

## **Loopholes in Law: Why Local Strategies Fail to Curb Child Marriage in Jember Regency**

**Siti Muslifah**

Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember

[sitimuslifah@uinkhas.ac.id](mailto:sitimuslifah@uinkhas.ac.id)

**Muhammad Aenur Rosyid**

Universitas Islam Negeri Kiai Haji Achmad Siddiq Jember

[maenurrosyid@uinkhas.ac.id](mailto:maenurrosyid@uinkhas.ac.id)

**Iklil Athroz Arfan**

School of Islamic Studies, Ibn Haldun University, Turkiye

[iklilathroz.arfan@stu.ihu.edu.tr](mailto:iklilathroz.arfan@stu.ihu.edu.tr)

### **Abstract:**

Child marriage persists as a critical issue in Jember Regency, which recorded the highest incidence in East Java in 2023 despite the national reform raising the legal minimum age for marriage. This study investigates community perceptions of early marriage, evaluates local government strategies, and assesses their effectiveness from a legal perspective. Employing a juridical-empirical approach with statutory and case study methods, data were collected through semi-structured interviews with purposively selected informants and analyzed using narrative techniques. The findings reveal that child marriage in Jember is driven by intertwined socio-economic, cultural, and religious factors. These include poverty, limited educational attainment, traditions such as arranged marriages and nikah siri, parental anxiety about social stigma, premarital pregnancies, and misinterpretations of religious obligations. In response, the Jember Regency Government introduced Circular Letter No. 474/196/35.09.317/2024, which outlines additional administrative requirements for marriage dispensation applications. However, assessed through the lens of legal effectiveness theory, the policy has proven insufficient. The circular letter holds weak legal authority, applies only to government agencies rather than the wider community, and remains vulnerable to circumvention. This study contributes to the literature by not only mapping the socio-cultural drivers of child marriage but also critically evaluating the legal effectiveness of local government interventions. It argues that meaningful reduction of child marriage requires stronger binding regulations, enhanced institutional coordination, and culturally sensitive community education.

**Keywords:** child marriage, marriage dispensation, government policy, legal effectiveness, Jember Regency.



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## Introduction

The legal reform to raise the minimum marriage age for women from sixteen to nineteen, as stipulated in the Marriage Law, represents a cohesive relationship between the state's interest in providing legal protection for children and the religious interest in upholding the concept of marital welfare for children.<sup>1</sup> This effort is a strategic step to prevent early-age marriages, which have been shown to have negative consequences.

The need to prevent early marriage stems from its impact on the sustainability and harmony of a household, encompassing economic, physical, and mental well-being. A significant number of early-age marriages fail due to the psychological immaturity of both parties. Furthermore, physical readiness is essential to ensure reproductive health during pregnancy. Economic preparedness is also crucial for guaranteeing the stability of household finances, the lack of which can often trigger conflicts that lead to divorce.<sup>2</sup>

Despite the tightening of normative requirements by increasing the minimum marriage age, the Marriage Law still provides for marriage dispensation as an alternative solution for underage couples to officially marry. This creates a dilemma. On the one hand, marriage dispensation is intended as an emergency measure or last resort for situations where marriage is an absolute necessity. On the other hand, the absence of clear limitations on what constitutes a very urgent reason for marriage makes the dispensation regulation contradictory to the increase in the minimum marriage age for women to nineteen.<sup>3</sup>

In 2023, the Jember Religious Court recorded a significant increase in marriage dispensation applications, reaching 1,600 cases.<sup>4</sup> This number rose from 1,364 cases in the previous year.<sup>5</sup> This increase indicates that raising the minimum marriage age for women has not been effective in preventing early marriage, with dispensations often being used as a loophole to circumvent the regulation.

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<sup>1</sup> Fitri Yanni Dewi Siregar Dan Jaka Kelana, "Kesetaraan Batas Usia Perkawinan Di Indonesia Dari Perspektif Hukum Islam," *Mahakim: Journal Of Islamic Family Law* 5, No. 1 (14 Juni 2022): 1–10, <https://doi.org/10.30762/Mahakim.V5i1.130>.

<sup>2</sup> Agus Munib Dan Miftahul Huda, "Pernikahan Di Bawah Umur Dan Relasinya Terhadap Keluarga Di Kecamatan Slahung Kabupaten Ponorogo," T.T.

<sup>3</sup> Sulistyarini, "Penguatan Norma Syarat Dispensasi Kawin Dalam Upaya Pencegahan Perkawinan Anak Berdasarkan Perspektif Teori Tujuan Hukum," *Justitia Et Pax* 39, No. 1 (2023): 55–85.

<sup>4</sup> Gandi Lukmanto, "Kasus Pernikahan Dini Di Jember Masih Tinggi," *Radio Republik Indonesia*, 15 Juli 2023, <https://www.rri.co.id/jember/daerah/287675/kasus-pernikahan-dini-di-jember-masih-tinggi>.

<sup>5</sup> Safitri Safitri, "Tahun 2022 Dispensasi Nikah Di Jember Tembus 1.364 Perkara," *Radar Jember*, 21 Januari 2023, <https://radarjember.jawapos.com/jember/791123629/tahun-2022-dispensasi-nikah-di-jember-tembus-1364-perkara>.

In order to identify the novelty of this research, a comparison was made with the works of Ana Latifatul Muntamah et al., entitled *Pernikahan Dini Di Indonesia: Faktor Dan Peran Pemerintah (Perspektif Penegakan Dan Perlindungan Hukum Bagi Anak)*<sup>6</sup>, and Diah Noval Lestari et al., entitled *Peran Pemerintah Daerah Kabupaten Lamongan Dalam Upaya Mengurangi Angka Pernikahan Dini Tahun 2021*<sup>7</sup>. These two studies exclusively focus on the factors contributing to early marriage and the general forms of government policy. In contrast, this study not only addresses these two aspects but also analyzes the effectiveness of government policies in preventing early marriage.

Furthermore, this research is differentiated from the works of Rahmah Nur, entitled *Perkawinan Di Bawah Umur (Analisis Terhadap Tugas, Fungsi Dan Peran Pemerintah Dalam Mengatasi Perkawinan Di Bawah Umur Pada Masyarakat Islam Kota Manado)*,<sup>8</sup> and Indah Muhadara et al., entitled *Peran Pemerintah Daerah Dalam Pengendalian Perkawinan Usia Dini Di Kecamatan Polongbangkeng Utara Kabupaten Takalar*. Those two studies primarily analyze the role of local governments in preventing early marriage through the duties and functions of the Office of Religious Affairs (KUA).<sup>9</sup>

Conversely, this study evaluates the role of not only the KUA but also other local government bodies, including the Office of Women's Empowerment, Child Protection, and Family Planning (DP3AKB), the Health Office, and the Religious Court. This integrated approach is crucial because it examines the entire process, from the submission of administrative requirements for marriage dispensation to the analysis of weaknesses in its implementation.

The complexity of the factors underlying early marriage is not limited to the judiciary's application of marriage dispensations. Consequently, there is a need for the establishment of an integrated, cross-sectoral formal policy, as there is no single solution to prevent child marriage globally. Therefore, the researcher is interested in investigating and evaluating the role of the Jember Regency government in reducing the rising rate of early marriage.<sup>10</sup>

## Method

<sup>6</sup> Ana Latifatul Muntamah, Dian Latifiani, Dan Ridwan Arifin, "PERNIKAHAN DINI DI INDONESIA: FAKTOR DAN PERAN PEMERINTAH (PERSPEKTIF PENEGAKAN DAN PERLINDUNGAN HUKUM BAGI ANAK)," *Widya Yuridika* 2, No. 1 (21 April 2019): 1, <https://doi.org/10.31328/Wy.V2i1.823>.

<sup>7</sup> Diah Noval Lestari, Nunik Retno Herawat, Dan Turtiantoro - -, *Journal Of Politic And Government Studies; Vol 12, No 1: Periode Wisuda Januari 2023*, 30 Desember 2022, <https://ejournal3.undip.ac.id/index.php/jpgs/article/view/37280>.

<sup>8</sup> Rahmah Nur, "Perkawinan Di Bawah Umur (Analisis Terhadap Tugas, Fungsi Dan Peran Pemerintah Dalam Mengatasi Perkawinan Di Bawah Umur Pada Masyarakat Islam Kota Manado)," *I'tisham: Journal Of Islamic Law And Economics* 1, No. 1 (2021): 54–77.

<sup>9</sup> Indah Muhadara, Anwar Parawangi, Dan Ihyani Malik, "PERAN PEMERINTAH DAERAH DALAM PENGENDALIAN PERKAWINAN USIA DINI DI KECAMATAN POLONGBANGKENG UTARA KABUPATEN TAKALAR," *Jurnal Kolaborasi* 2, No. 3 (2016).

<sup>10</sup> Heri Sunaryanto, "ANALISIS SOSIAL-EKONOMI FAKTOR PENYEBAB PERKAWINAN ANAK DI BENGKULU: DALAM PERSPEKTIF MASYARAKAT DAN PEMERINTAH (Studi Kasus Di Kabupaten Seluma)," *Jurnal Sosiologi Nusantara* 5, No. 1 (25 Juni 2019): 22–42, <https://doi.org/10.33369/Jsn.5.1.22-42>.

This study employed an empirical legal research design to analyze both the factors contributing to child marriage and the implementation of marriage dispensation procedures in Jember Regency. The analysis was guided by Soerjono Soekanto's theory of legal effectiveness. A combination of statutory and case study approaches was used. Primary data were collected through semi-structured interviews and document review. Informants were selected using purposive sampling, resulting in seven participants drawn from institutions directly involved in child marriage prevention, including the Religious Court, the Office of Religious Affairs, the Department of Women's Empowerment, Child Protection, and Family Planning (DP3AKB), and local civil society organizations.

Secondary data were obtained from relevant laws and regulations, journal articles, books, and policy documents addressing early marriage and marriage dispensation. These materials provided the theoretical and contextual foundation for interpreting the empirical findings. Data were analyzed using descriptive narrative analysis to identify patterns, compare institutional roles, and evaluate the effectiveness of regulatory implementation. This methodological approach enabled the integration of community perspectives, legal frameworks, and government practices in assessing child marriage prevention efforts.

## Discussion

### Theoretical Framework: Legal Effectiveness

The term "effectiveness" originates from the English word "effective," which denotes a successful and well-executed outcome. According to the Great Dictionary of the Indonesian Language, the word also signifies something that has had an impact or influence since its legal enactment.<sup>11</sup> In a legal context, effectiveness refers to the state where an authority successfully carries out a function, such as law enforcement. Therefore, effectiveness implies the presence of a desired impact or consequence resulting from a specific action. According to Soerjono Soekanto, several key factors influence the effectiveness of a legal framework.<sup>12</sup>

#### 1. The Legal Factor

The primary goal of law enforcement is to achieve legal certainty, justice, and utility. However, in practice, harmonizing these three elements simultaneously is often difficult, leading to conflicts between legal certainty and justice. While legal certainty is concrete and can be explicitly defined in statutory regulations, justice is more abstract. In rendering a decision, a judge might focus too heavily on the literal application of a legal article, neglecting the element of justice. Therefore, in resolving legal issues, justice should be the priority, as the success of law enforcement is not solely determined by written legal provisions but also by other evolving factors within society. Despite this, the value of justice itself remains subject to individual subjectivity.

#### 2. The Law Enforcement Factor

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<sup>11</sup> Pusat Pembinaan Dan Pengembangan Bahasa, Ed., *Kamus Besar Bahasa Indonesia*, 2. Ed., 3. Cetakan (Jakarta: Balai Pustaka, 2001).

<sup>12</sup> Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* / (Jakarta: Raja Grafindo Persada, 2007).

This factor includes all parties involved in formulating, enacting, and implementing legal rules. Legal effectiveness is achieved when law enforcement officials can proportionally deliver certainty, justice, and utility. To accomplish this, these officials must act transparently, professionally, and with integrity. Three primary elements are crucial for effective law enforcement:

- a) The institutions themselves, along with their physical resources and operational mechanisms.
- b) The professional culture that guides the performance of law enforcement officials, supported by adequate welfare.
- c) The regulatory framework—both material and formal—that supports institutional performance and sets performance standards.

### 3. The Facilities and Infrastructure Factor

Legal facilities and infrastructure are essential supporting elements that facilitate the work of law enforcement officials in achieving their goals. This encompasses physical resources, skilled and trained human capital, sound organizational management, adequate equipment, and sufficient funding. Beyond the availability of these resources, their regular maintenance is also critical. In many cases, the implementation of a regulation is unproductive due to a lack of necessary infrastructure, which creates obstacles that impede the law enforcement process.

### 4. The Societal Factor

The ultimate objective of law enforcement is to achieve social order, security, and peace within the community. The effectiveness of law enforcement is highly dependent on the legal awareness of the public. If officials are committed to enforcing the law but are not met with public awareness and compliance, enforcement becomes difficult. Therefore, efforts to enhance public legal awareness, such as through socialization involving key community figures, government authorities, and law enforcement officials, are crucial. The formulation of legal rules must also consider ongoing social changes to ensure the law remains an effective tool for social regulation.

### 5. The Cultural Factor

The cultural factor is closely related to the societal factor, as it centers on the system of values that form the core of a society's non-material culture. This is a distinct element because law, as a social system (or a subsystem of a societal system), encompasses structure, substance, and culture. The structure refers to the framework or form of the legal system, including formal legal institutions, inter-institutional relationships, rights, and obligations.

## **Regulation of Marriage Dispensation in Indonesia**

Etymologically and terminologically, "dispensation" is defined as an exemption or release from a general provision, obligation, or prohibition that would otherwise apply. The granting of dispensation is predicated on specific, urgent considerations or

circumstances. It represents a form of leniency toward formal rules that are not permissible or actionable under normal conditions.<sup>13</sup>

Within the context of Indonesian marriage law, a marriage dispensation specifically refers to an exemption from the minimum age requirement for marriage as stipulated by law. Before the 2019 revision, Law No. 1 of 1974 set the minimum age at 19 for men and 16 for women. This provision allowed for child marriage, particularly for females, which subsequently led to various social and legal problems.

With the enactment of Law No. 16 of 2019, the minimum age for marriage was uniformly raised to 19 years for both males and females. This amendment aims to ensure the psychological and physical maturity of prospective spouses, mitigate divorce risks, and support the optimal development of children. Under this revised legal framework, marriage dispensation is explicitly defined as the court's permission for a male or female who has not yet reached the age of 19 to marry.

A request for marriage dispensation must be based on "extremely urgent reasons" supported by adequate evidence. The criteria for "extremely urgent" are central to a judge's consideration. Common urgent reasons cited in practice include out-of-wedlock pregnancy, parental concern over premarital promiscuity, or a lack of interest from the child in pursuing higher education.

The increase in the minimum marriage age to 19 for both genders has resulted in a direct surge in the number of marriage dispensation applications. This phenomenon does not necessarily indicate a decline in the practice of child marriage but rather a procedural shift from direct marriage, which was previously permitted, to a formal application for a legal exemption through the court system.

In response to this trend, the Indonesian Supreme Court issued Supreme Court Regulation (PERMA) No. 5 of 2019 on November 21, 2019. This regulation provides a uniform and comprehensive guideline for judges adjudicating marriage dispensation requests. The PERMA reflects the Supreme Court's commitment to internalizing and prioritizing the principles of child rights in all aspects of the judicial process, including case examination and verdict deliberation.<sup>14</sup>

PERMA No. 5 explicitly mandates that judges listen to the testimony of the child seeking dispensation and their prospective spouse. This testimony can be obtained without parental presence and even through remote audio-visual communication to ensure the child's freedom of expression. Judges are also required to thoroughly consider the psychological state, health, and readiness of the child, as well as to identify any evidence of coercion behind the application.

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<sup>13</sup> Marlina, "PROBLEMATIKA DISPENSASI KAWIN," *JDIH MAhkamah Agung*, n.d., <https://jdih.mahkamahagung.go.id/storage/uploads/artikel/2024/2024-Problematika%20Dispensasi%20Kawin.pdf>.

<sup>14</sup> Hernawan Hernawan and Mohammad Syifa Amin Widigdo, "Peran Pertimbangan Hakim dalam Penetapan Dispensasi Nikah Perspektif Children's Best Interest: Studi Kasus Pengadilan Agama Wonosari," *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 17, no. 5 (2023): 3491, <https://doi.org/10.35931/aq.v17i5.2652>.

To support comprehensive decision-making, judges are encouraged to solicit recommendations from various parties, including psychologists, medical professionals, social workers, the Regional Technical Service Unit for Women and Child Protection (UPTD PPA), and the Indonesian Child Protection Commission (KPAI). The PERMA strategically positions the judiciary as the "final gatekeeper" in the effort to prevent child marriage, underscoring its judicial responsibility to protect children's rights.

### **Public Perception of Factors Influencing the Rise of Child Marriage in Jember Regency**

The pervasive phenomenon of child marriage in Jember Regency remains a critical issue that demands priority in problem-solving. To effectively reduce the rate of child marriage, various strategic approaches and synergy among stakeholders concerned with child protection are necessary. This requires the initial identification of the factors that contribute to early-age marriages. In this study, researchers conducted interviews with several parties involved in preventing child marriage in Jember Regency, including the Jember Religious Court, the Office of Religious Affairs, the Department of Women's Empowerment, Child Protection, and Family Planning of Jember Regency (Dinas Pemberdayaan Perempuan Perlindungan Anak dan Keluarga Berencana), and the Jember Women's Concern Movement (Lembaga Swadaya Masyarakat Gerakan Peduli Perempuan Jember).

According to Mr. Faiq, the head of the Jember Religious Court, the number of marriage dispensation applications over the last four years has been consistently high. In 2020, there were 1,461 cases; in 2021, 1,417 cases; in 2022, 1,395 cases; and in 2023, 1,362 cases. For 2024, as of June, the number has already reached 559 cases.<sup>15</sup> This high rate led to Jember Regency being ranked first in East Java for the highest number of child marriages in 2023. The largest number of applications came from the Sumberbaru sub-district, followed by Silo and Bangsalsari. The data trend indicates that the primary reasons for these applications are economic factors, cultural practices, and out-of-wedlock pregnancies. The majority of applicants for marriage dispensation are prospective brides who have only completed elementary school.

An analysis of the inter-related factors reveals that for parents with low economic capacity, a child's education is not a priority. These parents often believe that if their child is unemployed, it is better to marry them off quickly to reduce the family's economic burden. This is often reinforced by a flawed religious understanding that if children consent to marriage, they should not be prevented, as it could lead to extramarital relations. Furthermore, children who drop out of school and lack positive activities often become involved in free association, which can lead to out-of-wedlock pregnancies.

A similar view was expressed by Eko Hadi Sunarjoko, head of the Sumberbaru Office of Religious Affairs.<sup>16</sup> He noted several reasons for the high number of marriage dispensation applications in his area, with out-of-wedlock pregnancy being a major cause.

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<sup>15</sup> Faiq, the head of the Jember Religious Court, "Interview," July 22, 2024.

<sup>16</sup> Eko, head of the Sumberbaru Office of Religious Affairs, "Interview," August 3, 2024.

As the pregnancy progresses, waiting until the couple turns nineteen is not an option. To save face and avoid shame, parents rush to file for dispensation. Besides pregnancy, parents may also apply for dispensation out of concern over their children's increasingly liberal social interactions. To prevent behavior that could lead to religiously forbidden acts like premarital sex, parents expedite their children's marriage. Another factor is related to local customs; among the majority Madurese population, there is a strong belief that if a child is not married promptly, they will be considered an old maid and unmarriageable. To protect the family's reputation, parents push for marriage without considering the child's age or economic independence.

Mulyadi, head of the Silo Office of Religious Affairs, also identified several factors contributing to the increase in child marriage in Silo sub-district. First, parental roles are crucial in preventing child marriage.<sup>17</sup> Parents who are too busy working to monitor their children's social lives may lose control over their activities. Parental awareness is often influenced by their own level of education. Second, the socio-cultural environment where children live plays a role. If a community is indifferent to the social lives of its youth, it can lead to risky dating behaviors that result in pregnancy. Third, a permissive community culture towards child marriage is a factor. A large portion of the Madurese community in Silo has a strong adherence to Islamic teachings.<sup>18</sup> This belief influences parental thinking, where their religious devotion is manifested by efforts to keep their children away from sin and premarital sex. This is often achieved by marrying them off, even if they do not meet the legal age requirements. Fourth, parental economic capacity is a factor. Child marriage is sometimes seen as a solution to family problems. Parents with weak economic backgrounds may marry off their children to reduce the economic burden on the household. Fifth, child marriage can also be attributed to parental arranged marriages, a practice motivated by a sense of obligation to repay a debt of gratitude. This represents a complex socio-cultural phenomenon wherein parental promises are regarded as moral imperatives, ultimately leading to the sacrifice of a child's future to honor that commitment.<sup>19</sup>

Joko Sutriswanto, the Head of the Child Protection Division at the Jember P3AKB Office, stated that child marriage rates in Jember Regency remain high.<sup>20</sup> In the first six months of 2024, there were 115 marriage dispensation applications, with the majority of applicants being under 18. The sub-districts with the highest number of applications were Puger, Jenggawah, and Bangsalsari. The main causes include early-age engagement, unregistered marriages (nikah siri), and social behavior. The cultural factor remains very

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<sup>17</sup> Mulyadi, head of the Silo Office of Religious Affairs, "Interview," August 12, 2024.

<sup>18</sup> Awatiful Azza et al., "Pernikahan Dini Dalam perspektif Budaya dan Kesehatan (Studi Kasus pada masyarakat Madura-Jember): Studi Kasus pada masyarakat Madura-Jember," *National Multidisciplinary Sciences* 1, no. 4 (2022): 601–7, <https://doi.org/10.32528/nms.v1i4.110>.

<sup>19</sup> Endang Yuli Setyowati dkk., "Hubungan Dukungan Budaya Tentang Pernikahan Dini Dengan Pengambilan Keputusan Melakukan Pernikahan Dini Pada Perempuan Di Desa Silo Kabupaten Jember," t.t.

<sup>20</sup> Joko Sutriswanto, the Head of the Child Protection Division at the Jember DP3AKB, "Interview," August 15, 2024.



dominant, particularly within Madurese traditions, where engagement and nikah siri are seen as necessary and difficult to avoid. Engagement is considered a symbol to strengthen ties between two families and parental consent for a child's relationship with their partner, a tradition often practiced at an early age. Engagements are pursued even if the child is not yet seventeen, driven by parental concern over their child's social life, with the reasoning that if pregnancy occurs, a marriage dispensation can be applied for.

However, a core issue with the Madurese engagement tradition is that it often includes an unregistered marriage ceremony (nikah siri), not just a simple binding or matchmaking process. This is done to protect the couple from negative public perception and premarital sin. It can be argued that engagement serves as a pathway to nikah siri, and nikah siri in turn becomes a reason for child marriage. Additionally, a lack of public understanding about child marriage prevention and low educational awareness also contribute to the issue. This situation must be addressed, as it has wide-ranging negative consequences.

Based on several interview findings, the high prevalence of child marriage in Jember Regency is perceived by the community to be driven by a confluence of socio-cultural, economic, and religious factors. Economic drivers include parents' financial difficulties, where children are viewed as an economic liability to be married off promptly. There is also a cultural practice of reciprocal social obligation, which can lead to arranged marriages to repay a prior debt or favor. On the educational front, a low level of attainment contributes to a lack of awareness regarding the negative consequences of early marriage.

Culturally, the issue is influenced by the tradition of early arranged marriages and the practice of engagements that culminate directly in unregistered religious ceremonies (nikah siri), locally known as bhekalan. Socially, parents' concern that their unmarried children will face negative social stigma is a significant factor, as are premarital pregnancies. Finally, flawed interpretations of religious teachings that advocate for expediting marriage also contribute to the phenomenon.

### **The Jember Regency Government's Efforts to Reduce Child Marriage Rates**

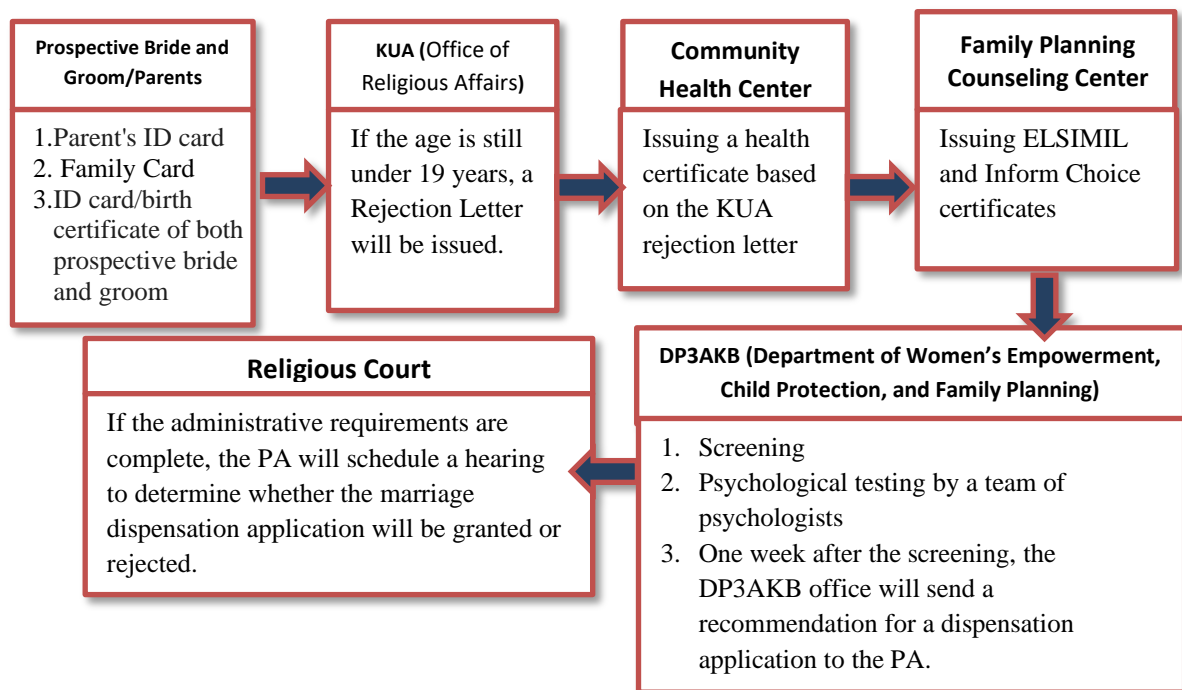
While no specific provision in the Regional Government Law explicitly mandates the prevention of child marriage, this obligation is implicitly included in the duties of local governments to provide services for children in need of special protection and to fulfill children's rights. The fulfillment of these rights, in the context of preventing child marriage, is not solely the responsibility of the Religious Courts or Offices of Religious Affairs; it also falls to the local government.<sup>21</sup> The rights protected under the Child Protection Law demand that the government be innovative in its approach to preventing child marriage. Therefore, to address the complex issues surrounding this matter, synergistic efforts between the Jember Regency government and relevant stakeholders are essential.

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<sup>21</sup> Indra Kertati, "Peran Pemerintah Daerah Dalam Pencegahan Perkawinan Anak," *MIMBAR ADMINISTRASI FISIP UNTAG Semarang* 20, no. 1 (2023): 268–76, <https://doi.org/10.56444/mia.v20i1.682>.

The Jember Regency government has undertaken several initiatives to curb the high rate of child marriage. First, the local government ratified Regional Regulation No. 1 of 2023 concerning Child-Friendly Cities. The passage of this regulation demonstrates the government's commitment to creating a city that is supportive of children and provides special attention to their needs. Consequently, one of the objectives stipulated in Article 14 of the regulation is the prevention of child marriage. Second, to reinforce and follow up on this effort, the Regent issued Circular Letter No. 474/196/35.09.317/2024 regarding the process for applying for marriage dispensation in Jember Regency.<sup>22</sup> This circular letter represents a swift response to the issue, even as the local government continues to deliberate on a more comprehensive regent's regulation on child marriage prevention.<sup>23</sup>

The circular letter outlines a mandatory administrative procedure for applicants seeking marriage dispensation at the Religious Court. The required process is illustrated in the diagram below:



**Figure 1.** Marriage Dispensation Application Flowchart  
(Source: Author's processed data, 2024)

Prospective couples applying for marriage dispensation must first prepare the necessary administrative documents, including the parents' ID cards, as well as the prospective couple's ID cards, birth certificates, and latest educational diplomas. These documents are initially submitted to the Office of Religious Affairs (KUA) for marriage

<sup>22</sup> Surat Edaran Nomor 474/196/35.09.317/2024 Tentang Pelayanan Permohonan Dispensasi Kawin Di Kabupaten Jember.

<sup>23</sup> Joko Sutriswanto, the Head of the Child Protection Division at the Jember DP3AKB, "Interview," August 15, 2024.

registration. If the documents are complete but the couple (or one of them) does not meet the minimum marriageable age of 19, the KUA will issue a letter of rejection.

After receiving the rejection letter from the KUA, the couple must undergo health and drug-free screenings. Health examinations are conducted by the local community health center (puskesmas), while drug-free tests are performed by a physician at a regional health laboratory, with a referral letter from the puskesmas. Based on these examinations, the puskesmas will issue a triple elimination letter and the regional health laboratory will issue a drug-free certificate. These tests are intended to verify the couple's physical health and confirm pregnancy (e.g., hemoglobin, blood type, plano test, blood sugar), screen for communicable diseases (HIV, syphilis, HBsAg), and test for drug use.<sup>24</sup> These two certificates are the basis for the health department to issue a health examination result letter for the prospective couple.<sup>25</sup>

Subsequently, the health certificate is used to obtain a Ready-to-Marry, Ready-for-Pregnancy (ELSIMIL) certificate and an Informed Choice letter. Both of these documents can only be acquired after the couple submits an application to the family planning counseling center in their sub-district. A counselor will provide information and knowledge on reproductive health and contraception. This is aimed at ensuring the prospective bride's reproductive readiness and health, as well as emphasizing the importance of contraception for family planning. Once the couple demonstrates a sufficient understanding, the counselor will issue the Elsimil and Informed Choice certificates.

In the next stage, applicants are required to visit the Department of Women's Empowerment, Child Protection, and Family Planning (P3AKB) for a marriage eligibility screening and a psychological assessment. This assessment is conducted by a psychologist from the P3AKB office in collaboration with the Indonesian Psychological Association for the Jember-Lumajang region. Following the assessment, the P3AKB office issues a recommendation letter, which is sent to the Religious Court within a maximum of one week. This series of administrative procedures is a mandatory requirement for filing for marriage dispensation. Applicants are also required to pay the court fee deposit as determined by the local Religious Court.

The administrative requirements and procedures established by the Jember Regency government's circular letter are a follow-up to Article 5 of Supreme Court Regulation No. 5 of 2019 concerning guidelines for adjudicating marriage dispensation applications. These requirements have been tightened with the addition of a recommendation letter from the P3AKB Office, the ELSIMIL certificate, the Informed Choice letter, and a health certificate.<sup>26</sup> This is a crucial step to provide judges with a basis for considering whether

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<sup>24</sup> Dinas P3AKB, "Materi Proses Pelayanan Dispensasi Kawin Dalam Training Of Trainer 'Pencegahan Perkawinan Anak' Di Fakultas Syariah UIN KHAS Jember," July 5, 2024.

<sup>25</sup> Joko Sutriswanto, the Head of the Child Protection Division at the Jember DP3AKB, "Interview," August 15, 2024.

<sup>26</sup> Article 5 of Supreme Court Regulation No. 5 of 2019 Concerning Guidelines for Adjudicating Marriage Dispensation Applications.

to grant or deny the application, ensuring that marriage dispensation is granted selectively and only as a last resort in genuinely urgent circumstances.

An urgent circumstance can be defined as a situation where there is no other option and marriage must proceed immediately. To assess this, sufficient evidence is required, such as a doctor's letter confirming pregnancy in cases of out-of-wedlock conception. Judges are expected to play an active role in preventing child marriage through the court proceedings by taking a persuasive approach with parents, encouraging them to reconsider whether the marriage can be postponed until the children are of a legal age. This approach also takes into account the potential benefits and harms of the marriage. The dispensation application can be withdrawn if the mediation process is successful and the parents agree to postpone the marriage. Before the marriage takes place, the judge can advise and encourage the parents to provide guidance to their children to ensure they are truly ready for married life.<sup>27</sup>

Since the implementation of the circular letter on marriage dispensation applications in Jember Regency, out of the 559 applications filed with the Jember Religious Court as of June 2024, only 415 have been decided. The fact that not all applications are granted indicates that the administrative requirements have had a positive impact on the effort to prevent child marriage.<sup>28</sup>

Furthermore, Joko Sutriswanto stated that a third effort is to optimize socialization and education to prevent child marriage. The Jember Regency government has implemented several programs, such as conducting village and school-based outreach on the importance of preventing child marriage and on reproductive health. The government has also collaborated with the Jember Women's Concern Movement (GPP) to establish "Kampung Remaja Sehat" (Healthy Teen Village) in the Summersari sub-district. The goal is to provide education and map the root causes of the high rates of child marriage in specific areas, such as Wirolegi and Karangrejo villages. The education provided includes topics on child marriage prevention, reproductive health, skills training, and regular health check-ups.<sup>29</sup>

Sri Sulistyani, Director of GPP Jember, also confirmed that the Healthy Youth Village is a collaborative program with the Jember Regency Government. It is hoped that it will serve as a pilot project to prevent child marriage. The program will be developed and disseminated to sub-districts and villages in Jember Regency. As a form of support for the Regency Government's efforts, GPP Jember also initiated a civil society organization innovation festival. This festival, held at the PB Sudirman Hall of the Jember Regency Government, involved 50 non-governmental organizations focused on the protection and empowerment of women in Jember Regency. The festival included a women's discussion to discuss all issues facing women in Jember Regency, particularly those related to the

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<sup>27</sup> Allika Fadia Tasya and Atik Winanti, "Dispensasi Perkawinan Anak Setelah Adanya Perma Nomor 5 Tahun 2019," *Wajah Hukum* 5, no. 1 (2021): 241, <https://doi.org/10.33087/wjh.v5i1.333>.

<sup>28</sup> Faiq, the head of the Jember Religious Court, "Interview," July 22, 2024.

<sup>29</sup> Joko Sutriswanto, the Head of the Child Protection Division at the Jember DP3AKB, "Interview," August 15, 2024.

prevention of child marriage. This resulted in a recommendation for the immediate creation of a Jember Regent Regulation governing the prevention of child marriage.<sup>30</sup>

In addition to non-governmental organizations, the Jember Regency government continues to promote child marriage prevention efforts through the local Ministry of Religious Affairs. According to the head of the Kaliwates Office of Religious Affairs, the Ministry has a program called “Pusaka Sakinah”,<sup>31</sup> one of whose goals is to reduce the rate of child marriage in the regency. Through Islamic Religious Counselors, the Ministry assists the government in helping parents understand the importance of preventing child marriage. This is particularly crucial when dealing with a community with strong religious beliefs, where it is necessary to provide a correct interpretation of religious teachings regarding the urgency of marriage, as misinterpretations can contribute to the prevalence of child marriage.

The Jember Regency government also collaborates with academics to expand socialization and education on child marriage prevention. An example of this is the Training of Trainers on child marriage prevention organized by the Center for Family Law, Gender, and Child Studies at the Faculty of Sharia, UIN KHAS Jember.<sup>32</sup> The event aims to train students and lecturers to become cadres who will assist in providing counseling to prevent child marriage through research and community service activities organized by their academic institutions. Similarly, the government's Collaborative Community Service Program (Kuliah Kerja Nyata Kolaboratif), involving all public and private universities in Jember, works to provide socialization and collect data on the number of child marriages in the regency.

### **The Effectiveness of the Jember Regency Government's Role in Reducing Child Marriage Rates**

The effectiveness of law in preventing child marriage in Jember Regency can be assessed by examining whether the government succeeds or fails in achieving its stated goals, as outlined in the legal frameworks that guide its actions. For a legal rule to impact public attitudes or behavior, certain conditions must be met. These conditions are typically achieved through effective legal communication with the public, which largely involves changing public attitudes. An attitude reflects a person's mental readiness, their tendency to evaluate something as good or bad, and is reflected in their behavior. According to Soerjono Soekanto,<sup>33</sup> the effectiveness of the Jember Regency government's efforts to prevent child marriage can be measured using a legal effectiveness theory that includes the following components:

#### **1. The Legal Substance/Rule**

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<sup>30</sup> Sri Sulistyani, Direktur GPP Jember, “Interview,” August 15, 2025.

<sup>31</sup> M. Syaiful Hadi, head of the Kaliwates Office of Religious Affairs, “Interview,” August 15, 2024.

<sup>32</sup> Joko Sutriswanto, the Head of the Child Protection Division at the Jember DP3AKB, “Interview,” August 15, 2024.

<sup>33</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Ed. 1; Cet. 8 (RajaGrafindo Persada, 2008).

A legal norm is considered juridically valid when its formulation is based on higher-level legal provisions, in accordance with the hierarchical structure of laws and regulations. A legal norm is sociologically valid when its enforcement by authorities is acknowledged by the public. Philosophically, a legal norm is valid if it is formulated in line with the highest fundamental legal principles.<sup>34</sup>

The Regent's Circular Letter No. 474/196/35.09.317/2024 concerning marriage dispensation application services in Jember Regency serves as a procedural guide for applicants. As long as applicants can provide strong justification by fulfilling the administrative requirements outlined in the circular, the local government will issue a recommendation. The importance of this legal process is to protect the applicants from potential risks to legal protection and the validity of their marriage.

However, it is important to note that the circular letter is not legally binding but holds legal relevance. Its issuance is relevant to Articles 5 and 15 of Supreme Court Regulation No. 5 of 2019, but hierarchically, the circular is not bound by this regulation. A circular letter is not a formal part of the hierarchy of laws and regulations and is not a state administrative decision. Instead, it is a policy regulation, often referred to as a quasi-legal regulation. Circular letters differ from formal regulations; they fall under the study of state administrative law because they are created based on the authority of the local government, whereas formal laws are within the domain of constitutional law as they are created by law-making bodies.<sup>35</sup>

A circular letter is an internal government memo that contains announcements, explanations, or instructions for implementing a specific matter deemed important and urgent.<sup>36</sup> This circular letter is addressed only to relevant agencies and does not directly bind the public. Consequently, its legal standing is weak and can be circumvented by the public. Therefore, the Regent of Jember should not have issued just a circular letter but a formal Regent's Regulation, which would provide a strong legal basis for child marriage prevention policies in Jember Regency and directly bind the public.

## 2. The Role of Law Enforcement Officials

To measure legal effectiveness, one must consider the role of law enforcement officials who have the authority to formulate and enact laws, as well as to apply legal provisions themselves. The performance of these officials is influenced by three key factors:<sup>37</sup>

- a. Law enforcement agencies, including the supporting infrastructure and facilities.

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<sup>34</sup> Zainuddin Ali, *Filsafat hukum* (Sinar Grafika, 2006).94

<sup>35</sup> Cholida Hanum, "Analisis Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia," *Jurnal Hukum Dan Masyarakat Madani* 10, no. 2 (2020): 138–53, <https://doi.org/10.26623/humani.v10i2.2401>.

<sup>36</sup> Muhammad Nur Miswari, "Kedudukan Surat Edaran Gubernur Aceh Nomor 450/21770 Tentang Larangan Mengadakan Pengajian Selain Dari I'tiqad Ahlussunnah Waljamaah Yang Bersumber Dari Mazhab Syafi'iyah," *Jurnal Iuris Studia* 2, no. 2 (2021), <https://doi.org/10.55357/is.v2i2.130>.

<sup>37</sup> Mohd. Yusuf Dm et al., "Faktor-Faktor yang Mempengaruhi Penegakan Hukum dalam Masyarakat," *Jurnal Ilmu Hukum, Humaniora dan Politik* 5, no. 4 (2025): 2866–71, <https://doi.org/10.38035/jihhp.v5i4.4234>.

- b. The work culture of law enforcement officials, supported by their welfare.
- c. The formal and material legal instruments that serve as the fundamental guidelines for officials in carrying out their duties and authority.

The effectiveness of the child marriage prevention policy in Jember Regency depends on the commitment and efforts of the local government, as implemented through the mechanisms outlined in the Regent's circular letter and the regional regulation on child-friendly cities. These measures are carried out by relevant agencies according to their respective authorities and responsibilities. According to interviews with several informants, child marriage prevention efforts have been executed through the Health Department, which ensures physical health and confirms pregnancy via various tests and issues a health certificate.

Similarly, family planning counselors in sub-districts have performed their duties by ensuring prospective couples are ready to marry and be pregnant, and by educating them on the importance of preparing reproductive health through contraception to delay and space out pregnancies. The P3AKB Department also plays a role in assessing the couple's mental readiness. The local government has also synergized with various related institutions, such as the KUA, which assists in counseling to prevent child marriage; civil society organizations, with which it has established the "Healthy Teen Village"; and universities, by training cadres to educate the public and collect data on child marriage through collaborative community service programs involving various public and private universities in Jember Regency.

### **3. Infrastructure and Facilities Supporting Law Enforcement**

For a law to be effective, it requires supporting infrastructure that helps achieve its enforcement goals.<sup>38</sup> While infrastructure is not the most critical factor, without adequate support, law enforcement cannot function optimally. The required infrastructure can include physical resources such as buildings, adequate equipment, sufficient budgets, and transportation. Supporting facilities can also take the form of professional and competent human resources with strong skills and managerial abilities. In practice, a law that has been passed is often not supported by the necessary infrastructure, leading to counterproductive outcomes.

Adequate infrastructure and facilities are vital for implementing child marriage prevention policies and the dispensation application services in Jember Regency. The local government, as the service provider, must ensure the quality of this infrastructure. While infrastructure is not the primary factor in preventing child marriage, it is a supporting medium that enables success by imposing strict administrative requirements for dispensation applications. This includes skilled and professional human resources, sound organizational management, adequate equipment, sufficient funding, and other resources. If these conditions are not met, it will be impossible to achieve the goals of law enforcement effectively.

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<sup>38</sup> Galih Orlando, "Efektivitas Hukum Dan Fungsi Hukum Di Indonesia," *Tarbiyah bil Qalam : Jurnal Pendidikan Agama dan Sains* 6, no. 1 (2022), <https://doi.org/10.58822/tbq.v6i1.77>.

In its efforts to limit child marriage in Jember Regency, the government has established application procedures and infrastructure by involving several institutions such as KUA, Community Health Centers, Regional Health Laboratories, Family Planning Counselors, and the DP3AKB to complete the administrative requirements for dispensation applications. However, the researcher's findings reveal some issues with this infrastructure. First, the fees charged for health certificates often do not comply with the rates set by the health department. Second, the processing time for the recommendation from the P3AKB Department, which should take a maximum of one week, often exceeds this period, sometimes taking over a month.

#### **4. The Societal Factor**

Public awareness of a legal rule can be achieved when people understand their rights and obligations and when there are legal activities that provide them with protection. Public compliance with regulations is a measure of the community's level of obedience. This level of obedience can only be measured if the public is aware of and understands a legal rule. Once a law is formally enacted through a legitimate legislative process, it is considered legally valid.<sup>39</sup> This gives rise to the legal assumption that every citizen is presumed to know the law (presumption iures de iure). However, in reality, not all citizens are aware of these rules.

The high number of marriage dispensation applications in Jember Regency indicates that public knowledge and understanding of marriage law, as stipulated in the Marriage Law and other regulations, remain very low. This may be because the local government's socialization and education efforts have not fully reached the grassroots level of society, which is most vulnerable to child marriage. However, this issue may also be caused by strong cultural factors whose influence is more powerful than the public's awareness of formal legal rules.

#### **5. The Cultural Factor**

Culture plays a crucial role for individuals and society by guiding how people should behave, act, and interact with one another. Therefore, culture provides behavioral principles that set boundaries on what is acceptable and what is forbidden.<sup>40</sup> These boundaries are rooted in customary law within a society. The effectiveness of a legal rule is significantly influenced by the relevance of the values it contains to the community's customary law.

Child marriage is deeply tied to the culture of the Jember community. A portion of the community still believes that marrying off children quickly is the best way to protect the family's reputation and fulfill religious commands. Even if this practice violates the minimum marriageable age set by law, it has become a customary norm considered correct because it prioritizes obedience to parents and religion. This situation makes child marriage prevention policies very difficult to enforce because the dominant cultural

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<sup>39</sup> Angel Nikhio et al., "Penegakan hukum di Indonesia: Peran Pemerintah dalam Mewujudkannya," *Jurnal Indigenous Knowledge* 2, no. 6 (n.d.): 420.

<sup>40</sup> Ika Darmika, "Budaya Hukum (Legal Culture) Dan Pengaruhnya Terhadap Penegakan Hukum Di Indonesia," *Jurnal Tora* 2, no. 3 (2016).



norms are not aligned with the legal provisions. In cases where the administrative requirements for a dispensation application are convoluted and time-consuming, or if an application is rejected by the judges, community members may still choose to marry off their children through an unregistered religious ceremony (nikah siri).

Based on this analysis, an evaluation of improvements is necessary to ensure the optimal implementation of administrative requirements and procedures for marriage dispensation applications. This can be achieved through several key recommendations. First, the Regent of Jember should promptly issue a Regent's Regulation. This regulation would possess a stronger legal standing and directly bind the public, providing a more robust framework for child marriage prevention policies in Jember. Furthermore, this regulation must clearly outline sanctions for non-compliance, including penalties for individuals involved in unregistered religious marriages (nikah siri) of minors.

Second, it is crucial to enhance the capacity and synergy of the institutions responsible for processing administrative requirements for marriage dispensations. This will ensure the speed and accuracy of service delivery. Third, the local government must optimize supporting infrastructure by ensuring that administrative fees, particularly for health certificates, comply with established rates from relevant departments and are publicized transparently. Oversight through unannounced inspections and a public complaint service is also essential to prevent illegal fees. Finally, the Jember local government should conduct more intensive and widespread socialization and education efforts. These initiatives should extend beyond the district level and target villages, sub-districts, and communities most vulnerable to child marriage. This approach should involve local religious and traditional leaders, as well as community heads, as agents of change.

## **Conclusion**

The high incidence of child marriage in Jember Regency is attributed to a complex interplay of socio-cultural, economic, and religious factors. Economically, poverty and a low value placed on education lead parents to view marriage as a means of alleviating financial burdens. Socio-culturally, deeply-rooted traditions are key drivers. These include the practice of early arranged marriages (particularly prevalent in Madurese culture), marriages arranged to reciprocate favors, parental anxieties about social conduct, and the fear of social stigma. Furthermore, premarital pregnancies stand out as one of the most significant precipitating factors. Religiously, a shallow or mistaken understanding that marriage is a way to avoid sin and immoral behavior also accelerates this phenomenon. The Jember Regency government has attempted to address this issue by enacting a Regional Regulation on Child-Friendly Cities and issuing a Circular Letter (SE) to govern marriage dispensation procedures. However, the effectiveness of these measures remains suboptimal. The SE, in particular, is considered to have weak legal standing as it is only binding on the relevant government agencies, not the general public. Consequently, the community may disregard it or seek alternative, extralegal routes, such as nikah siri (unregistered religious marriage), to circumvent the complex administrative process. Moreover, bureaucratic obstacles, including unofficial fees and lengthy processing times, persist.

The prevention of child marriage cannot be achieved by a single entity alone. The existing synergy between the local government and non-governmental organizations through socialization and education has proven insufficient to address the deep-seated cultural issues at the core of the problem. Therefore, the Jember Regency government must immediately upgrade the Circular Letter to a formal Regent's Regulation (Perbup) to provide a more robust legal framework that directly binds the public. Furthermore, improved coordination among all involved agencies is essential to ensure that services are delivered with speed, accuracy, and transparency. Regular oversight and inspections are necessary to prevent unofficial charges and illegal levies. Finally, the government should develop family economic empowerment programs, particularly in areas with a high prevalence of child marriage.

This study has limitations as it does not comprehensively explore the direct perspectives of individuals involved in child marriage, such as children who apply for dispensation, their parents, or their partners. Therefore, it does not fully capture their decision-making processes beyond the broad social factors that have been identified. The analysis is largely based on existing legal documents, government agency reports, and information gathered from key informants, which may not completely grasp the complexity of the issues on the ground. Consequently, a recommendation for future research is to focus on the perspectives of those who apply for marriage dispensations. This would help identify how policies can be adjusted to be more culturally sensitive and effectively implemented. Additionally, a comparative policy study of other regional governments that have successfully reduced the number of marriage dispensation applications would be beneficial.

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