

AN ANALYSIS OF JUDICIAL DETERMINATIONS IN MARRIAGE DISPENSATION CASES FROM THE PERSPECTIVE OF MAQĀSĪD AL-SHARĪ‘AH AND THE CHILD PROTECTION LAW

Muhammad Roy Purwanto ¹, Nurul I‘anatul Fajriyah²

1. Program Studi Ahkwal Syakhsyah, Fakultas Ilmu Agama Islam Universitas Islam Indonesia, Yogyakarta , Indonesian
2. Program Studi Ahkwal Syakhsyah, Fakultas Ilmu Agama Islam Universitas Islam Indonesia, Yogyakarta , Indonesian

Info Artikel	DOI : 10.20885/tullab.vol6.iss2.art14
Artike History	E-mail Address
Received: June 28, 2024 Accepted: October 31, 2024 Published: November 04,2024	muhammadroy@uui.ac.id nuruianah@uui.ac.id
ISSN: 2685-8924	e-ISSN: 2685-8681

Abstrak

This article aims to examine Judicial Determination Number 236/Pdt.P/2021/PA.Llk concerning a marriage dispensation issued by the Religious Court of Lolak, analyzed through the perspectives of Maqāṣid al-Sharī‘ah and the Child Protection Law. It explores how the judge resolved the petition for a marriage dispensation based on the conceptual considerations of Maqāṣid al-Sharī‘ah and Indonesia’s Child Protection Law. In cases related to marriage dispensations—particularly those involving underage marriages—judicial decisions are significantly influenced by the ethical framework of Maqāṣid al-Sharī‘ah. The overarching objectives of Islamic law, known as Maqāṣid al-Sharī‘ah, include the protection of wealth (māl), religion (dīn), life (nafs), intellect (‘aql), and lineage (nasl). These objectives guide judges in issuing rulings that uphold Islamic legal principles and promote the public interest. In this case, the Court received a petition from a father seeking a marriage dispensation for his 17-year-old pregnant daughter, registered under Case Number 236/Pdt.P/2021/PA.Llk. The Court assessed the couple’s eligibility to marry and the potential health risks concerning the girl, taking into account her survival, intellectual development, and lineage.

Keywords: *Maqāṣid al-Sharī‘ah, Child Protection Law, Marriage Dispensation, Judicial Determination*

A. INTRODUCTION

Early marriage remains one of the social issues that continues to attract public concern in Indonesia. The rate of child marriage in Indonesia was estimated to have risen to 15.65% in 2021, according to data from the Central Statistics Agency (BPS). In addition to jeopardizing the health, education, and economic prospects of young girls, this phenomenon also highlights gender inequality, which demands serious attention from various stakeholders. (BPS,2021)

The health of young girls is profoundly affected by early marriage. Younger brides are more likely to experience reproductive health problems, as their bodies are still growing and not yet fully prepared to endure the physical demands of pregnancy and childbirth. This condition places them at a significantly higher risk of major health complications, including miscarriage, premature birth, and maternal or infant mortality. In the context of education, early marriage often becomes a catalyst for students to leave school prematurely. Young brides frequently struggle to balance their roles as wives and learners. Family responsibilities tend to take precedence over educational opportunities, thereby hindering girls from realizing their full potential. (Tampubolon, 2021:738)

As public awareness of the harmful effects of child marriage continues to grow, the Indonesian government responded by enacting Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage. This amendment raised the legal minimum age of marriage for women to 19 years. Although this reform represents a positive step toward addressing the problem of early marriage, significant challenges remain. According to data from the Religious Courts in 2022, there were still 233,123 applications for marriage dispensations. The existence of such dispensations reflects a crucial legal mechanism in the effort to curb child marriage, as they serve as exceptions to the general rule, yet simultaneously reveal the persistent demand for underage marriages despite legal restrictions. (Sofia, 2020: 49). In deciding whether to grant or deny a petition for a marriage dispensation, judges are not bound by a specific set of guidelines or principles. Ambiguities within the regulatory framework continue to create varying interpretations. This is evident in Article 7(2) of Law Number 1 of 1974 on Marriage, which states that applications for marriage dispensation may be submitted to the court or another designated institution by the parents of either party. This provision was later revised through Law Number 16 of 2019, which amended the original Marriage Law. Under the revised Article

7(2), eligible males and females may marry before the age of 19, provided that the court grants a marriage dispensation supported by strong legal arguments and sufficient evidence. (Prabowo, 2013: 300)

This study examines Judicial Determination Number 236/Pdt.P/2021/PA.Llk concerning a marriage dispensation issued by the Religious Court of Lolak, analyzed through the perspectives of Maqāṣid al-Sharī'ah and the Child Protection Law. It seeks to understand how the judge resolved the marriage dispensation case based on the conceptual framework of maqāṣid al-sharī'ah and the legal considerations mandated by Indonesia's Child Protection Law.

B. METHOD

This study employs an empirical juridical approach. It is categorized as qualitative research to obtain an in-depth understanding and interpretation of the factual realities related to the issue. The primary, secondary, and tertiary data sources used in this research were gathered through observation and literature review.

C. FINDINGS

1. Marriage Dispensation Case

The case analyzed in this study is Judicial Determination Number 236/Pdt.P/2021/PA.Llk, which reveals that the petition for a marriage dispensation submitted by the applicant to the Religious Court of Lolak is the primary focus of discussion. The applicant, a 42-year-old Muslim farmer, sought permission for his 17-year-old daughter to marry an 18-year-old man. The planned marriage had previously been rejected by the Office of Religious Affairs (KUA) due to the daughter's age. Nevertheless, the applicant insisted on proceeding with the marriage, explaining that his daughter worked as a miner and had been in a close relationship with the young man since November 2019.

As part of the legal procedure, the applicant was required to present two neighbors as witnesses and submit several documents, including a birth certificate, family card, and national identity card. The applicant remained firm in his request, even though the judge advised postponing the marriage until his daughter reached the legal age of 19. Relying on the legal framework provided by Supreme Court Regulation (Perma) Number 5 of 2019 concerning Guidelines for Filing Marriage Dispensation Petitions, the applicant asked the Religious Court of Lolak to grant the

dispensation. In considering the petition, the judge evaluated factors such as the couple's ages, financial readiness, and potential risks associated with the marriage.

2. Maqāṣid al-Sharī'ah as Judicial Consideration

Linguistically, *maqāṣid al-sharī'ah* consists of two words: *maqāṣid* and *sharī'ah*. *Maqāṣid* is the plural form of *maqṣid*, which means aim, intention, or objective. The term *sharī'ah*, in its original linguistic context, referred to a source of water intended for drinking. Over time, Arabs used the word *sharī'ah* to denote a straight path, drawing an analogy between the clarity and necessity of water as a life-sustaining source and a straight path that guides human beings toward goodness. (Qathhan, 2021:13)

According to another perspective, the term *sharī'ah* derives from *al-sharī'ah*, which is synonymous with *al-shir'ah*. Lexically, both terms mean “a path leading to a source.” The notion of a path to a source implies safety and guidance. In the Qur'an, these terms are used to refer to religion as the straight path ordained by Allah for humanity to follow in order to attain salvation. In its later development, the term *Sharī'ah* expanded to encompass the fundamental principles of religion and, at times, to denote the essential aspects of both religious doctrine and law. This understanding portrays *Sharī'ah* as comprehensive Islamic law in a broad sense, covering legal, moral, and doctrinal dimensions. Consequently, Islamic law is regarded as synonymous with the religion of Islam itself. (Auda, 2018).

Maqāṣid al-Sharī'ah is a compound term (iḍāfī) consisting of two words: *maqāṣid* and *al-sharī'ah*. Etymologically, *maqāṣid* is the plural form of *maqṣad*, derived from the letters qāf, ṣād, and dāl, meaning intention, purpose, or objective. Meanwhile, the word *al-sharī'ah* originates from the verb *shara'a-yashra'u-shar'an*, which means to legislate, to enact a law, to clarify, or to proclaim. The phrase *shara'a lahum shar'an* implies that one has shown or prescribed a path, or may also carry the meaning of *sanna*, which refers to establishing a rule or directive. (Khan, 2014; 25).

From a terminological standpoint, scholars have provided various definitions of *Sharī'ah*. Asaf A. Fyze describes *Sharī'ah* as the canon law of Islam, encompassing the entirety of divine commandments contained in sacred texts. Satria Effendi further explains that *Sharī'ah* refers to *al-nuṣūṣ al-muqaddasah*—the holy, authoritative texts found in the Qur'an and *mutawātir* Hadith, untouched by human interpretation. Thus, the scope of *Sharī'ah* includes matters of

creed (*i'tiqādiyyah*), practical worship and legal rulings (*'amaliyyah*), and moral conduct (*khuluqīyyah*). However, contemporary scholars note that the meaning of *Sharī'ah* has undergone a narrowing of interpretation. Mahmud Shaltut clarifies that *Sharī'ah* comprises the divinely mandated laws and regulations revealed by Allah for humanity, serving as guidance in regulating their relationship with God, with fellow human beings, with nature, and with all aspects of life. Similarly, Ali al-Sayyid explains that *Sharī'ah* consists of laws bestowed by God to His servants so that they may believe in them and apply them for their benefit in both worldly affairs and the hereafter. (Fyzee, 2008).

Scholars have defined *Maqāṣid al-Sharī'ah* in various ways. First, Imam al-Ghazālī (450–505 H) describes it as *al-maṣlaḥah*, meaning the fundamental consideration of what brings benefit or prevents harm. This is achieved by safeguarding the five essential objectives of the *Sharī'ah*: the protection of religion, life, intellect, lineage, and property. (Izomiddin, 2018).

Second, Imam al-Shāṭibī (720–790 H) concluded that *Maqāṣid al-Sharī'ah* refers to the overarching purposes of the *Sharī'ah* revealed to humankind, ensuring that it aligns with three fundamental categories of human needs: *ḍarūriyyāt* (essentials), *ḥājīyyāt* (needs), and *taḥsīniyyāt* (embellishments or refinements). According to him, Allah legislates commands and prohibitions to preserve both worldly and spiritual benefits.

Third, Ibn 'Āshūr (d. 1393 H) argues that *Maqāṣid al-Tashrī'* refers to the underlying meanings and wisdoms embedded within all—or at least most—of the Islamic legal texts. Similarly, Alal al-Fasi (d. 1394 H) defines *Maqāṣid al-Sharī'ah* as the objectives of the *Sharī'ah* and the intrinsic wisdom contained in each of its rulings. (Izomiddin, 2018).

Fourth, Wahbah al-Zuḥaylī defines *Maqāṣid al-Sharī'ah* as the meanings and purposes inherent in all or the majority of prescribed rulings, as well as the objectives behind the establishment of the *Sharī'ah* and the wisdom derived from each legal injunction.

From these various definitions put forth by scholars over time, it becomes evident that every divine mandate—whether a command or a prohibition—is intended to realize human welfare and protect them from harm. Through this, individuals are able to recognize the true benefits of Islamic law for their lives. (Siddiqui, 2015: 15).

Under Islamic law, the issue of marriage dispensation presents a complex array of ethical and legal considerations that require a profound understanding of socio-cultural dynamics and

relevant religious teachings. Judges are guided by the framework of *Maqāṣid al-Sharī'ah*, which prioritizes the protection of property (*māl*), intellect (*'aql*), religion (*dīn*), life (*naḥs*), and lineage (*nasl*).

a. Protection of Lineage

Maqāṣid al-Sharī'ah places significant emphasis on the preservation of lineage (*hiḥz al-nasl*), which includes upholding moral values and maintaining family cohesion. In both cases examined, the petitioners underscored the importance of marriage as a means to prevent behaviors considered unethical within the Islamic tradition. This aligns with the principle of *hiḥz al-nasl*, which assigns great value to the integrity of the family and the stability of the social order. By granting marriage dispensations, judges seek to legitimize relationships that might otherwise lead to social stigma or religious transgression. (Izomiddin, 2018).

However, the preservation of lineage must also take into account the potential negative consequences for underage individuals involved. Early marriage may hinder a young person's educational pursuits and personal development, leading to long-term socioeconomic disadvantages. Although the courts recognize the cultural significance of marriage, they also highlight the risks associated with underage unions. Balancing the welfare of minors with prevailing cultural and religious norms creates a challenging ethical landscape, as illustrated by the tension between these competing considerations. (Siddiqui, 2015: 15)

b. Protection of Life and Intellect

Another essential component of *Maqāṣid al-Sharī'ah* is the protection of life and intellect. Early marriage poses significant threats to the mental and physical well-being of those involved. Due to their heightened vulnerability during pregnancy and childbirth, adolescent girls face considerable maternal health risks. These dangers underscore the relevance of *hiḥz al-naḥs*, which emphasizes the preservation of life and overall well-being. Educational disruption is another major concern. Early marriage often leads to the termination of formal schooling, thereby limiting future opportunities for personal and professional development. Acknowledging these consequences, judges in such cases advise petitioners on the potential long-term impacts of underage marriage. The principle of *hiḥz al-'aql* highlights the importance of cognitive development, which is compromised when children are married before completing their education. (Siddiqui, 2015: 15)

Thus, the ethical dilemma lies in balancing the long-term intellectual and physical welfare of minors with the cultural and familial pressures that push for early marriage. This tension illustrates the complexity of judicial decision-making in such matters.

c. Protection of Property

In marriage dispensation cases, financial readiness and the ability to support a household are critical factors for judicial consideration. The *Maqāṣid al-Sharī'ah* principle of *hiḍḍ al-māl* emphasizes the safeguarding of property and financial stability. In both cases examined, the petitioners assured the court that they would provide financial support for the young couple. However, the minors themselves were not yet financially independent, as they had not had sufficient opportunities to establish a reliable source of income.

This raises concerns about the young couple's financial dependence on their families, potentially perpetuating a cycle of poverty. For long-term stability and independence, newly married couples must possess adequate resources to sustain themselves. While judges took into account the financial guarantees offered by the petitioners, they also weighed the broader economic implications of underage marriage, which is frequently associated with poorer socioeconomic outcomes. (Fyzee, 2008).

3. The Child Protection Law as Judicial Consideration

The modernization of the Marriage Law, evidenced by the amendment of the 1974 Marriage Law through the enactment of Law No. 16 of 2019, emerged as a response to increasing demands for raising the minimum legal age of marriage. The Constitutional Court ruled that, similar to men, the minimum age for women to marry must be 19 years. The Court argued that establishing this age requirement prevents the government and the House of Representatives (DPR) from arbitrarily determining childhood age limits. By setting a clear minimum marriage age, the Court sought to avoid rigidity in future legislative considerations and to allow lawmakers greater flexibility in responding to evolving legal and sociological developments. In its ruling, the Constitutional Court declared that provisions allowing girls to marry at the age of 16 were unconstitutional, as they violated the 1945 Constitution (UUD 1945). Consequently, the 16-year age limit stated in Article 7(1) of the Marriage Law became legally unenforceable and contrary to the Constitution. Moreover, this provision conflicted with Article 1 of the Child Protection Law, which defines a child as any person under 18 years of age, including those still

in the womb. Following the Constitutional Court's decision, President Joko Widodo enacted Law of the Republic of Indonesia Number 16 of 2019, amending the 1974 Marriage Law, on October 14, 2019, in Jakarta. The law came into force on October 15, 2019, establishing the revised minimum age requirements. (Candra, 2021)

Theories of development and ethics further reinforce the legal and ethical considerations in this matter. According to the Convention on the Rights of the Child—which Indonesia has ratified—the best interests of the child must be the primary consideration in all matters affecting children. This principle aligns closely with the objectives of *Maqāṣid al-Sharī'ah*, particularly in safeguarding life, intellect, and overall well-being.

Developmental theories emphasize adolescence as a crucial stage for intellectual, emotional, and physical growth. Psychologists such as Jean Piaget and Erik Erikson highlight this period as essential for identity formation and cognitive development. Early marriage disrupts these developmental trajectories and may adversely affect mental health and social integration. This theoretical awareness supports judicial caution by underscoring the importance of delaying marriage until minors are sufficiently mature to shoulder marital responsibilities. (Candra, 2021).

4. Judicial Determination Number 236/Pdt.P/2021/PA.Llk within the Framework of Maqāṣid al-Sharī'ah and the Child Protection Law

Case Number 236/Pdt.P/2021/PA.Llk, decided by the Religious Court of Lolak, serves as an illustrative example of how *Maqāṣid al-Sharī'ah* and the Child Protection Law are applied in marriage dispensation cases. *Maqāṣid al-Sharī'ah*, the higher objectives of Islamic law, seeks to preserve fundamental values such as religion, life, intellect, lineage, and property. These principles offer a crucial analytical lens for addressing the complexities inherent in the case. *Maqāṣid al-Sharī'ah* also aims to prevent harm and promote public welfare—including physical and emotional well-being—which becomes particularly relevant given the girl's pregnancy. Complementing this framework is the principle of the “best interests of the child,” as codified in the Convention on the Rights of the Child. This standard requires that children's welfare be prioritized in all legal decisions concerning them. Therefore, a careful assessment of the potential impacts of early marriage on the girl's health, education, and future prospects is essential. The court was tasked with determining whether granting the dispensation would

genuinely serve her best interests or instead expose her to harm and adverse consequences. (Candra, 2021)

In Case Number 236/Pdt.P/2021/PA.Llk, the court faced a tension between immediate social pressures and long-term well-being. The girl's pregnancy and cultural expectations to legitimize the relationship created a sense of urgency. However, the court also had to consider her long-term welfare, including health, education, and socioeconomic opportunities. The question was whether early marriage would provide stability and growth or place her at greater risk later in life. Another critical factor was obtaining the girl's genuine consent. Due to her young age and potential familial influence, the court sought assurance that she understood the implications of marriage and agreed voluntarily. This required an evaluation of her emotional maturity, comprehension of marital responsibilities, and readiness to endure potential challenges. (Candra, 2021)

Human rights principles reinforce the necessity of comprehensive and fair judicial reasoning, particularly concerning children's rights. The CRC strongly emphasizes protecting children from practices detrimental to their development and well-being. Judges must incorporate these principles to uphold legal ethics and ensure vulnerable individuals are protected. Case Number 236/Pdt.P/2021/PA.Llk demonstrates the importance of rights-based judicial decision-making. It shows that marriage dispensation cases require a balanced and equitable approach, integrating legal standards, ethical considerations, and cultural sensitivity.

The principle of the best interests of the child ensures that children's rights and welfare remain paramount, while the application of *Maqāṣid al-Sharī'ah* provides a holistic framework for promoting comprehensive well-being. The court must weigh long-term considerations—such as health, education, and socioeconomic potential—against short-term factors like pregnancy and cultural expectations. Ensuring that underage consent is voluntary and well-informed is essential to respecting personal autonomy. Upholding legal and ethical standards while accommodating cultural norms requires courts to balance legal precedents with sociocultural realities. Judicial competence in delivering informed and just decisions is further supported by human rights principles and developmental psychology. (Fyze, 2008)

Ultimately, achieving a thorough and equitable ruling in marriage dispensation cases demands a deep understanding of legal, ethical, and cultural dimensions. By integrating these

considerations, courts can safeguard children's rights and welfare while administering justice in a manner consistent with both legal frameworks and cultural contexts. A balanced and principled approach—exemplified by Case No. 236/Pdt.P/2021/PA.Llk—highlights the complexities and responsibilities inherent in such judicial decision-making.

D. Acknowledgements

The researcher extends sincere gratitude to the Directorate of Research, Technology, and Community Service (DRTPM), the Directorate General of Higher Education, Research, and Technology (Diktiristek), Ministry of Education, Culture, Research, and Technology (KEMENDIKBUDRISTEK) for funding this activity, and to the Directorate of Research and Community Service (DPPM) of the Islamic University of Indonesia for supporting this research

E. CONCLUSION

In cases involving marriage dispensation, particularly those related to underage marriage, judicial decisions are profoundly influenced by the ethical framework of Maqashid al-Shari'ah. The overarching objectives of Islamic law—preserving property (maal), religion (deen), life (nafs), intellect ('aql), lineage (nasl), and faith (deen)—guide judges to render verdicts that uphold Islamic legal principles and promote the public good. In Case Number 236/Pdt.P/2021/PA.Llk, the court examined a father's request for a marriage dispensation for his 17-year-old pregnant daughter. The court assessed the couple's readiness for marriage and considered potential health risks to the girl, carefully weighing issues related to the preservation of life, intellect, and lineage.

REFERENCES

- BPS. 2021. *Proporsi Perempuan Umur 20-24 Tahun yang Berstatus Kawin*. Diakses dari <https://www.bps.go.id/id/indicator/40/1360/1/proporsi-perempuan-umur-20-24-tahun-yang-berstatus-kawin-atau-berstatus-hidup-bersama-sebelum-umur-18-tahun-menurut-provinsi.html> pada 3 Desember 2023
- Elisabeth Putri Lahitani Tampubolon, "Permasalahan Perkawinan Dini Di Indonesia," *Jurnal Indonesia Sosial Sains* 2, no. 5 (2021): 738–46, <https://doi.org/10.36418/jiss.v2i5.279>
- Kamarusdiana and Ita Sofia, "Dispensasi Nikah Dalam Perspektif Hukum Islam, Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam," *SALAM: Jurnal Sosial dan Budaya Syar-i* 7, no. 1 (February 9, 2020): 49–64, <https://doi.org/10.15408/sjsbs.v7i1.14534>

- Bagya Agung Prabowo, "Pertimbangan Hakim Dalam Penetapan Dispensasi Perkawinan Dini Akibat Hamil Di Luar Nikah Pada Pengadilan Agama Bantul," *Jurnal Hukum Ius Quia Iustum* 20, no. 2 (2013): 300–317, <https://doi.org/10.20885/iustum.vol20.iss2.art7>
- Abdurrahman Qathhan, *Maqasid al-Shari'ah: Its Relevance in Modern Jurisprudence* (Penerbit: Dar al-Nafais, 2001).13.
- Jaser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systematic Approach* (Cambridge: Islamic Texts Society, 2008).
- Muhammad Abdul Khan "Maqasid al-Shari'ah: A New Paradigm for Islamic Law." *International Journal of Islamic Thought* 5, no. 1 (2014): 25-35. DOI: 10.24035/ijit.5.1.3
- Asaf A. Fyzee, *Outlines of Muhammadan Law* (Oxford: Oxford University Press, 2008).
- Izomiddin, *Pemikiran dan Filsafat Hukum Islam*, (Jakarta: PrenadaMedia Group, 2018), 82.
- Mohammed Siddiqui, "Maqasid al-Shari'ah and Its Relevance in Contemporary Islamic Jurisprudence." *Al-Ahkam: Jurnal Ilmu Syariah* 15, no. 1 (2015): 15-30. DOI: 10.21043/al-ahkam.v15i1.894
- Mardi Candra, *Buku tentang Pembaharuan Hukum Dispensasi Kawin dalam Sistem Hukum Indonesia* (Jakarta: Rineka, 2021), 73-104.