

## Child Marriage and the Quest for Legal Protection: Integrating Islamic Family Law and Islamic Criminal Law

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### ABSTRACT

Child marriage remains a serious problem in Indonesia, significantly affecting children's physical safety, psychological well-being, and legal protection. This article analyzes the practice of child marriage through an integrative approach between Islamic family law and Islamic criminal law, arguing that a family law approach alone is inadequate to address the vulnerabilities and risks faced by children as victims. This research employs qualitative methods, drawing on normative studies of Islamic legal literature, national regulations, and empirical findings related to the practice of marriage dispensation. The findings demonstrate that child marriage actually involves elements of coercion, violence, and violations of children's rights, thereby placing it within a legal domain that also aligns criminal law consideration. Consequently, a more comprehensive framework of protection is required, achieved through the integration of the regulatory function of Islamic family law with the preventive and protective functions of Islamic criminal law. Normatively, the principle of *ḥifẓ al-nafs* (protection of life) is invoked to underscore the primacy of children's safety and best interests.

[Perkawinan anak masih menjadi persoalan serius di Indonesia dan secara signifikan berdampak pada keselamatan fisik, kesejahteraan psikologis, dan perlindungan hukum anak. Artikel ini melihat praktik perkawinan anak melalui pendekatan integratif antara hukum keluarga Islam dan hukum pidana Islam, dengan argumen bahwa pendekatan hukum keluarga semata tidak memadai untuk mengatasi kerentanan dan risiko yang dihadapi anak sebagai korban. Penelitian ini bertumpu pada kajian normatif terhadap literatur hukum Islam, peraturan perundang-undangan nasional, serta temuan empiris yang berkaitan dengan praktik dispensasi perkawinan. Hasil penelitian menunjukkan bahwa perkawinan anak kerap melibatkan unsur paksaan, kekerasan, dan pelanggaran terhadap hak-hak anak, sehingga menempatkannya dalam ranah hukum yang juga relevan untuk dikaji melalui perspektif hukum pidana. Oleh karena itu, diperlukan suatu kerangka perlindungan yang lebih komprehensif melalui integrasi fungsi regulatif hukum keluarga Islam dengan fungsi preventif dan protektif hukum pidana Islam. Secara normatif, prinsip *ḥifẓ al-nafs* (perlindungan jiwa) digunakan untuk menegaskan pentingnya keselamatan dan kepentingan terbaik bagi anak.]

### KEYWORDS

Child marriage, Islamic family law, Islamic criminal law, *ḥifẓ al-nafs*, child protection

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## A. Introduction

Child marriage remains a serious problem in many countries, including Indonesia.<sup>1</sup> Although the minimum age for marriage was raised to 19 through the 2019 revision of the Marriage Law, the practice remains widespread through marriage dispensation mechanisms.<sup>2</sup> Religious court data shows a high number of applications for marriage dispensations for children in Indonesia. According to an official report from the Ministry of Women's Empowerment and Child Protection (Kemen PPPA), approximately 65,000 applications for child marriage dispensations were recorded in 2021 and 55,000 cases in 2022.<sup>3</sup> These figures confirm that although the minimum age for marriage has been raised to 19 years through the revision of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the practice of child marriage continues through dispensation mechanisms.<sup>4</sup> This phenomenon demonstrates that the issue of child marriage is not only related to regulatory aspects, but is also influenced by interrelated social, cultural, and religious factors.

<sup>1</sup> Aulil Amri and Muhadi Khalidi, "Efektivitas Undang-Undang Nomor 16 Tahun 2019 Terhadap Pernikahan Di Bawah Umur," *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 6, no. 1 (2021): 85; Sastro Mustapa Wantu et al., "Early Child Marriage: Customary Law, Support System, and Unwed Pregnancy in Gorontalo," *Samarah* 5, no. 2 (2021): 780–803.

<sup>2</sup> Sonny Dewi Judiasih et al., "Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur Di Indonesia," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (2020): 203–22; Kamarusdiana Kamarusdiana and Ita Sofia, "Dispensasi Nikah Dalam Perspektif Hukum Islam, Undang-Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam," *SALAM: Jurnal Sosial Dan Budaya Syar-i*, ahead of print, 2020.

<sup>3</sup> Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, "Perkawinan Anak Di Indonesia Sudah Mengkhawatirkan," Siaran Pers Kemen PPPA, 2023, <https://www.kemennppa.go.id/index.php/siaran-pers/kemen-pppa-perkawinan-anak-di-indonesia-sudah-mengkhawatirkan>?

<sup>4</sup> Ellyvon Pranita, "Peringkat Ke-2 Di ASEAN, Begini Situasi Perkawinan Anak Di Indonesia," *KOMPAS.Com*, 2021; PA Semarang, "Statistik Perkara Dispensasi Kawin," Pa-Semarang.Go.Id, 2025, <https://pa-semarang.go.id/id/kepaniteraan/statistik-perkara/statistik-diska>; Radar Semarang, "Hingga Mei 2021 Sudah 104 Anak Di Semarang Ajukan Dispensasi Kawin," 2021.

The social and psychological impacts of child marriage have been extensively discussed in numerous studies. Numerous studies demonstrate how this practice leaves lasting scars for children, families, and society.<sup>5</sup> However, one aspect has rarely received serious attention: how Islamic law views and responds to this issue. A crucial question arises: whether this issue is adequately understood within the framework of family law, or whether it also needs to be read from the perspective of Islamic criminal law, which emphasizes protection and justice.

In Islamic legal literature, child marriage has often been placed within the realm of family law (*al-ahwāl al-shakhṣiyyah*). The primary focus has been on the validity of the marriage contract, the role of guardians, and the conditions and pillars of marriage.<sup>6</sup> This perspective is important, but becomes inadequate when confronted with contemporary realities, where the impact of child marriage actually creates new vulnerabilities that intersect with the criminal realm, such as forced marriage, sexual violence, and violations of children's rights.

Several previous studies have examined this practice from various perspectives. Grijns and Horii (2018) and Horii (2020) show how the practice of marriage dispensation in West Java creates a space for compromise between state law, religious courts, and religious norms, often resulting in the legitimization of child marriage.<sup>7</sup> Kasjim (2016) highlights the misuse of religious arguments in South Sulawesi to justify the practice,<sup>8</sup> while Engelcke et al.'s (2025) study demonstrates that similar issues arise in various Muslim jurisdictions with varying contexts.<sup>9</sup>

Empirical studies also provide important insights into the factors driving child marriage. Research by Liem et al. (2024), Rumble et al. (2018), and Kok et al. (2023) demonstrates how poverty, low education, and the COVID-19 pandemic

<sup>5</sup> Muhammad Ikhsanudin and Siti Nurjanah, "Dampak Pernikahan Dini Terhadap Pendidikan Anak Dalam Keluarga," *Al-I'tibar: Jurnal Pendidikan Islam* 5, no. 1 (2018): 38-44; Umriyeh et al., "Dampak Pernikahan Dini Terhadap Pendidikan Anak Dalam Keluarga Di Dusun Laok Songai Kec. Kokop Bangkalan," *Pendas* 9, no. 3 (2024); Nur Qalbi Putri Ramadhani Ahmad et al., "Perkawinan Dini: Menyingkap Dampaknya Terhadap Kesehatan Anak Di Kota Bandar Lampung," *Julia: Jurnal Litigasi Amsir* 11, no. 2 (2024): 105-12; Elprida Riyanny Syalis and Nunung Nurwati Nurwati, "Analisis Dampak Pernikahan Dini Terhadap Psikologis Remaja," *Focus: Jurnal Pekerjaan Sosial* 3, no. 1 (2020): 29; Amri and Khalidi, "Efektivitas Undang-Undang Nomor 16 Tahun 2019 Terhadap Pernikahan Di Bawah Umur."

<sup>6</sup> Muhammad Fajar and Linda Kartika, "Fiqh Analysis of the Age Limit for Marriage and Its Implications for Children's Welfare," *Indonesian Journal of Islamic Law* 4, no. 1 (2021): 17-34; Ahmad Rasyidi Halim et al., "Legal Formulation for Forced Marriage Prevention through the Decision of Wali Mujbir in Religious Courts and Its Relevance with Maqāṣid Syari'ah and Human Rights," *Mazahib* 23, no. 1 (2024): 79-116.

<sup>7</sup> Mies Grijns and Hoko Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society*, ahead of print, 2018; Hoko Horii, "Legal Reasoning for Legitimation of Child Marriage in West Java: Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection," *Journal of Human Rights Practice*, ahead of print, 2020.

<sup>8</sup> Kasjim Salenda, "Abuse of Islamic Law and Child Marriage in South-Sulawesi Indonesia," *Al-Jami'ah: Journal of Islamic Studies* 54, no. 1 (2016): 95-122.

<sup>9</sup> Dörthe Engelcke et al., "Underage Marriage: Legal and Social Practice in Muslim Jurisdictions," *Arab Law Quarterly*, March 26, 2025, 1-49.

accelerate child marriage.<sup>10</sup> This data strengthens the argument that child marriage cannot be viewed solely as a moral or religious issue, but also as a structural problem that requires legal intervention and public policy.

Regulatory efforts through criminal law are also beginning to be discussed. An article by Susilowati et al. (2023) emphasizes the importance of criminal policy in addressing child marriage, although it does not directly link it to an Islamic legal perspective.<sup>11</sup> Meanwhile, Usman (2022), through a study of the Aceh Qanun Jinayat (Islamic Law on the Rights of the Child), demonstrates the limitations of Islamic criminal law in providing equal protection, thus still leaving problems for vulnerable groups.<sup>12</sup> These findings indicate that despite numerous studies, research examining the intersection of Islamic family law and Islamic criminal law within the framework of protecting victims of child marriage remains very limited.

This research gap serves as the primary basis for this article. Protection for victims of child marriage cannot be fully guaranteed through a family law approach alone. Criminal law, emphasizing justice and rights protection, is necessary. The intersection of Islamic family law and Islamic criminal law demonstrates the need for a more integrated framework for understanding this issue. This study seeks to explain how these two domains can complement each other in addressing the complexities of child marriage, particularly when the practice involves elements of coercion, violence, and violations of children's rights. In this context, reference to the principle of protection of the soul (*ḥifz al-nafs*) is used in a limited way as a normative consideration to emphasize that the practice of child marriage—especially those involving elements of coercion, violence, or vulnerability—is contrary to the goal of protecting the safety and welfare of children.<sup>13</sup>

This article applies a normative-analytical approach, examining Islamic legal literature (classical and contemporary), national regulations, and empirical

<sup>10</sup> Andrian Liem et al., "Factors Associated with Child Marriage During the COVID-19 Pandemic in Indonesia," *Contemporary Islam* 18, no. 3 (2024): 457–78; Lauren Rumble et al., "An Empirical Exploration of Female Child Marriage Determinants in Indonesia," *BMC Public Health* 18, no. 1 (2018): 407; Maryse C. Kok et al., "Drivers of Child Marriage in Specific Settings of Ethiopia, Indonesia, Kenya, Malawi, Mozambique and Zambia – Findings from the Yes I Do! Baseline Study," *BMC Public Health* 23, no. 1 (2023): 794.

<sup>11</sup> Christina Maya Indah Susilowati et al., "Child Marriages and Criminal Law Policy in Indonesia: Exploring Legal Reform Possibilities," *International Journal of Criminal Justice Sciences* 18, no. 2 (2023): 139–50.

<sup>12</sup> Zainul Fuad et al., "Wither Qanun Jinayat? The Legal and Social Developments of Islamic Criminal Law in Indonesia," *Cogent Social Sciences* 8, no. 1 (2022): 1–17.

<sup>13</sup> Khairul Hamim and Lalu Supriadi, "The Contextualization of *Ḥifz Al-'Ird* on Hoax News (A Study on Imam Tājuddīn al-Subkī's *Maqāṣid al-Sharī'a*)," *Ulumuna* 24, no. 2 (2020): 348–66; Zumiyati Sanu Ibrahim et al., "Integration of *Maqāṣid Al-Sharī'ah* in the Criminal Law Reform to Achieve Justice and Human Dignity," *Jurnal Hukum Islam* 23, no. 1 (2025): 105–44; Alimuddin Alimuddin, "The Urgency of the *Maqāṣid Al-Syarī'ah* in Reasoning Islamic Law," *Britain International of Humanities and Social Sciences (BloHS) Journal* 1, no. 2 (2019): 117–23; Isnain La Harisi and M. Wahid Abdullah, "Pembaharuan Hukum Keluarga Islam Dalam Menghadapi Tantangan Sosial Kontemporer Persepektif *Maqashid Syariah*," *USRAH: Jurnal Hukum Keluarga Islam* 5, no. 2 (2024): 226–41.

research findings to identify the dynamics of Islamic jurisprudence in the current context. The analysis is conducted comparatively and thematically, focusing on the integration of Islamic family law and criminal law within the framework of the *maqāṣid al-sharī'ah* (the principles of Islamic law) for the issue of child marriage. This article offers a novel approach by examining the protection of victims of child marriage through the intersection of two previously rarely linked domains of Islamic law. This analysis not only fills an academic gap but also provides a practical contribution to formulating a more comprehensive framework for victim protection in Indonesia. This article seeks to answer the question: how can the intersection of Islamic family law and Islamic criminal law be used to strengthen the protection of victims of child marriage?

## **B. The Dynamics of Child Marriage in Indonesia**

The phenomenon of child marriage remains a complex social problem in Indonesia. Despite the 2019 revision of the Marriage Law, which sets the minimum age for marriage at 19 for both men and women, the practice of child marriage continues in various regions.<sup>14</sup> This situation demonstrates a gap between positive legal norms and social reality. Child marriage is often viewed as a way out of economic difficulties, out-of-wedlock pregnancies, or as a way to maintain family honor, yet this practice actually creates new vulnerabilities for children.<sup>15</sup> Statistically, Indonesia has one of the highest rates of child marriage in Southeast Asia. Data from the Central Statistics Agency (BPS) in 2020 showed that approximately 10.82% of women aged 20–24 was married before the age of 18. This figure does show a decrease compared to the previous decade, but it still falls short of the national target of reducing the child marriage rate to below 8.74% by 2024. UNICEF even ranks Indonesia eighth in the world for absolute child marriage rates, making this issue a global issue that demands serious attention.<sup>16</sup>

The causes of child marriage are diverse and multidimensional. Economic factors are a primary cause, with poor families often marrying off their children to ease financial burdens. Furthermore, education plays a significant role: girls who drop out of school are more vulnerable to being married off at a young age.<sup>17</sup> Cultural

<sup>14</sup> Iswandi Iswandi and Andi Yaqub, "Implications of The Revision of Law No. 16 of 2019 Againsts the Practice of Child Marriage," *Al-'Adl* 16, no. 1 (2023): 12–24; Muliani Ratnaningsih et al., "Child Marriage Acceptability Index (CMAI) as an Essential Indicator: An Investigation in South and Central Sulawesi, Indonesia," *Global Health Research and Policy* 7, no. 1 (2022): 32.

<sup>15</sup> Hoko Horii, "Child Marriage as a 'Solution' to Modern Youth in Bali," *Progress in Development Studies* 20, no. 4 (2020): 282–95.

<sup>16</sup> UNICEF Indonesia; BPS; PUSKAPA UI; Kementerian PPN/Bappenas, *Child Marriage in Indonesia Latest Statistics of Child Marriage in Indonesia* (2020).

<sup>17</sup> Girls Not Brides, "Indonesia – Child Marriage Atlas," <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/indonesia/>

and traditional factors, such as the view that marrying at a young age is more honorable, also remain deeply rooted in some communities. Religious norms are often interpreted narrowly, thus justifying the practice of child marriage.<sup>18</sup>

In addition to internal family and cultural factors, the legal system also provides space for child marriage through marriage dispensation mechanisms. Religious courts frequently accept and grant dispensation requests, citing premarital pregnancy or social pressure. Although dispensation is normatively intended as an exception, in practice, it has become a frequent solution to legalize child marriage.<sup>19</sup> This creates a dilemma: on the one hand, the courts want to protect children from social stigma; on the other, such decisions actually reinforce practices that contradict child protection principles.

The impact of child marriage on girls is serious, both from a health, educational, and psychosocial perspective. From a health perspective, child marriage increases the risk of high-risk pregnancies, maternal mortality, and stunting in the unborn child. From an educational perspective, girls who marry young are almost certain to drop out of school, thus limiting future economic opportunities. Psychologically, married children lack emotional maturity, making them vulnerable to domestic violence. This cycle of vulnerability makes child marriage not only an individual problem but also a national development issue.<sup>20</sup> Thus, the constellation of child marriage in Indonesia demonstrates the tension between formal regulations, social realities, and cultural-religious interpretations. Efforts to reduce child marriage rates cannot be achieved solely through legal means; they require a multidimensional approach: family economic empowerment, equitable access to education, and a reinterpretation of religious and cultural values to better support child protection. Without these comprehensive measures, child marriage will continue to be a persistent problem, hampering efforts to protect children's rights and human resource development in Indonesia.

### **C. Indonesian Law and the Protection of Children**

Indonesia's positive law in recent decades has shown significant progress in child protection, including regarding the issue of child marriage. The revision of Law Number 1 of 1974 through Law Number 16 of 2019, for example, raised the

<sup>18</sup> Shandra Widiyanti, "Why Can't Indonesia Let Go of Child Marriage?," 360info.Org, 2024, <https://360info.org/why-cant-indonesia-let-go-of-child-marriage/>

<sup>19</sup> Dede Kania and Siti Nur Fatoni, "Protecting Children's Rights in Marriage Dispensation Cases: Evidence from Religious Courts in Indonesia," *Asy-Syari'ah* 25, no. 2 (25 AD): 79–98.

<sup>20</sup> Isnawati Hidayah et al., "The Role of Parental Child Marriage in Children's Food Security and Nutritional Status: A Prospective Cohort Study in Indonesia," *Frontiers in Public Health* 12 (December 2024): 1–17; Lisa Cameron et al., "Child Marriage: Using the Indonesian Family Life Survey to Examine the Lives of Women and Men Who Married at an Early Age," *Review of Economics of the Household* 21, no. 3 (2023): 725–56.

minimum age for marriage for girls from 16 to 19, equalizing the provisions for boys. This change represents a step forward, although it still leaves a legal loophole through the marriage dispensation mechanism.<sup>21</sup>

The Child Protection Law also emphasizes that every child has the right to protection from early marriage. Its articles define child marriage as a violation of children's rights. This aligns with Indonesia's international commitments, such as the Convention on the Rights of the Child (CRC) and the Sustainable Development Goals (SDGs), which target the elimination of child marriage by 2030.<sup>22</sup> Although regulations have become more stringent, practice does not always align with this. Religious Courts still frequently grant marriage dispensation requests, particularly on the grounds of out-of-wedlock pregnancies.<sup>23</sup> This phenomenon demonstrates that regulations have not fully served as a preventative measure; instead, they sometimes legitimize the practice of child marriage. Thus, the implementation of positive law still faces major challenges.

Furthermore, the new Criminal Code (KUHP) places special emphasis on protecting children from sexual violence.<sup>24</sup> In the context of child marriage, this provision is crucial to ensure that the marital relationship does not justify sexual coercion against children. These criminal provisions strengthen the legal position in protecting children as vulnerable individuals. However, the relationship between family law and criminal law in the practice of child marriage remains inconsistent. On the one hand, family law allows child marriage through dispensation. On the other hand, criminal law demands maximum protection for children from all forms of violence. This tension often creates confusion in legal practice, both in the courts and in society.

Implementation issues are also related to societal culture. In some regions, child marriage is still considered a solution to out-of-wedlock pregnancies or family economic problems.<sup>25</sup> Law enforcement often faces a dilemma between enforcing

<sup>21</sup> Korik Agustian et al., "Marriage Law in Indonesia from a Legal Sociology Perspective," *Russian Law Journal* 11, no. 6 (2023): 667–75.

<sup>22</sup> Shella Oetharry Gunawan and Syamsul Bahri, "Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives," *El-USrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 362; Aulia Dwi Damayanti and Dwi Aryanti Ramadhani, "Implementing the SDGs: Implications for Regulating Marriage Age in Indonesia," *Jurnal Cendekia Hukum* 10, no. 1 (2025): 149–65.

<sup>23</sup> Siskawati Thaib, "Perkawinan Dibawah Umur (Ditinjau Dari Hukum Islam Dan Undang-Undang Nomor 1 Tahun 1974)," *Lex Privatum*, 2017; Judiasih et al., "Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur Di Indonesia"; Nita Fatmawati et al., "Dispensasi Perkawinan Di Bawah Umur Akibat Hamil Diluar Nikah (Studi Di Pengadilan Agama Demak) Nita," *Diponegoro Law Review* 5, no. 2 (2016): 1–16.

<sup>24</sup> Endrianto Bayu Setiawan et al., "The Indonesian Criminal Law System's Progression in Sexual Assaults Regulation," *Volksgesit: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 2 (2022): 161–77.

<sup>25</sup> Wantu et al., "Early Child Marriage: Customary Law, Support System, and Unwed Pregnancy in Gorontalo"; Horii, "Child Marriage as a 'Solution' to Modern Youth in Bali."

the law and adhering to local social norms. This demonstrates that legal protection is not sufficient through regulation alone; it also requires supportive social change. Thus, Indonesian positive law already provides a clear framework for child protection efforts. However, its effectiveness is still hampered by the dualism of regulations, societal culture, and court practices. This situation demands stronger integration between family law and criminal law, so that child protection does not stop at the normative level but is truly present in practice.

#### **D. Child Marriage from the Perspective of Islamic Family Law**

In classical Islamic jurisprudence (*fiqh*) literature, the age of marriage is not explicitly regulated. The majority of scholars only state that one of the requirements for a valid marriage is puberty. For girls, puberty is usually associated with menstruation, while for boys, it is marked by wet dreams. This understanding has led some to believe that child marriage is valid as long as these biological requirements are met. This view is rooted in a past socio-cultural context that differs significantly from current realities.<sup>26</sup> However, the development of modern Islamic legal thought shows a shift in approach. Many contemporary scholars emphasize the importance of physical, mental, and social maturity before a person enters marriage. Yūsuf al-Qarḍawī, for example, noted that marriage cannot be understood solely as a biological contract, but rather as a family institution that demands readiness and responsibility.<sup>27</sup> This emphasis on aspects of maturity and responsibility highlights that marriages conducted without readiness have the potential to cause harm, especially for children.<sup>28</sup> Therefore, the age of maturity is a crucial consideration in determining a person's readiness to marry, particularly in the context of safeguarding the safety and welfare of children.

The Indonesian context exhibits unique dynamics. The Marriage Law sets a minimum age for marriage, and a 2019 amendment equalized the minimum age for men and women at 19. This policy can be read as the state's attempt to interpret Islamic family law in a more protective manner for children. While not universally agreed, this move affirms that sharia must be interpreted with the goal of public welfare in mind.

<sup>26</sup> Fajar and Kartika, "Fiqh Analysis of the Age Limit for Marriage and Its Implications for Children's Welfare."

<sup>27</sup> Ane Fany Novitasari et al., "The Importance of Maturity in Marriage from an Islamic Legal Perspective," *Journal of Legal Studies* 33, no. 47 (2024): 99–108.

<sup>28</sup> Zulpahmi Lubis et al., "Analysis of Ideal Marriage Age Perspective of Islamic Family Law Philosophy," *Islamijah: Journal of Islamic Social Sciences* 6, no. 2 (2025): 90–116.

The principle of benefit is key to understanding Islamic family law.<sup>29</sup> If the practice of child marriage is proven to cause serious harm, especially to the safety and well-being of children, then such practice is inconsistent with protecting the soul (*hifz al-nafs*).<sup>30</sup> Several contemporary Islamic legal thinkers believe that preventing child marriage is part of an effort to protect children from physical, psychological, and social risks. Therefore, Islamic family law has room for adaptive reinterpretation to respond to social change.

Nevertheless, many people still refer to classical Islamic jurisprudence (*fiqh*) to justify child marriage.<sup>31</sup> This demonstrates the tension between normative texts and contextual needs. The greatest challenge is finding a religious authority that can bridge this gap. Islamic scholars, academics, and community leaders play a crucial role in encouraging a paradigm shift, emphasizing that postponing child marriage is not against religion but rather a form of protection consistent with Sharia. Among those who disagree with changing the minimum age for marriage, particularly for women, from 16 to 19, is the increased risk of adolescent sin due to delaying marriage. This issue certainly warrants further discussion, as early marriage can potentially lead to family problems that may arise in the post-marital period. Thus, the perspective of Islamic family law cannot be interpreted statically. It demands openness to social change and an awareness of the *hifz al-nafs*. When child marriage is proven to hinder the achievement of the goals of sharia, reinterpretation becomes necessary. This demonstrates the potential of Islamic family law as a dynamic legal system, capable of adapting to reality without losing the substance of its values.

## **E. The Criminal Dimensions of Child Marriage Practices**

Child marriage is not only a family issue but also has serious criminal implications. Children who marry at an early age are vulnerable to physical, psychological, and sexual abuse. In many cases, child marriage becomes a gateway to exploitation. Unequal power relations leave children without bargaining power, making them vulnerable victims of domestic violence.<sup>32</sup> From the perspective of Islamic criminal law, marriage cannot be used as a justification for acts of violence or for allowing

<sup>29</sup> Andi Yaqub et al., "Reconstruction of Sakinah Family Criteria During the Covid-19 Period," *Al-Ahkam* 31, no. 1 (2021): 1–24; Maskur Rosyid and M. Nurul Irfan, "Reading Fatwas of MUI a Perspective of Maslahah Concept," *Syariah: Jurnal Hukum Dan Pemikiran* 19, no. 1 (2019): 91–117.

<sup>30</sup> Mariani Amberi, "Efforts to Prevent Child Age Marriage in The Study of Islamic Legal Philosophy and Indonesia Positive Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 239–60.

<sup>31</sup> Syahrudin Hidayat et al., "The Norm of Marriage Age Limit and Cultural Contestation of Child Marriage Law in Rural Communities," *Jurnal Hukum Islam* 21, no. 1 (2023): 55–82.

<sup>32</sup> Sonny Dewi Judiasih and Hazar Kusmayanti, "Legal Protection Against Domestic Violence in Child Marriage," *Jurnal Poros Hukum Padjadjaran* 5, no. 2 (2024): 203–18; Bahman Baraie et al., "What Socio-Cultural Factors Encourage Child Marriage in Sanandaj, Iran? A Qualitative Study," *Child & Youth Services* 45, no. 1 (2024): 23–44.

injustice to occur against children. Allowing potential violence and injustice against children constitutes a crime. Sharia emphasizes justice, compassion, and protection in marital relations.<sup>33</sup> When child marriage actually results in harm in the form of violence, it can be considered a form of crime. In this case, a crime of *ta'zīr* is a crime whose form and type of sanctions are the responsibility of a country's law enforcement authorities.<sup>34</sup> The possibility of even the slightest crime must be prevented. The principle of "*lā ḍarar wa lā ḍirār*" (no harm and no mutual harm) is an important foundation for addressing this issue.<sup>35</sup>

The criminal dimension also arises when child marriage is linked to sexual crimes. Children who are biologically and mentally immature are not actually ready for sexual intercourse. Within the framework of Islamic criminal law, sexual intercourse without readiness and morally valid consent can be categorized as a form of coercion. This is close to the category of *zinā bi al-ikrāh* (adultery by force), which has severe legal consequences.<sup>36</sup>

Indonesian positive law also takes this matter seriously. The Child Protection Law and the new Criminal Code affirm the prohibition of sexual exploitation of children, including within the framework of marriage. This means the state recognizes the potential for crime behind the practice of child marriage. Although a marriage may be legally valid after a dispensation, the risk of criminal action remains if there is an element of violence or exploitation.

Another issue is the practice of marriage dispensations, which are often used as a legal loophole.<sup>37</sup> On the one hand, dispensations are considered a solution when a child becomes pregnant out of wedlock. However, on the other hand, this mechanism has the potential to legitimize child marriage and close off opportunities for criminal protection. The lack of synchronization between family law and criminal law makes child victims even more vulnerable.

Within the framework of *maqāṣid al-sharī'a* (the main goals of Islamic law), the negative impacts of child marriage—especially those that lead to violence or

<sup>33</sup> Dillah Afriyanti et al., "Analysis of Domestic Violence under Islamic Criminal Law (Jināyah): A Qiṣāṣ and Ta'zīr Perspective," *SYARIAT: Akhwal Syaksiyah, Jinayah, Siyasah and Muamalah* 1, no. 2 (2024): 115–23.

<sup>34</sup> 'Abd al-Qādir 'Awdah, *Al-Tashrī' al-Jinā'ī al-Islāmī Muqāranan Bi al-Qānūn al-Waḍ'ī* (Mu'assasah al-Risālah, 2001).

<sup>35</sup> Najm al-Dīn Al-Ṭūfī, "Sharḥ Arba'īn Nawāwī," in *Al-Maṣlaḥah Fī al-Tashrī' al-Islāmī Wa Najm al-Dīn al-Ṭūfī*, ed. Muṣṭafā Zayd (Dār al-Fikr al-'Arābī, 1954); Maskur Rosyid and Anwar Hafidzi, "Paradigma Dan Alienasi Konsep Maslahat Al-Tufi Sebagai Legalitas Sumber Syariah," *Al-Banjari : Jurnal Ilmiah Ilmu-Ilmu Keislaman* 19, no. 2 (2020).

<sup>36</sup> Iffatin Nur, "Islamic Law on Gender Based Sexual Violence," *AHKAM : Jurnal Ilmu Syariah* 13, no. 1 (2013); Wahyu Atsmaruddin et al., "Reconciling Marital Rape Within Islamic and Positive Legal Frameworks in Indonesia: A Sadd Al-Ḍarī'ah Perspective," *Al-Fiqh: Islamic Law Review Journal* 2, no. 2 (2023): 113–29.

<sup>37</sup> Amri and Khalidi, "Efektivitas Undang-Undang Nomor 16 Tahun 2019 Terhadap Pernikahan Di Bawah Umur."

exploitation—clearly contradict the principles of protection of life (*ḥifẓ al-nafs*) and protection of offspring (*ḥifẓ al-nasl*). These principles emphasize that any form of social or legal practice that endangers the safety and dignity of children is contrary to the spirit of Islamic justice. In this context, Islamic criminal law is not only understood as a system of punishment, but also as a mechanism for preventing harm and safeguarding human dignity. Therefore, discussions regarding child marriage cannot be limited to aspects of the contract's validity in family law. This study also needs to consider how criminal law can function as a protective framework for children who are vulnerable to violence, coercion, or sexual exploitation in marriage. The integration between Islamic family law and criminal law is not intended to mix the two realms of law, but to realize a complete vision of Islamic law, namely, a law that is not only morally valid, but also substantively fair.

## **F. Intersection between Islamic Family Law and Islamic Criminal Law: To a New Direction**

Islamic family law and Islamic criminal law fundamentally have interrelated goals, namely ensuring human welfare and protection. In the context of child marriage, both overlap in the issue of protecting the safety and well-being of children. Islamic family law views marriage as an institution that demands readiness, responsibility, and the continuity of family life. In contrast, Islamic criminal law provides instruments to prevent and address various forms of violence, coercion, and exploitation that can arise in early marriage.

In classical Islamic jurisprudence (*fiqh*) literature, child marriage is not explicitly prohibited. However, many scholars emphasize the importance of physical and psychological maturity as part of the principle of benefit. In the development of contemporary Islamic legal thought, marriage practices that cause harm—especially those that endanger the safety of children—are deemed necessary to be reexamined. In this context, reference to the principle of protection of the soul (*ḥifẓ al-nafs*) is used in a limited way as a normative consideration to emphasize that marriage practices that cause physical, psychological harm, or violence to children are unjustifiable. Furthermore, the concept of *ta'zir* in Islamic criminal law provides the state with the authority to impose sanctions on parties who coerce or exploit children through marriage.<sup>38</sup> This intersection creates space for harmonization between family law and Islamic criminal law.

<sup>38</sup> Inggit Arifah et al., "Fiqhi Jinayah Analysis on Legal Protection for Women and Children Victims of Domestic Violence," *Delictum: Jurnal Hukum Pidana Islam* 1, no. 2 (2023): 129–47; Muhammad Mawardi Djalaluddin et al., "The Implementation of Ta'zir Punishment as an Educational Reinforcement in Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 399–417. For example, tuse ta'zir in the case of drug

In the Indonesian context, the intersection between Islamic family law and criminal law is becoming increasingly relevant. Family law is regulated through the Marriage Law. In contrast, aspects of child protection and violence are regulated in the Child Protection Law and the new Criminal Code. Although these two legal regimes often operate in tandem, tensions usually arise in practice, particularly in cases of marriage dispensations. Therefore, an approach that prioritizes child protection, rather than simply formal legalization of marriage, is needed.

Religious court data indicate a significant increase in applications for marriage dispensations, particularly during the pandemic and following the change in the minimum marriage age. The Directorate General of Religious Courts recorded approximately 34,000 applications for marriage dispensation between January and June 2020, with a very high approval rate. The Ministry of Women's Empowerment and Child Protection reported approximately 65,000 applications in 2021 and approximately 55,000 in 2022. Most of these applications involve children under 18 and relate to out-of-wedlock pregnancies or social pressure, which in practice can potentially involve elements of coercion, exploitation, or sexual violence. Several studies have shown that many marriage dispensation cases mask criminal aspects that remain unaddressed because they are resolved within the framework of family law.

In this context, marriage dispensation, intended as a solution, can actually serve as a legal loophole for child exploitation. Therefore, the intersection of family law and criminal law demands a stricter application of the precautionary principle, ensuring that dispensation is granted only in truly urgent circumstances and with due consideration for child protection. Islamic criminal law legitimizes the state to impose sanctions as a preventative measure against practices that endanger children. In cases of child marriage, the state can impose sanctions on parents or other parties who force early marriages. These sanctions are not only repressive but also preventive, aiming to prevent the recurrence of similar practices. Thus, Islamic family law continues to function as a safeguard for the institution of marriage. In contrast, Islamic criminal law ensures the protection of children as a vulnerable group.

The intersection of Islamic family law and Islamic criminal law ultimately results in a complementary approach. Family law provides a normative framework for marriage, while criminal law strengthens child protection through preventive and enforcement mechanisms. This integration strengthens Islamic law's position as a legal system that is not only normative but also responsive to social realities and

see Muhammad Nuril Fauzan, "Law, Society, and Religion: Rethinking Ta'zīr and Capital Punishment for Drug Trafficking in Indonesia," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 59, no. 1 (2025): 80–98.

the needs of child protection. Therefore, the issue of child marriage cannot be understood solely through a single legal regime. The intersection of family law and criminal law enables a more comprehensive legal formulation, one that positions children as legal subjects who must be protected, while also highlighting the role of Islamic law in addressing contemporary social challenges.

The phenomenon of child marriage in Indonesia demonstrates that Islamic legal theory cannot be separated from the social realities on the ground.<sup>39</sup> Data from the Religious Courts shows that thousands of marriage dispensation applications are filed yearly, mostly by girls under eighteen. In some cases, marriages are initiated due to out-of-wedlock pregnancies or social pressure, and often result in domestic violence. This reality demonstrates the blurred boundaries between family law and criminal law. Both are intertwined with a single goal: protecting children from the physical and social dangers arising from early marriage.

The discussion on child marriage opens up a new space for the development of Islamic legal theory that is more responsive to the empirical realities and factual vulnerabilities experienced by children. Protection of children's safety and well-being can no longer be understood solely as a normative ideal. However, it must be realized through legal instruments capable of responding to concrete risks such as coercion, violence, and exploitation. In this context, a limited reference to the principle of protection of the soul (*hifz al-nafs*) is used to emphasize that Islamic law is concerned not only with the formal validity of a contract, but also with substantive justice and the safety and security of children as legal subjects who must be protected.

Court cases demonstrate that Islamic family norms need to be integrated with the principles of Islamic criminal law, particularly in the context of *ta'zīr* (religious obligations), so that the state has a strong basis for prosecuting those who force child marriage. This integration presents a new model for Islamic legal theorizing: law that is not sectoral but systemic and protection-oriented. At this point, the maqāṣid theory serves as a bridge between values and reality.

By incorporating empirical data into the legal interpretation process, the new direction of Islamic legal theorizing becomes more concrete. It does not stop at reproducing classical norms but transforms into a living and adaptive legal framework. In this context, Islamic law emerges as a dynamic system—capable of

<sup>39</sup> Nurul Shafiqah Zainal Abidin and Mustafa Mat Jubri Shamsuddin, "The Misconception of Early Marriage: Reconciling Perspectives Through Maqasid al-Shariah," *Jurnal Pengajian Islam* 18, no. 1 (2025): 123–43; Zaini Nasohah, "Dynamics of Islamic Family Law in Facing Current Challenges in Southeast Asia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024): 1; Ibnu Mas'ud et al., "Dynamics of Islamic Legal Theory (Ushul al-Fiqh) toward Addressing Challenges of Halal Products in the 21st Century," *International Journal of Islamic Thought and Humanities* 4, no. 1 (2025): 88–105.

responding to social change without losing its sharia foundation, while simultaneously emphasizing the role of the state and ulama in safeguarding the interests of children as protected legal subjects.

## G. Conclusion

This article demonstrates that child marriage in Indonesia cannot be understood solely as a family law issue, but also as a legal protection issue involving criminal dimensions. The Islamic family law approach, which focuses on the formal legitimacy of marriage, has proven inadequate to address the various vulnerabilities experienced by children, particularly when child marriage practices intersect with coercion, violence, and exploitation. Therefore, the integration of Islamic family law and Islamic criminal law is crucial to ensure that child protection, not simply the legalization of marriage, is the primary principle in responding to child marriage practices. Within this framework, limited reference to the principle of life protection (*hifz al-nafs*) is used as a normative consideration to emphasize that the safety and well-being of children must be given primary concern in all legal policies and practices related to marriage. The synergy between the regulatory function of family law and the preventive and protective functions of criminal law allows for the formulation of Islamic law that is more comprehensive, responsive to social realities, and oriented towards substantive justice. Thus, Islamic law exists not only as a formal norm but also as a relevant protection instrument in addressing contemporary challenges related to children's rights and safety.

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