

## Between Welfare and Vulnerability: A Critique of Marriage Dispensation in the Probolinggo Religious Court Decree from the Perspective of Maqasid al-Shari'ah and Children's Rights

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### Abstract

The amendment of the Marriage Law through Law Number 16 of 2019, which raised the minimum marriageable age to 19 years, has created a legal paradox in Indonesia. Despite stricter regulations intended to prevent child marriage, requests for marriage dispensation in Religious Courts have significantly increased. This study analyzes the judicial reasoning behind these grants using a qualitative document study and a descriptive-normative approach, specifically focusing on the Probolinggo Religious Court Decree No. 210/Pdt.P/2025/Pa.Probolinggo. The findings indicate that judges often grant dispensations based on the Islamic legal maxim *akbaff al-dararain* (choosing the lesser of two evils) to prevent perceived social harms such as premarital intimacy or pregnancy. However, from the perspective of *Maqasid al-Syari'ah* and children's rights, this study critiques the dominance of short-term welfare considerations over long-term vulnerabilities. The results suggest that current judicial practices often neglect the child's rights to education (*hifz al-'aql*), reproductive health (*hifz al-nafs*), and economic stability. The study concludes that a transformation in the judicial approach is necessary, moving from a formal-administrative "rubber stamp" process to an integrative model involving cross-sectoral collaboration with health and psychological experts to ensure the "best interest of the child."

[Perubahan Undang-Undang Perkawinan melalui Undang-Undang Nomor 16 Tahun 2019 yang menaikkan batas usia minimum perkawinan menjadi 19 tahun telah melahirkan suatu paradoks hukum di Indonesia. Di tengah pengetatan regulasi yang bertujuan untuk mencegah perkawinan anak, permohonan dispensasi kawin di Pengadilan Agama justru mengalami peningkatan yang signifikan. Penelitian ini bertujuan untuk menganalisis pertimbangan hakim dalam mengabulkan permohonan dispensasi kawin dengan menggunakan metode studi dokumen kualitatif dan pendekatan deskriptif-normatif, dengan fokus pada Penetapan Pengadilan Agama Probolinggo Nomor 210/Pdt.P/2025/PA.Probolinggo. Hasil penelitian menunjukkan bahwa hakim kerap mengabulkan dispensasi kawin dengan mendasarkan pertimbangannya pada kaidah fikih *akbaff al-dararain* (memilih mudarat yang lebih ringan) guna mencegah kemudaratatan sosial yang dipersepsikan, seperti kedekatan hubungan antara laki-laki dan perempuan di luar perkawinan maupun kehamilan di luar nikah. Namun demikian, ditinjau dari perspektif *Maqasid al-Syari'ah* dan hak-hak anak, penelitian ini mengkritisi dominannya pertimbangan kemaslabatan jangka pendek dibandingkan dengan kerentanan jangka panjang yang berpotensi dialami oleh anak. Temuan penelitian mengindikasikan bahwa praktik peradilan yang berlangsung saat ini sering kali mengabaikan hak anak atas pendidikan (*hifz al-'aql*), kesehatan reproduksi (*hifz al-*

*nafs), dan stabilitas ekonomi di masa depan. Penelitian ini menyimpulkan bahwa diperlukan transformasi dalam pendekatan peradilan, dari sekadar proses formal-administratif yang bersifat rubber stamp menuju model yang lebih integratif melalui kolaborasi lintas sektor dengan tenaga kesehatan dan psikolog, guna menjamin terpenuhinya prinsip kepentingan terbaik bagi anak (the best interest of the child).]*

**Keywords:** Marriage dispensation, Child marriage, Religious Court, Maqasid al-Shari'ah, Children's rights

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## INTRODUCTION

The change in the legal marriage age through Law Number 16 of 2019, which sets the minimum marriage age at 19 for both men and women, is a state effort to reduce child marriage rates and strengthen protection of children's rights. However, child marriage practices continue through the marriage dispensation mechanism granted by the court. This phenomenon shows a tension between the child protection goals promoted by legislation and the social realities faced by the community. (Indonesia 2019; Putra 2025).

Data on marriage dispensation cases in various religious courts show that requests for dispensation remain relatively high even after the change in marriage age. The reasons given generally relate to social relationships considered risky, out-of-wedlock pregnancies, economic factors, cultural aspects, or parents' concerns about their children's behavior, while also ensuring the welfare and best interests of the children. (Religious Court Body of the Supreme Court of the Republic of Indonesia 2025).

Several previous studies have discussed marriage dispensation from various perspectives. A study by Rabiatal Adawiyah focused on changes in the minimum age for marriage following the implementation of Law Number 16 of 2019 (Adawiyah 2022). Research by Muhammad Irfan Firdaus and Lilik Andaryuni examined the application of the best interest of the child principle in marriage dispensation decisions (Firdaus and Andaryuni 2023). Meanwhile, Ahmad Sainul analyzed marriage dispensation from the perspective of maqāṣid al-sharī'ah and considerations of benefit and harm (Sainul 2024). These various studies have made important contributions to understanding marriage dispensation, but they still generally focus on normative aspects and have not specifically studied judges' considerations in certain decisions by integrating the perspectives of maqāṣid al-sharī'ah and child protection at the same time.

Based on that review, there is a research gap in that studies analyzing judges' legal considerations in marriage dispensation cases through an integrative approach between maqāṣid al-sharī'ah and child protection principles in concrete religious court decisions have not been optimal. In fact, both perspectives play an important role in assessing whether granting dispensation truly aims to realize welfare while also ensuring the best interests of the child. This research is important because marriage dispensation is not only related to the legality of child marriage but also involves the protection of children's rights, continuation of education, reproductive health, and the social future of the children

involved. Analysis of judges' considerations is needed to understand the extent to which the values of maqāṣid al-sharī'ah and child protection principles are implemented in religious court practice.

Therefore, this study aims to analyze the legal considerations of judges in the Probolinggo Religious Court Decision Number 210/Pdt.P/2025/PA.Prob regarding marriage dispensation and to examine its compliance with the principles of maqāṣid al-sharī'ah and child protection. The results of this study are expected to provide an academic contribution to the development of Islamic family law studies while also serving as a reference for evaluating the practice of granting marriage dispensations in Indonesia.

### **RESEARCH METHOD**

This study uses a qualitative approach to evaluate legal protection for underage girls in the context of child marriage by referring to the principles of maqashid sharia (Moleong 2021; Sugiyono 2023). The legal materials in this research consist of three types. First, primary legal materials which include relevant laws and regulations, such as Law No. 1 of 1974 concerning Marriage (which has been updated by Law No. 16 of 2019), Law No. 23 of 2002 on Child Protection, and Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Requests. These regulations are studied to understand the legal basis and state policies regarding the minimum age of marriage and child protection in Indonesia. Second, secondary legal materials which include literature on maqashid sharia, the views of contemporary scholars, and academic works discussing the rights of women and children in Islamic law. This literature includes books, scientific journals, articles, and other scholarly works that provide deeper insights into legal protection for women and children from a sharia perspective. Third, tertiary legal materials, which include legal dictionaries, encyclopedias, and other supporting sources, help define key concepts and provide context for primary and secondary legal materials. (Indonesia 2019; Indonesia 2014).

The analytical technique used in this study is analytical descriptive analysis through three stages. First, identifying legal provisions related to child protection and early marriage in Indonesia, as well as the relevant maqashid sharia values. Second, interpreting to assess whether these legal provisions align with the five goals of maqashid sharia (hifz al-din, hifz al-nafs, hifz al-aql, hifz al-nasl, and hifz al-mal), focusing on how legal policies reflect the principles of protecting religion, life, mind, lineage, and wealth in preventing the negative impacts of early marriage. Third, evaluating the effectiveness of existing legal protection, by examining its alignment with maqashid sharia principles and providing recommendations for improving fair and humane legal protection for underage girls. With this method, the study can assess whether the existing regulations are already optimal in protecting vulnerable groups in line with the main objectives of sharia, which are welfare and justice.

### **RESULTS AND DISCUSSION**

#### **Case Overview in Determination Number 210/Pdt.P/2025/PA.Prob**

The ruling number 210/Pdt.P/2025/PA.Prob concerns a request for a marriage dispensation submitted by the parents of a prospective bride who has not yet reached the age of 15. This request was submitted considering that the prospective bride and the prospective groom, who is 21 years old, have been in a serious relationship and are already engaged. The applicants argued that both prospective spouses love each other, are ready to start a family, and wish to get married soon to avoid actions that are not in accordance with religious teachings or social norms.

This request was submitted after the Office of Religious Affairs denied the marriage registration because the prospective bride did not meet the age requirement under Article 7 paragraph (1) of Law Number 16 of 2019 (Indonesia 2019), which sets the minimum age for

marriage at 19 for both men and women. So, the only option available is to apply for a marriage dispensation at the Religious Court.

During the trial process, the panel of judges will verify the identities of the parties involved, listen to statements from the applicant and the prospective bride or groom, and analyze various evidence presented before deciding whether to approve the marriage dispensation request.

### **Judges' Legal Considerations in Granting Marriage Dispensation**

Based on the analysis of existing rulings, judges' considerations come from juridical, sociological, and welfare perspectives. From a juridical point of view, judges refer to the provisions of Article 7 paragraph (2) of Law Number 16 of 2019 and Supreme Court Regulation Number 5 of 2019. These rules give courts the authority to approve marriage dispensations if there are urgent conditions supported by sufficient evidence (Indonesia 2019; Indonesia 2019).

From a sociological perspective, judges assess that the relationship between the prospective spouses has been ongoing for a long time and has family approval. If the marriage is not carried out immediately, there is concern that broader social implications may arise, including potential violations of religious and community norms.

In addition, the judge also reviews the readiness of the prospective groom to take on responsibilities within a household. This review shows that the judge isn't just focusing on biological age limits, but also analyzing the actual conditions of the individuals involved.

The evaluation carried out by the judge reflects the application of the principle of legal utility, prioritizing solutions that are considered able to prevent bigger negative impacts, rather than sticking dogmatically to age limits for marriage. (Fauzi 2024; Firdaus and Andaryuni 2023; Syamsuddin 2025).

In the case of applying for a marriage dispensation at the Probolinggo Religious Court submitted by the parents or guardians of the prospective bride and groom under Number 210/Pdt.P/2025/PA.Prop, the applicant (female) is 15 years old and her prospective husband is 21 years old. The reason the applicant is requesting a marriage dispensation is that they claim to love each other and both prospective bride and groom are ready and able to get married. Therefore, for the guardians submitting the marriage dispensation request, this is very urgent to proceed because they are already engaged, and they want to get married soon so they don't fall deeper into free social interactions without a marital bond. The applicant has also registered this marriage plan at the Wonoasih KUA, which is outlined as follows:

NO.	Identity	210/Pdt.P/2025/PA.Probolinggo
1.	Name	(Initials) SZ binti MZ
2.	Place/Date of Birth	Probolinggo, April 19 2010
3.	Age	15 years old
4.	Religion	Islam
5.	Study	Elementary School
6.	Job	Not Working Yet
7.	Place to Live	Jati Neighborhood, RT 6 RW 4, Jrebeng Kidul Subdistrict, Wonoasih District, Probolinggo City.

### **Analysis of Case Number 210/Pdt.P/2025/PA.Prob from the Perspective of Maqāṣid al-Sharī'ah and Child Protection**

From the point of view of the objectives of Islamic law (maqāṣid al-sharī'ah), this ruling can be examined based on the five fundamental goals of Sharia (al-kulliyāt al-

khams) (Auda 2021; Kamali 2022; Ishomuddin 2021). First, the dimension of preserving religion (*ḥifẓ al-dīn*). Granting a marriage dispensation is seen as a preventive step to avoid actions that go against religious teachings due to the close relationship between the two prospective partners.

Second, the dimension of preserving lineage (*ḥifẓ al-nasl*). The judge aims to ensure that the relationship between the two prospective partners is established within a lawful marriage framework, so that the legal status of any children to be born is guaranteed legal protection and adequate safeguards.

Even so, from a child protection perspective, there are several points that need further attention.

The prospective bride being only 15 years old indicates that, psychologically and socially, she is still considered a child according to the provisions in the Child Protection Law. At this age, the risk of dropping out of school, lack of mental readiness, reproductive health issues, and economic vulnerability is still quite significant. Therefore, this decision reflects two legal interests that carry equal weight. On one side, there is an effort to promote the public good by preventing broader social and religious impacts. (Indonesia 2014; Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia 2024; UNICEF 2023; Mubasyaroh 2021).

On the other side, there is also the state's mandate to ensure the fulfillment of children's rights so that they receive maximum protection. In this context, the panel of judges adopts the principle of *dar'u al-mafāsīd muqaddamun 'alā jalb al-maṣāliḥ*, which means prioritizing the prevention of potential harm that is considered greater.

Even so, the process of granting marriage dispensation should still be treated as an exceptional measure and not as a way to facilitate underage marriage. Therefore, every request for dispensation must go through careful evaluation based on the best interest of the child. (Nurhayati 2024; Wulandari dan Paritkesit 2022).

### **Dilemma at the Probolinggo Religious Court: Facts and Judges' Considerations**

Based on case study data, granting dispensations at the Probolinggo Religious Court is often driven by emergency situations, especially pregnancies out of wedlock and parents' concerns about their child's free social interactions (social stigma). Judges often find themselves in a tough spot; rejecting the request is seen as potentially worsening the psychosocial condition of the already pregnant child, while approving it means legalizing a marriage for which they are not yet physically or mentally ready. Economic factors also often play a supporting role, where marriage is seen as a quick solution to shift the responsibility of providing for the child from the parents to the husband (Hasanah (2025), Putri, Sainul, dan Hidayah (2024), serta Saini (2025)).

**Critique from the Maqashid Al-Sharia Perspective** From the Maqashid Al-Sharia point of view, every legal ruling should aim to protect five basic principles (*Al-Kulliyat al-Khamsah*).

1. *Hifz al-Nasl* (Protection of Lineage): This is often used as the main reason for granting dispensations to legalize the status of a child in the womb. However, this perspective is often limited because it only focuses on formal legality without considering the future quality of life of the offspring.

2. *Hifz al-Nafs* (Protection of Life): Early marriage in Probolinggo creates serious medical vulnerabilities. The risk of maternal death during childbirth and stunting in children are real threats to life (*nafs*) that are often overshadowed by arguments based on religious formalities.

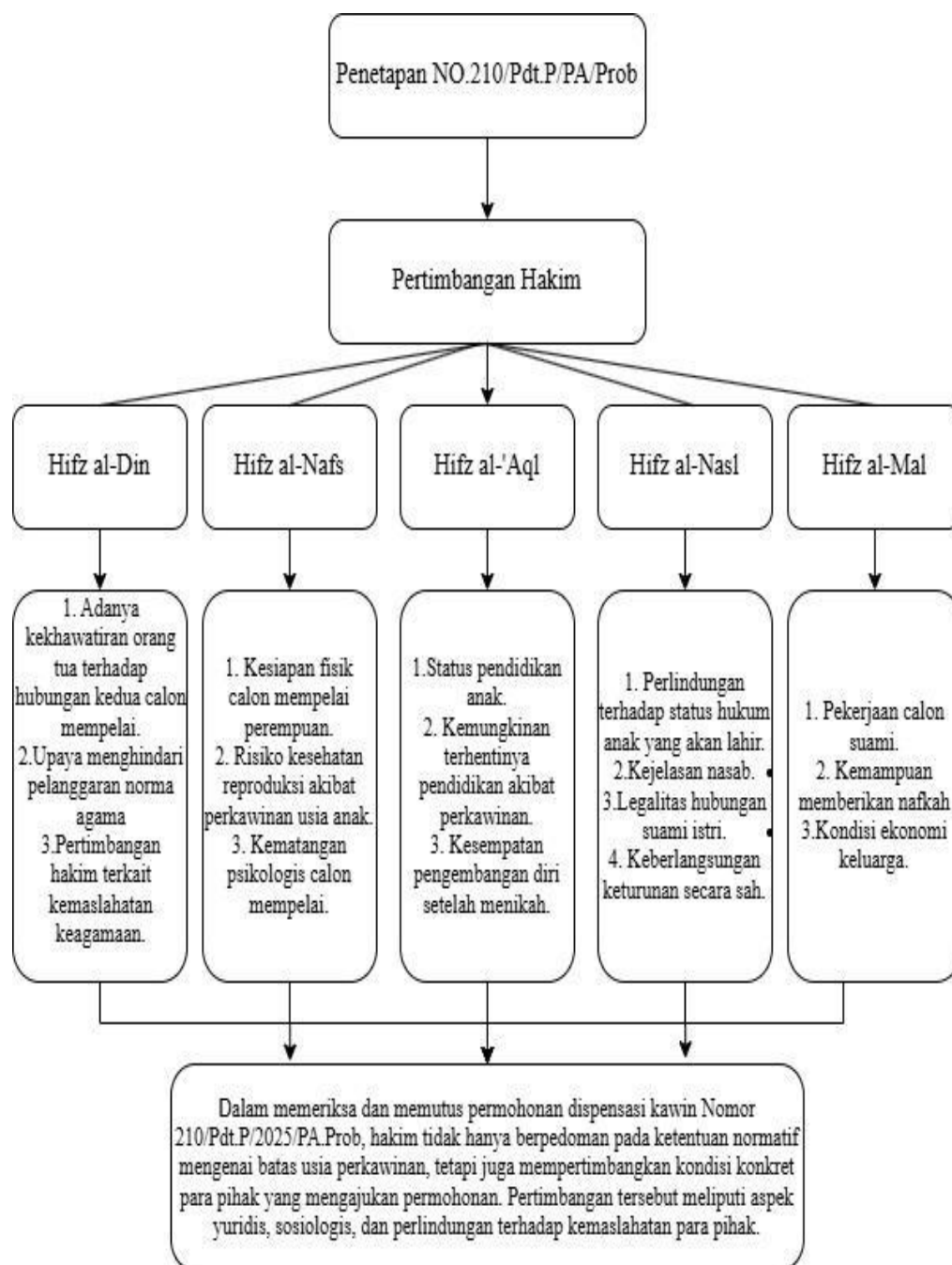
3. *Hifz al-'Aql* (Protection of Mind/Intellect): Early marriage almost always cuts off children's access to education. Without adequate education, intellectual development halts, which directly contradicts the spirit of protecting the mind in the sharia. (Nurhayati 2024; Wulandari and Paritkesit 2022).

Criticism from the Child Rights Perspective From the viewpoint of national regulations and the Convention on the Rights of the Child, giving 'easy' dispensations in the Probolinggo Religious Court neglects several fundamental rights: (2025), Putri, Sainul, and Hidayah (2024), and Saini (2025).

1. **Right to Education:** Children who marry early tend to drop out of school. This creates a new cycle of poverty and unemployment in the Probolinggo area.

2. **Right to Protection from Exploitation:** Child marriage can be considered a form of neglecting the child's psychological maturity. Judges often do not thoroughly examine whether the child truly has *rusyd* (maturity) or is just following environmental pressures

**Summary: Weighing Benefits and Minimizing Vulnerability.** The main criticism of the PA Probolinggo regulations is the dominance of 'short-term benefits' considerations (avoiding shame/adultery) over 'long-term harms' (health, education, and economic stability). The principle of *Dar'u al-Mafasid Muqaddamun 'Ala Jalbi al-Masalih* (preventing harm takes priority over seeking benefits) should be applied more strictly. The 'benefits' pursued through dispensations are often illusory if they ultimately create greater social 'vulnerability,' such as the high rate of early divorce in Probolinggo.



## CONCLUSION

The granting of marriage dispensations at the Probolinggo Religious Court needs a shift in approach. Judges shouldn't just act as an "administrative stamp" citing emergency reasons. Cross-sector collaboration is needed— involving the health department, education office, and psychologists— as a mandatory requirement before a decision is made. True welfare means a child can grow up with their rights fulfilled, not just legalizing a biological relationship to avoid social stigma (Imran, Risnain, dan Nurbani 2024; Zubaidi, Fauzi, dan Sholih 2026).

Analysis of the practice of granting marriage dispensations at the Probolinggo Religious Court reveals a significant legal paradox. Even though national regulations

through Law No. 16 of 2019 have tightened the minimum marriage age to 19, the dispensation mechanism is still often used as a legal route based on emergency situations. From the Maqasid al-Shari'ah perspective, judges tend to apply the principle of akhaff al-dararain (choosing the lesser harm) to avoid social impacts like zina or societal stigma. However, this study emphasizes that judges' considerations are still often stuck on short-term benefits. The main criticism that arises is the neglect of long-term vulnerabilities for children, especially regarding their right to education (hifz al-'aql), reproductive health (hifz al-nafs), and economic stability. Giving dispensations too easily without thorough evaluation risks perpetuating cycles of poverty and mental unreadiness for marriage. (Imran, Risnain, and Nurhani 2024; Zubaidi, Fauzi, and Sholihi 2026).

Therefore, a transformation in the judicial approach is needed, shifting from an administrative-formalistic style to an integrative approach that involves cross-sector collaboration (health, education, and psychology). Judges should prioritize the best interest of the child to ensure that true welfare is achieved through fulfilling the child's basic rights, not just legalizing biological relationships to avoid social pressure.

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