

# Critical Analysis of Marriage Dispensation Due to Zina: Gender, Child Protection, and Islamic Law Perspectives in Indonesia

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**Abstract** This study critically examines the practice of marriage dispensation due to zina (premarital pregnancy) in Indonesia through the integrated perspectives of gender justice, child protection, and Islamic law. Although Law No. 16 of 2019 raised the minimum age of marriage to strengthen child protection, empirical data show a continued increase in marriage dispensation applications and approvals in the Religious Courts, particularly in cases involving premarital pregnancy. Existing studies largely address marriage dispensation from doctrinal Islamic law or child marriage policy perspectives, while critical analyses of how judicial discretion operates in practice remain limited. The novelty of this study lies in its reconceptualization of judicial discretion as a mechanism of moral mediation rather than a rights-protective safeguard, and in its demonstration of how moral narratives surrounding zina shape judicial reasoning and marginalize child-centered assessments. Using a qualitative library-based method with a critical socio-legal approach, this study analyzes Religious Court decisions issued between 2019 and 2023, academic literature, and institutional reports. The findings show that marriage dispensation is frequently framed as an immediate response to social stigma and moral anxiety, causing the best interests of the child principle to function symbolically rather than substantively. This study contributes to Islamic family law scholarship by offering a new analytical lens for evaluating marriage dispensation practices and their implications for child protection and gender justice.

**Keywords:** Marriage Dispensation Due to Zina, Perspective of Gender, Child Protection, Islamic Law

## Introduction

The phenomenon of marriage dispensation granted by Religious Courts in Indonesia has become increasingly prevalent in recent years, particularly as a response to pregnancies outside of marriage resulting from acts of *zina* (illicit sexual relations). Official data from the Directorate General of Religious Courts (Badan Peradilan Agama/Badilag) show a significant surge in marriage dispensation applications following the revision of the Marriage Law. In 2022 alone, there were 59,178 marriage dispensation applications submitted to Religious Courts across Indonesia, the majority of which were linked to premarital pregnancy cases (Badilag, 2022). This trend intensified during and after the COVID-19 pandemic, reflecting broader vulnerabilities in child protection and social control mechanisms (Huda & Nurhayati, 2022). From a social perspective, marriage dispensation is frequently framed as an “instant” solution to preserve family honor and to mitigate social stigma directed at girls who become pregnant out of wedlock. However, this practice raises serious concerns regarding the protection of children’s and women’s rights and the normalization of child marriage. Data from Statistics Indonesia (BPS) indicate that the prevalence of child marriage remains persistent, particularly among girls from socio-economically vulnerable backgrounds (BPS, 2022). Furthermore, records from the SIMFONI PPA system reveal tens of thousands of reported cases of violence against women and children annually, underscoring the heightened risks of exploitation and gender-based violence associated with early and forced marriages (Kementerian PPPA, 2022).

Within the judicial process, Religious Court judges play a decisive role in determining marriage dispensation cases. Nevertheless, empirical studies suggest that judicial reasoning often remains influenced by patriarchal norms and moral stigma rather than by the best interests of the child and gender equality principles as mandated by the Child Protection Act and the Convention on the Rights of the Child (Wahyuni, 2020; Sari, 2022; Rahman & Rofiah, 2023). At the same time, ambivalent interpretations of Islamic law concerning *zina* and marriage as a remedial solution continue to generate tension with contemporary child protection standards in both national and international legal frameworks (Cammack, 2021; Alfitri, 2022).

Research on marriage dispensation due to *zina* has garnered considerable attention from scholars over the past decade, encompassing legal, social, and religious aspects. For example, Fatimah (2019) explores trends in marriage dispensation in Indonesia from a child protection perspective, while the study by Andriani and Putra (2021) examines the role of judges in deciding on marriage dispensation applications and its relevance to Law Number 16 of 2019 concerning Marriage. Another study by Ningsih and Suwito (2020) highlights the dilemma between religious norms and positive law regarding the practice of marriage dispensation due to pregnancies outside marriage. In contrast, Akbar (2023) discusses the tendency toward gender bias in marriage dispensation decisions at religious courts. Nevertheless, few studies have comprehensively examined the issue of marriage dispensation due to *zina* by simultaneously analyzing gender, child protection, and Islamic legal perspectives, as well as critically assessing how the Indonesian judicial system responds to these three perspectives (Sari, 2022; Alfitri, 2022). The state of the art in this paper lies in its multidisciplinary approach and critical analysis, which positions these three perspectives as central points for assessing the practice of marriage dispensation due to *zina* and its impact on the Indonesian judicial system.

The central problem in marriage dispensation practices due to *zina* lies in the dominance of moral reasoning over rights-based legal analysis in judicial decision-making. Religious Court rulings frequently prioritize the formal resolution of premarital pregnancy through marriage, while providing limited consideration of the psychological, social, and legal consequences for children and women involved. Judicial reasoning tends to emphasize legal certainty and social order rather than systematically applying child protection norms and gender-sensitive principles mandated by statutory law (Fatimah, 2019; Rahman &

Rofiah, 2023). This approach is legally problematic, as Islamic law simultaneously recognizes the prohibition of *zina* and the obligation to protect the welfare and legal status of children born from such relationships. However, this normative balance is often underdeveloped in judicial practice, resulting in a narrow interpretation of marriage as a remedial mechanism (Cammack, 2021). The limited incorporation of gender analysis in court decisions further constrains the recognition of women's agency and vulnerability, increasing the risk of adverse outcomes such as marital instability and post-marital harm (Akbar, 2023). Existing scholarship has predominantly examined marriage dispensation either from doctrinal Islamic law perspectives or from child marriage policy frameworks. Few studies have systematically connected judicial reasoning, child protection standards, and gender bias within a unified analytical framework of Islamic family law and the Indonesian Religious Court system (Alfitri, 2022).

Amidst various regulations and religious fatwas, the practice of marriage dispensation due to *zina* frequently serves as a compromise space between religious norms, state law, and local cultural values. However, there has yet to be a strong synergy between child protection policies, the principles of gender equality, and progressive Islamic legal norms in marriage dispensation rulings. Research by Sari (2022) and Wahyuni (2020) reveals that the weak child protection perspective in religious court decisions is caused by the lack of training and understanding regarding children's rights and gender. Disparities in decisions across regions also indicate that judges' roles are strongly influenced by their social backgrounds and religious understanding (Andriani & Putra, 2021). In the literature on Islamic law, there is debate about the validity of marriages precipitated by *zina* and the legitimacy of marriage dispensation as an "emergency" solution deemed to align with the principle of *maslahah* (public interest), but in practice, this has not yet fully prioritized the best interests of the child and women (Cammack, 2021; Alfitri, 2022). The absence of a comprehensive and inclusive legal framework further underscores the urgency of this research.

Accordingly, this study undertakes a critical literature review to examine the practice of marriage dispensation due to *zina* within the Indonesian Religious Court system through three analytical lenses: gender, child protection, and Islamic law. It explores how these perspectives are applied and negotiated in judicial reasoning, as well as the extent to which they shape or constrain decision-making in marriage dispensation cases. The central research question guiding this study is: *How is marriage dispensation due to zina assessed*

*from the perspectives of gender, child protection, and Islamic law within the Indonesian judicial system?* Beyond addressing this question, the study seeks to identify structural legal gaps and patterns of gender bias embedded in judicial practice, along with their broader social implications. It also formulates normative and practical recommendations grounded in child protection principles and gender equality, aligned with the objectives of substantive justice in Islamic law and the national legal framework (Rahman & Rofiah, 2023; Huda & Nurhayati, 2022).

This article contributes to legal scholarship by offering an integrated analytical framework that bridges Islamic legal norms, gender analysis, and child protection standards in the evaluation of marriage dispensation practices. Practically, it provides insights relevant to judicial reform by encouraging more rights-based and multidisciplinary approaches in Religious Court adjudication. By centering the rights of children and women as key evaluative benchmarks, this study supports the development of a more responsive and inclusive system of religious justice in Indonesia (Sari, 2022; Wahyuni, 2020).

## Research Methods

This study employs a qualitative library-based research design with a critical socio-legal approach to examine marriage dispensation practices due to *zina* in Indonesia. A qualitative socio-legal approach is appropriate for analyzing how legal norms operate in practice and interact with social, cultural, and religious contexts beyond formal doctrinal analysis (Creswell & Poth, 2018; McConville & Chui, 2017). The unit of analysis consists of ten selected Religious Court (*Pengadilan Agama*) decisions on marriage dispensation issued between 2019 and 2023, accessed through the Supreme Court Decision Directory (*Direktori Putusan Mahkamah Agung*), alongside peer-reviewed international journal articles (Q1–Q2) and official institutional reports on child protection and gender-based violence (Mahkamah Agung RI, 2023; UNICEF, 2020). The selection of court decisions was based on their explicit reference to premarital pregnancy, discernible patterns of judicial reasoning, and relevance to gender and child protection concerns, following purposive sampling commonly used in qualitative legal research (Miles et al., 2020). These materials were complemented by authoritative scholarship on national law and Islamic legal theory to situate judicial practices within broader normative and doctrinal frameworks (Anshari, 2021; Effendy, 2020).

Data were analyzed using thematic analysis, which enables systematic identification, coding, and interpretation of recurring patterns within legal texts and academic literature (Braun & Clarke, 2006; Saldaña, 2016). The analysis was guided by three interrelated analytical frameworks: gender analysis, to assess power relations and differential impacts on women; child protection principles, particularly the *best interests of the child* as articulated in Article 3 of the UN Convention on the Rights of the Child (UNCRC, 1989); and Islamic legal reasoning, informed by *maqashid syariah*, especially the protection of life, lineage, and human dignity (Zaydan, 1996; Ramdani, 2021). Through this process, recurring themes—such as moral justification, judicial discretion, and the positioning of women’s and children’s rights—were identified and critically assessed. This methodological design enables a focused examination of how statutory norms, religious interpretations, and social considerations intersect in Religious Court decision-making, while avoiding purely doctrinal or descriptive analysis that overlooks lived legal realities (McCrudden, 2018).

## Results and Discussion

### A. Marriage Dispensation Due to Zina: A Critical Socio-Legal Review

Marriage dispensation due to *zina* in Indonesia constitutes a contested socio-legal practice operating at the intersection of religious norms, state regulation, and gendered social power relations. Although Law No. 16 of 2019 formally strengthened child protection by raising the minimum marriage age to 19 for both sexes, Religious Courts retain broad discretionary authority to grant dispensations under “urgent circumstances.” In practice, premarital pregnancy is frequently construed as fulfilling this urgency, allowing courts to prioritize the immediate resolution of social pressure over the substantive protection of children’s and women’s rights (Widyastuti & Fauzan, 2020; Nursyahbani, 2021). This finding reinforces earlier empirical studies showing that judicial discretion is often exercised to restore social order rather than to advance rights-based legal objectives (Mulyana, 2019; Aulia, 2022). As a result, legal reform aimed at preventing child marriage risks being neutralized at the adjudicative level, where discretion functions as a space for social compromise rather than rights enforcement. This condition highlights the gap between legislative intent and judicial implementation in marriage dispensation cases. In this context, judicial discretion operates as a regulatory filter that selectively absorbs social norms while

diluting statutory safeguards. Consequently, the effectiveness of legislative reform becomes contingent on judicial interpretation rather than normative design.

When examined through the lens of international child rights law, particularly Article 3 of the UN Convention on the Rights of the Child, this pattern reveals a significant normative gap. The *best interests of the child* principle is rarely articulated or operationalized substantively in Religious Court rulings. This gap is evident in Decision of the Religious Court of Jember No. 0123/Pdt.P/2020/PA.Jr and Decision of the Religious Court of Brebes No. 0019/Pdt.P/2021/PA.Bbs, where premarital pregnancy was treated as an “urgent reason” without a comprehensive assessment of psychological maturity, educational continuity, or long-term welfare of the female minors involved. Such decisions reflect a procedural compliance with child protection norms, rather than a holistic and forward-looking evaluation of the child’s best interests (Latifah, 2021; Yusuf & Rahmawati, 2020). The absence of individualized child-centered assessment indicates that urgency is constructed normatively, not empirically, thereby weakening the protective function of judicial review. This approach risks transforming child protection principles into symbolic references rather than operative standards guiding judicial outcomes.

From the perspective of Islamic legal reasoning, marriage dispensation is commonly justified through *maqashid syariah*, particularly *hifzh al-nasl* (protection of lineage). While lineage protection is a legitimate objective, contemporary Islamic legal scholarship emphasizes that *maqashid* must be interpreted holistically, balancing lineage protection with *hifzh al-nafs* (protection of life and well-being), *hifzh al-‘irdh* (protection of dignity), and the prevention of harm (*dar’ al-mafasid*) (Cammack, 2021; Effendy, 2020). Judicial practice, however, often reduces *maqashid* to lineage legitimacy alone, thereby overlooking the documented risks of early and coerced marriage for girls pregnant due to *zina*, including health complications, marital instability, and long-term socio-economic vulnerability (Anshari, 2023). This reductionist application transforms *maqashid* from an ethical framework into a formalistic justification, detached from its core objective of safeguarding human welfare. Such selective interpretation weakens the moral authority of Islamic law by instrumentalizing its objectives to accommodate social expediency.

Feminist legal theory further clarifies how marriage dispensation functions within asymmetric gender power relations. In both examined decisions, moral responsibility for *zina* is implicitly attributed to female applicants, while male accountability and women’s

consent are insufficiently scrutinized. Marriage is framed as a corrective mechanism for female transgression, reinforcing patriarchal assumptions that position women's bodies as sites of moral regulation (Putri, 2023; Salamah, 2021). This convergence of moral reasoning, selective *maqashid* interpretation, and weak application of child rights standards demonstrates that marriage dispensation operates less as a protective legal institution and more as a mechanism of social control. Consequently, judicial discretion, gender bias, and child protection gaps should be understood as structurally interconnected phenomena rather than isolated shortcomings within Religious Court practice. This structural reading is essential to move beyond individual blame and toward systemic reform of religious adjudication. By exposing these interconnections, feminist legal analysis provides a critical lens for reorienting judicial practice toward substantive equality and accountability.

## **B. Gender Perspective in the Practice of Marriage Dispensation**

A gender-based analysis of marriage dispensation practices in Indonesia reveals that gender inequality is not merely a social by-product, but is structurally embedded in legal processes and judicial reasoning. In applications and decisions of Religious Courts, women who experience premarital pregnancy due to *zina* are disproportionately positioned as bearers of moral, social, and legal responsibility, while male involvement is often treated as secondary or implicit (Dewi & Suharti, 2021). Judicial reasoning tends to frame marriage as a remedial obligation for women, prioritizing administrative resolution and family reputation over an assessment of women's autonomy, consent, and psychological needs (Mawaddah & Ali, 2022). This pattern indicates that gender bias operates through legal normalization rather than overt discrimination, where unequal outcomes are produced under the guise of moral and procedural necessity (Azizah, 2021). Such normalization obscures power asymmetries by presenting unequal treatment as legally reasonable and socially acceptable. Consequently, gender inequality becomes embedded in routine judicial practice rather than recognized as a rights violation requiring correction. Over time, this routinization weakens the judiciary's capacity to function as a corrective institution against discrimination. Instead of disrupting unequal power relations, legal reasoning subtly legitimizes them through repeated patterns of adjudication. This condition illustrates how law can function as a stabilizing force for inequality when gender analysis is absent.

Rather than functioning as neutral arbiters, Religious Courts often reproduce dominant gender norms by privileging collective moral order over individual rights. The absence of explicit gender analysis in judicial considerations results in limited recognition of women as rights-bearing subjects, thereby constraining their capacity to refuse marriage or articulate alternative life choices (Marzuki, 2021). In this context, patriarchy should not be understood solely as cultural stigma, but as a decision-making logic that shapes legal outcomes by narrowing the range of acceptable solutions to premarital pregnancy (Rosyidah, 2022). Marriage dispensation thus becomes a legally sanctioned pathway through which women's life trajectories are redirected in accordance with social expectations, rather than legal protection standards (Hidayat, 2022). This logic transforms judicial discretion into an instrument of social conformity, limiting the possibility of protective or emancipatory legal responses. As a result, women's agency is subordinated to the perceived necessity of restoring social equilibrium. Judicial neutrality is therefore compromised, as courts implicitly endorse prevailing moral hierarchies. This dynamic underscores how discretion, when uncoupled from rights-based standards, may operate as a vehicle for reinforcing dominant social norms rather than safeguarding individual freedoms.

Gender bias is further evident in the procedural dimensions of marriage dispensation cases. Decision documents frequently emphasize moral restoration and social harmony, while failing to engage with gender-specific risks such as reproductive health, exposure to domestic violence, and educational discontinuity (Latifah, 2023). The accelerated handling of dispensation applications, often without adequate legal assistance or gender-sensitive mediation, marginalizes women's voices within the judicial process itself (Setiawan, 2022). This procedural deficit reinforces a legal environment in which early marriage is normalized as the default solution, limiting the availability of protective or restorative alternatives for women and girls (Nugraheni & Sari, 2021). Procedural speed and formality thus replace substantive inquiry, weakening the court's role as a safeguard against rights violations. In this sense, procedural practices actively contribute to the reproduction of gendered injustice. The absence of meaningful participation by women in the process further undermines procedural fairness. Courts become sites of decision-making about women rather than with women, diminishing the legitimacy of outcomes from a gender justice perspective.



The cumulative impact of this gendered legal practice extends beyond individual cases. Empirical studies demonstrate that women subjected to marriage dispensation face heightened risks of psychological distress, school dropout, economic dependency, and long-term vulnerability to domestic violence (Prasetyo & Wulandari, 2022; Mawaddah & Ali, 2022). These outcomes illustrate that marriage dispensation, when applied without gender-sensitive safeguards, may function as a source of secondary victimization rather than protection. Moreover, the intergenerational reproduction of gender inequality becomes inevitable when legal institutions fail to challenge, and instead reinforce, asymmetric power relations within family law (Savitri, 2021; Latifah, 2023). This indicates that the consequences of biased adjudication are cumulative and systemic, affecting not only individual women but broader patterns of social inequality across generations. Legal decisions thus have long-term social effects that extend beyond the courtroom. Without corrective intervention, marriage dispensation practices risk perpetuating cycles of vulnerability that undermine broader development and equality goals.

Addressing these structural shortcomings requires repositioning gender equality as a core evaluative standard in marriage dispensation adjudication. Legal reform efforts must move beyond formal compliance and incorporate gender analysis into judicial guidelines, mediation procedures, and evidentiary assessment (Rohmah, 2022). Capacity-building initiatives for judges, mediators, and court officials are essential to ensure that gender sensitivity is operationalized rather than rhetorical (Fadhilah, 2023). Strengthening legal and psychosocial support mechanisms for women and children would further shift marriage dispensation away from moral regulation toward rights-based protection (Hidayat, 2022; Setiawan, 2022). Without such structural interventions, discretionary practices will continue to privilege social order over justice, undermining the transformative potential of legal reform. Institutional reform must therefore be accompanied by accountability mechanisms that monitor how gender principles are applied in practice. Only through such measures can judicial discretion be aligned with substantive equality.

From a scholarly perspective, existing literature has largely documented the presence of patriarchy and stigma, but fewer studies critically examine how these forces are translated into judicial norms and procedural practices. Future research should therefore focus on the interaction between gendered legal reasoning, Islamic family law interpretation, and institutional discretion in Religious Courts (Dewi & Suharti, 2021; Azizah, 2021). Such an

analytical shift is crucial for developing a more inclusive and gender-just framework of family law that genuinely safeguards women and children affected by marriage dispensation practices (Nugraheni & Sari, 2021; Rohmah, 2022). By moving beyond descriptive accounts toward institutional critique, future scholarship can more effectively inform legal reform and judicial accountability. This direction will also strengthen the empirical and theoretical foundations of gender-sensitive family law reform in plural legal systems such as Indonesia's.

### **C. Child Protection in the Context of Marriage Dispensation Due to *Zina***

Marriage dispensation in the context of pregnancies resulting from *zina* generates serious debate concerning the protection of children's rights, both in terms of national and international law. Indonesian national law explicitly regulates child protection in Law No. 35 of 2014 on Child Protection, which affirms the right of children to grow and develop optimally, and to be free from violence and discrimination. However, the practice of granting marriage dispensation due to out-of-wedlock pregnancies often contradicts the principles of child protection, as it promotes early marriage and potentially neglects the fundamental rights of children (Rizqon & Ulfah, 2022). At the international level, the Convention on the Rights of the Child (CRC), which Indonesia ratified through Presidential Decree No. 36 of 1990, mandates the prohibition of discrimination and the necessity of prioritizing the best interests of the child in every decision that affects their lives (Andriyani, 2023). Consequently, applications for marriage dispensation due to *zina* create a dilemma between the positive legal norms of national law—which seek to limit child marriage—and the socio-cultural pressures that normalize marriage as a response to out-of-wedlock pregnancies, thereby placing children in a legally and socially vulnerable position (Setiawan, 2023).

The psychosocial impact of marriage dispensation on children is highly complex and multidimensional. Children forced into early marriage, particularly as a result of out-of-wedlock pregnancy, face a high risk of psychological trauma, social pressure, and poor adaptation to their new environment within marriage (Utami & Rahmawati, 2022). Developmental psychology studies have shown that child marriage is closely associated with anxiety disorders, depression, and even post-traumatic stress disorder due to the emotional and mental immaturity of children undertaking the roles of wife or husband (Nurhayati, 2021). Furthermore, family relationships formed without emotional readiness are prone to

prolonged conflict and domestic violence, which will negatively affect the child's growth and development (Isnaeni, 2022). This phenomenon often results in girls losing the opportunity to continue their education, dropping out of school, and having limited access to reproductive health services, thereby perpetuating cycles of poverty and social injustice from one generation to the next (Munandar & Lestari, 2020). This condition demonstrates that marriage dispensation due to *zina* is not only a legal issue, but also a highly serious matter concerning child protection in both social and psychological domains (Irawati, 2023).

From a legal perspective, marriage dispensation granted by religious courts actually entails the risk of violating children's rights as stipulated in the constitution and legislative regulations. Religious courts are often confronted with the dilemma of adhering to statutory regulations while responding to strong socio-cultural demands that still normalize marriage as a response to out-of-wedlock pregnancy (Suhada & Yuliati, 2022). In practice, judges tend to grant dispensations based on the preservation of family honor, social pressure, and the protection of the fetus, while the child's right to a proper future and decent life is not given priority (Rini, 2023). Moreover, the implementation of marriage dispensation rulings is often not accompanied by adequate psychological and social support for children marrying at an early age, meaning that the child protection system that should be present in court practices is not yet optimal (Fitria & Setyaningsih, 2021). As a result, court decisions are susceptible to neglecting the principle of the best interests of the child as emphasized in both national and international law.

An evaluation of child protection within religious court decisions reveals a gap between the ideal norms stipulated in regulation and the reality of implementation in the field. Many studies show that judges have not fully adopted a multidisciplinary approach in reviewing marriage dispensation applications, so psychological, educational, and health considerations for children are often overlooked or merely treated as formality (Setiawan, 2023; Munandar & Lestari, 2020). Disparities in court decisions across different regions also indicate the lack of standardized procedures for accommodating children's rights, particularly regarding participation rights and protection from exploitation (Utami & Rahmawati, 2022). Oversight and evaluation from external institutions regarding the performance of religious courts in matters of child protection remain minimal, thus making reform of the religious justice system vital to prevent practices that endanger children's rights and futures (Nurhayati, 2021).

Child protection in the practice of marriage dispensation requires synergy between strengthening regulations, enhancing the capacity of legal officials, and educating the public about the harmful effects of child marriage resulting from *zina*. Efforts to strengthen the child protection system can be carried out through stricter legal revisions and enforcement regarding marriage dispensation, continuous training for judges and religious court officials on children's rights perspectives, as well as the provision of holistic support services for children who are victims of early marriage (Irawati, 2023; Isnaeni, 2022). In addition, enhancing legal literacy and civil society advocacy is crucial for building awareness that marriage due to out-of-wedlock pregnancy is not an ideal solution for child protection and can exacerbate psychosocial risks and gender injustice (Fitria & Setyaningsih, 2021). In the long term, reforming the religious justice system to be more responsive to the best interests of the child will be key to achieving equitable child protection.

It is important to continuously strengthen literature and multidisciplinary research on child protection in the context of marriage dispensation due to *zina*, from legal, social, and psychological perspectives. In-depth research that integrates national legal approaches, international standards, and empirical experiences in religious courts and communities is urgently needed to strengthen advocacy for policy reform and improvements in the child protection system in Indonesia (Andriyani, 2023; Rini, 2023). The development of research based on accurate field data and the involvement of various stakeholders—such as government, academics, legal practitioners, and child protection organizations—will strengthen the basis for demanding optimal protection of children's rights amid ongoing marriage dispensation practices. Thus, the realization of an inclusive and sustainable child protection system will not merely be a normative ideal, but become a reality in every policy-making process at both local and national levels.

#### **D. Critical Analysis of the Judicial System and Interpretation of Islamic Law**

The practice of applying for marriage dispensation due to *zina* in Indonesia has increased markedly since the enactment of Law No. 16 of 2019, which raised the minimum marriage age to 19 for both males and females. Official data from the Directorate General of Religious Courts recorded 59,178 marriage dispensation applications in 2022, with premarital pregnancy identified as the dominant ground for approval (Badilag, 2022). Empirical studies further confirm that more than 60% of dispensation cases are motivated

by out-of-wedlock pregnancy, framed as an effort to preserve family honor and avoid social stigma (Prabowo & Astuti, 2022; Aminah & Burhanuddin, 2022). Regional disparities also persist, with higher application rates in areas characterized by strong patriarchal traditions, indicating that statutory reform has not displaced entrenched social norms (Syukron & Rahayu, 2020). These patterns suggest that marriage dispensation operates as a social safety valve that absorbs the shock of legal reform without fundamentally altering community responses to premarital pregnancy. Socio-legal research on legal reform in Indonesia demonstrates that changes in statutory law often generate adaptive social responses rather than direct compliance, particularly when new legal norms conflict with entrenched moral and religious expectations (Butt, 2020). In this sense, the rise in dispensation applications should not be understood merely as non-compliance with the law, but rather as evidence of the adaptive capacity of social norms in responding to legal change. Families continue to mobilize the legal institution of marriage dispensation as a mechanism to reconcile modern statutory requirements with long-standing moral expectations, especially in cases involving premarital pregnancy and concerns over family honour (Cammack et al., 2015). Consequently, the effectiveness of Law No. 16 of 2019 is mediated not only by its normative content but also by the socio-cultural environment in which it is implemented. Empirical findings further indicate that this mediation creates a persistent gap between the aspirational goals of child-marriage prevention and the lived realities of judicial practice, explaining why legal reform alone has proven insufficient to curb marriage dispensation due to *zina* (UNICEF Indonesia, 2020).

Judicial reasoning illustrates how these pressures are institutionalized through discretion. Analysis of Decision of the Religious Court of Jember No. 0123/Pdt.P/2020/PA.Jr, Decision of the Religious Court of Brebes No. 0019/Pdt.P/2021/PA.Bbs, and Decision of the Religious Court of Lombok Tengah No. 0045/Pdt.P/2022/PA.Prg shows that premarital pregnancy is consistently framed as an “urgent circumstance” justifying dispensation. Judges emphasize the avoidance of slander and the legal status of the unborn child, while psychological maturity, educational continuity, and voluntariness of consent receive minimal scrutiny. This pattern reflects what Anshari (2021) identifies as the dominance of moral reasoning over rights-based adjudication in Indonesian Islamic family law. Socio-legal scholarship demonstrates that judicial discretion in religious courts often operates as a conduit through which communal moral anxiety—particularly surrounding *zina*—is

translated into legally sanctioned outcomes (Anshari, 2021; Cammack et al., 2015). Rather than functioning primarily as a safeguard for vulnerable parties, discretion frequently serves to legitimize prevailing moral expectations within formal legal reasoning. The repeated reliance on similar justificatory language across different courts further indicates a process of jurisprudential routinization, in which judges rely on standardized moral narratives instead of individualized rights-based assessments (Butt, 2020). Such routinization reduces the likelihood of case-by-case, child-centered analysis and encourages formulaic decision-making that prioritizes social order over legal protection. Over time, this practice risks transforming judicial discretion into a predictable pathway for approving marriage dispensation rather than a critical filter for protecting children and other vulnerable parties. As a result, the court's role gradually shifts from rights protector to mediator of social conformity, reinforcing normative moral expectations rather than advancing substantive justice (UNICEF Indonesia, 2020).

From the standpoint of international child protection, this practice reveals a clear normative gap. Although the best interests of the child principle is procedurally referenced, it is rarely operationalized through individualized assessment. UNICEF (2020) documents that early marriage following premarital pregnancy is associated with school dropout and heightened health risks, while the World Bank (2017) highlights its long-term economic and intergenerational costs. These findings underscore that child marriage is not a neutral solution, but one with measurable and lasting harm to children's physical health, psychological well-being, and educational prospects. Empirical studies consistently demonstrate that early marriage is associated with higher risks of maternal mortality, school discontinuation, and long-term socio-economic vulnerability (UNICEF Indonesia, 2020; WHO, 2018). However, such empirical evidence is largely absent from judicial considerations in marriage dispensation cases. The absence of child-centered empirical evaluation in court decisions indicates that judicial urgency is constructed normatively, rather than grounded in demonstrable welfare outcomes (Anshari, 2021). This construction prioritizes moral immediacy—particularly concerns related to *zina* and social order—over long-term developmental considerations affecting the child. Consequently, the principle of the best interests of the child often functions more as a symbolic reference than as a substantive decision-making framework in judicial reasoning (Butt, 2020). This symbolic deployment weakens the normative force of international child rights standards within

domestic adjudication and undermines the courts' potential role in aligning national legal practice with global child protection commitments (UNICEF Indonesia, 2020).

Islamic legal reasoning is frequently invoked through *maslahah* and lineage protection. However, classical fiqh does not uniformly classify pregnancy due to *zina* as a condition of necessity. Al-Nawawi and Ibn Rushd both permit marriage after *zina* but do not mandate it, emphasizing repentance and moral accountability rather than compulsion (Al-Nawawi, n.d.; Ibn Rushd, n.d.). This doctrinal position suggests that marriage is an option, not an obligation, in such circumstances. From an *usul al-fiqh* perspective, Zaydan (1996) stresses that *darurat* applies only when harm is unavoidable and no lawful alternatives exist. When alternative protective measures are available—such as social support, education continuity, and legal recognition of children—compulsory marriage cannot automatically be justified as necessity. Compelling early marriage that exposes girls to health and social risks may therefore contradict *maslahah* and the principle of blocking harm. Contemporary scholars similarly warn against reductionist interpretations of *maqashid* that prioritize lineage while neglecting the protection of life and dignity (Effendy, 2020; Ramdani, 2021). Notably, the Indonesian Council of Ulama has issued no fatwa obligating marriage as a response to *zina*, leaving doctrinal space for non-marital protective measures (MUI, 2012). This absence of obligation further weakens claims that marriage dispensation is religiously inevitable.

Comparative experiences reinforce this conclusion. Malaysia requires social inquiry reports and judicial scrutiny, while Morocco's *Mudawwanah* restricts child marriage through mandatory best-interest evaluations and judicial accountability mechanisms. Egypt has likewise tightened administrative controls, even in cases of pregnancy (UNICEF, 2020). These jurisdictions demonstrate that Muslim-majority legal systems can respond to premarital pregnancy without defaulting to early marriage. Comparative studies show that countries such as Morocco and Malaysia increasingly emphasize protective assessments, judicial supervision, and institutional oversight to minimize harm to children and girls, rather than treating marriage as an automatic remedy for moral transgression (Welchman, 2019; Nurlaelawati, 2018). The comparative evidence highlights that the Indonesian approach is therefore not doctrinally predetermined, but rather policy-contingent, reflecting choices about how judicial discretion is structured and constrained (Cammack et al., 2015). These systems demonstrate that discretion can be designed to prioritize welfare-based evaluations, including psychological readiness, educational continuity, and social support

mechanisms, instead of moral urgency alone. Learning from these models could help recalibrate marriage dispensation practices in Indonesia toward stronger child protection outcomes. Ultimately, comparative analysis shows that harmonizing Islamic family law with international child rights norms is both legally and practically feasible, provided that judicial discretion is guided by clear, rights-based standards rather than moral expediency (Welchman, 2019; UNICEF Indonesia, 2020).

## Closing

This study critically examines the practice of marriage dispensation due to *zina* in Indonesia through the integrated perspectives of gender, child protection, and Islamic legal interpretation. The findings can be analytically summarized in three key points. First, marriage dispensation is predominantly applied as a pragmatic and immediate response to out-of-wedlock pregnancy, with judicial considerations largely oriented toward safeguarding family honour and alleviating social pressure rather than ensuring the substantive rights of women and children. This practice reflects a persistent reliance on moralistic and cultural narratives within religious court decision-making. Second, from a gender perspective, the dispensation mechanism reproduces unequal power relations, positioning women—particularly girls—as the most disadvantaged actors in both the application process and the implementation of court decisions, while limiting their agency, consent, and autonomy. Third, the child protection analysis demonstrates that the principle of the best interests of the child is not yet operationalized in a substantive and forward-looking manner, as psychological well-being, educational continuity, and long-term welfare are frequently marginalized in judicial reasoning.

Overall, these findings reveal a structural gap between normative legal frameworks that emphasize protection and justice, and the realities of religious court practice, which tend to be formalistic and pragmatic. As a result, the religious court system has not fully functioned as an institution for safeguarding vulnerable groups, particularly women and children affected by marriage dispensation due to *zina*. Importantly, this article makes a scientific contribution by offering a multidisciplinary analytical framework to evaluate marriage dispensation practices based on out-of-wedlock pregnancy, integrating gender analysis, child rights principles, socio-legal perspectives, and Islamic legal reasoning. This framework advances existing scholarship by moving beyond descriptive accounts and



providing a systematic tool to assess how judicial discretion, moral considerations, and legal norms interact in shaping court outcomes.

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