

ISLAMIC LAW ANALYSIS OF MARRIAGE DISPENSATION FROM THE PERSPECTIVE OF MAQASID AL-SYARIAH

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Abstract

Every person's marriage is definitely inseparable from family life and life. The reasonable and healthy hopes or intentions of every young person or teenager in their growing years is one of the goals of marriage. In this case, the minimum age limit for marriage for women is equated with the minimum age limit for marriage for men, namely 19 (nineteen) years as stated in Law Number 16 of 2019. The aim of this research is to analyze Islamic law regarding marriage dispensations from the Maqasid Al-Shariah perspective. The type of research carried out in this research is normative juridical legal research, by using the library research method. Data is obtained from documentation of previous journals, previous theses, and books. Because the researcher used library materials as the main data to analyze cases, and the author did not conduct field research. The results of the research show that the judge's considerations regarding the protection of children's rights are certainly in line with the articles contained in the Marriage Law and are also in accordance with what is aimed at by Maqasid al-shariah, namely to maintain the benefit in which the judge positions the position of shari'ah as higher than Constitution.

Keywords: *Underage marriage, Maqasid al-syariah, Islamic Law*

Abstrak

Pernikahan setiap orang pasti tidak dapat dipisahkan dari kehidupan sosial dan kehidupan berkeluarga. Harapan atau niat yang wajar dan sehat dari setiap remaja di masa pertumbuhannya merupakan salah satu tujuan pernikahan. Dalam hal ini batasan usia minimal menikah bagi perempuan disamakan dengan batasan usia minimal menikah bagi laki-laki yaitu 19 (sembilan belas) tahun sebagaimana tercantum dalam Undang-Undang Nomor 16 Tahun 2019. Tujuan dari penelitian ini adalah untuk menganalisis hukum Islam mengenai dispensasi pernikahan dalam perspektif Maqasid al-syariah. Jenis penelitian yang dilakukan dalam penelitian ini adalah penelitian hukum yuridis normatif, dengan menggunakan metode library research. Data diperoleh dari dokumentasi jurnal terdahulu, skripsi terdahulu, dan buku. karena peneliti menggunakan bahan pustaka sebagai data utama untuk menganalisis perkara, dan penulis tidak melakukan penelitian lapangan. Hasil penelitian menunjukkan bahwa pertimbangan hakim mengenai perlindungan hak

anak tentunya sejalan dengan pasal-pasal yang terdapat dalam Undang-Undang Perkawinan dan juga sesuai dengan apa yang dituju oleh Maqasid al-syariah yaitu menjaga kemaslahatan dalam yang mana hakim menempatkan kedudukan syariat lebih tinggi dari konstitusi.

Kata Kunci: *Pernikahan di bawah umur, Maqasid al-syariah, Hukum Islam*

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A. Introduction

One form of human obedience to Allah Subhanahu Wa Ta A'la is that in order to channel sexual desire between men and women must be based on the bonds that He has determined, namely through the institution of marriage as a sacred institution, sacred to Muslims. Marriage is the inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the divinity of the Almighty, and the creation of domestic harmony (*sakinah, mawaddah warahmah*) is the dream of everyone in the household; even the Qur'an proclaims marriage as the holiest, most solid agreement (bond) between husband and wife, firm and strong (*Hukum Perkawinan Dan Perceraian*, n.d.).

The word marriage or marriage in Arabic comes from the word *nikah* or *zawaj*. The word *nikah* in the al-Munawwir dictionary is also called *an-nikāh*. (كاح) and *az-ziwāj* (الزواج) *az-Zawj* or *az-zijah*. Literally, *an-nikāh* means *al-waṭ'u, aḍḍammu, al-jam'u*. *Al-waṭ'u* (الوطء) It comes from the word *waṭi'a yaṭa'u waṭ'an* which means to walk over, through, tread on, step on, enter, mount, copulate and have intercourse or intercourse. It could be *aḍ-ḍammu* (الضم) It comes from the word *ḍamma* which literally means to gather, to hold, to grasp, to unite, to combine, to sum up, to lean on, to embrace, to embrace and to sum up, it can also mean to be lenient and friendly (Ahmad Warson Munawwir, 1997).

Islam teaches about Fiqh Munakahat which contains a chapter on marriage with several sub-chapters from the objectives, wisdom and principles, marriage is not just about fulfilling biological needs alone and not just administrative order. Marriage is the longest worship and its implementation must be in accordance with Islamic law, marriage is also a form of obedience of creatures to their Creator, namely Allah Subhanahu Wa Ta' A'la.

Marriage has been regulated in Law Number 16 of 2019 concerning Marriage. The law is believed by the people and scholars of Indonesia to be the result of *ijtihad* so that all of its contents are considered part of *sharia*. As a consequence,

anyone who marries not in accordance with the provisions of the law can be declared invalid. One of the provisions in the Law on Marriage is that marriages must be registered with a marriage registration officer (Article 2 Paragraph 2). However, there are many Indonesians whose unregistered marriages are valid, as long as they are carried out in accordance with the provisions of sharia. This is why the number of controversial marriages is not small. Peter Berger's three-moment dialectical process theory, namely the discussion related to controversial marriages of externalisation, objectivation, and internalisation.

Sharia provisions and the Marriage Law are objects that already exist (objectivation). Both are then understood by the community (internalisation). As a new understanding, both norms are then practised in social life to become new "products" (externalisation). In addition to using Berger's theory, the discussion also uses Bourdieu's theory by developing Weber's analysis of religion and Verter, to map the problem and see the significance of the study developed. The discussion of this marriage controversy also uses a gender approach. There are several studies that are used as a basis, namely, first, based on the research of the Law and Women's Group, marriage, whose initial purpose is to legalise the relationship between men and women and family ties, but ultimately positions women to be vulnerable and even worse Second, in Nurmila's study (2009), there are three categories of understanding of Islamic law, namely textualists, semi-contextualists, and contextualists. The marriages that everyone lives are inseparable from family life and life. The reasonable and healthy expectations or intentions of every young person or teenager in their growth period is one of the goals of a marriage (Kosasih, 2021).

Law Number 1 of 1974 concerning marriage states that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on God Almighty. The age limit for marriage in Law Number 1 of 1974 concerning Marriage, the minimum age of marriage for women who will marry is 16 years, which is carried out to improve norms by increasing the minimum age limit for marriage. In this case, the minimum age of marriage for women is equated with the minimum age of marriage for men, namely 19 (nineteen) years as stated in Law Number 16 of 2019. Mature in body and soul is the meaning of the age limit that changes are made to be able to enter into marriage in order to realise the purpose of marriage properly without ending in divorce and get healthy and quality offspring. The increase in the age limit higher than 16 (sixteen) years for women to marry is expected to result in a lower birth rate and reduce the risk of maternal and child mortality. In addition, children's rights can also be fulfilled so as to optimise children's growth and development

including parental assistance and provide children with access to the highest possible education.

Although age limits have been set, there are still deviations by marrying underage. This is clearly contrary to the principles and conditions of marriage outlined by Law No. 16/2019 on Marriage, marriage dispensation from the religious court is given due to deviations from Law No. 16/2019 on Marriage. The existence of marriage dispensation provisions creates the perception that Law No. 16/2019 on Marriage is inconsistent with the provisions on marriage age limits.

Child marriage and menstrual health are two significant and interconnected health and human rights concerns in many low- and middle-income countries, including Indonesia. Around 45% of Indonesian girls feel unprepared for their first period, and only 16% of adolescent girls and 9% of adolescent boys know that a woman's fertile period is halfway between her periods. For the health impact of child marriage, teenage pregnancy is correlated with maternal mortality and morbidity. Girls aged 10–14 years had five times the risk of dying during pregnancy or childbirth compared to 20–24 years, while this risk doubled in 15–19 years. The mortality rate for mothers under the age of 16 in middle and low-income countries is even sixfold higher. (Wibowo et al., 2021). Marriage has been used as escape by the adolescents' to avoid both homework and housework. The teenagers were tired of studying online, trusting their boyfriends/girlfriends and feeling relaxed and inseparable, and eventually decided to get married. The adolescents in this study have mainly spoken about this set of patterns as reasons why they got married at a young age. (Maila D.H, 2021)

The application for a marriage dispensation case certainly involves the judge's view and the judge's reasoning in handling the case submission, which is a more in-depth discussion related to the analysis of Islamic Law, especially in marriage dispensation cases using the *Maqasid al-sharī'ah* perspective. the study of maqashid shari'ah is known to have existed since the time of the Prophet Sallallahu 'alaihi wa Sallam. The study of Maqasid al-sharī'ah began to receive intensive attention after the Prophet's death, when the Companions were faced with various new problems and social changes that had never occurred during the Prophet's lifetime. The social change in question is any change in social institutions in a society that affects its social system, including values, attitudes, patterns of behaviour among groups in society. Social change like this requires the creativity of the companions to solve new problems that arise as a result of social change. According to Raisuni, *Maqasid al-sharī'ah* has been developed by the mujtahids before *Al-Syatibi* and even developed and refined by contemporary thinking today. The word *al- Maqasid* itself, according to Ahmad Raisuni, was first used by Al-Turmudzi Al-

Hakim, who first voiced maqashid shari'ah through his books, *Al-Shalat wa Maqashiduhu, Al-Hajj wa Asraruh, Al-'Illah, 'Ilal Al-Syari'ah, 'Ilal Al-'Ubudiyyah and Al-Furuq* (Kosasih, 2021).

Thesis from Yunia Nurhayati 2020 entitled "Maqasid Al-Shari'ah Analysis of the Consideration of PA Judges in Kediri Kab in Granting and Rejecting Applications for Marriage Dispensation Permits. The results of the study concluded that in the Maqasid Al-Shari'ah study, the consideration of the judge who granted the application for a marriage dispensation permit was relevant to the Maqasid Al-Shari'ah principle, namely protecting religion (hifz al-din) by maintaining religious values, both obligations and prohibitions must both be enforced. Meanwhile, the judge's consideration in the decision to reject the application for a Marriage Dispensation permit still overrides the principles of Maqasid Al-Shari'ah, considering that the benefit has not been achieved in the decision which contradicts the general objective of maqasid al-shari'ah, namely achieving benefit. (Nurhayati, 2020)

Thesis from Mila Mertiana in 2020 entitled "Consideration of Judges in Providing Marriage Dispensation at the Sengeti Class 1 B UIN Sulthan Thaha Jambi Religious Court". In this thesis, it discusses more about the procedure for applying for marriage dispensation. Dispensation of marriage is a voluntary case in the form of leeway granted by the Court to prospective husband and wife who have not reached the lowest age limit, namely 19 years for men and 16 years for women in order to enter into marriage. Underage marriage has a negative impact and creates new problems, such as divorce, prone to death for mothers and children, and poverty will arise. (Mertiana, M., Kasir, K. I., & Rasito, 2019)

B. Research Methods

This research study emphasises the use of doctrinal legal research methodology doctrinal legal research methodology. In the meaning of the doctrinal legal research methodology, the approach taken is to explain legal issues based on previous legal doctrines that are relevant to the legal issues discussed. Meanwhile, according to (Peter Mahmud Marzuki, 2011), doctrinal research is research that provides a systematic explanation of the rules governing a particular legal category. The discussion of law in using a research method must be careful, so that in determining the method later there is no mistake. The data used will be secondary data which emphasises secondary legal materials sourced from the views or opinions of experts who have often been used as references in the use of legal research. The opinions of these experts are then compared and a conclusion is drawn about proving the truth in legal research using normative juridical methods.

This type of study is normative legal research that has qualitative characteristics using the library research method, which means that this research uses data sources mainly from literature and documents. While the design of this research is qualitative-descriptive, which tries to describe the situation as a whole. Qualitative research aims to present a picture and perspective of the object under study in terms of concepts, behavior, and views.

The technique used in collecting data for this research is by collecting secondary data consisting of primary legal materials and secondary legal materials that have to do with the subject matter of the research, namely the validity of nikah siri or not recorded. The legal material collection model used is a library research model or literature study. This study takes place in libraries or other places where various sources of data on the necessary legal materials can be obtained. (Ali, 2009)

C. Discussion

1. Maqasid Al-Shariah on Marriage Dispensation

According to 'Allal Al-Fasiy, maqashid shari'ah is : The purpose intended by Shara' and the secrets set by *Shâri'* (Allah) in every law. The essence of maqashid shari'ah is to realise good while avoiding bad, or attracting benefits and rejecting mudharat, or in other words, to achieve benefit, because the purpose of determining the law in Islam is to create benefit in order to maintain the objectives of shara'. In his book *Maqasid Al-Syariah Al-Islamiyah*, Ibn 'Ashur states that maqashid shari'ah is the meanings and wisdom recorded/shown by Allah Subhanahu wa Ta'ala in all or most of His shari'ah, also included in this area the characteristics of shari'ah or general objectives. The essence of maqashid shari'ah is to achieve the greatest benefit of the people, because the purpose of determining the law in Islam is to create benefits in order to maintain the objectives of shara'. The objectives of shara' that must be maintained are 1) protecting religion, 2) protecting the soul, 3) protecting the mind, 4) protecting offspring and 5) protecting property.

Thus it can be said that a mukallaf will be able to get kemashlahatan if he has the ability to maintain the five principles above, and vice versa he will get harm or mafsadah if he cannot maintain these five things. To realise the kemashlahatan, according to Muhammad Said Ramadhan Al-Buthi 3 there are five criteria that must be met, namely: First, prioritising the objectives of Shara', Second, not contradicting the Qur'an, Third, not contradicting Al-Sunnah, Fourth, not contradicting the principle of qiyas, because qiyas is one way of exploring the law, which in essence is to provide benefits for mukallaf. And Fifth, pay attention to the greater benefit that can be achieved (Nursidin Ghilman, 2012).

Maqasid means something that is intended or a goal to be obtained. While al-Shariah means the place where water flows. In the terminological meaning, sharia is the law of Allah Subhanahu Wa Ta A'la to humans about the rules of life in order to achieve benefit and prosperity in this world and the hereafter. From this, Maqasid sharia is the objectives and benefits to be obtained by the provisions of sharia, whether general (global) or specific (detailed) (Rohman, 2017).

According to al-Syatibi about *Maqasid Al-Syariah*, that the purpose of Allah Subhanahu Wa Ta A'la in establishing the law is for the benefit of his servants, both in this world and in the hereafter. Maintaining religion, soul, mind, honour and offspring, and maintaining property are five things that are included in the category of *Maqasid Al-Syariah*. To maintain these five basic things, this is the Islamic law that was revealed. Every verse of law when examined will find the reason for its formation which is none other than to maintain the five points above. In the case of marriage dispensation submitted to the Religious Court, in considering the application, the Religious Court must include consideration of the objectives of Islamic law or *Maqasid Al-Syariah*, both in terms of the existence of orders (*janibul wujud*), as well as in terms of the absence of orders or prohibitions (*janibul adm*) (Nadhiroh, Jamilatun, 2021).

Placing *Maqasid al-sharī'ah* in a very important position is something that should be supported, especially considering the historical involvement of *Maqasid al-sharī'ah* in every ruling. However, the problem arises when *Maqasid al-sharī'ah* is taken into consideration as well as a method of determining Islamic law. The issue is the concept of *Maqasid al-sharī'ah* itself. Some understand *Maqasid al-sharī'ah* only in relation to the purpose of the ruling, and this is in accordance with the essential meaning of *Maqasid al-sharī'ah* itself. However, some understand that in addition to the purpose of the ruling, *Maqasid al-sharī'ah* is also related to the 'illah (motive) of the ruling. In *uṣūl al-fiqh*, 'illah is the determinant of the existence or non-existence of a law. When there is a ruling, there is almost certainly an 'illah behind it, which is the motive for the ruling, but when the 'illah of a ruling no longer exists, there is no reason to maintain the ruling. Therefore, it is not impossible to say that *Maqasid al-sharī'ah* can serve as an assessment of the purpose of a ruling as well as its motive. However, the consequence of returning *Maqasid al-sharī'ah* to its original function as understood from a linguistic point of view is that it has other consequences. The result is that *Maqasid al-sharī'ah* only serves the purpose of examining the wisdom of the law, so it is no more than a philosophy (Sari, 2023).

The law carries out *Maqasid al-sharī'ah* in the marriage age limit is to achieve kemashlah and avoid kemudharatan. The law on the age of marriage is based on the principles of *Maqasid al-sharī'ah*, to protect individuals who are not yet mature

enough physically, mentally, and emotionally from being damaged by marriage at too early an age. The ultimate goal is to protect the interests and rights of individuals, especially women, and to ensure that marriage occurs under healthy conditions and supports the well-being of families and communities.

The age limit of adulthood for prospective brides and grooms is regulated by existing legislation in Indonesia through Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the old Marriage Law in article 7 which reads: "Marriage is only permitted if the man has reached the age of 19 years (nineteen) and the woman has reached the age of 16 years (sixteen)". In case of deviation from paragraph (1) of this article, a request for dispensation may be made to the court or an official appointed by both parents of the man and woman.

The Compilation of Islamic Law in Article 15 paragraph 1 emphasises the requirements contained in the old Marriage Law with the following formulation: Article 15 "For the benefit of the family and household, marriage may only be entered into by the prospective bride and groom who have reached the age stipulated by Article 7 of Law Number 1 of 1974 concerning Marriage, namely by the husband at least 19 years old and the prospective wife at least 16 years old".

Subsequently, the House of Representatives revised and approved by the President of the Republic of Indonesia the age limit in the old Marriage Law, and was passed on 14 October 2019 in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the new Marriage Law. Initially, the age limit was 16 years old for women and has been changed to 19 years old, the same as the age limit for men.

The public and academics are debating whether to change or revise the minimum age of marriage. This is because the previous age limit for women alone has caused a lot of harm, such as the number of illegal marriages or unregistered marriages due to the age that has not reached the age set by law. It is feared that there will be more cases of unregistered marriages and cases of early or underage marriage due to the higher age limit for marriage, by applying for marriage dispensation to the Religious Court.

Dr. H. Zulkarnain, S.H, M.H. (Ketua Pengadilan Tinggi Palu) explains that the Religious Courts are one of the judicial organs that exercise judicial power, together with the general courts, military courts and state administrative courts, under the Supreme Court (Article 24 of the 1945 Constitution, Article 18 of Law No. 48 of 2009). Religious Courts are courts for people who are Muslims (Article 1 paragraph 1 of Law No. 7 of 1989), are one of the actors of judicial power for people seeking justice who are Muslims regarding certain civil cases regulated by law (Article 2 of Law No. 3 of 2006). The Religious Courts are implemented by the Religious Courts

and the Religious High Courts (Article 3 paragraph 1 of Law No. 7 of 1989). The Religious Courts are located in the capital cities of regencies and cities, and their jurisdiction covers the area of the city or regency (Article 4 paragraph 1 of Law No. 3 of 2006). The Religious High Court is located in the capital city of the province, and its jurisdiction covers the province (Article 4 paragraph 2 of Law No. 7 of 1989). The Religious Court is the Court of First Instance (Article 6 paragraph 1 of Law No. 7 of 1989), and the Religious High Court is the Court of Appeal (Article 6 paragraph 2 of Law No. 7 of 1989). The Religious Courts and Religious High Courts are called *judex factie*, while the Supreme Court is called *judex juries*. *Judex factie* is a judge who examines the facts of the trial, whether or not the case is proven. Meanwhile, *judex juries* are judges who examine the application of the law, whether there is an error in the application of the law in the *judex factie* Court. The *judex factie* function goes through several stages of examination, namely formulating facts, finding causal relationships, and estimating probabilities. The function of the *judex juries* is limited to investigating whether the judgement is contrary to the application of the law or whether the lower court has exceeded the limits of its authority (Zulkarnain, 2023).

Underage marriage there are several factors that influence maintaining harmony in the household, the age factor is one of the factors that influence household harmony with an age that is still insufficient for the provisions in the Law of men and women who marry underage will be unprepared in fostering a household where knowledge in household matters is still minimal, where in a family it is very necessary to be prepared to face all the problems that will arise in the household that will be built. Their experience of life is not enough to provide lessons on how to form a prosperous and harmonious family. So when viewed in terms of the Law which must pay attention to age limits in marriage, age is one that needs to be considered because people who marry underage will be very vulnerable in building a household, in the future the family will encounter many problems because they are not ready physically and mentally. Marriages conducted at a relatively young age, where the couple's condition is psychologically and socially immature, will usually cause psychological and social symptoms that are not good. If there is an argument between the two, then they are unable to refrain from emotions. Underage marriage is one of the causes of the non-realisation of harmony in the household, besides that couples who marry at a young age are also not ready in terms of age and socio-economics. In general, they do not have a permanent job so that economic difficulties can trigger problems in the household (Kahfi & Lesmana, 2023).

2. *Factors of Marriage Dispensation in Islamic Law*

Muhammad Nabil Khazim argues that *Zawaj*, meaning marriage, encapsulates the sacred union of husband and wife or man and woman. Meanwhile, *Zauj* expands its scope to include any individual in the company of someone of the same kind, describing a spectrum of dualities such as day and night, sweet and bitter, wet and dry, and so on. In the Islamic point of view, as explained by M. Thobroni and Aliyah A. Munir, *Nikah* is more than just a marriage covenant; it evolves into a form of worship (Herlena & Muads Hasri, 2021). It involves a covenant between a man and a woman, aimed at achieving a life characterised by *sakinah* (tranquillity), *mawaddah* (mutual love), and *warahmah* (a life blessed by Allah). The multifaceted concept of marriage has different interpretations, all converging on the same essence. Marriage, as described, involves a covenant that privileges an intimate union between a man and a woman, either through the spoken word “*nikah*” or a formal agreement (*ijab and qabul*) between the couple. Framing marriage as “a sacred covenant that establishes a familial bond between a man and a woman.” Imam Shafi'i, on the other hand, characterises it as “a covenant that permits legal sexual relations between a man and a woman”. In essence, marriage emerges as a sacred covenant or agreement, in line with Anwar Haryono's (1988) view that marriage is a “sacred covenant between a man and a woman to form a happy family”. It explores the intrinsic social nature of humans, emphasising their innate tendency towards socialisation, communal living, and interdependence (Mujib, 2024).

According to Aristotle's philosophy, humans are essentially *zoon politikon* (political or social animals), intertwined in the fabric of communal existence. Biologically, humans are created with an innate drive to channel their sexual desires towards the opposite sex, an undeniable biological imperative. This fundamental aspect of human nature, imbued by God, manifests as a natural inclination to harbour affection towards the opposite sex. Muhammad al-Bahi underlines the crucial role of carnal love as the force that drives the individual towards engagement with the opposite sex. Most importantly, he advocates marriage as the most optimal channel for expressing carnal desires, particularly for human beings who possess dignity. This reinforces the importance of marriage as a holistic institution, which fulfils both biological and emotional needs in the complexity of human relationships. Ali Ahmad al-Jurjani, underlines the importance and pivotal role of marriage in the complexity of human life (Zubair, 2022). Marriage, as al-Jurjani explains, is more than just a union; it serves as a formal link between two different individuals of different genders, cementing a legal conjugal relationship and giving birth to the formation of a cohesive family unit. This familial nucleus, in turn, acts as a catalyst for the growth and development of society.

Al-Jurjani's perspective explores the complex dynamics of marriage, and portrays it as the foundation for growing social bonds. The sanctioned relationship between husband and wife is not merely a personal one but the foundation upon which the family edifice is built. As a result, this familial entity fuelled progress towards the wider social community. The general purpose of marriage, as described by al-Jurjani, transcends worldly boundaries, aiming to usher individuals into a deep happiness and contentment that transcends worldly boundaries, and extends into the afterlife.

Etymologically, the word *nikah* (marriage) means gathering, union, intercourse and contract. Then in *majaz* means a contract, because it includes the binding of cause and effect. Terminologically, according to Imam Shafi'i, marriage is a contract by which sexual relations between a man and a woman become lawful. According to the Muta'akhirin scholars, marriage is a contract that gives the legal benefit of the permissibility of establishing family relations between a man and a woman and establishing mutual assistance and providing limits to the rights of their owners and the fulfilment of their respective obligations (Mardani, 2016). The legal basis of marriage in the view of Islam, many refer to the Qur'an, Al-Hadith, Ijma' Ulama, and Ijtihat that marriage is an act of worship that is recommended by the Prophet Muhammad Shalallahu Alaihi Wasallam.

The basis for the lawfulness of marriage is the word of Allah in the Qur'an, which means: *"And among the signs of His power is that He created for you wives of your own kind, that you may tend to them and be at ease with them, and He made between you love and affection. Indeed, in such things there are signs for the thinking people."* (QS: Ar-rum : 21)(Quraish Shihab, 2020). That marriage does have a legal basis derived from the words of Allah Subhanahu Wa Ta A'la, namely the Qur'an and Hadith, the words of the Prophet Muhammad Shalallahu Alaihi Wasallam which means: *"There are three groups of people whom Allah will surely help: Those who fight (Mujahid) in the cause of Allah, those who marry to preserve their honour, and slaves who seek to free themselves (so that they can worship freely)".* (H.R. Ahmad no 7416) (Lukman Hakim, 2021).

In the verses of the Qur'an or Hadith, Islam does not specifically regulate the age at which a person is allowed to marry, but only hints at the limit of physical maturity. As stated in Allah's word Al-Qur'an Surat An-Nisa' (4): 6, which means: *"And test the orphans until they are old enough to marry. then if you think they are intelligent (good at keeping property), Then hand over to them their property. and do not eat orphans' property more than is appropriate and (do not) rush (to spend it) before they are mature. If any of the custodians is able, then let him refrain (from consuming the orphan's property), and if he is poor, then let him consume it as he sees*

fit. Then when you transfer the property to them, then let there be witnesses (of the transfer) for them, and Allah is sufficient as a Controller (of the testimony)."

Hadits Rasulullah Muhammad Shalallahu Alaihi Wasallam :

حَدَّثَنَا يُحْيَى بْنُ يُحْيَى التَّمِيمِيُّ وَ أَبُو بَكْرٍ بْنُ أَبِي شَيْبَةَ وَمُحَمَّدُ بْنُ الْعَالِءِ الْهَمْدَانِيُّ جَمِيعًا عَنْ أَبِي مُعٍ وَاللَّفْظُ لِيُحْيَى أَخْبَرَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَغْمَشِيِّ عَنْ إِبْرَاهِيمَ عَنِ عَلْقَمَةَ قَالَ كُنْتُ أَمْشِي مَعَ عَبْدِ هَلَلًا - أَوْيَةً بِمِثِّي فَلَقِيَهُ عُثْمَانُ فَقَامَ مَعَهُ يُحَدِّثُهُ فَقَالَ لَهُ عُثْمَانُ يَا أَبَا عَبْدِ الرَّحْمَنِ أَلِ نَزَوِجُكَ جَارِيَةٌ شَابَّةٌ لَعَلَّهَا تَذْكُرُكَ بِهِ ضَمَّ مَا مَضَى مِنْ زَمَانِكَ قَالَ فَقَالَ عَبْدُ هَلَلًا لَعِنَ ذَلِكَ لَقَدْ قَالَ لَنَا رَسُولُ هَلَلًا صَلَّى هَلَلًا عَلَيْهِ وَسَلَّمَ يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضَى لِلْبَصَرِ وَأَخْصَرَ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَ - عَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءَ

"Yahyā ibn Yahyā at-Tamîmiy and Abû Bakr ibn Abî Shibah and Muhammad ibn al-'Ala' al-Hamdaniy have all related to us from Abû Mu'āwiyah - and the Lafaz belongs to Yahyā, Abû Mu'āwiyah has related to us from al-Aghmasy from Ibrāhim from Al-Qamah, he said: I walked with Abdullāh in Mina, then he met Uthmān. He walked with him then Uthmān said: O Abdurrahmān do you want me to marry a girl who will remind you of what you are doing. Then he said: If you say so, the Messenger of Allah (peace and blessings of Allāh be upon him) said to us: 'O young men, whoever among you is able to marry should marry, for that will protect the eyes and keep the private parts pure. And whoever is not able to do so, let him fast, for that is more likely to pacify his lustful urges." (Ibnu Hajar al-Asqalany, 2004).

Verse 6 of the Qur'an Surah An-Nisa' above can be understood that the age of Baligh is the age limit for marriage in Islam, while from the Hadith above it can be seen that to enter into marriage there is a requirement, namely having the provision and preparation for marriage. Only people who are mature have the ability and preparation for marriage. Regardless of gender, whether male or female, each individual is endowed with reproductive capabilities that can function optimally when put together in harmony. The completeness of existence is realised through the complex fusion of each individual with his or her complementary partner. God, in His wisdom, has instilled in every creature an innate tendency to seek union with its partner, an urgent desire that becomes more evident every day, demanding its fulfilment. Failing to realise this union and companionship will result in restlessness, mental turmoil and constant emotional turmoil. Hence, marriage, in

the Divine design, emerged as a remedy to calm the mental agitation and provide tranquillity to every soul.

The teachings of the Qur'an emphasise that God's intention for men and women to unite in marriage is rooted in the creation of a new generation, which continues the legacy of mankind on earth. Much evidence supports the assertion that marriage is a basic human need. In Islam, the emphasis lies not only on the marital act but on the quality of the bond of interaction between the couple, and the social fabric of their life together. Husain 'Ali Turkamani, underlines the important role of family welfare in ensuring the welfare of society. Islam consistently advocates family formation and the cultivation of happiness in the lives of married couples and their offspring. Post-marriage, the couple bears the responsibility of building a new institution whose excellence surpasses all others. A virtuous society provides the optimal environment for the healthy development of today's children, who are destined to become the outstanding individuals of tomorrow. The resilience and health of this family system, influenced by parental culture and partly shaped by societal norms, correlates directly with the quality of growth exhibited by the next generation.

The Religious Court is one of the four courts under the Supreme Court of the Republic of Indonesia as one of the pinnacles of judicial power and the highest State court which has a strategic position and role in the field of judicial power in accordance with the Judicial Power Law Number 48 of 2009.

The birth of Law Number 1 of 1974 concerning Marriage is certainly inseparable from the historical and social dynamics that exist in Indonesian society, so that the government at that time played an important role in the background of the birth of the Marriage Law, which affected the rules regarding the minimum age of marriage. After 45 years of enactment of this Marriage Law, finally in 2014 a number of people again filed a lawsuit with the Constitutional Court (MK) so that the minimum age of marriage was reviewed because it was felt that the age for women was very low and was still under the protection of the law on children and women, but the Constitutional Court had not granted this request and was still reviewing the law, finally at the plenary session of the House of Representatives (DPR) on 16 September 2019 it was stated that the DPR approved limited amendments to Law Number 1 of 1974 concerning Marriage.¹⁵ As for the important points of the amendment, they are in Law Number 1 of 1974 concerning Marriage. The important points that were changed were in Article 7 of Law Number 1 Year 1974 concerning Marriage, namely equalising the minimum age of marriage for men and women to 19 years.¹⁶ With this change, if a marriage is forced to be carried out, there must be sufficient reasons and evidence. The discussion of Regulation No. 1 of

1974 concerning Marriage is a continuation of the choice of case of the Constitutional Court of the Republic of Indonesia Number 22 / PUU-XV / 2017 which partially standardised the applicant's request to change the contents of Article 7 Paragraph (1). This Judicial Review (JR) application is the second attempt after the previous utility was rejected by the Constitutional Court (MK) in 2014, after going through several hearings and experiencing delays for no apparent reason, in December 2018 the Constitutional Court (MK) through its decision stated that part of the application was granted. In this amendment, if a marriage must take place, it must be accompanied by strong reasons and sufficient evidence (Muhammad Andri, 2019).

Dispensation according to the Big Indonesian Dictionary means an exception from the general rule for a special situation, an exemption from an obligation or prohibition. In the case of dispensation, what is usually prohibited by the lawmaker is usually allowed. Dispensation of marriage is a concession granted by the Religious Court to prospective husband and wife who have not reached the minimum age limit for marriage. In the Marriage Law in Article 7 Paragraph (2) regulates the dispensation of marriage age which reads: 'In the event of a deviation from Paragraph 1 'Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached 19 (nineteen) years.' This article can request dispensation to the Religious Court or other officials appointed by both parents of the male and female parties. Meanwhile, the Compilation of Islamic Law which was disseminated through INPRES Number 1 of 1991 strengthens the provisions of Article 15 KHI stating that the age limit for marriage is the same as Article 7 paragraph (2) of Law Number 16 of 2019, but with the addition of the benefit of the family and household.

The absence of clear rules on the conditions for applying for dispensation under Article 7 Paragraph (2) of the Marriage Law has reduced the concept of dispensation itself, as explained that dispensation is a limited state administrative decision to set aside a prohibition in a special case. Therefore, the formulation of permissible reasons is the most basic element for a dispensation to be granted. Dispensations are thus intended to resolve specific cases that may further clarify the general statement of the purpose of the law, which is the public good.

D. Closing

The judge's consideration of the protection of children's rights is certainly in line with the articles contained in the Marriage Law and is also in accordance with what is intended by *Maqasid al-shariah*, namely to maintain the benefit in which the judge positions the position of *Shara'* higher than the Law so that protecting or

maintaining religion (*hifz al-din*) is a form of the judge's efforts. Granting permission to marry to the prospective bride and groom is a judge's decision that can be considered as an endeavour to provide status to the child who will later be born (*hifz al-nafs*). The validity of marriage and children born in marriage will have a positive impact (*hifz al-nasl*). Marriage dispensation is included in the *Maqasid al-shariah dharuriyyat* category (as an urgent or emergency need). The positive side and the negative side are the impacts caused by marriage dispensation. In positive terms, it can protect children and provide better opportunities, but in negative terms, it cannot face major challenges in maintaining the continuity and happiness of marriage at a young age. This research raises the issue of how marriage dispensation is viewed from the perspective of *Maqasid Al-Shariah* in Islamic law. Through an Islamic legal theory approach, this research aims to identify and analyze the principles of *Maqasid Al-Shariah* that are relevant in the context of granting marriage dispensation. From the research conducted, it was found that *Maqasid Al-Shariah* offers a comprehensive framework for evaluating and considering marriage dispensation. Several key aspects of *Maqasid Al-Shariah*, such as the protection of religion, soul, intellect, offspring and property, can be used as a foundation in the decision-making process related to marriage dispensation. This shows that the granting of marriage dispensation does not only need to be seen from the perspective of positive law, but must also consider the *maslahat* and *mudarat* associated with the objectives of sharia. Thus, the conclusion of this study confirms the importance of considering *Maqasid Al-Shariah* in any decision related to marriage dispensation to ensure that the decision is in line with the main objectives of sharia, namely realizing good and preventing harm for individuals and society.

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