

C2024-J-Rina Shahriyani Shahrullah-Dilemmas faced by judges when granting marriage dispensations for child marriages in West Java, Indonesia

ORIGINALITY REPORT

20%

SIMILARITY INDEX

17%

INTERNET SOURCES

12%

PUBLICATIONS

7%

STUDENT PAPERS

PRIMARY SOURCES

1	Submitted to Indiana University Student Paper	2%
2	ejournal.unib.ac.id Internet Source	1%
3	www.ajhssr.com Internet Source	1%
4	etheses.uin-malang.ac.id Internet Source	1%
5	law.unimelb.edu.au Internet Source	<1%
6	doi.org Internet Source	<1%
7	journal.ugm.ac.id Internet Source	<1%
8	ijsr.internationaljournallabs.com Internet Source	<1%
9	jurnal.fh.unila.ac.id Internet Source	<1%
10	legal.isha.or.id Internet Source	<1%
11	jurnal.iain-bone.ac.id Internet Source	<1%
12	ejurnal.iainpare.ac.id Internet Source	<1%

C2024-J-Rina Shahriyani
Shahrullah-Dilemmas faced by
judges when granting
marriage dispensations for
child marriages in West Java,
Indonesia

by Library UIB

Submission date: 28-Jan-2024 05:51PM (UTC+0700)

Submission ID: 2280018651

File name: 2023_Desember_-_Dilemmas_faced_by_judges_Q3.docx (451.16K)

Word count: 10411

Character count: 59241



Dilemmas faced by judges when granting marriage dispensations for child marriages in West Java, Indonesia

Rina Shahriyani Shahrullah^{1,□}, Firdaus Firdaus², Elza Syarief¹, Aditya Rahmadhony², Ampuan Situmeang¹, Sri Lilestina Nasution², Nurlaily Nurlaily¹, Sari Kistiana², Deden Gumilar Nugraha²

¹Faculty of Law, Universitas Internasional Batam, Baloi-Sei Ladi, Jalan Gajah Mada, Tiban Indah, Kota Batam, Kepulauan Riau, Indonesia

²National Research and Innovation Agency, Jakarta, Indonesia

□Corresponding author: E-mail: rina@uib.ac.id

ABSTRACT

6

Child marriage remains common in Indonesia, particularly in West Java. The highest number of child marriages is seen in the Tasikmalaya and Indramayu regencies. We argue that although the Marriage Law has been amended and the age of marriage consent increased to 19 years to prevent child marriage, the law fails to eliminate child marriages as it allows for a marriage dispensation under emergency conditions, such as a minor's premarital pregnancy. This article is based on empirical research that employs sociolegal approaches to examine the grounds adopted by judges when deciding whether to grant or reject marriage dispensation applications in these two regencies. It was found that judges face dilemmas in examining the applications because they must prioritize the best interests of the children. As a result, their decisions are made by considering emergency and non-emergency conditions related to the child. Legal instruments are found to be more comprehensive in Tasikmalaya than in Indramayu. However, their implementation continues to be ineffective in eliminating child marriage.

70

KEYWORDS: Child marriage, Marriage dispensation, Tasikmalaya, Indramayu, West Java

53

I. INTRODUCTION

90

The phenomenon of marriages between the ages of 15 and 18 years still occurs in Indonesia, although the prevalence of child marriage for girls continues to slowly decline every year. Within a 10-year period, the percentage of child marriages decreased only by 3.5 percentage

points, from 14.67 per cent in 2008 to 11.21 per cent in 2018.¹ The 2018 National Socioeconomic Survey showed that one out of nine women between the ages of 20 and 24 had married before the age of 18 years, which represented 1.2 million individuals, while those who got married for the first time below the age of 15 years were 61.3 thousand.² The exact number of child marriages in 2017 was 1,781,000, placing Indonesia in the seventh ranking in the world for child marriages.³

According to the Convention on the Rights of the Child (CRC), a child is defined as any individual under the age of 18 years.⁴ This definition is also reflected in Indonesian law, specifically Law Number 35 of 2014 on Child Protection, which revised the previous Law Number 22 of 2002. Despite this, the minimum age for marriage in Indonesia, as regulated by Law Number 1 of 1974 on Marriage, has evolved through ongoing efforts.⁵ This evolution culminated in a pivotal moment during Constitutional Court Decision Number 22/PUU-XV/2017, which declared Article 7, paragraph (1) of Law Number 1 of 1974 inconsistent with the 1945 Constitution of the Republic of Indonesia, rendering it without binding force.⁶ This landmark decision prompted an amendment to Law Number 1 of 1974, resulting in Law Number 16 of 2019, which harmonized the minimum age for marriage at 19 years for both males and females.⁷ The ruling underscored the inherent discrimination in the previous law, where the lower minimum age for females compared to males infringed upon the constitutional rights of girls and led to potential underage marriages among women.

However, the amended Marriage Law provides dispensation for marriage under Article 7 (2), allowing for marriage under the age of 19 years. The process of filing applications and court proceedings for marriage dispensation was tightened by the Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Trial Applications for Marriage Dispensation. This regulation standardized the process of adjudicating applications for marriage dispensation. According to Sumner, the amendments to the Marriage Law do not change the fact that there is no absolute minimum age for marriage regulated by law in Indonesia, because parents can apply for marriage dispensation for their children under the age of 19 years.⁸

The reality is that since the issuance of the amended Marriage Law, the number of applications for marriage dispensations to be decided by the religious courts has increased. Figure 1 shows that the increase in marriage dispensation cases decided by the religious courts in 2020 increased significantly, with 2.7 times more cases than in 2019 (from 23,126 cases in 2019 to 63,231 cases in 2020). Likewise, the number of applications for dispensation for marriage in 2021 reached 61,443 cases, more than the cases between 2017 and 2019. A comparison of the cases filed and decided from 2017 to 2021 shows that on average,

¹ BPS et al, 'Prevention of Child Marriage: Acceleration That Cannot Be Delayed' (Jakarta: BPS, 2020), 71, <https://puskapa.org/publikasi/881/>.

² Ibid, 6.

³ 'Child Marriage Prevalence Rate', Girls not Brides, <https://www.girlsnotbrides.org/about-child-marriage/>. Accessed 6 April 2022.

⁴ R. Yeung, 'Review the Acute Effects of Exercise on Mood State' (1996) 36 (1) *Journal of Psychosomatic Research* 33–61, <https://pubmed.ncbi.nlm.nih.gov/8778396/>.

⁵ Ernawati, M. Shohib, E. Baharuddin, and E. Hikmawati, 'Distortion of Marriage Age in Asian Muslim Countries' (2020) *International Conference on Recent Innovations (ICRI 2018)*, <https://doi.org/10.5220/0009952005250531>.

⁶ Decision Number 22/PUU-XV/2017, 2017, https://www.mkri.id/public/content/persidangan/putusan/22_PUU-XV_2017.pdf. Accessed 15 November 2022.

⁷ S.D. Judiasih, S.S. Dajaan, and B.D. Nugroho, *Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur Di Indonesia* (The Contradiction Between Marriage Dispensation and Efforts to Minimize Underage Marriage in Indonesia) (2020) 3 (2) *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 203–222, <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/221>.

⁸ Sumner, *Ending Child Marriage: Indonesia: The Role of the Courts* (Center for Indonesian Law, Islam and Society, University of Melbourne, 2020), <https://law.unimelb.edu.au/centres/cilis/research/publications/cilis-policy-papers/ending-child-marriage-in-indonesia-the-role-of-courts>.

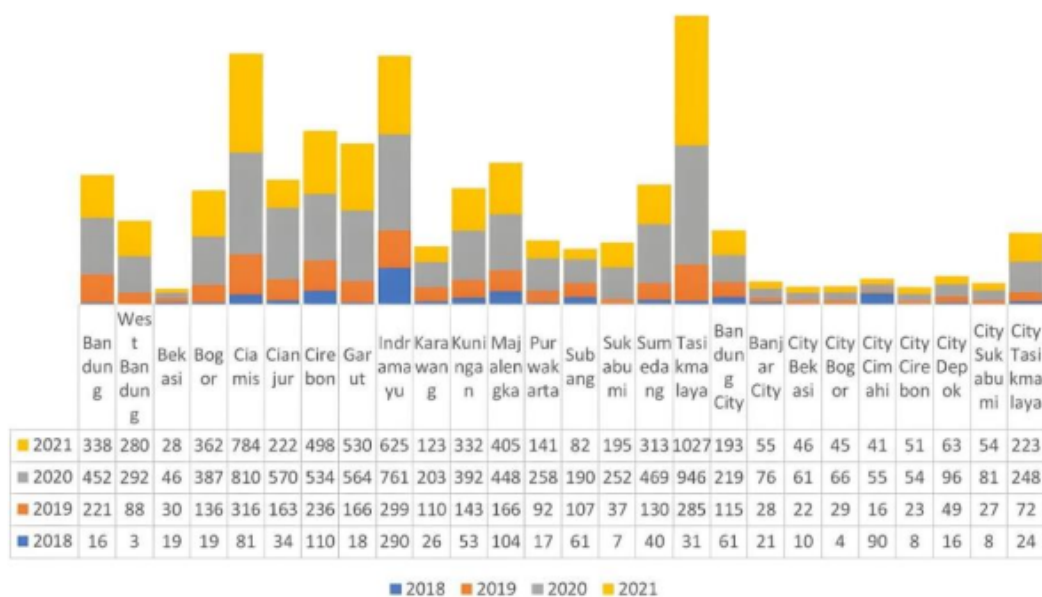


Figure 2. Number of marriage dispensation applications in West Java from 2018 to 2021. Source: Data processed from the Bandung Religious High Court, 2021.

eastern part of West Java is the Tasikmalaya, Ciamis, and Garut regencies, and the northern part is the Indramayu and Cirebon regencies. This research focuses on two regencies: Tasikmalaya and Indramayu, which have the highest number of marriage dispensation applications. Tasikmalaya, is primarily an agrarian area. A majority of its residents are farmers who primarily speak Sundanese. It is known for its strong religious community life and is often referred to as the ‘city of Muslim students’ (Santri city). A ‘santri’ is defined as someone who earnestly seeks to deepen his/her understanding of Islam.¹⁶

In contrast, Indramayu is situated in the northern coastal area of West Java. While it falls within West Java Province, most of its population speak Indramayu Javanese and work in the service sector. Although Indramayu does have students and Islamic boarding schools (*pondok pesantren*), they are not as numerous or popular as in Tasikmalaya.

Figure 2 shows that almost all regencies or cities in West Java have experienced an increase in the number of marriage dispensation applications. Tasikmalaya, Ciamis, and Indramayu were the three regencies with the highest number of marriage dispensation applications in West Java in 2020 and 2021. Even though there was a decrease in marriage dispensation applications in almost all the regencies in West Java in 2021, there was a significant increase in marriage dispensation applications in Tasikmalaya, from 949 cases in 2020 to 1,027 cases in 2021. This shows that child marriages are increasing in this regency. Similarly, Indramayu experienced a major increase in marriage dispensation applications, from 299 cases in 2019 to 761 cases in 2020, although they decreased to 625 cases in 2021. The SI-KABAYAN applications of the Bandung Religious High Court showed that the COVID-19 pandemic did not affect the rise or fall of marriage dispensation cases in this regency. This is reflected by the data at the national level, where the marriage dispensation applications decreased from 63,231 in 2020 to 61,443 in 2021. SI-KABAYAN is an application developed by the Religious High Court of Bandung, which serves as the Religious High Court for the entire jurisdiction of West Java Province. It is designed to monitor and evaluate statistics on various types of cases, including marriage dispensations. This includes the

¹⁶ T. Penyusun, *Kamus Besar Bahasa Indonesia* (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2008) p. 878.

regencies of Tasikmalaya and Indramayu as they fall within the legal jurisdiction of West Java Province.

This research examines the amended Marriage Law and argues that its existence has not suppressed the practice of child marriage. Yet, the Indonesian government is prioritizing human resource development in its Golden Vision 2045 in order to achieve its economic goals by that year, the 100th anniversary of the nation's independence. The coming generation is expected to be productive, innovative, adaptable to change, and ready to seize new opportunities.¹⁷

Child marriage can pose a hindrance to realizing the Golden Vision 2045, considering that child marriage is also correlated with the deprivation of children's rights to education, thereby affecting efforts to enhance the quality of human resources.¹⁸ Hence, the current study focuses on marriage dispensation practices in West Java Province, specifically in the regencies of Tasikmalaya and Indramayu. The increase in marriage dispensation approvals in these regions highlights the contradictions between policies aimed at preventing child marriage and the judges' rulings granting dispensations.

This research employed empirical legal research methods that examine the disparity between laws, policies, orders, and their actual implementation in society. Data collection involved a literature review of Religious Court decisions,¹⁹ statutory documents, and research published in national and international journals. Field research included in-depth interviews with judges of the Religious Court, the Head of the Religious Affairs Office, applicants, and minors in the two regencies. A focus group discussion (FGD) involved relevant stakeholders from government institutions and NGOs. The study adopted a descriptive approach using qualitative analysis with interpretative methods.²⁰ Data analysis involved transcribing recorded files from FGDs and interviews, categorizing them thematically, and developing major themes and subthemes based on the conceptual framework.²¹ The research team made decisions regarding data coding and exclusion from the study.

II. LOCALE OF RESEARCH

1. Tasikmalaya Regency

The total area of Tasikmalaya is 2,708.82 km².²² Table 1 shows the demography of Tasikmalaya regency.

Islamic values are visible in the religious and social life of the people, as well as in the state and politics.²³ In Tasikmalaya, the percentage of the population aged 10 years and above who are already married is 63 per cent for boys and 64 per cent for girls.²⁴ Based on data from the Bandung Religious High Court, there has been an increase in the number of child marriages in Tasikmalaya. The data in Figure 3 show the significant increase in marriage

¹⁷ <https://kalibawang.kulonprogokab.go.id/detil/786/apa-itu-indonesia-emas-2045>

¹⁸ Bangkapos.com, 'Sosiolog: Pernikahan Dini Bisa Picu Gafalkan Indonesia Emas 2045', <https://bangka.tribunnews.com/2022/02/14/sosiolog-pernikahan-dini-bisa-picu-gagalkan-indonesia-emas-2045?page=all>. Accessed 21 November 2023.

¹⁹ Court Decisions can be accessed from Pengadilan Agama Kabupaten Tasikmalaya (<https://www.pa-tasikmalaya.go.id/>), Pengadilan Agama Kabupaten Indramayu (<https://www.pa-indramayu.go.id/>), Sistem Informasi Kontrol Tabayun dan Pengawasan (SI-KABAYAN) Pengadilan Tinggi Agama Bandung (<http://kabayan.pta-bandung.go.id/start/>).

²⁰ M.B. Miles and A.M. Huberman, *An Expanded Sourcebook Qualitative Data Analysis* (New York: SAGE Publications, 1994).

²¹ *Ibid.*

²² BPS, *Kabupaten Tasikmalaya Dalam Angka 2022* (Tasikmalaya regency in Figures 2022), (Kabupaten Tasikmalaya: BPS Kabupaten Tasikmalaya, 2022) p. 3.

²³ A. Satori and T. Nurohman, 'Pergeseran Orientasi Dan Ekspresi Elit Pesantren Di Kota Tasikmalaya' (Shifting Orientation and Extension of Islamic Boarding School Elites in the City of Tasikmalaya) (2018) 2 (1) *Jurnal Sosiologi Walisongo* 17–28, <https://doi.org/10.21580/jsw.2018.2.1.2478>.

²⁴ BPS, *Statistik Kesejahteraan Rakyat Kabupaten Tasikmalaya 2022* (Tasikmalaya Regency People's Welfare Statistics in 2022) (Kabupaten Tasikmalaya: BPS Kabupaten Tasikmalaya, 2022).

Table 1. Demography of Tasikmalaya Regency in 2021

Category	Number
Total Population	1,796,496
Male	913,795
Female	882,701
0–14 years old	434,116
15–64 years old	1,294,105
65 years old or above	155,512

Source: The Tasikmalaya Regency Population and Civil Registry Service, 2021. BPS, *Kabupaten Tasikmalaya Dalam Angka 2022* (Tasikmalaya regency in Figures 2022), (Kabupaten Tasikmalaya: BPS Kabupaten Tasikmalaya, 2022) p. 37.

dispensation applications from 2018 (31 applications), 2019 (285 applications), 2020 (946 applications), and 2021 (1,027 applications).

2. Indramayu Regency

Indramayu has an area of 2,099.42 km².²⁵ Table 2 shows the demography of Indramayu regency.

It was reported that 625 child marriages occurred in Indramayu based on the dispensations approved by the courts in 2021.²⁶ The data from the Bandung Religious High Court show that there has been an increase in the number of child marriages in Indramayu as seen by the increase in applications for marriage dispensations from 2018 to 2020. The data in Figure 4 show a significant increase in marriage dispensation applications from 2018 (290 applications) to 2019 (299 applications) to 2020 (744 applications). However, there was a decrease in 2021 (625 applications). The decrease in the number of marriage dispensation requests in Indramayu indicates that the community has become aware of the minimum marriage age limit for children, which is 19 years old. However, this number of requests remains relatively high in the West Java Province.²⁷

88 I. FINDINGS

1. Child marriage realities

The results of the research in the Tasikmalaya and the Indramayu regencies show that child marriage is generally caused by economic and formal educational factors that are complicated by society's perspectives on sex education. These motives are interrelated and are to be found in previous studies, which claimed that economic problems were a factor in the occurrence of child marriage. The difficult economic conditions of the family are the reason for parents wanting to marry off their children as soon as possible so that they can be free from the burdens of family expenses.²⁸

²⁵ BPS Kabupaten Indramayu, *Kabupaten Indramayu Dalam Angka 2022* (Indramayu Regency in Figures in 2022), Badan Pusat Statistik Kabupaten Indramayu, vol. 13 (Indramayu: BPS Kabupaten Indramayu, 2022).

²⁶ Si-Kabayan, Statistik Perkara Pengadilan Agama Se-Jawa Barat (Statistics of Religious Court Cases in West Java), http://kabayan.pta-bandung.go.id/pengawasan_sipp/proses_stat. Accessed 7 February 2022.

²⁷ Kompas, 'Perkawinan Anak di Indramayu Turut Picu Perceraian hingga Tengkes', <https://www.kompas.id/baca/nusantara/01/26/perkawinan-anak-di-indramayu-berdampak-pada-perceraian-hingga-tengkes>. Accessed 6 October 2023.

²⁸ M.R.A.P. Pratomo, 'Child Marriage under Indonesian Marriage Law: Legal and Social Analysis' (2021) 7(3) *Law Research Review Quarterly* 285–302. <https://doi.org/10.15294/lrrq.v7i3.48158>; M. Ratnaningsih, H.R. Wibowo, N.J. Goodwin et al., 'Child Marriage Acceptability Index (CMAI) as an Essential indicator: an investigation in South and Central Sulawesi, Indonesia' (2022) 7 *Global Health Research Policy* 32. <https://doi.org/10.1186/s41256-022-00252-4>; A. Roy and P. Chouhan, 'Exploring the Socioeconomic Factors Associated with Girl-child Marriage and its Impact on Pregnancy Outcomes: A Study from Malda District of West Bengal' (2022) 47 *Indian Journal of Community Medicine* 8–11. https://doi.org/10.4103/ijcm.IJCM_7_21

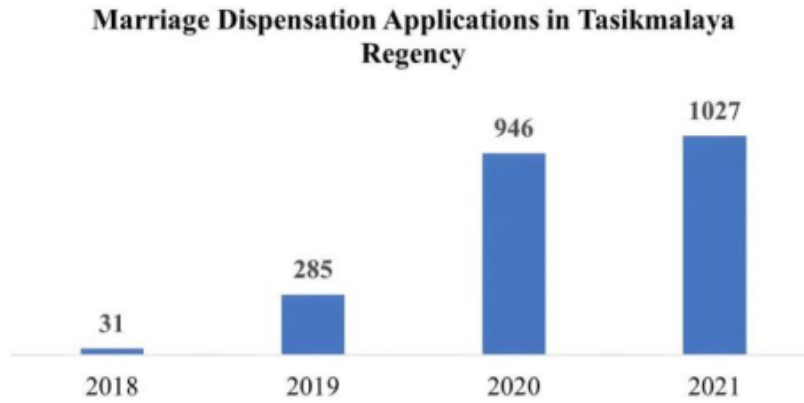


Figure 3. Number of marriage dispensation applications, Tasikmalaya. Source: Data processed from the Bandung Religious High Court SI-KABAYAN Application 2021.

Table 2. Demography of Indramayu Regency, 2021

Category	Number
Total population	1,851,383
Male	930,838
Female	920,545
0–14 years old	417,074
15–64 years old	1,326,651
65 years old or above	107,658

²⁵ Source: The Indramayu Regency Population and Civil Registry Service, 2021. BPS Kabupaten Indramayu, *Kabupaten Indramayu Dalam Angka 2022 (Indramayu Regency in Figures in 2022)*, Badan Pusat Statistik Kabupaten Indramayu, vol. 13 (Indramayu: BPS Kabupaten Indramayu, 2022) p. 38.

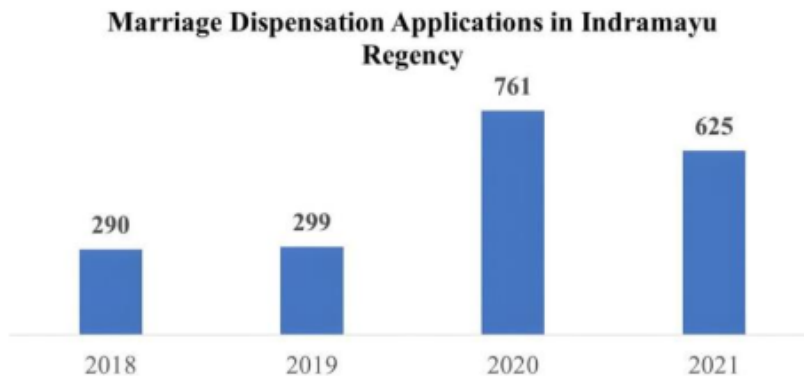


Figure 4. Number of marriage dispensation applications, Indramayu. Source: Data processed from the Bandung Religious High Court SI-KABAYAN Application, 2021.

- a) **Economic factors:** In Tasikmalaya, children and adolescents between 10 and 19 years of age number were 316,482, and constitute the dominant group within the population. The total working population is 877,416 people; 67,290 are unemployed, 81,075 are school attendees, 275,740 manage households, and 56,908 are involved in other activities.²⁹ The number of poor people in 2021 was 11.15 per cent of the population

²⁹ BPS (n 19).

an increase of 0.8 percentage points from 10.24 per cent in 2020. The average total expenditure per capita of people per month is Rp. 985,34, (US\$ 75.80) for food and non-food expenses.³⁰ In this regency, poverty and unemployment are driving factors for choosing to marry at a young age.³¹ In Indramayu, the number of children and adolescents between 10 and 19 years of age is 289,730, constituting the largest group in the population. The total working population is 875,280 people, and the unemployed 79,241, students 65,446, people managing households 266,110, and those engaged in other activities 80,331.³² The number of poor people has increased from 220.31 thousand (12.70 per cent) in 2020 to 228.6 thousand (13.04 per cent) in 2021.³³ The population between 15 years old and over who work in the service sector is 459,831 people, in agriculture 273,623 people, and in the manufacturing sector 142,826 people. The average total expenditure per capita of Indramayu people in a month is Rp. 1,254,515 (US\$ 96,50) for food and non-food expenses.³⁴ In this regency, economic difficulties encourage many parents to work as labourers abroad. This results in many children being neglected and a high divorce rate. It was also expressed in the FGD that there is a belief in society that 'if you do not go abroad, it's not cool'. Hence, those who do not go overseas to work choose to get married at an early age by requesting a marriage dispensation, which mostly ends in divorce with the children becoming victims.³⁵ Andayani's research shows that among the six children left behind by their mothers who went abroad, five cases involved parents who were already divorced.³⁶ Similarly, Listiani's study found that out of eight women and widows who divorced in Indramayu, seven had previous experience as migrant workers.³⁷

- b) **Educational factors:** In Tasikmalaya, lack of formal education opportunities for children is one of the key factors contributing to child marriage. Sixty-nine per cent of the population between 7 and 24 years of age are studying at elementary schools, 16 per cent at junior high schools, 17 per cent at senior high schools, and 30 per cent do not go to school at all.³⁸ A judge from Tasikmalaya said that many children who graduated from junior high schools cannot continue their education, therefore they were attracted to marriage rather than doing nothing at home.³⁹ Girls in Tasikmalaya mostly show no interest in school or to continue their education at a higher level.⁴⁰ Another reason for the lack of interest in continuing formal education is that the education of their parents and family members is generally low (elementary school level).⁴¹ Gender bias also contributes to child marriage.⁴² These findings align with a study by Rumble et al, using data from the Indonesian Demographic and Health Survey (SDKI) in 2012, which concluded that lower education levels are associated

³⁰ Ibid.

³¹ In-depth Interview with MS (39 years old, elementary school, housewife) on 28 October 2022 in Tasikmalaya Regency.

³² BPS (n 25) 49–50.

³³ Ibid, 119.

³⁴ Ibid, 50.

³⁵ Summarized results of FGDs with the stakeholders in Indramayu Regency on 9 November 2022.

³⁶ R.H.R. Andayani and M. Azzasyofia, 'The Success Factors of Community-Based Social Rehabilitation: A Case Study on Children of Migrant Workers in Indramayu Regency' (2021) 4(2) *Indonesian Journal of Social Work*.

³⁷ T. Listiani, 'Analysis of the Characteristics of Circular Migration: The Case of Female Domestic Workers from Rural Indonesia' (2017) 25 (1) *政策科学 [Social Policy]* 153–169.

³⁸ BPS (n 25).

³⁹ In-depth interview with DI, Judge of the Religious Court of Tasikmalaya Regency on 24 October 2022.

⁴⁰ In-depth Interview with AS (18 years old, junior high school, housewife) on 28 October 2022 in Tasikmalaya Regency.

⁴¹ In-depth Interview with MS (39 years old, elementary school, housewife) on 28 October 2022 in Tasikmalaya Regency.

⁴² In-depth Interview with the Officer of Population Control and Women's Empowerment, Child Protection Office (*Dinas Pengendalian Penduduk dan Pemberdayaan Perempuan, Perlindungan Anak/DP2P3A*) of Tasikmalaya Regency on 25 October 2022.

with a higher risk of child marriage.⁴³ Similarly, research by Grijns et al suggests that children who marry at a young age often come from families with limited education, typically completing only elementary school.⁴⁴ In Indramayu, the lack of education of the parents strongly influences their decision to permit their children to get married at a young age, because they had done the same. A total of 163,633 students study at elementary schools, 62,742 students at junior high schools, 19,837 students at senior high schools, and 52,461 students are in vocational schools.⁴⁵ There is no sex education because sex is a taboo subject among youth and society in general; talking about it is considered a disgrace for the family.⁴⁶ Advances in technology are a driver of child marriage because they make adolescents more vulnerable to sexual behaviour and sexual activity before marriage. Easy access to mass and social media tends to increase exposure to pornography and sexual activity, which potentially leads to unwanted pregnancies; marriage becoming a solution.⁴⁷ The findings of this research align with previous studies in Indramayu. Social media platforms, especially the internet, have been identified as a contributing factor to the rise in marriage dispensation requests.⁴⁸ Similarly, the study by Muharry et al suggests that child marriage in Indramayu is influenced by phone usage. The sample data obtained from the religious courts in the Tasikmalaya regency from 2020 to 2022 in relation to marriage dispensation applications show that 29 per cent of the marriage dispensations were requested because the parties were already engaged; 26 per cent of the applications revealed that the parties agreed to get married, and sometimes, at the time of submission, the couple had already set the wedding date and sent out invitations, and 15 per cent of the applications stipulated that the parties loved each other.⁴⁹ Based on the sample data of the Religious Court, 18 per cent of the applicants stated that the reason for requesting a marriage dispensation was because the parents were fearful that their children would have sexual intercourse outside of marriage.⁵⁰

Fear of violating religious and social norms is another ground for requesting marriage dispensations in Indramayu. This was confirmed by AS, a parent whose child was already dating. He was afraid that ‘something bad’ would happen and was ashamed because getting pregnant before marriage was embarrassing.⁵¹ A similar sentiment was expressed by SA, a 21-year-old who asserted that ‘instead of having an accident [pregnancy], which is even more dangerous, it was better to get legal first so that nothing would happen and embarrass the family’.⁵² The fear of violating religious and social norms is relevant to previous research. Wibowo et al found strong social norms whereby parents support marrying off their

⁴³ L. Rumble et al, ‘An Empirical Exploration of Female Child Marriage Determinants in Indonesia’ (2018) 18 (1) *BMC Public Health* 1–13, <https://doi.org/10.1186/s12889-018-5313-0>.

⁴⁴ M. Grijns et al, ‘Pernikahan Anak Di Sukabumi Jawa Barat: Diri Dan Agensi Anak Perempuan’ (2016) 21 (1) *Jurnal Perempuan* 9–33, <http://www.jurnalperempuan.org/sahabat-jp.html>.

⁴⁵ BPS (n 25) 38.

⁴⁶ FGD on 9 November 2022 in Indramayu Regency (Key Informant: Fathurrahman, Office of Population Control, Family Planning, Women’s Empowerment and Child Protection).

⁴⁷ In-depth interview with AT, Judge of the Religious Court of Indramayu Regency on 7 November 2022.

⁴⁸ K. S. et al, ‘Marriage Dispensation After the Decision of Constitutional Court Number 22/PUU-XV/2017’ (2021) 19 (1) *Jurnal Hukum Islam*, <https://doi.org/10.28918/jhi.v18i2.3491>

⁴⁹ In-depth interview with AN (17 years old, junior high school, housewife) on 28 October 2022, in Tasikmalaya Regency.

⁵⁰ In-depth interview with AS (18 years old, junior high school, housewife) on 28 October 2022 in Tasikmalaya Regency.

⁵¹ In-depth interview with AS (53 years old, elementary school, meatball seller) on 10 November 2022 in Indramayu Regency.

⁵² In-depth interview with AS (21 years old, senior high school, housewife) on 10 November 2022 in Indramayu Regency.

underage children to prevent feelings of shame if an unwanted pregnancy occurs. They believe that marrying their underage children is preferable to the family being shamed.⁵³

The data from 2020 to 2022 from the Religious Court of the Indramayu Regency revealed that most of the reasons for filing marriage dispensations were related to pregnancies (58 per cent), followed by engagement (34 per cent), risk of having sexual intercourse (5 per cent), engaged in premarital sex (2 per cent), and love for each other (0.4 per cent).⁵⁴ This was also reconfirmed during the FGD in Indramayu which found that '90 per cent of the dispensations asked for by the applicants were filed because the party was already pregnant'.⁵⁵

2. A problematic provision under the amended marriage law

The policy to prevent child marriage faces a dilemma because it is related to the three pillars of power (*trias politica*), namely the legislative, executive, and judicial institutions. The role of the legislature is to develop a marriage age limit, which has been increased to 19 years for both men and women based on the Decision of the Constitutional Court Number 22/PUU-XV/2017, which was then implemented by the executive branch by including it as one of the development agendas of the National Medium Term Development Plans of 2020–2024. These Plans translate the prevention of child marriage into seven development agendas, one of which is increasing the quality and competitiveness of human resources. The issue of child marriage is included as part of improving the quality of children's, women's, and youth's lives. The Indonesian government is planning to reduce the prevalence of child marriage from 11.2 per cent of all marriages in 2018 to 8.74 per cent in 2024.⁵⁶

We assert the marriage prevention policy is also related to the judiciary because a person who has not reached the age required to get married can ask the court for a dispensation provided sufficient evidence of the reasons for the marriage exists. Provisions of the amended Marriage Law have been developed by the legislature and the grounds for granting child marriage dispensations have been set by the executive branch, yet in the end, they are at the mercy of the judges and their decisions in religious courts (judicative institution). The executive body (government) cannot intervene in the decisions that have been determined by the judiciary because of the separation of powers which provides for the rule of checks and balances between each power. Forcing judges not to grant a dispensation for marriage to reduce the number of child marriages constitutes an intervention into the power of the judiciary.

The amended Marriage Law clearly stipulates that marriage is permitted only if both parties have reached the age of 19 years. This obviously means that a person under 19 years of age is, in principle, not allowed to get married by law.⁵⁷ If a prospective bride or groom has not reached this age, they must obtain permission from their parents to go ahead with the marriage.⁵⁸ We argue that the implementation of Article 7(1) of the amended Marriage Law is not strict enough as it provides an exemption under Article 7(2) of the law, which constitutes an exception to the 19-year-old requirement. It provides that the girl's and/or the boy's parents can request a marriage dispensation from the court.

Currently, most marriages conducted in the Muslim communities in the Tasikmalaya and the Indramayu regencies are registered at the Office of Religious Affairs (KUA). The

⁵³ H.R. Wibowo, M. Ratnaningsih, N.J. Goodwin, D.F. Ulum, E. Minnick, 'One Household, Two Worlds: Differences of Perception Towards Child Marriage Among Adolescent Children and Adults in Indonesia. The Lancet Regional Health' (2021) 8 *Western Pacific* 10010. <https://doi.org/10.1016/j.lanwpc.2021.100103>

⁵⁴ In-depth interview with AT, Judge of the Religious Court of Indramayu Regency on 7 November 2022.

⁵⁵ FGD on 9 November 2022 in Indramayu Regency (Key Informant: Fathurrahman, Office of Population Control, Family Planning, Women's Empowerment and Child Protection).

⁵⁶ Ministry of National Development Planning/Bappenas, 2020.

⁵⁷ Article 7(1) of Law Number 16 of 2019 concerning the Amendments of Law Number 1 of 1974 concerning Marriage.

⁵⁸ Article 6(2) of Law Number 16 of 2019 concerning the Amendments of Law Number 1 of 1974 concerning Marriage.

18 number of marriage dispensations granted continues to increase every year. This may 33 be interpreted as violation of the constitutional rights of a child. This right is guaranteed 28 by the 1945 Constitution under Article 28B (2) of the Constitution. It is also included in the Child Protection Law that children's rights are part of human rights⁵⁹ that must be guaranteed, protected, and fulfilled by the parents, family, community, state government, and local governments. A child, whose rights must be guaranteed, protected, and fulfilled is someone who is not yet 18 years old.⁶⁰ A problem exists 34 because the amended Marriage Law permits a marriage dispensation. As judges are obliged to explore, follow, and understand legal values and a sense of justice as required by Article 5 (1) of Law Number 48 of 2009 concerning Judicial Power, in the hearing of a marriage dispensation application, they must provide advice to the applicant, children, prospective husband/wife, and parents/guardians of the couple. The advice given by the judge, as required by Article 12 of the Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for the Dispensation of Marriage, is related to the risks in marriage between minors as follows:

- 11
- a) Possible cessation of education for children.
 - b) The inability to complete 12 years of compulsory education.
 - c) The child's reproductive organs are not ready for sexual activity.
 - d) The economic, social, and psychological impact on children.
 - e) Potential disputes and domestic violence.

33 The advice of the judge is intended to protect the rights of children based on the principles of the best interests of the child, ensuring their protection, upbringing, well-being, continuity of life, and development,⁶¹ therefore 33 if judges do not give advice, their decisions are void⁶² as stipulated under Article 12(4) of the Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Dispensation of Marriage that 'In the event that a judge fails to provide advice as referred to in paragraph (1) and paragraph (2), it shall result in the nullification of the ruling'. In this regard, we emphasize that the judges play the role of protecting children and preventing marriages between minors. It is expected that parents may rethink and cancel their plans to marry off their children after receiving advice. Dispensation should only be given for urgent reasons, such as unwanted pregnancies or being involved in sexual intercourse. Judges take this approach to providing advice to balance the reality of society and the aspiration to reduce child marriages because such a marriage may violate the rights of a child. 11

In the FGD,⁶³ it was claimed that the change in the age of marriage consent under the amended Marriage Law 66 has been a trigger for an increased number of marriage dispensation applications. The increase in the minimum marriage consent age was originally intended to suppress the occurrence of child marriages. It turned out differently because previously women aged 17–18 years were allowed to get married. The 2 amended Marriage Law resulted in a requirement that women aged 17–18 years old must apply for a marriage dispensation. We opine that the amended Marriage Law does not explicitly prohibit child marriage because this Law still provides a loophole for child marriage through marriage

⁵⁹ Articles 52–66 of Law Number 39 of 1999 concerning Human Rights.

⁶⁰ Article 1(1) of Law Number 35 of 2014 concerning the Amendments of Law Number 23 of 2002 concerning Child Protection.

⁶¹ The Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Dispensation of Marriage. 3

⁶² Article 12(3) and (4) of Article 12 of the Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Dispensation of Marriage.

⁶³ Summarized Results of FGDs with the stakeholders in Indramayu Regency on 9 November 2022.

dispensations.⁶⁴ This phenomenon has occurred in the Tasikmalaya⁶⁵ and Indramayu regencies.⁶⁶ The increase in the age of marriage consent from 16 to 19 years has significantly impacted the number of marriage dispensation applications in Tasikmalaya and Indramayu.⁶⁷ The problem regarding child marriage also affects the Office of Religious Affairs because it does not have a special duty and function for the prevention of child marriages. Its task is only administrative, which means that it carries out a marriage when there is a court-approved marriage dispensation.⁶⁸

IV. DISCUSSION

1. Child marriage dispensations: granting or rejecting

A dilemma has been encountered by judges in the Tasikmalaya and the Indramayu regencies because of the flexible approach of the amended Marriage Law, which permitted minors to marry based on the dispensations under Article 7(2), which stipulates that ‘in deviation from the provision in paragraph (1) of this article, dispensation may be petitioned for to the Court or other authority designated by the parents of both the male and female marriage candidates’. However, the minors and their parents are directed to go to the Religious Court to obtain a marriage dispensation based on the Article 7(2) of the amended Marriage Law which provides for an exemption of the marriage age and allows applying for a marriage dispensation. The head of the Indonesian Council of Ulama of Tasikmalaya Regency⁶⁹ predicted that all marriage dispensation applications would be granted by the Religious Court.

According to judges in the two regencies, granting a marriage dispensation must be based strictly on the following factors as instructed by Article 14 of the Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Dispensation of Marriage. They are as follows.

- a) Emergency conditions ie when a pair of children have been in a relationship, and they may have been involved in sexual intercourse.
- b) Non-emergency conditions. In this regard, a child is physically and materially mature, and he or she already understands how to handle household matters.⁷⁰

In the process of granting a marriage dispensation, judges must follow the Supreme Court Regulations concerning the Guidelines for Adjudicating Applications for Marriage Dispensation. Accordingly, when a marriage dispensation application is submitted to the Religious Court, it must accept it, although it does not automatically give its approval because it has to examine and adjudicate the case. Most are approved after being examined by the court based on the emergency condition of the minors.⁷¹

All marriage dispensation applications in Tasikmalaya and Indramayu are submitted by one or both parents of the minors. Usually, the parents are assisted by an Assistant Marriage Registrar and officials from the Office of Religious Affairs. A parent of a minor revealed that he was assisted by a lawyer who helped him with the marriage dispensation application

⁶⁴ Sonny Dewi Judiasih et al., ‘Dispensasi Pengadilan Telaah Penetapan Pengadilan atas Permohonan Perkawinan Dibawah Umur’ (2017) 3 (2) *Jurnal Hukum Acara Perdata ADHAPER* 194.

⁶⁵ In-depth interview with DP, Judge of the Religious Court of Tasikmalaya Regency on 24 October 2022.

⁶⁶ In-depth interview with AG, Judge of the Religious Court of Indramayu Regency on 26 October 2022.

⁶⁷ In-depth interview with IY, Deputy of the Religious Court of Indramayu Regency on 26 October 2022.

⁶⁸ In-depth interview with DB, head of the Religious Affairs Office of Tasikmalaya Regency on 24 October 2022.

⁶⁹ FGD on 26 October 2022 in Tasikmalaya Regency (Key Informant: H.D, the Indonesian Council of Ulama of Tasikmalaya Regency).

⁷⁰ In-depth interview with AP, Judge of the Religious Court of Tasikmalaya Regency on 24 October 2022.

⁷¹ In-depth interview with AP, Judge of the Religious Court of Tasikmalaya Regency on 24 October 2022.

because the girl was pregnant. The father had to pay Rp.2.5 million (US\$ 192) to the Registrar. He would have paid less than Rp.1 million (US\$ 77), if he had taken care of the application himself because the fee covered the whole process of a marriage dispensation request, including transportation and service costs of the Registrar, the court fee, and other administrative fees.

All the informants in Tasikmalaya stated that the marriage dispensation applications were submitted based on the wishes of the minors and with the consent of their parents without any coercion from other parties.⁷² A parent of a minor informed us that ‘the marriage dispensation was proposed because of the wishes of all. It’s not just me, not just my wife, so there’s been an agreement about the marriage’.⁷³ However, the findings in Indramayu showed that a marriage dispensation application was submitted by one of the minors because she was forced to have sex by her boyfriend (later husband) when dating him. She was punched by him on her face and stomach. As she was afraid that he would hit her again if she refused to marry him, she agreed to get married.⁷⁴ 22

In addition to clarifying who are the eligible parties to apply for a dispensation, such as parents or guardians, there are administrative requirements that must be fulfilled when applying for a marriage dispensation. As stipulated in Article 5 of Supreme Court Regulation Number 5 of 2019, which pertains to Guidelines for Adjudicating Applications for Dispensation of Marriage, the applicant (either parent or guardian of a minor) is required to submit all the necessary documents including a photocopy of the applicant’s identity card, a photocopy of the applicant’s marriage book, a rejection letter from the Office of Religious Affairs (KUA), a photocopy of the applicant’s family card, a photocopy of the birth certificate, and a health certificate issued by a doctor or midwife.⁷⁵

Most of the applicants are assisted by an Assistant Marriage Registrar and a lawyer when filing the documents.⁷⁶ During the trial, the judge examines the papers and asks questions of the applicant, the applicant’s children, and spouse as well as witnesses who must be present before the court.⁷⁷ The hearing is brief, about 20 minutes, during which information is obtained from various parties, and evidence examined. Common questions asked by the judge relate to the condition of the female minor, whether she is already pregnant or not, the income of a prospective husband, the number of daily prayer times,⁷⁸ and several prayer recitations, eg the prayer after having intercourse, the prayer before giving birth.⁷⁹ The judge specifically asks about the prayers to ensure that the couples are able to implement basic religious education as spouses and parents.⁸⁰

In addition to examining the administrative requirements, during the hearing the judge also gives advice to the applicant, ie, the applicant’s husband or wife, or guardians of the prospective husband or wife. The advice given by the judge is to ensure that all the parties understand the risks of marriage, the possibility of dropping out of school for the children,⁸¹ the unpreparedness of the child’s reproductive organs, and the economic, social and

⁷² In-depth interview with AS (18 years old, junior high school, housewife) on 28 October 2022 in Tasikmalaya Regency.

⁷³ In-depth interview with AI (32 years old, Bachelor’s Degree, teacher) on 28 October 2022 in Tasikmalaya Regency.

⁷⁴ In-depth interview with DF (19 years old, graduated from senior high school, entrepreneur) on November 10 in Indramayu Regency.

⁷⁵ In-depth interview with Su (64 years old, elementary school, entrepreneur) on 10 November 2022 in Indramayu Regency.

⁷⁶ In-depth interview with IN (45 years old, junior high school, housewife) on 28 October 2022 in Tasikmalaya Regency.

⁷⁷ In-depth interview with AS (41 years old, elementary school, housewife) on 10 November 2022 in Indramayu Regency.

⁷⁸ In-depth interview with AO (19 years old, graduated from elementary school, housewife) on 10 November 2022 in Indramayu Regency.

⁷⁹ In-depth interview with IH (20 years old, elementary school, housewife) on 28 October 2022 in Tasikmalaya Regency.

⁸⁰ In-depth interview with DP, Judge of the Religious Court of Tasikmalaya Regency on 24 October 2022.

⁸¹ In-depth interview with SN (19 years old, senior high school, entrepreneur) on 10 November 2022 in Indramayu Regency.

psychological impact on early marriage on children, and the need for a good relationship between a husband and wife.⁸²

50 Upon completion of the examination, the judge carefully evaluates and determines whether to grant or reject the application.¹² This consideration and decision-making process adheres to the guidelines set forth in Supreme Court Regulation Number 5 of 2019 regarding the Adjudication of Marriage Dispensation Applications. According to this regulation, the judge takes into account various aspects and conditions concerning the child, including psychological, social, cultural, and educational factors, as well as the health and economic circumstances of the child and their parents.⁸³ Based on the experience of one of the applicants, it is expected that the dispensation will be issued within a timeframe of 14 days to 1 month following the hearing.⁸⁴

2. Sociolegal strategies to reduce the number of child marriages

Previous studies claimed that child marriage causes harm to minors,⁸⁵ particularly in relation to development,⁸⁶ sexual and reproductive health,⁸⁷ and increases the possibility of divorce.⁸⁸ The impact of child marriage creates new poverty, and increases maternal and child mortality and divorce rates. It also increases the risk of children dropping out of school and the child's lack of readiness for reproduction and exposure to mental stress. Further, it affects the family's economy because most of the minors are not economically independent. These issues lead to potential disputes and disharmony in the minors' households.⁸⁹ The head of the Indonesian Ulema Council of the Tasikmalaya Regency stated that almost 70 per cent of the underage marriages cause problems. He claimed that most of the minors perceived child marriage from a religious point of view. He argued that they lacked understanding about the negative impact of getting married at a young age and concluded that child marriage has more disadvantages than benefits for all the parties.⁹⁰

The adverse impact of child marriage was experienced by many married minors, even if, after getting married, they tried to be independent and provide for their own needs as much as possible. In fact, they still relied on their parents' help, when their daily needs had not been fulfilled, especially those who already had children.⁹¹ Based on the marriage dispensation decisions from 2020 to 2022, it appears that 73 per cent of husbands' income in Tasikmalaya and 64 per cent in Indramayu was between Rp. 2 million (US\$ 153.8) and Rp.

⁸² 55 In-depth interview with AS (41 years old, elementary school, housewife) on 10 November 2022 in Indramayu Regency.

⁸³ Article 5 (1) of Law Number 48 of 2009 concerning Judicial Power states that 'Judges and constitutional justices are required to explore, follow, and understand legal values and a sense of justice that lives in society'.

⁸⁴ In-depth interview with AO (19 years old, graduated from elementary school, housewife) on 10 November 2022 in Indramayu Regency.

⁸⁵ H. Horii, 'Legal Reasoning for Legitimation of Child Marriage in West Java: Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection' (2020) 12 (3) *Journal of Human Rights Practice* 501–523, <https://doi.org/10.1093/jhuman/huaa041>; S. Nawaz, M. Koser, K. Bilal, M.S. Shabbir, and R. Latif, 'The Conceptual Framework of Early Child Marriage in Pakistani Society' (2021) 18 (9) *Palarch's Journal of Archaeology of Egypt/Egyptology* 1762–1776, <https://archives.palarch.nl/index.php/jae/article/view/10548>.

⁸⁶ A. Sanjaya, M.B. Narendra, Irwanto, A. Suryawan, M. Irmawati, and F. Efendi, 'Early Marriage and Its Relationship with Child Development' (2018) 9 (9) *Indian Journal of Public Health Research and Development* 193–198, <https://doi.org/10.5958/0976-5506.2018.00993.2>.

⁸⁷ K.G. Santhya, 'Early Marriage and Sexual and Reproductive Health Vulnerabilities of Young Women: A Synthesis of Recent Evidence from Developing Countries' (2011) *Current Opinion in Obstetrics and Gynecology*, <https://doi.org/10.1097/GCO.0b3e32834a93d2>.

⁸⁸ D.A. Widyastari, P. Isarabhakdi, P. Vapattanawong, and M. V6lker, 'Marital Dissolution in modern Java Does Early Marriage Increase the Likelihood to Divorce?' (2020) 61 (8) *Journal of Divorce and Remarriage* 556–573, <https://doi.org/10.1080/10502556.2020.1799308>.

⁸⁹ FGD on 26 October 2022 in Tasikmalaya Regency (Key Informant: IY, Population Control, Family Planning, Women's Empowerment and Child Protection of Tasikmalaya Regency).

⁹⁰ FGD on 26 October 2022 in Tasikmalaya Regency (Key Informant: H.D, the Indonesian Council of Ulama of Tasikmalaya Regency).

⁹¹ In-depth interview with DR (43 years old, junior high school, entrepreneur) on 28 October 2022 in Tasikmalaya Regency.

3 million (US\$ 230.8) per month. Only a small number of informants live alone, separately from their parents or in-laws; generally, most still live with their parents or in-laws.

With regard to education, there are differences between Tasikmalaya and Indramayu. In Tasikmalaya, before applying for a marriage dispensation, most of the informants (especially girls) were no longer in school, either because they had stopped due to financial issues or had just finished elementary school.⁹² They also had no desire to continue education because they preferred focusing on taking care of their children⁹³ or being a homemaker.⁹⁴ In Indramayu, child marriage caused children to drop out of school because some girls were pregnant.⁹⁵

Psychologically, most of the informants in Tasikmalaya felt happy even though they were burdened with household chores, and faced the hardship of being a mother as they had no idea how to take care of children.⁹⁶ A different situation was experienced by some informants from Indramayu. They felt regret at getting married at a young age⁹⁷ and were stressed because of the premarital pregnancy.⁹⁸

We explain here that several types of impact were experienced by those who married at a young age, as can be seen in Figure 5 and Figure 6, which show that economic and financial independence are the main impacts from child marriage, followed by psychological and educational impact. Furthermore, maternal and child health is a serious concern relating to child marriage in Tasikmalaya, while domestic arguments are the more serious in Indramayu. We found that the reason 'quarrels and domestic violence' was more frequently mentioned by informants in Indramayu compared to those in Tasikmalaya because violence against women (domestic violence) frequently occurs in the West Java province, especially in the regencies of Indramayu, Subang, Cirebon, Kuningan, Cianjur, Sukabumi, Bekasi, Garut, Ciamis, Sumedang, and Depok City.⁹⁹ The incidence of domestic violence in Indramayu has been on the rise from 40 cases in 2019¹⁰⁰ to 44 cases in 2020,¹⁰¹ while Tasikmalaya has been experiencing a decline from 13 cases in 2021 to 9 cases in 2022.¹⁰² This is evident in Indramayu taking the first position in the divorce rate, whereas Tasikmalaya is ranked eighth in the West Java Province and domestic violence is identified as the primary cause of divorce.¹⁰³

To prevent child marriage, the Head of the Indonesian Ulema Council in Tasikmalaya proposed to immediately establish a strategic approach by religious courts to reduce the issuance of marriage dispensations. In this regard, the courts need to collaborate with other institutions and must work together with the community, religious leaders, and the government

⁹² In-depth interview with AS (18 years old, junior high school, housewife) on 28 October 2022 in Tasikmalaya Regency.

⁹³ In-depth interview with AK (62 years old, elementary school, laborer) on 28 October 2022 in Tasikmalaya Regency.

⁹⁴ In-depth interview with SA (16 years, graduated from elementary school, seller) on 28 October 2022 in Tasikmalaya Regency.

⁹⁵ In-depth interview with SN (19 years old, senior high school, entrepreneur) on 10 November 2022 in Indramayu Regency.

⁹⁶ In-depth interview with AN (17 years old, junior high school, housewife) on October 28, 2022 in Tasikmalaya Regency.

⁹⁷ In-depth interview with AO (19 years old, graduated from elementary school, housewife) on 10 November 2022 in Indramayu Regency.

⁹⁸ In-depth INTERVIEW with SN (19 years old, senior high school, entrepreneur) on 10 November 2022 in Indramayu Regency.

⁹⁹ Sindonews.com, 'Perceraian dan KDRT Tinggi, Ridwan Kamil Luncurkan Sekoper Cinta', <https://daerah.sindonews.com/berita/1363417/174/perceraian-dan-kdrt-tinggi-ridwan-kamil-luncurkan-sekoper-cinta>. Accessed 6 October 2023.

¹⁰⁰ Indramayu.com, 'KPI Indramayu Soroti Korban Perkawinan Anak Masih Tinggi' <https://www.indramayujeh.com/berita-terbaru/kpi-indramayu-soroti-korban-perkawinan-anak-masih-tinggi/>. Accessed 21 November 2023.

¹⁰¹ PelitaNews, 'KPI Indramayu Ajak Stakeholder Stop Perkawinan Anak', <https://harianpelitanews.id/kpi-indramayu-ajak-stakeholder-stop-perkawinan-anak/>. Accessed 21 November 2023.

¹⁰² Radartasik.com, 'Jumlah Kasus Kekerasan terhadap Perempuan dan Anak di Kabupaten Tasikmalaya Menurun, Ini Rinciannya', <https://radartasik.disway.id/read/637694/jumlah-kasus-kekerasan-terhadap-perempuan-dan-anak-di-kabupaten-tasikmalaya-menurun-ini-rinciannya>. Accessed 21 November 2023.

¹⁰³ databoks, '10 Wilayah dengan Kasus Perceraian Tertinggi di Jawa Barat', <https://databoks.katadata.co.id/datapublish/2022/07/26/10-wilayah-dengan-kasus-perceraian-tertinggi-di-jawa-barat>. Accessed 21 November 2023.



Figure 5. Child marriage impact in Tasikmalaya Regency. Source: Data processed by researchers based on interviews in Tasikmalaya and Indramayu using NVIVO.



Figure 6. Child marriage impact on Indramayu. Sources: Data processed by researchers based on interviews in Tasikmalaya and Indramayu using NVIVO.

to create a **16** common understanding of child marriage among the community, by educating the public about the potential impact of child marriage and the fundamental purpose of marriage.¹⁰⁴ The collaboration of the relevant stakeholders was also emphasized by a researcher in Tasikmalaya, who **13** that there must be synergy among the Health Services, the Education Office, and **the Ministry of Religion, in this case the Religious Affairs Office**. Although there is premarital guidance for grooms and brides, it is important that health information be integrated into premarital counseling. When a child marriage was conducted

¹⁰⁴ FGD on 26 October 2022 in Tasikmalaya Regency (Key Informant: H.D, the Indonesian Council of Ulama of Tasikmalaya Regency).

based on a marriage dispensation, the couples must pay attention to their health. The Education Office must provide a curriculum for high and junior high schools that specifically includes reproductive health, so students understand, from an early age, when their parents are ready for sexual activity or pregnancy.¹⁰⁵ A similar opinion was expressed by the Indonesian Child Protection Commission of Tasikmalaya that the Education Office as a relevant stakeholder needs to include prevention of early marriage measures in their policy such as inclusion of sex education in the school curriculum. She added that the regulatory infrastructure in Tasikmalaya was quite good compared to other areas in West Java, yet up to now the legal instruments have not been implemented effectively.¹⁰⁶ A similar sentiment was expressed by the Social Office of the Tasikmalaya regency that 'the current policy for preventing child marriage in Tasikmalaya was still ineffective as a result of several factors such as education (both formal and informal), welfare, and the family economy of people in that region'.¹⁰⁷

Tasikmalaya is better able to prevent child marriage from the legal point of view as it has the Tasikmalaya Regional Regulation Number 5 of 2019 concerning Women Empowerment and Child Protection. In 2022, the Tasikmalaya Regional Regulation Number 153 of 2022 concerning prevention of child marriage was issued to protect and provide welfare for children by preventing child marriage.¹⁰⁸ It was enforced on December 30, 2022. Article 1 (9) of the Regulation explains that 'the Regional Government, community, parents, children and stakeholders should make policies, activities, and other efforts to prevent and reduce child marriages'. This provision adopts the term 'reduce' instead of 'eliminate' the number of child marriages in Tasikmalaya. We assume that the government of this regency realizes that it may be impossible to entirely eliminate child marriage because the data show that marriage dispensations have only reduced from 778 requests in 2022 to 589 requests in 2023 (as per 20 November 2023).¹⁰⁹ The Head of the Tasikmalaya Religious Court also acknowledged the Court has not established any collaboration with social workers, the Commission for the Protection of Children's Rights, or the Department of Women's Empowerment and Child Protection in efforts to prevent child marriage dispensation.¹¹⁰ The head of the Indonesian Council of Ulama of the Tasikmalaya Regency explained that the understanding of the concept of marriage in Islam is understood in a religious way by the community. He emphasized that Islam teaches that marriage aims to establish *sakinah, mawadah, and wara-mah* (a happy, loving, and supportive) family and to give birth to good offspring. In fact, almost 70 per cent of early marriages fail and end in divorce; thus, the aims of marriage are not being fulfilled. He concluded that child marriage brings more *mudharat* (harm) than *manfaat* (benefits).¹¹¹ Hence, we claim that despite the existence of the local regulations,

¹⁰⁵ FGD on 26 October 2022 in Tasikmalaya Regency (Key Informant: HS, Respati College of Health Sciences).

¹⁰⁶ FGD on 26 October 2022 in Tasikmalaya Regency (Key Informant: AR, Regional Child Protection Commission).

¹⁰⁷ In-depth interview with DH, head of the Social Service Office of Tasikmalaya Regency on 22 October 2022.

¹⁰⁸ The Tasikmalaya Regulation has a binding force because it is included in the hierarchy of laws and regulations in Indonesia under Article 7 (1) of Law Number 12 of 2011 concerning Formation of Legislation, which was later amended by Law Number 15 of 2019 concerning Amendment to Law Number 12 of 2011 concerning Formation of Legislation. The hierarchy of laws and regulations consists of

- 1) The 1945 Constitution of the Republic of Indonesia;
- 2) The Decree of People's Consultative Assembly;
- 3) Laws/Government Regulations in Lieu of Laws;
- 4) Government Regulation;
- 5) Presidential Decree;
- 6) Provincial Regulation and City/Region Regulation.

¹⁰⁹ SI-KABAYAN, 'Statistik Perkara Pengadilan Agama se-Jawa Barat (Statistics of Religious Court Cases in West Java)', http://kabayan.pta-bandung.go.id/pengawasan_sipp/proses_stat. Accessed 21 November 2023.

¹¹⁰ KPAI, 'Angka Permohonan Dispensasi Kawin di Tasikmalaya Tinggi: KPAI Lakukan Pengawasan', <https://www.kpai.go.id/publikasi/angka-permohonan-dispensasi-kawin-di-tasikmalaya-tinggi-kpai-lakukan-pengawasan>. Accessed 21 November 2023.

¹¹¹ FGD on 26 October 2022 in Tasikmalaya Regency (Key Informant: H.D, Indonesian Council of Ulama of Tasikmalaya Regency).

the lack of collaboration among stakeholders, coupled with the community's perspective which relates marriage to being a part of worship, contributes to the persistently high rate of marriage dispensations in Tasikmalaya.

To align with Article 7(2) of the amended Marriage Law, the Tasikmalaya Child Marriage Prevention Regulation inserts the provision related to child marriage dispensation under Article 4(3) of the Regulation, which states that applicants for underage marriages must obtain a dispensation, which is then decided by the court after the minors receive counseling. The dispensation must be requested by the minors' parents or guardians or family members who are blood relations. The parents or guardians are obliged to have the health condition of the minors examined at a hospital or a health centre and must first consult a child psychologist or counselor before applying for a dispensation.¹¹² The Regulation also emphasizes the need for coordination among the relevant stakeholders, namely Child Friendly City Task Force, Schools and/or Educational Institutions, Child Forums, the Integrated Service Center for Empowerment of Women and Children, Family Learning Center, Empowerment and Family Welfare Mobilizing Team, Youth, Women, Community and other organizations to prevent child marriage by carrying out 'outreach, coordination, facilitation, education and training in order to synergize programmes'.¹¹³ It is concerned with preventing child marriage and imposes 12 years of compulsory formal education on all children.¹¹⁴ That means that after graduating from senior high school, young people are eligible to get married (at 19 years old) because the age of entering elementary school is 7 years old.

Tasikmalaya is different from Indramayu in that nearly 10,000 divorces occur in Indramayu every year. We found that the trend has increased after the enactment of the amended Marriage Law, which increased the age limit for marriage to 19 years. Ninety per cent of the marriage dispensations submitted by applicants were due to premarital pregnancy. Marriage dispensation applicants in Indramayu mostly have low education and the community has a lack of understanding of the dangers of early marriage. In addition, Indramayu has not issued a special regulation following the prevention of child marriage. Yet, the local government has conducted many events to educate the public,¹¹⁵ e.g. the Indramayu Office of Population Control, Family Planning, Women's Empowerment and Child Protection continues to prevent child marriage by performing outreach and counseling activities on the dangers of early marriage in schools and villages,¹¹⁶ and a campaign 'No Drugs, No Early Marriage, and No Premarital Sex (3 Zero)' for Indramayu students at junior high schools, High Schools, and Vocational High Schools.¹¹⁷

We can summarize the discussion as follows:

- a) Tasikmalaya is more advanced in providing legal instruments to prevent child marriages than Indramayu. Tasikmalaya has issued a special regulation to prevent child marriage. This does not exist in Indramayu. Yet, the Tasikmalaya local regulation is not fully effective to prevent child marriage.

¹¹² Article 7(3) of the Tasikmalaya Regional Regulation Number 153 of 2022 concerning Prevention of Child Marriage.

¹¹³ Article 10 of the Tasikmalaya Regional Regulation Number 153 of 2022 concerning Prevention of Child Marriage.

¹¹⁴ Article 8(2f) of the Tasikmalaya Regional Regulation Number 153 of 2022 concerning Prevention of Child Marriage.

¹¹⁵ FGD on 9 November 2022 in Indramayu Regency (Participant: YK, Selendang Puan Dharma Ayu Foundation).

¹¹⁶ A.F. Ashri, *Ratusan Anak Menikah karena Hamil, Pemkab Indramayu Siapkan Pendampingan* (Hundreds of Children Married Due to Pregnancy, the Government of Indramayu Regency Prepares Assistance) https://www.kompas.id/baca/nusantara/2023/01/27/ratusan-anak-menikah-karena-hamil-pemkab-indramayu-siapkan-pendampingan?utm_source=kompasid&utm_medium=link_shared&utm_content=copy_link&utm_campaign=sharinglink. Accessed 17 February 2023.

¹¹⁷ *Tim Publikasi Diskominfo Indramayu, Disduk P3A Kabupaten Indramayu Ajak Pendidik dan Orang Tua Cegah Pernikahan Usia Dini* (Publication Team of Diskominfo Indramayu, Disduk P3A Kabupaten Indramayu Invites Educators and Parents to Prevent Early Marriage) <https://indramayukab.go.id/disduk-p3a-kabupaten-indramayu-ajak-pendidik-dan-orang-tua-cegah-pernikahan-usia-dini/>. Accessed 17 February 2023.

- b) Collaboration among relevant stakeholders is needed. Each stakeholder needs to contribute by integrating education, and include the health, psychological, economic, and social aspects of child marriage, and its impact in the school curriculum.
- c) Public education related to child marriage should provide a comprehensive approach, so that people in both regencies do not understand marriage from a strictly religious perspective only.

V. CONCLUSION

Child marriage in the Tasikmalaya¹¹⁰ Indramayu regencies is primarily caused by economic and educational factors. However, the reasons for applying for marriage dispensations in the regencies differ. The parents in Tasikmalaya marry their children based on their own needs, and to avoid adultery and gossip. In Indramayu, parents generally marry off their children to prevent premarital pregnancy.³¹

Provisions of Article 7(1) of the amended Marriage Law stipulate that the age of marriage consent is 19 years, but this is not strictly adhered to because the provision under Article 7²² of the Law provides a possible deviation from the 19-year-old requirement by allowing requests for marriage dispensation from the court. Although the judges in the two regencies implement the Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, they face dilemmas in considering whether to grant or reject dispensation applications. Therefore, they classify the grounds for the applications into two categories, emergency and non-emergency conditions, when making their decisions.⁷⁷

A Regional legal instrument is adequate in Tasikmalaya to prevent child marriage through the existence of the Regional Regulation of the Tasikmalaya regency concerning the Prevention of Child Marriage. However, its implementation is not fully successful in preventing child marriages because of the lack of collaboration among relevant stakeholders and the community's perspective on marriage. Indramayu has yet not issued a special regulation to prevent child marriage. However, it has attempted to educate its people by conducting advocacy and campaigns against child marriage. Similar activities have also been held in Tasikmalaya. Due to Indonesia's decentralized system, each region has the autonomy to regulate and manage local government affairs and community interests, leading to policy variations between different regions like Tasikmalaya and Indramayu.

Strategies have been proposed to reduce child marriage in the two regencies through coordination, collaboration, and unification of different perceptions in handling child marriage. Preventive efforts by intensive communication, information, and education regarding the negative impact of child marriage must be regularly conducted by engaging all the relevant stakeholders.

⁹⁴

FUNDING

⁶⁵

Funding support for this article was provided by the The National Research and Innovation Agency (Badan Riset dan Inovasi Nasional/BRIN) (RP1-BP-KL1/2022-016).

C2024-J-Rina Shahriyani Shahrullah-Dilemmas faced by judges when granting marriage dispensations for child marriages in West Java, Indonesia

ORIGINALITY REPORT

20%

SIMILARITY INDEX

17%

INTERNET SOURCES

12%

PUBLICATIONS

7%

STUDENT PAPERS

PRIMARY SOURCES

1	Submitted to Indiana University Student Paper	2%
2	ejournal.unib.ac.id Internet Source	1%
3	www.ajhssr.com Internet Source	1%
4	etheses.uin-malang.ac.id Internet Source	1%
5	law.unimelb.edu.au Internet Source	<1%
6	doi.org Internet Source	<1%
7	journal.ugm.ac.id Internet Source	<1%
8	ijsr.internationaljournallabs.com Internet Source	<1%
9	jurnal.fh.unila.ac.id Internet Source	<1%
10	legal.isha.or.id Internet Source	<1%
11	jurnal.iain-bone.ac.id Internet Source	<1%
12	ejurnal.iainpare.ac.id Internet Source	<1%

13	journal.uinjkt.ac.id Internet Source	<1 %
14	www.girlsnotbrides.es Internet Source	<1 %
15	repository.uin-malang.ac.id Internet Source	<1 %
16	ghrp.biomedcentral.com Internet Source	<1 %
17	journal.uinsi.ac.id Internet Source	<1 %
18	Nabilah Luthfiah Chusnida, Teddy Prima Anggriawan. "Dispensation of Marriage in The Perspective of Children's Rights: Best Interest of The Children", Jurnal Penelitian Hukum De Jure, 2022 Publication	<1 %
19	ghrd.org Internet Source	<1 %
20	repository.up.ac.za Internet Source	<1 %
21	journal.unnes.ac.id Internet Source	<1 %
22	Sonny Dewi Judiasih, Nyulistiowati Suryanti, Sudaryat Sudaryat, Deviana Yuanitasari. "Gender Equality: Challenges toward Efforts to Minimize Child Marriage in Indonesia during the Covid-19 Pandemic", International Journal of Criminology and Sociology, 2021 Publication	<1 %
23	media.neliti.com Internet Source	<1 %
24	pure.rug.nl Internet Source	<1 %

25	A Jaenudin, T Suradinata, M Maryuliyanna. "The effect of micro-climate to quality and existence of Gedong Gincu Mango", Journal of Physics: Conference Series, 2019 Publication	<1 %
26	journal.uinsgd.ac.id Internet Source	<1 %
27	ojs.iainbatusangkar.ac.id Internet Source	<1 %
28	Submitted to Universitas Negeri Semarang Student Paper	<1 %
29	eudl.eu Internet Source	<1 %
30	iiste.org Internet Source	<1 %
31	Sri Karyati, B. Farhana K.Lestari. "Legal Policy Model for Prevention Children Marriage at West Nusa Tenggara Province", FIAT JUSTISIA, 2019 Publication	<1 %
32	ijssrr.com Internet Source	<1 %
33	repository.uia.ac.id Internet Source	<1 %
34	Submitted to IAIN Bengkulu Student Paper	<1 %
35	Submitted to University of Leeds Student Paper	<1 %
36	repo.uinsatu.ac.id Internet Source	<1 %
37	www.cambridge.org Internet Source	<1 %

38	S Fadillah, D A Kuncoro, F Priandani. "Physico-chemical properties and stable isotope composition of springwater in Leuwisari subdistrict and surrounding, Tasikmalaya, West Java, Indonesia", IOP Conference Series: Earth and Environmental Science, 2023 Publication	<1 %
39	journal.uin-alauddin.ac.id Internet Source	<1 %
40	www.syekhnurjati.ac.id Internet Source	<1 %
41	jurnal.fisip.uniga.ac.id Internet Source	<1 %
42	Din Nurika Agustina, Rahmat Sagara, Anang Kurnia. "Characteristics of child marriage in West Java province, 2018 (using the generalized linear model with empirical Bayes)", AIP Publishing, 2022 Publication	<1 %
43	Submitted to Flinders University Student Paper	<1 %
44	lppm-unissula.com Internet Source	<1 %
45	ojs.journalsdg.org Internet Source	<1 %
46	seajbel.com Internet Source	<1 %
47	daerah.sindonews.com Internet Source	<1 %
48	docplayer.net Internet Source	<1 %
49	jabarprov.go.id Internet Source	<1 %

50	jurnalius.ac.id Internet Source	<1 %
51	www.tripadvisor.co.uk Internet Source	<1 %
52	Eva F. Nisa. "Battling Marriage Laws: Early Marriage and Online Youth Piety in Indonesia", Hawwa, 2020 Publication	<1 %
53	epdf.pub Internet Source	<1 %
54	Submitted to American University of Beirut Student Paper	<1 %
55	jim.unsyiah.ac.id Internet Source	<1 %
56	journal.iain-manado.ac.id Internet Source	<1 %
57	www.iiste.org Internet Source	<1 %
58	Eric Thompson, Gavin Willis Jones. "Muslim and non-Muslim divorce trends in Southeast Asia in the 21st century", Asian Journal of Social Science, 2023 Publication	<1 %
59	diskopdagin.indramayukab.go.id Internet Source	<1 %
60	hk-publishing.id Internet Source	<1 %
61	jurnalfsh.uinsby.ac.id Internet Source	<1 %
62	resmilitaris.net Internet Source	<1 %
63	web.pln.co.id Internet Source	<1 %

<1 %

64

John P. Sullivan. "Present Status of Safety Education in Some Representative School Systems", American Journal of Public Health and the Nations Health, 10/1938

Publication

<1 %

65

journal.sepaham.or.id

Internet Source

<1 %

66

www.sciencegate.app

Internet Source

<1 %

67

www.scribd.com

Internet Source

<1 %

68

en.mkri.id

Internet Source

<1 %

69

nlist.inflibnet.ac.in

Internet Source

<1 %

70

scioteca.caf.com

Internet Source

<1 %

71

www.lawjournals.org

Internet Source

<1 %

72

Tutut Ferdiana Mahita Paksi. "Analysis of the formation of laws and regulations in the Indonesian legislation hierarchy", Ekspose: Jurnal Penelitian Hukum dan Pendidikan, 2022

Publication

<1 %

73

journal.walisongo.ac.id

Internet Source

<1 %

74

ligahukum.upnjatim.ac.id

Internet Source

<1 %

75

repository.unisma.ac.id

Internet Source

<1 %

76	www.scholink.org Internet Source	<1 %
77	Elisabeth Sundari, Anny Retnowati. "Marrying Unwanted Pregnant Girl Phenomenon in Indonesia: Is it in the Child's Best Interests?", <i>KnE Social Sciences</i> , 2024 Publication	<1 %
78	Raden Siti Rachmah Wardani. "Regional Representative Council in the Indonesian State Governance System: A Study of the Bicameral System", <i>SIGn Jurnal Hukum</i> , 2023 Publication	<1 %
79	ejournal.uinsaizu.ac.id Internet Source	<1 %
80	garuda.kemdikbud.go.id Internet Source	<1 %
81	oarep.usim.edu.my Internet Source	<1 %
82	peraturan.bpk.go.id Internet Source	<1 %
83	repository.umi.ac.id Internet Source	<1 %
84	www.corbyccg.nhs.uk Internet Source	<1 %
85	Hasyim Sofyan Lahilote, A.A. Miftah, Yuliatin Yuliatin, Rahmi Hidayati. "Judge's Dilemma in Marriage Dispensation in the Religious Court", <i>Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan</i> , 2022 Publication	<1 %
86	Noverman Duadji, Novita Tresiana. "Analysis of Child Marriage and Related Policies in Indonesia: Sustainable Development Issue", <i>Problemy Ekorozwoju</i> , 2022	<1 %

87	Nur Mohamad Kasim, Indra Saputra Daud. "Application of The Concept of Maslahah by Judges to Issuance of Marriage Dispensation Due to Pregnancy in Religious Courts", Jambura Law Review, 2022 Publication	<1 %
88	dinamikahukum.fh.unsoed.ac.id Internet Source	<1 %
89	discovery.researcher.life Internet Source	<1 %
90	e-journal.iainpekalongan.ac.id Internet Source	<1 %
91	ejournal.uin-malang.ac.id Internet Source	<1 %
92	ijmmu.com Internet Source	<1 %
93	namibian-studies.com Internet Source	<1 %
94	nexa.polito.it Internet Source	<1 %
95	unfpa.org.br Internet Source	<1 %
96	www.indramayujeh.com Internet Source	<1 %
97	www.shareweb.ch Internet Source	<1 %
98	Atnike Nova Sigiro. "Abolishing Child Marriage in Indonesia's Marriage Law through Feminist Legal Theory and Child's Rights Approach", Jurnal Perempuan, 2020 Publication	<1 %

99 Internet Source <1 %

100 ijtihad.iainsalatiga.ac.id Internet Source <1 %

101 ejournal.ipdn.ac.id Internet Source <1 %

102 jurnal.poltekesos.ac.id Internet Source <1 %

103 jurnal.unissula.ac.id Internet Source <1 %

Exclude quotes On

Exclude matches Off

Exclude bibliography On