
MAQASHID SYARI'AH ANALYSIS OF PREGNANT WOMEN'S MARRIAGE: A REVIEW OF INDIVIDUAL AND COMMUNITY WELFARE

Deris Arista Saputra

Universiti Sultan Azlan Shah, Perak, Malaysia

Email: derisaristasaputra@gmail.com

KEYWORDS

Maqashid Shari'ah;
marriage dispensation;
Pregnancy out of
wedlock

ABSTRACT

The increasingly widespread phenomenon of promiscuity shows that there is a decline in morals and moral values among teenagers which has an impact on the problem of adultery and increasing cases of pregnancy outside of marriage. Even though in the Islamic view, marriage is one solution to avoid adultery, if adultery is committed then this is a serious violation of religious teachings. This research aims to find out the legal and ethical considerations in pregnancy out of wedlock and to find out Maqasid Syari'ah considerations in determining marriage dispensations. The research method used is library research, through data from sources relevant to the research such as books and journals. discusses the Maqashid Syari'ah analysis regarding the marriage of pregnant women. Descriptive analysis was carried out to identify and describe various aspects, regulations, and norms related to research. The results of the research show that legal and ethical considerations in the dispensation of marriage for pregnancy out of wedlock are important to maintain the benefit of the individual and society. Marriage dispensations must carefully consider marriage age limits, individual rights, protection of unborn children, and social impacts. Maqasid Syari'ah principles such as protection of religion, life, lineage, property, and honor are important guidelines in maintaining a balance between religious values and social norms in determining marriage dispensations due to pregnancy out of wedlock. The government's policy in setting the age limit for marriage reflects Islamic religious values and efforts to maintain morality and social norms in society.

INTRODUCTION

Marriage in Islam is considered a very strong bond, not only as an official contract between two individuals but also as a means of fulfilling religious obligations and worshipping Allah. In the Islamic view, marriage is not just a social agreement, but a deep concept with the main aim of building a household based on Islam. In this case, the relationship between husband and wife is seen as a relationship that must be based on respect and mutual respect. Marriage is also considered a vessel for channeling natural biological desires and achieving psychic and emotional happiness per human nature, which includes the needs of physical and

spiritual life. Islam also stresses the importance of marriage in forming an Islamic family and aims to continue a clear offspring. The purity of offspring is highly preserved in Islam, and marriage is a legal path to continue the lineage (Nordin, 2012).

Mating in the context of humans and animals has fundamental differences that reflect the level of civilization and moral consciousness. In animals, mating takes place without any binding rules and is driven solely by the need for lust and basic lust. Animals have no ethics or morals governing marital relationships. In contrast, in marriage for human beings, some rules and ethics reflect human values and a more moral level of civilization. Human marriage is a more structured form of bonding, involving physical relationships and deep emotional, social, and spiritual involvement.

In the teachings of Islam to build family life and society there are two main goals, namely caring for the family to grow healthy and creating a clean place to raise generations who adhere to religious principles. Islam forbids practices such as adultery, concubines, and taking people's wives in ways that are not halal, as such acts contradict Islam's goal of creating a holy family as well as a morally strong generation. As explained in the word of Allah Almighty in Q.S. Al-Isra'verse 32.

وَلَا تَقْرَبُوا الزَّوْجَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا ۝ ٣٢

It means: "And do not approach adultery. Verily it is a heinous act and the worst way."

This verse, found in Surah Al-Isra, verse 32, is a rebuke from Allah in the Qur'an to abstain from adultery. This verse emphasizes that adultery is a very heinous act and a bad way. In other words, Islam strictly forbids adultery and affirms that it damages the morals and honor of individuals and society. This verse views adultery as an act that hurts individuals and society. Therefore, it warns Muslims to stay away from it and follow a good and moral path.

But in reality today, the phenomenon of promiscuity that occurs in adolescents is increasingly rife, which shows the beginning of the fading of morals and moral values among some adolescents. This phenomenon can be observed through the increase in promiscuous relations that often result in acts of adultery, even pregnancy outside the bonds of marriage. This phenomenon illustrates a shift in the values that should be held by the younger generation in public life and a decrease in compliance with the rules that should be upheld. This development raises serious problems related to pregnancy out of wedlock, which in the past was still considered a tabu.

This shift in values is mainly reflected in behavior that violates religious norms, often triggered by uncontrolled lust. In this context, promiscuity, the practice of free sex, indulgence, and behavior that violates religious ethics are increasingly rampant, especially among the younger generation. These immoral acts are often the consequence of a misconception of the concept of love. The consequences of actions that contradict these moral norms not only affect individuals but also affect society at large.

Based on data compiled from BKKBN and published in the DPR RI news (2023), cases of pregnant marriage in Indonesia for the East Java region recorded 15,212 requests for marriage dispensation, of which 80 were related to cases of pregnancy out of wedlock, while

at the Semarang High Court of Religion, Central Java, there were 11,392 cases of marriage dispensation in 2022, mostly caused by similar cases. Similar data was also found in the Lampung area which amounted to 649 cases. In the city of Bima, NTB 276 cases occurred. This shows that the phenomenon of pregnant marriage has become a comprehensive problem in the national scope that requires serious action to safeguard the future of children and adolescents in Indonesia.

In society, pregnancy out of wedlock is often considered a severe disgrace, both by the family and society at large. Women who experience pregnancies outside the bonds of wedlock often have to face negative social stigma. This stigma not only affects the individuals involved but also spreads to their families and social environments. This condition forces parents to look for solutions that can cover the disgrace experienced by their daughters. One solution that is usually chosen is to marry off a child who is pregnant out of wedlock, even if the age is not sufficient to marry legally according to the law.

In the regulation of Law of the Republic of Indonesia, Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage brought major changes in marriage regulations in Indonesia. These changes, particularly regarding the age limit for marriage and the transitional rules of marriage dispensation, point to developments in Indonesian family law that have been in place for more than four decades. In addition to the Marriage Law, the Compilation of Islamic Law (KHI) also plays an important role in regulating marriage in the context of Islamic law. KHI integrates aspects of Islamic law related to marriage and family, providing a comprehensive legal foundation for the Muslim community in Indonesia.

The Rules of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974, provide a legal basis for marriage dispensation in cases of pregnancy out of wedlock. Although the aim was to avoid the possibility of greater harm due to promiscuity, this rule did not always have the support of all levels of society. Some community groups see the marriage dispensation as a sign that child marriage has legitimacy from the state.

In addition, in the context of Islamic Law (KHI), some rules allow the marriage of pregnant women outside the marriage bond without having to delay until the birth of their child. However, there are concerns that Article 53 of the IHL could be abused, such as in situations where two people who love each other are forced to commit adultery because of the resistance of both parents. This creates an ethical dilemma about whether Article 53 of the IHL should be considered a legitimate way out or as a legalization of adultery.

Conditions in which many cases of pregnancy out of wedlock have changed the perception of marriage in society. Today, "pregnant marriage" is no longer just a matter of whether or not marriage is legal, but also carries social implications. Marriages that occur after pregnancy often raise questions about responsibility, social stigma, and legal repercussions. Thus, this phenomenon reflects the changing views of society towards marriage and highlights how complicated the social and legal issues involved in the change are (Azhari et al., 2022).

The rule of jurisprudence known as the theory of *maslahah mursalah* plays an important role in explaining Islamic law, especially in situations where the Qur'an and Hadith do not

provide clear guidance on a matter. This theory allows scholars to establish legal provisions based on considerations of goodness and rejection of damage in people's lives (Rifai, 1995). Maslahah, which is the welfare and interests of the Ummah, is the main foundation in the decision-making process of Islamic law (Sitorus, 2020). However, in this context, it is important to note that the theory of maslahah mursalah should also always take into account the principles of Maqasid Shari'ah. Maqasid Shari'ah, or the purpose of Islamic Shari'ah, is an important concept that encompasses a broader understanding of Islamic values, ethics, and objectives in safeguarding the well-being of mankind.

The establishment of marriage dispensation in Islamic law cannot be separated from the principles of Maqasid Shari'ah which pursues benefit and prevents damage to human life. The concept of Maqasid Shari'ah provides a relevant basis for assessing age limits in marriage (Sitorus, 2020). As stated by Al-Syatibi, five main principles need to be maintained in Islam, including safeguarding offspring, religion, if, property, and reason (Auda, 2015). In the context of marriage, age restriction is important because lack of biological maturity can endanger the health of the mother and child, even resulting in abnormal childbirth. Therefore, the determination of the minimum age in marriage not only reflects attention to the benefit of the individual but also safeguards the benefit of the family and offspring, in line with the principles of Maqasid Shari'ah.

All the issues and tensions in this issue make it an important and interesting research subject to explore further. The purpose of this study is to find out the legal and ethical considerations in marriage dispensation due to pregnancy outside marriage and to find out the consideration of Maqasid Shari'ah in determining marriage dispensation due to pregnancy outside marriage.

The purpose and benefit of this study is to analyze the relationship between the marriage of pregnant women and the concept of Maqashid Shari'ah, which involves understanding the principles of Islamic law and the related objectives of Shari'ah. Assess the impact of a pregnant woman's marriage on the well-being of individuals, both psychologically and socially, taking into account the principles of Shari'ah in this regard.

METHOD RESEARCH

The research method used in this study is *library research*. This method is carried out by obtaining data from sources relevant to research, such as books and journals that discuss the analysis of Maqashid Shari'ah on the marriage of women in a pregnant state. By combining literature research methods with a review of the principles of Maqashid Shari'ah, an analysis of the critical aspects that influence policy and legal considerations related to marriage in such situations will be obtained, as well as their impact on individuals and society as a whole.

Descriptive analysis is conducted to identify and describe various aspects, regulations, and norms related to the marriage of women who are pregnant outside the bonds of marriage, including legal, ethical, and related social and moral considerations. The purpose of applying this descriptive analysis is to provide a comprehensive overview of the issues that are the focus of research, as well as to gain a deeper understanding of how Maqashid Shari'ah influences the assessment of marriage in the context of extramarital pregnancy.

RESULTS AND DISCUSSION

Legal and Ethical Considerations in the Dispensation of Marriage Due to Pregnancy Outside of Wedlock

Marriage, according to the prevailing marriage law, is the establishment of an outward bond between a man and a woman in the roles of husband and wife, building an eternal family, based on faith in God Almighty (Mujib, 2001). From this definition, marriage is not just an ordinary bond, but a commitment to form a lasting life. Therefore, marriage requires emotional, physical, financial, and firm determination to go through the journey of life together with a life partner or life partner.

However, this readiness is often not only determined by a person's age. In Islam, there is no explicit Qur'anic provision for age restrictions on marriage. Instead, concepts such as 'aqil, baligh, mumayyiz, and rushd are used to describe a person's maturity (Zulfiani, 2017). These concepts do not contain a specific age number, so the determination of the age limit for marriage is the responsibility of the fuqaha and other Muslim scholars, who consider physiological, sociological, and geographical factors of the surrounding community.

In the context of marriage, initially, age limits are based on the biological maturity of both men and women. But, when viewed from today's perspective, it can be considered to reflect gender discrimination and violations of women's mental and physical health. The progress of the times has made women encouraged in terms of achieving achievements in various fields, including education and career. Women have equal rights with men, such as education rights, civil rights, economy, social rights, and various constitutional rights as citizens.

Law No. 16 of 2019 provides changes in the age limit for marriage to ensure that those who are getting married have reached sufficient maturity of body and soul. In addition, this is also expected to reduce divorce rates, control births, reduce the risk of maternal and infant deaths, and fulfill children's rights to obtain proper development and growth.

Marriage under the age limit, with its provisions contained in the law is a deviation from the existing marriage regulations and is known as early marriage. The high demand for marriage dispensation shows that public understanding of the marriage age limit regulation is still relatively low (Halilah, 2022). This age limit is implemented to ensure that marriage is only carried out by those who are mature both mentally and physically, and to protect the health of prospective husbands and wives, as well as their offspring.

However, in some societies, marriage is often seen as an option that can be used as an alternative to overcome social problems, such as marrying off children who have become pregnant out of wedlock (Kohno et al., 2020). This is often done to avoid embarrassment and stigma experienced by the woman's family. Therefore, the granting of marriage dispensation is considered a measure aimed at protecting pregnant women and ensuring the well-being of the unborn child.

The granting of marriage dispensation only applies to certain issues and is not intended to replace or change the age of marriage stipulated by the Marriage Law or the Child Protection Law. This marriage dispensation is given to protect the legal rights of children who are still in the womb and prevent remarriage after the birth of the child.

A study conducted by Mansari & Rizkal (2021) revealed that the reason parents marry off their children who are already pregnant out of wedlock is fear of spreading family disgrace,

although this is still not by the requirements of the marriage law, especially for the age limit for marriage. The phenomenon of pregnancy out of wedlock is increasingly frequent, and this can be caused by the weakening of ethical and moral norms in society, especially among adolescents whose religious awareness is not yet stable and who are still in puberty (Ahmad, 2015).

The complexity of the issue of marriage dispensation due to pregnancy out of wedlock is not only due to low public awareness of the risks of early marriage but also influenced by existing legal rules. In line with what was stated by Soekanto (2013) about the theory of legal effectiveness, the effectiveness of law enforcement depends on four main indicators, namely law / legal norms, law enforcement, facilities, and facilities, and the community.

First, the law must have the capacity to provide justice and ensure legal order, both explicitly and implicitly. Second, law enforcement, such as police officers and judicial officials, have an important role in properly applying the law by their duties and authorities. Third, adequate facilities and facilities, such as skilled human resources and adequate equipment, are needed for effective law enforcement. Lastly, society also plays an important role in awareness and compliance with the law.

In formulating the decision of marriage dispensation, it is necessary to use legal considerations known as *legal reasoning*. The material legal sources of the Religious Courts include the Marriage Law, Islamic Law, jurisprudence, the KHI (Compilation of Islamic Law), relevant positive law, as well as various books of fiqh. When deciding on marriage dispensation, it is necessary to refer to the principles of Maqasid Shari'ah, which emphasizes the importance of avoiding harm rather than seeking benefits.

Article 53 of the IHL permits marriage in the event of pregnancy that occurs before the marriage is performed. In this provision, a woman who has become pregnant can be legally legal after marrying the man who impregnated her. The marriage process can be done when the woman is still pregnant, without the need to wait for the birth of the child she is carrying. This provision provides a legal solution for cases of pregnancy out of wedlock, which makes the birth of a child from the marriage have a clear legal status as the legal child of the couple.

In addition, it is also necessary to consider related laws, such as Law No. 23 of 2004 concerning the Elimination of Domestic Violence, and Law No. 35 of 2014 concerning Child Protection. Considerations of Islamic law must also take into account the principles of benefit and prosperity by referring to the rules of the origin of fiqh (Khallaf, 1977). One of the rules that is often used is.

إذاتعارض مفسدتان روعي أعظمهما ضررا بار تكاب أحفهما

It means: "If there are two contradictory malasadas, then what should be left behind is the mafsadat whose mudharat is greater by performing a lighter mudharat". As for other rules, they are:

درأ المفاسد مقدم على جلب المصالح

It means: "Rejecting damage takes precedence over attracting benefit".

In the context of marriage dispensation, this consideration is important because it includes protecting the rights of the unborn child and preventing remarriage that could result in greater damage in the future.

The consideration that must also take precedence is community justice. Marriage dispensation is often considered an alternative solution to social problems, such as maintaining the good name of the family. Therefore, in making dispensation decisions, it is necessary to consider the impact on society and maintain a balance between individual rights and the interests of society.

Taking these aspects into account, marriage dispensation due to pregnancy out of wedlock can be decided carefully and by applicable legal and ethical principles. This is a step taken carefully to protect individual rights, especially the rights of unborn children while minimizing the potential for greater risk and damage in the future.

Considerations of Maqasid Shari'ah in the Determination of Marriage Dispensation Due to Pregnancy Outside of Wedlock

Maqasid Shari'ah to establish law in Islam, has an important role in the study of Islamic law. Experts in the field of legal theory see it as a concept that needs to be understood by those who conduct in-depth legal analysis (ijtihad). Maqasid Shari'ah aims to realize good avoid evil, pursue benefits, and avoid madharat. The concept equivalent to Maqasid Shari'ah is *maslahat* because Islamic law must be based on *maslahat* (Ash-Shatibi, n.d.). The provisions of Islamic law by Allah SWT as shari'a, are not made casually, but with the aim of human benefit in the world and the hereafter (Busyro, 2019).

The Islamic Shari'ah as a whole is fair and merciful, and there is a silver lining. Any regulation that does not follow the principles of fairness, mercy, benefit, and wisdom is not part of the Shari'a. However, in the face of social changes in the modern era, reform in Islamic law is still a challenge (Abdullah, 2014). One issue that arises is marriage with the motive of avoiding adultery or because of pregnancy out of wedlock, which can result in substantial deviations in the institution of marriage itself.

Marriages based solely on the motive of avoiding adultery or because pregnancy can lead to deviation can damage the meaning of marriage itself and the sacred nature and strength of the marriage bond (*mistaken ghazal*). Such marriages may not have a solid foundation and may deviate due to hasty decision-making, without considering how to build a happy home by religious law.

The scholars agree that Islamic law is established to achieve and maintain human welfare, personally or collectively. The goals of the community to be achieved include all aspects of human well-being, focusing on physical peace and psychological well-being. Thus, *maslahat* in the context of Islamic law refers to the effort to obtain benefits and prevent damage (Ash-Shatibi, n.d.).

In facing this challenge, Islamic thinkers need to devise methods that are firmly rooted in Islam to obtain legal results that continue to develop and are comprehensive by Islamic values. In the context of marriage dispensation due to pregnancy out of wedlock, Maqasid Shari'ah can be used as a guideline by considering the following aspects of benefit:

Aspects of Maintaining Religion (Hifz Al-Din)

The consideration of the dispensation of pregnancy out of wedlock by focusing on the Maqasid Shari'ah, especially the protection of religion (*hifz al-din*), became the main basis in the decision-making process. Amirah & Eva (2023) explain that Maqashid Shari'ah in marriage dispensation is to avoid adultery which falls under religious observance. The first

thing on which it is based is to maintain the integrity of Islamic law, with Islam strictly forbidding adultery. Zina is an act that is viewed very badly and should be avoided. Therefore, in the case of an application for dispensation on the grounds of pregnancy outside the bonds of marriage, one must understand that the act constitutes adultery, which has the potential to cause damage to morals and religious norms in society. Countries with a large Muslim population such as Indonesia need to maintain religious norms and customs to maintain order and morals.

Moreover, taking into account that the bride and groom do not have a mahram relationship that forbids marriage, they have reached maturity both physically and psychically. One of the requirements of marriage in Islam is that the bride and groom must have physically and spiritually reached puberty. Thus, the granting of dispensation permission to marry under the age limit set by the Marriage Law is not proportional to the benefits that can arise if Sharia regulations are not followed.

In this legal analysis, the main objective is to safeguard religious society by maintaining and protecting Islamic law from deviations. Although sometimes the granting of marriage dispensation under the age limit of the Marriage Law is contrary to positive law, the harm that can occur if the marriage is not performed by the Shari'a is much greater. Therefore, the protection of religion is the main focus in making decisions regarding the dispensation of pregnancy out of wedlock.

Life Protection Aspects (Hifz Al-Nafs)

Maqasid Shari'ah is an important foundation in determining the decision on the dispensation of pregnancy out of wedlock, with attention to the protection of life (Hifz Al-Nafs). As noted in various written sources, early marriage can have serious risks to life security, especially to the conceived baby and the mother. In the context of child protection, Law No. 23 of 2002 concerning Child Protection expressly states that children must obtain protection from everything in their development that can have a negative impact, in terms of physical and psychological. And it is explained, that this legislation will provide criminal sanctions for violators. Therefore, the child protection law is in line with the purpose of the marriage age rule stated in Article 7 of the Marriage Law, namely to maintain the safety and health of wives, husbands, and children affected by lack of physical and psychological maturity.

The determination of the marriage dispensation decision does not have to ignore the general rules that have been in force. Marriage at an early age has great potential for the safety of children and the safety of women. In this case, the explanation given in Article 7 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage is a wise step. This article reflects alignment with the Law on the Protection of Women and Children which aims to protect individuals, especially women and children, from the risks that may arise from early marriage.

Based on the Maqasid Shari'ah, especially in the aspect of life protection (Hifz Al-Nafs), the safety of women and children is the top priority in determining the decision of marriage dispensation. Early marriage without careful consideration can hurt the mental and physical health of women who are still immature. Therefore, the provision of the age of marriage based on broader laws such as Child Protection and Women's Protection is important in ensuring

that dispensation decisions are taken with the safety and well-being of individuals in mind, which is in line with the objectives of the Maqasid Shari'ah in safeguarding the soul and minimizing the risk of harm.

Life Protection Aspects (Hifz Al-Nasl)

Maqasid Shari'ah, in the context of determining the decision on the dispensation of pregnancy out of wedlock, also takes the aspect of protecting the life of offspring (Hifz Al-Nasl) seriously. This principle emphasizes the importance of safeguarding offspring and families from all forms of defects and weaknesses and provides a strong foundation for families with wise doctrinal principles. Islam erases the wrong and destructive ways of dealing with this problem.

Nasab or descent is the main foundation in family relationships and becomes the basis that supports important elements such as creed, morals, and sharia among family members. Islam pays great attention to protecting this nasab from mixing or humiliation that can damage the glory of the nasab (Ash-Shatibi, n.d.). Nasab which has been translated and listed in KBBI means family relationship or as a descendant (KBBI, 2021). Nasab, which is termologically interpreted as a familial relationship from blood relations, must come from a legal marriage, not from a facid marriage or a subhat relationship (Irfan, 2012).

To ensure the continuity of offspring, Islam strictly forbids any kind of sex outside marriage or the practice of adultery and strongly encourages the institution of marriage as a means of bearing legitimate offspring and maintaining clear familial relationships. Thus, the main objective in the application of Islamic teachings is to ensure the protection and continuity of offspring (nasab), which becomes a solid basis for establishing family life that binds individuals through blood ties.

The customs and culture of Indonesian society, which still adhere to Eastern moral values, are also very concerned about social norms. In this context, pregnancy out of wedlock is often perceived as deviating from these norms, which makes applications for marriage dispensation often triggered by pregnancies out of wedlock. Where parents move quickly to marry off their pregnant children, to conform to cultural norms and religious beliefs embraced.

Article 42 of the Marriage Law No. 16 of 2019 confirms that recognized children are descendants born from legal marriages, including those born in conditions of pregnant women. This is also in line with the provisions in Article 53 of the IHL which states that marriage when a pregnant woman becomes a valid marriage if the process is carried out together with the man who is the cause of her pregnancy. Even if pregnant out of wedlock, if there is a marriage taking place, the child born from that marriage is considered a legitimate child according to law. Thus, the teachings of Islam provide legal solutions by the Maqasid Shari'ah to protect the nasab and recognize the child born from such a situation as a legitimate child.

Property Protection Aspects (Hifz Al-Mal)

Maqasid Shari'ah has an important role in determining the decision of dispensation of pregnancy out of wedlock by considering aspects of property protection (Hifz Al-Mal). Maqasid Shari'ah makes the protection of property an important goal, where every individual has the right to own wealth, and stealing it from others is prohibited. In the context of marital dispensation for pregnancy out of wedlock, property protection becomes relevant when a child

applying for marriage dispensation has given birth to a child in the absence of the father. In such a situation, the child's right to be the heir of the testator, i.e. his parents, may be threatened due to the absence of a marriage bond that recognizes the relationship. Therefore, by granting the marriage dispensation in this case, the child's right of inheritance to his parents' property can be preserved.

To protect this property, the conclusion that can be drawn is that the main objective is to protect and preserve property, by ensuring that every child born has guaranteed inheritance rights, even in situations outside of legal marriage. Thus, this act contributes to the preservation of property and reminds society of the importance of guaranteeing inheritance rights to every individual born, so that the property can be bequeathed to their children fairly by the principles of sharia upheld in Islam.

Honorary Aspect (Hifz Al-Ird)

From the Maqasid Shari'ah, plays an important role in determining the decision of the dispensation of pregnancy out of wedlock, especially in the context of the honorary aspect (Hifz Al-Ird). Islam has a strong foundation in safeguarding human dignity and recognizing individual human rights.

This protection is reflected in the firmness of the punishment given against offenses such as adultery, which can damage one's honor. Islam also protects by forbidding against bad deeds such as ghibah (gossiping), slander (pitting), denunciation with harsh words, and other acts involving insults to human honor and dignity. One way to provide protection is to defame and give a stern warning to violators with the threat of terrible torture on the doomsday (Husain, 2013).

The consideration of Hifz Al-Ird (protection of honor) becomes particularly relevant in the context of marriage dispensation of pregnancy outside the bonds of marriage. The decision of the dispensation must take into account potential violations of the honor of the bride and groom who are already pregnant, as well as threats to the honor of individuals, families, and the surrounding community. Problems like this can trigger slander, and anxiety in society, and have a negative impact related to the social side and community life. If constantly events of this kind can threaten the integrity of honor, both individually and within social norms.

In this context, it is important to connect with Surah Al-Isra' verse 32, which forbids adultery. This verse affirms the importance of maintaining honor, and transgressions such as adultery, with all its consequences, are acquired sins and can defame the honor of the offender and threaten the honor of social norms in society. No religion or civilization overtly legalizes adultery. Therefore, this principle underlines that acts such as adultery are processes that can threaten the honor, of both the individuals involved and the social values upheld in society.

In resolving the issue of marriage dispensation due to pregnancy outside marriage, the legal arguments outlined and the underlying considerations show that this step aims to avoid potential negative effects or damage that might occur if the marriage does not occur. The efforts made in this regard have significant positive consequences, namely maintaining the honor of all parties involved in the implementation of the marriage.

This problem implies that there is a misunderstanding in society about age as an obstacle to marriage because generally requests for marriage dispensation in religious courts are often granted. However, in the context of *legal culture*, the author notes the lack of considerations

that support the fulfillment of the sense of justice in society sociologically, juridically, and philosophically. Several views can be a guide to determine decisions in making decisions regarding the granting of marriage dispensation, such as several theories about justice, theories about the sociology of law, theories about the freedom of judges, and theories about benefits (maslahah).

Regarding pregnancy out of wedlock that asks for marital dispensation, this has an influence on society at large to provide a deterrent effect, especially for potential adulterers in the future. In addition, it also provides an opportunity to educate the public about the risks and consequences that can occur when someone marries while pregnant. This education can create fear or reluctance to imitate the practice of marriage under similar conditions.

The provision of the age of marriage derived from government regulations through Law No. 16 of 2019 does not contradict Islamic law. On the contrary, this policy is in line with the objectives of Islamic sharia (Maqasid Shari'ah) in safeguarding religion, soul, offspring, property, and honor. Therefore, the dispensation of marriage due to pregnancy out of wedlock, taking into account aspects such as the best interests of the child and the principles of Maqasid Shari'ah, is a wise step to safeguard moral values and honor in society and prevent potential mafsadat that can damage social order.

CONCLUSION

Legal and ethical considerations in marriage dispensation due to pregnancy out of wedlock play an important role in maintaining the benefit of individuals and society. Marriage, as a bond based on the One True Godhead, requires a careful understanding of the age limit of marriage, while considering individual rights, the protection of the unborn child, and its social impact. Marriage dispensations should be taken with care, referring to legal and ethical principles, to minimize the potential for greater risk and damage in the future.

The principles of Maqasid Shari'ah, including the protection of religion, soul, descent, property, and honor, serve as the main guide for maintaining a balance between religious values and social norms in society. In this context, the policy in line with Maqasid Shari'ah is the establishment of the age limit for marriage by the government. This approach not only reflects Islamic religious values but also aims to maintain morality and strong social norms in society.

REFERENCES

- Abdullah, M. A. (2014). Religion, science, and culture: An integrated, interconnected paradigm of science. *Al-Jami'ah: Journal of Islamic Studies*, 52(1), 175–203.
- Ahmad, B. (2015). *Hukum Perkawinan Umat Islam di Indonesia*. Lampung Publishing.
- Amirah, N., & Eva, Y. (2023). The Judge's Refusal of The Application for Marriage Dispensation. *Kawanua International Journal of Multicultural Studies*, 4(1), 69–74.
- Asy-Syatibi, A. I. (n.d.). *Al Muwafaqot fi ushul Al-Ahkam* (2nd ed.). Dar Al-Fikr.
- Auda, J. (2015). *Membumikan Hukum Islam Melalui Maqasid Syariah*. Mizan Media Utama.
- Azhari, D., Sugitanata, A., & Aminah, S. (2022). Trend Ajakan Nikah Muda: Antara Hukum Agama dan Hukum Positif. *The Indonesian Journal of Islamic Law and Civil Law*, 3(1), 1–17.

- Busyro. (2019). *Maqashid Al-Syariah: Pengetahuan Mendasar Memahami Mashlahah*. Kencana Prenadamedia Group.
- DPR RI. (2023). *Kasus Anak Hamil di Luar Nikah Sudah Darurat*. Dewan Perwakilan Rakyat Republik Indonesia. <https://www.dpr.go.id/berita/detail/id/43062/t/Kurniasih%3A+Kasus+Anak+Hamil+di+Luar+Nikah+Sudah+Darurat>
- Halilah, S. (2022). Pertimbangan hakim dalam memutuskan pemberian izin pengajuan dispensasi pernikahan di bawah umur dan efek terhadap kelangsungan dan ketentraman kehidupan keluarga di masyarakat (studi kasus di pengadilan agama kuala tungkal). *Jurnal Ilmu Manajemen Terapan*, 4(2), 299–324.
- Husain, A. A.-M. (2013). *Maqashid Syariah*. Amzah.
- Irfan, N. (2012). *Nasab dan Status Anak dalam Hukum Islam*. Amzah.
- KBBI. (2021). *Kata Nasab di Kamus Besar Bahasa Indonesia*. KBBI (Kamus Besar Bahasa Indonesia). <https://kbbi.web.id/nasab>
- Khallaf, A. W. (1977). *Ilmu Ushul al-Fiqh*. Graha Media.
- Kohno, A., Techasrivichien, T., Suguimoto, S. P., Dahlui, M., Nik Farid, N. D., & Nakayama, T. (2020). Investigation of the key factors that influence the girls to enter into child marriage: A meta-synthesis of qualitative evidence. *PloS One*, 15(7), e0235959.
- Mansari, M., & Rizkal, R. (2021). Peranan Hakim dalam Upaya Pencegahan Perkawinan Anak: Antara Kemaslahatandan Kemudharatan. *El-USRAH: Jurnal Hukum Keluarga*, 4(2), 328–356.
- Mujib, A. (2001). *Kaidah-kaidah Ilmu Fiqih*. Kalam Mulia.
- Nordin, M. M. (2012). An Islamic perspective of assisted reproductive technologies. *Bangladesh Journal of Medical Science*, 11(4), 252.
- Rifai, M. (1995). *Ushul Fiqh*. Al Ma'arif.
- Sitorus, I. R. (2020). Usia Perkawinan dalam UU No 16 Tahun 2019 Perspektif Masalah Mursalah. *Nuansa: Jurnal Studi Islam Dan Kemasyarakatan*, 13(2), 190–199.
- Soekanto, S. (2013). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Rajawali Press.
- Zulfiani, Z. (2017). Kajian Hukum terhadap Perkawinan Anak di Bawah Umur Menurut Undang-undang Nomor 1 Tahun 1974. *Jurnal Hukum Samudra Keadilan*, 12(2), 211–222.

Copyright holders:

Deris Arista Saputra (2023)

First publication right:

JoSS - Journal of Social Science



This article is licensed under a Creative Commons Attribution-ShareAlike 4.0 International