

Legal Rationality and Gender Inequality in Judicial Determinations of Marriage Dispensation Due to Pregnancy

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Abstract

The high prevalence of marriage dispensations due to pregnancy has the potential to generate gender injustice against girls. This study aims to examine the construction of judges' legal rationality in granting marriage dispensations and to identify the forms of gender injustice manifested therein. This study employs a qualitative socio-legal method with a gender studies approach. The analysis is based on documents of marriage dispensation rulings at the Bantul Religious Court before and after the enactment of Law Number 16 of 2019, and is complemented by a comparison with rejection decisions at the Painan Religious Court. The analysis draws on Max Weber's theory of legal rationality and Mansour Fakhri's concept of gender injustice. The findings show that procedural modernization has not been accompanied by changes in the substance of judicial reasoning, where pregnancy continues to be positioned as an emergency condition that legitimizes child marriage. In contrast, judges at the Painan Religious Court position pregnancy as an indicator of fundamental unpreparedness for marriage, thereby rejecting dispensation applications; however, their reasoning remains laden with moral stigma that disproportionately burdens girls. This practice perpetuates subordination, marginalization, stereotypes, symbolic violence, and the double burden on girls, indicating the lack of integration of a gender perspective in judicial considerations.

Keywords: Marriage Dispensation, Gender Inequality, Legal Rationality.

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Introduction

The principal spirit underpinning Law Number 16 of 2019 is the reduction of child marriage (Tasya & Winanti, 2021). This regulation establishes the minimum legal age of marriage at nineteen years for both men and women, reflecting the principles of gender equality and the best interests of the child (Munawaroh dkk., 2024). The equalisation of the minimum marriage age constitutes a manifestation of legal justice aimed at eliminating discrimination and exploitation against girls. Supreme Court Regulation Number 5 of 2019 further reinforces this protective framework by requiring judges to consider the principles of the best interests of the child, equality before the law, and gender non-discrimination in adjudicating applications for Marriage Dispensation. This framework positions girls and boys on an equal footing while ensuring that judicial decisions permitting underage marriage are not based solely on familial interests.

Empirical realities, however, reveal dynamics that stand in stark contrast to the spirit of child protection and the principle of gender non-discrimination. Data from the Religious Court of Bantul in 2025 recorded 89 Marriage Dispensation cases, underscoring the continued prevalence of child marriage practices facilitated through legal mechanisms (*Laporan Pelaksanaan Kegiatan Tahun 2025*). At the same time, data on early marriage demonstrate that girls remain disproportionately affected: in

2022 there were 149 cases (91 girls and 58 boys), in 2023 there were 157 cases (98 girls and 59 boys), and in 2024 there were 94 cases (67 girls and 27 boys) (*Data Pilah Gender dan Anak, 2025*). Nationally, more than 92.2 per cent of Marriage Dispensation applications were granted in 2023, indicating that a legal mechanism originally intended to restrict child marriage has instead evolved into an easily accessible avenue of legal legitimization (Wahyudi, 2024). Within this context, girls emerge as the most disadvantaged party, as their bodies and futures are frequently sacrificed 'for the sake of' preserving familial and social honour, while their rights to education, reproductive health, and bodily autonomy are neglected in judicial considerations that prioritise the resolution of social stigma over substantive protection (Akbari, 2025).

Judges in Marriage Dispensation cases do not merely apply written legal provisions; they also consider the social values that exist within society (Kurniawan dkk., 2025). Article 17 of Supreme Court Regulation Number 5 of 2019 requires judges to consider the best interests of the child based not only on statutory regulations but also on unwritten law in the form of legal values, local wisdom, and a sense of justice that lives within society. This provision indicates that judicial legal reasoning develops through an interaction between formal legal norms and the social context in which a case is examined. In Marriage Dispensation cases involving pregnancy, this social

context often includes religious norms, notions of family honour, and social stigma toward pregnancy outside marriage (Efrinaldi dkk., 2023). These factors may influence how both litigants and judges interpret the principle of the best interests of the child in the decision-making process.

The influence of social and religious values is important to consider because Marriage Dispensation cases do not occur within a socially neutral environment. Communities often regard marriage as a solution to the social consequences of pregnancy outside marriage and as a means of restoring family honour (Kurniawan dkk., 2025). As a result, the best interests of the child may be interpreted differently between the child protection objectives mandated by statutory law and the social expectations that prevail within society (Efrinaldi dkk., 2023). Therefore, an analysis of judicial legal rationality must be situated within a broader social context in order to understand the relationship between legal reasoning, religious values, and social realities in Marriage Dispensation cases.

Previous scholarship relevant to this study may be classified into four principal categories. First, Weberian rationality-oriented studies remain largely descriptive in portraying the motives of judicial actors (Ardiyono & Handoyo, 2024; Kurniawati dkk., 2023). Second, gender-based studies have revealed relations of power and the marginalisation of women within

judicial reasoning, yet they have not systematically connected these dynamics to the judges' choice of legal rationality (Wagiarto dkk., 2025). Third, a number of studies focus on procedural evaluations following the enactment of Law Number 16 of 2019 and Supreme Court Regulation Number 5 of 2019, highlighting the suboptimal implementation of the principle of the best interests of the child due to the multiple interpretations surrounding the notion of "urgent circumstances" (Al Hasan & Yusup, 2021; Hernawan & Widigdo, 2023; Susanti, 2021). Fourth, studies specifically conducted at the Religious Court of Bantul confirm pregnancy as the primary determinant in the granting of Marriage Dispensation applications (Hilyasani dkk., 2022; Suci dkk., 2025).

Based on this mapping, no prior study has integratively unpacked the construction of legal rationality while simultaneously identifying forms of gender injustice before and after the regulatory reform. This study addresses that gap by combining Max Weber's theory of legal rationality with Mansour Fakih's concept of gender injustice in order to critically examine how judges' legal rationality in Marriage Dispensation cases due to pregnancy is constructed, while also identifying the manifestations of gender injustice embedded within such reasoning. In light of these objectives, this study addresses two principal questions. First, how is judicial legal rationality constructed in determining Marriage

Dispensation cases due to pregnancy at the Religious Court of Bantul before and after the enactment of Law Number 16 of 2019? Second, how are forms of gender injustice manifested within such legal considerations? This study analyses ten Marriage Dispensation determinations issued in 2018 and 2025 by the Religious Court of Bantul, supplemented by a comparative analysis of four rejection determinations from the Religious Court of Painan. The findings are expected to provide an empirical basis for a critical evaluation of judicial practices concerning Marriage Dispensation, while simultaneously encouraging the mainstreaming of gender perspectives through an interdisciplinary approach that connects Weber's typology of legal rationality with the concept of gender injustice.

Research Methods

This study adopts a qualitative design within the socio-legal tradition, employing a gender studies approach. Primary data were collected through an examination of ten Marriage Dispensation determinations issued by the Religious Court of Bantul on the grounds of pregnancy, consisting of five determinations from 2018 and five from 2025, all of which granted the applications. The selection of these periods aims to enable a comparative analysis of judicial reasoning before and after the enactment of Law Number 16 of 2019. Given the absence of any rejected Marriage Dispensation decisions on the basis of pregnancy at the Religious Court of Bantul, this

study incorporates four rejected Marriage Dispensation determinations on similar grounds from the Religious Court of Painan as comparative data. The year 2022 was selected as it represents the only period for which rejection determinations from the Religious Court of Painan on the grounds of pregnancy were accessible to the researchers.

The researchers acknowledge the quantitative and qualitative imbalance between the two jurisdictional samples, which is solely attributable to the absence of pregnancy-based Marriage Dispensation rejection decisions at the Bantul Religious Court during the period under study. The four Painan decisions are therefore intended not as a numerically equivalent comparator but as critical cases to illustrate possible variations in the construction of legal rationality beyond Bantul, and findings from Painan cannot be generalized to all religious courts. Furthermore, this study relies exclusively on court determinations, textual products institutionally sanitized through the judicial process, which are inherently incapable of capturing latent coercion, informal negotiations, or the fluid power dynamics that unfold in the courtroom. Accordingly, the interpretation of gender injustice in this article is limited to what is explicitly or implicitly manifested in the text of judicial reasoning, and courtroom ethnographic research remains an urgent necessity to complement these limitations.

Data analysis was conducted using content analysis with the interactive model developed by Matthew B. Miles and A. Michael Huberman, comprising data reduction, data display, and conclusion drawing and verification (Miles & Huberman, 1994). The analysis was carried out thematically to identify patterns of judicial reasoning, with a particular focus on the construction of judicial considerations, the use of legal norms, and the representation of gender injustice through the combined analytical frameworks of legal rationality and Mansour Fakih's gender theory.

Max Weber distinguishes legal rationality into two primary typologies: formal rationality, which emphasises adherence to codified rules and procedural consistency, and substantive rationality, which allows for value-based considerations beyond the text of the law (Holton & Turner, 2010). In this study, these typologies are employed as analytical tools to examine how judges construct legal reasoning in Marriage Dispensation determinations. Operationally, formal rationality is identified through reliance on written norms and consistency in evidentiary procedures, whereas substantive rationality is traced through the incorporation of moral, religious, and social considerations in judicial

decisions. These typologies are then analysed through a gender injustice perspective to assess the extent to which judicial reasoning reproduces or challenges gender inequality.

Mansour Fakih identifies five interrelated manifestations of gender injustice: marginalisation (processes of economic exclusion or impoverishment), subordination (the positioning of women in secondary roles in decision-making), stereotyping (negative labelling that limits social roles), violence (physical, psychological, or sexual harm), and double burden (the excessive allocation of domestic responsibilities) (Fakih, 2008). In the analysis of judicial determinations, subordination is evident when the voices of girls are not given primary consideration; marginalisation appears in the neglect of economic factors; stereotyping is reflected in moral or shame-based narratives; violence is manifested in the legitimisation of marriage under conditions of implicit coercion; and the double burden is visible in the absence of judicial consideration of post-marital domestic responsibilities.

Results and Discussion

Portrait of Legal Rationality in the Granting of Marriage Dispensation Applications at the Religious Court of Bantul

Table 1. Data on Granted Marriage Dispensation Cases at the Religious Court of Bantul in 2018 and 2025

Case Number	Female Child	Male Child	
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	Age (Y/M)	Edu	Preg nanc y	Age (Y/B)	Edu	Income	Dur atio n (Y/ M)
20/Pdt.P/2018/ PA.Btl	16	-	22 W	16	-	Daily labourer (IDR 60,000/da y)	1
29/Pdt.P/2018/ PA.Btl	16	-	9 W	17/5	-	Trading (IDR 2 million /month)	1/3
42/Pdt.P/2018/ PA.Btl	16	-	9 W	16/6	Active Studen t	-	2
62/Pdt.P/2018/ PA.Btl	15/7	-	13 W	14/7	Active Studen t	-	1
94/Pdt.P/2018/ PA.Btl	15/10	-	17 W	16/3	-	Farmer (IDR 50,000/da y)	2 /6
15/Pdt.P/2025/ PA.Btl	18/7	Junio r High Scho ol (SMP)	8 W	17/7	SMP	Daily labourer (IDR 2.5 million /month)	1
17/Pdt.P/2025/ PA.Btl	16/8	Vocat ional High Scho ol (SMK)	32 W	18/1	SMP	Courier and trader (IDR 3 million/mo nth)	4
21/Pdt.P/2025/ PA.Btl	15/9	Junio r High Scho	23 W	19/6	Senior High School (SLTA)	Employee (IDR 2.3 million/mo nth)	5

		ol (SMP)					
22/Pdt.P/2025/ PA.Btl	15/2	Elem entar y Scho ol (SD)	33 W	17/8	SMP	Employed (income not specified)	2
26/Pdt.P/2025/ PA.Btl	16/11	Did not comp lete elem entar y scho ol	22 W	16/8	SD	Workshop worker (IDR 500,000/m onth)	2

Note: Age (Y/M) indicates age in years and months. For example, "6/3" denotes 6 years and 3 months. "Duration" refers to the length of the relationship between the prospective bride and groom prior to the Marriage Dispensation application, as stated in the court determinations.

The 2018 Marriage Dispensation determinations at the Religious Court of Bantul were predominantly characterised by substantive rationality oriented toward religious values. The panel of judges consistently invoked the Islamic jurisprudential maxim, "*Dar'u al-mafāsīd muqaddamun 'alā jalbi al-maṣāliḥ*" (preventing harm takes precedence over pursuing benefit), as the principal justificatory basis for granting applications. Data presented in Table 1 indicate that all applications were granted without adequate assessment of the economic and educational preparedness of the prospective spouses. Many determinations were issued solely on the basis of preventing perceived

greater harm, without detailed elaboration of material considerations.

Determination Number 42/Pdt.P/2018/PA.Btl granted a Marriage Dispensation even though the prospective husband was still a student and had no independent income. Similarly, Determination Number 62/Pdt.P/2018/PA.Btl approved the application despite both parties being unemployed, on the consideration that financial support would be provided by their parents. Within this context, community perceptions position early marriage as the primary solution for concealing family shame or stigma arising from extramarital pregnancy. Moreover, early marriage is socially encouraged

as a means of avoiding slander and preventing immoral behaviour, a concern that is increasingly associated with the influence of digital technology and social media (Juhani & Tahmid, 2022).

The 2025 determinations demonstrate a strengthening of formal rationality through more structured procedural requirements. Educational data are recorded in greater detail, the involvement of the Office for Women's Empowerment has increased, and evidentiary materials have been expanded to include sworn witness testimony and medical statements. However, the substantive considerations remain largely unchanged. In all determinations, the judges consistently held that failure to immediately contract marriage would *"risk leading to more severe acts prohibited by Islamic law, constitute a family disgrace, and serve the best interests of the unborn child."*

Even in Determination Number 26/Pdt.P/2025/PA.Btl, the application was granted despite the prospective husband's income being only IDR 500,000 per month, without any meaningful assessment of economic sufficiency. Compliance with formal procedures after 2019 did not alter the substantive structure of judicial rationality in Marriage Dispensation cases. Judges continued to rely on similar jurisprudential maxims and maintained the narrative of family shame as a central justificatory framework.

Concrete forms of harm that may be experienced by the child if the marriage were either conducted or

refused were not rigorously examined. Recommendations from the Office for Women's Empowerment indicating the prospective couple's lack of readiness were consistently set aside. This is evident in Determination Number 26/Pdt.P/2025/PA.Btl, where the panel of judges stated that *"the child of the applicant and the prospective husband has demonstrated readiness and a strong commitment to marry and build a household; therefore, even in the absence of recommendations, the fact that the applicant's child is pregnant constitutes an urgency factor requiring immediate marriage."* The repetitive pattern across determinations indicates a tendency toward standardised reasoning without in-depth assessment of the specific circumstances of each case. This condition confirms that procedural modernisation has primarily strengthened administrative legitimacy, while substantive rationality remains the dominant basis of judicial decision-making.

The practice of legal rationality at the Religious Court of Bantul reveals the dominance of substantive values concealed behind procedures that appear formally neutral. Judicial considerations consistently position the body and future of girls as instruments for resolving broader social and familial problems. Across both periods examined, pregnancy is constructed as an emergency condition that opens access to marriage dispensation without adequate assessment of psychological, economic, or educational readiness.

This pattern produces a mechanism that is detrimental to the interests of girls. The analysis of ten determinations in Bantul demonstrates that regulatory reform has not altered how judges interpret the best interests of the child. This condition provides a basis for further examining the manifestations of gender injustice embedded within judicial reasoning.

Forms of Gender Injustice in the Legal Rationality of Marriage Dispensation

Legal rationality oriented toward the preservation of social morality at the Religious Court of Bantul systematically produces five forms of gender injustice. Subordination of girls emerges through courtroom practices that reduce their statements to mere formality. Determination Number 29/Pdt.P/2018/PA.Btl and Number 17/Pdt.P/2025/PA.Btl record expressions of willingness to marry without any deeper inquiry into underlying familial pressure or social stigma. Mansour Fakhri defines subordination as the positioning of women in a secondary role in decision-making over their own lives (Fakhri, 2008). The voice of the girl is thereby overshadowed by parental pressure to immediately restore family honour. Economic marginalisation operates simultaneously through the neglect of indicators of financial readiness on the part of the prospective husband (Salma & Suryani, 2025). Determination Number

26/Pdt.P/2025/PA.Btl granted Marriage Dispensation despite the prospective husband's income being only IDR 500,000 per month, relying instead on parental support to sustain household needs. This condition places girls in a dual dependency: on an economically unprepared husband and on extended family networks for the fulfilment of basic necessities.

Gender stereotyping further reinforces injustice by constructing marriage as a moral safeguard for pregnant women. Determination Number 62/Pdt.P/2018/PA.Btl and Number 22/Pdt.P/2025/PA.Btl formulate the grounds for granting dispensation through narratives of concern over family shame and violations of religious norms. Fakhri conceptualises stereotyping as negative labelling that restricts an individual's social role. The panel of judges thus constructs the girl's body as a symbol of family honour that must be restored through the institution of marriage. This traditionalist logic is consistently reflected across the determinations issued by the Religious Court of Bantul in both 2018 and 2025. For instance, in Determination Number 62/Pdt.P/2018/PA.Btl and Number 22/Pdt.P/2025/PA.Btl, marriage is framed as a mechanism capable of erasing moral stain and preventing further moral degradation.

Symbolic violence emerges in the language of judicial reasoning, which objectifies the bodies of girls. Determination Number 42/Pdt.P/2018/PA.Btl and Number 21/Pdt.P/2025/PA.Btl construct

pregnancy as an emergency condition that necessitates immediate marriage without a comprehensive evaluation of the child's readiness. Fakh categorises violence as a form of gender injustice that may be physical, psychological, or sexual in nature. Within the context of Marriage Dispensation, such violence manifests as a form of implicit coercion embedded in legal structures that effectively eliminate any meaningful choice for girls. The double burden becomes a direct consequence of granting Marriage Dispensation without a thorough assessment of readiness (Arbain dkk., 2017). Determination Number 94/Pdt.P/2018/PA.Btl and Number 17/Pdt.P/2025/PA.Btl granted dispensation without any discussion of the division of domestic roles or caregiving responsibilities. Girls who are still in the stage of formal education are thereby compelled to assume multiple roles—as wives,

mothers, and household managers—at an age marked by developmental immaturity.

The five interrelated forms of gender injustice embedded in judicial reasoning at Bantul indicate that procedural reforms have not altered judges' conceptualisation of the best interests of the child. Subordination, marginalisation, stereotyping, symbolic violence, and the double burden all find fertile ground within a legal rationality that prioritises the resolution of social shame. Law thus operates as a mechanism of control over women's bodies through procedures that appear formally neutral. The analysis of these five forms of injustice provides a basis for examining the practice of Marriage Dispensation rejection in other courts as a critical comparison.

Legal Rationality in the Rejection of Marriage Dispensation Applications at the Religious Court of Painan: A Comparative Analysis

Table 2. Data on Rejected Marriage Dispensation Cases at the Religious Court of Painan in 2022

Case Number	Female Child			Male Child			Duration (Y/M)
	Age (Y/M)	Edu	Pregnancy	Age (Y/M)	Edu	Inome	
56/Pdt.P/2022/PA.Pn.	16/1	Junior High School (SMP)	22 W	16	SD	Farmer (IDR 200,000/day)	3
61/Pdt.P/2022/PA.Pn.	18/1	Elementary School (SD)	24 W	17/5	SM P	Farmer (IDR 80,000/day)	-

72/Pdt.P/2022/ PA.Pn.	17/3/ 5	Senior High School (SLTA)	17 W	16/ 6	SLT A	-	4
120/Pdt.P/2022 /PA.Pn.	18/6/ 11	Element ary School (SD)	17 W	14/ 7	SD	-	4

The practice of rejecting Marriage Dispensation applications at the Religious Court of Painan demonstrates a form of legal rationality that is fundamentally different from that of the Religious Court of Bantul. Judges in Painan regard pregnancy as a legal fact that must be examined critically, rather than as an emergency condition that automatically legitimises underage marriage. Determination Number 56/Pdt.P/2022/PA.Pn reflects this stance by rejecting the application even though the prospective bride was five months pregnant and the relationship had lasted for three years. The panel of judges grounded its decision in the statement of the girl, who expressed that she was not ready to marry. Judicial reasoning further referred to Article 2 letter c of Supreme Court Regulation Number 5 of 2019 concerning the principle of respect for the child's opinion. This comparison underscores that the application of legal norms is contingent upon judges' rationality in interpreting concrete situations (Aini dkk., 2026).

In contrast to the practice at the Religious Court of Bantul, Determination Number 120/Pdt.P/2022/PA.Pn illustrates a

deeper engagement with psychological readiness in judicial reasoning. The panel of judges rejected the application for Marriage Dispensation even though the prospective husband had a stable income of IDR 200,000 per day and the prospective bride stated her willingness to marry. The court reasoned that *"the fact that a person has engaged in zina indicates a very weak spiritual and emotional stability, and such a person is considered not yet capable of entering marriage and fulfilling household responsibilities, whereas the capacity to marry constitutes an absolute requirement for the permissibility of marriage."* A clear distinction from Bantul lies in the way pregnancy is interpreted. While judges in Bantul tend to treat pregnancy as a basis for bypassing assessments of economic and psychological readiness, judges in Painan position it as an indicator of fundamental unpreparedness for marriage.

The protection apparent in Determination Number 120/Pdt.P/2022/PA.Pn nonetheless leaves unresolved issues at the level of judicial reasoning. The panel of judges did reject the application for Marriage Dispensation, a decision that is

procedurally consistent with efforts to prevent child marriage. However, the statement that acts of zina reflect weak spiritual and emotional stability indicates the intrusion of moral judgment into the judicial determination. This formulation is not neutral, as it reinforces long-standing social stigma, particularly against girls who experience pregnancy outside of marriage, positioning them as morally deficient subjects. When such an assessment is used as a basis for judicial reasoning, social prejudice is transformed into stigma legitimised by the judicial institution (Ana et al., 2023). In patriarchal societies, the social and psychological burden is borne disproportionately by girls rather than boys, even though decisions do not explicitly differentiate between them (Ana dkk., 2023).

The divergence in judicial approaches between Bantul and Painan may reflect broader differences in local legal culture and socio-religious environments. Painan, which is located in West Sumatra, is situated within a Minangkabau socio-cultural setting shaped by the principle of "*adat basandi syarak, syarak basandi Kitabullah*", where social norms and Islamic moral values are closely interconnected (Asrinaldi & Yoserizal, 2020). Within this normative structure, acts considered morally transgressive carry significant communal weight and are subject to accountability at the community level (Alfadrian, 2019). In such a context, judicial reasoning concerning pregnancy outside

marriage may be more closely associated with communal moral expectations. Nevertheless, this study does not seek to establish a direct causal relationship between local culture and judicial reasoning, but rather to indicate that socio-cultural context may constitute one of several factors influencing how judges interpret "urgent circumstances" in Marriage Dispensation cases. Similar variations in judicial reasoning have also been identified in other Indonesian religious courts, suggesting that the dispensation mechanism remains highly dependent on local interpretive practices and judicial legal culture (Berlina Cahya Putri dkk., 2025).

The comparison between the practices of Bantul and Painan demonstrates that the scope of judicial interpretation in Marriage Dispensation cases is considerably broad, yet it is not accompanied by an adequate gender-sensitive perspective. Bantul represents a form of substantive rationality that openly sacrifices girls' rights in the name of restoring family morality through marriage. Painan, on the other hand, reflects a form of formal rationality through its adherence to procedural requirements and normative references, yet its reasoning still incorporates substantively moral judgments. Both fail to position girls as autonomous legal subjects. This confirms that procedural reform alone is insufficient to ensure substantive justice, while also necessitating a redefinition of the best interests of the child from a gendered perspective.

Rethinking the Best Interests of the Child

Judicial practice in both Bantul and Painan indicates that the concept of the best interests of the child is interpreted in a limited manner. Judges in Bantul tend to position marriage as an emergency solution to pregnancy, whereas judges in Painan reject Marriage Dispensation applications, although their reasoning is not entirely free from potential gender bias. Both approaches fail to place the restoration of girls' fundamental rights at the centre of legal consideration. Rights to education, reproductive health, and psychosocial recovery are not subjected to thorough judicial scrutiny. The interpretation of the best interests of the child therefore needs to be shifted from a narrow focus on marital status toward the fulfilment of the child's concrete needs. A gender perspective enables a critical examination of power relations, the distribution of social burdens, and the construction of morality within judicial reasoning (Irianto, 2006). A shift is necessary to adequately address the specific vulnerabilities experienced by girls in Marriage Dispensation cases.

Such a reorientation also opens space for alternative solutions that prioritise the restoration of the child's condition. One concrete legal pathway is the submission of an application for a determination of the child's origin to the court. Such a determination provides legal certainty regarding the status of the fetus or child born,

including civil relations with the biological father (Maskuri, 2022). This legal status reduces the burden on girls, as responsibility for child support and protection is no longer placed solely on them or their families (Yohanes & Djaja, 2024). Outside the judicial sphere, interventions by the Office for Women's Empowerment and Child Protection should be directed toward ensuring educational continuity, providing psychological counselling services, and guaranteeing access to maternal and child healthcare services. Such a restorative approach positions marriage as a last resort rather than an automatic solution.

Determination of a child's origin has a clear legal basis within the Indonesian legal system (Millatul Hakimah & Dairani Dairani, 2025). Article 55 of Law Number 1 of 1974 on Marriage and Article 103 of the Compilation of Islamic Law authorize the court to determine a child's origin when the child's status requires legal proof. Such an application may be submitted by an interested party to obtain legal certainty regarding the child's identity and legal relationship with their parents (Baihaki, 2023). The legal status of children has been further strengthened by Constitutional Court Decision Number 46/PUU-VIII/2010, which recognizes a civil legal relationship between a child and his or her biological father, provided that the relationship can be established through science and technology or other legally admissible evidence. The court's determination subsequently serves as the legal basis

for fulfilling the child's rights to identity, care, financial support, and legal protection without requiring child marriage.

This mechanism is consistent with the protection of children's constitutional rights and the protective objectives of *Maqāṣid al-Sharī'ah* (Sukri & Fauzan, 2025). Establishing a legal relationship between the child and the biological father preserves the clarity of lineage and is therefore aligned with the objective of *ḥifẓ al-nasl* (the preservation of lineage) (Millatul Hakimah & Dairani Dairani, 2025). This mechanism also protects children in vulnerable situations by ensuring access to civil rights and parental responsibilities from both parents. In cases involving pregnancy at a young age, judges are often confronted with two alternatives that each involve potential harm. Child marriage may reduce social stigma, yet it risks compromising girls' rights to education, reproductive health, and psychosocial development. This consideration is consistent with the Islamic legal maxim *idhā ijtama'ā al-ḍararāni usqīta al-akbaru li al-aṣghar* (when two harms coexist, the greater harm should be avoided by choosing the lesser one), which guides decision-makers to select the less harmful option when both harms cannot be avoided simultaneously (Rifandy dkk., 2025). Therefore, the determination of a child's origin may be regarded as a mechanism that preserves lineage while protecting girls from the greater risks associated with child marriage.

The integration of a gender perspective into Marriage Dispensation adjudication requires a transformation in how judges interpret legal facts and formulate their reasoning. Judges must recognise that girls bear unequal social, economic, and psychological burdens in situations of extramarital pregnancy. Judicial reasoning must therefore be expanded to include considerations ranging from reproductive health to access to education and social support systems that have long been neglected (Elnakib dkk., 2024). The dispositive section of judgments should ideally include restorative orders, such as obligations for local governments to provide post-decision assistance. In this way, law functions as an instrument for liberating children from structural vulnerability, rather than as a mechanism for controlling women's bodies. Reframing the best interests of the child within a gender perspective is a prerequisite for achieving substantive justice in Marriage Dispensation proceedings.

Conclusion

First, the study finds that judicial legal rationality in granting Marriage Dispensation on the grounds of pregnancy at the Religious Court of Bantul—both before and after the enactment of Law Number 16 of 2019—remains dominated by a substantive logic that prioritises the resolution of social shame and religious morality over the protection of girls' fundamental rights. Second, this construction of rationality

produces five systemic forms of gender injustice in judicial reasoning, namely the subordination of children's voices, economic marginalisation, stereotyping of women as symbols of family honour, symbolic violence, and the double burden. The comparative analysis with rejection practices at the Religious Court of Painan confirms that procedural formalisation alone has not been sufficient to eliminate moral bias that disproportionately disadvantages girls. Accordingly, the mainstreaming of a gender perspective in judicial reasoning constitutes an urgent necessity for the realisation of substantive justice in Marriage Dispensation adjudication.

Recommendations

This study offers two strategic recommendations to strengthen justice and gender equality in Marriage Dispensation proceedings. First, the Supreme Court should reinforce the implementation of Supreme Court Regulation Number 5 of 2019 by embedding a gender perspective in judicial training and decision monitoring. This is crucial to ensure that judicial considerations do not remain confined to formal procedural compliance, but instead encompass a comprehensive assessment of girls' psychological readiness, access to education, and reproductive health, while also encouraging the use of legal determinations concerning the child's origin as a non-marital alternative. Second, further research based on courtroom ethnography is needed to

uncover the dynamics of power relations and trial practices that are not reflected in written judgments.

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