

Reconstructing the Legal Parameters Of “Very Urgent Reasons” Under Article 7(2) of Law No. 16 of 2019: A Structured Judicial Assessment Framework Based on the SDGs

Muhammad Dhiya'Ulhaq Syahrial Ramadhan^{1*}, Naela Rosita², Anitta Febiana³,
Nabilah⁴, Ibnu Jayyid Zidan⁵

¹E-mail: 25203011010@student.uin-suka.ac.id

²E-mail: 25203011012@student.uin-suka.ac.id

³E-mail: anitta.febiana25@mhs.uinjkt.ac.id

⁴E-mail : 25203011013@student.uin-suka.ac.id

⁵E-mail : ibnujayyid87@gmail.com

^{1,2,4}Universitas Islam Negeri Sunan Kalijaga Yogyakarta, Indonesia

³Universitas Islam Negeri Syarif Hidayatullah Jakarta, Indonesia

⁵Universitas Perguruan Tinggi Ilmu Al-Qur'an

*corresponding author

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Abstract

Law No. 16 of 2019 raised Indonesia's minimum marriage age to 19, yet Article 7(2) still permits dispensation on “very urgent reasons” supported by sufficient evidence, which its Elucidation defines circularly as a situation with no other option. This article maps the sources of normative uncertainty in Article 7(2) and reconstructs parameters for assessing very urgent reasons using the official indicators of Sustainable Development Goals (SDGs) 1, 3, and 4 and Target 5.3 as reference measures. It is normative legal research with statutory, conceptual, and comparative (Jordan) approaches, using grammatical, systematic, and teleological interpretation. The uncertainty stems from a circular definition, the absence of substantive indicators of urgency, and the absence of a minimum age for dispensation. The proposed framework has four dimensions (economic vulnerability, maternal and child health, education, and free consent), a minimum age of 16, a mandatory professional recommendation for applicants under 18, and an explicit pathway for pregnancy outside marriage. The SDGs do not bind judges; the framework can bind only after institutionalisation through amendment of the PERMA and the law.

INTRODUCTION

Child marriage remains a critical legal and social issue in Indonesia, despite Law No. 16 of 2019, which raised the minimum marriage age for men and women to 19.¹ The data do not show that the practice has ended. The Directorate General of Religious Courts (Badilag) reports 32,400 dispensation cases in 2024 and a provisional 19,790 up to September 2025,² while Statistics Indonesia (*Badan Pusat Statistik*, BPS) records that 19.51% of young people aged 16–30 reported a first-marriage age of 18 or below.³ These figures are not sole evidence of misuse of Article 7(2): some child marriages occur without dispensation, the BPS indicator includes cohorts who married before 2019,⁴ and Badilag cautions that fewer applications do not necessarily mean fewer child marriages, because many couples turn to unregistered unions.⁵ They do show that the exception route remains heavily used and that judges lack a case-level standard for it.

Earlier studies document harm from several perspectives. A literature review reports that women who marry young face significant risks of pregnancy complications (anaemia, preterm labour, low birth weight) and of anxiety and depression,⁶ and another study adds cervical cancer and high maternal mortality.⁷ A qualitative study links young couples' emotional and financial constraints to domestic instability, divorce, and domestic violence against girls, aggravated by loss of access to education,⁸ and a

¹ Muhammad Affan and Muhammad Zainuddin Sunarto, “Ketidakefektifan Pencegahan Pernikahan Dini Di Indonesia: Analisis Sistem Hukum Lawrence M. Friedman,” *USRAH: Jurnal Hukum Keluarga Islam* 7, no. 2 (2026): 839–52, <https://doi.org/10.46773/gxf5zd52>.

² Abdul Rahman, “Dirjen Badilag Ungkap Tren Dispensasi Kawin Menurun, Namun Peringatkan Potensi Besar Perkawinan Anak Di Bawah Tangan Pada Seminar Internasional Di Pascasarjana UIN Bandung,” *Mahkamah Agung Republik Indonesia*, November 19, 2025, <https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/dirjen-badilag-ungkap-tren-dispensasi-kawin-menurun-namun-peringatkan-potensi-besar-perkawinan-anak-di-bawah-tangan-pada-seminar-internasional-di-pascasarjana-uin-bandung>.

³ Badan Pusat Statistik, “Statistik Pemuda Indonesia 2025,” Desember 2025, 229.

⁴ Novrizaldi, “Cegah Perkawinan Anak, Penguatan Kapasitas Pendamping Diperlukan,” *Kementerian Koordinator Bidang Pembangunan Manusia Dan Kebudayaan*, n.d., <https://www.kemenkopmk.go.id/cegah-perkawinan-anak-penguatan-kapasitas-pendamping-diperlukan>.

⁵ Abdul Rahman, “Dirjen Badilag Ungkap Tren Dispensasi Kawin Menurun, Namun Peringatkan Potensi Besar Perkawinan Anak Di Bawah Tangan Pada Seminar Internasional Di Pascasarjana UIN Bandung.”

⁶ Endah Purda Listya, Nurul Fatimah Susanti, and Hasrita Octalia, “Perkawinan Dini, Dampaknya Bagi Kesehatan Reproduksi: Literature Review,” *Sehat Rakyat: Jurnal Kesehatan Masyarakat* 4, no. 2 (2025): 125–36, <https://doi.org/10.54259/sehatrakyat.v4i2.4240>.

⁷ Jenuri and Ariz Najib, “Pernikahan Dini Dalam Perspektif Hukum Islam Dan Hukum Di Indonesia,” *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 11, no. 2 (2023): 127–42, <https://doi.org/10.30868/am.v11i02.4519>.

⁸ Junita Friska et al., “Analisis Sosial Ekonomi Dampak Pernikahan Dini Dikalangan Remaja,” *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 2, no. 1 (2025): 40–64, <https://doi.org/10.62383/aliansi.v2i1.636>.

quantitative study of 17 respondents in one hamlet in Maros Regency reports a strong negative correlation ($r = -0.761$) between early marriage and children's education.⁹

Pregnancy outside marriage is reported to be the most dominant factor in dispensation applications,¹⁰ which puts judges in a dilemma over the legal status of the unborn child. That dilemma has a doctrinal basis, Article 53 of the Compilation of Islamic Law allows a pregnant woman to be married to the man who made her pregnant without waiting for the birth,¹¹ while the Constitutional Court has held that a child born outside a valid marriage has a civil relationship with the mother and her family and with the father where blood relationship is proved by science and technology and/or other evidence under law.¹²

Previous studies fall into four clusters: the impact of child marriage on health, socio-economic conditions, and education,^{13,14,15} judicial practice and disparities in interpreting urgency,^{16,17} governance and street-level bureaucratic discretion,^{18,19} and child marriage in relation to development policy and the SDGs, including proposals to reconstruct

⁹ Hajrah, Haeruddin, and Abd Malik, "Dampak Pernikahan Dini Terhadap Pendidikan Anak Di Dusun Lokayya Desa Tompobulu Kecamatan Tompobulu Kabupaten Maros," *JURNAL ALMANAR* 2, no. 1 (2025): 155-64.

¹⁰ Friska et al., "Analisis Sosial Ekonomi Dampak Pernikahan Dini Dikalangan Remaja," 46.

¹¹ Kompilasi Hukum Islam. Article 53(1)-(3)

¹² Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 36-37. amar putusan on Article 43(1) of Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

¹³ Listya, Susanti, and Octaliana, "Perkawinan Dini, Dampaknya Bagi Kesehatan Reproduksi: Literature Review," 125.

¹⁴ Friska et al., "Analisis Sosial Ekonomi Dampak Pernikahan Dini Dikalangan Remaja," 44.

¹⁵ Listya, Susanti, and Octaliana, "Perkawinan Dini, Dampaknya Bagi Kesehatan Reproduksi: Literature Review," 155-60.

¹⁶ Hikmah et al., "Disparitas Penafsiran Hakim Tentang Makna Urgensi Dalam Alasan Dispensasi Kawin," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 19, no. 2 (2025): 861-82, <https://doi.org/10.35931/aq.v19i2.4816>.

¹⁷ Dwi Yoga Pratama, Waluyo Sudarmaji, and Najih Abqori, "Analisis Putusan Hakim Terhadap Penolakan Dispensasi Kawin Perspektif Masalah Mursalah," *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* 11, no. 1 (2025): 78-79, <https://doi.org/10.58401/faqih.v11i1.1775>.

¹⁸ Noorhaidi Hasan et al., "Adaptive Discretion in Child Marriage Prevention: Street-Level Bureaucracy in Indonesia's Islamic Marriage Administration," *Journal of Islamic Law* 7, no. 1 (2026): 150-59, <https://doi.org/10.24260/jil.v7i1.5265>.

¹⁹ Nuruddin, Aisyah Wardatul Jannah, and Dwi Martini, "Evaluating the Effectiveness of Age Restriction on Marriage in Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 2 (2023): 322, <https://doi.org/10.24090/volksgeist.v6i2.9844>.

judicial reasoning.^{20,21,22,23} The first cluster demonstrates harm but gives no testable criteria, the second and third diagnose disparities without formulating the content of the parameters, and the fourth, to the authors' knowledge, has not derived criteria, evidentiary requirements, and legal consequences from SDG indicators anchored in positive norms. All four take the norm as given and ask what its application reveals; none asks what the norm should contain. The closest studies, Ashari's and Hikmah and others', are compared in Section C.

This article differs in three respects. Its unit of analysis is Article 7(2), its Elucidation, and PERMA No. 5 of 2019 as one normative system, not particular decisions, which only illustrate the diagnosis. It uses the official indicators of SDGs 1, 3, and 4 and Target 5.3 as reference measures to derive criteria, evidence, and legal consequences. And it explains how these criteria can become binding without eliminating discretion, justifying a minimum age by reference to Jordan, the former statutory age for women, and international standards. Unlike studies that describe how judges interpret urgency or whether the regulations protect the child, it asks what content the standard itself should have, and it ties case-level criteria to Article 7(2), its Elucidation, and the PERMA. The novelty lies in this model, not in the proposition that child marriage is harmful.

The article answers two research questions. First, how do Article 7(2), its Elucidation, and PERMA No. 5 of 2019 generate uncertainty in assessing "very urgent reasons", distinguishing normative uncertainty, judicial discretion, and implementation problems? Second, how should parameters be reconstructed on the basis of the official indicators of SDGs 1, 3, and 4 and Target 5.3 so that they can acquire normative force for judges without abolishing discretion? The legal basis for this step is not the SDGs themselves, a development framework setting collective targets, but the best interests principle in the PERMA and child protection legislation, which already binds the judge in individual cases. The two frameworks operate in different normative registers, so the indicators are not applied directly: they are restated as risks observable in a single case and anchored

²⁰ Hasan Ashari, "Rekonstruksi Pertimbangan Alasan Sangat Mendesak Pada Perkara Dispensasi Kawin Di Pengadilan Agama," *Al-Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 18, no. 2 (2024): 1097, <https://doi.org/10.35931/aq.v18i2.3389>.

²¹ Nanda Ayuningtyas, "Rekonstruksi Kebijakan Publik Dan Hukum Islam Terkait Pernikahan Di Usia Dini Dalam Mencapai SDGs," *Pro Justicia: Jurnal Hukum Dan Sosial* 3, no. 1 (2023): 11, <https://doi.org/10.55380/projus.v3i1.494>.

²² Sonny D. Judiasih et al., "Efforts to Eradicate Child Marriage Practices in Indonesia: Towards Sustainable Development Goals," *Journal of International Women's Studies* 21, no. 6 (2020): 138, <https://vc.bridgew.edu/jiws/vol21/iss6/8>.

²³ Winsherly Tan, "Problematisasi Perkawinan Di Bawah Umur Dan Tantangan Dalam Mencapai Sustainable Development Goals (SDGs)," *JUSTISI* 7, no. 2 (2021): 77, <https://doi.org/10.33506/js.v7i2.1342>.

in that principle (Tables 3 and 4), and their binding force depends on institutionalisation in positive norms.

METHODS

This study is normative (doctrinal) legal research of a prescriptive nature, relying on library research with legal materials.²⁴ It is confined to authoritative legal sources, namely legislation, case law, and doctrine.^{25,26} The statutory approach is applied to Article 7(1) to (4) of Law No. 1 of 1974 as amended by Law No. 16 of 2019, its Elucidation, and PERMA No. 5 of 2019,²⁷ the conceptual approach clarifies legal certainty, judicial discretion, the best interests of the child, and SDG indicators,²⁸ and the comparative approach, used for legal reform,²⁹ examines Article 10 of Jordan's Personal Status Law No. 15 of 2019, which sets the marriage age at 18 and allows a judge, with the Chief Justice's approval, to permit marriage from 16 in the child's best interest.³⁰ Following the principle of functionality, the question is posed in functional terms,³¹ and each solution is described on its own terms and then evaluated critically.³² Jordan is an illustrative, not representative, case, and its practice is known here only through a joint NGO report and a comparative journal article, which is a limitation, since Malaysia, Egypt, Morocco, or Türkiye could also be compared.³³

Legal materials are classified as primary, secondary, and tertiary.³⁴ The primary materials are the 1945 Constitution, Laws No. 1 of 1974, 16 of 2019, 35 of 2014, 48 of 2009, and 12 of 2022, Constitutional Court Decisions No. 22/PUU-XV/2017 and 46/PUU-VIII/2010, the Compilation of Islamic Law, PERMA No. 5 of 2019, and Jordan's Personal Status Law. The CRC and CEDAW, to which Indonesia is a party, and the treaty committees' joint recommendation on harmful practices (interpretative guidance) bear

²⁴ Amad Sudiro et al., *Metodologi Penelitian Hukum: Panduan Komprehensif Untuk Penulisan Akademis Dan Praktis* (Purbalingga: Diva Pustaka, 2025), 63.

²⁵ Sudiro et al., 78–79.

²⁶ Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 85, <https://doi.org/10.21153/dlr2012vol17no1art70>.

²⁷ Sudiro et al., *Metodologi Penelitian Hukum: Panduan Komprehensif Untuk Penulisan Akademis Dan Praktis*, 63.

²⁸ Sudiro et al., 64.

²⁹ Sudiro et al., 67.

³⁰ 2019 (لجنة) 15(رقم الشخصية الأحوال قانون, Article 10(A)–(B), <https://www.refworld.org/legal/legislation/natlegbod/2019/123423>.

³¹ Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law*, trans. by Tony Weir (Oxford: Oxford University Press, 1998), 34.

³² Zweigert and Kötz, 43–47.

³³ Sudiro et al., *Metodologi Penelitian Hukum: Panduan Komprehensif Untuk Penulisan Akademis Dan Praktis*, 68.

³⁴ Sudiro et al., 64.

on the minimum age.^{35,36,37,38} Resolution A/RES/70/1 is a General Assembly recommendation, not a binding norm,^{39,40} and, with the official indicators adopted by A/RES/71/313, is used only as a policy reference.⁴¹ Secondary materials are journal articles and books on dispensation, child marriage, judicial discretion, and the SDGs. Tertiary materials serve only as finding aids and are not cited.⁴² BPS and Badilag statistics are treated as official non-legal documents. Primary materials were selected because they fix the age of marriage, regulate the dispensation procedure, or protect the child; secondary materials because they analyse Article 7(2), dispensation practice, judicial discretion, or child marriage and the SDGs, and were used to identify and illustrate the problem, not as authority for the norm.

The materials were collected by document study⁴³ and analysed qualitatively and prescriptively through inventory, classification, interpretation, and systematisation.⁴⁴ Grammatical and systematic interpretation elaborates Article 7(2) in relation to the other paragraphs, the Elucidation, and the PERMA, teleological interpretation assesses the fit between the norm and the aim of child protection. Finally, the official SDG indicators were translated into case-level criteria in four steps: selecting the indicators of Goals 1, 3, and 4 and Target 5.3 affected by child marriage, restating each as a risk observable in a single case; formulating the question for the judge and the evidence that answers it; and anchoring each criterion in the best interests principle in the PERMA and child protection

³⁵ Convention on the Rights of the Child.

³⁶ Convention on the Elimination of All Forms of Discrimination against Women.

³⁷ Undang-Undang (UU) Nomor 7 Tahun 1984 Tentang Pengesahan Konvensi Mengenai Penghapusan Segala Bentuk Diskriminasi Terhadap Wanita (Convention on The Elimination of All Forms of Discrimination Against Women).

³⁸ Keputusan Presiden (Keppres) Nomor 36 Tahun 1990 Tentang Pengesahan Convention On The Rights Of The Child (Konvensi Tentang Hak-Hak Anak).

³⁹ Charter of the United Nations And Statute Of The International Court Of Justice. Article 10

⁴⁰ United Nations General Assembly, "A/RES/70/1: Transforming Our World: The 2030 Agenda for Sustainable Development," September 25, 2015.

⁴¹ United Nations General Assembly, "A/RES/71/313: Work of the Statistical Commission Pertaining to the 2030 Agenda for Sustainable Development," July 6, 2017. Annex (global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda)

⁴² Sudiro and others, 'Metodologi Penelitian Hukum', 64.

⁴³ Sudiro et al., *Metodologi Penelitian Hukum: Panduan Komprehensif Untuk Penulisan Akademis Dan Praktis*, 122.

⁴⁴ Sudiro et al., 79-80.

legislation (Tables 3 and 4). The indicators are reference measures, not thresholds for individual applicants.^{45,46,47}

RESULTS AND DISCUSSION

1. Normative Uncertainty in Article 7(2) and Its Implementation in Marriage Dispensations.

Following Constitutional Court Decision No. 22/PUU-XV/2017, Law No. 16 of 2019 was enacted on 14 October 2019, amending Law No. 1 of 1974. It removed the age-based difference between prospective brides and grooms formally by raising the minimum age for women, previously 16, to 19, equal to that for men.^{48,49} The rationale is gender equality, wider fulfilment of children's rights, and physical, mental, economic, social, and reproductive maturity before marriage,⁵⁰ consistent with the child protection paradigm of Article 1(2) of Law No. 35 of 2014 and serving as a preventive measure against violence and discrimination associated with underage marriage.⁵¹ However, these formal rules have not yet automatically translated into an effective child protection system in the courts or in society,⁵² and a study of children's rights under international law likewise reports that courts still often grant dispensations and that cultural and economic factors limit protection in practice.⁵³

⁴⁵ Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin. Article 2

⁴⁶ Undang-Undang (UU) Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak. Article 26(1)(c).

⁴⁷ Assembly, "A/RES/71/313: Work of the Statistical Commission Pertaining to the 2030 Agenda for Sustainable Development.", Annex, indicators 1.2.1, 1.3.1, 3.1.1, 3.1.2, 3.2.1, 3.7.2, 4.1.2, and 5.3.1.

⁴⁸ Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. Article 7(1).

⁴⁹ Dona Salwa, Soraya Parahdina, and Abidzar Al Ghiffary, "Implikasi Perubahan Undang-Undang Perkawinan Mengenai Batas Usia Perkawinan Dalam Sistem Hukum Keluarga Di Indonesia," *Journal of Islamic and Law Studies* (2024) 1 (8): 139, <https://doi.org/10.18592/jils.v8i1.12860>.

⁵⁰ Rachmi Sulistyarini, "Rasio Legis Pengaturan Batas Minimal Usia Perkawinan Menurut Undang Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Arena Hukum* 15, no. 1 (2022): 139–40, <https://doi.org/10.21776/ub.arenahukum.2022.01501.7>.

⁵¹ Dede Kania and Siti Nur Fatoni, "Protecting Children's Rights in Marriage Dispensation Cases: Evidence from Religious Courts in Indonesia," *Asy-Syari'ah* 25, no. 2 (2023): 79–80, <https://doi.org/10.15575/as.v25i2.43846>.

⁵² Nuruddin, Jannah, and Martini, "Evaluating the Effectiveness of Age Restriction on Marriage in Indonesia," 322.

⁵³ Ahmad Rusly Purba, "The Protection of Children's Rights and Gender Equality in the Perspective of International Law," *Journal of Gender and Social Inclusion in Muslim Societies* 7, no. 2 (2026): 77, <https://doi.org/10.30829/jgsims.v7i2.30330>.

A central source of this gap is the uncertainty of the exception provision in Article 7(2) of Law No. 16 of 2019, under which parents may seek a dispensation for marriage from the court, namely the Religious Court or the District Court.^{54,55} The law permits departure from the age limit only on "very urgent reasons", supported by sufficient evidence.⁵⁶ Although the Elucidation defines the phrase, the definition is circular and offers no objective criteria or threshold indicators for what counts as having 'no other option', which gives rise to substantial normative uncertainty.⁵⁷

Article 7(2) of Law No. 16 of 2019 contains two cumulative elements, namely very urgent reasons and sufficient supporting evidence, which parents submit to the court. Contrary to the view that the phrase is undefined, the Elucidation defines it as a situation in which there is no other option and the marriage is compelled by necessity, and it specifies supporting evidence in the form of a certificate of age and a certificate from a health professional. The problem lies in the quality of that definition. It is circular, because it restates urgency as compulsion; it provides no measure for the "other options" that must have been considered; and it does not link the reasons to the best interests of the child. The documents prove the child's age and health status; they do not tell the judge what makes a reason urgent. Ambiguity exists when a provision can bear two or more distinct meanings; vagueness, when its meaning has a clear core but blurred boundaries; and circularity, when a definition restates the term it defines. "Very urgent reasons" is vague; its Elucidation is circular; and in practice the two produce ambiguity, because judges fill the gap with different meanings. "Normative uncertainty" is used below as the umbrella term for these defects. Read as a whole, Article 7 has a rule (the age of 19 in paragraph (1)), an exception (paragraph (2)), and a safeguard (paragraph (3), the entry point for free consent in Table 4); only the exception lacks content, so the reconstruction targets its standard and does not reopen the rule.

This uncertainty must be distinguished from two other matters. Judicial discretion, as analysed by Bendor and Segal in their study of Aharon Barak's theory, is the power granted to judges to choose between two or more alternatives, all of them lawful. It is a normative rather than a psychological concept, because it exists only where the law

⁵⁴ Undang-Undang (UU) Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. Article 7(2)

⁵⁵ Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin, n.d. Article 5.

⁵⁶ Undang-Undang (UU) Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. Article 7(2).

⁵⁷ Undang-Undang (UU) Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. Elucidation of Article 7(2).

permits a choice among equally permissible alternatives, not wherever a judge deliberates or weighs options carefully.⁵⁸ Implementation problems are gaps between norm and practice, for example in how institutional authority is negotiated among state, religious, and community actors at the front line.⁵⁹ Each calls for a different remedy: normative ambiguity is resolved by sharpening the norm; discretion by structuring the criteria and the duty to give reasons; and implementation by supervision, training, and systematic recording of decisions.

Barak's doctrine identifies a tension that structures the argument: if objective criteria leave a single lawful option, discretion disappears; if several remain, the criteria have not helped.⁶⁰ The circular Elucidation illustrates the second horn, since "no other option" cannot discriminate between applications. Discretion must in any case be exercised reasonably, by an objective test that prohibits arbitrariness.⁶¹

The argument that Article 7(2) is a legal loophole can be tested through three questions. First, in terms of legislative construction, the legislature raised the age limit in response to Constitutional Court Decision No. 22/PUU-XV/2017 but retained dispensation as an exception.⁶² Second, in terms of safeguards, the law provides thin substantive guarantees (reasons and evidence), whereas the PERMA provides thick procedural guarantees (principles, judicial advice, hearing the child, and identification of coercion).⁶³ Third, in terms of authority, restrictions on the right to form a family must be set by law, so a minimum age for dispensation should be set in the law, whereas an instrument for assessing judicial considerations can be set in the PERMA.^{64,65} On this basis, "legal loophole" is better replaced with the more specific "normative uncertainty". The tests also show that the defects are distinct: the first and third concern the norm itself, the second the relation between substantive and procedural safeguards. Procedural guarantees ensure that the child is heard and coercion explored, but they cannot tell the

⁵⁸ Ariel L. Bendor and Zeev Segal, "The Judicial Discretion of Justice Aharon Barak," *Tulsa Law Review* 47, no. 2 (2013): 465–66, <https://digitalcommons.law.utulsa.edu/tlr/vol47/iss2/10>.

⁵⁹ Hasan et al., "Adaptive Discretion in Child Marriage Prevention: Street-Level Bureaucracy in Indonesia's Islamic Marriage Administration," 155–59.

⁶⁰ Bendor and Segal, "The Judicial Discretion of Justice Aharon Barak," 466–67.

⁶¹ Bendor and Segal, 469–73.

⁶² Putusan Mahkamah Konstitusi Nomor 22/Puu-Xv/2017 Perihal Pengujian Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

⁶³ Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin, n.d. Articles 2, 12, and 14.

⁶⁴ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Articles 28B(1) and 28J(2).

⁶⁵ Undang-Undang (UU) Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan. Article 8(2).

judge which reasons are urgent, so the substantive gap remains even where the PERMA is fully applied.

BPS’s 2025 Indonesian Youth Statistics provide context, not proof: 19.51% of young Indonesians aged 16–30 had a first-marriage age of 18 or below, a cohort that includes people who married before Law No. 16 of 2019 took effect.⁶⁶ Table 1 sets out the Badilag figures, which describe a sharp rise around the 2019 amendment followed by a continuing decline. The rise is not by itself evidence of legal resistance: once the minimum age for women rose from 16 to 19, persons aged 16 to 18 who could previously marry without a court’s permission had to apply for dispensation.⁶⁷ The data show the scale of the exception route, not why it is used, and Badilag warns that fewer applications do not necessarily mean less child marriage.⁶⁸

Table 1. Marriage dispensation cases reported by the Directorate General of Religious Courts (Badilag)

Period	Dispensation cases	Note
2019	64,196	Described in the report as a significant surge after the amendment
2024	32,400	Figure recorded for the year
January–September 2025	19,790	Provisional figure

Source: Badilag report of 19 November 2025. Another study reports 23,386 cases in 2019 and 64,487 in 2020; because its 2019 figure differs, the peak year is not stated.⁶⁹

PERMA No. 5 of 2019 requires judges to adopt a child-sensitive approach. Article 2 sets the governing principles, including the best interests of the child, the child’s right to life and development, respect for the child’s views, and gender equality, and Article 3 includes identifying coercion behind an application.⁷⁰ Judges must advise on the risks of marriage (interrupted education, immature reproductive organs, economic, social, and psychological effects, and potential domestic violence),⁷¹ and a decision is null by

⁶⁶ Statistik, “Statistik Pemuda Indonesia 2025,” 229.

⁶⁷ Undang-Undang (UU) Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. Article 7(1)–(2).

⁶⁸ Abdul Rahman, “Dirjen Badilag Ungkap Tren Dispensasi Kawin Menurun, Namun Peringatkan Potensi Besar Perkawinan Anak Di Bawah Tangan Pada Seminar Internasional Di Pascasarjana UIN Bandung.”

⁶⁹ Akbar Faisal, “Dinamika Pernikahan Dini Dan Stabilitas Rumah Tangga: Analisis Kasus Perceraian Di Kota Yogyakarta,” *Jurnal Ilmiah Multidisiplin Indonesia* 1, no. 1 (2025): 42–43, <https://doi.org/10.64845/jimi.v1i1.52>.

⁷⁰ Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin, n.d. Articles 2 and 3.

⁷¹ Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin. Article 12.

operation of law if the advice is not given or the statements of the child, the prospective spouse, and the parents or guardians are not heard.⁷²

In practice, the PERMA also meets economic pressure, community cultural norms,^{73,74} and the ambivalence of front-line officials such as those of the Office of Religious Affairs (*Kantor Urusan Agama, KUA*).⁷⁵

Reported motives also differ by location, though the evidence comes from a few local studies and should not be generalised. In Yogyakarta City, one qualitative study links child marriage to more permissive adolescent norms and pregnancy before marriage, which puts judges in a dilemma between refusal and securing the child's legal status.^{76,77,78} A 'coercion of circumstance' from pregnancy is hard to fit within Article 14 of the PERMA, which directs judges to identify whether the child has knowingly consented and whether there is coercion; Section C returns to this.⁷⁹ In rural settings, a study in Rukti Basuki (Central Lampung) identifies economic conditions, free association and education as the factors behind early marriage,^{80,81} while a study in Dlingo (Bantul) and Dukun (Magelang) reports that families use child marriage as a strategy against economic insecurity and that daughters are described as burdens.⁸²

Reproductive health is the most direct area of harm, as pregnancy at a young age carries clinical risks to the mother.⁸³ Local studies also report that couples who marry young are not yet ready mentally, economically, or educationally, and are not yet mature

⁷² Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin. Articles 12(4) and 13(3).

⁷³ Enny Fitriahadi et al., "Strategies for Child Marriage Prevention in Indonesia: A Case Study," *Jurnal Kesehatan Masyarakat* 21, no. 1 (2025): 156, <https://doi.org/10.15294/kemas.v20i3.13732>.

⁷⁴ Muhammad Kamaludin Al Ayubi, "Studi Kualitatif Pernikahan Dini Di Wilayah Kota Yogyakarta 2024 (Perspektif Sosial Budaya)," *PESHUM: Jurnal Pendidikan, Sosial Dan Humaniora* 4, no. 2 (2025): 2804, <https://doi.org/10.56799/peshum.v4i2.7747>.

⁷⁵ Hasan et al., "Adaptive Discretion in Child Marriage Prevention: Street-Level Bureaucracy in Indonesia's Islamic Marriage Administration," 150–53.

⁷⁶ Ayubi, "Studi Kualitatif Pernikahan Dini Di Wilayah Kota Yogyakarta 2024 (Perspektif Sosial Budaya)," 2798–800.

⁷⁷ Kompilasi Hukum Islam, n.d. Article 53.

⁷⁸ Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. amar putusan on Article 43(1) of UU No. 1 Tahun 1974.

⁷⁹ Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin, n.d. Article 14(a)–(c).

⁸⁰ Vina Pandu Winata and Atik Purwasih, "Pernikahan Dini Pada Remaja: Studi Analisis Di Desa Rukti Basuki," *Social Pedagogy: Journal of Social Science Education* 5, no. 1 (2024): 77–78, <https://doi.org/10.32332/social-pedagogy.v5i1.8553>.

⁸¹ Fitriahadi et al., "Strategies for Child Marriage Prevention in Indonesia: A Case Study," 159.

⁸² Fitriahadi et al., 162.

⁸³ Fitriahadi et al., 156.

in handling financial responsibility⁸⁴ and emotional conflict among couples married after unintended pregnancy,⁸⁵ these are indications, not national estimates.

These findings explain why the framework in Section C rests on four dimensions: economic vulnerability, maternal and child health, education, and free consent, which correspond to the Goals and Target through which the SDGs address child marriage.⁸⁶ Neither Law No. 16 of 2019 nor PERMA No. 5 of 2019 gives judges a way of weighing these concerns, and effectiveness depends on how discretion is exercised locally.⁸⁷

The normative uncertainty reflects a lack of legal certainty. Radbruch placed legal certainty alongside justice and utility as a fundamental value of law and identified four aspects of it: positive law consists of legislation; it is based on facts; those facts must be formulated clearly to avoid ambiguity; and it should not be easily changed.⁸⁸ Rules open to multiple interpretations fail this standard and leave interpretation largely to the judge.⁸⁹

Court rulings suggest that dispensation applications are motivated by a preventive factor (preventing adultery and out-of-wedlock pregnancy) and a curative factor (covering a disgrace or securing the status of the unborn child).⁹⁰

Some judges treat existing pregnancy as a very urgent reason, others also fear of adultery. A study of ten decisions from South Kalimantan reports that judges interpret urgency differently, so that rulings are inconsistent although case backgrounds are similar.⁹¹ A decision analysed in another study shows how facts matter: the child had been born by the hearing, and the judge refused the application because marriage after

⁸⁴ Syifa Aulia Rahmah and Yani Achdiani, "Pernikahan Usia Muda Sebagai Faktor Risiko Dalam Ketahanan Ekonomi Keluarga," *Jurnal Equalita: Studi Gender Dan Anak* 7, no. 1 (2025): 58–59, <https://doi.org/10.24235/equalita.v7i1.20017>.

⁸⁵ Azzahra Hanurita Elfani and Alif Muarifah, "Regulasi Emosi Pasangan Pernikahan Dini Akibat Kehamilan Yang Tidak Diinginkan (KTD) Di Kecamatan Banguntapan, Bantul, Yogyakarta," *Psikoborneo: Jurnal Ilmiah Psikologi* 10, no. 2 (2022): 320, <https://doi.org/10.30872/psikoborneo.v10i2.7561>.

⁸⁶ Assembly, "A/RES/70/1: Transforming Our World: The 2030 Agenda for Sustainable Development." Goals 1, 3, and 4 and Target 5.3.

⁸⁷ Hasan et al., "Adaptive Discretion in Child Marriage Prevention: Street-Level Bureaucracy in Indonesia's Islamic Marriage Administration," 159.

⁸⁸ Dino Rizka Afdhali and Taufiqurrohman Syahuri, "Idealitas Penegakan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum," *Collegium Studiosum Journal* 6, no. 2 (2023): 558, <https://doi.org/10.56301/csj.v6i2.1078>.

⁸⁹ Hikmah et al., "Disparitas Penafsiran Hakim Tentang Makna Urgensi Dalam Alasan Dispensasi Kawin," 163–64.

⁹⁰ Abdul Rahman A. Ali, Fenty U. Puluhulawa, and Lusiana M. Tijow, "Form of Judge's Consideration Against Dispensation Early Marriage," *Damhil Law Journal* 1, no. 2 (2021): 162, <https://doi.org/10.56591/dlj.v1i2.1094>.

⁹¹ Hikmah et al., "Disparitas Penafsiran Hakim Tentang Makna Urgensi Dalam Alasan Dispensasi Kawin," 880.

birth would not change the status of a child born outside marriage, except through a determination of parentage.⁹² Because its facts differ, this case does not itself prove inconsistency; it shows that the weight of pregnancy depends on how the judge understands the child's status, the question addressed by Constitutional Court Decision No. 46/PUU-VIII/2010.

Another study reports two decisions, No. 25/Pdt.P/2024/PA.Rtu and No. 13/Pdt.P/2024/PA.Rtu, with the same stated ground (concern about adultery) but different outcomes.⁹³ A shared ground does not mean shared facts, and the primary decisions were not examined, so the pair illustrates the risk of divergence rather than proving it. Read through Radbruch's theory, Article 7(2) falls short of legal certainty because 'very urgent reasons' is vague: Alston is reported to hold that vagueness occurs when a term's application cannot be ascertained, while Marmor's 'multiple meanings' is, in the terms used here, closer to ambiguity.⁹⁴

The increase of the minimum age for women from 16 to 19 aims to reduce child marriage, but the dispensation exception and low public awareness limit its effect.⁹⁵ Because Article 7(2) sets no age limit for applicants, a dispensation could in principle be granted to a child well under 19, for example a 15-year-old, provided the judge finds very urgent reasons and sufficient evidence.⁹⁶

2. Comparative Perspective: The Age Floor for Exceptions in Jordan.

Wiranto and others describe Jordan as a model of 'legal dualism': the constitutional guarantee of equality is excluded from Muslim family matters, which are governed by the Personal Status Law under the exclusive jurisdiction of the Sharia courts.⁹⁷ Indonesia differs, since dispensation is decided by the Religious Court for Muslims and the District Court for others within one constitutional order. The joint submission reports that the 2017 Instructions for Granting Marriage Permits to Individuals under 18 remain in effect

⁹² Pratama, Sudarmaji, and Abqori, "Analisis Putusan Hakim Terhadap Penolakan Dispensasi Kawin Perspektif Masalah Mursalah," 78–79.

⁹³ Hikmah et al., "Disparitas Penafsiran Hakim Tentang Makna Urgensi Dalam Alasan Dispensasi Kawin," 875–77.

⁹⁴ Cecep Tedy Siswanto, "Analisis Kebijakan Dispensasi Kawin Di Indonesia," *Jurnal Hukum Caraka Justitia* 5, no. 1 (2025): 101, <https://doi.org/10.30588/jhcj.v5i1.2197>.

⁹⁵ Sonny Dewi Judiasih, Susilowati Suparto Dajaan, and Bambang Daru Nugroho, *Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur Di Indonesia*, 3, no. 2 (2020): 220, <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/221>.

⁹⁶ Undang-Undang (UU) Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. Article 7(2) (the provision states no lowest age for the person for whom dispensation is sought).

⁹⁷ Wiranto et al., "Hukum Perkawinan Di Timur Tengah : Mesir, Yordania, Suriah, Dan Arab Saudi," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 4, no. 2 (2026): 591, <https://doi.org/10.61104/alz.v4i2.4351>.

and require the judge to verify consent and the necessity and interest served, and to check that the age gap is at most 15 years, that the suitor is unmarried and can pay the dowry and provide a home, that the marriage will not end the child’s schooling, and that a medical examination has been done.⁹⁸ Requests may be referred to Family Reconciliation and Mediation Offices for a recommendation.⁹⁹ The Instructions refer to a minor who has completed 15, whereas Article 10(B) refers to 16; which threshold prevails cannot be determined from the sources consulted.¹⁰⁰

The submission also reports shortcomings. The Instructions do not define ‘necessity’ or ‘interest’, and respondents were unclear about them.¹⁰¹ The referral offices approved 95% of the petitions referred to them, and of 7,964 child marriages in 2020, 6,401 were endorsed by them, so about 20% were permitted without referral, which is optional.¹⁰² Of the 75 married girls interviewed, 92% left school after marriage;¹⁰³ that figure comes from indicative, non-representative research based on snowball sampling, and none of these figures establishes causation. Child marriages in Jordan fell after the 2017 Instructions but rose again in 2020–2021.

The comparison uses a common function, limiting exceptions to the minimum marriage age, and the six criteria of Table 2. Article 10(A) of Jordan’s Personal Status Law No. 15 of 2019 sets the marriage age at 18, raised from 15, and Article 10(B) allows a judge, upon the Chief Justice’s approval, to permit marriage from 16 if in the person’s best interest.¹⁰⁴ Two further sources are used: a comparative study of Middle Eastern marriage law¹⁰⁵ and a joint submission by three Jordanian child-rights organisations to the UN Universal Periodic Review, which is treated as one stakeholder’s report, not an official evaluation.

Table 2. Indonesian and Jordanian rules on exceptions to the minimum marriage age

Criterion	Indonesia	Jordan
General minimum age	19 years for men and women.	18 years.

⁹⁸ Save the Children Jordan, SOS Children’s Villages Jordan, and Information Foundation and Research Center King Hussein, “Challenges Related to Children’s Rights in Jordan,” 2024, 4, Paragraph 1.6, https://haqqi.info/sites/default/files/2023-08/SCJordan_SOS%20UPR%2005062023%20%282%29.pdf.

⁹⁹ Jordan, Jordan, and Foundation, 4. Paragraph 1.7

¹⁰⁰ Jordan, Jordan, and Foundation, 2–4.

¹⁰¹ Jordan, Jordan, and Foundation, 5. Paragraph 1.8

¹⁰² Jordan, Jordan, and Foundation, 5. Paragraph 1.7

¹⁰³ Jordan, Jordan, and Foundation, 5. Paragraph 1.10

¹⁰⁴ قانون الأحوال الشخصية الأردني رقم 15 (لسنة 2019).

¹⁰⁵ Wiranto et al., “Hukum Perkawinan Di Timur Tengah : Mesir, Yordania, Suriah, Dan Arab Saudi,” 591.

Lowest age for exceptions	None stated in Article 7(2).	16 years (Article 10(B)); the 2017 Instructions, reported to remain in effect, refer to 15.
Authority granting permission	The court: the Religious Court for Muslims and the District Court for others.	The judge, upon approval of the Chief Justice; referral to a mediation office is optional.
Substantive standard	“Very urgent reasons”, defined in the Elucidation as a situation with no other option, with sufficient evidence; PERMA principles, including the best interests of the child.	Marriage required by ‘necessity’ and ‘interest’ in the judge’s determination; neither is defined.
Additional safeguards	Judicial advice, hearing of the child and parents, identification of coercion, professional recommendation (optional), and nullity for non-compliance.	Consent check, age gap of at most 15 years, schooling, means, medical examination, premarital course; no follow-up on schooling is reported.
Effectiveness	No decision-level evidence in this article; Badilag reports declining applications but warns of unregistered marriage.	Reported: 95% of referred petitions approved; about 20% of 2020 permits without referral; 92% of 75 girls interviewed left school (indicative sample).

Not every element is transferable. A lowest age for exceptions can be adopted because Article 7(2) has none, and it should be set by law because it restricts the right to form a family.¹⁰⁶ The figure of 16 is not simply copied: it was the minimum age for women under Article 7(1) of Law No. 1 of 1974 before 2019, it equals Jordan’s lowest age for exceptions, and it is the absolute minimum accepted by the 2014 joint recommendation of the CEDAW and CRC committees where exceptions are allowed.^{107,108} It is a transitional compromise, since the CRC treats everyone under 18 as a child and CEDAW denies legal effect to the marriage of a child,^{109,110} so abolition is the long-term direction (Section D). Approval by the Chief Justice is incompatible with the independence of judicial power¹¹¹ and is not adopted; a statutory floor binds every judge equally, whereas approval is

¹⁰⁶ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Article 28J(2).

¹⁰⁷ Committee on the Elimination of Discrimination against Women (Author); Committee on the Rights of the Child, “Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices,” Joint General Recommendation, New York: United Nations, 2014, 14, <https://docs.un.org/en/CEDAW/C/GC/31/REV.1>.

¹⁰⁸ قانون الأحوال الشخصية الأردني رقم 15 (لسنة 2019).

¹⁰⁹ CRC, Articles 1 and 3(1).

¹¹⁰ Convention on the Elimination of All Forms of Discrimination against Women, 7. Article 16(2).

¹¹¹ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Article 24(1).

hierarchical control of an individual decision. Three lessons from the Jordanian reports, none establishing causation, shape the model: an exception defined only by ‘necessity’ or ‘interest’ leaves the same uncertainty as the circular Elucidation, so urgency must be defined through criteria (Section C); conditions without follow-up, such as continued schooling, are reported to have had little effect, so conditional orders need monitoring; and where referral to a review body is optional, a safeguard can be bypassed, so the model makes the professional recommendation mandatory below 18.

3. A Structured Judicial Assessment Framework for “Very Urgent Reasons”.

The framework treats Target 5.3 of the SDGs, the elimination of child, early and forced marriage, as the legal objective to be achieved. From the SDGs it derives four assessment dimensions: economic vulnerability (Goal 1), maternal and child health (Goal 3), education (Goal 4), and free consent and protection from coercion (Target 5.3 itself). Three dimensions thus come from Goals 1, 3, and 4, and the fourth from the Target that also states the objective.¹¹²

SDG indicators are population-level measures, whereas a judge decides an individual case, so they are not applied as thresholds. Each indicator identifies a risk that child marriage tends to raise at population level; the risk is restated as a question for the judge and evidence that can answer it (Tables 3 and 4).¹¹³

Table 3. From official SDG indicators to case-level criteria (authors’ construction)

Dimension	Official indicator	Meaning at case level
Economic vulnerability (Goal 1)	1.2.1 population living below the national poverty line; 1.3.1 population covered by social protection systems	Whether the household lacks income and protection, and whether marriage would transfer or deepen that vulnerability
Maternal and child health (Goal 3)	3.1.1 maternal mortality ratio; 3.2.1 under-five mortality rate; 3.7.2 adolescent birth rate	Risk to the health of the child, and of any child to be born, at this age and in this condition
Education (Goal 4)	4.1.2 completion rate (primary, lower secondary, upper secondary)	Whether the child will complete schooling after marriage

¹¹² Assembly, “A/RES/70/1: Transforming Our World: The 2030 Agenda for Sustainable Development.” Goals 1, 3, and 4 and Target 5.3

¹¹³ Assembly, “A/RES/71/313: Work of the Statistical Commission Pertaining to the 2030 Agenda for Sustainable Development.” indicators 1.2.1, 1.3.1, 3.1.1, 3.2.1, 3.7.2, 4.1.2, and 5.3.1.

Free consent and protection from coercion (Target 5.3)	5.3.1 proportion of women aged 20–24 married or in a union before age 15 and before age 18	Whether the child’s will is free; marriage before 18 is a risk marker, not proof of coercion
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Table 4. Judicial assessment matrix for “very urgent reasons” (authors’ proposal)

Dimension and SDG reference	Entry point in positive norms	Questions for the judge	Required evidence	Legal consequence
Economic vulnerability (Goal 1; Indicators 1.2.1, 1.3.1)	PERMA Art. 12 (economic impact); Law No. 35 of 2014 Art. 26(1)(c)	Does the marriage reduce the child’s economic vulnerability or merely shift the burden? Are there alternative social-protection options?	Statements from both families; any available proof of income, housing, and social-assistance status; written commitment to provide maintenance (absence of documents is not by itself a ground for refusal)	Economic grounds cannot stand alone; may be granted conditionally if maintenance is guaranteed
Maternal and child health (Goal 3; Indicators 3.1.1, 3.2.1, 3.7.2)	PERMA Arts. 12 and 15; 1945 Constitution Art. 28H(1)	Are the child’s physical, reproductive, and psychological conditions safe? Is there a pregnancy or health risk?	Health professional’s certificate (already required by the Elucidation); recommendation from a psychologist or child-service institution	High risk without mitigation: reject or defer. Manageable risk: conditional on examinations and accompaniment. Pregnancy: see the pathway below
Education (Goal 4; Indicator 4.1.2)	PERMA Art. 12; 1945 Constitution Arts. 28C(1) and 31(1)	Can the child continue formal or non-formal education after marriage?	Statement from the educational institution; written plan and commitment to	Conditional order requiring continued education and reporting; without a verified

			continue schooling	plan, the dimension is not satisfied and the judge may defer for a plan to be prepared or refuse
Free consent and protection from coercion (Target 5.3; Indicator 5.3.1)	Law No. 16 of 2019 Art. 7(3); PERMA Art. 14	Does the child express their will freely? Is there psychological, physical, or sexual, or economic coercion, Pregnancy is assessed under the pathway below and is not treated as coercion by itself.	Child's statement heard directly; psychologist's assessment; statement of a companion	Coercion proven: reject and refer to child protection

The matrix is the authors' construction and still needs to be tested against a sample of court decisions.

The binding force is structured in three tiers. At the first, the SDGs are an interpretative consideration, already permitted by judges' duty to explore the values of justice.¹¹⁴ At the second, an amendment to the PERMA makes assessment of the four dimensions a mandatory consideration with a comply-or-explain mechanism: judges must assess each dimension and give reasons for any departure. At the third, only matters restricting constitutional rights, such as the lowest age and the negative criteria, are placed in the law.¹¹⁵ At present only the first tier applies, so the framework is persuasive, not binding. Comply-or-explain also answers the limit that Bendor and Segal identify in Barak's theory: discretion bounded only by an abstract duty of reasonableness risks being perceived as a substitute for legal reasoning rather than a supplement to it.¹¹⁶

Comply-or-explain might be said to infringe judicial independence, which the model invokes against Chief Justice approval. The two differ in kind: approval controls the

¹¹⁴ Undang-Undang (UU) Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman. Article 5(1).

¹¹⁵ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Article 28J(2).

¹¹⁶ Bendor and Segal, "The Judicial Discretion of Justice Aharon Barak," 475.

outcome of a decision, whereas comply-or-explain requires only that each dimension be assessed and departures be reasoned, as Indonesian law already requires of decisions generally¹¹⁷ and as the PERMA already requires of dispensation decisions on pain of nullity.¹¹⁸ The weighing and the decision remain the judge's, consistent with Article 24(1) of the 1945 Constitution.

The model has two layers. Layer A places norms in the body of Article 7(2), not its Elucidation, because an Elucidation may not contain norms.¹¹⁹ It has three parts: a lowest age of 16 years; cumulative criteria with operational meanings; and negative criteria. A 'real and imminent risk' is a risk established by evidence other than the parents' statements (a health certificate or a report by a social worker, psychologist, or child-protection institution) and already materialising or concretely expected, not a general fear of adolescent relationships. 'Marriage as the only effective means' requires the judge to record that protective alternatives were examined and found inadequate or unavailable: counselling, integrated child-protection services, postponement with support until 19, continued schooling, and, in a pregnancy, proof of paternity and recognition of the child's civil relationship without marriage. The four-dimension assessment must not be contrary to the child's best interests. The negative criteria are that concern about relationships, customary or family pressure, and economic difficulty cannot stand alone. Layer B (the PERMA) contains the four-dimension checklist, a duty to record each dimension, a mandatory professional recommendation for every applicant under 18, conditional orders with monitoring, and standardised recording; Article 15 currently makes the recommendation optional (*dapat*).¹²⁰ Assessment proceeds in five steps: (1) formal test of age and completeness; (2) minimum-age test, refusing applications below 16 and referring them to child-protection and health services; (3) test of the reason against the negative criteria; (4) assessment of the four dimensions with professional recommendation; and (5) decision (conditional grant, deferral, or refusal) with reasons for each dimension.

¹¹⁷ Undang-Undang (UU) Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman. Article 50(1).

¹¹⁸ Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin. Articles 12(4) and 13(3).

¹¹⁹ Adi Condro Bawono, "Fungsi Penjelasan Dan Lampiran Peraturan Perundang-Undangan," *Hukumonline*, n.d.

¹²⁰ Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin, n.d. Article 15.

PERMA No. 5 of 2019 defines a child as a person under 19, whereas Law No. 35 of 2014 and the CRC use 18.^{121,122,123} The best interests principle therefore reaches every applicant, including those aged 18, who receive the full four-dimension assessment; the professional recommendation is mandatory below 18 and discretionary at 18.

Pregnancy outside marriage, the most frequently reported ground, is neither an automatic reason nor an automatic 'coercion of circumstance'; it opens a conditional pathway. First, the age floor applies: applicants under 16 are refused and referred for medical and child-protection care. Second, the health dimension is assessed promptly with a professional recommendation. Third, the judge examines consent and possible sexual violence; where the pregnancy results from rape, marriage of the victim to the perpetrator is a form of forced marriage and the application is refused and referred.¹²⁴ Fourth, the judge records the alternatives: the child's civil relationship with the father can be established without marriage, and the Compilation of Islamic Law permits marriage during pregnancy without waiting for the birth, so marriage is a permitted route, not the only one.^{125,126} Fifth, if the other dimensions are satisfied, dispensation may be granted with conditions.

This responds to the dilemma Bendor and Segal identify in Barak's doctrine: criteria that leave a single lawful option remove discretion, and criteria that leave several have not helped.¹²⁷ For matters that restrict constitutional rights (the lowest age, refusal of coerced marriage, and the negative criteria) the model accepts a single lawful option and places them in the law. Elsewhere it keeps several lawful options in a zone of managed risk, where the judge may grant with conditions, defer until reports arrive, or refuse, recording reasons.

Two counter-risks need attention. Stricter evidence may push poor families towards unregistered marriage; Badilag warns that fewer applications do not necessarily mean less child marriage and reports about 34 million couples not yet recorded in the civil registry.¹²⁸ The model therefore treats no missing document as a ground for refusal where

¹²¹ Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin. Article 1.

¹²² Undang-Undang (UU) Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak. Article 1(1).

¹²³ Convention on the Rights of the Child. Article 1.

¹²⁴ Undang-Undang (UU) Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual. Article 10(2)(c).

¹²⁵ Kompilasi Hukum Islam. Article 53.

¹²⁶ Putusan No. 46/PUU-VIII/2010. amar putusan on Article 43(1) of UU No. 1 Tahun 1974.

¹²⁷ Bendor and Segal, "The Judicial Discretion of Justice Aharon Barak," 466-67.

¹²⁸ Abdul Rahman, "Dirjen Badilag Ungkap Tren Dispensasi Kawin Menurun, Namun Peringatkan Potensi Besar Perkawinan Anak Di Bawah Tangan Pada Seminar Internasional Di Pascasarjana UIN Bandung."

other evidence shows the child's circumstances, pairs refusal with referral and information on unregistered marriage, and records refusals and referrals so the effect can be measured. Conditional orders such as continued schooling need monitoring: the model proposes periodic reports from local education and child-protection offices and, on breach, a monitoring hearing and referral to services, not annulment. These are the authors' proposals, and their cost and capacity are untested.

The closest studies are Ashari's and Hikmah and others'. Ashari finds that the regulations do not adequately explain the phrase, so judges build interpretations from the child's circumstances, parental involvement, and environmental factors, and proposes a simplified mathematical approach to judicial reasoning.¹²⁹ Hikmah and others document divergent interpretations of urgency in ten South Kalimantan decisions.¹³⁰ On the basis of their abstracts, neither derives criteria from SDG indicators, specifies evidence and consequences for each criterion, or addresses the route to binding force. This article builds on Ashari's idea of structured reasoning and gives it content and a binding-force architecture.

Discretion can be preserved and structured at once through the four-dimension assessment, consistent with the requirement that discretion be exercised reasonably, by an objective test, without arbitrariness,¹³¹ and reflecting Kaplow's trade-off between rules, costly to make but cheap to apply, and standards, the reverse: the model combines a rule (age floor, negative criteria) with a standard (structured assessment).¹³²

The contribution is not repeating the best interests principle but translating it into testable criteria, evidence, and consequences. In court, the judge first checks the lowest age and the evidence required by the Elucidation; then assesses the four dimensions using the questions and evidence in Table 4; and then draws the legal consequence stated there (reject, defer, or grant conditionally), giving and recording reasons. Each ground of urgency thus becomes testable, and the judge's remaining choice is confined to cases where the assessment leaves more than one lawful outcome.

4. Implications for the SDGs and the Position of the Model.

¹²⁹ Ashari, "Rekonstruksi Pertimbangan Alasan Sangat Mendesak Pada Perkara Dispensasi Kawin Di Pengadilan Agama," 1097.

¹³⁰ Hikmah et al., "Disparitas Penafsiran Hakim Tentang Makna Urgensi Dalam Alasan Dispensasi Kawin," 880.

¹³¹ Bendor and Segal, "The Judicial Discretion of Justice Aharon Barak," 472.

¹³² Louis Kaplow, "Rules Versus Standards: An Economic Analysis," *Duke Law Journal* 42 (1992): 559-60, <https://scholarship.law.duke.edu/dlj/vol42/iss3/2>.

Reconstructing Article 7(2) supports SDGs 1, 3, and 4 and Target 5.3, which calls for eliminating harmful practices such as child, early and forced marriage.¹³³ Judiasih and others argue that child marriage discriminates against women and violates human rights and should be abolished,¹³⁴ and Purba notes that it disproportionately affects girls, in tension with CEDAW's equality standard;¹³⁵ this article takes the same long-term position, and the model is transitional, keeping dispensation from 16 only while the exception exists and constraining it. Each dimension of Section C maps onto an SDG channel. Under Goal 1, poverty is reported to push some parents to marry off their children, since marriage is seen as reducing the family's burden;^{136,137} under Goal 3, underage marriage is associated with maternal and infant health risks;¹³⁸ and under Goal 4, early marriage tends to reduce educational opportunities and hinder women's empowerment.^{139,140} That contribution is a hypothesis grounded in the literature, not a finding of this article.

CONCLUSION

This article concludes, first, that the uncertainty in Article 7(2) stems from a circular definition of "very urgent reasons", the absence of substantive indicators of urgency, and the absence of a lowest age, which, together with variation in discretion and implementation, mean the remedy cannot be a single measure.

Second, parameters for assessing very urgent reasons can be reconstructed through a structured judicial assessment framework that uses the official indicators of SDGs 1, 3, and 4 and of Target 5.3 as reference measures for four dimensions: economic vulnerability, maternal and child health, education, and free consent. It proposes a lowest

¹³³ Assembly, "A/RES/70/1: Transforming Our World: The 2030 Agenda for Sustainable Development." Goal 5, Target 5.3.

¹³⁴ Judiasih et al., "Efforts to Eradicate Child Marriage Practices in Indonesia: Towards Sustainable Development Goals," 138.

¹³⁵ Purba, "The Protection of Children's Rights and Gender Equality in the Perspective of International Law," 77.

¹³⁶ Faisal, "Dinamika Pernikahan Dini Dan Stabilitas Rumah Tangga: Analisis Kasus Perceraian Di Kota Yogyakarta," 48.

¹³⁷ Purba, "The Protection of Children's Rights and Gender Equality in the Perspective of International Law," 78.

¹³⁸ Hasan Bastomi, "Pernikahan Dini Dan Dampaknya (Tinjauan Batas Umur Perkawinan Menurut Hukum Islam Dan Hukum Perkawinan Indonesia)," *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 7, no. 2 (2016): 376, <https://doi.org/10.21043/yudisia.v7i2.2160>.

¹³⁹ Tan, "Problematisasi Perkawinan Di Bawah Umur Dan Tantangan Dalam Mencapai Sustainable Development Goals (SDGs)," 85-86.

¹⁴⁰ Sri Endah Kinasih and others, 'Gender-based Education to Addressing Child Marriage', *Indonesia Journal of Legal Community Engagement*, 8.2 (2025), 569-616 (610).

age of 16, a mandatory professional recommendation for applicants under 18, and an explicit pathway for pregnancy outside marriage. The SDGs do not bind judges; the framework can bind them once embedded in positive norms through an amendment of PERMA No. 5 of 2019 (a mandatory consideration with comply-or-explain) and of the law (the lowest age and the negative criteria). Until then it operates as an interpretative consideration.

Theoretically, the model shifts from a choice between unguided discretion and mechanical rules to "structured discretion", in which a few rules (the lowest age and the negative criteria) bound a zone of reasoned judgment. Practically, it gives the Supreme Court a basis for an assessment checklist and the legislature a basis to restructure Article 7(2). The study is limited to normative analysis, has not tested the model against court decisions, and examined the Jordanian rule through secondary sources; further research should test it empirically.

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