

The Legal Reasoning of Religious Court Judges in Granting Marriage Dispensations from the Perspective of *Maqāshid Al-Shari'ah*

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Article info

Received: Sep 24, 2024

Revised: Nov 5, 2024

Accepted: Dec 15, 2024

DOI: <https://doi.org/10.31599/krtha.v18i3.2937>

Abstract : *The issue of preventing child marriage and marriage dispensation to provide child protection remains a crucial legal problem. This research aims to examine the legal reasoning in the rulings of Religious Court judges regarding marriage dispensation applications and to what extent these rulings provide child protection from the perspective of Maqāshid Al-Shari'ah. This study employs normative legal research methods and analyzes legal issues from the perspective of Maqāshid Al-Shari'ah. Data collection was conducted through a literature review. The findings indicate that the legal reasoning in the rulings of Religious Court judges has not fully aligned with the spirit of the Marriage Law, the Child Protection Law, and the Supreme Court Regulation on Marriage Dispensation, which aim to prevent child marriage. There is a dilemma among judges between efforts to prevent child marriage and the legal reality where the child applying for marriage dispensation has met urgent reasons and supporting evidence. Most of the rulings by Religious Court judges on marriage dispensation cases align with the main objectives of Islamic law (Maqāshid Al-Shari'ah), which are the protection of religion (hifz al-din), the protection of life (hifz al-nafs), the protection of lineage (hifz al-nasl), the protection of intellect (hifz al-aql), and the protection of property (hifz al-māl).*

Keywords : *Legal Reasoning, Religious Court, Marriage Dispensation, Maqāshid Al-Shari'ah*

Abstrak : *Persoalan pencegahan perkawinan anak dan dispensasi perkawinan dalam rangka memberikan perlindungan terhadap anak hingga kini masih menjadi problematika hukum yang krusial. Penelitian ini bertujuan untuk mengkaji legal reasoning dalam penetapan Hakim Pengadilan Agama mengenai perkara permohonan dispensasi perkawinan dan sejauhmana penetapan hakim tersebut memberikan perlindungan terhadap anak ditinjau dari perspektif maqāshid al-shari'ah. Penelitian ini menggunakan metode penelitian hukum normatif dan menganalisis masalah hukum dari perspektif maqāshid al-shari'ah. Pengumpulan data dilakukan melalui penelusuran data kepustakaan. Hasil penelitian menunjukkan legal reasoning dalam penetapan Hakim Pengadilan Agama belum sepenuhnya sejalan dengan spirit UU Perkawinan, UU Perlindungan Anak, dan PERMA Dispensasi Perkawinan yaitu untuk mencegah perkawinan anak terjadi. Ada dilema di kalangan para Hakim, antara upaya mencegah perkawinan anak dengan fakta hukum adanya kepentingan anak yang dimohonkan dispensasi perkawinan telah memenuhi alasan sangat mendesak dan bukti pendukung yang mencukupi. Sebagian besar penetapan Hakim Pengadilan Agama terhadap perkara dispensasi perkawinan telah sesuai dengan tujuan-tujuan utama hukum Islam (Maqāshid al-shari'ah), yaitu perlindungan agama*



(*hifẓ al-dīn*), perlindungan jiwa (*hifẓ al-nafs*), perlindungan keturunan (*hifẓ al-nasl*), perlindungan akal (*hifẓ al-aql*), dan perlindungan (*hifẓ al-māl*).

Kata kunci : *Legal Reasoning*, Pengadilan Agama, Dispensasi Perkawinan, *Maqāshid al-Shari'ah*

I. INTRODUCTION

Marriage aims to form a happy and lasting family, or in Islamic legal terminology, to create a family that is *sakinah, mawaddah, warahmah*.¹ Therefore, every person intending to marry must be well-prepared, both physically and mentally, to achieve the purpose of marriage. Child marriage is feared to have adverse effects on the child's future development and may result in the failure to fulfill the child's rights to survival, growth, and development, as well as protection from all forms of violence and discrimination. In addition to the negative impact on physical and mental health, early marriage can affect reproductive health, leading to issues such as childbirth defects and maternal mortality during childbirth.²

To prevent child marriage, Law Number 23 of 2002 on Child Protection, as amended by Law Number 35 of 2014, mandates that parents are responsible for preventing child marriage.³ Furthermore, Law Number 12 of 2022 on Sexual Violence Crimes (UU TPKS) explicitly states that child marriage is considered a form of sexual violence crime. Law Number 1 of 1974 on Marriage (UUP), as amended by Law Number 16 of 2019, regulates that everyone, both male and female, is only permitted to marry if they have reached the age of 19.⁴

The enactment of Law Number 16 of 2019 is intended not only to eliminate gender discrimination regarding the age of marriage for women and men but also to protect the best interests of the child by preventing marriage at a young age.⁵ The change in the

¹ The purpose of marriage is mentioned in Article (Pasal) 1 of Law (Undang-Undang) No. 1 of 1974 on Marriage and Article 3 of the Compilation of Islamic Law.

² Ahmad Juhaidi & Masyithah Umar, *Pernikahan Dini, Pendidikan, Kesehatan Dan Kemiskinan Di Indonesia, Masihkah Berkorelasi?*, Khazanah: Jurnal Studi Islam dan Humaniora, Vol. 18, No. 1 (2020), hlm. 12-20. Lihat juga Shafa Yuandina Sekarayu & Nunung Nurwati, *Dampak Pernikahan Usia Dini Terhadap Kesehatan Reproduksi*, Jurnal Pengabdian dan Penelitian Kepada Masyarakat (JPPM), Vol. 2 No.1, April 2021: hlm. 42-43. <https://jurnal.unpad.ac.id/jppm/article/view/33436/15460>

³ There is a difference in the understanding of the concept of a child between the UUPA and the UUHLM. In the general provisions of the UUPA, Article 1 states that a child is defined as someone under the age of 18 (eighteen), including a child in the womb. Meanwhile, the UUP mentions child marriage as a marriage conducted under the age of 19, for which a marriage dispensation may be requested.

⁴ Law No. 16 of 2019 on the Amendment of Law No. 1 of 1974 on Marriage was enacted as a form of implementation of Constitutional Court Decision No. 22/PUU-XV/2017, which mandated changes to the provisions regarding the minimum age for marriage as stipulated in Article 7 of Law No. 1 of 1974 on Marriage. The minimum marriage age for girls, which was originally set at 16 years according to Article 7 of Law No. 1 of 1974 on Marriage, has been amended to be the same as that for boys, at a minimum age of 19 years. The Constitutional Court judges viewed the difference in the minimum marriage age as being contrary to the principle of equality before the law, which is a fundamental characteristic of a democratic state under the rule of law as outlined in Article 27 of the 1945 Constitution of the Republic of Indonesia. See Constitutional Court Decision No. 22/PUU-XV/2017.

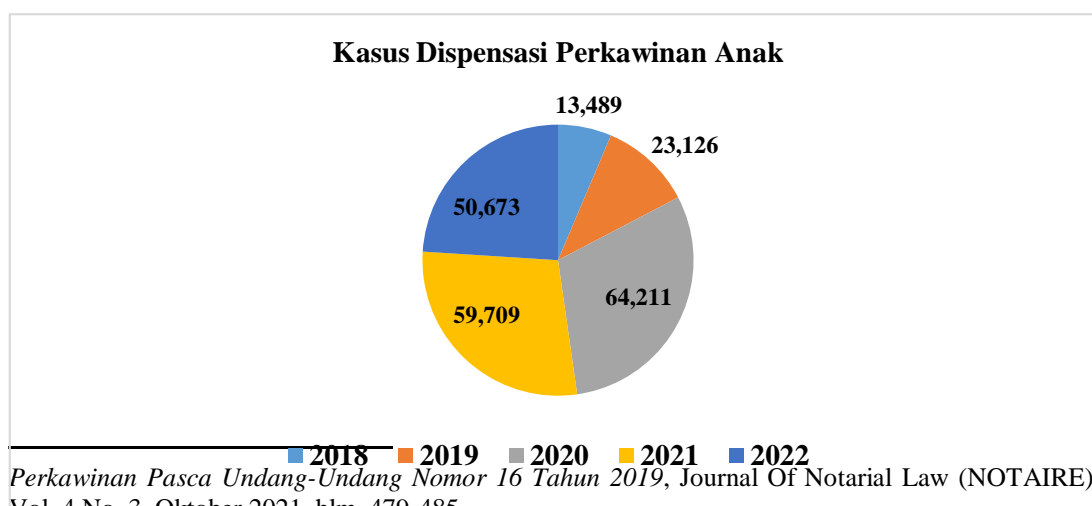
⁵ Miftakur Rohman, *Dispensasi Perkawinan Dan Kebijakan Politik Hukum Di Indonesia*, MASADIR: Jurnal Hukum Islam Volume 03, Nomor 01, April 2023. hlm. 566-567. Lihat juga Trisadini Prasastinah Usanti, Xavier Nugraha, dan Dita Elvia Kusuma Putri, *Analisis Perubahan Politik Hukum Dispensasi*

minimum marriage age for girls to match that of boys, at 19 years, is an effort to prevent the negative impacts of child marriage. This change aims to ensure that girls are physically and mentally prepared and have broader opportunities to access education on par with boys, enabling them to play an active role in society.⁶

Meanwhile, Article 15 of the Compilation of Islamic Law (KHI) contains similar provisions to those in Article 7 of the Marriage Law (UUP) before the amendment. Islamic law does not explicitly determine the permissible age for marriage. Classical and contemporary scholars agree that while religion does not strictly prohibit underage marriage, it also does not encourage it, especially if it occurs without considering physical readiness, mental maturity, and the best interests of the child. As long as the marriage provides benefits to the child, everyone has the right to marry.⁷ This aligns with the provisions of the Marriage Law, which, while setting the marriage age at 19, still grants children the right to marry below the legal age by applying for a marriage dispensation in court.⁸

In practice, the legal policy to prevent child marriage still falls short of expectations. According to reports from the United Nations Children's Fund (UNICEF), there is a significant prevalence of child marriages in Indonesia. UNICEF reports that between 2008-2018, child marriage prevalence was high in Indonesia. By 2023, Indonesia ranked fourth globally in child marriages, with 25.53 million cases⁹, making it one of the highest in East Asia and the Pacific.¹⁰ Child marriages are most common among children with low education levels and those from low-income families, predominantly in rural areas.

Meanwhile, based on data from the Religious Courts Agency, it records the number of requests for dispensation over the last four five from 2018-2022.



⁶ Holijah & Jariyah binti Abd Manaf, *The Importance of Increasing Minimum Age For Marriage In Indonesian Marriage Law*, Al-Adalah, Vol. 16, No. 2 (2019), hlm. 427-428

⁷ Moh Hatta, *Batasan Usia Perkawinan Dalam Perspektif Ulama Klasik Dan Kontemporer*, Al-Qānūn: Jurnal Pemikiran Dan Pembaharuan Hukum Islam 19, No. 1 (2016): 73–78. Lihat juga Samsul Hadi, Putusan Mk No.22 /Puu-Xv /2017 Tentang Permohonan Judicial Review Pasal 7 Ayat (1) Uu No. 1 Tahun 1974 Tentang Usia Perkawinan Dalam Perspektif Maslahah, Ahwal, Vol. 11, No. 2, (2018). HLM. 74-75.

⁸ Pasal 7 ayat (1) dan (2) UU No. 16 Tahun 2019 tentang Perubahan atas UU No. 1 Tahun 1974 tentang Perkawinan

⁹ <https://news.schoolmedia.id/lipsus/Indonesia-Peringkat-Empat-Kasus-Kawin-Anak-di-Dunia-2552-Juta-Anak-Menikah-USia-Dini-3898>

¹⁰ <https://news.unair.ac.id/2021/01/05/fenomena-perkawinan-anak/?lang=id>

Based on this case data, there has been a drastic increase in cases of marriage dispensation in Indonesia, especially after the enactment of Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriage.¹¹ Even though there was a decrease of 17.54% in 2022 compared to cases that occurred in 2021, when compared before and after the birth of the amended UUP, cases of requests for marriage dispensation increased by 100%. This shows that there is an anomaly between the hopes and objectives in the UUP as a result of changes that seek to tighten child marriage, but in fact cases of child marriage are increasing.

The various cases of child marriages approved by the courts reflect a legal dilemma that influences judges' decisions. Fundamentally, Article 28B, paragraph (2) of the 1945 Constitution mandates that every child has the right to live, grow, and develop as the next generation of the nation. Meanwhile, Article 28D affirms that every person has the right to form a family and continue their lineage through marriage as a fundamental right that must be protected. In the legal reasoning of judges' decisions, there is a dilemma between the legal policy of the Child Protection Law, which seeks to prevent child marriage, and the provisions of Law No. 16 of 2019, which allows child marriage under urgent circumstances. There is a conflict between protecting children and the practical reality where children are already involved in premarital sexual relations or pregnancy.¹² In truth, marriage should not only be pursued due to urgent reasons but to form a happy and lasting family and to prevent divorce.¹³

At this level, the role of judges becomes challenging in assessing the legal facts against the legal provisions stipulated by law. This is understandable because the legal provisions in Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage, and the Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications, only determine the reasons, requirements, and guidelines for adjudicating marriage dispensation cases. The assessment of whether there are "urgent reasons" for a marriage dispensation application is entirely at the judge's discretion, interpreting the best interests of the child.¹⁴

This study seeks to examine the legal reasoning in judges' decisions, including the considerations used in assessing legal facts, legal bases, and the legal interpretation

¹¹ <https://dataindonesia.id/varia/detail/dispensasi-pernikahan-anak-mencapai-50673-kasus-pada-2022>

¹² Ahdiyatul Hidayah and Mesfer Ali M. Alaklabi, *Aligning Legal Effectiveness with Children's Interests: A Study of Marriage Dispensation Decisions in Religious Courts of Amuntai*, Jurnal Indo-Islamika, Volume 13, No. 2, January-June 2023, hlm. 111-113.

¹³ Nada Putri Rohana, Wilda Rahma Nasution, *Dinamika Pemberian Dispensasi Kawin Dibawah Umur Oleh Hakim Pasca Perubabano Undang-Undang Perkawinan*, AJUDIKASI: Jurnal Ilmu Hukum, Volume 7 Nomor 1, Juni 2023. hlm. 171

¹⁴ In Article 3 of the Convention on the Rights of the Child, as ratified by the Government of Indonesia through Presidential Decree No. 36 of 1990 on the Ratification of the Convention on the Rights of the Child, emphasizes that all actions and decisions must be based on the best interests of the child.

methods employed by judges in granting or rejecting marriage dispensations, from the perspective of the best interests of the child.¹⁵ This is important to provide solutions to the legal issues surrounding the granting of child marriage dispensations, ensuring justice, legal certainty, and legal benefit for the child.

II. RESEARCH METHOD

This study is a normative juridical research, which seeks to examine legal concepts, principles, and regulations relevant to the subject under study. It falls within the scope of library research. The data sources used are secondary data consisting of primary, secondary, and tertiary legal materials, including legislation, court rulings, books, and journals directly or indirectly related to the legal issues being investigated. This study is classified as a literature review, focusing on analyzing and examining various literatures or books related to the issues under investigation. The research employs three approaches: the Statute Approach, the Conceptual Approach, and the Case Approach. These three approaches are utilized to comprehensively analyze the legal issues concerning the meaning of the concept "urgent reasons accompanied by sufficient supporting evidence" as stated in Article 7, paragraph (2) of Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage. The study also examines the legal objectives intended by the marriage law, as well as the considerations and legal interpretation methods used by judges in deciding cases involving the granting of marriage dispensation for underage children. The analysis is descriptive-analytical, using a *Maqāshid Al-Shari'ah* perspective within Islamic law.

III. DISCUSSION

Legal Reasoning in Granting and Rejecting Marriage Dispensation

All provisions regarding marriage requirements as stipulated in Articles 6 to 12 of Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, are expected to achieve the purpose of marriage: to create a happy and eternal household based on the belief in God Almighty or, as stated in Article 3 of the Compilation of Islamic Law (KHI), to form a *sakinah* (tranquil), *mawaddah* (loving), and *rahmah* (caring) family.

The age restriction for marriage, as regulated in Law Number 16 of 2019, which sets the minimum marriage age for both men and women at 19 years, aims to prevent child marriage.¹⁶ This regulation is intended to ensure that those intending to marry are mature enough to do so, minimizing the risks associated with marriage, including its

¹⁵ Ahmad Rizza Habibi, *Dialektika Pembuktian Alasan Mendesak dalam Dispensasi Nikah dan Korelasinya terhadap Kepentingan Terbaik bagi Anak*, Artikel Website Resmi Mahkamah Agung, 26 April 2022

¹⁶ According to Article 1 Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Mengadili Perkara Permohonan Dispensasi Kawin, a child is defined as a person who is under the age of 19 or has never been married.

impact on education, health (such as reproductive readiness), psychology, sociology, culture, economy, and the potential for domestic disputes and violence.¹⁷

Despite various regulations aimed at preventing child marriage, the law still provides a right for children to marry below the age of 19, as marriage is a right guaranteed by law. This right is exercised by allowing parents to apply for marriage dispensation based on very urgent reasons supported by sufficient evidence.¹⁸

Article 7, paragraph (2) of the amended Marriage Law stipulates that a marriage dispensation can only be granted if there are "very urgent reasons" accompanied by sufficient supporting evidence. The explanation of this article defines "very urgent reasons" as a situation where the parents of the bride or groom have no other choice and are compelled to marry off their child. The term "sufficient supporting evidence" refers to documents proving that the intended bride or groom is below the legal age and a certificate from a healthcare provider supporting the urgency of the marriage.¹⁹

This explanation is a general, systematic interpretation, giving judges the discretion to interpret or find the law (*rechtsvinding*) concerning the existence of "very urgent reasons" in specific cases brought before the court. This requires careful consideration by judges when assessing the legal facts and reasoning they will use in deciding marriage dispensation cases.

The determination of whether "very urgent reasons" exist in a marriage dispensation application is the responsibility of the judge, who must enforce the law by concretizing the reasons and evidence based on the facts presented in court. A request will be granted if the reasons and supporting evidence presented by the applicant convince the judge. Conversely, the judge will reject the application if it lacks urgent reasons and the supporting evidence does not substantiate the reasons in court. The primary consideration for judges in such decisions is the best interest of the child, ensuring protection, care, well-being, survival, and development.

In accordance with Article 25, paragraph (3) of Law No. 48 of 2009 on Judicial Power, the Religious Courts have the authority to adjudicate, decide, and resolve cases between Muslims according to applicable laws and regulations. In performing their duties, judges of the Religious Courts must uphold Islamic substantive law or specific Islamic civil law within their jurisdiction. One of the Religious Courts' powers, as regulated in Law No. 3 of 2006, which amends Law No. 7 of 1989 on the Religious Courts, includes marriage, including marriage dispensation.²⁰

¹⁷ Salma Mursyid, Nasruddin Yusuf, *Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi*, Samarah: Jurnal Hukum Kelurga dan Hukum Islam, Vol. 6, No. 2 (2022), hlm. 975-996.

¹⁸ Article 7 Paragraph (2) UU Nomor 16 Tahun 2019 tentang Perubahan Atas UU Nomor 1 Tahun 1974 tentang Perkawinan

¹⁹ See the explanation of Article 7 ayat (2) UU Nomor 16 Tahun 2019 tentang Perubahan Atas UU Nomor 1 Tahun 1974 tentang Perkawinan

²⁰ Mardani, *Hukum Acara Perdata Peradilan Agama & Mahkamah Syariah*, Jakarta: Sinar Grafika, 2009, hlm. 53-60; Abdul Ghofur Anshori, *Peradilan Agama di Indonesia Pasca UU No. 3 Tahun 2006: Sejarah, Kedudukan, dan Kewenangan*, Yogyakarta: UII Press, 2007, hlm. 49-50

Judges in the Religious Courts may grant or reject marriage dispensation applications based on specific legal reasoning that forms the basis of their consideration. A judge will grant an application if the case's facts and legal reasoning align with Islamic law and applicable legislation. Conversely, a judge will reject the application if the facts and legal reasoning do not align with Islamic law or applicable legislation.²¹

Court data indicate that judges have both accepted and rejected marriage dispensation applications based on various legal considerations. The judges' considerations in deciding dispensation cases are based on two factors: the legal facts and the judges' legal reasoning. When assessing legal facts, the judge will examine whether there is a "very urgent reason" in the dispensation application submitted by the parents or guardians. Some "very urgent reasons" frequently cited by applicants and considered by judges include the close relationship between the child and their prospective spouse, the occurrence of intimate relations, pregnancy out of wedlock, and the community's reaction to finding the couple alone in a secluded place (khalwat).²²

First, a close relationship between the child and their prospective spouse often leads to concerns about them committing zina (fornication) or other acts that violate religious norms.²³ This concern frequently motivates parents to apply for marriage dispensation, a consideration often taken into account by judges when granting the request. Second, the reason for having engaged in premarital sexual relations.²⁴ In court proceedings, it has been revealed that many cases of dispensation requests are due to pregnancies outside of marriage.²⁵ Premarital pregnancy is often the primary reason that motivates parents to marry off their children to cover up the shame and the concern that their daughter might give birth without a father. The girl's parents often demand responsibility from the male party who caused their daughter to become pregnant out of wedlock.

Third, pregnancy outside of marriage is a significant factor leading to marriage dispensation applications.²⁶ In many cases, parents are compelled to marry off their

²¹ Widihartati Setiasih, *Analisis Putusan Dispensasi Nikah Dibawah Umur Dalam Perspektif Perlindungan Perempuan*, Jurnal PPKM UNSIQ, Vol. 4, No. 3 (2017). Hlm. 235 -245

²² M. Beni Kurniawan, Dinora Refiasari, *Penafsiran Makna "Alasan Sangat Mendesak" Dalam Penolakan Permohonan Dispensasi Kawin*, Jurnal Yudisial, Vol. 15 No. 1 (2022), hlm. 83-96.

²³ See the Decree of Pengadilan Agama Kediri Nomor 48/Pdt.P/2023/PA.Kdr, the Decree of Pengadilan Agama Tahuna Nomor 13/Pdt.P/2023/PA.Thn, the Decree of Pengadilan Agama Sukamara Nomor 64/Pdt.P/2023/PA.Skr, the Decree of Pengadilan Agama Jember Nomor 1791/Pdt.P/2023/PA.Jr,

²⁴ Bagya Agung Prabowo, *Pertimbangan Hakim dalam Penetapan Dispensasi Perkawinan Dini Akibat Hamil di Luar Nikah pada Pengadilan Agama Bantul*, Jurnal Hukum IUS QUIA IUSTUM, Vol. 20 No. 2 (2013), hlm. 300 – 317. Also, according to research, the National Population and Family Planning Board (BKKBN) reported that 60% of teenagers aged 16-17 in Indonesia engage in premarital sex. When classified by age, BKKBN notes that 60% of teenagers aged 16-17 engage in premarital sexual relations, 20% at ages 14-15, and 20% at ages 19-20. [Source: <https://news.solopos.com/bkkbn-60-persen-remaja-usia-16-17-tahun-di-indonesia-lakoni-seks-pranikah-1703798>].

²⁵ The Decree of Pengadilan Agama Sijunjung Number 201/Pdt.P/2023/PA.SJJ

²⁶ The Decree of Pengadilan Agama Manna Number 91/Pdt.P/2023/PA.Mna, The Decree of Pengadilan Agama Number 170/Pdt.P/2022/PA.Kdr, Putusan Pengadilan Agama Waingapu Nomor 2/Pdt.P/2024/PA.WGP, Penetapan Pengadilan Agama Bantul Nomor 192/Pdt.P/2023/PA.Btl;

pregnant child to avoid further zina and other religiously prohibited acts.²⁷ Fourth, instances where a child and their prospective spouse are caught alone by the community²⁸, particularly in Aceh, often result in marriage dispensation applications. In such cases, the couple is usually married off to prevent further immoral acts.

Fifth, school dropout is another cause of child marriage.²⁹ Despite the government's mandate that children must attend school for 12 years until high school, many children still drop out for various reasons, including financial difficulties, lack of interest, and insufficient parental attention. Dropping out of school often leads children into negative associations, prompting parents to marry off their child quickly to avoid further immoral behavior and to reduce the family's economic burden.

To ensure that marriage dispensation cases are examined in the best interest of the child, as stipulated in Supreme Court Regulation (PERMA) Number 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications, judges have taken several steps during the examination process. These steps include investigating the background and reasons for the child's marriage, gathering information on the child's understanding and consent to marry, hearing the testimony of the applicant, the child, the prospective spouse, and the prospective spouse's parents or guardians, and considering the child's psychological, sociological, cultural, educational, health, and economic conditions, based on recommendations from psychologists, doctors/midwives, social workers, the Integrated Service Center for the Protection of Women and Children (P2TP2A), or the Indonesian Child Protection Commission (KPAI/KPAD).³⁰

During the court proceedings, the judge initially examines and adjudicates the formal aspects of the applicant's legal standing and the completeness of documentary evidence and witnesses presented by the marriage dispensation applicant. Subsequently, the judge examines and adjudicates the material aspects of whether the urgent reasons cited in the dispensation application are supported by documentary evidence and witnesses, meeting both formal and material requirements, along with testimony from relevant child protection parties.

The emphasis on urgent reasons and sufficient evidence is intended to discourage underage marriages. Applicants (parents or guardians) must prove to the judge that the reasons for the application are indeed urgent. Similarly, applicants are required to present sufficient evidence to demonstrate to the judge that the child for whom the

Penetapan Pengadilan Agama Bantul Nomor 48/Pdt.P/2023/PA.Kdr
<https://putusan3.mahkamahagung.go.id/direktori/index/kategori/dispensasi-nikah-1.html>

²⁷ According to BKKBN's findings, more than 50 early marriages occur due to pregnancies outside of marriage. [Source: <https://www.cnnindonesia.com/nasional/20230118133119-20-901969/ribuan-anak-hamil-di-luar-nikah-bkkbn-nilai-pengetahuan-rendah>].

²⁸ Penetapan Mahkamah Syariah Suka Makmue Number 250/Pdt.P/2019/MS.Skm.

²⁹ The child's education is limited to Junior High School (SMP) and does not wish to continue further education. See the Decree of the Sukamara Religious Court No. 64/Pdt.P/2023/PA.Skr and the Decree of the Tahuna Religious Court No. 13/Pdt.P/2023/PA.Thn.

³⁰ Article 16 Peraturan MA Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Perkawinan

marriage dispensation is sought is ready to marry. These reasons and evidence form the basis for the judge's decision to grant or reject the marriage dispensation.

The Marriage Dispensation PERMA stipulates that judges must consider various factors when deciding marriage dispensation applications, prioritizing the best interest of the child. Furthermore, during case proceedings, judges must consider the reasons and supporting evidence presented. However, this does not preclude the possibility that every case brought before the Religious Courts may be accepted or rejected, as judges have the authority to issue rulings on the applications.³¹ These rulings carry legal force as binding law in the form of decisions.³²

In addition to considering the legal facts regarding the existence of urgent reasons and supporting evidence, judges also consider legal foundations, legal principles, or legal norms to strengthen the legal reasoning in their decisions. The legal foundations include Law Number 16 of 2019 amending Law Number 1 of 1974 on Marriage and its explanations, Supreme Court Regulation Number 5 of 2019, and the Child Protection Law.

Article 7, paragraph 2 of Law Number 16 of 2019, amending Law Number 1 of 1974 on Marriage, in conjunction with Article 16(h) of the Supreme Court Regulation Number 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications, and Article 26, paragraph (1), number (3) of Law Number 23 of 2002, as amended by Law Number 35 of 2014 and further amended by Law Number 17 of 2016 on Child Protection, which states that parents are obliged and responsible for preventing marriages during childhood, should be understood within the framework of safeguarding and protecting the child's best interests. According to data from the United Nations Children's Fund (UNICEF) in 2014, women who give birth at the age of 15-19 are twice as likely to die compared to those who give birth at the age of 20 or older, and in this case, the applicant's child is still 14 years old.³³

In examining the case, the Judge has followed the procedural requirements as mandated by Article 1, Paragraph (11) of the PERMA on Marriage Dispensations. During the trial, the Judge hears testimonies from the child, the parents as the applicants, witnesses, and other relevant parties. After reviewing these testimonies, the Judge provides advice to the applicants and the child regarding the potential risks associated with underage marriage, including issues related to education, the child's reproductive health, social, economic, psychological aspects, and the potential for domestic conflict and violence, as stipulated in Article 12, Paragraphs (1) and (2) of the PERMA on Marriage Dispensations. To strengthen this, the Judge also considers the assessment results from the Social Services and Women's Empowerment and

31 Kamijan, *Studi Kritis Ditolak dan Diterima Dispensasi Kawin di Pengadilan Agama Muara Teweh*, Jurnal Sosial dan Sains, Vol. 1, No. 8, (2021), hlm. 762.

32 Sudikno Mertokusumo, *Penemuan Hukum*, Yogyakarta: Liberty, 2009, hlm. 39.

33 M. Akhlis Azamuddin Tifani & Ahmad Junaidi, Dispensasi Perkawinan oleh Hakim PA Ponorogo Perspektif Peraturan Mahkamah Agung Nomor 5 Tahun 2019, JELHUM: Journal of Economics, Law, and Humanities, Vol. 2, No.1, (2023), hlm. 45-55

Child Protection Agency (Dinas Sosial dan PPPA) regarding the child's suitability for marriage. In practice, despite these advisories, such efforts often do not succeed.

Judges base their legal reasoning on the regulations stipulated in the Marriage Law, Child Protection Law, Supreme Court Regulation (PERMA) on Marriage Dispensation, and other relevant legal provisions. Additionally, Religious Court Judges also draw upon principles from the Qur'an, Hadith, and relevant fiqh (Islamic jurisprudence) rules when dealing with marriage dispensation requests, such as:

يُزَالُ الضَّرَرُ

Translation: "Harm must be removed."

المَصَالِحُ جَلْبِ عَلَى مُقَدِّمِ الْمَفَاسِدِ دَرُءٌ

Translation: "Preventing harm should take precedence over obtaining benefits."

وَإِذَا مِنْهَا الْأَعْلَى قُدِّمَ الْمَصَالِحُ تَزَاحَمَتْ إِذَا مِنْهَا الْأَخْفَى قُدِّمَ الْمَفَاسِدُ تَزَاحَمَتْ

Translation: "If several benefits conflict, the greater benefit should be prioritized. And if several harms conflict, the lesser harm should be prioritized."

بِالْمَصْلَحَةِ مَنُوطٌ الرَّاعِيَّةِ عَلَى الْإِمَامِ تَصْرُفٌ

Translation: "The leader's/political authority's actions for the people must be based on public interest (maslahah)."

These fiqh principles are often employed by judges when deciding to grant or reject marriage dispensation requests. Judges who grant such requests frequently rely on the principle that "preventing harm should take precedence over obtaining benefits." Many cases of marriage dispensation are filed because the applicant's child has a close relationship with their partner or has engaged in sexual relations, resulting in pregnancy out of wedlock. Judges grant these requests because they fear that failing to do so could lead to further violations of religious norms, disrupt societal harmony, and potentially provoke acts of vigilante justice.

On the other hand, some judges reject marriage dispensation requests for children under 16 years old, considering that the child is not yet physically or mentally mature, which could negatively impact the stability of the marriage and possibly lead to divorce.³⁴ In making this determination, judges weigh the potential harms and choose the lesser one. According to the judges, rejecting the marriage dispensation request could lead to the applicant's child committing further acts of fornication and being stigmatized by society. However, granting a marriage dispensation for a 14-year-old child poses numerous risks, such as reproductive health issues, immature physical

³⁴ Takdir, Muhammad Tahmid Nur, & Muhammad Farhan Abdullah, *Implications of the Determination of Marriage Dispensation on Divorce Case (Case Study at Sengkang Religious Court)*, NAJHA: International Journal Law and Society, Vol. 1, No. 3 (2022), hlm. 209-210

and mental condition, economic instability, interrupted education, the potential for premature births leading to disabilities in infants, maternal and child mortality, and the possibility of domestic disputes and violence that could result in divorce.

Based on this discussion, it is evident that the enactment of Law No. 16 of 2019, which amended Law No. 1 of 1974 on Marriage by raising the minimum marriage age for women to 19, has inadvertently increased the number of marriage dispensation cases. The requirement in Article 7(2) for a “very urgent reason” to justify marriage dispensation seems ineffective in reducing the number of cases. This is partly due to the lack of specificity and clarity in the law, leaving the interpretation of what constitutes a “very urgent reason” entirely up to the judges. Additionally, the issues surrounding marriage dispensation requests involve various factors, including social, economic, cultural, and educational issues. Even the Supreme Court Regulation (PERMA) No. 5 of 2019, which aims to limit child marriages, has not been entirely effective.³⁵ This situation appears to create a contradiction between the desire to prevent or minimize child marriages and the legal reality that shows an increase in the number of child marriages in Indonesia.³⁶

Analysis of Legal Reasoning in Marriage Dispensation Rulings from the Perspective of Maqashid Syariah

In Islamic religious doctrine, it is believed that all of God's decrees, whether in the form of commands or prohibitions found in the Qur'an or Hadith/Sunnah conveyed or exemplified by the Prophet Muhammad (SAW), contain wisdom and purposes aimed at ensuring human happiness in this world and the hereafter. Imam Al-Syatibi stated:

إِنَّ وَضْعَ الشَّارِعِ إِنَّمَا هُوَ لِمَصَالِحِ الْعِبَادِ فِي
الْعَاجِلِ وَالْآجِلِ مَعًا

"Indeed, the Shari' (the lawgiver) in enacting the law intends to achieve the welfare of His servants both in this world and the hereafter simultaneously."

Based on this, it is understood that every legal rule established is intended to bring about the welfare of human life, not only for worldly happiness but also for the hereafter. From this viewpoint, Imam Al-Syatibi became the first to introduce the objectives of Islamic law with the concept of Maqashid al-Syariah.³⁷ Ibn al-Qayyim al-Jauziyah further concretely explained the essence of the maqashid syari'ah concept, namely the effort to derive benefits and prevent harm with truth, justice, and virtue, as

³⁵ Ahmad Muqaffi, Rusdiyah, Diana Rahmi, *Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi Uu Perkawinan*, Journal of Islamic and Law Studies, Vol. 5, No. 3, (2021), hlm. 361-377.

³⁶ Sonny Dewi Judiasih, Susilowati S. Dajaan, Bambang Daru Nugroho, *Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur Di Indonesia*, ACTA DIURNAL: Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad, Vol. 3, No. 2, (2020), hlm. 203

³⁷ Abu Ishaq al-Syatibi, *al-Muwafaqat fi Usul al-Ahkam*, Mesir : Darul Fiqr, 1341, hlm. 15

well as delineating the path that must be followed by human reason.³⁸ Similarly, according to Abdul Wahhab al-Khallaf, the purpose of Islamic law (*maqāshid al-syarī'ah*) is to protect human interests in this life by obtaining what is beneficial and rejecting what is harmful to them.

In al-Syâtibî's conception, *maqāshid al-syarī'ah* relates to three basic necessities in human life: *dharuriyyah* (primary needs), *hajiyyah* (secondary needs), and *tahsiniyyah* (tertiary needs). If these needs are met, human welfare will be achieved.³⁹ *Maqāshid al-Shari'ah* is directed towards protecting five basic principles in Islamic law (*al-Kulliyah al-khamsah*), namely preserving religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*).⁴⁰

In the context of examining legal reasoning in granting marriage dispensations at the Religious Courts, it is important to review it from the perspective of *maqāshid al-syarī'ah* as the ultimate legal objective. This is done to understand the extent to which the granting of marriage dispensations to children by the Religious Court judges aligns with the principles, rules, and objectives of Islamic law.

Based on a review of several court rulings on granting and rejecting marriage dispensation requests, it was revealed that the urgent reasons cited by the applicants included the close relationship between the applicant's child and their partner, premarital sexual relations, and pregnancy out of wedlock. In addition to considering the urgency of the reasons, the Religious Court judges also weighed the supporting evidence submitted by the parents of the child as applicants.

In practice, the judges have followed the procedure for adjudicating dispensation cases by referring to the Supreme Court Regulation on Marriage Dispensation. Article 12 of the Marriage Dispensation Regulation clearly states that a marriage dispensation request can be granted if the ruling aligns with the best interests of the child. The best interest of the child refers to ensuring that the child grows and develops according to their dignity and worth. Therefore, the child's readiness to build a household physically, psychologically, and economically, as well as the prevention of possible future violence and the avoidance of societal stigma, are considered.⁴¹

All of God's commands and prohibitions found in the Qur'an, as well as those conveyed by Prophet Muhammad (SAW) in the Hadith, which are assumed to have legal implications, conclude that they all have specific purposes and none are without wisdom. They all contain profound wisdom, serving as mercy for humanity. Essentially, the core objective of Sharia (law) or *maqāshid al-syarī'ah* is the welfare of mankind. Regarding this, Al-Syâthibi stated:

³⁸ Ibn al-Qayyim al-Jauziyah, *I'lam al-Muwaqqi'in*, Juz III, Kairo: Dar al-Kutub al-Hadis, 1969, hlm. 177.

³⁹ Abdul Wahhab Khallaf, *Ilmu Ushul al-Fiqh*, Cet. III, Kuwait: Mathba' al-Nasyr, 1977, hlm. 198.

⁴⁰ Abu Ishaq al-Syatibi, *Ohlm. Cit.*, hlm. 25

⁴¹ Aliya Karima, Nabila Luthvita Rahma, Abdurrohman Kasdi, Labib Nubahai, *Kepentingan Terbaik Anak Dalam Permohon Dispensasi Pernikahan: Sebuah Penafsiran Hukum Oleh Hakim*, *Al-Syakhsiyah: Journal of Law & Family Studies*, Vol. 5 No. 2, December (2023), hlm. 128-130.

The granting of marriage dispensation tends to aim at the welfare of preserving lineage at the level of *daruriyat* (necessities). The purpose of law must be understood in order to develop legal reasoning in Islam in general and to address legal issues not explicitly regulated by the Qur'an and Hadith.

The acceptance or rejection of a ruling is undoubtedly based on long-term objectives that align with *maqāshid al-syarī'ah*. The judge's consideration of protecting the rights of the child is in accordance with the provisions of the Child Protection Law and Supreme Court Regulation No. 5 of 2019, and also aligns with the objectives of *maqāshid al-syarī'ah*, which is to preserve welfare and consider the aspect of preserving lineage.

First, granting marriage dispensation to a child who has a close relationship with their partner, has engaged in premarital sexual relations, or is pregnant out of wedlock aligns with the preservation of religion or the protection of religion (*hifz al-dīn*) for the child. If parents, guardians, or society are unable to prevent the child from violating religious norms, such as being in seclusion in difficult-to-monitor places or even committing adultery, then granting the dispensation aligns with *hifz al-dīn*, which can prevent the child's moral deterioration. Allowing a close relationship that is difficult to control may cause harm by leading the child deeper into major sins that are greatly detested by Allah.

Immoral acts or *zina* (adultery) that result in out-of-wedlock pregnancy can produce illegitimate children. These children often face stigma as 'illegitimate children' in society. According to Islamic law, an illegitimate child does not have a *nasab* (lineage or blood relationship) with their biological father. Although today a child born out of wedlock can claim support and inheritance from their biological father in court, their status is certainly not the same as a legitimate child who has a *nasab* relationship with their father.

Second, marriage dispensation viewed from the perspective of protecting life (*hifz al-nafs*). Health studies show that early marriage poses significant risks to the life of the mother and the child she carries. The Child Protection Act No. 23 of 2002 explains that children should be protected from things that bring risks and negative impacts on their physical and psychological development. Several risks of child marriage include:

1. Increased risk of sexually transmitted diseases,
2. Reproductive organs not fully developed, leading to higher chances of miscarriage,
3. Increased risk of death for the mother and baby,
4. Risk of stunted growth in babies born to young mothers,
5. Increased risk of depression, trauma, and stress in the couple,
6. Susceptibility to domestic violence (KDRT),

7. Higher likelihood of divorce.⁴²

Based on legal findings in the court rulings, it was revealed that judges do not dismiss the potential negative impacts of child marriage. However, the judges identified several aspects in accordance with Article 14 of the Supreme Court Regulation on Marriage Dispensation, such as examining the psychological and health conditions, the child's readiness to marry and build a household, and identifying potential psychological, physical, sexual, or economic coercion on the child and/or their family to marry. Therefore, judges consider assessments from relevant parties such as the Social Affairs and Child Protection Agency (Dinsos PPPA), doctors, and others as needed. To prevent psychological, physical, sexual, and economic coercion in dispensation applications, judges directly question the child during the hearing. Based on these various considerations, as long as the marriage dispensation application prioritizes the protection and best interests of the child, judges will grant the dispensation. Conversely, if the application is not supported by sufficient evidence and testimony, the judges tend to reject the request.

Third, marriage dispensation viewed from the perspective of protecting lineage (*hifz al-nasl*). The majority of marriage dispensation requests are made due to out-of-wedlock pregnancy. This situation creates concern for the child who fears being scolded, ridiculed, or even disowned by their parents. The parents of such children often feel great pressure due to their child's behavior that violates social and religious norms. The parents usually feel embarrassed in front of their family and society due to the situation their child is in. To prevent continued violation of religious norms and to avoid embarrassment, the parents usually try to marry off their child to their partner.⁴³

Additionally, the child's pregnancy causes psychological pressure. Weak psychological conditions can affect the development of the fetus. This situation can lead to premature birth, among other issues. Granting marriage dispensation to a child with valid reasons and supporting evidence can prevent continued moral degradation (*mafsadat*) and instead bring about benefits for the child. Once the child of the applicant is born, the status of the child can be recognized as legitimate. Even if the child was pregnant before marriage, if she marries the person who impregnated her, the child will become legitimate. Granting dispensation in this context provides legal protection for the child of the dispensation applicant as well as the child born to her.

⁴² Syakroni, *Pernikahan Dini Dan Dampaknya Terhadap Kesehatan Reproduksi Dan Keutuhan Rumah Tangga*, Jurnal Sosial dan Teknologi (SOSTECH), Vol. 1, No. 11, (2021), hlm. 1469-1470. Lihat juga Ahsandy Ramadhan Suardi, Imanuddin Abil Fida, *Analisis Dampak Pernikahan Dini Terhadap Kehidupan Keluarga Di Desa Sumberkedawungkecamatan Leces Kota Probolinggo*, USRAH: Jurnal Hukum Keluarga Islam, Vol. 4 No. 2, Oktober 2023, hlm. 164-165

⁴³ Mad Said, *Dispensasi Perkawinan Hamil Di Luar Nikah Pada Pengadilan Agama Parigi Menurut Undang-Undang Nomor 16 Tahun 2019 (Suatu Analisis Maqasid Syari'ah)*, Tesis Magister Hukum (M.H) pada Prodi Magister *Ahwal Syaksiyyah*, Pascasarjana Universitas Islam Negeri (UIN) Datokarama Palu 2023, hlm. 156-159

This is certainly in line with the principles of Sharia or Islamic law in preserving lineage (*hifz al-nasl*).

Fourth, marriage dispensation viewed from the perspective of protecting intellect (*hifz al-aql*). Early marriage can lead to the failure of the child to fulfill their educational obligations or complete the nine-year basic education. If marriage occurs during school age, the risk of dropping out is high. Low education levels have implications for limited knowledge, which in turn affects the child's maturity in thinking and behavior in family life and in the broader society and workforce. Therefore, granting dispensation may reduce opportunities for intellectual development in knowledge and skills that support life.

In cases of marriage dispensations, a close relationship between a child and their partner or an out-of-wedlock pregnancy can lead to scandal and unrest in society. Consequently, the child often becomes stigmatized and experiences negative treatment, adversely affecting their mental development. If such issues are not addressed, there is a risk of destroying the honor of the child, the parents, the family, and the surrounding community. Additionally, the psychological or mental readiness of both prospective spouses to face and accept all risks arising from violating social and religious norms should be an important consideration in deciding on a marriage dispensation case.

Based on the legal reasoning behind marriage dispensation decisions by judges, it can be interpreted that the judges at the Ponorogo Religious Court have attempted to engage in progressive reasoning by considering the potential harms or damages that may arise if the marriage does not proceed. This effort has positive consequences, such as maintaining the honor of all parties involved and ensuring the psychological and mental readiness of the child, aligning with the protection of intellect.

Fifth, marriage dispensation from the perspective of the protection of property (*hifz al-māl*) shows that economic readiness is a factor emphasized by the applicants to demonstrate that the child or their partner has sufficient economic resources to establish a household. Conversely, if the child or partner lacks economic readiness, the Judge may require the child's parents to provide temporary financial support to avoid economic difficulties in running the household. Failure to meet this requirement could lead to difficulties for the child and partner, potentially causing conflicts and leading to divorce later on.

Economic support from the child's parents becomes crucial in cases of child marriage. Lack of economic readiness will create problems that can impact their household life. The judge's efforts in examining and adjudicating this case include advising the child and their parents in economic support until they can independently sustain their family.

Marriage dispensation cases are inherently dilemma-driven; on one hand, judges are required to protect children's rights and prevent child marriages, while on the other hand, judges face the reality of "whether the child must marry or not." In such situations, judges are more likely to adhere to the fiqh principle of "avoiding harm over

seeking benefit," where granting a marriage dispensation is seen as a way to avoid greater harm, such as preventing continuous adultery by the child, rather than focusing solely on the benefits of preventing child marriage through arguments related to reproductive health, the risk of premature birth, economic issues, or other reasons. Such concerns can be minimized with assessments from relevant parties that support the examination results.⁴⁴

Judges apply this fiqh principle in every decision made by the Religious Court that is accepted or granted. The basis for using this principle is prioritizing the prevention of harm, as most cases of marriage dispensation involve factors like the child being pregnant or having a close relationship with their partner. Thus, accepting dispensations based on pregnancy and societal unrest becomes important because preventing harm is prioritized.

To minimize child marriage, a comprehensive approach involving all parties—children, families, communities, judicial institutions, and social protection agencies—is required. There needs to be outreach to ensure that children, parents, and the community have a good understanding and legal awareness to prevent child marriages.⁴⁵ Additionally, there should be interconnection between institutions, both among relevant judicial bodies and various other agencies. Building a synergistic relationship between judicial institutions, including both general and religious courts, and other relevant agencies, such as Social Services and Child Protection Agencies (Dinas Sosial dan PPA) and the Indonesian Child Protection Commission (KPAI), is necessary. This new framework will involve non-judicial external institutions to assist and oversee the implementation of marriage dispensations.⁴⁶

IV. CONCLUSION

In granting marriage dispensation requests, the judges of the Religious Courts have based their decisions on the legal framework provided by statutory regulations and Islamic law, derived from the Qur'an, Hadith, and Fiqh principles or scholarly opinions. The provisions of Article 7 paragraph (2) of the revised Marriage Law regarding the reasons and supporting evidence for the dispensation request, the Child Protection Law, and Article 14 of the PERMA on Marriage Dispensation are consistently used as legal foundations in these regulations. In addition to examining the presence of reasons and supporting evidence for the marriage dispensation request, the judges also follow proper legal procedures by considering various statements from relevant parties, particularly the assessments from the Social Affairs and PPPA office, as well as medical evaluations, that support the marriage dispensation request.

⁴⁴ M. Akhlis Azamuddin Tifani & Ahmad Junaidi, *Ohlm. Cit.*, hlm. 45-55

⁴⁵ Humaeroh, Zakaria Syafei, Nurul Ma'rifah, *Formulation of Underage Marriage in The Perspective of Islamic Law and Legal Sociology*, Krtha Bhayangkara, Vol. 17, No. 3 (2023), hlm. 680-683

⁴⁶ Amran Suadi A, Mardi Candra, *Prevention of Child Marriage in Indonesia Based On System Interconnection*, Journal of Southwest Jiaotong University. Vol. 57 No. 6 (2022), hlm. 929-933.

The judges' considerations in adjudicating marriage dispensation requests generally align with the provisions of the Marriage Law, PERMA No. 5 of 2019, and the objectives of Islamic law as outlined in Maqāshid al-Sharī'ah, which seeks to promote the welfare of human life, particularly for the children seeking to marry through this dispensation. However, the court's decision to grant a marriage dispensation may not fully align with the legislative intent to prevent early childhood marriages. Nonetheless, from the perspective of Maqāshid al-Sharī'ah, granting such dispensation requests can be justified as long as the reasons, supporting evidence, and statements provided align with the primary objectives of Islamic law, including the protection of religion (*hifz al-din*), protection of life (*hifz al-nafs*), protection of lineage (*hifz al-nasl*), protection of intellect (*hifz al-aql*), and protection of property (*hifz al-māl*).

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