



Legal Regulation Prevention Of Child Marriage: The Perspective Of Lawrence M. Friedman and Sadd al-Dzari‘ah's Legal System

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Informasi Artikel	Abstract
Vol: 2 No : 6 2025 Halaman : 10-18	This study examines the effectiveness of regulations preventing child marriage in the city of Surabaya after the enactment of Law No. 16 of 2019, which raised the minimum age for marriage to 19 years, but still allows for marriage dispensations through Article 7 paragraph (2). This normative loophole raises academic questions about how the law works in social reality and how preventive measures can be institutionalized. This study aims to assess the implementation of regional policies, particularly Perwali No. 32 of 2024, and to examine the practices of religious courts in deciding on marriage dispensations using Lawrence M. Friedman's Legal System Theory and the principle of Sadd al-Dzari‘ah as analytical tools. Empirical research methods were used through interviews, observations, documentation, and qualitative analysis of two cases of marriage dispensation that were rejected and granted. The results of the study show that the significant decrease in the number of marriage dispensations in Surabaya occurred due to the synergy of the legal structure (Religious Court, DP3APPKB, Ministry of Religious Affairs, RT/RW), legal substance through the Perwali which tightened procedures, and changes in the legal culture of society. The courts applied new standards that are more protective and based on maqāṣid al-syarī‘ah , making marriage dispensations an emergency mechanism rather than a legalization of child marriage. This study provides theoretical implications in the form of an integrative model between maqāṣid and the modern legal system, as well as practical implications in the form of recommendations to replicate the Surabaya model in other regions in an effort to protect children.

Keywords:

Child Marriage, Legal System, *Sadd al-Dzari‘ah*

Abstract

Penelitian ini mengkaji efektivitas peraturan yang mencegah pernikahan anak di Kota Surabaya setelah diberlakukannya Undang-Undang Nomor 16 Tahun 2019, yang menaikkan batas usia minimum pernikahan menjadi 19 tahun, namun masih memperbolehkan dispensasi pernikahan melalui Pasal 7 ayat (2). Celah normatif ini menimbulkan pertanyaan akademis tentang bagaimana hukum bekerja dalam realitas sosial dan bagaimana langkah-langkah pencegahan dapat diinstitusionalisasikan. Penelitian ini bertujuan untuk mengevaluasi implementasi kebijakan daerah, khususnya Perwali No. 32 Tahun 2024, serta menganalisis praktik pengadilan agama dalam memutuskan dispensasi pernikahan menggunakan Teori Sistem Hukum Lawrence M. Friedman dan prinsip Sadd al-Dzari‘ah sebagai alat analisis. Metode penelitian empiris digunakan melalui wawancara, observasi, dokumentasi, dan analisis kualitatif terhadap dua kasus dispensasi pernikahan yang ditolak dan disetujui. Hasil penelitian menunjukkan bahwa penurunan signifikan dalam jumlah dispensasi pernikahan di Surabaya terjadi akibat sinergi antara struktur hukum (Pengadilan Agama, DP3APPKB, Kementerian Agama, RT/RW), substansi hukum melalui Perwali yang memperketat prosedur, dan perubahan budaya hukum masyarakat. Pengadilan menerapkan standar baru yang lebih melindungi dan didasarkan pada maqāṣid al-syarī‘ah, menjadikan dispensasi pernikahan sebagai mekanisme darurat daripada legalisasi pernikahan anak. Studi ini memberikan implikasi teoretis dalam bentuk model integratif antara maqāṣid dan sistem hukum modern, serta implikasi praktis dalam bentuk rekomendasi untuk mereplikasi model Surabaya di wilayah lain sebagai upaya melindungi anak-anak.

Kata Kunci: Perkawinan Anak, Sistem Hukum, Sadd al-Dzari‘ah

INTRODUCTION

Marriage is a social institution and legal entity that plays a fundamental role in the structure of Indonesian society. Law No. 1 of 1974 defines marriage as a spiritual and physical bond between a man and a woman with the aim of forming a permanent family based on belief in One God (Law No. 1 of 1974 on Marriage, Article 1, t.t.). However, social reality shows that when marriage is entered into by individuals who are not yet physically or psychologically mature, namely minors, the ideal relationship as intended by the law has the potential to cause harm. The phenomenon of an increase in marriage dispensations after the enactment of Law Number 16 of 2019, which raised the minimum age for marriage to 19 years, indicates a legal loophole as well as challenges in the implementation of this policy (Law No. 16 of 2019 concerning Amendments to Law No. 1974). Thus, research on the prevention of child marriage is relevant, both from the perspective of positive law and Islamic law, especially to see the extent to which modern regulations and Sharia principles move in the same direction in protecting children's rights.

The academic argument for choosing this topic is based on the fact that child marriage remains a structural problem in Indonesia. Its impact is not only related to the reproductive health of girls, but also has implications for education, the economy, and vulnerability to exploitation (UNICEF Indonesia, 2020). Legally, the state has regulated the minimum age for marriage and the mechanism for dispensation, but these provisions have not been able to prevent all possible violations. On the other hand, classical fiqh tends to allow child marriage as long as the requirements and conditions are met, creating tension between textual religious norms and the need to protect children in the current context. This condition has created an academic urgency to examine how regulations and religious approaches can work together to prevent the practice of child marriage.

The selection of Surabaya as the object of study has strong methodological reasons. Surabaya is a metropolitan city that serves as a barometer for East Java Province policies. Between 2020 and 2024, the city recorded a significant decrease in the number of marriage dispensation requests, from 406 cases in 2020 to only 68 cases in 2024. This decline did not occur naturally, but was the result of a series of progressive policies, such as psychosocial assessments of prospective child brides and grooms, public campaigns, cross-agency integration, and the issuance of Surabaya Mayor Regulation No. 32 of 2024 on the Prevention of Child Marriage. Therefore, Surabaya is an ideal social laboratory for assessing how regional legal policies contribute to reducing child marriage practices, while also evaluating the effectiveness of structural interventions in the legal system. In addition to its social urgency, this topic is also the subject of considerable academic debate, both nationally and internationally. UNICEF research shows that child marriage is a global issue related to poverty, education, and cultural constructs. In the context of Muslim countries, there is a debate between the classical fiqh approach, which allows child marriage based on historical practice, and the *maqāṣid al-syarī'ah* approach, which prioritizes the protection of life, reason, and offspring. Contemporary scholars argue that although child marriage is not explicitly prohibited in classical texts, the practice is irrelevant in the modern context because it contradicts the principle of child protection.

In Indonesia, the tension of this debate is evident in legal cases such as the marriage of Sheikh Puji to Lutfiana Ulfa, where some people justify the practice based on religious references, while the state considers it harmful to children. This tension between religious legitimacy and legal protection calls for an analytical framework that can bridge the two. Two approaches were used in this study: Lawrence M. Friedman's Legal System Theory and *Sadd al-Dzari'ah*. Friedman assesses the effectiveness of law based on three components: structure, substance, and legal culture (Kamali, 2018). The *Sadd al-Dzari'ah*, on the other hand, teaches the importance of closing paths that have the potential to cause harm (mafsadah), so that practices that are originally permissible can be restricted if they have negative consequences (al-Zuhaili, 1986). The combination of these two approaches allows for a comprehensive analysis between positive law and Sharia principles.

Based on this background, it can be concluded that there are three main issues underlying this study. First, how the implementation of Surabaya Mayor Regulation No. 32 of 2024 works as an instrument to prevent child marriage. Second, to what extent these prevention efforts are in line with the structure, substance, and legal culture in Friedman's perspective. Third, how does this regulation align with the principle of *Sadd al-Dzarī'ah* in Islamic law, which emphasizes the prevention of potential mafsadah? Through this analysis, the study aims to contribute to the development of child protection law, both in the form of policy recommendations and a contemporary fiqh approach that is more responsive to social realities.

Literature Review

Studies on child marriage in Indonesia have been widely discussed in contemporary legal, social, and fiqh literature. Erfaniah Zuhriah et al. (2024) researched the phenomenon of high rates of child marriage in Malang Regency and concluded that state policies have not been effective due to the lack of systematic prevention mechanisms. According to them, age regulations without an implementation strategy merely become norms that are unable to curb practices in society (Erfaniah Zuhriah dkk, 2024). The findings show that child marriage cannot be understood as a purely legal issue, but is also influenced by social structures and the lack of adequate preventive measures.

Meanwhile, research by Suciati Ningsih Haryadi, Muthia Septarina, and Salimah (2023) reviewed the implementation of the marriage age limit in Law Number 16 of 2019 and found that violations of the minimum age requirement still occur through the mechanism of marriage dispensation. They assessed that the granting of dispensations often does not take into account the principle of child protection, resulting in deviations from the main objective of the minimum age of marriage regulation (Haryadi dkk., 2023). This study provides an overview that the normative aspects of the law are not always in line with field practices, particularly in the context of religious courts.

The dimensions of judges' considerations in granting marriage dispensations were further explored by Khoiri (2021) through the *maqāṣid al-syarī'ah* approach. In his research on the decisions of the Bengkalis Religious Court, Khoiri found that judges granted dispensations for reasons such as concerns about adultery, the length of the relationship, or premarital pregnancy. These reasons were placed within the framework of protecting offspring and honor (Khoiri, 2021). However, this study also shows that the use of *maqāṣid* arguments often ignores greater harms, such as the potential for violence, early divorce, and vulnerability to children's education. This approach reflects the complexity of the relationship between religious norms, social morality, and child protection.

The sociological approach is explained by Novianti Soeleman and Rifki Elindawati (2021), who state that Indonesia is among the countries with the highest rates of child marriage. Economic, educational, and cultural factors are the main drivers of this practice. They emphasize that without intensive social intervention, regulatory changes alone will not change people's behavior (Rifki Elindawati, 2021). This literature is important as a basis for understanding that society has a mindset and social pressures that contribute to the normalization of early marriage, thereby influencing the decisions of parents and adolescents.

From a legal mechanism perspective, Fahadil Amin Al Hasan and Deni Kamaluddin Yusup (2020) examined the implementation of PERMA Number 5 of 2019 as a guideline for reviewing marriage dispensation requests. They concluded that even though PERMA clarifies the review standards, there has been an increase in dispensation requests, indicating a discrepancy between the objectives of the regulation and judicial practice (Deni Kamaluddin Yusup, 2020). Judicial decisions do not always consider the long-term risks to children, thus providing a legal loophole for the continuation of early marriage practices.

In addition, research by Haryadi, Suciati, and Muthia Septarina (2023) used Lawrence M. Friedman's Legal Systems Theory to analyze the prevention of early marriage by the KUA. They concluded that the imbalance between legal substance, institutional structure, and legal culture in

society has resulted in ineffective policies for preventing child marriage (Haryadi & Septarina, 2023). This study shows that prevention efforts require a systemic approach that is not only based on laws or technical regulations, but also changes in the legal culture of society.

From an Islamic legal perspective, the *Sadd al-Dzari'ah* approach emphasizes the preventive function of law against potential mafsadah. Research by Shavira Ayu Ningtias et al. (2025) concludes that the practice of child marriage is an act that must be prevented because it opens the door to various social and health risks (Shavira Ayu Ningtias dkk., 2025). This approach is relevant because it emphasizes that the protection of children is in line with broader Sharia objectives.

Based on the literature, it can be concluded that child marriage is a multi-dimensional phenomenon: ineffective regulations, permissive judicial practices, coercive socioeconomic conditions, and religious interpretations that are often understood textually. However, this study differs from previous studies in several ways. First, this study specifically examines the implementation of Surabaya Mayor Regulation No. 32 of 2024, a regional policy that has been proven to significantly reduce the number of marriage dispensations in the last four years. Second, this study combines two analytical approaches: Lawrence M. Friedman's Legal System Theory and the principle of *Sadd al-Dzari'ah* to analyze the effectiveness of policies to prevent child marriage in the city of Surabaya. Third, this study views marriage dispensations not only as a legal loophole, but as an indicator of systemic failure that requires a cross-approach analysis between positive law and Islamic law. Thus, this study is expected to contribute new insights to the discourse on preventing child marriage and strengthening child protection based on national law and Islamic law.

METHOD

This study uses Lawrence M. Friedman's Legal System Theory and *Sadd al-Dzari'ah* theory as its analytical framework. Friedman's theory is used to assess the functioning of law through the elements of structure, substance, and legal culture, while *Sadd al-Dzari'ah* is used to examine the preventive function in Islamic law, particularly in closing the potential for mafsadah in the practice of child marriage. Both theories are applied to assess the effectiveness of the implementation of Law No. 16 of 2019 and policies to prevent child marriage in the city of Surabaya (Friedman, 1975). This type of research is empirical legal research, as it examines law in action and captures the application of law in the actual behavior of society. The research was conducted in the city of Surabaya, which was chosen because it showed a significant decline in marriage dispensation requests from 2020 to 2025, making it an ideal location to assess the effectiveness of regulations and local government interventions.

Data was obtained through three main techniques: in-depth interviews with judges, court clerks, DP3APPKB, religious counselors, and relevant community members; observation of the marriage dispensation process and social interactions; and documentation in the form of court decisions, government archives, and official documents from the Ministry of Religious Affairs. Informants were selected using purposive sampling based on relevance and competence.

Data analysis was conducted using qualitative-descriptive methods through data editing, thematic classification, verification through triangulation, and critical analysis using Friedman and *Sadd al-Dzari'ah*'s theoretical variables to assess the effectiveness of regulations and identify legal loopholes. The results of the analysis formed the basis for drawing conclusions and recommendations for strengthening regulations on the prevention of child marriage (al-Zuhaili, 1986).

RESULTS AND DISCUSSION

The findings of this study describe how efforts to prevent child marriage in the city of Surabaya are carried out systematically through the implementation of Surabaya Mayor Regulation No. 32 of 2024 and the legal mechanisms established by Law No. 16 of 2019. The research results show that these regulatory changes have not only impacted the administrative structure, but also altered community

behavior patterns and the approach of judicial institutions in handling marriage dispensation requests. The implementation of Perwali 32/2024 has proven to be a dominant factor in the significant decline in marriage dispensation requests, from 406 cases in 2020 to only 32 cases in mid-2025. This decline shows that strict regulatory intervention, coupled with an educational approach, has created a strong legal cultural transformation within the Surabaya community (Friedman, 1975).

Perwali 32/2024 strictly stipulates that RT, RW, and kelurahan officials are prohibited from issuing marriage referral letters for couples who have not reached the minimum age, thereby blocking administrative access to child marriage at the most basic level. This administrative policy is reinforced by the requirement for psychological and medical assessments for underage prospective brides and grooms before their applications are submitted to the Religious Court. Interviews with DP3APPKB officials revealed that these assessments play a major role in identifying the physical and mental unpreparedness of child brides and grooms, with the result that the majority of applications are deemed unsuitable for proceeding to court.¹ On the other hand, the collaboration between the Surabaya City Government, the Ministry of Religious Affairs, and the Religious Court has created a pattern of legal structure synchronization that is rarely found in other regions. This legal structure harmony ensures that prevention policies are not fragmented, but rather run simultaneously within a single child protection framework.

From the perspective of Lawrence M. Friedman's Legal System, the research findings show that the three elements of legal structure, substance, and culture—theory work together and reinforce each other. Surabaya's legal structure is active, particularly through inter-agency cooperation that enables strict supervision of potential child marriages. The legal substance through Perwali 32/2024 provides more operational norms, closing the remaining gaps in Law 16/2019, particularly in Article 7 paragraph (2) which opens up the possibility of dispensation. Meanwhile, the legal culture of the Surabaya community has undergone significant changes: the community has begun to understand the health, social, and economic risks associated with child marriage and has begun to reject the practice even at the planning stage. This change in legal culture is evident from field data, where many people who previously encouraged child marriage have now switched to counseling.²

From the perspective of *Sadd al-Dzari'ah*, the policy of preventing child marriage in Surabaya is in line with the principle of Sharia law which requires closing the path to mafsadah. This principle assesses that actions which are essentially permissible must be prevented if they cause greater harm than good. Facts on the ground show that child marriage in Surabaya often results in educational failure, reproductive health risks, domestic violence, and economic exploitation (W.H.O., 2021). Based on the principle of *Sadd al-Dzari'ah*, preventive measures through Perwali 32/2024 are not only administrative policies, but also represent sharia protection aimed at minimizing harm to children. An interview with a judge at the Surabaya Religious Court reinforced this conclusion, in which the judge's consideration to reject the dispensation was no longer centered solely on urgent reasons, but also on broader considerations of benefit and risk of harm.³

In addition, the findings of the study show that the two cases analyzed in depth one case of dispensation that was rejected and one that was accepted illustrate the increasingly strict pattern of judicial consideration. In the rejected case, the judge adhered to the principle that the risks of harm far outweighed the benefits, particularly due to the young age of the child, the lack of financial readiness, and emotional instability. Conversely, the case that was granted had special circumstances involving premarital pregnancy and concerns about wider social conflict. However, even though it was granted, the court still required further counseling for both parties. These findings confirm that the judge's

¹ Interview with DP3APPKB Surabaya City, February 2025.

² Results of interviews with community members and neighborhood association officials, Surabaya 2024.

³ Interview with a judge at the Surabaya Religious Court, January 2025.

considerations are now not only juridical but also socio-psychological and based on the value of preventing harm in accordance with the principle of *Sadd al-Dzari'ah*.

Thus, this study concludes that the success of preventing child marriage in Surabaya rests on three integrative factors: first, the strength of Perwali 32/2024 as a legal substance capable of closing loopholes in the law; second, the consolidation of the legal structure through the synergy of the Religious Court, DP3APPKB, and the Ministry of Religious Affairs; and third, the transformation of the legal culture of the community, which increasingly rejects the practice of child marriage. The collaboration between empirical, structural, normative, and religious aspects in this prevention effort shows that Surabaya has succeeded in developing an effective, comprehensive prevention model that can be replicated in other regions (Naimah, 2022).

Discussion

This discussion outlines a critical analysis of research findings on the effectiveness of regulations preventing child marriage in the city of Surabaya, using two main theoretical frameworks Lawrence M. Friedman's Legal System Theory and the principle of *Sadd al-Dzari'ah* as analytical tools. The drastic decline in the number of marriage dispensations from 406 cases in 2020 to only 32 cases in mid-2025 shows an interesting dynamic about how the law works at the social level and how regional policies can complement and reinforce national laws. These findings show that the issue of child marriage cannot be separated from the interaction between legal structure, legal substance, legal culture, and preventive needs according to *maqāṣid al-syarī'ah* (Friedman, 1975).

Substantively, Perwali No. 32 of 2024 has proven to be a regulation that serves as both a restrictive and preventive instrument against potential child marriage. This policy fills the void left by Law No. 16 of 2019, which still provides loopholes for marriage dispensations through Article 7 paragraph (2). This loophole is often understood by the public as a "legal way" to legitimize child marriage in situations that are not actually emergencies. With the presence of the Mayor Regulation, Surabaya strengthens the substance of the law through stricter procedures: mandatory psychological assessments, detailed examination of the motives for the application, social assistance, and tighter issuance of marriage-related documents. This preventive approach is in line with *Sadd al-Dzari'ah*, which is the principle of anticipating damage that may arise from actions that are legally permissible but have the potential to cause mafsadah (Kurniawan & Hudafi, 2021).

The discussion of the first case in the study shows how the court no longer grants leniency simply because of parents' concerns about the potential for "adultery" among teenagers. The judge considered that this reason did not constitute an emergency under positive law or according to *Sadd al-Dzari'ah*, because a greater risk would arise if a child who was not yet psychologically mature was forced into marriage. The decision to reject the dispensation in this case shows a shift in legal culture from a permissive orientation towards a protective orientation, a change that has long been a major weakness in the family law system in Indonesia.

In the second case, the court granted the request for dispensation due to a premarital pregnancy that legally and morally required the preservation of lineage and the protection of the mother and child. However, the judge still required counseling, social supervision, and further assessment. This pattern of decisions shows that the court no longer understands dispensation as legalizing child marriage, but as a control mechanism to prevent greater social damage. Thus, the Islamic legal approach that prioritizes the preservation of life (*ḥifẓ al-naḥs*), lineage (*ḥifẓ al-nasl*), and dignity (*ḥifẓ al-'ird*) can be translated into operational public policy.

The discussion also found that Surabaya's success was not only based on regulations, but on the synergy of legal structures: cooperation between the Religious Court, DP3APPKB, the Ministry of Religious Affairs, RT/RW, and social workers. This collaborative model proves Friedman's theory that laws will not be effective without strong institutional support. On the other hand, the cultural shift in society's perception of child marriage as a solution to teenage pregnancy or promiscuity has been

transformed through structured education conducted by the city government. The decrease in dispensation requests each year shows that society no longer views child marriage as a normal or socially acceptable option.

In the context of Islamic legal thought, this study confirms that *Sadd al-Dzari'ah* is not only relevant as a fiqh concept but can also serve as a preventive paradigm in public policy. Perwali 32/2024 is an example of the implementation of the *maqāṣid* principle institutionalized in regional regulations, so that child protection is not just moral rhetoric but has a binding positive legal basis. In this way, Islamic law appears not as a normative entity separate from the state legal system but as a source of legal ethics capable of shaping the direction of modern policy (Auda, 2008).

This study also reveals several theoretical implications. First, the application of Friedman's theory in family law issues shows that strengthening the substance of law cannot stand alone without cultural transformation. Second, the *Sadd al-Dzari'ah* approach opens up space for the development of contemporary fiqh that is more responsive to social developments. Third, the combination of the two produces a new analytical framework that can be used as a model for the study of Islamic law in the context of a constitutional state. In practical terms, the findings of this study offer a model for regulating child marriage that can be replicated by other regions. Perwali 32/2024 shows that child protection requires more responsive and layered policies, not just relying on age limits. Strengthening preventive approaches, mandatory psychological assessments, and administrative restrictions have been proven to significantly reduce the number of child marriages in a short period of time.

Finally, this discussion shows that the future of child marriage regulation in Indonesia needs to move towards an integrative model: negating non-emergency dispensation loopholes, strengthening a culture of child protection, and placing *maqāṣid al-syarī'ah* as the ethical foundation of positive law. Thus, this study not only answers academic needs but also offers a practical basis for family law reform in Indonesia.

CONCLUSION

This study shows that the reconstruction of child marriage regulations in Surabaya City is the result of a dynamic interaction between legal structures, legal substance, and the legal culture of society. The findings show that strengthening inter-agency coordination, tightening administration through Perwali No. 32 of 2024, and an educational and preventive approach have succeeded in significantly reducing the number of marriage dispensation requests from year to year. From an Islamic law perspective, the application of the *Sadd al-Dzari'ah* principle reinforces the normative argument that the prevention of child marriage is in line with the public interest and protection against potential harm, thereby giving local government policies both sharia and legal legitimacy.

This study has limitations in terms of access to certain data, such as the inability to analyze all judicial considerations in depth and the variation in policy implementation at the village level, which is not yet uniform. Therefore, further research is recommended to explore inter-regional comparisons, examine in more detail judicial practices in granting dispensations, and develop an integrative model between local policies and contemporary fiqh to strengthen comprehensive child protection.

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The author also affirms that every institution that provided access to data including local governments, judicial institutions, and community service units had no influence on the interpretation of data or the preparation of recommendations. All opinions, arguments, and conclusions contained herein are entirely the responsibility of the author as part of his academic contribution to the development of science, particularly in relation to the reconstruction of child marriage law in the context of Islamic law and the Indonesian legal system. Thus, the author declares that this article is free from any form of conflict of interest.

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