

DOI: 10.5281/zenodo.12426184

NORMATIVE ANALYSIS OF LEGAL PROTECTION FOR CHILDREN FROM EARLY MARRIAGE FROM THE PERSPECTIVE OF A COMPILATION OF ISLAMIC LAW AND THE INDONESIAN LEGAL SYSTEM

Rahmawati, Sugianto

UIN Cyber Syekh Nurjati, Cirebon, West Java, Indonesia.
Email: legaljustice22403@gmail.com, sugiantoaphi@gmail.com

Received: 07/08/2025
Accepted: 14/01/2026

Corresponding Author: Rahmawati
(legaljustice22403@gmail.com)

ABSTRACT

*Early marriage remains a serious challenge in Indonesia despite the enactment of Law Number 16 of 2019, which sets the minimum marriage age at 19 years for both men and women. The continued prevalence of marriage dispensation indicates persistent gaps between legal norms and their implementation. This study aims to analyze the normative framework for protecting children from early marriage by examining the harmonization between the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) and the Indonesian national legal system. Using a normative juridical approach, this research analyzes statutory regulations, court decisions, and relevant legal doctrines through statute, conceptual, and analytical methods. The findings demonstrate that KHI and national regulations form a complementary and coherent legal framework grounded in the principles of *maslahah* and the best interests of the child. However, the effectiveness of this framework is constrained by socio-cultural traditions, economic pressures, and limited legal and reproductive health literacy. This study concludes that the primary challenge lies not in normative deficiencies but in weak implementation, particularly in the granting of marriage dispensations. Strengthening judicial supervision, legal education, and cross-sectoral coordination is therefore essential to enhance child protection and reduce early marriage practices in Indonesia.*

KEYWORDS: Legal Protection, Child Marriage, Marriage Dispensation, Islamic Law, Indonesian Legal System.

1. INTRODUCTION

Early marriage, commonly defined as marriage involving individuals under the age of 18, remains a significant social and legal problem in many developing countries, including Indonesia. This practice constitutes a violation of children's fundamental rights, as it limits access to education, increases vulnerability to health risks, and perpetuates cycles of poverty and social inequality. Internationally, the elimination of child marriage has been identified as a key target within the United Nations Sustainable Development Goals (SDGs), particularly in relation to gender equality and child welfare. Despite global and national commitments, early marriage continues to persist in various regions due to complex socio-cultural, economic, and institutional factors.

In Indonesia, the government has sought to address this issue through legal reform. Law Number 16 of 2019, which amended Law Number 1 of 1974 on Marriage, established a minimum marriage age of 19 years for both men and women. This amendment reflects the state's commitment to aligning national legislation with child protection principles and international human rights standards. In addition, Law Number 35 of 2014 on Child Protection obliges parents, families, and the state to prevent marriage at an early age. However, the persistence of marriage dispensation practices, which allow underage الزواج through court approval, indicates that legal reform alone has not been sufficient to eliminate early marriage.

The continued use of marriage dispensation mechanisms highlights the gap between normative legal provisions and their practical implementation. In many cases, dispensations are granted on the basis of social pressure, economic hardship, concerns about premarital relationships, or out-of-wedlock pregnancies. These factors often outweigh considerations of children's long-term welfare, psychological readiness, and educational continuity. Consequently, the dispensation system, which was designed as an exceptional measure, has in some contexts become a routine pathway that legitimizes early marriage.

Within the Indonesian legal system, family law operates within a pluralistic framework that incorporates both state law and Islamic law. The Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) serves as the primary reference for Religious Courts in resolving marital disputes and regulating family relations among Muslims. Although classical Islamic jurisprudence does not prescribe a specific minimum age for marriage,

contemporary Islamic legal thought emphasizes the principles of *maslahah* (public interest) and *maqāṣid al-sharī'ah* (objectives of Islamic law), which prioritize human welfare, protection of intellect, and preservation of lineage. These principles provide a normative basis for restricting early marriage in order to prevent harm and promote children's well-being.

Previous studies on early marriage in Indonesia have generally focused on three main perspectives. First, human rights and positive law approaches emphasize the incompatibility of child marriage with constitutional guarantees and international conventions. Second, regulatory effectiveness studies examine the limited impact of age-limit reforms due to the availability of dispensations. Third, Islamic law-based studies analyze early marriage through the lens of religious doctrines and moral values. While some research has attempted to compare Islamic law and national law, such studies often remain partial and lack systematic analysis of normative harmonization.

Accordingly, there remains a need for comprehensive research that examines how Islamic legal norms and state regulations interact in shaping child protection policies, particularly in the context of marriage dispensation. Understanding this interaction is essential for evaluating whether existing legal instruments function coherently or generate inconsistencies in practice.

This study aims to analyze the normative framework for protecting children from early marriage by examining the harmonization between the Compilation of Islamic Law and the Indonesian national legal system. Specifically, this research seeks to address the following questions: (1) How do national law and KHI regulate the prevention of early marriage? (2) To what extent are these regulations normatively consistent and mutually reinforcing? and (3) What challenges arise in the implementation of marriage dispensation mechanisms? By adopting a normative juridical approach, this study is expected to contribute to the development of more effective legal and institutional strategies for preventing early marriage and strengthening child protection in Indonesia.

Studies on early marriage in Indonesia have developed in several mainstream studies:

1. Positive legal and human rights approach.

Previous research has highlighted early marriage as a violation of children's rights and women's rights, particularly in the context of the Child Protection Act and the Marriage Act. The main focus of this study is the weakness of the minimum age limit for marriage and its impact on children's health, education, and social welfare.

2. Study on the effectiveness of the minimum age of marriage regulation. A number of studies argue that the change in the marriage age limit under Law No. 16 of 2019 has not been fully effective because the marriage dispensation mechanism remains open. The dispensation is seen as a loophole in the law that allows the practice of child marriage to continue legally.
3. The approach of Islamic law and *maqāṣid al-sharī'ah*. Other research situates early marriage within the framework of Islamic law by emphasizing the concepts of puberty, rush, and the principle of benefit. This study shows that normative Islam does not encourage child marriage if it causes harm, although it does not explicitly set an age limit.
4. A partial comparative study of Islamic law and national law. Some studies have compared Islamic law with positive law, but they remain generally partial—whether emphasizing criticism of state law or the normative defense of Islamic law—without a deep, systematic analysis of harmonization.

The position of this article in the scientific map

The article compiled is at an advanced stage (advanced normative analysis), because it not only discusses aspects of positive law or Islamic law separately, but also analyzes the normative integration (harmonization) between the Compilation of Islamic Law (KHI) and the national legal system in the protection of children from early marriage.

Research on early marriage in Indonesia has developed through several dominant scholarly approaches:

a. Positive Law and Human Rights Perspective

Many studies examine child marriage as a violation of constitutional rights, child protection laws, and international conventions. These works emphasize:

- Legal inconsistencies,
- Weak enforcement of minimum age regulations,
- Impacts on education, health, and welfare.

b. Effectiveness of Legal Reform

After the enactment of Law No. 16 of 2019, scholars increasingly focused on evaluating its effectiveness. Key findings include:

- Persistent use of marriage dispensation,
- Courts as legal gateways for underage marriage,
- Limited deterrent effect of legal reform.

c. Islamic Law and Maqāṣid al-Sharī'ah Approach

Another stream analyzes early marriage from Islamic jurisprudence, highlighting:

- The absence of explicit age limits in classical fiqh,
- The relevance of *maslahah* and *maqāṣid al-sharī'ah*,
- Ethical arguments against harmful practices.

d. Partial Comparative Studies

Some research compares Islamic law and national law, but most:

- Focus on one system more than the other,
- Lack systematic harmonization analysis,
- Remain descriptive rather than integrative.

e. Emerging Normative Integration Studies

Recent scholarship begins to explore legal pluralism and normative interaction, but remains limited in scope and depth, particularly regarding judicial practice and institutional coherence.

This paper belongs to the advanced stage of normative legal studies, as it systematically examines the harmonization between Islamic law (KHI) and national legislation within child protection policy.

2. METHODOLOGY

2.1. Research Design and Approach

This study employs a normative juridical research design, focusing on the analysis of legal norms, principles, and doctrines governing the protection of children from early marriage in Indonesia. This approach is appropriate because the research aims to examine the coherence and harmonization between the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) and national legal regulations, rather than to investigate social behavior empirically. Normative legal research enables systematic interpretation of statutory provisions, judicial guidelines, and Islamic legal principles relevant to marriage and child protection.

2.2. Research Approaches

To strengthen the analysis, this study applies three complementary approaches:

2.3. Statutory Approach

The statutory approach is used to examine laws and regulations related to early marriage and child protection. These include Law Number 1 of 1974 as amended by Law Number 16 of 2019 on Marriage, Law Number 35 of 2014 on Child Protection, Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, and relevant provisions of the Compilation of Islamic Law. This approach enables the identification of normative standards, institutional responsibilities, and procedural requirements.

2.4. Conceptual Approach

The conceptual approach is employed to analyze key legal and Islamic concepts underlying early marriage regulation, such as child protection, legal capacity, marriage dispensation, *maslahah*, and *maqāṣid al-sharī'ah*. Through this approach, the study examines the philosophical and ethical foundations of legal norms and their relevance to children's welfare and human dignity.

2.5. Analytical and Comparative Approach

An analytical and comparative approach is used to assess similarities, differences, and points of convergence between Islamic law and national legislation. This approach facilitates the evaluation of normative consistency, potential contradictions, and areas of harmonization in regulating early marriage and dispensation practices.

2.6. Types and Sources of Legal Materials

This research relies exclusively on secondary legal materials, which are classified into three categories:

2.6.1. Primary Legal Materials

Primary legal materials consist of binding legal instruments, including statutes, government regulations, Supreme Court regulations, and the Compilation of Islamic Law. These materials serve as the main reference for analyzing legal obligations, institutional authority, and normative standards.

2.6.2. Secondary Legal Materials

Secondary legal materials include scholarly books, peer-reviewed journal articles, research reports, expert opinions, and official publications issued by government institutions and international organizations. These sources provide interpretative perspectives and contextual understanding of early marriage and child protection.

2.6.3. Tertiary Legal Materials

Tertiary legal materials, such as legal dictionaries, encyclopedias, and indexing databases, are used to support conceptual clarification and terminological consistency.

2.7. Selection of Court Decisions

To strengthen the normative analysis, this study examines selected Religious Court decisions on marriage dispensation. Decisions were selected based on the following criteria: (1) availability in official judicial databases, (2) relevance to underage marriage cases, (3) clarity of judicial reasoning, and (4) representation of different regional contexts.

These decisions are used to illustrate how legal norms are interpreted and applied in practice.

2.8. Data Collection Techniques

Legal materials were collected through systematic library research and document analysis. Statutory regulations were obtained from official government and judicial websites. Academic literature was accessed through reputable academic databases and university libraries. Court decisions were retrieved from authorized judicial information systems and court archives.

All collected materials were organized thematically and classified according to their relevance to research objectives, including regulatory framework, judicial discretion, Islamic legal principles, and child protection mechanisms.

2.9. Data Analysis Method

Data analysis was conducted qualitatively using normative and doctrinal interpretation techniques. The analytical process consisted of three main stages:

1. **Data Reduction.** Relevant legal materials were selected, categorized, and filtered to focus on issues related to early marriage regulation, legal harmonization, and marriage dispensation.
2. **Data Organization and Presentation.** Selected data were systematically organized into thematic categories and presented in descriptive-analytical form to facilitate comparison and interpretation.
3. **Interpretation and Conclusion Drawing.** The organized data were interpreted through statutory interpretation, conceptual analysis, and normative reasoning. Conclusions were drawn based on patterns of legal consistency, institutional roles, and practical challenges identified in the analysis.

2.10. Validity and Reliability

To ensure analytical rigor, this study applies source triangulation by comparing statutory provisions, judicial guidelines, court decisions, and academic interpretations. Consistency of interpretation is maintained through cross-referencing multiple authoritative sources. Peer-reviewed literature is prioritized to enhance academic credibility.

2.11. Limitations of the Study

This research is limited to normative and doctrinal analysis and does not involve fieldwork, interviews, or surveys. Consequently, it does not capture empirical perceptions or lived experiences of affected communities. The findings therefore reflect legal and institutional perspectives rather than social realities.

Future studies are encouraged to integrate empirical methods to complement normative findings.

2.12. Ethical Considerations

As this study is based exclusively on publicly available legal documents and academic sources, it does not involve human participants and does not require ethical clearance. Nevertheless, the research adheres to principles of academic integrity, proper citation, and responsible use of sources.

3. RESULTS AND DISCUSSION

3.1. Normative Framework for the Protection of Children from Early Marriage in Indonesian Law

The analysis shows that Indonesian national law has established a comprehensive normative framework to prevent early marriage and protect children's rights. Article 28B paragraph (2) of the 1945 Constitution guarantees every child's right to survival, development, and protection from violence and discrimination. This constitutional mandate provides the fundamental legal basis for regulating marriage in a manner that safeguards children's welfare.

This commitment is further reflected in Law Number 16 of 2019, which amended Law Number 1 of 1974 on Marriage by setting the minimum marriage age at 19 years for both men and women. This reform aims to ensure physical, psychological, and social maturity before entering marriage. In addition, Law Number 35 of 2014 on Child Protection obliges parents, families, and the state to prevent child marriage and to prioritize children's best interests in all decisions affecting them.

These regulations demonstrate that, at the normative level, the Indonesian legal system recognizes early marriage as a practice that threatens children's health, education, and socio-economic development. The legal framework therefore positions child protection as a central objective of marriage regulation. However, despite the existence of clear standards, the continued prevalence of underage marriage indicates limitations in practical enforcement.

3.2. Regulation of Marriage Dispensation in National Law

Although national law establishes a strict minimum age requirement, it also provides a mechanism for marriage dispensation. Article 7 paragraph (2) of Law Number 16 of 2019 allows parents or guardians to apply for court permission when their children have not reached the minimum

age, provided that strong reasons and supporting evidence are presented. This provision is further elaborated in Supreme Court Regulation (PERMA) Number 5 of 2019, which sets procedural and substantive guidelines for adjudicating dispensation cases.

The findings indicate that PERMA No. 5 of 2019 has strengthened judicial responsibilities by requiring judges to consider medical, psychological, educational, and social aspects of the child's readiness for marriage. Judges are also required to hear directly from the prospective bride and groom to ensure that the application is not the result of coercion.

Normatively, this mechanism is intended as an exceptional measure, designed to address urgent situations while maintaining child protection principles. However, analysis of selected court decisions suggests that dispensations are frequently granted due to social pressure, out-of-wedlock pregnancy, or economic hardship. In many cases, these factors are considered more decisive than long-term developmental risks. This practice indicates that the dispensation mechanism, although normatively restrictive, functions in practice as a flexible instrument that may weaken preventive efforts.

3.3. Perspective of the Compilation of Islamic Law (KHI) on Early Marriage

From the perspective of Islamic law as codified in the Compilation of Islamic Law (KHI), marriage is regarded as a recommended religious institution aimed at preserving moral values and family stability. Although classical Islamic jurisprudence does not stipulate a specific minimum age for marriage, KHI incorporates age-related considerations by referring to statutory regulations and parental consent requirements.

Article 15 of the KHI emphasizes that marriage should be conducted in accordance with the minimum age provisions stipulated in the Marriage Law. This provision reflects the adaptation of Islamic family law to contemporary social and legal realities. Furthermore, Islamic legal doctrine recognizes the concept of *rushd*, which refers to intellectual and moral maturity, as an important element in determining marital readiness.

The analysis demonstrates that KHI implicitly supports restrictions on early marriage through the principles of *maslahah* (public interest) and *maqāṣid al-sharī'ah*. These principles prioritize the protection of life, intellect, and lineage. Early marriage, which increases health risks, limits educational opportunities, and threatens family stability, is therefore inconsistent with these objectives.

Consequently, from a normative Islamic perspective, restricting child marriage is compatible with religious values aimed at preventing harm and promoting welfare.

3.4. Harmonization between KHI and National Legal Regulations

One of the main findings of this study is that the Compilation of Islamic Law and national legislation are normatively consistent and mutually reinforcing in protecting children from early marriage. Both legal systems emphasize maturity, responsibility, and welfare as prerequisites for marriage.

First, both frameworks share similar normative objectives. National law prioritizes the best interests of the child, while KHI emphasizes *maslahah* and harm prevention. Although these principles originate from different legal traditions, they converge in promoting children's physical, psychological, and social well-being.

Second, both systems recognize marriage dispensation as an exceptional instrument rather than a general rule. National law regulates it procedurally through courts, while KHI frames it ethically through benefit-oriented reasoning. This dual foundation provides judges with both legal authority and moral guidance in evaluating applications.

Third, harmonization is evident in judicial practice, where Religious Court judges frequently combine statutory provisions with Islamic legal reasoning. This integrated approach enables judges to justify decisions not only in formal legal terms but also in ethical and religious contexts. As a result, judicial discretion is strengthened, particularly in protecting vulnerable children.

However, this harmonization remains primarily normative. In practice, socio-cultural pressures often influence judicial decisions, limiting the effectiveness of integrated legal standards.

3.5. Marriage Dispensation as an Instrument of Exception

The analysis indicates that marriage dispensation constitutes the most critical element in the regulation of early marriage. Conceptually, it is designed as a selective and protective mechanism. Judges are expected to evaluate whether granting permission genuinely serves the child's best interests.

In practice, however, dispensations are frequently used as a means to resolve social and moral anxieties, particularly in cases involving pregnancy or community stigma. These considerations often lead to pragmatic decisions that prioritize short-term social harmony over long-term child welfare.

Consequently, dispensation functions as a legal loophole that legitimizes practices the law seeks to prevent.

Judges face complex dilemmas in these cases. On the one hand, they are required to uphold child protection principles. On the other hand, they must respond to social realities that may expose children to discrimination, violence, or exclusion if marriage is denied. This tension illustrates the limitations of purely normative regulation in addressing deeply rooted cultural practices.

3.6. Implementation Challenges and Institutional Limitations

The findings reveal that the main obstacles to preventing early marriage are not located in normative deficiencies but in implementation constraints. Cultural traditions, economic vulnerability, limited access to education, and low legal literacy continue to influence family decisions. In many communities, early marriage is perceived as a practical solution to financial hardship or moral concerns.

Institutional limitations also contribute to these challenges. Coordination between courts, religious affairs offices, schools, health services, and social agencies remains insufficient. Preventive programs and legal education initiatives are unevenly distributed, particularly in rural areas. As a result, many families lack adequate information about the long-term consequences of early marriage.

Furthermore, monitoring mechanisms for dispensation decisions are still limited. Although PERMA No. 5 of 2019 provides detailed guidelines, their consistent application depends heavily on individual judges' commitment and capacity. Without systematic evaluation and supervision, disparities in judicial practice persist.

3.7. Implications for Legal Policy and Practice

The results of this study suggest that strengthening child protection requires an integrated approach that combines legal regulation, judicial professionalism, and social intervention. Normative harmonization between KHI and national law provides a strong foundation, but it must be supported by effective implementation strategies.

First, continuous training for judges on child psychology, reproductive health, and human rights is essential to enhance the quality of dispensation decisions. Second, legal and reproductive health education programs should be expanded to increase public awareness. Third, cross-sectoral coordination among relevant institutions must be institutionalized to create a comprehensive prevention system.

Finally, periodic evaluation of dispensation practices at regional and national levels is necessary to identify inconsistencies and promote best practices. Such measures would strengthen the role of law as a protective instrument rather than merely a procedural framework.

This study offers several original contributions to the existing literature:

a. Systematic Harmonization Analysis

Unlike previous partial comparisons, this research:

- Examines KHI and national law as an integrated normative system,
- Demonstrates their coherence in child protection objectives,
- Shows convergence between *maslahah* and the best interests of the child.

b. Integration of Legal and Religious Reasoning

The study innovatively:

- Links statutory provisions with Islamic legal philosophy,
- Shows how judges combine positive law and religious ethics,
- Explains the dual normative foundation of judicial discretion.

c. Focus on Dispensation as a Structural Issue

Rather than treating dispensation merely as a loophole, this paper:

- Conceptualizes it as a structural weakness,
- Analyzes its transformation from exception to routine,
- Connects it to socio-cultural pressures.

d. Emphasis on Judicial Institutional Role

This research highlights judges as:

- Norm translators,
- Moral and legal guardians,
- Central actors in child protection governance.

e. Advanced Normative Methodology

By combining statutory, conceptual, and comparative approaches, the study produces a multi-layered normative analysis rarely found in previous works.

Main Novelty Statement. This article is novel in demonstrating that Islamic law and national law are normatively harmonized in preventing child marriage, and that implementation failure—especially through dispensation practice—is the main source of ineffectiveness.

Despite extensive prior research, several important gaps remain, which this study partially addresses:

a. Gap in Integrated Normative Framework Studies

Previous research often:

- Separates Islamic law and state law,
- Fails to analyze their interaction systematically,
- Overlooks institutional synergy.

Gap: Lack of comprehensive studies on legal harmonization in plural systems.

b. Gap in Institutional and Judicial Analysis

Most studies focus on:

- Legal texts,
- Social impacts,
- Policy outcomes.

Few examine:

- Judicial reasoning patterns,
- Institutional coordination,
- Professional capacity.

Gap: Limited understanding of how courts operationalize child protection norms.

c. Gap between Normative and Empirical Research

Many works are either:

- Purely normative, or
- Purely sociological.

They are rarely integrated.

Gap: Insufficient interdisciplinary research connecting legal doctrine with social reality.

d. Gap in Monitoring and Evaluation Studies

Research rarely addresses:

- Systematic supervision of dispensation decisions,
- Regional disparities,
- Accountability mechanisms.

Gap: Weak evidence on governance and monitoring effectiveness.

e. Gap in Community and Child Perspectives

Most studies analyze policies from institutional viewpoints, with little attention to:

- Children's experiences,
- Family decision-making processes,
- Local cultural dynamics.

Gap: Absence of bottom-up perspectives in legal research.

Table 1: State of the Art, Novelty, and Gap

Aspect	Description
State of the Art	Research dominated by legal reform, human rights, Islamic jurisprudence, and partial comparisons; limited integrative studies.
Novelty	Systematic harmonization analysis, integration of legal-religious reasoning, structural critique of dispensation, and institutional focus.
Research Gap	Lack of interdisciplinary, institutional, monitoring, and community-based studies in early marriage regulation.

Current studies on early marriage in Indonesia mainly focus on human rights perspectives, regulatory effectiveness, and Islamic legal interpretations. However, most remain partial and do not systematically examine the normative interaction between Islamic law and national legislation.

This study provides a comprehensive analysis of normative harmonization between the Compilation of Islamic Law and the national legal system, highlighting the convergence of *maslahah* and child protection principles and identifying marriage dispensation as a structural implementation challenge.

Previous research has insufficiently explored institutional practices, judicial reasoning, and interdisciplinary integration. This study addresses these gaps by examining legal coherence and implementation dynamics within Indonesia's plural legal framework.

4. CONCLUSION

This study demonstrates that the Indonesian legal system and the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) have established a coherent and complementary normative framework for protecting children from early marriage. Through constitutional provisions, statutory regulations, judicial guidelines, and Islamic legal principles, the state has articulated clear standards that prioritize children's physical, psychological, and social well-being. The principles of the best interests of the child and *maslahah* function as shared ethical and juridical foundations that strengthen the legitimacy of early marriage prevention efforts.

The findings indicate that the persistence of child marriage in Indonesia is not primarily caused by weaknesses in legal norms, but by limitations in their implementation. In particular, the marriage dispensation mechanism, although designed as an

exceptional measure, often operates as a pragmatic response to socio-cultural pressures, economic vulnerability, and moral concerns. As a result, dispensation practices frequently compromise long-term child welfare in favor of short-term social accommodation.

This study further highlights the central role of Religious Court judges in translating normative standards into effective protection. By integrating statutory provisions with Islamic legal reasoning, judges function not only as law enforcers but also as guardians of children's rights. However, the effectiveness of this role depends on institutional support, professional capacity, and consistent supervision.

Based on these findings, strengthening child protection requires more than legal reform. It demands systematic efforts to enhance judicial training, expand legal and reproductive health education, and improve coordination among courts, religious affairs offices, educational institutions, health services, and social agencies. In addition, regular monitoring and evaluation of marriage dispensation decisions are necessary to ensure uniform application of child-centered principles across regions.

This research contributes to the literature by demonstrating that normative harmonization between Islamic law and national law constitutes a valuable foundation for child protection policy in plural legal systems. Nevertheless, its limitations lie in its exclusive reliance on normative analysis. Future research should therefore adopt interdisciplinary and empirical approaches to examine judicial practices, community perceptions, and institutional dynamics. Such studies would provide deeper insight into the social and legal mechanisms that sustain early marriage and support the development of more effective, evidence-based prevention strategies.

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