

## **BETWEEN JUDICIAL DISCRETION AND THE BEST INTERESTS OF THE CHILD: THE DILEMMA OF CHILD PROTECTION IN MARRIAGE DISPENSATION IN INDONESIA**

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### **Abstract**

**Purpose** – This study aims to analyze the normative paradox in the flexibility of marriage dispensations, which expands the subjectivity of judicial decisions due to the absence of substantive indicators of “urgent reasons” and parameters of the best interests of the child. In addition, this study examines the shift in the function of dispensations from the ultimum remedium to a response to social pressure. This study also evaluates its impact on the consistency of decisions and the effectiveness of the minimum age norm as an instrument of child protection.

**Methods** – This study used a qualitative method with a normative legal approach. The research data consist of primary and secondary legal materials selected purposively based on their relevance and authority, with a focus on legal norms and judicial considerations related to marriage dispensation.

**Findings** – This study confirms the existence of a normative paradox in the flexibility of marriage dispensation in Indonesia, where the mechanism, originally designed as a limited correction to the minimum age limit, has instead expanded the scope for subjectivity in judicial practice due to the absence of indicators regarding compelling reasons and operational parameters in the best interests of the child. This has resulted in inconsistent decisions and weakened child protection. Furthermore, the functional shift of dispensation from ultimum remedium to a response to social pressure has blurred the boundaries and has the potential to shift the law from an instrument of protection to a means of legitimizing child marriage practices.

**Research contribution/limitations** – This study offers a conceptual framework for reorienting the practice of marriage dispensation towards child protection and substantive justice. However, this study does not fully accommodate the empirical perspectives of those directly affected by the disaster.

**Originality/value** – The novelty of this study is that it positions marriage dispensation as a structural issue in family law, emphasizing the need for more accountable regulatory standards and judicial guidelines for the protection of children and justice.

**Keywords:** *Marriage Dispensation; Child Protection; Family Law; Regulatory Flexibility; Court Decisions.*

## Abstrak

**Tujuan** – Penelitian ini bertujuan menganalisis paradoks normatif dalam fleksibilitas dispensasi perkawinan yang memperluas subjektivitas putusan peradilan akibat ketiadaan indikator substantif "alasan mendesak" dan parameter kepentingan terbaik anak. Selain itu, penelitian ini mengkaji pergeseran fungsi dispensasi dari ultimum remedium menjadi respons terhadap tekanan sosial. Penelitian ini juga mengevaluasi dampaknya terhadap konsistensi putusan dan efektivitas norma usia minimum sebagai instrumen perlindungan anak.

**Metode** – Penelitian ini menggunakan metode kualitatif dengan pendekatan hukum normative. Data penelitian berupa bahan hukum primer dan sekunder yang dipilih secara purposif berdasarkan relevansi dan otoritasnya, dengan fokus pada norma hukum dan pertimbangan peradilan terkait dispensasi perkawinan.

**Temuan** – Penelitian ini menegaskan adanya paradoks normatif dalam fleksibilitas dispensasi perkawinan di Indonesia, di mana mekanisme semula dirancang sebagai koreksi terbatas terhadap batas usia minimum, justru memperluas ruang subjektivitas praktik peradilan akibat ketiadaan indikator mengenai alasan mendesak dan parameter operasional kepentingan terbaik anak. Kondisi ini berdampak pada ketidakseragaman putusan dan melemahnya perlindungan anak. Selain itu, pergeseran fungsional dispensasi dari ultimum remedium menjadi respons terhadap tekanan sosial, sehingga batasan menjadi kabur dan berpotensi menggeser hukum dari instrumen perlindungan menjadi sarana legitimasi praktik perkawinan anak.

**Kontribusi/Keterbatasan Penelitian** – Penelitian ini menawarkan kerangka konseptual untuk mereorientasikan praktik dispensasi perkawinan agar berorientasi pada perlindungan anak dan keadilan substantif. Namun, kajian ini belum sepenuhnya mengakomodasi perspektif empiris dari pihak-pihak yang terdampak secara langsung.

**Keaslian/Nilai** – Kebaruan penelitian ini memposisikan dispensasi perkawinan sebagai persoalan struktural dalam hukum keluarga, ditekankan perlunya standar regulasi dan pedoman yudisial yang lebih akuntabel demi perlindungan anak dan keadilan.

**Kata kunci:** Dispensasi Kawin; Perlindungan Anak; Hukum Keluarga; Fleksibilitas Regulasi; Putusan Pengadilan.

## INTRODUCTION

Marriage is ideally understood as a social and legal institution that aims to protect human dignity, ensure the continuity of healthy family life, and fulfill the basic rights of all legal subjects, especially children and women (Vundamati, 2021). Within this normative framework, setting a minimum age for marriage serves as a preventive legal instrument to suppress child marriage (Braithwaite, 2021), reduce the risk of domestic violence, and ensure the physical, psychological, and social readiness of prospective spouses (Anwar et al., 2024). Minimum age of marriage regulations in various modern

countries are positioned as preventive instruments aimed at reducing the practice of child marriage, reducing the risk of domestic violence, and ensuring the physical, psychological, and social readiness of prospective spouses (Faiz et al., 2023; Husna et al., 2022; Insani et al., 2024; Mursyid and Yusuf, 2022; Rohmadi et al., 2024; Rohman et al., 2023) within the framework of international law oriented towards child protection and gender equality (Wismayanti et al., 2021), legal flexibility regarding the age of marriage must remain within strict limits so as not to reduce the protective function of family law (Efevbera, 2020).

However, reality shows that in many developing countries, including Indonesia, the dispensation mechanism often shifts from an emergency instrument to a pragmatic solution to short-term social pressures such as social stigma, pregnancy outside of marriage, and dominant moral-communal norms. In the practice of religious courts in Indonesia, the phenomenon of an increase in marriage dispensation requests reflects the complexity of its normative objectives (Purwanti and Natalis, 2025), between protective legal norms and social realities that demand quick and solution-oriented responses (Yuni, 2021). Judges are often in a dilemma between enforcing the minimum age for marriage as a norm for child protection and responding to strong social pressure from families and the community (Foster, 2020). Therefore, non-legal considerations, such as social stigma, religious moral constructs, and concerns about family disgrace, often become the main justifications for dispensation requests (Kurniawan et al., 2025).

In this context, the flexibility of marriage dispensation regulations in Indonesia raises structural problems in contemporary family law, particularly regarding the effectiveness of child protection (Yang, 2021). The absence of clear normative indicators regarding “urgent circumstances” opens up broad judicial discretion and has the potential to give rise to disparities in decisions, while encouraging the legalization of

existing circumstances rather than the prevention of long-term risks (Sekarrini et al., 2025). The orientation towards short-term problem-solving often shifts the substantive assessment of a child's psychological readiness, emotional maturity, and future to a mere administrative formality (Afiyah et al., 2024). As a result, dispensations no longer function as instruments of protection but rather as routine “emergency measures” (Firdaus and Andaryuni, 2025). This has serious implications for the vulnerability of children, especially girls, who are at risk of limited access to education, economic dependence, unequal power relations (Rahmah and Achdiani, 2025), and an increased risk of violence and early divorce (Ottakkam Thodukayil et al., 2025). Therefore, this study is significant in critically examining whether the flexibility of marriage dispensation in contemporary family law still functions as an emergency legal instrument or has been normalized as a routine mechanism in responding to social pressures, and how this shift impacts the consistency of family law and the effectiveness of substantive child protection laws.

Several previous studies on marriage dispensation can be mapped into several thematic clusters. First, the normative-*maqāṣid* approach assesses judges' considerations through the framework of *maqāṣid al-sharī'ah* (Ilyas, 2025). In addition, other studies examine judges' references in the narrative of *maslahah* and prevention of *mafsadat* (Baihaqi et

al., 2024; Purwanto and Fajriyah, 2024). Although enriching normative justifications, this approach tends to accept the framework of dispensation as a necessity without critically examining whether this flexibility has shifted from an emergency instrument to a routine mechanism. Second, studies highlighting the issue of urgency standards and disparity in decisions emphasize the absence of measurable parameters regarding “urgent circumstances,” thus opening up space for the legalization of child marriage through weak arguments (Ilma, 2020; Makruf et al., 2025). Third, the socio-cultural approach highlights the dominance of factors such as pregnancy outside marriage, concerns about adultery, and moral-communal pressure as the main determinants of granting dispensations (Dwiyanti et al., 2025; Oktavianti et al., 2023). Fourth, historical-regulatory studies map the evolution of the dispensation system and show the selective application of the principle of the best interests of the child in certain judicial practices (Nabilah et al., 2024; Putri and Marwa, 2025). Although these studies make important contributions, most stop at the level of normative justification, description of disparities, or identification of sociological factors, without integrating the three in a framework of criticism of regulatory flexibility itself.

Therefore, this study is important because it attempts to conceptualize regulatory flexibility in marriage dispensation as a structural problem in

contemporary family law rather than merely a technical problem of law enforcement. This study aims to: (1) critically analyze the regulatory flexibility of marriage dispensation in Indonesian family law; (2) evaluate the functional shift of marriage dispensation from an emergency mechanism to a routine legal practice; and (3) formulate a conceptual basis for strengthening marriage dispensation policies and judicial guidelines that are more accountable, child-centered, and in line with the normative objectives of family law. Furthermore, this study not only examines the practice of dispensation but also critically evaluates how regulatory flexibility facilitates the shift from an emergency mechanism to a routine legal instrument.

By systematically integrating family law theory, child protection principles, and normative legal objectives, this study uses a theoretical framework that places regulatory flexibility as a structural phenomenon in family law practice rather than merely a technical issue of norm application. This framework is based on a conceptual analysis of the relationship between written legal norms, judicial discretion, and child protection orientation in the marriage’s dispensation system. In this construction, family law theory serves as the basis for understanding the position of dispensation in the normative architecture of marriage law, while child protection principles become evaluative parameters for assessing the legitimacy

of the use of regulatory flexibility. Thus, the theoretical framework used serves as a conceptual instrument to explain the interrelationship between legal norms, judicial practice, and social implications in a structured, systematic, and relevant manner, with the aim of strengthening marriage dispensation policies that are more accountable and centered on the best interests of the child.

## **METHOD**

This study uses a qualitative method and normative legal approach. The normative legal approach is used to analyze marriage dispensation as a legal construct governed by legislation, judicial doctrine, and court decisions in Indonesia's family law system. This approach analyzes the harmony between the legal norms governing marriage dispensations and the normative objectives of family law, particularly child protection. The research framework is critical-conceptual to examine the extent of regulatory flexibility embedded in the provisions of marriage dispensations and their implications for the best interests of children. Within this framework, the law is not merely a collection of written norms but a normative tool that produces social consequences and represents certain value orientations in legal governance. Thus, this study allows for a more comprehensive evaluation of the relationship between legal norms,

judicial discretion, and child-protection outcomes.

The study's objective is to examine the regulation and judicial practice related to marriage dispensations in Indonesia, consisting of legal norms, judicial reasoning, and patterns of interpretation reflected in legislation, Constitutional Court decisions, and Religious Court decisions regarding marriage dispensations. This study limits its scope to doctrinal legal materials and judicial texts to maintain the normative coherence and analytical depth. This limitation ensures that the research remains focused and systematically structured in its assessment of regulatory flexibility in contemporary family laws. The research data included primary and secondary data. Primary data include legal products, namely laws and regulations related to marriage and marriage dispensation, relevant Constitutional Court decisions, and relevant Religious Court decisions in marriage dispensation cases. Secondary data include literature relevant to the research topic. The selection of research data in the form of legal material was carried out purposefully based on its relevance, authority, and contribution to the analytical objectives of this study.

Data analysis was conducted qualitatively using a descriptive-analytical and critical-evaluative approach. The analytical process involved several stages: (1) classification of legal norms and judicial arguments related to marriage dispensation, (2)

interpretation of these norms and rulings using doctrinal and conceptual legal reasoning, and (3) critical evaluation of the alignment between the normative objectives of family law, particularly child protection, and the practical application of marriage dispensations. The analysis is then synthesized to construct a systematic legal argument and formulate conceptual recommendations to strengthen the regulation of marriage dispensation and the judicial guidelines. The limitations of this study are methodological in nature, as it does not include empirical data obtained from interviews, field observations, or the real-life experiences of the affected legal subjects. Nevertheless, this limitation is acknowledged as a deliberate methodological choice, given that the main objective of this study is to strengthen the normative and conceptual foundations of marriage dispensation regulations. Artificial intelligence was used in this study for language checking.

## RESULTS AND DISCUSSION

### Shifting the Function of the Marriage Dispensation in Family Law

Marriage dispensation was originally constructed as an exceptional and emergency legal instrument, not as a mechanism routinely used in family court practice. Normatively, its existence is intended to provide limited discretion for the state in responding to extraordinary situations that cannot be

fully accommodated by the general provisions regarding the minimum age for marriage (Syaifullah et al., 2023). Thus, marriage dispensation is placed within the framework of *ultimum remedium*, which is the last resort that can only be taken when strict enforcement of the age limit has the potential to cause greater harm to the best interests of the child, the protection of individuals, and the broader social order (Susanti, 2024).

However, social dynamics, cultural pressures, and the increasing number of requests for dispensation in various religious court jurisdictions indicate a significant shift in the function of the marriage contract. Marriage dispensation is no longer positioned solely as a restrictive instrument of exception, but tends to be normalized in judicial practice as an administrative mechanism to legitimize child marriage under certain social conditions. This functional transformation marks a reorientation from an emergency-based protection paradigm to a broader discretionary practice, which in many cases is influenced by social constructs of morality, premarital pregnancy, family pressure, and pragmatic narratives of public interest that have developed in society.

A normative analysis of the legal framework and practice of Religious Court decisions shows a trend of increasing numbers of marriage dispensation requests, followed by relatively high approval rates. This

phenomenon indicates that dispensation is no longer strictly understood as an exceptional instrument used only in extraordinary circumstances but has moved towards a more accessible procedural mechanism in the administration of marriage (Sanusi et al., 2024). From a legal theory perspective, this condition reflects the broadening of judicial discretion, which has gradually shifted the boundary between exceptions and regular practices.

The judges' considerations in dispensation cases also show a pattern of argumentation that is not solely based on normative urgency, as formulated in legislation, but extends to socioeconomic variables, cultural expectations, and moral pressures that are developing in society. Although often framed in terms of public interest or protection, this rationalization has the potential to erode the extraordinary character that is conceptually inherent in marriage dispensation. In other words, discretion, which is intended as a protective instrument, has transformed into a channel for legitimizing practices that are normatively intended to be restricted.

This functional shift cannot be separated from the strong and persistent sociocultural construction of marriage. In many local contexts, child marriage is positioned as a pragmatic solution to the problems of pregnancy outside marriage, family economic vulnerability, and concerns about the social stigma attached to relationships outside

marriage (Adisti, 2025). This situation reveals a complex interaction between legal norms, social morality, and household economic rationality, placing marriage dispensation at the intersection of child protection and compromise with a social reality that has not yet fully changed.

Consequently, marriage dispensation increasingly functions as a legal instrument that legitimizes socially tolerated early marriage practices rather than as a protective mechanism to prevent harm (Ludfi, 2024). This reflects the ongoing tension between legal norms and empirical realities. On the normative level, the state establishes minimum marriage age regulations to protect children's rights and prevent the adverse physical, psychological, and social impacts of early marriage. On a practical level, judges are confronted with complex factual situations in which denying dispensation is perceived as potentially generating new social problems (Owens and Merriman, 2021). This tension encourages the expansive use of judicial discretion, ultimately blurring the boundary between legal exceptions and socially embedded practices.

The normative implications of this shift are particularly significant when dispensations are granted permissively, as the preventive function of marriage age regulation is substantially weakened, and the exception effectively neutralizes the norm (Mursyid and Yusuf, 2022). In this sense, marriage

dispensation evolves into a normative loophole that allows the legal continuation of child marriages. This transformation has direct consequences for gender justice and child protection, as girls are disproportionately affected by early marriage in terms of reproductive health risks, educational discontinuity, and weakened bargaining positions within marital relationships (Sari et al., 2020).

When marriage dispensation prioritizes the rapid resolution of social problems over the best interests of the child, family law risks reproducing the structural inequalities it is normatively designed to prevent. This highlights a broader governance problem in contemporary family law: the lack of synchronization between normative legal objectives and their implementation in judicial practice (Onditi, 2022). Accordingly, this analysis directly supports the study's objective of critically evaluating the regulatory flexibility of marriage dispensation and assessing whether it continues to function as an emergency protection mechanism or has shifted into a routine legal pathway that undermines child protection and justice in the family law.

### **Regulatory Flexibility and Inconsistency of Court Decisions**

Regulatory flexibility in marriage dispensation refers to the scope of judicial discretion granted by statute to deviate from the minimum legal age of marriage under specific circumstances.

Within the Indonesian family law system, such flexibility is normatively designed as a corrective and exceptional mechanism intended to address emergencies or social conditions that cannot be fully anticipated by rigid legal norms (Ardiansyah et al., 2025). Accordingly, marriage dispensation is not formulated as a general rule but as a casuistic exception to be applied restrictively and prudently in specific circumstances. However, this regulatory design simultaneously produces structural effects. The absence of substantive, firm, and measurable indicators defining key concepts such as "urgent reasons" and "the best interests of the child" creates a broad interpretive space for judges (Sriono et al., 2023). While implementing regulations emphasize formal requirements and the principle of judicial prudence, they do not provide objective benchmarks for assessing urgency, child readiness or long-term welfare. Consequently, judges exercise extensive discretion in evaluating the facts, weighing the evidence, and determining whether to grant or deny a marriage dispensation application.

In judicial practice, this regulatory flexibility has generated significant variations in judicial reasoning across courts and cases. Some judges interpret marriage dispensation primarily as a child protection instrument and therefore apply stricter standards, including psychological maturity, reproductive health considerations,

economic preparedness, and potential long-term risks to the child (Al Hasan and Yusup, 2021). Conversely, other judges place greater emphasis on sociological and moral considerations, such as avoiding social stigma, responding to family pressure, or preventing perceived “greater harm,” even when indicators of the child’s readiness remain insufficient (Darmawati and Arsyad, 2024).

This divergence in legal reasoning demonstrates a causal relationship between regulatory flexibility and inconsistent judicial outcomes. Cases with comparable characteristics, such as

the applicant’s age, social background, or grounds for submission, may result in substantively different decisions. Consequently, legal certainty is weakened as judicial outcomes become highly dependent on individual judicial perspectives and local social contexts rather than uniform normative standards. From a rule-of-law perspective, this undermines the law’s function as an instrument of predictability, equality, and protection. To systematize this relationship, the analytical impact of regulatory flexibility on the consistency of court decisions can be mapped as follows:

**Table 1.** Analytical impact of regulatory flexibility on the consistency of court decisions

No	Aspect of Regulatory Flexibility	Form of Implementation in Judicial Decisions	Impact on Legal Consistency
1.	Undefined formulation of “urgent reasons”	Judges interpret urgency based on personal reasoning and local socio-cultural contexts	Divergence in assessment standards among judges
2.	Broad discretion in determining the best interests of the child	Some judges prioritize child protection, others emphasize social or moral pressures	Non-uniform decisions in cases with similar factual patterns
3.	Absence of objective indicators of marital readiness	Assessment of readiness relies on subjective and speculative judgment	Difficulty in forming consistent jurisprudence
4.	Lack of quantitative limits or sanction guidelines	Dispensations are repeatedly granted in certain regions	Dispensation shifts from an exception to a routine practice

Table 1 shows how regulatory flexibility in marriage dispensation operates as a structural factor that influences the consistency of judicial decisions. Each aspect of flexibility identified in the table represents a normative gap within the regulatory framework that directly shapes judicial

reasoning and the outcomes. The absence of a clearly delimited formulation of “urgent reasons” allows judges to rely on subjective interpretations and local socio-cultural considerations, resulting in divergent assessment standards across different courts. Furthermore, the broad

discretion in defining the child's best interests leads to differing judicial orientations, with some decisions prioritizing child protection while others emphasizing social or moral pressures. This variation highlights how flexibility, when not guided by substantive criteria, transforms judicial discretion into a source of legal uncertainties. The lack of objective indicators for assessing marital readiness further exacerbates this condition, as judicial evaluations become speculative and case-specific, making it difficult to establish consistent jurisprudence. Finally, the absence of quantitative limitations or sanction guidelines enables the repeated granting of dispensations in certain jurisdictions, signaling a shift in the functional role of marriage dispensations from an exceptional mechanism to routine legal practice.

Unlike the findings of other studies that highlight imbalances in decisions and weak urgency standards in marriage dispensations, there is a need to reevaluate the provisions for marriage dispensations to prevent the opening of space for the legitimization of child marriage (Silva, 2025). Overall, these findings reinforce the argument that regulatory flexibility, without adequate interpretive guidance, weakens the function of family law as a tool for legal certainty, equality before the law and child protection. It also highlights the causal relationship between normative ambiguity and inconsistency in judicial decision-making, which ultimately

undermines the preventive purpose of minimum age at marriage regulations.

### **Marriage Dispensation and Child Protection Principles: Ambivalence in Law and Justice**

Marriage dispensation is an exemption mechanism that allows marriage below the minimum age limit through court permission (Basalamah and Widodo, 2024). In contemporary family law, this mechanism is normatively formulated as an extraordinary remedy, which is a limited solution for situations that cannot be accommodated by general norms. However, when the subjects involved are children, dispensation is no longer merely a matter of administrative flexibility but directly touches on the principle of child protection as the ethical and juridical foundation for decision-making. This is where the ambivalence of the judiciary's attitude arises: on the one hand, judges are called upon to enforce the minimum age limit as an instrument of protection; on the other hand, courts often respond to social, moral, and cultural pressures that are constructed as "urgent circumstances." This tension reflects the dilemma between normative commitment to children's rights and the pragmatic need to resolve immediate social issues in the field.

Conceptually, the principle of child protection places children as legal subjects with the right to optimal development, education, health, and

protection from practices that could potentially harm their future (Tahir et al., 2025). In the context of marriage dispensation, this principle requires that each application be assessed based on long-term welfare parameters rather than merely legitimizing existing conditions. The principle of the best interests of the child serves as an analytical instrument that requires judges to comprehensively evaluate the psychological readiness, emotional maturity, reproductive health risks, and continued access to education of the minor (Hernawan and Widigdo, 2023). However, judicial practice shows that these considerations are not always the primary determinants.

In several decisions, reasons such as pregnancy outside of marriage or concerns about social stigma are more dominant than longitudinal analyses of the impact of child marriage. This indicates a shift in orientation from child protection to the protection of adult social values, thereby putting children at risk of being reduced to objects of community moral resolution (Nasyadira and Saputra, 2025). In fact, doctrinally, judges bear the responsibility as institutional guardians of children's interests and are therefore required to exercise discretion carefully, including through a multidisciplinary approach (Akmal et al., 2025a). Without strict evaluation standards, flexibility can erode the preventive function of family law.

However, in judicial practice, applying child protection principles often encounters structural challenges. Sociocultural norms, moral perceptions, and community pressures often shape the construction of the "urgent reasons" that applicants present. In several court decisions, marriage dispensation has been granted primarily to avoid social stigma or preserve family honor, with limited assessment of the child's long-term welfare. Such practices risk shifting the orientation of child protection away from the child and toward protecting adult social values, thereby positioning children as objects of problem-solving rather than as rights-bearing subjects.

From a doctrinal perspective, child protection requires judges to exercise discretion with greater caution. Judges function not only as applicers of legal norms but also as institutional guardians of children's interests, particularly given children's limited bargaining power in judicial proceedings (Akmal et al., 2025b). Accordingly, the examination of marriage dispensation applications should ideally involve multidisciplinary assessments, including psychological evaluations, expert testimonies, and analyses of the child's family and social environment. This approach helps ensure that judicial decisions are grounded in objective evaluations rather than assumptions or external pressures.

Moreover, child protection in marriage dispensation must be understood in terms of both preventive and corrective dimensions. Preventively,

family law seeks to restrict child marriage because of its wide-ranging impact on children's fundamental rights (Setiawan, 2024). Marriage dispensation may be used only in truly unavoidable circumstances and must aim to minimize risks to the child. When dispensations are granted loosely and repeatedly, the law's protective function is weakened, and the normative objective of regulating the minimum age of marriage loses its substantive meaning. From a family law perspective, the tension between marriage dispensation and child protection reflects a broader normative dilemma between legal flexibility and firm commitment to children's rights (Fitria et al., 2023). While flexibility is necessary to address complex social realities, without a robust child protection framework, it may inadvertently legitimize practices that harm children.

Therefore, the principle of child protection must operate as both an ethical and juridical boundary that cannot be compromised in marriage dispensation cases. Marriage dispensation and child protection principles are linked by a critical corrective relationship (Hidayat et al., 2024). Marriage dispensation can only be justified if it genuinely functions as an instrument of protection rather than a legal loophole that perpetuates child marriage. Strengthening child protection perspectives through stricter screening standards, multidisciplinary judicial approaches, and heightened awareness

of the long-term consequences of child marriage is essential to ensure that family law delivers normative certainty and substantive justice for children.

The phenomenon of marriage dispensation cannot be separated from the principles of child protection affirmed in the Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly on November 20, 1989. This Convention places children as legal subjects with inherent rights to survival, development, participation, and protection from all forms of discrimination and harmful practices. In this context, the policy and practice of marriage dispensation must be assessed against the four general principles of the CRC: non-discrimination, the best interests of the child, the right to life and development, and respect for the child's views. The principle of the best interests of the child, as stated in Article 3 of the CRC, emphasizes that every decision concerning a child must prioritize their best interests. International literature emphasizes that the best interests principle is not merely moral rhetoric but a substantive legal norm that must be translated into measurable procedures and evaluation parameters (Zermatten, 2010).

In the context of child marriage, the CRC is understood as an instrument that obliges states to take preventive measures against practices that endanger the health, education, and autonomy of children, including

restrictions on the minimum age of marriage (Bunting, 2005; UNICEF, 2018). In the context of marriage dispensations, this requires a comprehensive assessment of the impact on a child's health, education, psychological well-being, and future prospects, rather than simply considering social or moral pressures. Without rigorous substantive evaluation, granting dispensation could deviate from the state's obligation to ensure optimal protection for children. Article 19 of the CRC also requires states to protect children from harmful practices, including child marriage, which can limit access to education, increase reproductive health risks and reinforce unequal power relations. Article 12 of the CRC affirms the child's right to be meaningfully heard in any process affecting them (Perserikatan Bangsa-Bangsa, 1989). Therefore, the examination in dispensation cases must ensure that the child's participation takes place without pressure and is supported by a multidisciplinary assessment so that the decisions taken truly reflect the child's best interests.

A critical analysis of the CRC shows that implementing the principle of the best interests of the child requires a balance between contextual flexibility and clear normative boundaries (Tobin, 2019). If dispensations are granted without a multidisciplinary assessment and the meaningful participation of the child, as mandated by Article 12 of the CRC, the state potentially fails to fulfill its obligation of optimal protection.

Therefore, harmonization between national regulations on marriage dispensation and CRC standards should not be merely declarative but must be realized through measurable indicators of urgency, strict verification procedures, and accountable monitoring mechanisms. Without such a framework, legal flexibility risks becoming a normative loophole that weakens the commitment to child protection within the contemporary family law system.

### **Strengthening Marriage Dispensation as an Emergency Mechanism**

The strengthening of marriage dispensation as an emergency legal mechanism must be situated within the fundamental objectives of marriage law, namely, the protection of children and the enforcement of minimum marriage age limits as a preventive strategy against child marriage (Fauzi, 2022). The regulation of marriage age is not merely an administrative requirement. Still, it reflects the state's normative commitment to safeguarding children's rights to physical, psychological, and social development, as well as to securing their long-term welfare. Within this normative framework, marriage dispensation is conceptually justified only as a narrowly defined exception that must not undermine or displace the primary protective purpose of the marriage law.

Theoretically, this framework aligns with a policy model that places child protection as the main normative

foundation in marriage regulations (Fahrival et al., 2025). In this construction, marriage dispensation is positioned as a conditional emergency mechanism that is only used when strict compliance with general norms has the potential to cause greater harm to the best interests of the child. Therefore, the legal flexibility provided is not intended to be broad or unlimited but is limited by clear ethical and legal parameters. The dispensation is placed immediately after the ideal regulatory objective, functioning as a corrective instrument (rather than) an alternative norm that replaces the minimum age standard for marriage.

However, empirical developments in judicial practice have significantly deviated from this normative path. One emerging trend is the normalization of marriage dispensations, reflected in the increasing number of applications and a relatively permissive tendency in the approval rate (Ilham, 2022). Dispensations are often treated as pragmatic solutions to social pressures, including concerns about morality, family honor, and economic vulnerability. Such practices risk shifting the role of the judiciary from guardian of the best interests of the child to an institution that indirectly legitimizes new forms of vulnerability and reproduces the practice of child marriage under the guise of legal legitimacy (Patoni et al., 2025).

Conversely, another perspective views marriage dispensation strictly as

an *ultima remedium*. In this approach, dispensation can only be granted after all non-marital protection alternatives, such as social assistance, educational support, and psychological intervention, have been comprehensively evaluated and proven to be inadequate (Fernando, 2020). This emphasizes that child marriage should not be positioned as the main solution to social and moral dilemmas but rather as a last resort that must undergo strict multidisciplinary assessment based on the best interests of the child.

To shift judicial practice from a problematic branch to an ideal one, accountability must be strengthened and judicial decision-making standardized in a more measurable manner. Legal flexibility must be balanced with clear, operational, and testable indicators to guide judges' discretion rationally and proportionally. These indicators include the child's psychological readiness, reproductive health risks, social maturity, educational sustainability, and the long-term impact of marriage on the child's life trajectory. Thus, strengthening the marriage dispensation framework should not be interpreted as an expansion of exceptions but rather as a refinement of the analytical framework for assessing the appropriateness of an exception (Sirohi and Mehra, 2025).

Furthermore, this policy stream requires regulatory updates and the consolidation of judicial guidelines as a control node that bridges normative goals with judicial practice. Regulations

must clarify the concept of “urgent interest” to prevent elastic and subjective interpretations. Simultaneously, judicial guidelines must emphasize participatory procedures, expert involvement, and meaningful recognition of children's voices and perspectives in court proceedings (Riza and Sibarani, 2021). These instruments serve as safety mechanisms to ensure that dispensations remain exceptional (rather than) routine administrative procedures.

When regulatory reforms and judicial guidelines are implemented cohesively, the direction of the marriage dispensation policy will converge on a single normative point: accountable, selective, and child protection-centered dispensations. At this stage, dispensation returns to its original character as a limited, proportional exception based on the child’s best interests (Shantya et al., 2025). The integration of normative idealism, institutional reform, and structured judicial discretion ultimately forms a coherent policy synthesis. This synthesis affirms that strengthening the dispensation mechanism as an emergency instrument is not a strategy to weaken the age limit norm for marriage but rather a conscious and targeted legal design to ensure that every exception is implemented responsibly, transparently, and in line with contemporary principles of family law and child protection. The following is a conceptual flow of the strengthening

of marriage dispensations as an accountable emergency mechanism in the marriage law.

**Figure 1.** Conceptual Flow of Strengthening Marriage Dispensation as an Accountable Emergency Mechanism in Marriage Law

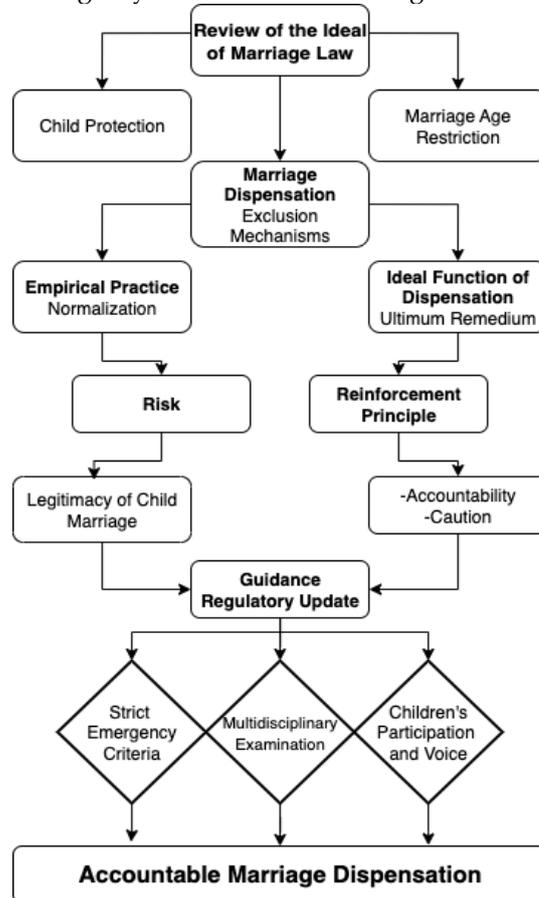


Table 1 shows two main paths in the practice of marriage dispensation. The first path reflects the empirical reality of the tendency to normalize marriage dispensation, characterized by a high number of requests and grants. This condition has the potential to shift marriage dispensation into a routine solution to social problems, thereby indirectly legitimizing the practice of child marriage and weakening the goal of child protection. In contrast, the second path represents the ideal

function of marriage dispensation as the *ultima remedium*. The transition from problematic to ideal pathways requires strengthening of accountability and prudence. Judges must not only assess formal aspects but also conduct substantive assessments of psychological readiness, reproductive health, power relations within the family, and the long-term impacts on children. Legal flexibility is maintained but is controlled by clear and accountable standards of consideration. The next step is to update judicial regulations and guidelines to align the normative objectives with judicial practice. Strengthening the criteria for urgency and multidisciplinary examination is key to ensuring that the concept of an emergency is not interpreted loosely. With the consistent application of this process, marriage dispensation can be restored to its ideal function as a selective, accountable, and child-protection-oriented exception.

Several studies confirm that an increase in requests and approvals for dispensations reflects a trend toward the institutionalization of legal exceptions. For example, a study by UNICEF and the Religious Court Agency shows that the surge in requests for dispensations after the revision of the marriage age limit reflects a shift from informal marriage practices to legalistic judicial mechanisms, making dispensations a more formal channel of legitimization for child marriage (UNICEF Indonesia, 2016). In this perspective, as criticized by

others, the courts risk performing a pragmatic function that is responsive to social pressures, such as premarital pregnancy, family stigma, and economic factors, but normatively weakens the principle of child protection, which is the basis of regulation (BPS and Bapennas, 2020). In this framework, the obligation to obtain court permission is considered to expand the scope of multidisciplinary evaluation, including psychological examination, social conditions, and the best interests of the child, which were previously absent in non-judicial early marriage practices (Sumner and Lindsey, 2011). In other words, the existence of dispensations is seen as a protective instrument that allows the state to intervene based on substantive considerations rather than merely administrative ones.

However, several studies have shown judicial ambivalence in the practice of dispensation. Judges often find themselves in a dilemma between the normative ideal of child protection and the social reality of a society that still views marriage as a solution to moral and economic crises (Nurlaelawati, 2010). In this context, the pro argument states that the flexibility of dispensation is a form of responsive adjudication that is sensitive to the local context, especially when non-marital alternatives to protection are not yet adequately available. Conversely, critical arguments suggest that excessive flexibility actually creates structural accommodation for the practice of child marriage, so that the

courts indirectly play a role in reproducing the social vulnerability that the minimum age of marriage regulation seeks to prevent (Pratiwi, 2025).

Furthermore, the model of dispensation as an *ultimum remedium* is only effective if supported by strict indicators and an evaluation framework based on the best interests of the child. Without measurable parameters, judicial discretion tends to be influenced by dominant social norms, which ultimately encourages the rationalization of dispensation as a pragmatic solution rather than a selective legal exception (UNICEF and UNFPA, 2021). Therefore, the dialogue between empirical findings and normative frameworks shows that the two paths in Figure 1 are not entirely separate dichotomies but rather a spectrum of practices influenced by the interaction between legal norms, social pressures, and the institutional capacity of the judiciary. In an ideal policy framework, marriage dispensation should remain positioned as a limited, selective, and accountable emergency mechanism so that it does not become a routine solution to social problems that should be addressed through more comprehensive child protection interventions.

## CONCLUSION

This study concludes that the flexibility of marriage dispensation regulations in Indonesian family law contains an inherent normative paradox.

On the one hand, this flexibility is designed as a corrective mechanism to the rigidity of the minimum age of marriage norm, which aims to accommodate urgent circumstances that cannot be resolved otherwise. However, on the other hand, the absence of measurable substantive indicators regarding the category of urgent reasons and the parameters of the best interests of the child actually expands the scope of subjectivity in decisions. Consequently, decisions are made without uniform evaluative standards, leading to disparities in decisions and undermining the preventive function of the minimum age of marriage as an instrument for child protection.

There has been a shift in the function of dispensation from an emergency mechanism (*ultimum remedium*) to a response that tends to be routine in response to social pressures such as unplanned pregnancies, social stigma, and family economic vulnerability. When exceptions are repeatedly used, the conceptual boundary between norms and exceptions becomes increasingly blurred. Thus, the law undergoes a functional transformation, from a protection instrument oriented towards prevention to a device for legitimizing child marriage practices that are normatively intended to be restricted. A further impact can be seen in the position of children, who are often reduced to objects of social problem-solving rather than being recognized as legal subjects who have rights to long-

term protection, education, health, and psychosocial development. This study emphasizes that legal flexibility in marriage dispensation must have measurable, multidisciplinary, and accountable substantive standards. Permission for a marriage dispensation request can only be accepted if it can be proven rationally and is shown to protect the best interests of the child. Thus, repositioning dispensation as a truly extraordinary mechanism is a fundamental prerequisite for maintaining the consistency of family law norms and ensuring that the resulting justice is not only procedural but also substantive and child-centered.

This study strengthens the analysis of marriage dispensation through an integrative reading of the normative, judicial practice, and socio-cultural dimensions, resulting in a conceptualization of the “paradox of flexibility” in Indonesian family law. This study also offers a conceptual framework for reformulating the indicators of “urgent reasons” and the operational standards of the best interests of the child. The limitations of this study lie in its analytical focus, which relies on a normative and interpretative approach to court decisions and regulatory frameworks, thus failing to fully capture the variation in empirical practices across all areas of religious court jurisdictions. Therefore, further extensive research is needed to test the consistency of the findings and strengthen the formulation of more

contextual and child protection-oriented policies.

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