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Dispensing with Age? Marriage Dispensation, Household Resilience, and the Tensions Between Islamic and State Law

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Abstract:

Although Law No. 16 of 2019 stipulates a minimum marriage age of 19, marriage dispensation requests remain prevalent in Bekasi, highlighting a persistent gap between legal regulation and social practice. This study examines the judicial considerations underlying the granting of marriage dispensation in the Bekasi Religious Court, applying an empirical case study approach supported by literature review and document analysis. The principles of *al-Maqashid al-Khamsah* were employed to evaluate the judges' reasoning. The findings reveal that the dispensation was granted primarily due to the close relationship between the petitioner and the respondent, alongside parental concerns regarding potential adverse consequences if the request was denied. The decision was legally grounded in Articles 8–10 of the Marriage Law and Articles 39–43 of the Compilation of Islamic Law, which permit marriage despite non-compliance with the statutory age requirement. However, such dispensations carry potential risks for marital stability, particularly in psychological, social, and economic domains. This study contributes to the discourse on judicial discretion by demonstrating how *al-Maqashid al-Khamsah* can serve as a normative framework for balancing legal, religious, and social considerations. It underscores the necessity for judges to weigh not only immediate familial concerns but also the long-term resilience of households, thereby ensuring that judicial decisions safeguard the welfare of couples and future generations.

Keywords: Judge's Considerations, Marriage Dispensation, Household Resilience, Marriage Law, *al-Maqashid al-Khamsah*



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Introduction

Marriage is a physical and mental bond between a man and a woman, based on the principle of God Almighty, with the aim of forming a happy and eternal family or

household.¹ Islam regards marriage as a sacred contract where both parties should put their effort to nurture and preserve the sacred relationship. Marriage in Islam is an act of devotion or *ibadah* which is essentially a righteous act.² To realize this goal, the bride and groom must physically and mentally prepare themselves. However, prospective brides and grooms often lack full mental maturity and are possibly unprepared in the material aspect. Therefore, marriage preparation is essential, including physical preparation, spiritual preparation, economic preparation, and cognitive and spiritual maturity.³ Each of these aspects needs to be considered so that marriage can be carried out maturely and result in a harmonious and prosperous household life.

In marriage, one of the things that needs to be considered is the appropriate age limit. Marriage age restriction is significant in forming a *sakinah*, *mawaddah*, and *warahmah* family. Therefore, marriage should only be carried out by individuals who have reached maturity, both in age and thought, and can take responsibility for all their actions. An individual is said to be ready for marriage if they have met the criteria for maturity, one of which is age. The older a person gets, the more mature his physical and psychological readiness to undergo marriage. The age limit set as a condition of eligibility for marriage, according to Law No. 16 of 2019, which is an amendment to Law No. 1 of 1974, is 19 years for both men and women.⁴ Someone who has reached a mature age tends to have a better level of psychological maturity than individuals who are not old enough but intend to marry.⁵

As a result of underage marriages, these couples often face difficulties in thinking and acting when facing domestic problems.⁶ Early marriage is a marriage between a man and a woman whose ages are both below the minimum limit set by law.⁷ Ideally, marriage is carried out when individuals have reached the age of maturity according to the Marriage Law and the age of puberty according to Islamic law. The aim is to form a *sakinah*, *mawaddah*, and *waratah* family based on God Almighty and love and affection in living life together.⁸

¹ Jeremy E. Uecker, "Marriage and Mental Health among Young Adults," *Journal of Health and Social Behavior* 53, no. 1 (2012): 67–83, <https://doi.org/10.1177/0022146511419206>.

² Muhammad Tahir Mansoori, *Family Law in Islam: Theory and Application*, 2009 ed. (Shari'ah Academy, 2009).

³ Nurul Ilmi Idrus, "Problematizing the Minimum Age of Marriage: The State and Local Perspective on Marriage Dispensation in South Sulawesi," *Jurnal Humaniora* 34, no. 2 (2022): 159, <https://doi.org/10.22146/jh.73661>.

⁴ Muzaiyanah dan Anies Shahita Aulia Arafah, "Dispensasi Nikah Setelah Berlakunya Undang-Undang Nomor 16 Tahun 2019 Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Perspektif Maqashid Syariah," *Kajian Keislaman Multi-Perspektif* 1, no. 2 (2021): 159–92.

⁵ Ainun Yusri Dwiranti dkk., "Perubahan Syarat Usia Perkawinan Bagi Wanita Menurut Undang-Undang Perkawinan Sebagai Upaya Pencegahan Perkawinan Dibawah Umur," *Supremasi Hukum: Jurnal Penelitian Hukum* 31, no. 1 (2022): 48–65, <https://doi.org/10.33369/jsh.31.1.48-65>.

⁶ Muhammad Faiqul Hammam Novriansyah, "The Effect of The Minimum Age Limit for Marriage After The Enactment of Law Number 16 of 2019 Concerning Amendments to Law Number 1 of 1974 Concerning Marriage on The Determination of Marriage Dispensation at The Lumajang Religious Court," *Juris-Diction* 6, no. 3 (2023): 529–44, <https://doi.org/10.20473/jd.v6i3.46710>.

⁷ Achmad Al-Muhajir dan Amrotus Soviah, "Pernikahan Dini Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Asa* 5, no. 2 (2023): 34–61, <https://doi.org/10.58293/asa.v5i2.75>.

⁸ Naufa Salsabilah dan Hariyo Sulistiyantero, "Dispensasi Kawin Di Bawah Umur Menurut Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Di Pengadilan Agama Surabaya," *Jurnal Syntax Admiration* 2, no. 6 (2021): 1103–19, <https://doi.org/10.46799/jsa.v2i6.248>.

Although Islamic law does not explicitly regulate the age limit for marriage, the Marriage Law regulates the minimum age limit to reduce the number of early divorces. Thus, a valid marriage is by religious and state law. From the perspective of Islam, a valid marriage is carried out with the consent of the bride and groom, accompanied by guardians, and witnesses. Meanwhile, according to state law, a marriage is considered valid if it fulfills religious requirements and has been recorded at the local Office of Religious Affairs (KUA).⁹

Regarding the issue of age limits in marriage, there are different views between Fiqh and the Marriage Law. The Marriage Law in Indonesia, which is regulated in Law Number 1 Year 1974 Article 7 Paragraph 1, which was later amended by Law Number 16 Year 2019, states that "marriage is only permitted if the man and woman are 19 years old."¹⁰ This provision sets a minimum age limit for marriage. However, in Fiqh, no evidence explicitly sets an age limit for marriage in the Qur'an or Hadith. In the Fiqh view, marriage is permitted when a person has reached maturity, which is marked by *baligh*. In men, *baligh* is marked by wet dreams, while in women, it is marked by menstruation. In Islam, maturity is not solely related to age but to one's ability to think maturely, especially regarding financial responsibility. Therefore, according to Fiqh, as long as a person can reason and is financially responsible, he can get married.

If there is a deviation from the age provisions in marriage, where the age of one of the parties has not reached 19 years, then by the provisions stipulated in Law Number 16 of 2019 Article 7 Paragraph (2), "the parents of the male party and/or the parents of the female party may request dispensation to the Court on very urgent grounds, accompanied by sufficient supporting evidence."¹¹ In this case, the parents of both parties or the prospective couple concerned must apply for dispensation to the Religious Court. This dispensation application aims to enable the prospective couple to enter into marriage even though they are not of the age stipulated in the law.¹² The marriage dispensation process is an application case resulting in a stipulation issued by a judge based on legal considerations with permanent legal force. Although the stipulation is in the form of an administrative decision, it also has a legitimate legal impact in accordance with the applicable provisions.¹³

⁹ Musyaffa Amin dan Ash Shabah, *Pernikahan sebagai HAM*, 11, no. 2 (2020): 25–33.

¹⁰ Sekretariat Negara Republik Indonesia, "Undang-undang Republik Indonesia No 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Undang-Undang Republik Indonesia*, no. 006265 (2019): 2–6.

¹¹ Sekretariat Negara Republik Indonesia, "Undang-undang Republik Indonesia No 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

¹² 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.v16i1.4229>.

¹³ Sofia Gussevi dkk., "Sosialisasi dan Pendampingan Faktor Penyebab dan Dampak Perkawinan di Bawah Umur serta Undang-Undang nomor 16 Tahun 2019 tentang Batas Usia Perkawinan," *Sivitas : Jurnal Pengabdian dan Pemberdayaan Masyarakat* 3, no. 1 (2023): 37–46, <https://doi.org/10.52593/svs.03.1.04>.



Figure 1. Application for Marriage Dispensation at The Bekasi Religious Court

Based on the marriage dispensation request data recorded in the Annual Report of the Religious Court of Bekasi, there has been a fluctuating trend in marriage dispensation applications from 2021 to 2024. In 2021, there were 38 applications, which increased to 41 cases in 2022. The number remained stable at 41 cases in 2023; however, in 2024, there was a significant decline to 23 cases. In 2022, out of the 41 dispensation requests, 34 were granted, while 7 were rejected¹⁴. This indicates the influence of various social, economic, and policy factors on the decisions of the Religious Court of Bekasi. The fluctuations in the number of applications reflect the changing societal needs and the impact of regulations on marriage dispensation requests, highlighting the importance of understanding the underlying factors contributing to these trends.

In an increasingly dynamic social environment, the phenomenon of marriage dispensation has become a relevant issue for deeper examination, particularly regarding judicial considerations in granting marriage dispensation requests and their impact on the quality of marital life. This study is a continuation of previous research that focused on court decisions. Unlike earlier studies that predominantly emphasized Islamic law,¹⁵ customary law,¹⁶ Hadith,¹⁷ *maslahah*,¹⁸ *Sadd Dzari'ah*,¹⁹ *Maqashid Syariah*,²⁰ family

¹⁴ Pengadilan dan Agama Bekasi, *Laporan Pelaksanaan Kegiatan Pengadilan Agama Bekasi Kelas 1A Tahun 2024*, 2024.

¹⁵ Afif Muamar dkk., “Marriage Dispensation: An Analysis from the Perspective of Islamic Marriage Law and the Sustainable Development Goals,” *Asy-Syir’ah: Jurnal Ilmu Syari’ah Dan Hukum* 58, no. 1 (2024): 119–40, <https://doi.org/10.14421/ajish.v58i1.1327>.

¹⁶ Muhammad Hasan Sebyar, “Harmonization of Islamic Legal Institutions and Customary Law in Marriage Dispensation Cases at the Panyabungan Religious Court,” *MILRev: Metro Islamic Law Review* 2, no. 2 (2023): 2, <https://doi.org/10.32332/milrev.v2i2.7809>.

¹⁷ Nasrulloh Nasrulloh dkk., “Understanding of the Hadith, Marriage Age and the Islamic Law: Study of Regent’s Regulations in Bojonegoro, East Java,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 998–1022, <https://doi.org/10.22373/sjhk.v8i2.19567>.

¹⁸ Nur Mohamad Kasim dan 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>.

¹⁹ Ali Mutakin dkk., “Implementation of *Sadd Dzari’ah* in The Decision of Religious Courts Class I.B Blora Concerning Marriage Dispensation,” *Al-’Adalah* 18, no. 2 (2021): 323–44, <https://doi.org/10.24042/andalah.v18i2.9515>.

²⁰ Layla Rizki Rahmadhani dkk., “The Role of the Office of Religious Affairs in the Prevention of Underage Marriage in the perspective of *Maqashid Syariah*,” *International Journal of Contemporary Islamic Law and Society* 5, no. 2 (2023): 11–19, <https://doi.org/10.24239/ijcls.vol5.iss2.70>.

resilience,²¹ child protection,²² the Marriage Law,²³ and judicial reasoning,²⁴ this research highlights the application of the *maqashid al-khamsah* principles in marriage dispensation cases granted by judges in Decision No. 0336/Pdt.P/2024/PA/Bks. This study aims to contribute significantly to understanding the harmonization between state law and religious law regarding marriage dispensation, as well as the impact of such legal decisions on family life in Indonesia.

Methods

This study is an empirical legal research²⁵ with a case study approach²⁶ that is qualitative-descriptive²⁷ in nature, aimed at describing and exploring the natural state and interactions among aspects within the context of marriage dispensation law. In this research, marriage dispensation is understood as a result of an Islamic legal approach that integrates cultural, social, and religious perspectives, as emphasized by experts such as Soerjono Soekanto and M. Atho Mudzhar.²⁸ This study applies the principles of *al-Maqashid al-Khamsah* to assess the considerations made by judges in the decision being analyzed. The primary data source for this study is the decision of the Bekasi Religious Court, No. 0336/Pdt.P/2024/PA/Bks. The primary legal materials used include Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage, Supreme Court Regulation No. 5 of 2019 on Guidelines for Marriage Dispensation Management, Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection, and the Compilation of Islamic Law.²⁹ Additionally, secondary data sources such as jurisprudence commentary, references from fiqh and ushul fiqh texts, legislation, and other relevant documents are also utilized.³⁰ The data analysis technique employed is content analysis, an objective and qualitative method to examine descriptive-analytical data.³¹ This method aims to systematically and factually describe facts and the relationships between phenomena. Data analysis is conducted using the Miles and Huberman model,³² involving three main stages: data reduction, data presentation, and conclusion drawing or verification.

²¹ Wardana Said dkk., "Marriage Traditions and Family Resilience in Bugis Bone Society: A Study of Islamic Law and Islamic Education," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1372–90, <https://doi.org/10.22373/sjhk.v8i3.23227>.

²² Haniah Ilhami dkk., "Child Protection Post the New Marriage Law: How Indonesian Religious Court Interpreting the Urgency in Child-Age Marriage," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 75–95, <https://doi.org/10.29303/ius.v11i1.1054>.

²³ Sakirman Sakirman dkk., "Effectiveness of Marriage Age Limit According to Law Number 16 of 2019 in East Lampung," *MILRev: Metro Islamic Law Review* 1, no. 2 (2022): 164–75, <https://doi.org/10.32332/milrev.v1i2.6206>.

²⁴ Nur Insani dkk., "Judicial Considerations in Child Marriage Dispensations: An Empirical Study of the Gorontalo Religious Court," *Jurnal Ilmiah Al-Syir'ah* 22, no. 1 (2024): 41, <https://doi.org/10.30984/jis.v22i1.2066>.

²⁵ Lexy J. Moleong, *Metode Penelitian Kualitatif* (PT. Remaja Rosdakarya, 2007).

²⁶ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum* (PT. Citra Aditya Bakti, 2004).

²⁷ M. Sayuthi Ali, *Metodologi Penelitian Agama: Pendekatan Teori dan Praktek* (PT RajaGrafindo Persada, 2002).

²⁸ M. Atho Mudzhar, *Pendekatan studi Islam dalam teori dan praktek* (Pustaka Pelajar, 1998).

²⁹ Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam (1991). <https://bphn.go.id/data/documents/91ip001.pdf>.

³⁰ Soerjono Soekanto, *Pengantar penelitian hukum* (Penerbit Universitas Indonesia (UI-Press), 2006).

³¹ Fred N Kerlenger, *Asas-Asas Penelitian Behavioral* (Gajah Mada University Press, 1996).

³² Matthew B Miles dan A. Michael Huberman, *Analisis Data Kualitatif: Buku Sumber Tentang Metode-Metode Baru* (UI Press, 1992).

Analysis of the Judge's Consideration in Granting the Marriage Dispensation Petition in Case Number 0336/Pdt.P/2024/PA/Bks

In the case registered at the Bekasi Religious Court under the number 0336/Pdt.P/2024/PA/Bks, the petitioner requested a marriage dispensation for his daughter, aged 15 years and 11 months, who had been in a close relationship with her fiancé for over a year. The petition was submitted after the Marriage Registration Office (KUA) of Bantargebang rejected the registration due to the bride's age, which was below the legal minimum of 19 years.

The petitioner submitted valid written evidence and called two witnesses to support the petition. The submitted documents included copies of the Identity Cards, Birth Certificates, Marriage Certificates, and a Health Examination Certificate. Witnesses provided testimony confirming the closeness of the relationship and the rationale for the early marriage, which aimed to avoid administrative complications and potential undesirable outcomes. The first witness, a neighbor of the petitioner, testified that the bride and groom were both unmarried, Muslim, and had no blood relations. The second witness, an uncle of the petitioner, confirmed the agreement between both families to arrange the marriage and expressed concerns about the couple's close relationship, citing the risks of unforeseen consequences.³³

The court ruled in favor of granting the marriage dispensation, considering that denying the request might result in greater harm to the petitioner's daughter. The judge noted that the close relationship between the bride and groom could lead to undesirable actions if the marriage were delayed. In its considerations, the court referred to Article 7(1) of Law No. 16 of 2019 on Marriage,³⁴ which establishes the legal minimum age for marriage at 19. The law also permits a marriage dispensation to be requested from the Religious Court in cases of urgent need.³⁵

However, despite the evidence and testimonies provided, the judge's decision primarily relied on the Marriage Law (Law No. 1 of 1974) without adequately considering the child's rights under Law No. 35 of 2014 on Child Protection.³⁶ The judge's focus on the Marriage Law overlooked the need to protect and guarantee the child's rights for her future well-being, a matter that was not sufficiently addressed. Granting the marriage dispensation could have long-term detrimental effects on the child, such as early divorce, economic instability, health issues within the family, and increased maternal and infant mortality rates, in addition to psychological and social challenges. Therefore, further examination of the impact of marriage dispensations on child protection is necessary to mitigate the risks of early divorce.³⁷

The author contends that, in the case of 0336/Pdt.P/2024/PA/Bks, there was no urgent need that would justify granting the marriage dispensation. Parents should protect their children from early marriage by adhering to Law No. 23 of 2002 on Child Protection,

³³ Ismi Lathifatul Hilmi dan Armi Agustar, "Review of Islamic Law and Positive Law: Regarding the Obligation to Comply with the Marriage Law," *El-Aqwal : Journal of Sharia and Comparative Law*, 26 Juli 2023, 87–94, <https://doi.org/10.24090/el-aqwal.v2i2.7786>.

³⁴ Sekretariat Negara Republik Indonesia, "Undang-undang Republik Indonesia No 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

³⁵ Sri Murni, "The Marriage Age Limit According to Indonesian Law No. 16, 2019 as Effort to Child Protection," Atlantis Press, 20 Mei 2020, 222–30, <https://doi.org/10.2991/aebmr.k.200513.047>.

³⁶ RI Kemensesneg, "Undang - Undang Nomor 35 Tahun 2014 tentang Perubahan Atas Undang – Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak," *UU Perlindungan Anak*, 2014, 48.

³⁷ Imran Imran dkk., "Aspects Of Justice Of Marriage Dispensation And Best Interests For Children," *Jurnal Hukum Dan Peradilan* 13, no. 1 (2024): 63–88, <https://doi.org/10.25216/jhp.13.1.2024.63-88>.

specifically Article 26, which mandates the provision of education, advice, and motivation to ensure that children are emotionally and physically ready for marriage. This approach aims to ensure that children are adequately prepared in terms of age and maturity before marriage, preventing risks associated with premature marital commitments.³⁸ This aligns with the provisions of the Supreme Court Regulation No. 5 of 2019, Article 12(2), which identifies the following concerns:³⁹

- a. The potential disruption of the child's education.
- b. The continuation of the child's compulsory 12-year education.
- c. The immaturity of the child's reproductive organs.
- d. The economic, social, and psychological impacts on the child, as well as the potential for domestic conflict and violence.

Thus, the guidelines for deciding marriage dispensation petitions are outlined in Supreme Court Regulation No. 5 of 2019, Article 3, which serves to:⁴⁰

- a. Implement the principles mentioned in Article 2, including the best interests of the child, the right to life and development, respect for the child's opinions, respect for human dignity, non-discrimination, gender equality, equality before the law, justice, benefit, and legal certainty.
- b. Ensure a judicial system that protects children's rights.
- c. Increase parental responsibility in preventing child marriage.
- d. Identify any coercion behind the petition for marriage dispensation.
- e. Standardize the process of adjudicating marriage dispensation requests in court.

Therefore, when deciding on a marriage dispensation case, judges must not only be guided by Fiqh and Marriage Law but also adhere to the Supreme Court Regulation. This is crucial to ensure the protection of children's basic rights, including their right to education and play. Given that children's interests are of paramount importance and foundational for their future, careful consideration of these aspects is essential in every marriage dispensation decision.⁴¹

Analysis of *Maqāṣid al-Khamsah* in Marriage Dispensation Case Number 0336/Pdt.P/2024/PA/Bks

In deciding a marriage dispensation case, judges evaluate various factors, including physical, mental, and social readiness, and other aspects that affect the health, well-being, and psychological development of the couple intending to marry.⁴² Biologically, Islam considers an individual ready for marriage when they reach maturity, marked by wet dreams for men and menstruation for women. However, biological

³⁸ Yopani Selia Almahisa dan Anggi Agustian, "Pernikahan Dini Dalam Perspektif Undang-Undang Perkawinan Dan Kompilasi Hukum Islam," *Jurnal Rechten : Riset Hukum dan Hak Asasi Manusia* 3, no. 1 (2021): 27–36, <https://doi.org/10.52005/rechten.v3i1.24>.

³⁹ Mahkamah Agung RI, "Peraturan Mahkamah Agung RI No. 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin," dalam *Peraturan Mahkamah Agung RI No. 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin*, preprint, 2019.

⁴⁰ RI, "Peraturan Mahkamah Agung RI No. 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin."

⁴¹ Nabilah Luthfiyah Chusnida dan Teddy Prima Anggriawan, "Dispensation of Marriage in The Perspective of Children's Rights: Best Interest of The Children," *Jurnal Penelitian Hukum De Jure* 22, no. 3 (2022): 295, <https://doi.org/10.30641/dejure.2022.v22.295-310>.

⁴² Muhammad Alwi Al Maliki dkk., "Equality of Rights and Courts: Constitutional-Based Arguments on the Fixed-Standard of Minimum Age for Marriage in Lights of *Maqāṣid al-Syarīah*," *Mazahib Jurnal Pemikiran Hukum Islam* 20, no. 2 (2021): 285–320, <https://doi.org/10.21093/mj.v20i2.3645>.

readiness alone is not sufficient; marriage also requires financial, physical, and mental preparedness. Regarding the age of maturity, scholars have different opinions:⁴³

1. Al-Awza'i, al-Shafi'i, Abu Yusuf, and Muhammad argue that the age of maturity for both men and women is 15 years.
2. Dawud and Imam Malik contend that there is no specific age for maturity.
3. Imam Malik believes that the age of maturity for both men and women is 17 or 18 years.
4. Abu Hanifah holds that the age of maturity for men is 17 or 18 years, while for women it is 18 years.

Islam does not prohibit marriage below the age of 19. However, Islamic jurisprudence emphasizes that individuals wishing to marry must be ready from various aspects, such as religious (syar'i), sociological, psychological, mental, and health considerations. This readiness is essential to achieve the goals of Islamic law (Maqāṣid al-Shārī'ah), which include ensuring the safety of offspring (hifz an-nasl) without jeopardizing the safety of the soul of the child granted a marriage dispensation (hifz al-nafs), preserving intellectual abilities to continue education (hifz al-'aql), safeguarding religion (hifz al-dīn), and ensuring financial stability (hifz al-māl). These five principles collectively form the foundation for decision-making in marriage dispensation cases, ensuring the protection of the rights and well-being of all parties involved while achieving the broader objectives of Islamic law.⁴⁴

Among the reasons the applicants submitted for requesting a marriage dispensation in case number 0336/Pdt.P/2024/PA/Bks is that the applicant and the respondent, or prospective husband, have developed a very close relationship, and they are concerned about the potential negative consequences if the marriage does not take place.⁴⁵ In considering the case, the judge based the decision on the principle of minimizing greater harm and avoiding further damage in the future, even though some harm cannot be entirely avoided.⁴⁶ According to the judge, rejecting the marriage dispensation would cause greater harm due to the close relationship between the applicant's daughter and her prospective husband, raising concerns that they might engage in undesirable behaviors continuously.⁴⁷ Therefore, granting the marriage dispensation can be seen as choosing the lesser of two evils—early marriage—over a greater harm—adultery.⁴⁸ This is consistent with the fiqh principle:

الضرر الأشد يزال بالضرر الأخف

“The greater damage must be eliminated, even if it requires causing lesser damage”

⁴³ Muhammad Syarif Hidayatullah, “Eksistensi dan Standarisasi Pemeriksaan Perkara Dispensasi Kawin Berbasis Kepastian Hukum,” *Syakhshiyyah: Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 81–102, <https://doi.org/10.32332/syakhshiyyah.v3i1.6485>.

⁴⁴ Hidayatullah, “Eksistensi dan Standarisasi Pemeriksaan Perkara Dispensasi Kawin Berbasis Kepastian Hukum.”

⁴⁵ Woro Mega Dwi Astuti dkk., “Supreme Court Policy On Underage Marriage Dispensation Realizing Legal Certainty,” *UNIFIKASI: Jurnal Ilmu Hukum* 8, no. 2 (2021): 253–61, <https://doi.org/10.25134/unifikasi.v8i2.3700>.

⁴⁶ T.B., “Early marriages,” *Notes and Queries* s3-V, no. 105 (1864): 23–24, <https://doi.org/10.1093/nq/s3-V.105.23e>.

⁴⁷ Nidlomatum Mukhlisotur rohmah Nidlom dan Michelle Andrina, “Examining Negotiations Process on the Rejected Marriage Dispensation,” *Harmoni* 20, no. 2 (2021): 240–58, <https://doi.org/10.32488/harmoni.v20i2.495>.

⁴⁸ Mesraini dkk., “Teori Hukum Feminisme Dan Kaidah Fikih Sebagai Pertimbangan Hakim Dalam Perkara Dispensasi Kawin,” *Palastren* 13, no. 1 (2020): 139–62.

From the author's perspective, the judge should not have granted the marriage dispensation in case number 0336/Pdt.P/2024/PA/Bks. This is because the applicant's child is not in an urgent situation and is very young, being only 15 years old. Several factors must be considered, such as health, economic stability, and mental well-being, to prevent potential future problems. In deciding marriage dispensation cases, judges must base their decisions on *maqāṣid al-sharī'ah*,⁴⁹ which prioritize the public good. In this context, Imam al-Shatibi outlines the benefits of marriage in three ways:⁵⁰

1. *Dharuriyyah* (Primary Needs)

Dharuriyyah refers to the needs essential for the realization of benefits in both this world and the hereafter. Failing to fulfil these needs leads to harm, as the purpose of marriage is to prevent adultery and protect religion, as mentioned in the hadith narrated by Bukhari and Muslim.

عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ لَنَا رَسُولُ اللَّهِ : يَا مَعْشِرَ الْشَّيَّابِ ، مَنْ اسْتَطَاعَ مِنْهُ الْبَاءَةَ فَلْيَتَرْوَجْ ، فَإِنَّهُ أَغْنُنَ لِلْبَصَرِ ، وَأَحْصَنَ لِلْفَرْجِ ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ ; فَإِنَّهُ لَهُ وِجَاءٌ . (مَتَّقُ عَلَيْهِ)

From Abdullah bin Mas'ud, he said, "The Messenger of Allah (peace be upon him) said to us, 'O young people, whoever among you is able to provide for a household, let him marry, for it is more effective in lowering the gaze and safeguarding one's chastity. Whoever is not able, let him fast, for fasting will help diminish his desires.'"

This explains that when individuals engage in relationships not according to Islamic law, it may lead to harm, including prohibited actions. Therefore, Islam encourages facilitating marriage if individuals have close relationships. In this case, the role of parents is crucial to ensure their children avoid unlawful behavior by educating them from a young age and instilling religious values. Additionally, parents should ensure protection for their children through a balanced approach: *Asah* (parents must educate), *Asih* (parents must provide affection), and *Asuh* (parents must guide their children).⁵¹

2. *Hajiyyat* (Secondary Needs)

Hajiyyat represents secondary needs, which are essential for a better life but do not threaten survival, unlike *dharuriyyat*. *Hajiyyat* aims to facilitate daily life and prevent significant difficulties. While not as crucial as basic needs, meeting *hajiyyat* can reduce potential suffering or hardships, such as challenges in mobility or accessing necessary services.

3. *Tahsiniyat* (Tertiary Needs)

Tahsiniyat refers to needs that improve the quality of life rather than being directly related to survival. These are the needs that enhance social and personal well-being, making life more comfortable, dignified, and honorable.⁵²

Based on the principles of *maqāṣid al-sharī'ah*, case number 0336/Pdt.P/2024/PA/Bks does not involve an urgent element, such as preserving offspring, as the applicant's child is not pregnant but in a very close relationship with her

⁴⁹ Jurnal Diskursus Islam dkk., *The Existence of The Marriage Dispensation in Majene Religious Court (Study of Maqasid Shari'ah)* THE EXISTENCE OF THE MARRIAGE DISPENSATION IN MAJENE RELIGIOUS COURT (Study of Maqasid Shari'ah), 10 (t.t.): 187–205.

⁵⁰ Muzaiyanah dan Anies Shahita Aulia Arafah, "Dispensasi Nikah Setelah Berlakunya Undang-Undang Nomor 16 Tahun 2019 Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Perspektif Maqashid Syariah."

⁵¹ A Adam, *Eksistensi Dispensasi Perkawinan Terhadap Pelaksanaan Perlindungan Anak di Indonesia, 2020*.

⁵² Wardatun Nabilah dan Deri Rizal, *Jasser Auda's System Approach in The Rules of Marriage Dispensation in Indonesia (Review of Maqashid Syariah)*, 2020, 265–81.

partner. Therefore, granting the marriage dispensation is difficult to justify, particularly regarding *dharuriyyah* and *tahsiniyyat*. *Dharuriyyah* addresses urgent needs for preserving individual safety and well-being, while *tahsiniyyat* focuses on fulfilling needs to improve social and psychological life. In this case, no urgent need justifies early marriage, aside from social and cultural factors that focus on *hajiyat*, which, while important, do not require drastic actions such as granting a marriage dispensation at such a young age.

From the perspective of *al-Qawā'id al-Khamsah*, which consists of five key principles for maintaining human balance, this case requires careful consideration of the following five aspects:

1. *hifz al-dīn* (Preservation of Religion): Early marriage should be evaluated to determine whether it can maintain the stability of the couple's faith. If marriage occurs without sufficient mental and religious readiness, it may jeopardize their religious understanding in the future.
2. *hifz al-nafs* (Preservation of Life): One of the main objectives of *maqāṣid al-shari‘ah* is to preserve life, and early marriage may threaten both physical and mental health, with high risks to the health of the mother and child and the psychological development of the child in the marriage.
3. *hifz al-‘aql* (Preservation of Intellect): An essential aspect is the mental and intellectual readiness of the couple to face the challenges of marriage. Limited age and experience may affect their ability to make rational and mature decisions, impacting their future well-being.
4. *hifz al-nasl* (Preservation of Offspring): The main goal of preserving healthy and developed offspring is not achieved if marriage occurs before the couple has adequate biological, emotional, and financial readiness.
5. *hifz al-māl* (Preservation of Wealth): Financial readiness for building a prosperous family is another important aspect. The financial incapacity of young couples can exacerbate the economic burden, leading to poverty and instability in the household.

Therefore, granting a marriage dispensation in this case must be carefully considered to ensure that all aspects of *maqāṣid al-shari‘ah* are properly maintained. The greater harm that may arise from early marriage—including health, education, and psychological well-being issues—should be the primary consideration. Additionally, the judge needs to ensure that the decision made genuinely serves the best interests of the child and family, and is not merely driven by social or cultural reasons that are not urgent. In conclusion, when judges grant or reject a request, both parties will suffer harm. If the request is granted, it will lead to greater harm, such as unpreparedness for marriage, divorce, domestic violence, economic neglect, and physical and mental unpreparedness. Therefore, judges must strive to minimize the harm in the case.⁵³

In deciding on the marriage dispensation request in case number 0336/Pdt.P/2024/PA/Bks, the judge must carefully consider the request to avoid future negative impacts, as permitted by the existing law, listening to statements from the parents, close family, or guardians. Furthermore, the judge's consideration in determining the marriage dispensation involves the five essential aspects of *al-Maqāṣid al-Khamsah*,

⁵³ Nabilah dan Rizal, *Jasser Auda 's System Approach in The Rules of Marriage Dispensation in Indonesia (Review of Maqashid Syariah)*.

which are the preservation of religion, life, intellect, offspring, and wealth. If these five aspects are properly implemented, the benefits will be realized.⁵⁴

To achieve family well-being as the foundation of family resilience, every individual within the family must fulfil their rights and responsibilities. In addition to upholding the rights and responsibilities of each individual, creating harmony within the household requires good communication, which is an essential aspect.⁵⁵ Communication is not a trivial matter; sometimes, it may seem like you are communicating, but in reality, you are not fulfilling the essential elements of communication. When problems arise, effective communication is crucial. This involves clearly expressing complaints using appropriate language and sentences to foster mutual understanding and avoid offense. Building good communication should be based on love; the love that grows must always be nurtured together because love is the solution to all problems, and with love, one can accept any condition.⁵⁶

Conclusion

Marriage is not merely a personal or emotional union but a legal, spiritual, and social institution aimed at building a stable and enduring household. The minimum age requirement of 19 years under Indonesian Marriage Law reflects the state's effort to ensure psychological, social, and economic preparedness as prerequisites for marital stability. However, Islamic jurisprudence (fiqh) approaches maturity through the concept of *baligh*, marked by biological indicators rather than fixed age. This divergence often leads to requests for marriage dispensation, as seen in the Bekasi Religious Court Decision No. 0336/Pdt.P/2024/PA/Bks. The judges' decision to grant dispensation was based on the close relationship between the parties and parental concerns about potential harm if the marriage were delayed. While the ruling was legally grounded in the Marriage Law and the Compilation of Islamic Law, its broader implications raise concerns regarding child protection and long-term household resilience.

From the perspective of *al-Maqashid al-Khamsah*—the preservation of religion, life, intellect, offspring, and wealth—such decisions demand careful scrutiny to minimize risks of early divorce, economic instability, health issues, and psychological or social disruption. This study underscores that judicial discretion in dispensation cases carries profound responsibilities: judges must balance legal, religious, and social considerations with the best interests of the child. Integrating *maqashid* principles into judicial reasoning provides a normative framework to ensure that dispensation rulings do not merely address immediate familial concerns but also safeguard the future security and well-being of households and society at large. Nevertheless, this study is limited to a single case analysis in Bekasi, which restricts the generalizability of its findings. Future research should incorporate comparative studies across multiple jurisdictions to capture broader patterns of judicial reasoning and social outcomes. Policymakers and religious courts are also encouraged to strengthen guidelines for dispensation cases, ensuring that decisions are aligned with child protection principles and sustainable family resilience.

⁵⁴ Zamroni Wafa, "Dispensasi Perkawinan Perspektif Undang-Undang Perlindungan Anak dan Maqasid Al-Shari'ah," *Ad-DA'WAH* 21, no. 2 (2023): 148–57.

⁵⁵ Muhammad Nabih Ali dan M. Marovida Aziz, "Membangun Komunikasi Keluarga Pada Pasangan Nikah Muda Sebagai Benteng Ketahanan Keluarga," *TAQNIN: Jurnal Syariah dan Hukum* 4, no. 02 (2022): 169–84, <https://doi.org/10.30821/taqnin.v4i02.14042.v>

⁵⁶ M. Anwar Nawawi dkk., "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): 117–33, <https://doi.org/10.18326/ijtihad.v22i1.117-133>.

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