



The Role of Marriage Law in Optimizing the Protection of Children's Rights

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Abstract

This study aims to analyze the role of marriage law in protecting children's rights and identify factors that affect the effectiveness of its implementation in the field. This study uses a juridical-sociological approach with a descriptive-analytical nature. Data was obtained through literature studies on laws and regulations and scientific literature, as well as field research through interviews with related parties. The results of the study show that although marriage law normatively regulates parents' obligations to children, its implementation still faces various obstacles, such as unrecorded marriage practices, weak enforcement of court decisions related to child support, low awareness of family law, and disharmony between state law, Islamic law, and social practices. In addition, the principle of the best interests of children has not been fully internalized in the practice of marriage law. This study concludes that optimizing the protection of children's rights through marriage law requires strengthening systemic legal implementation, increasing public legal awareness, and integrating the values of maqāṣid al-syarī'ah as the foundation for the benefit of children. This research is expected to make a theoretical and practical contribution to the development of family law and child protection policies in Indonesia.

Keywords: *Marriage Law; Protection of Children's Rights; The Best Interests of the Child*

Abstrak

Penelitian ini bertujuan untuk menganalisis peran hukum perkawinan dalam melindungi hak anak serta mengidentifikasi faktor-faktor yang memengaruhi efektivitas implementasinya di lapangan. Penelitian ini menggunakan pendekatan yuridis-sosiologis dengan sifat deskriptif-analitis. Data diperoleh melalui studi kepustakaan terhadap peraturan perundang-undangan dan literatur ilmiah, serta penelitian lapangan melalui wawancara dengan pihak-pihak terkait. Hasil penelitian menunjukkan bahwa meskipun hukum perkawinan secara normatif telah mengatur kewajiban orang tua terhadap anak, implementasinya masih menghadapi berbagai kendala, seperti praktik perkawinan tidak tercatat, lemahnya penegakan putusan pengadilan terkait nafkah anak, rendahnya kesadaran hukum keluarga, serta disharmoni antara hukum negara, hukum Islam, dan praktik sosial. Selain itu, prinsip kepentingan terbaik bagi anak belum sepenuhnya terinternalisasi dalam praktik hukum perkawinan. Penelitian ini menyimpulkan bahwa optimalisasi perlindungan hak anak melalui hukum perkawinan menuntut penguatan implementasi hukum secara sistemik, peningkatan kesadaran hukum masyarakat, serta integrasi nilai-nilai maqāṣid al-syarī'ah sebagai landasan kemaslahatan anak. Penelitian ini diharapkan dapat memberikan kontribusi teoretis dan praktis bagi pengembangan hukum keluarga dan kebijakan perlindungan anak di Indonesia.

Kata Kunci: Hukum Perkawinan; Perlindungan Hak Anak; Kepentingan Terbaik Anak

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Introduction

In social practice in society, marriage law has not been fully able to provide optimal protection for children's rights.¹ One of the real problems is the prevalence of unregistered marriages (nikah siri) which has a direct impact on the unclear legal status of children, especially related to the right to identity, maintenance, inheritance, and state protection.² This condition shows that there is a gap between the ideal legal norms of marriage and the social reality that is developing in the field. In addition, the high divorce rate also raises various problems in fulfilling children's rights after the breakup of marriage. In many cases, divorce is not followed by the fulfillment of parental obligations on an ongoing basis, especially in terms of child support, parenting, and education.³ Although courts have established such obligations in their rulings, weak oversight and enforcement mechanisms have often led to the neglect of children's rights.

Another problem that is no less important is the practice of child marriage that is still ongoing with various social, cultural, and economic justifications.⁴ Child marriage is not only contrary to the provisions of national marriage law, but also has a serious impact on the violation of children's rights to education, health, and psychological development.⁵ This phenomenon shows the limited role of marriage law in preventing practices that are detrimental to the future of children.⁶ In the context of parenting, the inequality of the role of parents after divorce is also a real problem. Children are often under the care of the mother without adequate economic and psychological support from the father.⁷ In fact, marriage law mandates joint responsibility for both parents in ensuring the growth and development of children. This imbalance has an impact on the quality of parenting and the overall well-being of children.

¹ Marina Plesons dkk., "Updated Research Gaps on Ending Child Marriage and Supporting Married Girls for 2020–2030," *Reproductive Health* 18, no. 1 (2021): 152, <https://doi.org/10.1186/s12978-021-01176-x>.

² Nailur Rahmi dkk., "Building Legal Compliance: A Study on the Practice of Unregistered Marriages in Tanjung Raya Subdistrict, Agam Regency, West Sumatra, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025): 416–37, <https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/28306>.

³ Sixbert Sangwa dan Placide Mutabazi, "Rights-Based Reforms and the Corporate-Cooperative Family Paradox: A Seven-Country Analysis of Marital Dissolution in Africa (1995-2025)," *Available at SSRN* 5368174, 2025, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5368174.

⁴ Nicolla Eddy Wopara, *Child Marriage in Africa: The Effectiveness of International Organizations in Ending Child Marriage in Africa*, 2025, <https://escholarship.org/uc/item/6dq3b8b5>.

⁵ Quentin Wodon dkk., *Economic impacts of child marriage: global synthesis report*, 2017, <https://repositorio.minedu.gob.pe/handle/20.500.12799/5588>.

⁶ Lailatul Magfiroh dan Erny Herlin Setyorini, "CHILD MARRIAGE DISPENSATION FROM THE PERSPECTIVE OF CHILD PROTECTION," *Akrab Juara: Jurnal Ilmu-ilmu Sosial* 10, no. 4 (2025): 1767–81, <https://akrabjuara.com/index.php/akrabjuara/article/view/2644>.

⁷ Luyanda Mathe dan Maditobane R. Lekganyane, "The psychosocial barriers and enablers for managing growing up with an absent father," *Health SA Gesondheid*, 10 September 2025, a2911, <https://doi.org/10.4102/HSAG.v30i0.2911>.

Theoretically, marriage law is positioned as a normative instrument that not only regulates the relationship between husband and wife, but also guarantees comprehensive protection of the rights of children as legal subjects.⁸ From the perspective of national law, Islamic law, and international conventions on children's rights, the principle of parental responsibility, the best interest of the child, and justice in parenting are the main foundations in maintaining the sustainability of children's rights. However, in practice, the theory has not been fully internalized in the legal behavior of the community and law enforcement officials.⁹ The gap between theory and reality is evident in the theoretical assumption that marriage registration will automatically guarantee the protection of children's rights. In the reality on the ground, there are still many unrecorded marriages that take place with social and religious legitimacy, so that the protection of children's rights promised by marriage law theory becomes ineffective. This shows that legal-formal theory is not yet fully able to answer the social and cultural complexity of society.

Furthermore, the theory of marriage law emphasizes that court decisions are binding and able to ensure the fulfillment of children's rights after divorce, especially related to alimony and upbringing.¹⁰ However, the reality shows that the enforcement and supervision mechanisms for the implementation of these decisions are weak, so that parental obligations are often ignored without significant legal consequences. This condition shows that there is a gap between legal compliance theory and ongoing social practice. In the perspective of child protection, theory places the principle of the best interests of the child as the main consideration in every marriage law policy and decision. However, in practice, administrative, formalistic, and parental considerations are often more dominant than the needs and well-being of the child. This indicates that the child-centered theoretical orientation has not been fully implemented substantively.

A number of previous studies have shown that marriage law has a strategic position in ensuring the protection of children's rights, especially in the aspects of legal status, alimony, and parenting. Normative studies confirm that the Marriage Law and its derivative regulations have regulated parents' obligations to children quite

⁸ Denys Sydorenko dkk., "Legal Framework and Practical Dimensions of Marital and Family Rights: A Doctrinal and Comparative Legal Review," *Science* 14 (2025): 100127, <https://premierscience.com/wp-content/uploads/2025/10/5-pjs-25-1336.pdf>.

⁹ Achmad Muchtarom dan Azis Budianto, "Progressive Legal Reform as an Effort to Address Inequality in Law Enforcement and Strengthen Social Cohesion in Indonesia," *Jurnal Greenation Sosial dan Politik* 3, no. 4 (2025): 866–74, <https://greenationpublisher.org/JGSP/article/view/508>.

¹⁰ Nanda Maretta Tamba dan Fitria Olivia, "FATHER'S RESPONSIBILITY TOWARDS CHILDREN AFTER DIVORCE (STUDY OF DECISION NUMBER 11/PDT. G/2025/PN. PMS)," *International Journal of New Approaches to Law and Rationality in Nationhood, Governance, and Rights Advocacy* 1, no. 1 (2025): 484–92, <https://jurnal.unsaka.ac.id/index.php/nalarnagara/article/view/235>.

comprehensively, both in the condition of a complete marriage and post-divorce.¹¹ However, this study generally stops at the analysis of legal texts and has not explored in depth the effectiveness of its implementation in social reality. Other research with a juridical-sociological approach reveals that there is a gap between the norms of marriage law and societal practices, especially in the case of unregistered marriages and divorce.¹² These studies have found that children are often the most vulnerable due to weak formalistic legal protections. Although marriage law recognizes children's rights to maintenance and upbringing, in practice these obligations are often ignored by parents without effective enforcement mechanisms.

Research focusing on child marriage confirms that the practice remains a serious challenge to the protection of children's rights. These studies show that although marriage laws have undergone reforms to limit the age of marriage, cultural, economic, and religious legitimacy are still strong reasons for child marriage.¹³ Previous research has emphasized the prevention aspect of child marriage, but has not specifically linked it to optimizing the role of marriage law in the sustainable protection of children's rights.¹⁴

The novelty of this research lies in the effort to formulate the role of marriage law not only as a normative instrument that regulates the relationship between husband and wife, but as a strategic and operational mechanism in the child rights protection system that is oriented towards the best interests of the child. In contrast to previous research that tends to separate the study of marriage law and child protection or stop at normative analysis, this study integrates the analysis of marriage law with the reality of implementation in the field to assess the extent to which the law really functions to protect children's rights substantively.

Method

This study uses a juridical-sociological approach (socio-legal research) with the nature of descriptive-analytical research.¹⁵ This approach was chosen because the study not

¹¹ Anas Tharakan, "Trends, Impacts, and Emerging Perspectives on Divorce in Kerala- a Review Approach," *Discover Global Society* 3, no. 1 (2025): 62, <https://doi.org/10.1007/s44282-025-00199-0>.

¹² Gugun Gumilar, "Legal Reasoning Judges in Determining Marriage Dispensation and Its Implications for Children's Rights in Indonesia," *SMART: Journal of Sharia, Traditon, and Modernity*, 2025, 80–97, <https://ejournal.radenintan.ac.id/index.php/smart/article/view/20014>.

¹³ Yvette Efevbera dan Jacqueline Bhabha, "Defining and Deconstructing Girl Child Marriage and Applications to Global Public Health," *BMC Public Health* 20, no. 1 (2020): 1547, <https://doi.org/10.1186/s12889-020-09545-0>.

¹⁴ Gumilar, "Legal Reasoning Judges in Determining Marriage Dispensation and Its Implications for Children's Rights in Indonesia."

¹⁵ Faisal Ananda Arfa dan Watni Marpaung, *Metodologi Penelitian Hukum Islam: Edisi Revisi* (Prenada Media, 2018), <https://books.google.com/books?hl=id&lr=&id=IN-2DwAAQBAJ&oi=fnd&pg=PA1&dq=metodologi+penelitian+hukum&ots=drLkL6Bi4a&sig=Hjf7P1kajMxjz0fnep8NG0thGPA>.

only examines the legal norms of marriage textually, but also examines how these norms are implemented in social and institutional practices related to the protection of children's rights. This type of research is empirical legal research combined with normative studies.¹⁶ The normative aspect is used to analyze laws and regulations related to marriage law and child protection, such as the Marriage Law, the Compilation of Islamic Law, the Child Protection Law, and international instruments related to children's rights. Meanwhile, the empirical aspect is used to examine the reality of the implementation of marriage law in ensuring the protection of children's rights in the field. The approaches used in this study include a statutory approach and a conceptual approach. The legislative approach is used to systematically examine the substance of marriage law and child protection. Conceptual approaches are used to understand the concept of protecting children's rights, the best interests of the child, and parental responsibilities.

The data sources in this study consist of primary data and secondary data. Primary data was obtained through in-depth interviews with relevant informants, such as religious court judges, KUA officers, child protection agency officials, and parents or guardians who have experienced firsthand the legal issues of marriage and child protection. Secondary data is obtained from primary legal materials in the form of laws and regulations and court decisions, secondary legal materials in the form of books, scientific journals, and previous research results, as well as tertiary legal materials such as legal dictionaries and encyclopedias. Data collection techniques are carried out through library research and field research. Literature studies are used to collect and review legal materials and literature relevant to the research topic. Field research was conducted through interviews and limited observations to obtain an empirical picture of the implementation of marriage law in the protection of children's rights. The data analysis in this study was carried out qualitatively using a descriptive-interpretive analysis method.¹⁷ The data that has been collected is analyzed through the stages of data reduction, data presentation, and conclusion drawn. The analysis was carried out by comparing the applicable legal norms and practices in the field.

Results and Discussion

Normative Protection

The results of the study show that normatively, marriage law in Indonesia has contained quite clear provisions regarding the protection of children's rights, both in the

¹⁶ Qadriani Arifuddin dkk., *Metodologi Penelitian Hukum* (PT. Sonpedia Publishing Indonesia, 2025), https://books.google.com/books?hl=id&lr=&id=fDE_EQAAQBAJ&oi=fnd&pg=PR1&dq=metodologi+penelitian+hukum&ots=ZqhFrn2A6y&sig=99qa6xkxUpdPirvAALqdWeD-owY.

¹⁷ Kornelius Benuf dan Muhamad Azhar, "Metodologi penelitian hukum sebagai instrumen mengurai permasalahan hukum kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33, <https://ejournal2.undip.ac.id/index.php/gk/article/view/7504>.

context of a complete marriage and post-divorce. Provisions regarding parental obligations in fulfilling maintenance, parenting, education, and child protection have been regulated in the Marriage Law, Compilation of Islamic Law, and Child Protection Law. However, field findings show that the existence of these legal norms is not fully proportional to the factual level of protection of children's rights. This study found that the practice of unrecorded marriage is still a dominant problem that has a direct impact on the fulfillment of children's rights. Children born out of wedlock are not recorded as having difficulties in obtaining identity documents, certainty of alimony, and adequate legal protection. This condition shows that marriage registration as a legal instrument has not been fully understood by society as an integral part of the protection of children's rights.

In the context of divorce, the results of the study show that although the court has established the obligation of support and child care in its decision, the implementation of the decision is often not effective. Many cases show that child support obligations are not consistently fulfilled by parents, especially fathers, without strict supervision and sanction mechanisms. As a result, the fulfillment of children's rights is highly dependent on the economic ability and psychological resilience of the mother. This study also found that the principle of the best interest of the child has not been fully implemented substantively in the practice of marriage law. In determining custody and resolving family disputes, formal and administrative considerations still tend to be more dominant than in-depth analysis of the psychological, social, and developmental needs of children. This causes the protection of children's rights to be procedural, not based on long-term welfare.

In terms of legal awareness, the results of the study show that public understanding of marriage law is still limited to the legality aspect of the husband-wife relationship, while the dimension of parental responsibility for children has not been the main concern. This low level of family law literacy contributes to the weak protection of children's rights, especially in families experiencing conflict or divorce. This study also found that there is a disharmony between state law, Islamic law, and customary practices in the implementation of marriage law. In some cases, customary legitimacy and partial religious understanding are used to justify practices that ignore the interests of children, such as child marriage or neglect of alimony. This shows that the values of child protection contained in Islamic law and national law have not been fully internalized in social practice.

In the perspective of *maqāṣid al-syarī'ah*, the results of the study show that the goals of safeguarding offspring (*ḥifẓ al-nasl*) and the protection of the soul (*ḥifẓ al-nafs*) have not been optimally realized in the implementation of marriage law. Although conceptually marriage law is oriented towards the benefit of the family and children, in practice this orientation is still hampered by structural, cultural, and institutional factors. Overall, the results of this study show that the role of marriage law in the protection of children's rights is still normative and not fully operational. Optimizing the protection of children's rights requires strengthening the implementation of marriage law through increasing public legal

awareness, effective enforcement of court decisions, and synergy between institutions involved in child protection.

Discussion

The practice of unregistered marriage that is still rampant shows the limitations of the legal-formal approach in ensuring the protection of children's rights. Theoretically, marriage registration is positioned as the entrance to legal protection for children. However, field findings suggest that social legitimacy, customs, and religious understanding are often more dominant than adherence to state laws.¹⁸ This confirms the gap between law in the books and law in action, while showing that child protection cannot depend solely on formal legality, but requires a more contextual socio-cultural approach. In the context of divorce, the findings on weak enforcement of child support obligations reinforce criticism of the theoretical assumption that court decisions are automatically effective. This research is in line with the view of Lawrence M. Friedman who emphasized that the legal system only works effectively if it is supported by an enforcement structure and a culture of compliance.¹⁹ Non-compliance with child support judgments shows that marriage law is still losing substantive coercion, so that the protection of children's rights shifts from the legal system to the economic and moral resilience of the individual parents.

Findings related to the lack of internalization of the principle of the best interests for children show that the practice of marriage law is still oriented towards the interests of adults and an administrative approach. Theoretically, the principle of best interest of the child is the main foundation of modern child protection law.²⁰ However, this study shows that this principle has not yet become the dominant paradigm in parenting practices and family dispute resolution. This reinforces the criticism that child protection in marriage law is still procedural, not oriented towards the welfare of children in the long term. The low awareness of family law found in this study shows that the issue of protecting children's rights cannot be separated from the cultural dimension of community law.²¹ These findings

¹⁸ Abdallah Kalaf Al-Raggad, "Administrative Law's Role in Protecting Ethnic and Religious Minorities: Legal Mechanisms, Policy Challenges, and Future Directions," *Central European Journal of Public Policy* 19, no. 2 (2025): 35–55, <https://doi.org/10.2478/cejpp-2025-0008>.

¹⁹ Lawrence M. Friedman, *Law in America: A short history*, vol. 10 (Modern Library, 2002), <https://books.google.com/books?hl=id&lr=&id=CDR8hjdaxboC&oi=fnd&pg=PR7&dq=Lawrence+M.+Friedman+&ots=SmIyURYex4&sig=UTiYk9EQSzxqbiKndBG-y30zuw>.

²⁰ B. Dzotsenidze dan K. Kukhianidze, "PHILOSOPHICAL FOUNDATIONS AND LEGAL MECHANISMS FOR THE PROTECTION OF CHILD RIGHTS," *Sciences of Europe*, no. 169 (2025): 16–23, <https://cyberleninka.ru/article/n/philosophical-foundations-and-legal-mechanisms-for-the-protection-of-child-rights>.

²¹ Lamin Filijeh Daffeh, "The Extent to which Ghana's Laws Comply with International Law to Protect Children's Right to Education: Towards Harmonisation of Law and Culture" (PhD Thesis, Birmingham City University, 2025), <https://www.open-access.bcu.ac.uk/16722/>.

extend previous research by showing that a narrow understanding of marriage law—limited to the legality of the marital relationship—has direct implications for the abandonment of children's rights. Thus, optimizing the legal role of marriage requires a transformation of legal awareness that places children as the main subject, not just the result of marital relations.

The disharmony between state law, Islamic law, and social practices revealed in this study shows that the problem of protecting children's rights is multidimensional. Theoretically, Islamic law through *maqāṣid al-syarī'ah* places the protection of children as part of the custody of the offspring (*ḥifẓ al-nasl*) and the protection of the soul (*ḥifẓ al-nafs*).²² However, when the value of *maqāṣid* is not operationalized in the policy and practice of marriage law, the law actually loses its function of benefit. These findings enrich the *maqāṣid* discourse by emphasizing the importance of an operational approach, not just a normative-conceptual one. In the perspective of *maqāṣid al-syarī'ah*, the findings of this study show that marriage law has not fully functioned as a preventive and protective instrument for children. The practice of child marriage, neglect of alimony, and weak co-parenting show that the goal of child welfare is still reduced by structural and cultural factors.²³ Thus, this study confirms that *maqāṣid* is not sufficiently understood as an abstract goal, but must be translated into concrete legal designs and enforcement mechanisms.

Finally, the findings on weak institutional integration confirm that the protection of children's rights cannot be left to a single legal institution alone. The lack of synergy between religious courts, KUA, and child protection institutions causes marriage law to work partially. This discussion reinforces the novelty of research that optimizing the legal role of marriage requires a systemic approach that integrates legal norms, enforcement, legal culture, and the values of *maqāṣid al-syarī'ah* in one sustainable child protection framework.

Conclusion

This study concludes that marriage law in Indonesia has normatively provided an adequate legal framework to protect the rights of children, both in the context of a complete marriage and post-divorce. The provisions regarding parental obligations, marriage registration, parenting, and fulfillment of child support show that child protection has become an integral part of the substance of marriage law. However, the existence of these

²² Thoat Stiawan dkk., "Judicial Guardianship in Marriage: A Comparative Study of Indonesia's Shāfi'ī and Iran's Ja'fari Schools from a Maqāṣid al Shari'ah Perspective," *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 12, no. 2 (2025): 396–413, <https://repository.um-surabaya.ac.id/id/eprint/10420/>.

²³ Juliet Macdonald, "Rights and responsibilities of unmarried fathers: A model for social workers" (PhD Thesis, University of the Western Cape, 2025), <https://uwcscholar.uwc.ac.za/items/f79d3426-fd8d-410c-b2fc-00d27386e744>.

legal norms has not been fully implemented effectively in social and institutional practices. The results of the study show that the role of marriage law in the protection of children's rights is still dominated by normative-formal approaches and has not functioned substantively. The practice of marriage is not recorded, the weak enforcement of court decisions related to child support, and the lack of internalization of the principle of the best interests for children indicate that there is a gap between the written law (law in the books) and the law in action. As a result, the protection of children's rights relies heavily on the individual awareness of parents, rather than on a strong and integrated legal system.

This study also concluded that low awareness of family law and disharmony between state law, Islamic law, and social practices are significant factors that weaken the effectiveness of marriage law in protecting children's rights. Although Islamic law through *maqāṣid al-syarī'ah* places the protection of children as the primary goal of marriage, these values have not been fully operationalized in the policies and practices of marriage law at the implementation level. Thus, optimizing the role of marriage law in the protection of children's rights requires strengthening systemic legal implementation, not only through improving norms, but also through increasing public legal awareness, the effectiveness of law enforcement, and synergy between institutions involved in child protection. This research emphasizes that marriage law must be positioned as a preventive, protective, and corrective instrument oriented towards the benefit of children, both in the perspective of national law and *maqāṣid al-syarī'ah*.

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