

## From Doctrinal Legitimacy to Child Protection: Mapping and Reconstructing Child Marriage *Fiqh* Studies in Indonesia

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### Abstract

This article examines the evolution of child marriage *fiqh* (Islamic jurisprudence) scholarship in Indonesia and argues for a paradigmatic shift from doctrinal legitimacy toward substantive child protection. Although academic discussions on child marriage have expanded significantly over the past decade, much of the scholarship remains anchored in doctrinal–juridical frameworks that prioritize formal permissibility and legal validity over children’s welfare. This study aims to map the epistemological trajectory of child marriage *fiqh* critically and to reconstruct its normative orientation toward a preventive and child-centered paradigm. Employing a qualitative systematic desk review, the research analyzes 68 peer-reviewed articles published in 22 Scopus-indexed Islamic law journals between 2017 and 2026. The findings reveal methodological disparities, thematic fragmentation, and geographic concentration, alongside recurring critiques of classical *fiqh* doctrines that continue to legitimize marriage dispensation practices. Despite increasing references to the objectives of Islamic law (*maqāsid al-sharī‘ah*) and child protection principles, most studies remain confined to descriptive and doctrinal approaches, with limited socio-legal and interdisciplinary integration. Consequently, contemporary *fiqh* discourse reproduces a legality-centered approach rather than developing a preventive jurisprudence grounded in the best interests of the child. By providing the first systematic intellectual mapping of this field, the article advances a critical-progressive framework that integrates *maqāsid* reasoning, socio-legal analysis, and judicial practice to strengthen child protection within Indonesia’s plural Islamic legal order.

[Artikel ini mengkaji evolusi studi fikih perkawinan anak di Indonesia dan berargumen perlunya pergeseran paradigmatik dari legitimasi doktrinal menuju perlindungan anak secara substantif. Meskipun diskursus akademik mengenai perkawinan anak meningkat secara signifikan dalam satu dekade terakhir, sebagian besar kajian masih bertumpu pada kerangka doktrinal-yuridis yang memprioritaskan kebolehan formal dan keabsahan hukum dibandingkan kesejahteraan anak. Penelitian ini bertujuan untuk memetakan secara kritis trajektori epistemologis kajian fikih perkawinan anak serta merekonstruksi orientasi normatifnya menuju paradigma preventif yang berpusat pada anak. Dengan menggunakan pendekatan desk review sistematis kualitatif, penelitian ini menganalisis 68 artikel terindeks Scopus yang diterbitkan dalam 22 jurnal hukum Islam pada periode 2017–2026. Temuan penelitian menunjukkan adanya disparitas metodologis, fragmentasi

*tematik, dan konsentrasi geografis, disertai kritik berulang terhadap doktrin fikih klasik yang masih melegitimasi praktik dispensasi perkawinan. Meskipun wacana maqāsid al-shari‘ah dan perlindungan anak semakin menguat, mayoritas studi tetap berada dalam pendekatan deskriptif dan doktrinal, dengan integrasi sosio-legal dan interdisipliner yang terbatas. Akibatnya, diskursus fikih kontemporer cenderung mereproduksi legalitas normatif daripada mengembangkan yurisprudensi preventif berbasis kepentingan terbaik anak. Melalui pemetaan intelektual sistematis, artikel ini menawarkan kerangka kritis-progresif yang mengintegrasikan maqāsid, analisis sosio-legal, dan praktik peradilan guna memperkuat perlindungan anak dalam tata hukum Islam Indonesia.]*

**Keywords:** Child Marriage, Child Protection, *Fiqh* Studies, Indonesia, Legal Pluralism, *Maqāsid al-Shari‘ah*.

## Introduction

Over the last decade, studies on child marriage in Indonesian *fiqh* (Islamic jurisprudence) have become increasingly prominent in global academic debates, alongside a rise in Scopus-indexed publications in Islamic law journals.<sup>1</sup> However, most existing literature relies heavily on normative-legalistic perspectives that view classical *fiqh* doctrine as a framework justifying child marriage, especially through debates over puberty (*bulūgh*), intellect (*‘aql*), and the capacity to fulfill marital responsibilities (*al-mas’ūliyyah al-ḥanjiyyah*), without critically examining social and empirical contexts.<sup>2</sup> This approach has posed significant challenges for scholars, particularly regarding limitations in marriage regulation and judicial decisions. Specifically, *fiqh* teachings are frequently applied without consideration of their historical context to justify underage marriage, despite conflicting with international child protection standards. Key principles of the United Nations Convention on the Rights of the Child (UNCRC)—including the best interests of the child, non-discrimination, and child participation—are frequently treated as mere ethical guidelines rather than being incorporated as substantive frameworks within protective *fiqh*.<sup>3</sup> As a result, *fiqh* has yet to serve as an effective tool for addressing systemic issues like reproductive health, educational disparities, intergenerational poverty, and the social vulnerabilities of children.<sup>4</sup> This situation

<sup>1</sup> Tholkhatul Khoir, Lathifah Munawaroh, and Zainudin Bin Hassan, “The Critique toward Uṣūl Al-Fiḥ Literacy of 1890–2023: An Offer for Development,” *Al-Ahkam* 34, no. 1 (April 2024): 63–98; Mogamat Nasief Adams, “A Postcolonial Critique of Modernist Approaches to Maqāsid al-Shari‘ah” (Thesis, University of Johannesburg, 2019).

<sup>2</sup> Fahadil Amin Al Hasan and Deni Kamaluddin Yusup, “Marriage Dispensation in the Indonesian Legal System: Protecting Children’s Best Interests through Judges’ Decisions,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (June 2021): 86–98; Javad Yoosefi Lebni et al., “Exploring the Consequences of Early Marriage: A Conventional Content Analysis,” *INQUIRY: The Journal of Health Care Organization, Provision, and Financing* 60 (January 2023): 1–14.

<sup>3</sup> Jacques Hartmann and Reem Alhasawi, “Coming of Age: The Adoption of 18 as the Legal Minimum Age of Marriage,” *University of Oxford Human Rights Hub Journal* 1 (2019): 1–44.

<sup>4</sup> Fathonah K. Daud et al., “Phenomenon and Several Reasons for Childfree in Indonesia from the Perspective of Islamic Law,” *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 10, no. 2 (November 2025): 907–25; Bekir Güzel and Sema Nur Beserek, “The Role of International Mechanisms in Preventing Early Marriage: Empowering Asylum Seekers Through International Protection in Türkiye,” in *Advances in Psychology, Mental Health, and Behavioral Studies*, ed. Emaj Uddin (IGI Global, 2024), 369–92; Arifah Millati Agustina, “Protecting Women’s Rights in Exogamous Society: Mahram in Minangkabau Customs,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 2 (December 2024): 205–20; Hijriyan Angga Prihantoro, Noorhaidi Hasan, and Mohammad Yunus Masrukhin, “Islamic Law and the Politics of Nation-State:

underscores an ongoing tension between *fiqh* as a religious norm and state law as a mechanism for child protection. This tension persists without a well-founded empirical strategy for resolution.

The growing academic focus on child marriage *fiqh* marks a significant shift toward understanding Islamic law within modern social contexts.<sup>5</sup> Nevertheless, earlier research still leaves considerable gaps in knowledge. Conceptually, previous studies often approach the topic in a fragmented way, treating state law, customary law, and religious norms as separate and conflicting systems rather than as interconnected normative frameworks within a legal pluralism perspective.<sup>6</sup> This shortcoming is compounded by the absence of integrative methods that simultaneously link *fiqh* with gender analysis, judicial discretion, and child rights protection, limiting *fiqh*'s potential as both an analytical tool and a means of transformation.<sup>7</sup> On an empirical and normative level, recent research highlights the strategic promise of child protection-oriented *fiqh*—based on the objectives of Islamic law (*maqāṣid al-sharī'ah*), lineage (*nasab*), custody (*ḥaḍānah*), and financial maintenance (*nafaqah*)—in preventing child marriage, especially when incorporated into positive law within democratic states that support legal pluralism.<sup>8</sup> Nonetheless, the literature also uncovers ongoing challenges in implementing *fiqh* doctrines alongside national legal systems and international child rights standards, both in social practices and religious courts.<sup>9</sup> Consequently, *fiqh* often serves more as a means of normative justification than as a framework for prevention and protection. This unresolved issue remains unaddressed and serves as the theoretical and empirical foundation of the current study.

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Debating Citizenship Fiqh Through the al-Maskut 'anhu Discourse," *Abkam: Jurnal Ilmu Syariah* 23, no. 2 (December 2023): 307–28.

- <sup>5</sup> Mies Grijns and Hoko Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," *Asian Journal of Law and Society* 5, no. 2 (November 2018): 453–66; Robert Jensen and Rebecca Thornton, "Early Female Marriage in the Developing World," *Gender & Development* 11, no. 2 (July 2003): 9–19; Brian Z. Tamanaha, Caroline Sage, and Michael Woolcock, eds., *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*, 1st ed. (Cambridge: Cambridge University Press, 2012); Brian Z. Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences*, 1st ed. (New York: Oxford University Press, 2021).
- <sup>6</sup> 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 (July 2021): 544–62; Anak Agung Istri Ari Atu Dewi et al., "The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia," *Srinwijaya Law Review* 6, no. 2 (July 2022): 268–85; Bagong Suyanto et al., "The Causes and Impacts of Early Marriage: The Ordeal of Girls in East Java, Indonesia," *Sociologia, Problemas e Práticas*, no. 101 (March 2023): 71–94; Romi Bhakti Hartarto et al., "Early Marriage and Child Cognition: Empirical Evidence from Indonesia," *Forum for Social Economics* 53, no. 3 (July 2024): 249–61.
- <sup>7</sup> Yasin Yetta et al., "Understanding the Implications of Marriage Law Amendments: Marriage Dispensation Cases in Indonesian Religious Courts," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024): 121–36; Ibnu Amin et al., "The Concept of Baligh Perspective of Fiqh and Positive Law," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (2022): 441–66.
- <sup>8</sup> Siti Nurjanah et al., "Children's Rights in Islamic Law: A Contemporary Study of Family Practices," *MILRev: Metro Islamic Law Review* 4, no. 2 (July 2025): 933–53; Azizah Mohd, BadruddinHj Ibrahim, and Alhaji Umar Alkali, "An Overview of the Protection of Children Rights Under Islamic Law," *Advanced Science Letters* 23, no. 4 (April 2017): 3251–54.
- <sup>9</sup> Iman Jauhari et al., "The Qur'an and Islamic Legal Perspectives on Child Protection," *Pharos Journal of Theology* 104, no. 4 (2023): 1–13; Pajar Hatma Indra Jaya et al., "Exploring Local Experiences in Reducing Childhood Stunting in Indonesia: Towards an Agenda of Welfare Provision," *Asia Pacific Journal of Social Work and Development*, March 30, 2025, 1–24.

Addressing the identified gap in the existing scholarship, this study undertakes a comprehensive review of 68 articles on child marriage *fiqh* published across 22 leading Islamic law journals in Indonesia. The objective is to elucidate the operational limitations present within the current literature. Previous research predominantly utilizes a diverse range of methodological approaches—including variations in data collection techniques, research populations, geographic coverage, and classification systems—resulting in fragmented perspectives and analytical inconsistencies in conceptualizing *fiqh* as a normative framework for protecting the best interests of the child. Although critiques concerning the permissibility of child marriage have gained prominence, most studies remain confined to doctrinal legal analyses and largely descriptive empirical investigations.<sup>10</sup> Interpretations of *fiqh* as a socio-legal construct and as a basis for progressive *ijtihād* remain marginal within the scholarly discourse. Consequently, critical aspects such as power relations, local legal cultures, and the interaction between *fiqh* norms, state legislation, and international child protection frameworks are insufficiently examined.<sup>11</sup> Against this backdrop, the present article aims to offer a holistic review tracing the evolution of child marriage *fiqh* studies and to propose a forward-looking child protection agenda that situates *fiqh* within a critical and progressive interpretative paradigm.

This study conceptualizes the *fiqh* of child marriage as a dynamic discursive domain that continuously evolves in response to changing social, political, and legal contexts and to configurations of legal pluralism. Within this evolving framework, *fiqh* is no longer regarded solely as a fixed and closed normative system; rather, it is understood as an interpretive space shaped, negotiated, and enacted through the interplay of social practices, religious institutions, and state legal mechanisms.<sup>12</sup> From a socio-legal perspective,<sup>13</sup> the study asserts that Islamic law does not function autonomously but is invariably embedded within reciprocal relationships with socio-cultural contexts and power structures. This paradigm shift signifies a critical movement away from a juridical–normative approach toward one that is protective and preventive, prioritizing the best interests of the child in future policy and legal agendas. By conceptualizing *fiqh* as a living, evolving jurisprudence, the study creates opportunities to reconstruct theories of child marriage *fiqh* that are responsive to children’s

<sup>10</sup> Hoko Horii, “Legal Reasoning for Legitimation of Child Marriage in West Java: Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection,” *Journal of Human Rights Practice* 12, no. 3 (February 2021): 501–23; Esther Miedema, Winny Koster, and Nicky Pouw, “Taking Choice Seriously: Emic Understandings of Decision-Making about Child Marriage,” *Progress in Development Studies* 20, no. 4 (October 2020): 261–69; Grijns and Horii, “Child Marriage in a Village in West Java (Indonesia),” 453–66.

<sup>11</sup> Muhamad Isna Wahyudi, “Judges’ Legal Reasoning on Child Protection: Analysis of Religious Courts’ Decisions on the Case of Child Parentage,” *Al-Jami’ah: Journal of Islamic Studies* 55, no. 1 (June 2017): 127–54.

<sup>12</sup> Sri Wahyuningsih et al., “Girls’ Decision-Making in Child Marriage Prevention: Scoping Review,” *Malaysian Journal of Medicine and Health Sciences* 21 (2025): 272–81; Md Abul Kalam et al., “A Social-Ecological Model to Explore Multi-Faceted Drivers of Child Marriage: An Iterative Qualitative Study in Southern Bangladesh,” *Qualitative Health Research*, April 28, 2025, 10497323251330447.

<sup>13</sup> See: John Griffiths, “What Is Legal Pluralism?,” *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (January 1986): 1–55; Tamanaha, *Legal Pluralism Explained*; Sally Engle Merry, “Global Legal Pluralism and the Temporality of Soft Law,” *The Journal of Legal Pluralism and Unofficial Law* 46, no. 1 (January 2014): 108–22.

vulnerabilities, grounded in empirical research, and capable of integrating *maqāṣid al-sharī‘ah* into substantive, sustainable protective frameworks.

### Research Methodology

This research employs a desk review, characterized by a systematic, structured approach to literature collection.<sup>14</sup> Data collection was conducted in two distinct phases. Initially, a literature search was conducted using three keywords—“child marriage”, “dispensation”, and “child marriage *fiqh*”—to identify scholarly works on child protection-oriented *fiqh* (*fiqh al-ḥimāyah*) in the context of underage marriage. During the preliminary screening, particular emphasis was placed on studies exploring the governance of child marriage in Indonesia and Islamic legal scholarship shaped by legal pluralism. Subsequently, the Scimago Journal Rank (SJR) database ([www.scimagojr.com](http://www.scimagojr.com)) was used to map and categorize journals by quartile (Q1–Q4), serving as indicators of international standing and academic quality. This procedure identified 22 journals that consistently serve as principal references in Islamic law research. All articles published within these journals were manually examined to verify their substantive relevance, thematic alignment, and methodological orientation concerning the discourse on child marriage *fiqh*.

**Table 1**  
**Child Marriage and *Fiqh*-Related Articles in Leading Journals**

22 Journals (n = 68 Articles)	Study Area	No. of Papers
Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan	All academic journals focused on Islamic law studies	2
El-Mashlahah		2
JURIS (Jurnal Ilmiah Syariah)		3
Journal of Islamic Law		1
Al-Ihkam: Jurnal Hukum dan Pranata Sosial		4
Ahkam: Jurnal Ilmu Syariah		3
Al-Manahij: Jurnal Kajian Hukum Islam		2
Samarah: Jurnal Hukum Keluarga dan Hukum Islam		12
Al-Istinbath: Jurnal Hukum Islam		1
De Jure: Jurnal Hukum dan Syar’iah		7
El-Usrah: Jurnal Hukum Keluarga		5
Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan		0
Syariah: Jurnal Hukum dan Pemikiran		2
Mazahib Jurnal Pemikiran Hukum Islam		0
MILRev: Metro Islamic Law Review		2
Al-Ahwal: Jurnal Hukum Keluarga Islam		4
Al-‘Adalah		8
Jurisdictie: Jurnal Hukum dan Syariah		0
Petita: Jurnal Kajian Ilmu Hukum dan Syariah		1
Jurnal Ilmiah Al-Syir’ah		3
Jurnal Hukum Islam		5
Khazanah Hukum		1

Source: Scimago Journal Rank (2024).

According to the Scimago Best Quartile (Q) classification, 21 journals were designated as Q1, while one journal (Khazanah Hukum) was classified as Q2. All selected journals

<sup>14</sup> Katie MacLure, Vibhu Paudyal, and Derek Stewart, “Reviewing the Literature, How Systematic Is Systematic?,” *International Journal of Clinical Pharmacy* 36 (April 2016): 685–94.

consistently focus on Islamic law studies and employ a range of methodologies, including normative-doctrinal, socio-legal, and multidisciplinary approaches. The literature review was temporally confined to the past decade (2017–2026) to examine the evolving discourse on child marriage within *fiqh*. The mapping results reveal an uneven distribution of publication productivity. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* was identified as the most prolific contributor with 12 articles, followed by *Al-‘Adalah* (8) and *De Jure: Jurnal Hukum dan Syar’iah* (7). In contrast, three journals—*Jurisdictie: Jurnal Hukum dan Syariah*, *Mazahib Jurnal Pemikiran Hukum Islam*, and *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*—did not publish any articles explicitly addressing child marriage from a *fiqh* perspective during the review period. This variation indicates thematic differentiation and varying levels of engagement among journals regarding child marriage in contemporary Islamic legal scholarship.

During the selection and document analysis phase, the quality of sources was evaluated based on four principal criteria: the methodological rigor demonstrated in preceding studies, the clarity and consistency of their findings, their relevance to the research objectives, and the credibility of the publication venues. Each academic document was not merely regarded as an information source but was subjected to critical appraisal to ascertain its contribution to reinforcing the analytical framework. To enhance the validity of the results and ensure precise data synthesis, the chosen sources were subjected to triangulation, facilitating the detection of patterns, points of convergence, and divergences across the literature. Furthermore, potential biases embedded within the data sources—stemming from methodological choices, institutional affiliations, or research contexts—were meticulously identified and accounted for during the analytical process. This systematic and reflective evaluation of data sources enables readers to attain a more nuanced and comprehensive understanding of child protection-oriented *fiqh* and the complexities surrounding underage marriage. Consequently, the analysis offers a robust conceptual foundation for interpreting legal pluralism within child protection frameworks and contributes to advancing broader initiatives to prevent child marriage.

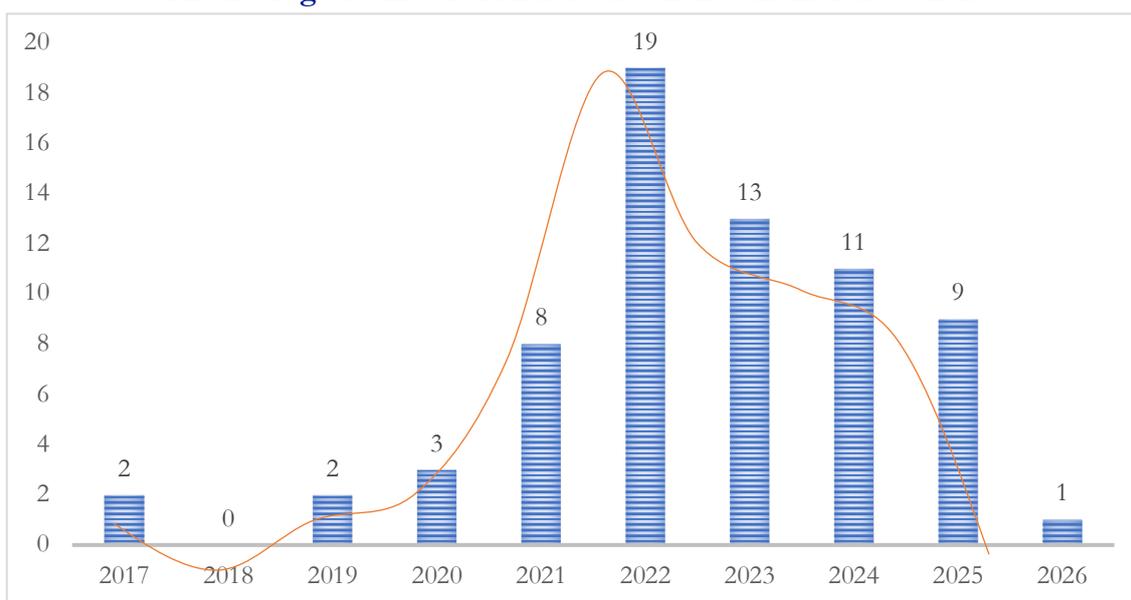
### Critical Findings from the Evolution of Child Marriage *Fiqh*

Between 2017 and 2026, 68 articles on child marriage from a *fiqh* perspective were systematically collected from 22 Indonesian Islamic law journals indexed in Scopus (see Figure 1). The publication trend exhibits a non-linear pattern, lacking evidence of cumulative scholarly progression. Notably, 2022 witnessed the peak in publications, with 19 articles, while 2018 saw no contributions. During the initial years (2017, 2019, and 2020), the output remained relatively stagnant, averaging approximately three articles annually. This trend suggests that child marriage had not yet been recognized as a pressing legal and ethical issue within contemporary *fiqh* discourse.<sup>15</sup> The surge in publications following the COVID-19

<sup>15</sup> Susilo et al., “Investigation of Early Marriage,” 544–62; Dewi et al., “The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia,” 268–85; Suyanto et al., “The Causes and Impacts of Early Marriage,” 71–94; Hartarto et al., “Early Marriage and Child Cognition,” 249–61; Anwarul Mu’minin, “Religious Court Legal Policy on Early Marriage Warning: An Analysis of the Implementation of Supreme Court Regulation Number 5 of 2019,” *Santara: Journal of Islamic Law and Humanity* 1, no. 2 (2025): 118–30.

pandemic indicates increased social awareness, policy impetus, and heightened visibility of child marriage cases amid crisis conditions.<sup>16</sup> Nevertheless, the decline in publications after 2022 appears to reflect discursive saturation rather than meaningful resolution of the issue. This situation reveals a predominance of repetitive normative-doctrinal methodologies characterized by the reiteration of classical *fiqh* arguments without epistemological advancement or methodological innovation.<sup>17</sup> Consequently, *fiqh* scholarship on child marriage has encountered conceptual stagnation. These observations highlight the critical need to reorient research agendas toward interdisciplinary frameworks, *maqāsid*-based and child protection-focused reformulations of *fiqh*, and empirical engagement with national legal systems, mental health research, and legal pluralism paradigms.

**Figure 1**  
**The Average Number of Articles Published from 2017 to 2026**



Source: Authors' elaboration.

The literature mapping, as presented in Table 2, reveals that studies on child marriage within the field of *fiqh* are predominantly characterized by normative–doctrinal methodologies, with 34 articles conceptualizing law as an autonomous system of texts and doctrines. This approach perpetuates the assumption that law functions independently of its broader social context. In alignment with critiques articulated by Tamanaha<sup>18</sup> and Cotterrell<sup>19</sup>,

<sup>16</sup> Maila D. H. Rahiem, “COVID-19 and the Surge of Child Marriages: A Phenomenon in Nusa Tenggara Barat, Indonesia,” *Child Abuse & Neglect* 118 (August 2021): 105168; Very Julianto et al., “Tick Tick Boom: The Rise of Child Marriage in Indonesia during the COVID-19 Pandemic,” *Vulnerable Children and Youth Studies* 20, no. 1 (January 2025): 131–47.

<sup>17</sup> Ajmand Ahmad, “Fiqh, Women and Human Rights: Competing Methodologies,” *Studia Islamika* 10, no. 1 (2003): 123–60; Wawan Juandi and Abu Yasid, “Discourse of Islamic Jurisprudence in Indonesian Ma’had Aly between Taqlidy and Manhajy,” *Journal of Indonesian Islam* 10, no. 1 (June 2016): 139–58; Fajri Matahati Muhammadin and Shania Dwini Azzahra, “The Role of Fiqh al-Siyar in International Law-Making: Escaping the Lethargy,” *Al-Jami’ah: Journal of Islamic Studies* 60, no. 2 (December 2022): 509–46.

<sup>18</sup> Tamanaha, Sage, and Woolcock, *Legal Pluralism and Development*; Tamanaha, *Legal Pluralism Explained*.

<sup>19</sup> Roger Cotterrell, *Jurisprudence and Socio-Legal Studies: Intersecting Fields*, 1st ed. (London: Routledge, 2024), 123–34.

such a focus on black-letter law risks reducing legal analysis to abstract constructs that overlook social realities and the practical implications of policy. While 27 studies utilize empirical legal research and 7 adopt socio-legal frameworks, these proportions remain insufficient to capture the multifaceted nature of child marriage practices, which are influenced by cultural, economic, and gendered power dynamics.<sup>20</sup> The predominant use of qualitative methods—employed in 67 out of 68 studies—further highlights a notable deficiency in systematic efforts to assess regulatory effectiveness and policy implementation, a methodological limitation long identified by Epstein and King.<sup>21</sup> Additionally, the observed separation between theoretical implications (31 studies) and empirical findings (27 studies) underscores a persistent divide between *fiqh* discourse and legal practice. Collectively, these findings underscore the critical need for socio-legal and mixed-methods approaches to ensure that *fiqh* scholarship on child marriage transcends normative legal frameworks and becomes more attuned to child protection objectives and evidence-based legal reform.

**Table 2**  
**Empirical and Analytical Methods**

Categories	No. of Studies (N = 68)
Types of research	34
• Doctrinal legal research	27
• Empirical legal research	7
• Socio-legal research	
Research methods	67
• Qualitative ( <i>Narrative, Case Study, Phenomenology, Ethnography</i> )	1
• Quantitative	
Research applications	31
• Theoretical debates	37
• Empirical studies	
Types of data collected	12
• Primary data	30
• Secondary data	39
• Primary and secondary data	

Source: Authors' elaboration.

The spatial distribution of *fiqh* research concerning child marriage in Indonesia reveals pronounced regional disparities and underscores a geographical bias in the production of Islamic legal knowledge. The majority of research sites are concentrated in Java—specifically Banten (1), West Java (2), Central Java (14), Yogyakarta (1), and East Java (6)—followed by Aceh (4), West Sumatra (3), South Sumatra (1), Lampung (1), East Kalimantan (1), South Kalimantan (1), West Sulawesi (1), North Sulawesi (1), South Sulawesi (4), Gorontalo (1), and West Nusa Tenggara (3). Collectively, these investigations encompass 16 provinces (see Figure 2). This geographic concentration reflects a Java-centric orientation in legal scholarship, which risks neglecting the complexities of Islamic legal practices in peripheral

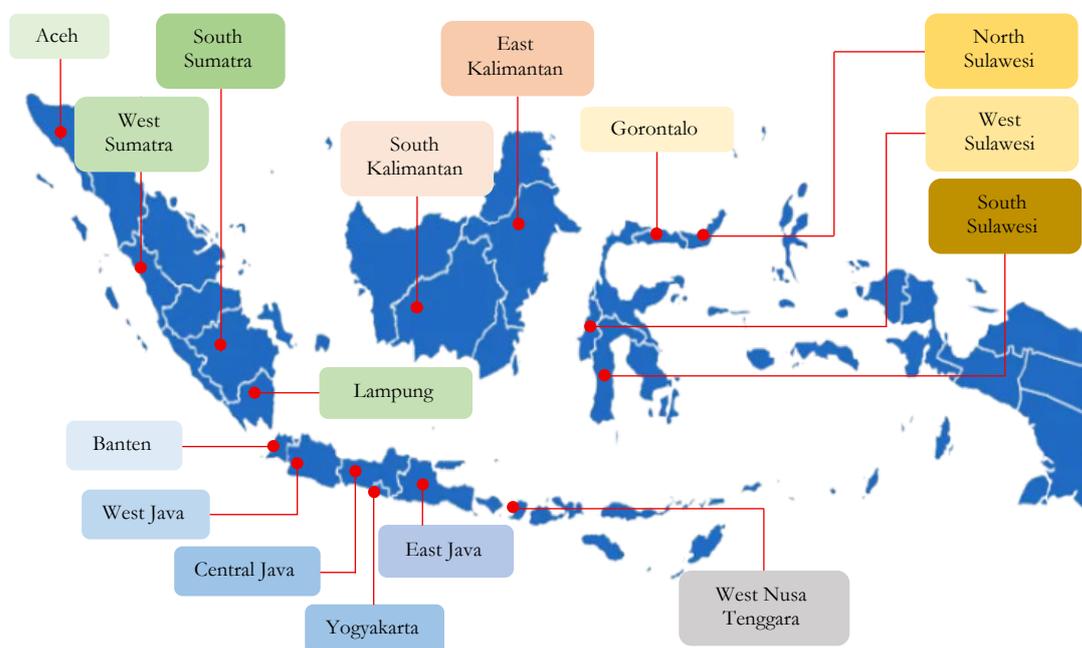
<sup>20</sup> Rifdah Alifiyah and Isa Anshori, “Legal Protection for Children in Cases of Domestic Violence in the Indonesian Households,” *El-Ushrah: Jurnal Hukum Keluarga* 6, no. 2 (December 2023): 348–61; Erfaniah Zuhriah et al., “Dimensions of The Islamic Law and Human Rights in The Protection of Children from Convicted Parents,” *De Jure: Jurnal Hukum dan Syaria* 16, no. 2 (December 2024): 432–55; Zunly Nadia and Niswatin Faoziah, “Gender Equality within Family in Islamic Perspective: Insights from The Hadiths of Ummul Mukminin,” *Jurnal Studi Ilmu-Ilmu Al-Qur’an dan Hadis* 25, no. 1 (June 2024): 161–86.

<sup>21</sup> Lee Epstein and Gary King, “A Defense of Empirical Legal Scholarship: A Reply,” *The University of Chicago Law Review* 69, no. 1 (2002): 191–209.

regions, particularly in Eastern Indonesia and areas governed by non-Javanese customary law. This pattern corroborates critiques advanced by Merry<sup>22</sup>, Benda-Backmann<sup>23</sup>, and Cahala & Gemede,<sup>24</sup> who argue that centralized legal knowledge production perpetuates existing power structures and marginalizes localized legal experiences.

Figure 2

Geographical Distribution of Child Marriage in *Fiqh* Studies



Source: Authors' elaboration.

Regarding research focus, there is a predominant emphasis on Religious Courts (addressed in 21 studies) and on formal legal frameworks—including the Marriage Law, Constitutional Court rulings, and the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI)—examined in approximately 29 studies. This trend illustrates the predominance of a state-centric legal perspective, whereas non-state social practices—such as local customs (discussed in 8 articles) and the role of the Office of Religious Affairs (*Kantor Urusan Agama*, KUA) (considered in roughly 10 studies)—remain comparatively underexplored. Nonetheless, socio-legal scholarship indicates that non-judicial institutions and social norms frequently exert a more significant influence on child marriage practices than codified law.<sup>25</sup> This imbalance underscores the necessity for expanded scholarly engagement with the dynamics of living law across Indonesia's diverse socio-cultural landscapes.

<sup>22</sup> Merry, "Global Legal Pluralism and the Temporality of Soft Law."

<sup>23</sup> Keebet Von Benda-Beckmann, "Trajectories of Legal Entanglement Examples from Indonesia, Nepal, and Thailand," *Legal Pluralism and Critical Social Analysis* 54, no. 1 (January 2022): 13–30.

<sup>24</sup> Dejene Gemechu Chala and Nega Jibat Gemede, "Legal Pluralism, Gender and Justice: Women's Rights to Property under Marriage Dissolution among the Oromo in Jimma, Ethiopia," *Legal Pluralism and Critical Social Analysis* 54, nos. 2–3 (September 2022): 278–96.

<sup>25</sup> Franz Von Benda-Beckmann, "Islamic Law in a Plural Context: The Struggle over Inheritance Law in Colonial West Sumatra," *Journal of the Economic and Social History of the Orient* 55, nos. 4–5 (2012): 771–93; Keebet Von Benda-Beckmann and Bertram Turner, "Legal Pluralism, Social Theory, and the State," *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (September 2018): 255–74.

Recognizing the prevalent understanding that underage child marriage represents a complex and multifaceted subject within *fiqh* inquiry, the epistemological study of child marriage necessitates cross-disciplinary and interdisciplinary methodologies.<sup>26</sup> A comprehensive review of the literature reveals considerable disciplinary diversification, with sociology emerging as the most prominent field, comprising 41 articles. Within this domain, the sociology of law cluster (25) predominantly investigates the interplay among *fiqh* norms, legal institutions, and social practices. Additional sociological subfields—including the sociology of family (6), sociology of religion (3), and sociology of education (3)—broaden the analytical scope to encompass family dynamics, religious authority, and the transmission of values through educational systems. Anthropological contributions (15 articles) further enhance contextual comprehension by focusing on cultural and local dimensions, particularly through the lenses of legal anthropology (7), cultural anthropology (3), and rural anthropology (1), thereby elucidating the negotiations between *fiqh* norms and indigenous practices. Moreover, psychological approaches (11 articles), including child psychology (6), have increasingly addressed the effects of child marriage on children’s mental development, emotional well-being, and long-term welfare. Importantly, the public policy literature (16 articles) endeavors to integrate normative and empirical insights with regulatory frameworks; however, this body of work remains fragmented across social policy (2), legal policy (3), and child protection policy (6), indicating substantial potential for more comprehensive integration of *fiqh* scholarship, socio-legal analysis, and child-centered policy development.

Figure 3 illustrates that research on child marriage remains predominantly grounded in sociological perspectives, especially within the sociology of law, which examines the interplay among religious norms, legal institutions, and social practices. Although this focus enhances comprehension of how *fiqh*, state law, and legal culture negotiate child marriage practices, it also exposes a reductionist inclination, wherein children are frequently regarded solely as normative or institutional entities. Contributions from legal anthropology enrich contextual interpretations by emphasizing custom, locality, and social power dynamics; however, these analyses often lack engagement with micro-level perspectives that consider children as active subjects experiencing these practices.<sup>27</sup> Concurrently, child psychology provides essential insights into the immediate and long-term effects of child marriage on mental health, emotional development, and decision-making abilities. However, these findings are seldom incorporated into *fiqh* deliberations or policy development.<sup>28</sup> Public policy research serves as

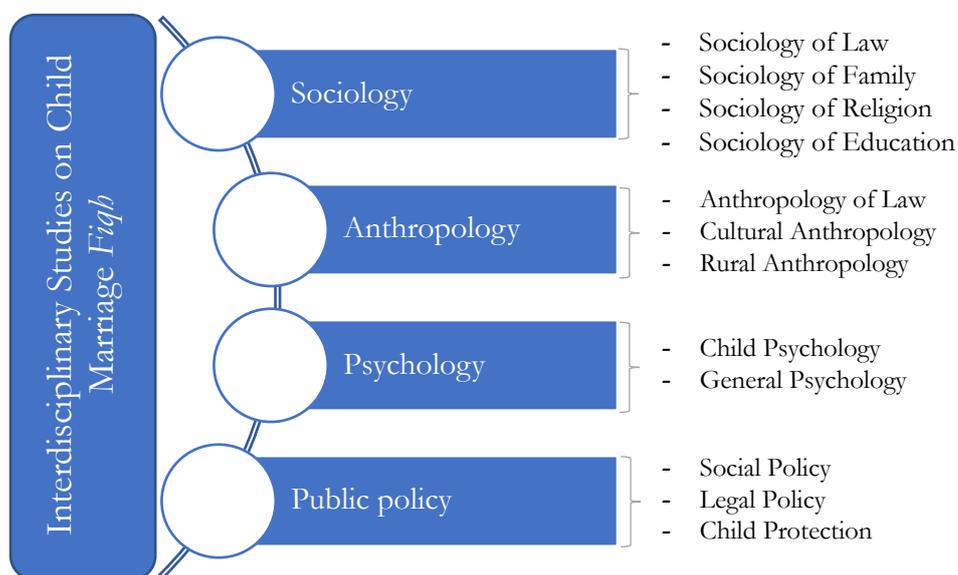
<sup>26</sup> Quentin Wodon, “Islamic Law, Women’s Rights, and State Law: The Cases of Female Genital Cutting and Child Marriage,” *The Review of Faith & International Affairs* 13, no. 3 (July 2015): 81–91; Federica Sona, “Reformulating Transnational Muslim Families: The Case of Shari’ah-Compliant Child Marriages,” *Journal of Muslim Minority Affairs* 40, no. 1 (January 2020): 84–103; Tauseef Ahmad Parry, “The Legal Methodology of ‘Fiqh al-Aqalliyat’ and Its Critics: An Analytical Study,” *Journal of Muslim Minority Affairs* 32, no. 1 (March 2012): 88–107.

<sup>27</sup> Lina Mrayan and Salwa Obeisat, “The Lived Experience of Early Marriage in Jordan: The Perspective of Adolescent Girls and Young Women,” *Sage Open* 11, no. 3 (July 2021): 21582440211048895; Farel Rifandanu and Ayu Febrianti, “Early Marriage and Implications for Future Orientation in Islamic Law,” *Contemporary Issues on Interfaith Law and Society* 2, no. 2 (July 2023): 167–88; Farida Ulvi Naimah et al., “Internalization of Local Traditions in Child Marriage from the Perspective of Maqasid al-Usrah,” *El-Mashlahab* 14, no. 2 (October 2024): 237–58.

<sup>28</sup> Makhtoom Ahmed, Muhammad Zaman, and Hifza Irfan, “Child Marriage Traditions in Pakistan: Reconstructing (In) Security and Subjective Well-Being of Children,” *The Qualitative Report* 30, no. 3

an intermediary between empirical evidence and regulatory guidance, but remains fragmented and sector-specific, thereby failing to establish a comprehensive child protection framework.<sup>29</sup> This disciplinary fragmentation highlights a significant structural gap in the literature: the absence of an integrated approach that synthesizes child psychology, local anthropological insights, and child protection policy within a socio-legal and *maqāṣid*-oriented framework that prioritizes the best interests of the child.

**Figure 3**  
**Interdisciplinary Classification Approaches**



Source: Authors' elaboration.

The classification of studies, as delineated in Table 3, reveals that critiques of *fiqh* concerning child marriage manifest in a multi-layered manner—encompassing textual, structural, and reconstructive dimensions—yet have not fully evolved into a comprehensive paradigm centered on substantive child protection. Among the 68 articles examined, the predominance of themes related to *maqāṣid al-sharī‘ah* and child protection (41%) indicates concerted efforts to reorient normative legitimization toward a welfare-based framework; however, the majority of these discussions remain at the theoretical level and have not been translated into practical legal reforms. Critiques addressing normative legalism and marriage dispensation (25%) underscore a persistent challenge within contemporary Islamic jurisprudence: a formalistic approach that overlooks the best interests of the child and principles of gender justice,<sup>30</sup> while remaining susceptible to patriarchal cultural dominance

(February 2025): 3227–54; Lisa Cameron, Diana Contreras Suarez, and Susan Wieczkiewicz, “Child Marriage: Using the Indonesian Family Life Survey to Examine the Lives of Women and Men Who Married at an Early Age,” *Review of Economics of the Household* 21, no. 3 (September 2023): 725–56.

<sup>29</sup> Stephanie R. Psaki et al., “What Are the Drivers of Child Marriage? A Conceptual Framework to Guide Policies and Programs,” *Journal of Adolescent Health* 69, no. 6 (December 2021): S13–22.

<sup>30</sup> Muchlis Muchlis et al., “Child-Centered Adjudication: Integrating the Best Interests Principle Into Indonesian Marital Property Distribution,” *Nurani: Jurnal Kajian Syari‘ah dan Masyarakat* 25, no. 2 (October 2025): 473–92; Roslina Roslina et al., “Reinterpreting Islamic Inheritance: Supreme Court Jurisprudence and Gender Justice in Indonesia,” *Jurnal Ilmiah Peuradeun* 13, no. 3 (September 2025): 2339–64; Masyithah

and entrenched local power dynamics.<sup>31</sup> Research emphasizing culture, custom (*‘urf*), and local authority (22%) illustrates that *fiqh* practices are inherently non-neutral, being continuously negotiated within specific socio-political milieus.<sup>32</sup> However, the comparatively modest representation of progressive *fiqh* reconstruction (12%) reflects a limited epistemic willingness to transcend critique and advance preventive jurisprudence grounded in systemic *maqāṣid* and the realization of children’s rights.<sup>33</sup> Collectively, these findings highlight a significant disconnect between *maqāṣid*-oriented discourse and the practices of religious courts, where marriage dispensation is frequently normalized rather than supplanted by proactive child protection mechanisms.

**Table 3**  
**A Conceptual Critique of *Fiqh* Perspective on Child Marriage Studies**

Thematic Cluster	Main Focus	Study Proportion
<i>Maqāṣid al-sharī‘ah</i> and child protection	<i>Ḥifẓ al-Nafs</i> (preservation of life) and the best interest of the child	Very high
Doctrinal <i>fiqh</i> and legalistic critique	Marriage dispensation, <i>bulūgh</i> , and legalities	High
Culture, <i>‘urf</i> , and local authority	Legitimacy of customary child marriage	Medium
Reconstruction of progressive <i>fiqh</i>	<i>Fiqh al-ḥimāyah</i> and preventive action	Small

Source: Authors’ elaboration.

In sum, the results of this desk review reveal that the discourse on child marriage *fiqh* in Indonesia persists within a context marked by an imbalance between normative critique and the imperative for substantive reform. The predominance of doctrinal methodologies, a geographic focus on Java, and disciplinary fragmentation lead to *fiqh* being characterized primarily as a mechanism for legal legitimation rather than as an ethical and protective framework attuned to children’s vulnerabilities. While discussions surrounding *maqāṣid al-sharī‘ah* and child protection have gained momentum,<sup>34</sup> they largely remain theoretical and

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Mardhatillah and Saoki, “Women in the Madurese Translation of the Qur’an: Questioning Gender Equality in Family Legal Verses,” *Jurnal Studi Ilmu-Ilmu Al-Qur’an dan Hadis* 26, no. 1 (March 2025): 99–130; Helmy Ziaul Fuad et al., “Application of Contra Legem Principles in Judicial Rulings on Joint Property Characteristics,” *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 3, no. 2 (December 2023): 128–40.

<sup>31</sup> Abdullahi Ahmed An-Na’im, *Islam and the Secular State* (Harvard University Press, 2008); Sami Zubaida, “Islam and Secularization,” *Asian Journal of Social Science* 33, no. 3 (2005): 438–48; Boudouin Dupret, “The Concept of Positive Law and Its Relationship to Religion and Morality,” in *The Oxford Handbook of Law and Anthropology*, 1st ed., ed. Marie-Claire Foblets et al. (Oxford University Press, 2021); Ahmad Faisal, “The Intersection of Islamic Law and Nationhood in Contemporary Indonesia,” *European Journal of Humanities and Social Sciences* 3, no. 2 (2023): 141–47.

<sup>32</sup> Megan Arthur et al., “Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities,” *Journal of Women, Politics & Policy* 39, no. 1 (January 2018): 51–74; Dian Latifiani, “The Darkest Phase for Family: Child Marriage Prevention and Its Complexity in Indonesia,” *Journal of Indonesian Legal Studies* 4, no. 2 (November 2019): 241–58.

<sup>33</sup> Nawal M. Nour, “Health Consequences of Child Marriage in Africa,” *Emerging Infectious Diseases* 12, no. 11 (November 2006): 1644–49; Anita Raj, “When the Mother Is a Child: The Impact of Child Marriage on the Health and Human Rights of Girls,” *Archives of Disease in Childhood* 95, no. 11 (November 2010): 931–35; Fitriyadi Fitriyadi et al., “Redefining Legal Frameworks: Progressive Methods in Ascertaining Children’s Lineage from Fasid Marriages in Religious Court Proceedings,” *Syariah: Jurnal Hukum dan Pemikiran* 24, no. 1 (May 2024): 148–71.

<sup>34</sup> Wardatun Nabilah et al., “Between Protection and Permissiveness: A Fiqh Siyasa Reexamination of Marriage Dispensation in Indonesia,” *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (June 2025): 137–51; Asep

lack consistent practical application within religious court proceedings, especially in the context of marriage dispensation.<sup>35</sup> The evident disconnect among *fiqh* scholarship, empirical research, child psychology, and public policy underscores the absence of a cohesive framework that effectively integrates religious norms with social realities and international child rights standards. Consequently, future research must embrace an epistemological transition from a reactive, legalistic *fiqh* approach toward a preventive *fiqh* paradigm grounded in systemic *maqāṣid* principles, socio-legal analysis, and evidence-based policymaking. Such a shift is essential to advancing the protection of children's best interests beyond mere normative discourse and to fostering transformative, justice-oriented legal practices.

### Forward-Looking Protection Agenda of Child Marriage in *Fiqh* Studies

The principle of the best interests of the child serves as the central analytical framework in the study of child marriage *fiqh* within Indonesia's diverse legal context.<sup>36</sup> Recognized as a social phenomenon deeply rooted in religious norms and institutional practices, child marriage is consistently characterized as a multifaceted and complex issue.<sup>37</sup> However, the existing body of scholarship is predominantly shaped by doctrinal-legal and normative-empirical methodologies, with relatively few studies critically examining protection models and governance mechanisms that promote the long-term welfare of children. This literature review aims to fill this gap by providing a comprehensive analysis of child marriage *fiqh* through a systematic mapping of key themes identified in recent academic work. Consequently, the study serves as both a guide to current scholarly debates and a conceptual basis for the development of future child protection policies. From an analytical perspective, the study delineates three principal child protection agendas (see Figure 4): (1) the epistemic reconstruction of *fiqh* with a focus on child protection, (2) the formulation of community–

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Saepullah et al., "A Contemporary Socio-Legal Evaluation of Indonesia's Post-Reformation Child Marriage Policies," *MILRev: Metro Islamic Law Review* 4, no. 2 (December 2025): 1393–426; Rahma Amir et al., "Solution to Inheritance Rights for Children in Pregnant Marriages: A Maqāṣid al-Shari'ah Approach," *El-Ushab: Jurnal Hukum Keluarga* 8, no. 2 (December 2025): 933–51; Arbanur Rasyid et al., "Dynamics of Childless Marriage Through the Lens of Maqasid al-Shari'a," *Jurnal Ilmiah Peuradeun* 12, no. 2 (May 2024): 763–86.

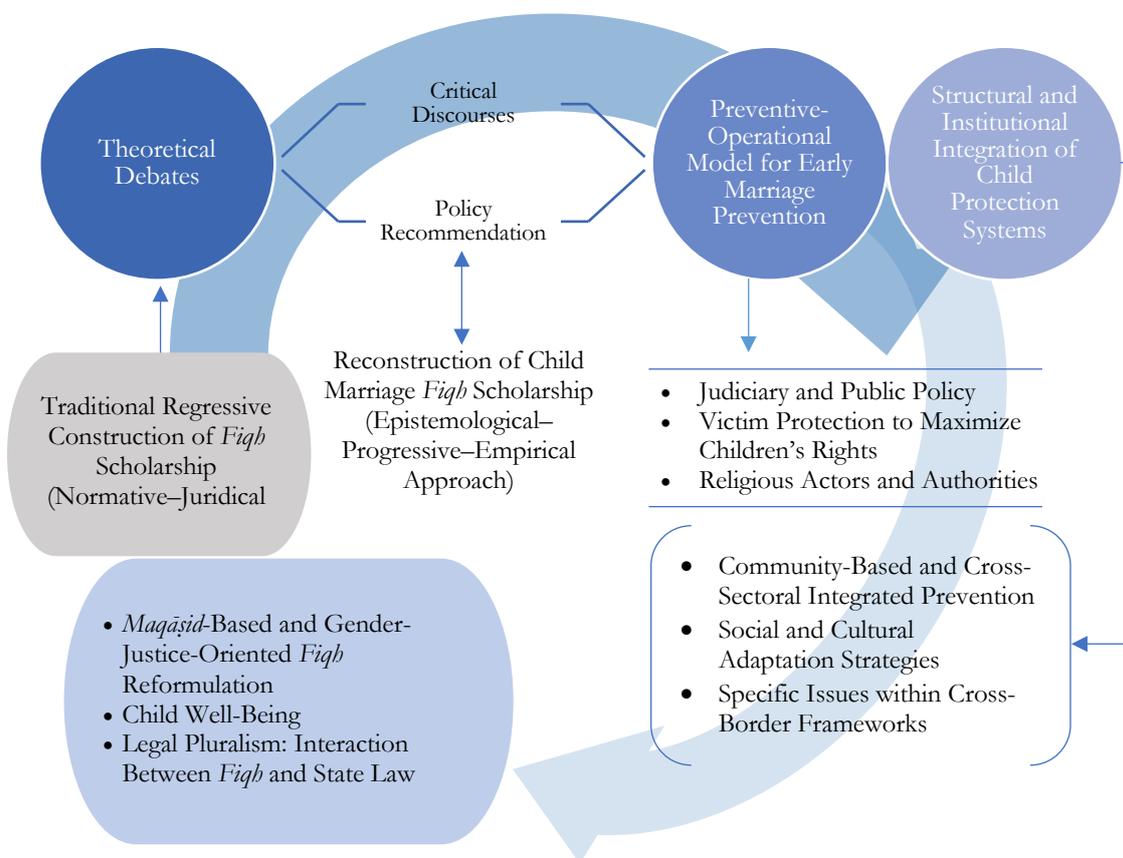
<sup>35</sup> Ani Purwanti and Aga Natalis, "Law as Text, Culture as Context: The Semiotics of Marriage Dispensation and Judicial Considerations in Indonesia," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 39, no. 2 (February 2026): 729–60; Hanin Yumna, "The Impact of Marriage Dispensation Policy Interventions on Underage Marriage Trends Among Banyuwangi Teenagers," *Jurnal Mediasas: Media Ilmu Syari'ah dan Ahwal Al-Syakhsiyah* 8, no. 2 (June 2025): 411–18; Otavia Berlina Cahya Putri, Lukman Santoso, and Iqbal Saujan, "Why Pregnancy Is Not Enough: Judicial Interpretation of 'Urgent Grounds' in Child Marriage Dispensation Cases at the Madiun Religious Court," *Indonesian Journal of Sharia and Socio-Legal Studies* 1, no. 2 (November 2025): 174–92; Ardian Kurniawan, Syarif bin Muhammadromli Samae, and Hamida Arbi, "From Judicial Discretion to Maqasid al-Shari'ah Reasoning: The Case of Marriage Dispensation at the Muara Bulian Religious Court, Indonesia," *Islamic Law and Social Issues in Society* 1, no. 1 (May 2025): 64–85.

<sup>36</sup> Grijns and Horii, "Child Marriage in a Village in West Java (Indonesia)," 453–66; Horii, "Legal Reasoning for Legitimation of Child Marriage in West Java," 501–23.

<sup>37</sup> Ewa Batyra and Luca Maria Pesando, "Trends in Child Marriage and New Evidence on the Selective Impact of Changes in Age-at-Marriage Laws on Early Marriage," *JSM - Population Health* 14 (June 2021): 100811; Nicola Jones et al., "Child Marriage and Its Consequences for Adolescent Mental Health in Conflict-Affected Contexts: Evidence from Bangladesh, Ethiopia and Jordan," *Vulnerable Children and Youth Studies* 20, no. 3 (July 2025): 307–28.

and policy-driven preventive frameworks, and (3) the integration of cross-institutional child protection systems within a pluralistic and evolving legal order.

**Figure 4**  
**Elucidating the Domains of Child Marriage in *Fiqh* Studies**



Source: Authors' elaboration.

First, the progressive reconstruction of child marriage *fiqh* represents an increasingly critical epistemic endeavor, particularly given the prevailing dominance of doctrinal legal methodologies within contemporary scholarship. This tendency is exemplified by approximately 34 of the 68 reviewed articles, which primarily employ normative *fiqh* as their analytical lens. Such predominance suggests that academic discourse continues to prioritize formal legal validity and the preservation of classical *fiqh* traditions, rather than engaging in a critical assessment of their ramifications for child protection.<sup>38</sup> This literature review delineates three main trajectories of reconstruction. The first trajectory entails the reformulation of *fiqh* grounded in *maqāṣid al-sharīʿah* and principles of gender justice, as demonstrated in at least 15 of the 34 studies, indicating a paradigm shift from strict normative

<sup>38</sup> Abdurrohman Kasdi, "Reconstruction of Fiqh Nusantara: Developing the Ijtihad Methodology in Formulating Fiqh from Indonesian Perspective," *QIJS (Qudus International Journal of Islamic Studies)* 7, no. 2 (December 2019): 239–66; Muhammad Fikri Adrian and Zeni Ayu Ariani, "Reconstructing Fiqh in Post-Reform Indonesia: From Theocentric to Anthropocentric Paradigms," *Indonesian Journal of Interdisciplinary Islamic Studies (IJIS)* 8, no. 1 (2025): 103–26.

legality toward a framework that emphasizes protection, rationality, and welfare.<sup>39</sup> The second trajectory involves critical examinations of marriage dispensation practices justified by normative *fiqh*, discussed in roughly 11 articles, which highlight the limitations of legal formalism that frequently overlook preventive measures and the long-term impacts on children. The third trajectory comprises proposals aimed at reconciling Islamic law with state legal systems, identified in about eight studies, reflecting ongoing fragmentation between *fiqh* authorities and national legal frameworks. Collectively, these epistemic and normative agendas underscore that contemporary conceptualizations of child marriage within *fiqh* have yet to be fully integrated into a comprehensive and coherent framework for child protection.

Future research initiatives should prioritize comprehensive analytical re-examinations of both the normative foundations and legal frameworks that regulate child marriage. Foremost, the reconstruction and reinterpretation of *fiqh* conceptualizations must be regarded as a crucial methodological tool, especially in critically assessing normative discourses that frame child protection primarily in terms of permissibility rather than ethics centered on safeguarding children.<sup>40</sup> This situation reveals persistent biases within protection standards, preventive *fiqh*, and legal integration processes that undermine the fundamental rights of children involved in underage marriages.<sup>41</sup> Secondly, the criterion of urgency applied in marriage dispensation represents a pivotal focus of contemporary *fiqh* discourse, arising as a response to formalistic dispensation practices that often serve to legitimize rather than deter child marriage. Finally, the reformulation of legal texts, regulations, and statutes continues to adopt a predominantly normative stance concerning the protection of children in underage marriages. The advancement of an ideal legal framework to prevent *nikāh fāsīd* (irregular marriage) constitutes a significant future research agenda. Thus, the synthesis of child-protective *fiqh*, state legislation, and international human rights norms emerges as an urgent conceptual imperative, facilitating a paradigm shift from *fiqh*-based legitimization toward a justice-oriented prevention model.

<sup>39</sup> Muhammad Fajar and Linda Kartika, “Fiqh Analysis of the Age Limit for Marriage and Its Implications for Children’s Welfare,” *Indonesian Journal of Islamic Law* 4, no. 1 (June 2021): 17–34; Nurjanah et al., “Children’s Rights in Islamic Law,” 933–53; Farida Nurun Nazah et al., “Gender Justice in Child Custody Disputes: The Maqāṣid al-Sharī’ah Approach in Contemporary Judicial Practice,” *MILRev: Metro Islamic Law Review* 4, no. 2 (November 2025): 1328–58; Muhammad Fitri Adi, “Hadhonah Rights of Children (Not Mumayyis) Based on Compilation of Islamic Law and Child Protection Act,” *NUSANTARA: Journal of Law Studies* 2, no. 1 (March 2023): 9–22.

<sup>40</sup> Yvette Efevbera and Jacqueline Bhabha, “Defining and Deconstructing Girl Child Marriage and Applications to Global Public Health,” *BMC Public Health* 20, no. 1 (December 2020): 1547; John F. Mayberry, “A Critical Analysis of the Impact of Early Marriage on Girls Based on Published Autobiographies and a Contemporary Scholarly Text – *Īdāh al-Bayān fī Nikāh al-Ṣibyān*,” *Medico-Legal Journal* 93, no. 1 (March 2025): 37–41; Ahmad Ropei et al., “Managing ‘Baligh’ in Four Muslim Countries: Egypt, Tunisia, Pakistan, and Indonesia on the Minimum Age for Marriage,” *Al-Abwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (June 2023): 112–40.

<sup>41</sup> Fredy Alpin Gunawan, Indah Dwi Qurbani, and Tunggul Anshari, “Tinjauan Yuridis Ratio Legis Syarat Usia Minimum Perkawinan Paska Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017,” *Media Iuris* 6, no. 1 (February 2023): 85–114; Machrus Ali Syifa’, Ahmad Tholabi Kharlie, and Mualimin Mochammad Sahid, “Juridical Study of the Constitutional Court’s Decision No. 22/PUU-XV/2017 Regarding Restriction of Marriage Age in the Perspective of Maslahah Theory by Muhammad Sa’id Ramaḍān al-Būṭī’s and Gender Equality in Islam,” *Al-Adalah* 17, no. 1 (November 2020): 111–30.

Second, this study situates preventive–operational models as a pivotal framework within the discourse on child marriage. Prevention should not be confined to normative rhetoric alone; instead, it necessitates comprehensive and systematic incorporation across legal frameworks, public policy, public health initiatives, and related socio-cultural dimensions.<sup>42</sup> An analysis of approximately 27 scholarly articles reveals that, while prevention is commonly addressed in research using empirical legal methodologies, the approach remains fragmented and inadequately considers the interplay among judicial systems, social policies, and broader social determinants.<sup>43</sup> As highlighted by Raj et al.,<sup>44</sup> Parsons,<sup>45</sup> and Nur et al.,<sup>46</sup> addressing fundamental social determinants—such as gender norms, educational access, and economic vulnerability—is crucial for effective prevention strategies from a global standpoint. International research further indicates that multidisciplinary methodologies, which integrate perspectives from the social sciences, anthropology, law, and public health, are better at elucidating both the causes and consequences of child marriage than approaches confined to a single discipline.<sup>47</sup> These empirical insights underscore the necessity of a progressive, empirically informed epistemic reconfiguration within child marriage scholarship. Critical dimensions—including the interplay between judicial and policy frameworks, the protection of child victims of domestic violence, and the influence of grassroots religious authorities—are pivotal in prevention, intervention, and safeguarding efforts concerning underage married individuals. Such interdisciplinary frameworks not only deepen theoretical understanding but also strengthen the evidentiary basis for formulating effective, gender-equitable, and child-rights-centered policy interventions.

Third, as an implication derived from empirical research, child protection systems at the structural and institutional levels must incorporate judicial frameworks, public policy mechanisms, and religious authorities. The body of socio-legal research, comprising eight studies, remains relatively limited, suggesting that transformative approaches centered on the best interests of the child are still insufficiently developed. This situation is primarily due to the fragmented distribution of authority among courts, policymakers, and religious actors, which compromises the efficacy of protection mechanisms. Empirical findings from

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<sup>42</sup> Adrian and Ariani, “Reconstructing Fiqh in Post-Reform Indonesia: From Theocentric to Anthropocentric Paradigms”; Islamic Fiqh Academy, *Resolutions and Recommendations of the Council of the Islamic Fiqh Academy: 1985-2000* (Jeddah: Islamic Development Bank, 2000).

<sup>43</sup> Tauchid Komara Yuda and Stefan Kühner, “Bringing Indonesia into the Global Welfare Regime Debate: A Literature Review and Future Research Agenda,” *Asian Social Work and Policy Review* 17, no. 2 (2023): 103–14; James Midgley, “Imperialism, Colonialism and Social Welfare,” in *Colonialism and Welfare: Social Policy and the British Imperial Legacy* (Cheltenham, UK: Edward Elgar Publishing, 2011); Chala and Gemedede, “Legal Pluralism, Gender and Justice,” 278–96.

<sup>44</sup> Anita Raj et al., “Prevalence of Child Marriage and Its Effect on Fertility and Fertility-Control Outcomes of Young Women in India: A Cross-Sectional, Observational Study,” *The Lancet* 373, no. 9678 (May 2009): 1883–89.

<sup>45</sup> Jennifer Parsons et al., “Economic Impacts of Child Marriage: A Review of the Literature,” *The Review of Faith & International Affairs* 13, no. 3 (July 2015): 12–22.

<sup>46</sup> Dwi Utami Hudaya Nur et al., “Addressing Child Marriage in West Sulawesi: The Role of Islamic Institutions in Public Legal Awareness,” *De Jure: Jurnal Hukum dan Syariah* 17, no. 1 (May 2025): 149–74.

<sup>47</sup> Michael L. Valan, Caroline Agboola, and Vivian B. Lord, “A Systematic Review of the Multifaceted Impact of Child Marriage on Victims,” *Vulnerable Children and Youth Studies* 20, no. 1 (January 2025): 1–20; S. M. Mostafa Kamal et al., “Child Marriage in Bangladesh: Trends and Determinants,” *Journal of Biosocial Science* 47, no. 1 (January 2015): 120–39.

previous studies reveal inconsistencies in judicial rulings regarding marriage dispensation, inadequate evidentiary standards, and a diminished protective role of the courts.<sup>48</sup> Although Supreme Court Regulation No. 5/2019 introduces considerations of psychological and social factors, judicial capacity continues to depend on expert evidentiary standards, the integration of psychosocial and medical data, and the application of *maqāṣid*-based strategic litigation as a preventive tool against long-term risks to children.<sup>49</sup> Concurrently, such integration necessitates the enhancement of victim protection mechanisms and the safeguarding of children's rights—including reproductive rights—alongside the establishment of national standards for children who are already married. Institutional integration further requires repositioning religious actors, with *ulamā* serving as brokers of legitimacy, and the inclusion of female religious scholars in preventive strategies aligned with state policy.<sup>50</sup> This structural and institutional integration highlights that child protection cannot be entrusted to a single institution but must be constructed through legal co-production among the state, judiciary, and religious authorities, oriented toward prevention and substantive justice.

Building upon prevailing trends in existing scholarship, this study delineates significant deficiencies that systematically undermine the role of *fiqh* in advancing effective child protection and prevention initiatives. Predominantly, the literature situates *fiqh* primarily as a mechanism for normative legitimation rather than as a pragmatic framework equipped to address the multifaceted vulnerabilities faced by children. As a result, discourse surrounding *fiqh* frequently remains restricted to considerations of legal validity, lacking robust methodologies to assess the social, psychological, and structural consequences of child marriage practices. This limitation is further exacerbated by the insufficient evaluation of legal efficacy within religious court proceedings, particularly in dispensation cases, and their broader implications for safeguarding children. The integration of *fiqh* principles, judicial discretion, and empirical data is notably sparse, leading to judicial outcomes that function within normative domains largely disconnected from lived social realities. Within this context, the dynamic nature of living law, the roles of non-judicial entities such as families, communities, and social service organizations, and the recognition of children as autonomous legal subjects are frequently marginalized.

To expand academic perspectives and enhance scholarly contributions, this research proposes a protective–preventive *fiqh* framework, conceptualized as a *maqāṣid*-based systemic model, that prioritizes the best interests of the child as its central normative aim. Within this

<sup>48</sup> Rifki Fakhudin, Pramestya Raharjanti, and Muhammad Wahyu Saiful Huda, “Relevance of Religious Court Decisions Regarding Dispensation in Child Marriage,” *Indonesia Private Law Review* 3, no. 1 (June 2022): 37–46; Purwanti and Natalis, “Law as Text, Culture as Context,” 729–60.

<sup>49</sup> Syarief Husien, “Legal Uncertainty Regarding the Status of Children Born Out of Wedlock in the Perspective of Hifdzu al-Nasl,” *Jurnal Hukum Unissula* 40, no. 2 (December 2024): 63–74; Kutbuddin Aibak, “Implementation of Maqāṣid Shariʿah in Reform of Case Management of Violence against Women and Children,” *De Jure: Jurnal Hukum dan Syarʿiah* 15, no. 1 (July 2023): 82–98; Azni Azni et al., “Pseudo-Maṣlaḥah and Epistemological Failure in Marriage Dispensation at Indonesian Religious Courts,” *Jurnal Ilmiah Peuradeum* 13, no. 2 (May 2025): 1399–420.

<sup>50</sup> Ali Altaf Mian, “Translating Scholars: Theorizing Modern South Asian ‘Ulama’ Studies,” *Religion Compass* 16, no. 5 (May 2022): e12430; Nor Ismah, “Destabilising Male Domination: Building Community-Based Authority among Indonesian Female Ulama,” *Asian Studies Review* 40, no. 4 (October 2016): 491–509; Umma Farida and Abdurrohman Kasdi, “The 2017 KUPI Congress and Indonesian Female ‘Ulama,’” *Journal of Indonesian Islam* 12, no. 2 (December 2018): 135–58.

framework, *maqāṣid al-sharī'ah* is employed as an evaluative tool to critically assess the legal, social, and psychological ramifications of child marriage practices. This approach necessitates a reconfiguration of *fiqh* grounded in principles of preventive ethics and substantive protection. Furthermore, integrating a socio-legal framework focused on religious court practices is essential to reconcile the divergence between legal norms and empirical realities. Investigating patterns of judicial discretion, the rationale behind decisions, and their effects on children's vulnerability trajectories can substantially deepen the understanding of legal efficacy. Concurrently, broadening empirical inquiry through a critical engagement with legal pluralism facilitates a nuanced comprehension of child marriage as a complex socio-legal phenomenon shaped by the interplay among state law, *fiqh*, customary norms, and social power dynamics. Therefore, child protection is reframed not as an abstract principle but as a negotiated, contested, and enacted social practice embedded within everyday life.<sup>51</sup>

## Conclusion

Within the evolving discourse on child marriage *fiqh*, a consistently prominent and pivotal characteristic is the predominance of a normative–juridical framework rooted in doctrinal legal methodologies. This pattern reveals that the majority of Islamic legal scholars predominantly base their analyses on normative sources—namely classical *fiqh* texts and formal legal statutes—when addressing the issue of underage marriage. Consequently, much of the scholarly work remains focused on questions of legal validity and formal permissibility, often lacking a balanced critical examination of the social, psychological, and structural impacts on children, especially girls. This persistent reliance on normative frameworks not only highlights epistemological constraints but also reflects a pronounced reluctance to transcend established legal doctrines. Therefore, opportunities to incorporate perspectives centered on child protection, the best interests of the child, mental health considerations, and gendered power dynamics remain limited. The relatively few studies that explicitly engage with critical and progressive methodologies—such as contemporary *maqāṣid al-sharī'ah*, *fiqh al-ḥimāyah*, or analyses grounded in legal pluralism—underscore the continued dominance of the doctrinal–legal paradigm in *fiqh*-based discussions of child marriage. Ultimately, this prevailing orientation limits *fiqh*'s capacity to serve as a responsive ethical and normative framework that effectively aligns with child protection and welfare objectives in the Indonesian context.

This comprehensive and critical literature review delineates three principal dimensions that form the conceptual basis for understanding the evolution of child marriage *fiqh*. Firstly, recent scholarship remains predominantly characterized by normative–juridical approaches, resulting in *fiqh* analyses that are largely confined to legal–textual interpretations. This focus limits the development of constructive frameworks capable of addressing the epistemic and empirical complexities inherent in child marriage. The reliance on classical normative

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<sup>51</sup> Wardana Said et al., “Marriage Traditions and Family Resilience in Bugis Bone Society: A Study of Islamic Law and Islamic Education,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 3 (August 2024): 1372–90; Horii, “Legal Reasoning for Legitimation of Child Marriage in West Java,” 501–23; Qodariah Barkah, Suraya Sintang, and Leanne Morin, “Negotiating Islamic Law and State Norms in Child Marriage Practices in Coastal Indonesia,” *Antmind Review: Journal of Sharia and Legal Ethics* 2, no. 1 (June 2025): 43–55.

paradigms has consequently constrained analytical depth and diminished *fiqh*'s ability to engage effectively with dynamic and multifaceted social realities. Secondly, innovative approaches that seek to transcend traditional boundaries of Islamic legal norms remain relatively underdeveloped, both methodologically and theoretically. As a consequence, more progressive epistemological perspectives—incorporating principles of protection ethics, social justice, and the lived experiences of children as legal subjects—have yet to be fully articulated within contemporary *fiqh* discourse. Thirdly, although there have been efforts to employ socio-legal methodologies as analytical tools, these endeavors encounter significant challenges within Indonesia's intricate, overlapping, and multidimensional legal pluralism. Within this framework, the present review advances future scholarship on child marriage *fiqh* by systematically mapping existing studies and identifying opportunities to develop a more existential and protection-centered understanding of child welfare in the context of early marriage, grounded in the extant literature.

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