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Child Marriage in Villages: Misuse of Ijbār, Structural Discrimination, and Best Interest of the Child Dismissal

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Abstract

Despite ongoing global efforts to end child marriage, the practice remains widespread in Indonesia. In 2024, Pasuruan recorded some of the highest child marriage rates. Ngantungan Village in Pasrepan is a striking example of how entrenched cultural beliefs and economic pressures continue to drive the trend. This study investigates how structural discrimination—primarily through the practice of *ijbār* (coercive guardianship) in Islamic legal interpretation—clashes with the best interests of the child (BIC) and perpetuates early marriage. Fieldwork included interviews with religious authorities, local officials, guardians, and young people involved in these marriages. The findings reveal that although Islamic jurisprudence allows

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guardians to arrange underage marriages under certain conditions, *ijbār* is frequently misapplied in ways that ignore girls' autonomy and strip them of their right to participate in life-changing decisions. In Ngantungan, traditional myths—like the belief that rejecting too many proposals dooms a girl to lifelong singleness—create social pressure, particularly for girls from low-income families with little formal education. For many, early marriage is seen not as a choice but as the only viable escape from economic hardship. Tackling this issue calls for more than legal reform. It demands a cultural shift, localized education initiatives, and financial support programs that offer meaningful alternatives and disrupt the cycle of child marriage.

Keywords:

Child Marriage; Right of *Ijbār*; Structural Discrimination;
Best Interests of the Child

Introduction

Although numerous international conventions have been ratified and national laws enacted to eliminate child marriage, the practice persists in many regions across the globe. It remains a critical human rights concern due to its harmful consequences for children's health, education, and gender equality. In Yemen, the combination of a missing legal minimum age for marriage and ongoing armed conflict has accelerated the increase in child marriages, with over 4 million girls married before reaching 18 and 1.4 million before the age of 15.¹ Pakistan mirrors this trend, where around 39% of women get married before 18, often under cultural norms that favor male children.² Meanwhile, in Afghanistan, socio-cultural rigidity and widespread poverty, particularly in rural communities, reinforce the persistence of child marriage.³ The situation is also severe in South

¹ Endah Trisnani and Idham Badruzaman, "The Roles of UNFPA-UNICEF in the Case of Child Marriage in Yemen 2016-2019," *Sociologia Y Tecnociencia* 13, no. 1 (2023): 127-44, <https://doi.org/10.24197/st.1.2023.127-144>.

² Mazhar Mughal, Rashid Javed, and Thierry Lorey, "Female Early Marriage and Son Preference in Pakistan," *Journal of Development Studies* 59, no. 10 (2023): 1549-69, <https://doi.org/10.1080/00220388.2023.2217997>.

³ Omid Dadras, Tanaporn Khampaya, and Takeo Nakayama, "Child Marriage, Reproductive Outcomes, and Service Utilization among Young Afghan Women:

Asia—Bangladesh, for instance, has one of the highest child marriage rates globally, with 52% of girls getting married before turning 18.⁴ These marriages elevate maternal and child health risks, especially in low-income regions.⁵ Refugee communities, like Palestinian and Syrian populations in Jordan, also experience high early marriage rates due to poverty and cultural conservatism.⁶ Among Syrian refugees, limited access to education compounds the issue.⁷ In Malaysia, rising concerns over Muslim child marriages have led to demands for legal reform rooted in *Siyāsah asy-Syar’iyyah*.⁸ These cases illustrate a global trend that child marriage persists due to poverty, weak legal enforcement, and cultural norms.

In Indonesia, one of the primary legal tools that facilitate underage unions is the marriage dispensation mechanism, which allows courts to authorize marriages below the national age requirement legally. This mechanism, though ostensibly a protective measure, has been widely used across the country, revealing inconsistencies in the enforcement of child marriage laws. Between 2022 and 2024, the Surabaya Religious High Court (Pengadilan Tinggi Agama) recorded the nation's highest number of dispensation cases: 15,253 in 2022, followed by 12,630 in 2023, and 9,164 in 2024. At the local level, the Pasuruan Religious Court documented 703

Findings from a Nationally Representative Survey in Afghanistan,” *Studies in Family Planning* 53, no. 3 (2022): 417–31, <https://doi.org/10.1111/sifp.12207>.

⁴ Raaj Kishore Biswas, Jahidur Rahman Khan, and Enamul Kabir, “Trend of Child Marriage in Bangladesh: A Reflection on Significant Socioeconomic Factors,” *Children and Youth Services Review* 104 (2019): 1–9, <https://doi.org/10.1016/j.chilcyouth.2019.06.017>.

⁵ Md Moyazzem Hossain et al., “Child Marriage and Its Association with Morbidity and Mortality of Under-5 Years Old Children in Bangladesh,” *Plos One* 17, no. 2 (2022): 1–14, <https://doi.org/10.1371/journal.pone.0262927>.

⁶ Bassam Abu Hamad et al., “‘No One Should Be Terrified Like I Was!’ Exploring Drivers and Impacts of Child Marriage in Protracted Crises Among Palestinian and Syrian Refugees,” *European Journal of Development Research* 33, no. 5 (2021): 1209–31, <https://doi.org/10.1057/s41287-021-00427-8>.

⁷ An Van Raemdonck, “Early Marriage/Pregnancy among Syrian Refugees in Jordan in Light of Reproductive Governance and Justice,” *Women’s Studies International Forum* 99, no. 2022 (2023): 1–8, <https://doi.org/10.1016/j.wsif.2023.102779>.

⁸ Muhammad Al-Ghazalli Abdol Malek, Mohd Al Adib Samuri, and Muhammad Nazir Alias, “Child Marriage in Malaysia: Reforming Law through the Siyasa al-Shar’iyya Framework,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (2023): 58–83, <https://doi.org/10.22373/sjhk.v7i1.16011>.

dispensation cases in 2022, 860 in 2023, and 892 in 2024, making it one of the major contributors to Indonesia's national figures.⁹ In Pasrepan Subdistrict Pasuruan, for example, marriage dispensation data indicate that early marriages are often driven by cultural motives, such as avoiding premarital stigma or legitimizing relationships. In 2024, 68 underage marriage decisions were recorded in Pasrepan alone.¹⁰

The normalization of child marriage in communities such as Ngantungan Village in Pasrepan Subdistrict is further reinforced by social beliefs that favor early marriage to avoid the perceived shame of remaining unmarried. For instance, myths persist that girls who reject multiple marriage proposals—typically between three and six—risk remaining unmarried for life.¹¹ These local myths influence family decisions, often compelling acceptance of marriage proposals regardless of a girl's developmental maturity. These cultural narratives sustain the misuse of *ijbār*—the guardian's right to arrange a marriage—especially when implemented without prioritizing the child's welfare. In Indonesian Muslim communities, particularly under the Shafi'i tradition, *ijbār* remains legally tolerated through marriage dispensations.¹² While *ijbār* was historically conceived as a form of guardianship meant to protect minors, its contemporary application often leads to structural discrimination against girls. This includes curtailing their access to education, limiting their personal agency, and increasing their vulnerability to emotional trauma, early divorce, and poverty.¹³

⁹ Processed from "Bank Data Perkara Peradilan Agama," accessed November 20, 2024, https://kinsatker.badilag.net/JenisPerkara/perkara_persatker/362/2024.

¹⁰ Khoirul Mundir, Head of the Pasrepan Religious Affairs Office, *Interview*, October 1, 2024.

¹¹ M. Mujir, Modin in Ngantungan Village Pasrepan District Pasuruan Regency, *Interview*, October 3, 2024.

¹² Misbachul Munir and Siti Zumrotun, "The Position of Ijbar Rights in Perspective Islamic Law and Human Rights," *El-Ussrah: Jurnal Hukum Keluarga* 5, no. 2 (2023): 89–95, <https://doi.org/10.22373/ujhk.v6i1.17374>.

¹³ Jackie Jones and Rashida Manjoo, *The Legal Protection of Women and Girls from Violence: Normative Gaps in International Law, Human Rights and International* (London-New York: Routledge, Taylor & Francis Group, 2018), 107–133; Diana Teresa Pakasi et al., "Young Women's Agency and the Social Navigation of Divorce from Child Marriage in West Java, Central Java, and West Lombok, Indonesia," *Asian Women* 40, no. 2 (2024): 95–121, <https://doi.org/10.14431/aw.2024.6.40.2.95>.

Previous studies have explored *ijbār*, structural discrimination, and child marriage from various angles, but some key aspects remain untouched—especially how these issues play out in village life. Agustina and Nor Ismah, through their KUPI research, redefine *ijbār* as a moral responsibility instead of a guardian's absolute right. While advocating justice and equality, their work is primarily normative and lacks ground-level insight, especially in patriarchal, low-income communities like rural Java.¹⁴ Abdul Wahid's findings in Bima reveal that *ijbār* is shaped by local customs. However, the cultural and legal dynamics in Pasuruan—dominated by the Shafi'i school and myths like the fear of becoming an "old maid"—require a different lens.¹⁵ Munir and Zumrotun critique *ijbār*'s role in forced marriage and gender-based violence, but their legal analysis lacks empirical context.¹⁶ Singgih Susilo et al. examine myths that encourage early marriage, yet they don't link these beliefs with Islamic legal doctrines or institutional structures.¹⁷ Hidayati, Yuliatin, and Syuib discuss how puberty is equated with marriage readiness, but they don't explore how this norm is upheld by guardianship authority or the court system.¹⁸ N.Q. Tahir et al. connect low education with early marriage, but overlook how guardianship power and religious interpretation worsen the issue.¹⁹ Unlike these works, this research combines doctrinal critique with field data from Ngantungan Village. It

¹⁴ Arifah Millati Agustina and Nor Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages," *Journal of Islamic Law* 5, no. 1 (2024): 125–46, <https://doi.org/10.24260/jil.v5i1.2319>.

¹⁵ Jumarim, Ilyya Muhsin, and Muhammad Chairul Huda, "The Interplay of Fiqh, Adat, and State Marriage Law: Shaping Legal Consciousness of Sasak Women," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 19, no. 2 (2024): 27–52, <https://doi.org/10.19105/al-ihkam.v19i1.10522>.

¹⁶ Munir and Zumrotun, "The Position of Ijbar Rights in Perspective Islamic Law and Human Rights."

¹⁷ Singgih Susilo et al., "Investigation of Early Marriage: A Phenomenology Study in the Society of Bawean Island, Indonesia," *Journal of Population and Social Studies* 29, no. 1 (2021): 544–62, <https://doi.org/10.25133/JPSv292021.034>.

¹⁸ Rahmi Hidayati, Yuliatin, and Kholil Syuib, "The Norm of the Age Limit for Early Marriage in Suku Anak Dalam Jambi Province," *Jurnal Hukum Islam* 20, no. 2 (2022): 253–78, <https://doi.org/10.28918/jhi.v20i2.6167>.

¹⁹ Nur Qadriyana Tahir et al., "Influence of Education and Parental Income of Parents on Early Marriage for Young Women the Village Baranti Districts Baranti Regency Sidenreng Rappang," *Open Access Macedonian Journal of Medical Sciences* 8, no. T2 (2020): 127–30, <https://doi.org/10.3889/oamjms.2020.5208>.

investigates how *ijbār* is practiced and sometimes abused as a tool of control. This study fills a significant gap by focusing on the intersection of religious authority, cultural expectations, and legal mechanisms—linking ideas with lived experience.

Although Indonesia has changed its Marriage Law under Law No. 16 of 2019—setting the minimum age for men and women at 19—real-world enforcement is inconsistent,²⁰ especially in villages like Ngantungan in Pasrepan. While this legal shift frames the best interests of the child as central to any marriage decision, on the ground, that idea often fades in the face of old customs and patriarchal values.²¹ In practice, decisions about to whom and when a girl should marry are more about what the community considers appropriate than about the girl's readiness or consent. This means young girls are often pressured into early marriages, even when they're not emotionally or mentally prepared. Furthermore, laws alone don't fix the issue. A complete response is required, ranging from educating communities, and creating economic alternatives to developing culturally sensitive programs that challenge these ingrained beliefs. This study, therefore, asks three things: how *ijbār* works in daily life, how discrimination is woven into local marriage traditions, and how child welfare is—or isn't—considered in these unions. These questions help uncover how deeply religious rules, cultural habits, and legal interpretations shape the choices made about young girls' futures.

Methods

This study adopts an empirical approach to examine the practice of *ijbār* about child marriage and Islamic legal norms, viewed through a human rights perspective. Fieldwork was conducted in Ngantungan Village, Pasrepan District, Pasuruan Regency—selected to reflect broader patterns in rural Muslim communities, including patriarchal guardianship, limited access to education, and economic

²⁰ Wahyuni Retnowulandari et al., "The Prevalence of Child Marriage: Comparative Study of Indonesia and Other South Asian States," *Jambura Law Review* 6, no. 2 (2024): 339–66, <https://doi.org/10.33756/jlr.v6i2.24257>.

²¹ Ahmad Faris Hilmi and Muhammad Zawil Kiram, "The Under-Age Marriage during the Pandemic: The Best Interest of the Child Principle," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (2023): 71–80, <https://doi.org/10.31862/9785426311961>.

hardship. Its strong alignment with religious authority and traditional norms makes it a compelling microcosm to analyze how cultural, legal, and spiritual frameworks reinforce early marriage. Data were collected through semi-structured interviews with stakeholders, including a *penghulu*, KUA officials, a *modin*, guardians (*wali*), and adolescents who married early. These interviews revealed how both formal and informal systems sustain the practice of child marriage. Table 1 shows the adolescents who entered into early marriages.

Table 1. Information on Married Couples

Initial (Female)	Age (F)	Initial (Male)	Age (M)	Occupation (M)	Date of Marriage
LM	12,8	SA	15,8	Farm Laborer	December 10, 2021
AP	16,7	NH	23,7	Private Employee	December 20, 2021
NA	16,1	AA	21,1	Private Employee	May 28, 2021
R.H	17	MS	23	Private Employee	May 25, 2022
P.L	18	AF	22	Sales	October 25, 2024

Based on Table 1, it can be seen that there are five informants in this research. In addition to primary data, this study draws on secondary sources, including literature on *ijbār* in Islamic jurisprudence and best interest of the child (BIC) principle, to provide a theoretical and legal foundation for interpreting the findings. The analysis critically explores how *ijbār* and structural discrimination affects children's well-being. By integrating classical Islamic legal thought with contemporary child protection principles, the study offers a nuanced understanding of the relationship between religious tradition and children's rights.

Result and Discussion

Ijbār in Islamic Jurisprudence and Reality

In Ngantungan Village, the persistence of child marriage—despite its legal prohibition—reflects the interplay of cultural norms, patriarchal authority, and economic insecurity. Early marriage is not

seen as outdated but embraced as a social norm, often justified by concerns over family honor or financial hardship. Most girls aged 14 to 17, who have completed only elementary school, are often married to older men aged 16 to 36 who similarly have low educational backgrounds.²² These marriages rarely reflect the girl's informed choice but are shaped by coercive parental authority and legitimized through the doctrine of *ijbār*. Although Islamic jurisprudence originally framed *ijbār* as a protective mechanism for those lacking legal capacity, in practice it has been repurposed to override consent—transforming a safeguard into an instrument of structural control.

The classical concept of *walī mujbir* grants male guardians—typically a father or paternal grandfather—the legal authority to arrange marriages for their daughters without explicit consent. In Islamic legal tradition, this guardianship is categorized into *walī ijbār* (who may compel marriage) and *walī ikhtiyār* (who must obtain the ward's consent).²³ Foundational sources, such as Surah An-Nisa' verse 6, frame this guardianship as a protective measure for individuals considered incapable of independent decision-making. This rationale also applies to financial guardianship, reinforcing the view that minors lack legal capacity. Hadith literature and juristic consensus (*ijmā'*) further support this view, asserting that accountability (*taklīf*) begins only at puberty.²⁴ Yet, field data from Ngantungan in 2024 tells a different story. The five documented cases involve underage girls married before completing formal education. Their husbands—generally older and also lacking education—were selected not through legal deliberation, but under familial pressure and economic necessity. In such cases, *ijbār* loses its legal nuance and becomes a tool for controlling girls' lives. Legal guardianship thus devolves into cultural coercion, where protective rhetoric conceals the denial of autonomy and deepens gender-based vulnerability.

²² S I, Mother of P in Ngantungan Village Pasrepan District Pasuruan Regency, *Interview*, October 15, 2024.

²³ Muḥammad bin 'Alī bin Muḥammad bin 'Alī bin 'Abd Ar-Raḥmān, *Ad-Durr al-Mukhtār Syarh Tanwīr al-Absār wa Jāmi' al-Biḥār* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2002), 183.

²⁴ 'Awaḍ bin Rajā' bin Farīj Al-'Awfī, *Al-Wilāyah fī an-Nikāḥ* (Al-'Arabiyyah al-Su'ūdiyyah: 'Amādat al-Baḥṭh al-'Ilmī bi al-Jāmi'ah al-Islāmiyyah, 2002), 366–370.

Within Islamic jurisprudence, various *madhāhib* (legal schools) differ in interpretations of *ijbār*, particularly regarding virginity and minority status. The Hanafi school asserts that a guardian may compel marriage only in cases involving minors. Upon reaching maturity (*bulūgh*) and sound judgment, the guardian's authority to compel marriage ceases.²⁵ This position is supported by a narration from An-Nasa'i, where a girl told the Prophet that her father had married her to his nephew for social status. The Prophet affirmed her right to accept or refuse the marriage, establishing that a mature and competent girl must consent.²⁶ However, this legal ideal contrasts with practices in Ngantungan, where pubescent girls are often married off with little involvement in the decision. Though technically involved, their participation is shaped by cultural norms—respect for parents, community pressure, and concern for family honor. In this setting, individual choice may be subdued by a sense of obligation. Consequently, *ijbār* is often invoked not as a safeguard but to justify conformity and social pressure—undermining the Hanafi doctrine's protective intent.

The hadith supporting the Hanafi position—*yusta'maru an-nisā'u fī abdā'ihinna*—clarifies that mature women must be consulted in marital matters.²⁷ This requirement applies even to virgins, indicating that silence as tacit approval must be confirmed, not assumed. In Ngantungan, consultation is often superficial or entirely bypassed. Interviews with religious leaders and families show that marriage decisions are typically made unilaterally by fathers or male guardians. Cultural norms often treat a girl's silence as consent, ignoring her limited education and subordinate position in the household. Many girls lack the language, confidence, or societal support to voice opposition. As a result, the Hanafi emphasis that autonomy and voluntary consent are undermined, and *ijbār* becomes a cover for coercion. This gap between doctrine and practice raises ethical concerns, particularly when viewed from a human rights

²⁵ Abdullāh bin Maḥmūd bin Mawdūd Al-Mawṣilī, *Al-Ikhtiyār Li-Ta'līl al-Mukhtār* (Al-Qāhirah: Maṭba'at al-Ḥalabī, 1937), 92.

²⁶ Kamāl ad-Dīn al-Iskandarī Muḥammad ibn 'Abd al-Wāḥid As-Siwāsī, *Sharḥ Faṭḥ al-Qadīr 'alā al-Hidāyah*, Vol. 3 (Beirut: Dar al-Fikr, 1970), 257–61.

²⁷ Aḥmad bin 'Alī bin Ḥajar Al-'Asqalānī, *Faṭḥ al-Bārī bi-Sharḥ al-Bukhārī*, Vol. 3 (Miṣr: Al-Maktabah as-Salafiyyah, 1390), 319.

perspective. Rather than preserving the girl's welfare, such practices reinforce a cycle of submission and disempowerment.

The Maliki school expands the scope of *ijbār* by allowing compulsion based on either virginity or minority status. Even a mature virgin may be compelled into marriage if the father considers it in her best interest. This also applies to minor widows and adult widows deemed incapable of choosing a spouse. However, the Maliki school includes specific safeguards. The school emphasizes the principle of *ḍarar* (*ḥarām*) as a limit to the guardian's authority. If a proposed marriage causes emotional, physical, or social harm, the compulsion is invalid.²⁸ Yet, in Ngantungan, this protective principle is frequently overlooked. One case involves R.H., who was married to M.S., justified by claims of financial security. During the marriage, R.H. experienced verbal abuse and ostracism from her in-laws, leading to psychological trauma and eventual divorce. Under Maliki doctrine, such harm should have negated the guardian's right of *ijbār*. Yet, adherence to patriarchal norms overrode concern for her well-being, showing how protective doctrines can be eclipsed by rigid customs and economic reasoning.

The Shafi'i school, influential in Indonesia, including in Pasuruan, permits a broader application of *ijbār*. Under this framework, a father may marry off his virgin daughter—minor or adult—without her explicit consent.²⁹ However, this right excludes previously married women, even if they are still minors. This reflects a distinction based on experience rather than age alone. The school's position is backed by hadith and legal texts that codify the guardian's discretion in selecting a marital partner for his virgin daughter. In practice, this has facilitated widespread child marriage in rural Java. In 2024, the Pasuruan Religious Court approved 892 dispensations for underage marriage, underscoring *ijbār*'s prevalence in the region. One case involves P.L., a 17-year-old girl married to a man nearly twice her age. Her silence, along with family approval, was deemed sufficient. Emotional and psychological readiness were not considered. The outcome—marital discord and trauma—reveals a failure to align Shafi'i jurisprudence with contemporary child

²⁸ Aḥmad ibn Muḥammad Al-Ṣāwī, *Hāshiyat al-Ṣāwī 'alā al-Sharḥ al-Ṣaghīr*, Vol. 1 (Kairo: Maktabat Muṣṭafā al-Bābī al-Ḥalabī, 1952), 382.

²⁹ Abū al-Ḥusayn Muslim ibn al-Ḥajjāj al-Qushayrī Al-Naysābūrī, *Ṣaḥīḥ Muslim*, Vol. 2 (Qāhirah: Maṭba'at 'Isā al-Bābī al-Ḥalabī wa Shurakā'uh, 1955), 1037.

protection standards. This includes neglecting the objectives of Islamic law that uphold human dignity and social welfare.

The Hanbali school mirrors the Shafi'i view but intensifies it further. Here, *ijbār* is permitted based on the girl's virginity or her minor status. Fathers may compel marriage not only for minors but also for adult virgins without their consent.³⁰ Although consultation with the mother or the girl is recommended, it is not legally binding. This interpretive flexibility may lead to inconsistent applications in practice. In rural Ngantungan, consultation is often symbolic, or omitted entirely. One example involves N.A., a 15-year-old girl whose marriage was arranged by her mother during a holiday gathering. The boy's passive response—whatever my parents decide—reflects limited involvement from both parties. Such cases illustrate how local interpretations of *ijbār* may diverge from juristic intent, reinforcing traditional gender roles. The hadith's ethical emphasis on consultation is often reduced to a mere formality. Emphasis on procedural compliance over meaningful engagement may risk overlooking broader Islamic values of compassion, justice, and welfare.

While each Islamic school offers distinct views on implementing *ijbār*, they converge on one critical point: the guardian's authority must not lead to harm. Yet, in Ngantungan, this doctrinal diversity is reduced to a uniform justification for coercive marriage. Jurisprudential nuances are selectively cited to legitimize practices the schools themselves might reject. Girls are married not due to legal protections of their minority status but because of entrenched gender roles, economic hardship, and prevailing community myths. In such a context, *ijbār* shifts from a protective principle to a tool of structural bias. It reflects not legal integrity but cultural survival strategies disregarding the lived impact on young girls. The appropriation of Islamic law for socio-economic ends exposes a gap between scriptural ideals and real-world practice. Bridging this gap requires more than legal reinterpretation; it calls for reevaluating community values through the lens of human dignity, justice, and individual agency. Only then can *ijbār* return to its original purpose: safeguarding, not sacrificing, the welfare of the most vulnerable.

³⁰ Manṣūr bin Yūnus bin Idrīs Al-Bahūtī, *Kashshāf al-Qinā'an Matn al-Iqnā'*, Vol. 5 (Riyadh: Maktabat an-Naṣr al-Ḥadīthah, 1968), 43–44.

Structural Discrimination on Child Marriage at Ngantungan, Pasrepan, Pasuruan

In Ngantungan, structural discrimination arises where legal frameworks and entrenched norms converge to limit young girls' agency in marriage. Interviews with *Modin* reveal that such beliefs often pressure parents to marry off their daughters, assuming marriage is the only route to security.³¹ These are not isolated cases but reflect a normalized pattern of exclusion grounded in cultural myths and selective religious interpretation. Such a system denies young girls meaningful participation in decisions that shape their lives.³² The personal testimony of LM, a 12-year-old girl from Pasuruan, illustrates how gendered structural discrimination can manifest subtly through family pressures and social norms. LM was married to SA, 16, primarily due to her parents' fear of social judgment, rather than any assessment of legal or emotional readiness. Both LM and her husband faced intense financial and psychological hardship, highlighting how early marriage deepens vulnerability and restricts development. As LM recalled:

"I entered into marriage at twelve. It began as an introduction but due to our parents' fears about misconduct, they arranged for us to marry. Life after the wedding was difficult. My husband worked merely as a farm laborer and was only able to give me IDR 10,000 per day. The stress affected him—he became anxious, and we often argued. I wasn't emotionally ready, either. We divorced before our first anniversary. Not long after, my parents arranged another marriage for me. Through it all, I felt voiceless, with no control over the decisions shaping my life".³³

Similarly, the case of AP (16), married to NH (23), highlights how entrenched social norms can override individual readiness. The marriage was driven more by familial closeness than by AP's own

³¹ Mujir, Modin in Ngantungan Village Pasrepan District Pasuruan Regency, *Interview*, October 3, 2024.

³² Elisabeth Henn, *International Human Rights Law and Structural Discrimination: The Example of Violence Against Women* (Berlin: Springer, 2019), 37–39.

³³ L M, Girl in Child Marriage, *Interview*, October 7, 2024.

intentions or emotional readiness. Her words demonstrate the emotional and social costs of such practices:

“At the age of sixteen, I entered into marriage following an introduction arranged by the families of both parties. What initially appeared to be a simple familial acquaintance gradually developed into something more serious, though I did not anticipate that it would progress to marriage so swiftly. My parents orchestrated the entire arrangement. In truth, I did not feel ready, yet I lacked the space or confidence to refuse. After the wedding, I was unsure how to navigate my new role. I did not understand what being a wife entailed, which led to frequent miscommunication and conflict between us. Our marriage ended in divorce within a year. Shortly thereafter, my parents arranged another marriage. Throughout these experiences, I was never allowed to express my wishes – it felt like every major decision about my life had been made without my input.”³⁴

This narrative reflects how structural norms, presented as tradition or moral guidance, can erase the consent of adolescent girls and place them in roles for which they are neither emotionally nor socially equipped.

The case of NA (15), married to AA (21), introduces a more acute dimension of indirect discrimination: the normalization of silence in the face of fear. Though both families approved the marriage, it quickly devolved into psychological unease and emotional isolation:

"I got married at fifteen through an arranged match. Our families agreed, and I had no say—everything was already decided. After we married and had a child, things quickly became difficult. We argued a lot, mostly about money. What scared me the most was that my husband often carried a knife around the house. I felt unsafe, but I never told anyone. In our community, we're not supposed

³⁴ A P, Girl in Child Marriage, *Interview*, October 7, 2024.

to talk about problems outside the home—it's seen as shameful. But inside, I was constantly anxious. This marriage didn't protect me; it made me feel more vulnerable every day."³⁵

NA's experience makes visible how emotional insecurity, justified under cultural silence, becomes another layer of indirect discrimination. What appears as family approval and cultural continuity often hides deeper vulnerabilities, especially when adolescent girls are placed in unstable or threatening domestic settings.

Another story from RH's experience reveals how economic hardship is often used to rationalize child marriage while disregarding the emotional cost borne by the girl involved. On May 25, 2022, RH was married off to MS, a man perceived as financially secure, in hopes of easing her family's poverty. Yet her story tells a different truth. RH, unprepared emotionally, was made to live with her in-laws, where she faced verbal abuse and constant intrusion. This imbalance of power and lack of autonomy led to psychological distress and, eventually, divorce. Her account illustrates how financial reasoning, when paired with patriarchal control, creates silent suffering and reinforces structural inequality:

"I was matched with MS because my family thought he was financially stable. After the wedding, I had to live with his parents because we couldn't afford our place. But it wasn't a peaceful home. I was often scolded, belittled, and constantly criticized. My in-laws interfered in everything, even the smallest things, between me and my husband. I felt emotionally drained. I cried a lot, feeling like I had no respect or space as a wife. Eventually, I returned to my parents' house—I couldn't take it anymore. Not long after, we got divorced. Looking back, I feel that the marriage was never really about me. No one asked how I felt or if I was ready."³⁶

³⁵ N A, Girl in Child Marriage, *Interview*, October 10, 2024.

³⁶ R H, Girl in Child Marriage, *Interview*, October 9, 2024.

This highlights how structural discrimination—via economic pressures masked as an opportunity—can rob young women of agency and subject them to emotionally damaging environments under the guise of practical necessity.

Finally, a story of PL (18) demonstrates how familial power dynamics, when intertwined with financial precarity, further complicate consent. Her marriage was arranged not from mutual interest but to satisfy adult expectations during a family gathering:

“My mother arranged the marriage during a family gathering at Eid. The groom's mother said she liked me and wanted me as her daughter-in-law. When they asked the groom, he said, 'Whatever my parents decide.' I didn't have a say either. Our family was struggling financially, and my mother believed this marriage was a good opportunity for me to have a better life. I wasn't sure about it, but everything had already been decided. It felt like I was going along with a plan that had nothing to do with what I wanted or felt ready for.”³⁷

PL's experience underscores the normalization of passive acceptance, reflecting how indirect discrimination persists through cultural scripts that prioritize adult decisions over a young woman's autonomy. These narratives, when examined collectively, reveal a consistent thread of structural inequality—less visible but deeply embedded in cultural norms, economic arrangements, and familial expectations—that continues to shape the trajectories of girls in rural Indonesia.

These cases reveal that structural discrimination rarely presents itself through overt force. Instead, it operates subtly through practices considered socially or religiously acceptable. Legal mechanisms like marriage dispensation—originally intended for exceptional cases—are now routinely used to legitimize child marriage. These processes often ignore power imbalances and implicit coercion.

Many girls enter marriage emotionally and financially unprepared, driven by family pressure and poverty into conditions that undermine

³⁷ P L, Girl in Child Marriage, *Interview*, October 9, 2024.

their autonomy and future. Divorce, disrupted schooling, and post-marital abuse are common consequences. Though seldom acknowledged in court, these outcomes are widespread and recurring. These patterns show that child marriage in Ngantungan is systemic—not circumstantial—and reflects a broader failure to protect the vulnerable.³⁸

Although some scholars view guardianship as protective, it often reinforces patriarchal control. This logic assumes girls need male guardians to serve their best interests, yet it rarely acknowledges their voice or evolving capacities. In Ngantungan, this view allows parents to dominate decision-making while ignoring the following negative outcomes. Early divorce, forced remarriage, and mental trauma indicate that these so-called protections fail in practice. Rather than safeguarding well-being, the guardian's authority often legitimizes coercion that undermines a child's dignity and freedom. Thus, what is framed as cultural protection ultimately denies rights and reinforces patriarchal norms disguised as tradition.³⁹

In this context, substantive equality offers a more just and context-sensitive framework. Unlike formal equality, which applies uniform rules irrespective of context, substantive equality recognizes that marginalized groups start from a disadvantage and need tailored protections. In Ngantungan, girls face compounded disadvantages due to gender norms, financial dependence, and restricted legal literacy. It calls for responsive legal reforms and social interventions that reflect these lived realities. Within this framework, child marriage is reclassified not as a cultural tradition but as a form of gender-based violence demanding systemic intervention. Comprehensive sexuality education, community advocacy, and progressive religious reinterpretation are vital to dismantling structural inequality.⁴⁰

In Ngantungan, human rights education is a crucial but missing catalyst for change. Resident interviews reveal that neither schools nor religious forums offer meaningful education on human

³⁸ Nora Salem, *The Impact of the Convention on the Elimination of All Forms of Discrimination Against Women on the Domestic Legislation in Egypt*, *International Studies in Human Rights*, Volume 124 (Leiden Boston: Brill Nijhoff, 2018), 123–24.

³⁹ Julie Stone Peters and Andrea Wolper, *Women's Rights, Human Rights: International Feminist Perspectives* (New York: Routledge, 1995), 12–15.

⁴⁰ Manisha Priyam, Krishna Menon, and Madhulika Banerjee, *Human Rights, Gender and The Environment* (Krishna: Saurabh Printers, 2009), 154–57.

rights, leaving many girls unaware of basic protections—such as the right to refuse marriage or escape coercion. This lack of awareness reinforces cultural myths and legal misunderstandings that perpetuate discrimination. If adapted to rural Indonesian contexts, such instruction could be transformative—empowering girls and challenging the moral legitimacy of child marriage.⁴¹ The persistence of underage marriage in Ngantungan cannot be attributed solely to parental decisions or financial constraints; rather, it reflects an entrenched system in which legal, religious, and cultural norms collectively undermine female autonomy. These forced marriages, driven by communal authority and poverty, deprive girls of education, freedom, and a stable future. Outcomes like short-lived unions, repeated divorces, and increased vulnerability highlight the urgent need for reform. Bridging Islamic law, state policy, and human rights standards requires more than reinterpretation; it calls for a cultural realignment grounded in fairness, dignity, and the recognition of girls as independent legal subjects.⁴²

The Best Interests of the Child (BIC): Integrating Islamic Legal Thought and Empirical Realities

BIC has emerged as a foundational principle in both international law and domestic policy, particularly following the adoption of Article 3 of the Convention on the Rights of the Child (CRC). As emphasized by Michael Freeman, BIC is a binding legal norm that must guide administrative, legislative, and judicial actions, applied according to each child's specific context.⁴³ Beyond a moral directive, BIC requires decision-makers to prioritize children's welfare and autonomy across all domains. Codified through the CRC,⁴⁴ BIC mandates that a child's well-being—including education, protection

⁴¹ Jonathan Todres and Sarah Higinbotham, *Human Rights in Children's Literature: Imagination and the Narrative of Law* (New York: Oxford University Press, 2016), 13–16.

⁴² Amós Nascimento and Matthias Lutz-Bachmann, *Human Dignity: Perspectives from a Critical Theory of Human Rights, Rethinking Political and International Theory* (London: Routledge, 2018), 54–59.

⁴³ Michael D. A. Freeman, *Commentary on the United Nations Convention on the Rights of the Child* (Leiden: Martinus Nijhoff Publishers, 2007), 25.

⁴⁴ Eugene Verhellen, *The Convention on the Rights of the Child: Reflections from a Historical, Social Policy and Educational Perspective*, 1st ed. (London: Routledge, 2015).

from harm, healthcare, and personal agency—be central to any decision affecting them.

In Ngantungan Village, child protection laws are frequently undermined. Many girls are married before completing twelve years of formal education, often to partners with equally limited schooling. These marriages are driven by social pressure and cultural norms that prioritize communal reputation over individual welfare. Although Indonesia's Child Protection Act (Law No. 23 of 2002), particularly Articles 26 and 27,⁴⁵ guarantees children's rights, it is often circumvented by parental decisions rooted in fear of social stigma rather than legal obligation. This leads to a moral justification of child marriage that sustains gender-based discrimination under the pretense of protection. Similarly, the classical Islamic doctrine of *ijbār*—recognized by the Maliki, Shafi'i, and Hanbali schools—was originally intended to protect minors, yet its current use often overlooks a child's ability to give informed consent. When applied uncritically, it silences girls under the authority of guardianship. The Hanafi school offers a more child-centered approach by requiring the consent of mature girls, aligning better with contemporary rights frameworks. This is exemplified in the case of NA, a 16-year-old girl married without her approval. Here, *ijbār* was misused as a form of structural coercion, resulting in emotional harm and divorce. Such cases highlight the need to reinterpret Islamic legal doctrines to uphold, not undermine, the child's best interests.

A proper implementation of the BIC principle must be grounded in developmental psychology. As Benjamin Garber asserts, assessing BIC requires a holistic understanding of a child's physical, cognitive, emotional, social, and moral development.⁴⁶ In the context of child marriage, disregarding these developmental factors constitutes a fundamental violation of BIC—especially when children are forced into adult roles they are not developmentally prepared for.⁴⁷ Vincenzo Lorubbio conceptualizes BIC as a three-tiered

⁴⁵ Anak Agung Istri Ari Atu Dewi et al., "The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia," *Sriwijaya Law Review* 6, no. 2 (2022): 268–85, <https://doi.org/10.28946/slrev.Vol6.Iss2.1885.pp268-285>.

⁴⁶ Benjamin D. Garber, *Developmental Psychology for Family Law Professionals: Theory, Application, and the Best Interests of the Child* (New York: Springer, 2010), 21–25.

⁴⁷ Garber, 46.

framework: a substantive right, an interpretative principle, and a procedural rule.⁴⁸ This triadic structure positions BIC as both a legal standard and a guide for interpreting and applying judicial procedures involving minors. In child marriage cases, legal rulings must clearly demonstrate how BIC was considered substantively, interpreted normatively, and applied procedurally before approving marriage dispensations.⁴⁹ Yet, in practice, systemic discrepancies remain evident. Judges often base their approval of marriage dispensations on parental narratives, with a minimal assessment of the child's willingness or psychological readiness. Empirical data from Ngantungan reveal that girls rarely resist such dispensations, not from genuine consent but due to fear of shame or family pressure. Their silence, often mistaken for approval, functions more as a survival tactic than an expression of informed consent.⁵⁰

The BIC framework can be applied through multiple analytical lenses. *First*, psychosocial maturity assessment is critical. Freeman and Yassari argue that legal age or biological puberty alone does not suffice; assessing emotional, cognitive, and social readiness is equally crucial.⁵¹ *Second*, Garber and Howe-Covell emphasize the need to incorporate long-term risk assessments into legal and community decisions, particularly concerning the effects of early marriage on education, mental health, and personal growth.⁵² *Third*, Elliston stresses that procedural justice demands genuine respect for child participation, with their perspectives placed at the center – not treated

⁴⁸ Vincenzo Lorubbio, *The Best Interests of the Child: More than a Right, a Principle, a Rule of Procedure of International Law* (Napoli: Editoriale scientifica, 2022), 12.

⁴⁹ Lorubbio, 15.

⁵⁰ Kholifatun Nur Mustofa, "Adjudicating Underage Marriages at Religious Courts: A Progressive Collaboration between Judiciary and Health Authority," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 2 (2023): 342–63, <https://doi.org/10.14421/ahwal.2023.16208>.

⁵¹ Nadjma Yassari, Lena-Maria Möller, and Imen Gallala-Arndt, *Parental Care and the Best Interests of the Child in Muslim Countries* (The Hague: T.M.C. Asser Press, 2017), 9.

⁵² Garber, *Developmental Psychology for Family Law Professionals: Theory, Application, and the Best Interests of the Child*; Robert Brian Howe and Katherine Covell, *Education in the Best Interests of the Child: A Children's Rights Perspective on Closing the Achievement Gap* (Toronto Buffalo: University of Toronto Press, 2013), 9.

as symbolic.⁵³ Finally, adult-centric biases and patriarchal norms must be scrutinized, as Mass and Elliston show that decisions often prioritize collective adult interests over the child's genuine needs and rights.⁵⁴

These approaches align with critical reinterpretations of *ijbār* within Islamic legal thought. Initially intended to protect underage girls from exploitative unions, *ijbār* is now often used to justify coercive marriages, particularly in rural Indonesia. KUPI has criticized this shift, promoting an ethically grounded interpretation of Islamic texts centered on justice, mutual consent, and child welfare.⁵⁵ Although Indonesian law, particularly Law No. 1 of 1974 and the KHI, mandates consent in marriage, enforcement remains inconsistent. In regions like Pasrepan, structural poverty, and limited educational access sustain the view of marriage as an economic necessity. Girls like LM, for instance, enter marriage without vocational skills or financial independence, reinforcing a cycle of dependency and disempowerment.⁵⁶

This was evident in Ngantungan, where testimonies from girls like LM indicated a lack of consultation and preparation for marriage. Their silence, often mistaken as agreement, reflects a distorted interpretation of hadith that equates a virgin's silence with consent. Without genuine evaluation of emotional maturity, consent becomes a hollow formality, not a reflection of agency.⁵⁷ Field interviews further confirmed that most child marriage requests stem from economic necessity and social pressure to preserve honor. Local *Modin* (local religious figure) and *penghulu* (marriage registrar) acknowledged that such motivations frequently override legal and religious norms.⁵⁸ In

⁵³ Sarah Elliston, *Best Interests of the Child in Healthcare* (London: Routledge-Cavendish, 2007), 120.

⁵⁴ Mili Mass, *In the Best Interests of the Child: Loss and Suffering in Adoption Proceedings* (New York: Berghahn Books, 2018), 3.

⁵⁵ Agustina and Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa Against Forced Marriages."

⁵⁶ Syahrul Mubarak Subeitan, "Forced Marriage: Implementation of the Mandatory Provisions of the Bride's Consent in Indonesia," *Juris: Jurnal Ilmiah Syariah* 21, no. 1 (2022): 77–87, <https://doi.org/10.31958/juris.v21i1.5581>.

⁵⁷ Charles R. Beitz, *The Idea of Human Rights* (Oxford: Oxford Univ. Press, 2011), 102–6.

⁵⁸ Mujir, Modin in Ngantungan Village Pasrepan District Pasuruan Regency, *Interview*, October 3, 2024.

such contexts, early marriage becomes a culturally imposed trajectory, erasing the child's right to choose, learn, and grow.

An important aspect of the BIC principle is evaluating the child's social and relational environment. When marriage exposes a child to psychological harm or entrenched gender inequality, it violates BIC standards.⁵⁹ Yassari and colleagues emphasize that assessing the broader social context is vital for sound legal and ethical decisions.⁶⁰ In Ngantungan, marriage is often framed as protection against dishonor or spiritual misfortune, reinforced by beliefs—unsupported by any madhhab—that girls who reject multiple proposals face lifelong singleness. Ironically, these so-called protections frequently result in emotional neglect, disrupted education, and separation. Testimonies reveal that early marriage perpetuates cycles of harm: economic dependency, repeated arranged unions, and the erosion of autonomy and future prospects. This reflects not only individual misjudgment but also a systemic failure to uphold children's rights. By invoking cultural protection while perpetuating harm, the community sustains structures that undermine child well-being. Such dynamics underscore that the best interests of the child must be pursued through empirical evidence, legal rigor, and ethical accountability—not rhetorical invocation.⁶¹

As interpreted by Mass and Lorubbio, the BIC doctrine imposes clear obligations on the state to protect children. A state permitting child marriage without rigorous BIC assessment is considered to have failed in safeguarding children's rights.⁶² Lorubbio also emphasizes that BIC must be clearly articulated as a legal standard in all state actions concerning children.⁶³ Classical scholars from the four Sunni schools offer nuanced views on child marriage and state responsibility. The Maliki, Shafi'i, and Hanbali schools

⁵⁹ Garber, *Developmental Psychology for Family Law Professionals: Theory, Application, and the Best Interests of the Child*, 51.

⁶⁰ Yassari, Möller, and Gallala-Arndt, *Parental Care and the Best Interests of the Child in Muslim Countries*, 7.

⁶¹ Roifah, Staff of the Pasrepan Religious Affairs Office, *Interview*, October 1, 2024.

⁶² Mass, *In the Best Interests of the Child: Loss and Suffering in Adoption Proceedings*, 7; Lorubbio, *The Best Interests of the Child: More than a Right, a Principle, a Rule of Procedure of International Law*, 14.

⁶³ Lorubbio, *The Best Interests of the Child: More than a Right, a Principle, a Rule of Procedure of International Law*, 15.

recognize *ijbār* under limited conditions while also stressing the importance of protecting minors from harm. In contrast, the Hanafi school prioritizes the consent of mature girls, reflecting an implicit recognition of autonomy and welfare aligned with BIC principles. Accountability is crucial in evaluating the local enforcement of child protection laws. The 2019 amendment to Indonesia's Marriage Law, which raised the minimum marriage age, signifies formal progress. Yet, it remains inadequate if the socio-cultural and economic drivers of early marriage are not addressed.⁶⁴ In Ngantungan, limited access to secondary education and pervasive poverty lead families to view early marriage as a pragmatic solution. Girls with only elementary education are particularly vulnerable, as marriage is seen as a path to stability despite evidence showing otherwise.

BIC is a comprehensive legal, psychological, and ethical standard that must guide the assessment of child marriage. It demands that decisions reflect a child's developmental stage, participation capacity, rights, and the influence of social norms and power structures. Legal reform alone is insufficient; ending child marriage requires a cultural transformation that recognizes children as autonomous legal subjects. Islamic doctrines such as *ijbār* must be reinterpreted through a rights-based lens. The Hanafi school's emphasis on consent and maturity offers a more child-centered alternative than other classical views permitting guardianship-based marriages. Field research in Ngantungan, Pasuruan, illustrates the urgency of this shift: girls like LM, NA, and RH were married under economic pressure, without adequate psychological readiness or genuine consent. Their silence—misread as approval—was a survival strategy within coercive environments. Realizing BIC in practice requires not only legal enforcement but also economic empowerment, education, and critical reflection on cultural and religious assumptions sustaining child marriage.

Conclusion

Child marriage in Ngantungan persists due to a convergence of legal loopholes, entrenched patriarchal values, and chronic poverty

⁶⁴ Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (2023): 54–66, <https://doi.org/10.18860/j-fsh.v15i1.17461>.

that systematically disadvantages girls. Despite national reforms—such as the amendment to Indonesia's Marriage Law raising the minimum age to 19—many families continue to exploit the doctrine of *ijbār* as a justification for marrying off daughters without informed consent. These marriages often interrupt girls' formal education, increase the likelihood of early divorce, and compound both emotional and economic vulnerability. Rather than fulfilling their supposed protective purpose, such marriages frequently violate the principle of BIC, which demands the promotion of dignity, autonomy, and safety. Therefore, efforts to eliminate child marriage must extend beyond legislative reform to include holistic interventions such as rights-based education for girls, economic empowerment for families, and the reinterpretation of religious teachings to foreground justice and child protection. Girls must be viewed not as passive dependents but as full legal subjects entitled to participate in shaping their futures. Without this cultural and structural shift, child marriage will continue to be normalized as a mechanism for regulating female agency and controlling social risk. Future research should systematically investigate how local customary norms (*adat*) interact with legal and religious frameworks in legitimizing early marriage practices. Furthermore, longitudinal and ethnographic studies are needed to assess the long-term consequences of child marriage on family resilience—particularly its effects on caregiving structures, household stability, and the intergenerational transmission of poverty—thereby illuminating the broader socio-economic legacy of such practices.

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