

MARRIAGE DISPENSATION DECISIONS AT THE MEDAN RELIGIOUS COURT FROM A MAQASHID SHARIA PERSPECTIVE

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Abstrak

Penelitian ini bertujuan untuk menganalisis pertimbangan hakim dalam memutus perkara dispensasi nikah di Pengadilan Agama Medan serta menilai kesesuaiannya dengan prinsip *Maqashid Syariah*. Penelitian ini menggunakan metode yuridis empiris dengan pendekatan yuridis normatif, empiris, dan konseptual. Data diperoleh melalui studi dokumentasi terhadap putusan dispensasi nikah, wawancara dengan pihak terkait, serta kajian terhadap peraturan perundang-undangan, buku, dan jurnal ilmiah yang relevan. Data dianalisis secara kualitatif menggunakan analisis isi dengan mengacu pada lima tujuan pokok *Maqashid Syariah*, yaitu perlindungan agama (*hifz al-din*), jiwa (*hifz al-nafs*), akal (*hifz al-'aql*), keturunan (*hifz al-nasl*), dan harta (*hifz al-mal*). Hasil penelitian menunjukkan bahwa kehamilan di luar nikah menjadi faktor dominan pengajuan dispensasi, selain kekhawatiran terhadap zina, tekanan sosial, kondisi ekonomi, rendahnya pendidikan, dan lemahnya pengawasan orang tua. Hakim telah mempertimbangkan aspek yuridis, sosial, psikologis, dan kemaslahatan. Namun, penerapan *Maqashid Syariah* masih cenderung menitikberatkan pada *hifz al-din* dan *hifz al-nasl*, sedangkan perlindungan jiwa, akal, dan harta belum sepenuhnya seimbang. Oleh karena itu, diperlukan pertimbangan yang lebih holistik agar dispensasi nikah mampu memberikan kemaslahatan berkelanjutan dan meminimalkan kemudharatan bagi anak serta keluarga.

Kata kunci: Dispensasi Nikah, Pertimbangan Hakim, Maqashid Syariah

Abstract

This study aims to analyze judges' considerations in deciding marriage dispensation cases at the Medan Religious Court and to assess their conformity with the principles of *Maqashid Sharia*. This study employs an empirical juridical method using normative juridical, empirical, and conceptual approaches. Data were collected through document analysis of marriage dispensation decisions, interviews with relevant parties, and a review of relevant laws and regulations, books, and scholarly journals. The data were analyzed qualitatively using content analysis based on the five fundamental objectives of *Maqashid Sharia*: the protection of religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-'aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*). The findings indicate that premarital pregnancy is the dominant factor underlying applications for marriage dispensation, followed by concerns about illicit sexual relations, social pressure, family economic conditions, low educational attainment, and inadequate parental supervision. Judges have considered juridical, social, psychological, and welfare-related aspects in deciding cases. However, the application of *Maqashid Sharia* tends to emphasize *hifz al-din* and *hifz al-nasl*, while the protection of life, intellect, and property has not yet received equal consideration. Therefore, a more holistic approach is needed to ensure that marriage dispensation promotes sustainable welfare and minimizes potential harm to children and families.

Keywords: Marriage Dispensation, Judicial Considerations, Maqashid Sharia

INTRODUCTION

Marriage constitutes an important social and religious institution because it concerns not only the relationship between a man and a woman but also the establishment of a family, the continuation of lineage, the fulfillment of social responsibilities, and the protection of the dignity and rights of family members. From an Islamic perspective, marriage is intended to establish a family characterized by *sakinah*, *mawaddah*, and *rahmah*. Therefore, its implementation should not merely satisfy formal requirements but should also take into account the physical, psychological, social, and economic readiness of prospective spouses. Within the framework of Indonesian positive law, this principle of protection has been strengthened through the establishment of a minimum marriage age as an instrument to prevent child marriage and protect prospective spouses from various risks arising from their lack of readiness to enter married life (Ilma, 2020; Tan, 2021).

The regulatory reform introduced through Law Number 16 of 2019, which establishes 19 years as the minimum marriage age for both men and women, represents an important measure to strengthen child protection and prevent marriage at an immature age. Nevertheless, the law provides an exceptional mechanism through marriage dispensation when urgent reasons can be adequately demonstrated before the court. Marriage dispensation is therefore essentially a special legal instrument and should not be understood as an easily accessible alternative for circumventing the statutory minimum marriage age. Rather, the mechanism requires judges to carefully examine the condition of the child, the reasons underlying the application, and the possible consequences of marriage after the dispensation is granted (Tasya & Winanti, 2021; Ilhami et al., 2023). This framework is further strengthened by Supreme Court Regulation Number 5 of 2019, which places the best interests of the child among the principal considerations in adjudicating marriage dispensation applications.

The phenomenon of marriage dispensation has become increasingly complex because the reasons underlying such applications are intertwined with social, cultural, economic, educational, and moral circumstances. Pregnancy outside marriage, parental concerns regarding children's social relationships, social pressure, family circumstances, and efforts to avoid social problems and preserve family honor frequently constitute part of the background of dispensation applications. Studies of judicial considerations indicate that parental concerns and particular social circumstances often become important elements in the construction of applications and judicial assessments (Fadhli & Warman, 2021; Iqbal & Rabiah, 2020). These circumstances demonstrate that marriage dispensation is not merely an administrative question of whether the statutory age requirement has been satisfied but rather a multidimensional legal issue requiring judges to understand the factual and social context of each case.

The urgency of this issue becomes even more apparent when the possible consequences following marriage are considered. Marriage during childhood may be associated with psychological and social unreadiness, disruption of educational continuity, economic vulnerability, and various difficulties in establishing family life. Thus, granting a marriage dispensation may resolve an immediate problem while simultaneously creating new long-term

challenges. Tan (2021) situates underage marriage within broader issues of development and child-rights protection, while Jalil (2025) highlights the legal dilemma between the marriage dispensation mechanism and the objective of protecting children. Accordingly, the success of a judicial decision cannot be assessed solely on the basis of legal certainty but should also be evaluated according to its capacity to protect the interests of the child and minimize potential risks following the marriage.

Within this context, the *Maqashid al-Shariah* approach provides a relevant analytical framework for evaluating the purposes and consequences of legal decisions. *Maqashid al-Shariah* places human welfare among the principal orientations of Islamic law. The concept generally encompasses the protection of religion (*hifẓ al-din*), life (*hifẓ al-nafs*), intellect (*hifẓ al-'aql*), lineage (*hifẓ al-nasl*), and property (*hifẓ al-mal*). In marriage dispensation cases, the *Maqashid al-Shariah* approach enables judicial decisions to be assessed not merely in terms of conformity with normative legal provisions but also according to their purposes, benefits, risks, and consequences for the lives of children and families. Contemporary studies demonstrate that *Maqashid al-Shariah* can be employed to evaluate both the regulation and practice of marriage dispensation by positioning child protection and substantive welfare as central considerations (Nabilah et al., 2024; Putri, 2024).

The application of *Maqashid al-Shariah* to marriage dispensation cases is particularly important because short-term benefits may conflict with long-term protection. In cases involving pregnancy outside marriage, for example, granting a dispensation may be regarded as an attempt to provide legal certainty for family relations and preserve lineage (*hifẓ al-nasl*). However, when prospective spouses lack physical, psychological, educational, and economic readiness, such a decision may generate other problems relating to the protection of life (*hifẓ al-nafs*), intellect (*hifẓ al-'aql*), and property (*hifẓ al-mal*). Aprilianto et al. (2026) demonstrate the importance of *maqasid*-based reasoning in marriage dispensation cases involving child pregnancy, while Nurbaeti et al. (2025) emphasize the need to assess marriage dispensation decisions through the perspectives of legal pluralism and *Maqashid al-Shariah*. Therefore, welfare cannot be measured solely by the resolution of an immediate problem but must also take into account the consequences that may arise in the child's life after marriage.

In judicial practice, these issues place judges in a highly strategic position. Judges are not merely responsible for applying Law Number 16 of 2019 and Supreme Court Regulation Number 5 of 2019 but are also required to establish the facts, understand the circumstances of prospective spouses, hear the child's views, and assess readiness for and the consequences of marriage. Research on judicial considerations demonstrates that the best interests of the child should serve as an important foundation for decisions concerning marriage dispensation applications (Hernawan & Widigdo, 2023). Furthermore, the exercise of judicial discretion should be accompanied by clear, measurable, and welfare-oriented reasoning so that decisions do not remain confined to formalistic legal considerations (Kurniawan et al., 2025; Maemunah et al.,

2025). Judicial reasoning should therefore proportionately incorporate legal, social, psychological, health, educational, and economic considerations.

Research on marriage dispensation decisions at the Medan Religious Court is particularly relevant because religious courts occupy an important position in translating normative provisions into concrete judicial decisions that directly affect the lives of children and prospective spouses. Previous research on couples whose marriages resulted from dispensations in Medan has demonstrated that post-marriage family welfare also constitutes an important issue to be examined from the perspective of *maslahah* (Yazid et al., 2022). In the case examined in this study, involving a 17-year-old girl and pregnancy outside marriage, a dilemma emerges between the need to provide legal certainty and the obligation to protect the best interests of the child. On the one hand, marriage may be perceived as a means of resolving a social problem and providing certainty regarding family status. On the other hand, marriage during childhood may pose risks to health, psychological readiness, education, economic stability, and the sustainability of family life.

Studies of marriage dispensation have developed from a variety of perspectives. Several studies have examined the strengthening of statutory marriage-age requirements and the dispensation mechanism following legal reform (Ilma, 2020; Tasya & Winanti, 2021), judicial considerations and the best interests of the child (Hernawan & Widigdo, 2023; Ilhami et al., 2023), and marriage dispensation from the perspective of *Maqashid al-Shariah* (Darmawati & Arsyad, 2024; Nabilah et al., 2024; Putri, 2024). Other research has developed analyses of the relationship between judicial discretion and *Maqashid al-Shariah*-based reasoning (Kurniawan et al., 2025). Nevertheless, there remains room for a more specific examination of how the reasoning underlying marriage dispensation decisions at the Medan Religious Court can be mapped and evaluated according to the five essential objectives of *Maqashid al-Shariah*.

The novelty of this study lies in directly linking the structure of judicial reasoning in a marriage dispensation case with the five essential objectives of *Maqashid al-Shariah*, rather than employing *Maqashid al-Shariah* merely as a supporting normative concept. This framework is used to evaluate whether the reasons, facts, and legal considerations contained in the decision genuinely reflect the protection of religion, life, intellect, lineage, and property. It also assesses whether the welfare underlying the judicial decision is substantive and long-term in orientation or merely directed toward resolving an immediate problem. Such an approach is important because the practice of marriage dispensation demonstrates continuing tension between the objectives of marriage-law reform, judicial discretion, and the need to protect children (Halim, 2025; Akbari, 2025). Accordingly, this study is expected to enrich the field of Islamic family law, particularly scholarship concerning the relationship among positive law, judicial reasoning, child protection, and the objectives of Shariah.

Based on the foregoing discussion, this study aims to analyze the legal and substantive considerations employed by judges in deciding a marriage dispensation case at the Medan Religious Court and to assess their conformity with the principles of *Maqashid al-Shariah*. The study is expected not only to contribute theoretically to the development of Islamic family law

but also to offer practical relevance for judges, academics, and society by emphasizing that marriage dispensation constitutes an exceptional legal mechanism that must be applied carefully, selectively, and with a strong orientation toward child protection and human welfare. Ultimately, a sound judicial decision is not merely one that provides legal certainty but one that also achieves substantive justice, protects vulnerable parties, and minimizes the potential harm that may affect children and their families in the future.

METHOD

This study employs a normative-empirical legal research design (*empirical juridical research*) using normative juridical, empirical juridical, and conceptual approaches. These approaches were selected because the study not only examines the legal provisions governing marriage dispensation but also analyzes their implementation in judicial practice, particularly through decisions issued by the Medan Religious Court. The normative juridical approach is used to examine Law Number 16 of 2019, the Compilation of Islamic Law, and Supreme Court Regulation Number 5 of 2019 as the legal foundations for adjudicating marriage dispensation cases. Meanwhile, the empirical juridical approach is applied to examine how these provisions are implemented in judges' considerations when deciding cases. The conceptual approach places *Maqashid al-Shariah* as the analytical framework for assessing the orientation toward public welfare (*maslahah*) reflected in judicial decisions. This approach is relevant because marriage dispensation is not merely a matter of compliance with the statutory minimum marriage age but is also closely related to child protection, family welfare, and the prevention of harm (Nugroho, 2025; Wahid, 2023).

The study was conducted at the Medan Religious Court. The location was selected based on its relevance to the research object, the availability of marriage dispensation decisions, and the social characteristics of an urban community in which diverse family-law issues may arise. The research data consist of primary, secondary, and tertiary sources. Primary data include copies of judicial decisions concerning marriage dispensation cases and, where possible, interviews with judges, court clerks, or other relevant parties familiar with the adjudication process. Secondary data include statutory regulations, the Compilation of Islamic Law, books on Islamic law and marriage law, and scholarly journal articles discussing marriage dispensation and *Maqashid al-Shariah*. Tertiary data include legal dictionaries, encyclopedias, and other reference sources used to clarify concepts and research terminology. The use of these various sources is intended to provide a comprehensive understanding of marriage dispensation and its implications for child protection (Rofiq, 2021; Sari & Kurniawan, 2023).

Data were collected through literature review, document analysis, and interviews. Document analysis served as the primary data collection technique by examining marriage dispensation decisions, particularly the case identity, grounds for the application, facts established during the hearing, legal bases, and judicial considerations. Interviews were used as supporting data to obtain further explanations regarding the juridical, sociological, psychological,

and welfare-related aspects considered in the adjudication process. The data were subsequently analyzed qualitatively using content analysis. The analytical process involved data reduction, data presentation, and conclusion drawing. Judicial decisions were first identified based on their relevance to the research focus and then classified according to the grounds for the application and the considerations employed by the judges. These considerations were subsequently analyzed using the five essential objectives of *Maqashid al-Shariah*, namely the protection of religion, life, intellect, lineage, and property. The analysis also considers the balance between *maslahah* and *mafsadah* in order to assess whether the judicial decision is more strongly oriented toward protection and the best interests of the child. Such an approach is consistent with the view that marriage dispensation should be assessed not only from a formal-legal perspective but also in terms of its social consequences and the sustainability of family life (Kartika, 2024; Suryani, 2022). Data validity was maintained through source triangulation, methodological triangulation, and reference adequacy by comparing judicial decisions, interview findings, legal regulations, and relevant scholarly literature.

RESULTS AND DISCUSSIONS

Based on the findings obtained through documentary analysis of marriage dispensation decisions and interviews with judges and other relevant parties at the Medan Religious Court, marriage dispensation cases were found to involve legal, social, psychological, economic, and religious dimensions simultaneously. The Medan Religious Court, as a judicial institution with jurisdiction over marriage-related matters, occupies a strategic position in ensuring that the granting of marriage dispensation does not merely constitute an exception to the statutory minimum marriage age but is genuinely based on urgent circumstances and consideration of the best interests of the prospective spouses. The establishment of 19 years as the minimum marriage age under Law Number 16 of 2019 was essentially intended to strengthen child protection and ensure the readiness of prospective spouses to establish family life. Nevertheless, the existence of the marriage dispensation mechanism indicates that the law continues to provide room for particular circumstances requiring judicial resolution (Ilma, 2020; Tasya & Winanti, 2021).

The findings indicate that pregnancy outside marriage constitutes the most dominant factor underlying marriage dispensation applications at the Medan Religious Court. Parents tend to regard marriage as a solution for preserving family honor, avoiding social stigma, and providing certainty regarding the status of the child to be born. In addition to pregnancy, concerns regarding the possibility of *zina*, relationships between prospective spouses perceived as excessively close, social and cultural pressures, family economic circumstances, low educational attainment, and inadequate parental supervision were also identified as factors underlying applications. These findings demonstrate that marriage dispensation cannot be understood merely as an issue of failure to meet the statutory age requirement but rather as the consequence of interactions among various social problems within families and their surrounding communities. This finding is consistent with studies demonstrating that parental concerns,

pregnancy, and family social circumstances frequently constitute important grounds for marriage dispensation applications (Fadhli & Warman, 2021; Iqbal & Rabiah, 2020).

Regarding judicial considerations, the findings reveal that Law Number 16 of 2019 constitutes one of the primary legal foundations, yet judges do not restrict their reasoning to normative considerations. Based on the interviews, judges also consider philosophical and psychological aspects, the social environment, customary practices, the child's level of maturity, and the specific circumstances faced by the prospective spouses. Thus, there is an effort to situate judicial decisions within the social context of the cases being examined. Judges consider whether rejecting an application might produce greater harm than granting permission to marry through dispensation. Such considerations demonstrate an attempt to achieve a balance between legal certainty and welfare. This approach is consistent with the importance of placing the best interests of the child and the actual circumstances of prospective spouses within substantive judicial reasoning rather than merely examining compliance with formal legal requirements (Hernawan & Widigdo, 2023; Ilhami et al., 2023).

Nevertheless, the findings also reveal a tendency for judicial considerations to be more strongly directed toward immediate emergency circumstances or imminent harm. Pregnancy outside marriage, concerns about the occurrence of *zina*, social stigma, and the need to provide legal certainty regarding the status of a child constitute relatively dominant considerations. From the perspective of *Maqashid al-Shariah*, such an orientation may be understood through the principles of protecting religion (*hifz al-din*) and preserving lineage (*hifz al-nasl*). Granting a dispensation under particular circumstances may therefore be viewed as an effort to prevent violations of religious norms while simultaneously protecting lineage. However, a *Maqashid al-Shariah*-based analysis requires that welfare not be assessed solely on the basis of resolving an immediate problem but also in terms of the consequences that may arise in the child's life after marriage (Nabilah et al., 2024; Putri, 2024).

When analyzed according to the five essential objectives of *Maqashid al-Shariah*, judicial considerations demonstrate conformity in several respects but remain insufficiently comprehensive. In relation to *hifz al-din*, granting a dispensation to prevent *zina* reflects an orientation toward protecting religion. With respect to *hifz al-nasl*, providing legal certainty for the marriage and the child to be born demonstrates attention to the preservation of lineage. In terms of *hifz al-nafs*, consideration of pregnancy may be interpreted as attention to the safety of both mother and child. A problem arises, however, when *hifz al-'aql* and *hifz al-mal* do not receive equally strong consideration. Educational readiness, psychological maturity, emotional stability, and the economic capacity of prospective spouses constitute important factors in determining whether marriage will genuinely produce welfare. A *Maqashid al-Shariah* perspective on marriage dispensation requires a comprehensive evaluation of these dimensions of protection so that the achievement of one objective does not come at the expense of other objectives of Shariah (Darmawati & Arsyad, 2024; Putri, 2024).

These findings reveal a tendency toward the partial application of *Maqashid al-Shariah*. Judges have incorporated considerations of welfare and harm, but their reasoning tends to focus on preventing immediate harm, while potential long-term consequences have not always been examined in sufficient depth. Marriage at a young age without adequate psychological and economic readiness may increase vulnerability to marital conflict, educational disruption, and instability in family life. This situation demonstrates a dilemma between marriage dispensation as a legal solution to urgent circumstances and the broader objective of child protection (Jalil, 2025; Tan, 2021). Accordingly, granting an application should not merely resolve an existing problem but should also consider the capacity of prospective spouses to sustain family life after marriage.

Within this context, the principle of *dar'u al-mafasid muqaddam 'ala jalb al-masalib* should be applied proportionately. Preventing *zina* and preserving family honor undoubtedly constitute important benefits; however, such benefits must be weighed against the potential harm that may arise when prospective spouses are psychologically immature, have not completed their education, and lack economic capacity. Welfare therefore cannot be assessed solely according to the resolution of short-term problems. A decision genuinely consistent with *Maqashid al-Shariah* should take into consideration the sustainability of welfare after the marriage has taken place. *Maqasid*-based reasoning likewise requires judges to weigh competing interests hierarchically and proportionately, particularly in cases involving child pregnancy (Aprilianto et al., 2026; Kurniawan et al., 2025). Accordingly, this study finds that marriage dispensation practices at the Medan Religious Court demonstrate an orientation toward *Maqashid al-Shariah*, although their application needs to move beyond an emergency-oriented approach toward a more integrative framework that balances the protection of religion, life, intellect, lineage, and property. Such an approach is necessary to ensure that marriage dispensation does not become an instant solution but genuinely functions as a legal instrument capable of providing sustainable protection and welfare for children, prospective spouses, and families.

Furthermore, the findings demonstrate that judges in marriage dispensation cases essentially occupy an intersection between the demand for legal certainty and the need to respond to social realities. Judges cannot rely solely on the minimum age of 19 years as the determining criterion because the dispensation mechanism is legally provided to address particular circumstances regarded as urgent. Nevertheless, the existence of such an exception does not mean that every social consideration can automatically be classified as an urgent circumstance. The quality of judicial reasoning is therefore highly significant in ensuring that marriage dispensation remains an exceptional mechanism rather than becoming a normal route for underage marriage. Studies of judicial practice following the reform of the statutory marriage age similarly demonstrate the importance of strictly interpreting urgent circumstances so that the objective of child protection is not undermined (Akbari, 2025; Halim, 2025).

The findings also show that statements provided by prospective spouses and their parents play an important role in the examination process. Such statements provide information regarding the level of readiness, the relationship between the prospective spouses, family circumstances, and the actual reasons underlying a marriage dispensation application. From a

Maqashid al-Shariah perspective, this process may provide a basis for judges to determine whether the benefit sought genuinely outweighs the potential harm. Accordingly, judicial considerations should ideally address not only the question of “why the marriage must be performed immediately” but also “whether the prospective spouses are capable of responsibly undertaking married life.” This shift in orientation from urgency toward readiness is important in ensuring that child protection does not end when the judicial decision is issued but continues throughout the post-marriage period. The relevance of such long-term considerations is reinforced by findings regarding the welfare of couples whose marriages resulted from marriage dispensation in Medan, which demonstrate the importance of evaluating post-marriage consequences from the perspective of *maslahah* (Yazid et al., 2022).

Accordingly, the findings strengthen the argument that the application of *Maqashid al-Shariah* in marriage dispensation cases should be directed toward a holistic approach. *Hifẓ al-din* and *hifẓ al-nasl* constitute important considerations, particularly when cases involve pregnancy outside marriage and concerns regarding the occurrence of *zina*. Nevertheless, these two objectives should operate in conjunction with *hifẓ al-nafs*, *hifẓ al-'aql*, and *hifẓ al-mal*. Such a balance enables judges to assess marriage not merely as an instrument for resolving moral and social problems but as an institution requiring physical, psychological, intellectual, and economic readiness. An approach that combines child protection with *Maqashid al-Shariah* enables judicial decisions to pursue welfare that is not merely immediate but is instead oriented toward the sustainability and quality of long-term family life (Nurbaeti et al., 2025; Putri, 2024).

CONCLUSIONS

Based on the findings, it can be concluded that the practice of marriage dispensation at the Medan Religious Court is a complex issue influenced by legal, social, cultural, economic, and religious factors. Pregnancy outside marriage is the most dominant reason, accompanied by concerns about *zina*, social pressure, family economic conditions, low educational attainment, and inadequate parental supervision of children's social relationships. In deciding cases, judges rely not only on the provisions of Law Number 16 of 2019 but also consider psychological conditions, maturity, social environment, customary practices, and the potential benefits and harms arising from marriage. From the perspective of *Maqashid al-Shariah*, these considerations reflect the principles of *hifẓ al-din* and *hifẓ al-nasl*, particularly in preventing *zina* and ensuring the protection and continuity of lineage. However, their application has not been fully comprehensive because *hifẓ al-nafs*, *hifẓ al-'aql*, and *hifẓ al-mal*, particularly those related to psychological readiness, education, health, and economic capacity, have not always received balanced consideration. Therefore, a more comprehensive and long-term approach to judicial reasoning is required to ensure that marriage dispensation does not merely serve as a solution to urgent circumstances but genuinely promotes sustainable welfare and prevents new forms of harm to children and their future family life.

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