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Constitutional Rights Conflict in Child Marriage: Prioritizing the Right to Child Development Over the Right to Form a Family

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Abstract

This article presents a conflict of constitutional rights over child marriage in Indonesia, more specifically the tension between the right to establish a family through lawful marriage (Article 28B(1) of 1945 Constitution of Republic of Indonesia) and the right of children to their life, growth, development and protection from violence and discrimination (Article 28B(2)). The conducting of this study uses a normative juridical method, in which the sources of law used were statute, concepts and case laws. The judgment states that the right to marry and found a family is not absolute, but rather subject to legitimate restrictions under article 28J(2) of the Constitution and thereby upholds the children's perspective to rights applying in accordance with the best interests of the child principle. While the minimum age for marriage now stands equally at 19 years for both sexes, the marriage dispensation procedure may contradict child protection aims and give rise to legal uncertainty particularly in light of disharmonising regulations with the child protection system when being applied with a soft touch.

Abstrak

Penelitian ini mengkaji benturan hak konstitusional dalam fenomena perkawinan anak, khususnya ketegangan antara hak membentuk keluarga melalui perkawinan yang sah (Pasal 28B ayat (1) UUD NRI 1945) dan hak anak atas kelangsungan hidup, tumbuh, dan berkembang serta perlindungan dari kekerasan dan diskriminasi (Pasal 28B ayat (2) UUD NRI 1945). Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan kasus. Hasil penelitian menunjukkan bahwa hak membentuk keluarga bukanlah hak yang bersifat absolut, melainkan dapat dibatasi berdasarkan Pasal 28J ayat (2) UUD NRI 1945 demi perlindungan hak anak dan prinsip kepentingan terbaik bagi anak (the best interests of the child). Meskipun batas usia perkawinan telah diseragamkan menjadi 19 tahun, mekanisme dispensasi kawin yang diterapkan secara longgar berpotensi melemahkan tujuan perlindungan anak dan menciptakan ketidakpastian hukum, terutama karena disharmoni dengan rezim perlindungan anak.

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INTRODUCTION

Child marriage in Indonesia still ranks among the top absolute numbers of child marriages in the world, despite consistent legal and policy changes. Current projections indicate that 16% of Indonesian women aged 20-24 were married before they reached the age of 18 and more than 10.2 million girls have been married off in Indonesia, underlining the country's status as one of the largest contributors to global child marriage statistics.[1] Data from national household survey and UNICEF–BPS analysis show that progress has also been uneven with high prevalence rates especially among a number of provinces/areas and in rural areas, despite the fact that child marriage is strongly linked to poverty, limited education as well as weak social protection mechanisms. In constitutional terms, this persistent practice compels us to raise a basic question concerning the ability of the State to attribute substantive contents to the rights of children as enshrined in 1945 Constitution and international human rights agreements that Indonesia has ratified.

Autonomy and Dissonance The very constitutional architecture is replete with an underlying tension. Article 28B (1) provides that "every person has the right to form a family and beget children through marriage based on the principle of '*Ketuhanan Yang Maha Esa*' (monotheism), while Article 28B (2) states that every child has the rights to live, grow, and develop, to be protected against abuse and discrimination. These two need-clashes occur for child marriage when those "children" under domestic law enter a legally-recognized marriage. Such tension is also moderated by Article 28J (2) which allows the restriction of the exercise of constitutional rights for respect for the rights and freedom of others and to satisfy the just demands based upon considerations of morality, religious values, security or public order in a democratic society. Accordingly, the pivotal constitutional issue is not whether there is recognition of the right to marry, but how far those rights may be curtailed if their exercise imperils extinguishing even if only potentially exercising a child's own constitutionally protected right to development.

Concerns such as these have been addressed by legal and policy changes in the past decade. The legislature passed the 2019 Law No. 16 of 2019, which amended Article 7 of the Marriage Act (Law No. l/1974) and increased the legal minimum age of marriage to be at least l9 years for both men and women in Indonesia in 2019. This legal reform was promulgated in response to the Constitutional Court Ruling[2] No.22/PUU-XV/2017 that had held the prior gender-specific age limit (19 years for males and 16 years for females) to be discriminatory and unconstitutional on account of equality guarantees and children's rights principles. However, the secular framework still enables courts to issue marriage dispensations for youth aged under 19 in "urgent" cases, a provision that has resulted in a sharp increase in applications and approvals for such dispensations largely filed and issued by religious courts. Empirical evidence demonstrates that a very large majority of these applications is accepted and justified by pregnancy, social pressure or economic need such as lack of support.[3]

This provokes an even larger issue of legal coherence. While, on one hand the Child Protection Law defines a child as anyone under 18 years of age and obliges parents and the State to protect children from being married off. The otherwise neo-Marriage Law regime of dispensation as amended provides judicial authorization to marry under 19 (actually qua the Child Protection

[1] Partini Partini et al., "Saving Indonesia's Golden Generation: Preventing Teenage Marriage in Rembang, Central Java (A Case Study)," *IKAT: The Indonesian Journal of Southeast Asian Studies* 4, no. 1 (2020): 63–74, https://doi.org/10.22146/ikat.v4i1.51554.

[2] Esti Royani et al., "Juridical Aspects of Underage Marriage and Customary Law," *Awang Long Law Review* 6, no. 1 (2023): 193–205, https://doi.org/10.56301/awl.v6i1.990.

[3] Amran Suadi, "The Role of Religious Court In Prevention Underage Marriage," *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020): 116–31, https://doi.org/10.25216/jhp.9.1.2020.116-131.

Law children). The dual role of these legal systems results in normative friction and frictions in the application, which damage legal certainty (rechtszekerheid) and the constitutional obligation that every individual is entitled to protection by a fair legal order. Additionally, the existence of deep-seated traditional customs and religious beliefs deeming children who have achieved biological maturity or '*baligh*' as marriageable has served to undermine State attempts to enforce age based statutory safeguards.[4]

A considerable body of national and international scholarship has explored incidence, determinants, and socio-economic as well as health implications of child marriage in Indonesia, the latter also within the context of South Asia more generally. Research has demonstrated associations between early marriage and negative maternal and reproductive health outcomes, as well as school dropout, intergenerational poverty, and gender-based violence. Indonesian legal academics have focused on the relation between Law No 16 of 2019 and the Constitutional Court's case law for underage marriages as well, pointing at times to a dilution of its protective function due to the dispensation option. Yet many of these efforts are, in a sense, either empirically descriptive with prevalence and causation mapping or doctrinally narrow on statutory interpretation and institutional practice without fully theorizing the hierarchy of littoral right.42 They shed light on what specific territories need to be mapped out as part of a legal geography.[5]

In light of this discussion, the first contribution to current debates made by this article is to cast child marriage in Indonesia as a conflict of constitutional rights explicitly and analyze it using a contemporary lens of balancing and proportionality theory. Comparative constitutional literature regarding conflicting rights would explain that not all rights are placed on the same normative level, some of them being more closely related to the "substance" of human dignity and thus deserving a higher level of protection when they clash with other rights. Utilizing this framework, the article contends that the right to survival, growth and development of the child under Article 28B(2) receives a higher level of constitutional protection than does the corollary right to marry by a child or on his behalf under Article 28B (1) and therefore must be regarded as a limitable right for its enjoyment by or on behalf of a child.[6]

The second contribution is in connecting this rights-balancing analysis to the parents patriae doctrine and to Indonesia's own juristic and legislative replies to child marriage. Yet, what legal studies is on the impact of Constitutional Court Decision No. 22/PUU- XV/2017 and the law reform that ensued regarding the minimum age of marriage has rarely demonstrated how concretely one should design and employ this mechanism as there are implications in State's parents patriae to use this mechanism on marriage. Based on both Indonesian and comparative jurisprudence, this article argues that the dispensation mechanism should be reimagined not as a routine administrative process for making underage marriages "legal," but rather an extraordinary and narrowly circumscribed tool reserved for exceptional Canadian families one subject to cumulative and mandatory conditions.[7]

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[4] Dedy Sumardi et al., "Legal Pluralism within The Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 426–49, https://doi.org/10.22373/sjhk.v5i1.9303.

[5] Saratri Wilonoyudho1 and Lutfi Agus Salim2, "Social Impacts of Child Marriage in Grobogan Regency, Central Java Province, Indonesia," *Medico Legal Update* 20, no. 4 (2020): 513–18, https://doi.org/10.37506/mlu.v20i4.1869.

[6]Piero Ríos Carrillo, "Proportionality, Comparability, and Parity: A Discussion on the Rationality of Balancing," *Legal Theory* 29, no. 4 (2023): 257–88, https://doi.org/10.1017/S1352325223000186.

[7] Mohammad Fajar Abdjul et al., "Underage Marriage Review Post Latest Marriage Law," *Damhil Law Journal* 3, no. 1 (2023): 1–20, https://doi.org/10.56591/dlj.v3i1.1856.

Third, the article contributes to the wider Indonesian legal development discourse by contextualizing child marriage in dynamics of regulatory inconsistency and legal pluralism. Indonesian legal scholarship has had a role recently in drawing attention to the fact that constitutional court decisions can push the reforms of private and public law through the need for doctrinal clarity and by limiting arbitrary power centrally, such as happened when "breach of contract" was redefined within fiduciary guarantees following Constitutional Court Decision No. 18/PUU-XVII/2019. Jurnal Ilmu Hukum has in fact established itself as prominent space for such applications of normative analysis, also with regard to the constitutional duties of politicians and office-holders, aiming to establish thereby a methodological guideline for this study. The article takes these developments into account and frames the marriage dispensation problem as a specific instance of a broader phenomenon in which constitutional review decisions require more than mere textual change; they also require fundamental realignments at the doctrinal,4 institutional5 and policy levels.[8]

This research follows a classical normative juridical approach, it takes the positive law, doctrinal constructions and judicial reasoning as object study instead of empirical field work. This reading is accompanied by an analysis of the Marriage Law as revolutionized by Law No. 16 of 2019, the provisions on child protection within said law and related regulations, as well as Constitutional Court Decision No. 22/PUU-XV/2017 as well as Supreme Court Regulation No. 5 of 2019 about directions on judiciary proceeding marriage dispensation case. These titles are augmented by secondary sources from peer-reviewed national and international journals, as well as policy papers provided by international bodies within the past five years. The main research problem is: What should the hierarchical order of constitutional rights look like in child marriage-related cases in Indonesia, and what are the doctrinal and institutional implications for designing and applying the mechanism for dispensation in marriage?[9]

In answering to this question, the article attempts legal normative framework that make child right on development as constitutional agenda thus indirect legislative, judicial and socio-legal practices would be relocated from formality of tolerating child marriage to effective protecting measures in line with Indonesia's international obligations and her commitment of Sustainable Development Goals agenda.

METHOD

This research is a normative legal (doctrinal) approach, which problematize on the written norms and the way to interpret it through Indonesian law system not in empirical behavior. The relevant legal documents are the 1945 Constitution of the Republic of Indonesia, Law No. 16 of 2019 concerning Amendment to Law No.1/1974 on Marriage, Child Protection Laws and their subsequent amendments, Human Rights Laws, Supreme Court Regulation No.5/2019Judicial Guidelines for Handling Marriage Dispensation Applications and Constitutional Court Decision Number:22/PUU-XV/2017 along with judicial interpretation or scholarly explanation after that out came.[10]

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[8] Sigit Nurhadi Nugraha, "Cidera Janji (Wanprestasi) Dalam Perjanjian Fidusia Berdasarkan Pasal 15 Ayat (3) UU Nomor 42 Tahun 1999 Pasca Putusan Mahkamah Konstitusi Nomor: 18/Puu-Xvii/2019," *AL WASATH Jurnal Ilmu Hukum* 2, no. 2 (2021): 77–92, https://doi.org/10.47776/alwasath.v2i2.213.

[9] Sri Puji Astuti, "Court Grants Withdrawal of Petition on Minimum Marriage Age," En.Mkri.Id, accessed April 05, 2026, https://en.mkri.id/news/details/2023-09-27/Court_Grants_Withdrawal_of_Petition_on_Minimum_Marriage_Age.

[10] Imran Imran et al., "Aspects Of Justice Of Marriage Dispensation And Best Interests For Children," *Jurnal Hukum Dan Peradilan* 13, no. 1 (2024): 63–88, https://doi.org/10.25216/jhp.13.1.2024.63-88.

Three main approaches are employed. Part I examines the hierarchy and structure and interplay of the pertinent constitutional and statutory provisions regulating marriage age, child protection, and limitations on rights by using a statutory analysis. Second, an analytical method probes core doctrinal concepts in the field; conflicting rights, proportionality, derogable versus non-derogable rights, parents patriae, lex specialist, legal certainty and the best interests of the child building on contemporary constitutional and human rights literature. Third, the case-based approach is geared towards Constitutional Court Decision No. 22/PUU-XV/2017 and concomitantly related decisions as well as selected Religious Courts' decisions and guidelines on marriage dispensation, in order to (re)construct the courts' ratio decidendi -and its consequences for future adjudication, Subramanee.[11]

Secondary materials consist of peer-reviewed journal articles and policy studies within the past five years on child marriage, Indonesian marriage law reform, constitutional review process, and legal pluralism in both Indonesia and other countries. The articles from AL WASATH Jurnal Ilmu Hukum are selected to position this research in national contemporary debates about constitutional duties, the legal protection and relevance of Constitutional Court decisions for public and private law regimes. The analysis is qualitative, proceeding deductively from constitutional norms and general rights-theory to specific statutory language and judicial behaviour. The result is a prescriptive one, not only to describe the law as it stands, but to make normative proposals about the ways in which we might reconstitute Constitution's marriage dispensation regime so that better align with imperatives of child protection.[12]

RESULT AND DISCUSSION

Constitutional Rights Antinomy in Child Marriage

There is a constitutional paradox in the child marriage problem in Indonesia: the right to marry and start a family versus the child's rights on full development, inclusively protection. In dogmatic terms, a constitutional antinomy is present when two norms of the same formal rank make simultaneous claim to validity, which can be satisfied only by limiting one another in certain cases. Child Marriages are a classic e. g. where an individual who remains a "child" under the Child Protection Law marries, the realization of that person's right under Article 28B(1) to establish a family typically translates in practice into an infringement of their rights under Article 28B(2) to education, health and development, and more broadly their social-economic entitlements set out respectively in Articles 28C, 28H and 31 for which Constitution.[13]

International findings on the effects of child marriage highlight how costly this trade-off can be. Evidence from systematic reviews and regional studies in South Asia indicates that child marriage is a major predictor of early and multiple pregnancies, maternal and neonatal morbidity and mortality, intimate partner violence, as well as ongoing educational and economic deprivation. Indonesian-focused studies have also found that child marriage often results in school dropout, decreased access to labour markets, increased risk of poverty and the

[11] S. Daarwin Subramanee et al., "Child Marriage in South Asia: A Systematic Review," *International Journal of Environmental Research and Public Health* 19, no. 22 (2022): 15138, https://doi.org/10.3390/ijerph192215138.

[12] Partini Partini et al., "Saving Indonesia's Golden Generation: Preventing Teenage Marriage in Rembang, Central Java (A Case Study)," *IKAT: The Indonesian Journal of Southeast Asian Studies* 4, no. 1 (2020): 63–74, https://doi.org/10.22146/ikat.v4i1.51554.

[13] Heribertus Rinto Wibowo et al., "One Household, Two Worlds: Differences of Perception towards Child Marriage among Adolescent Children and Adults in Indonesia," *The Lancet Regional Health - Western Pacific* 8 (March 2021): 100103, https://doi.org/10.1016/j.lanwpc.2021.100103.

intergenerational transmission of disadvantage all of which compromise the State's goal of nurturing a "golden generation" by 2045. These empirical facts suggest that depriving children of the right to development is constitutionally harmful on a structural and often permanent level, while the right to get married can be put on hold without causing similar long-term harm to kids or their neighborhoods in most instances.[14]

The theory of balancing in the adjudication of constitutional rights serves as an exit ramp in such disputes. Modern proportionality inquiry usually develops along the following lines: legitimate purpose, rational connection, least restrictive means (necessity), and strict proportionality. When applied to child marriage, the crux is whether the harm prevented by banning or seriously restricting minors from marrying outweighs this deprivation of a minor's right to marry. considering the serious and multi-layered injuries related to child marriage, many of which impact not only the child but also future children and the broader social structure, there is a powerful normative reason for privileging a child's development-related right over this contested ground: in essence, when an adult demand of a state permits an overriding interest of national community determining how it will grow its next generation may derogate from or countervail efforts at nurturing that following generation.[15]

In terms of Indonesian constitutional doctrine, this hierarchy is in line with the understanding that Article 28J(2) allows statutory limitations on rights for the purpose of protecting recognition and respect for rights and freedoms of others and to satisfy legitimate public interest, provided such limitations are neither discriminating nor disproportionate. It is also consistent with Indonesia's international obligations under the CRC, including the duty to ensure that "the best interests of the child" are a primary consideration in all matters relating to children and to protect them from harmful practices such as child marriage. When it comes to legal norms that allow marriage below the minimum age, such as a 'marriage dispensation', are to be construed strictly and secondary on the highest duty of protection in view of the constitutional obligation to protect children's development and dignity, United Nations Children's Fund (UNICEF).

The operationalization of this hierarchy, however, remains murky under Indonesian law and practice. Although Law No. 16 of 2019 sets the minimum age for marriage at twenty-one in formal (if not substantive) terms, with a concession that those aged below are enabled to marry on court-dispensed dispensations, it is this gap between the implied statement of constitutional commitment and what appears to be taking place through adjudication on the ground that serves as a carefully observed tension. Empirical research demonstrates that an overwhelming majority of dispensation petitions are granted, even for applicants under the age of 18, and frequently on such grounds as pregnancy, concerns about social shame or even parental anxiety over "free association" without a broad evaluation of the child's psychological maturity, educational preparation and economic stability. In effect, it fosters a hierarchy inverted from that which should be inferred from both constitutional and international human rights norms the immediate realization of the right to marry trumps long-term enjoyment of the right to development.[16]

What makes this misfit the problem is the recognition that children, as legal subjects, are

[14] Naresh Manandhar and Sunil Kumar Joshi, "Health Co-Morbidities and Early Marriage in Women of a Rural Area of Nepal: A Descriptive Cross-Sectional Study," *JNMA: Journal of the Nepal Medical Association* 58, no. 230 (2020): 780–83, https://doi.org/10.31729/jnma.5205.
[15] Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations*, with Doron Kalir, Cambridge Studies in Constitutional Law 2 (University Press, 2012). 83–98
[16] Barak, *Proportionality*. 83–98

structurally vulnerable. In private law doctrine, children are normally deemed not to have full legal capacity (backwashed) to conclude onerous legal transactions, notably those of great personal and economic significance, like marriage. Under such circumstances, the State as parents patriae must offer increased protection by examining, and where necessary curtailing, parental or societal preferences that are not in the best interests of the child. Such low levels of scrutiny to underage marriage applications effectively transform a constitutional protection system into one in which consent becomes formalistic and the weakest party bears, over the longer term, the heaviest costs.[17]

Paradigm Shift and the *Parrens Patriae* Doctrine: Constitutional Court Decision No. 22/PUU-XV/2017

The Constitution Court Decision No. 22/PUU-XV/2017 is a milestone for Indonesia's legal efforts to combat child marriage. In that case, the petitioners challenged the gender-differentiated minimum ages for marriage under Article 7(1) of the 1974 Marriage Law, arguing that by establishing a higher age limit for females (16 years compared with 19 years for males), it constituted discrimination, violated equality before law and undermined rights to education, health and a decent life of girl children. The Court found that the difference between ages of marriage was inconsistent with constitutional principles relating to non-discrimination, the right of children to special protections and Indonesia's international human rights treaty obligations under the CRC and CEDAW. The ruling on married men however amounts to a direction by the Court that Parliament ensures that both men and women attain majority at 19 years was realized through Law No 16 of 2019.[18]

In addition to the formal age change, the opinion marked a shift in the way that Court would view the State's role in private family life. Whereas marriage is usually thought to be part of religious and custom autonomy, the Court raised child protection and gender equality as constitutional values that legitimize state intrusion into the regulation of minimum marriage age. This movement is part of wider global trends in constitutional jurisprudence under which courts increasingly instrumentalism the State as a protective actor that has a duty to interfere in private relationships, so as to prevent structural injustice and to ensure that the best interests of vulnerable groups exemplified by children and women are supported.[19]

In this sense, the parents patriae doctrine serves as a theoretical link between constitutional principles and actual regulatory detail. In this area of law, the State acts in a quasi-parental capacity towards persons who are unable to care for themselves completely, such as children, disabled people, or others who may be subject to exploitation. Contemporary Indonesian scholars have relied on parents patriae in relation to diverse areas, such as the protection of personal data as a component part of privacy rights and the operation of fiduciary conduct post-reform constitutional court decisions underscoring state duties to intervene against oppressive use of power by structurally more powerful parties. If, then, the state cannot leave the decision to marry as a child to a parent's judgment, nor ought it to be left, in cases of controversially proposed marriages too early from other causes than mere age, either to parental discretion or even (in circumstances creating doubt) only by judges who may or may not accord with such

[17] Rudi Mayandra, "Regulation of Marriage Dispensation Against Marriage of Children Under The Age of Post Decision of The Constitutional Court Number 22 / Puu-Xv / 2017," *Syariah: Jurnal Hukum dan Pemikiran* 20, no. 2 (2020): 187–200, https://doi.org/10.18592/sjhp.v20i2.4160.
[18] M. Ag Asman, "Interpretation of Marriage Law Determination: An Analysis Study of the Adult Age of Marriage in Indonesia," *Law and World* 11, no. 34 (2025): 112–30, https://doi.org/10.36475/11.2.10.
[19] Anna Weihrauch, "The Principle of 'the Best Interest of the Child,'" *Humanium*, 2021, https://www.humanium.org/en/the-principle-of-the-best-interest-of-the-child/.

parents; insecurity could not but arise.[20]

But the transition to this new paradigm has not been without its frustrations. Despite being entrenched in Law No. 16 of 2019, the new minimum age law, the marriage dispensation process continues to be a significant gap. Regulation of the Supreme Court No. 5/2019 concerning judge-engine areas but from the practice is not as tightly proposed evidence also Senior Church still happen in cases that have a grip freeway. Research on the judgments in religious courts indicates a high rate of approval for dispensation applications, particularly when pregnancy out-of-wedlock, financial difficulty or social pressure are invoked; child maturity assessment is conducted by only a few disciplines and alternative to marriage finding is limited. This suggests that the protective reasoning of the decision by the Constitutional Court has not yet been fully internalized in first-instance adjudication.[21]

International human rights practice requires that any exceptions to minimum marriage age be strictly circumscribed, subject to rigorous judicial oversight and based on compelling reasons in the best interests of the particular child. By contrast, the current dispensation regime in Indonesia tends to regard dispensation as a routine administrative instrument rather than an exceptional ultimum remedium. "In doing so, it runs the risk of replicating the past wrongs that the Constitutional Court intended to cure and dilutes the normative weight between child's rights against right to marry. If a genuinely parents patriae-based approach were to be adopted, it would have to involve a re-engineering of dispensation processes so that they function as narrow safety valves subject only narrowly and strictly to precedent's universal primacy for the child's rights (and not a flexible mechanism for meeting the social or economic

Regulatory Disharmony, Lex Specialis, and Legal Uncertainty

The legacy of child marriages in Indonesia can't simply be explained from the perspective of constitutional adjudication, as it also results from a disharmony between the child protection system and the marriage law. The Child Protection Law says that anyone below the age of 18 is a child and makes parents and the State responsible to stop child marriage, while under the amended Marriage Law, girls are allowed to marry at the age of 19 but judges can grant dispensations for those even younger. This leads to a conceptual and pragmatic inconsistency: those who remain "children" for child protective law purposes, may de facto be able to marry by dispensation, actually legitimizing the very practice that is sought to eliminate with respect to the child protection regime.[22]

From the viewpoint of legislative technique there is a possibility that the general lex specialist derogate leggy generally principle may apply in favour of the Child Protection Law which is more special than the regime relating to children. In reality the opposite is often true: there are a series of religious court's rulings which narrowly (re)interpret Marriage Law dispensation provisions and end up trumping stricter norms under the Child Protection Law. This reversal of lex specialist creates legal uncertainty and violates the principle of equality before the law as set out on Article 28D(1) of the Constitution. It also reveals a more profound structure in the Indonesian process of law-making, in which sectoral legislation is passed with insufficient harmonization, and decisions of the constitutional court are taken but not systematically

[20] Nugraha, "Cidera Janji (Wanprestasi) Dalam Perjanjian Fidusia Berdasarkan Pasal 15 Ayat (3) UU Nomor 42 Tahun 1999 Pasca Putusan Mahkamah Konstitusi Nomor."
[21] Suadi, "The Role of Religious Court in Prevention Underage Marriage."
[22] Gilar Giri Prayoga Putra et al., "Juridical Analysis of Marriage Laws and Regulations in Indonesia and the United Kingdom," *Journal of Legal and Cultural Analytics* 4, no. 2 (2025): 937–48, https://doi.org/10.55927/jlca.v4i2.14516.

implemented through coherent secondary regulation since this has already been practiced previously in other areas like that of fiduciary guarantees or administrative discretion.[23]

New research on child Involuntary Marriage after Law No. 16 of 2019 suggested that applications for dispensations had not decreased, and that in some jurisdictions the number of such application had increased, with courts often considering the applications from a subjective or socio-cultural based perspective. This dynamic vitiates the proposed effect of raising the marriage age, and implies that unless stricter statutory and procedural obstacles were to be introduced (which does not appear feasible in practice), dispensation would persist as a de facto exception proving every rule on the books. 7 For this reason, some academics have urged that the systems of dispensation must be reconsidered and brought more into line with the Marriage Law, Child Protection Law and constitutional spirit.[24]

Within this debate, the experience of other areas of Indonesian law illustrates how constitutional review can mandate a re-calibration of private law concepts to protect weaker parties. For example, following Constitutional Court Decision No. 18/PUU-XVII/2019 on fiduciary guarantees, legal scholars in Indonesia have shown how the Court's reinterpretation of "breach of contract" (*wanprestasi*) requires creditors to obtain either the debtor's agreement or a court decision before executing fiduciary objects, thereby curbing arbitrary repossessions and enhancing legal certainty for debtors. Similar reasoning should apply in the context of marriage dispensation: the protective logic of Constitutional Court Decision No. 22/PUU-XV/2017 should not remain confined to age-threshold text but must extend to the interpretation and application of dispensation norms in order to prevent functional circumvention of child protection goals.[25]

Legal Pluralism, Living Law, and Social Engineering

Indonesia's response to child marriage is further complicated by advanced legal pluralism, with State law operating alongside religious and customary norms that otherwise continue to dominate family life and the institution of marriage. [1] [2] In some cases, however, early marriage (particularly forced child marriage) is a harmful and inhumane practice that not only damages the physical and mental health of those girls who are married underage but can also block economic development; particularly in countries where signs of puberty are used to justify girl's value as wives.[3] Factors causing such marriages include tradition, culture, poverty, dowry systems, social norms, customs, economic reasons (dowry), religious beliefs, illegitimate pregnancy,468and ideas about family honour. In some contexts, marriage of a child can be understood as socially valid, morally defensible or religiously justified, even when it is criminalized by State law.[26]

The 1945 Constitution acknowledges and respects traditional communities and their customary rights, as well as freedom of religion. But these cultural and religious rights are not absolute, they are subject to the superior values of the constitution -- humanity, justice and protecting society's most vulnerable. International and the comparative jurisprudence stresses that tradition cannot be given primacy to allow violations, particularly of the fundamental human rights and

[23] Muhammad Alfaruq Nirwana, "Aturan Hukum Keberpihakan Presiden dalam Pemilu," *AL WASATH Jurnal Ilmu Hukum* 5, no. 1 (2024): 1–10, https://doi.org/10.47776/alwasath.v5i1.1004.
[24] Mohammad Fajar Abdjul et al., "Underage Marriage Review Post Latest Marriage Law," *Damhil Law Journal* 3, no. 1 (2023): 1–20, https://doi.org/10.56591/dlj.v3i1.1856.
[25] Arla Haiqa Saffanah and Dwi Aryanti Ramadhani, "Perlindungan Hukum Debitur dalam Eksekusi Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019," Articles, *JURNAL USM LAW REVIEW* 7, no. 3 (2024): 1784–800, https://doi.org/10.26623/julr.v7i3.10707.
[26] Sumardi et al., "Legal Pluralism within The Space of Sharia."

particularly children and woman. This tension is frequently presented in Indonesian scholarship as a struggle between [End Page 223] state law and living law, one for which legal pluralism scholars trace how Islamic, *adat* (customary), and State norms are interwoven in cultural spaces such as criminal law in Aceh or family law across the archipelago.[27]

It is in this context that social engineering through law becomes critical.' Legal changes alone like increasing the minimum age of marriage will have limited impact if they do not change the underlying norms that make child marriage an acceptable or even attractive practice. Recent reviews of child marriage prevention programs in Indonesia show that public discourses are often still at an "information" level when it comes to discussions about the risks of teenage marriage and have yet to lead to deep attitudinal change among local communities. This would be of much greater effectiveness than targeted interventions, aimed at religious leaders tradition authorities schools, health provider and local governments to re-interpret religious texts and customary practices in light of Best Interest Principle, the obligations which follow from it under the constitution for child protection duty.[28]

AL WASATH Jurnal Ilmu Hukum is national journal from other journals which have exposed how constitutional and statutory frameworks can inform the reinterpretations of normative traditions: the debate on executive power, on obedience to the constitution, changing privacy concepts in the age personal data protection. In the case of child marriage, a parallel discursive strategy is also called for: instead of characterizing State law as an alien interference with religious or traditional self-rule, legal actors and scholars are positioned to assert the protection of children from harmful early marriage as completely consonant with indeed dictated by fundamental Islamic legal purposes (maqāṣ.id al-sharī'ah) such as the preservation of life, intellect and lineage; and with *kemanusiaan yang adil dan beradab* (just and civilized humanity) enshrined in the constitution35.[29]

Such a model would signal that age markers are used not as random or arbitrary incursions into religious and family realms, but rather as reasonable stand-ins for serious maturity and capacity. Alongside concentrated (re-)education, financial help to vulnerable families and better access for reproductive health service and education, legal social engineering can stop the social acceptability of child marriage decreasing in time and living law becoming accommodated with the constitutional orders.

CONCLUSION

It has been argued in this post, that the construction of child marriage in Indonesia should best be understood as a counter-constitutional rights conflict between the right to marry and found a family on the one hand, and children's rights to survive and develop into protected adults on the other. Applying normative juridical analysis inspired by proportionality theory and the parents patriae principle, it has been demonstrated that, on the scale of constitutional values, the child's development-related rights are to be understood as a priority right and that

[27] KLD MacQuarrie and C. Juan, "Trends and Factors Associated with Child Marriage in Four Asian Countries [Version 1; Peer Review: 1 Approved, 1 Approved with Reservations]," *Gates Open Research* 3, no. 1467 (2019), https://doi.org/10.12688/gatesopenres.13021.1.

[28] Niken Meilani et al., "Improving Knowledge and Attitude towards Child Marriage Prevention among Senior High School Students," *Journal of Education and Learning (EduLearn)* 17, no. 3 (2023): 354–64, https://doi.org/10.11591/edulearn.v17i3.20763.

[29] Mujiyana Mujiyana et al., "Obedience to Constitutional Court Decisions: Constitutional Obligations and Moral Obligations of Legislators," Articles, *LAW & PASS: International Journal of Law, Public Administration and Social Studies* 2, no. 3 (2025): 182–91, https://doi.org/10.47353/lawpass.v2i3.21.

the right to marry when invoked by or on behalf of a child is an amendable power which can (and should) lawfully be circumscribed. This interpretation is consistent with Article 28J (2) of the 1945 Constitution, Indonesia's obligations under the CRC and extensive empirical evidence on the harms associated with child marriage in later life.[30]

Constitutional Court Decision No. 22/PUU-XV/2017 and the passage of Law No. 16 of 2019 are on a right path towards achieving this by lifting marriage age to 19 and recognizing that any earlier marriage thresholds were discriminatory and harmful. But the continued existence of the marriage dispensation and its lenient implementation have greatly weakened the protection provided by these new arrangements. On the contrary, far from being a narrowly tailored measure of last resort, dispensation has in many cases become a routine bureaucratic mechanism for "regularizing" underage marriages usually on grounds that do not hold water under best interests of the child criteria. To get practice in line with constitutional imperatives, three normative agendas are needed. First, at the legislative level, both Parliament and Government should review the so- called "special consideration" provision under The Marriage Law to ensure that it features a series of cumulative safeguards as well as mandatory conditions for protection: independent psychological assessments on a child's emotional and cognitive readiness; medical examinations for any reproductive health risks; written assurances regarding continued education and minimal economic support. Opting-out should be explicitly set as the ultima ratio and that only when all reasonable alternatives to marriage have been tried and when there are clear, evidence-based reasons that demonstrate it is in the genuine best interest of the child.[31]

Second, at the judicial level, the Supreme Court should fortify and elucidate its instructions provided in Supreme Regulation No. 5 of 2019, seeing to it that these three judicial tests best interests' principal application, multidisciplinary assessment and closer scrutiny of socio-cultural justifications are consistently incorporated in the adjudication process. Courts should internalize the constitutional hierarchy of rights and treat the child's development as a requirement, not just an aspirational norm. Lessons can be drawn from other areas of law for example in the context of the recharacterization of breach of contract and execution in fiduciary guarantees following Constitutional Court Decision No. 18/PUU-XVII/2019 indicating that Indonesian courts are capable and willing to adapt their operational doctrine, normative patterns and day-to-day legal practice to ensure constitutional review decisions can have full effect.[32]

Third, on the policy and societal level, the central and local governments need to implement social engineering efforts that can tackle causes of child marriage related to socio-economic and traditional drivers. This would involve strengthening social protection programmes, increasing access to secondary education and reproductive health services, and working with religious and traditional leaders to reinterpret marriage norms bridging local tradition and constitutionality/human rights. By framing reforms of the age Marriage Of Children 105 at which individuals can marry as steps toward achieving a more comprehensive goal, protecting human

[30] Heri Kuswanto et al., "Prevalence of and Factors Associated with Female Child Marriage in Indonesia," *PLOS ONE* 19, no. 7 (2024): e0305821, https://doi.org/10.1371/journal.pone.0305821.
[31] Fibriyanti Karim, "The Effect of Marriage Age Limit Changes on Marriage Dispensation Granting by the Limboto Religious Court: Study of the Republic of Indonesia Constitutional Court Decision No. 22/PUU-XV/2017," *Reformasi Hukum* 28, no. 3 (2024): 218–33, https://doi.org/10.46257/jrh.v28i3.1081.
[32] Saskia Fazrin Khoirunnisa, "PENGATURAN HUKUM EKSEKUSI OBJEK JAMINAN FIDUSIA APABILA DEBITUR MELAKUKAN TINDAKAN PELANGGARAN PERJANJIAN," ILMU HUKUM, *COURT REVIEW: Jurnal Penelitian Hukum (e-ISSN: 2776-1916)* 3, no. 05 (2023): 12–23, https://doi.org/10.69957/cr.v3i05.1359.

dignity, strengthening families and achieving Indonesia's long-term development aims, reforms in law may be more widely embraced and an-flounced in the "living law" (in-law reform) on a community level.[33]

Ultimately, the State's constitutional responsibility is not simply to tinker with statutory age limits, but make certain that a child protection infrastructure is in place so that no child will be forced by law or circumstances to enter into an adult relationship before she is ready and that all children are provided sound options should they find themselves in oppressive situations. The way I read them, the Indonesian Constitution requires a putative right to marry to bend, when called upon in the Childs best interest, before the greater force of safeguarding the life's chances and human dignity against misuse.

References

Abdjul, Mohammad Fajar, Nur Mohamad Kasim, and Dian Ekawaty Ismail. "Underage Marriage Review Post Latest Marriage Law." *Damhil Law Journal* 3, no. 1 (2023): 1–20. https://doi.org/10.56591/dlj.v3i1.1856.

Abdjul, Mohammad Fajar, Nur Mohamad Kasim, and Dian Ekawaty Ismail. "Underage Marriage Review Post Latest Marriage Law." *Damhil Law Journal* 3, no. 1 (2023): 1–20. https://doi.org/10.56591/dlj.v3i1.1856.

Asman, M. Ag. "Interpretation of Marriage Law Determination: An Analysis Study of the Adult Age of Marriage in Indonesia." *Law and World* 11, no. 34 (2025): 112–30. https://doi.org/10.36475/11.2.10.

Astuti, Sri Puji. "Court Grants Withdrawal of Petition on Minimum Marriage Age." En.Mkri.Id. Accessed April 25, 2026. https://en.mkri.id/news/details/2023-09-27/Court_Grants_Withdrawal_of_Petition_on_Minimum_Marriage_Age.

Barak, Aharon. *Proportionality: Constitutional Rights and Their Limitations*. With Doron Kalir. Cambridge Studies in Constitutional Law 2. University Press, 2012.

Carrillo, Piero Ríos. "Proportionality, Comparability, and Parity: A Discussion on the Rationality of Balancing." *Legal Theory* 29, no. 4 (2023): 257–88. https://doi.org/10.1017/S1352325223000186.

Fazrin Khoirunnisa, Saskia. "Pengaturan Hukum Eksekusi Objek Jaminan Fidusia Apabila Debitur Melakukan Tindakan Pelanggaran Perjanjian." Ilmu Hukum. *Court Review: Jurnal Penelitian Hukum (e-ISSN: 2776-1916)* 3, no. 05 (2023): 12–23. https://doi.org/10.69957/cr.v3i05.1359.

Imran, Imran, Amran Suadi, Muh Risnain, and Erlies Septiana Nurbani. "Aspects Of Justice Of Marriage Dispensation And Best Interests For Children." *Jurnal Hukum Dan Peradilan* 13, no. 1 (2024): 63–88. https://doi.org/10.25216/jhp.13.1.2024.63-88.

Karim, Fibriyanti. "The Effect of Marriage Age Limit Changes on Marriage Dispensation Granting by the Limboto Religious Court: Study of the Republic of Indonesia Constitutional Court Decision No. 22/PUU-XV/2017." *Reformasi Hukum* 28, no. 3 (2024): 218–33. https://doi.org/10.46257/jrh.v28i3.1081.

Kuswanto, Heri, Pratnya Paramitha Oktaviana, Ferry Efendi, Nelwati Nelwati, and Hema Malini. "Prevalence of and Factors Associated with Female Child Marriage in Indonesia." *PLOS ONE* 19, no. 7 (2024): e0305821. https://doi.org/10.1371/journal.pone.0305821.

MacQuarrie, KLD, and C. Juan. "Trends and Factors Associated with Child Marriage in Four Asian Countries [Version 1; Peer Review: 1 Approved, 1 Approved with Reservations]." *Gates Open Research* 3, no. 1467 (2019).

[33] Partini et al., "Saving Indonesia's Golden Generation," 2020.

https://doi.org/10.12688/gatesopenres.13021.1.

Manandhar, Naresh, and Sunil Kumar Joshi. "Health Co-Morbidities and Early Marriage in Women of a Rural Area of Nepal: A Descriptive Cross-Sectional Study." *JNMA: Journal of the Nepal Medical Association* 58, no. 230 (2020): 780–83. https://doi.org/10.31729/jnma.5205.

Mayandra, Rudi. "Regulation of Marriage Dispensation Against Marriage of Children Under The Age of Post Decision of The Constitutional Court Number 22 / Puu-Xv / 2017." *Syariah: Jurnal Hukum dan Pemikiran* 20, no. 2 (2020): 187–200. https://doi.org/10.18592/sjhp.v20i2.4160.

Meilani, Niken, Nanik Setiyawati, Siti Rofi'ah, and Tuti Sukini. "Improving Knowledge and Attitude towards Child Marriage Prevention among Senior High School Students." *Journal of Education and Learning (EduLearn)* 17, no. 3 (2023): 354–64. https://doi.org/10.11591/edulearn.v17i3.20763.

Mujiyana, Mujiyana, Windy Virdinia Putri, and Gumilang Fuadi. "Obedience to Constitutional Court Decisions: Constitutional Obligations and Moral Obligations of Legislators." Articles. *LAW & PASS: International Journal of Law, Public Administration and Social Studies* 2, no. 3 (2025): 182–91. https://doi.org/10.47353/lawpass.v2i3.21.

Nirwana, Muhammad Alfaruq. "Aturan Hukum Keberpihakan Presiden dalam Pemilu." *AL WASATH Jurnal Ilmu Hukum* 5, no. 1 (2024): 1–10. https://doi.org/10.47776/alwasath.v5i1.1004.

Nugraha, Sigit Nurhadi. "Cidera Janji (Wanprestasi) Dalam Perjanjian Fidusia Berdasarkan Pasal 15 Ayat (3) UU Nomor 42 Tahun 1999 Pasca Putusan Mahkamah Konstitusi Nomor: 18/PUU-XVII/2019." *AL WASATH Jurnal Ilmu Hukum* 2, no. 2 (2021): 77–92. https://doi.org/10.47776/alwasath.v2i2.213.

Partini, Partini, Hermin Indah Wahyuni, and Lidwina Mutia Sadasri. "Saving Indonesia's Golden Generation: Preventing Teenage Marriage in Rembang, Central Java (A Case Study)." *IKAT: The Indonesian Journal of Southeast Asian Studies* 4, no. 1 (2020): 63–74. https://doi.org/10.22146/ikat.v4i1.51554.

Partini, Partini, Hermin Indah Wahyuni, and Lidwina Mutia Sadasri. "Saving Indonesia's Golden Generation: Preventing Teenage Marriage in Rembang, Central Java (A Case Study)." *IKAT: The Indonesian Journal of Southeast Asian Studies* 4, no. 1 (2020): 63–74. https://doi.org/10.22146/ikat.v4i1.51554.

Putra, Gilar Giri Prayoga, Nandhita Febryliani, Adisha Najmadina, Moh Sigit Gunawan, and Deni Yusup Permana. "Juridical Analysis of Marriage Laws and Regulations in Indonesia and the United Kingdom." *Journal of Legal and Cultural Analytics* 4, no. 2 (2025): 937–48. https://doi.org/10.55927/jlca.v4i2.14516.

Royani, Esti, Arief Nurtjahjo, Norti Bilung, and Sajid Ali. "Juridical Aspects Of Underage Marriage And Customary Law." *Awang Long Law Review* 6, no. 1 (2023): 193–205. https://doi.org/10.56301/awl.v6i1.990.

Saffanah, Arla Haiqa, and Dwi Aryanti Ramadhani. "Perlindungan Hukum Debitur dalam Eksekusi Jaminan Fidusia Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019." Articles. *JURNAL USM LAW REVIEW* 7, no. 3 (2024): 1784–800. https://doi.org/10.26623/julr.v7i3.10707.

Suadi, Amran. "The Role Of Religious Court In Prevention Underage Marriage." *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020): 116–31. https://doi.org/10.25216/jhp.9.1.2020.116-131.

Subramanee, S. Daarwin, Kingsley Agho, Josyula Lakshmi, Md. Nazmul Huda, Rohina Joshi, and Blessing Akombi-Inyang. "Child Marriage in South Asia: A Systematic Review." *International Journal of Environmental Research and Public Health* 19, no. 22 (2022): 15138. https://doi.org/10.3390/ijerph192215138.

Sumardi, Dedy, Ratno Lukito, and Moch Nur Ichwan. "Legal Pluralism within The Space of

Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 426–49. https://doi.org/10.22373/sjhk.v5i1.9303.

Weihrauch, Anna. "The Principle of 'the Best Interest of the Child.'" *Humanium*, 2021. https://www.humanium.org/en/the-principle-of-the-best-interest-of-the-child/.

Wibowo, Heribertus Rinto, Muliani Ratnaningsih, Nicholas J. Goodwin, Derry Fahrizal Ulum, and Emilie Minnick. "One Household, Two Worlds: Differences of Perception towards Child Marriage among Adolescent Children and Adults in Indonesia." *The Lancet Regional Health - Western Pacific* 8 (March 2021): 100103. https://doi.org/10.1016/j.lanwpc.2021.100103.

Wilonoyudho1, Saratri, and Lutfi Agus Salim2. "Social Impacts of Child Marriage in Grobogan Regency, Central Java Province, Indonesia." *Medico Legal Update* 20, no. 4 (2020): 513–18. https://doi.org/10.37506/mlu.v20i4.1869.