
Social Control and Legal Reform: A Study of Minimum Marriage Age From the Perspective of Islamic Law and Plural Legal Systems

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ABSTRACT

Although numerous studies have examined the practice of child marriage in Indonesia, few have analyzed this phenomenon from the perspective of legal pluralism, which encompasses state law, customary law, and religious law. This study aims to analyze child marriage within the context of legal pluralism in Indonesia, focusing on the coexistence of state, customary, and religious norms regulating marriage and their influence on child protection policies. The study employs a qualitative approach with a literature review design and thematic analysis to achieve this objective, integrating the theories of *maslahah mursalah*, social control, and legal pluralism. Through this analysis, the study explores how legal regulations governing the minimum age of marriage often conflict with prevailing social and religious norms, and how practices such as unregistered marriage (*nikah sirri*) and marriage dispensations continue despite formal regulations. The findings suggest that, although legal frameworks exist, their implementation is still constrained by strong social and cultural norms. Therefore, a holistic policy approach is required, involving social education and community empowerment to reshape perceptions of child marriage and strengthen law enforcement. This study contributes to the understanding of legal pluralism in child marriage and provides recommendations for more effective and contextually appropriate child protection policies.

Keywords: *Islamic Law, Minimum Marriage Age, Plural Legal
System*

Introduction

Child marriage remains a serious and complex issue in Indonesia, despite significant regulatory reforms in marriage law. Data from the 2023 National Socio-Economic Survey (Susenas) indicate that approximately 13.2% of women aged 20–24 were married before the age of 18, with the highest prevalence occurring in Nusa Tenggara Barat, South Kalimantan, West Sulawesi, and Southeast Sulawesi. This practice not only violates the fundamental rights of children but also adversely affects reproductive health, school continuation, and contributes to intergenerational structural poverty. Normatively, Law No. 16 of 2019 has revised the minimum age of marriage to 19 years for both males and females, replacing the previous provision under Law No. 1 of 1974. Nevertheless, child marriage continues to occur, either through court dispensations or through religious and cultural justifications. This situation reflects that formal legal norms have not yet been fully internalized within the social system, highlighting a gap between state law and local socio-religious norms in determining the appropriate age for marriage.

Various global studies have highlighted child marriage as a violation of children's rights and a serious barrier to sustainable development. (Ebetürk, 2021) , through a historical study of changes in marriage age regulations across countries from 1965 to 2015, identified a global trend toward harmonization at a minimum age of 18 years, particularly to protect girls from structural violence. However, as criticized by Horii (2020), international human rights frameworks often fail to address child marriage practices legitimized by religious and cultural traditions, indicating the need for a contextual approach that is sensitive to the plurality of local norms. Within the framework of Islamic law, Sona (2020) emphasizes the importance of reinterpreting Sharia texts related to marriage age to align with principles of justice and modern national legal norms. Meanwhile, Akter et al. (2022), in a field study in Bangladesh, revealed that poverty, family pressure, and patriarchal social norms are dominant factors driving child marriage, even in the presence of laws explicitly prohibiting it. In Indonesia, several local studies show similar tendencies: families and communities often rely on religious or cultural justifications to perpetuate this practice, even when it conflicts with positive law. Collectively, these studies demonstrate that the mere existence of formal regulations is insufficient to prevent child marriage without accompanying social change, religious reinterpretation, and progressive cultural legitimacy.

Although several studies have examined policies on minimum marriage age and Islamic legal perspectives, a conceptual gap remains in comprehensively integrating normative and sociological approaches. Locally, studies such as (Suleman et al., 2023)

have reviewed the implementation of child marriage policies through the lens of *maslahah mursalah*. However, these analyses are normative and limited to formal legal services without exploring the relationship with community social responses. On the other hand, Hori highlights the dynamics of legal pluralism in Indonesia, emphasizing that while the pluralistic nature of Indonesian law is widely recognized, its explicit application to child marriage remains very limited. For instance, in examining the interaction between customary law, state law, and traditional practices in the context of adolescent pregnancy in Bali, it was found that emergencies, such as child marriage, are often resolved through informal compromises among customary authorities, families, and state institutions. However, this work does not explicitly focus on legal pluralism as the primary theoretical lens (Pertiwi et al., 2025). From a global perspective, discussions on social control theory in relation to child marriage remain scarce, particularly those directly linked to the interpretation of Islamic law within a pluralistic legal context. Therefore, this article proposes an interdisciplinary theoretical approach that integrates: (a) *maslahah mursalah* analysis as a normative framework within Islamic legal tradition, (b) legal pluralism to explain the complex interactions among state, religious, and customary laws, and (c) social control theory to understand how community norms can either support or hinder formal regulations. This approach aims to bridge both theoretical and empirical gaps while providing new insights into why child marriage continues despite the existence of prohibitive regulations.

Based on the discussion of the issues, previous studies, and the identified research gap, this article formulates three main research questions: First, how has the regulation of minimum marriage age evolved within Indonesian positive law following the revision of Law No. 16 of 2019? Second, how does Islamic law, through the *maslahah mursalah* approach, provide an argumentative basis for policies on minimum marriage age? Third, how do perspectives from legal sociology, particularly legal pluralism and social control theory, explain the persistence of child marriage practices despite formal prohibitions? To address these questions, this study aims to conduct an in-depth analysis of the gap between state regulations and socio-religious practices, while proposing an integrative model that connects Islamic law, state law, and social norms within the context of child protection. Although the issue of minimum marriage age has been discussed from normative and child protection advocacy perspectives, few studies have systematically integrated Islamic legal approaches with social theory frameworks and legal pluralism. However, the interaction between state law, religious norms, and local social control mechanisms is crucial in determining the effectiveness of such policies. This article seeks

to bridge this gap and provide a comprehensive framework for understanding the continued practice of child marriage in Indonesia.

Methods

This study adopts a qualitative juridical and sociological approach with a library research design enriched by empirical analysis. Primary data consists of national legal documents (Law No. 1 of 1974, Law No. 16 of 2019, and Constitutional Court decisions), classical fiqh literature, and contemporary literature from indexed journals. To strengthen the empirical context, the study also refers to similar methodologies employed by Ariyanti & Putra, (2024), in which field research within the Lumbang community utilized empirical legal research, legal anthropology, and conceptual analysis to explore unregistered child marriage practices as a reflection of legal pluralism. Methodologically, this research conducts thematic analysis across three main domains: state legal legitimacy, Islamic law, and social norms through the lens of Social Control Theory. Although the study does not employ quantitative surveys, the qualitative approach allows for an in-depth exploration of the motivations and cultural legitimacy underlying child marriage practices. The data analysis procedure includes data reduction and summarizing legal documents and other literature into analytical themes. These themes are integrated into a framework connecting Islamic law, social norms, and state law through conceptual synthesis. Finally, argumentative validation is conducted through theoretical consistency and cross-verification.

Findings

Dynamics of Minimum Marriage Age Regulation in Indonesia Post Law No. 16 of 2019

Law No. 1 of 1974, in Article 7, paragraph (1), established the minimum age of marriage at 16 years for females and 19 years for males. However, based on Constitutional Court Decision No. 22/PUU-XV/2017, this provision was deemed discriminatory, and the article was subsequently revised in Law No. 16 of 2019, which sets the minimum marriage age at 19 for both males and females. This revision was implemented as a step toward gender equality and the strengthening protection for girls (Kartoningrat & Andayani, 2024; Ag, 2025). The amendment reflects an increased awareness of the need to protect children from the practice of child marriage, which carries serious health, educational, and social consequences.

Although this regulatory reform was designed to reduce the incidence of child marriage by equalizing the minimum age, its implementation shows that marriage dispensations continue to be widely utilized. A descriptive study by Asman reveals that,

while the age of 19 is considered an ideal marker of maturity from the perspective of Islamic law, dispensation requests, which are situational in nature, remain the primary mechanism for addressing cases of immaturity, whether biological or psychological, among prospective brides and grooms (Ag, 2025). This reality underscores that, despite the formal update of regulations, a significant gap persists between written law and socio-religious norms, which requires attention toward multidimensional legal and social reform.

In 2022, according to DataIndonesia.id, the Religious Courts recorded 50,673 child marriage dispensation cases that were adjudicated, showing a decrease of approximately 17.5% compared to the previous year, which had around 64,000 cases (Mustajab, 2023). Data from 2023 indicates a further decline to approximately 41,852 cases, reflecting a 20% decrease from 2022 (Genius, n.d.). This trend demonstrates a reduction in dispensation requests, which can be interpreted as an indication of the effectiveness of public education initiatives, the implementation of the new law, and policies related to marriage registration. Nevertheless, dispensations remain an important instrument in the practice of child marriage in Indonesia. Regulatory changes alone are insufficient to eliminate the practice. This observation aligns with the study by Hasan et al. (2022), which emphasizes that, although the number of dispensation requests has declined, access to dispensations continues to serve as a “formal pathway” for social legitimacy, particularly in communities with strong adherence to religious and customary norms. Families or communities employ disputes as a formal solution, especially in pregnancy or specific social circumstances. Despite stricter legal age limits, this phenomenon reflects the weak internalization of legal norms within the socio-religious fabric of Indonesian society.

According to data from (Statistik, n.d.), there is a significant variation across provinces. Nusa Tenggara Barat (NTB) recorded the highest prevalence, with the proportion of women aged 20–24 who were married before the age of 18 reaching 14.96%, well above the national average of approximately 11–12%. This is followed by South Papua at 14.40% and West Sulawesi at 10.71%. These figures reflect the strong influence of local cultural norms and social structures on the practice of child marriage, particularly in regions with particular traditions that continue to uphold longstanding normative values.

Islamic Legal Arguments on the Minimum Age of Marriage

In classical fiqh tradition, the four major schools: Hanafi, Maliki, Shafi'i, and Hanbali, do not set a numerical age limit for determining marriage eligibility; instead, they rely on signs of puberty (*bulugh*) and the capacity for legal responsibility (*rushd*). For example, the Hanafi school permits the marriage of girls from the age of 9 and boys

around 12, provided they have shown signs of puberty. The Shafi'i and Hanbali schools similarly hold that a marriage contract is valid even if the parties have not yet reached puberty, as long as the guardian and other marriage conditions are fulfilled (Maisarah et al., 2019). This paradigm stems from the assumption that early marriage serves as a means to protect the moral integrity and honor of children, and is part of the guardian's authority. However, this approach also leaves room for debate regarding an individual's biological and psychological readiness to undertake marital life, particularly in the modern era (Büchler, A., & Schläter, 2013).

Conversely, in contemporary discourse, many Muslim-majority countries have reinterpreted classical fiqh texts through the lens of *maqāṣid al-sharī'ah* and *maslahah mursalah*. For instance, family law reform in Morocco through the 2004 Mudawana explicitly raised the minimum marriage age to 18 years for both males and females, citing protecting children's rights and adequate psychosocial readiness (Büchler, A., & Schläter, 2013). This approach represents a re-examination of classical texts in light of modern contexts and constitutes a form of legal *ijtihād* that considers social realities and child protection. Moreover, in practice, countries such as Tunisia and Turkey have entirely replaced classical fiqh provisions with binding civil law, reflecting the development of legal reforms prioritizing the child's best interests. Consequently, there has been a shift from normative fiqh based on puberty to a legal-age-based approach that emphasizes child protection principles.

The principle of *maslahah mursalah* allows for the establishment of a minimum marriage age based on considerations of public interest, even if it is not explicitly mentioned in Sharia texts. In the context of Indonesia, Nurnazli and Pane (2020) explain that Law No. 16 of 2019, which sets the minimum age at 19 years, represents a form of contemporary *ijtihād* grounded in the relative benefits (*maslahah*) regarding the health and social impacts of child marriage, such as high maternal and child mortality risks and psychological immaturity. Furthermore, Suleman et al. (2023) emphasize that *maslahah*-based policies must be designed holistically and can only succeed if it accommodate social, cultural, and public health dimensions.

The *Maqasid al-Shari'ah* framework focuses on five primary objectives of Sharia, including *ḥifẓ al-nafs* (protection of life), *ḥifẓ al-'aql* (protection of intellect), and *ḥifẓ al-nasl* (protection of lineage). This principle supports the view that excessively early marriage may undermine these three core objectives—due to high health risks, immature mental capacity, and the potential decline in the quality of future generations. This theoretical framework provides a strong normative justification for progressively regulating minimum marriage age, not only taking classical texts into account but also reflecting

Sharia's universal and adaptive objectives in contemporary contexts. Several contemporary scholars endorse a minimum age of 18–19 years as a reflection of gender equality and socio-economic readiness in the modern era (Nurnazli & Pane, 2020). However, some conservative voices argue that this age limit disregards the classical principle of puberty as a requirement for a valid marriage. They contend that setting a higher legal age may conflict with classical fiqh's textual and scholarly dimensions. This discussion highlights the tension between literal interpretations of classical rulings and the transformation of *maqāṣid* as a structural and adaptive approach to evolving social realities.

Socio-Religious Practices and Customary Norms

Child marriage practices in Indonesia are often closely linked to local customary and religious norms that govern social and cultural life. In certain regions, such as Nusa Tenggara Barat (NTB), social and cultural pressures can encourage families to marry off girls at a very young age. For instance, within the Sasak indigenous community in NTB, cultural norms emphasizing social harmony and family honor often view marriage as a means to maintain social status and avoid family stigma. Research by Gede Agung et al. (2024) shows that in Sasak culture, girls who marry at a young age are often considered more honorable, whereas delaying marriage can lead to social stigma. Field studies reveal that these traditions persist even when they conflict with existing legal regulations.

Social Control Theory explains that individual social behavior is influenced by formal legal norms and social supervision carried out by families and communities. In the context of child marriage, these social norms act as a powerful control mechanism, where individuals tend to follow values accepted by society due to social monitoring by their peers and community groups. In many communities, the internalization of social values regarding early marriage occurs from an early age, with adolescent girls already familiar with the idea that marriage is a primary pathway to adulthood and social respect. Research by Hasan et al. (2022) reveals that in Muslim communities in Bima, the practice of *londo iha* (bride kidnapping) still occurs despite being contrary to Sharia law, demonstrating the strong influence of social and customary norms in shaping individual behavior.

From the perspective of Social Control Theory, the strong internal social control within these communities presents a significant challenge to preventing child marriage. Although regulations prohibiting child marriage, such as Law No. 16 of 2019, exist, deeply rooted social customs lead many families to seek marriage dispensations from religious courts. Therefore, a comprehensive approach is required, involving education,

community empowerment, and legal awareness campaigns, aimed at transforming social norms that support early marriage.

Legal Pluralism in the Context of Child Marriage

As a country of diverse ethnicities and cultures, Indonesia has a pluralistic legal system encompassing state, customary, and religious law. In the context of child marriage, the coexistence of these norms often creates complex dynamics. While state law sets the minimum age for marriage, customary and religious norms in some communities still regard child marriage as part of tradition and social obligation. For instance, in the Bali indigenous community, despite state law regulating the minimum marriage age, child marriage practices are still observed due to the strong influence of customary norms that consider marriage an important step in a woman's life. Research by Suhardi (2025) shows that although some customary and religious leaders have begun to reinterpret Sasak customary law to prevent child marriage, the practice persists due to deeply entrenched cultural influences.

Unregistered marriage (*nikah sirri*), valid under religious law but not officially registered by the state, represents a manifestation of legal pluralism in Indonesia. This phenomenon often occurs in areas with limited access to official marriage registration services. For example, in Aceh, unregistered marriages are prevalent due to administrative service constraints and the strong influence of religious norms that consider the marriage valid even without official registration (Aditya & Waddington, 2021). Consequently, although such marriages are recognized under religious law, couples in unregistered marriages do not receive legal protection from the state, which affects the rights of women and children within these unions.

The conflict between the substantive justice of state law and socio-religious legitimacy arises when state legal norms conflict with community's prevailing social and religious norms. Although state law sets a minimum marriage age to protect the rights of children, social and religious norms in some communities continue to view child marriage as a social and religious obligation. Research by Aditya & Waddington (2021) shows that, despite state prohibitions on child marriage, the practice persists due to strong social and religious legitimacy. This situation reflects the tension between the substantive justice intended by state law and the socio-religious legitimacy upheld within the community.

Discussion

In Indonesia's child marriage context, the integration of *maslahah mursalah* (public interest), social control theory, and legal pluralism provides a holistic perspective on social and legal dynamics. The principle of *maslahah mursalah* emphasizes the importance of

policies oriented toward public welfare and the protection of children's rights, considering social, cultural, religious, and legal dimensions. The implementation of child marriage policies based on *masalah mursalah* should be holistic, involving collaboration among the government, non-governmental organizations, religious leaders, and the community in designing and executing these policies. On the other hand, social control theory explains how social and cultural norms function as a control mechanism influencing individual behavior within society. In the context of child marriage, strong social norms regarding the role of girls as wives and mothers can encourage early marriage practices, even when they conflict with formal regulations. Research by Ariyanti and Putra (2024) reveals that, in the Lusmbang community, unregistered child marriage practices constitute a manifestation of legal pluralism, in which customary and religious norms dominate the determination of marriage age, even though the state law has set a minimum marriage age.

Legal pluralism in Indonesia reflects the coexistence of state law, customary law, and religious law within a pluralistic society. This phenomenon creates complex dynamics in the practice of child marriage, where customary and religious norms often exert more influence than state law. Research by (Suhardi, 2025) shows that in the Sasak community of Lombok, child marriage practices persist due to the strong influence of customary and religious norms, even though the state law has established a minimum marriage age.

The main obstacle in implementing regulations related to child marriage in Indonesia is the mismatch between state law and socio-cultural norms. Although the state has set a minimum marriage age, strong customary and religious norms often act as barriers to changes in social behavior. Research by Arman Budiman and Rumadi (2025) shows that the lack of synchronization between state law, religion, and customary law creates space for child marriage practices, particularly through the granting of marriage dispensations by religious courts. Opportunities for synergy among legal systems can be realized through a harmonization approach involving all relevant stakeholders, including the government, non-governmental organizations, religious leaders, and customary community leaders. This approach aims to align state legal norms with the socio-cultural values of the community, thereby creating effective and widely accepted policies.

Therefore, the formulation of child protection policies related to early marriage must consider the local context, including prevailing social, cultural, religious, and customary norms. A context-based approach enhances the effectiveness of policies and ensures that they are accepted and implemented by the community. Research by Setyawan et al. (2023) indicates that legal reforms regarding the minimum marriage age in Indonesia must consider gender perspectives and the Sustainable Development Goals (SDGs) and adopt

a legal approach sensitive to the socio-cultural context. There is a need for a reinterpretation of religious texts and a harmonization strategy between customary and state law to create alignment among religious norms, customary practices, and state law in the context of child marriage. This approach can be implemented by engaging religious leaders and customary community leaders in open dialogues regarding public interest and child protection values.

Conclusion

This study has examined the practice of child marriage in Indonesia within the framework of legal pluralism, encompassing state law, customary law, and religious law. The main findings indicate that, although Law No. 16 of 2019 has established a minimum marriage age of 19 years, child marriage remains prevalent in society. This practice is primarily influenced by the strength of social and cultural norms that support early marriage, particularly in communities deeply attached to customary traditions and religious teachings. Even though state regulations prohibit child marriage, unregistered marriages (*nikah sirri*) and marriage dispensations from religious courts continue to serve as solutions for families bound by prevailing social norms. The implications of these findings highlight the need for a holistic approach in law implementation, which not only relies on formal regulations but also incorporates social education, religious dialogue, and community empowerment. Especially in areas with strong customary norms, efforts to enhance legal awareness are necessary to ensure government policies are socially accepted.

However, this study has limitations, including its focus on case studies in specific provinces such as NTB and West Sulawesi, which cannot be generalized to all of Indonesia. Therefore, further research employing a more in-depth qualitative field approach is needed to understand the social dynamics influencing this practice comprehensively. Future studies should adopt a mixed-methods approach, including in-depth interviews and broader field studies, encompassing both rural and urban areas, to understand better the impact of culture, religion, and public policy on child marriage. Overall, this research provides important contributions to understanding legal pluralism and social dynamics related to child marriage in Indonesia. Consequently, synergy among state law, religious norms, and customary law is essential to achieve adequate child protection and prevent child marriage in the future.

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