child protection, strengthening parents to have parenting knowledge and skills, mechanisms for protecting children who experience violence, mechanisms for protecting and fulfilling the rights of children who are victims of parental conflict, and details of efforts to prevent violence against children. (Fauzan & Nufus, 2024)

Recommendations to the House of Representatives to amend the Child Protection Law considering that there are several norms related to the protection and fulfillment of children's rights that have not been regulated in the law. Furthermore, it can increase the budget for the implementation of the protection and fulfillment of children's rights, including the supervision budget. The recommendations to all ministries and institutions to make optimal efforts to prevent child marriage in synergy with all stakeholders in education units, communities, and families. Finally, recommendations to the Indonesian Supreme Court to increase the number of juvenile judges in the General Court and Religious Court as the foundation of the court in handling cases of marriage dispensation and civil cases involving children.

With several notes and recommendations from various independent institutions and organizations and state institutions, it is seen that the issue of child marriage is one of the major problems in this country (Idris et al., 2024). This is evident from the high increase in the number of cases to recommendations for supervision and review of laws related to child protection (Zumrotun & Muna, 2025). This is a form of justice and fulfillment of children's rights as the future of society and the country itself.

Justice in Marriage Dispensation: A Comprehensive Interpretation in the Indonesian Context

The existence and understanding of the minimum age of marriage stipulated in the law does not seem to contribute directly to reducing the practice of child marriage, at least in the short term. Child marriage can still occur without official registration or through falsification of documents and information, while law enforcement efforts against violations of this rule are rare. Even so, the law still plays an important role as a normative reference; qualitative and quantitative data show that people tend to take into account and refer to the rule of law in determining when a marriage is considered appropriate. (International, 2015)

Marriage regulations in Muslim countries vary in setting the minimum age as well as mechanisms for marriage dispensation, with Indonesia, Malaysia, Morocco and Tunisia showing different approaches according to their Islam-based legal systems. Indonesia sets the minimum age of marriage at 19 under Law No. 16/2019, but still allows marriage dispensation through religious courts without strict supervision, often providing a loophole for child marriage (Azni et al., 2025). In contrast, Malaysia sets a minimum age of 18 years for males and 16 years for females, with dispensation only being granted through the Syariah Court after rigorous evaluation by psychologists and social workers (Karini et al., 2024), making it more difficult to obtain than Indonesia. Morocco, with a minimum age of marriage of 18 under the Personal Status Code, also allows dispensations, but judges are required to consider the social and psychological impact on girls before approving them, ensuring a stronger oversight mechanism than Indonesia. Tunisia, which has the most progressive policy (Ash Shiddieqy et al., 2024), sets the minimum age of marriage at 18 years and hardly grants marriage dispensation, except in very exceptional cases that require strict evaluation by the courts, so child marriage is less common. This comparison shows that Indonesia's legal system is still too lax in granting dispensations, leading to legal uncertainty that often disadvantages girls, while countries such as Malaysia, Morocco and Tunisia have taken more stringent measures to limit child marriages and strengthen legal protection for them. Egypt strictly limits the age of marriage to 18 years for both men and women and there is no loophole for marriage license even if there is a guardian's permission (Husien, 2024; Laksana, Susilo, et al., 2025; Novianti, 2023). By looking at the success of regulations in these countries, Indonesia can adopt a stricter approach with the elimination of dispensation loopholes or the implementation of stronger monitoring mechanisms, to ensure that the legal system truly functions as an instrument to protect girls' rights and not as a tool to legitimize patriarchal practices in family law.

This study found that the regulations related to marriage dispensation cases; both those contained in the law and those contained in the Supreme Court regulations when juxtaposed with the judges' considerations in deciding the permission to apply for marriage dispensation, are very opposite. The intention to prevent marriage in the Child Protection Law is not in line with the administrative provisions contained in the Supreme Court Regulation (PERMA) number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications coupled with the Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 30 of 2024 concerning Marriage Registration.

In general, the law aims to create justice, ensure legal certainty in society, and provide benefits from its existence. The three main elements of legal objectives-justice, legal certainty, and benefit-should be applied in the law enforcement process to avoid imbalance. These legal objectives form the basis for the application of law in society, both in protecting individual rights and maintaining social order (Tapia-Hoffmann, 2021). In the Indonesian legal system, marriage is regulated by positive law, which comes from state legislation, as well as Islamic law (*Fiqh Siyasah*), which plays a role in providing a normative perspective based on sharia teachings (Nabilah & Rizal, 2024). Although the regulation of marriage has been strengthened by Law No. 16/2019, the practice of marriage dispensation shows an imbalance between positive law and the values of justice in Islam, especially in protecting girls' rights from child marriage.

Fiqh siyasah provides the perspective that public policy should be maslahah (public good) oriented, ensuring a balance between individual interests and the interests of society (Ahmed, 2024). The main principle of *Ta'dil Siyasah* is that leaders should consider the balance between individual and societal interests and between sharia law and practical needs in governance (Ahyani et al., 2024). However, in practice, marriage dispensation regulations in Indonesia often accommodate family interests and patriarchal culture, rather than considering substantive justice for girls. Therefore, it is important to examine how positive law and *fiqh siyasah* can be harmonized in marriage regulation, to ensure better legal protection for children.

In the context of *fiqh siyasah*, state policies must prioritize justice, public welfare, and individual protection (Alfurqan et al., 2025), including in marriage regulation. The principle of deliberation (*Shura*) requires every legal decision to consider consultations from various competent parties, such as legal experts, psychologists, and child protection groups, so that it is not only based on the interests of the guardian or family alone. Justice (*Adl*) emphasizes that marriage law should favor children as individuals, so that it is not only subject to cultural norms or family economic pressures, but also ensures the protection of their rights. *Mashlahat* (*Maslahah Mursalah*) is an important principle in determining marriage dispensation policies (Nabilah et al., 2021), where the state must focus on protecting children from the negative impacts of early marriage, rather than simply making room for patriarchal practices that are still entrenched in the family law system (Elfia et al., 2024; Liman & Rifai, 2024). Accountability (*Mas'uliyah*) requires the state to be responsible for ensuring that every marriage dispensation has strict oversight, not only fulfilling administrative procedures, but also considering the psychological, social and economic impacts on girls. By applying these principles, marriage regulation can favor substantive justice, remove legal loopholes that allow child marriage, and ensure that legal policies truly function as instruments of protection, not as tools that can be manipulated by patriarchal interests. (Setiawan, 2023; Setiyaji & Martanto, 2025)

Marriage regulations in Indonesia set a minimum age of 19 years, but still open opportunities for marriage dispensation, creating legal ambiguity that is contrary to the principles of justice in *fiqh siyasah* (Husni & Mustofa, 2023). Dispensations are often granted without considering the psychological, educational and economic impact on girls, so early marriages continue to occur even though normative age limits have been set. The lack of supervision in granting dispensations allows child marriage to continue, as the legal system emphasizes compliance with administrative procedures over substantive protection for affected individuals (Maloko et al., 2024; Rusdi et al., 2024). Furthermore, family dominance in marriage decisions reinforces patriarchal structures, where girls do not have full autonomy in determining their future, and are often trapped in forced marriages due to social or economic pressures (Sulaeman et al., 2025). The state also acts as an actor in systemic oppression (*Tazyiq*), because marriage regulations still provide space for practices that do not favor substantive justice, especially in the context of family law that maintains gender inequality (Khanifah & Iklilah Muzayyanah Dini Fajriyah, 2023). Under these conditions, marriage dispensation is not only a legal loophole, but also a tool for patriarchal actors to maintain their dominance, so that more assertive legal reforms are needed to remove the dispensation loophole and improve protection mechanisms for girls.

In legal systems, there are two main approaches to assessing the fairness of a policy: procedural justice and substantive justice (Röhl, 2019). Procedural justice focuses on the conformity of the legal process

with the applicable rules, while substantive justice is oriented towards the end result of the policy, ensuring social justice and the protection of human rights (Saleh et al., 2024). In the context of marriage dispensation in Indonesia, existing policies prioritize procedural justice, where judges only consider whether the dispensation application meets the formal requirements, without considering the long-term impact on girls. This can be seen in Supreme Court Regulation (PERMA) number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications Article 2 and Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 30 of 2024 concerning Marriage Registration. In addition, although marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years in Article 7 paragraph (1) of Marriage Law No. 1 of 1974 and then underwent changes in 2019 in Law No. 16 of 2019, dispensation cases are still regulated even with additional article points that provide opportunities for marriage dispensation applications to be wide open with the ability of the parents of the male party and/or the parents of the female party to request dispensation from the Court on very urgent grounds accompanied by sufficient supporting evidence in the same law Article 7 paragraph (2).

As a result, many dispensations are granted without in-depth analysis of the psychological, social and economic aspects that girls will face after marriage. This approach creates injustice in the legal system, because although the marriage dispensation regulation is considered procedurally legal, in reality the policy does not provide sufficient protection for girls, but rather opens up space for patriarchal practices in family law. In Indonesia's marriage dispensation regulations, the legal procedure allows for dispensation to be applied for through religious courts, provided that there are urgent reasons, such as pregnancy outside of marriage or economic pressure. Judges in this system only assess the legal aspects, without considering the social implications and welfare of girls, so regulations that aim to protect individuals from the adverse effects of early marriage become loopholes that maintain gender inequality. In contrast, substantive justice requires the legal system to assess the ultimate impact of marriage dispensation, such as girls' psychological and social security, and their right to choose their future without external pressure. Unfortunately, current regulations still prioritize administrative procedures, without considering that early marriage can lead to educational disconnection, domestic inequality, and increased risk of domestic violence. Therefore, marriage regulation reform needs to eliminate loopholes in marriage dispensation, by setting the minimum age as a single standard without exceptions, tightening the dispensation evaluation mechanism by involving psychologists and social workers, and removing patriarchal dominance in the family law system to ensure girls have full rights in determining their future. Raising legal awareness and educating the public are important steps in changing the view that dispensation is not a tool to legitimize child marriage, but should be used with justice and welfare in mind. By applying the principles of *Ta'dil Siyasah* (Ahyani et al., 2024), marriage regulation can be more in favor of substantive justice, ensuring that the law functions as an instrument of protection, rather than a tool for patriarchal practices in family law.

In the perspective of *fiqh siyasah*, legal policies must consider substantive justice, not just procedural justice, so that marriage regulations truly favor the welfare of children and avoid manipulation of family law by patriarchal actors. Therefore, firm and systematic legal reforms are needed to eliminate gender discrimination in marriage regulations and ensure that the state functions as a protector of children's rights, not as an instrument of Tazyiq (systemic oppression). A key step in the reform of marriage regulation is the establishment of a single standard age of marriage, by removing the dispensation loophole, so that the age limit of 19 years is truly a non-negotiable legal standard. The abolition of dispensation will ensure legal certainty, prevent patriarchal practices in family law, and protect girls' rights, by preventing early marriages that pose a high risk to their health and well-being. If dispensations are retained, then the mechanisms should be tightened, by involving psychologists and social workers in the application process, implementing independent consultations, where girls are given the opportunity to speak directly to the judge without pressure from the family, and increasing court transparency and accountability, with more detailed reporting on the reasons for granting dispensations. In addition, the state should be more active in protecting girls' rights, rather than simply granting dispensations on the basis of family requests. These reforms include stricter oversight of the dispensation process, the implementation of a monitoring system for couples marrying under the age of 19, and the elimination of patriarchal roles in the family law system, ensuring that every policy is truly in favor of girls. To support these reforms, public education campaigns

are needed to raise public awareness of the dangers of child marriage, involving educational institutions, child protection organizations and religious leaders, as well as improving legal understanding, so that people understand that dispensation is not a tool to legitimize child marriage, but should be used with justice and welfare in mind. These reforms should also promote girls' empowerment, by ensuring that they have access to education, health and information that can protect their rights (Karima et al., 2024). By implementing these reforms, marriage regulations in Indonesia can be more fair, transparent and pro-girl, and remove legal loopholes that still allow manipulation of family law by patriarchal actors. In addition, the application of sanctions for violators of marriage regulations is needed to ensure that legal policies are actually implemented with strong legal certainty, so that no party can take advantage of legal loopholes to ignore girls' rights. By implementing these reforms, the Indonesian legal system can be more fair, transparent, and in favor of the interests of girls, and ensure that marriage regulations truly function as instruments of protection, not as tools for discriminatory practices.

After this reform is carried out by creating a single and unambiguous legal certainty, it is necessary to reaffirm the position of each regulation by related institutions that handle the marriage process such as the Office of Religious Affairs (KUA) and the Religious Court in considering these regulations in deciding cases. Because, despite efforts to socialize the prevention of child marriage from various parties, these two institutions are very instrumental in filtering the number of child marriages in Indonesia.

Conclusion

The effectiveness of a law, seen from the achievement of the purpose of making the law or not. Marriage dispensation is considered to be a solution for young couples who are not yet 19 years old to enter into a legal marriage according to the Marriage Law and Islamic Law. Because, if this step is not taken immediately, it will lead the couple to greater damage (mafsadah) such as adultery. However, in the study of *fiqh siyasah*, justice is the prohibition of doing wrong. The unpreparedness of underage couples and the impacts that occur afterwards show that this marriage dispensation regulation has not realized justice and other recommendations and solutions must be found. It can be seen that the enforcement of norms for the protection and fulfillment of children's rights has not been included in the Child Protection Law. These norms include cyber-based child protection, strengthening parents to have parenting knowledge and skills, mechanisms for protecting children who experience violence, mechanisms for protecting and fulfilling the rights of children who are victims of parental conflict, and details of efforts to prevent violence against children. This study found an understanding that a comprehensive study has not been conducted regarding all existing marriage regulations in Indonesia. This is important to do so that there is no overlap in order to realize the principles of expediency and justice. This study is still limited to four regulations related to marriage, child protection and guidelines for adjudicating marriage dispensation applications. Therefore, a more in-depth study is needed regarding marriage regulations in Indonesia, especially in the prevention of marriage dispensation applications.

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Conflict of Interest

This article has no conflicts of interest.

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