

Judges' Ijtihad in Granting Dispensation of Marriage from the Perspective of Maqāṣid Al-Usrah Jamāluddīn Al-'Aṭhiyah (Study of Decisions at the Jombang Religious Court in 2025)

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Abstract

The increase in requests for marriage dispensation after the enactment of Law Number 16 of 2019, which raised the minimum age for marriage to 19 years, encouraged the panel of judges in the Religious Courts to optimize legal discovery (rechtvinding) contextually, rather than simply focusing on literal interpretation of the legislation. This study aims to analyze the form of ijtihad of judges in granting requests for marriage dispensation at the Jombang Religious Court in 2025 and examine it from the perspective of Maqāṣid al-Usrah Jamāluddīn al-'Aṭhiyah. This study is a field study with an empirical juridical approach, using primary data in the form of interviews with judges and analysis of five marriage dispensation decisions granted in 2025, supported by secondary data in the form of laws and related literature. Data were analyzed through an interactive model that includes reduction, presentation, and concluding. The results of the study indicate that the judge's ijtihad is carried out through a balancing process between legal certainty and public interest, with the maqāṣidī form of ijtihad being the most dominant. In cases motivated by pregnancy outside of marriage, the judge's ijtihad is directed at protecting the child's status, certainty of lineage, and parental responsibility, while the reason for a long-standing relationship is considered not to automatically fulfill the criteria of "very urgent reasons" in Article 7 paragraph (2) of Law Number 16 of 2019. Viewed from the perspective of Maqāṣid al-Usrah, the judge's ijtihad is more dominant in realizing the dimension of Ḥifẓ al-Nasl, while the dimensions of Tanẓīm al-'Alāqah bayna al-Jinsayn and Taḥqīq al-Sakīnah wa al-Mawaddah wa al-Raḥmah have not been optimally realized. This study concludes that the judge's ijtihad is a process of balancing legal certainty and public interest that is oriented towards the best interests of children and families.

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1. INTRODUCTION

The phenomenon of marriage dispensations filed through Religious Courts is now a serious concern in Indonesian society. Marriage dispensations are special permits issued by the judiciary to legalize marriages for individuals who have not reached the minimum age set by the state. The urgency of this issue has grown since the enactment of Law Number

1200 | Judges' Ijtihad in Granting Dispensation of Marriage from the Perspective of Maqāṣid Al-Usrah Jamāluddīn Al-'Aṭhiyah (Study of Decisions at the Jombang Religious Court in 2025)
(Wahyu Nur Affandi)

16 of 2019, an update to Law Number 1 of 1974 concerning Marriage, which raised the minimum age for marriage for men and women to 19 years (2019 Law of the Republic of Indonesia) to ensure the protection of children's rights and minimize the risk of early marriage..(Dona Salwa, Soraya Parahdina 2024)However, Article 7 paragraph (2) of the law actually opens up loopholes for the legalization of underage marriage through applications for marriage dispensation (M. K. Republik 1974), so that the aim of increasing the age of marriage has the potential to be suboptimal if applications for dispensation are granted without adequate consideration.

Legally, the Religious Court has absolute authority to examine and decide on applications for marriage dispensation, as regulated in Article 49 of Law Number 3 of 2006 in conjunction with Law Number 7 of 1989 concerning Religious Courts. (M. Republik 1989) Data from the Jombang Religious Court shows that in 2025 there were 256 applications for marriage dispensation, and all of them were granted by the judge, while only 2 cases were rejected. (PA Jombang n.d.) The tendency for the high number of grants raises academic questions regarding how the construction of judges' *ijtihad* is built, whether it is solely based on the application of positive law or also considers the broader aspect of family welfare.

Several previous studies have examined the issue of marriage dispensation from various perspectives. Al-Hasan and Yusup emphasize the importance of the principle of the child's best interest as a parameter for judges' decisions in marriage dispensation cases. (Al-Hasan and Yusup 2021) Faizah et al. highlighted the relevance of the *fiqh* principle of *dar'u al-mafāsīd muqaddam ‘alā jalb al-masāliḥ* in the marriage registration policy (Isniyatin, Faizah et al. 2024), while Lutfi studies the engagement relationship within the ethical framework of *Maqāṣid al-Usrah*. (Lutfi 2023) These studies generally stop at assessing the conformity of the decision with positive law or jurisprudential rules in general, and have not specifically examined how the judge's *ijtihad* can be mapped into the dimensions of *Maqāṣid al-Usrah* initiated by Jamāluddīn al-‘Aṭhiyah, namely *Hifz al-Nasl* (preserving descendants), *Tanzīm al-‘Alāqah bayna al-Jinsayn* (regulating the relationship between men and women), and *Taḥqīq al-Sakīnah wa al-Mawaddah wa al-Raḥmah* (creating a family of *sakinah*, *mawaddah*, and *raḥmah*). (Jamāl al-dīn ‘Aṭhiyyah 2001) Therefore, this research has novelty (*novelty*) in the analysis of the judge's *ijtihad* in granting a request for marriage dispensation by placing a balancing process (*balancing*) between legal certainty and public welfare as the common thread of legal considerations. This novelty is reinforced by the distinction between cases of marriage dispensation caused by pregnancy outside of marriage and cases based on the long-standing relationship of the two prospective brides and grooms, and its examination through the perspective of *Maqāṣid al-Usrah* Jamāluddīn al-'Aṭhiyyah. This approach allows this research not only to assess the suitability of the decision to legal provisions, but also to identify the level of urgency of the reasons for the request and the orientation of the welfare that is intended to be realized through the judge's decision.

The researcher's initial observations in the Jombang Religious Court courtroom revealed a more concrete picture of the issue. Most marriage dispensation applicants were aged between 15 and 18, with various educational backgrounds, most of whom had not yet completed high school. The trial process was generally brief because both the applicant and the prospective bride and groom's families had reached a unanimous agreement to proceed with the marriage. In several trials observed by the researcher, the panel of judges appeared to attempt to explore the facts in depth through questions that touched on the psychological aspects and readiness of the prospective bride and groom, rather than simply examining the completeness of the application's administrative requirements. This phenomenon indicates

that the marriage dispensation trial process does not stop at a normative examination, but is also colored by the judge's contextual assessment of the real conditions faced by the parties.

2. METHOD

This study uses a qualitative research type with a field research approach and a theoretical approach to Islamic law. (Deassy J.A. Hehanussa, Margie Gladies Sopacua, Achmad Surya, Juanrico Alfaromona Sumarezs Titahelu, Josef Mario Monteiro, Rospita Adelina Siregar, Christina Bagenda, Kasmanto Rinaldi, Iman Jalaludin Rifa'i, Andri Nurwandri, Andi Muhammad Aidil & Hasanuddi, Legal Research Methods, 2023) Primary data was obtained through interviews with judges of the Jombang Religious Court (Jakim PA Jombang n.d.) and analysis of five samples of marriage dispensation decisions granted in 2025, while secondary data was obtained from relevant laws and regulations, books, and journal articles. Data collection techniques were carried out through observation, interviews, and documentation, with descriptive-qualitative data analysis techniques, which included the stages of data examination, classification, verification, and drawing conclusions. The analytical framework of this research uses the concept of Maqāsid al-Usrah Jamāluddīn al-'Aṭhiyah as an analytical tool to assess the benefit orientation realized by judges in their *ijtihad*.

3. RESULTS AND DISCUSSION

Marriage Dispensation Case Profile at the Jombang Religious Court in 2025

Data from the Jombang Religious Court Registrar's Office recorded that throughout 2025 there were 256 cases of marriage dispensation requests received, with 254 cases decided and only 2 cases rejected, or a grant rate of 99.2 percent. The highest monthly fluctuations occurred in May and September, with 35 cases each, which is sociologically related to the Jombang community's tradition of tending to marry after the school graduation season. From a demographic perspective, 246 children (97.6 percent) were in the age range of 15 to under 19 years, 175 children (68.3 percent) were junior high school graduates, and 178 children (69.5 percent) were unemployed, indicating that the majority of marriage dispensation applicants in Jombang were vulnerable youth, junior high school educated, and not yet economically independent.

The quantitative data can be summarized as follows.

Category	Amount	Percentage
Things come in	256 things	100%
Matter decided	254 things	99,2%
Matter rejected	2 things	0,8%
Children aged 15 to <19 years	246 children	97,6%
Junior high school graduate	175 children	68,3%
The child is not working yet	178 children	69,5%

Table 1. Summary of Data on Marriage Dispensation Cases at the Jombang Religious Court in 2025 (Source: Jombang Religious Court Clerk's Office, 2025)

Forms of *Ijtihad* by Judges in Granting Marriage Dispensation Requests

The results of a study of five samples of marriage dispensation decisions granted at the Jombang Religious Court in 2025 indicate that judicial *ijtihad* is not conducted solely through the textual application of legal norms. Judges first assess the concrete facts revealed in court, then weigh the legal and social consequences that may arise if the request is granted or rejected. Thus, judicial *ijtihad* in marriage dispensation cases is more accurately understood as a process of legal reasoning oriented toward solving concrete problems. Amran Suadi, Imran n.d., 2024) Two dominant reasons were found as the background for granting requests, namely pregnancy outside of marriage and a long-standing relationship between the two prospective brides and grooms that was difficult to separate.

In cases involving pregnancy outside of marriage, the judge not only questions the fact that the minimum age for marriage has not been met, but also considers the fact that the prospective bride is pregnant as a result of a pre-marital relationship, which is obtained through examination of the parties and witness statements. (Islami 2023) This situation changed the judge's perspective: if the positive legal norms were read formally, the application should have been rejected because the prospective bride and groom had not met the minimum age limit. However, the judge also considered the legal and social consequences that might arise if the application were rejected, such as the unclear legal status of the child, the psychological burden on the family, and the potential for social stigma. Thus, the judge's *ijtihad* in this case lies in the process of balancing legal certainty and public welfare, where granting the dispensation is not intended to legitimize premarital sexual relations, but rather as an effort to minimize greater negative impacts on the woman, the unborn child, and the families of the parties. (Aziz Mualim 2024)

In cases filed on the grounds of a long-standing relationship, judges consider the concerns of parents and the parties that postponing marriage could potentially lead to violations of religious norms. According to researchers, the length of the relationship cannot be used as a sole indicator of the psychological readiness, maturity of thought, or economic capacity of the prospective bride and groom to build a family. If this reason is used as the primary basis for granting a marriage without being supported by other, more pressing facts, this has the potential to shift the meaning of "very urgent reasons" as referred to in Article 7 paragraph (2) of Law Number 16 of 2019 (M. Beni Kurniawan and Dinora Refiasari 2022). Therefore, *ijtihad* based on the benefit in this type of case requires stricter proof so that it does not turn into legalization of every long-standing relationship.

Perspective Analysis of Maqāṣid al-Usrah Jamāluddīn al-'Aṭhiyah

The concept of benefit underlying the judge's *ijtihad* above needs to be further examined using the perspective of Maqāṣid al-Usrah Jamāluddīn al-'Aṭhiyah, which views marriage as not merely the legalization of the relationship between a man and a woman, but rather an instrument for realizing family goals. As al-'Aṭhiyah asserts in his work:

مقاصد الأسرة هي حفظ النسل، وتنظيم العلاقة بين الجنسين، وتحقيق السكينة والمودة والرحمة

("The purposes of the family are to preserve offspring, regulate relations between the two sexes, and create peace, love, and affection.")

These three dimensions serve as analytical tools to assess the extent to which the judge's *ijtihad* in the marriage dispensation decision has represented the family's goals, not merely its conformity with positive law. (Jamāl al-dīn 'Aṭhiyyah 2001)

Hifz al-Nasl as the Most Dominant Dimension

The majority of marriage dispensation requests granted at the Jombang Religious Court in 2025 were motivated by out-of-wedlock pregnancies, so the judges' considerations were more focused on resolving the situation. From the perspective of Maqāṣid al-Usrah,

this condition has strong relevance to the dimension of Ḥifẓ al-Nasl, which is not only interpreted as maintaining reproductive continuity but also ensuring that each child receives certainty of lineage, legal protection, and parental responsibility..(Jamāl al-dīn ‘Aṭhiyyah 2001) However, the implementation of Ḥifẓ al-Nasl in the judge's ijtihad is still curative rather than preventive, because protection for offspring is only provided after an out-of-wedlock pregnancy has occurred, a logical consequence of the character of the judicial function which only works when a case has been filed.

Tanzīm al-'Alāqah bayna al-Jinsayn which is not yet optimal

In cases involving long-standing romantic relationships, the judge's considerations are indeed related to the principle of the law of marriage, namely the goal of regulating the relationship between men and women so that it proceeds in a dignified manner through the institution of marriage. However, the legal system places this relationship within the framework of responsibility, maturity, and readiness to carry out family functions (Jamāl al-dīn ‘Aṭhiyyah 2001). Therefore, the measure of success in this dimension is not simply whether a couple avoids religiously prohibited behavior, but rather their ability to build a healthy relationship. The length of a relationship cannot be used as a sole indicator of this readiness, so this dimension is considered not to have been fully realized substantially in the decision-making practices studied.

Tahqīq al-Sakīnah wa al-Mawaddah wa al-Raḥmah, which has not become the dominant orientation

The dimension of Tahqīq al-Sakīnah wa al-Mawaddah wa al-Raḥmah is oriented towards the ultimate goal of family formation, namely the realization of peace, affection, and the continuity of family functions, not merely the fulfillment of the conditions and pillars of marriage. (Jamāl al-dīn ‘Aṭhiyyah 2001) This study has not found this dimension to be a dominant consideration in the decisions studied, because the judge's focus is more directed at resolving immediate issues. This condition is a logical consequence of the character of marriage dispensation cases, which are generally urgent (urgent cases), so that the space for in-depth assessment of readiness to build a harmonious family is relatively limited.

Overall, the judges' ijtihad in granting marriage dispensation requests at the Jombang Religious Court in 2025 was built through a process of balancing legal certainty and public interest, not a conflict between the two. Viewed from the perspective of Maqāṣid al-Ushrah, the most dominant orientation of public interest realized is Ḥifẓ al-Nasl, while the dimensions of Tanzīm al-'Alāqah bayna al-Jinsayn and Tahqīq al-Sakīnah wa al-Mawaddah wa al-Raḥmah have not been realized evenly. This finding indicates that the implementation of Maqāṣid al-Ushrah in the practice of judges' ijtihad represents more curative and preventive dimensions than constructive dimensions in the formation of a sakinah family comprehensively.

4. CONCLUSION

This study concludes that the judge's ijtihad in granting marriage dispensation requests at the Jombang Religious Court in 2025 was carried out through a process of balancing legal certainty and public interest based on concrete facts revealed in court, not merely the application of textual legal norms. In cases motivated by pregnancy outside of marriage, the judge prioritized protecting the interests of the child and resolving the harm that had occurred, while in cases based solely on a long-standing relationship, these reasons were deemed not to automatically meet the criteria for very urgent reasons and therefore required

stricter proof. Viewed from the perspective of Maqāṣid al-Usrah Jamāluddīn al-'Aṭhiyah, the judge's ijtihad is more dominant in realizing the dimension of Ḥifẓ al-Nasl, while the dimensions of Tanẓīm al-'Alāqah bayna al-Jinsayn and Taḥqīq al-Sakīnah wa al-Mawaddah wa al-Raḥmah have not been optimally realized. This study recommends that the Supreme Court strengthen the guidelines for the application of the phrase "very urgent reasons" for the sake of uniformity in the application of law in the Religious Courts, so that the practice of judges' ijtihad is always oriented towards the best interests of children and families as a whole, not only on the aspect of legal certainty alone.

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