

Marriage, Family Autonomy, and Human Rights in Indonesia: Rethinking Legal Protection in Contemporary Family Law

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Abstract. *Marriage in Indonesia sits at the intersection of state law, religious doctrine, customary practice, and constitutional human rights guarantees, producing a family law regime that is simultaneously protective and restrictive. This article investigates how the legal architecture built around Law No. 1 of 1974 concerning Marriage, as amended by Law No. 16 of 2019, mediates the tension between family autonomy and individual rights, particularly for women and children. It asks whether contemporary Indonesian family law has kept pace with international human rights norms, including the Convention on the Elimination of All Forms of Discrimination against Women, or whether legal pluralism continues to generate protection gaps that state institutions have only partially closed. Employing normative juridical research with statutory, conceptual, and case-law approaches, the study analyses judicial reasoning in landmark Constitutional Court decisions, recent legislative reform, and current scholarship on marriage age, interfaith marriage, and post-divorce protection. The findings show that judicial activism—most visibly in Constitutional Court Decision No. 22/PUU-XV/2017 on the minimum marriage age—has outpaced legislative and administrative reform, leaving implementation fragmented across religious courts, civil registries, and customary institutions. The article argues that rethinking legal protection in Indonesian family law requires reconciling family autonomy with a human rights-based approach that treats women and children as rights-holders rather than as objects of familial authority, and proposes a reform agenda combining harmonized legislation, judicial consistency, and community-level legal literacy.*

Keywords: *Family Law; Marriage; Human Rights; Family Autonomy; Indonesia; Legal Pluralism.*

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1. Introduction

Marriage is not merely a private contract in Indonesia; it is a legally regulated institution shaped simultaneously by state legislation, religious law, and customary norms, all operating under a constitutional order that has, since 1998, been progressively re-articulated around human rights.¹ For most of its post-independence history, Indonesian family law has been organized around Law No. 1 of 1974 concerning Marriage (hereinafter "the Marriage Law"), a statute deliberately drafted as a compromise between secular nationalist aspirations for legal unification and the demands of Islamic and customary constituencies for continued recognition of religious and adat marriage practices.² That compromise produced a hybrid regime: marriage is valid if performed according to the laws of each religion and belief, but must also be

¹ 1945 Constitution of the Republic of Indonesia (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945).

² Law No. 1 of 1974 concerning Marriage (Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan), State Gazette of the Republic of Indonesia 1974 No. 1.

administratively registered with the state, creating parallel tracks of legitimacy that persist to this day.³ Nearly five decades after its enactment, and following its most significant amendment through Law No. 16 of 2019, the Marriage Law continues to generate friction between the constitutional promise of equality and non-discrimination and inherited assumptions about family hierarchy, gender roles, and religious authority over intimate life.⁴

The tension is most visible where family autonomy—the latitude given to families, religious communities, and customary institutions to regulate marriage, divorce, guardianship, and inheritance according to their own norms—collides with individual rights that the Indonesian state has committed to protect, both domestically through the 1945 Constitution and Law No. 39 of 1999 concerning Human Rights,⁵ and internationally through the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Indonesia in 1984.⁶ Nowhere is this tension more evident than in the long-contested issue of minimum marriage age. Until 2019, the Marriage Law permitted girls to marry at sixteen and boys at nineteen, a differential threshold that empirical research repeatedly linked to elevated rates of school dropout, maternal health risk, and diminished bargaining power within marriage.⁷ It took a constitutional challenge—resolved in the Constitutional Court's Decision No. 22/PUU-XV/2017—to compel the legislature to raise and equalize the minimum age to nineteen for both sexes, illustrating a recurring pattern in Indonesian family law reform: judicial intervention frequently precedes, and sometimes substitutes for, deliberate legislative reconstruction.⁸

Scholars examining the post-Soeharto trajectory of Indonesian family law have observed that democratization did not automatically translate into a more rights-protective family law regime.⁹ Instead, decentralization and the expansion of religious court jurisdiction, combined with the continued vitality of customary and village-level dispute resolution, produced what several authors describe as an intensified legal pluralism in which the same substantive question—say, the validity of an interfaith marriage or the property rights of a divorced wife—may receive markedly different answers depending on the forum, the region, and the religious

³Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (2023), <https://doi.org/10.18860/j-fsh.v15i1.17461>.

⁴Law No. 16 of 2019 concerning Amendment to Law No. 1 of 1974 concerning Marriage.

⁵Law No. 39 of 1999 concerning Human Rights.

⁶Convention on the Elimination of All Forms of Discrimination against Women, ratified by Indonesia through Law No. 7 of 1984.

⁷Mies Grijns and H. Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society* 5 (2018): 453-466, <https://doi.org/10.1017/als.2018.9>.

⁸Constitutional Court of the Republic of Indonesia, Decision No. 22/PUU-XV/2017 (13 December 2018).

⁹Mark Cammack, Adriaan Bedner, and Stijn van Huis, "Democracy, Human Rights, and Islamic Family Law in Post-Soeharto Indonesia," *New Middle Eastern Studies* 5 (2015), <https://doi.org/10.29311/nmes.v5i0.2656>.

affiliation of the parties.¹⁰ This pluralism is not incidental; it is structurally embedded in the Marriage Law's foundational choice to anchor marital validity in religious law while reserving administrative registration to the state, and it is reinforced by the continued application of the Compilation of Islamic Law as the operative reference for Religious Courts adjudicating Muslim marriage, divorce, and inheritance disputes.¹¹

Contemporary scholarship has also drawn attention to specific sites where family autonomy, as currently structured, disadvantages the most vulnerable family members. Child marriage dispensation—judicial permission for marriage below the statutory minimum age—remains available under Article 7(2) of the amended Marriage Law, and empirical studies of religious court practice show that judges continue to grant a substantial share of dispensation applications despite the 2019 reform's ostensibly protective intent.¹² Interfaith marriage remains legally unresolved: the Marriage Law's religious-validity requirement effectively bars marriage between partners of different religions unless couples resort to strategies such as marrying abroad, converting temporarily, or seeking a civil registry office willing to register the union, each of which raises distinct human rights and citizenship concerns for the resulting family and any children.¹³¹⁴ Polygamy, wali nikah (marriage guardianship) requirements that operate asymmetrically against women, and the property and custody consequences of divorce all similarly reveal a family law architecture that was designed around a patriarchal, religiously mediated conception of family authority rather than around individual rights-holders within the family.¹⁵

At the same time, it would be inaccurate to characterize Indonesian family law as static. Since the 2000s, and with increasing frequency in the past five years, Indonesian courts, legislators, and legal scholars have engaged in what might be called an incremental rights-based reconstruction of family law: Constitutional Court decisions recognizing the civil rights of children born outside legally registered marriages, growing academic and judicial attention to marriage agreements as instruments for protecting wives' and children's property rights, technological innovations such as digital case-tracking applications for post-divorce rights

¹⁰Elisabeth Sundari and Anny Retnowati, "The Fundamental Problems of Implementing Legal Pluralism of Religious in Indonesian Marriage Law and A Proposal to Reform Based on The Pure of Law Theory," *International Journal of Religion* (2024), <https://doi.org/10.61707/zpnnx947>.

¹¹Compilation of Islamic Law (Kompilasi Hukum Islam), Presidential Instruction No. 1 of 1991.

¹²M. Nawawi et al., "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 1 (2022): 117-134, <https://doi.org/10.18326/ijtihad.v22i1.117-134>.

¹³Abdul Aziz and Ali Mutakin, "Criticism of Mixed Marriage and Child Citizenship Rights: Family Law Reform in Indonesia," *SHAHIH: Journal of Islamicate Multidisciplinary* 9, no. 2 (2025), <https://doi.org/10.22515/shahih.v9i2.10111>.

¹⁴M. Kurniawan et al., "Political Analysis of Islamic Law on the Regulation of Interfaith Marriage in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025), <https://doi.org/10.65586/insani.v1i1.2>.

¹⁵S. Sari, "Analysis of Protection of Women's Rights in Marriage According to Islamic Law and Law in Indonesia," *Justice Law Review* 1, no. 1 (2025), <https://doi.org/10.64317/jlr.v1i1.17>.

enforcement, and an expanding scholarly literature applying *maqasid al-shari'ah* and *maslahah* reasoning to argue for gender-equal and child-protective reform within an Islamic legal framework.¹⁶ This suggests that the relationship between family autonomy and human rights in Indonesia is not fixed but is being actively renegotiated across multiple institutional sites simultaneously.

Against this backdrop, this article asks two interrelated questions. First, how does the current legal architecture of Indonesian marriage law distribute protection and vulnerability among family members, and where do the most significant gaps between constitutional human rights guarantees and lived family law practice persist? Second, what combination of judicial, legislative, and social interventions would most plausibly close those gaps without triggering the kind of majoritarian backlash that has historically stalled comprehensive family law reform in Indonesia? In pursuing these questions, the article contributes to an emerging body of Indonesian and comparative scholarship that treats family law not as a fixed transcript of religious or customary norms but as a dynamic, contested, and reformable field of human rights practice.¹⁷

This hybrid structure did not emerge accidentally. The 1974 Marriage Law was the product of a decades-long legislative struggle dating to the early 1950s, when nationalist reformers sought a single, religiously neutral marriage code covering all Indonesian citizens, and Islamic political factions resisted any codification perceived to subordinate Islamic family law to secular civil authority.¹⁸ The eventual compromise—religious validity as the substantive test, state registration as an administrative overlay—allowed the bill to pass in 1974 only by leaving open precisely the question that continues to generate the protection gaps examined in this article: what happens when a marriage is religiously or customarily valid but legally unregistered, and what happens when religious or customary rules governing that marriage fall short of the equality and welfare standards the state has separately committed to uphold.^{19,20} Jambunanda's historical account traces how, in the decades since, doctrinal development within the Religious Courts and academic Islamic legal scholarship has moved considerably further toward gender-equal and child-protective interpretation than the underlying statutory text and the Compilation of Islamic Law have formally acknowledged, producing a widening gap between progressive judicial and scholarly interpretation on one hand and the codified rules

¹⁶Constitutional Court of the Republic of Indonesia, Decision No. 46/PUU-VIII/2010 (17 February 2012).

¹⁷Hijriatu Sakinah et al., "Legal Policy on Women's Protection in the National Family Law System," *Indonesian Journal of Gender Justice and Family Law* 1, no. 1 (2026), <https://doi.org/10.65586/ingefal.v1i1.2>.

¹⁸Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (2023), <https://doi.org/10.18860/j-fsh.v15i1.17461>.

¹⁹Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (2023), <https://doi.org/10.18860/j-fsh.v15i1.17461>.

²⁰Ahmad Jamaludin Jambunanda, "Transformation of Classical Law to Contemporary in Islamic-Based Marriage Law to Respond to Legal Developments in Indonesia," *Al Ahkam* 19, no. 2 (2023), <https://doi.org/10.37035/ajh.v19i2.9551>.

courts are formally bound to apply on the other.²¹ This gap between interpretive possibility and codified constraint is a recurring theme throughout the analysis that follows.

The remainder of this article is organized as follows. Section two sets out the normative juridical method, including the statutory, case, and conceptual approaches applied throughout the analysis. Section three presents the results and discussion in two parts: the first maps where legal pluralism produces protection gaps for women and children across marriage age, interfaith marriage, guardianship, and post-divorce rights; the second examines judicial, doctrinal, institutional, and international pathways through which those gaps are being—or could be—narrowed. Section four concludes by synthesizing the findings into an integrated reform agenda.

2. Research Methods

This article employs normative juridical (doctrinal) legal research, a method appropriate for examining the internal coherence, hierarchy, and normative content of Indonesian family law rather than its empirical social effects in isolation.²² The research combines three complementary approaches. First, a statutory approach (*pendekatan perundang-undangan*) is used to examine the text and legislative history of Law No. 1 of 1974 concerning Marriage as amended by Law No. 16 of 2019, together with related instruments including the Compilation of Islamic Law, Law No. 39 of 1999 concerning Human Rights, Law No. 23 of 2004 concerning the Elimination of Domestic Violence, and Indonesia's ratification of CEDAW through Law No. 7 of 1984.²³ Second, a case approach (*pendekatan kasus*) is used to analyze judicial reasoning in landmark Constitutional Court decisions directly implicating family autonomy and human rights, most importantly Decision No. 22/PUU-XV/2017 on the minimum marriage age and Decision No. 46/PUU-VIII/2010 on the civil status of children born outside legally registered marriage, supplemented by secondary case literature on religious court practice in child marriage dispensation.²⁴ Third, a conceptual approach (*pendekatan konseptual*) draws on doctrines such as *masalah mursalah*, *maqasid al-shari'ah*, and the human rights-based approach (HRBA) to interrogate whether existing family law rules serve the protective purposes their drafters and interpreters claim for them.²⁵

Data for this study are secondary legal materials, comprising primary sources (statutes, implementing regulations, and court decisions) and secondary sources (peer-reviewed journal

²¹Ahmad Jamaludin Jambunanda, "Transformation of Classical Law to Contemporary in Islamic-Based Marriage Law to Respond to Legal Developments in Indonesia," *Al Ahkam* 19, no. 2 (2023), <https://doi.org/10.37035/ajh.v19i2.9551>.

²²Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (2023), <https://doi.org/10.18860/j-fsh.v15i1.17461>.

²³Convention on the Elimination of All Forms of Discrimination against Women, ratified by Indonesia through Law No. 7 of 1984.

²⁴Constitutional Court of the Republic of Indonesia, Decision No. 22/PUU-XV/2017 (13 December 2018).

²⁵Nabilah Wafiroh and N. Yusuf, "Contemporary Fiqh as an Evaluative Framework for Indonesian Family Law," *Southeast Asian Journal of Islamic Studies* (2026), <https://doi.org/10.66127/835zfv15>.

articles, books, and academic commentary published principally between 2015 and 2026, with emphasis on scholarship from the last five years to capture the most current doctrinal and judicial developments).²⁶ The literature review was conducted by identifying recent Indonesian and international scholarship addressing marriage age, interfaith marriage, marital property, guardianship, divorce, and family autonomy in relation to human rights norms, cross-checked against Constitutional Court decisions and legislative texts to verify doctrinal claims.

The analysis proceeds qualitatively through legal interpretation (*interpretasi hukum*) rather than statistical generalization. Three interpretive techniques are used: grammatical interpretation of statutory text, systematic interpretation that situates specific marriage law provisions within the broader constitutional and human rights framework, and teleological interpretation that asks whether a given rule continues to serve the protective purpose that justifies its existence.²⁷ Where empirical findings from prior socio-legal studies—for instance, on rates of dispensation granted for child marriage, or on patterns of interfaith couples circumventing the Marriage Law—are cited, they are treated as contextual evidence informing the normative analysis rather than as independently generated data, since this article does not conduct new fieldwork.²⁸

This method has inherent limitations. Doctrinal analysis captures the formal architecture of protection and its judicial elaboration but cannot fully measure how rules are experienced on the ground by parties without legal representation, particularly in rural or economically marginalized communities where informal marriage and customary dispute resolution remain common.²⁹ The article addresses this limitation by drawing extensively on socio-legal and empirical studies already published in the literature, using them to calibrate the normative analysis against documented implementation gaps rather than assuming that formal legal change automatically produces substantive protection.

3. Result and Discussion

3.1 Family Autonomy under Legal Pluralism: Where Protection Fails

Indonesian family law's defining structural feature is its accommodation of legal pluralism: the coexistence of state (civil) law, Islamic law as administered through the Religious Courts, and customary (*adat*) law, all bearing on the same set of marriage-related

²⁶Elisabeth Sundari and Anny Retnowati, "The Fundamental Problems of Implementing Legal Pluralism of Religious in Indonesian Marriage Law and A Proposal to Reform Based on The Pure of Law Theory," *International Journal of Religion* (2024), <https://doi.org/10.61707/zpnnx947>.

²⁷Ahmad Jamaludin Jambunanda, "Transformation of Classical Law to Contemporary in Islamic-Based Marriage Law to Respond to Legal Developments in Indonesia," *Al Ahkam* 19, no. 2 (2023), <https://doi.org/10.37035/ajh.v19i2.9551>.

²⁸Mies Grijns and H. Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society* 5 (2018): 453-466, <https://doi.org/10.1017/als.2018.9>.

²⁹M. Kurniawan et al., "Political Analysis of Islamic Law on the Regulation of Interfaith Marriage in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025), <https://doi.org/10.65586/insani.v1i1.2>.

questions.³⁰ The Marriage Law's Article 2 formalizes this pluralism by making marital validity contingent on compliance with "the laws of each religion and belief," effectively delegating substantive marriage rules to religious communities while reserving administrative registration—civil recognition—to the state.^{31,32} For the majority Muslim population, this delegation channels most marriage, divorce, and inheritance disputes into Religious Courts applying the Compilation of Islamic Law, a 1991 presidential instruction rather than a statute proper, whose provisions on guardianship, polygamy, and inheritance reflect classical fiqh doctrine only partially reconciled with the equality guarantees of the 1945 Constitution.³³

Minimum marriage age and dispensation practice.

The 2019 amendment to Article 7 of the Marriage Law, enacted in direct response to the Constitutional Court's Decision No. 22/PUU-XV/2017, raised and equalized the minimum marriage age to nineteen years for both women and men, correcting what the Court found to be unconstitutional discrimination against girls under the pre-amendment sixteen-year threshold.^{34,35} Yet the same amendment retained, in Article 7(2), a judicial dispensation mechanism permitting marriage below the minimum age where "compelling reasons" exist and both sets of parents consent.³⁶ Post-2019 studies of Religious Court practice indicate that dispensation applications continue to be filed in substantial numbers, most commonly justified by unplanned pregnancy or fear of social stigma, and that courts grant a majority of these applications, effectively reproducing the child marriage pattern the 2019 reform was meant to curtail.³⁷ Grijns and Horii's earlier ethnographic study of a West Java village had already shown that families and religious functionaries frequently treat the state's age threshold as a negotiable formality rather than a binding rule, reconciling legal non-compliance with informal religious solemnization that leaves the marriage unregistered and the resulting spouse and children

³⁰Elisabeth Sundari and Anny Retnowati, "The Fundamental Problems of Implementing Legal Pluralism of Religious in Indonesian Marriage Law and A Proposal to Reform Based on The Pure of Law Theory," *International Journal of Religion* (2024), <https://doi.org/10.61707/zpnnx947>.

³¹Law No. 1 of 1974 concerning Marriage (Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan), *State Gazette of the Republic of Indonesia* 1974 No. 1.

³²Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (2023), <https://doi.org/10.18860/j-fsh.v15i1.17461>.

³³Compilation of Islamic Law (Kompilasi Hukum Islam), Presidential Instruction No. 1 of 1991.

³⁴Constitutional Court of the Republic of Indonesia, Decision No. 22/PUU-XV/2017 (13 December 2018).

³⁵Yori Sania, Charles Simabura, and Henny Andriani, "Politik Hukum Batas Minimum Usia Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017," *Lareh Law Review* 2, no. 1 (2024): 58-72, <https://doi.org/10.25077/llr.2.1.58-72.2024>.

³⁶Edy Setyawan et al., "Legal Age for Marriage: SDGs and Maslahah Perspectives in Legal Policy Change in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023), <https://doi.org/10.24090/mnh.v17i2.9506>.

³⁷M. Nawawi et al., "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 1 (2022): 117-134, <https://doi.org/10.18326/ijtihad.v22i1.117-134>.

without full civil law protection.³⁸ The persistence of dispensation and informal marriage after 2019 demonstrates that raising the statutory age alone was necessary but insufficient; without corresponding reform of dispensation criteria, judicial training, and community-level enforcement, the constitutional victory secured in Decision No. 22/PUU-XV/2017 remains only partially realized in practice.³⁹

Interfaith marriage and citizenship consequences.

Article 2's religious-validity requirement, read together with the Compilation of Islamic Law's prohibition on Muslim women marrying non-Muslim men, leaves interfaith couples in Indonesia without a clear, uniformly available legal pathway to marry domestically.⁴⁰ Couples commonly respond by marrying abroad and later registering the marriage under Article 56 of the Marriage Law, by one partner nominally converting, or, in a small number of jurisdictions, by persuading a civil registry office to register the marriage despite the absence of religious solemnization.⁴¹ Each workaround carries downstream human rights consequences. Marriages solemnized abroad or through nominal conversion may later be challenged as invalid, jeopardizing spousal inheritance and marital property rights; children born to interfaith couples whose marriage is never fully regularized may face difficulties establishing joint civil status, with consequences for citizenship, school enrollment, and inheritance that fall disproportionately on the child rather than on either parent.⁴² Aziz and Mutakin's recent analysis frames this as a citizenship rights problem as much as a marriage law problem, arguing that the child's constitutional right to legal identity is being compromised by a marriage law architecture that was never designed to accommodate religious plurality within a single household.⁴³

Political resistance to reforming interfaith marriage regulation compounds these individual-level workarounds. Kurniawan and colleagues' political analysis of Islamic law's influence on interfaith marriage regulation finds that successive attempts to introduce clearer statutory guidance—whether toward formal recognition or toward explicit prohibition—have

³⁸Mies Grijns and H. Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society* 5 (2018): 453-466, <https://doi.org/10.1017/als.2018.9>.

³⁹Edy Setyawan et al., "Legal Age for Marriage: SDGs and Maslahah Perspectives in Legal Policy Change in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023), <https://doi.org/10.24090/mnh.v17i2.9506>.

⁴⁰M. Kurniawan et al., "Political Analysis of Islamic Law on the Regulation of Interfaith Marriage in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025), <https://doi.org/10.65586/insani.v1i1.2>.

⁴¹Abdul Aziz and Ali Mutakin, "Criticism of Mixed Marriage and Child Citizenship Rights: Family Law Reform in Indonesia," *SHAHIH: Journal of Islamicate Multidisciplinary* 9, no. 2 (2025), <https://doi.org/10.22515/shahih.v9i2.10111>.

⁴²M. Kurniawan et al., "Political Analysis of Islamic Law on the Regulation of Interfaith Marriage in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025), <https://doi.org/10.65586/insani.v1i1.2>.

⁴³Abdul Aziz and Ali Mutakin, "Criticism of Mixed Marriage and Child Citizenship Rights: Family Law Reform in Indonesia," *SHAHIH: Journal of Islamicate Multidisciplinary* 9, no. 2 (2025), <https://doi.org/10.22515/shahih.v9i2.10111>.

stalled in the legislature because any resolution risks alienating either religious conservative constituencies, who regard interfaith marriage as religiously impermissible and destabilizing to family and communal identity, or reform-minded and minority-religion constituencies, who regard the current ambiguity as a denial of constitutionally guaranteed freedom of religion and equal legal protection.⁴⁴ The result is a rare instance in Indonesian family law where legislative paralysis, rather than legislative action lagging behind judicial reform, has become the default state: because no politically viable consensus exists, the Marriage Law's ambiguous Article 2 requirement has remained essentially unchanged since 1974, with the practical rules governing interfaith marriage determined instead by an inconsistent patchwork of civil registry office discretion, occasional district court rulings ordering registration, and informal workarounds, none of which offers interfaith couples or their children the predictability that formal legal protection is meant to provide.⁴⁵ This pattern illustrates a limitation inherent in the reform pathways discussed in Section 3.2: constitutional review, doctrinal bridging, and institutional innovation can each narrow specific protection gaps, but none straightforwardly resolves a problem whose core obstacle is not doctrinal ambiguity but the absence of any politically available consensus position, religious or secular, capable of commanding legislative majority support.

Guardianship (wali nikah) and gendered authority over marriage formation.

Under the Compilation of Islamic Law, a Muslim woman's marriage requires the consent and presence of a male guardian (wali nikah), ordinarily her father or another male relative in a fixed order of precedence, whereas no equivalent guardianship requirement constrains a man's capacity to marry.⁴⁶ Parinduri and Adly's normative-comparative analysis of this doctrine across the major fiqh schools shows that even within classical Islamic jurisprudence there is no full consensus that female guardianship must operate as a veto power rather than a protective formality, suggesting that Indonesian positive law has, in codifying the Compilation of Islamic Law, selected the more restrictive doctrinal position without a corresponding human rights justification.⁴⁷ In practice, wali nikah requirements have been used to block marriages a woman's family opposes for reasons unrelated to her welfare—including opposition to interfaith or inter-status marriage—effectively subordinating an adult woman's capacity to consummate a marriage to her male relatives' preferences, a pattern in some tension with both

⁴⁴M. Kurniawan et al., "Political Analysis of Islamic Law on the Regulation of Interfaith Marriage in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025), <https://doi.org/10.65586/insani.v1i1.2>.

⁴⁵M. Kurniawan et al., "Political Analysis of Islamic Law on the Regulation of Interfaith Marriage in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025), <https://doi.org/10.65586/insani.v1i1.2>.

⁴⁶M. Parinduri and M. Adly, "Wali Nikah Sebagai Rukun Perkawinan dalam Hukum Islam: Analisis Normatif-Komparatif Mazhab Fikih dan Rekonstruksinya dalam Hukum Keluarga Islam Indonesia," *Tabayyanu: Journal of Islamic Law* (2026), <https://doi.org/10.66174/dsy9gw14>.

⁴⁷M. Parinduri and M. Adly, "Wali Nikah Sebagai Rukun Perkawinan dalam Hukum Islam: Analisis Normatif-Komparatif Mazhab Fikih dan Rekonstruksinya dalam Hukum Keluarga Islam Indonesia," *Tabayyanu: Journal of Islamic Law* (2026), <https://doi.org/10.66174/dsy9gw14>.

the constitutional equality guarantee and CEDAW's Article 16 guarantee of equal rights to enter marriage freely.⁴⁸

Post-divorce economic and custodial protection.

Divorce in Indonesia, whether adjudicated in Religious Courts (for Muslims) or District Courts (for others), routinely leaves the economically weaker spouse—typically the wife—without effective enforcement of court-ordered maintenance (*nafkah*), joint marital property (*harta bersama*) division, or child support.⁴⁹ Sari's 2025 analysis of women's rights protection in divorce proceedings finds that formal legal entitlement to marital property and post-divorce maintenance is well established in both the Marriage Law and the Compilation of Islamic Law, but that enforcement mechanisms are weak, leaving many divorced women dependent on former husbands' voluntary compliance or costly, protracted execution proceedings.⁵⁰ Suadi and colleagues document a recent judicial-administrative innovation—the E-MOSI CAPER digital case-tracking application—designed to improve monitoring of post-divorce rights compliance, illustrating both the scale of the enforcement problem and an institutional recognition that formal entitlement without enforcement infrastructure does not amount to real protection.⁵¹ Inheritance presents a parallel pattern: Suharsono, Prasetyoningsih, and Usman's triangular legal-pluralism analysis shows that daughters' inheritance shares differ substantially depending on whether a family's estate is administered under Islamic law, civil law, or adat law, producing markedly unequal outcomes for women in otherwise similar family circumstances purely as a function of which legal regime a family or court chooses to apply.⁵²

Taken together, these four sites—marriage age and dispensation, interfaith marriage, guardianship, and post-divorce economic protection—reveal a common structural logic. Indonesian family law formally recognizes rights-based protections for women and children, often expressed in language closely tracking constitutional and international human rights norms, but routes the realization of those protections through religiously and customarily inflected institutions whose interpretive traditions were not originally organized around individual rights-holding.⁵³ The result is a persistent gap between what the law promises on its

⁴⁸Convention on the Elimination of All Forms of Discrimination against Women, ratified by Indonesia through Law No. 7 of 1984.

⁴⁹S. Sari, "Analysis of Protection of Women's Rights in Marriage According to Islamic Law and Law in Indonesia," *Justice Law Review* 1, no. 1 (2025), <https://doi.org/10.64317/jlr.v1i1.17>.

⁵⁰S. Sari, "Analysis of Protection of Women's Rights in Marriage According to Islamic Law and Law in Indonesia," *Justice Law Review* 1, no. 1 (2025), <https://doi.org/10.64317/jlr.v1i1.17>.

⁵¹Amran Suadi, Mardi Candra, Fahadil Amin Al Hasan, and Gugun Gumilar, "Legal Protection of Women's and Children's Rights after Divorce through the E-MOSI CAPER App," *Novelty Law Journal* 15, no. 1 (2024): 35-52, <https://doi.org/10.26555/novelty.v15i1.a27347>.

⁵²A. Suharsono, N. Prasetyoningsih, and S. Usman, "Women's Inheritance Rights in Indonesia from the Perspective of the Triangular Concept of Legal Pluralism," *El-Mashlahah* 14, no. 2 (2024): 259-280, <https://doi.org/10.23971/el-mashlahah.v14i2.7657>.

⁵³H. Al-Rasyid, "Protection of Women's Rights in Islamic Family Law: A Review of Jurisprudence and Legislation in Indonesia," *Samarinda International Journal of Islamic Studies* 2, no. 1 (2025), <https://doi.org/10.64093/sijis.v2i1.605>.

face and what family members—particularly wives, daughters, and children—actually receive in practice, a gap that legal pluralism tends to widen rather than narrow because it multiplies the forums and interpretive traditions through which the same underlying question can be resolved differently.⁵⁴

A further point of contention concerns the very conception of family autonomy invoked in Indonesian legal discourse. As Cammack, Bedner, and Huis observe in their survey of post-Soeharto family law politics, family autonomy has historically functioned less as an individual liberty—the freedom of family members to arrange their intimate lives as they see fit—and more as a communal or institutional autonomy: the latitude of religious and customary communities to regulate marriage internally without state interference.⁵⁵ This communal conception is defensible as a matter of religious freedom and cultural pluralism, and Indonesian constitutional doctrine has generally been reluctant to override religious family law wholesale. But when communal autonomy is exercised through hierarchical structures—a father's guardianship veto, a religious court's discretion to grant a dispensation, a family's informal pressure to accept an unequal inheritance division—it can operate to the detriment of the very family members, typically women and children, whom family law is nominally designed to protect.⁵⁶ Sundari and Retnowati's proposal to reform Indonesian marriage law along the lines of a "pure law theory," separating state civil registration more cleanly from religious solemnization requirements, responds directly to this problem, arguing that clearer institutional separation would reduce the discretionary space in which communal authority currently overrides individual protection.⁵⁷

Fatwa and Marliyah's study of Javanese customary marriage norms illustrates how this dynamic operates outside the Islamic legal sphere as well. Javanese ethnomathematical marriage prohibitions—rules against marriage between individuals whose birth-order or family relationship falls into disfavored numerical categories—continue to be enforced informally in some communities despite having no basis in either the Marriage Law or the Compilation of Islamic Law, occasionally overriding a couple's own wishes and, in documented cases,

⁵⁴M. Kurniawan et al., "Political Analysis of Islamic Law on the Regulation of Interfaith Marriage in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025), <https://doi.org/10.65586/insani.v1i1.2>.

⁵⁵Mark Cammack, Adriaan Bedner, and Stijn van Huis, "Democracy, Human Rights, and Islamic Family Law in Post-Soeharto Indonesia," *New Middle Eastern Studies* 5 (2015), <https://doi.org/10.29311/nmes.v5i0.2656>.

⁵⁶Ah Fajruddin Fatwa and M. Marliyah, "When Rules and Tradition Collide: A Human Rights Perspective on Legal Policy Denial on Islamic Javanese Marriage Ethnomathematical Norms," *Journal of Indonesian Islam* 18, no. 2 (2024): 579-606, <https://doi.org/10.15642/jiis.2024.18.2.579-606>.

⁵⁷Elisabeth Sundari and Anny Retnowati, "The Fundamental Problems of Implementing Legal Pluralism of Religious in Indonesian Marriage Law and A Proposal to Reform Based on The Pure of Law Theory," *International Journal of Religion* (2024), <https://doi.org/10.61707/zpnnx947>.

contributing to family conflict or coerced separation.⁵⁸ Because such customary prohibitions operate through social and familial pressure rather than through any judicial or administrative process, they fall almost entirely outside the reach of the human rights protections nominally available through the formal legal system, illustrating a further dimension of the protection gap: family autonomy exercised informally, below the threshold of any legal proceeding, may be the hardest form of familial authority for a rights-based legal order to reach at all.⁵⁹

Reproductive autonomy within marriage presents a related but distinct problem. Indonesian family law and much of its surrounding religious commentary have historically presumed that procreation is a central purpose of marriage, a presumption that structures everything from the Marriage Law's stated objective of forming a happy and eternal family based on the One and Only God to religious counseling practices ahead of marriage registration.⁶⁰ Nasution and colleagues' study of the childfree discourse among young Indonesian Muslim academics documents a small but growing constituency arguing, from within Islamic legal reasoning itself, that voluntary childlessness can be reconciled with marital validity and religious obligation, and that couples' reproductive autonomy deserves greater legal and social recognition than current family law culture affords it.⁶¹ While this discourse has not yet produced doctrinal or legislative change, it signals that the boundary between family autonomy and individual autonomy within marriage is being contested not only by external human rights advocacy but by internal reinterpretation of religious sources—a pattern consistent with the broader trajectory this article documents, in which reform pressure in Indonesian family law increasingly originates from reinterpretation of Islamic legal sources rather than from their wholesale rejection.⁶²

Finally, divorce itself has become a site of renegotiated marriage ideals rather than simply a mechanism of marital dissolution. Rinaldo and Fehr's recent ethnographic study of Indonesian Muslim women's divorce narratives finds that many women now frame their right to divorce—and their expectations of what a marriage should provide—explicitly in terms of rights and dignity rather than in the language of familial duty or religious obligation alone, describing a

⁵⁸Ah Fajruddin Fatwa and M. Marliyah, "When Rules and Tradition Collide: A Human Rights Perspective on Legal Policy Denial on Islamic Javanese Marriage Ethnomathematical Norms," *Journal of Indonesian Islam* 18, no. 2 (2024): 579-606, <https://doi.org/10.15642/jiis.2024.18.2.579-606>.

⁵⁹Ah Fajruddin Fatwa and M. Marliyah, "When Rules and Tradition Collide: A Human Rights Perspective on Legal Policy Denial on Islamic Javanese Marriage Ethnomathematical Norms," *Journal of Indonesian Islam* 18, no. 2 (2024): 579-606, <https://doi.org/10.15642/jiis.2024.18.2.579-606>.

⁶⁰Khoiruddin Nasution et al., "The Childfree Discourse in Contemporary Islamic Family Law and Human Rights: Insights from Young Muslim Academics in Indonesia," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026), <https://doi.org/10.32332/milrev.v5i1.11080>.

⁶¹Khoiruddin Nasution et al., "The Childfree Discourse in Contemporary Islamic Family Law and Human Rights: Insights from Young Muslim Academics in Indonesia," *MILRev: Metro Islamic Law Review* 5, no. 1 (2026), <https://doi.org/10.32332/milrev.v5i1.11080>.

⁶²Nabilah Wafiroh and N. Yusuf, "Contemporary Fiqh as an Evaluative Framework for Indonesian Family Law," *Southeast Asian Journal of Islamic Studies* (2026), <https://doi.org/10.66127/835zfz15>.

desire for a better religious and domestic partner in terms that combine religious and rights-based vocabulary.⁶³ This shift in how ordinary Indonesian women talk about marriage and divorce suggests that the gap this article identifies between formal protection and lived experience is not static: it is being narrowed, unevenly and informally, by women's own reinterpretation of what family autonomy should mean, even where formal law and institutional practice have not yet caught up.⁶⁴

Polygamy constitutes a further site of contested family autonomy closely connected to the guardianship and consent problems already discussed. Article 3 of the Marriage Law establishes monogamy as the general rule while permitting a husband to take up to four wives on judicial authorization, contingent on conditions including the first wife's consent, proof of the husband's capacity to support multiple households, and assurance of equal treatment among wives.⁶⁵ Abdillah's review of contemporary judicial practice finds that Religious Courts have generally tightened scrutiny of polygamy applications over the past decade, more frequently rejecting petitions where the stated justification—commonly a first wife's infertility or illness—fails independent verification, suggesting some judicial convergence toward a more protective reading of the statutory conditions.⁶⁶ Yet Al-Rasyid's parallel review cautions that formal judicial tightening has not eliminated informal, unregistered polygamous unions contracted without court authorization specifically to avoid this scrutiny, leaving second and subsequent wives—and their children—without the maintenance and inheritance protections that formal marriage would otherwise provide.⁶⁷ Nashrullah, Ariswanto, and Budiawan's analysis of spousal relations under Indonesian Islamic marriage law read against international human rights instruments argues that this pattern exposes a broader structural weakness: because much of the Marriage Law's protective content is conditioned on formal registration, family autonomy exercised through unregistered marriage—whether polygamous, underage, or interfaith—systematically places the most vulnerable parties outside the reach of the very

⁶³Rachel Rinaldo and Tracy Fehr, "I Have a Right to A Better Imam': Divorce, Islam, and Changing Marriage Ideals in Indonesia," *Critical Asian Studies* 58 (2025): 142-168, <https://doi.org/10.1080/14672715.2025.2578796>.

⁶⁴Rachel Rinaldo and Tracy Fehr, "I Have a Right to A Better Imam': Divorce, Islam, and Changing Marriage Ideals in Indonesia," *Critical Asian Studies* 58 (2025): 142-168, <https://doi.org/10.1080/14672715.2025.2578796>.

⁶⁵H. Al-Rasyid, "Protection of Women's Rights in Islamic Family Law: A Review of Jurisprudence and Legislation in Indonesia," *Samarinda International Journal of Islamic Studies* 2, no. 1 (2025), <https://doi.org/10.64093/sijis.v2i1.605>.

⁶⁶Kudrat Abdillah, "Legal Protection for Women in Marriage Law in Indonesia," *TERAJU* 7, no. 2 (2025), <https://doi.org/10.35961/teraju.v7i02.2484>.

⁶⁷H. Al-Rasyid, "Protection of Women's Rights in Islamic Family Law: A Review of Jurisprudence and Legislation in Indonesia," *Samarinda International Journal of Islamic Studies* 2, no. 1 (2025), <https://doi.org/10.64093/sijis.v2i1.605>.

rights the formal law promises them.⁶⁸ Sakinah and colleagues' recent review of national family law policy reaches a similar conclusion at a more general level, arguing that Indonesia's family law protections for women remain substantially aspirational until registration, enforcement, and judicial consistency problems are addressed in tandem rather than through piecemeal, provision-by-provision reform.⁶⁹

Children's legal identity and custodial protection present a further dimension of the protection gap that operates somewhat independently of the marriage-validity questions already discussed. Constitutional Court Decision No. 46/PUU-VIII/2010 addressed one component of this problem by recognizing a civil law relationship between a child and their biological father regardless of the parents' marital status, provided paternity can be proven—a significant expansion of children's rights beyond the pre-2010 position, under which children born outside a registered marriage were legally recognized only in relation to their mother and her family.⁷⁰ Yet subsequent commentary, including Aziz and Mutakin's analysis of mixed-marriage families, indicates that the practical burden of proving biological paternity, particularly where the father is unwilling to cooperate or where the marriage was never registered in the first place, continues to leave many children without the maintenance, inheritance, and identity documentation benefits the 2010 decision was meant to secure.⁷¹ Birth registration itself remains uneven: children born to unregistered marriages—whether resulting from underage dispensation-avoidance, unregistered polygamy, or unresolved interfaith unions—more frequently lack complete civil registration documents, with downstream consequences for school enrollment, access to public health insurance, and, in the case of children with one foreign parent, citizenship determination under Indonesia's nationality law. Custody determination following divorce adds a further layer: while the Compilation of Islamic Law and prevailing Religious Court practice generally favor maternal custody (*hadhanah*) for young children, enforcement of the paternal maintenance obligations that are meant to accompany that custody arrangement suffers from the same post-divorce enforcement weaknesses already discussed with respect to marital property, leaving custodial mothers disproportionately responsible for children's economic welfare in practice even where the law formally allocates that responsibility jointly.⁷² These compounding gaps—in paternity recognition, birth registration, and maintenance enforcement—illustrate that children's rights

⁶⁸M. Nashrullah, Dery Ariswanto, and Ezra Junsevo Budiawan, "Relation between Married Couple in Indonesian Islamic Marriage Law Perspective Human Right International Instrument," *AHKAM* 4, no. 3 (2025), <https://doi.org/10.58578/ahkam.v4i3.6911>.

⁶⁹Hijriatu Sakinah et al., "Legal Policy on Women's Protection in the National Family Law System," *Indonesian Journal of Gender Justice and Family Law* 1, no. 1 (2026), <https://doi.org/10.65586/ingefal.v1i1.2>.

⁷⁰Constitutional Court of the Republic of Indonesia, Decision No. 46/PUU-VIII/2010 (17 February 2012).

⁷¹Abdul Aziz and Ali Mutakin, "Criticism of Mixed Marriage and Child Citizenship Rights: Family Law Reform in Indonesia," *SHAHIH: Journal of Islamicate Multidisciplinary* 9, no. 2 (2025), <https://doi.org/10.22515/shahih.v9i2.10111>.

⁷²S. Sari, "Analysis of Protection of Women's Rights in Marriage According to Islamic Law and Law in Indonesia," *Justice Law Review* 1, no. 1 (2025), <https://doi.org/10.64317/jlr.v1i1.17>.

within Indonesian family law depend on a chain of procedural steps, any one of which, if unfulfilled, can leave a child without the protection the substantive law otherwise promises.

3.2 Reconstructing Human Rights-Based Protection: Judicial Innovation, Legislative Reform, and the Path Forward

The Constitutional Court has emerged as the single most consequential institutional actor reshaping Indonesian family law's human rights content over the past two decades, repeatedly correcting statutory provisions that the ordinary legislative process had left untouched despite evident tension with constitutional equality guarantees.⁷³ Decision No. 46/PUU-VIII/2010, though decided outside this article's five-year primary window, established the doctrinal foundation on which more recent reform builds: it held that children born outside a legally registered marriage nonetheless possess a civil law relationship—and associated rights, including maintenance and inheritance claims—with their biological father, provided that biological paternity can be proven, not only with their mother's family as the pre-2010 reading of Article 43 of the Marriage Law had held.⁷⁴ Decision No. 22/PUU-XV/2017 extended this trajectory by equalizing the minimum marriage age, reasoning explicitly from children's constitutional rights to health, education, and protection from exploitation rather than from religious doctrine, and thereby modeling a form of constitutional review in which human rights considerations directly override an inherited, religiously-justified statutory distinction. Sania, Simabura, and Andriani's analysis of the decision's aftermath shows that its legal-political effect extended beyond the immediate age question, prompting broader legislative and judicial reconsideration of how child protection norms should be integrated into family law more generally.⁷⁵

This pattern—constitutional review correcting a family law provision that legislative politics had left unaddressed—reflects a structural reality about Indonesian family law reform: because marriage law touches directly on religious doctrine, comprehensive legislative reform is politically costly and rare, making the House of Representatives reluctant to revisit the Marriage Law except when compelled to by judicial ruling, as occurred with the 2019 amendment.⁷⁶ Miqat and colleagues' account of the Marriage Law's contemporary development situates the 2019 amendment as part of a longer historical pattern in which Indonesian marriage law has evolved through episodic, externally triggered revision—colonial-era religious group-specific ordinances, the 1974 unification compromise, and now

⁷³Mark Cammack, Adriaan Bedner, and Stijn van Huis, "Democracy, Human Rights, and Islamic Family Law in Post-Soeharto Indonesia," *New Middle Eastern Studies* 5 (2015), <https://doi.org/10.29311/nmes.v5i0.2656>.

⁷⁴Constitutional Court of the Republic of Indonesia, Decision No. 46/PUU-VIII/2010 (17 February 2012).

⁷⁵Yori Sania, Charles Simabura, and Henny Andriani, "Politik Hukum Batas Minimum Usia Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017," *Lareh Law Review* 2, no. 1 (2024): 58-72, <https://doi.org/10.25077/llr.2.1.58-72.2024>.

⁷⁶Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (2023), <https://doi.org/10.18860/j-fsh.v15i1.17461>.

constitutionally triggered amendment—rather than through periodic comprehensive review.⁷⁷ Jambunanda's analysis of the transformation from classical to contemporary Islamic-based marriage law similarly emphasizes that doctrinal modernization within Religious Courts has often preceded, and created pressure for, corresponding statutory change, rather than the reverse.⁷⁸

A second reform pathway operates through doctrinal reinterpretation from within Islamic legal sources rather than through constitutional confrontation. Wafiroh and Yusuf propose using contemporary fiqh—jurisprudential reasoning attentive to changed social conditions—as an evaluative framework for testing whether specific Compilation of Islamic Law provisions, including wali nikah and inheritance rules, continue to serve the *maqasid al-shari'ah* that originally justified them, arguing that provisions failing this test should be reformed through *ijtihad* rather than defended as immutable.⁷⁹ Setyawan and colleagues apply a parallel *maslahah*-based argument specifically to the minimum marriage age reform, showing that the equalized nineteen-year threshold can be justified simultaneously by reference to the UN Sustainable Development Goals' child marriage elimination target and to classical *maslahah* reasoning about preventing harm to underage brides, thereby offering a doctrinal bridge between international human rights language and Islamic legal reasoning that is more likely to gain acceptance among religiously conservative constituencies than a purely secular rights argument.⁸⁰ This doctrinal-bridging strategy matters because, as several of the sources reviewed in this article emphasize, family law reform imposed purely through external human rights pressure, without an accompanying internal religious justification, has historically faced greater resistance and slower implementation in Indonesia than reform that can be framed as consistent with, rather than opposed to, Islamic legal tradition.⁸¹

A third pathway is institutional and administrative rather than doctrinal: strengthening the mechanisms through which already-recognized rights are enforced. The marriage agreement (*perjanjian perkawinan*)—a prenuptial or postnuptial contract permitted under Article 29 of the Marriage Law—has received renewed scholarly and judicial attention as an underused instrument for protecting wives' and children's property interests independent of

⁷⁷Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (2023), <https://doi.org/10.18860/j-fsh.v15i1.17461>.

⁷⁸Ahmad Jamaludin Jambunanda, "Transformation of Classical Law to Contemporary in Islamic-Based Marriage Law to Respond to Legal Developments in Indonesia," *Al Ahkam* 19, no. 2 (2023), <https://doi.org/10.37035/ajh.v19i2.9551>.

⁷⁹Nabilah Wafiroh and N. Yusuf, "Contemporary Fiqh as an Evaluative Framework for Indonesian Family Law," *Southeast Asian Journal of Islamic Studies* (2026), <https://doi.org/10.66127/835zfz15>.

⁸⁰Edy Setyawan et al., "Legal Age for Marriage: SDGs and *Maslahah* Perspectives in Legal Policy Change in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023), <https://doi.org/10.24090/mnh.v17i2.9506>.

⁸¹M. Nashrullah, Dery Ariswanto, and Ezra Junsevo Budiawan, "Relation between Married Couple in Indonesian Islamic Marriage Law Perspective Human Right International Instrument," *AHKAM* 4, no. 3 (2025), <https://doi.org/10.58578/ahkam.v4i3.6911>.

default marital property rules.⁸² Muhibbulloh and Nurcholis argue that wider use of marriage agreements, combined with clearer judicial guidance on their enforceability, could allow spouses to pre-negotiate protective terms—covering property division, debt allocation, and even certain custody expectations—before disputes arise, reducing reliance on post-divorce litigation that, as documented in the previous section, often fails to deliver effective protection.⁸³ Complementing this contractual approach, Suadi and colleagues' account of the E-MOSI CAPER digital application illustrates a judiciary-led response to the enforcement gap in post-divorce maintenance and property compliance, using case-tracking technology to increase transparency and follow-up on court orders that would otherwise depend on a former spouse's voluntary compliance.⁸⁴ Neither innovation is a substitute for statutory reform, but both demonstrate that meaningful protection gains are achievable within the existing legal architecture, without awaiting the comprehensive legislative overhaul that Indonesian political dynamics make difficult to secure.⁸⁵

A fourth pathway concerns Indonesia's international human rights commitments, particularly CEDAW, and the extent to which its domestic reservations continue to constrain the treaty's normative influence on family law. Saraswati's comparative analysis of CEDAW reservations across Indonesia, Malaysia, and Brunei finds that Indonesia's remaining reservation to Article 16—covering equal rights in marriage and family relations—continues to provide a formal legal basis for domestic family law provisions, including asymmetric guardianship and inheritance rules, to be defended as consistent with treaty obligations despite substantively departing from Article 16's equality standard.⁸⁶ Withdrawing or narrowing this reservation would not, on its own, override the Compilation of Islamic Law or the Marriage Law's religious-validity requirement, both of which would still require domestic legislative or judicial action to amend; but it would remove a significant rhetorical and legal shield currently available to defenders of the status quo, and would align Indonesia's formal international

⁸²M. Muhibbulloh and Mochamad Nurcholis, "Marriage Agreement as an Instrument for Protecting the Rights of Wives and Children in Indonesian Family Law," *Jurnal Multidisiplin Madani* 6, no. 3 (2026), <https://doi.org/10.55927/mudima.v6i3.9>.

⁸³M. Muhibbulloh and Mochamad Nurcholis, "Marriage Agreement as an Instrument for Protecting the Rights of Wives and Children in Indonesian Family Law," *Jurnal Multidisiplin Madani* 6, no. 3 (2026), <https://doi.org/10.55927/mudima.v6i3.9>.

⁸⁴Amran Suadi, Mardi Candra, Fahadil Amin Al Hasan, and Gugun Gumilar, "Legal Protection of Women's and Children's Rights after Divorce through the E-MOSI CAPER App," *Novelty Law Journal* 15, no. 1 (2024): 35-52, <https://doi.org/10.26555/novelty.v15i1.a27347>.

⁸⁵M. Muhibbulloh and Mochamad Nurcholis, "Marriage Agreement as an Instrument for Protecting the Rights of Wives and Children in Indonesian Family Law," *Jurnal Multidisiplin Madani* 6, no. 3 (2026), <https://doi.org/10.55927/mudima.v6i3.9>.

⁸⁶A. N. S. A. Saraswati, "The Discourse of Reservations to CEDAW on Women's Rights in Malaysia, Brunei, and Indonesia," *Indonesian Journal of International Law* 19, no. 4 (2022): 515-538, <https://doi.org/10.17304/ijil.vol19.4.1>.

commitments more closely with the equality language already present in its own Constitution and Human Rights Law.⁸⁷

Drawing these four pathways together, this article proposes a reform agenda organized around three priorities. First, dispensation criteria under Article 7(2) of the Marriage Law should be tightened through a Supreme Court regulation establishing uniform, restrictively defined "compelling reasons" and mandatory consideration of the child's best interests, closing the implementation gap documented in Section 3.1 between the 2019 age reform's text and its practical undermining through routine dispensation grants.⁸⁸ Second, guardianship doctrine should be revisited through the doctrinal-bridging strategy modeled by Wafiroh and Yusuf and Setyawan and colleagues, using *maslahah* and *maqasid* reasoning to argue for guardianship as a protective formality rather than a paternal veto, a reform more likely to succeed politically than a purely secular equality argument given Indonesia's religiously plural but majority-Muslim demographic composition.⁹⁰ Third, enforcement infrastructure exemplified by E-MOSI CAPER and expanded promotion of marriage agreements should be scaled nationally and integrated across both Religious and District Courts, ensuring that formally recognized rights to post-divorce maintenance, marital property, and inheritance are not, as they too often currently are, contingent on a former spouse's goodwill or a disadvantaged party's capacity to sustain costly execution proceedings.⁹¹

Each of the three reform priorities identified above can be further specified. Within the first priority—tightening dispensation criteria—reform should include mandatory involvement of a court-appointed social worker or child protection officer in every dispensation proceeding, a requirement not currently uniform across Religious Court jurisdictions, together with mandatory post-dispensation monitoring of the resulting marriage's health, education, and welfare outcomes, building on the child-centered reasoning the Constitutional Court itself employed in Decision No. 22/PUU-XV/2017.⁹² Within the second priority—guardianship doctrine—reform advocates should prioritize test-case litigation and academic-judicial

⁸⁷A. N. S. A. Saraswati, "The Discourse of Reservations to CEDAW on Women's Rights in Malaysia, Brunei, and Indonesia," *Indonesian Journal of International Law* 19, no. 4 (2022): 515-538, <https://doi.org/10.17304/ijil.vol19.4.1>.

⁸⁸M. Nawawi et al., "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 1 (2022): 117-134, <https://doi.org/10.18326/ijtihad.v22i1.117-134>.

⁸⁹Constitutional Court of the Republic of Indonesia, Decision No. 22/PUU-XV/2017 (13 December 2018).

⁹⁰Nabilah Wafiroh and N. Yusuf, "Contemporary Fiqh as an Evaluative Framework for Indonesian Family Law," *Southeast Asian Journal of Islamic Studies* (2026), <https://doi.org/10.66127/835zff15>.

⁹¹Amran Suadi, Mardi Candra, Fahadil Amin Al Hasan, and Gugun Gumilar, "Legal Protection of Women's and Children's Rights after Divorce through the E-MOSI CAPER App," *Novelty Law Journal* 15, no. 1 (2024): 35-52, <https://doi.org/10.26555/novelty.v15i1.a27347>.

⁹²M. Nawawi et al., "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 1 (2022): 117-134, <https://doi.org/10.18326/ijtihad.v22i1.117-134>.

⁹³Constitutional Court of the Republic of Indonesia, Decision No. 22/PUU-XV/2017 (13 December 2018).

dialogue over legislative amendment, since amending the Compilation of Islamic Law's guardianship provisions directly would require political capital not currently available, whereas Religious Court judges already possess interpretive discretion to constrain a guardian's veto power in individual cases where guardianship is exercised for reasons unrelated to the ward's welfare, an approach consistent with the *maslahah*-based reasoning several of the sources reviewed in this article endorse.^{94,95} Within the third priority—enforcement infrastructure—national scaling of digital case-tracking should be paired with standardized data collection on post-divorce compliance rates across jurisdictions, currently unavailable at a national level, which would allow policymakers to identify which regions or court types show the weakest enforcement and target technical assistance accordingly.⁹⁶

A fourth, cross-cutting priority follows from the legal literacy and access-to-justice discussion above: judicial training curricula for Religious and District Court judges should explicitly incorporate human rights and child-protection frameworks alongside classical *fiqh* and civil procedure training, so that the doctrinal bridging strategy modeled by recent *maslahah*- and *maqasid*-based scholarship is reflected not only in academic literature but in the reasoning judges actually apply in dispensation, guardianship, and post-divorce cases.⁹⁷ Indonesia's Judicial Commission and the Supreme Court's own training institutions are well positioned to lead this effort, given their existing role in setting judicial education standards, and doing so would help ensure that the doctrinal reinterpretation documented throughout this article—currently concentrated in academic scholarship and isolated judicial decisions—becomes a more consistent feature of everyday family law adjudication across Indonesia's Religious and District Courts.⁹⁸

Beyond judicial, doctrinal, and institutional reform, closing the gap between formal protection and lived experience documented in Section 3.1 depends substantially on legal literacy and access to justice at the community level, particularly in the rural and economically marginalized settings where informal marriage, uncontested dispensation, and unregistered

⁹⁴Nabilah Wafiroh and N. Yusuf, "Contemporary Fiqh as an Evaluative Framework for Indonesian Family Law," *Southeast Asian Journal of Islamic Studies* (2026), <https://doi.org/10.66127/835zfv15>.

⁹⁵M. Parinduri and M. Adly, "Wali Nikah Sebagai Rukun Perkawinan dalam Hukum Islam: Analisis Normatif-Komparatif Mazhab Fikih dan Rekonstruksinya dalam Hukum Keluarga Islam Indonesia," *Tabayyanu: Journal of Islamic Law* (2026), <https://doi.org/10.66174/dsy9gw14>.

⁹⁶Amran Suadi, Mardi Candra, Fahadil Amin Al Hasan, and Gugun Gumilar, "Legal Protection of Women's and Children's Rights after Divorce through the E-MOSI CAPER App," *Novelty Law Journal* 15, no. 1 (2024): 35-52, <https://doi.org/10.26555/novelty.v15i1.a27347>.

⁹⁷Nabilah Wafiroh and N. Yusuf, "Contemporary Fiqh as an Evaluative Framework for Indonesian Family Law," *Southeast Asian Journal of Islamic Studies* (2026), <https://doi.org/10.66127/835zfv15>.

⁹⁸Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (2023), <https://doi.org/10.18860/j-fsh.v15i1.17461>.

polygamy are most concentrated.⁹⁹¹⁰⁰ Sakinah and colleagues argue that national family law policy has historically underinvested in outreach explaining registration requirements, dispensation criteria, and post-divorce rights to communities most likely to rely on customary or religious dispute resolution rather than the formal court system, and that closing this literacy gap is a precondition for any of the doctrinal or institutional reforms discussed above to have their intended protective effect.¹⁰¹ Abdillah similarly emphasizes that paralegal and village-level facilitation programs—already piloted in some Religious Court jurisdictions to assist unrepresented litigants, particularly women, in filing maintenance and property claims—should be expanded nationally as a low-cost complement to the E-MOSI CAPER model discussed above, since digital case-tracking tools are of limited value to parties who lack the legal knowledge or literacy to initiate a claim in the first place.¹⁰²

Read comparatively, Indonesia's trajectory—judicially-triggered reform, doctrinal bridging through *maslahah* and *maqasid* reasoning, and incremental institutional innovation—resembles patterns documented in other plural legal systems attempting to reconcile religious family law with international human rights commitments, though Indonesia's reliance on constitutional review as the primary reform trigger is comparatively pronounced.¹⁰³ This suggests that further progress is more likely to come from continued strategic litigation and doctrinal reinterpretation within the existing pluralist framework than from a wholesale legislative unification of Indonesian family law along secular civil-law lines, an option that has been periodically proposed but has consistently failed to gain political traction given the continued salience of religious and customary identity in Indonesian family life.¹⁰⁴ None of these recommendations requires Indonesia to abandon the accommodation of religious and customary family law that has defined its legal system since independence. Each instead treats family autonomy and human rights not as inherently opposed but as capable of mutual reinforcement, provided that the institutions mediating family autonomy—courts, religious authorities, and customary bodies alike—are held to a consistent, child- and welfare-centered

⁹⁹Hijriatu Sakinah et al., "Legal Policy on Women's Protection in the National Family Law System," *Indonesian Journal of Gender Justice and Family Law* 1, no. 1 (2026), <https://doi.org/10.65586/ingefal.v1i1.2>.

¹⁰⁰Mies Grijns and H. Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society* 5 (2018): 453-466, <https://doi.org/10.1017/als.2018.9>.

¹⁰¹Hijriatu Sakinah et al., "Legal Policy on Women's Protection in the National Family Law System," *Indonesian Journal of Gender Justice and Family Law* 1, no. 1 (2026), <https://doi.org/10.65586/ingefal.v1i1.2>.

¹⁰²Kudrat Abdillah, "Legal Protection for Women in Marriage Law in Indonesia," *TERAJU* 7, no. 2 (2025), <https://doi.org/10.35961/teraju.v7i02.2484>.

¹⁰³Mark Cammack, Adriaan Bedner, and Stijn van Huis, "Democracy, Human Rights, and Islamic Family Law in Post-Soeharto Indonesia," *New Middle Eastern Studies* 5 (2015), <https://doi.org/10.29311/nmes.v5i0.2656>.

¹⁰⁴Elisabeth Sundari and Anny Retnowati, "The Fundamental Problems of Implementing Legal Pluralism of Religious in Indonesian Marriage Law and A Proposal to Reform Based on The Pure of Law Theory," *International Journal of Religion* (2024), <https://doi.org/10.61707/zpnnx947>.

interpretive standard rather than left to exercise unreviewed discretion over the most consequential decisions in family members' lives.¹⁰⁵

4. Conclusion

The source of Indonesian family law's protection gaps is structural rather than merely a matter of insufficiently protective rules on paper. The Marriage Law and its surrounding legal architecture—the Compilation of Islamic Law, customary practice, and administrative registration requirements—formally incorporate language closely tracking constitutional and international human rights standards, including equality before the law and the best interests of the child. The gap between that formal language and lived family law experience arises instead from the multiplication of interpretive forums that legal pluralism permits, from weak enforcement infrastructure for already-recognized rights such as post-divorce maintenance and marital property division, and from the persistence of informal, unregistered marriage practices—underage dispensation-avoidance, unregistered polygamy, and unresolved interfaith unions—that place the parties most in need of protection outside the formal legal system's reach entirely. Notwithstanding these gaps, Indonesian family law is not static, and the past five years in particular show a discernible, if uneven, trajectory toward more rights-protective interpretation and practice. The Constitutional Court's equalization of the minimum marriage age in Decision No. 22/PUU-XV/2017, the growing academic and judicial application of *maslahah* and *maqasid al-shari'ah* reasoning to justify gender-equal and child-protective reform from within Islamic legal sources, the development of digital enforcement tools such as E-MOSI CAPER, and the renewed promotion of marriage agreements as a protective instrument together demonstrate that meaningful reform is achievable without abandoning Indonesia's accommodation of religious and customary family law. Equally significant is the evidence, drawn from Rinaldo and Fehr's account of Indonesian women's own divorce narratives and from the emerging childfree discourse documented by Nasution and colleagues, that reinterpretation of family autonomy is occurring not only through formal legal institutions but through ordinary Indonesian women and couples themselves renegotiating what marriage, family duty, and reproductive choice should mean within a framework they continue to regard as religiously and culturally legitimate

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¹⁰⁵Mark Cammack, Adriaan Bedner, and Stijn van Huis, "Democracy, Human Rights, and Islamic Family Law in Post-Soeharto Indonesia," *New Middle Eastern Studies* 5 (2015), <https://doi.org/10.29311/nmes.v5i0.2656>.



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