

| Research Article |

## From Judicial Discretion to *Maqāṣid al-Sharī'ah* Reasoning: The Case of Marriage Dispensation at the Muara Bulian Religious Court, Indonesia

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**Abstract:** This article discusses the application of judicial discretion in marriage dispensation of Decision Number 106/PDT.P/2023/PA.MBL at the Muara Bulian Religious Court based on the perspective of *maqāṣid al-sharī'ah*. Amid increasing legislative efforts to protect children by raising the minimum marriage age, judicial discretion has become a determining factor in granting or rejecting marriage dispensation applications. Thus, this article aims to analyze how judges interpret and apply the concept of “urgent reasons” in cases involving a 14-year-old prospective bride, explore how judges incorporate principles of *maqāṣid al-sharī'ah*, particularly the balance between the preservation of lineage (*ḥifẓ al-nasl*) and the protection of life and intellect (*ḥifẓ al-nafs* and *ḥifẓ al-'aql*), in their legal considerations, and assess the gap between formal child protection standards and their practical implementation within the religious court system. By using a qualitative research approach with legal document analysis, this article finds that judicial discretion in this case involves an expansive interpretation of “urgent reasons” based on premarital sexual relations, a narrow focus on *ḥifẓ al-nasl* rather than a holistic assessment of the child's best interests, and significant discrepancies between formal protections and their practical application. These findings highlight a fundamental tension between a preventive approach toward premarital sexual relations and the long-term protection of children's rights within the framework of contemporary *maqāṣid al-sharī'ah*. This article contributes to a better understanding of the complexities of judicial discretion in child marriage cases and offers insights for improving legal reasoning standards to prioritize child protection in Indonesia.

**Keywords:** Judicial Discretion, Marriage Dispensation, Child Marriage, *Maqāṣid al-Sharī'ah*, Muara Bulian Religious Court, Child Protection.

## Introduction

Court case Number 106/PDT.P/2023/PA.MBL at the Muara Bulian Religious Court represents an important example of judicial discretion in child marriage dispensation, where a 14-year-old girl was permitted to marry a 19-year-old man despite not being pregnant. Statistics from the Muara Bulian Religious Court show a concerning trend: marriage dispensation cases increased from 25 cases in 2019 to 91 cases in 2023, with 302 cases approved and only 4 cases rejected during this period (see table 1.1 and figure 1.1 in the subsection "Marriage Dispensation at the Muara Bulian Religious Court"). This case highlights the complex tension between the legal age requirements established in Law No. 16 of 2019, which sets the minimum marriage age at 19 years for both genders, and judicial discretion that allows exceptions based on religious, cultural, and social considerations. This dispensation was granted primarily because the couple had engaged in sexual relations five times, creating what the court considered an "urgent situation" despite concerns about the girl's reproductive health, lack of psychological readiness certification, and limited religious knowledge. Therefore, this case presents a unique opportunity to critically examine how judicial discretion operates at the intersection of positive law, *maqāṣid al-sharī'ah* principles, and social realities in contemporary Indonesian legal practice.

Research on marriage dispensation in Indonesia has been conducted from various perspectives. Lahilote et al. (2022) revealed the dilemma judges face in applying the principles of Supreme Court Regulation (PERMA) No. 5/2019, with a tendency to use *maslahah* theory in their decisions. Kasim and Daud (2022) found that the concept of *maslahah* forms the basis for judges' considerations in granting marriage dispensations due to pregnancy. Mutakin et al. (2021) analyzed the use of *sadd al-dharī'ah* to prevent fornication as a greater evil. Mursyid and Yusuf (2022) and Maimunah et al. (2021) revealed a significant increase in dispensation applications after Law No. 16/2019. Iswantoro and Tobroni (2022) emphasized the importance of children's psychological readiness, while Rohman et al. (2023) analyzed judges' interpretation of "urgent reasons" that prioritize preventing violations of religious norms. Syufa'at (2022) identified two main factors in granting dispensations: close relationships raising parental concerns and pregnancy. Sebyar (2023) discussed harmonization between Islamic legal institutions and customs, while Rohmadi et al. (2024) examined variations in judges' interpretations of "urgent reasons" in marriage dispensations.

Despite these valuable contributions, there are significant gaps in the existing literature. Shahrullah et al. (2023) and Asmuni and Adikara (2024) have indeed discussed judges' dilemmas and the application of "very urgent" criteria, but no study has deeply analyzed how judges integrate *maqāṣid al-sharī'ah* principles in specific cases, especially when sexual activity without pregnancy becomes the main justification. Yetta et al. (2024) analyzed the implications of changes to the Marriage Law on dispensation cases but did not specifically address the judicial reasoning process that prioritizes the prevention of premarital sexual relations above child

protection principles. In-depth qualitative analysis of judicial reasoning in marriage dispensation cases involving minors, particularly the balance between protection of lineage (*ḥifẓ al-nasl*) and protection of life and intellect (*ḥifẓ al-nafs* and *ḥifẓ al-'aql*), remains very limited in existing research. This gap is important to fill given the increasing trend of marriage dispensations following the Marriage Law amendment and its implications for protecting children's rights.

Therefore, this article aims to critically analyze judicial discretion in child marriage dispensation through an in-depth examination of case Number 106/PDT.P/2023/PA.MBL at the Muara Bulian Religious Court based on the *maqāṣid al-sharī'ah* perspective. Specifically, this article aims to: (1) analyze how judges interpret and apply the concept of "urgent reasons" in cases involving a 14-year-old prospective bride; (2) identify how judges integrate *maqāṣid al-sharī'ah* principles in their legal considerations, particularly the balance between protection of lineage (*ḥifẓ al-nasl*) and protection of life and intellect (*ḥifẓ al-nafs* and *ḥifẓ al-'aql*); and (3) evaluate the gap between formal child protection standards and their practical implementation in the religious court system. We seek to unravel the judicial reasoning process that prioritizes the prevention of premarital sexual relations above child protection principles despite the absence of pregnancy. This study intends to identify the normative, religious, and social factors that influence judges' application of "urgent situation" criteria as established in Marriage Law No. 16 of 2019. Furthermore, this article will evaluate how judges interpret and apply the "best interests of the child" principle when it conflicts with religious considerations regarding sexual morality and the prevention of fornication. Finally, we aim to develop a more nuanced understanding of judicial discretion in religious courts by analyzing how judges navigate the complex interaction between formal law, *maqāṣid al-sharī'ah*, and community expectations in these controversial cases.

This article argues that judicial discretion in case Number 106/PDT.P/2023/PA.MBL reveals a systematic prioritization of preventing fornication above protecting children's rights to education, reproductive health, and psychosocial development based on an unbalanced application of *maqāṣid al-sharī'ah*. The judge's interpretation of "urgent circumstances" appears to be heavily influenced by classical Islamic jurisprudential concerns about sexual morality that emphasize *ḥifẓ al-nasl* in a narrow sense rather than contemporary child welfare principles that consider all aspects of *maqāṣid* holistically. We argue that this case exemplifies a broader pattern where religious court judges extend their discretionary authority to accommodate social and religious norms that effectively override legislative efforts to reduce child marriage. Furthermore, the court's reliance on the juristic principle "*dar' al-mafāsid muqaddam 'alā jalb al-maṣāliḥ*" (preventing harm takes precedence over securing benefits) demonstrates how Islamic legal maxims are selectively applied to justify decisions that potentially undermine children's long-term welfare. This analysis ultimately reveals the limitations of legislative reform alone in addressing child marriage when judicial discretion remains heavily influenced by religious and

cultural factors that prioritize sexual morality over child protection concerns within a comprehensive *maqāṣid al-sharī'ah* framework.

## Method

This research adopts a qualitative approach with a single case study method to deeply analyze judicial discretion in marriage dispensation Decision Number 106/PDT.P/2023/PA.MBL at the Muara Bulian Religious Court. This case was selected based on its representative yet unique characteristics, involving a very young prospective bride (14 years old), a history of premarital sexual relations without pregnancy, and approval of the application despite several significant risk factors for child protection.

Data collection was conducted through three main methods. First, analysis of legal documents, including the complete copy of the decision and its legal considerations, relevant laws and regulations, and court statistical data. Second, a comprehensive literature review of previous research on marriage dispensation, child marriage, and judicial discretion. Third, a comparative study of other marriage dispensation decisions at the Muara Bulian Religious Court during the 2019-2023 period to identify patterns in judges' considerations in similar cases.

The theoretical framework of this research uses the *maqāṣid al-sharī'ah* approach as the main analytical tool to uncover the basic objectives of Islamic law in judges' considerations. *Maqāṣid al-sharī'ah* etymologically derives from two Arabic words: *maqāṣid* (objectives) and *al-sharī'ah* (Islamic law). Terminologically, *maqāṣid al-sharī'ah* refers to the objectives that Islamic law aims to achieve for human welfare (Al Idrusiah et al., 2024; Kurniawan et al, 2020; Kurniawan & Zaiful, 2022; Kurniawan, 2018). However, scholars of *uṣūl al-fiqh* understand it as the aims and secrets of Sharia established by God (*al-shāri'*) in each of His laws, all of which led to human welfare in this world and the hereafter (Ibn 'Āshūr, 2004, p. 165; al-Fāsī, 1993, p. 7; al-Zuhaylī, 2011, II: 308). Within this framework, the intended welfare is manifested in five fundamental principles known as *al-darūriyyāt al-khams*, namely the protection of religion (*dīn*), life (*nafs*), lineage (*nasl*), property (*māl*), and intellect (*'aql*)—as also affirmed in *al-Muwāfaqāt* (al-Shāṭibī, 2005, II: 8). Contemporary scholars such as Jasser Auda have developed this theory of *maqāṣid* by incorporating new dimensions such as human rights protection, environmental protection, and sustainable development, and by emphasizing a holistic approach that considers all dimensions of *maqāṣid* integratively, not hierarchically (Auda, 2022; Audah, 2014, 2022).

However, this research chooses to use the framework of the five main principles of *maqāṣid al-sharī'ah* developed in today's context. Therefore, this research identifies the hierarchy of values used by judges in weighing between protection of lineage (*ḥifẓ al-nasl*) and protection of life (*ḥifẓ al-nafs*) and intellect (*ḥifẓ al-'aql*). The analysis also examines the use of *fiqh* maxims in judges' considerations, particularly the maxim "preventing harm takes precedence over bringing benefits" (*dar' al-mafāsīd muqaddam*

'alā jalb al-maṣāliḥ), and how the concepts of "harm" (*mafsadah*) and "benefit" (*maṣlahah*) are constructed in the context of child marriage.

The operational steps in applying the *maqāṣid al-sharī'ah* framework to the analysis of this case are: first, identification of judges' considerations that explicitly or implicitly refer to *maqāṣid* principles; second, analysis of how judges construct the concept of "very urgent reasons" within the *maqāṣid* framework; third, evaluation of the application of the *dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* maxim in judges' considerations; fourth, assessment of the balance between protection of *ḥifẓ al-nasl* and other *maqāṣid* aspects (*ḥifẓ al-nafs* and *ḥifẓ al-'aql*); fifth, identification of gaps between the application of classical *maqāṣid* and more holistic contemporary *maqāṣid* conceptions.

The validity and reliability of the research are ensured through data source triangulation, theory triangulation, and examination by experts in Islamic family law and child protection. Epistemologically, this research departs from an interpretive-critical paradigm that recognizes that court decisions are not merely mechanical applications of legal rules, but also products of interpretation influenced by the understanding of the objectives of Islamic law in contemporary social contexts.

### **Marriage Dispensation in the Indonesian Legal System**

The marriage age limit in Indonesia has undergone important changes since the enactment of Law Number 1 of 1974 (1974). Initially, the minimum age for marriage was 16 years for women and 19 years for men. After a judicial review in 2019, the Constitutional Court declared this provision contrary to the 1945 Constitution because it created differential treatment based on gender and potentially perpetuated child marriage. A major change occurred through the enactment of Law Number 16 of 2019 (2019), which equalized the marriage age limit to 19 years for both genders with the aim of protecting children's rights and reducing child marriage rates. Despite this new rule, Article 7 paragraph (2) still provides exceptions through marriage dispensation for urgent reasons that must be supported by evidence (Law No. 16/2019). Interestingly, this legal change was followed by a surge in marriage dispensation applications in Religious Courts from 23,126 cases in 2019 to 64,211 cases in 2020, showing a misalignment between legal objectives and their implementation in the field.



Table 1.1: Number of Marriage Dispensation Applications in Religious Courts, Years 2016-2022

<b>Year</b>	<b>Number of Cases</b>
2016	11.488
2017	12.557
2018	13.489
2019	23.145
2020	63.382
2021	61.449
2022	50.673

(National Commission on Violence Against Women, 2022)

The procedure for applying for marriage dispensation is regulated in Articles 6 to 11 of Supreme Court Regulation (PERMA) Number 5 of 2019. Applications must be submitted by parents or guardians of children under 19 years of age to the Religious Court for Muslims or the District Court for non-Muslims. Applications must be accompanied by important documents such as a rejection letter from the Office of Religious Affairs, the child's birth certificate, the applicant's identity, and other supporting information showing "very urgent reasons" for the marriage. Field studies show that judges interpret "very urgent reasons" in various ways, generally including premarital pregnancy, premarital sexual relations, concerns about fornication, or economic factors, although there are no clear objective measures in the regulations. When examining cases, judges are required to hear statements from all parties separately, including the child for whom dispensation is requested, the prospective spouse, and parents/guardians from both sides without using official attributes to create a non-intimidating atmosphere. This process requires judges to gather information about the child's psychological condition, reproductive health, education, economics, and potential exploitation, although research shows examinations are often conducted briefly without in-depth exploration (Perma, No. 5/2019 Articles 6-11).

Supreme Court Regulation Number 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications has changed the way marriage dispensation cases are handled by introducing a child's best interests approach. This PERMA establishes ten basic principles in adjudicating dispensation applications, including the best interests of the child, the right to development, respect for the child's opinion, respect for dignity, non-discrimination, gender equality, equality before the law, justice, benefit, and legal certainty. Judges are required to consider the age difference between the child and the prospective spouse, assess the risk of marriage for potential violence or exploitation, and evaluate the physical, psychological, economic, and intellectual readiness of the parties. The technical implementation of this PERMA faces challenges in the form of limited court facilities for reproductive health examinations, psychological assessments, and professional assistance, causing "very

urgent reasons" considerations to often dominate over considerations of the child's best interests.

### **Marriage Dispensation at the Muara Bulian Religious Court**

This section presents an in-depth analysis of marriage dispensation at the Muara Bulian Religious Court, focusing on the legal process, social context, and implications for child protection. The discussion is divided into three main parts: the profile of the specific case under study, the socio-legal context behind it, and the special characteristics of the analyzed case.

#### **1. Profile of the Case No. 106/PDT.P/2023/PA.MBL**

Marriage dispensation case Number 106/PDT.P/2023/PA.MBL was filed by a biological mother (Applicant) who wanted to marry off her 14-year-old daughter to a 19-year-old man. This case began when the Applicant registered her child's marriage at the local Office of Religious Affairs (KUA) but was rejected because she had not reached the minimum age of 19 years according to Law No. 16 of 2019. This case was examined by a single judge without wearing court attributes to create a comfortable atmosphere for the child. The Applicant presented evidence in the form of photocopies of the child's birth certificate, a rejection letter from the KUA, and two witnesses who provided testimony in accordance with the application. The examination involved direct testimony from the child for whom dispensation was requested, the prospective husband, and the prospective husband's parents to ensure there was no coercion in the marriage plan (Decision of Muara Bulian Religious Court No. 106/PDT.P/2023/PA.MBL, 2023).

The parties in this case include the Applicant as the biological mother of the girl, while the biological father had passed away in July 2014. The prospective bride was 14 years old when the application was submitted, still under her mother's care as her sole guardian. The prospective groom was 19 years old, already working as a palm oil farmer with an income of Rp. 3,000,000 per month, present with his parents in the trial. The identities of all parties are kept confidential in accordance with research ethics by replacing their names using XXXX code in official court documents to protect privacy. The judge's decision affirms the Applicant's legal standing as a biological parent entitled to apply for marriage dispensation based on the child's birth certificate submitted during the trial (Decision of Muara Bulian Religious Court No. 106/PDT.P/2023/PA.MBL, 2023).

The marriage dispensation application was submitted with the main reason that the relationship between the two prospective spouses was "very urgent" because they had maintained a close relationship for more than a year and could not be separated. The trial facts revealed that the Applicant's child and her prospective husband had engaged in sexual relations five times although it did not result in pregnancy. The application emphasized moral and religious concerns that if the marriage was not carried out immediately, they would be trapped in behavior that violates moral

norms, religion, and local customs. The Applicant and the prospective husband's parents stated their commitment to take responsibility for the economic, social, and health aspects of both prospective spouses after marriage. The judge had given advice to postpone the marriage until the Applicant's child reached the age of 19, but this effort was unsuccessful because both families maintained their position to carry out the marriage (Decision of Muara Bulian Religious Court No. 106/PDT.P/2023/PA.MBL, 2023).

The trial facts revealed a pattern of relationship that had exceeded the boundaries of socio-religious norms between the two prospective spouses. The admission of premarital sexual relations five times became the judge's main consideration in identifying "very urgent reasons" according to legal provisions. Examination of financial readiness revealed that the prospective husband was already working with an income considered sufficient to support their small family. Witness testimony confirmed that there was no family relationship or blood ties that would prevent marriage between the two prospective spouses. The judge conducted an assessment of the physical and psychological maturity of the prospective bride although without formal examination by reproductive health experts or psychologists. The judge's considerations also included the commitment of both families to accompany and support the household of the prospective spouses, including in terms of continuing education for the Applicant's child (Decision of Muara Bulian Religious Court No. 106/PDT.P/2023/PA.MBL, 2023).

## **2. Socio-Legal Context and Number of Cases**

The Muara Bulian Religious Court has a jurisdiction that covers Batanghari Regency, Jambi, with community characteristics that are a mix of urban and rural. The social structure of the community in this region is dominated by residents with middle to lower economic backgrounds, with main livelihoods in the palm oil and rubber plantation sectors (Nainggolan, Yanita, & Sidabutar, 2022; Tarigan, 2016). The community's religious culture still firmly holds traditional Islamic values that tend to be conservative in viewing opposite-sex relationships outside of marriage (Abdi, 2020). The scattered settlement pattern and the relatively long distance between villages make it difficult for people to access adequate sex education, reproductive health services, and premarital counselling. Within the framework of local values, marriage is often seen as a solution to violations of sexual norms by young couples, even when their age has not reached the legal minimum limit (Abdi, 2020). It is in this context that the Muara Bulian Religious Court is required to balance the application of positive law with sensitivity to the socio-cultural complexities of the local community.

This social condition is reflected in the pattern of handling marriage dispensation cases which shows a significant increase since the enactment of Law No. 16 of 2019. Statistical data records a surge in cases from 25 cases in 2019 to 91 cases in 2023, with a total of 302 applications granted and only 4 rejected throughout the period.



Examination of marriage dispensation cases is generally carried out by a single judge to create a friendly and non-intimidating trial atmosphere for children, as regulated in PERMA No. 5 of 2019. The trial process presents all interested parties, including the child for whom dispensation is requested, the prospective spouse, and parents/guardians from both sides, to ensure there is no element of coercion in the marriage plan. The dominant reason in judges' considerations is prevention of fornication and concern about social stigma, although normatively PERMA No. 5 of 2019 has established the standard of the best interests of the child as the top priority. In practice, judges of the Muara Bulian Religious Court apply a practical approach, weighing the protection of children's rights in the long term with the necessity of maintaining religious and social norms that are still very strong in the local community.

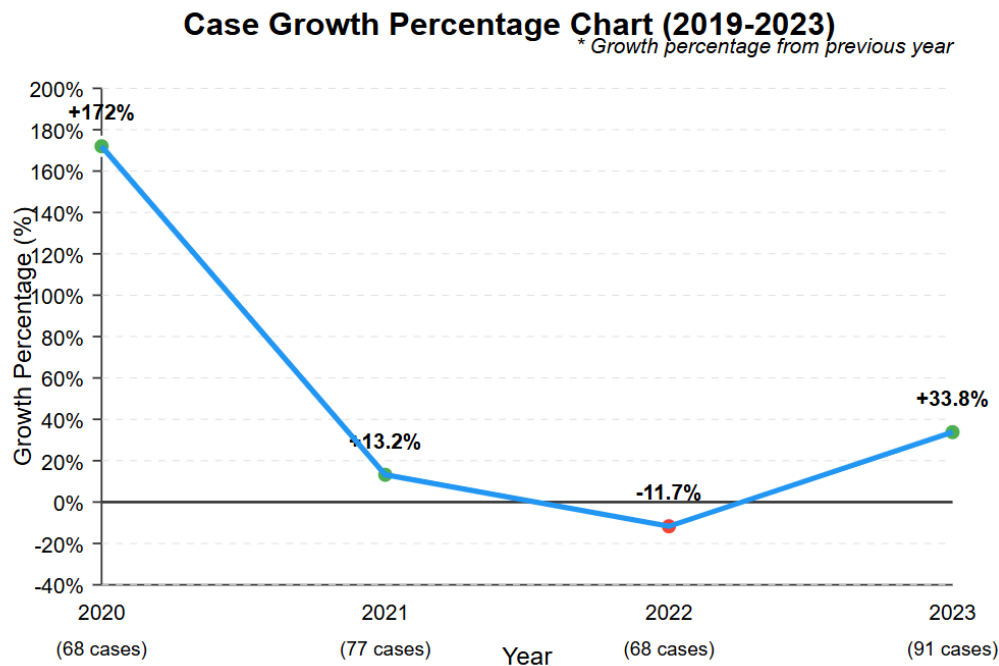
Table 02: Case Decisions with Numbers and Percentages (2019-2023)

Year	Granted	%	Withdrawn	%	Dropped	%	Not Accepted	%	Rejected	%	Total
2019	22	88.0%	3	12.0%	-	0.0%	-	0.0%	-	0.0%	25
2020	58	85.3%	7	10.3%	2	2.9%	1	1.5%	-	0.0%	68
2021	71	92.2%	6	7.8%	-	0.0%	-	0.0%	-	0.0%	77
2022	65	95.6%	1	1.5%	2	2.9%	-	0.0%	-	0.0%	68
2023	86	94.5%	-	0.0%	-	0.0%	1	1.1%	4	4.4%	91
Total	302	91.8%	17	5.2%	4	1.2%	2	0.6%	4	1.2%	329

(Source: Muara Bulian Religious Court Documents 2019-2023)

The number of cases from 2019 to 2023 shows fluctuating changes. In 2020, cases surged very high with an increase of 172% from the previous year, from 25 cases to 68 cases. The following year, 2021, the number of cases still increased, but not as high as before, only increasing by 13.2% to 77 cases. Then in 2022, the number of cases decreased by 11.7%, back to 68 cases. But in 2023, the number of cases increased again quite significantly by 33.8%, reaching 91 cases. Overall, although there was one year where cases decreased, the long-term trend shows that cases tend to increase from year to year as shown in the graph below.

Figure: 01



### 3. Special Characteristics of the Case

The main characteristic in case No. 106/PDT.P/2023/PA.MBL lies in the very young age of the prospective bride, 14 years old, which is clearly far below the minimum age requirement in Law No. 16 of 2019. The five-year age difference between the prospective bride (14 years old) and groom (19 years old) raises important questions about relationship equality and psychological maturity in their relationship (Decision of Muara Bulian Religious Court No. 106/PDT.P/2023/PA.MBL, 2023). From a reproductive health perspective, women who marry at the age of 14 face high risks for pregnancy complications, childbirth, and child developmental disorders. At this age, girls are psychologically still in the stage of identity formation and do not have the emotional maturity to face the complexities of marital relationships. Although PERMA No. 5 of 2019 has required a comprehensive assessment of the physical, mental, intellectual, and financial readiness of children for whom dispensation is requested, its implementation at the court level is often limited. In this case, the Muara Bulian Religious Court judge granted the dispensation application based on reasons of preventing fornication and support from both families, without significant exploration of the child's psychosocial readiness.

Furthermore, the history of the relationship between the two prospective spouses displays a pattern that should be questioned from a child protection perspective. The admission that the couple had engaged in sexual relations five times before marriage indicates weak parental supervision and minimal sex education in their social environment. It is not explicitly explained in the trial whether these sexual acts were carried out on the basis of a complete understanding of sexuality and with

truly voluntary consent—a crucial matter considering the very young age of the prospective bride. Sexual activity at the age of 14 raises serious concerns about the potential for gender-based violence and sexual exploitation of children, even if it is claimed to occur in the context of dating (Teunissen et al., 2024). Nevertheless, the judge interpreted this sexual history as a "very urgent reason" to grant the application, without an in-depth exploration of possible violations of children's rights. The reactive approach to adolescent sexuality with a marriage solution shows the limitations of the child protection perspective that should be a priority in the religious court system (Decision of Muara Bulian Religious Court No. 106/PDT.P/2023/PA.MBL, 2023).

The social, economic, and educational aspects of the parties further strengthen the structural complexity in this case. The prospective bride comes from a family that has lost the father figure since 2014, indicating vulnerable conditions in terms of family care and supervision. Meanwhile, the prospective groom works as a palm oil farmer with an income of around Rp3,000,000 per month, reflecting the economic reality of rural communities with limited formal employment options. The trial did not clearly reveal the education level of the prospective bride and whether the marriage would impact the continuity of her education. In the local social context, violations of sexual norms by adolescents are often responded to through marriage solutions as a form of saving family honour. Such strong social expectations put families and even courts under normative pressure that is difficult to ignore. The commitment of both families to provide economic and social support after marriage, although technically indicating good faith, does not automatically solve structural root problems such as access to education and proper reproductive health services for adolescents (Decision of Muara Bulian Religious Court No. 106/PDT.P/2023/PA.MBL, 2023).

### ***Maqāṣid al-Sharī'ah* in Judges' Considerations**

This section discusses how judges of the Muara Bulian Religious Court apply the principles of *maqāṣid al-sharī'ah* (objectives of Islamic law) in deciding marriage dispensation cases. The discussion focuses on the hierarchy of values used by judges, the application of the concept of protection of lineage, the use of Islamic legal maxims, and the tension between religious morality and the protection of children's rights.

The judge's considerations in decision Number 106/PDT.P/2023/PA.MBL reflect a hierarchy of values within the *maqāṣid al-sharī'ah* framework that places protection of lineage (*ḥifẓ al-nasl*) in a priority position. The judge identified two possible harms that must be chosen in this marriage dispensation case: rejecting the application with the risk of social stigma and the possibility of repeated fornication or granting the application with risks to the reproductive health and educational welfare of a 14-year-old girl. The judge's reasoning process concluded that prevention of sexual relations outside of marriage (fornication) is a more important interest compared to potential health and education risks for the prospective bride. The decision applies the concept of *maṣlaḥah* (benefit) which is interpreted in a limited way to moral-religious

protection without deepening the long-term *maṣlaḥah* of optimal child development. The arrangement of the value hierarchy in this decision reflects a tendency toward classical *maqāṣid* interpretation that emphasizes aspects of moral-religious protection above considerations of comprehensive child welfare as recommended in contemporary *maqāṣid* understanding.

The priority of *ḥifẓ al-nasl* (protection of lineage) in the judge's considerations appears dominant compared to other *maqāṣid* dimensions. The judge quoted Quran Surah An-Nur verse 32 and the Prophet's Hadith about the recommendation to marry those who are capable (*al-bā'ah*) as a theological basis for granting the dispensation application. The admission that sexual relations had occurred five times between the prospective spouses is positioned as an indicator of "very urgent reasons" that activate the priority of lineage protection within the *darūriyyāt* (primary needs) framework. The meaning of *ḥifẓ al-nasl* in this decision tends to be narrow on the aspect of formal legitimacy of sexual relations through marriage, without comprehensively considering the dimension of the quality of offspring that includes reproductive health, psychological maturity, and economic readiness. The limited exploration by the judge of reproductive health risks for a 14-year-old prospective bride shows the gap between the theoretical concept of comprehensive *ḥifẓ al-nasl* and its practical application in the context of religious courts. This approach illustrates the challenge of contextualizing classical *maqāṣid* principles in contemporary issues involving children's rights and reproductive health.

The maxim *dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* (preventing harm takes precedence over achieving benefits) becomes the basis of the main argument in the judge's considerations. The application of this maxim is seen in the identification of *mafsadah* (harm) in the form of potential repeated fornication and social stigma, which is assessed as greater than the *mafsadah* of violating the child's right to optimal development. The judge builds the concept of *mafsadah* selectively with dominant emphasis on violations of moral-religious norms related to sexual relations, while the impact of early marriage on health, education, and psychosocial aspects of the child does not receive equal weight of consideration. The decision reveals a pattern of reasoning with a moral-preventive approach that prioritizes prevention of fornication as the main *mafsadah* that must be avoided even at the expense of other aspects of child protection. The application of this maxim in the context of child marriage shows a fundamental tension between classical moral-religious principles and contemporary child protection principles that require multidimensional and long-term considerations. The construction of the judge's argument reflects the challenge of adjustment between textual understanding of *fiqh* maxims and the complexity of contemporary socio-legal issues.

The construction of the concepts of *mafsadah* and *maṣlaḥah* in the judge's considerations reflects an understanding limited to the moral-religious dimension of marriage. *Mafsadah* is dominantly constructed as a violation of sexual norms through relations outside of marriage, social stigma, and potential community gossip about

prolonged dating relationships. *Maṣlaḥah* is constructed as the legalization of sexual relations through the institution of marriage, the prevention of slander, and the realization of a prosperous family with support from both families. This construction shows a limited perspective in understanding the complexity of marriage *maṣlaḥah* which should include biological-psychological maturity, economic readiness, and capacity to carry out roles in the household. The judge's consideration regarding the *maṣlaḥah* of marriage for a 14-year-old girl is limited to the formal legitimacy of sexual relations and family economic support, without an in-depth analysis of the long-term impact on physical-mental health and future education. The applied *maṣlaḥah* paradigm in this decision reflects the tension between contextual *maṣlaḥah* understanding that is short-term in nature and fundamental *maṣlaḥah* that has a long-term dimension within the framework of protecting children's rights.

The tension between the prevention of fornication and the protection of children's rights becomes a fundamental dilemma in this marriage dispensation decision. The judge identified the ethical-juridical dilemma but tended to prioritize prevention of violations of sexual norms above considerations of the long-term impact of marriage on the child. This approach reflects the gap between the ideals of PERMA No. 5 of 2019 which emphasizes child protection and judicial practice that is still dominated by moral-religious considerations. The conceptual tension between *ḥifẓ al-nasl* in a narrow sense (protection of offspring legitimacy) and *ḥifẓ al-nasl* in a broad sense (protection of offspring quality) has not been adequately explored in the judge's considerations. The paradox of *maqāṣid* application is seen when efforts to protect moral-religious values actually potentially ignore the protection of children's basic rights to develop optimally. This case reveals the need for a reformulation of a more integrative understanding of *maqāṣid*, where prevention of fornication and protection of children's rights are not positioned as two contradictory things but as complementary goals within the framework of protection of humanity (*ḥifẓ al-insāniyyah*).

### **The Gap between Child Protection Standards and Practical Implementation**

This section critically examines the gap between child protection principles embedded in legal regulations and their practical application in judicial proceedings, with specific reference to marriage dispensation cases at the Muara Bulian Religious Court. It explores the implementation of Supreme Court Regulation (PERMA) No. 5 of 2019, structural and institutional challenges, the prevailing judicial mindset toward child protection norms, and the disjunction between the law's intent and how it is enacted. The discussion aims to provide a comprehensive analysis of how regulatory standards intended to safeguard children are frequently compromised by limitations in judicial execution and prevailing socio-religious paradigms.

In Case Number 106/PDT.P/2023/PA.MBL, the application of PERMA No. 5 of 2019 reveals a noticeable divergence between formal regulatory mandates and their practical realization in the courtroom. While the judge adhered to some procedural



aspects of PERMA—such as conducting hearings in an informal setting, directly engaging with the child, and accounting for post-marital economic conditions—these steps only partially fulfill the regulation’s expectations. Notably absent from the decision is a thorough engagement with the ten foundational principles stipulated for adjudicating marriage dispensation cases. The core tenets of protecting the best interests of the child and ensuring their developmental rights were inadequately addressed. The court’s written rationale did not fully evaluate the critical risks associated with child marriage, including threats to the reproductive health of a 14-year-old girl, potential discontinuation of her education, and exposure to domestic violence—issues explicitly highlighted in PERMA. Consequently, the decision to approve the marriage dispensation, largely driven by a desire to prevent illicit sexual relations (*zinā*), overlooked essential evaluations of the child’s physical, psychological, and intellectual welfare. This illustrates how the enforcement of PERMA remains entrenched in a moral-preventive paradigm, often at the expense of a child-centric, rights-based approach to justice (Gunawan & Bahri, 2023).

The structural impediments to realizing a child rights framework within this judicial context are multifaceted. A significant concern lies in the absence of infrastructure and institutional support, such as access to psychological or reproductive health professionals, which is critical for assessing the readiness of underage individuals for marriage. In the aforementioned case, the judge unilaterally assessed the child’s maturity without consultation from qualified experts, undermining the comprehensive assessment mandate required by PERMA (Muara Bulian Religious Court Decision No. 106/PDT.P/2023/PA.MBL, 2023). Additionally, the court operates with limited human resources; a single judge presides over a high volume of cases, leaving insufficient time and capacity for in-depth evaluation of complex child protection issues. Coordination with external agencies—such as the local Office for Women’s Empowerment and Child Protection—was also notably absent, pointing to the lack of integrated, cross-sectoral mechanisms necessary for effective enforcement of child protection standards. Time constraints within the judicial system, driven by pressure to resolve cases swiftly, further inhibit the court’s ability to carry out the multidimensional assessments required by law. These limitations collectively demonstrate how structural inadequacies severely hinder the application of PERMA’s child protection provisions, especially in less-resourced jurisdictions.

Beyond structural challenges, there is also evidence of conceptual and epistemological resistance among judicial actors. Although the judge formally acknowledged child protection principles in the decision, such recognition appears largely symbolic, as moral-religious justifications ultimately dominated the legal reasoning. The principle of the child’s best interests was interpreted narrowly—primarily in terms of preventing zina and maintaining family economic stability—rather than embracing a broader developmental and rights-based perspective. This selective interpretation reflects a deeper ideological tendency to subordinate child

rights to traditional religious values. The decision frequently cited Islamic texts promoting early marriage but lacked substantive engagement with contemporary legal, psychological, or social science literature on child protection. This pattern underscores a broader epistemic orientation within the judiciary that privileges scriptural authority over empirical evidence and international child protection standards. Resistance to the child rights paradigm does not manifest through outright rejection but through the selective elevation of religious values within judicial considerations, often at the expense of assessing the long-term developmental harms of child marriage.

The inconsistency between regulatory frameworks and their implementation—often described as the divide between “law in books” and “law in action”—is particularly stark in this case. While PERMA No. 5 of 2019 and Law No. 16 of 2019 introduced significant normative advancements aimed at curbing child marriage, these reforms have yet to catalyze a corresponding shift in legal culture and on-the-ground judicial behavior. Statistical trends even reveal a counterintuitive outcome: despite tighter regulatory controls, the number of marriage dispensation requests has increased, with approval rates remaining consistently high at the Muara Bulian Religious Court. This contradiction suggests that legislative reform alone is insufficient to reduce child marriage when courts continue to exercise discretion in ways that align with moral-religious norms rather than child protection imperatives. Qualitatively, the gap is evident in the minimalist reasoning adopted in judicial decisions, which frequently omit critical evaluations of marriage’s impact on a child’s overall well-being. The disparity between PERMA’s detailed procedural and substantive guidelines and the actual reasoning used in court decisions reveals how regulatory intent is frequently diluted in practice. This phenomenon illustrates the inherent limitations of top-down legal reform, especially when it is not accompanied by parallel transformations in legal education, institutional capacity, and socio-cultural attitudes among judicial actors.

### **Impact of Judicial Discretion on Child Marriage Prevention Efforts**

This section discusses how judges’ wisdom in deciding marriage dispensation cases affects efforts to prevent child marriage in Indonesia. The discussion includes the paradox of increasing marriage dispensation cases after regulatory tightening, the long-term consequences of child marriage, the sociological and juridical implications of court decisions, and recommendations for improving judicial practice.

The paradox of increasing marriage dispensation cases after regulatory tightening is clearly seen in the Muara Bulian Religious Court’s statistical data which shows a surge in applications from 25 cases in 2019 to 91 cases in 2023. This phenomenon raises fundamental questions about the interaction between the objectives of Sharia (*maqāṣid al-sharī’ah*) and contemporary judicial practice. The Muara Bulian Religious Court has granted 302 marriage dispensation applications and rejected only 4 applications during this period, indicating judicial discretion that

tends to prioritize *ḥifẓ al-nasl* (protection of lineage) in the narrow context of legalizing sexual relations. Case Number 106/PDT.P/2023/PA.MBL reflects the classical *fiqh* paradigm that places prevention of fornication (*sadd al-dhari'ah*) above considerations of the child's holistic welfare, so that premarital sexual activity is consistently made the main justification for granting dispensation despite the prospective bride being only 14 years old. This limited interpretation of *maqāṣid al-sharī'ah* has created a situation where legislative reform to protect children actually increases the legalization of child marriage through judicial channels, showing the gap between contemporary *maqāṣid* understanding and judicial practice that is still dominated by the classical paradigm. The normative-textual approach in implementing *maqāṣid* results in prioritization of moral-religious protection aspects above holistic protection of children's welfare (*maṣlaḥat al-ṭifl*).

The long-term consequences of child marriage for the health, education, and welfare of girls often do not receive adequate consideration within the framework of the judge's *maqāṣid al-sharī'ah* analysis. Marriage at the age of 14, as in case 106/PDT.P/2023/PA.MBL carries significant reproductive health risks that actually potentially threaten life (*ḥifẓ al-nafs*) and intellect (*ḥifẓ al-'aql*) as fundamental components in the *maqāṣid* hierarchy. The impact on education is seen in the high potential for dropping out of school, limiting girls' access to intellectual development which is a manifestation of *ḥifẓ al-'aql* in the contemporary context. The imbalance in considering various aspects of *maqāṣid* reflects a partial understanding of the concept of *ḥifẓ al-nasl*, which emphasizes formal legitimacy of sexual relations rather than the quality of offspring that includes health, education, and social welfare. The judge's approach that prioritizes prevention of fornication through early marriage shows the application of the maxim *dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* (preventing harm takes precedence over achieving benefits) with a construction of *mafsadah* (harm) limited to violations of sexual norms, ignoring long-term *mafsadah* in the form of reproductive health risks, school dropouts, and poverty. Failure to integrate contemporary understanding of *maqāṣid* that includes temporal dimensions (short-term vs. long-term) and a more comprehensive hierarchy of values contributes to the perpetuation of practices that potentially compromise more fundamental protection objectives in Sharia (Auda, 2011).

The sociological implications of the juridical legitimacy of child marriage through marriage dispensation create normalization of practices that are problematic from the perspective of contemporary *maqāṣid*. Granting dispensation applications in cases of 14-year-old prospective brides as in case 106/PDT.P/2023/PA.MBL sends a social message that the protection of *nasl* (lineage) is defined primarily as the prevention of premarital sexual relations, not as the protection of the quality of children's lives. This judicial legitimacy strengthens the limited interpretation of *maṣlaḥah* (benefit) in the context of marriage that emphasizes moral-religious aspects rather than the child's holistic welfare. The high prevalence of granting marriage dispensations at the Muara Bulian Religious Court reflects the dominance of the *sadd*

*al-dhari'ah* paradigm (closing the path to harm) which is applied narrowly to the prevention of fornication, without developing a more comprehensive preventive-educative approach in accordance with contemporary *maqāṣid* understanding. This phenomenon potentially creates a contradiction in the implementation of Sharia, where efforts to protect moral-religious aspects in the short term actually compromise more fundamental protection objectives for life, intellect, and even lineage in terms of long-term quality of life. Judicial practice that gives dominant weight to the prevention of fornication at the expense of other *maqāṣid* aspects reflects the gap between the development of contemporary *maqāṣid* theory which emphasizes a holistic approach and judicial practice that is still influenced by the classical *fiqh* paradigm that tends to be compartmentalistic in understanding the hierarchy of values.

The juridical implications of the pattern of judicial discretion in marriage dispensation cases show the limitations of the *maqāṣid* approach applied partially in the religious court system. The court's decision in case 106/PDT.P/2023/PA.MBL which constructs "very urgent reasons" based on a history of premarital sexual relations reflects an unbalanced interpretation of *maṣlaḥah* between moral-sexual considerations and comprehensive protection of the child. The judge's extensive interpretation of the "very urgent reasons" concept reveals the dominance of the *sadd al-dhari'ah* approach in preventing fornication without in-depth analysis of the potential long-term *mafsadah* of early marriage. This practice creates *fiqh al-taysir* (*fiqh* that provides ease) in a context that should require *tabṣir* (restriction) (Amin et al., 2017) for more comprehensive child protection. The legalistic-formal approach in implementing PERMA No. 5 of 2019 without substantive internalization of the spirit of child protection reflects the gap between formal legal reform and paradigmatic transformation of *maqāṣid* in judicial practice. This disharmony results in a situation where the *maqāṣid* analytical tool that should function to contextualize Islamic law with contemporary needs (Auda, 2011), is actually used to legitimize traditional practices that are problematic from a child protection perspective. These juridical implications show the need for methodological reconstruction in the application of *maqāṣid al-sharī'ah* in cases involving children, where holistic and long-term considerations of the five aspects of protection (*kulliyāt al-khams*) are integrated in a balanced manner.

Recommendations for reform of judicial practice in marriage dispensation cases require more integrative reconceptualization of *maqāṣid al-sharī'ah* in the context of child protection (Arifin & Mahmudi, 2022). Religious Courts need to develop a comprehensive assessment system that reflects contemporary *maqāṣid* understanding where *ḥifẓ al-nasl* is understood not only as legalization of sexual relations, but includes protection of the quality of life of the child and their offspring. Judges handling marriage dispensation cases should receive special training on the integration of contemporary *maqāṣid* principles with international child protection standards, to develop an approach that balances the prevention of fornication with

holistic protection of the child. The "very urgent reasons" criteria need to be reconstructed through the methodology of *fiqh al-muwāzanāt* (jurisprudence of balance) that considers the hierarchy of *maṣāliḥ* (benefits) and *maḥāsīd* (harms) more comprehensively (al-Qardawi, 2006; Aydın & Cevherli, 2025), so that a history of sexual relations does not automatically become justification for granting dispensation without analysis of long-term impacts. Religious Courts should develop an interdisciplinary approach in applying *maqāṣid* by involving health, psychology, and education perspectives in determining the best interests of the child. For cases like 106/PDT.P/2023/PA.MBL involving very young prospective brides (14 years old), the methodology of *istiṣlāḥ* (consideration of benefit) should be applied more comprehensively and long-term, involving evaluation of the impact of marriage on all aspects of *maqāṣid* including life, intellect, lineage, honor, and property. This paradigmatic reform is needed to bridge the gap between the development of contemporary *maqāṣid* theory and judicial practice that is still influenced by the classical *fiqh* approach.

## Conclusion

Research on marriage dispensation case Number 106/PDT.P/2023/PA.MBL at the Muara Bulian Religious Court reveals the complexity of judicial discretion at the intersection of positive law, religious doctrine, and social reality based on the *maqāṣid al-sharī'ah* perspective. The main findings of the research show that judges interpret "urgent reasons" extensively based on a history of premarital sexual relations, reflecting the priority of preventing fornication (*sadd al-dharī'ah*) above comprehensive evaluation of the child's best interests. In integrating *maqāṣid al-sharī'ah* principles, judges show an imbalance by dominating the protection of lineage (*ḥifẓ al-nasl*) which is narrowly defined as legalization of sexual relations, while aspects of protection of life (*ḥifẓ al-nafs*) and intellect (*ḥifẓ al-'aql*) related to reproductive health and education are neglected. A significant gap between formal child protection standards and their practical implementation is identified through judges' passive resistance, limitations of assessment infrastructure, and the disparity between legislative goals and judicial practice.

This phenomenon reflects a paradigmatic gap between legislative reform and judicial culture that results in a paradox where regulatory tightening actually increases the legalization of child marriage through court dispensation—proven by the surge in applications from 25 cases (2019) to 91 cases (2023), with 302 granted and only 4 rejected. This study contributes to the understanding of the interaction between judges' juridical-religious habitus and the application of *maqāṣid al-sharī'ah* in the context of child marriage, with practical implications in the form of the urgency of reconceptualizing the *maqāṣid* approach that integrates holistic considerations of child welfare. Improvement of the judicial system requires standardization of "very urgent reasons" criteria, strengthening of comprehensive assessment, and paradigmatic



transformation in understanding the best interests of the child according to a balanced *maqāṣid al-sharī'ah* framework.

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