



Legal Protection of Children in Early Marriage Cases: An Islamic Law and Positive Law Perspective

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Article Info

Article history:

Received 24 May, 2024

Revised 17 Jun, 2024

Accepted 24 Jul, 2025

Keywords:

Marriage; Islamic Law; Positive Law

ABSTRACT

This study aims to analyze the legal protection of children in cases of early marriage from the perspective of Islamic law and positive law in Indonesia. The main focus of this research is to find a meeting point between religious norms and national legal provisions in providing protection for children's rights. The method used is qualitative research based on library research with a normative-philosophical approach, examining both classical and contemporary Islamic literature, statutory regulations, and empirical data from relevant institutions. The findings show that although positive law has established a minimum age for marriage, its implementation still faces challenges due to legal loopholes, particularly through the marriage dispensation mechanism. Meanwhile, Islamic law, through the *maqāṣid al-syarī'ah* approach, provides normative support for age restrictions for the sake of the child's well-being. Therefore, harmonizing these two legal systems is essential to build a more just, humanistic, and sustainable legal protection framework for children in Indonesia.

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INTRODUCTION

Early marriage is a complex issue involving various dimensions—social, cultural, psychological, and legal. Children who are married at a young age often lack the physical and emotional maturity to manage marital life, thus placing them at risk of social vulnerability, interrupted education, and economic dependence. Therefore, early marriage is considered a violation of children's rights, which should be fully protected (Maududi, 1990).

In Indonesia, the practice of early marriage remains a serious challenge, especially in regions with low levels of education and welfare. According to data from the Central Statistics Agency (BPS, 2023), in 2022, 8.06% of women aged 20–24 had been married before the age of 18. This statistic indicates the continued ineffectiveness of legal regulations in curbing the practice, even though Indonesia has undertaken legal reforms to raise the minimum age for marriage.

The revision of Law No. 1 of 1974 through Law No. 16 of 2019 marked a significant step in improving child protection. This revision raised the minimum marriage age for girls from 16 to 19, equalizing it with that for boys. However, legal loopholes remain, especially through the dispensation mechanism that may be granted by religious courts (Law No. 16 of 2019).

In Islamic law, marriage is a sacred contract with noble objectives. However, the requirement of physical maturity (*baligh*) does not always guarantee mental and social readiness for marriage. Although classical Islamic jurisprudence does not specify a certain age, contemporary scholars—through the *maqāṣid al-syarī'ah* approach—emphasize the importance of considering the child's welfare in marriage (Qaradawi, 2006). Protection of intellect (*'aql*) and lineage (*nasl*) becomes a strong basis for delaying early marriage.

The lenient religious views on age limits are often exploited by some communities as justification for early marriage. However, in the spirit of *maqāṣid al-syarī'ah*, Islamic law strongly emphasizes the protection of vulnerable groups, including children (Syaltut, 2003). Therefore, the harmonization between Islamic legal principles and national legal regulations must be strengthened.

The impact of early marriage is not only individual but also systemic. Girls who marry early are more likely to drop out of school, face high-risk pregnancies, and experience domestic violence. Data from UNICEF and WHO indicate that early marriage significantly contributes to poverty and poor maternal and child health outcomes (UNICEF, 2020).

Indonesia ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990, affirming the importance of protecting children's rights to life, development, and participation. In this regard, the practice of early marriage contradicts the fundamental principles of the convention and reveals inconsistencies between international commitments and domestic practices (United Nations, 1990).

The problem lies in the fact that, in religious court practice, requests for marriage dispensation are often granted without adequate psychological and social assessments of the child's readiness. This reflects the absence of standardized child protection approaches in judicial procedures, both substantively and procedurally (Badilag Directorate, 2021).

Therefore, it is crucial to critically reexamine legal protection for children in early marriage cases from both the Islamic legal perspective, which emphasizes *maṣlaḥah* (public interest), and the positive legal perspective, which is based on children's rights and social justice. This multidisciplinary approach opens space for strengthening legal policies that are fair and focused on protecting vulnerable groups.

This study aims to fill an academic gap and offer recommendations for the formation of legal norms that harmonize Islamic values with the national legal system. In doing so, the protection of children as vulnerable legal subjects can be realized effectively and sustainably within the Indonesian legal framework

LITERATURE REVIEW

Studies on the legal protection of children in the context of early marriage have attracted the attention of both academics and legal practitioners, from the perspectives of Islamic law and positive law. In positive law, Law No. 35 of 2014 on Child Protection serves as the primary normative foundation, affirming that every child has the right to grow and develop properly—physically, mentally, and socially. Furthermore, the amendment to the age of marriage in Law No. 16 of 2019, which raised the minimum age for marriage to 19 years for both males and females, marks a progressive step in enhancing legal protection for children (Law No. 16 of 2019).

In the context of Islamic law, the discourse on the age limit for marriage is not explicitly stated in the Qur'an or Hadith. However, classical scholars generally use the sign of physical maturity (*baligh*) as an indicator of readiness for marriage. This is where the role of *maqāṣid al-syarī'ah* becomes crucial as a contemporary approach to addressing modern social issues, including child marriage. According to Qaradawi (2006), *maqāṣid al-syarī'ah* emphasizes the protection of five essential aspects of life: religion (*dīn*), life (*nafs*), intellect (*‘aql*), lineage (*nasl*), and property (*māl*). Early marriage, which harms these aspects, is fundamentally contrary to the core objectives of the Sharia.

Several previous studies have highlighted the negative impact of early marriage on children's rights. According to UNICEF (2020), girls who marry early are more likely to experience high-risk pregnancies, drop out of school, and face domestic violence. Additionally, the National Commission on Violence Against Women (Komnas Perempuan, 2020) reported that the marriage dispensation mechanism is often misused and not accompanied by adequate psychological and social assessments, thus undermining the spirit of child protection.

Maududi (1990), in his work *Islamic Law and Its Development*, emphasized that Islamic law should be viewed as a dynamic system that evolves in response to the context of the times. Therefore, legal interpretation should not be rigid but must consider public interest (*maṣlaḥah*) in its implementation. This view aligns with Syaltut (2003), who stated that the protection of the weak, including children, is a fundamental principle of Islamic teaching.

Literature discussing the integration of Islamic law and national law reveals the importance of a value harmonization approach. Kamali (2008) emphasized that a *maqāṣid*-based legal framework can serve as a bridge between religious norms and contemporary societal needs. This approach is highly relevant in developing family law in Indonesia so that it becomes more responsive to social realities while remaining rooted in Islamic values.

Thus, the literature review shows that both Islamic law and positive law hold significant potential in providing legal protection for children. However, the realization of such protection requires a contextual and multidisciplinary approach that is not only normative but also operational at the levels of policy and judicial practice.

METHODOLOGY

This study employs a qualitative approach with a library research design. Library research is selected because the issue under investigation is normative in nature, concerning legal concepts and norms found in legal texts, both in Islamic legal sources and Indonesian positive law. The focus of this research is to examine

the concept of legal protection for children in the practice of early marriage by reviewing statutory regulations, court decisions, and relevant scholarly works.

Data in this study were collected through an extensive review of various literature and contemporary Islamic scholarly works on *maqāṣid al-syarī'ah*, as well as national laws such as Law No. 16 of 2019 on Marriage, Law No. 35 of 2014 on Child Protection, and the Convention on the Rights of the Child. In addition, secondary sources were utilized, including academic journals, official institutional reports (BPS, Komnas Perempuan, Badilag), and legal articles discussing the phenomenon of child marriage in Indonesia from the comparative perspectives of Islamic and positive law.

The data were analyzed using a descriptive-analytical method, which involved describing the content of legal texts and documents, followed by critical analysis to identify both convergences and divergences between Islamic law and positive law in providing protection for children. This analysis also incorporated a normative-philosophical approach, particularly through the lens of *maqāṣid al-syarī'ah* in Islamic law and child protection theory in modern legal systems, in order to gain a deep understanding and generate constructive recommendations for the development of responsive legal norms concerning children's rights in the context of early marriage.

RESULT AND DISCUSSION

Early marriage has become a complex legal and social issue in Indonesia. This practice not only involves the psychological and biological unpreparedness of children but also brings legal consequences concerning the protection of children's rights. In practice, children who are married at an early age often lose access to full education, health services, and social participation (BPS, 2023).

From the perspective of Indonesia's positive law, efforts to protect children have shown significant progress. One such effort is the revision of the Marriage Law through Law No. 16 of 2019, in which the minimum age for marriage was raised to 19 years for both males and females. This reflects the state's commitment to protecting children from the harms of early marriage (Law No. 16 of 2019).

However, the policy has not been fully effective due to the remaining legal loophole of marriage dispensation. Religious courts may still grant permission for underage marriage based on "urgent reasons" and parental considerations. In practice, such dispensations are often issued without adequate assessment of the psychosocial impacts on the child (Directorate of Religious Courts, 2021).

Empirical data indicate that the number of marriage dispensation applications granted by religious courts significantly increased following the amendment of the Marriage Law. This phenomenon reveals an inconsistency between the spirit of legal protection and its implementation in practice (Komnas Perempuan, 2020). It reflects the fact that legal norms have not yet been fully internalized within social awareness or the judicial system.

Islamic law does not explicitly determine a minimum age for marriage but rather uses signs of physical and mental maturity (*baligh* and *'aql*) as indicators of readiness. However, in the modern context, many contemporary scholars emphasize the importance of considering the child's best interests (*maṣlaḥah*) when determining marriage age. This aligns with the principles of *maqāṣid al-syarī'ah*, which emphasize the protection of life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), and lineage (*ḥifẓ al-nasl*) (Qaradawi, 2006).

Through the lens of *maqāṣid al-syarī'ah*, early marriage can be classified as an act that contradicts public welfare if it negatively impacts a child's future. Thus, Islamic law should not be seen as justifying early marriage, but rather as a value system that is flexible and adaptive to social realities (Syaltut, 2003).

Some Muslim-majority countries have already adopted minimum age limits for marriage in their legal systems based on *maqāṣid* considerations. Tunisia and Morocco, for instance, have set the minimum marriage age at 18 for females. This demonstrates that establishing age limits does not contradict Sharia as long as it is grounded in considerations of *maṣlaḥah* and the protection of children's rights (Al-Zuhaili, 2003).

In the context of Indonesia's religious courts, there is still no standardized mechanism for assessing a child's psychological readiness in marriage dispensation cases. This aspect is crucial, considering the child's social and emotional vulnerability. The weakness of such assessments reflects the suboptimal implementation of legal protection for children in practice (Directorate of Religious Courts, 2021).

An analysis of several court rulings reveals that the reasons behind the approval of dispensations are often normative, such as "being in a relationship" or "fear of committing *zina* (fornication)." Rarely do judges thoroughly consider the psychological condition or economic readiness of the prospective spouses (Komnas Perempuan, 2020).

The difference between Islamic and positive legal approaches to this issue is not inherently antagonistic. Rather, it should be reconstructed within a harmonious framework. Islamic law emphasizes justice and the protection of the vulnerable, while positive law provides regulatory mechanisms and legal sanctions as instruments of social control. Therefore, integrating the values of both systems is crucial to developing a holistic child protection framework (Maududi, 1990).

For example, legal protection for children cannot be achieved solely by raising the minimum marriage age. It also requires legal education, contextual dissemination of religious values, and strengthening the capacity of the judiciary to assess children's readiness. Law alone is insufficient without accompanying cultural transformation and collective awareness (Qaradawi, 2006).

From a children's rights perspective, early marriage may be categorized as a form of structural exploitation. Children who are not psychologically mature do not possess full capacity to consent to marriage, and thus such consent cannot be considered as the exercise of free will. The Convention on the Rights of the Child emphasizes every child's right to protection from traditional practices that endanger their health and well-being (United Nations, 1990).

The impacts of early marriage are not only short-term but also long-lasting. Girls who marry young are at high risk of domestic violence, adolescent pregnancy, and limited access to decent employment. This creates an intergenerational cycle of poverty that is difficult to break (UNICEF, 2020). The impact of early marriage on family law shows that despite regulations governing the minimum age for marriage, the practice persists and creates various legal, social, and psychological challenges (Yafid, Bunyamin, Mujahidin, & Winda Sari, 2025).

Early marriage has the potential to harm the rights of women and children, such as limited access to education, poor health conditions, and the inability to manage a household properly, which often leads to divorce. Family law must be strengthened in terms of supervision, protection of individual rights, and community empowerment. Therefore, according to Komnas Perempuan (2020), legal reform efforts must not only focus on normative aspects but also on substantive ones. It is necessary to train judges in child psychology, develop guidelines for assessing marriage readiness, and enhance the role of non-judicial institutions such as the Office of Religious Affairs (KUA), schools, and Islamic boarding schools (*pesantren*) in preventing such practices.

From the perspective of Islamic law, the formulation of fatwas or contemporary *fiqh* guidelines that explicitly recommend a minimum age for marriage can be an important step in supporting state regulations. This would help dispel the perception that religious law absolutely justifies the practice of child marriage (Syaltut, 2003).

This study finds that the harmonization of Islamic law and positive law can be achieved by adopting the principles of *maqāṣid al-syarī'ah* as a moral and philosophical foundation for national law. These two legal systems do not need to be in conflict; instead, they can reinforce one another in protecting children (Qaradawi, 2006).

Harmonization between Islamic law and positive law in the context of child protection, particularly in cases of early marriage, can be carried out through the *maqāṣid al-syarī'ah* approach as a universal value framework. *Maqāṣid al-syarī'ah*, as the core objectives of the Sharia, places the protection of life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), religion (*ḥifẓ al-dīn*), and property (*ḥifẓ al-māl*) as foundational principles for legal development (Qaradawi, 2006). This approach can transcend formalistic boundaries and offer solutions to contemporary issues through more inclusive justice and human welfare.

In the context of early marriage, *maqāṣid al-syarī'ah* encourages regulations that are not only religiously valid but also protect children's fundamental rights. For example, positive law that sets the minimum marriage age at 19 can be interpreted as a form of protection for lineage (*nasl*) and life (*nafs*), as marriage below this age is vulnerable to reproductive health risks and mental unpreparedness for family life (Al-Zuhaili, 2003). Hence, positive law does not contradict Sharia but rather represents the implementation of *maqāṣid* values.

This harmonization also requires a reconstruction of the religious paradigm, which has long tended to be textual and formalistic. A contextual approach to scriptural texts is needed so that Islamic law is not misunderstood as legitimizing harmful practices such as child marriage. In this regard, religious fatwas must be directed toward supporting child protection and promoting regulations that are relevant to contemporary demands and the objective conditions of society (Syaltut, 2003).

Institutionally, integrating *maqāṣid* into positive law can be carried out through inclusive and dialogical legislative processes involving scholars, academics, and policymakers. *Maqāṣid* can serve as an evaluative framework to assess whether a regulation genuinely supports public welfare and social justice. In this context, *maqāṣid al-syarī'ah* can act as a bridge between text and context, between religious and state law, and between religious authority and governmental authority (Kamali, 2008).

By positioning *maqāṣid* as the common ground, Islamic law and positive law need not be opposed. Instead, they can synergize to create a legal system oriented toward the protection of vulnerable groups, especially children. This is highly relevant in building a national legal system that prioritizes not only formal legality but also the ethical and spiritual values embedded in Indonesia's Muslim society (Qaradawi, 2006).

Public awareness is also a key factor. Without a transformation in legal culture at the community level, regulatory change will not be effective. Therefore, community education—including contextual Islamic legal education—needs to be enhanced as a long-term strategy (Maududi, 1990).

Thus, the findings of this study affirm that legal protection for children in cases of early marriage must be pursued through an integrated approach involving state law, Islamic values, educational systems, and comprehensive community empowerment. This integration is a strategic path to eliminating child marriage practices and building a more dignified future for children.

CONCLUSIONS

Legal protection for children in cases of early marriage requires harmonization between Islamic law and positive law through the *maqāṣid al-syarī'ah* approach, which emphasizes the protection of life (*nafs*), intellect (*'aql*), and lineage (*nasl*). Although positive law has established a minimum age for marriage, its implementation still faces challenges, particularly in the practice of marriage dispensation. On the other hand, Islamic law—being flexible and contextual—provides a strong normative foundation for rejecting child marriage when it contradicts the principle of public interest (*maṣlaḥah*). Therefore, synergy between state regulations and Sharia-based values that prioritize justice and the protection of the vulnerable is essential to realizing a responsive, equitable, and humanistic legal system for the future of Indonesian children.

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