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JUDICIAL REASONING IN MARRIAGE DISPENSATION DUE TO PREMARITAL PREGNANCY: A MAQĀṢIDĪ CRITIQUE OF A JEMBER RELIGIOUS COURT DECISION

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Abstract

Studies on marriage dispensation in religious courts have predominantly focused on procedural-juridical aspects and case statistics, while the quality of judicial reasoning in constructing legal arguments remains insufficiently examined. This study aimed to analyze the structure of judicial reasoning in Jember Religious Court Decision Number 1743/Pdt.P/2025/PA.Jr concerning marriage dispensation due to premarital pregnancy, focusing on identifying the values prioritized and the aspects neglected in the judge's ijtihād*. Employing normative legal research with a case study approach, this study examined the decision through the framework of* maqāṣid al-sharī'ah*,* maṣlaḥah–mafsadah *theory, and the best interest of the child principle. The findings revealed that the judicial reasoning is corrective-formal in nature, prioritizing* ḥifẓ al-nasl *(legitimation of lineage) and* ḥifẓ al-dīn *(restoring relations within the boundaries of the* sharī'ah*), while* ḥifẓ al-nafs *and* ḥifẓ al-'aql*, concerning the physical, psychological, and educational welfare of the child, remain inadequately integrated.* Maṣlaḥah *considerations are directed toward avoiding short-term* mafsadah*, whereas potential long-term* mafsadah *receives insufficient substantive attention. This study contributes to developing a* maqāṣidī *critique of judicial* ijtihād *practices and recommends strengthening the marriage dispensation paradigm as an* ultimum remedium *oriented toward substantive justice and comprehensive child protection.*
Keywords: *Judicial Reasoning, Marriage Dispensation, Maqāṣid al-Sharī'ah, Child Protection, Substantive Justice.*

Abstrak

*Kajian terhadap dispensasi kawin di pengadilan agama selama ini lebih berfokus pada aspek prosedural-yuridis dan statistik perkara, sementara kualitas penalaran hakim (*judicial reasoning*) dalam membangun argumentasi hukum belum banyak dianalisis secara kritis. Penelitian ini bertujuan mengkaji struktur penalaran hakim dalam Putusan Pengadilan Agama Jember Nomor 1743/Pdt.P/2025/PA.Jr tentang dispensasi kawin akibat kehamilan pranikah, dengan fokus pada identifikasi nilai-nilai yang diprioritaskan dan aspek-aspek yang terabaikan dalam ijtihad hakim. Menggunakan metode penelitian hukum normatif dengan pendekatan studi kasus, penelitian ini menganalisis putusan tersebut melalui kerangka* maqāṣid al-sharī'ah*, teori* maṣlaḥah–mafsadah*, dan prinsip* best interest of the child*. Hasil penelitian menunjukkan bahwa penalaran hakim bersifat korektif-formal dengan prioritas pada* ḥifẓ al-nasl *(legitimasi nasab) dan* ḥifẓ al-dīn *(pengembalian relasi ke koridor syariat), sementara* ḥifẓ al-nafs *dan* ḥifẓ al-'aql *yang berkaitan dengan kesejahteraan fisik, psikologis, dan pendidikan anak belum terintegrasi secara memadai. Pertimbangan* maṣlaḥah *lebih diarahkan pada penghindaran* mafsadah *jangka pendek, sedangkan potensi* mafsadah *jangka panjang kurang mendapat perhatian substantif. Penelitian ini berkontribusi dalam mengembangkan kritik* maqāṣidī *terhadap praktik ijtihad hakim dan merekomendasikan*

penguatan paradigma dispensasi kawin sebagai ultimum remedium *yang berorientasi pada keadilan substantif dan perlindungan anak secara komprehensif.*
Kata Kunci: *Judicial Reasoning, Dispensasi Kawin, Maqāṣid al-Sharī'ah, Perlindungan Anak, Keadilan Substantif.*


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INTRODUCTION

Religious Courts, as the bodies exercising judicial power for Muslim justice seekers, play a strategic role in shaping family law practice in Indonesia. Through their decisions, judges do not merely apply legal norms but also exercise *ijtihād* to find the law that best accords with justice and the welfare (*maṣlaḥah*) of the parties. In this context, the quality of *judicial reasoning* becomes a crucial variable that determines whether a decision truly reflects substantive justice or merely satisfies formal procedure.[1]

Cases of marriage dispensation due to pregnancy outside marriage are a category that demands extra care in judicial reasoning. On the one hand, judges face the normative demand to uphold the minimum marriage age mandated by Law Number 16 of 2019.[2] On the other hand, the social reality of adolescent pregnancy places judges in a dilemma that requires careful weighing of competing values.[3] The tension among legal certainty, child protection, religious values, and social order requires judges to construct legal arguments that are coherent and academically accountable.

The *academic uneasiness* that serves as the starting point of this study is the following question: to what extent has judicial reasoning in marriage dispensation cases been tested substantively from the perspective of integrating *maqāṣid al-sharī'ah* and the principle of child protection? Previous studies have tended to focus on procedural and formal juridical aspects, on case statistics and application patterns, or on testing the relevance of judges' considerations in general without an in-depth reconstruction of the structure of reasoning.[4] There remains an

[1] Muh. Rakasiwi A. Gazali and Asni, "Pengadilan Agama sebagai Institusi Penegak Hukum Islam Perspektif Yuridis Normatif," *LexIslamica: A Multidisciplinary Approach to Islamic Law and Its Contemporary Applications* 2, no. 6 (2026): 1–9, https://doi.org/10.33650/joki.v4i2.

[2] Hikmah et al., "Disparitas Penafsiran Hakim tentang Makna Urgensi dalam Alasan Dispensasi Kawin," *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 19, no. 2 (2025): 861–84, https://doi.org/10.35931/aq.v19i2.4816.

[3] Heribertus Rinto Wibowo et al., "One Household, Two Worlds: Differences of Perception towards Child Marriage among Adolescent Children and Adults in Indonesia," *The Lancet Regional Health – Western Pacific* 8 (2021): 100103, https://doi.org/10.1016/j.lanwpc.2021.100103.

[4] Irsan, Winning Son Ashari, and Fathan Jihadul Islam, "Analisis Statistik dan Hukum Keluarga Islam terhadap Permohonan Dispensasi Pernikahan pada Pengadilan Agama Jember Tahun 2023–2024,"

analytical gap in examining how judges actually construct the logic of their arguments, which values they prioritize, and which aspects they neglect in decision-making.

This study rests on the premise that a court decision is not merely a final legal product but a text that contains traces of judicial reasoning that can be analyzed, critiqued, and developed. As Asmuni and Adikara emphasize, the decisions of religious court judges represent a dialectic among normative texts, social reality, and the judge's understanding, manifested in the construction of legal arguments.[5] Examining the quality of judicial *ijtihād* therefore means interrogating the thought process underlying a decision, not merely assessing whether its outcome is right or wrong.

Jember Religious Court Decision Number 1743/Pdt.P/2025/PA.Jr was selected as the *sample* and object of research on several methodological grounds. *First*, the case involved a prospective bride aged 17 years and 11 months who was four months pregnant, thus representing the complexity of marriage dispensation cases arising from pregnancy outside marriage. *Second*, the decision was issued after the entry into force of Supreme Court Regulation Number 5 of 2019, which explicitly requires judges to prioritize the best interests of the child, making it relevant for testing the implementation of that regulation in practice. *Third*, the Jember Religious Court handles a high volume of dispensation cases, as shown by Irsan, Ashari, and Islam, who recorded 178 dispensation applications in 2023–2024.

The analysis focuses on reconstructing the judge's *judicial reasoning* rather than repeating the operative part of the decision. The research questions are: (1) What is the structure of the judge's reasoning in granting the marriage dispensation application in Decision Number 1743/Pdt.P/2025/PA.Jr? (2) Which values are prioritized and which aspects are neglected in the judge's *ijtihād*? (3) To what extent has the judge's reasoning integrated *maqāṣid al-sharī'ah* and the principle of child protection holistically?

The critique developed in this study is directed at the quality of *ijtihād*, not at whether the decision is right or wrong. As Citrawan argues, criticism of religious court decisions should aim to strengthen the quality of reasoning rather than to delegitimize judicial authority.[6] With this approach, the study is expected to contribute constructively to the development of religious court practice that is more responsive to the needs of child protection and substantive justice.

Al-Majaalis: Jurnal Dirasat Islamiyah 12, no. 2 (2025): 247–72, https://doi.org/10.37397/al-majaalis.v12i2.872.

[5] Asmuni and Rezha Nur Adikara, "Application of Very Urgent Criteria in the Marriage Dispensation Norms for the Protection of Children: Analysis of Jasser Auda's Theory," *Jurnal Hukum Islam* 22, no. 1 (2024): 25–56, https://doi.org/10.28918/jhi_v22i1_2.

[6] Harison Citrawan, "Proses Kreasi dalam Penalaran Hukum dari Lensa Temporalitas," *Undang: Jurnal Hukum* 6, no. 2 (2023): 309–49, https://doi.org/10.22437/ujh.6.2.309-349.

Theoretical Framework

This study uses five interrelated main concepts in analyzing the marriage dispensation decision. Each concept has a specific function in the analytical framework, as described below.

Marriage Dispensation as the Factual Context

Marriage dispensation is a court ruling that grants an exception to the minimum marriage age for prospective spouses who have not reached the age of 19. In the Indonesian legal system, this mechanism is regulated by Article 7(2) of Law Number 16 of 2019, which requires very urgent reasons accompanied by sufficient supporting evidence.[7] Supreme Court Regulation Number 5 of 2019 then provided technical guidelines, stressing that judges must prioritize the best interests of the child in every examination of a dispensation case.[8]

Furthermore, Chairina *et al.* argue that marriage dispensation in the context of pregnancy outside marriage has characteristics that differ from dispensation in general. Pregnancy places judges in a situation in which the consequences of rejection are seen as more serious than those of granting the application. This often pushes judges to prioritize an immediate resolution in order to avoid wider social impacts. In this study, marriage dispensation is positioned as the factual context underlying the judge's reasoning.

Judicial Reasoning as the Main Object

Judicial reasoning refers to the thought process by which judges construct legal arguments to arrive at a decision. As has been stated, *legal reasoning is essentially a matter of making sense of a particular case in light of a body of norms, precedents, and principles*. Judicial reasoning includes identifying relevant facts, selecting the applicable norms, interpreting those norms, and applying them to the concrete case.[9]

Auda states that in the tradition of religious courts, judicial reasoning cannot be separated from the dimension of *ijtihād*. Religious court judges in fact perform the function of a *mujtahid* within a modern institutional context, in which they are required to find the law that best accords with justice and welfare. Analyzing *judicial reasoning* thus means examining how judges build an argumentative bridge between the available norms and the decision taken.

In this study, *judicial reasoning* is positioned as the main object of analysis. This approach aims to provide a constructive evaluation oriented toward strengthening the quality of

[7] Muhamad Hasan Sebyar, "Harmonization of Islamic Legal Institutions and Customary Law in Marriage Dispensation Cases at the Panyabungan Religious Court," *MILRev: Metro Islamic Law Review* 2, no. 2 (2023): 155–74, https://doi.org/10.32332/milrev.v2i2.7809.

[8] Nina Chairina, Sultan Isnansyah Fazri, and Sinta, "Analisis Pertimbangan Hakim dalam Pemberian Izin Dispensasi Kawin di Bawah Umur di Pengadilan Agama Pandeglang," *Mutawasith: Jurnal Hukum Islam* 8, no. 1 (2025): 64–80, https://doi.org/10.47971/mjhi.v8i1.1144.

[9] Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: The International Institute of Islamic Thought, 2008).

legal reasoning. The focus is on reconstructing the structure of reasoning, identifying the premises used, and evaluating the coherence of the arguments constructed by the judge.

Judicial Ijtihād as the Conceptual Approach

Etymologically, *ijtihād* derives from *jahada*, meaning to exert every effort. Terminologically, al-Āmidī defines *ijtihād* as " استفراغ الوسع في طلب الظن بشيء من الأحكام الشرعية على وجه يحس من النفس العجز عن المزيد فيه" (exerting every effort in seeking a strong presumption about a ruling of the *sharī'ah* to the point that one feels incapable of doing more). This definition affirms that *ijtihād* in the judicial context is not mere free interpretation but a maximal intellectual process that demands methodological rigor in order to produce decisions that approach the truth of the *sharī'ah*.[10]

In the context of the modern judiciary, judicial *ijtihād* has been institutionalized through judicial mechanisms. Euis Nurlaelawati explains that the *ijtihād* of religious court judges is a collective-institutional form of *ijtihād* that differs from the individual *ijtihād* of classical scholars but shares the same substance, namely the effort to find the law that best accords with the aims of the *sharī'ah*.[11] This approach allows religious court decisions to be analyzed with the tools of *uṣūl al-fiqh* without neglecting the modern institutional context.

In this study, judicial *ijtihād* is used as a conceptual approach to understanding decision-making in marriage dispensation cases. With this approach, judicial decisions can be evaluated not in terms of absolute right or wrong but in terms of the quality of reasoning and its consistency with established principles of *ijtihād*.

Substantive Justice as the Normative Standard

Substantive justice refers to justice that addresses the essence of a problem rather than merely fulfilling formal procedure.[12] Recent regulatory developments have opened space for substantive justice, but their practical impact still requires measured evaluation to ensure consistent application. Substantive justice requires judges to go beyond procedural formality to achieve outcomes that are truly just for the parties.[13]

[10] Abdul Helim, *Maqāṣid al-Sharī'ah versus Uṣūl al-Fiqh* (Yogyakarta: Pustaka Pelajar, 2019).

[11] Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*.

[12] Jumala Rachmaida et al., "Keadilan sebagai Landasan Filsafat dalam Penegakan Hukum di Indonesia," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 6 (2025): 11186–97, https://doi.org/10.61104/alz.v3i6.2941.

[13] E. Fernando M. Manullang, "Misinterpretasi Ide Gustav Radbruch mengenai Doktrin Filosofis tentang Validitas dalam Pembentukan Undang-Undang," *Undang: Jurnal Hukum* 5, no. 2 (2022): 453–80, https://doi.org/10.22437/ujh.5.2.453-480.

In Islamic law, substantive justice resonates strongly with the concept of *al-ʻadālah*, one of the fundamental values of the *sharīʻah*.[14] Ibn Qayyim al-Jawziyyah affirms:

"إن الشريعة مبناها وأساسها على الحكم ومصالح العباد في المعاش والمعاد، وهي عدل كلها، ورحمة كلها، ومصالح كلها، وحكمة كلها"

(Indeed, the *sharīʻah*, its foundation and basis, is built upon wisdom and the welfare of God's servants in this world and the hereafter. The *sharīʻah* is entirely justice, entirely mercy, entirely welfare, and entirely wisdom.)[15]

In this study, substantive justice is positioned as the normative standard for evaluating the quality of judicial *ijtihād*. The key question is whether the judge's reasoning has led to justice that addresses the essence of the problem or has stopped at a formal resolution of a pressing issue.

Maqāṣid al-Sharīʻah as the Analytical Tool

Maqāṣid al-sharīʻah is a teleological framework in Islamic law that focuses on the purposes behind the provisions of the *sharīʻah*. Al-Shāṭibī, the central figure in the systematization of *maqāṣid* theory, defines it as:

"المقاصد التي وضعت الشريعة لأجل تحقيقها لمصلحة العباد"

(The purposes for whose realization the *sharīʻah* was laid down, for the welfare of God's servants.)[16]

The essence of *maqāṣid al-sharīʻah* lies in the protection of five universal principles (*al-kulliyyāt al-khams*): religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʻaql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). Al-Ghazālī affirms that " كل ما يتضمن حفظ هذه الأصول الخمسة فهو مصلحة، وكل ما يفوت هذه الأصول فهو مفسدة" (everything that ensures the preservation of these five principles is *maṣlaḥah*, and everything that neglects them is *mafsadah*).

In contemporary developments, Jasser Auda has developed a *systems approach* to *maqāṣid*, emphasizing that the five aims of the *sharīʻah* must be understood holistically and as integrated with one another rather than partially and hierarchically. This approach is relevant for analyzing cases involving conflicts among *maqāṣid*, such as marriage dispensation cases.

The theory of *maṣlaḥah–mafsadah* is an operational derivative of *maqāṣid al-sharīʻah*. ʻIzz al-Dīn ibn ʻAbd al-Salām formulated the fundamental maxim "درء المفاسد مقدم على جلب المصالح"

[14] Claudya Vanessa et al., "Penerapan Nilai al-'Adālah dalam Good Governance Islam dalam Menjawab Tantangan Keadilan Pemerintah Modern," *Jurnal Multidisiplin Ilmu Akademik* 2, no. 6 (2025): 389–401, https://doi.org/10.61722/jmia.v2i6.7035.

[15] Ibn Qayyim al-Jawziyyah, *Iʻlām al-Muwaqqiʻīn ʻan Rabb al-ʻĀlamīn* (Riyadh: Dār Ibn al-Jawzī, 1423 AH).

[16] Abū Isḥāq al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʻah*, ed. ʻAbd Allāh Darrāz (Beirut: Dār al-Maʻrifah, n.d.), 2:6. Original text: "المقاصد التي وضعت الشريعة لأجل تحقيقها لمصلحة العباد" (the purposes for the realization of which the sharīʻah was laid down, for the benefit of God's servants).

(warding off harm takes precedence over securing benefit).[17] However, applying this maxim requires careful analysis of the severity of the *mafsadah* and the sustainability of the *maṣlaḥah*, in both the short and the long term.[18]

The principle of child protection (*best interest of the child*) is also integrated into the analytical framework. Article 3 of the Convention on the Rights of the Child affirms: "*In all actions concerning children… the best interests of the child shall be a primary consideration*."[19] At the national level, Supreme Court Regulation Number 5 of 2019 adopts this principle by requiring judges to identify the condition of the child and/or the prospective spouse and to ensure that the child understands and consents to the planned marriage.[20]

In this study, *maqāṣid al-sharī'ah* and its derivatives (*maṣlaḥah–mafsadah* and child protection) are positioned as analytical tools for critically examining judicial reasoning in the marriage dispensation decision.

Previous Studies and Novelty

Decisions on marriage dispensation in religious courts have been studied by a number of researchers with various approaches and analytical foci. Mapping these studies is important for identifying the position and novel contribution of this study. Siti Musawwamah, in an article in *Al-Ihkam*, examines marriage dispensation from the perspective of harmonizing Islamic law and positive law. She concludes that there is tension between the flexibility of Islamic law, which does not rigidly set a marriage age, and the rigidity of positive law, which sets a fixed age.[21] Although this study makes an important contribution to understanding the normative dialectic, it does not examine in depth how this tension is resolved in judicial reasoning in concrete cases.

Jamaluddin and Djabbar, in *Al-Bayyinah*, analyze the dynamics of judges' considerations in marriage dispensation cases in various religious courts. They identify significant variation in judges' considerations, ranging from procedurally oriented ones to those that seek substantive justice. This finding confirms a gap in the quality of reasoning among judges but does not provide

[17] Auda explains: "*The purposes of Islamic law should be dealt with as an integral, not partial, in order to arrive at balanced and just conclusions*." Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 45.

[18] Akbar Sarif and Ridzwan bin Ahmad, "Konsep Maslahah dan Mafsadah sebagai Asas Pemikiran Maqāsid Syariah: Satu Analisis," *Ijtihad: Jurnal Hukum dan Ekonomi Islam* 10, no. 2 (2016): 1–20, https://doi.org/10.21111/ijtihad.v10i2.1241.

[19] Ahmad Rizal Roby Ananta et al., "Criminal Limitations on Diversion of Children against the Law Based on the Juvenile Criminal Justice System from a Comparative Perspective," *Jurnal Penegakan Hukum dan Keadilan* 6, no. 2 (2025): 130–42, https://doi.org/10.18196/jphk.v6i2.26234.

[20] T. Jamaluddin and Yusuf Djabbar, "An Analysis of Judges' Considerations in Making Decision about the Case of Application for Marriage Dispensation after the Enactment of Law Number 16 of 2019 Concerning Marriage," *Al-Bayyinah* 5, no. 1 (2021): 57–75, https://doi.org/10.35673/al-bayyinah.v4i2.981.

[21] Dwi Arya Saputra et al., "Ketentuan Umur Perkawinan dalam Perspektif Undang-Undang Perkawinan dan Fikih Munakahat," *Syariah: Jurnal Hukum Keluarga Islam* 2, no. 1 (2025): 14–25, https://doi.org/10.53888/sjhki.v2i1.944.

an in-depth analysis of a single specific decision that could serve as a model for academic critique.[22]

Sainul, in *Mediasas*, examines marriage dispensation from the perspective of *maqāṣid al-sharī'ah*, focusing on the protection of lineage and the prevention of *zinā*. He concludes that judges' considerations tend to prioritize *ḥifẓ al-nasl* in the sense of legitimizing lineage but pay less attention to *ḥifẓ al-nasl* in the sense of protecting the child's welfare.[23] This study makes an important contribution to identifying imbalances among the *maqāṣid* but does not specifically analyze cases of pregnancy outside marriage.

Irsan, Winning Son Ashari, and Fathan Jihadul Islam conducted a statistical analysis of 178 dispensation applications at the Jember Religious Court in 2023–2024. They found that 21.6 percent of applications were related to *zinā* and 14.8 percent were due to pregnancy outside marriage.[24] These quantitative findings show the significance of pregnancy as a background to dispensation but have not been developed through qualitative analysis of the quality of judicial reasoning in such cases.

Aman and Gumilar, in *SMART*, examine the legal reasoning of religious courts in deciding marriage dispensation cases in general. They find that religious court judges use a combination of deductive reasoning from positive norms and teleological reasoning from *maqāṣid* principles, but the integration of the two is not always coherent.[25] This finding is relevant to understanding patterns of judicial reasoning but has not been applied to the specific case of pregnancy outside marriage.

Abdur Rohman, in *Istidlal*, analyzes marriage dispensation decisions from the perspective of *maqāṣid al-sharī'ah*, focusing on the protection of religion and lineage. He concludes that judges tend to use *maqāṣid* arguments partially, prioritizing *ḥifẓ al-dīn* in the sense of preventing *zinā*, without comprehensive integration with the other *maqāṣid*.[26] This finding confirms a fragmentary approach in judicial reasoning.

This mapping reveals several analytical gaps. *First*, previous studies tend to be general or aggregative, without an in-depth reconstruction of the structure of judicial reasoning in a single concrete decision. *Second*, few studies focus specifically on cases of pregnancy outside marriage. *Third*, the integration of the perspectives of *maqāṣid al-sharī'ah* and the principle of child

[22] Jamaluddin and Djabbar, "An Analysis of Judges' Considerations."

[23] Ahmad Sainul, "Dispensasi Nikah di Pengadilan Agama: Tinjauan Maqosid Syariah dan Pertimbangan Maslahah-Mafsadah," *Jurnal Mediasas: Media Ilmu Syari'ah dan Ahwal Al-Syakhsiyyah* 7, no. 2 (2024): 327–41, https://doi.org/10.58824/mediasas.v7i2.184.

[24] Irsan, Ashari, and Islam, "Analisis Statistik dan Hukum Keluarga Islam," 10.

[25] Aman and Gugun Gumilar, "Legal Reasoning Judges in Determining Marriage Dispensation and Its Implications for Children's Rights in Indonesia," *SMART: Journal of Sharia, Tradition and Modernity* 5, no. 2 (2025): 80–97, https://doi.org/10.24042/kjf38b90.

[26] Hikmah et al., "Disparitas Penafsiran Hakim."

protection (*best interest of the child*) in analyzing judicial reasoning has not been developed systematically.

This study fills these gaps by critically analyzing Jember Religious Court Decision Number 1743/Pdt.P/2025/PA.Jr through a reconstruction of the structure of judicial reasoning, the identification of the values prioritized and neglected, and an evaluation of the integration of *maqāṣid al-sharī'ah* with the principle of child protection. This approach allows a constructive critique of the quality of judicial *ijtihād* rather than a mere assessment of whether the decision was right or wrong.

RESEARCH METHODS

This study is normative legal research (*doctrinal legal research*) that aims to analyze legal norms and their application in court decisions. Faisal explains that normative legal research is conducted to produce arguments, theories, or new concepts as prescriptions for solving the problems at hand. The study uses a *case approach* to examine the *ratio decidendi* and legal considerations of the judge in the decision under study.

The primary legal materials comprise: (1) Jember Religious Court Decision Number 1743/Pdt.P/2025/PA.Jr as the main object of analysis; (2) Law Number 16 of 2019 on Marriage; (3) Supreme Court Regulation Number 5 of 2019 on Guidelines for Adjudicating Applications for Marriage Dispensation; and (4) Law Number 35 of 2014 on Child Protection.

The secondary legal materials comprise: (1) classical *fiqh* literature, especially al-Shāṭibī's *Al-Muwāfaqāt*, al-Ghazālī's *Al-Mustaṣfā*, and Ibn 'Abd al-Salām's *Qawā'id al-Aḥkām*; (2) contemporary *maqāṣid* literature, especially Jasser Auda's *Maqasid al-Shariah as Philosophy of Islamic Law*; and (3) articles in reputable national and international journals relevant to the object of research.

Data were collected through documentary study by inventorying, classifying, and systematizing legal materials. The data were analyzed descriptively and analytically in three stages: (1) reconstructing the structure of the judge's reasoning from the text of the decision; (2) identifying the values prioritized and the aspects neglected; and (3) critically evaluating the quality of the judge's *ijtihād* using the framework of *maqāṣid al-sharī'ah*, the theory of *maṣlaḥah–mafsadah*, and the principle of child protection.[27]

[27] Sarif and Ahmad, "Konsep Maslahah dan Mafsadah."

RESULTS AND DISCUSSION

Legal Facts and the Reconstruction of the Structure of Judicial Reasoning

The application in Jember Religious Court Decision Number 1743/Pdt.P/2025/PA.Jr was filed by the parents of a girl aged 17 years and 11 months who was to be married to a 21-year-old man. The application followed the refusal of the Office of Religious Affairs (KUA) of Silo District to register the marriage because the prospective bride had not reached the age of 19. The crucial fact in this case is that the prospective bride was about four months pregnant as a result of premarital relations with the prospective husband.

Based on an analysis of the text of the decision, the structure of the judge's reasoning can be reconstructed as follows.

First, the judge identified the fact that the prospective bride had not reached the minimum marriage age set out in Article 7(1) of Law Number 16 of 2019. This fact is the starting point, indicating a "deviation" that requires dispensation.

Second, the judge identified the pregnancy as a "very urgent reason" that fulfils the requirement of Article 7(2) of Law Number 16 of 2019. The pregnancy was positioned as an emergency that changed the character of the case from an ordinary dispensation to a dispensation of high urgency.

Third, the judge considered the readiness of the prospective husband in terms of age (21 years), occupation (self-employed), and stable income. This consideration was aimed at ensuring that the prospective husband was able to support a family.

Fourth, the judge ensured that there was no impediment to marriage between the two prospective spouses under either Islamic or state law. This consideration is negative-eliminative, removing any possible impediment to the marriage.

Fifth, the judge referred to the consideration that if the marriage were not held immediately, social, moral, and legal consequences would arise, both for the honor of the family and for the status of the child to be born.

This reconstruction shows that the logic of the judge's reasoning is *corrective-restorative*: marriage is seen as an instrument to correct (*to correct*) a situation that has already occurred (pregnancy outside marriage) and to restore (*to restore*) social and legal order. The reasoning is oriented more toward an *ex post facto* resolution of consequences that have already arisen than toward a prospective evaluation of the impact of the marriage on the child.

Values Prioritized in the Judge's Ijtihād

Analysis of the structure of the judge's reasoning reveals a hierarchy of values implicitly constructed in the decision-making process. Several values appear to be prioritized in the judge's *ijtihād*.

First, certainty of the child's legal status. The dominant consideration in the decision is to ensure that the unborn child will be born within a valid marriage, so that the child has a clear lineage (*nasab*) and protected civil rights. This orientation is consistent with *ḥifẓ al-nasl* in the sense of legitimizing descent.[28] However, as Subaki and Khafid point out, *ḥifẓ al-nasl* does not mean solely the protection of lineage but also the protection of the quality of life of children and future generations.

Second, restoring relations within the boundaries of the *sharī'ah*. Marriage is seen as a mechanism for ending a condition contrary to religious norms and returning the parties' relationship to an institution that is valid according to the *sharī'ah*. This orientation reflects *ḥifẓ al-dīn* in the sense of upholding religious moral values.[29]

Third, preventing social stigma. The judge's considerations were also aimed at avoiding the social impact of stigma on the child and family if the marriage were not held immediately. Within the *maṣlaḥah–mafsadah* framework, the judge appears to have prioritized preventing social *mafsadah* that was seen as more real and immediate.[30]

Fourth, administrative order. Granting the dispensation allows the marriage to be registered at the Office of Religious Affairs, providing administrative certainty for the parties. This orientation reflects respect for a legal system that requires marriage registration as a condition of formal validity.[31]

Aspects Neglected in the Judge's Ijtihād

The analysis also identifies several aspects that are absent from, or receive little attention in, the judge's reasoning.

First, the child's psychological readiness and emotional maturity. Supreme Court Regulation Number 5 of 2019 explicitly requires judges to hear the child and to "identify the child's psychological condition."[32] In the decision examined, this aspect does not appear to be a focus of substantive consideration. Siti Musawwamah emphasizes that psychological readiness is

[28] Alwan Subaki and Abadi Khafid, "Reinterpretasi Ḥifẓ an-Nasl Menurut aṭ-Ṭāhir bin 'Āsyūr dan Relevansinya terhadap Konsep Ketahanan Keluarga," *Qisthosia: Jurnal Syariah dan Hukum* 6, no. 1 (2025): 12–24, https://doi.org/10.46870/jhki.v6i1.1489.

[29] Derry Angling Kesuma et al., "Telaah Norma terhadap Dispensasi Kawin dalam Sistem Hukum Indonesia untuk Kepentingan Si Anak," *Lex Librum: Jurnal Ilmu Hukum* 8, no. 1 (2022): 255–68, https://doi.org/10.5281/zenodo.6615694.

[30] Zahidah Nabilah, "Dinamika Pembaharuan Akad Nikah dalam Komunitas Masisir: Telaah Hukum Keluarga Islam dan Sadd al-Dzarī'ah," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 4 (2025): 3415–40, https://doi.org/10.62976/ijijel.v3i4.1494.

[31] Jovita Dwi Caroline Halan et al., "Kesadaran Hukum Pencatatan Perkawinan Penghayat Kepercayaan Sapta Darma di Kota Malang," *Jurnal Dialektika Hukum* 7, no. 2 (2025): 194–218, https://doi.org/10.36859/jdh.v7i2.4696.

[32] Jamaluddin and Djabbar, "An Analysis of Judges' Considerations."

a fundamental prerequisite for the continuation of a healthy marriage, and the absence of this consideration in dispensation decisions indicates an approach that remains formalistic.[33]

Second, the impact of marriage on the continuation of education. Various studies show that child marriage is strongly correlated with the interruption of access to education.[34] This aspect has serious implications for the child's future but does not appear among the considerations in the decision. Within the *maqāṣid* framework, the continuation of education is closely related to *ḥifẓ al-'aql*, which includes the development of intellectual potential.[35]

Third, reproductive health risks. Pregnancy and childbirth in adolescence carry higher health risks than in adulthood.[36] The aspect of *ḥifẓ al-nafs* in the sense of protecting physical health does not appear to be a substantive consideration in the decision.

Fourth, the potential instability of the marital relationship. A marriage contracted without adequate readiness may give rise to conflict and relational instability, which in turn affect the child's welfare.[37] Muhammad Latif Fauzi notes that divorce rates among couples who marry as minors are statistically higher than among those who marry as adults, indicating structural problems in child marriage.

Fifth, the evaluation of alternatives to marriage. The *ultimum remedium* approach requires the exploration of alternatives before dispensation is granted.[38] In the decision examined, there is no apparent consideration of other alternatives that might protect the child's interests without the marriage taking place at an immature age.

A Critical Evaluation of the Integration of Maqāṣid al-Sharī'ah

Within the framework of *maqāṣid al-sharī'ah*, evaluating the judge's *ijtihād* must consider the extent to which the five aims of the *sharī'ah* (*al-kulliyyāt al-khams*) have been

[33] Muh Nizar Zulmi et al., "Pemberian Dispensasi Kawin di Bawah Umur oleh Hakim Pasca Perubahan Undang-Undang Perkawinan," *Doktrin: Jurnal Dunia Ilmu Hukum dan Politik* 2, no. 1 (2024): 262–70, https://doi.org/10.59581/doktrin.v2i1.1952.

[34] Cecep Tedi Siswanto, "Analisis Kebijakan Dispensasi Kawin di Indonesia," *Jurnal Hukum Caraka Justitia* 5, no. 1 (2025): 91–106, https://doi.org/10.30588/jhcj.v5i1.2197.

[35] Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 48.

[36] Gusmawati et al., "Dampak Pernikahan Dini yang Berhubungan dengan Kesehatan Reproduksi pada Remaja Putri," *Antigen: Jurnal Kesehatan Masyarakat dan Ilmu Gizi* 3, no. 3 (2025): 16–36, https://doi.org/10.57213/antigen.v3i3.697.

[37] Rafliyanto, "Menimbang Moralitas dan Rasionalitas: Studi Kritis Fenomena Tren Nikah Muda dan Penundaan Perkawinan melalui Perspektif Maqāṣid al-Syarī'ah dan Teori Tindakan Sosial Max Weber," *Jurnal Restorasi Hukum: Pusat Studi dan Konsultasi Hukum* 8, no. 1 (2025): 134–66, https://doi.org/10.14421/v16nh673.

[38] Hasan Ashari, "Rekonstruksi Pertimbangan Alasan Sangat Mendesak pada Perkara Dispensasi Kawin di Pengadilan Agama," *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 18, no. 2 (2019): 1087–105, https://doi.org/10.35931/aq.v18i2.3389.

integrated proportionally. Al-Shāṭibī affirms that "المصالح المعتبرة شرعاً هي التي تلائم مقاصد الشارع" (the interests recognized by the *sharī'ah* are those consistent with the aims of the Lawgiver).[39]

The preceding analysis shows that the judge's *ijtihād* in Decision Number 1743/Pdt.P/2025/PA.Jr predominantly reflects *ḥifẓ al-nasl* (in the sense of legitimizing lineage) and *ḥifẓ al-dīn* (in the sense of restoring relations within the boundaries of the *sharī'ah*). Meanwhile, *ḥifẓ al-nafs* (in the sense of physical and mental health), *ḥifẓ al-'aql* (in the sense of the continuation of education and intellectual development), and other dimensions of *ḥifẓ al-nasl* (in the sense of the child's long-term welfare) have not been adequately integrated.

Jasser Auda criticizes partial approaches to *maqāṣid*, emphasizing that *the purposes of Islamic law should be dealt with as an integral, not partial, in order to arrive at balanced and just conclusions*.[40] A partial approach risks producing decisions that appear to fulfil one aim of the *sharī'ah* while in fact neglecting the others.

In terms of the theory of *maṣlaḥah–mafsadah*, the judge's considerations appear to emphasize avoiding immediate and visible *mafsadah* (social stigma, unclear lineage), while latent and long-term *mafsadah* (interrupted education, marital instability, health risks) receives less attention.[41] Ibn 'Abd al-Salām emphasizes that the assessment of *maṣlaḥah* and *mafsadah* must be comprehensive, taking into account "المآلات والعواقب" (outcomes and consequences).[42]

A Critical Evaluation of the Application of the Principle of Child Protection

The principle of the *best interest of the child* requires every decision concerning a child to be based on a comprehensive evaluation of the short- and long-term impact on the child's welfare. General Comment No. 14 of the UN Committee on the Rights of the Child affirms that *the child's best interests is a dynamic concept that encompasses various issues which are continuously evolving*.[43]

In Decision Number 1743/Pdt.P/2025/PA.Jr, the child's interests appear to be reduced to formal legal status. The child is positioned as a subject to be rescued from uncertain lineage rather than as an individual entitled to comprehensive welfare. This approach reflects what Rohmawati

[39] Risma Hermawati Apriliani, Salsabila Putri Virgiawan, and Lina Marlina, "Analisis Maqashid al-Syari'ah dalam Pemikiran Islam Imam al-Syatibi," *Jureksi: Journal of Islamic Economics and Finance* 3, no. 2 (2025): 95–110, https://doi.org/10.59841/jureksi.v3i2.2626.

[40] Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 55.

[41] Sainul, "Dispensasi Nikah di Pengadilan Agama," 4.

[42] Suandi et al., "Reinterpretasi Konsep Maṣlaḥah dalam Mazhab Mālikī dan Relevansinya terhadap Problematika Hukum Islam Kontemporer," *Qisthosia: Jurnal Syariah dan Hukum* 7, no. 1 (2026): 40–56, https://doi.org/10.46870/jhki.v7i1.2066.

[43] Sekaring Ayumeida Kusnadi, "Kepentingan Terbaik Anak dalam Pengaturan Hukum Dispensasi Perkawinan," *Legal Standing: Jurnal Ilmu Hukum* 9, no. 4 (2025): 1047–62, https://doi.org/10.24269/ls.v9i4.12264.

and Ahsan call a *formal-legalistic approach to child protection that prioritizes legal status over substantive welfare*.[44]

Supreme Court Regulation Number 5 of 2019 in fact provides fairly comprehensive guidance on the aspects judges must consider, including the child's psychological condition, the child's views, and the potential impact of marriage on the child's welfare.[45] However, the implementation of this guidance in the decision examined does not appear optimal.

Toward a More Comprehensive Paradigm of Ijtihād

Based on the above analysis, several critical notes can be formulated for strengthening the quality of judicial *ijtihād* in marriage dispensation cases.

First, the need for holistic integration of *maqāṣid al-sharī'ah*. It is not enough for judges' considerations to focus only on *ḥifẓ al-nasl* in the sense of legitimizing lineage and *ḥifẓ al-dīn* in the sense of restoring relations within the boundaries of the *sharī'ah*. The dimensions of *ḥifẓ al-nafs* and *ḥifẓ al-'aql*, which concern the child's physical, mental, and intellectual welfare, must be given equal weight.[46]

Second, the need to broaden the scope of *maṣlaḥah–mafsadah* analysis. The evaluation of *maṣlaḥah* and *mafsadah* must not be limited to immediate and visible impacts. Potential long-term *mafsadah*, such as interrupted education, marital instability, and health risks, must be taken seriously into account.[47]

Third, the need for substantive implementation of the principle of the *best interest of the child*. Child protection cannot be understood merely within the framework of formal legal status. The child's comprehensive welfare, including physical and mental health, education, and social development, must be the main standard of evaluation.[48]

Fourth, the need to strengthen the *ultimum remedium* approach. Marriage dispensation should be positioned as a last resort, granted only after other alternatives have been adequately explored. M. Atho Mudzhar emphasizes that marriage dispensation should not be a 'shortcut' for solving social problems but an instrument used with great care after mature consideration.[49]

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[44] Rohmawati, "Seeking Justice in Islamic Legal Pluralism: The Dispute of Child Best Interests in Marriage Dispensation in Indonesia," *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 19, no. 2 (2024): 147–78, https://doi.org/10.21274/epis.2024.19.02.147-178.

[45] Chairina, Fazri, and Sinta, "Analisis Pertimbangan Hakim."

[46] Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, 60.

[47] 'Izz al-Dīn ibn 'Abd al-Salām, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*, 1:110.

[48] Committee on the Rights of the Child, *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)* (Geneva: United Nations, 2013), para. 80.

[49] Hikmah et al., "Disparitas Penafsiran Hakim," 22.

CONCLUSION

The analysis of Jember Religious Court Decision Number 1743/Pdt.P/2025/PA.Jr shows that the structure of the judge's reasoning in granting marriage dispensation due to pregnancy outside marriage is corrective-formal, oriented toward an *ex post facto* resolution of a situation that has already occurred. The reconstruction of the *judicial reasoning* shows that the judge prioritized certainty of the child's legal status, restoring relations within the boundaries of the *sharī'ah*, preventing social stigma, and administrative order. Meanwhile, aspects relating to the child's psychological readiness, the continuation of education, health risks, and the potential instability of the marital relationship do not appear as substantive considerations.

From the perspective of *maqāṣid al-sharī'ah*, the judge's *ijtihād* in this decision predominantly reflects *ḥifẓ al-nasl* (legitimation of lineage) and *ḥifẓ al-dīn* (restoring relations within the boundaries of the *sharī'ah*), without adequate integration of *ḥifẓ al-nafs* and *ḥifẓ al-'aql*, which concern the child's physical, mental, and intellectual welfare. From the perspective of *maṣlaḥah–mafsadah*, the judge's considerations emphasize avoiding short-term *mafsadah*, while potential long-term *mafsadah* receives less attention. From the perspective of child protection, the child's interests are reduced to formal legal status without a comprehensive evaluation of the child's substantive welfare.

This study recommends a paradigmatic strengthening of judicial *ijtihād* in marriage dispensation cases, comprising: (1) holistic integration of the five *maqāṣid al-sharī'ah*; (2) broadening the scope of *maṣlaḥah–mafsadah* analysis to include long-term dimensions; (3) substantive implementation of the principle of the *best interest of the child* beyond formal legal status; and (4) strengthening the last-resort approach, which places marriage dispensation as a final remedy after other alternatives have been adequately explored.

Future research could compare trends in Jember decisions with national trends after the revision of the Marriage Law (Law No. 16 of 2019) to determine whether the pattern of *judicial reasoning* identified here is local or systemic. It could also integrate a sociology-of-law approach to examine the long-term impact of marriage dispensation on divorce rates among underage couples in the region.

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