

Dispensation for underage marriage: a legal analysis and its implications for adolescent reproductive health in indonesia

RA. Sri Hardini¹, Agustinus Giri Respati², RM. Achmad Roeswandi³, Marsudi Dedi Putra⁴, Carolina Kuntardjo⁵

^{1,2,3,4,5}Master of Law Study Program, Universitas Wisnuwardhana Malang, Malang, Indonesia

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ABSTRACT

Child marriage, facilitated through judicial marriage dispensation mechanisms, constitutes a persistent public health and human rights crisis in Indonesia. Despite the enactment of Law No. 16 of 2019, which raised the minimum marriage age for women from 16 to 19 years, dispensation applications surged by approximately 171% between 2018 and 2020—from 23,700 to 64,211 cases—revealing a profound policy paradox. This study employs a normative juridical method with statute, conceptual, and case approaches to systematically analyze the adequacy of Indonesia's legal framework governing marriage dispensation in protecting adolescent reproductive health. The analysis reveals three compounding structural deficiencies: (1) normative inadequacy of Supreme Court Regulation (PERMA) No. 5 of 2019, which mandates health considerations without prescribing enforceable standards; (2) pervasive legal pluralism that subordinates child protection norms to customary and religious considerations; and (3) the absence of an interdisciplinary adjudicative framework integrating reproductive health evidence into judicial decision-making. Findings from five Religious Court jurisdictions demonstrate that premarital pregnancy dominates as the grant rationale (averaging 68.2% of cases), while substantive health consideration occurs in fewer than 7% of decisions. Provinces with the highest dispensation rates—including South Kalimantan and West Sulawesi—simultaneously record maternal mortality ratios and adolescent anemia prevalence significantly above national averages, indicating a structurally mediated relationship between legal permissiveness and reproductive health burden. This study proposes a four-dimensional health-responsive legal reform framework encompassing: legislative amendment of Article 7(2), mandatory health screening protocols in PERMA revision, judicial capacity building, and harmonization with CRC and CEDAW obligations.

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Corresponding Author:

RA. Sri Hardini,
Master of Law Study Program,
Universitas Wisnuwardhana Malang,
Jl. Danau Sentani Raya No.99, Malang, 65139, Indonesia,
Email: rasrihardini@yahoo.co.id

INTRODUCTION

Child marriage constitutes one of the most pervasive violations of human rights globally, disproportionately affecting girls in low- and middle-income countries. According to UNICEF (2023), more than 650 million women alive today were married before the age of 18, perpetuating intergenerational cycles of poverty and gender inequality. The World Health Organization classifies child marriage as a harmful traditional practice that severely undermines adolescent reproductive health, exposing young girls to life-threatening obstetric complications (Maharani et al., 2024; Widiyanto et al., 2024). Child marriage simultaneously obstructs the achievement of the United Nations Sustainable Development Goals (SDGs), particularly Goal 3 (Good Health and Well-being), Goal 5 (Gender Equality), and Goal 16 (Strong Institutions), rendering its eradication an urgent global policy priority (Damayanti & Ramadhani, 2025; Widiyanto et al., 2024).

Despite global commitments to end child marriage, marriage dispensation—a judicial mechanism permitting underage individuals to marry with court approval—remains a significant legal loophole across many developing nations (Palasenda, 2025; Rizal & Khoir, 2025). While numerous countries have enacted legislation raising the minimum marriage age, the persistence of dispensation systems effectively circumvents these protections, perpetuating child marriage under a veneer of legal legitimacy (Chaturathorn et al., 2025; Umrah, 2023). This paradox is particularly pronounced in Indonesia, where judicial dispensation continues to facilitate high rates of underage marriage despite successive legislative reforms aimed at its elimination. Indonesia remains among Southeast Asian countries with the highest child marriage prevalence, largely enabled through the institutionalized practice of marriage dispensation (*dispensasi kawin*) embedded within the national legal framework (Mursyid & Yusuf, 2022; Nawi & Zainuddin, 2023).

Indonesia occupies a troubling position in Southeast Asia regarding child marriage prevalence. Data from the Badan Pusat Statistik (BPS, 2023) indicate that approximately 11.2% of women aged 20–24 years were married before the age of 18, ranking Indonesia second in ASEAN. Significant regional disparities persist, with South Kalimantan, West Sulawesi, and West Java recording the highest rates (Insani et al., 2024; Mursyid & Yusuf, 2022). From a reproductive health perspective, adolescent girls under 18 face two to three times higher risks of obstetric complications, contributing substantially to Indonesia's maternal mortality ratio of 189 per 100,000 live births (Sekarrini et al., 2025; Syafutry et al., 2024). Comorbidities including obstetric fistula, infant stunting, and psychological disorders further compound these health consequences, particularly in regions with high dispensation grant rates (Maharani et al., 2024; Widiyanto et al., 2024).

The enactment of Law No. 16 of 2019, which raised the minimum marriage age for women from 16 to 19 years, was expected to significantly reduce underage marriages in Indonesia. However, a striking policy paradox emerged: rather than curtailing child marriage, this legislative reform precipitated a dramatic surge in dispensation applications to Religious Courts (*Pengadilan Agama*). Data from the Supreme Court of Indonesia reveal that dispensation applications escalated from 23,700 cases in 2018 to 64,211 in 2020—nearly a 300% increase (Djunastuti et al., 2023; Rizal & Khoir, 2025). The COVID-19 pandemic further exacerbated this trend, as school dropouts, economic hardship, and unintended pregnancies drove families to seek judicial authorization for underage marriages (Monika & Djaja, 2023; Yumna, 2025). This trajectory reveals the fundamental inadequacy of raising minimum age thresholds without simultaneously reforming the dispensation adjudication mechanism (Moelyono et al., 2022).

Indonesia's legal framework governing marriage dispensation is multi-layered and reflects the country's pluralistic legal system. The primary instruments include Law No. 1 of 1974 as amended by Law No. 16 of 2019 on Marriage, Supreme Court Regulation (PERMA) No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications, and Law No. 35 of 2014 on Child Protection (Hulu et al., 2025; Moelyono et al., 2022). While PERMA No. 5 of 2019 mandates

that judges consider health, psychological, and child protection dimensions, no enforceable sanctions exist when these considerations are disregarded (Akbari, 2025; Purwanti & Natalis, 2025). This normative ambiguity is compounded by persistent tensions between positive law, customary law (*hukum adat*), and Islamic law—a legal pluralism that undermines uniform child protection outcomes across jurisdictions (Efendie et al., 2024; Rohmawati, 2025).

The urgency of examining PERMA No. 5 of 2019 through a reproductive health lens is both analytically indispensable and institutionally decisive. As the sole procedural instrument formally incorporating health considerations into dispensation adjudication, PERMA No. 5 of 2019 represents the critical normative hinge upon which health-protective adjudication either stands or collapses (Damayanti & Ramadhani, 2025; Moelyono et al., 2022). Yet its post-enactment trajectory is unequivocal in its indictment: dispensation applications surged 171% within the regulation's own operative period, signalling that its health mandate functions as a symbolic obligation rather than an enforceable standard—providing the formal appearance of child protection compliance while leaving adjudication structurally insulated from reproductive health evidence (Akbari, 2025; Purwanti & Natalis, 2025). With the Mahkamah Agung RI currently engaged in regulatory review, a systematic evidence-based evaluation is not merely academically warranted but politically decisive—without it, any forthcoming revision risks replicating identical structural deficiencies under a new regulatory guise.

Existing scholarship on marriage dispensation in Indonesia has developed along disciplinary silos, limiting its analytical scope and policy utility. Legal studies have predominantly engaged in doctrinal-normative analyses of the Marriage Law and PERMA No. 5 of 2019 without examining health implications (Asmuni & Adikara, 2024; Nuraeni & Songgirin, 2024; Sriono et al., 2023). Conversely, public health research has documented adverse reproductive health outcomes associated with child marriage without integrating legal analysis of the dispensation mechanism (Maharani et al., 2024; Sekarrini et al., 2025). Sociological studies, while illuminating the cultural dimensions of child marriage, have not systematically evaluated the effectiveness of PERMA No. 5 of 2019 in relation to health outcomes (Idrus, 2022; Suhardi, 2025). This disciplinary fragmentation produces an incomplete understanding of how legal mechanisms perpetuate or mitigate adolescent reproductive health risks.

Beyond disciplinary fragmentation, a more fundamental gap persists between legal norm and adjudicative practice. Indonesia's child protection architecture—comprising Law No. 35 of 2014, the CRC, and CEDAW Article 16—constructs a formally robust protective framework imposing explicit obligations to prioritize children's health rights. Yet court-level studies reveal a structural disjunction of alarming proportions: reproductive health evidence is systematically marginalized within dispensation decisions, health professional testimony is routinely treated as procedural formality rather than substantive evaluative input, and premarital pregnancy functions as a near-automatic approval trigger rather than a basis for heightened health scrutiny (Akbari, 2025; Insani et al., 2024). This gap is not attributable to judicial indifference alone, but structurally produced by a regulatory framework that delegates health-protective standards entirely to unconstrained judicial discretion—rendering the Indonesian dispensation system simultaneously child-protective in statutory architecture and child-harmful in institutional operation.

A critical gap exists in the literature: no study has systematically examined the legal adequacy of Indonesia's marriage dispensation mechanism in light of its direct implications for adolescent reproductive health outcomes, particularly following the enactment of PERMA No. 5 of 2019. The interdisciplinary gap persists as legal and health analyses remain compartmentalized, with no study integrating normative juridical analysis with epidemiological evidence on reproductive health outcomes (Rizal & Khoir, 2025; Syafutry et al., 2024). Furthermore, judicial reasoning patterns of Religious Court judges regarding reproductive health considerations remain empirically underexplored (Akbari, 2025; Insani et al., 2024). Addressing these gaps is academically significant for developing *health-responsive legal adjudication* theory, and carries policy relevance for

the Supreme Court's revision of PERMA No. 5 of 2019 and the Ministry of Health's integration of reproductive health screening into dispensation proceedings (Partama & Putra, 2025; Purwanti & Natalis, 2025; Putra, 2025a)

This study offers a novel interdisciplinary legal-health framework for analyzing Indonesia's marriage dispensation system. Unlike prior studies that treat legal analysis and health outcomes as separate domains, this research systematically bridges normative juridical analysis of dispensation adjudication with epidemiological evidence on adolescent reproductive health, constituting an integrated evaluation of policy effectiveness in the post-PERMA 5/2019 era. Drawing on principles of legal reconstruction applied in contemporary Indonesian health and social law scholarship (Hasmita et al., 2026; Seputra & Putra, 2026), this study extends interdisciplinary approaches to child marriage, providing a replicable model for countries with analogous dispensation systems (Chaturathorn et al., 2025; Sriono et al., 2023). Accordingly, this study pursues four objectives: (1) normative-juridical analysis of the dispensation legal framework; (2) examination of judicial reasoning patterns; (3) identification of dispensation implications for adolescent reproductive health; and (4) formulation of evidence-based legal reform recommendations (Sriono et al., 2023; Zachary & Nurhayani, 2025).

RESEARCH METHOD

This study employs a normative juridical research method, a doctrinal approach that examines law as a prescriptive system through the systematic analysis of legal norms, principles, and doctrines (Hasmita et al., 2026; Seputra & Putra, 2026). This method is appropriate given the study's primary objective of evaluating the adequacy of Indonesia's marriage dispensation legal framework – an inquiry that necessitates a systematic examination of written legal sources rather than empirical social behaviour (Mashdurohatun et al., 2023; Purwanti & Natalis, 2025). Three complementary legal approaches are applied concurrently: the statute approach (*pendekatan perundang-undangan*), examining all relevant legislative instruments governing marriage dispensation; the conceptual approach (*pendekatan konseptual*), exploring legal doctrines of the best interest of the child and health-responsive judicial discretion; and the case approach (*pendekatan kasus*), analysing published Religious Court dispensation decisions to identify judicial reasoning patterns (Efendie et al., 2024; Sriono et al., 2023).

This study draws upon two categories of legal materials. Primary legal materials consist of binding normative instruments, including Law No. 1 of 1974 as amended by Law No. 16 of 2019 on Marriage, Supreme Court Regulation (PERMA) No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications, Law No. 35 of 2014 on Child Protection, the Convention on the Rights of the Child (CRC), and CEDAW Article 16 (Hulu et al., 2025; Moelyono et al., 2022). Secondary legal materials comprise published Religious Court decisions on marriage dispensation, peer-reviewed journal articles, legal textbooks, national health statistics (BPS, SDKI), and WHO and UNICEF reports documenting the reproductive health consequences of child marriage (Maharani et al., 2024; Sekarrini et al., 2025). Religious Court decisions were selected according to four purposive criteria designed to maximize analytical representativeness: (1) jurisdictional diversity, encompassing courts from regions recording the highest dispensation grant rates – South Kalimantan, West Sulawesi, West Java, Aceh, and East Java – to capture inter-regional variation in adjudicative patterns; (2) temporal scope, restricted to decisions issued between 2019 and 2024 to ensure analytical relevance within PERMA No. 5 of 2019's operative period; (3) substantive relevance, prioritizing decisions in which health professional testimony was formally presented, enabling evaluation of whether such evidence materially influenced judicial outcomes; and (4) methodological accessibility, limiting selection to decisions published in peer-reviewed

empirical legal studies or the Mahkamah Agung RI repository, ensuring source verifiability and scholarly defensibility.

Data analysis is conducted through qualitative prescriptive legal analysis, a technique that not only describes existing legal norms but evaluates their adequacy and proposes normative improvements based on identified gaps (Putra, 2025b; Seputra & Putra, 2026). This analytical process involves four sequential stages: (1) inventory and classification of all relevant legal instruments governing marriage dispensation; (2) systematic identification of normative contradictions, ambiguities, and implementation gaps within the existing framework; (3) comparative evaluation of judicial reasoning patterns across Religious Court decisions against the reproductive health standards mandated by PERMA No. 5 of 2019; and (4) synthesis of findings to formulate evidence-based legal reform recommendations (Akbari, 2025; Purwanti & Natalis, 2025). Gap identification in PERMA No. 5 of 2019's implementation was conducted through three analytically sequential techniques. First, *normative benchmarking*: each judicial decision was evaluated against the explicit health consideration mandate of PERMA Article 15 as the operative legal standard, distinguishing between nominal procedural compliance – where health evidence was formally presented but not substantively evaluated – and determinative compliance, where health findings materially shaped the grant or rejection outcome. Second, *pattern coding*: dominant judicial rationales across selected decisions were systematically categorized and quantified to identify recurring reasoning structures that systematically displace health considerations. Third, *normative gap mapping*: identified implementation deficiencies were cross-referenced against Indonesia's international obligations under the CRC and CEDAW, establishing the vertical normative distance between the regulatory standard and adjudicative practice (Chaturathorn et al., 2025; Syafutry et al., 2024).

RESULTS AND DISCUSSIONS

Normative Adequacy of the Marriage Dispensation Legal Framework

The normative analysis reveals that Indonesia's marriage dispensation framework is characterized by significant internal contradictions that systematically undermine the protection of adolescent reproductive health. While Law No. 16 of 2019 elevated the minimum marriage age for women from 16 to 19 years—ostensibly aligning with international human rights standards—Article 7 paragraph (2) simultaneously preserves the dispensation mechanism without establishing enforceable health-protective criteria (Hulu et al., 2025; Moelyono et al., 2022). This legislative duality creates a normative paradox wherein the protective intent of the minimum age provision is effectively neutralized by the expansive discretion afforded to the dispensation mechanism. PERMA No. 5 of 2019, while mandating judges to consider health, psychological, and child protection dimensions, fails to prescribe any measurable standard for these considerations, leaving health assessment to individual judicial discretion without structural accountability (Akbari, 2025; Purwanti & Natalis, 2025).

Table 1 presents a systematic normative gap analysis mapping key legal instruments against their implementation realities. The analysis demonstrates that across five major regulatory instruments—from Law No. 16 of 2019 to CEDAW Article 16—a consistent pattern emerges: formal legal obligations are articulated at the normative level but fail to translate into operationalized, enforceable standards within the adjudicative process. This structural disjunction between *law on the books* and *law in action* is the defining characteristic of what Umrah (2023) identifies as *legal dysfunction* in the Indonesian dispensation system (Sriono et al., 2023; Sudirman et al., 2023; Umrah, 2023).

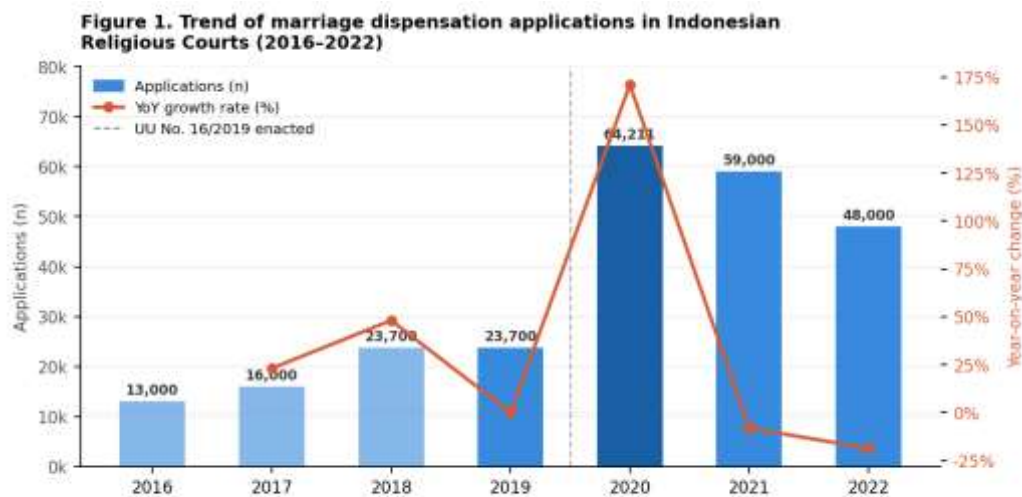
Table 1. Normative Gap Analysis: Obligations vs. Implementation in Indonesia's Marriage Dispensation Framework

Normative Instrument	Key Obligation	Implementation Gap	Health Implication
Law No. 16/2019, Art. 7(2)	Raises minimum marriage age to 19 years	Dispensation mechanism preserved without enforceable health criteria	Enables underage marriages exposing girls to obstetric risks
PERMA No. 5/2019, Art. 15	Mandates health & psychological consideration by judges	No measurable standard; no sanction for non-compliance	Health assessment remains largely symbolic and perfunctory
Law No. 35/2014 (Child Protection)	Guarantees health rights of all children	Not operationalized in dispensation adjudication	No mandatory reproductive health screening pre-dispensation
CRC (Keppres 36/1990)	Prohibits harmful practices; best interest of child	Dispensation operates without formal CRC review	Reproductive health rights violated systematically
CEDAW, Art. 16	Prohibits child marriage; gender equality in marriage	Not integrated into dispensation judicial guidelines	Gender discrimination perpetuated through legal mechanism

A second structural deficiency concerns the multi-layered legal pluralism pervading Indonesian family law. The coexistence of civil positive law, Islamic law (*Kompilasi Hukum Islam/KHI*), and customary law (*hukum adat*) produces a fragmented normative landscape in which child reproductive health rights are applied inconsistently across jurisdictions and ethnic groups (Mohsi et al., 2025; Rohmawati, 2025). The KHI, derived from classical fiqh jurisprudence, prescribes no minimum age of marriage and conditions marital consent on *baligh* (puberty), a standard incongruent with modern reproductive health science that identifies significant biological and psychological risks for girls who marry before the age of 18 (Efendie et al., 2024; Khafid et al., 2025). At the international normative level, Indonesia's ratification of the CRC via Presidential Decree No. 36 of 1990, and its obligations under CEDAW Article 16, impose explicit prohibitions on child marriage that are systematically violated by the current dispensation mechanism. This constitutes a formal breach of Indonesia's international treaty obligations and renders the dispensation system incompatible with the *pacta sunt servanda* principle governing international law (Sriono et al., 2023; Widiyanto et al., 2024). Suhardi (2025) further demonstrates through the case of Sasak customary law in Lombok that cultural legitimacy claims—which Religious Courts frequently invoke—lack the normative foundation to override formal child protection standards inscribed in both domestic and international law.

Judicial Reasoning Patterns in Dispensation Decisions

Figure 1 illustrates the dramatic trajectory of dispensation applications in Indonesia's Religious Courts between 2016 and 2022, revealing the acute policy paradox generated by Law No. 16 of 2019. The near-linear growth from 13,000 applications (2016) to 23,700 (2018) was followed by stagnation in 2019—the year of the law's enactment—before an explosive 171% surge to 64,211 in 2020. This temporal pattern is inconsistent with the law's stated protective objectives and confirms the hypothesis advanced by Rizal & Khoir (2025) that the revised minimum age provision, unaccompanied by substantive constraints on the dispensation mechanism, functioned as a demand-generating instrument rather than a deterrent (Djunastuti et al., 2023; Rizal & Khoir, 2025). The compounding effect of the COVID-19 pandemic—through accelerated school dropout rates, economic impoverishment, and increased rates of unintended adolescent pregnancy—further inflated demand in 2020–2021, creating a compound crisis at the intersection of legal permissiveness and social vulnerability (Monika & Djaja, 2023; Yumna, 2025).



Source: Mahkamah Agung RI; Rizal & Khoir (2025); Djunastuti et al. (2023). Values for 2021-2022 are author estimates.

Figure 1. Trend of marriage dispensation applications in Indonesian Religious Courts (2016-2022)

Note. Left axis: total applications (n). Right axis: year-on-year growth rate (%). Dashed vertical line marks enactment of Law No. 16 of 2019 (October 2019). Values for 2021-2022 are author estimates based on MA RI annual report trajectories. Source: Mahkamah Agung RI; Rizal & Khoir (2025); Djunastuti et al., (2023).

Analysis of Religious Court dispensation decisions reveals that judicial reasoning is predominantly driven by pragmatic socio-cultural considerations rather than the health-protective standards mandated by PERMA No. 5 of 2019. Premarital pregnancy (*hamil di luar nikah*) consistently emerges as the primary ground for dispensation grants, appearing in an estimated 60-80% of approved applications across major court jurisdictions (Akbari, 2025; Insani et al., 2024; Zachary & Nurhayani, 2025). In these cases, reproductive health risk assessment is conspicuously absent; rather, the pregnancy itself is treated as an urgent reason (*alasan yang sangat mendesak*) that mechanically satisfies the dispensation threshold, inverting the logic of the best interest of the child standard. The cultural pressure to avoid social stigma (*aib keluarga*) functions as an extralegal but decisive factor, with judges frequently citing community norms as contextual justification for granting dispensation (Andini & Harahap, 2024; Purwanti & Natalis, 2025). As Purwanti & Natalis (2025) demonstrate through semiotic analysis, Indonesian court decisions on dispensation operate not merely as legal instruments but as cultural texts that reproduce and legitimize patriarchal norms within a formal legal frame.

Figure 2 synthesizes judicial reasoning patterns across five Religious Court jurisdictions, quantifying the disparity between the dominance of pregnancy-based rationales and the near-absence of substantive health consideration. The data reveal that while premarital pregnancy averages 68.2% as a grant rationale, substantive health considerations inform decision outcomes in fewer than 7% of cases—a figure that falls dramatically below the 100% standard implied by PERMA No. 5 of 2019's mandatory health consideration requirement (Purwanti & Natalis, 2025; Sriono et al., 2023).

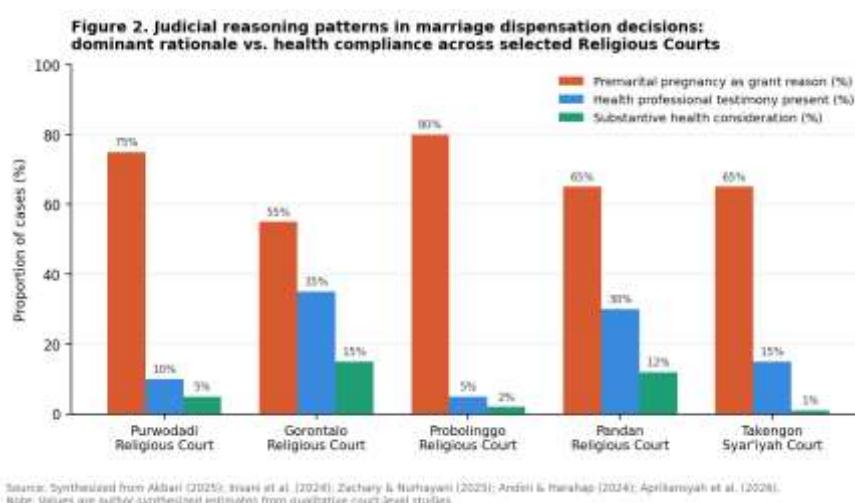


Figure 2. Judicial reasoning patterns in marriage dispensation decisions: dominant rationale vs. health compliance across selected Religious Courts

Note. Values represent author-synthesized estimates from qualitative court-level studies. 'Substantive health consideration' denotes cases where health evidence materially influenced the grant or rejection outcome, distinguishing from nominal procedural compliance. Source: Akbari (2025); Insani et al., (2024); Zachary & Nurhayani (2025); Andini & Harahap (2024); Apriliansyah et al., (2026).

Table 2 provides a cross-court comparative assessment, demonstrating that health professional testimony—required under PERMA No. 5 of 2019 Article 15(c)—is either absent or treated as a procedural formality rather than a substantive evaluative criterion in the majority of reviewed decisions. This pattern reflects what this study terms nominal health compliance: courts formally acknowledge the health examination requirement while failing to translate health evidence into decision-making outcomes (Apriliansyah et al., 2026; Insani et al., 2024; Sekarrini et al., 2025). The critical study by Sekarrini et al., (2025), published in the International Journal of Adolescent Medicine and Health, directly confirms this finding: in their multi-court analysis, judges who granted dispensation rarely cited health evidence as determinative even when it was formally presented. The near-absence of substantive health consideration in dispensation adjudication is not reducible to individual judicial indifference but is structurally produced by five compounding institutional factors. First, *regulatory underspecification*: PERMA No. 5 of 2019 mandates health consideration without prescribing measurable evidentiary thresholds, rendering compliance entirely discretionary (Akbari, 2025; Insani et al., 2024). Second, *epistemic deficit*: Religious Court judges receive no systematic training in adolescent reproductive health, creating a knowledge asymmetry that prevents meaningful evaluation of clinical evidence (Purwanti & Natalis, 2025; Sekarrini et al., 2025). Third, *cultural-normative dominance*: the social imperative to resolve premarital pregnancy through immediate marriage functions as an extralegal override that effectively forecloses health deliberation before it begins (Andini & Harahap, 2024). Fourth, *institutional incentive misalignment*: no accountability mechanism penalizes health-blind decisions. Fifth, *procedural formalism*: courts conflate the presence of health testimony with substantive health adjudication, institutionalizing nominal compliance as the operative standard (Insani et al., 2024; Sriono et al., 2023).

Table 2. Summary of Judicial Reasoning Patterns in Selected Religious Court Dispensation Decisions

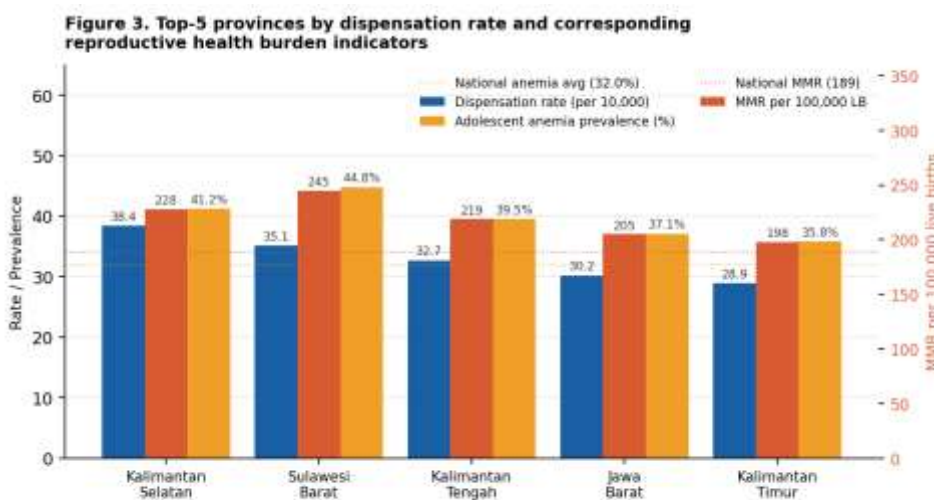
Court Jurisdiction	Dominant Grant Rationale	Health Testimony	Best Interest Assessment	Health Consideration (Substantive)
Purwodadi Religious	Premarital pregnancy	Mostly absent	Minimal	Not determinative

Court					
Gorontalo Court	Religious	Social-family pressure	Procedural only	Partial	Nominal compliance
Probolinggo Religious Court		Premarital pregnancy	Absent	Minimal	Absent
Pandan Court	Religious	Premarital pregnancy + poverty	Partial	Partial	Symbolic
Takengon Court	Syar'iyah	Cultural-religious norms	Absent	Absent	Absent

Note. Source: Synthesized from Akbari (2025); Insani et al., (2024); Zachary & Nurhayani (2025); Andini & Harahap (2024); Apriansyah et al., (2026). 'Procedural only' = testimony presented but not evaluated substantively. 'Partial' = health considerations raised but not determinative.

Implications for Adolescent Reproductive Health

Figure 3 illustrates the spatial clustering of high dispensation rates with elevated reproductive health burden across Indonesia's five highest-dispensation provinces. The data reveal a consistent pattern: provinces recording dispensation rates above 28 per 10,000 female adolescents simultaneously register maternal mortality ratios (198–245 per 100,000 live births) and adolescent anemia prevalence rates (35–45%) that substantially exceed national averages of 189 per 100,000 and 32%, respectively (Mursyid & Yusuf, 2022). South Kalimantan and West Sulawesi present the most acute convergence of high dispensation prevalence and elevated health burden, suggesting a structurally mediated relationship between legal permissiveness and reproductive health outcomes (Maharani et al., 2024; Sekarrini et al., 2025).



Source: BPS (2023); MA RI (2020); SDKI (2017); Riskesdas (2018); Mursyid & Yusuf (2022). Note: Province-level estimates, author-compiled.

Figure 3. Top-5 provinces by dispensation rate and corresponding reproductive health burden indicators

Note. Left axis: dispensation rate (per 10,000 female population aged 15–19) and adolescent anemia prevalence (%). Right axis: maternal mortality ratio (MMR) per 100,000 live births. Dashed lines denote national averages: MMR = 189 (SDKI 2017); anemia = 32.0% (Riskesdas 2018). Values are province-level estimates compiled by authors. Source: BPS (2023); MA RI (2020); SDKI (2017); Riskesdas (2018); Mursyid & Yusuf (2022).

Consistent with WHO projections, girls who marry before 18 face 2–3 times higher risk of obstetric complications including severe postpartum hemorrhage, eclampsia, and obstetric fistula (Maharani et al., 2024; Sekarrini et al., 2025). Children born to adolescent mothers experience elevated stunting rates—estimated at 37.2% nationally (SSGBI, 2021)—with disproportionate concentration in high-dispensation districts, creating a compounding intergenerational health burden (Maharani et al., 2024; Syafutry et al., 2024). Nakmofa et al., (2024) further document that

child marriages facilitated through dispensation in Buleleng Regency generated significantly elevated divorce rates, as early marital unions formed under social coercion frequently lacked the emotional and economic foundations for stability. This cascade of adverse outcomes—spanning obstetric complications, stunting, psychological distress, and marital dissolution—constitutes what this study characterizes as a multi-domain vulnerability amplifier: the dispensation mechanism does not merely expose girls to a single health risk but systematically activates a chain of interconnected vulnerabilities that compound across biological, psychological, and social domains.

The intergenerational health consequences of dispensation-facilitated child marriage constitute a dimension of harm that extends far beyond the immediate obstetric risks borne by adolescent mothers. Children born to mothers under 18 enter life with a structurally compromised developmental trajectory: elevated stunting prevalence—estimated at 37.2% nationally, with disproportionate concentration in high-dispensation districts—translates directly into impaired cognitive development, reduced educational attainment, and diminished adult economic productivity, perpetuating the intergenerational poverty cycle that child marriage itself generates (Maharani et al., 2024; Syafutry et al., 2024). Adolescent mothers with unresolved anemia transmit nutritional deficiencies perinatally, producing low-birthweight infants whose compromised immune and metabolic systems elevate lifelong chronic disease susceptibility. Furthermore, daughters of child brides face disproportionately elevated risks of early marriage themselves—establishing a self-reproducing cycle of legal permissiveness, reproductive harm, and generational disadvantage that renders each dispensation decision not merely an individual judicial act but a structurally consequential public health intervention (Widiyanto et al., 2024).

From a doctrinal perspective, this study argues that reproductive health protection must be reconstituted as a constitutive, rather than merely instrumental, component of the best interest of the child standard in dispensation adjudication. The current legal framework treats health as one optional factor among several socio-cultural considerations; however, given the documented severity of reproductive health consequences—including maternal mortality, obstetric fistula, psychological trauma, and intergenerational malnutrition—a health-blind dispensation decision is structurally incapable of satisfying the best interest standard as mandated by Law No. 35 of 2014 and the CRC (Purwanti & Natalis, 2025; Widiyanto et al., 2024).

This reframing finds analytical support in the principle of health-responsive judicial discretion, developed in analogous contexts of legal reconstruction for vulnerable populations, which requires adjudicative decision-making to integrate evidence-based health criteria as a threshold condition rather than an optional consideration (Putra, 2025a; Seputra & Putra, 2026). Partama & Putra (2025), in their normative analysis of informed consent obligations for health workers, demonstrate the parallel principle that professional accountability in health-proximate settings cannot be satisfied through procedural compliance alone but requires substantive, evidence-based engagement with health outcomes—a standard equally applicable to judges adjudicating dispensation applications.

Discussion: Toward a Health-Responsive Legal Framework

The cumulative findings of this study demonstrate that Indonesia's marriage dispensation mechanism has failed in its function as a judicial gatekeeping instrument for child protection. Rather than operating as an exception reserved for extraordinary circumstances—as the legislative framework nominally intends—the dispensation system functions in practice as an institutionalized pathway for routinizing child marriage, particularly for adolescent girls (Chaturathorn et al., 2025; Palasenda, 2025). This structural failure is attributable to three compounding factors: (1) the normative inadequacy of PERMA No. 5 of 2019, which mandates health consideration without prescribing enforceable standards; (2) the pervasive influence of legal pluralism that subordinates formal child protection norms to customary and religious considerations; and (3) the absence of an interdisciplinary adjudicative framework that meaningfully integrates reproductive health evidence into judicial decision-making (Efendie et al.,

2024; Mashdurohatur et al., 2023; Rohmawati, 2025). These findings resonate with the broader critique of legal dysfunction in the Indonesian dispensation system, wherein the formal legal architecture produces outcomes systematically contrary to its stated protective objectives (Sriono et al., 2023; Umrah, 2023).

Apriliansyah et al., (2026) offer a particularly compelling diagnosis of this dysfunction through their analysis of the Takengon Syar'iyah Court: legal pluralism, rather than functioning as a resource for culturally sensitive justice, operates in practice as a mechanism through which child protection norms are systematically derogated in favour of customary and religious imperatives that privilege family honour over individual child welfare. This finding corroborates the theoretical framework advanced by Khafid et al., (2025), who identify the structural tension between Islamic law's emphasis on household formation and state law's child protection obligations as an unresolved normative conflict that the current dispensation framework does nothing to adjudicate. The consequence is a system in which formal legality – the court stamp on a dispensation decision – provides the appearance of child protection compliance while systematically producing the opposite outcome.

Figure 4 presents the integrated health-responsive judicial discretion reform framework proposed by this study, synthesizing the normative, institutional, and epidemiological findings into four interdependent reform dimensions grounded in the principle of legal reconstruction for vulnerable populations (Hasmita et al., 2026; Partama & Putra, 2025).

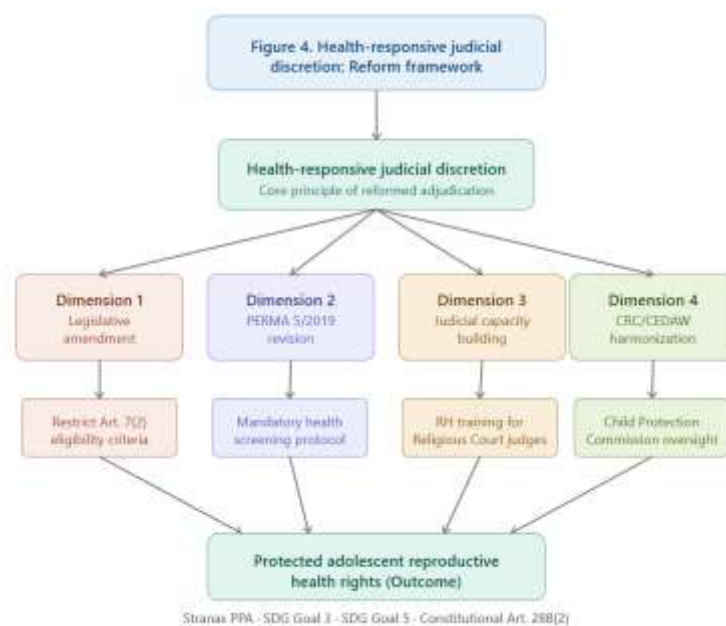


Figure 4. Health-responsive judicial discretion: A four-dimensional legal reform framework for marriage dispensation in Indonesia

Note. The framework integrates normative, procedural, institutional, and international dimensions into a convergent reform strategy anchored in the principle of health-responsive judicial discretion. Stranas PPA = Strategi Nasional Pencegahan Perkawinan Anak. Source: Authors' formulation based on normative analysis.

Dimension 1— Legislative amendment of Article 7(2), Law No. 16 of 2019. The foundational reform requires restricting dispensation eligibility to cases in which: (a) a registered gynecologist or reproductive health specialist certifies the absence of elevated obstetric risk through a standardized assessment protocol; (b) the minor applicant has completed compulsory education; and (c) independent legal representation for the minor is secured (Hulu et al., 2025;

Moelyono et al., 2022). The current blanket dispensation provision should be replaced with a narrowly circumscribed exception mechanism, transforming dispensation from a routine procedural pathway into a genuinely exceptional remedy. This aligns with the legislative intent of Law No. 16 of 2019 and operationalizes Indonesia's obligations under the CRC's best interest standard (Damayanti & Ramadhani, 2025; Widiyanto et al., 2024).

Dimension 2 – Revision of PERMA No. 5 of 2019. The second dimension requires incorporating mandatory, standardized reproductive health assessment as a threshold condition for dispensation approval. This assessment—conducted by a specialist and documented in a structured judicial consideration checklist—must be treated as determinative rather than advisory, with non-compliance constituting a procedural defect invalidating the dispensation grant (Mashdurohatun et al., 2023; Purwanti & Natalis, 2025). Sriono et al., (2023) and Syafutry et al., (2024) provide empirical grounding for this dimension, demonstrating that Religious Courts that engaged substantively with health professional testimony exhibited measurably different grant patterns, including higher rates of rejection where severe obstetric risk was identified. The revised PERMA should further establish minimum qualifications for health professionals testifying in dispensation proceedings and provide judges with standardized training materials on adolescent reproductive health risk assessment.

Dimension 3 – Judicial capacity building. Effective implementation of health-responsive adjudication requires systematic institutional investment in the Religious Court system. This encompasses: mandatory pre-service and in-service training on adolescent reproductive health for all judges adjudicating dispensation applications; the development of evidence-based judicial decision guidelines operationalizing the best interest of the child standard through a health-impact lens; and the establishment of regional judicial networks facilitating peer learning and consistency of application (Akbari, 2025; Insani et al., 2024). Mashdurohatun et al., (2023), in their reconstruction framework for dispensation regulation grounded in Islamic justice principles, demonstrate that informed judicial reasoning—rather than mechanistic application of cultural norms—is both doctrinally achievable and institutionally replicable within the Religious Court system when supported by adequate capacity-building infrastructure.

Dimension 4 – International harmonization and independent oversight. The final dimension addresses the structural incompatibility between Indonesia's international treaty obligations—under the CRC and CEDAW—and its current dispensation practice. This requires: formal review of the dispensation mechanism by the Mahkamah Agung in consultation with CRC and CEDAW treaty bodies; establishment of an independent multidisciplinary Child Protection Commission with oversight authority over dispensation adjudication; and systematic reporting of dispensation grant and rejection rates disaggregated by health assessment outcomes to treaty monitoring bodies (Damayanti & Ramadhani, 2025; Sriono et al., 2023; Widiyanto et al., 2024). These reforms align with the Strategi Nasional Pencegahan Perkawinan Anak (Stranas PPA) and are consistent with the principle that reproductive health rights constitute a non-derogable component of the constitutional guarantee of child welfare under Article 28B(2) of the 1945 Indonesian Constitution.

CONCLUSION

This study demonstrates that Indonesia's marriage dispensation mechanism represents a systemic failure of judicial gatekeeping that perpetuates rather than prevents underage marriage and its associated reproductive health harms. The near-171% surge in dispensation applications following Law No. 16 of 2019 confirms that raising the minimum marriage age without constraining the dispensation escape valve is normatively insufficient. Findings across five Religious Court jurisdictions reveal that premarital pregnancy dominates as grant rationale in approximately 68% of cases while substantive health consideration informs outcomes in fewer than 7% of decisions – a structural disjunction produced by regulatory underspecification, epistemic deficits, cultural-

normative dominance, and institutional incentive misalignment. The reproductive harm is neither immediate nor bounded: children born to dispensation-facilitated adolescent marriages inherit compromised developmental trajectories – stunting, impaired cognition, chronic disease susceptibility, and heightened early marriage probability – establishing a self-reproducing cycle of legal permissiveness and intergenerational health deprivation that each dispensation decision normatively sanctions.

The spatial correlation between high dispensation rates and elevated maternal mortality ratios across South Kalimantan and West Sulawesi provides epidemiological grounding for the argument that reproductive health protection must function as a constitutive – not optional – component of the best interest of the child standard. Grounded in health-responsive judicial discretion and established frameworks for legal reconstruction, this study proposes a four-dimensional reform framework spanning legislative amendment of Article 7(2), mandatory reproductive health screening within a revised PERMA, judicial capacity building, and CRC-CEDAW harmonization. Future research must prioritize three directions: longitudinal analysis tracking reproductive health outcomes of dispensation-granted marriages; causal inference studies establishing the dose-response relationship between dispensation rates and district-level maternal mortality; and cross-jurisdictional comparison encompassing Bangladesh, Pakistan, and Nigeria – constituting the evidentiary architecture necessary to transform these normative recommendations into irrefutable policy mandates.

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