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Marriage Dispensation in The Shadow of Coercion and Exploitation Based on Maqasid Al-Shari'ah

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Abstract. *Applications for marriage dispensation involving girls require an examination capable of ensuring that consent is given freely and is not shaped by family pressure, economic dependence, pregnancy, abuse of position, or the risk of exploitation. This study aims to analyze the weaknesses in examining girls' consent and formulate a model for assessing free consent based on maqasid al-shari'ah. This research employs a normative legal method using statutory, conceptual, and Islamic law approaches, supported by qualitative analysis through grammatical, systematic, and teleological interpretation. The findings demonstrate that Supreme Court Regulation Number 5 of 2019 has not established uniform operational stages and indicators for assessing the freedom of a child's consent. A statement of agreement does not prove free will when the child does not understand the consequences of marriage or has no genuine opportunity to refuse. Pregnancy cannot automatically justify the granting of a marriage dispensation. The principles of karamah al-insaniyyah, rida, ikrah, and the protection of life, intellect, lineage, property, and dignity provide the foundation for formulating the assessment model. The model includes private examination, provision of information, independent assistance, a reflection period, and an assessment of indicators of pressure and exploitation. Judges must explain the process through which the child's will was formed in the marriage dispensation ruling.*

Keywords: *Child Exploitation; Free Consent; Maqasid al-Shari'ah; Marriage Dispensation.*

1. Introduction

Indonesia, as a state governed by law, places respect for human dignity and the protection of children within the responsibilities of the state. Article 1 paragraph

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(3) of the 1945 Constitution of the Republic of Indonesia affirms that the administration of the state must be based on law. Article 28B paragraph (2) guarantees every child the right to survival, growth, development, and protection from violence and discrimination. Article 28D paragraph (1) also guarantees recognition, protection, and fair legal certainty for every person. These constitutional foundations require marriage law to safeguard children's safety, health, education, and freedom to determine their future.¹ Legal supervision of marriages involving girls must prevent marriage from being used to serve the interests of the family, the prospective husband, or other parties through coercion, abuse of vulnerability, economic inducements, or forms of control that may lead to exploitation.²

Marriage is a physical and spiritual bond that produces religious, civil, social, and familial consequences. It entails long-term responsibilities relating to sexual relations, financial support, household management, pregnancy, childcare, and the distribution of responsibilities between spouses. Article 6 of Law No. 1 of 1974 on Marriage requires the consent of both prospective spouses as a prerequisite for marriage. Consent has legal validity when it arises from free will, is based on adequate information, and is given by a person who understands the consequences of the decision. A statement of consent formed under threats, fear, family pressure, economic dependence, or fear of losing accommodation does not reflect genuine freedom of choice. Girls face heightened vulnerability because decisions regarding their marriage may be influenced by their parents, an older prospective husband, pregnancy, or the economic needs of the family.³

Law No. 16 of 2019 amending Law No. 1 of 1974 on Marriage establishes nineteen years as the minimum marriageable age for both men and women.⁴ Parents may apply to a court for a marriage dispensation when there are highly urgent reasons supported by sufficient evidence. A marriage dispensation constitutes an exception to the minimum-age requirement and must be examined by considering the interests of the prospective spouse for whom the

¹ Ahdiyatul Hidayah and Mesfer Ali M. Alaklabi, Aligning Legal Effectiveness with Children's Interests: A Study of Marriage Dispensation Decisions in Religious Courts of Amuntai, *Jurnal Indo-Islamika*, Vol. 13, No. 2, 2023, page 105-117

² Kholis Bidayati, Abudushalamu Tuerxun, and Wawan Baehaqi, The Eliminating Forced Marriage Through the Law: Effectiveness and Social Urgency, *Jurnal Indo-Islamika*, Vol. 14, No. 1, 2024, page 28-35

³ Vincentius Patria Setyawan, Forced Marriage as One of the Crimes of Sexual Violence, *IBLAM Law Review*, Vol. 3, No. 3, 2023, page 83-90

⁴ Dede Kania et al., Marriage Dispensation Post the Decision of the Constitutional Court No. 22/PUU-XV/2017, *Jurnal Hukum Islam*, Vol. 19, No. 1, 2021, page 43-64



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dispensation is sought.⁵ This study limits the meaning of a girl to a prospective bride who has not reached eighteen years of age, in accordance with the definition of a child under child-protection law. This limitation is necessary because a person who has reached eighteen but has not yet reached nineteen still requires a marriage dispensation despite no longer being legally classified as a child.

Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Marriage Dispensation regulates the examination of the child, the prospective husband or wife, and the parents or guardian.⁶ Judges are required to provide advice concerning the risks of marriage and to consider the best interests of the child, respect for the child's views, gender equality, and protection from violence. The examination may also involve psychologists, health professionals, professional social workers, social-welfare personnel, or institutions responsible for the protection of women and children. These guidelines provide a legal basis for judges to obtain information regarding the child's circumstances. The legal problem lies in the absence of specific procedural stages and uniform indicators for distinguishing free consent from compliance produced by family pressure, imbalances of power, economic dependence, or fear of the consequences of refusal.⁷

The absence of clear standards for free consent may cause the examination to stop at the question of whether the child is willing to marry. A child's answer in court does not always represent her actual wishes because she may appear with her parents and prospective husband, who have already agreed upon the marriage.⁸ The child may also have been instructed on how to answer or may believe that refusal would bring shame upon the family. The examination must identify who first proposed the marriage, the reasons for the child's acceptance, the family's response when she expressed refusal, any economic benefit provided by the prospective husband, and the consequences she may face if the marriage is postponed. Freedom of consent must be assessed by determining whether genuine alternatives are available, including whether the child can

⁵ Imran Imran et al., Aspects of Justice of Marriage Dispensation and Best Interests for Children, *Jurnal Hukum dan Peradilan*, Vol. 13, No. 1, 2024, page 63-88

⁶ Mochammad Agus Rachmatulloh and Chafidz Syafiuddin, Praktik Permohonan Dispensasi Kawin di Pengadilan: Studi Peraturan Mahkamah Agung Nomor 5 Tahun 2019, *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam*, Vol. 9, No. 1, 2022, page 1-15

⁷ Hasyim Sofyan Lahilote et al., Judge's Dilemma in Marriage Dispensation in the Religious Court, *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, Vol. 22, No. 1, 2022, page 52-60

⁸ Rina Shahriyani Shahrullah et al., Dilemmas Faced by Judges When Granting Marriage Dispensations for Child Marriages in West Java, Indonesia, *International Journal of Law, Policy and the Family*, Vol. 37, No. 1, 2023, article ebad035



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refuse without losing accommodation, education, economic support, or acceptance within the family.

Law No. 12 of 2022 on Sexual Violence Crimes classifies forced marriage as a form of sexual violence crime. Article 10 includes child marriage, forced marriage conducted in the name of cultural practices, and the forced marriage of a rape victim to the perpetrator within the scope of forced marriage.⁹ The application of this provision still requires proof of coercion, the placement of a person under another party's control, or the abuse of power that causes the marriage to take place. The relationship between the examination of marriage-dispensation applications and the prohibition of forced marriage places judges in an initial position to identify threats, pressure, sexual violence, and abuse of vulnerability. A marriage-dispensation ruling must prevent the legalisation of a marriage used to conceal sexual violence, compel the resolution of pregnancy through marriage, or shield a perpetrator from legal responsibility.

The Supreme Court recorded 28,034 marriage-dispensation cases filed before the religious courts in 2025. Of these, 27,046 cases were decided, 1,100 were withdrawn, and 192 remained pending at the end of the year. These figures demonstrate the extensive need for judicial examination of marriages involving persons below nineteen years of age, although the data do not distinguish prospective spouses by sex or age group.¹⁰ The large number of cases places the quality of judicial examination at the centre of the protection of girls. Each ruling may affect the continuation of education, reproductive health, accommodation, family relations, and the child's economic independence. Consent that is not examined thoroughly may allow judicial proceedings to legitimise a decision already made by the family or prospective husband before the child has had a genuine opportunity to express her wishes freely.¹¹

The exploitation of girls through marriage may take sexual and economic forms. Sexual exploitation occurs when marriage is used to obtain access to a child's body through pressure, threats, deception, or abuse of position. Economic exploitation may occur when marriage is used to reduce the family's financial burden, obtain payment, settle debts, secure assistance from the prospective

⁹ Nur Azisa et al., *The Crime of Forced Marriage Against Children in the Perspective of Criminal Law*, *Awang Long Law Review*, Vol. 5, No. 2, 2023, page 669-674

¹⁰ Mahkamah Agung Republik Indonesia, "Laporan Tahunan Mahkamah Agung Tahun 2025", Kepaniteraan Mahkamah Agung Republik Indonesia, 2026, https://kepaniteraan.mahkamahagung.go.id/images/laporan_tahunan/FA_LAPTAH_2025.pdf, accessed on Juni 2026

¹¹ Qodariah Barkah et al., *Abandonment of Women's Rights in Child Marriage: An Islamic Law Perspective*, *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, Vol. 17, No. 2, 2022, page 383-411

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husband, or excessively exploit the child's labour through household work and childcare. The assignment of household responsibilities does not automatically constitute exploitation. It becomes exploitative when imposed through coercion, used to benefit another party, harmful to the child's health, responsible for terminating her education, or obstructive to her development. These standards are required to ensure that the term exploitation is applied accurately and is not equated with every responsibility arising within family life.

Islamic law recognises human beings as possessing inherent dignity through the principle of *karamah al-insaniyyah*. This principle prohibits coercion and the exploitation of women's vulnerability for the benefit of others. *Rida* forms the basis of a prospective spouse's acceptance of marriage, while the maxim *la darar wa la dirar* prohibits conduct that causes harm. A guardian exercises authority to protect the child's welfare and may not use that position to compel a marriage that threatens her safety, terminates her education, or permits control over her body and labour. *Maqasid al-shari'ah* provides an evaluative framework through the protection of life, intellect, lineage, property, and dignity.¹² This framework directs judges to consider reproductive health, continuity of education, economic independence, freedom of choice, and the child's ability to enter married life without pressure or exploitation.¹³

Several previous studies have examined marriage dispensation, child protection, and forced marriage. Fahadil Amin Al Hasan and Deni Kamaluddin Yusup examined the role of judicial decisions in guaranteeing the best interests of the child in marriage-dispensation proceedings.¹⁴ Elsa Safitri Wulandri, Muhammad Mashuri, and Kristina Sulatri analysed parental responsibility in applications for marriage dispensation by placing the best interests of the child at the centre of judicial consideration.¹⁵ Ismail Marzuki and A. Malthuf Siroj examined forced marriage from the perspectives of human rights and the Law on Sexual Violence Crimes, particularly women's freedom to choose a spouse and the criminal

¹² Darlin Rizki, Frina Oktalita, and Ali Sodikin, *Maqasid Sharia Perspective in Changes the Marriage Age Limits for Women According to Law Number 16 of 2019*, *Al-Istinbath: Jurnal Hukum Islam*, Vol. 7, No. 2, 2022, page 487-508

¹³ Toha Andiko, Zurifah Nurdin, and Ahmed Abdul Malik, *Reactualization of Wali Mujbir in the Modern Era: Maqasid Sharia Analysis of Imam Shafi'i's Concept Regarding Wali's Ijbar Right*, *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, Vol. 23, No. 2, 2023, page 274-291

¹⁴ Fahadil Amin Al Hasan and Deni Kamaluddin Yusup, *Dispensasi Kawin dalam Sistem Hukum Indonesia: Menjamin Kepentingan Terbaik Anak melalui Putusan Hakim*, *Al-Ahwal: Jurnal Hukum Keluarga Islam*, Vol. 14, No. 1, 2021, page 86-98

¹⁵ Elsa Safitri Wulandri, Muhammad Mashuri, and Kristina Sulatri, *Asas Kepentingan Terbaik bagi Anak Terkait Pengajuan Permohonan Dispensasi Kawin*, *Yurijaya: Jurnal Ilmiah Hukum*, Vol. 4, No. 2, 2022, page 138-149

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liability of perpetrators of forced marriage.¹⁶ These studies have provided a foundation for understanding child protection, judicial reasoning, parental responsibility, and the prohibition of forced marriage. This study adopts a different focus by examining operational standards for assessing the free consent of girls and identifying risks of exploitation before a marriage dispensation is granted.

This study aims to analyse the weaknesses in the examination of girls' consent in marriage-dispensation applications and to formulate a model for assessing free consent based on maqasid al-shari'ah. The novelty of this study lies in developing an examination model that incorporates a private examination of the child, the provision of information concerning rights and the consequences of marriage, independent assistance, a reflection period, an assessment of power imbalances, and the identification of pressure and risks of exploitation. The model also requires judges to explain the process through which the child's will was formed, the circumstances influencing her decision, her understanding of the consequences of marriage, and the basis for assessing the freedom of her consent in the marriage-dispensation ruling.

2. Research Methods

This study employs a normative legal research method to analyse the regulation of girls' consent in the examination of marriage-dispensation applications. The approaches used comprise the statutory approach, conceptual approach, and Islamic law approach. The statutory approach examines the 1945 Constitution of the Republic of Indonesia, the Marriage Law, the Child Protection Law, the Law on Sexual Violence Crimes, the Law on the Eradication of Human Trafficking, the National Criminal Code, and Supreme Court Regulation No. 5 of 2019. The conceptual approach is used to analyse free consent, power imbalances, abuse of vulnerability, forced marriage, and the exploitation of girls. The Islamic law approach examines the principles of karamah al-insaniyyah, rida, ikrah, masalah, sadd al-dhara'i, and the protection of life, intellect, lineage, property, and dignity within maqasid al-shari'ah. Primary legal materials consist of legislation relevant to the research object, while secondary legal materials include books, scholarly journal articles, expert opinions, and official institutional reports. All legal materials are analysed qualitatively through grammatical, systematic, and teleological interpretation to identify weaknesses in the regulation governing the examination of children's consent and to formulate a

¹⁶ Ismail Marzuki and A. Malthuf Siroj, Pemaksaan Perkawinan dalam Konteks Kajian Hak Asasi Manusia dan Undang-Undang Tindak Pidana Kekerasan Seksual, *REUSAM: Jurnal Ilmu Hukum*, Vol. 10, No. 2, 2023, page 215-226



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free-consent assessment model that judges may use to prevent coercion and the exploitation of girls through marriage dispensation.

3. Results and Discussion

3.1. Weaknesses in Assessing the Free Consent of Girls in Marriage-Dispensation Proceedings

Marriage dispensation constitutes an exception to the minimum marriageable age of nineteen years as stipulated in the Marriage Law.¹⁷ Courts are authorised to grant a dispensation on the basis of highly urgent reasons supported by sufficient evidence.¹⁸ This study defines a girl as a prospective bride below eighteen years of age in accordance with the definition of a child under the Child Protection Law. The child's consent occupies a central position because a dispensation ruling permits the formation of a legal relationship affecting her body, reproductive health, education, residence, economic circumstances, and social relations. Consent must nevertheless be assessed together with the prospective spouse's readiness, the risks of marriage, and the best interests of the child.¹⁹

Article 6 of the Marriage Law requires the consent of both prospective spouses. Such consent has legal value when it arises from free will, is based on adequate information, and is given by a person who understands the consequences of marriage. Free consent includes the child's ability to understand the purpose of marriage, recognise her rights and obligations, identify alternatives to marriage, obtain sufficient time for consideration, and refuse without facing the loss of basic needs. A statement that the child is willing to marry does not by itself establish readiness for marriage. A child may agree without understanding the implications for education, reproductive health, financial support, childcare, ownership of property, and possible divorce.²⁰ Judges must therefore assess freedom of will, understanding, readiness, and risk in an integrated manner.

¹⁷ Salmah Mursyid and Nasruddin Yusuf, Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi, *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, Vol. 6, No. 2, 2022, page 975-996

¹⁸ Lilik Andar Yuni, Analysis of the Emergency Reasons in the Application of Marriage Dispensation at the Tenggara Religious Court, *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, Vol. 5, No. 2, 2021, page 976-1002

¹⁹ Nabilah Luthfiyah Chusnida and Teddy Prima Anggriawan, Dispensation of Marriage in the Perspective of Children's Rights: Best Interest of the Children, *Jurnal Penelitian Hukum De Jure*, Vol. 22, No. 3, 2022, page 295-310

²⁰ Loveria Sekarrini, Sabarinah Prasetyo, and Agustin Kusumayati, Child Marriage Dispensation from a Reproductive Health Perspective: Why Do Judges Grant or Reject Applications?, *International Journal of Adolescent Medicine and Health*, Vol. 37, No. 6, 2025, page 411-420

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Supreme Court Regulation No. 5 of 2019 requires judges to hear the child for whom a dispensation is sought, the prospective spouse, and the parents or guardian. Judges must also provide advice regarding the risks of marriage, education, reproductive health, economic circumstances, and the potential for domestic violence. The examination may be supported by recommendations from psychologists, health professionals, professional social workers, social-welfare personnel, or institutions responsible for the protection of women and children.²¹ Although the regulation provides basic protective mechanisms, it does not establish operational stages for assessing free consent. It contains no uniform indicators of pressure, prescribed forms of questioning, procedures for assessing changes in the child's testimony, or legal consequences where the freedom of consent remains doubtful. The quality of examination therefore depends heavily on the diligence of individual judges.²²

A child's statement in court does not always reflect her actual wishes. She may appear together with her parents and prospective husband, who agreed upon the marriage before the application was filed. This situation may lead the child to adjust her answers to family expectations or previously given instructions. Closed questions about willingness to marry merely produce an affirmative or negative response without revealing how the decision was formed. Judges must investigate who first proposed the marriage, why the child agreed, how the family responded when she objected, and what consequences she would face if the marriage were postponed. Separate examination away from parents and the prospective spouse is required to create a safe space. Confidentiality and access to protective services also affect the child's willingness to disclose pressure.

A child's dependence on her parents for accommodation, education, daily necessities, and family acceptance may affect her freedom to consent to marriage. Pressure may be expressed through statements that she has brought shame upon the family, become a burden, or must obey the guardian's decision. Judges must distinguish parental advice from conduct that controls the child's will. Advice provides information and leaves room for choice, while pressure directs the child towards a single option by threatening adverse consequences if she refuses. Pregnancy is another circumstance frequently presented as a highly urgent reason for marriage dispensation. It may create pressure to marry immediately to protect the family's reputation and establish the prospective

²¹ Muhammad Ishom, The Loose Interpretation of *Dominus Litis* Principle in Marriage Dispensation for Underage Marriage in Banten, *AHKAM: Jurnal Ilmu Syariah*, Vol. 23, No. 2, 2023, page 329-350

²² Supriyadi and Siti Suriyati, Judges' Legal Culture in Dealing with High Number of Applications for Child Marriage Dispensation During COVID-19 Pandemic at the Kudus Religious Court, *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, Vol. 17, No. 1, 2022, page 136-161

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father's responsibility. Pregnancy does not prove that marriage is the best option for the child.²³ Judges must examine the prospective father's age and identity, the nature of the relationship, age differences, possible sexual violence, and the child's wishes after receiving adequate information.²⁴ A pregnant child remains entitled to health services and protection regardless of the outcome of the application. Pregnancy must not be used to bind a victim of sexual violence to the alleged perpetrator.

Article 10 of the Law on Sexual Violence Crimes classifies forced marriage as a sexual violence crime. Its scope includes child marriage, forced marriage conducted in the name of cultural practices, and the forced marriage of a rape victim to the perpetrator. The inclusion of child marriage must be linked to coercion, placing a person under another party's control, or abusing power to cause the marriage to take place. Not every child marriage automatically fulfils the elements of forced marriage. Judges must identify threats, pressure, abuse of position, and control over the child. The granting of a marriage dispensation does not eliminate possible criminal liability where consent was obtained through coercion.²⁵

Differences in age, social status, and economic capacity between a child and the prospective husband may create an unequal relationship. Such differences do not automatically establish exploitation. The assessment must focus on how the prospective husband uses his position, including providing money to the family, paying the parents' debts, controlling accommodation, restricting communication, or threatening to disclose private information. Financial assistance may affect the child's freedom where the family treats the marriage as repayment for benefits received. Judges must examine the form, purpose, and recipient of the benefit and its connection to the decision to marry the child.

Sexual exploitation through marriage occurs when pressure, deception, abuse of power, or exploitation of vulnerability is used to obtain access to the child's body and reproductive functions. Marriage does not remove the obligation to respect the child's bodily integrity, safety, and wishes. The risk of exploitation arises

²³ Nur Mohamad Kasim and Indra Saputra Daud, Application of the Concept of *Maslahah* by Judges to Issuance of Marriage Dispensation Due to Pregnancy in Religious Courts, *Jambura Law Review*, Vol. 4, No. 1, 2022, page 122-138

²⁴ Taufiqur Rohman et al., Preventing Violations of Religious and Social Norms: Judicial Interpretation of 'Urgent Reasons' in Marriage Dispensation at the Wonosari Religious Court, Indonesia, *Journal of Islamic Law*, Vol. 4, No. 2, 2023, page 218-236

²⁵ Kholis Bidayati, Abudushalamu Tuerxun, and Wawan Baehaqi, The Eliminating Forced Marriage Through the Law: Effectiveness and Social Urgency, *Jurnal Indo-Islamika*, Vol. 14, No. 1, 2024, page 28-35

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where the prospective husband controls communication, social relations, access to health services, or reproductive decisions. Economic exploitation may occur where marriage is used to reduce the family's financial burden, obtain payment, settle debts, or secure economic benefits from the prospective husband. The use of a child's labour in the household becomes exploitative when imposed through coercion, used for another party's benefit, harmful to health, or detrimental to education and development.

Islamic law recognises the consent of prospective spouses as part of the formation of marriage. The principle of rida signifies acceptance arising from free will, while ikrah describes a will formed through pressure or threats. A guardian holds authority to protect the child's welfare and may not compel a marriage that endangers her.²⁶ The principle of karamah al-insaniyyah recognises the girl as a person possessing dignity who may not be used to resolve economic problems, preserve family reputation, or satisfy the prospective husband's interests. The maxim la darar wa la dirar prohibits conduct that causes or perpetuates harm.

Maqasid al-shari'ah directs protection towards the life, intellect, lineage, property, and dignity of girls. A marriage threatening reproductive health conflicts with the protection of life. Terminating education undermines the protection of intellect. Control over earnings and exploitation of labour conflict with the protection of property. Pressure, coercion, and the use of a child for another person's interests also violate her dignity. Religious interpretations that treat marriage as the sole means of preserving honour must be distinguished from the objectives of Islamic law, which position the guardian as the protector of the child's welfare.²⁷

Marriage may be connected to human trafficking where the elements of conduct, means, and purpose of exploitation are fulfilled. Recruitment, transfer, delivery, or receipt of a child must be linked to deception, abuse of vulnerability, payment to a person exercising control over the child, or another means used for exploitation. Marriage and the child's relocation to the spouse's residence do not by themselves constitute human trafficking. Criminal concerns arise where marriage is used as a cover to control the child's body and labour, compel her to work, sexually exploit her, or obtain economic benefit. Marriage-dispensation

²⁶ Iswantoro and Faiq Tobroni, Rationalization of Islamic Legal Considerations in Marriage Dispensation: A Lesson from Katingan, Central Kalimantan, *Al-Manahij: Jurnal Kajian Hukum Islam*, Vol. 16, No. 2, 2022, page 301-314

²⁷ M. Anwar Nawawi et al., Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia, *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, Vol. 22, No. 1, 2022, page 117-133



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proceedings may serve as an early-detection mechanism, allowing warning signs to be referred to protection institutions or law-enforcement authorities. Independent assistance can help the child understand questions and describe her experiences without direction from interested parties. Information from psychologists, social workers, teachers, health professionals, or officers responsible for protecting women and children may reveal behavioural changes, interrupted education, violence, pregnancy, and economic dependence. Professional recommendations do not replace judicial authority but broaden the factual basis for assessing the child's circumstances. Judges must also ensure that the child understands her rights to continue education, obtain health services, receive financial support, retain personal documents, communicate with her family, and obtain protection from violence.²⁸

The principal weakness in assessing free consent lies in the absence of a standard integrating separate examination of the child, provision of information, assessment of power imbalances, independent assistance, examination of exploitation risks, and detailed judicial reasoning. Supreme Court Regulation No. 5 of 2019 provides a protective foundation but does not establish these stages as mandatory procedures to be carried out in sequence. A dispensation ruling may state that the child has agreed to marry without explaining how consent was obtained, what pressure was examined, or how far the child understood the consequences. A free-consent assessment standard must ensure that the child is examined away from persons who may influence her, receives understandable information, has time for reflection, obtains assistance, and remains protected when expressing refusal

3.2. Formulating a Free-Consent Assessment Model Based on Maqasid al-Shari'ah

Maqasid al-shari'ah positions law as a means of protecting human welfare through the protection of life, intellect, lineage, property, and dignity. This framework may be used by judges to assess whether granting a marriage dispensation protects the girl or places her in a relationship that threatens her safety and future.²⁹ The examination must not rely solely on documentary completeness, parental approval, pregnancy, or an agreement between the two families. Judges must assess how the child's will was formed, her understanding of the consequences of marriage, her health, educational continuity, economic

²⁸ Syufa'at, Marriage Dispensation in Underage Marriage: A Case Study at the Purwokerto Religious Court, *Al-Manahij: Jurnal Kajian Hukum Islam*, Vol. 16, No. 1, 2022, page 91-102

²⁹ Ahdiyatul Hidayah and Mesfer Ali M. Alaklabi, Aligning Legal Effectiveness with Children's Interests: A Study of Marriage Dispensation Decisions in Religious Courts of Amuntai, *Jurnal Indo-Islamika*, Vol. 13, No. 2, 2023, page 105-117



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dependence, and the possibility of exploitation. Free consent forms the central basis because the purposes of marriage, including tranquillity, affection, and family responsibility, cannot be achieved through a decision formed under pressure.³⁰

The principle of *karamah al-insaniyyah* recognises the girl as a person possessing dignity, freedom, and the right to determine her future. She must not be treated as a means of protecting family reputation, concealing pregnancy, settling debts, obtaining economic assistance, or serving the prospective spouse's interests. The principle of *rida* indicates acceptance arising from free will, while *ikrah* describes a will formed through pressure or threats. A guardian exercises authority to protect the child's welfare and has no legitimate basis for compelling a marriage that endangers her safety, education, health, or dignity. Guardianship must be distinguished from control over the child's choices. Protection provides information, consideration, and support, whereas coercion directs the child towards one option by threatening loss if she refuses.³¹

Pressure on girls does not always involve physical violence. Dependence on parents for accommodation, education, daily necessities, and family acceptance may affect the child's freedom of choice. She may agree because she fears expulsion from the home, termination of schooling, social exclusion, or accusations of bringing shame upon the family. Financial assistance from the prospective husband may also influence the decision where the family treats marriage as repayment for benefits received. The free-consent model must examine what the child would face if she refused, who controls her basic needs, how the marriage proposal was communicated, and what conduct was used to direct her answer. An expression of agreement formed in such circumstances does not establish free will.

The protection of life or *hifz al-nafs* directs the examination towards the child's safety, mental health, and reproductive health. Judges must obtain information regarding her physical condition, reproductive readiness, history of violence, psychological state, and possible risks following marriage. Pregnancy must be separated from the decision on marriage dispensation because a pregnant child remains entitled to health services without being required to marry the prospective father. Suspected sexual violence, forced sexual relations, or abuse

³⁰ Ali Mutakin, Ahmad Yani, and Siti Muslikaturrohman, Implementation of *Sadd Dzari'ah* in the Decision of Religious Courts Class I.B Blora Concerning Marriage Dispensation, *Al-'Adalah*, Vol. 18, No. 2, 2021, page 323-344

³¹ Ivada Ilya, Perlindungan Perempuan dari Pemaksaan Perkawinan Perspektif *Maqashid Syari'ah*: Studi Fatwa KUPI Ke-2 No. 06/MK-KUPI-2/XI/2022, *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam*, Vol. 5, No. 2, 2024, page 2547-2560



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of vulnerability must be examined separately. A marriage that increases the risk of violence, obstructs recovery, or binds the child to a dangerous person conflicts with the protection of life. Pregnancy must not automatically justify the granting of a dispensation.

The protection of intellect or *hifz al-'aql* covers education, the development of ability, and the child's capacity to understand the consequences of marriage. Judges must assess whether the child understands spousal rights and obligations, financial support, reproductive health, pregnancy, childcare, household finances, and divorce. Educational continuity cannot be established merely through a promise that the child will be allowed to remain in school. The plan must address costs, distance, study time, division of household labour, and childcare after childbirth. The child must also be allowed to explain her aspirations and life plans. Consent given without understanding the risk of leaving school, losing employment opportunities, and becoming economically dependent does not demonstrate mature decision-making.

The protection of lineage or *hifz al-nasl* cannot be reduced to the performance of marriage in response to pregnancy. It includes maternal health, the safety of the unborn child, quality of care, parental responsibility, and family life free from violence. A hastily arranged marriage without adequate readiness may result in conflict, neglect, and divorce. The status of the unborn child must not be used to force a victim to marry the perpetrator of sexual violence. Assessment must focus on the prospective spouse's ability to meet the child's needs, provide care, secure safe accommodation, and respect the rights of the girl as a mother. Protection of lineage concerns the quality of family life, not merely the performance of the marriage contract.

The protection of property or *hifz al-mal* is used to assess the economic circumstances of the child and prospective spouse. Judges must examine sources of income, debt burdens, money or goods provided to the family, future accommodation, and control over the child's income and personal documents. Benefits provided to the family do not automatically prove exploitation but may affect free consent if marriage is treated as repayment. The protection of dignity or *hifz al-'ird* rejects the view that the child's honour is determined solely by social judgement regarding pregnancy or premarital relationships. Her dignity lies in respect for her body, wishes, safety, and future. Marriage must not be used to conceal family shame at the expense of the girl's rights.³²

³² Azam Sukri and Aris Fauzan, *Maqasid Al-Shariah and Child Protection: A Holistic Approach to Preventing Early Marriage*, *Karsa: Journal of Social and Islamic Culture*, Vol. 33, No. 2, 2025, page 600-636

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The free-consent assessment begins with a separate examination of the child away from parents, the prospective spouse, and other interested parties. Separate examination must be conducted for prospective spouses below eighteen years of age. Judges should use simple language and open-ended questions regarding who first proposed the marriage, why the child accepted, how the family responded when she objected, and what kind of life she desires after marriage. The child should also be asked whether refusal would result in the loss of accommodation, education, financial support, or family acceptance. Separate examination assists the child in expressing her wishes without direct influence from persons controlling her basic needs.³³

The child must receive adequate information before giving consent. This information includes the rights to continue education, obtain health services, receive financial support, retain personal documents, communicate with family members, refuse violence, and report harmful conduct. The child must also understand household responsibilities, pregnancy, childcare, financial management, and the legal consequences of divorce. After the information is provided, the judge should ask the child to restate it in her own words. This method assists in assessing understanding and prevents consent from merely repeating answers prepared by the family. Understanding must still be examined together with freedom of will because a child who understands the consequences may nevertheless remain under pressure.

Independent assistance is required where there are indications of pressure, violence, pregnancy, a significant age gap, economic dependence, or suspected exploitation. Psychologists, social workers, counsellors, health professionals, or officers responsible for the protection of women and children may assess emotional conditions, maturity, family relationships, history of violence, reproductive health, and decision-making capacity. Assistants do not represent the wishes of the parents or prospective spouse. Their assessments serve as material for judicial consideration and do not replace the judge's authority. Assistance also helps the child understand questions, disclose experiences, and obtain protection where her testimony differs from the family's wishes.³⁴

A reflection period should be provided where the child faces family pressure, pregnancy, conflict, or social coercion. An adjournment allows her to receive

³³ Ashabul Fadhli and Ashabul Kahfi, The Judge's Considerations in Refusing an Application for Marriage Dispensation in Respect of Very Urgent Reasons, *El-Hekam: Jurnal Studi Keislaman*, Vol. 8, No. 1, 2023, page 190-203

³⁴ Ashabul Fadhli et al., Out-of-Court Assistance Based on the Principle of the Best Interests of the Child: Study on Examination Process of Marriage Dispensation Cases, *JURIS: Jurnal Ilmiah Syariah*, Vol. 23, No. 1, 2024, page 67-80

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information, undertake counselling, and reconsider her decision without the direct influence of interested parties. A change in testimony should not immediately be treated as dishonesty because it may indicate that the child has begun to feel safe enough to express her actual wishes. The reflection period also gives protection institutions time to prepare safe accommodation, educational assistance, health services, or economic support where the child refuses marriage. The court may continue the examination once her condition is safer and the freedom of her consent can be assessed more comprehensively.

Risk assessment should use indicators including physical or verbal threats, dependence on accommodation, termination of education, family debt, payments to parents, a substantial age difference, a history of violence, pregnancy resulting from sexual violence, control over personal documents, restrictions on communication, and plans to relocate the child. A single indicator does not prove coercion or exploitation, but a combination of indicators justifies further examination. The use of a child's labour in family life must also be distinguished from the ordinary division of responsibilities between spouses. Exploitation occurs where work is imposed through coercion, endangers health, obstructs education, benefits another party, or deprives the child of opportunities for development.³⁵

The marriage-dispensation ruling must fully explain the results of the free-consent assessment. Judicial reasoning should describe how the child was examined, what information was provided, her level of understanding, the presence or absence of pressure, professional assessments, health conditions, educational plans, economic circumstances, and risks of exploitation. A general statement that the child consented is insufficient without an explanation of how her will was formed. Uncertainty regarding the freedom of consent provides grounds for further examination or rejection of the application where marriage would conflict with the child's best interests. Detailed reasoning also promotes consistency and permits evaluation of the quality of judicial protection.

The assessment guidelines should include separate examination, provision of information, a reflection period, risk indicators, independent assistance in specified cases, and a duty to explain the assessment results in the ruling. Consent must not be regarded as free where it arises from threats, abuse of position, economic dependence, transactions, or other circumstances that remove the child's ability to refuse. The model based on maqasid al-shari'ah places Islamic law as the foundation for protecting the dignity, safety, education,

³⁵ Maryam Hosseini and Khadijeh Asadisarvestani, Reasons for Early Marriage of Women in Zahedan, Iran: A Qualitative Study, *BMC Women's Health*, Vol. 22, 2022, article 542



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economic independence, and honour of girls in marriage-dispensation proceedings.

4. Conclusion

The assessment of girls' consent in marriage-dispensation applications remains inadequate because Supreme Court Regulation No. 5 of 2019 has not established operational stages integrating separate examination of the child, provision of information, assessment of pressure, independent assistance, a reflection period, examination of exploitation risks, and a duty to explain how the child's will was formed in the ruling. A statement of agreement does not establish free will where the child remains dependent on her parents, is subjected to family pressure, faces pregnancy, is economically influenced by the prospective husband, or does not understand the consequences of marriage for health, education, childcare, and economic independence. The formulation of a free-consent assessment model based on maqasid al-shari'ah places the principles of karamah al-insaniyyah, rida, ikrah, and the protection of life, intellect, lineage, property, and dignity at the foundation of the examination. The model comprises private examination, provision of information regarding rights and the consequences of marriage, assessment through open-ended questions, professional assistance in high-risk cases, a reflection period, and the use of indicators of pressure and exploitation. Judges should grant a marriage dispensation only after the freedom of consent, the child's readiness, and the protection plan have been established, while doubts regarding the child's wishes should provide grounds for expanded examination or rejection of the application in accordance with the best interests of the girl.

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