



## **Gaps and Challenges in Child Marriage Regulation: An Indonesian and Australian Legal Perspective**

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**Abstract:** Child marriage remains a persistent global issue, including in Indonesia and Australia. Despite legal frameworks that set a minimum age for marriage, the practice persists due to loopholes, socio-cultural factors, and weak enforcement. This study adopts a comparative legal approach by analysing statutory regulations, court decisions, and relevant academic literature within the contexts of Islamic law, Indonesian law, and Australian law. Findings reveal that the challenges in regulating child marriage are not purely juridical but are significantly influenced by psychosocial conditions. In Indonesia, the prevalence of marriage dispensations and cultural norms that tolerate early marriage creates a tension between legal norms and social realities. In contrast, Australia, while having a stronger legal framework and a relatively low prevalence, still allows dispensations for those aged 16–17 and faces cases of forced marriage within migrant communities, compounded by limited national data. The study's contribution lies in demonstrating the importance of a legal-psychosocial perspective for understanding and addressing child marriage regulation. Protecting children's rights, therefore, requires not only normative reforms but also comprehensive social interventions that address underlying cultural and structural drivers.

**Keywords:** gaps; challenges; child marriage; Indonesia; Australia.

**Abstrak:** Perkawinan anak tetap menjadi isu global yang persisten, termasuk di Indonesia dan Australia. Meskipun telah ada kerangka hukum yang menetapkan batas usia minimum perkawinan, praktik ini tetap berlangsung karena adanya celah hukum, faktor sosial-budaya, serta lemahnya implementasi. Penelitian ini menggunakan pendekatan hukum komparatif dengan menganalisis peraturan perundang-undangan, putusan pengadilan, serta literatur akademik yang relevan dalam konteks hukum Islam, hukum Indonesia, dan hukum Australia. Temuan penelitian menunjukkan bahwa tantangan dalam regulasi perkawinan anak tidak semata-mata bersifat yuridis, tetapi juga sangat dipengaruhi oleh kondisi psikososial.

Di Indonesia, tingginya angka dispensasi perkawinan dan norma budaya yang mentoleransi perkawinan dini menimbulkan ketegangan antara norma hukum dan realitas sosial. Sebaliknya, Australia, meskipun memiliki kerangka hukum yang lebih kuat dan prevalensi yang relatif rendah, masih memberikan dispensasi bagi anak berusia 16–17 tahun serta menghadapi kasus perkawinan paksa di kalangan komunitas migran, yang diperparah oleh keterbatasan data nasional. Kontribusi penelitian ini terletak pada penekanan pentingnya perspektif hukum-psikososial dalam memahami dan menangani regulasi perkawinan anak. Perlindungan hak anak, oleh karena itu, tidak hanya menuntut reformasi normatif, tetapi juga intervensi sosial yang komprehensif untuk mengatasi faktor budaya dan struktural yang mendasarinya.

**Kata kunci:** kesenjangan; tantangan; perkawinan anak; Indonesia; Australia.



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## Introduction

The phenomenon of child marriage continues to occur widely across the world, both in Indonesia and abroad, despite the existence of regulations that set a minimum age for marriage.<sup>1</sup> Child marriage persists, which is a deeply concerning issue. Similarly, in both Indonesia and Australia, although they have different legal systems, both countries face challenges in closing regulatory loopholes and ensuring the protection of children from early marriage practices.<sup>2</sup>

Indonesia ranks eighth in the world in terms of the absolute number of child marriages, with an estimated million girls married before the age of 18. According to UNICEF's Child Marriage Country Profile, around 10–16% of women aged 20–24 were married before reaching the age of 18.<sup>3</sup> This figure reflects the persistently high prevalence of child marriage despite the existence of legal measures and preventive policies.<sup>4</sup>

A significant change occurred in 2019, when Law No. 16 of 2019 amended the Marriage Law No. 1 of 1974, raising the minimum age of marriage for both men and

<sup>1</sup> Minh Cong Nguyen and Quentin Wodon, "Global and Regional Trends in Child Marriage," *The Review of Faith & International Affairs* 13, no. 3 (July 2015): 6–11, <https://doi.org/10.1080/15570274.2015.1075756>.

<sup>2</sup> Siti Nur Shoimah and Fahmi Ridlol Uyun, "Children of Marriages Between Indonesian Citizens and Rohingya: What Are Their Inheritance Rights?," *Al-Syakhsyiyah: Journal of Law and Family Studies* 7, no. 1 (June 2025): 27–46, <https://doi.org/10.21154/syakhsyiyah.v7i1.10373>.

<sup>3</sup> UNICEF, *Child Marriage Country Profile: Indonesia*, (New York: UNICEF, 2021).

<sup>4</sup> Ahmad Rusyaid Idris, Muhammad Khusaini, and Syaiful Anwar Al-Mansyuri, "Contemporary Islamic Law in Indonesia: The Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage," *MILRev: Metro Islamic Law Review* 3, no. 1 (April 2024): 1–21, <https://doi.org/10.32332/milrev.v3i1.8907>.

women to 19 years.<sup>5</sup> This amendment was welcomed as a progressive step; however, in practice, the number of marriage dispensations granted by religious courts increased significantly. Data from the Ministry of Women's Empowerment and Child Protection recorded a surge in dispensation applications following the revision of the Marriage Law, primarily driven by economic factors and disrupted education.<sup>6</sup>

Following the enactment of Law No. 16 of 2019 on Marriage, child marriage has nevertheless remained possible through mechanisms such as applications for marriage dispensation, the recognition of unregistered marriages (*itsbat nikah*), and the absence of legal sanctions for violations of the Marriage Law.<sup>7</sup> Despite the existence of the National Strategy for the Prevention of Child Marriage (STRANAS PPA) 2020, significant implementation gaps remain at the grassroots level. Weak marriage registration, disparities in law enforcement across regions, and socio-cultural norms that continue to tolerate the practice have rendered legal efforts not entirely effective.<sup>8</sup>

In contrast to Indonesia, Australia has a very low prevalence of child marriage. However, reports from various international organisations note the existence of legal loopholes that still allow marriages under the age of 18 with the approval of a court or certain authorities.<sup>9</sup> At the federal level, the Australian Marriage Act sets the minimum age of marriage at 18; however, children aged 16–17 may marry with a court dispensation if deemed “appropriate”.<sup>10</sup>

In addition, Australia faces the issue of forced marriage, which is categorised as a form of modern slavery. The Parliamentary Joint Committee on Law Enforcement has documented reports of forced marriage cases within migrant and

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<sup>5</sup> UNICEF. “UNICEF welcomes amendment of Indonesia’s Marriage Act,” *Press Release*, September 18, 2019.

<sup>6</sup> Ministry of Women's Empowerment and Child Protection, *Laporan STRANAS Pencegahan Perkawinan Anak 2020*. (Jakarta: KemenPPPA, 2020).

<sup>7</sup> Anthin Lathifah, Briliyan Ernawati, and Anwar Masduki, “Problems with the Islamic Legal System Regarding Child Marriages in Indonesia during the Covid-19 Pandemic Period,” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (December 2022): 155–76, <https://doi.org/10.18326/ijtihad.v22i2.155-176>.

<sup>8</sup> Girls Not Brides, *Country Profile: Indonesia*, (London: Girls Not Brides, 2020); BPS, *Prevention of Child Marriage: Acceleration That Cannot Wait* (Jakarta: Puskapa, 2020).

<sup>9</sup> Khusnul Khotimah, Sabarudin Ahmad, and Eka Suriansyah, “Reconfiguring Justice: Judicial Discretion and the Validation of Underage Marriages in the Modern Era,” *Sakina: Journal of Family Studies* 8, no. 4 (December 2024): 4, <https://doi.org/10.18860/jfs.v8i4.11808>; Amran Suadi, “The Role of Religious Court In Prevention Underage Marriage,” *Jurnal Hukum Dan Peradilan* 9, no. 1 (April 2020): 1, <https://doi.org/10.25216/jhp.9.1.2020.116-131>.

<sup>10</sup> Marriage Act 1961 (Cth), Australia.

diaspora communities.<sup>11</sup> Unfortunately, there is no official national data on the prevalence of child or forced marriage in Australia, which indicates weaknesses in the system of documentation and monitoring.<sup>12</sup>

Several civil society organisations and international reports, such as the Global Slavery Index, have urged Australia to close all age-dispersion loopholes, tighten oversight of cross-border marriage practices, and strengthen protection services for girls at risk.<sup>13</sup> In both Indonesia and Australia, the urgency of child marriage regulation is closely linked to its long-term social consequences. Global studies show that child marriage increases the risk of school dropout, reproductive health complications, intergenerational poverty, and vulnerability to domestic violence.<sup>14</sup> This fact reinforces the view that regulatory loopholes are not merely a legal or formal issue but also a threat to human development and the achievement of the Sustainable Development Goals (SDGs).

The granting of marriage dispensations by the courts makes exceptions to the age limit for marriage set in law, so that, although some countries, such as Australia, strengthen the legal framework to prevent and punish the practice of child marriage, dispensation mechanisms in Indonesia can actually undermine the purpose of such prevention if not closely monitored.<sup>15</sup> In an empirical context, the prevalence of child marriage in Indonesia is still significant, with around 16% of girls married before the age of 18. However, this trend shows a decline of several percentage points according to UNICEF and national data mapping.<sup>16</sup>

Based on this phenomenon, several research questions have arisen that must be addressed using the available data. First, to what extent are child marriage regulations in Indonesia and Australia effective in reducing child marriage rates? Secondly, how do the different mechanisms of dispensation for marriage in Indonesia and the judicial mechanisms in Australia contribute to the

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<sup>11</sup> Parliament of Australia. "Inquiry into Human Trafficking and Slavery". *Parliamentary Joint Committee on Law Enforcement Report*, 2017.

<sup>12</sup> Australian Institute of Family Studies, *Forced Marriage in Australia: A Scoping Study*, (Canberra: AIFS, 2020).

<sup>13</sup> Helena Hassani, Modern Slavery Lead, and Mercy Foundation, "More Forced Marriage Cases Detected in Australia," *Mercy Foundation*, October 9, 2024, [https://www.mercyfoundation.com.au/latest\\_news/more-forced-marriage-cases-detected-in-australia/](https://www.mercyfoundation.com.au/latest_news/more-forced-marriage-cases-detected-in-australia/); Walk Free Foundation, *Global Slavery Index 2022*, (Perth: Minderoo Foundation, 2022).

<sup>14</sup> UNFPA, *Marrying Too Young: End Child Marriage*, (New York: UNFPA, 2012).

<sup>15</sup> Parliament of Australia, *Inquiry into Child and Forced Marriage* (Canberra: Commonwealth of Australia, 2021). 12-15; Australian Government, *Government Response to the Parliamentary Inquiry into Child Marriage* (Canberra: DFAT, 2022).

<sup>16</sup> Girls Not Brides. "Child Marriage in Indonesia: Country Profile 2023". accessed 20 September 2025, <https://www.girlsnotbrides.org>

implementation of the law? Thirdly, what social, cultural, and economic factors strengthen or undermine the implementation of these rules? These questions are crucial for identifying the gap between formal regulation and the realities on the ground.

In a tentative answer, it can be argued that the effectiveness of child marriage regulations is determined not only by the substance of the law but also by the quality of implementation, consistency of judicial decisions, and support of social policies. In Indonesia, the marriage dispensation loophole is the dominant factor that undermines the implementation of the child marriage ban. In contrast, in Australia, despite a relatively firmer legal framework, challenges arise in the form of cases of forced marriage and cross-border marriage. Thus, this comparative analysis is expected to contribute to the development of a more effective legal framework and to strengthen the protection of children's rights in both countries.<sup>17</sup>

This study employs a comparative approach to analyse legal documents, academic writings, and other relevant literature on child marriage within the contexts of Islamic law, Indonesian law, and Australian law.<sup>18</sup> This study employs normative legal data derived from primary sources, namely legislation, court decisions, and government policies. Secondary data consist of academic literature, journal articles, and institutional reports. The selection of data is based on several criteria: timeframe, namely sources from the most recent years; substantive relevance, referring to sources that directly address regulations, implementation challenges, and socio-cultural factors related to child marriage; and jurisdictional context, namely data that reflect the legal conditions in Indonesia and Australia in a comparative manner, both in terms of the legal framework and the social policies that either support or hinder its implementation. The analysis is carried out using a comparative legal analysis approach.

The selection of Indonesia and Australia is based on the consideration that Indonesia represents a country with a high prevalence of child marriage, despite undertaking legal reforms by raising the minimum age of marriage. Australia, on the other hand, represents a developed country with a low prevalence. Yet, it continues to face issues such as legal loopholes, forced marriages, and weaknesses

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<sup>17</sup> KemenPPPA, *Perkawinan Anak: Situasi Dan Upaya Pencegahan Di Indonesia* (Jakarta: KemenPPPA, 2023).

<sup>18</sup> Muhammad Rudi Syahputra, "Metodologi Penelitian Hukum Dalam Menyelesaikan Problematika Hukum Kontemporer," *Jurisprudensi: Jurnal Ilmu Hukum* 1, no. 2 (December 2024): 89-106, <https://doi.org/10.70193/jurisprudensi.v1i02.08>; Artidjo Alkostar, *Metode Penelitian Hukum Profetik* (Yogyakarta: UII Press, 2018).

in national data documentation. A comparison of the two provides a contrasting picture while also opening space to identify more effective regulatory models.

This study focuses on a normative analysis of the legal framework and socio-cultural aspects influencing the regulation of child marriage. The research does not involve field data collection and therefore does not claim empirical findings derived from interviews or direct observation.<sup>19</sup>

Based on these considerations, this study is significant because it provides both academic and practical contributions, including a more just and effective regulatory model to prevent child marriage. It offers legal recommendations that are sensitive to the protection of children's rights while also taking into account socio-cultural contexts. Furthermore, it serves as an academic foundation for policymakers, legal practitioners, and international institutions to strengthen legal instruments and implement measures to prevent child marriage.

## **Comparison of Child Marriage Regulations in Islamic Law, Indonesia, and Australia**

### **1. Regulations on Child Marriage in Islamic Law**

According to Islamic law, marriage is a contract with extreme force, known as *mitsaqan ghaliidhan*, which is not merely a social agreement but also a form of obedience to Allah SWT and noble worship.<sup>20</sup> In this context, marriage is not simply a contract between two individuals but a sacred bond that requires great responsibility to build a harmonious family and to adhere to sharia. Interestingly, Islamic law does not set a specific age for marriage.<sup>21</sup> This indicates that the primary focus in Islamic marriage is not only the age of the individuals involved, but rather their readiness and ability to live family life mentally, spiritually, and socially, as stated in Surah An-Nur, verse 32:<sup>22</sup> "Marry free single among you and the righteous

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<sup>19</sup> Steven Barkan, Barbara Bintliff, and Mary Whisner, *Fundamentals of Legal Research*, 10th (St. Paul, MN: Foundation Press, 2015).

<sup>20</sup> Tuba Erkoc Baydar, "A Secret Marriage and Denied Rights: A Critique from an Islamic Law Perspective," *Religions* 14, no. 4 (April 2023): 463, <https://doi.org/10.3390/rel14040463>.

<sup>21</sup> Nur Azizah, "The Analysis Of Minimum Marriage Age Determination In Indonesia And Other Islamic Countries," *Jurnal Ilmiah Al-Syir'ah* 16, no. 2 (December 2018): 148–60, <https://doi.org/10.30984/jis.v16i2.664>.

<sup>22</sup> Azizah Mohd and Nadhilah A. Kadir, "Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC-IIUM)," *Al-Shajarah Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* 24, no. 2 (December 2019): 239–66, <https://doi.org/10.31436/shajarah.v24i2.945>.

of your servants and female servants. If they are poor, Allah will enrich them from His grace. Allah is All-Encompassing (in His grace) and All-Knowing.”<sup>23</sup>

According to Quraish Shihab, the word "*ashalihiin*" in this verse is understood by many scholars to refer to those who are mentally and spiritually ready to build a household, not merely based on biological age.<sup>24</sup> The objectives of marriage in Islam, as manifested in specific traditions practised by Muslim communities across the world, warrant serious attention to preserve cultural heritage within the framework of Islamic law.<sup>25</sup>

The differences regarding the age regulations for child marriage in Islam are still a complex and nuanced issue among the ulama. Some scholars argue that child marriage is permissible as long as the conditions of physical and mental maturity are met, and that there is permission from the guardian, based on traditional and classical interpretations that emphasise flexibility in determining the age of marriage.<sup>26</sup> However, this view is not without criticism, especially in the modern context, where the well-being and rights of the child are paramount.<sup>27</sup>

On the other hand, other clerical groups reject the practice of child marriage because young age does not guarantee psychological and social readiness to build a household, potentially hurting the health, education, and development of children, especially girls.<sup>28</sup> In practice, some Muslim countries have set a minimum marriage age of 18 years in an effort to protect children's rights and in harmony with international standards. These regulations are based on the principles of *maqashid*

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<sup>23</sup> Asfa Widiyanto, Siti Zumrotun, and Heru Saputra, "The Prevention of Underage Marriage in Indonesia: State, Religious Authority and Human Rights," *Justicia Islamica* 21, no. 2 (October 2024): 2, <https://doi.org/10.21154/justicia.v21i2.9771>.

<sup>24</sup> Nor Fadillah, "Urgensi Pembatasan Umur Perkawinan Dalam Undang-Undang No 16 Tahun 2019 Tentang Perkawinan (Perspektif Sadd Adz-Dzari'ah)," *Tashwir* 10, no. 2 (December 2022): 91-108, <https://doi.org/10.18592/jt.v10i2.7492>; Ahmad Ropei et al., "Managing 'Baligh' in Four Muslim Countries: Egypt, Tunisia, Pakistan, and Indonesia on the Minimum Age for Marriage," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (June 2023): 112-40, <https://doi.org/10.14421/ahwal.2023.16106>.

<sup>25</sup> Rezky Munirah et al., "Spiritual Communication in Achieving the Marital Harmony: The Rapo-Rapoang Tradition in Bugis Community," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (February 2025): 1, <https://doi.org/10.31958/juris.v24i1.13194>. 1-11.

<sup>26</sup> Iqrar Abdul Halim, M. Wildan Fauzbika, and Muchammad Abdur Rochman, "Exploring the Diversity of Opinions in Contemporary Islamic Family Law: The Response of Islamic Civil Society Organizations in Banyumas to Changes in the Marriage Age Limit," *Legitima: Jurnal Hukum Keluarga Islam* 7, no. 1 (December 2024): 100-126, <https://doi.org/10.33367/legitima.v7i1.6485>.

<sup>27</sup> Waleed M. Sweileh, "Analysis and Mapping of Literature on Child Marriage Published in Peer-Reviewed Journals (1983 - 2022)," *Vulnerable Children and Youth Studies* 19, no. 1 (January 2024): 158-71, <https://doi.org/10.1080/17450128.2023.2278116>.

<sup>28</sup> Jacqueline Nelson and Jennifer Burn, "Forced Marriage in Australia: Building a Social Response with Frontline Workers," *Social & Legal Studies* 34, no. 1 (February 2025): 89-109, <https://doi.org/10.1177/09646639241242125>.

sharia, which emphasise protecting offspring, honour, and family happiness.<sup>29</sup> Thus, despite differences among scholars, child marriage is generally discouraged in the modern context because it is contrary to the primary goal of Islamic law, which prioritises the welfare and welfare of society.

## **2. Child Marriage Regulations in Indonesian Law**

The revision of Law No. 1/1974 on Marriage by Law No. 16/2019 was an important milestone, raising the age limit for marriage for women from 16 to 19 years, equaling that of men.<sup>30</sup> This change is the result of pressure from civil society, decisions from the Constitutional Court, and the government's commitment to reducing the rate of child marriage.<sup>31</sup>

Although a minimum age has been set, the provision of dispensation for marriage remains a legal loophole. Through Supreme Court Regulation (PERMA) Number 5 of 2019, judges are given guidance on adjudicating marriage dispensation applications, with the principle of the best interests of the child.<sup>32</sup> However, field practice has shown variations in application, depending on the judge's interpretation and the applicant's socio-economic conditions.<sup>33</sup>

Mating dispensation is still often proposed on the grounds of extramarital pregnancy, economic factors, or social pressure.<sup>34</sup> Traditional and religious norms also influence, where some people still consider child marriage to be normal or even a solution to some social issues.<sup>35</sup> Structural factors such as poverty and low access to education have proven to be the main drivers of child marriage.<sup>36</sup>

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<sup>29</sup> Henky Fernando et al., "Bibliometrics of Family Law Research Trends in Southeast Asia: An Analysis Two Decades 2003-2023," *El-Ussrah: Jurnal Hukum Keluarga* 7, no. 1 (June 2024): 82-109, <https://doi.org/10.22373/ujhk.v7i1.22439>; Afiq Budiawan, "Metodologi Penetapan Hukum Perkawinan Di Dunia Muslim," *Jurnal An-Nahl* 7, no. 1 (June 2020): 85-97, <https://doi.org/10.54576/annahl.v7i1.11>.

<sup>30</sup> Law No. 16 of 2019 Concerning Amendments to Law Number 1 of 1974 on Marriage.

<sup>31</sup> Constitutional Court Decision Number 22/PUU-XV/2017 on the Age Limit for Marriage

<sup>32</sup> Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Requests.

<sup>33</sup> Nunung Susfita, Darmini Darmini, and Lukman Santoso, "Breaking Through Customary Domination for Child Protection: An Analysis of the Gerakan Anti-Merarik Kodeq (GAMAK) from the Perspective of Maqasid al-Shariah," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 12, no. 2 (October 2025): 451-73, <https://doi.org/10.32505/qadha.v12i2.12286>.

<sup>34</sup> Otavia Berlina Cahya Putri, Lukman Santoso, and Iqbal Saujan, "Why Pregnancy Is Not Enough: Judicial Interpretation of 'Urgent Grounds' in Child Marriage Dispensation Cases at the Madiun Religious Court," *Indonesian Journal of Sharia and Socio-Legal Studies* 1, no. 2 (November 2025): 174-92, <https://doi.org/10.24260/ijssls.1.2.117>.

<sup>35</sup> 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), <https://doi.org/10.1016/j.lanwpc.2021.100103>.

<sup>36</sup> Asma Pourtaheri et al., "Socio-Ecological Factors of Girl Child Marriage: A Meta-Synthesis of Qualitative Research," *BMC Public Health* 24, no. 1 (February 2024): 428, <https://doi.org/10.1186/s12889-023-17626-z>;



Even though regulation has been progressive, implementation still faces normative and sociological problems. On the normative side, the existence of dispensation provisions may undermine the objectives of Law 16/2019.<sup>37</sup> From a sociological perspective, legal pluralism (law, state, religion, and custom) often leads to clashes between rules and local values.<sup>38</sup> Therefore, it is necessary to strengthen procedural legal instruments and limit the grounds for dispensation to make policies more effective in preventing child marriage – integration of social law and policy through conditional social assistance programmes, education, and public awareness campaigns.<sup>39</sup> Following the amendment to the Marriage Law, the section on Marriage Dispensation should be reconsidered, as this provision serves as the basis for the legal registration of early marriages.<sup>40</sup>

Based on this, child marriage regulations in Indonesia have progressed through Law 16 of 2019, but implementation still faces challenges. Mating dispensation remains a loophole that allows child marriage to take place. To effectively realise child protection, improvements in legal instruments, social policies, and an integrated cultural approach are needed.<sup>41</sup>

### **3. Child Marriage Regulations in Australian Law**

The phenomenon of child marriage in Australia is more prevalent among immigrant communities, mainly from Afghanistan, Sudan, South Sudan, Iraq, Syria, India, Pakistan, Bangladesh, and Nepal. According to the Australian Institute of Family Studies (AIFS), this practice is influenced by cultural factors and traditions carried over from the country of origin.<sup>42</sup>

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Maila D. H. Rahiem, "COVID-19 and the Surge of Child Marriages: A Phenomenon in Nusa Tenggara Barat, Indonesia," *Child Abuse & Neglect* 118 (August 2021): 105168, <https://doi.org/10.1016/j.chiabu.2021.105168>.

<sup>37</sup> Hoko Horii, *Child Marriage, Rights, and Choice: Rethinking Agency in International Human Rights* (London New York: Routledge, Taylor & Francis Group, 2022).

<sup>38</sup> Shoimah and Uyun, "Children of Marriages Between Indonesian Citizens and Rohingya"; Esti Royani et al., "Juridical Aspects of Underage Marriage and Customary Law," *Awang Long Law Review* 6, no. 1 (November 2023): 193–205, <https://doi.org/10.56301/awl.v6i1.990>.

<sup>39</sup> Jan Priebe and Sudarno Sumarto, "Reducing Child Marriages through CCTs: Evidence from a Large-Scale Policy Intervention in Indonesia," *Journal of Public Economics* 242 (February 2025): 105306, <https://doi.org/10.1016/j.jpubeco.2025.105306>.

<sup>40</sup> Elizabeth Warner, "Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls," *American University Journal of Gender, Social Policy & the Law* 12 (2004): 233.

<sup>41</sup> Arbanur Rasyid et al., "The Actualization of the Concept of National Fiqh in Building Religious Moderation in Indonesia," *Millah: Journal of Religious Studies*, July 16, 2022, 433–64, <https://doi.org/10.20885/millah.vol21.iss2.art5>.

<sup>42</sup> Grace Wong and Frances Simmons, "Learning from Lived Experience: Australia's Legal Response to Forced Marriage," *The University of New South Wales Law Journal* 44, no. 4 (November 2021): 1619–62, <https://doi.org/10.3316/agispt.20211206057927>; Australian Institute of Family Studies, *Child Marriage in Australia*, (AIFS, 2022).

However, Australian law is stringent. Under the Marriage Act 1961 (Cth), the minimum age of marriage is 18 years, with the possibility of dispensation from the courts (court approval) only if the party to marry is at least 16 years old.<sup>43</sup> 2023 Australian Bureau of Statistics (ABS) data shows that of the 12 applications for child marriage dispensation, only two were approved, both due to special considerations related to exploitation and victim protection.<sup>44</sup>

In addition, families who force their daughters to marry minors can be charged with criminal penalties. Under the Criminal Code Act 1995 (Cth), forced marriages are punishable by imprisonment for up to seven years.<sup>45</sup> Other legal consequences include allegations of child neglect (with threats of punishment of up to 15 years in prison), revocation or rejection of family visas, financial sanctions, and even revocation of parental rights over children.<sup>46</sup>

Under the Marriage Act 1961, the minimum legal age for marriage in Australia is 18 years.<sup>47</sup> However, individuals under 18 may marry with prior court approval. This dual provision creates significant legal complexity, as it opens loopholes that allow for child marriage, particularly in situations where family pressure or cultural practices conflict with legal provisions.<sup>48</sup>

In general, the marriage process in Australia is strictly regulated to ensure that any marriage is legal, voluntary, and based on the full understanding of both parties.<sup>49</sup> One of the main procedures to be fulfilled is the settlement and delivery *notification for Intended Marriage (NOIM)*, which must be submitted to the competent marriage officer at least one month before the marriage and no more than 18 months before.<sup>50</sup> This procedure allows sufficient time for the authorities to verify the

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<sup>43</sup> Marriage Act 1961 (Cth), s 11–12.

<sup>44</sup> Australian Bureau of Statistics (ABS), *Family and Domestic Violence Statistics*, 2023.

<sup>45</sup> Criminal Code Act 1995 (Cth), Div 270.7A

<sup>46</sup> Samantha Lyneham and Samantha Bricknell, *When Saying No Is Not an Option: Forced Marriage in Australia and New Zealand*, June 15, 2018, <https://www.aic.gov.au/publications/rr/rr11>; Department of Home Affairs, *Forced Marriage and Visa Consequences*, (Government of Australia, 2023).

<sup>47</sup> Oscar I. Roos and Anita Mackay, "A Shift in the United Nations Human Rights Committee's Jurisprudence on Marriage Equality? An Analysis of Two Recent Communications from Australia," SSRN Scholarly Paper no. 3454967 (Rochester, NY: Social Science Research Network, February 8, 2019), <https://papers.ssrn.com/abstract=3454967>.

<sup>48</sup> Megan Arthur et al., "Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities," *Journal of Women, Politics & Policy* 39, no. 1 (January 2018): 51–74, <https://doi.org/10.1080/1554477X.2017.1375786>.

<sup>49</sup> Vaibhav Chadha and Uddhav Tiwari, "Legal Efforts to Curb Child Marriage in India, USA and Australia: A Comparative Analysis," *The Age of Human Rights Journal*, no. 18 (June 2022): 463–89, <https://doi.org/10.17561/tahrj.v18.6582>.

<sup>50</sup> Kejaksaan Agung. "Pemberitahuan Pernikahan yang Ditujukan". Accessed on May 16, 2025, <https://www.ag.gov.au/families-and-marriage/publications/notice-intended-marriage>

completeness of the documents and ensure there are no legal obstacles to the marriage.<sup>51</sup>

For a comprehensive verification process, the prospective bride and groom must submit a valid official identification document, such as a birth certificate, passport, No Barriers to Marriage Certificate, or other documents that can prove the date and place of birth to validate the child's age. If a child is found to be under 18, marriages cannot be performed unless they have obtained court approval (*Court Approval*).

The process of requesting consent (marriage dispensation) begins with an application to the court by the child's parents/guardians. After that, the court will appoint an *Independent Children's Lawyer* (ICL) to represent the child during the examination. ICL will also conduct a series of thorough examinations of the child regarding psychology, health, education, and family environment, and will directly consult the child to determine whether the marriage is based on the child's will or on coercion from the family or environment. All examination results conducted by the *Independent Children's Lawyer* will be submitted to the judge so that the judge can obtain a complete picture of the child's objective condition.<sup>52</sup>

In cases of marriage dispensation, judges rarely interview children; however, they must consider the evidence and assessments from ICLs, psychologists, or social workers appointed by the court. In some cases, the judge may interview the child. There is no age limit on when the child's views are considered; however, the older the child, the more weight the court gives to the opinion.

The marriage application through the NOIM process will continue when the court approves the marriage dispensation application. However, before the wedding ceremony, officers must meet separately with each prospective couple.<sup>53</sup> The purpose of this meeting was to reaffirm that both parties understand the meaning and legal consequences of marriage and give their free consent without coercion or pressure from any party. This meeting is therefore an essential protective

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<sup>51</sup> Kerry H. Robinson and Cristyn Davies, "Children's Gendered and Sexual Cultures: Desiring and Regulating Recognition through Life Markers of Marriage, Love and Relationships," in *Children, Sexuality and Sexualization*, ed. Emma Renold, Jessica Ringrose, and R. Danielle Egan (London: Palgrave Macmillan UK, 2015), 174-90, [https://doi.org/10.1057/9781137353399\\_11](https://doi.org/10.1057/9781137353399_11).

<sup>52</sup> Amran Suadi and Mardi Candra, "Prevention of Child Marriage In Indonesia Based on System Interconnection," *Journal of Southwest Jiaotong University* 57, no. 6 (December 2022): 926-37, <https://doi.org/10.35741/issn.0258-2724.57.6.79>.

<sup>53</sup> Kejaksaan Agung. "Pemberitahuan Pernikahan yang Ditujukan". Accessed on May 16, 2025, <https://www.ag.gov.au/families-and-marriage/publications/notice-intended-marriage>

mechanism to ensure that marriage is based on the genuine awareness and will of both potential partners.<sup>54</sup>

Since 2024, there has been a significant change in wedding procedures in Australia: the introduction of the option for couples to sign a NOIM virtually via an audio-visual link. This facility provides greater accessibility, particularly for those in remote locations or abroad, making the process of administering a marriage more flexible and inclusive without compromising the legal validity of the document. However, while some administrative steps may be practised virtually, the marriage ceremony must still be performed in person with a marriage officer and two witnesses to ensure the validity and sanctity of the marriage.<sup>55</sup>

Marriage law enforcement in Australia also faces challenges in a diverse and multicultural society.<sup>56</sup> Different cultural practices sometimes run counter to national legal norms, so law enforcement officials and marriage officials must balance respect for religious and artistic freedom with the obligation to protect the rights of individuals, especially children and women.

Overall, Australia's marriage rules and procedures reflect the country's commitment to maintaining the integrity of the institution of marriage while protecting the rights of the individuals involved, particularly children. Adaptive changes to regulations in response to technological advances and modern social needs have also strengthened protection mechanisms and legal certainty in the conduct of marriage in Australia.

### **Child Marriage Practices in Indonesia and Australia**

Child marriage, both in Indonesia and Australia, is a serious and complex issue. This complexity stems from the cultural pressures and social norms that favour child marriage, which often conflict with existing laws and how the justice system handles such cases. Child marriage should not be permitted because its adverse effects far outweigh its positive effects.<sup>57</sup> The impact of child marriage is not limited to legal

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<sup>54</sup> Chadha and Tiwari, "Legal Efforts to Curb Child Marriage in India, USA and Australia."

<sup>55</sup> Kejaksaan Agung. "Pemberitahuan Pernikahan yang Ditujukan." Accessed on May 16, 2025, <https://www.ag.gov.au/families-and-marriage/publications/notice-intended-marriage>

<sup>56</sup> Péter Berta, ed., *Arranged Marriage: The Politics of Tradition, Resistance, and Change* (Rutgers University Press, 2023), <https://www.jstor.org/stable/jj.18530988>.

<sup>57</sup> Fahadil Amin Al Hasan and Deni Kamaluddin Yusup, "Dispensasi Kawin Dalam Sistem Hukum Indonesia: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (June 2021): 86-98, <https://doi.org/10.14421/ahwal.2021.14107>.

aspects, but also includes the health and education of the children involved.<sup>58</sup> Children who marry at a young age, especially girls, face serious health risks, including life-threatening complications of pregnancy and childbirth. Additionally, early marriage often leads to school dropout, hindering educational development and future opportunities.<sup>59</sup> This situation exacerbates gender inequality and reinforces the cycle of poverty, which ultimately hurts social welfare on a broader scale.

In Indonesia, for example, child marriage is still common. The Indonesian Central Statistics Agency reports that in 2024, around 5.90% of women aged 20–24 were married for the first time before age 18. This represents the average child marriage rate among girls under the age of 18. However, 20 provinces still exceed this average, with the top five provinces being West Nusa Tenggara at 14.6%, South Papua at 14.0%, West Sulawesi at 10.1%, West Kalimantan at 10.5%, and Central Kalimantan at 9.89%.<sup>60</sup>

The above data is further supported by the number of applications for marriage dispensation submitted to religious courts, which remain significant despite the downward trend. This is in line with the data received by the Directorate General of Religious Courts as follows:

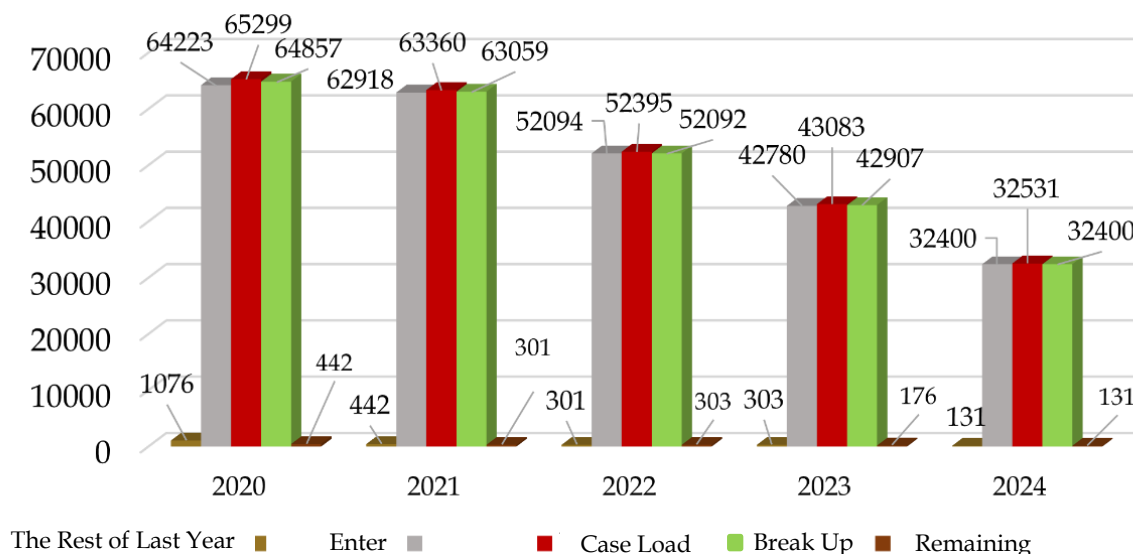
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<sup>58</sup> Qodariah Barkah et al., "The Manipulation of Religion and The Legalization of Underage Marriages in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (March 2023): 1, <https://doi.org/10.22373/sjhk.v7i1.13316>.

<sup>59</sup> Ayu Asmara, "Legal Protection Perspective of Underage Marriage," *Damhil Law Journal* 2, no. 2 (March 2023): 84–94, <https://doi.org/10.56591/dlj.v2i2.1743>.

<sup>60</sup> Central Statistics Agency. "Proporsi perempuan berusia 20–24 tahun yang menikah atau tinggal bersama sebelum usia 18 tahun." Accessed on 26 May 2025, <https://www.bps.go.id/id/statistics-table/2/MTM2MCMY/proporsi-perempuan-umur-20-24-tahun-yang-berstatus-kawin-atau-berstatus-hidup-bersama-sebelum-umur-18-tahun-menurut-provinsi.htm>

**Figure 1.** Matrimonial Dispensation Cases (National)



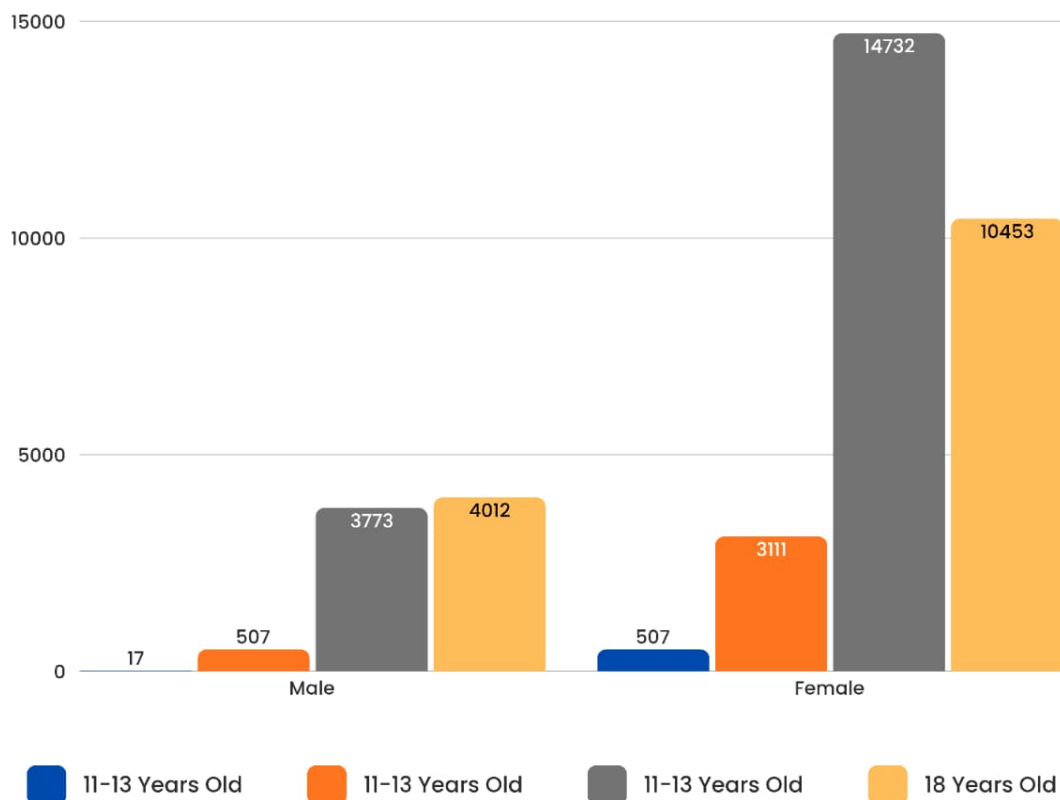
Source: Annual Report Directorate General of Religious Courts Year 2024

In the context of child marriage in Australia, no official data has been released by the Australian government on the exact number. However, child marriage in the country is very low. This is reinforced by significant changes in recent decades regarding the age at which men and women enter their first marriage in the country. The latest 2023 data show that the median age at first marriage for men is 31.4 years, while for women it is 30.1 years. These figures reflect Australians' tendency to marry later than in previous years.<sup>61</sup> This trend of increasing median marriage age has been consistent since the mid-1970s.

It shows social and cultural changes that influence individual decisions about the proper timing of marriage, such as improved education, career development, and shifting family values. The 2024 data show that many children under the age of 16 are still brought to court for marriage dispensation, with some as young as 13. This is according to data obtained by the Directorate General of Religious Courts as follows:

<sup>61</sup> Qu, Lixia, Jennifer Baxter, Catherine Andersson, and Rebecca Jenkinson, "Marriages in Australia." accessed on May 25, 2025, <https://aifs.gov.au/research/facts-and-figures/marriages-australia-2024>

**Figure 2.** Children Applying for Marriage Dispensation in 2024



Source: Annual Report Directorate General of Religious Courts Year 2024

Data show that a significant number of children aged 11-15 have applied to religious courts for dispensation to marry. This indicates that the practice of marrying children under the age of 15 is still quite common in Indonesia. For example, some 3,900 children under 15 applied to religious courts for marriage dispensation in 2024.

In setting the minimum age for marriage, Indonesia and Australia have determined that marriage can only be performed if a person is of legal age. In Indonesia, the minimum age for marriage is 19, while in Australia it is 18. However, the laws of both countries allow minors to marry with the consent of the courts.<sup>62</sup>

<sup>62</sup> Ahmad Dakhoir and Sri Lumatus Sa'adah, "Meta-Juridical Analysis on the Legal Arguments beyond Changes in Indonesian's Marriage Age Rule," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 18, no. 1 (June 2023): 80-101, <https://doi.org/10.19105/al-lhkam.v18i1.7162>; Prahasti Suyaman and Ramdani Wahyu Sururie, "Legal Effectiveness of Marriage Age Restrictions in Indonesia," *Jurnal Hukum Volkgeist* 7, no. 1 (December 2022): 1-6, <https://doi.org/10.35326/volkgeist.v7i1.2490>.

Then changes in social norms can become significant channels underlying the causal chain between educational expansion and marriage.<sup>63</sup> This legal loophole poses significant challenges in enforcing laws regarding the minimum age for marriage in both Indonesia and Australia, especially in the context of multicultural societies with diverse cultural and religious practices. Courts often face a dilemma between enforcing state laws and respecting cultural traditions that allow early marriage.<sup>64</sup>

Based on the above explanation, the differences in the implementation of child marriage regulations between Indonesia and Australia are distinguished by the author in the following table:

**Table 1.** Comparison of the Application of Child Marriage Regulations in Indonesia and Australia

	<b>Indonesia</b>	<b>Australia</b>
<b>Minimum Marriage Age Limit</b>	Law No. 16 of 2019 amending the Marriage Law No. 1 of 1974, fixing the minimum age of marriage at 19 years for men and women.	The Marriage Act 1961 established a minimum age of marriage of 18 years.
<b>Possible Dispensation</b>	Marriage dispensation can be submitted to the Religious/State Court if the parents submit specific reasons (Article 7, paragraph (2) of the Marriage Law).	Dispensation can only be given by the court to older children aged 16–17 in exceptional circumstances and with good reason (e.g., pregnancy).
<b>Number of Dispensation Cases</b>	2020 Supreme Court data: more than 64,000 applications for dispensation of marriage, majority granted.	ABS 2023 data: only 2 of 12 dispensations submitted were approved; the rest were rejected.
<b>Sanctions for Violations</b>	There are no special criminal sanctions for	Based on the Criminal Code Act 1995, families who force child

<sup>63</sup> Antonio Di Paolo and Khalifany-Ash Shidiqi, "Education and Ethnic Inter-marriage: Evidence from Higher Education Expansion in Indonesia," *World Development* 195 (November 2025): 107080, <https://doi.org/10.1016/j.worlddev.2025.107080>.

<sup>64</sup> Mies Grijns and Hoko Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society* 5, no. 2 (November 2018): 453–66, <https://doi.org/10.1017/als.2018.9>.



	parents who marry minors; only marriages can be annulled or considered invalid.	marriage can be punished up to 7 years in prison; if it is related to exploitation or neglect of children, the punishment can reach 15 years in prison.
<b>Socio-cultural Factors</b>	Economic factors, traditions, low education, and social stigma towards extramarital pregnancies still drive child marriage.	Child marriage occurs more often in immigrant groups (Afghanistan, Sudan, Iraq, Syria, India, Pakistan, Bangladesh, Nepal) and non-indigenous Australians.
<b>Other Consequences</b>	Vulnerable to violating children's rights, affecting education, reproductive health, and structural poverty.	Other consequences: revocation of visas, denial of family visas, financial sanctions, and even deprivation of parental rights

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Source: Law No. 16 of 2019 Concerning the Amendment to Law No. 1 of 1974 on Marriage, and Act 1961, and ALRC Report 135, 2019

According to the above table, there are differences in the practice of child marriage between the two countries. As for the similarity of the laws in these two countries that prohibit underage marriage, we will also see how each country implements its rules and regulations regarding underage marriage. Thus, the condition of child marriage in Indonesia is no better than in Australia. Compared to Indonesia, Australia views the practice of child marriage not only as a civil matter but also as a criminal crime with serious consequences.

### **The Role of Islamic Norms, National Codification, and *Common Law* in the Policy for the Prevention of Child Marriage**

A child is a creature created by Allah who must be protected and preserved with honour and dignity. The fulfilment of children's rights is an important issue to be discussed.<sup>65</sup> Child marriage is vulnerable to various emerging problems, such as social issues (being subjected to ridicule), legal matters (incidents of domestic violence), psychological issues (a high risk of conflicts that may lead to divorce), as

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<sup>65</sup> Siti Nurjanah et al., "Children's Rights in Islamic Law: A Contemporary Study of Family Practices," *MILRev: Metro Islamic Law Review* 4, no. 2 (July 2025): 933–53, <https://doi.org/10.32332/milrev.v4i2.10077>.

well as health-related problems.<sup>66</sup> Several factors, including tradition, arranged or endogamous marriage, economic conditions, promiscuity, and gender inequality, cause child marriage.<sup>67</sup>

Child marriage is a social phenomenon that has far-reaching and profound effects, particularly on the education, health, and mental well-being of the children involved. One of the most significant effects of child marriage is the loss of opportunities for children, especially girls, to continue their education.<sup>68</sup> Research data show that the majority of women who marry before the age of 18 do not complete formal education for nine years.<sup>69</sup> This situation hinders their intellectual development and skill acquisition, and traps them in a cycle of poverty and vulnerability that is difficult to break.<sup>70</sup> Education is the foundation for improving the quality of life and opening economic opportunities, so that when access to education is impaired, the effects are far-reaching and lasting.

Apart from education, reproductive health is one of the most vulnerable aspects to the effects of early marriage. Young married children face a much higher risk of pregnancy complications compared to those who marry in adulthood.<sup>71</sup> Complications such as anaemia, bleeding, and other health problems can lead to increased maternal and infant mortality rates.<sup>72</sup>

The negative impact also extends to mental health. Marriages that occur at a young age are often unhealthy and stressful, which can lead to prolonged stress, depression, and other cognitive impairments. Children caught up in these situations usually lose social support and opportunities for emotional development, further

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<sup>66</sup> Aliya Karima et al., "Kepentingan Terbaik Anak Pemohon Dispensasi Pernikahan Dalam Penafsiran Hukum Oleh Hakim," *Al-Syakhsyiyah: Journal of Law and Family Studies* 5, no. 2 (November 2023), <https://doi.org/10.21154/syakhsyiyah.v5i2.7082>.

<sup>67</sup> Rahmi Hidayati et al., "Dynamics of Child Marriage in Suku Anak Dalam Community," *Justicia Islamica* 20, no. 2 (October 2023): 261–80, <https://doi.org/10.21154/justicia.v20i2.5975>.

<sup>68</sup> Norma Yuni Kartika, Muhajir Darwin, and Sukamdi Sukamdi, "Perampasan Hak Pendidikan Perempuan Dalam Ikatan Perkawinan Usia Anak Di Provinsi Kalimantan Selatan (Analisis Data Survei Demografi Dan Kesehatan Indonesia Tahun 2012)," *Vidya Karya* 31, no. 2 (November 2017), <https://doi.org/10.20527/jvk.v31i2.3988>.

<sup>69</sup> Akanksha A. Marphatia et al., "How Much Education Is Needed to Delay Women's Age at Marriage and First Pregnancy?," *Frontiers in Public Health* 7 (January 2020), <https://doi.org/10.3389/fpubh.2019.00396>.

<sup>70</sup> Shamnaz Arifin Mim, "Effects of Child Marriage on Girls' Education and Empowerment," *Journal of Education and Learning (EduLearn)* 11, no. 1 (February 2017): 9–16, <https://doi.org/10.11591/edulearn.v11i1.5130>.

<sup>71</sup> J. M. Burn and M. Evenhuis, "Just Married, Just a Child": *Child Marriage in the Indo-Pacific Region*, Report (2014), <https://opus.lib.uts.edu.au/handle/10453/36760>.

<sup>72</sup> UNICEF and UNFPA, *Child Marriage South Asia An Evidence Review*, Technical Report (UNICEF ROSA, 2019), <http://digitalrepository.fccollege.edu.pk/handle/123456789/949>; Dian Latifiani, "The Darkest Phase for Family: Child Marriage Prevention and Its Complexity in Indonesia," *Journal of Indonesian Legal Studies* 4 (2019): 241.

worsening their mental health condition. Given the complexity of the adverse effects of child marriage, which range from health risks to loss of access to education, to the economic vulnerability of efforts to that end, the prevention of this practice should be significantly enhanced through comprehensive and evidence-based policy measures.<sup>73</sup>

In theory, children are protected and guaranteed under the Indonesian Marriage Law. However, three parties often contribute to the increasing ambiguity surrounding child custody rights, namely judges, mothers/wives, and fathers.<sup>74</sup> One of the main factors contributing to underage marriage is the low level of education. Education is one of the most powerful and influential forces in transforming deeply rooted customary systems and cultural practices.<sup>75</sup>

In the context of child marriage, Article 1 of the CRC defines a child as any individual below the age of 18, unless under the law applicable to the child, the majority is attained earlier.<sup>76</sup> Therefore, child marriage is regarded as a violation of children's rights, particularly the right to education, health, and protection from exploitation.<sup>77</sup> Indonesia has undertaken legal reform by enacting Law No. 16 of 2019, which amended the Marriage Law No. 1 of 1974, equalising the minimum marriage age for both men and women to 19 years.<sup>78</sup> However, there remains a loophole in the marriage dispensation mechanism in the courts, which is often granted in practice.<sup>79</sup> In addition to providing protection, the state is also required to exercise supervision.<sup>80</sup>

Meanwhile, Australia, through the Marriage Act 1961 in conjunction with the Family Law Act 1975, sets the minimum age of marriage at 18, but allows court

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<sup>73</sup> Jennifer Parsons et al., "Economic Impacts of Child Marriage: A Review of the Literature," *The Review of Faith & International Affairs* 13, no. 3 (July 2015): 12-22, <https://doi.org/10.1080/15570274.2015.1075757>.

<sup>74</sup> Doni Azhari, Asmuni Asmuni, and Khoiruddin Nasution, "Reassessing Tajdid Al-Nikah: Maqasid al-Shariah and Legal Status of Illegitimate Children in Central Lombok," *Justicia Islamica* 22, no. 1 (May 2025): 1-24, <https://doi.org/10.21154/justicia.v22i1.7343>; Anak Agung Istri Ari Atu Dewi et al., "The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia," *Sriwijaya Law Review* 6, no. 2 (July 2022): 2, <https://doi.org/10.28946/slrev.Vol6.Iss2.1885>.pp268-285.

<sup>75</sup> Imran Imran et al., "Aspects Of Justice Of Marriage Dispensation And Best Interests For Children," *Jurnal Hukum Dan Peradilan* 13, no. 1 (March 2024): 63-88, <https://doi.org/10.25216/jhp.13.1.2024.63-88>.

<sup>76</sup> United Nations. "Convention on the Rights of the Child, 20 November 1989". *UN Treaty Series*, vol. 1577

<sup>77</sup> UNICEF, *Child Marriage: Latest Trends and Future Prospects*, (New York: UNICEF, 2018).

<sup>78</sup> Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

<sup>79</sup> Komnas Perempuan, *Perkawinan Anak: Status, Tantangan, dan Praktik Dispensasi Kawin di Indonesia*, (Jakarta: Komnas Perempuan, 2021).

<sup>80</sup> Aristoni Aristoni, "Quo Vadis Marriage Dispensation in Indonesia: Judge's Decision in Preventing Child Marriage at the Jepara Religious Court," *De Jure: Jurnal Hukum Dan Syar'iah* 14, no. 2 (December 2022): 226-43, <https://doi.org/10.18860/j-fsh.v14i2.17408>; Horii, *Child Marriage, Rights, and Choice*.

approval for those aged 16–17 under exceptional circumstances (exceptional circumstances).<sup>81</sup> This mechanism is stringent, making the number of child marriages in Australia relatively low compared to Indonesia.<sup>82</sup> Nonet and Selznick distinguish three stages of legal development: repressive law, autonomous law, and responsive law.<sup>83</sup> Responsive law is adaptive, sensitive to social needs, and prioritises the protection of vulnerable groups.

In the issue of child marriage, Indonesia demonstrates a shift from autonomous law toward responsive law by raising the minimum marriage age to 19. However, the broad application of marriage dispensations suggests that the law is not yet fully responsive, as it places greater emphasis on normative certainty than on substantive protection.<sup>84</sup> Australia is closer to the model of responsive law, as the courts are not merely an administrative formality but genuinely assess whether a child marriage at the age of 16–17 is truly in the best interests of the child, making dispensations rarely granted.<sup>85</sup> Thus, responsive law theory helps assess whether a regulation merely enforces the minimum age norm or genuinely protects children through substantive mechanisms that prioritise the best interests of the child. Therefore, the minimum age of marriage needs to be revised, considering the various negative impacts arising from child marriage, such as female reproductive health issues, family economic problems, and even divorce.

Based on an evaluation of the effectiveness of child marriage prevention regulations in Indonesia and a comparative study of best practices in Australia (which has succeeded in reducing child marriage rates through a holistic approach), two main policy recommendations have been formulated to optimise prevention, namely:

### **1. Strengthening Synergies Between Institutions**

In Australia, the low rate of child marriage is inseparable from systematic cooperation between government and non-government agencies, effectively intertwined at various levels.<sup>86</sup> Indonesia has designed various strategic policies,

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<sup>81</sup> Marriage Act 1961 (Cth), Section 11; Family Law Act 1975 (Cth).

<sup>82</sup> Australian Bureau of Statistics (ABS), *Marriages and Divorces*, (Australia, 2020, Canberra: ABS, 2021).

<sup>83</sup> Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (New York: Harper & Row, 1980); Philippe Nonet, Philip Selznick, and Robert A. Kagan, *Law and Society in Transition: Toward Responsive Law* (Routledge, 2017).

<sup>84</sup> Efrinaldi Efrinaldi, Jayusman Jayusman, and M. Yenis, "Revealing The Dilemma of Marriage Dispensation Regulations In Indonesia," *ADHUKI: JOURNAL OF ISLAMIC FAMILY LAW* 5, no. 1 (July 2023): 31–46, <https://doi.org/10.37876/adhki.v5i1.113>.

<sup>85</sup> Michelle Fernando et al., *Family Law In Australia* (S.I.: Lexisnexis Butterworths, 2025).112–115.

<sup>86</sup> Elizabeth Fernandez, "Child Protection and Vulnerable Families: Trends and Issues in the Australian Context," *Social Sciences* 3, no. 4 (December 2014): 785–808, <https://doi.org/10.3390/socsci3040785>.

such as the National Strategy for the Prevention of Child Marriage and the Maturity of Marriage Programme (PUP), aimed at raising public awareness of the adverse effects of early marriage. However, implementation on the ground remains hampered by fragmented coordination between the ministries and agencies concerned. The Ministry of Women's Empowerment and Child Protection (KPPPA), the Ministry of Social Affairs, the Ministry of Religion, and local governments often run programs that are only partially integrated with data and resources.

## **2. Reform of Marriage Dispensation Regulations**

In Australia, regulations on marriage under the age of 18 are strictly enforced through a mechanism of marriage dispensation, which can only be applied to children aged 16-17. This means that children under the age of 16 are not allowed to apply for a marriage dispensation in court, without exception. This policy shows a precise, strict tightening of procedures to protect children from the risks of early marriage. With this minimum age limit, Australia is working to prevent very young marriages that could hurt the physical, psychological, and social development of children.

On the other hand, in Indonesia, although the minimum legal age for marriage is set higher at 19 years, the prevailing system of marriage dispensation is much more lenient. In Indonesia, children under 19 years old, including those aged 11 to 15, can still apply to the courts for a marriage dispensation without strict minimum age requirements. This opens the door for very young children to experience their first marriage at a very young age. This situation is concerning because marriage at a very young age can hurt the overall health, education, and well-being of children.

Overall, the comparison between Australia and Indonesia highlights that stricter rules and procedures for granting marriage dispensations are essential to protect children from the risks of early marriage. Australia has established clear minimum age limits and robust protection mechanisms through court orders and mandatory assessments. At the same time, Indonesia still needs to carry out significant reforms to ensure that the marriage dispensation system does not become a loophole that allows child marriage at a very young age. Such reforms should be aimed at preventing child marriages by promoting the protection of children's rights in all legal policies and practices relating to marriage.

## **Conclusion**

This study underlines that the regulatory gaps surrounding child marriage in Indonesia and Australia stem not only from juridical inconsistencies but also from

deep psychosocial dynamics that undermine legal effectiveness. In Indonesia, the persistence of marriage dispensations, parental pressure, and community norms that normalise early unions produces a legal-social dissonance that weakens child protection. Meanwhile, in Australia, data fragmentation, cultural silences within migrant communities, and the limited enforceability of age-related exemptions create residual spaces where forced and underage marriages may occur. Theoretically, this research contributes to socio-legal and child-rights scholarship by demonstrating the necessity of integrating psychological, cultural, and structural factors into legal analyses of child marriage. It shows that regulation cannot be evaluated solely through statutory design but must consider the behavioural and relational contexts in which the law operates. The study's implications for child-marriage research emphasise the need for a regulatory model that is culturally informed yet firmly rights-based, supported by stronger implementation, coordinated data systems, and community-level preventive interventions. Its limitations lie in the scope of jurisdictions studied and the reliance on secondary data, which restricts deeper ethnographic insight. Future research could explore comparative models in other plural societies, examine children's lived experiences, and assess how legal reforms translate into long-term social change across diverse cultural settings.

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