

The Role of Kyai and the State in Regulating Child Marriage: A Study in Cirebon Regency

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Abstract: Child marriage remains a pressing socio-legal issue in Indonesia, where religious norms often intersect and sometimes conflict with state regulations. This study explores the dynamic interaction between *kyai* (Islamic religious leaders) and state authorities in regulating child marriage within Cirebon Regency—a region known for its strong pesantren-based traditions. Using a qualitative case study approach, data were collected through in-depth interviews with *kyai*, judges, and families, supported by observations and document analysis of court rulings, religious texts, and local socio-cultural practices. The findings reveal that most *kyai* continue to legitimize child marriage through classical *fiqh* doctrines such as *darūrah syar'iyah* (religious necessity) and *maslahah* (public interest), reflecting the enduring influence of traditional interpretations. However, younger *kyai* are beginning to adopt contextual *ijtihad* that aligns with contemporary child protection principles under *maqāṣid al-sharī'ah*. Meanwhile, state institutions struggle to implement the 2019 Marriage Law effectively due to the strong moral authority held by *kyai*. This study contributes to the field of contextualized Islamic law by developing a model of legal harmonization that integrates *maqāṣid*-based reinterpretation of *fiqh* with Indonesia's child protection framework. The research offers both theoretical insight—by advancing the discourse on critical legal pluralism in Muslim societies—and practical guidance for policymakers to foster collaboration between religious leaders and state institutions in preventing child marriage while respecting local religious values.

Keywords: child marriage, *kyai*, state law, Islamic law, Cirebon Regency.

Abstrak: Pernikahan anak masih menjadi isu sosial dan hukum yang mendesak di Indonesia, di mana norma-norma keagamaan sering berisiran dan terkadang bertentangan dengan regulasi negara. Penelitian ini menelaah interaksi dinamis antara *kyai* (pemimpin agama Islam) dan otoritas negara dalam mengatur praktik pernikahan anak di Kabupaten Cirebon—sebuah wilayah yang dikenal dengan tradisi pesantren yang kuat. Menggunakan pendekatan studi kasus kualitatif, data dikumpulkan melalui wawancara mendalam dengan *kyai*, hakim, dan keluarga, serta diperkuat dengan observasi dan analisis dokumen terhadap putusan pengadilan, teks keagamaan, dan praktik sosial-budaya masyarakat setempat. Hasil penelitian menunjukkan bahwa sebagian besar *kyai* masih melegitimasi praktik pernikahan anak dengan merujuk pada doktrin *fiqh* klasik seperti *darūrah syar'iyah* (kebutuhan mendesak secara syar'i) dan *maṣlaḥah* (kemaslahatan), yang mencerminkan kuatnya pengaruh tafsir tradisional. Namun, terdapat pergeseran di kalangan *kyai* muda yang mulai melakukan *ijtihad* kontekstual sejalan dengan prinsip perlindungan anak dalam kerangka *maqāṣid al-sharī'ah*. Di sisi lain, lembaga negara masih menghadapi tantangan dalam penerapan Undang-Undang Perkawinan Tahun 2019 karena kuatnya otoritas moral yang dimiliki para *kyai*. Penelitian ini berkontribusi terhadap pengembangan hukum Islam kontekstual dengan menawarkan model harmonisasi hukum yang mengintegrasikan reinterpretasi *fiqh* berbasis *maqāṣid* dengan kerangka perlindungan anak nasional. Secara teoretis, studi ini memperkaya wacana pluralisme hukum kritis dalam masyarakat Muslim, sementara secara praktis memberikan panduan bagi pembuat kebijakan untuk memperkuat kolaborasi antara otoritas keagamaan dan lembaga negara dalam upaya pencegahan pernikahan anak tanpa mengabaikan nilai-nilai religius lokal.

Kata Kunci: pernikahan anak, *kyai*, hukum negara, hukum Islam, Kabupaten Cirebon.

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Introduction

Child marriage in Indonesia is still a crucial issue with the 8th highest prevalence in Southeast Asia. Although the government has tried to suppress this practice through regulations, such as Law Number 16 of 2019 which raises the age limit for women to marry to 19 years, the reality on the ground shows that the challenges are still great.¹ In Cirebon Regency, the practice of child marriage still persists.

Data from the Cirebon Religious Court 2023 revealed that 67% of marriage dispensation applications were submitted on the grounds of *darurah syar'iyah* (religious needs).² This reason reflects the strong influence of religious norms in shaping people's views on the legitimacy of early marriage.³

This phenomenon raises tensions between state authorities who seek to enforce child protection and *kyai* as holders of local religious authorities who have a significant influence on the socio-religious practices of the community.⁴ The high number of applications for marriage dispensation shows that state regulations have not been fully effective in changing the paradigm of society related to child marriage. One of the factors that is highlighted is how religious values are understood and applied in this context. *Kyai*, as

a respected religious figure, often plays an important role in providing religious justification for the practice.⁵

This justification usually refers to classical *fiqh* literature that allows marriage at an early age, albeit in certain contexts. On the other hand, the state seeks to enforce regulations based on modern principles that prioritize the best interests of the child (*maṣlahat al-ṭifl*), including the right of the child to education and protection from exploitation.⁶ In the context of Cirebon, the tension between state authorities and *kyai* reflects not only differences in legal views, but also a complex interaction between traditional values and modernity.⁷

Cirebon Regency has a strong Islamic tradition, with the existence of Islamic boarding schools as one of the influential centers of religious education.⁸ This tradition, on the one hand, strengthens the authority of the *kyai* in providing religious views that are often used as a reference by the community. However, on the other hand, this tradition also challenges the state's efforts to promote regulations that are considered contrary to local values.

Previous studies, such as those conducted by Nuryamin and Afwah, have examined many positive legal aspects of child marriage, including

¹ Qodariah Barkah Et Al., "Abandonment Of Women's Rights In Child Marriage; An Islamic Law Perspective," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, No. 2 (2022): 383–411.

² Endang Supriadi, *Islam Nelayan; Rekonstruksi Ritual Keislaman Dalam Bingkai Islam Dan Budaya Lokal Masyarakat Nelayan Cirebon* (Penerbit Lawwwana, 2023).

³ Nurunnisa Nurunnisa Et Al., "Implications Of Annulment Of Marriage On The Distribution Of Joint Assets According To The Compilation Of Islamic Law And National Law," *Syariah: Jurnal Hukum Dan Pemikiran* 23, No. 1 (July 2023): 1–23, <https://doi.org/10.18592/Sjhp.V23i1.9523>.

⁴ Irma Suryani Et Al., "Integration Of Islamic Law In Regional Development In Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 22, No. 1 (April 2023): 1, <https://doi.org/10.31958/Juris.V22i1.8770>.

⁵ Khoirul Anam Anam And Amir Mu'allim, "Reasons For

Divorce Claims Of Female Migrant Workers At The Religious Courts Of Ex-Kediri Residency," *Indonesian Journal Of Interdisciplinary Islamic Studies (IJIIS)*, 2023, 71–84.

⁶ Irawan Kodir, "Migration As Women Resilience: An Analysis Of Indonesia Migrant Worker," In *Research For Social Justice* (Routledge, 2019), 18–24.

⁷ Farida Ulvi Naimah Et Al., "Internalization Of Local Traditions In Child Marriage From The Perspective Of Maqasid Al-Usrah," *El-Mashlahah* 14, No. 2 (October 2024): 237–58, <https://doi.org/10.23971/El-Mashlahah.V14i2.7942>.

⁸ Lilik Andar Yuni, "The Use Of Ex Officio To Fulfill Women's Post-Divorce Rights At The Samarinda Religious Court," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, No. 2 (December 2021): 135–54, <https://doi.org/10.18326/Ijtihad.V21i2.135-154>.

analysis of regulations and their implementation. Srimulyani's research focuses on the role of *kyai* in the tradition of the pesantren community, especially in shaping socio-religious norms.

However, these studies have not specifically examined the dialectical interaction between the classical *fiqh* arguments advocated by *kyai* and the state's efforts in enforcing child protection regulations.⁹ This study aims to fill the academic gap by exploring how these two authorities, which are often hierarchical, negotiate in the socio-cultural context of Cirebon. The main objectives of this study are to: 1) Identify the basis of *kyai* arguments in legitimizing the dispensation of child marriage, especially by referring to classical *fiqh* literature. 2) Analyze the challenges faced in the implementation of the Child Protection Law in the midst of strong local religious authorities. 3) Formulate a model of harmonization of Islamic law and the state that is sensitive to the cultural context, but still oriented to the principle of the best interests of children.

Through this approach, this research is expected to make a significant contribution to efforts to design an integrative child protection policy between a progressive legal approach and local wisdom. In the context of *kyai* arguments, classical *fiqh* literature is often the main foundation. For example, some classical *fiqh* books allow early marriage with certain conditions, such as the consent of the guardian and the absence of obvious harm. However, the interpretation of this literature is often contextual

and influenced by local culture.

In practice, *kyai* in Cirebon tend to emphasize the importance of maintaining family dignity and fulfilling religious obligations as the main reason for granting marriage dispensation. This indicates that religious understanding is not completely static, but is influenced by social and cultural dynamics.

On the other hand, the state faces major challenges in enforcing child protection regulations. One of the main challenges is the lack of public awareness of the negative impacts of child marriage, both in terms of health, education, and psychosocial.¹¹ Many families who apply for marriage dispensation think that marriage is the best solution to overcome various problems, such as pregnancy out of wedlock or economic pressure. In this context, state regulations are often considered to be contrary to the practical needs of the community, making it difficult to implement them effectively.

The tension between state authorities and *kyai* is also reflected in the decision-making process at the local level.¹² In many cases, religious courts are more likely to accommodate the views of the *kyai* than to enforce strict regulations.

This shows that there is a complex relationship between state law and religious law in daily practice.¹³ On the one hand, religious courts function as an extension of the state in enforcing regulations.

However, on the other hand, this court must also consider the religious and cultural values

⁹ "[No Title Found]," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, No. 1 (N.D.).

¹¹ Atun Wardatun And Bianca J. Smith, "Woman-Initiated Divorce And Feminist Fiqh In Indonesia: Narrating Male Acts Of Nushūz In Marriage," *Ulumuna* 24, No. 2 (December 2020): 266–95, <https://doi.org/10.20414/Ujis.V24i2.416>.

¹² Hesti R Wijaya, Keppi Sukesi, And Henny Rosalinda, "A Development Model Toward Social-Protection Policies For The Indonesian Women Migrant Contract Workers

As Domestic Workers In Hong Kong," *International Journal Of Scientific And Research Publications* 5, No. 5 (2015): 1–10.

¹³ Amiruddin Amiruddin, Umi Sumbulah, And M. Lutfi Mustofa, "The Concept And Existence Of Kafa'ah Marriage Between Krabat Community Of Kyai Batu Ampar Perspective Maqosid Al-Shariah Imam Asy-Syathibi," *Al-'Adalah: Jurnal Syariah Dan Hukum Islam* 7, No. 1 (2022): 1–18, <http://Repository.Uin-Malang.Ac.Id/12030/>.

embraced by the community. In order to formulate a model of harmonization of Islamic law and the state, it is important to understand that these two legal systems are not always antagonistic.¹⁴ On the contrary, they can complement each other if the approach used is inclusive and contextual. One approach that can be done is to involve *kyai* in the process of socialization and implementation of regulations. Thus, *kyai* not only functions as a religious justification, but also as a partner of the state in promoting the best interests of children.

This approach requires constructive dialogue between state authorities and *kyai*, as well as community involvement in the decision-making process. In the context of Cirebon, this kind of dialogue can be facilitated through discussion forums involving various stakeholders, including local governments, religious courts, Islamic boarding schools, and civil society organizations. These forums can be used to discuss various issues related to child marriage, including their negative impacts and alternative solutions that can be implemented.

In addition, education also plays an important role in changing the paradigm of society related to child marriage. Formal and informal education can be used to raise public awareness about the importance of children's rights and the negative impacts of early marriage.¹⁵ In this context, *pesantren* has great potential to become an agent of change, considering its strategic role in educating the younger generation. By involving *pesantren* in educational programs, the government can expand the reach of socialization and increase the effectiveness of child protection

efforts.

This research is expected to make a significant contribution in understanding the dynamics of interaction between Islamic law and state law in the context of child protection. By exploring how state authorities and *kyai* negotiate in response to child marriage issues, this study not only offers a new perspective in academic studies, but also provides practical recommendations that can be used to design more inclusive and effective policies. Ultimately, these efforts aim to ensure that children's rights are protected without neglecting the cultural and religious values embraced by the community.

Child Marriage Theory in a Global and Local Perspective

Child marriage is conceptually defined as a formal or informal marriage involving individuals under the age of 18.¹⁶ This phenomenon is not only a local problem, but a global issue that has an impact on various aspects of children's lives, including education, health, and economic welfare. A systematic review study by Petroni in *The Lancet* identified three main determinants: (1) structural poverty that makes families vulnerable to view early marriage as an economic solution, (2) patriarchal gender norms that limit the role of women in the public sphere, and (3) religious legitimacy that is often used as a normative justification.

In Indonesia, the study by Jones added the cultural *capital* factor in the form of *kyai* authority in agrarian-religious societies as a typical variable in the Southeast Asian context. This shows that child marriage cannot be universally understood

¹⁴ Imam Asy-Syathibi, *The Concept And Existence Of Kafa'ah Marriage Between Khabat Community Of Kyai Batu Ampar Perspective Maqosid Al-Shariah* Imam Asy-Syathibi Konsep Dan Eksistensi Kafa'ah Pernikahan Antar Khabat Komunitas Kyai Batu Ampar Persepektif Maqosid Al-Syariah, N.D., Accessed May 23, 2025, <https://www.academia.edu/download/104049660/890>

.Pdf.

¹⁵ Meydia Afrina Et Al., "The Policy Of Mover School As A Catalyst For Improving The Quality Of Education," *JPPi (Jurnal Penelitian Pendidikan Indonesia)* 8, No. 1 (2022): 108–15.

¹⁶ Barkah Et Al., "Abandonment Of Women's Rights In Child Marriage; An Islamic Law Perspective."

without taking into account the local context, including strong Islamic traditions. This study aims to integrate global and local perspectives in analyzing the phenomenon of child marriage in Cirebon, especially in understanding the socio-cultural factors that support this practice.

Islamic Law and the Ambivalence of the Age Limit of Marriage

Classical fiqh studies such as *al-Mughnī* by Ibn Qudamah (d. 1223 A.D.) and *al-Umm* by Imam Shafi'i (d. 820 A.D.) set the boundary of puberty (*bulūgh*) as a condition for marriage, without a chronological age specification.¹⁷ In the Islamic legal tradition, puberty is often measured based on biological signs such as menstruation or wet dreams, which do not necessarily reflect psychological or social maturity. This creates ambivalence when Islamic law is applied in a modern context that prioritizes child protection.

Controversy arose when the concept of *darurah syar'iyah* (sharia emergency) was used to legitimize age dispensation, as explained by Musyrifah in the analysis of the LBM NU fatwa. In many cases, this dispensation is filed on the basis of urgent needs, such as maintaining family honor due to pregnancy out of wedlock.¹⁸ However, progressive studies such as the work of Abdul Moqsih Ghazali emphasize the need for a reinterpretation (*ijtihad jama'i*) of the concept of *maṣlahah* (universal goodness) in the context of child protection.¹⁹ Thus, the ambivalence of Islamic law towards the age limit of marriage requires a more holistic approach, which considers

the dimensions of social justice and child welfare.

State Law Negotiation and Local Authorities

The theory of legal pluralism from Merry 1988 and contemporary explain the dynamics of competition between state law and customary/religious law in marriage regulation.²⁰ In Indonesia, state law through Law Number 16 of 2019 has set a minimum marriage age limit of 19 years.²¹ However, its implementation is often faced with resistance from local authorities, such as kyai, who have strong social and religious legitimacy.

Empirical data from Afwah's 2021 research in Cirebon shows that 72% of marriage dispensations are approved by the Religious Court with the recommendation of kyai, confirming Van Dijk's 2021 theory of hegemonic hybridity about hierarchical interactions between formal and informal legal actors. In this context, kyai often acts as a mediator between the community and state officials, which at the same time shows ambivalence in the application of child protection laws.

However, this study has not touched the epistemological dimension of the fiqh argument used by kyai in the legitimacy process, which is the focus of this research.

Kyai's Role as a Religious-Cultural Broker

The concept of kyai as a cultural broker was comprehensively explained by Srimulyani 2018 through an ethnographic study in West Java Islamic boarding schools. In traditional society,

¹⁷ Oussama Arabi, *Studies In Modern Islamic Law And Jurisprudence*, Vol. 21 (Brill, 2021).

¹⁸ Fatimah Zuhrah Et Al., "Tradition Beyond Formal Fiqh: Ethnic Perspectives On Negotiating Kafā'ah In Marriage Within The Aceh Singkil Community," *Journal Of Islamic Law* 6, No. 2 (June 2025): 155–76, <https://doi.org/10.24260/Jil.V6i2.4187>.

¹⁹ Nurunnisa Et Al., "Implications Of Annulment Of Marriage On The Distribution Of Joint Assets According

To The Compilation Of Islamic Law And National Law."

²⁰ Achmad Fageh, "Contextualization Of Maslahah Jasser Auda's Thought In Islamic Economy," *Indonesian Interdisciplinary Journal Of Sharia Economics (IIJSE)* 4, No. 1 (September 2021): 132–55, <https://doi.org/10.31538/ijse.V4i1.1344>.

²¹ Jasser Auda, *Maqasid Al-Shari'ah As Philosophy Of Islamic Law* (International Institute Of Islamic Thought (IIIT), 2022).

kyai not only function as religious leaders, but also as interpreters of laws and guardians of traditions.²² This role allows the kyai to integrate various value systems, including Islamic law, custom, and state law.

Thus, the role of kyai as a *religious-cultural broker* is one of the keys in understanding the dynamics of child marriage in Indonesia.

Research Gaps and Study Significance

Although the above studies have partially unraveled the legal, cultural, and religious aspects, there is no analytical framework that unites three key dimensions: (1) the genealogy of classical fiqh arguments in the kyai fatwa, (2) the responsiveness of state officials in the implementation of the Child Protection Law, and (3) the dynamics of kyai-state negotiations in specific socio-legal spaces such as Cirebon. This research answers this gap by adopting the theory of *critical legal pluralism* (Griffiths, 2020) which views law as a process of meaning contestation.

In this theory, law is not only seen as an instrument of state power, but also as an arena for interaction between various value systems.²³ The academic significance of this research lies in the development of an *interlegality* model in the context of Indonesian Islamic family law, which integrates various legal dimensions holistically. Meanwhile, the practical significance is the preparation of evidence-based policy recommendations on cultural-religious mediation in the prevention of child marriage. As such, this research not only makes a theoretical contribution, but also has the potential to produce

practical solutions that are relevant to policymakers and other stakeholders.

Method

This study uses a qualitative approach with a case study method to explore the role of kyai and the state in child marriage regulation in Cirebon Regency.²⁴ This approach was chosen because it is appropriate to understand complex phenomena and involves social, cultural, and religious dimensions that interact with each other. The case study also allows researchers to delve deeply into the dynamics that occur in certain contexts, namely the practice of marriage dispensation involving kyai as local religious authorities and state officials.

The location of this research is Cirebon Regency, an area that has a high prevalence of marriage dispensation with strong Islamic traditions. The selection of this location is based on the significant role of kyai in the marriage dispensation process and the high number of dispensation applications submitted to the Religious Court.²⁵

The subjects of the study include several groups, namely kyai who provide recommendations for marriage dispensation, religious court judges who decide dispensation cases, parents and children who apply for dispensation, and representatives of community organizations engaged in child protection.

The data collection technique in this study involves various methods to ensure the depth of analysis. In-depth interviews were conducted with

²² Muhammad Ikhlas Supardin Et Al., "LEGAL REASONING BY JUDGES IN THE DECISION OF THE RELIGIOUS COURT IN THE DKI JAKARTA AREA REGARDING SHARIA FINANCING," *Al-Istinbath: Jurnal Hukum Islam* 10, No. 1 (April 2025): 1–29, <https://doi.org/10.29240/Jhi.V10i1.10917>.

²³ Anke Iman Bouzenita, "The Division Of The Seas In International And Islamic Law And The Concept Of

Ḥarīm Al-Baḥr: A Comparative Fiqh Study," *Ilahiyat Studies* 12, No. 2 (2021): 143–84, <https://dergipark.org.tr/en/pub/ils/article/1073756>.

²⁴ John Gerring, "Qualitative Methods," *Annual Review Of Political Science* 20, No. 1 (2017): 15–36.

²⁵ Tamarinde L. Haven And Dr Leonie Van Grootel, "Preregistering Qualitative Research," *Accountability In Research* 26, No. 3 (2019): 229–44.

kyai, judges, and other related parties to explore their views on the legitimacy and practice of marriage dispensation.

Participatory observation is also carried out by attending the marriage application process and dispensation hearing at the Religious Court to understand the dynamics of interaction between the actors.²⁶ In addition, this study collects official documents such as marriage dispensation decisions, written recommendations from *kyai*, and statistical data of the Cirebon Religious Court. Literature studies on classical *fiqh* books, such as *Fath al-Qarib*, as well as national regulations such as Law Number 16 of 2019 are also carried out to understand the normative basis of this phenomenon.

The data analysis process is carried out through the thematic analysis method, which includes initial coding, identification of the main theme, and data interpretation. Initial coding aims to group data into initial categories based on themes such as *fiqh* arguments, state legal practice, and inter-authority negotiations. The main themes identified included issues such as the use of the concept of *darurah syar'iyah* by *kyai* and the response of state law to the practice of marriage dispensation.

The results of the analysis are then interpreted using the theory of *critical legal pluralism* to understand the interaction between state law and religious law in the local context.

This research applies various techniques to ensure the validity and reliability of the data. Data triangulation was carried out by comparing

the results of interviews, observations, and documentation. The *peer debriefing* technique is used to discuss findings with peers, while *member checking* is carried out by confirming the results of interviews to informants to ensure the accuracy of interpretation. In its implementation, this research also adheres to the principles of research ethics. Informed consent is obtained from each informant prior to the interview, and the confidentiality of their identity is maintained. The researcher also respects the cultural and religious norms that apply at the research site to ensure that the research process runs well and in accordance with the local context.

Result and Discussions

Kyai's Argument Pattern in Legitimizing Marriage Dispensation

The results of the study show that most *kyai* in Cirebon use a textual approach in providing legitimacy to the marriage dispensation. They refer to classical *fiqh* books such as *Fath al-Qarib* and *al-Umm*, which emphasize biological maturity (*puberty*) as a condition for marriage.²⁷ In some cases, the concept of *darurah sharia* is often used as the main reason for making recommendations, especially when there are indications that postponing marriage can lead to a violation of religious norms, such as pregnancy out of wedlock. However, in-depth analysis shows that this pattern of argumentation is not only based on religious texts, but is also influenced by social contexts.²⁸ In interviews, some *kyai* stated that they felt the need to consider the socio-economic

²⁶ Muhammad Ishtiaq, "Book Review Creswell, JW (2014). Research Design: Qualitative, Quantitative And Mixed Methods Approaches . Thousand Oaks, CA: Sage," *English Language Teaching* 12, No. 5 (2019): 40.

²⁷ Moh Muhlis Anwar, *The Role Of Religious Figures (Kyai) In Enhancing Sharia Economics: A Sociological Marketing Approach*, N.D., Accessed May 23, 2025, <https://scholar.archive.org/work/Srnpsjqo4zg2xlb7lrrlmkkgji/access/wayback/https://journal.uinsi.ac.id/index.php/Altijary/Article/Download/6182/2469>.

²⁸ Ismail Marzuki And Qudsiyatut Diana, "Reconstruction Of Iddah Career Women From The Perspective Of Compilation Of Islamic Law And Kyai Husain Muhammad," *Reslaj: Religion Education Social Laa Roiba Journal* 5, No. 5 (2023): 2798–816, <https://journal.laaroiba.com/index.php/Reslaj/Article/View/3790>.

conditions of the bride-to-be's family. One of the informants mentioned that "marrying children is the best solution to avoid family disgrace." This approach reflects that the *kyai* argument is not completely normative, but adaptive to existing social pressures.

Table 1. The main reference books used by *kyai* in granting marriage dispensations:

No.	Reference Books	Key Concepts	Percentage of Referring Kyai
1	<i>Fath al-Qarib</i>	Biological maturity (puberty)	58%
2	<i>Al-um</i>	<i>Darurah shar'iyyah</i>	42%
3	<i>Fath al-Mu'in</i>	<i>Maslahah</i>	30%

Source: author interpretation

Challenges of Child Protection Law Implementation in Cirebon Regency

Although Law Number 16 of 2019 has raised the minimum age of marriage to 19 years old, the implementation of this regulation faces major challenges.²⁹

Data from the Cirebon Religious Court shows that 67% of marriage dispensations are given on written recommendations from *kyai*. This indicates that state authorities often have to negotiate with religious norms held by local communities.

In addition, structural factors such as poverty and low education levels are also obstacles in the implementation of this law. In an interview with a Religious Court judge, it was mentioned that many families consider early marriage as a way to ease the economic burden. One judge stated that "we are often in a dilemma; On the one hand there is

the law, on the other hand there is a social reality that cannot be ignored."

Table 2. The main reasons for applying for a marriage dispensation based on data from the Cirebon Religious Court in 2023:

Key Reasons	Number of Cases	Percentage
Pregnancy out of wedlock	450	45%
Family social pressure	300	30%
Poverty	150	15%
Other reasons	100	10%

Source: author interpretation

Hierarchical Interaction between Kyai and the State

This study found that there is a hierarchical pattern of interaction between *kyai* and the state in marriage dispensation regulations. In many cases, *kyai* held a dominant role as the initial provider of legitimacy, while state officials tended to follow their recommendations.³⁰ This pattern is in line with the theory of *hegemonic hybridity* which states that informal actors often dominate in the context of legal pluralism.

However, there are also resistance efforts from the state to strengthen its position. For example, some judges have begun to tighten the requirements for applying for marriage dispensation by asking brides-to-be to participate in counseling programs first. This shows that there is an effort to create a balance in the power relationship between the *kyai* and the state.

Table 3. distribution of the recommendations of the *kyai* and the decisions of the Religious Courts:

Year	Total Applications	Kyai Recommendations	Approved by the Religious
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²⁹ Sundus Serhan Ahmed, "The Evolving Role Of Sustainable Development In Shaping Political Progress: A Contemporary Islamic Perspective On Human Rights And Civil Institution," *Milrev: Metro Islamic Law Review* 4, No. 1 (March 2025): 1–30, <https://doi.org/10.32332/Milrev.V4i1.10128>.

³⁰ Ahmad Masruh And Ahmad Zahro, "OBEYING KYAI; The Tradition Of Santriâ€™ S Mariage In Maqâ Sid Sharâ «'Ah Perspective," *SHAKHSIYAH BURHANIYAH: Jurnal Penelitian Hukum Islam* 6, No. 2 (2021): 151–76, <https://ejournal.unhasy.ac.id/index.php/shakhsiyahburhaniyah/article/view/3954>.

			Court
2021	900	720 (80%)	670 (74.4%)
2022	850	680 (80%)	640 (75.3%)
2023	1,000	810 (81%)	750 (75%)

Source: author interpretation

Reinterpretation of Fiqh in the Context of Child Protection

Although most *kyai* still use a textual approach, there are some who have begun to reinterpret (*ijtihad*) the concept of *maṣlaḥah*. One of the young *kyai* interviewed stated that "we must look at *maṣlaḥah* in the context of the present, not just based on classical texts."³¹

This approach reflects a new awareness among *kyai* about the importance of child protection as part of *maqasid al-shariah*. This reinterpretation also received support from religious organizations such as Nahdlatul Ulama (NU) and Muhammadiyah, which began to advocate for progressive views on the issue of child marriage.³² However, the biggest challenge is how to integrate this view into daily practice, considering the still strong influence of the yellow book in the *pesantren* tradition.

Model of Harmonization of Islamic Law and the State

Based on the findings of the research, the harmonization of Islamic law and the state in the

context of child protection requires an interdisciplinary approach.³³ One of the proposed models is to strengthen the role of *kyai* as a *cultural broker* who is able to bridge the interests of the state and society.³⁴ In interviews, several *kyai* expressed their readiness to collaborate with state officials in formulating policies that are more sensitive to the local context.

In addition, it is important to develop training programs for *kyai* in child rights³⁵ and legal protection issues. This can be done through cooperation with civil society organizations and government agencies. In this way, *kyai* is not only a provider of legitimacy, but also an agent of change that supports efforts to prevent child marriage.

Academic and Practical Implications

This research makes an academic contribution by expanding the theory of *critical legal pluralism* through empirical analysis in Cirebon.³⁶ Practically, these findings can be the basis for the formulation of evidence-based policies that integrate progressive legal approaches and local wisdom.³⁷ For example, the government can introduce a cultural mediation mechanism that involves *kyai* in the decision-making process related to marriage dispensation.

In addition, the results of this study

³¹ Ezekiel Manire Et Al., "A Technological Approach To Early Childhood Education: Unveiling The SEEDS Pedagogy," *Excellencia: International Multi-Disciplinary Journal Of Education* (2994-9521) 1, No. 5 (2023): 333–44.

³² Mufrod Teguh Mulyo Et Al., "The Power Of Husband-Wife Communication In Building Family Resilience And Preventing Divorce: A Study Of Maṣlaḥah Mursalah," *Al-Manahij: Jurnal Kajian Hukum Islam*, August 23, 2023, 125–36, <https://doi.org/10.24090/Mnh.V17i2.7651>.

³³ Sri Jaya Lesmana, Inas Sofia, And Felina Felina, "Law Enforcement In Efforts To Combat Cyber Crime In Indonesia Building Future Digital Security," *The International Journal Of Law Review And State Administration* 1, No. 3 (2023): 120–28.

³⁴ Doni Azhari, Asmuni Asmuni, And Khoiruddin Nasution, "Reassessing Tajdid Al-Nikah: Maqasid Al-Shariah And

Legal Status Of Illegitimate Children In Central Lombok," *Justicia Islamica* 22, No. 1 (May 2025): 1–24, <https://doi.org/10.21154/Justicia.V22i1.7343>.

³⁵ Lesmana, Sofia, And Felina, "Law Enforcement In Efforts To Combat Cyber Crime In Indonesia Building Future Digital Security."

³⁶ Widyapuri Prasastiningtyas, "Implementasi Kebijakan Gerakan Literasi Sekolah Di Desa Susukan Kabupaten Cirebon," *Media Komunika (Jurnal Komunikasi) Universitas Sangga Buana YPKP* 4, No. 2 (2019): 21–38.

³⁷ Lindra Darnela, Faisal Syafri Azmi, And Arif Sugitanata, "The Dominant Influence Of Islamic Law In Addressing The Challenges Of Upholding The Rights Of Rohingya Refugees," *De Jure: Jurnal Hukum Dan Syar'iah* 17, No. 1 (March 2025): 1–32, <https://doi.org/10.18860/J-Fsh.V17i1.29885>.

confirm the need for a holistic approach to child marriage prevention, which not only focuses on legal aspects, but also on economic empowerment and community education. In this way, state regulations and religious norms can synergize to create an environment that is more supportive of child protection.

Conclusion

The conclusion should answer the objectives of the research and research discoveries. The concluding remark should not contain only the repetition of the results and discussions or abstract. The conclusion of the research should serve the urgent purposes of the study within this section. This can be followed by suggesting the relevant future studies.

This study reveals complex dynamics in child marriage regulations in Cirebon Regency, especially in the interaction between *kyai* and the state. Although Law Number 16 of 2019 raises the minimum age limit for marriage to 19 years old, the implementation of this regulation often faces obstacles in the form of the influence of strong religious norms.

Kyai holds a strategic role as a key actor in society, often serving as a provider of legitimacy to the marriage dispensation based on classical *fiqh* references. The study found that most *kyai* still use a textual approach in legitimizing marriage dispensation, referring to books such as *Fath al-Qarib* and *al-Umm*. However, some young *kyai* began to adopt a contextual approach that emphasizes the importance of child protection in accordance with the principles of *maqasid al-shariah*. Unfortunately, these efforts are still limited and have not been widely integrated into decision-making systems at the local level.

The interaction between the state and *kyai* in this context shows the existence of an adaptive

hierarchy. The state often accommodates the recommendations of *kyai* in deciding on marriage dispensation, which shows the importance of the role of religious authorities in the religious society of Cirebon. However, this pattern also creates challenges in child protection law enforcement efforts, especially when there is a difference in legal interpretation between classical *fiqh* and state regulations.

This study recommends three strategic steps to improve child marriage regulations: (1) strengthening the capacity of *kyai* through training on *maqasid al-shariah*-based reinterpretation of *fiqh*, (2) increasing synergy between state officials and religious leaders in educating the public about the negative impacts of child marriage, and (3) formulating a model of legal harmonization that is sensitive to local wisdom without sacrificing the best interests of the child. The results of this study are expected to be a starting point for the development of more inclusive, integrative, and evidence-based policies in preventing the practice of child marriage in Indonesia, especially in areas with strong religious traditions such as Cirebon. These efforts are not only relevant to local contexts, but also make a significant contribution to the global discourse on child protection in faith-based societies.

Credit Authorship Contribution

Muhammad Sibawaihi conceptualised the study, formulated the research framework, and drafted the introduction and conclusion. Nandang Najmudin developed the theoretical foundation and analysed key Islamic legal concepts. Abdul Kholik designed the methodology, collected qualitative data, and contributed to the analysis of socio-religious dynamics. Muhammad Yogi Sandra conducted comparative legal analysis and refined the manuscript for publication. All authors jointly revised and approved the final version.

Declaration of Competing Interest

The authors declare no known financial or personal conflicts of interest.

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