

RECONSTRUCTING PREVENTIVE LEGAL PARADIGMS: SADDU AL-ZARI'AH AND THE LIMITS OF STATUTORY REFORM IN CHILD MARRIAGE REGULATION

RECONSTRUINDO PARADIGMAS JURÍDICOS PREVENTIVOS: SADDU AL-ZARI'AH E OS LIMITES DA REFORMA LEGISLATIVA NA REGULAMENTAÇÃO DO CASAMENTO INFANTIL

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Abstract

Child marriage persists despite statutory reforms raising the minimum legal marriage age, indicating structural limits of regulatory approaches relying solely on formal prohibition. Situated within the Indonesian legal context following the enactment of Law No. 16 of 2019, this study examines why legal reform fails to substantially reduce child marriage and how a preventive legal paradigm can be reconstructed from the Islamic jurisprudential doctrine of saddu al-zari'ah. Using a qualitative socio-legal method based on empirical fieldwork, the study combines interview data with legal and doctrinal analysis. The findings show that statutory reform often displaces rather than

Resumo

O casamento infantil persiste apesar das reformas estatutárias que aumentaram a idade mínima legal para casar, indicando limites estruturais das abordagens regulatórias que dependem exclusivamente da proibição formal. Situado no contexto jurídico indonésio após a promulgação da Lei n.º 16 de 2019, este estudo examina por que a reforma jurídica não consegue reduzir substancialmente o casamento infantil e como um paradigma jurídico preventivo pode ser reconstruído a partir da doutrina jurisprudencial islâmica de saddu al-zari'ah. Utilizando um método sociojurídico qualitativo baseado em trabalho de campo empírico, o estudo combina dados de entrevistas com análises jurídicas e doutrinárias. Os



eliminates the practice, as communities adapt through procedural mechanisms such as dispensations and informal marriages. This demonstrates that the primary limitation of legal reform lies not only in enforcement but also in the absence of a preventive legal paradigm. The study reconstructs saddu al-zari'ah as a conceptual framework for preventive governance and formulates a three-layer intervention model consisting of primary, secondary, and tertiary prevention. This reconstruction transforms a classical jurisprudential doctrine into an applied regulatory paradigm capable of addressing socially embedded legal practices.

Keywords: Preventive Legal Paradigm. Saddu Al-Zari'ah. Child Marriage Regulation. Socio-Legal Analysis. Legal Reform Limits.

resultados mostram que a reforma estatutária muitas vezes desloca, em vez de eliminar, a prática, à medida que as comunidades se adaptam por meio de mecanismos processuais, como dispensas e casamentos informais. Isso demonstra que a principal limitação da reforma jurídica reside não apenas na aplicação da lei, mas também na ausência de um paradigma jurídico preventivo. O estudo reconstrói o saddu al-zari'ah como um quadro conceptual para a governação preventiva e formula um modelo de intervenção em três camadas que consiste na prevenção primária, secundária e terciária. Esta reconstrução transforma uma doutrina jurisprudencial clássica num paradigma regulatório aplicado capaz de abordar práticas jurídicas socialmente enraizadas.

Palavras-chave: Paradigma Jurídico Preventivo. Saddu Al-Zari'ah. Regulamentação do Casamento Infantil. Análise Sociojurídica. Limites da Reforma Jurídica.

1 INTRODUCTION

Raising the legal minimum age of marriage has become a dominant global policy strategy to prevent child marriage (UNICEF, 2018; WHO, 2020). Nevertheless, empirical research consistently demonstrates that statutory reform does not automatically reduce early marriage prevalence (Maswikwa *et al.*, 2015; Kidman, 2024). In many jurisdictions, legal prohibition coexists with persistent child marriage due to entrenched social norms, economic pressures, and weak enforcement mechanisms (Lee-Rife *et al.*, 2012; Plesons *et al.*, 2021). This indicates that regulatory prohibition alone is insufficient to transform socially embedded practices. This study is situated within the Indonesian legal context, particularly following the enactment of Law No. 16 of 2019 amended the previous Marriage Law by equalizing the minimum legal age of marriage for both men and women at 19 years, replacing the earlier provision that allowed girls to marry at 16. Despite this reform, empirical observations indicate that child marriage continues to occur through procedural and informal mechanisms, making Indonesia a relevant case for examining the structural limits of statutory regulation.

Socio-legal theory explains this phenomenon through the interaction of legal substance, institutional structure, and legal culture (Friedman, 1975; Soekanto, 2007). Where these elements are misaligned, legal reform produces procedural compliance without substantive behavioral change (Rahardjo, 2006; Mazmanian & Sabatier, 1983). Studies on marriage-age legislation confirm that communities may reinterpret legal provisions or rely on informal mechanisms when formal rules conflict with prevailing norms (Putri, 2022; Muslimin, 2024). Such patterns demonstrate that the challenge is not merely regulatory design but the paradigm guiding legal intervention.

Within Islamic legal thought, the doctrine of *saddu al-zari'ah* offers a preventive logic capable of addressing this gap. Classical jurists defined it as blocking permissible means that may lead to prohibited outcomes (Al-Qarāfī, 1998; Al-Ghazālī, 1993). The doctrine prioritizes causal reasoning and anticipatory judgment rather than reactive adjudication (Nasrullah, 2019; Nofrizal, 2025). Although widely discussed in jurisprudential theory, it has rarely been examined as a framework for contemporary legal governance.

Existing scholarship on child marriage focuses mainly on empirical determinants, legal enforcement, or socio-economic factors (Kurniawan *et al.*, 2022; Rohman, 2023), whereas research on *saddu al-zari'ah* remains largely doctrinal (Arafah, 2020; Jalili, 2020). Few studies integrate classical jurisprudential reasoning with modern socio-legal analysis to formulate an operational regulatory model. This gap raises a central research problem: how can a preventive legal paradigm be constructed to address socially embedded practices that persist despite statutory prohibition?

Contemporary regulatory scholarship similarly demonstrates that legal effectiveness depends not merely on formal enactment but on institutional capacity, social legitimacy, and behavioral incentives. Regulatory theory shows that rules lacking preventive design tend to produce symbolic compliance rather than substantive transformation (Baldwin *et al.*, 2012; Parker & Nielsen, 2011). Empirical socio-legal studies further confirm that when regulation targets outcomes rather than causal pathways, regulated actors adapt strategically to circumvent formal restrictions (Ayres & Braithwaite, 1992; Gunningham *et al.*, 1998). From a governance perspective, preventive legal architectures are therefore considered more effective than reactive enforcement models in addressing socially embedded practices (Braithwaite, 2008; Parker, 2002;

Hood *et al.*, 2001). These insights indicate that the limitation of statutory reform is paradigmatic rather than merely technical.

This article offers a novel contribution by integrating classical Islamic jurisprudential reasoning with contemporary socio-legal regulatory theory to construct a preventive legal paradigm. While previous studies examine child marriage primarily through empirical, sociological, or doctrinal perspectives separately, this research synthesizes these approaches into a unified analytical framework. The originality of this study lies in transforming saddu al-zari'ah from a traditional interpretive doctrine into an operational model of preventive legal governance structured across three regulatory layers. This reconstruction advances preventive legal theory and provides a transferable conceptual framework for jurisdictions confronting socially embedded legal practices resistant to formal statutory reform.

This study situates its analysis within the Indonesian legal system, where statutory reforms have raised the minimum legal age of marriage yet empirical evidence indicates continued persistence of child marriage practices. Although the legal framework has formally strengthened child protection norms, implementation outcomes suggest structural limitations in regulatory effectiveness. To address this gap, this article develops a preventive legal paradigm derived from the Islamic jurisprudential doctrine of saddu al-zari'ah and examines how such a framework can explain the persistence of socially embedded practices despite formal prohibition. The purpose of this study is therefore to formulate a conceptual model of preventive legal regulation that integrates doctrinal reasoning with socio-legal empirical findings and that may be applicable beyond a single jurisdiction.

1.1 Statement of the problem

Despite the significant legislative milestone of Law No. 16 of 2019, which raised the minimum marriage age to 19 for both sexes, the prevalence of child marriage in Indonesia remains alarmingly high. This phenomenon reveals a critical "decoupling" between statutory reform and social reality. The primary problem lies in the fact that legal formalization through the mere raising of age limits has failed to address the root causes of the practice. Instead, it has triggered unintended consequences, such as an

unprecedented surge in applications for "marriage dispensations" (dispensasi nikah) and a persistence of informal or unregistered marriages (nikah siri).

This study identifies a fundamental weakness in the current legal approach: it relies heavily on a "repressive-reactive" paradigm rather than a "preventive-constructive" one. While the law prohibits the act, it does not effectively neutralize the pre-conditions or "gateways" (zari'ah) that lead to child marriage, such as economic pressure, deep-seated cultural norms, and a lack of educational alternatives.

Furthermore, there is a theoretical gap in how Islamic legal doctrines are utilized within the national legal framework. The doctrine of Saddu al-Zari'ah (blocking the means to harm) is often invoked narrowly in judicial discretion but has not been reconstructed as a comprehensive preventive regulatory paradigm. Consequently, without a clear theoretical framework for prevention that bridges statutory law and religious jurisprudence, child marriage continues to adapt and persist within the legal loopholes. Therefore, this research seeks to address how the reconstruction of Saddu al-Zari'ah can provide a more effective preventive legal model to overcome the structural and cultural limits of the current statutory reform.

1.2 Research questions

Based on the identified problems, this study formulates the following research questions:

1. Why does statutory reform fail to substantially reduce child marriage?
2. How can preventive legal reasoning derived from Islamic jurisprudence inform contemporary governance?

1.3 Research objectives

The primary objective of this study is to formulate a comprehensive preventive legal framework for addressing child marriage in Indonesia by reconstructing the Islamic jurisprudential doctrine of Saddu al-Zari'ah. Specifically, this research aims to:

1. Analyze the structural and cultural limitations of Law No. 16 of 2019 in reducing child marriage rates and identify the factors causing the "decoupling" between statutory reform and social practice.
2. Evaluate the current application of Saddu al-Zari'ah within the Indonesian judicial context, particularly in marriage dispensation cases, to identify gaps in its use as a preventive tool.
3. Reconstruct Saddu al-Zari'ah as a modern preventive legal paradigm that transcends mere formal prohibition, transforming it into a proactive regulatory strategy.
4. Formulate a three-layer intervention model (primary, secondary, and tertiary prevention) based on the reconstructed doctrine to provide a more holistic approach to ending child marriage in Indonesia.

1.4 Scope of research

To ensure a focused and in-depth analysis, the scope of this research is delineated as follows:

1. **Legal Framework Focus:** The study focuses specifically on the intersection between Law No. 16 of 2019 concerning Marriage and the Islamic legal doctrine of Saddu al-Zari'ah. It does not extensively cover other aspects of family law unless directly related to child marriage.
2. **Thematic Scope:** The primary focus is on "preventive legal paradigms." This includes the analysis of "marriage dispensations" (dispensasi nikah) in Religious Courts as a procedural gateway that Saddu al-Zari'ah seeks to address.
3. **Jurisprudential Reconstruction:** The research is limited to the reconstruction of Saddu al-Zari'ah from a classical deterrent concept into a modern, applied regulatory framework.
4. **Geographical and Contextual Limit:** While the theoretical discussion is broad, the contextual application and empirical references are centered on the Indonesian legal system and the socio-legal challenges within Indonesian Muslim communities.
5. **Interdisciplinary Approach:** The scope includes a socio-legal perspective to

understand why statutory reforms fail at the grassroots level, focusing on the "decoupling" between official law and living law.

1.5 Significance of the study

This research offers substantial contributions to both legal theory and practical policy-making regarding the prevention of child marriage in Indonesia. The significance of this study is outlined as follows:

1. **Theoretical Significance;** This study contributes to the enrichment of Islamic legal discourse by reconstructing the classical doctrine of Saddu al-Zari'ah into a modern preventive legal paradigm. It bridges the gap between traditional jurisprudence and contemporary regulatory theory, providing a new theoretical framework for understanding how religious doctrines can be integrated into national statutory reforms to address socially embedded legal practices. Furthermore, it adds to the body of socio-legal literature concerning the "decoupling" phenomenon between formal law and societal behavior.
2. **Practical and Policy Significance;** For policymakers and legislators, this research provides a strategic "three-layer intervention model" (primary, secondary, and tertiary prevention) that can be adopted to refine the implementation of Law No. 16 of 2019. It offers actionable insights for the Ministry of Religious Affairs and the Supreme Court in formulating stricter guidelines for marriage dispensations (dispensasi nikah). By identifying the "gateways" (zari'ah) of child marriage, this study assists law enforcement and social workers in developing more targeted and effective preventive measures at the grassroots level.
3. **Social Significance;** Ultimately, this study aims to protect the fundamental rights of children, particularly their rights to education and health, by proposing a legal mechanism that is not only prohibitive but also constructive and culturally sensitive.

1.6 Definition of key terms

To avoid ambiguity and ensure a clear understanding of the conceptual framework used in this study, the following terms are defined as follows:

- a. Preventive Legal Paradigm: A conceptual approach in legal theory that focuses on neutralizing potential harms or violations before they occur, rather than merely responding to them after the fact. In this study, it refers to a proactive regulatory strategy that addresses the root causes and "gateways" of child marriage.
- b. Saddu al-Zari'ah: An Islamic jurisprudential doctrine that translates to "blocking the means to an evil/harm." It involves prohibiting an act that is inherently permissible or neutral if it consistently leads to a forbidden or harmful result. This study reconstructs this doctrine as a modern regulatory tool for prevention.
- c. Child Marriage: Any formal marriage or informal union where at least one of the parties is under the age of 19, in accordance with the age limit established by Law No. 16 of 2019 in Indonesia.
- d. Marriage Dispensation (Dispensasi Nikah): A legal exception granted by the Religious Court (for Muslims) or District Court (for non-Muslims) that allows individuals who have not reached the minimum legal marriage age to marry under specific urgent circumstances.
- e. Statutory Reform: Changes made to formal written laws by a legislative body. In this context, it refers specifically to the amendment of the Marriage Law (Law No. 1 of 1974) by Law No. 16 of 2019.
- f. Decoupling: A socio-legal phenomenon where there is a significant gap or disconnection between formal legal rules (the law on the books) and actual social practices (the law in action).

2 LITERATURE REVIEW

The discourse on child marriage and legal reform has attracted significant scholarly attention, particularly concerning the tension between statutory changes, religious doctrines, and social practices. Previous studies generally emphasize that

raising the minimum age of marriage is a crucial step toward protecting children's rights, yet its practical effectiveness in various jurisdictions remains a subject of intense debate.

Several scholars argue that the primary challenge in eliminating child marriage lies in the "decoupling" between formal law and social reality. Rahardjo (2006) highlights that when the "law on the books" is enacted without considering the underlying socio-economic drivers, it fails to transform into "law in action." This disconnect is evident in Indonesia, where the enactment of Law No. 16 of 2019 was intended to be a panacea. However, Rohman (2023) observes that this legal reform has inadvertently triggered a surge in "marriage dispensations" (*dispensasi nikah*), suggesting that the legal system itself provides a procedural backdoor that perpetuates the practice. Similarly, Putri (2022) points out that economic pressures and deep-seated cultural norms often override statutory prohibitions, rendering formal legal changes less effective at the grassroots level.

Another stream of literature focuses on the role of Islamic jurisprudence in regulating marriage and preventing harm. The doctrine of *Saddu al-Zari'ah* (blocking the means to harm) is conceptually designed to prohibit acts that, while inherently neutral, consistently lead to forbidden outcomes. Traditionally, this doctrine has been invoked within judicial discretion in Religious Courts to grant or deny marriage dispensations. Nevertheless, Jidatul Haz *et al.* (2024) argue that the current application of *Saddu al-Zari'ah* remains reactive and fragmented. According to this view, the doctrine is often used case-by-case rather than being integrated into a comprehensive preventive regulatory framework.

Research has also examined the unintended consequences of repressive legal reforms. Plesons *et al.* (2021) note that strict legal prohibitions without supporting social interventions often displace rather than eliminate child marriage, leading to a rise in informal or unregistered marriages (*nikah siri*). This concern is reinforced by Tan (2021), who emphasizes that a purely normative approach is insufficient. Instead, a socio-legal perspective is required to identify the specific legal gaps and "gateways" (*zari'ah*) that allow child marriage to persist despite legislative efforts. Furthermore, Parker (2002) underscores that effective regulation requires a shift from a reactive-repressive paradigm to a proactive-preventive one that addresses root causes.

While existing studies have extensively discussed the socio-economic factors of child marriage and the formal legality of marriage dispensations, relatively few have examined the potential of reconstructing Saddu al-Zari'ah as a modern, multi-layered preventive legal paradigm. Most prior research treats Islamic legal doctrines and statutory reforms as separate entities or focuses solely on judicial decisions. This study positions itself within that gap by proposing a reconstruction of Saddu al-Zari'ah as an applied regulatory framework. By formulating a three-layer intervention model, comprising primary, secondary, and tertiary prevention, this research seeks to bridge the gap between religious jurisprudence and national legal reform to create a more holistic and effective strategy for ending child marriage in Indonesia.

3 RESEARCH METHODOLOGY

This study employs a qualitative socio-legal approach based on empirical fieldwork conducted in Indonesia, combining field data with normative legal analysis (Tan, 2021). Empirical data were collected through semi-structured interviews with judges, court officials, parents, minors, religious leaders, and child-protection officers. Informants were selected purposively based on institutional roles and direct involvement in marriage regulation processes. Field research was conducted in an Indonesian urban jurisdiction (Makassar), selected because it represents a region with a significant number of marriage dispensation applications and thus provides a relevant empirical setting for examining the interaction between statutory regulation and social practice.

Documentary analysis examined statutory provisions, judicial decisions, and administrative reports concerning marriage regulation and child protection. Doctrinal analysis focused on classical and contemporary jurisprudential texts discussing saddu al-zari'ah and preventive reasoning (Al-Ghazālī, 1993; Al-Qarāfī, 1998; Al-Zuhayli, 1986). Data were analyzed using interpretive and comparative techniques to identify patterns of legal implementation, institutional interaction, and community responses to regulatory norms. While this study does not aim to measure statistical prevalence, its qualitative design enables in-depth examination of regulatory dynamics necessary for conceptual reconstruction.

4 RESEARCH FINDINGS AND DISCUSSION

4.1 Persistence of child marriage beyond legal reform

Findings from the Indonesian case study demonstrate that raising the legal minimum marriage age has not significantly reduced child marriage practices. Instead, reform often shifts behavior into alternative mechanisms such as judicial dispensations or unregistered marriages. Families frequently interpret legal provisions as administrative hurdles rather than binding norms, indicating symbolic rather than substantive compliance. This confirms socio-legal theory that legal effectiveness depends on alignment between law, institutions, and culture (Friedman, 1975; Rahardjo, 2006). Empirical studies likewise show that legal restrictions alone rarely eliminate socially embedded practices (Maswikwa *et al.*, 2015; Kidman, 2024).

4.2 Structural limitations of reactive legal systems

Institutional analysis reveals that regulatory systems tend to operate reactively. Legal institutions focus primarily on adjudicating applications rather than preventing them. Coordination among courts, administrative agencies, and social services remains limited. Such conditions reflect a reactive legal paradigm in which law intervenes only after a request or violation occurs. Implementation theory explains that policies lacking preventive mechanisms often produce compliance gaps (Mazmanian & Sabatier, 1983; Soekanto, 2007).

4.3 Parallel informal marriage as regulatory circumvention

The persistence of unregistered marriages demonstrates legal pluralism, where statutory law coexists with customary and religious norms (Hadjon, 1987; Asshiddiqie, 2005). When formal law imposes restrictions without addressing underlying motivations, individuals may shift toward alternative normative frameworks. Consequently, prohibition alone cannot eliminate socially accepted practices unless accompanied by preventive strategies targeting causal factors (Plesons *et al.*, 2021; Zein, 2020).

4.4 Reconstructing saddu al-zari'ah as a preventive legal paradigm

The central contribution of this study lies in reconstructing saddu al-zari'ah from a classical jurisprudential method into a contemporary regulatory paradigm. Traditionally, the doctrine functions to block lawful acts that may lead to unlawful consequences (Al-Qarāfi, 1998; Ibn Qayyim, 1991). Legal evaluation is therefore directed not only toward actions but toward their causal trajectories. Classical scholars emphasized that preventing harm is preferable to removing harm after it occurs (Al-Ghazālī, 1993; Al-Suyuti, 1983).

When interpreted within modern governance theory, this principle provides a conceptual foundation for anticipatory regulation in which law intervenes before harm occurs rather than after violations arise. Such reinterpretation shifts legal doctrine from retrospective adjudication to prospective governance. Thus, saddu al-zari'ah may be understood not merely as a juristic technique but as a normative framework for preventive legal design.

4.5 A three-layer preventive legal model

Based on empirical analysis and doctrinal reconstruction, this study formulates a three-layer preventive legal model derived from the causal logic of saddu al-zari'ah. The model conceptualizes prevention as a hierarchical regulatory design in which legal intervention operates at multiple stages rather than solely at the point of adjudication. Each layer addresses a different phase in the causal chain leading to child marriage, thereby transforming prevention from a policy recommendation into a structured legal framework.

Layer	Function	Strategy
Primary	Remove motivations	Education, awareness, cultural engagement
Secondary	Reduce risk	Monitoring, counseling, coordination
Tertiary	Control outcomes	Judicial review, enforcement

These layers correspond to the preventive hierarchy described in classical jurisprudence: blocking causes, limiting pathways, and restricting outcomes (Al-Ghazālī,

1993). Conceptually, this structure demonstrates that effective legal governance must intervene before harmful acts occur, not merely regulate them after they arise. The model therefore reframes legal regulation as anticipatory rather than reactive, aligning doctrinal reasoning with contemporary regulatory theory.

4.6 Comparative global perspective

Comparable patterns appear globally. Cross-national research shows that minimum-age marriage laws do not automatically reduce early marriage prevalence when enforcement is weak or communities rely on informal unions (Maswikwa *et al.*, 2015). Evidence also indicates that multi-level interventions combining education, protection, and institutional coordination are more effective than single legal measures (Lee-Rife *et al.*, 2012; Plesons *et al.*, 2021). These findings reinforce the argument that preventive strategies targeting causal pathways are essential for regulatory effectiveness.

The persistence of child marriage across legal systems demonstrates that statutory prohibition alone is insufficient when social norms, economic pressures, and institutional gaps remain unaddressed. Comparative global studies confirm that child marriage is not merely a legal violation but a structurally embedded practice sustained by poverty, gender inequality, and cultural expectations (Nour, 2009; Parsons *et al.*, 2015). Empirical findings from African jurisdictions similarly indicate that reforms focused solely on minimum-age legislation tend to shift practices into informal or unregistered unions rather than eliminating them altogether (Walker, 2012). This pattern supports the argument that effective regulation must operate preventively by addressing causal pathways before legal violations occur. In this context, the reconstruction of *saddu al-zari'ah* provides a doctrinally grounded framework capable of integrating moral reasoning, social policy, and legal regulation into a unified preventive paradigm.

4.7 Paradigm shift in legal governance

The findings collectively indicate that the ineffectiveness of legal reform does not stem solely from weak enforcement but from the absence of a preventive paradigm within legal governance. A system oriented exclusively toward adjudication cannot adequately

address practices rooted in social norms. Preventive frameworks are therefore necessary to complement statutory regulation.

The Indonesian experience illustrates how statutory reform without preventive paradigms tends to shift practices rather than eliminate them. Integrating jurisprudential principles into policy design expands law's function from dispute resolution to social transformation. Normative legal traditions thus become sources of regulatory innovation rather than merely interpretive authorities. In this sense, reconstructing saddu al-zari'ah provides not only doctrinal reinterpretation but a conceptual model for preventive legal systems.

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Statutory reform alone cannot effectively reduce child marriage where social norms, institutional structures, and legal culture remain misaligned. Empirical evidence shows that communities adapt to regulatory restrictions through procedural and informal mechanisms, revealing the limits of reactive legal approaches. By reconstructing saddu al-zari'ah as a preventive legal paradigm, this article proposes a model in which law intervenes before harmful outcomes occur rather than after violations arise. The applicability of this framework depends on institutional willingness to adopt preventive regulatory approaches. This reconstruction demonstrates that classical jurisprudential concepts can function not merely as interpretive doctrines but as operational frameworks for preventive legal governance across jurisdictions confronting structurally embedded social practices.

5.2 Strategic recommendations

Based on the reconstruction of the Saddu al-Zari'ah doctrine into a preventive legal paradigm, this study proposes a comprehensive strategy to overcome the limitations of

Law No. 16 of 2019. The recommendations are structured into a three-layer intervention model:

1. **Primary Prevention: Neutralizing the Root Causes (Upstream Strategy)** The government should shift its focus from mere formal prohibition to addressing the "gateways" (zari'ah) of child marriage. This includes:
 - **Educational Integration:** Establishing a mandatory 12-year education policy with strict oversight to ensure at-risk children remain in school, as education is the most effective "buffer" against early marriage.
 - **Economic Empowerment:** Providing targeted social assistance and vocational training for low-income families to eliminate economic desperation as a primary driver for marrying off underage children.
2. **Secondary Prevention: Tightening Judicial and Administrative Gatekeeping (Midstream Strategy)** To prevent the abuse of "marriage dispensations" (dispensasi nikah), the following measures are recommended:
 - **Standardization of "Urgency":** The Supreme Court should issue more rigorous guidelines that strictly define "urgent circumstances," ensuring that dispensations are only granted in extreme cases and not as a default solution for cultural or economic pressure.
 - **Mandatory Multi-Disciplinary Assessment:** Requiring a comprehensive evaluation from psychologists, social workers, and health professionals before a judge rules on a dispensation request to ensure the child's best interests are prioritized.
3. **Tertiary Prevention: Mitigation and Social Reintegration (Downstream Strategy)** For cases where child marriage has already occurred or is unavoidable, the state must:
 - **Protective Legal Monitoring:** Implementing a monitoring system to ensure that children in early marriages still have access to health services and non-formal education (Package C).
 - **Strengthening Informal Justice Systems:** Engaging religious and community leaders to internalize the preventive values of Saddu al-Zari'ah at the grassroots level, discouraging nikah siri (unregistered marriages) as a way to bypass formal laws.
4. **Policy Harmonization** There must be a synchronized regulatory framework

between the Ministry of Religious Affairs, the Ministry of Women Empowerment and Child Protection, and the Supreme Court. A unified digital database for marriage applications and school attendance can help identify and intervene in potential child marriage cases before they reach the judicial stage.

5.3 Future research directions

While this study provides a comprehensive reconstruction of the Saddu al-Zari'ah doctrine as a preventive legal paradigm, several avenues remain open for further academic inquiry. Future research should consider the following areas to expand the discourse on child marriage and legal reform:

1. **Quantitative and Longitudinal Impact Studies:** Future studies could employ quantitative methods to measure the long-term statistical impact of "marriage dispensations" on the socio-economic welfare of children over a decade. A longitudinal approach would provide empirical evidence on whether the preventive interventions proposed in this study effectively break the cycle of intergenerational poverty.
2. **Digital Jurisprudence and Surveillance:** As Indonesia moves toward a digital administrative system, research is needed to explore how "digital Saddu al-Zari'ah" the use of AI and big data to predict and prevent child marriage gateways can be integrated into the national legal framework without compromising privacy rights.
3. **Comparative Legal Analysis:** A comparative study between Indonesia and other Muslim-majority countries that have successfully reduced child marriage rates (such as Morocco or Tunisia) could offer valuable insights. Examining how these nations synchronize traditional Islamic doctrines with modern statutory reforms would enrich the global perspective on preventive jurisprudence.
4. **Psychological and Victim-Centric Perspectives:** Further research is required to delve deeper into the psychological impact of "legalized" child marriage via court dispensations. Understanding the subjective experiences of the children involved would help refine the "tertiary prevention" model to be more victim-centric and rehabilitative.

5. Role of Customary Law (Adat): Given Indonesia's legal pluralism, future inquiries should investigate the intersection between Saddu al-Zari'ah and various customary laws (hukum adat) in remote regions. This would help determine if a unified preventive paradigm is feasible or if localized, culturally-specific adaptations are more effective.

REFERENCES

- Al-Ghazālī. (1993). *Al-Mustasfa min 'ilm al-usul* (Vol. 1). Dār al-Kutub al-'Ilmiyyah.
- Al-Qarāfī, S. al-D. (1998). *Al-Furūq*. 'Ālam al-Kutub.
- Al-Suyūfī. (1983). *Al-Ashbāh wa al-Nazā'ir*. Dār al-Kutub al-'Ilmiyyah.
- Al-Zuhaylī, W. (1986). *Uṣūl al-fiqh al-islāmī*. Dār al-Fikr.
- Arafah, I. (2020). Pendekatan Sadd Adz-Dzari'ah dalam studi Islam. *Al-Muamalat*, 5(1), 68–86.
- Asshiddiqie, J. (2005). *Konstitusi dan konstitusionalisme Indonesia*. Konstitusi Press.
- Ayres, I., & Braithwaite, J. (1992). *Responsive regulation: Transcending the deregulation debate*. Oxford University Press.
- Badan Pusat Statistik. (2020). *Pencegahan perkawinan anak percepatan yang tidak bisa ditunda*.
- Baldwin, R., Cave, M., & Lodge, M. (2012). *Understanding regulation: Theory, strategy, and practice*. Oxford University Press.
- Braithwaite, J. (2008). *Regulatory capitalism: How it works, ideas for making it work better*. Edward Elgar.
- Friedman, L. M. (1975). *The legal system: A social science perspective*. Russell Sage Foundation.
- Gunningham, N., Grabosky, P., & Sinclair, D. (1998). *Smart regulation: Designing environmental policy*. Oxford University Press.
- Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia*. Bina Ilmu.
- Hernawan, & Widigdo, M. S. A. (2023). Peran pertimbangan hakim dalam penetapan dispensasi nikah perspektif children's best interest. *Al Qalam*, 17(5).
- Hood, C., Rothstein, H., & Baldwin, R. (2001). *The government of risk: Understanding risk regulation regimes*. Oxford University Press.

- Ibn Qayyim al-Jawziyyah. (1991). *I'lām al-muwaqqi'īn*. Dār al-Kutub al-'Ilmiyyah.
- Iyas, A. Y., & Zainuddin. (2020). Pelaksanaan nikah siri dan akibat hukumnya terhadap hak waris istri dan anak. *Journal of Lex Generalis*, 1(1).
- Jalili, I. (2020). *Eksistensi Sadd Adz-Dzari'ah dalam ushul fiqh*. [Note: Tambahkan nama penerbit/jurnal jika tersedia].
- Jidatul Haz, *et al.* (2024). Preventive jurisprudence in modern Islamic law. *Journal of Islamic Legal Studies*.
- Kidman, R. (2024). Reducing child marriage in sub-Saharan Africa. *Children and Youth Services Review*.
- Kurniawan, I. D., Firdaus, B. M., Jannah, D. I., Monika, D., & Wijayanti, N. A. (2022). Dampak dispensasi perkawinan terhadap fenomena perkawinan anak. *Serambi Hukum*, 15(2).
- Lee-Rife, S., Malhotra, A., Warner, A., & Glinski, A. (2012). What works to prevent child marriage. *Studies in Family Planning*, 43(4), 287–303. <https://doi.org/10.1111/j.1728-4465.2012.00327.x>
- Maswikwa, B., Richter, L., Kaufman, J., & Nandi, A. (2015). Minimum marriage age laws and prevalence of child marriage. *International Perspectives on Sexual and Reproductive Health*, 41(2), 58–68. <https://doi.org/10.1363/4105815>
- Mazmanian, D., & Sabatier, P. (1983). *Implementation and public policy*. Scott Foresman.
- Muslimin, D. (2024). Pola asuh orang tua terhadap risiko pernikahan dini. *Mandira Cendika*, 9(2).
- Nasrullah. (2019). Teori sadd al-dzarī'ah dan fath al-dzarī'ah. *Ijtihad*, 19(2).
- Nofrizal, O. (2025). Saddu dzari'ah menurut Imam Syafi'i. *Tasyri'*, 4(1).
- Nour, N. M. (2009). Child marriage: A silent health and human rights issue. *Reviews in Obstetrics & Gynecology*, 2(1), 51–56.
- Parker, C. (2002). *The open corporation: Effective self-regulation and democracy*. Cambridge University Press.
- Parker, C., & Nielsen, V. L. (2011). *Explaining compliance: Business responses to regulation*. Edward Elgar.
- Parsons, J., Edmeades, J., Kes, A., Petroni, S., Sexton, M., & Wodon, Q. (2015). *Economic impacts of child marriage: A review of the literature*. World Bank.

- Plesons, M., Travers, E., Malhotra, A., Finnie, A., Maksud, N., & Chandra-Mouli, V. (2021). Updated research gaps on ending child marriage. *Reproductive Health*, 18(152). <https://doi.org/10.1186/s12978-021-01176-x>
- Putri, N. D. (2022). Faktor sosial ekonomi dalam perkawinan anak. *Jurnal Ilmu Sosial dan Humaniora*, 11(3).
- Rahardjo, S. (2006). *Ilmu hukum*. Citra Aditya Bakti.
- Rannu, & Adhari. (2025). Legal gaps in Indonesian family law reform. *Indonesian Law Journal*.
- Rohman, M. (2023). Dispensasi perkawinan dan kebijakan politik hukum. *Jurnal Hukum*, 3(1).
- Soekanto, S. (2007). *Faktor-faktor yang mempengaruhi penegakan hukum*. Rajawali Press.
- Tan, D. (2021). Metode penelitian hukum. *Nusantara: Jurnal Ilmu Pengetahuan Sosial*, 8(5), 1332–1336.
- UNICEF. (2018). *Child marriage: Latest trends and future prospects*.
- UNICEF & UNFPA. (2023). *Global programme to end child marriage annual report*.
- Walker, J.-A. (2012). Early marriage in Africa: Trends, harmful effects and interventions. *African Journal of Reproductive Health*, 16(2), 231–240.
- World Health Organization. (2020). *Adolescent pregnancy*.
- Zein, W. (2020). Budaya lokal dan praktik perkawinan anak. *Jurnal Masyarakat dan Budaya*, 22(2).

Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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