

**EFFORTS OF JUDGES OF LUMAJANG RELIGIOUS COURT IN  
PREVENTING MARRIAGE DISPENSATION FROM THE  
PERSPECTIVE OF *MASHLAHAH MURSALAH* ASY-SYATHIBI**

**THESIS**

**BY:**

**AUFA ISRI ZURAIDA**

**SIN 210201110035**



**ISLAMIC FAMILY LAW DEPARTMENT**

**SHARIA FACULTY**

**STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM**

**MALANG**

**2025**

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## STATEMENT OF AUTHENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**EFFORTS OF JUDGES OF LUMAJANG RELIGIOUS COURT IN  
PREVENTING MARRIAGE DISPENSATION FROM THE  
PERSPECTIVE OF *MASHLAHAH MURSALAH* ASY-SYATHIBI**

Is truly writer's original work which can be legally justified. If this thesis is proven to be a result of duplication or plagiarism from another scientific work, it will be declared legally invalid as a precondition for the degree.

Malang, April 14<sup>th</sup>, 2025

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PREVENTING MARRIAGE DISPENSATION FROM THE  
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## MOTTO

يَا مَعْشَرَ الشَّبَابِ مَنِ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصَرِ وَأَحْصَنُ لِلْفَرْجِ وَمَنْ لَمْ  
يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ

"O young men, those of you who are able to have intercourse (because you can afford it), then get married, because marriage is more subordinate to the eyes and more protective of the private parts. And whoever is not able, then he should be fast for fasting (is) a deterrent for him."

**(HR. Bukhari)**

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From all the teaching, advice, guidance, and help of service for us to finish this thesis, then with all humility the writer will express the gratitude which is unequaled to:

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3. Erik Sabti Rahmawati, M.A, M.Ag., as the Head of the Islamic Family Law Department, Sharia Faculty, State Islamic University Maulana Malik Malang.
4. Abdul Aziz M.HI., as the researcher's Guardian Lecturer while studying at the Faculty of Sharia, State Islamic University Maulana Malik Ibrahim



- Malang. The researcher expresses gratitude, for your guidance, direction, and motivation during lectures and throughout the preparation of this thesis.
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With the completion of this thesis report, the hope that the knowledge we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for the forgiveness, criticism, and suggestions from all parties for future improvement efforts.

Malang, April 14<sup>th</sup>, 2025

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## TRANSLITERATION GUIDANCE

Transliteration is the transfer of Arabic writing into Indonesian writing (Latin), not the translation of Arabic into Indonesian. Included in this category are Arabic names of Arabs, while Arabic names of non-Arab nations follow the spelling of their respective national languages, or as written in the book being referred to. The writing of book titles in footnotes and bibliographies, still uses this transliteration provision.

### A. Consonants

The list of Arabic letters and their transliteration into Latin letters can be seen in the following table:

Arabic	English	Arabic	English
أ	`	ط	Ṭ
ب	B	ظ	Ẓ
ت	T	ع	'
ث	Th	غ	Gh
ج	J	ف	F
ح	Ḥ	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dh	م	M
ر	R	ن	N
ز	Z	و	W
س	Ṣ	ه	H
ش	Sh	ء	'
ص	S	ي	Y

ض	Ḍ		
---	---	--	--

Hamza (A) at the beginning of a word follows its vowel without any sign. If the hamza (A) is located in the middle or at the end, it is written with a sign (').

## B. Vowel

Arabic vowels, like Indonesian vowels, consist of single vowels or monophthongs and double vowels or diphthongs. Single vowels in Arabic, whose symbols are signs or harakat, are transliterated as follows:

Arabic Letters	Name	Latin Letters	Name
أ	Fathah	A	A
إ	Kasrah	I	I
أ	Hammah	U	U

Arabic double vowels, whose symbols are a combination of harakat and letters, are transliterated as a combination of letters, namely:

Sign	Name	Latin Letters	Name
أِي	Fathah and ya	Ai	A and I
أُو	Fathah and wau	Au	A and U

Example:

كَيْفَ : *kaifa*

هَوْلَ : *hau-la*

## C. Maddah

Long vowels or maddah are in the form of harakat and letters, transliterated in the form of letters and signs, namely:

Harakat and Letters	Name	Letters and Sign	Name
سَا سَي	Fatah and alif or ya	Ā	a and line above
سَي	Kasrah and ya	Ī	i and line above
سُو	Hammah and wau	Ū	u and line above

Example:

مَاتَ : mātā

رَمَى : ramā

قِيلَ : qīla

يَمُوتُ : yamūtu

#### D. Ta' Marbūṭah

There are two transliterations for ta marbūṭah, namely: ta marbūṭah which is alive or received fatḥah, kasrah, and ḍammah, is transliterated as [t]. While the ta marbūṭah which is dead or has the letter sukun, is transliterated as [h].

If the word ending in ta marbūṭah is followed by a word that uses the article al- and the two words are read separately, then ta marbūṭah is transliterated with ha (h). Examples:

رَوْضَةُ الْأَطْفَالِ : *rauḍah al-atfāl*

الْمَدِينَةُ الْفَاضِلَةُ : *al-madīnah al-fāḍilah*

الْحِكْمَةُ : *al-ḥikmah*

## E. Syaddah (Tasydīd)

Syaddah or tasydīd which in the Arabic writing system is symbolized by a tasydīd sign ( ّ ) in this transliteration is symbolized by a repetition of letters (double consonants) marked with a syaddah. Examples:

رَبَّنَا : *rabbanā*

نَجَّيْنَا : *najjainā*

الْحَقُّ : *al-ḥaqq*

الْحَجُّ : *al-ḥajj*

نُعِمُّ : *nu''ima*

عَدُوُّ : *'aduwwu*

If the letter ع with tasydīd at the end of a word and preceded by a letter with the letter kasrah (ِ), then it is transliterated like the letters maddah (ī). Examples:

عَلِيٌّ : *'Alī* (not *'Aliyy* or *'Aly*)

عَرَبِيٌّ : *Arabī* (not *'Arabiyy* or *'Araby*)

## F. Auxiliary Verb

The article of faith in the Arabic writing system is symbolized by the letter (اَل) alif lam ma'arifah). In this transliteration guideline, the Auxiliary verb of clothing is transliterated as usual, al-, both when it is followed by

shamsiah letters and qamariah letters. The Auxiliary Verb does not follow the sound of the letter directly following it. The article is written separately from the word that follows it and is connected with a horizontal line (-). For example:

الشَّمْسُ : *al-syamsu* (bukan *asy-syamsu*)

الزَّلْزَلَةُ : *al-zalزالah* (bukan *az-zalزالah*)

### G. Hamzah

The rule of transliterating hamzah letters into apostrophes (') only applies to hamzahs located in the middle and end of words. However, if the hamzah is located at the beginning of the word, it is not symbolized, because in Arabic writing it is an alif. For example:

تَأْمُرُونَ : *ta'murūna*

النَّوْءُ : *Al-Nau'*

### H. Writing Arabic Words Commonly Used in Bahasa

Arabic words, terms or sentences that are transliterated are words, terms or sentences that have not been standardized in Indonesian. Words, terms or sentences that are already common and part of the Indonesian language treasury, or are often written in Indonesian writing, are no longer written according to the above transliteration method. For example, the words Quran (from al-Qur'ān), sunnah, hadith, special and general. However, when these words are part of a series of Arabic texts, they must be transliterated as a whole:

*Fī zilāl al-Qur'ān*

*Al-Sunnah qabl al-tadwīn*

*Al-'Ibārāt Fī 'Umūm al-Lafz lā bi khuṣūṣ al-sabab*

#### **I. Lafz Al-Jalālah (الله)**

The word “Allah” preceded by particles such as jarr and other letters or as muḍāf ilaih (nominal phrase), is transliterated without the letter hamzah. Example:

دِينُ اللَّهِ : *Dīnullāh*

As for the ta marbūṭah at the end of a word that is based on lafz al-jalālah, it is transliterated with the letter [t]. Example:

هُم فِي رَحْمَةِ اللَّهِ : *Hum fī raḥmatillāh*

#### **J. Capital Letters**

Although the Arabic writing system does not recognize capital letters (All Caps), in transliteration the letters are subject to the provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the initial letter of proper names (person, place, month) and the first letter at the beginning of a sentence. When a proper name is preceded by the article (al-), the initial letter of the proper name is written in capital letters, not the initial letter of the article. If it is located at the beginning of a sentence, then the letter A of the article is capitalized (Al-). The same provision also applies to the initial letter of the title of the reference preceded by the article al-,



both when it is written in the text and in the reference notes (CK, DP, CDK, and DR). Example:

*Wa mā Muḥammadun illā rasūl, Inna awwala baitin wuḍi‘a linnāsi lallaẓī  
bi Bakkata mubārakan, Syahru Ramaḍān al-laẓī unẓila fīh al-Qur‘ān Naṣīr  
al-Dīn al-Ṭūs Abū Naṣr al-Farābī, Al-Gazālī, Al-Munqiz min al-Ḍalāl*

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## ABSTRAK

Aufa Isri Zuraida, NIM 210201110035, 2025. *Efforts of Judges of Lumajang Religious Court in Preventing Marriage Dispensation from The Perspective of Mashlahah Mursalah Asy-Syathibi*. Skripsi. Program Studi Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Muhammad Nuruddien, Lc., M.H.

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**Kata Kunci:** Dispensasi Kawin, Perkawinan Dini, Mashlahah Mursalah

Pernikahan dini adalah pernikahan di bawah usia 19 tahun yang masih sering terjadi meskipun telah diatur dalam Undang-Undang Nomor 16 Tahun 2019. Dispensasi kawin dapat diajukan ke pengadilan untuk melegalkan pernikahan di bawah umur. Orang tua sering mendorong pernikahan dini demi harapan masa depan anak yang lebih baik, meski Islam menekankan pentingnya tanggung jawab dan kesiapan dalam keluarga. Dalam perspektif hukum Islam, dispensasi seharusnya menjadi upaya terakhir yang ditempuh untuk menghindari dampak yang lebih buruk. Dalam penelitian ini terdapat dua rumusan masalah yaitu, Bagaimana hakim Pengadilan Agama Lumajang memaknai esensi mendalam tentang dispensasi kawin dengan motif yang beragam dan bagaimana tinjauan *Mashlahah Mursalah Asy-Syathibi* terhadap upaya hakim dalam mencegah angka dispensasi kawin.

Penelitian ini adalah penelitian yuridis empiris yang menggunakan pendekatan sosiologi hukum. Sumber data primernya yaitu dari wawancara, sedangkan sumber data sekundernya dari kepustakaan yang kemudian datanya diolah menggunakan Teknik editing, klasifikasi, analisis, dan kesimpulan.

Hasil penelitian ini dapat disimpulkan bahwa, menurut hakim Pengadilan Agama Lumajang, dispensasi kawin merupakan mekanisme hukum yang bersifat pengecualian dan hanya boleh digunakan dalam kondisi darurat, bukan sebagai celah untuk melonggarkan batas usia perkawinan. Sistem hukum terkait dispensasi ini seharusnya tidak hanya menekankan aspek legalitas, tetapi juga mempertimbangkan kesiapan anak secara fisik, mental, dan sosial. Tanpa kesiapan yang matang, pernikahan anak berisiko menimbulkan berbagai masalah, seperti perceraian dini dan rendahnya kualitas hidup anak. Oleh karena itu, upaya pencegahan melalui pendidikan dan penundaan usia perkawinan harus menjadi prioritas dalam menjaga keberlangsungan rumah tangga dan perlindungan anak. Kemudian salah satu contoh upaya yang bisa dilakukan adalah dengan mempersiapkan anak-anak—terutama perempuan—untuk menikah hanya setelah mereka benar-benar siap secara fisik dan mental merupakan langkah penting demi menjaga keberlangsungan keluarga dan masa depan generasi mendatang. Kesiapan ini tidak hanya berkaitan dengan kemampuan biologis, tetapi juga mencakup kematangan emosional, pendidikan, dan pemahaman akan tanggung jawab dalam rumah tangga. Pendekatan ini sejalan dengan tujuan syariah (*maqāṣid al-syarī'ah*),

khususnya dalam aspek *hifz al-nafs* (memelihara jiwa) dan *hifz al-nasl* (memelihara keturunan), yang menekankan pentingnya perlindungan terhadap kehidupan dan kualitas generasi penerus. Dengan demikian, pernikahan bukan hanya soal legalitas atau budaya, tetapi tentang kesiapan dan keberlanjutan kehidupan yang sehat dan bermartabat.

## ABSTRACT

Aufa Isri Zuraida, SIN 210201110035, 2025. *Efforts of Judges of Lumajang Religious Court in Preventing Marriage Dispensation from The Perspective of Mashlahah Mursalah Asy-Syathibi*. Thesis. Islamic Family Law Department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University Malang. Supervisor: Muhammad Nuruddien, Lc., M.H.

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**Keywords:** Marriage Dispensation, Early Marriage, *Mashlahah Mursalah*

Early marriage is a marriage under the age of 19 that still occurs frequently despite being regulated in Law Number 16 of 2019. Marriage dispensation can be applied for in court to legalize underage marriages. Parents often encourage early marriage in the hope of a better future for their children, even though Islam emphasizes the importance of responsibility and preparedness in the family. In the perspective of Islamic law, dispensation should be the last resort taken to avoid worse consequences. In this study, there are two problem formulations, namely, How the judges of the Lumajang Religious Court interpret the deep essence of marriage dispensation with various motives and how Asy-Syathibi's *Mashlahah Mursalah* review of the judge's efforts to prevent the number of marriage dispensations.

This research is an empirical juridical research that uses a legal sociology approach. The primary data source is from interviews, while the secondary data source is from the literature which is then processed using editing, classification, analysis, and conclusion techniques.

The results of this study can be concluded that, according to the judges of the Lumajang Religious Court, marriage dispensation is a legal mechanism that is exceptional in nature and may only be used in emergency conditions, not as a loophole to relax the marriage age limit. The legal system related to this dispensation should not only emphasize the legality aspect, but also consider the physical, mental and social readiness of children. Without proper preparation, child marriage risks causing various problems, such as early divorce and low quality of life for children. Therefore, prevention efforts through education and delaying the age of marriage should be a priority in maintaining the sustainability of households and the protection of children. Preparing children - especially girls - to marry only after they are physically and mentally ready is an important step in maintaining the sustainability of the family and the future of future generations. This readiness is not only related to biological ability, but also includes emotional maturity, education, and understanding of household responsibilities. This approach is in line with the objectives of sharia (*maqāṣid al-syarī'ah*), particularly in the aspects of *hifẓ al-nafs* (preserving the soul) and *hifẓ al-nasl* (preserving offspring), which emphasize the importance of protecting the life and quality of the next generation. Thus, marriage is not just a matter of legality or culture, but about readiness and sustainability of a healthy and dignified life.

## ملخص البحث

أوفى إسري زورايدة، رقم القيد ٢٠٢٥. ٢١٠٢٠١١١٠٠٣٥. دور قضاة المحكمة الشرعية في لوماجان في الحد من منح إذن الزواج المبكر في ضوء المصلحة المرسله عند الشاطي. بحث السالة. شعبة لأحوال الشخصية، جامعة مولانا مالك إبراهيم لإسلامية الحكومية مالانج. المشرف: محمد نوردين.

### الكلمات الرئيسية: فسخ النكاح، الزواج المبكر، زواج المسيار، مصلح مرسلا

الزواج المبكر هو الزواج الذي يحدث تحت سن التاسعة عشرة، ولا يزال يحدث كثيراً رغم تنظيمه في القانون رقم 16 لسنة 2019. يمكن تقديم طلب للحصول على إذن الزواج إلى المحكمة من أجل تقنين الزواج تحت السن القانوني. غالباً ما يدفع الوالدان أولادهما إلى الزواج المبكر أملاً في مستقبل أفضل لهم، رغم أن الإسلام يؤكد على أهمية المسؤولية والاستعداد في الأسرة. ومن منظور الشريعة الإسلامية، ينبغي أن يكون الإذن بالزواج حلاً أخيراً يُلجأ إليه لتجنب الأضرار الأكبر. في هذا البحث، توجد مسألتان رئيسيتان، وهما: كيف يفهم قضاة المحكمة الشرعية في لوماجان جوهر الإذن بالزواج من خلال الدوافع المتنوعة، وما هو تقييم المصلحة المرسله عند الشاطي لجهود القضاة في الحد من عدد حالات الإذن بالزواج.

هذا البحث هو بحث قانوني تجريبي يستخدم المنهج السوسيولوجي القانوني. أما مصادر البيانات الأولية فهي من المقابلات، في حين أن المصادر الثانوية مأخوذة من المراجع والمكتبة. بعد جمع البيانات، تمت معالجتها من خلال تقنيات التحرير، والتصنيف، والتحليل، ثم الاستنتاج.

يمكن استنتاج نتائج هذه الدراسة أن الإعفاء من الزواج هو آلية قانونية استثنائية لا يمكن استخدامها إلا في الظروف الطارئة، وليس كتغرة لتخفيف الحد الأدنى لسن الزواج. وينبغي ألا يركز النظام القانوني المتعلق بهذا الإعفاء على الجانب القانوني فحسب، بل يجب أن يراعي أيضاً الاستعداد البدني والعقلي والاجتماعي للأطفال. فبدون الاستعداد المناسب، قد يتسبب زواج الأطفال في العديد من المشاكل، مثل الطلاق المبكر وتدني نوعية حياة الأطفال. لذلك، يجب أن تكون جهود الوقاية من خلال التعليم وتأخير سن الزواج أولوية في الحفاظ على استدامة الأسرة وحماية الطفل. إن تهية الأطفال - خاصة الفتيات - للزواج بعد أن يكونوا مستعدين جسدياً وعقلياً فقط خطوة مهمة في الحفاظ على استدامة الأسرة ومستقبل الأجيال القادمة. ولا يرتبط هذا الاستعداد بالقدرات البيولوجية فحسب، بل يشمل أيضاً النضج العاطفي والتعليم وفهم المسؤوليات الأسرية. وهذا النهج يتماشى مع مقاصد الشريعة، ولا سيما في جانبي حفظ النفس وحفظ النسل، اللذين يؤكدان على أهمية الحفاظ على حياة الجيل القادم ونوعية الجيل القادم. وبالتالي، فإن الزواج ليس مجرد مسألة شرعية أو ثقافية، بل هو مسألة استعداد واستدامة لحياة صحية وكرمة.



# CHAPTER I

## INTRODUCTION

### A. Research Background

Early marriage refers to a formal or informal marriage between a child under the age of 19 and an adult or another child. Even today, early marriages are still common. In July 2023, data from the United Nations Children's Fund (UNICEF) showed that around one in five girls worldwide were married as a child.<sup>1</sup>

Indonesia itself is among the highest globally. Data collected by UNICEF in 2023 shows that Indonesia ranks fourth in the world with the number of girls married, estimated at 25.53 million people. This figure also shows that Indonesia is the country with the highest number of child marriage cases in ASEAN.<sup>2</sup>

Meanwhile, the Religious Court of Lumajang Regency recorded a total of 1,724 cases of early marriage or marriage dispensation from June 2022 to June 2024. The details are: 515 cases from June to December 2022,

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<sup>1</sup>Rizal Fadli, "6 Akibat Pernikahan Dini Untuk Kesehatan Mental dan Fisik Remaja", *Halodoc*, 18 Maret 2024, diakses tanggal 17 Agustus 2024 <https://www.halodoc.com/artikel/6-akibat-pernikahan-dini-untuk-kesehatan-mental-dan-fisik-remaja>

<sup>2</sup>Yosep Budianto, "Tingginya Angka Perkawinan Usia Anak di Indonesia", *Kompas.id*, 8 Maret 2024, diakses tanggal 17 Agustus 2024 <https://www.komreligiouscourts.id/baca/riset/2024/03/08/tingginya-angka-perkawinan-usia-anak-di-indonesia>

825 in 2023<sup>3</sup>, and 794 in 2024<sup>4</sup>. This makes Lumajang Regency ranked fifth in East Java with the highest number of underage marriages.<sup>5</sup>

Based on the data above, this is certainly not in accordance with the regulations in force in Indonesia. In 7 Law Number 16 of 2019 concerning Marriage, it is explained that marriage is only permitted if the man and woman have reached the age of 19 years.<sup>6</sup> With this regulation, anyone who marries under the age of 19 is considered invalid under state law. One way to validate underage marriage is to ask for dispensation from the court. This is also explained in the same article that if the parents of the man and/or the parents of the woman can ask for dispensation from the court for urgent reasons accompanied by sufficient supporting evidence.<sup>7</sup> The judge is also required to listen to the opinions of both prospective bride and groom who will be getting married.<sup>8</sup>

In Islamic law, marriage is a sacred institution that has a noble purpose, namely to build a family that is peaceful, loving and compassionate. However, in reality, marriage dispensations are often requested by society, especially when the prospective bride and groom have not yet met the age limit set by positive law or religious norms. One example

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<sup>3</sup>Sistem Informasi Penelusuran Perkara Pengadilan Agama Lumajang

<sup>4</sup> Keyra, "Pengajuan Dispensasi Pernikahan Dini di Lumajang Capai 794 Kasus", *Pantura7.com*, 13 Januari 2025, diakses tanggal 28 April 2025 [https://www.pantura7.com/2025/01/13/pengajuan-dispensasi-pernikahan-dini-di-lumajang-capai-794-kasus/?utm\\_source=chatgpt.com](https://www.pantura7.com/2025/01/13/pengajuan-dispensasi-pernikahan-dini-di-lumajang-capai-794-kasus/?utm_source=chatgpt.com)

<sup>5</sup>Zainullah FT, "Pernikahan Dini di Lumajang Tertinggi Kelima di Jawa Timur", *Pantura7.com*, 20 Januari 2023, diakses tanggal 17 Agustus 2024 <https://www.religiouscourtntura7.com/2023/01/20/pernikahan-dini-di-lumajang-tertinggi-kelima-di-jawa-timur/>

<sup>6</sup>Pasal 7 ayat 1 Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan..

<sup>7</sup>Pasal 7 ayat 2 Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan.

<sup>8</sup>Pasal 7 ayat 3 Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan.

of a factor in someone applying for a marriage dispensation is poverty and economic limitations. Parents often encourage their children to marry early in the hope that their children can live a better life through marriage. Meanwhile, Islam teaches the importance of family responsibility in providing a halal and adequate living before marriage. When viewed from the perspective of normative ideals in Islamic law, the factors that cause applications for marriage dispensations must be addressed using a Sharia-based approach. Marriage dispensation should be a last resort that is only taken when absolutely necessary to prevent greater harm.<sup>9</sup>

Based on the background explanation above, it is seen that this issue is important to be studied in depth. In this study, the researcher will further explore the related data and analyze it using the *Mashlahah mursalah* Asy-Syathibi approach.

## **B. Statement of Problem**

1. How do judges at the Lumajang Religious Court interpret the deep essence of marriage dispensation with various motives?
2. How does *Mashlahah mursalah* Asy-Syathibi view the judge's efforts to preventing marriage dispensations?

## **C. Objective Research**

1. To explain the interpretation of the Lumajang Religious Court judge regarding marriage dispensation with various motives.

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<sup>9</sup>HM. Dihan, "Dispensasi Nikah, Bagai Makan Buah Simalakama", *Website Pengadilan Agama Banjarnegara*, 2022, diakses tanggal 12 Desember 2024 <https://religious-court-banjarnegara.go.id/v2/135-artikel-peradilan/578-dispensasi-nikah-bagai-makan-buah-simalakama-catatan-akhir-tahun-2022>

2. To analyze the review of *Mashlahah mursalah* Asy-Syathibi regarding the judge's efforts to prevent the number of marriage dispensations.

#### **D. Benefit of Research**

It is expected that the results of this study will be useful for the community. The author will describe two benefits of this study, namely theoretical benefits and practical benefits. The explanation of the two benefits includes:

1. Theoretical Benefits

This research is expected to be a contribution of thought to the development of Family Law science. In addition, this research can also increase insight and knowledge about what efforts judges make in preventing marriage dispensations.

2. Practical Benefits

- a. For the public, to provide systematic information regarding what efforts judges are making to preventing marriage dispensations.
- b. For other authors, to be able to continue research from other perspectives by using this research as a reference.

#### **E. Operational Definition**

In writing the title of this thesis, there are several words that need to be clarified in detail to make it easier for the reader to understand, namely:

1. Judge

A judge is an official who is responsible for exercising judicial power at the first level, including examining, deciding, and resolving criminal

and civil cases. The main task of a judge is to exercise judicial power in his/her jurisdiction and carry out other duties that are his/her responsibility.<sup>10</sup>

## 2. Religious Court

Religious Court is the official name for one of the four legal state judicial environments or judicial powers in Indonesia. Religious Courts are also included in special courts in Indonesia. They are called special courts because Religious Courts handle certain cases or concerning certain groups of people, namely Muslims in Indonesia.<sup>11</sup>

## 3. Marriage Dispensation

According to Roihan Rasyid, marriage dispensation is a permit granted by the Religious Court to prospective brides and grooms who have not reached the legal age to marry; this applies to men who have not reached 19 years of age and women who have not reached 16 years of age.<sup>12</sup>

## F. Systematics Discussion

In general, researchers describe it as follows:

Chapter I. This chapter contains the introduction which is the initial step in conducting research. This chapter consists of the background, problem formulation, research objectives, research benefits, operational

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<sup>10</sup>Arpani, "Hakim Sebagai Penegak Hukum dan Keadilan", *Website Pengadilan Tinggi Agama Kalimantan Utara*, 15 Agustus 2023, diakses tanggal 17 September 2024 <https://pta-kaltara.go.id/2023/08/15/hakim-sebagai-penegak-hukum-dan-keadilan/>

<sup>11</sup>Erfaniah Zuhriah, *Peradilan Agama di Indonesia: Sejarah, Konsep, dan Praktik di Pengadilan Agama*, (Malang: Setara Press, 2016), 10.

<sup>12</sup>Muhammad Iqbal, Rabiah, "Penafsiran Dispensasi Perkawinan bagi Anak di Bawah Umur (Analisis Beberapa Putusan Mahkamah Syar'iyah Aceh)", *El-Usrah*, No. 1 (2020): 3 <https://jurnal.ar-raniry.ac.id/index.php/usrah/article/download/7708/4608>

definitions, and writing systematics which contain a general description of the thesis being discussed.

Chapter II. This chapter contains previous research and theoretical framework. Previous research includes a literature review that discusses the findings of previous research related to the topic being studied. While the theoretical framework is a plan or description that includes all materials used in the research and is based on the results of the research.

Chapter III. This chapter discusses research methods such as types of research, research approaches, research locations, data sources, data collection methods, and data processing methods.

Chapter IV. The results of the research and analysis are described in the form of data from primary, secondary, and tertiary legal materials. Then this data is analyzed to find solutions to the problems studied by the researcher. In this chapter, the author will explain the efforts of the Lumajang Religious Court judges in preventing marriage dispensations according to the perspective of *Mashlahah Mursalah* Asy-Syathibi.

Chapter V. Conclusion is the last part of the thesis. This section contains conclusions and brief, concise, and clear explanations regarding the answers to the problems formulated in the form of formulation points. In this chapter, there are suggestions, bibliography, appendices, and researcher biography.

## CHAPTER II

### LITERATURE REVIEW

#### A. Previous Research

Research with similar discussions has also been conducted by previous researchers. *First*, research conducted by Roza Himawan in 2023 with the title Method of Jember Religious Court Judges in Determining Marriage Dispensation Grades, Maulana Malik Ibrahim State Islamic University of Malang. This study explains that the large number of marriage dispensation applications has caused the Jember Religious Court judges to determine grades in marriage dispensation cases. The judge sets the grade for men aged 17 years and women aged 16 years. The determination of the grade has an effect on reducing the number of marriage dispensation applications at the Jember Religious Court. Regarding the similarities between this study and previous studies, they both discuss how judges try to reduce the number of marriage dispensations. Meanwhile, the difference between this study and previous studies is that the previous study also examined the impact of the judge's efforts.<sup>13</sup>

*Second*, a study conducted by Abdul Jalil, Mas Umar, and Hanif Azhar in 2023 entitled The Role of Judges in Efforts to Reduce the Number

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<sup>13</sup>Roza Himawan, "Metode Hakim Pengadilan Agama Jember Dalam Penentuan *Grade* Dispensasi Kawin" (Undergraduate Thesis, Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2023), <http://etheses.uin-malang.ac.id/57988/1/19210159.pdf>

of Marriage Dispensations in Bojonegoro Regency (Case Study at the Bojonegoro Religious Court in 2022), Al-Hikmah Islamic Institute Tuban and Hasan Jufri Islamic College Bawean. This study focuses on the opinions of judges regarding solutions to prevent and reduce the number of marriage dispensations in Bojonegoro Regency and what causes marriage dispensation cases in Bojonegoro Regency to increase. Then the similarity of this study with previous studies is that they both discuss the efforts of Religious Court judges to reduce the number of marriage dispensations. While the difference between this study and previous studies is of course in the location of the study, then the previous study also discussed the factors that caused this marriage dispensation case to increase.<sup>14</sup>

*Third*, a study conducted by Muhammad Iqbal, Holijah, and Khalisah Hayatuddin in 2023 entitled *The Role of Judges in Preventing Child Marriage and Protecting the Best Interests of Children Related to Submission of Marriage Dispensation Cases at the Pangkalan Balai Religious Court, Muhammadiyah University of Palembang*. This study focuses on the role of judges in preventing child marriage and how to protect the best interests of children related to the submission of marriage dispensation cases at the Pangkalan Balai Religious Court, as well as what factors cause the increase in applications for marriage dispensation after the change in the minimum age limit for marriage. The similarity of this study

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<sup>14</sup>Abdul Jalil, dkk., “Peran Hakim Dalam Upaya Menurunkan Angka Dispensasi Nikah di Kabupaten Bojonegoro (Studi Kasus di Pengadilan Agama Bojonegoro Tahun 2022)”, *Cendekia*, No. 2(2023):254 <https://www.ejurnal.staiha.ac.id/index.php/cendekia/article/view/487/234>



with previous studies is that it discusses the efforts of judges to reduce the number of marriage dispensations. Meanwhile, the difference between this study and previous studies is that previous studies also discuss the factors that cause the increase in applications for marriage dispensation after the change in the minimum age limit for marriage.<sup>15</sup>

**Table 1.1** Previous Research

No.	Research Title	Researcher Name	Difference	Equality
1.	Jember Religious Court Judge's Method in Determining Marriage Dispensation Grade	Roza Himawan (2023) Thesis, Islamic Family Law Study Program, Maulana Malik Ibrahim State Islamic University of Malang	1. Research location 2. Also focusing on the impact of judges' efforts to reduce the number of marriage dispensations	1. Using empirical legal research 2. Discussing how judges can reduce the number of marriage dispensations
2.	The Role of Judges in Efforts to Reduce the Number of Marriage Dispensations in Bojonegoro Regency (Case Study at the Bojonegoro Religious Court in 2022)	Abdul Jalil, Mas Umar, Hanif Azhar (2023) Journal Article, Al-Hikmah Islamic Institute, Hasan Jufri Bawean Islamic College	1. Research location 2. Also focusing on the factors causing the increase in marriage dispensation cases	1. Using qualitative research methods 2. Discussing how judges can reduce the number of marriage dispensations
3.	The Role of Judges in Preventing	Muhammad Iqbal, Holijah, Khalisah	1. Research location	1. Using empirical

<sup>15</sup>Muhammad Iqbal, dkk., "Peranan Hakim Dalam Pencegahan Perkawinan Di Usia Anak dan Perlindungan Kepentingan Terbaik Bagi Anak Terkait Pengajuan Perkara Dispensasi Kawin di Pengadilan Agama Pangkalan Balai", *Jurnal Hukum Doctrinal*, No. 1(2023): 60 <file:///C:/Users/Windows%2010/Downloads/6159-16987-1-SM.pdf>

Child Marriage and Protecting the Best Interests of Children Regarding Submission of Marriage Dispensation Cases at the Pangkalan Balai Religious Court	Hayatuddin (2023) Journal Article, Muhammadiyah University of Religious Pangkalan	2. Also focusing on the factors causing the increase in applications for marriage dispensation following the change in the minimum age for marriage.	legal research methods 2. Discussing how judges can reduce the number of marriage dispensations
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## B. Theoretical Framework

### 1. Marriage

#### a. Definition

Marriage in the Arabic dictionary has the root word نكح – ينكح – نكاح which means the same as تزوج. The contemporary Arabic-Indonesian dictionary explains that the وطء is the same as نكاح which means intercourse, زواج is the same as نكاح which means marriage. The Indonesian Dictionary defines marriage as a marriage bond (agreement) carried out in accordance with the provisions of law and religious teachings. While the word "marriage" forms a family with the opposite sex; having a husband or wife. It is also interpreted as having sexual intercourse or having sexual intercourse.<sup>16</sup>

In Law Number 1 of 1974 it is explained that, "Marriage is a physical and spiritual bond between a man and a woman as husband and wife

<sup>16</sup>Rusdaya Basri, *Fiqh Munahakat: 4 Madzhab dan Kebijakan Pemerintah* (Sulawesi Selatan: CV Kaaffah Learning Center, 2019), 2-3.

with the aim of forming a happy and eternal family (household) based on the One Almighty God."<sup>17</sup>

b. Marriage Dispensation

In simple terms, marriage dispensation can be understood in two basic words, namely dispensation and marriage. Grammatically, dispensation is defined as an exception to the general rule for special situations. While marriage is defined as the process of forming a family with the opposite sex. Thus, dispensation is a relaxation for special matters from the provisions of the law. The dispensation referred to here is an exception from the application of the provisions in the Marriage Law which is granted by a religious court or other appointed official for a marriage to be carried out because one or both prospective bride and groom have not reached the minimum age to enter into marriage.<sup>18</sup>

Underage marriage is mentioned in classical jurisprudence books as young marriage or early marriage with the term *Al-Shaghir/Al-Shaghirah* marriage. Meanwhile, contemporary fiqh books refer to it as *al-zawaj al-mubakkir* (early marriage). *Shaghir/Shaghirah* literally means 'little', but what is meant here is a man or woman who has not yet reached puberty.<sup>19</sup>

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<sup>17</sup>Pasal 1 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan

<sup>18</sup>Fahadil Amin Al Hasan, Deni Kalamuddin Yusup, "Dispensasi Kawin Dalam Sistem Hukum Indonesia: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim)", *Al-Ahwal*, No. 1 (2021): 90 [file:///C:/Users/Windows%2010/Downloads/al-ahwal,+7+fahadil%20\(1\).pdf](file:///C:/Users/Windows%2010/Downloads/al-ahwal,+7+fahadil%20(1).pdf)

<sup>19</sup>Khoirul Abror, *Dispensasi Perkawinan Di Bawah Umur* (Yogyakarta: DIVA Press, 2019), 65-66.

The application for marriage dispensation is regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, in Article 6 it is stated:

- (1) The parties who have the right to submit a marriage dispensation application are the parents;
- (2) In the event that the parents are divorced, an application for marriage dispensation must still be submitted by both parents, or one of the parents who has custody of the child based on a court decision;
- (3) In the event that one of the parents has died or whose whereabouts are unknown, an application for marriage dispensation is submitted by one of the parents;
- (4) In the event that one of the parents has died or has had his/her authority revoked or his/her whereabouts are unknown, the application for marriage dispensation is submitted by the child's guardian;
- (5) In the event that the parent/guardian is unable to attend, it is submitted by a proxy based on a power of attorney from the parent/guardian in accordance with statutory regulations.<sup>20</sup>

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<sup>20</sup>Pasal 6 Ayat 1-5 Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin

To prevent undesirable things such as forced marriages without the knowledge of the family and parents of the prospective bride and groom, this provision is made so that requests for dispensation are not submitted by other people or those who are not the family of the prospective bride and groom.<sup>21</sup> In addition to determining which party or who is entitled to apply for a dispensation, it also regulates the administrative requirements for applying for a marriage dispensation. These requirements are stated in Article 5 of the Regulation of the Supreme Court of the Republic of Indonesia in 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, namely:

- (1) The administrative requirements for submitting a Marriage Dispensation application are:
  - a. Application letter;
  - b. Photocopy of Population Identity Cards of both Parents/Guardians;
  - c. Photocopy of Family Card;
  - d. Photocopy of Population Identity Card or Child Identity Card and/or child's birth certificate;

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<sup>21</sup>Sonny Dewi Judiasih, Susilowati S. Dajaan, Bambang Daru Nugroho, "The Contradiction Between Marriage Dispensation and Efforts to Minimize Underage Marriage in Indonesia", *Acta Diurnal*, No. 2(2020): 213 <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/221/164>

- e. Photocopy of the Population Identification Card or Child Identity Card and/or birth certificate of the prospective husband/wife; and
- f. Photocopy of the child's last educational certificate and/or Certificate of Still in School from the child's school.

(2) If the requirements as referred to in paragraph (1) letters b to f cannot be met, then other documents can be used which explain the identity and educational status of the Child and the identity of the Parents/Guardians.<sup>22</sup>

The process of applying for a marriage dispensation is almost the same as the process of filing a general lawsuit. Where the applicant must write a letter of application for a marriage dispensation addressed to the Head of the religious court. This application can be made by yourself or made by the religious court Clerk. Then the application is registered and signed in the clerk's office. The clerk will estimate the amount of the down payment for the court costs, only after that the Applicant pays the court costs to the designated bank account. Furthermore, the Applicant submits proof of payment receipt to the Clerk. After all is fulfilled, the Applicant waits for the court summons which will be delivered to the Applicant's address.<sup>23</sup>

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<sup>22</sup>Pasal 6 Ayat 1-2 Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin

<sup>23</sup>Khoirul Abror, *Dispensasi Perkawinan Di Bawah Umur*, 193.

According to the Ministry of Religious Affairs, efforts to reduce the number of child marriages cannot be carried out by the government alone. Therefore, the Ministry of Religious Affairs is collaborating with the Nahdlatul Ulama Executive Board in the Family Welfare Movement (GKM). This movement is hereinafter known as GKMNU. The Ministry of Religious Affairs is also collaborating with the Aisyiyah Central Board in the field of Family Resilience which was signed in Yogyakarta on October 23, 2023. GKMNU itself has various activities, such as marriage guidance and guidance for school-age adolescents (BRUS). It is hoped that a better understanding of marriage among adolescents and prospective couples will help them build families, including reducing child marriages.<sup>24</sup>

## 2. The Judge's Position in Deciding Cases

In the history of justice, the position of judges is regulated in *Recht Ordinance* (RO), that the position of judges as autonomous and independent institutions, although of course not free from the political situation at that time. The honourable position of judges is also balanced with heavy responsibilities. This is because judges must realize that, because of their oath of office, they are not only responsible to the law, themselves, and the people, but also responsible to God Almighty.

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<sup>24</sup>M Rusydi Sani, "GKMNU Jadi Ikhtiar Kemenag Turunkan Angka Kawin Anak, Ini Target 2024", *Kementerian Agama Republik Indonesia*, 21 November 2023, diakses tanggal 11 November 2024 <https://kemenag.go.id/pers-rilis/gkmnu-jadi-ikhtiar-kemenag-turunkan-angka-kawin-anak-ini-target-2024-qAwss>

Therefore, it is important for judges as skilled officers to improve their abilities in the technical field of law (trial), and they must also demonstrate the authority that judges are God's representatives in resolving all disputes they face.<sup>25</sup>

Then, in the Judicial Power Law, judges are given the position of executor of judicial power. A position is actually a container containing certain rights and obligations. Therefore, judges, including supreme judges, function as a forum for people who seek justice with rights and obligations.<sup>26</sup>

The concept of formal truth in civil procedural law is closely related to the judge's belief in proving civil cases. This concept does not require the judge to decide the case based on his own belief, but rather based on existing evidence that is valid according to law.<sup>27</sup>

### 3. Asy-Syathibi's *Mashlahah Mursalah*

#### a. Biography of Asy-Syathibi

Imam asy-Syathibi has the full name Ibrahim bin Musa bin Muhammad Al-Lakhimy Al-Gharnathy Abu Ishaq. Known as asy-Syathibi. His place and date of birth are not known for certain, this is because the records of his residence and date of birth are not in historical records. However, the name asy-Syathibi is often associated

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<sup>25</sup>Rusli Muhammad, "Eksistensi Hakim dalam Pemikiran Yuridis dan Keadilan", *Ius Quia Iustum*, No. 3(2014): 431 <https://law.uui.ac.id/wp-content/uploads/2015/06/eksistensi-hakim-dalam-pemikiran-yuridis-dan-keadilan-rusli-muhammad-fh-uui.pdf>

<sup>26</sup>Rusli Muhammad, "Eksistensi Hakim dalam Pemikiran Yuridis dan Keadilan", 436.

<sup>27</sup>Ahmad Mathar, "Penilaian Hakim Dalam Memutus Perkara di Pengadilan Agama", *Aainul Haq*, No. 1(2022): 2 <https://ejournal.an-nadwah.ac.id/index.php/ainulhaq/article/view/396/326>



with the name of a place in Eastern Spain, namely Sativa or Syatiba (in Arabic) which assumes asy-Syathibi was born or at least lived there. asy-Syathibi then grew up in Gharnathan or Granada.<sup>28</sup>

In general, discussions about the date of al-hayah asy-Syathibi only mention the year of his death, which is 1388 (790 H). It is suspected that asy-Syathibi was born and lived his life in Granada considering the ratio of his name, namely al-Gharnati. Although the date and year of his birth are not known for certain, scholars discussing asy-Syathibi estimate that he lived during the reign of 2 caliphs, namely Yusuf Abu al-Hajaj (1333 - 1354 M) and Sultan Muhammad V (1354 - 1391 M). This assumption is obtained from a comparison between the year of asy-Syathibi's death and the reign of the two caliphs.<sup>29</sup>

Asy-Syathibi studied with many Andalusian scholars in Garnathan and its surroundings, he also had many students and followers. Asy-Syathibi's education began with studying Arabic and all its grammar. In this field, it is recorded that asy-Syathibi studied with a great scholar in the field of language, namely 'Abdillah Ibn Fakhkhar Al-Birri (d. 754 H / 1353 M), then asy-Syathibi studied with Abu al-Qasim al-Syarif al-Sabti (d. 760 H / 1358 M), a famous mufassir and holder of the title of king of Arabic in his time. Furthermore, asy-Syathibi also

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<sup>28</sup>Arlinta Prasetian Dewi, *Panorama Maqashid Syariah* (Bandung: CV. Media Sains Indonesia, 2021), 46.

<sup>29</sup>Dewi, *Panorama Maqashid Syariah*, 46-47.

deepened Arabic with Abu Ja'far Ahmad al-Syarqawi (d. 762 H / 1360 M) who taught him us Imam Sibawaih and Alfiah Ibn Malik.<sup>30</sup>

In addition from deepening his knowledge in the field of language, asy-Syathibi also deepened his knowledge in the field of Tafsir with his previous scholar, namely Abu 'Abdillah al-Balansani (d. 765 H/ 1363 M). in the field of Hadith Science, he studied with Abu al-Qosim Ibn al-Bina and Syamsu al-Din al-Tilimsani (d. 767 H/ 1365 M). Then in the Science of Ushul al-Fiqh, he studied with Imam Abu 'Abdillah Ibn Ahmad Al-Maqarri (d. 761 H/ 1359 M), he was a diplomat and tahqiq expert in the Maliki school of thought, it was from him that asy-Syathibi was introduced to al-Razi's thoughts regarding his ushul al-Fiqh as stated in the book *al-Mahsul*. Asy-Syathibi also studied Rational Science or known as *Ulum al-'Aqliyah*. He was taught by two renowned scholars of his time, namely Abu Ali Mansur al-Zawawi and Abu Abdullah al-Sharif al-Tilmisani.<sup>31</sup>

Of the students who studied with Asy-Syathibi, only three of them are known. Two famous Imam brothers, namely Abu Yahya bin 'Asim and Abu Bakr bin 'Asim. Abu Bakr was the chief qadhi or judge in Granada and is famous for his work *Tuhfat al-Hukkam*, a collection of laws used by judges in Granada. His third student was Abu Abdullah al-Bayani.<sup>32</sup>

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<sup>30</sup>Dewi, *Panorama Maqashid Syariah*, 47.

<sup>31</sup>Dewi, *Panorama Maqashid Syariah*, 47-48.

<sup>32</sup>Dewi, *Panorama Maqashid Syariah*, 48.

Imam as-Syathibi was nicknamed *Shaykhul Maqashid* because of his ability to combine the theories of *maqashid* and *ushul fiqh* so that the legal products created are more alive and more contextual. Among his famous written works that are widely used as references to this day are: *Al-Muwafaqat*, *Al-I'tisham*, *Al-Maqashid al-Syafiyyah fi Syahri Khulasoh al-Kafiyah*, *Al-Majalis*, *Syarah al-Khulashah*, *Unwan al-Ittifaq Fi 'Ilm al-Isytiqaq*, *Unwan al-Nahw*, and *Al-Ifadat Wa al-Insyadaat*.<sup>33</sup>

b. Understanding the *Mashlahah Mursalah* Asy-Syathibi

According to asy-Syathibi, *maslahah* is interpreted from two perspectives, namely from the perspective of the occurrence of *maslahah* in reality and from the perspective of the dependence of Sharia demands on *maslahah*.

- 1) In terms of the occurrence of *Mashlahah* in reality, it means:  
 Something that returns to the uprightness of human life, the perfection of one's life, the achievement of what is desired by the nature of one's soul and intellect absolutely.
- 2) In terms of the dependence of Sharia' demands on *Mashlahah*, namely benefit which is the aim of establishing Sharia law. To produce it, God requires humans to act.<sup>34</sup>

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<sup>33</sup>Dewi, *Panorama Maqashid Syariah*, 48.

<sup>34</sup>Amir Syarifuddin, *Ushul Fiqh, Jilid 2* (Jakarta: Kencana, 2011), 346-347.

Asy-Syathibi's thoughts on *Mashlahah mursalah* are outlined in his two popular books, namely *Al-Muwafaqat fi Usul Al-Ahkam wa Al-I'tisham*. In Asy-Syathibi's notes, the scholars of ushul fiqh show at least four perspectives on the use of *Mashlahah mursalah*. First, the opinion that states that *Mashlahah mursalah* can be used as a basis for determining law if it is based on evidence. Second, an opinion like Imam Malik, who recognizes *Mashlahah mursalah* as a basis for determining law. Third, an opinion that accepts it with an understanding close to the evidence of the Qur'an and *As-Sunnah Al-Maqbulah*. Fourth, an opinion that recognizes that the *Mashlahah mursalah* evidence can only be used for *dharuri* interests, but cannot be used for *hajiyyah* and *tahsiniyah* interests.<sup>35</sup>

The core of the thinking of *Mashlahah* Asy-Syathibi is *Mashlahah* as something that supports the creation of a prosperous and peaceful life, and the fulfillment of all basic human needs (reason and biology) so that humans in the world can live decently. *Mashlahah* in the perspective of Asy-Syathibi leads to the establishment of the pillars of life, not the opposite, destroying the pillars of life.<sup>36</sup>

Asy-Syathibi divides *maqashid* into two, namely: First, the purpose of Allah as the maker of Sharia (*qashdu al-Syari'*) which is divided into

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<sup>35</sup>Imron Rosyadi, "Pemikiran Asy-Syathibi Tentang Mashlahah Mursalah", *Profetika*, No. 1(2013): 85 [10.23917/profetika.v14i1.2009](https://doi.org/10.23917/profetika.v14i1.2009)

<sup>36</sup>Safriadi, *Maqashid Al-Syari'ah & Mashlahah: Kajian Terhadap Pemikiran Ibnu 'Asyur dan Sa'id Ramadhan Al-Buthi* (Lhokseumawe: Sefa Bumi Persada, 2021), 97.

four parts. Second, the purpose of mukallaf (*qashdu al-Mukallaf*) which only discusses a few issues.<sup>37</sup> The explanation of this division is:

1) *Qashdu Al-Shari'*

*Qashdu Al-Shari'* contains four aspects, namely: First, the initial goal of the Sharia, namely the welfare of the world and the hereafter. This aspect is related to the content and nature of the *maqashid* Sharia. Second, Sharia as something that must be understood. This aspect is related to the aspect of language in order to understand the Sharia and achieve the benefits it contains. Third, Sharia as a taklif law that is carried out. This aspect is related to the application of Sharia rules to achieve benefits. This is also related to human ability to implement it. Fourth, the goal of Sharia is to bring humans under the auspices of the law. This last aspect is related to the obligation of humans as mukallaf to obey the laws of Allah. In other words, the goal of Sharia is to free humans from the power of their lusts.<sup>38</sup>

2) *Qashdu Al-Mukallaf*

At the beginning of this discussion, Asy-Syathibi said that the *Shari'a* assesses an act if it is done with a clear intention and purpose. Because a person's purpose in doing something can affect whether it is valid or invalid, ibdaha or just showing off, fardlu or

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<sup>37</sup>Milhan, "Maqashid Syari'ah Menurut Imam Syathibi dan Dasar Teori Pembentukannya", *Al-Usrah*, No. 1(2021): 15 <file:///C:/Users/Windows%2010/Downloads/12335-29605-2-PB.pdf>

<sup>38</sup>Agung Kurniawan, Hamsah Hudafi, "Konsep Maqashid Syariah Imam Asy-Syathibi Dalam Kitab Al-Muqafaqat", *Al-Mabsut*, No. 1(2021): 35 <file:///C:/Users/Windows%2010/Downloads/502-Article%20Text-1269-1-10-20210401.pdf>

sunnah, or even faith or kufr. Every action that has a purpose is definitely related to taklif; conversely, actions that do not have a purpose have been separated from taklif, such as the actions of a person who is asleep.<sup>39</sup>

According to Asy-Syathibi, there are several ways that can be used to ensure that the purpose of one's actions is in accordance with what is outlined by the Sharia, including:

- 1) The mukallaf should determine goals as he understands the *Shar'i* goals in the Sharia and he must also intend his actions to be *ta'abbud*, so that his goals in actions do not deviate from the *Shar'i* goals that he does not know.
- 2) Determining the goals as outlined by the *Shari'a* without limiting those goals. This is broader in scope than the first.
- 3) Aims to carry out God's commands and submit to His laws alone. This is the highest level.

According to Asy-Syathibi, if the three methods above are truly carried out, they will bring the mukallaf to a state where he has adjusted his goals to the goals of the Sharia or at least does not conflict with the goals of the Sharia.<sup>40</sup>

#### c. History of the *Mashlahah Mursalah*

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<sup>39</sup>Milhan, "Maqashid Syari'ah Menurut Imam Syathibi dan Dasar Teori Pembentukannya", 90.

<sup>40</sup>Milhan, "Maqashid Syari'ah Menurut Imam Syathibi dan Dasar Teori Pembentukannya", 91.

Historically, the pattern of the Prophet's legal istinbat, as practiced by the *ushuliyyun*, was exemplified by the Prophet Muhammad SAW. This is the same as when a friend came to the Prophet to ask whether his sick father's Hajj obligation had to be fulfilled, the Prophet emphasized that it was imperative to fulfill it by calculating the payment of debts between people. The *Mashlahah mursalah* method solved many problems during the time of the companions, such as the appointment of Umar bin Khattab as caliph by Abu Bakr before he died, the formation of a government council by Umar bin Khattab, and the abolition of the punishment for cutting off hands for theft during the lean season.<sup>41</sup>

If traced, it seems that the *Mashlahah* method has been developed by mujtahids in the 6th century Hijri and further developed by contemporary thinkers today. The term *Mashlahah* is often based on the concept of *maqasid al-Syari'ah*. According to Ahmad Raysuni, the first person to use the term *Mashlahah* was Imam al-Tirmidzi, a scholar who lived in the 3rd century Hijri. He is the scholar who is considered to be the first to voice the concept of *Mashlahah* and *maqasid al-Syari'ah* in his works, such as: *al-Shalah wa Maqassiduha*, *al-Hajj wa Asrar*, *al-'Illah*, *'Ilal al-Syari'ah*, *'Ilal al-Ubudiyah*, and also *al-Furuq*

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<sup>41</sup>M. Sidiq Purnomo, "Reformulasi Mashlahah Mursalah Al-Syathibi Dalam Upaya Ijtihad Kontemporer", *Al-'Adalah*, No. 2(2011): 199  
<https://download.garuda.kemdikbud.go.id/article.php?article=1152339&val=5893&title=REFORMULASI%20MASHLAHAH%20AL-MURSALAH%20AL-SYATHIBI%20DALAM%20URELIGIOUS%20COURTYA%20IJTIHAD%20KONTEMPORER>

which was later adopted by Imam Shihab al-Din al-Qarafi as the title of his book. After al-Tirmidhi, then came Abu Mansur al-Maturidi (d. 333 H) with his work *Ma'had al-Syarh*, followed by Abu Bakar al-Qaffal al-Syasyi (d. 365 H) with his books *Usul al-Fiqh* and *Mahasin al-Syar'iyah*. After al-Qaffal, Abu Bakr al-Abhari (d. 375 H) and Muhammad al-Baqilani (d. 403 H) appeared, respectively, with their works, namely *Mas'alah al-Jawab wa al-Dalayl wa al-'Illah* and *al-Taqrif wa al-Irsyad fi Tartib Turuq al-Ijtihad*. After the death of al-Baqilani, figures emerged such as al-Juwayni, al-Ghazali, al-Razi, al-Amidi, Ibn Hajib, al-Baydlawi, al-Asnawi, Ibn al-Subuki, 'Izz al-Din bin 'Abd al-Salam, Shihab al-Din al-Qarafi, Najm al-Din al-Tufi, Ibn Taymiyyah and Ibnu al-Qayyim al-Jawziyyah.<sup>42</sup>

Meanwhile, according to Yusuf Ahmad Muhammad al-Badawi, the history of the concept of *Mashlahah* and *maqasid al-Syari'ah* is divided into two phases, namely before Ibn Taymiyyah and after Ibn Taymiyyah. According to Hamadi al-Ubaydi, the first person to discuss *Mashlahah* and *maqasid al-Syari'ah* was Ibrahim al-Nakha'I (d. 96 H), a *tabi'in* and his teacher Hammas Ibn Sulayman, his teacher Aba Hanifah. After that, Imam al-Ghazali, 'Izz al-Din bin 'Abd al-Salam, Najm al-Din al-Tufi, and finally asy-Syathibi appeared.<sup>43</sup>

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<sup>42</sup>Safriadi, *Maqashid Al-Syari'ah & Mashlahah: Kajian Terhadap Pemikiran Ibnu 'Asyur dan Sa'id Ramadhan Al-Buthi*, 58.

<sup>43</sup>Safriadi, *Maqashid Al-Syari'ah & Mashlahah: Kajian Terhadap Pemikiran Ibnu 'Asyur dan Sa'id Ramadhan Al-Buthi*, 59.



Although there are various versions, it can be concluded temporarily that before and after 'Izz al-Din bin 'Abd al-Salam, the concept of *Mashlahah* and *maqasid al-Shari'ah* already existed and was known even though in terms of its structure it was not yet systematic until the arrival of asy-Syathibi.<sup>44</sup>

d. Conditions for *Mashlahah Mursalah*

Imam asy-Syathibi explained the three conditions of *Mashlahah Mursalah*, including:

- 1) Rational. This means that reason can accept it when *Mashlahah Mursalah* is confronted with reason. With the proviso, this matter is a matter of principle (worship) which does not enter into *Mashlahah Mursalah*;
- 2) In line or in synergy with the *maqashid sharia*;
- 3) Maintaining basic principles (*dharuri*) to eliminate difficulties (*raf'ul haraj*).<sup>45</sup>

e. Levels of *Mashlahah Mursalah*

According to Asy-Syathibi, human welfare can be realized if the five basic elements of human life can be realized and maintained, namely religion, soul, reason, descendants, and property. In this framework, he divides it into three levels.<sup>46</sup>, among others:

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<sup>44</sup>Safriadi, *Maqashid Al-Syari'ah & Mashlahah: Kajian Terhadap Pemikiran Ibnu 'Asyur dan Sa'id Ramadhan Al-Buthi*, 60.

<sup>45</sup>Moh. Bahrudin, *Ilmu Ushul Fiqh* (Bandar Lampung: Aura, 2019), 69.

<sup>46</sup>Khodijah Ishak, "Pemikiran Al-Syathibi Tentang Masalah Mursalah Dan Implementasinya Dalam Pengembangan Ekonomi Syariah", 824 <file:///C:/Users/Windows%2010/Downloads/54-Article%20Text-217-1-10-20190712.pdf>

- 1) *Mashlahah al-dharuriyah*, is something that must exist for the sake of upholding goodness and prosperity, both regarding domestic affairs and worldly affairs, which if it does not exist, it cannot create an orderly and prosperous worldly life as well as a wretched and suffering spiritual life. According to Asy-Syathibi, *al-dharuriyah* includes efforts to maintain religion, maintain the soul, maintain offspring, maintain wealth, and maintain the mind.
- 2) *Mashlahah al-hajiyah*, is something that is needed from the side of its ability to bring relieve narrowness that usually leads to difficulties accompanied by missed goals. If *al-hajiyah* is not considered, difficulties will arise, but not to the point of causing damage that usually occurs in the case of *al-dharuriyah*. The category of *al-hajiyah* actually leads to the perfection of *al-dharuriyah*.
- 3) *Mashlahah al-tahsiniyah*, is something to do with observing good habits and avoiding bad ones, based on common sense considerations. This is often referred to as *makarim al-akhlaq*. Because *al-tahsiniyah* does not damage the affairs of *al-dharuriyah* and *al-hajiyah*, Asy-Syathibi sees *al-tahsiniyah* as a goodness that complements the principles of *al-dharuriyah* and *al-hajiyah*. As for *al-tahsiniyah*, it only realizes beauty, comfort, and

politeness in the relationship between servants with God and His fellow creatures.<sup>47</sup>

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<sup>47</sup>Safriadi, *Maqashid Al-Syari'ah & Mashlahah: Kajian Terhadap Pemikiran Ibnu 'Asyur dan Sa'id Ramadhan Al-Buthi*, 76-77.

## CHAPTER III

### RESEARCH METHODS

#### A. Types of Research

The type of research by the author is included in the type of empirical or field research. The explanation of this type of research according to Abdulkadir Muhammad is a type of research that investigates behavioral religious court patterns that exist in society as legal symptoms through expressions of actual behavior experienced by members of society.<sup>48</sup> Where the researcher will conduct direct research to collect information from judges at the Lumajang Religious Court which is directly related to the title to be researched, namely the Efforts of Judges at the Lumajang Religious Court in Preventing Marriage Dispensations from the Perspective of *Mashlahah Mursalah* Asy-Syathibi.

#### B. Research Approach

The approach used in this research is a socio-legal approach. By using a socio-legal approach, we can see how reactions and interactions occur when the normative system functions in society.<sup>49</sup> In this study, the researcher interviewed judges who had handled marriage dispensation cases at the Lumajang Religious Court. The researcher also explained the results of the interview, which were then written in a structured report.

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<sup>48</sup>Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 81.

<sup>49</sup>Muhaimin, *Metode Penelitian Hukum*, 87.

### C. Data Source

#### 1. Primary Data

Primary data is data obtained directly from the field from sources.<sup>50</sup> The primary data source in this study was obtained through direct interviews with judges at the Lumajang Religious Court who had tried marriage dispensation cases.

Researchers used the Experience-Based Sampling technique in determining informants. Namely, the technique of selecting informants based on their experiences that are relevant to the research topic. The informants were selected because they have certain experiences that are considered important to answer the research questions.

**Table 1.2** Informant

No.	Informant Name	Position
1.	Dra.Siti Muarofah Sa'adah, S.H	Judge
2.	Drs. Mohammad Hafizh Bula, M.H	Judge
3.	Dra. Nur Sholehah, M.H	Judge
4.	Drs. Masykur Rosih	Judge

#### 2. Secondary Data

Secondary data is data collected, processed, and presented by other parties. Researchers study and collect relevant data for this literature

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<sup>50</sup>Sheyla Nichlatus Sovia dkk., *Ragam Metode Penelitian Hukum*, (Kediri, Lembaga Studi Hukum Pidana, 2022), 51.

study. This data is taken from literature books, laws and regulations, the internet, and additional documents.<sup>51</sup>

#### **D. Method of Data Sources Collection**

The methods used in collecting data for this research are:

##### **1. Interview**

Interview is a direct question and answer activity between researchers and respondents, sources, or informants to obtain information. This interview can be conducted freely according to the guidelines, the most important thing is that researchers obtain the necessary data. Here the researcher will use the structured interview method, which is one of the data collection methods in research that involves a series of questions that have been prepared in advance and arranged systematically. In structured interviews, researchers use a list of standardized and unchanging questions, which are asked in the same order to all informants or respondents. Here the researcher will conduct an interview with a judge at the Lumajang Religious Court who has tried a marriage dispensation case.

##### **2. Documentation**

At this documentation stage, important documents are produced, such as the PDF version of the Ushul Fiqh book, the PDF version of the Research Methods book, legal journals, and supporting websites that are relevant to this research.

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<sup>51</sup>Sovia dkk., *Ragam Metode Penelitian Hukum*, 52.

## E. Data Processing Methods

In this process, the author will describe the data in the form of regular, coherent, logical, non-overlapping, and effective sentences so as to facilitate understanding and interpretation of the data. Data processing is usually carried out through the following stages:

### 1. Data checking (editing)

At this stage, the researcher re-examined all the data obtained so that the data used here is in accordance with the theme being discussed, namely the efforts of Lumajang Religious Court judges in preventing marriage dispensations from the Asy-Syathibi's *Mashlahah Mursalah* perspective.

### 2. Classification (classifying)

At this stage, the researcher groups all the data obtained. The data is reviewed thoroughly and then grouped according to the needs so that it is easy to read and understand and provides objective information.

### 3. Verification

At this stage, the researcher ensures that there is no falsification of the data obtained. By entering relevant data sources, the data is re-examined for its accuracy. The main goal is that the data obtained can be considered as definite data and can be tested to ensure its validity. To ensure the validity of the data, researchers asked questions that were more detailed than the questions that had been compiled.

### 4. Analysis (Analyzing)

This stage is the stage of describing data in the form of good and correct sentences, so that it is easy to read and interpret. In this study, the researcher used a descriptive analysis technique, namely analyzing by providing a description or explanation of the subject and object of the study as the results of the study were carried out.

## 5. Conclusion

The last stage is the conclusion, which is the details of the research made by the researcher. From the data obtained, the researcher will conclude. The goal is to be able to answer the problem formulation that has been made by the researcher.



## **CHAPTER IV**

### **RESULTS AND DISCUSSION**

#### **A. Lumajang Religious Court**

The Lumajang Religious Court was originally established as a result of the awareness of the Islamic community regarding their religious law. In fact, this court is one of the institutions of the Islamic community (non-formal institution) that is not recognized by the Dutch colonial government. Although the Religious Court is considered as something that is in principle contrary to the principles of Western legal justice, the fact cannot be removed because the Religious Court is part of the Islamic *tasyri'* calendar in Indonesia or the history of the development of Islamic law.

Due to the lack of information, it is difficult to determine exactly when the Lumajang Religious Court was established. However, based on the way Islam entered and developed in Lumajang, it can be concluded that at the end of the 17th century or around 760 M, the civil problems of Muslims in Lumajang had been resolved and tried. The first Penghulu (Hord) was RK Abdullah, who was buried in Jogoyudan, Lumajang, and was succeeded by his son RKH Moh. Isa, and then by his son RK Marham. It is said that during his time, it was during the struggle of Prince Diponegoro in Central Java that the recognition by the Dutch government was born with Stb. 1820 No. 22

According to Shohibul Hikayat, the establishment of the Lumajang Religious Court was caused by the community's awareness of their religious law and their hatred of the laws of the Dutch rulers, who were Christian. As a result, the community needed to secretly (unofficially) create their own order of life to resolve their disputes.

In addition, people who are considered to understand and study Islam the most are considered entitled to resolve the dispute. Finally, this practice and custom developed into an institution. It turned out that not only Muslims asked for a resolution of their disputes, but also indigenous people who opposed the colonial law who claimed to be Muslim also asked for a resolution.

Shohibul Hikayat said that peace or court was held at any time, day or night, at home or under a tree. Only after there was a prayer room or mosque, the court was held in the mosque's porch.<sup>52</sup>

In connection with the turn of the year, the Judge of Lumajang Religious Court, Honorable Mrs. Dra. Nur Sholehah, M.H., provided information on the latest developments of Lumajang Religious Court. There are several factors that contribute to the large number of marriage dispensation cases, namely, social, economic, and educational factors. In social and cultural factors, for example, there is social pressure that children who have reached puberty should be married immediately. As well as other

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<sup>52</sup>Admin, "Sejarah Pembentukan Pengadilan Agama Lumajang", *Website Pengadilan Agama Lumajang*, 10 April 2017, diakses tanggal 31 Oktober 2024 <https://web.religious-court-lumajang.go.id/profil-pengadilan/sejarah-pengadilan>

cultures in the form of engagement from a young age, which then requests that the marriage be carried out immediately, even though the age of the prospective bride and groom has not met the requirements. In fact, the problem of early marriage in addition to immature age, is economic, health, and mental and physical readiness, especially the reproductive system.<sup>53</sup>

Furthermore, the Religious Courts have certainly done their best to address these problems. However, the cooperation of various parties is still needed to prevent these numbers from being suppressed.

#### **B. The Interpretation of Lumajang Religious Court Judges Regarding Marriage Dispensation with Various Motives**

In the context of marriage law in Indonesia, marriage dispensation is one of the interesting aspects to study, especially in the Religious Court. In Lumajang Regency, the judges' interpretation of marriage dispensation shows diversity influenced by various social, cultural, and economic factors. Judges not only act as law enforcers, but also as mediators who consider the best interests of the parties involved. The various motives behind the request for marriage dispensation, such as age, education, and socio-economic conditions, create their own dynamics in the decision-making process. Therefore, a deep understanding of the judge's perspective in this context is

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<sup>53</sup> Admin, "Koordinasi dengan Surat Kabar Jawa Pos 'Radar Semeru': Rekap Perkara Dispensasi Kawin dan Perceraian Tahun 2024", *Website Pengadilan Agama Lumajang*, 7 Januari 2025, diakses tanggal 28 April 2025 <https://web.pa-lumajang.go.id/publikasi/arsip-berita/1668-koordinasi-dengan-surat-kabar-jawa-pos-radar-semeru-rekap-perkara-dispensasi-kawin-dan-perceraian-tahun-2024>

very important to reveal how the values of justice and compliance with legal norms can interact with each other in the practice of religious courts.

As for the interpretation of the Lumajang Religious Court judge regarding marriage dispensation with various motives, as explained by Her Honor, Mrs. Nur Sholehah, M.H as a judge who has tried marriage dispensation cases, She said:

“Actually, marriage dispensation is an emergency door. Because the marriage law determines the age limit, right? For women it is 16 years old, for men it is 19 years old. Then it was changed by Law No. 16 of 2019. There is still an age limit. This means that the law sets an age requirement within specific limits. But the law also does not rigidly apply the regulation. There are certain possibilities that the provision can be set aside, that is what is called dispensation. Why? There are certain things, right? Therefore, it is possible that it is not in accordance with the previous limitation due to certain factors or compelling emergencies. So the government in the law provides dispensation to prospective brides and grooms who are not yet of age. Yes, there are many factors. It could be due to coercion, environmental demands, tradition, and so on. So I interpret dispensation as an emergency granted by law. So, this means that the article on age restrictions is not rigid, but there is an emergency door that can be used, which is what is called a marriage dispensation.”<sup>54</sup>

Based on the statement made by him, we can analyze that marriage dispensation is seen as an "emergency door" in the Marriage Law. The law strictly regulates the minimum age limit for marriage, but also provides flexibility through dispensation due to the possibility or certain emergency conditions. Factors such as coercion, environmental demands, or tradition can be reasons for submitting a dispensation. Thus, marriage dispensation is an exception granted by law in urgent situations, so that the article on age restrictions is not applied rigidly.

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<sup>54</sup>Nur Sholehah, wawancara, (Lumajang, 13 Januari 2025)

Marriage dispensation due to underage is a form of leniency for prospective husbands and prospective wives in carrying out marriage because they have not been able to fulfill the requirements for marriage as stipulated in Article 7 of Law Number 1 of 1974 concerning Marriage. So that prospective husbands and prospective wives have permission to carry out marriage even though they have not reached the age of 19 years.<sup>55</sup>

Another opinion was also conveyed by Her Excellency Siti Muarofah Sa'adah, S.H regarding the marriage dispensation, She said:

“The legal system that regulates marriage dispensation is for children, especially girls, to get a complete education first, then so that their mentality is ready, their reproduction is ready, all components, so that they are not vulnerable. Of course, people who get married are oriented to having children later, so they prepare. If the mother is physically and mentally mature, of course her child will be of better quality. The risk of the mother and fetus dying will be small. Likewise for the continuation of the household. In reality, many children who ask for dispensation are not ready to be married, so after getting married and having children, they usually continue to file for divorce.”<sup>56</sup>

Based on the opinion presented by him, it can be seen that the legal system related to marriage dispensation should prioritize girls' education until completion so that they are mentally and reproductively ready before marriage. Ideally, marriage is prepared carefully, including readiness to have children. If a mother is physically and mentally mature, it is hoped that the child born will be of better quality and the risk of maternal and fetal death can be minimized. However, in reality, many children who apply for

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<sup>55</sup>Naufa Salsabilah, Hariyo Sulistiyantoro, “Dispensasi Kawin Di Bawah Umur Menurut Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan di Pengadilan Agama Surabaya”, *Jurnal Syntax Admiration*, No. 6(2021): 1109 <https://jurnalsyntaxadmiration.com/index.php/jurnal/article/view/248/408>

<sup>56</sup>Siti Muarofah Sa'adah, wawancara, (Lumajang, 14 Januari 2025)

marriage dispensation are not ready to live in a household, so that after getting married and having children, they tend to file for divorce. This highlights the importance of readiness before marriage for the sake of the continuity of the household and the quality of life of the child.

In society, marriage dispensation applications are often triggered by various factors, both social, economic, and psychological. Several judges explained several motives that are often submitted by applicants. Her Honor, Mrs. Siti Muarofah Sa'adah, S.H explained that:

"The motive is mostly because they are pregnant, then they are ready to get married, but are hindered by age. Now, children graduate from high school before they are 19 years old, so usually their social circle is already wide, they are already in a serious relationship. So if they delay marriage, it is feared that they will fall into negative things."<sup>57</sup>

Regarding the opinion of His Excellency Mr. Mohammad Hafizh Bula, M.H regarding the factors or motives often put forward by applicants, he explained that:

"The first one definitely wants to get married. The second one, if She is already pregnant so that there is recognition to the child in the womb that She has a father. There are also those whose motives come from the family or parents. It is impossible for their child to be pregnant but just let it be. So there are many motives."<sup>58</sup>

Her Highness, Mrs. Nur Sholehah also added:

"Mostly because the relationship was so close, then they were engaged."<sup>59</sup>

Everyone has a reason to apply for a marriage dispensation. The legal reason is to gain national recognition of their marriage bond because

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<sup>57</sup>Siti Muarofah Sa'adah, wawancara, (Lumajang, 14 Januari 2025)

<sup>58</sup>Mohammad Hafizh Bula, wawancara, (Lumajang, 14 Januari 2025)

<sup>59</sup>Nur Sholehah, wawancara, (Lumajang, 13 Januari 2025)

it affects the status of children and so on. In addition, social circumstances encourage someone to marry as a way to show gratitude for being able to build a family and have children.<sup>60</sup>

Choosing which factors are more difficult to consider or decide on often depends on the context and perspective of the individual. However, in general, motives that involve conflicts between personal values, social interests, and moral decisions are often considered more challenging. This is because they often require careful weighing of a variety of factors, including long-term impacts, the reactions of others, and personal integrity. In some cases, motives that involve ethical dilemmas or decisions that affect many people tend to be more difficult to decide on because they require in-depth analysis and careful consideration.

Her Honor, Mrs. Nur Sholehah, M.H explained what marriage dispensation cases are difficult to consider:

“Yes, that was pregnancy. The girl was too young, but She was already pregnant. The same goes for the boy, he was too young. Usually, if both of them are underage, we definitely reject them. But if they are already pregnant, well, that becomes a problem. We are very, very concerned. The ones we can educate are the parents.”<sup>61</sup>

The answers revealed that early pregnancy is one of the factors that is difficult to consider, especially when both are still minors. This situation becomes problematic because the pregnancy forces us to consider

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<sup>60</sup>Salsabilah, Sulistiyantoro, “Dispensasi Kawin Di Bawah Umur Menurut Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan di Pengadilan Agama Surabaya”, 1110. <https://jurnalsyntaxadmiration.com/index.php/jurnal/article/view/248/408>

<sup>61</sup>Nur Sholehah, wawancara, (Lumajang, 13 Januari 2025)

emergencies and greater responsibilities. Judges tend to reject underage couples, but pregnancy forces them to face reality and find solutions. Therefore, the focus of the judges shifts to the parents of the couple by providing education about early marriage, as an effort to overcome this complex situation.

In contrast to the answer given by Her Honorable Mrs. Nur Sholehah, M.H, His Honorable Mr. Mohammad Hafizh Bula M.H is of the opinion that he has never had any difficulty in considering or deciding on marriage dispensation matters. His Honorable Mr. Mohammad Hafizh Bula, M.H stated:

"The judge does not experience difficulties in considering something because the facts have been provided. So the judge only assesses where the facts are."<sup>62</sup>

The answer describes the decision-making process by a judge in a legal context. The judge has no difficulty in considering a case because of the clear and complete facts. Thus, the judge's task is more focused on assessing the existing facts, so that the decisions taken are based on strong and objective evidence. This shows that the judicial process is based on clear and transparent legal principles, where the final decision is determined by the quality and relevance of the evidence presented.

In the process of applying for marriage dispensation, the condition of pregnancy is often the main factor considered by the judge. However, there are several other factors that should also be considered to ensure a fair

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<sup>62</sup>Mohammad Hafizh Bula, wawancara, (Lumajang, 14 Januari 2025)



and appropriate decision. These factors include the social, economic, and psychological aspects of the couple applying, as well as the long-term impact of the dispensation on the family and society. By considering these factors, the judge can make a more comprehensive and sustainable decision, not only based on the condition of pregnancy alone.

His Honor, Mr. Drs. Masykur Rosih explained the factors that were taken into consideration by the judge, namely:

“Other factors besides pregnancy are parental consent, the prospective husband's job, and recommendations from related agencies.”<sup>63</sup>

Prevention of underage marriage dispensation is a shared responsibility of various parties, including local government agencies. To achieve cross-sector synergy, the involvement of the Social Service, Health Service, and Lumajang Regency Government is very important. These three institutions can carry out their respective duties collaboratively by signing an MoU with the Religious Court. The Health Service can provide reproductive health education and provide medical assistance. Meanwhile, the Social Service has the responsibility to foster families and handle cases of children at risk. The Lumajang Regency Government has the authority to regulate development programs based on child and women's protection and encourage cross-agency integration. This MoU is an administrative and legal tool that strengthens the shared commitment to reducing the number of marriage dispensations and protecting children's rights in the region.

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<sup>63</sup>Masykur Rosih, wawancara, (Lumajang, 9 Januari 2025)

Her Excellency Siti Muarofah Sa'adah also added:

“For now, there is already a PERMA on marriage dispensation. So judges who handle marriage dispensation must be guided by the PERMA. Like in Lumajang, there is already cooperation with the social service, health service, which supports the PERMA. So, the PERMA already contains things that must be fulfilled. That is the government's effort to limit early marriage.”<sup>64</sup>

From the answers, it can be seen that in the process of applying for marriage dispensation, there are several important factors other than pregnancy conditions that need to be considered. These factors include parental consent, the prospective husband's job, and recommendations from related agencies. In addition, the existence of the Supreme Court Regulation (PERMA) which regulates marriage dispensation requires judges to be guided by these regulations. In Lumajang itself, cooperation between the social and health services has been established to support the implementation of this PERMA. The main objective of this regulation is to limit early marriage by ensuring that all necessary requirements have been met. Thus, the marriage dispensation process becomes more structured and oriented towards the long-term interests of couples applying for marriage dispensation.

Marriage dispensation applications often involve complex and sensitive situations, especially when premarital pregnancy is involved. The question of experience in handling marriage dispensation cases where the woman is already pregnant opens up the discussion about how legal

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<sup>64</sup>Siti Muarofah Sa'adah, wawancara, (Lumajang, 14 Januari 2025)

practitioners or judges handle such cases. This requires a deep understanding of the legal, social, and emotional aspects involved in the marriage dispensation application process. In this context, it is important to understand how legal practitioners deal with the challenges and complexities that arise in such cases, and how they ensure that the decisions taken are fair and in accordance with applicable legal principles.

His Excellency Mr. Mohammad Hafizh Bula, M.H himself once refused to grant a marriage dispensation request where the woman was already pregnant. He stated that:

“In the past, it was also not granted. There is a solution if it is not granted, which is to submit the origin of the child. Now, the path they take is a secret marriage. Later, there will be a marriage ratification. Now, there is an MoU. Previously, there was none, so the judge was given the freedom to judge. The MoU does not bind the judge to grant or reject, but gives the judge what to do if it is granted but there is no recommendation from the relevant agency.”<sup>65</sup>

Problems related to the recognition and validation of marital status and children. In this context, unregistered marriage becomes one of the alternatives chosen when the official request is not granted. His Excellency Mr. Mohammad Hafizh Bula, M.H stated that submitting the origin of the child is a solution if the request is not granted. However, unregistered marriage is now an option, with the hope that the marriage will be officially recognized through validation at a later date. In addition, the existence of the MoU provides guidance for judges in assessing cases like this, although the MoU does not bind judges to grant or reject the request. This MoU

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<sup>65</sup>Mohammad Hafizh Bula, wawancara, (Lumajang, 14 Januari 2025)

functions more as a guideline for considering recommendations from related agencies in the decision-making process.

The Religious Court has the authority to grant or reject a marriage dispensation application based on legal considerations and the best interests of the child. Pregnancy outside of marriage is usually considered a “strong reason” to grant a dispensation, but it is not the only reason considered legally. One of the very important bases for examining marriage dispensation cases, especially after the issuance of Supreme Court Regulation (PERMA) No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, which contains:

“Request recommendations from a Psychologist or Doctor/Midwife, Professional Social Worker, Social Welfare personnel, Integrated Service Center for the Protection of Women and Children (P2TP2A), Indonesian/Regional Child Protection Commission (KPAI/KPAD).”<sup>66</sup>

This recommendation has several purposes, including: evaluating how prepared the prospective child bride is physically, mentally, financially, socially, and emotionally; deciding whether early marriage really protects the child or actually risks causing bigger problems; and to obtain additional protection such as counseling, pregnancy assistance, and post-natal care plans.

His Excellency Mr. Mohammad Hafizh Bula, M.H also added:

"If we try a woman who is already pregnant, and She is still underage, usually if that happens, there will be responsibility from the prospective husband or in other words, the one who impregnated the woman. If that is the case, they come to us to ask for a marriage

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<sup>66</sup>Pasal 15 Huruf d Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin

dispensation. As for this marriage dispensation, whether it is granted or not, that is the judge's domain. If from the recommendation of the relevant agency, She is healthy, ready, and considered a suitable candidate of having a household, it can be granted by the judge. But if there is none, the judge may not grant it. Because the recommendation is for the prevention of early marriage."<sup>67</sup>

This marriage dispensation is a decision that is in the realm of the judge, who determines whether the application is granted or not. This decision is highly dependent on the recommendations of the relevant agencies, which assess whether the couple is ready to build a household. If the recommendation is positive, the judge tends to grant the application. However, if there is no adequate recommendation, the judge has the right to reject the application.

Marriage dispensation requests are often submitted in urgent situations, one of which is when the woman is pregnant. However, when this request is not granted, the reactions of the parties involved can vary greatly. In this context, the responses of the parties can range from acceptance to protest.

His Excellency, Mr. Drs. Masykur Rosih said:

"Most of them are only agitated at the beginning, during the trial. They earnestly ask for it to be granted. Actually, if they don't accept it, they can appeal."<sup>68</sup>

From the explanation above, it is clear that the general reaction of the parties who apply for marriage dispensation when their application is not granted. Initially, they often show strong emotional reactions, such as

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<sup>67</sup>Mohammad Hafizh Bula, wawancara, (Lumajang, 14 Januari 2025)

<sup>68</sup>Masykur Rosih, wawancara, (Lumajang, 9 Januari 2025)

disappointment and protest. His Excellency, Mr. Drs. Masykur Rosih also mentioned that if they do not accept the decision, they have the option to file an appeal. This shows that despite the strong initial reaction, there is a legal path available to review the decision.

When viewed from the results of these interviews, the efforts made by the judges and the Lumajang Religious Court have shown compliance with the provisions in PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. This PERMA aims to reduce the number of child marriages and ensure that marriage dispensation applications are decided with due regard to the principle of child protection. In practice, judges at the Lumajang Religious Court have consistently applied the measures set out in this PERMA, such as conducting a careful examination of the grounds for the application, requiring the presence of the child and parents at the hearing, and involving relevant parties. In addition, judges also advise the parties on the risks of child marriage and encourage alternative solutions before granting the petition. By consistently implementing all of these measures, the Lumajang Religious Court is playing an active role in supporting national policies to reduce the number of child marriages and protect children's rights as a whole.

Although the efforts made by the judges and the Lumajang Religious Court are in line with the provisions of the PERMA, it should be noted that most of the steps taken are still in the administrative and normative realm. That is, the efforts are limited to fulfilling the legal procedures and formal

requirements set by the legislation. This approach has not fully touched on the preventive and transformative aspects. Thus, although the implementation of PERMA has proceeded procedurally, its effectiveness in reducing the number of marriage dispensations and preventing child marriage structurally still requires a more comprehensive and collaborative approach across sectors.

**Table 1.3** Efforts Regulated in PERMA

No.	Efforts Regulated in PERMA	Description
1.	Comparative examination	√
2.	Involvement of related parties (children, parents/guardians, and experts)	√
3.	Consideration of child protection principles	√
4.	Counseling and education	√
5.	Recording in the judgment	√

### **C. The Efforts of the Lumajang Religious Court Judges in Preventing Marriage Dispensation from the Perspective of the *Mashlahah Mursalah* Asy-Syathibi**

*Mashlahah Mursalah* one of the methods in forming Islamic law. Asy-Syathibi is one of the Maliki school of scholars. He explained that *mashlahah mursalah* is every sharia principle which is not accompanied by specific text evidence but is in accordance with sharia actions and its

meaning is taken from the sharia postulates. Therefore, this principle is valid as a legal basis and can be used as a reference as long as it becomes a principle and is used in qath'i sharia.<sup>69</sup> According to Asy-Syathibi, human welfare can be realized if the five basic elements of human life can be realized and maintained, namely religion, soul, reason, descendants, and property.<sup>70</sup>

Therefore, according to the five main elements mentioned by him, we can group and analyze them as follows:

“Actually, marriage dispensation is an emergency door. Because the marriage law determines the age limit, right? For women, it is 16 years old, for men it is 19 years old. Then it was changed by Law No. 16 of 2019. There is still an age limit. This means that the law sets an age requirement within specific limits. But the law also does not rigidly apply the regulation. There are certain possibilities that the provision can be set aside, that is what is called dispensation. Why? There are certain things, right? Therefore, it is possible that it is not in accordance with the previous limitation due to certain factors or compelling emergencies. So the government in the law provides dispensation to prospective brides and grooms who are not yet of age. Yes, there are many factors. It could be due to coercion, environmental demands, tradition, and so on. So I interpret dispensation as an emergency granted by law. So, this means that the article on age restrictions is not rigid, but there is an emergency door that can be used, which is what is called a marriage dispensation.”<sup>71</sup>

The statement interprets marriage dispensation as an emergency granted by law, so that the article on age restrictions is not applied rigidly.

The concept of *Mashlahah mursalah* is in line with the objectives of Sharia

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<sup>69</sup>Prahasti Suyaman, “Mashlahah Mursalah Sebagai Salah Satu Metode Istinbath”, *Krtha Bhayangkara*, No. 2(2024): 420 <file:///C:/Users/Windows%2010/Downloads/Maslahah+Mursalah+Sebagai+Salah+Satu+Metode+Istinbath.pdf>

<sup>70</sup>Khodijah Ishak, “Pemikiran Al-Syathibi Tentang Maslahah Mursalah Dan Implementasinya Dalam Pengembangan Ekonomi Syariah”, 824 <file:///C:/Users/Windows%2010/Downloads/54-Article%20Text-217-1-10-20190712.pdf>

<sup>71</sup>Nur Sholehah, wawancara, (Lumajang, 13 Januari 2025)



to preserve religion, soul, mind, descendants, and property, as well as ensure justice and benefit for the parties involved.

One of the most important rules established by the fuqaha is the rule of *dharuriyat* (primary rights), which is the most important part of the three categories of *maqashid sharia* popularized by Asy-Syathibi in addition to *hajiyyah* (secondary rights) and *tahsiniyah* (supplementary rights). The concept of *dharurah* is seen as one of the elements of flexibility or elasticity of Islamic law.<sup>72</sup>

In the view of *Maqashid* Asy-Syathibi, emergency (*darurah*) is a condition that allows an exception to general Sharia law due to the urgent need to maintain the five main objectives of Sharia (*maqashid al-syariah*), namely: maintaining religion (*hifz al-din*), maintaining the soul (*hifz al-nafs*), maintaining reason (*hifz al-'aql*), maintaining descendants (*hifz al-nasl*), and maintaining property (*hifz al-mal*).<sup>73</sup>

In his book *Al-Muwafaqat fi Usul al-Syariah*, Imam Asy-Syathibi explains that emergency is understood in the context of the principle of *al-dharurat tubih al-mahzurat* (emergency permits the forbidden). According to Asy-Syathibi, realizing the welfare of the people is the goal of Sharia.<sup>74</sup>

Emergency limits are set based on certain conditions to ensure that legal

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<sup>72</sup>Mutiara Fahmi', Muhammad Suhaili Sufyan, "Penerapan Kaidah Fiqh *Al-Hajatu Tanzilu Manzilata Al-Dharurah* dalam Kompleksitas Perubahan Kehidupan", *Lentera*, No. 1(2024): 46 <https://doi.org/10.32505/lentera.v6i1.8751>

<sup>73</sup>Nirwan Nazaruddin, Farhan Kamilullah, "Maqashid As-Syariah Terhadap Hukum Islam Menurut Imam As-Syatibi Dalam *Al-Muwafaqat*", *Asy-Syukriyyah*, No. 1(2020): 114 <https://doi.org/10.36769/asy.v2i1i.101>

<sup>74</sup>Nirwan Nazaruddin, Farhan Kamilullah, "Maqashid As-Syariah Terhadap Hukum Islam Menurut Imam As-Syatibi Dalam *Al-Muwafaqat*", 116.

freedom is not abused and the main objectives of the sharia are maintained.

These limits include:

1. The fact of harm. Not just a guess or assumption, the emergency must actually happen or be strongly predicted.
2. There are no halal alternatives. If there are other activities that are permitted by the sharia to avoid harm, then the actions that are normally prohibited may not be carried out.
3. Threat to life or limb. The emergency must threaten a person's life or health.
4. Not violating Islamic principles and beliefs. Emergency measures must not violate the basic principles of Sharia or harm the rights of others.
5. Proportionality of action. Action should be taken as needed, not too much, and only to eliminate harm.

By fulfilling these limitations, Islamic law provides leniency in emergency situations to protect the welfare of the people without violating the basic principles of Islamic law.<sup>75</sup>

In its application, the judge uses a comprehensive approach by considering legal, religious, customary, and cultural aspects of the community to decide on a marriage dispensation application. This shows

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<sup>75</sup>Abdurrahman Kasdi, "Maqasyid Syari'ah Perspektif Pemikiran Imam Syatibi Dalam Kitab *Al-Muwafaqat*", Yudisia, No. 1(2014): 11  
<https://journal.iainkudus.ac.id/index.php/Yudisia/article/viewFile/693/682>

that marriage dispensation is not just an exception, but also an effort to achieve welfare and prevent harm in society.

“The legal system that regulates marriage dispensation is for children, especially girls, to get a complete education first, then so that their mentality is ready, their reproduction is ready, all components, so that they are not vulnerable. Of course, people who get married are oriented to having children later, so they prepare. If the mother is physically and mentally mature, of course her child will be of better quality. The risk of the mother and fetus dying will be small. Likewise for the continuation of the household. In reality, many children who ask for dispensation are not ready to be married, so after getting married and having children, they usually continue to file for divorce.”<sup>76</sup>

The statement emphasizes the importance of preparing children, especially girls, for marriage once they are physically and mentally ready. This is in line with the principle of *Mashlahah mursalah* which aims to avoid harm and increase public welfare. In the statement, the welfare emphasized includes ensuring better quality children, reducing the risk of maternal and fetal death, and strengthening the continuity of the household. This is in line with the objectives of Sharia to preserve offspring and souls.

"The motive is mostly because they are pregnant, then they are ready to get married, but are hindered by age. Now, children graduate from high school before they are 19 years old, so usually their social circle is already wide, they are already in a serious relationship. So if they delay marriage, it is feared that they will fall into negative things.”<sup>77</sup>

One of the things emphasized in the statement is ensuring the goodness and safety of young couples by marrying early to avoid negative consequences. This is in line with the goal of Sharia to preserve the soul and offspring. By entering into a legitimate and legally protected relationship,

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<sup>76</sup>Siti Muarofah Sa'adah, wawancara, (Lumajang, 14 Januari 2025)

<sup>77</sup>Siti Muarofah Sa'adah, wawancara, (Lumajang, 14 Januari 2025)

young couples who marry early can reduce the risk of engaging in undesirable activities.

"The first one definitely wants to get married. The second one, if She is already pregnant so that there is recognition to the child in the womb that She has a father. There are also those whose motives come from the family or parents. It is impossible for their child to be pregnant but just let it be. So there are many motives."<sup>78</sup>

As discussed earlier, Asy-Syathibi categorizes benefits into three levels, namely *dharuriyyat*, *hajiyyat*, and *tahsiniyat*. In the dialogue above, the motive for marrying to give recognition to a child can be categorized as *dharuriyyat*, because this ensures the security and legal certainty for the child. The dialogue is also in line with the goal of Sharia to preserve offspring, which is one of the five main goals of Sharia. By marrying and giving recognition to the child, the couple fulfills their moral and legal responsibilities to ensure a safe and legal life for their child.

"Yes, that was pregnancy. The girl was too young, but She was already pregnant. The same goes for the boy, he was too young. Usually, if both of them are underage, we definitely reject them. But if they are already pregnant, well, that becomes a problem. We are very, very concerned. The ones we can educate are the parents."<sup>79</sup>

The statement suggests that concerns about early pregnancy can be addressed by considering long-term interests, such as ensuring the well-being and safety of the unborn child and avoiding potential negative consequences for the young couple. This is in line with the goal of Sharia to preserve the soul and offspring.

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<sup>78</sup>Mohammad Hafizh Bula, wawancara, (Lumajang, 14 Januari 2025)

<sup>79</sup>Nur Sholehah, wawancara, (Lumajang, 13 Januari 2025)

In addition, the dialogue also emphasized the importance of educating parents as one way to overcome this problem. By educating parents, they are expected to understand the importance of better preparing their children for adult life, including marriage and pregnancy. This education also helps ensure that couples have sufficient understanding to make the right decisions.

Then, with this education, the judge can ensure that the marriage that is carried out is valid and legally protected. Thus, this is an effort to maintain religion.

“Other factors besides pregnancy are parental consent, the prospective husband's job, and recommendations from related agencies.”<sup>80</sup>

In this dialogue, parents consent and the prospective husband's job can be considered as factors that ensure the general welfare of the family. This is in line with the goal of the sharia to preserve offspring and property, which is part of the five main objectives of sharia. Preserving offspring means ensuring the continuity and well-being of future generations, while preserving property means ensuring economic stability and material security for the family. Thus, parents consent ensures that the marriage is approved and supported by the family, while the prospective husband's job ensures that the family has sufficient economic resources to meet basic needs and raise children well.

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<sup>80</sup>Masykur Rosih, wawancara, (Lumajang, 9 Januari 2025)

Recommendations from related agencies can also be seen as an effort to ensure that the marriage decision is in accordance with the public interest and does not cause harm.

“For now, there is already a PERMA on marriage dispensation. So judges who handle marriage dispensation must be guided by the PERMA. Like in Lumajang, there is already cooperation with the social services, health services, which support the PERMA. So, the PERMA already contains things that must be fulfilled. That is the government's effort to limit early marriage.”<sup>81</sup>

From this statement, it can be analyzed that the implementation of PERMA can be seen as an effort to limit early marriage by ensuring that marriage dispensation applications are processed carefully and based on comprehensive considerations, including health and psychological aspects.

This is in line with the goal of Sharia to preserve the soul and offspring. Preserving the soul in this context means ensuring that the marriage does not harm the physical or mental health of the couple, especially if the marriage involves a couple who are not physically or mentally ready. Meanwhile, preserving offspring means ensuring that the marriage can bring goodness to the children who will be born from the marriage, including ensuring that they have a stable and healthy environment in which to grow and develop.

“In the past, it was also not granted. There is a solution if it is not granted, which is to submit the origin of the child. Now, the path they take is a secret marriage. Later, there will be a legalization of the marriage. Now, there is an MoU with the government. Previously, there was none, so the judge was given the freedom to judge. The MoU does not bind the judge to

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<sup>81</sup>Siti Muarofah Sa'adah, wawancara, (Lumajang, 14 Januari 2025)

grant or reject, but gives the judge what to do if it is granted but there is no recommendation from the relevant agency.”<sup>82</sup>

From this statement, it can be seen that the decision to conduct a secret marriage and then legalize it can be seen as an effort to ensure the goodness and safety of the child conceived, as well as avoiding the possibility of negative consequences if the marriage is not officially recognized. This is in accordance with the principle of *Mashlahah mursalah*, namely preserving offspring. This includes ensuring that there is no extinction and ensuring that children are in a safe and healthy environment where they can grow and develop.

In Islam, marriage is considered a means to maintain offspring in a legitimate and honorable manner, because marriage allows for a legitimate and legally protected relationship, so that children born from the marriage can have a clear and guaranteed status.

The presence of the MoU provides flexibility for judges to assess each case based on the wider interest, without binding them to automatically grant or reject the request. In addition, the MoU with the government helps ensure that families have the economic stability needed to maintain their assets.

"If we try a woman who is already pregnant, and She is still underage, usually if that happens, there will be responsibility from the prospective husband or in other words, the one who impregnated the woman. If that is the case, they come to us to ask for a marriage dispensation. As for this marriage dispensation, whether it is granted or not, that is the judge's domain. If from the recommendation of the relevant agency, She is healthy, ready, and considered a suitable candidate of having

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<sup>82</sup>Mohammad Hafizh Bula, wawancara, (Lumajang, 14 Januari 2025)

a household, it can be granted by the judge. But if there is none, the judge may not grant it. Because the recommendation is for the prevention of early marriage."<sup>83</sup>

The dialogue revealed that the decision to grant or reject a marriage dispensation application based on the recommendation of the relevant agency can be seen as an effort to ensure that the marriage does not endanger the related parties. This is in line with the goal of Sharia to preserve the soul and offspring. Preserving the soul in this context means ensuring the health and safety of individuals, especially the mother and the child she is carrying. This includes efforts to prevent health risks that may arise during pregnancy and after childbirth, as well as ensuring that the mother has a stable physical and mental condition to care for her child.

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<sup>83</sup>Mohammad Hafizh Bula, wawancara, (Lumajang, 14 Januari 2025)



## **CHAPTER V**

### **CLOSING**

#### **A. Conclusion**

Based on this research related to how the Lumajang Religious Court judges interpret marriage dispensation with various motives, it can be concluded that marriage dispensation is an exceptional legal mechanism and can only be used in certain urgent conditions. Its existence is intended not to relax the rules on the age limit for marriage, but rather as an “emergency door” that allows for legal flexibility when the situation forces it. Therefore, the granting of dispensation must be carried out strictly, selectively and thoughtfully, so as not to become a loophole that actually weakens the protection of children and the purpose of limiting the age of marriage itself. Then, the legal system for marriage dispensation should not only focus on fulfilling the legality aspect, but also prioritize the overall readiness of children, especially in terms of education, mental health, and reproductive readiness. Hasty marriages without proper preparation risk serious problems in the future, such as early divorce and negative impacts on the children born. Therefore, it is important for the legal system to encourage the postponement of child marriage until they are fully prepared, in order to create healthy, quality and sustainable households.

In an effort to prevent marriage dispensation, providing education to parents is one example of the strategy. Judges can play an active role in providing knowledge about the negative impacts of early marriage to parents, so that they can understand the importance of postponing marriage until their children are physically and mentally ready. In addition, the Religious Court also collaborates with the Lumajang Regency government, through an MoU to reduce the number of marriage dispensations. This MoU allows for better coordination between legal institutions and local governments in dealing with cases of early marriage, so as to minimize the risks faced by children and improve their quality of life.

Then based on the theory of *mashlahah mursalah* Asy-Syathibi, that the efforts made by judges in handling marriage dispensation cases have achieved all of main elements of human welfare, namely maintaining soul, mind, descendants, and property except maintaining religion. From the aspect of maintaining the soul means ensuring the safety and health of individuals, especially the mother and the child she is carrying. Furthermore, from the aspect of maintaining reason, education to the parties also helps ensure that the couple has sufficient understanding to make the right decision. Then, by ensuring that the marriage is carried out at the right time is an effort to fulfill the aspect of maintaining descendants. And finally, cooperation with the local government helps ensure that families have the economic stability needed to maintain their property. This has fulfilled the aspect of maintaining property.

**B. Suggestion**

1. For elements of the Lumajang Regency Government to be able to develop cooperation with religious institutions or religious organizations to increase public awareness about the importance of delaying marriage until the right age. In addition, conducting intensive counseling and socialization about early marriage is also important. This can be done through cooperation with educational institutions and community organizations. Then it can also develop education programs and skills training for teenagers, so that they have a better alternative than marrying at an early age.
2. For further researchers, it is hoped that they can conduct more in-depth research on early marriage, both from the legal aspect and implementation in the field.

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Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan

## APPENDIXES

### A. Documentation of Interview



Picture 1 Interview with Mrs. Nur Sholehah Judge



Picture 2 Interview with Mr. Masykur Rosih Judge





Picture 3 Interview with Mrs. Siti Mu'arofah Judge



Picture 4 Interview with Mr. Hafizh Bula Judge

## B. Research Letter



KEMENTERIAN AGAMA REPUBLIK INDONESIA  
UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG  
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Nomor : B- 2747 /F-Sy-1/TL-01/07/2024  
Hal : **Pra-Penelitian** Malang, 22 Agustus 2024

Kepada Yth.  
Kepala Pengadilan Agama Kelas I Lumajang  
Jalan Soekarno Hatta No 11, Sukodono, Biting Dua, Kutorenon, Kec. Lumajang,  
Kabupaten Lumajang

*Assalamualaikum wa Rahmatullah wa Barakatuh*

Dalam rangka menyelesaikan tugas akhir/skripsi mahasiswa kami:

Nama : Aufa Isri Zuraida  
NIM : 210201110035  
Fakultas : Syariah  
Program Studi : Hukum Keluarga Islam

mohon diperkenankan untuk mengadakan *Pro Research* dengan judul :  
**Pertimbangan Hakim Dalam Penerapan Syarat Hafal Rukun Islam Pada Perkara Dispensasi Kawin di Pengadilan Agama Lumajang**, pada instansi yang Bapak/Ibu Pimpin.

Demikian, atas perhatian dan perkenan Bapak/Ibu disampaikan terima kasih.

*Wassalamualaikum wa Rahmatullah wa Barakatuh*

Scan Untuk Verifikasi





*[Signature]*  
Amri Mubandri

Tembusan :

1. Dekan
2. Ketua Prodi Hukum Keluarga Islam
3. Kabag. Tata Usaha



Picture 5 Pre-Research letter

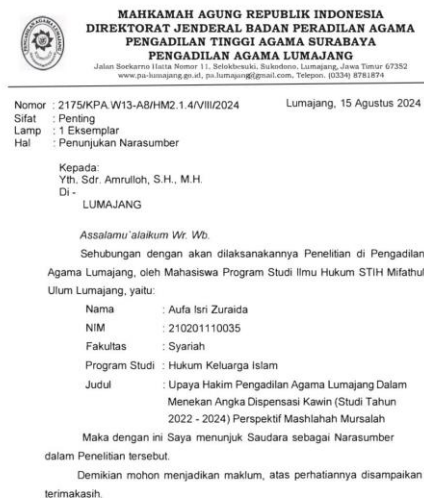


Assalamualaikum Wr. Wb.



Hidayat HS

Picture 6 Research reply letter Lumajang Religious Court



Assalamu'alaikum Wr. Wb.



Hidayat HS

Picture 7 Letter of appointment of informants

### **C. List of Interview Questions**

1. How do you interpret the deep essence of marriage dispensation under our legal system?
2. In your experience, what are the motives that are often put forward by applicants in marriage dispensation cases?
3. Are there any motives that you think are more difficult to consider or decide on than others? Explain your reasons!
4. Do you think there has been a changing trend in the motives for marriage dispensation applications over the last five years? If so, what are the contributing factors?
5. What are the main values or principles that you hold in deciding marriage dispensation cases?
6. Have you ever handled a marriage dispensation case where the female party was already pregnant?
7. Have you ever not granted a marriage dispensation case in which the girl was already pregnant?
8. How does the community respond to cases that are not granted?
9. Do you think there are other factors that judges should consider other than the condition of pregnancy in determining whether or not dispensation for marriage can be granted? What are these factors?
10. Do you have any suggestions or recommendations for policy or procedural changes in the handling of marriage dispensation cases in Indonesia, particularly those involving women who are already pregnant?

## CURRICULUM VITAE



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