

Application of Very Urgent Criteria in The Marriage Dispensation Norms for the Protection of Children: Analysis of Jasser Auda's Theory

Asmuni, Asmuni
Universitas Islam Indonesia, Yogyakarta, Indonesia
asmuni@uii.ac.id

Rezha Nur Adikara
Universitas Islam Indonesia, Yogyakarta, Indonesia
nadika.rezha@gmail.com

Abstract

The renewal of marriage legal norms regarding the minimum age limit for marriage with the criteria of "very urgent" has given rise to disparities in the judges' consideration when applying decisions on marriage dispensation cases, at the same time increasing the number of child marriages in the religious courts. This research discusses two main patterns, i.e.: the application of the "very urgent" criteria in marriage dispensation cases in the Religious Courts and; the relevance of "very urgent" criteria toward protecting women and children. The theory of the maqāsid syarī'ah system by Jasser Auda was used as an analytical tool from a contemporary jurisprudential perspective. This research uses a normative juridical approach with data collection techniques using library research. The results of the study show that the form of application of Jasser Auda's maqāsid syarī'ah system theory in understanding the "very urgent" criteria can at least be analyzed from 4 (four) four conditions that may occur in children



whom marriage dispensation is requested, i.e.: pregnancy in the child, the potential for free sex, the potential for unregistered marriages, as well as the potential for continuity of education for children who apply for marriage dispensation. These conditions are linear with the six features of Jasser Auda's maqāṣid syarī'ah system, i.e.: the cognitive nature of the system, wholeness, openness, interrelated hierarchy, multi-dimensionality, and focus on goals. In addition, the "very urgent" criteria norm is linear with the objectives of regulations regarding child protection and the elimination of domestic violence. This study has become a recommendation for judges in Religious Courts, to minimize disparities in consideration of marriage dispensation decisions.

KEYWORDS *Marriage Dispensation; Maqāṣid syarī'ah, Very Urgent*

Abstrak

Pembaharuan norma hukum perkawinan tentang batasan usia minimal menikah dengan kriteria “sangat mendesak” memunculkan disparitas pertimbangan hakim dalam penerapan putusan perkara dispensasi kawin, sekaligus mengakibatkan peningkatan angka perkawinan anak di pengadilan Agama. Penelitian ini mendiskusikan dua pola utama yaitu: penerapan kriteria “sangat mendesak” dalam perkara dispensasi kawin di Pengadilan Agama dan relevansi penerapan kriteria tersebut terhadap perlindungan perempuan dan anak. Teori sistem maqāṣid syarī'ah oleh Jasser Auda digunakan sebagai pisau analisis dengan sudut pandang fikih kekinian. Penelitian ini menggunakan pendekatan yuridis normatif dengan teknik pengumpulan data menggunakan studi pustaka. Hasil penelitian menunjukkan bahwa bentuk penerapan teori sistem maqāṣid syarī'ah Jasser Auda dalam memahami kriteria “sangat mendesak” setidaknya dapat dianalisa dari 4 (empat) kondisi yang mungkin ada pada anak yang dimohonkan dispensasi kawin, yaitu kehamilan pada anak, adanya potensi seks bebas, adanya potensi nikah siri, serta potensi keberlangsungan pendidikan anak yang dimohonkan dispensasi kawin. Penulis berargumen bahwa, kondisi tersebut sesuai dengan keenam fitur sistem maqāṣid syarī'ah Jasser Auda yaitu cognitive nature of system (kognisi), wholeness (keutuhan), openness (keterbukaan), interrelated hierarchy (kesalingterkaitan hierarki), multi-dimensionality (melibatkan berbagai dimensi), dan purposefulness (terfokus pada tujuan/kebermaksudan). Selain itu, norma kriteria “sangat mendesak” linier dengan tujuan dari peraturan tentang perlindungan anak dan penghapusan kekerasan dalam rumah tangga. Kajian ini menjadi rekomendasi bagi para hakim Pengadilan

Agama, untuk meminimalisir disparitas dalam pertimbangan putusan dispensasi nikah.

KATA KUNCI *Dispensasi Kawin, Maqāṣid Syarī'ah, Sangat Mendesak.*

Introduction

Changes to the age limit for marriage in the Marriage Law, namely from the minimum age for prospective brides to be 16 years, while the minimum age for prospective grooms is set at 19 years to the age limit for prospective husband and wife being 19 years.³² The change in the minimum age limit for marriage is based on the decision of the Constitutional Court of the Republic of Indonesia Number 22/PUUXV/2017. There are considerations in this decision which state that the state guarantees the rights of citizens to have a family and continue their lineage through legal marriage, guarantees children's rights to survival, growth and development, and the right to protection from violence and discrimination. as mandated in the 1945 Constitution. Apart from that, some considerations show that early marriage hurts the growth and development of children and can result in the loss of children's basic rights such as protection from violence and discrimination, civil rights, health and education rights, as well as social rights. This means that changing the marriage age limit in the marriage law is in the best interests of children.³³

In the best interests of children, provisions regarding the minimum age limit for marriage must be enforced. However, it is proven in the latest marriage law that if there is a deviation from the age provisions, the parents of the man and/or woman can ask the Religious Court for dispensation

³² Darlin Rizki, Frina Oktalita, and Ali Sodiqin, "Maqasid Sharia Perspective in Changes the Marriage Age Limits for Women According to Law Number 16 of 2019," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 November (2022): 487–508, <https://doi.org/10.29240/jhi.v7i2.4016>.

³³ Sri Murni, "The Marriage Age Limit According to Indonesian Law No. 16, 2019 as Effort to Child Protection," in *International Conference on Law, Economics and Health (ICLEH 2020)* (Atlantis Press, 2020), 222–30, <https://doi.org/10.2991/aebmr.k.200513.047>.

based on very urgent circumstances and supported by sufficient evidence.³⁴ The meaning of "very urgent" contains multiple interpretations even though the aim is in the best interests of the child. This happens because everyone has a different point of view in interpreting it. This interpretation is important to study further because this is where the problem of increasing child marriage rates in Indonesia begins. Data on the high number of applications for marriage dispensation in the Religious Courts are based on reports from the Directorate General of Religious Courts of the Republic of Indonesia in 2022, are 52,395 cases and in 2023 are 43,083 cases.³⁵

The opinion expressed by the National Commission on Violence Against Women is that the reason "very urgent" alone is not sufficient to protect the interests of children from child marriage, as stated in the Policy Paper written by the National Commission on Violence Against Women in 2019. It is mentioned that one of the recommendations proposed is the hope for the Religious Courts to abolish the granting of dispensations for child marriage based on greater considerations for the welfare of the child, including in cases of requests for dispensation due to unwanted pregnancies.³⁶ However, referring to Article 53 paragraph (1) of the Compilation of Islamic Law (Kompilasi Hukum Islam) regarding pregnancy before marriage, that a woman pregnant out of wedlock may be married to the man who impregnated her. There is a contradiction between the policy

³⁴ From a normative juridical perspective, what is meant by a very urgent reason contained in Article 7 is a situation where there is no other choice and it is absolutely necessary for the marriage to take place. Read in the Explanation of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

³⁵ Ditjen Badilag, "Laporan Pelaksanaan Kegiatan Tahun 2022" (Jakarta, 2023), 5, https://kepaniteraan.mahkamahagung.go.id/images/laporan_tahunan/FA-LAPTAH-2022.pdf.

³⁶ Desti Murdijana, Siti Nurwati Hodijah, and Ema Mukarramah, "Kertas Kebijakan Pengabaian Hak Reproduksi Dan Seksual: Ancaman Bagi Keselamatan Dan Hak Hidup Perempuan Dan Anak Perempuan Indonesia," <https://komnasperempuan.go.id/>, 2019, <https://komnasperempuan.go.id/kertas-posisi-detail/pengabaian-hak-reproduksi-dan-seksual-ancaman-bagi-keselamatan-dan-hak-hidup-perempuan-dan-anak-perempuan-indonesia-kertas-kebijakan-komnas-perempuan-untuk-pemenuhan-hak-reproduksi-dan-seksual-dan-10-risa>.

offered by the National Commission on Violence Against Women and the rule in the Compilation of Islamic Law. Therefore, when such a contradiction arises, the question also arises as to which *maṣlahah* (public interest) is truly at stake.

Previous studies have explored various aspects of marriage dispensations in religious courts and highlighted various factors that influence court decisions. For example, Kasim and Daud's research on the application of the concept of *maslahah* (public interest) in marriage dispensation decisions by judges at the Gorontalo Religious Court found that in their considerations the judge emphasized the welfare of the child she was carrying, namely the need to give the child legal status.³⁷ Yuni's research into the Tenggara Religious Court Judge's decision considered emergency reasons such as long-term relationships, unexpected pregnancies, frequent dating and living together.³⁸ Other research also found the same thing. For example, Kholis' research at the Rembang Religious Court,³⁹ Rasji and Kurnia's research at the Indramayu Religious Court,⁴⁰ Alam's Research at the Enrekang Religious Court⁴¹ and many other studies found the same thing. These conditions illustrate the complexity and diversity of considerations that influence court decisions regarding marriage dispensations.

³⁷ Nur Mohamad Kasim and Indra Saputra Daud, "Application of The Concept of *Maslahah* by Judges to Issuance of Marriage Dispensation Due to Pregnancy in Religious Courts," *Jambura Law Review* 4, no. 1 (2022): 122–38, <https://doi.org/10.33756/jlr.v4i1.10999>.

³⁸ Lilik Andar Yuni, "Analysis of The Emergency Reasons in The Application of Marriage Dispensation at The Tenggara Religious Court," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 976–1002, <https://doi.org/10.22373/sjhk.v5i2.9135>.

³⁹ M Nur Kholis, "Several Judges' Considerations in Deciding Marriage Dispensation Cases: Case Study at the Rembang Religious Court," *International Journal of Social Service and Research* 3, no. 9 (2023): 2135–41, <https://doi.org/10.46799/ijssr.v3i9.531>.

⁴⁰ Rasji Rasji and Ida Kurnia, "Application Of Reasons For Marriage Dispensation By The Indramayu Religious Court," *International Journal of Application on Social Science and Humanities* 1, no. 4 (2023): 10–15, <https://doi.org/10.24912/ijassh.v1i4.28669>.

⁴¹ Nur Alam Alam, "Dynamics of Judges' Considerations in The Determination Of Marriage Dispensation at The Enrekang Religion Court," *Al-Iftah: Journal of Islamic Studies and Society* 3, no. 2 (2022): 51–60, <https://doi.org/10.35905/aliftah.v3i2.6413>.

The complexity and diversity of judges' considerations in deciding marriage dispensation cases are reinforced by Anie and Herlina's research that the diversity of judges' considerations in marriage dispensation decisions is influenced by the judge's background, knowledge and ability to interpret regulations and assess certain conditions and social.⁴² Therefore, there are still significant challenges and gaps in understanding and applying the criteria for the current marriage dispensation. One important issue is the correlation between marriage dispensations and the increase in early marriage, which is considered to weaken family resilience and contribute to high divorce rates.⁴³ Additionally, the focus on the legal validity of statements and documents, without involving additional expert witnesses, raises questions about the rigour of judicial evaluations.⁴⁴ Judges also experience a dilemma in balancing children's best interests with existing legal instruments, as seen in the differences in the effectiveness of their implementation in Tasikmalaya and Indramayu.⁴⁵

The current research is different from previous research in that it analyzes the application of the "very urgent" criteria in marriage law in relation to the protection of women and children using Jasser Auda's systems theory. By examining these criteria through the lens of contemporary jurisprudence, this research seeks to address gaps in judicial considerations and offer a nuanced understanding of how these criteria can provide better protection for vulnerable groups. The findings of this

⁴² Dika Putri Vindi Santika Anie, "Disparity in Judges' Legal Reasoning on Marriage Dispensation Regarding Minimum Marriage Age: Indonesian Experience," in *International Conference on Sustainable Innovation on Humanities, Education, and Social Sciences (ICOSI-HESS 2022)* (Atlantis Press, 2022), 120–27, <https://doi.org/10.2991/978-2-494069-65-7>.

⁴³ Darmawan Darmawan et al., "Marriage Dispensation and Family Resilience: A Case Study of the Bener Meriah Shariah Court, Aceh Province," *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (2022), <https://doi.org/10.15408/ajis.v22i2.28827>.

⁴⁴ Muhammad Ishom, "The Loose Interpretation of Dominus Litis Principle in Marriage Dispensation for Underage Marriage in Banten," *AHKAM: Jurnal Ilmu Syariah* 23, no. 2 (2023), <https://doi.org/10.15408/ajis.v23i2.29881>.

⁴⁵ Rina Shahriyani Shahrullah et al., "Dilemmas Faced by Judges When Granting Marriage Dispensations for Child Marriages in West Java, Indonesia," *International Journal of Law, Policy and The Family* 37, no. 1 (2023): ebad035, <https://doi.org/10.1093/lawfam/ebad035>.

research have the potential to contribute to the ongoing legal reform discourse. Discourse on legal reform and protection of women and children in the context of marriage law.

Method

This research is normative juridical with statutory, conceptual and case approaches. The legal materials used include Law Number 1 of 1974 concerning Marriage, Law Number 16 of 2019, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Religious Court Decisions regarding marriage dispensations and various related documents and literature by the research objectives. Searching for legal materials uses document study with the steps of inventory of legal materials, classification of legal materials and systematization of legal materials. The legal material analysis technique uses prescriptive analysis with legal reasoning and interpretation of legal material.⁴⁶

Discussion

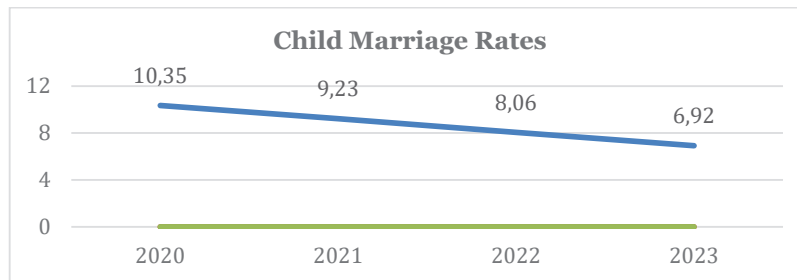
1. Child Marriage and Marriage Dispensation: Cases in Indonesia Today

Indonesia is ranked second in ASEAN after Cambodia in cases of child marriage.⁴⁷ However, the number of child marriages in Indonesia has decreased. In 2021 the child marriage rate will decrease from 10.35 percent to 9.23 percent. Then it will be 8.06 percent in 2022, and 6.92 percent in 2023.⁴⁸

⁴⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Media Grup, 2014), 142.

⁴⁷ Budi Setiawan et al., "Kesejahteraan Anak Indonesia: Analisis Deprivasi Hak Anak Multidimensi 2022," *Https://Www.Bps.Go.Id/* (Jakarta, 2023), 39.

⁴⁸ BPS, "Proporsi Perempuan Umur 20-24 Tahun Yang Berstatus Kawin Atau Berstatus Hidup Bersama Sebelum Umur 18 Tahun Menurut Provinsi (Persen), 2021-2023," <https://www.bps.go.id/>, 2024, <https://www.bps.go.id/id/statistics-table/2/MTM2MCMY/proporsi-perempuan-umur-20-24-tahun-yang-berstatus-kawin-atau-berstatus-hidup-bersama-sebelum-umur-18-tahun-menurut-provinsi.html>.



Source: Central Bureau of Statistics 2023

Based on this data, the average annual decline ranges from 1.12 to 1.17 percent. Even though it is slow, this number has exceeded the target set in the 2020-2024 National Medium Term Development Plan (RPJMN), namely 8.74 percent in 2024.

Child marriage has impacts on several aspects, including: (a) Educational Aspect; (b) Health Aspect; and (c) Psychological Aspect.⁴⁹ According to data from Susenas (National Socioeconomic Survey) by BPS (Central Statistics Agency) in March 2022, children experiencing deprivation due to child marriage reached 0.25 percent, with children living in rural areas being more affected than those in urban areas. In terms of age, children aged 13-17 are more vulnerable to child marriage compared to those under 13. The percentage of children in this age group experiencing deprivation due to child marriage is 0.66 percent. Although this percentage is small, the results of the 2020 Population Census (SP2020) indicate that there are 22.24 million children aged 13-17, with 14.68 million children experiencing deprivation due to child marriage (Deprivation is a condition experienced by an individual where there is a gap between expectations and reality).⁵⁰

⁴⁹ Setiawan et al., "Kesejahteraan Anak Indonesia: Analisis Deprivasi Hak Anak Multidimensi 2022," 39–40.

⁵⁰ Fauzan Heru Santhoso and Moh Abdul Hakim, "Deprivasi Relatif Dan Prasangka Antar Kelompok," *Jurnal Psikologi* 39, no. 1 (2012): 123, <https://doi.org/10.22146/jpsi.6971>; Shella Oetharry Gunawan and Syamsul Bahri, "Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 362–80,

According to the National Commission on Violence Against Women, there are several factors driving child marriage, namely tradition and culture. Cultural interpretations often state that girls who have reached menstrual age are considered ready for marriage. The notion of being an "old maid" can give rise to gossip and societal pressure. Child marriage is also seen as a preventative measure against premarital sex or other behaviour deemed inappropriate. Arranged marriages and the preservation of social class and status are also influencing factors, as is the desire to avoid the stigma of unwanted pregnancy, which can lead families to marry off their daughters, even in cases of rape, to hide the family's shame.⁵¹ In some areas, child marriage is considered a means of seeking blessings by marrying daughters to local religious figures. Additionally, child marriage is sometimes practised as a response to girls' perceived bad behaviour, and marriage is seen as a solution to curb or eliminate such behaviour.⁵²

Thus far, from various research findings conducted by different parties, pregnancies out of wedlock often serve as reasons for child marriage. Parents perceive that a pregnant unmarried daughter brings shame upon the family. Additionally, parents believe that child marriage can serve as a solution to prevent their child from engaging in premarital sex.⁵³ Literature studies have identified other factors contributing to child marriage, including traditional and religious factors. Some traditions that legalize child marriage are still prevalent in Indonesia, such as the merariq tradition in Lombok, where women are "abducted" to be married off to men. Additionally, research on marriage dispensations in three regions in

<https://doi.org/10.22373/ujhk.v6i2.20262>.

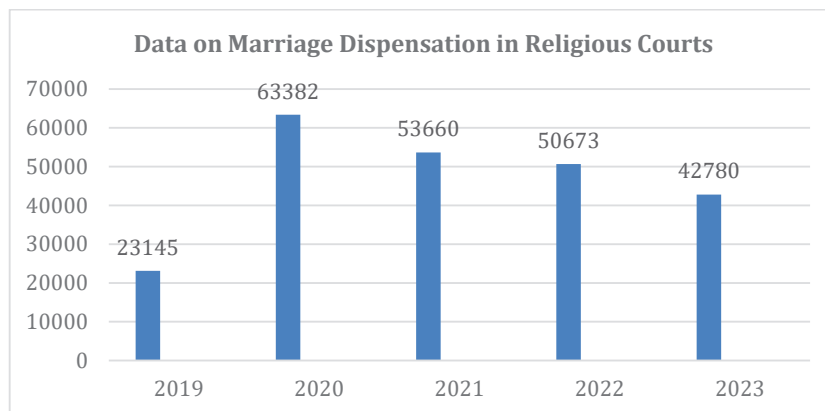
⁵¹ Vivi Tri Handayani and Muhammad Syaroni Rofii, "Evaluasi Kebijakan Pencegahan Perkawinan Anak Melalui Program Strategi Nasional Pencegahan Perkawinan Anak (Stranas PPA)," *Kolaborasi: Jurnal Administrasi Publik* 9, no. 1 (2023): 1–16, <https://doi.org/10.26618/kjap.v9i1.10159>.

⁵² Murdijana, Hodijah, and Mukarramah, "Kertas Kebijakan Pengabaian Hak Reproduksi Dan Seksual: Ancaman Bagi Keselamatan Dan Hak Hidup Perempuan Dan Anak Perempuan Indonesia," 1–2.

⁵³ Diana Teresa Pakasi et al., "Yes I Do. The Situation of Child Marriage, Teenage Pregnancy, and FGM/C in Sukabumi, Rembang, and West Lombok Regencies" (Jakarta, 2018), 5.

Indonesia also shows that the highest reason for dispensation requests is parents' concerns about their children who are already dating or engaged. The study also found that one of the main reasons judges grant dispensation requests is to avoid harm. Furthermore, seven out of eight women interviewed by the Independent Youth Alliance (ARI) cited unwanted pregnancies as a reason for marrying at a young age.⁵⁴

The high rate of child marriage is linear with the marriage dispensation. According to data from the Religious Courts Agency, 50,673 child marriage dispensations were decided by religious courts in 2022. This number is 17.54% lower than in 2021. The high jump in child marriage dispensations occurred in the initial period of COVID-19, namely from 23,145 in 2019 to 63,382 in 2020.⁵⁵ The results of PUSKAPA University of Indonesia's latest research on marriage dispensation decisions in Religious Courts throughout Indonesia show a similar trend. There were 70% of child marriages from 40 decisions in 2020, 60% from 40 decisions in 2021, and 53.66% from 41 decisions in 2022.⁵⁶



Source: Dirjen Badilag 2023

⁵⁴ Gaib Hakiki et al., "Pencegahan Perkawinan Anak Percepatan Yang Tidak Bisa Ditunda" (Jakarta, 2020), 45.

⁵⁵ Ditjen Badilag, "Laporan Pelaksanaan Kegiatan Tahun 2023" (Jakarta, 2024), 5, <https://cloud.badilag.net/s/ZmxzSdzb82LwLaA>.

⁵⁶ Santi Kusumaningrum et al., "Risalah Kebijakan Pencegahan Perkawinan Anak Untuk Perlindungan Berkelanjutan Bagi Anak" (Jakarta, 2023), 27, https://puskapa.org/assets/uploads/2023/04/Policy-Brief-_Pencegahan-Perkawinan-Anak.pdf.

Based on this data, the number of marriage dispensations was highest in 2020, during the Covid-19 pandemic. This number will decrease by approximately 30 percent in 2023.

Seeing the remarkably high number of cases and to anticipate disparities in handling marriage dispensation cases, and given that the process of adjudicating marriage dispensation requests has not been clearly and thoroughly regulated, the Chief Justice of the Supreme Court has enacted Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Requests, to be known and enforced for all types of marriage dispensation cases. In Supreme Court Regulation Number 5 of 2019, there are several new provisions that govern the procedures for marriage dispensation requests, especially during the case examination stage, which differs from the previous procedure. Judges examining marriage dispensation cases need to make thorough and comprehensive considerations, based on the legal facts emerging and unearthed from various aspects, while also involving the child subject to the marriage dispensation.⁵⁷

In adjudicating marriage dispensation cases, judges must apply fundamental principles as guiding principles in decision-making to achieve fair decisions and/or rulings for all parties involved.⁵⁸ The principles that judges must adhere to in adjudicating marriage dispensation cases include the best interests of the child, the right to life and development, respect for the child's views, respect for human dignity, non-discrimination, gender equality, equality before the law, justice, utility, and legal certainty.⁵⁹

⁵⁷ S Mursyid and N Yusuf, "Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi," *Samarah* 6, no. 2 (2022): 975–96, <https://doi.org/10.22373/sjhk.v6i2.12439>.

⁵⁸ M Anwar Nawawi et al., "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022): 117–34, <https://doi.org/10.18326/ijtihad.v22i1.117-133>.

⁵⁹ Article 2 Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Trying Marriage Dispensation Cases.

That applications for marriage dispensation submitted to court must be based on urgent reasons, accompanied by sufficient evidence, and must hear statements from all interested parties.⁶⁰ Apart from that, it must also be supported by supporting documents, in the form of a statement from a health worker supporting the parent/guardian's statement that it is very urgent for the marriage to take place and a statement of commitment from the child's parent/guardian confirming that they are taking responsibility for matters relating to education, health, social and economic.⁶¹

The judge examining marriage dispensation cases is a single judge, classified as having a decree as a child judge, following training and/or technical guidance on women facing the law or holding certificates in the juvenile justice system, or experienced in adjudicating marriage dispensation requests.⁶² Furthermore, during case examination, the judge and substitute court clerk are not allowed to wear court attire, and they must use language and methods that are easy for the child to understand and comprehend.⁶³

The court, in granting permission for marriage dispensation, must be guided by the spirit of preventing child marriage, considering emotional, psychological, health, religious, moral, customary, and cultural aspects, as well as other potential impacts. Additionally, the key legal considerations that must be included in a ruling are that the judge must have provided advice and heard testimony from interested parties, conveyed the results of the child's identification, and considered the protection and best interests of

⁶⁰ Syufa'at Syufa'at, "Marriage Dispensation in Underage Marriage: A Case Study at the Purwokerto Religious Court," *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 1 (2022): 91–102, <https://doi.org/10.24090/mnh.v16i1.6426>.

⁶¹ Mochammad Agus Rachmatulloh and Chafidz Syafiuddin, "Praktik Permohonan Dispensasi Kawin Di Pengadilan (Studi Peraturan Mahkamah Agung Nomor 5 Tahun 2019)," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 9, no. 1 (2022): 1–15, <https://doi.org/10.24252/al-qadau.v9i1.23752>.

⁶² Hasyim Sofyan Lahilote et al., "Judge's Dilemma in Marriage Dispensation in the Religious Court," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 1 (2022): 52–60, <https://doi.org/10.30631/alrisalah.v22i1.979>.

⁶³ Rachmatulloh and Syafiuddin, "Praktik Permohonan Dispensasi Kawin Di Pengadilan (Studi Peraturan Mahkamah Agung Nomor 5 Tahun 2019)," 13–14.

the child. Failure to do all of these could result in the nullification of the ruling.⁶⁴ This is an important point that must be taken by judges in the Religious Courts when handling marriage dispensation cases.

2. Application of Very Urgent Criteria According to Jasser Auda's Systems Theory

In previous discussions, data has been obtained indicating that common reasons cited by applicants when requesting Dispensation for Marriage include instances of pregnancy in unmarried individuals, parental concerns about their child engaging in premarital relations or engagement leading to fears of adultery, and certain cultural practices where the male party absconds with the female. Each of these various reasons will be analyzed from the perspective of Jasser Auda's Maqāṣid al-Sharī'ah system theory. The argument is, Jasser Auda, was strongly influenced by Greek logic in the principles of Islamic jurisprudence (uṣūl al-fiqh).⁶⁵ He believes that Islamic law, including its methodology, is open and is a product of human thought. In this way, a dialectic occurs between uṣūl al-fiqh and the science of logic.⁶⁶ Therefore, Auda considers it necessary to reconstruct the methodology of Islamic law using a modern logical perspective, considering that the science of logic continues to develop. Jasser Auda identifies six epistemological characteristics of Islamic law with a systems philosophy approach that can be used as a reference to answer how Maqāṣid al-Sharī'ah is utilized in the process of contemporary legal reasoning.⁶⁷

⁶⁴ Rachmatulloh and Syafiuddin, 14; Taufiqur Rohman et al., "Preventing Violations of Religious and Social Norms: Judicial Interpretation of Urgent Reasons' in Marriage Dispensation at the Wonosari Religious Court, Indonesia," *J. Islamic L.* 4, no. 2 (2023): 218–36, <https://doi.org/10.24260/jil.v4i2.1535>.

⁶⁵ Ṭaha 'Abd Al-Raḥman, *Tajdīd Al-Manhaj Fī Taqwīm at-Turās* (Beirut: Markāz al-Ṣaqāfi al-'Arābī, n.d.), 314.

⁶⁶ Hengki Ferdiansyah, *Pemikiran Hukum Islam Jasser Auda* (Tangerang Selatan: Yayasan Pengkajian Hadis el-Bukhari, 2018), 86.

⁶⁷ Auda Jasser, *Maqashid Al-Syari'ah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), 46.

Firstly, the occurrence of pregnancy in unmarried individuals. It is widely known in society that when an unmarried virgin becomes pregnant, her parents will promptly arrange her marriage to the father of the child. The primary objective is to safeguard the family's honor while also ensuring the legitimacy of the forthcoming child. As noted in research conducted by Enik Isnaini, the legitimization of children within the phenomenon of pregnant unions embodies two conflicting elements, namely, the principle of benefit (*masalah*) and harm (*mafsadah*).⁶⁸

Aspects of benefit/goodness include: (1) The child can obtain legal protection definitively; (2) The child has the right to demand accountability from their father if negligent, and they can inherit from each other; (3) The child feels equal to their peers, without feeling degraded for lacking a father; (4) The psychological burden on the mother and child is eliminated because through a pregnant marriage, the husband and wife can enjoy the pride of having offspring (children) obtained as a result of a lawful marriage; (5) Concealing family shame, the mother does not feel degraded as an outcast in society because her child has a father, who is also her husband.

Aspects of harm include: (1) Adolescents may adopt a pragmatic mindset in interacting with the opposite sex, which can lead to promiscuity (free sex), wherein the event of pregnancy, they still have the opportunity to marry so their child can be legitimate within that marriage; (2) Illegitimate children who were initially unwanted genealogically (in terms of blood ties and kinship) originate from parents who couldn't control their desires, thus committing sin. In other words, the negative traits of the parents can be inherited by their children. As the saying goes, "What a father has, his child will also have."; (3) Society's harsh judgment can incite brutal actions and disorder; (4) Legitimizing children can disrupt and tarnish family lineage and its purity. By understanding the aspects of goodness and harm in the event of a pregnant marriage, if the urgent reason cited in a dispensation

⁶⁸ Enik Isnaini, "Kedudukan Hukum Bagi Anak Yang Lahir Karena Kawin Hamil (Married By Accident) Di Tinjau Dari Hukum Islam Dan Hukum Perdata," *Jurnal Independent* 1, no. 2 (2013): 8–21.

marriage request is because the child is already pregnant, it undoubtedly emphasizes the factor of the benefit derived from such an event.

Secondly, there is parental concern about their child engaging in premarital relations or engagement leading to fears of adultery. In Islamic context, the term used for premarital relations is "khalwat," derived from the Arabic word "khala'," meaning solitude or seclusion. Khalwat typically refers to the state of being alone and away from the sight of others. It also connotes unfavorable circumstances, such as when a man and a woman who are not mahrams (unmarriageable kin) are alone together in a secluded place, thus providing ample opportunity for sinful behavior.⁶⁹

Furthermore, Islam unequivocally prohibits adultery (zina), and khalwat serves as a pathway or opportunity for engaging in zina. This indicates that adultery occurs due to the presence of other actions that lead to it. Therefore, in Aceh, khalwat is also considered one of the offenses (jarimah) and is subject to punishment. Khalwat is prohibited in Sharia law because such actions have the potential to lead individuals to commit adultery, namely engaging in intimate relations outside of lawful marriage. Allah SWT states in Surah al-Isrā' verse 32, which translates to "And do not approach adultery. Indeed, it is an immoral act and an evil way."⁷⁰

A number of Quranic scholars observe that every verse employing the phrase "do not approach," such as the aforementioned verse, typically signifies a prohibition against approaching something that can stimulate the soul or desires towards wrongdoing. Therefore, the command to refrain from approaching carries the meaning of prohibiting oneself from being influenced by the temptation of anything that has the potential to lead to engaging in prohibited actions.⁷¹

⁶⁹ Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam* (Jakarta: Ichtiar Baru Van Hoeve, 1996), 898.

⁷⁰ *Aljamil (Al-Qur'an Tajwid Warna, Terjemah Per Kata, Terjemah Inggris)* (Bekasi: Cipta Bagus Segara, 2012), 258.

⁷¹ M Quraish Shihab, *Tafsīr Al-Misbāh: Pesan, Kesan Dan Keserasian Al-Quran Vol. 7* (Jakarta: Lentera, 2005), 458–59.

Thirdly, there is the aspect of tradition. Essentially, this does not differ significantly from the reasons for engaging in premarital relations or engagement; however, this tradition leans more towards actions with a more serious intent towards marriage, perhaps representing another form of courtship rooted in regional values. Nevertheless, not all traditions observed in a particular area remain relevant today; some must be abandoned as they contradict human rights, while others can still be preserved.

Moreover, if we anchor on these three reasons and then relate them to Jasser Auda's system of *Maqāṣid al-Sharī'ah*, the following conclusions can be drawn. Firstly, concerning cognition, which pertains to the understanding of the mujtahid (Islamic jurist) regarding the revelation he studies. A pregnant marriage aimed at ensuring the marriage is legally recognized, thereby securing the child's rights under state law and all other legal ramifications, is a result of this cognition. For the protection of the child's rights administratively, such as having the parents' names recorded on the birth certificate, family card, and other documents, this must be realized to achieve long-term benefits.

Secondly, the aspect of wholeness can be utilized to comprehend the rules used as considerations in deciding dispensation cases, which must be reviewed holistically rather than partially. In the case of a pregnant marriage, it is not only about considering the welfare of the two spouses or their families but also contemplating the fate of the future child who will be born. It must also be considered regarding the statement that a child is born in a state of purity, so the child does not bear the sins of their parents. Therefore, if the child is not protected administratively, they may become victims of their parents' actions.

Thirdly, the aspect of openness. So, in considering the granting of marriage dispensation, it is not sufficient to rely solely on one reason; rather, other reasons relevant to contemporary developments must also be considered. For example, with the current trend of young people's dating styles, which tend to be more expressive and supported by technological

advancements, thus increasing the potential for Sharia violations, this must also be carefully considered. Moreover, the traditions commonly practiced in the region must also be taken into account, considering that Indonesian society is steeped in regional values. While many traditions have been acculturated with modern culture and religious teachings, there are still some traditions that remain original and conservative.

Fourthly, the aspect of hierarchy (interconnectedness). The reasons used to consider the granting of marriage dispensation must be interconnected. Dating, tradition, and pregnant marriage are interrelated and can be categorized as cause and effect. Dating activities supported by the legalization of tradition but not in accordance with state and religious law can potentially lead to pregnancies outside of lawful marriage. Therefore, these three reasons must be carefully considered as interconnected as possible.

Fifthly, multidimensionality aims to be utilized in understanding legal considerations in deciding marriage dispensation cases from multiple perspectives, particularly concerning their impact on well-being. Essentially, it is not sufficient to merely consider everything that has already occurred, such as pregnancy, but rather to understand the potential or risks that may arise. For instance, dating activities that may not yet involve adultery should still be regarded as having the potential to lead to subsequent consequences, such as adultery. As in the Jinayat law applicable in Aceh through Qanun Number 6 of 2014 concerning Jinayat Law, there are different levels of offenses ranging from *khalwat*⁷², *ikhtilath*⁷³, to *zina*⁷⁴.

⁷² Khalwat refers to the act of being in a secluded or concealed place between two individuals of opposite genders who are not mahrams (unmarriageable kin) and without the bond of marriage, with the mutual consent of both parties, which may lead to adultery. Dinas Syari'at Islam Aceh, *Hukum Jinayat Dan Hukum Acara Jinayat* (Aceh: Dinas Syari'at Islam Aceh, 2015), 7.

⁷³ Ikhtilath refers to the act of affectionate interaction such as flirting, physical touching, hugging, and kissing between a man and a woman who are not married to each other, with the mutual consent of both parties, whether in a secluded or open place. Aceh, 8.

⁷⁴ Zina is the act of sexual intercourse between a man or more than one man and a woman or more than one woman without the bond of marriage, with the mutual consent of

No one can guarantee that adultery will not be committed by young couples intoxicated by infatuation.

The significance of marriage lies in its provision of legal certainty to safeguard the interests of the parties involved. Therefore, Jasser Auda's theory of the maqāṣid-based system possesses a binding nature over other legal theories. The requirement for marriage regulations to be recorded serves the public order. Legitimate marriage serves as a deterrent against clandestine unions that may detrimentally affect various parties, including spouses and children. Hence, the effectiveness of the law can be measured by its societal benefit, ensuring comfort, security, peace, and prosperity. It is within this context that the objectives of Islamic law (maqāṣid syarī'ah) can be realized within a marriage contract.

Speaking about clandestine marriages, considering the significant prevalence of such marriages in Indonesia, it is worth considering in the granting of marriage dispensations. Denial of marriage dispensations should not inadvertently contribute to the proliferation of clandestine marriages, which lack legal certainty and often disadvantage women and children. Concerning the potential for clandestine marriages, this issue can also be categorized within the multidimensional and interconnected features of Jasser Auda's system.

Furthermore, when discussing clandestine marriages, it is related to the registration of marriages. Marriage registration is part of the public interest, exemplifying partial maqāṣid as formulated by Jasser Auda in his theory.

Apart from the three factors mentioned above, it is necessary to add additional considerations related to the interconnected, multidimensional, and purposive features, particularly regarding the educational status of the child for whom marriage dispensation is sought. Whether the child has completed 12 years of compulsory education, dropped out of school, or

both parties involved. Aceh, 8.

discontinued education but still has significant potential to resume schooling should also be taken into account.

If the child has completed 12 years of compulsory education, this could serve as a strong reason for granting marriage dispensation. Similarly, if the child has been out of school for a long time and expresses no intention to return, it could strengthen the case for granting marriage dispensation. Lack of school engagement may increase the likelihood of spending more time with a partner and potentially lead to extramarital affairs.

However, if during the case examination, the child indicates the potential to immediately return to school without waiting for the new academic year, and there are no other reinforcing reasons such as pregnancy or engaging in extramarital affairs, this could be a reason to reject the marriage dispensation application, aiming for the child to complete their education first.

In essence, understanding the reasons is crucial based on the *maqāṣid syarī'ah* system by Jasser Auda.⁷⁵ It is not sufficient to only consider past events but also to comprehend the potential or risks associated with decision-making, whether the marriage dispensation application will be accepted or rejected, to achieve the best interests of the child, the right to life and development, respect for the child's opinion, human dignity, non-discrimination, gender equality, equality before the law, justice, benefit, and legal certainty, as stipulated in Article 2 of Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Cases.

3. The Relevance to Child Protection

In the previous discussion, the analysis of pressing reasons that meet the criteria of the *Maqāṣid al-Sharī'ah* system by Jasser Auda revealed at least four main reasons that could be considered in addressing requests for

⁷⁵ Jasser, *Maqashid Al-Syari'ah as Philosophy of Islamic Law: A Systems Approach*, 113.

marriage dispensation, namely: first, the presence or absence of pregnancy in the applicant's child; second, the extent of the child's dating style with their partner; third, the presence or absence of potential for clandestine marriage; and fourth, the educational status of the child for whom marriage dispensation is sought.

The first point, the presence or absence of pregnancy in the child for whom marriage dispensation is sought, is worth considering because it pertains to the status and identity of the child who will be born. In the Convention on the Rights of the Child and Law Number 35 of 2014 concerning Child Protection, states are obligated to promptly fulfill the child's right to obtain identity and citizenship status. Article 27 paragraph 1 of the Child Protection Law states that "identity and citizenship status must be given to a child as soon as they are born into the world." Furthermore, paragraph 2 emphasizes that "this identity is recorded in the form of a birth certificate." The right to identity represents the state's acknowledgment of an individual's existence before the law. Possession of a birth certificate, as an actualization of birth registration, is one step towards child protection. Issuing birth certificates is also the state's responsibility towards children, as stated in the Preamble of the 1945 Constitution.

With these regulations in place, every child's right to identity and protection of their existence through birth registration is expected to be fulfilled. To ensure children's rights to obtain birth certificates, the government carries out birth registration by creating birth certificate registers, aiming to ensure the inclusion of the child's name, nationality, date of birth, and origin. Additionally, the government also provides a copy of the birth certificate to the respective child. The implications of not fully meeting the right to identity for children include discrimination, lack of access to basic education or healthcare services, vulnerability to sexual crimes, exploitation, and even becoming victims of baby and child trafficking.

Meanwhile, in the Islamic principles of state law, a birth certificate is a child's identity that must be provided by the competent government authority. Children's rights are an integral part of human rights that must be possessed, guaranteed, protected, and fulfilled by parents, families, society, government, and the state. Thus, in Islam, the state's fulfillment of children's identities is obligatory to ensure their well-being.

In the realm of administrative governance (*siyāsah 'idāriyyah*), one of the most fundamental rights for every child born into the world is the right to recognition of their identity, encapsulated in their name and lineage. From an Islamic perspective, a child's identity right falls under the categories of *ḥifẓ al-ird* (preservation of honor) and *ḥifẓ al nasl* (lineage). It is highly recommended in Islam for parents to name their child immediately after birth. Alongside naming, recording the lineage from the child's parents is also part of the child's identity rights. Islam also prohibits adoption that would result in the child losing their biological lineage.

In essence, the author agrees with Yenny's statement in her research that a birth certificate is crucial for a child as evidence of the state's fulfillment of the child's rights, with numerous benefits for the child in the future. These benefits include ensuring legal certainty regarding their identity, proving the legal relationship between the child and their biological parents, ensuring the accuracy of family relationship data and lineage determination, serving as a fundamental document for obtaining various other documents such as identity cards and family cards, facilitating access to formal education, preventing child labor, preventing legal proceedings against children, and preventing age manipulation and exploitation.⁷⁶

Secondly, to what extent has the child for whom marriage dispensation is sought engaged in dating behaviors with their partner, such as seclusion (*khalwat*), mixed-gender interaction (*ikhtilath*), or adultery (*zina*)? It has often been reported that factors influencing individuals, particularly

⁷⁶ A S Yenny, "Upaya Mewujudkan Pemenuhan Hak Atas Identitas Anak," *Jurnal Hukum Media Bhakti* 1, no. 1 (2017), <https://doi.org/10.32501/jhmb.v1i1.1>.

adolescents, to engage in premarital sex include frequent viewing or storing of pornography on mobile phones. This exposure may lead to arousal, prompting adolescents to engage in premarital sex without much thought, lack of self-control, and inadequate supervision from family regarding mobile phone usage, making it easier for them to access pornography without supervision. According to the author, the dominant factors contributing to adolescents engaging in premarital sex at school are family factors, lack of self-control, and peer influence, which are interconnected.

Adolescents who engage in premarital sex before marriage may experience unstable development, leading to loss of aspirations due to embarrassment, lack of concentration in studies, increased tendency to lie, and even addiction to exploring new sexual experiences. Underage marriage resulting from premarital sex can lead to divorce due to lack of maturity and resilience within the marital relationship. Moreover, reproductive system disorders in females and even criminal activities such as abortion and infanticide may occur due to pregnancies resulting from premarital sex, which are considered grave sins in Islam.⁷⁷ Therefore, considering the potential risks associated with premarital sex in the process of granting marriage dispensation is expected to mitigate potential adverse consequences for the child in the future. This aligns with the objective of child protection as outlined in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which aims to ensure and protect the child and their rights to live, grow, develop, and participate optimally according to human dignity, as well as to receive protection from violence and discrimination.

Thirdly, the presence or absence of potential for clandestine marriage if marriage dispensation is denied should be considered. The ultimate purpose of marriage dispensation is to ensure that a marriage event is officially recorded by the state, thus providing legal protection for the child's

⁷⁷ Muhammad April and Asrizal Saiin, "Perfection of Sex for the Intersex (Khun a) to Get Married: Maq Id Syar Ah Perspective on Corrective Surgery," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (2021): 173–84, <https://doi.org/10.14421/ahwal.2021.14205>.

status, particularly regarding their civil status. Unregistered marriages have negative implications for children, as they may encounter difficulties in obtaining their birth certificates. Even if a child manages to obtain a birth certificate, they may be categorized as illegitimate children in the document, making it challenging for them to access various services, such as healthcare, administrative procedures, and others.

Marriage registration constitutes a primary need (*al-ḍarūriyāt*) for the life of a nation and its citizens, particularly for spouses and children, aiming to create well-being by safeguarding dignity and ensuring protection of Human Rights under the law, as evidenced by the presence of an authentic document, namely the marriage certificate. The marriage certificate serves as valid evidence in marriage and can have legal implications in the event of undesirable circumstances. Marriages that are not registered with the state will pose difficulties for individuals in upholding their rights within their marriage. This is because the community lacks legal recognition of marriage by the state.

Due to the state's non-recognition of the legality of unregistered marriages, the most impacted individuals are women who enter into unofficial marriages. These women will not receive legal protection guaranteeing their rights as spouses. In cases of domestic violence where these unofficially married women become victims, they will struggle to obtain legal protection. Law Number 23 of 2004 concerning the Elimination of Domestic Violence cannot be applied in cases of violence against spouses in unofficial marriages because, formally and juridically, the household referred to in this law can only be proven through a marriage certificate citation, which is not present in unofficial marriages. Therefore, this condition does not meet the household element outlined in Law Number 23 of 2004.⁷⁸

⁷⁸ Saptosih Ismiati, *Menelisik Kupasan Kasus-Kasus KDRT (Sebuah Kajian Yuridis Sosiologi)* (Sleman: Deepublish Digital, 2023), 53.

The phenomenon of unofficial marriages (nikah siri) is currently evolving alongside the advancement and progression of time. Several facts indicate that unofficial marriages are not only seen as a means to legalize marital relationships in the eyes of religion but also harbor underlying motives. For instance, there may be intentions to elevate social status by marrying and having multiple wives, to satisfy male desires, and to legalize their "secret" relationships. Naturally, such intentions can affect the psychological condition of the wives. For example, being labeled as a mistress and the fear of abandonment or experiencing violence will undoubtedly haunt wives of unofficial marriages. Meanwhile, on the side of men who engage in unofficial marriages, there is a tendency to evade responsibility towards their unofficial wives and the children born from these marriages. This tendency arises due to the absence of laws protecting the relationships they engage in.

Furthermore, there is the issue of the educational status of children whose parents seek dispensation for marriage. Under Law Number 20 of 2003 concerning the National Education System, education is a conscious and planned effort to create a conducive learning environment and learning process so that students can actively develop their potential.

One of the government's initiatives in fulfilling the right to education for children is through the 9-year learning process, which mandates compulsory education for primary education at the elementary and junior high school levels. The 9-year compulsory education is also stipulated in Government Regulation of the Republic of Indonesia Number 47 of 2008 in Article 1, which states that the minimum education program that Indonesian citizens must follow under government responsibility is the primary education level, namely the education level that underpins the secondary education level, in the form of Elementary School (SD) and Madrasah Ibtidaiyah (MI) or equivalent forms as well as junior high school (SMP) and Madrasah Tsanawiyah (MTs), or equivalent forms. However, this regulation has been refined through a government program initiated in June 2015,

namely compulsory 12-year education, which means that every school-age individual must pursue education up to the high school level or its equivalent, and the government is obliged to fund and provide facilities so that school-age individuals can pursue education up to that high school or equivalent level. Accelerating the implementation of compulsory 12-year education is also one of the national priorities in the RPJMN 2020-2024, which is also a priority in the Merdeka Belajar (Freedom of Learning) initiative.⁷⁹

The state's duty in fulfilling the right to education for children comprises two main aspects. Firstly, education is recognized as a fundamental right for all citizens, encompassing every individual without discrimination. Secondly, education is deemed a citizen's entitlement, necessitating the state, as the governing body, to ensure its provision. In Indonesia, however, the complete fulfillment of children's rights remains incomplete. These rights include civil rights such as birth certificates and Child Identity Cards (KIA), educational rights such as the Smart Indonesia Card (KIP), and healthcare rights through the Healthy Indonesia Card.

The administration of children's educational rights is pivotal in endeavors to enhance human dignity and civilization, referred to in Islam as *ḥifẓ al 'aql* or the preservation of intellect. The primary responsibility lies with the family, particularly parents, in providing education. The conception of child education extends beyond intellectual capabilities to encompass the development of mental and spiritual faculties. Spiritual education intertwines with mental development, as a well-grounded spiritual education fosters sound mental attributes in children.⁸⁰

In summary, education for children in Islam is fundamentally considered a basic right that must be fulfilled starting from the prenatal

⁷⁹ Iranisa and Marihot Nasution, "Komitmen Pemerintah Pada Program Wajib Belajar 12 Tahun," *Buletin APBN VII*, No. 13, 2022, 14.

⁸⁰ Ocha Juliennelzky, Hidayat Fitri, and Dian Pertiwi, "Pemenuhan Hak-Hak Perlindungan Anak (Studi Perbandingan Hukum Positif Dan Hukum Tata Negara Islam)," *Jurnal Integrasi Ilmu Syari'ah* 4, no. 1 (2023): 147.

stage. Parents and families hold the primary responsibility, followed by society and the government. From the perspective of Islamic law, child education based on rights and comprehensiveness encompasses not only cognitive fulfillment but also the cultivation of morals and spirituality, enabling children to grow and develop holistically. Thus, considering the paramount importance of education, the consideration regarding the potential continuation of a child's education if a dispensation for marriage is requested should be obligatory in judicial decisions.⁸¹

In addition to the four aforementioned considerations, the author suggests that there is another potential concern that often instills fear when deciding on a dispensation for marriage, leading to child marriages: the prospect of divorce. Therefore, it is imperative to provide advice and understanding to the children seeking dispensation for marriage. Intensive counseling and guidance should be extended to them regarding the risks and potential issues within marriage, enabling them to avoid or, at the very least, prepare to address challenges with more thoughtful solutions, rather than resorting to instant solutions such as divorce. While it is acknowledged that a considerable number of divorces have historical ties to child marriages, policies must still be implemented while concurrently seeking alternative solutions for the betterment of the community, particularly in the best interest of the children.

Conclusion

The application of Jasser Auda's maqāṣid al-sharī'ah system theory in understanding the "very urgent" criteria in requests for marriage dispensation can be analyzed through four conditions that may arise in children who seek this dispensation. First, whether there is pregnancy in the

⁸¹ However, in discussing the relationship between child marriage and education level, it should be noted that this cannot show a causal correlation between these two aspects. This means that it cannot be ascertained whether marriage is a factor in children dropping out of school, or whether it is precisely because children drop out of school that the practice of child marriage occurs. Hakiki et al., *Pencegahan Perkawinan Anak Percepatan Yang Tidak Bisa Ditunda*, 12.

child, which is related to cognitive characteristics and integrity. Second, the extent of the child's dating behaviour is related to openness. Furthermore, because the first and second conditions can give rise to causes and effects in the future, these conditions are closely related to hierarchical (interconnection) and multidimensional characteristics. Third, whether or not there is a potential for clandestine marriages, which are related to the intention and partiality of maqāṣid. Fourth, the educational status of children seeking marriage dispensation is associated with the characteristics of hierarchy (interconnection), multidimensionality, and intentionality. The application of system theory in the judge's considerations in granting marriage dispensation is in line with the intent of the regulations regarding child protection and the elimination of domestic violence so that judges apply marriage dispensation decisions on the basis that achieving the best interests of the child can be realized.

Reference

- Al-Raḥman, Ṭaha ‘Abd. *Tajdīd Al-Manhaj Fī Taqwīm at-Turās*. Beirut: Markāz al-Šaqāfi al-‘Arābī, n.d.
- Alam, Nur Alam. “Dynamics of Judges’ Considerations in The Determination Of Marriage Dispensation at The Enrekang Religion Court.” *Al-Iftah: Journal of Islamic Studies and Society* 3, no. 2 (2022): 51–60. <https://doi.org/10.35905/aliftah.v3i2.6413>.
- Aljamil (Al-Qur’an Tajwid Warna, Terjemah Per Kata, Terjemah Inggris)*. Bekasi: Cipta Bagus Segara, 2012.
- Anie, Dika Putri Vindi Santika. “Disparity in Judges’ Legal Reasoning on Marriage Dispensation Regarding Minimum Marriage Age: Indonesian Experience.” In *International Conference on Sustainable Innovation on Humanities, Education, and Social Sciences (ICOSI-HESS 2022)*, 120–27. Atlantis Press, 2022. <https://doi.org/10.2991/978-2-494069-65-7>.
- April, Muhammad, and Asrizal Saiin. “Perfection of Sex for the Intersex (Khun a) to Get Married: Maq Id Syar Ah Perspective on Corrective Surgery.” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (2021): 173–84. <https://doi.org/10.14421/ahwal.2021.14205>.
- Badilag, Ditjen. “Laporan Pelaksanaan Kegiatan Tahun 2022.” Jakarta, 2023.

https://kepaniteraan.mahkamahagung.go.id/images/laporan_tahunan/FA-LAPTAH-2022.pdf.

- . “Laporan Pelaksanaan Kegiatan Tahun 2023.” Jakarta, 2024. <https://cloud.badilag.net/s/ZmxzSdzb82LwLaA>.
- BPS. “Proporsi Perempuan Umur 20-24 Tahun Yang Berstatus Kawin Atau Berstatus Hidup Bersama Sebelum Umur 18 Tahun Menurut Provinsi (Persen), 2021-2023.” <https://www.bps.go.id/>, 2024. <https://www.bps.go.id/id/statistics-table/2/MTM2MCMY/proporsi-perempuan-umur-20-24-tahun-yang-berstatus-kawin-atau-berstatus-hidup-bersama-sebelum-umur-18-tahun-menurut-provinsi.html>.
- Dahlan, Abdul Aziz. *Ensiklopedi Hukum Islam*. Jakarta: Ichtiar Baru Van Hoeve, 1996.
- Darmawan, Darmawan, Asmaul Husna, Mirza Rahmatillah, and Helmi Imran. “Marriage Dispensation and Family Resilience: A Case Study of the Bener Meriah Shariah Court, Aceh Province.” *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (2022). <https://doi.org/10.15408/ajis.v22i2.28827>.
- Ferdiansyah, Hengki. *Pemikiran Hukum Islam Jasser Auda*. Tangerang Selatan: Yayasan Pengkajian Hadis el-Bukhari, 2018.
- Gunawan, Shella Oetharry, and Syamsul Bahri. “Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives.” *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 362–80. <https://doi.org/10.22373/ujhk.v6i2.20262>.
- Hakiki, Gaib, Asnita Ulfah, Maarif Ibnu Khoer, Sugeng Supriyanto, Muhammad Basorudin, Widya Larasati, Dwi Prastiwi, et al. “Pencegahan Perkawinan Anak Percepatan Yang Tidak Bisa Ditunda.” Jakarta, 2020.
- Handayani, Vivi Tri, and Muhammad Syaroni Rofii. “Evaluasi Kebijakan Pencegahan Perkawinan Anak Melalui Program Strategi Nasional Pencegahan Perkawinan Anak (Stranas PPA).” *Kolaborasi: Jurnal Administrasi Publik* 9, no. 1 (2023): 1–16. <https://doi.org/10.26618/kjap.v9i1.10159>.
- Iranisa, and Marihot Nasution. “Komitmen Pemerintah Pada Program Wajib Belajar 12 Tahun.” *Buletin APBN VII, No. 13*, 2022.
- Ishom, Muhammad. “The Loose Interpretation of Dominus Litis Principle in Marriage Dispensation for Underage Marriage in Banten.” *AHKAM: Jurnal Ilmu Syariah* 23, no. 2 (2023). <https://doi.org/10.15408/ajis.v23i2.29881>.
- Ismiati, Saptosih. *Menelisik Kupasan Kasus-Kasus KDRT (Sebuah Kajian Yuridis Sosiologi)*. Sleman: Deepublish Digital, 2023.

- Isnaini, Enik. “Kedudukan Hukum Bagi Anak Yang Lahir Karena Kawin Hamil (Married By Accident) Di Tinjau Dari Hukum Islam Dan Hukum Perdata.” *Jurnal Independent* 1, no. 2 (2013): 8–21.
- Jasser, Auda. *Maqashid Al-Syari’ah as Philosophy of Islamic Law: A Systems Approach*. London: International Institute of Islamic Thought, 2008.
- Juliennelzky, Ocha, Hidayat Fitri, and Dian Pertiwi. “Pemenuhan Hak-Hak Perlindungan Anak (Studi Perbandingan Hukum Positif Dan Hukum Tata Negara Islam).” *Jurnal Integrasi Ilmu Syari’ah* 4, no. 1 (2023): 141–49.
- Kasim, Nur Mohamad, and Indra Saputra Daud. “Application of The Concept of Maslahah by Judges to Issuance of Marriage Dispensation Due to Pregnancy in Religious Courts.” *Jambura Law Review* 4, no. 1 (2022): 122–38. <https://doi.org/10.33756/jlr.v4i1.10999>.
- Kholis, M Nur. “Several Judges’ Considerations in Deciding Marriage Dispensation Cases: Case Study at the Rembang Religious Court.” *International Journal of Social Service and Research* 3, no. 9 (2023): 2135–41. <https://doi.org/10.46799/ijssr.v3i9.531>.
- Kusumaningrum, Santi, Ni Luh Putu Maitra Agastya, Siti Ainun Nisa, Ghivo Pratama, Andrea Andjaringtyas Adhi, Rohika Kurniadi Sari, Thomas Rizal, Erni Rachmawati, and Eti Sri Nurhayati. “Risalah Kebijakan Pencegahan Perkawinan Anak Untuk Perlindungan Berkelanjutan Bagi Anak.” Jakarta, 2023. https://puskapa.org/assets/uploads/2023/04/Policy-Brief-_Pencegahan-Perkawinan-Anak.pdf.
- Lahilote, Hasyim Sofyan, A A Miftah, Yuliatin Yuliatin, and Rahmi Hidayati. “Judge’s Dilemma in Marriage Dispensation in the Religious Court.” *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 1 (2022): 52–60. <https://doi.org/10.30631/alrisalah.v22i1.979>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Media Grup, 2014.
- Murdijana, Desti, Siti Nurwati Hodijah, and Ema Mukarramah. “Kertas Kebijakan Pengabaian Hak Reproduksi Dan Seksual: Ancaman Bagi Keselamatan Dan Hak Hidup Perempuan Dan Anak Perempuan Indonesia.” <https://komnasperempuan.go.id/>, 2019. <https://komnasperempuan.go.id/kertas-posisi-detail/pengabaian-hak-reproduksi-dan-seksual-ancaman-bagi-keselamatan-dan-hak-hidup-perempuan-dan-anak-perempuan-indonesia-kertas-kebijakan-komnas-perempuan-untuk-pemenuhan-hak-reproduksi-dan-seksual-dan-10-risa>.
- Murni, Sri. “The Marriage Age Limit According to Indonesian Law No. 16, 2019 as Effort to Child Protection.” In *International Conference on Law, Economics and Health (ICLEH 2020)*, 222–30. Atlantis Press,

2020. <https://doi.org/10.2991/aebmr.k.200513.047>.

- Mursyid, S, and N Yusuf. "Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi." *Samarah* 6, no. 2 (2022): 975–96. <https://doi.org/10.22373/sjhc.v6i2.12439>.
- Nawawi, M Anwar, Sulastri Sulastri, Relit Nur Edi, and Agus Setiawan. "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022): 117–34. <https://doi.org/10.18326/ijtihad.v22i1.117-133>.
- Pakasi, Diana Teresa, Reni Kartikawati, Fatimah Az Zahro, Amalina Azzahra, Ni Nyoman Sri Natih, Nadira Reza Chairani, Lusiana Rumintang, Tasneem Kakal, and Anke van der Kwaak. "Yes I Do. The Situation of Child Marriage, Teenage Pregnancy, and FGM/C in Sukabumi, Rembang, and West Lombok Regencies." Jakarta, 2018.
- Rachmatulloh, Mochammad Agus, and Chafidz Syafiuddin. "Praktik Permohonan Dispensasi Kawin Di Pengadilan (Studi Peraturan Mahkamah Agung Nomor 5 Tahun 2019)." *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 9, no. 1 (2022): 1–15. <https://doi.org/10.24252/al-qadau.v9i1.23752>.
- Rasji, Rasji, and Ida Kurnia. "Application Of Reasons For Marriage Dispensation By The Indramayu Religious Court." *International Journal of Application on Social Science and Humanities* 1, no. 4 (2023): 10–15. <https://doi.org/10.24912/ijassh.v1i4.28669>.
- Rizki, Darlin, Frina Oktalita, and Ali Sodiqin. "Maqasid Sharia Perspective in Changes the Marriage Age Limits for Women According to Law Number 16 of 2019." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 November (2022): 487–508. <https://doi.org/10.29240/jhi.v7i2.4016>.
- Rohman, Taufiqur, Muhammad Mahsus, Muhammad Abduh, and Gioia Arnone. "Preventing Violations of Religious and Social Norms: Judicial Interpretation of Urgent Reasons' in Marriage Dispensation at the Wonosari Religious Court, Indonesia." *J. Islamic L.* 4, no. 2 (2023): 218–36. <https://doi.org/10.24260/jil.v4i2.1535>.
- Santhoso, Fauzan Heru, and Moh Abdul Hakim. "Deprivasi Relatif Dan Prasangka Antar Kelompok." *Jurnal Psikologi* 39, no. 1 (2012): 121–28. <https://doi.org/10.22146/jpsi.6971>.
- Setiawan, Budi, Adilia Dian Fatmawati, Amalia Noviani, and Eva Yugiana. "Kesejahteraan Anak Indonesia: Analisis Deprivasi Hak Anak Multidimensi 2022." *Https://Www.Bps.Go.Id/*. Jakarta, 2023.
- Shahrullah, Rina Shahriyani, Firdaus Firdaus, Elza Syarief, Aditya Rahmadhony, Ampuan Situmeang, Sri Lilestina Nasution, Nurlaily Nurlaily, Sari Kistiana, and Deden Gumilar Nugraha. "Dilemmas

Faced by Judges When Granting Marriage Dispensations for Child Marriages in West Java, Indonesia.” *International Journal of Law, Policy and The Family* 37, no. 1 (2023): ebado35. <https://doi.org/10.1093/lawfam/ebado35>.

Shihab, M Quraish. *Tafsīr Al-Misbāh: Pesan, Kesan Dan Keserasian Al-Quran Vol. 7*. Jakarta: Lentera, 2005.

Syufa’at, Syufa’at. “Marriage Dispensation in Underage Marriage: A Case Study at the Purwokerto Religious Court.” *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 1 (2022): 91–102. <https://doi.org/10.24090/mnh.v16i1.6426>.

Yenny, A S. “Upaya Mewujudkan Pemenuhan Hak Atas Identitas Anak.” *Jurnal Hukum Media Bhakti* 1, no. 1 (2017). <https://doi.org/10.32501/jhmb.v1i1.1>.

Yuni, Lilik Andar. “Analysis of The Emergency Reasons in The Application of Marriage Dispensation at The Tenggarong Religious Court.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 976–1002. <https://doi.org/10.22373/sjhc.v5i2.9135>.

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

This research funding is based on personal budget

ACKNOWLEDGMENT

We would like to thank the Universitas Islam Indonesia, who have provided the opportunity for this collaborative research.

HISTORY OF ARTICLE

Submitted : January 25, 2024
Revised : Februari 24, 2024
Accepted : May 13, 2024
Published : June 4, 2024