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Between Legal Certainty and Substantive Child Protection: Judicial Reasoning and Maqasid al-Shariah in a Pregnancy-Related Marriage Dispensation Refusal in Indonesia

Muhammad Rizal Mufti Umam, Moch. Nurcholis, Muhammad Za'im Muhibbullah
Institut Agama Islam Bani Fattah Jombang Indonesia, Institut Agama Islam Nahdlatul Ulama Tuban
Email: rizalmufti16@gmail.com, moch.nurcholis@iaibafa.ac.id, zaim19991@gmail.com

Abstract: This article examines the reasoning of the Kediri Regency Religious Court in refusing a marriage-dispensation application involving a pregnant prospective bride, focusing on Decision No. 0107/Pdt.P/2018/PA.Kab.Kdr. The decision is analysed through the framework of maqasid al-shariah and contemporary child-protection principles. The study uses normative legal research supported by document analysis of the judgment and one contextual interview conducted on 29 May 2024 with Drs. Muridi, M.H., a court representative who was not a member of the original judicial panel. The judgment records that the prospective groom was 15 years and four months old, had no stable employment, and was considered insufficiently mature to assume marital responsibilities. It expressly states that the prospective bride's six-month pregnancy was not a condition of marriage and therefore did not alter the court's assessment. The article argues that the refusal can be understood as an exercise of protective judicial restraint, but its reasoning also raises questions about how pregnancy-related urgency, the prospective child's interests, and the consequences of refusal should be addressed. Maqasid al-shariah is therefore used not as an automatic rule requiring approval or refusal, but as an evaluative framework integrating the protection of religion, life, lineage, and dignity. The article contributes a case-based model for assessing whether judicial reasoning connects legal rules with concrete child-centred considerations.
Keywords: Marriage dispensation, child protection, *maqasid al-shariah,* judicial reasoning, pregnancy outside marriage

Introduction

Marriage dispensation occupies a difficult position in Indonesian family law. It provides a judicial route for exceptional cases involving applicants below the statutory marriage age, while also creating a risk that the exception may weaken the protective purpose of the age limit. Where a pregnancy has occurred before marriage, courts face an especially complex question: whether the pregnancy constitutes a compelling reason for early marriage, or whether the young age and limited readiness of the prospective spouses make refusal the more protective response. The issue cannot be resolved by treating pregnancy as an automatic entitlement to dispensation, nor by assuming that refusal alone necessarily secures the welfare of everyone involved.

This tension is visible in Decision No. 0107/Pdt.P/2018/PA.Kab.Kdr, issued by the Kediri Regency Religious Court on 23 March 2018. The applicants sought permission to marry their 15-year-old son to a prospective bride who was six months pregnant. The court rejected the application, emphasising the prospective groom's age, lack of stable employment, and need for psychological maturity and capacity to address household problems. It also stated that the pregnancy was not a matter requiring consideration because pregnancy was not a condition of marriage. The judgment thus offers a focused case through which to examine the relationship between legal certainty, judicial discretion, and substantive child protection.

The legal chronology is important. The decision was issued under the legal framework in force in 2018, including Article 7(1) of Law No. 1 of 1974 on Marriage and the child-protection framework then applicable. The later amendment to the Marriage Law through Law No. 16 of 2019 and Supreme Court Regulation No. 5 of 2019 must not be applied retroactively as the legal basis of the 2018 decision. They may inform contemporary context, but this article does not add post-2019 decisions as a comparative dataset. Its object remains the reasoning in the selected 2018 case.[1]

[1] Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, art. 7(1); Law of the Republic of Indonesia Number 16 of 2019 concerning Amendment to Law Number 1 of 1974 concerning Marriage; Supreme Court of the Republic of Indonesia, Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation. The 2019 instruments are later context and were not the legal basis

Research on child marriage and Indonesian religious courts has shown that judicial decision-making occurs amid competing legal, religious, familial, and social expectations. Studies by Horii, Grijns and Horii, and Shahrullah and colleagues describe the accommodation of local norms, the negotiation of legal obligations and religious concerns, and the dilemmas faced by judges deciding marriage-dispensation cases in West Java. These studies provide context for examining how judicial reasoning navigates tensions rather than merely applying rules mechanically.[2]

This article addresses two questions: (1) what legal considerations are expressly stated in Decision No. 0107/Pdt.P/2018/PA.Kab.Kdr; and (2) how can those considerations be evaluated through maqasid al-shariah and child-protection principles without confusing the court's stated reasons with the researcher's normative interpretation? Its contribution is a structured case analysis that separates the judgment, a later institutional interview, and the author's evaluative framework. It argues that maqasid al-shariah is most useful here as a disciplined evaluative method, not as a formula that predetermines whether a dispensation should be granted.

Research Methodology

This study uses normative legal research with a case-study orientation. The primary legal material is the official text of Decision No. 0107/Pdt.P/2018/PA.Kab.Kdr, issued on 23 March 2018 by the Kediri Regency Religious Court. Relevant legal materials include Law No. 1 of 1974 on Marriage, the child-protection legislation cited in the judgment, and broader child-rights principles used for normative evaluation. Secondary materials include scholarly studies of child marriage, judicial discretion, legal pluralism, and maqasid al-shariah.[3]

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in force when the 2018 decision was issued.

[2] Hoko Horii, "Legal Reasoning for Legitimation of Child Marriage in West Java: Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection," Journal of Human Rights Practice 12, no. 3 (2020): 501–23, https://doi.org/10.1093/jhuman/huaa041; Mies Grijns and Hoko Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," Asian Journal of Law and Society 5, no. 2 (2018): 453–66, https://doi.org/10.1017/als.2018.9; Rina Shahriyani Shahrullah et al., "Dilemmas Faced by Judges When Granting Marriage Dispensations for Child Marriages in West Java, Indonesia," International Journal of Law, Policy and the Family 37, no. 1 (2023): ebad035, https://doi.org/10.1093/lawfam/ebad035.

[3] Religious Court of Kediri Regency, Decision No. 0107/Pdt.P/2018/PA.Kab.Kdr, 23

The document analysis identifies the factual circumstances recorded in the decision, the legal provisions expressly cited, the court's reasons, and the operative order. The study also draws on one interview conducted on 29 May 2024 with Drs. Muridi, M.H. The interviewee was a representative of the court but was not a member of the panel that decided the 2018 case; the original judges had transferred. The interview is therefore used only as later institutional context and not as direct evidence of the original panel's deliberations. It is not treated as representative of all judges or all religious courts.[4]

The analysis proceeds in two stages. First, it reconstructs the judgment on its own terms. Second, it evaluates the stated reasons across four maqasid dimensions and child-protection principles. The study does not claim to establish causal effects, national trends, or the actual long-term outcomes for the applicants or child. Because it examines one judgment and one later institutional interview, its conclusions are case-specific and analytical rather than statistically generalisable.

Results and Discussion

Maqasid al-Shariah: Theoretical Framework

Maqasid al-shariah refers to the purposes and objectives of Islamic law. In contemporary approaches, it can help assess not only whether a rule has been formally applied, but also whether legal reasoning accounts for the interests and harms implicated by a decision. Auda's systems-oriented approach considers interrelated purposes, context, and consequences rather than isolated indicators. For the present case, maqasid is not treated as an independent legal source that overrides statutory requirements. It is an analytical lens for assessing the quality and completeness of the reasons given.[5]

The analysis focuses on four dimensions relevant to the record: hifz al-din (protection of religion), hifz al-nafs (protection of life and well-being),

March 2018; Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage; Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.

[4] Interview with Drs. Muridi, M.H., representative of the Kediri Regency Religious Court, 29 May 2024. Muridi was not a member of the panel that decided Decision No. 0107/Pdt.P/2018/PA.Kab.Kdr; the interview is used as later institutional context.

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

hifz al-nasl (protection of lineage and family-related interests), and hifz al-'ird (protection of dignity and honour). These dimensions are used as evaluative categories rather than as claims that the judgment itself expressly relied on all four. Each dimension requires attention to both the potential protective rationale of refusing early marriage and the unresolved interests that may remain after refusal.

Marriage Dispensation in Indonesian Islamic Law

Marriage dispensation is an exception to the statutory age requirement, not a general entitlement triggered by a particular social circumstance. The legal framework relevant to the 2018 decision must be distinguished from later reforms. Law No. 1 of 1974 was the governing Marriage Law at the time, and Article 7(1) set the minimum marriage age then in force. Law No. 16 of 2019 subsequently amended the minimum age, while Supreme Court Regulation No. 5 of 2019 established guidelines for adjudicating marriage-dispensation applications. Those later instruments are relevant to the evolution of the field but cannot be treated as the original panel's legal basis.[6]

Child-protection analysis also requires more than the binary question of whether marriage should occur. The Convention on the Rights of the Child places the child's best interests, protection from discrimination, identity, health, and development within a broader rights framework. These principles support scrutiny of the consequences of both granting and refusing a dispensation. They do not mechanically determine the result in every case; rather, they require judges and researchers to identify the child or children affected, the risks supported by evidence, and the reasons why a chosen outcome is proportionate.[7]

Legal pluralism And Subtantive Justice

Legal pluralism helps explain why disputes over child marriage may involve state law, Islamic legal understandings, family expectations, and

[6] Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, art. 7(1); Law of the Republic of Indonesia Number 16 of 2019 concerning Amendment to Law Number 1 of 1974 concerning Marriage; Supreme Court of the Republic of Indonesia, Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.

[7] Convention on the Rights of the Child, United Nations General Assembly Resolution 44/25, 20 November 1989.

community norms at the same time. Merry's account of legal pluralism describes a field in which more than one normative order may operate. In the context of marriage dispensation, the existence of competing norms does not mean that every norm has equal legal authority. Instead, it highlights why judicial reasons should make clear how statutory standards, religious considerations, and welfare concerns are assessed. Substantive justice requires attention to the practical effects of a decision, while legal certainty requires the court to explain how those effects are weighed within the law.[8]

The analytical framework in this article therefore has three layers: first, the court's express legal and factual reasoning; second, the limited contextual information provided by the 2024 interview; and third, the author's evaluation through maqasid al-shariah and child-protection principles. Keeping these layers distinct avoids attributing to the original judges arguments that are not stated in the judgment.

The Court's Stated Reasoning

The application was registered on 20 February 2018 and decided on 23 March 2018. The prospective groom was recorded as 15 years and four months old. The prospective bride was six months pregnant. The judgment records that the prospective groom had not yet obtained employment and stresses that marriage creates a lasting bond requiring mental readiness, maturity, and the capacity to confront household problems. The panel reasoned that these demands could not adequately be met by a person who remained a child and was not working.[9]

The judgment then expressly states that the prospective wife's six-month pregnancy was not something that needed to be considered because it was not a condition of marriage. On the basis of the evidence and applicable legislation, the court concluded that the application did not meet the statutory requirements and rejected it. The order also imposed court costs of Rp571,000. The decision was made by a panel consisting of Drs. Moch Anwar Musadad, M.H. as presiding judge, with Drs. H. Farihin, S.H.

[8] Sally Engle Merry, "Legal Pluralism," Law & Society Review 22, no. 5 (1988): 869–96, https://doi.org/10.2307/3053638.
[9] Religious Court of Kediri Regency, Decision No. 0107/Pdt.P/2018/PA.Kab.Kdr, 23 March 2018.

and Drs. H. Imam Rosidin, M.H. as members.[10]

Two features are central. First, the decision is not simply a formal age calculation: it also refers to employment, maturity, and the ability to shoulder marital responsibilities. Second, pregnancy is explicitly excluded from the decisive reasoning. That exclusion can be understood as an attempt not to allow pregnancy alone to displace the statutory protection associated with minimum marriage age. Yet the brevity of the treatment leaves an important question: how were the interests and circumstances of the pregnant prospective bride and the expected child assessed beyond the statement that pregnancy is not a marriage requirement?

Maqasid Analysis: Protection And Unresolved Interests

Hifz al-din. The refusal can be read as protecting the normative seriousness of marriage and resisting the assumption that a pregnancy automatically requires early marriage. Marriage is described in the judgment as a lasting commitment requiring maturity and responsibility.[11] From a maqasid perspective, protecting religion is not reducible to formal conformity or the prevention of social stigma; it also involves responsible ethical conduct and careful treatment of vulnerable persons. The judgment's emphasis on readiness is compatible with this broader understanding. However, the judgment does not explicitly articulate a maqasid analysis, so this is the researcher's interpretation rather than a stated judicial rationale.

Hifz al-nafs. The court's concern about age, maturity, and lack of employment can be understood as recognising risks to the physical and psychological well-being of the young prospective spouses. Early marriage may place substantial burdens on adolescents who lack resources or decision-making capacity. Research on child marriage has identified associations with schooling, health, and gendered vulnerability, including evidence drawn from Indonesia, although these findings should not be treated as proof of outcomes in this individual case. A child-centred assessment should nevertheless consider the health and support needs of

[10] Religious Court of Kediri Regency, Decision No. 0107/Pdt.P/2018/PA.Kab.Kdr, 23 March 2018.

[11] Zulfikri Zulfikri and Isniyatin Faizah, "Sadd al-Dzari'ah sebagai Media dalam Penyelesaian Perkara Kontemporer," *The Indonesian Journal of Islamic Law and Civil Law* 4, no. 2 (2023): 169–85, https://doi.org/10.51675/jaksya.v4i2.474.

the pregnant prospective bride and future child, regardless of whether the marriage application is granted.[12]

Hifz al-nasl. The pregnancy makes lineage and the future child's welfare relevant, but it does not establish that marriage must be authorised. Nor does refusal of dispensation automatically determine the child's legal lineage, registration status, or all civil relationships with the biological father. Those matters depend on applicable legal rules and facts beyond the marriage-dispensation order. A stronger child-centred rationale would explain what measures or legal pathways remain available to protect the child's identity, care, support, and registration, without using the child's existence to compel a potentially unprepared adolescent into marriage.

Hifz al-'ird. The pregnancy may expose the prospective bride and the child to stigma, but stigma should not be treated as a sufficient reason to require child marriage. Dignity protection means avoiding both the humiliation of the pregnant girl and the assumption that marriage is the only legitimate response to pregnancy outside marriage. The judgment's refusal may prevent a premature marriage, but the written reasons do not discuss how dignity, non-discrimination, or the risk of social exclusion would be addressed. This omission is a limit in the judgment's explicit reasoning, not proof that the court ignored these concerns in all aspects of its work.

Taken together, the four dimensions show why maqasid should be applied as a balanced evaluative framework. The protective rationale for refusal is plausible: age, maturity, and economic readiness are relevant to the prospective groom's ability to assume marital responsibilities. At the same time, the written decision could have made the child-protection

[12] Erica Field and Attila Ambrus, "Early Marriage, Age of Menarche, and Female Schooling Attainment in Bangladesh," Journal of Political Economy 116, no. 5 (2008): 881–930, https://doi.org/10.1086/593333; Susan Lee-Rife, Anju Malhotra, Ann Warner, and Allison McGonagle Glinski, "What Works to Prevent Child Marriage: A Review of the Evidence," Studies in Family Planning 43, no. 4 (2012): 287–303, https://doi.org/10.1111/j.1728-4465.2012.00327.x; Amanda M. Kalamar, Susan Lee-Rife, and Michelle J. Hindin, "Interventions to Prevent Child Marriage among Young People in Low- and Middle-Income Countries: A Systematic Review of the Published and Gray Literature," Journal of Adolescent Health 59, no. 3, Supplement (2016): S16–S21, https://doi.org/10.1016/j.jadohealth.2016.06.015; Anissa Rizkianti and Diah Puspita Sari, "Child Marriage and Its Impact on Reproductive Health and Rights of Girls in Indonesia," Vulnerable Children and Youth Studies 20, no. 1 (2025): 35–44, https://doi.org/10.1080/17450128.2024.2361921.

reasoning more complete by explaining how the pregnant prospective bride and expected child would be protected after refusal. Neither granting nor refusing dispensation automatically satisfies maqasid; the quality of reasoning depends on whether the relevant interests, evidence, and consequences are addressed.

Legal certainty, judicial discretion, and substantive justice

The decision illustrates a tension between legal certainty and substantive justice. Legal certainty supports applying a statutory minimum age and prevents pregnancy from functioning as an automatic exception. Substantive justice asks whether the decision adequately considers the specific vulnerabilities of the people affected. The two values need not be opposites. A court can maintain the age limit while still explaining the concrete welfare consequences of its decision and identifying relevant protective measures.

Studies of Indonesian religious courts show that marriage-dispensation decisions are made within a complex field of state law, Islamic norms, family pressures, and local social expectations. The present case should not be treated as representative of all courts, but it demonstrates a recurring analytical problem: the formal disposition may be clear while the written reasons provide limited discussion of the competing interests surrounding pregnancy. The case is therefore useful not because it proves a general judicial pattern, but because it exposes the questions a sufficiently reasoned decision should address.[13]

The 2024 interview with Drs. Muridi, M.H. can provide institutional context, but it cannot reconstruct the original panel's deliberations. Since the interviewee was not one of the deciding judges, it must not be presented as direct testimony about why the panel chose particular words or reached its conclusion. This distinction is methodologically important: the judgment is the primary evidence for the court's stated reasons, while the interview

[13] Mies Grijns and Hoko Horii, "Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns," Asian Journal of Law and Society 5, no. 2 (2018): 453–66, https://doi.org/10.1017/als.2018.9; Hoko Horii, "Pluralistic Legal System, Pluralistic Human Rights?: Teenage Pregnancy, Child Marriage and Legal Institutions in Bali," The Journal of Legal Pluralism and Unofficial Law 51, no. 3 (2019): 292–319, https://doi.org/10.1080/07329113.2019.1683429; Horii, "Legal Reasoning for Legitimation of Child Marriage"; Shahrullah et al., "Dilemmas Faced by Judges."

is a separate, later source that may help contextualise court practice.

A child-centred model for reasoning

A practical model for future reasoning can be organised around four questions. First, what statutory requirements apply at the time of adjudication, and what evidence supports any claim of urgency? Second, what are the separate interests and risks for each child involved, including the prospective spouses and the expected child? Third, how would either outcome—granting or refusing dispensation—affect safety, health, education, dignity, family support, and access to legal identity or care? Fourth, why is the selected outcome proportionate, and what protective steps are available independently of the marriage decision?

This model does not instruct judges to approve or reject every pregnancy-related application. Rather, it makes judicial discretion more transparent and accountable. It also fits the child-rights principle that the best interests of the child should be a primary consideration, while recognising that the rights and welfare of more than one child may be implicated. A decision should identify the relevant children, state the evidence relied on, explain the balancing exercise, and avoid treating pregnancy or social reputation as determinative on its own.[14]

For the Supreme Court of Indonesia, the case supports practical guidance rather than a new categorical rule. Training materials and reasoning templates could prompt judges to record the child's views where appropriate, assess the maturity and support conditions of the prospective spouses, consider educational and health implications, and explain the foreseeable consequences of both possible outcomes. Anonymised periodic review of decisions could assess whether these factors are addressed consistently. Such measures would preserve judicial discretion while making the child-protection purpose of that discretion more visible.

The limits of the written reasons should be described carefully. A judgment is not required to resolve every social issue surrounding a pregnancy, and the absence of a detailed discussion in the text does not prove that no other considerations were present in the hearing. Nevertheless, the written reasons are the principal public record through which parties, appellate bodies, and researchers can understand the basis

[14] Convention on the Rights of the Child, art. 3(1).

of judicial action. When the decision explicitly excludes pregnancy from consideration, it becomes especially important to explain which aspects of the applicants' circumstances remain legally relevant and how the court understands the consequences of refusal. A concise explanation of available child-protection measures would not require the court to turn a dispensation proceeding into a comprehensive welfare inquiry; it would simply clarify the relationship between the legal disposition and the interests that remain at stake.

The same distinction matters when evaluating the concept of the child's best interests. In this case, there is more than one young person whose interests may be affected: the prospective groom, the pregnant prospective bride, and the child expected to be born. Their interests are related but not identical. The prospective groom's age and lack of employment may weigh against authorising an immediate marriage, while the pregnant prospective bride may need non-stigmatising access to health care, family support, and protection from coercion. The expected child may require registration, care, and support irrespective of whether the prospective parents marry. A reasoned decision can acknowledge these separate interests without assuming that marriage itself automatically resolves them.

This approach also helps avoid two opposite analytical errors. The first is to treat statutory age limits as a complete answer, as though the legal result alone establishes that all child-protection concerns have been resolved. The second is to treat pregnancy as a decisive emergency that overrides the protective purpose of minimum-age rules. Both approaches reduce a multi-dimensional dispute to a single factor. A maqasid-informed assessment instead asks what each relevant objective requires in the concrete circumstances, what evidence supports the asserted risks, and whether the reasoning has considered the consequences of the chosen outcome. This does not eliminate judicial discretion; it makes the exercise of discretion more reasoned, transparent, and open to review.

Conclusion

Decision No. 0107/Pdt.P/2018/PA.Kab.Kdr refused a marriage-dispensation application involving a 15-year-old prospective groom and a prospective bride who was six months pregnant. The written judgment emphasised the groom's age, lack of employment, and insufficient readiness for the responsibilities of marriage. It expressly treated the

pregnancy as not a condition of marriage and concluded that the application did not meet the applicable statutory requirements. The decision must be assessed under the legal framework in force in March 2018, not retrospectively through the 2019 amendment or later procedural regulation.

The article's theoretical contribution is to show how maqasid al-shariah can evaluate judicial reasoning without predetermining the outcome. The refusal has a plausible protective rationale, particularly in relation to maturity and the risks of child marriage. Yet a fuller child-centred explanation could also address the welfare, dignity, identity, and support needs of the pregnant prospective bride and expected child after refusal. The four maqasid dimensions are therefore best used together, in dialogue with child-rights principles, rather than as isolated labels attached to a result.

The study is limited to one judgment and one later interview with a court representative who did not sit on the original panel. It cannot establish general patterns across Indonesian religious courts or determine the long-term consequences for the individuals concerned. Further research may compare a larger, carefully selected set of judgments using consistent criteria. As a practical implication, the Supreme Court could develop reasoning guidance and review tools that require explicit consideration of the evidence, the interests of each child affected, the proportionality of the outcome, and available protective measures. The central recommendation is not an automatic exception for pregnancy, but more transparent and substantively child-centred judicial reasoning.

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