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Analysis of *Sadd adz-Dzari'ah* Against the Paradox of "Love" as a Reason for Marriage Dispensation¹

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Abstract:

The revision of Marriage Law No. 16 of 2019, which sets the minimum age at 19, aims to minimize child marriage. However, national data from 2022-2025 shows an anomaly with high rates of marriage dispensation requests dominated by reasons of "love" and "fear of adultery" (67.16%). This study aims to analyze the shift in the meaning of urgency through the perspective of *sadd adz-dzari'ah* and to formulate a more protective reconstruction of the dispensation model. Using a qualitative literature study method with an Islamic law approach, this research finds that judges' *ijtihad* tends to be trapped in preventing presumptive harm (*mafsadah mauhumah*) such as adultery, while ignoring actual harm (*mafsadah muhaqqaqah*) such as school dropout and health risks. This causes the function of dispensation to shift from closing the door to harm (*sadd adz-dzari'ah*) to opening a new door to harm (*fath adz-dzari'ah*). The results recommend a "Conditional Dispensation" model through mandatory expert involvement and educational integrity pacts to ensure the future welfare of children.

Keywords: Marriage Dispensation; *Sadd adz-Dzari'ah*; Underage Marriage; *Maqashid Syariah*; Judicial *Ijtihad*

A. INTRODUCTION

The Government of the Republic of Indonesia has amended the 1974 Marriage Law with Law No. 16 of 2019. The most significant change therein is the adjustment of the minimum age for marriage, which has been synchronized for both men and women to 19 years. This reflects the government's positive intent through the principle of *taqyid al-mubah*, where the state restricts a permissible (*mubah*) action to achieve a greater benefit (*maslahah*). In Islam, the minimum age for marriage is not explicitly defined. However, the state has taken this step to prevent potential *mafsadah* (harm) that may

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arise, including school dropouts, poverty, and health risks such as stunting or maternal mortality (Ndala et al., 2024).

The implementation of this new law has significantly impacted the surge in marriage dispensation requests. Data from the Religious Courts Supervision Body of the Supreme Court (*Badilag MA*) indicates that before the law was enacted, the number of dispensations filed was 23,126. In contrast, in 2020, marriage dispensation requests increased to 64,211 (Badilag, 2024). Although the number of applications has gradually decreased each year, the figures consistently remain in the tens of thousands.

Kinsatker Badilag also publishes the reasons for marriage dispensation requests on its official website. However, the published data only provides national-scale reasons for 2022. From this data, it was found that "love" or "intimacy" was the most common reason for filing a marriage dispensation, surpassing "out-of-wedlock pregnancy" in second place. (Badilag, 2023). This aligns with the latest report from the Supreme Court published on their official website, stating that up to 2025, the reason of "love" driven by the "fear of committing adultery" (*zina*) reached 56 percent, while "out-of-wedlock pregnancy" accounted for 34 percent (Febriansyah, 2025). When viewed from the perspective of *sadd adz-dzari'ah*, this phenomenon warrants re-evaluation, given that the primary goal of raising the minimum marriage age is to minimize potential *mafsadah*. This study identifies "love" and the fear of adultery (*zina*) as a paradox because marriage dispensation applications granted on these grounds outnumber those based on premarital pregnancy. Despite the absence of pregnancy, judges continue to grant these applications, even though the marriages could, in principle, be postponed until the applicants reach the statutory minimum age for marriage.

Previous studies have attempted to analyze the *ratio decidendi* of judges in granting marriage dispensations through the lens of Islamic law. One significant finding suggests that judges tend to approve these requests as an effort to prevent the prevalence of adultery and unregistered marriages (*nikah siri*), which are considered detrimental to legal certainty in the future. From a *sadd adz-dzari'ah* perspective, judges focus on the *maslahah* aspects, including self-protection, safeguarding family honor, and avoiding *zina*. Conversely, regarding the *mafsadah*, these studies acknowledge looming risks such as the termination of education, the risk of divorce, anemia, and the risk of mortality during childbirth (Yasin, 2020).

Other studies, such as those conducted at UIN Malang (Jannah, 2020), argue that the application of *sadd adz-dzari'ah* in marriage dispensations does not legally violate regulations. Although it seemingly conflicts with the spirit of the Child Protection Law, granting a dispensation is considered constitutional because the Marriage Law itself provides an exceptional pathway through court petitions. In this view, the effort to avoid *zina* is prioritized, thereby justifying the use of this legal loophole without being considered a violation of positive law. However, this argument relies solely on legal-formal aspects and tends to ignore the essence of *sadd adz-dzari'ah* itself. If the door to marriage dispensation is opened too wide based on the existence of Marriage Law regulations and solely for the reason of avoiding *zina*, then the law becomes trapped in the practice of *fathu adz-dzari'ah* (opening the door to harm), considering the massive

mafsadah potentially caused after early marriage, such as the perpetuation of poverty and the decline in human resource quality due to marriages at an immature ages.

Unlike previous studies, this article highlights an anomaly in the national data from 2022 and 2025: the justification for preventing zina has shifted from an exceptional ground for marriage dispensation to the predominant rationale, while overlooking the long-term *mafsadah* of early marriage, including structural poverty and stunting. Using the *sadd adz-dzari'ah* perspective, this article seeks to re-examine its alignment with current marriage dispensation practices. This is crucial because, without careful consideration, the initial objective of the court in limiting the marriage age, namely *sadd adz-dzari'ah*, will transform into *fath adz-dzari'ah*, opening a new door to destruction. Based on this background, this study aims to answer two primary problems: first, how is the reason of "love" or "fear of zina" in the 2022-2025 marriage dispensation data viewed through the *sadd adz-dzari'ah* method? And second, how can the reconstruction of a "conditional dispensation" model serve as a guideline so that the spirit of *sadd adz-dzari'ah* in the Marriage Law does not shift into *fath adz-dzari'ah*?

B. METHODE

This research employs a normative legal research method through library research. It adopts three legal approaches: the statute approach, the conceptual approach, and the case approach. The statute approach is used to examine Law No. 16 of 2019 on Marriage, Supreme Court Regulation (PERMA) No. 5 of 2019, and other relevant legal instruments governing marriage dispensation. The conceptual approach is employed to analyze the issue through the theories of *taqyid al-mubah*, *sadd adz-dzari'ah*, *fath adz-dzari'ah*, and *maqāṣid al-sharī'ah*. The case approach examines selected Religious Court decisions in which "love," "fear of zina," or the parties' inseparable relationship constituted the principal grounds for granting marriage dispensation.

The data used in this study consist of secondary data derived from primary and secondary legal materials. The primary legal materials comprise legislation, Religious Court decisions, and classical and contemporary Islamic legal literature on *sadd adz-dzari'ah*. The secondary legal materials include annual institutional reports published by Kinsatker Badilag, statistical data issued by Statistics Indonesia (BPS), and other relevant academic publications.

Qualitative content analysis was employed to identify recurring legal issues, patterns of judicial reasoning, and the application of "love" as a basis for marriage dispensation. The court decisions were selected purposively because they explicitly identified "love," "fear of zina," or the parties' inseparable relationship as the principal grounds for granting marriage dispensation.

The collected materials were analyzed in three stages. First, the legal materials and institutional data were identified and classified according to their relevance to marriage dispensation. Second, the classified materials were interpreted in light of the relevant legal provisions and Islamic legal theories to evaluate the consistency between judicial practice and the objectives of the revised Marriage Law. Finally, the findings

were synthesized to formulate legal recommendations for a more protective model of marriage dispensation.

C. RESULTS AND DISCUSSION

1. Conceptualization of *Sadd adz-Dzari'ah* in Marriage Dispensation

Etymologically, *sadd adz-dzari'ah* is derived from two words: *sadd* and *dzari'ah*. The word *sadd* means to close or block, while *dzari'ah* means purpose or path (Zulfikri & Faizah, 2023). According to Ibn Qayyim al-Jawziyyah, *dzari'ah* refers to the means or avenues that lead to a particular end. In his work *Zad al-Ma'ad*, he posits that the legal status of a *dzari'ah* (means) is contingent upon its ultimate objective. If the objective is permissible or beneficial, the opening of the means (*fathu dzari'ah*) is warranted. Conversely, if the objective is unlawful or harmful, the blocking of the means (*saddu dzari'ah*) must be enforced. (S. al-D. A. A. M. bin A. bakar ibnu Al-Qayyim, 1996) In addition, in *I'lam al-Muwaqqi'in*, he argues that *sadd adz-dzari'ah* should not be applied when it compromises the common good and results in greater harm. A case in point is the prohibition against looking at a woman to avert indecency; however, this prohibition does not apply in cases of legitimate necessity, including matchmaking, business dealings, and bearing witness in court. (I. Al-Qayyim, 1991). Echoing Ibn al-Qayyim, al-Qaraḥī, a scholar of the Maliki school, likewise posits that a *dzari'ah* (means) may at times be commanded and at other times prohibited. He further clarifies that the legal status of a *dzari'ah* is contingent upon its ultimate objective, even though the status of the means is inherently subordinate to that of the end itself. In his view, the doctrine of *sadd adz-dzari'ah* denotes the cutting off of the avenues toward harm (*mafsadat*) as a preemptive measure to avert such detriment (Nasrullah, 2019). *Sadd adz-dzari'ah* is a method of legal determination in Islam where a fundamentally permissible action—due to its inherent benefit (*maslahah*)—is prohibited because it ultimately leads to a harm (*mafsadah*) (Saiban, 2019, p.82). At the macro level, the practice of *sadd adz-dzari'ah* has been implemented by the Government of the Republic of Indonesia, for example, through restrictions on the minimum age for marriage. Fundamentally, Islam does not stipulate a specific age for marriage; however, as a preventive measure to avoid adverse impacts, the state has limited the marriage age to 19 years for both men and women (Aisyah et al., 2025).

Sadd adz-dzari'ah is a form of legal *ijtihad* that examines the resulting *mafsadah*: an initially good action may have detrimental consequences. Al-Shatibi, in his seminal work, emphasized that actions should not be viewed solely by their outward appearance but also by the consequences that arise from them (Al-Syathibi, 1997, p. . According to Kasuwi Saiban, *dzari'ah* is classified into four types based on the quality of its *mafsadah*: first, actions that certainly lead to *mafsadah*, such as digging a well in the middle of a public road. Second, actions that rarely lead to *mafsadah*, such as digging a well in a seldom-used road. Third, actions that are highly likely to lead to *mafsadah*, such as selling grapes to a wine maker (*khamr*). Fourth, actions that fundamentally contain *maslahah* but are also likely to bring *mafsadah*, such as *al-'ajal* sales (transactions where the goods

appear non-existent), which are prohibited according to Al-Shatibi (Saiban, 2019, p. 82).

In the author's view, marriage dispensation falls into the fourth category. Essentially, marriage brings *maslahah*; however, if conducted by underage children, it is highly likely to cause significant *mafsadah*. Therefore, judges should take this into account when deciding whether to grant petitions for marriage dispensation. Judges must scrutinize the reasons submitted by the petitioners; if the reasons are not urgent, the petition should not be granted. Examples include the reason of "love" or the fear of committing *zina* (adultery). If petitions based on such reasons are granted, they will open the door to even greater *mafsadah* in the future, as previously explained. An exception may be made if the reason is a premarital pregnancy, as denying such a request would result in a greater *mafsadah* subsequently, particularly concerning the welfare of the mother and the unborn child.

2. The Paradox of "Love" and "Fear of Adultery" Reasons in Marriage Dispensation Petitions

The 1945 Constitution, as the constitutional foundation, guarantees every citizen the right to establish a family through a lawful marriage, as enshrined in Article 28B, Paragraph (1). In addition, the Constitution guarantees every child the right to survival, growth, development, and protection from violence and discrimination under Article 28B, Paragraph (2). These normative provisions are inherently ideal in harmonizing private rights with public protection. However, in judicial practice, marriage dispensation petitions filed under the pretext of "love" or fleeting affection trigger severe constitutional tension, as judges are frequently trapped into prioritizing the child's absolute freedom to marry over the very essence of the child's right to future protection.

The potential violation of the child's constitutional rights resulting from love-based dispensations lies within the dimensions of their development and their right to health. When underage child marriage is legalized solely on the basis of mutual consent, the decision directly robs them of their right to a proper education as guaranteed under Article 28C, Paragraph (1), since these children are almost invariably forced to drop out of school due to domestic demands. Furthermore, permitting early marriage also carries a high potential to violate the child's constitutional right to a healthy life as stipulated in Article 28A and Article 28H, Paragraph (1), considering that the under-matured reproductive organs of young girls are highly vulnerable to fatal medical risks, ranging from infant stunting to high maternal mortality rates.

This condition is exacerbated by the failure of judicial institutions to execute the mandate of Article 28B, Paragraph (2) to protect children from the cycle of violence and future social vulnerability. Marriages forced into existence based merely on immature emotional impulses tend to create psychological and financial unreadiness, which ultimately triggers high rates of Domestic Violence (*Kekerasan Dalam Rumah Tangga* / KDRT) and premature divorce. Consequently, courts that pragmatically grant marriage dispensations in the name of love are, in truth, sacrificing the fundamental rights of the child; thus, the fulfillment of child protection rights under the Constitution ought to be positioned as the primary principle that restrains judicial discretion in the courtroom.

This constitutional commitment to protecting the child's future is further reinforced by the dimension of international law through the ratification of Presidential Decree No. 36 of 1990 concerning the Convention on the Rights of the Child (CRC) and Law No. 7 of 1984 concerning the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The ratification of these two global conventions imposes legally binding obligations on Indonesia, including its judicial institutions, to guarantee, respect, and protect the fundamental rights of children and to ensure equal rights for women in both public and domestic spheres. When judges loosely grant underage marriage dispensation petitions solely to satisfy the affectional motif of "love," the court not only violates the child protection mandate within the domestic constitution but also undermines these international commitments. This is because the practice of loosening premature marriage permissions directly perpetuates gender discrimination and the disguised exploitation of young girls, culminating in high school dropout rates and reproductive health vulnerabilities, which have been consistently criticized by the UN Committee on the Rights of the Child.

Supreme Court Regulation (*PERMA*) No. 5 of 2019 provides guidelines for judges in adjudicating marriage dispensation petitions. Article 5 specifies several mandatory administrative requirements, including the formal petition letter; photocopies of the Identity Cards (*KTP*) of both parents/guardians; a photocopy of the Family Card (*KK*); photocopies of the Identity Card or Child Identity Card (*KIA*) and/or birth certificate of the child; photocopies of the Identity Card or Child Identity Card and/or birth certificate of the prospective spouse; and a photocopy of the child's latest educational diploma and/or a certificate of active school enrollment (Supreme Court Regulation No 5 of 2019, 2019). Based on these requirements, the Supreme Court has theoretically established a rigorous threshold to filter which petitions may be granted.

Beyond the aforementioned administrative requirements, Article 13 stipulates that the judge must hear testimony directly from the child and the parents. Furthermore, Article 15 states that the judge may—at their discretion—request and consider recommendations from psychologists, doctors, midwives, professional social workers, or other relevant parties. Additionally, Article 16, letter (j), emphasizes that the judge must ensure the parents' commitment to taking responsibility for the economic, social, health, and educational welfare of the child (Supreme Court Regulation No 5 of 2019, 2019). Thus, it is evident that the judge's duty in adjudicating marriage dispensation is not a light administrative task of merely granting permission; rather, it involves complex procedural scrutiny before a verdict is rendered. However, as stipulated in Article 15, the involvement of psychologists or expert witnesses in the decision-making process is merely optional (*facultative*) rather than mandatory. Consequently, the judge's assessment of the child's mental readiness remains largely subjective, as it relies primarily on the testimonies of the child and the parents or guardians (Supreme Court Regulation No 5 of 2019, 2019).

Marriage dispensation is intended as an "emergency exit" for those unable to meet the age requirements stipulated in the 2019 revision of the Marriage Law. Nevertheless, official data from *Kinsatker Badilag MA* reveals a staggering number of dispensation petitions; in fact, the number of applications surged following the

implementation of the revised law on October 15, 2019. The following data details the number of marriage dispensation petitions from 2019 to 2022 (Badilag, 2024):

Table 1. Number of Marriage Dispensation Petitions 2019-2022

Year	Number of Accepted Petitions	Notes
2019	23.126	Transitional Period (Law No. 16/2019 effective as of Oct 2019)
2020	64.211	Sharp Increase; First full year following the age synchronization to 19 years
2021	59.709	Post-surge stabilization period.
2022	52.095	Initial downward trend.

Source: Data Kinerja Satuan Kerja (Kinsatker) Badilag Mahkamah Agung RI, Tahun 2024 (processed)

The data indicates a significant surge in petitions in 2020. From 23,126 cases in 2019, the number rose to 64,211 in 2020, then gradually declined in subsequent years. Nevertheless, as of 2022, recorded marriage dispensation petitions still exceed 50,000. This phenomenon demonstrates that although the statutory regulations have been amended, they have not automatically shifted social behavior or the public mindset.

Kinsatker Badilag also officially published data regarding the reasons behind marriage dispensation petitions. However, the author only managed to obtain comprehensive national-scale data for these reasons for the year 2022 (Badilag, 2023). The detailed breakdown is presented as follows:

Table 2. Reasons for Marriage Dispensation Petitions in 2022

No	Reason	Number	Percentage
1	Love (Emotional Attachment)	34.987	67,16%
2	Pregnancy	13.457	25,83%
3	Economic Factors	2.406	4,62%
4	Physical Intimacy (Non-Pregnancy)	1.132	2,17%
5	Arranged Marriage	113	0,22%
Jumlah		5.2095	100%

Source: Data Kinerja Satuan Kerja (Kinsatker) Badilag Mahkamah Agung RI, Tahun 2023 (processed)

Based on the data presented above, the reason of "love" constitutes the overwhelming majority of marriage dispensation filings, accounting for 67.16% of all cases. In the author's view, this reason is primarily rooted in the parents' anxiety regarding potential *zina* (adultery) if the marriage is not immediately solemnized. Strikingly, the number of petitions citing love far exceeds those involving out-of-wedlock pregnancies. This trend persists into 2025, as noted in recent Supreme Court reports (Febriansyah, 2025), indicating that the concept of "emergency" (*darurah*) in the context of marriage dispensation has undergone a significant paradigm shift from biological emergencies to emotional ones.

A concrete manifestation of this standardization of the affectional motif is clearly reflected in several jurisprudences of the Indonesian religious courts. For instance, the Malang Regency Religious Court Decision No. 3/Pdt.P/2024/PA.Kab.Mlg granted a marriage dispensation petition solely on the consideration that both prospective spouses had known each other for three years and possessed an emotional attachment deemed inseparable. A similar pattern of reasoning is also found in the Jember Religious Court Decision No. 1848/Pdt.P/2025/PA.Jr, in which the judge approved the petition because the underage child had been in a relationship for one year, was in an inseparable condition, and the formal proposal had been well received by the family of the prospective bride.

These two judicial decisions provide crucial empirical evidence that at the grassroots level, the parameters of "emergency" (*darurah*) have undergone a highly loose simplification. Prolonged courtship, subjective emotional bonds, and formal family acceptance are treated as a legal urgency equivalent to a biological emergency. Such judicial pragmatism demonstrates that without objective evaluative criteria, the "urgent reasons" clause in the new regulation will continue to be reduced to a legal legitimization in the name of the sentiment of love, ultimately disregarding the commitment to protect constitutional rights and the child's future.

This data paradox highlights a deviation from the original mandate of Article 7, Paragraph 2 of Law No. 16 of 2019, which explicitly uses the term "urgent reasons" (*alasan mendesak*). In judicial practice, this "urgency" has been reinterpreted by judges' subjective discretion. Judges often prioritize the speculative fear of future adultery over the objective protection of the child's rights to health and education.

This condition creates a serious legal dilemma. On one hand, judges seek to "close the door to adultery" (*sadd adz-dzari'ah*); on the other hand, granting dispensations based on non-biological emergencies may inadvertently "open the door to destruction" (*fathu adz-dzari'ah*) on a broader scale—namely, the loss of a child's future due to premature marriage. In other words, the dispensation instrument, which was designed to be exceptional, has been transformed into a regularized norm due to the standardization of "love" as a valid emergency. This fact reinforces the argument that, even with stricter regulations, the spirit of the new Marriage Law will continue to be eroded by subjective reasoning in the courtroom in the absence of more objective evidentiary standards.

3. Analysis of *Sadd adz-Dzari'ah* Against the Paradox of "Love" as a Reason for Marriage Dispensation

From the perspective of *Ushul Fiqh*, a judge's *ijtihad* in deciding marriage dispensation cases is a manifestation of the application of the principle of *Sadd adz-Dzari'ah* (blocking the means to harm) (Alfarisi & Irhamuddin, 2024). However, examining the high rate of approvals based on "love" or "fear of adultery" (*zina*), at 67.16% according to the 2022 Kinsatker Badilag data, indicates a flaw in the *tahqiq al-manat* (verification of the legal basis) process. Judges tend to be trapped in efforts to avoid *mafsadah mauhumah* (presumptive harm), namely the potential for *zina*, without adequately considering *mafsadah muhaqqaqah* (actual/certain harm), such as the cessation of educational access and reproductive health threats for minors.

Methodologically, Al-Shatibi emphasizes that the legality of an action must be measured by *ma'alat al-af'al*, or the long-term impact it generates (Al-Syathibi, 1997). Utilizing the argument of *sadd adz-dzari'ah* to legalize early marriage solely based on moral anxiety creates an anomaly of *ijtihad* that is partial (*juz'i*). This contradicts the principle of *Maqashid al-Syari'ah*, which is universal (*kulli*), where the protection of life (*hifdz an-nafs*) and intellect (*hifdz al-'aql*) through education should hold a higher priority than merely facilitating the emotional needs of underage couples (Rany & Muliya, 2021).

The inability of judges to perform *tarjih* (weighing) between two harms (*ta'arudh al-mafsadatain*) has caused the function of marriage dispensation to shift. As the *fiqh* maxim states: "A greater harm cannot be removed by a harm that is equal or greater" (Ishak, 2020). Therefore, granting early marriage to avoid *zina* (which can be prevented through social supervision) while plunging the child into structural poverty and marital failure is a disproportionate *ijtihad*. What is required here is a reconstruction of judicial *ijtihad* so that it does not merely serve as a "rubber stamp" for the legality of child marriage, but rather becomes a protective fortress for the more comprehensive interests of the child.

In the hierarchy of *Maqashid al-Syari'ah*, the protection of the intellect (*hifdz al-'aql*) occupies a non-negotiable central position. The intellect is the primary instrument for humans to carry out *taklif* (legal obligations) and achieve life's prosperity (Hesasy & Triana, 2025). Therefore, pursuing knowledge through formal education for minors is not just a constitutional right but a mandatory religious obligation (*fardhu*). When a petition for marriage dispensation is filed on the basis of love, yet risks breaking the chain of education, a conflict inevitably arises between momentary emotional benefits and permanent intellectual benefits. Judicial considerations must be more cautious because education is a determining variable for the future economic independence of the family (Septrilia & Husin, 2024).

Referring to the data in Table 2, where 67.16% of petitioners cited love, there is a negative correlation with school retention rates. Most children who receive marriage dispensations do not pursue higher education. This phenomenon creates a "lost generation," where children's rights to develop intellectually are stripped away by the legality of early marriage. Research by Lina Sari et al., particularly in Tumbang Habaon, Gunung Mas, also demonstrates that school dropouts post-dispensation occur in various regions across Indonesia (Sari et al., 2023). This proves that the parents' promise in

Article 16 of PERMA No. 5 of 2019 to ensure children's education is often merely rhetorical without the executive power to implement it in practice.

Methodologically, judicial *ijtihad* must be able to map which needs fall under absolute necessity (*daruriyyat*) and which are merely secondary (*hajiyyat*) (Hidayatulloh & Janah, 2020). While avoiding *zina* is important, in the context of minors, equipping them with education and a healthy intellect is a *daruriyyat* need for their survival. Conversely, the desire to marry for love is more accurately categorized as *hajiyyat* or even *tahsiniyyat* (supplementary/ornamental). As explained by Edi Kurniawan et al., prioritizing emotional reasons over intellectual ones constitutes a form of neglecting the principle of priority of *maslahah* in *Ushul Fiqh*. Proper *ijtihad* should close the loopholes of early marriage to ensure the child's intellect and future are perfectly protected (Kurniawan & Najib, 2020).

The second equally important aspect in the review of *Maqashid al-Syari'ah* is the protection of life (*hifdz al-nafs*). In the context of marriage dispensation, judges often ignore the biological fact that the reproductive organs of children under 19 are not fully mature. Adolescent pregnancy carries extremely high medical risks, ranging from pre-eclampsia and severe bleeding to the risk of maternal and infant mortality (Sekarayu & Nurwati, 2021). In *Ushul Fiqh*, safeguarding life is an absolute obligation. If a judge grants a dispensation solely because of love or fear of *zina*—which is still presumptive (*mauhumah*)—yet realistically plunges the child into life-threatening medical risks, then the verdict violates the basic principle of *Sharia* aimed at removing harm (*yuzalu al-dharar*) (Khalimi, 2021).

Furthermore, the impact of early marriage does not stop at the couple; it also affects the quality of the offspring produced (*hifdz al-nasl*). Empirically, children born to mothers who are too young have a high risk of stunting or chronic malnutrition. Research by Titi Sulastry et al. strengthens this argument by showing that the cycle of poverty and health problems often begins with marriages forced at an early age (Sulastry & Fattah, 2023). A judicial *ijtihad* that focuses only on formal-legal aspects without considering the biological readiness of parents has contributed to the creation of a physically and economically weak generation. This is fundamentally contrary to the spirit of the Qur'an in Surah An-Nisa verse 9, which commands Muslims not to leave behind a weak generation.

This is where judges are required to perform *Tarjih al-Mafasid* (weighing the comparison of harms). Between the harm of potential *zina* and the harm of threats to life and reproductive health, the physical-medical harm (*al-mafsadah al-hissiyyah*) must be prioritized for prevention. The reason for love, which accounts for 67.16% of petitions, should be viewed as an emotional urge that can be mitigated through parental supervision and social education, rather than being resolved by granting legal validity to a marriage that threatens life safety. In this regard, judges must possess sociological-medical sensitivity so that the function of marriage dispensation returns to its original path as a very limited exception, not as a means of justifying risks to citizens' safety. To prevent the possibility that granting marriage dispensation leads to *fath adz-dzari'ah*, a

reconstruction of the implementation of the phrase "urgent reasons" in Article 7, Paragraph 2 of the Marriage Law is necessary.

The first reconstruction must begin by shifting the judge's paradigm from a mere administrative examiner to a substantive one. Thus far, Article 5 of *PERMA* No. 5 of 2019 emphasizes only document completeness, which, from the perspective of Ushul Fiqh, is merely a formal instrument. The author argues that judicial *ijtihad* must transcend the text by mandating the active involvement of experts, not just as supporters, as stated in Article 15. Assessment of psychological readiness by professionals is the only way to perform an accurate *Tahqiq al-Manat* regarding the petitioner's claim of "emergency." Without a certificate of psychological and health readiness, the reasons of "love" or "fear of zina" should not be considered to meet the "urgent reason" requirement in Law No. 16 of 2019.

Furthermore, the implementation of Article 16, letter (d), regarding the parents' commitment to the child's economic and educational welfare, must be formalized through a Conditional Dispensation scheme. The author proposes that every granted marriage dispensation must be accompanied by an "Educational Integrity Pact." In this document, the parents and the prospective groom must legally declare their willingness to guarantee the wife's right to education at least through senior high school (SMA). If the child subsequently drops out of school, there must be clear legal consequences or social sanctions. This aligns with the concept of *Maslahah Mursalah*, where the state has the right to establish additional regulations to safeguard the greater public interest. In this case, post-litigation monitoring is the key to ensuring that marriage dispensation does not become a shortcut to structural poverty.

Finally, this reconstruction requires a collaborative monitoring system between the Religious Court, the Religious Affairs Office (*KUA*), and the local Social Services. A judge's decision must not end in the courtroom but must be followed by a periodic report mechanism. For example, the *KUA* could be instructed to monitor the couple's educational continuity and report it to the supervisory judge. This model of collective *ijtihad* (*Ijtihad Jama'i*) across institutions will ensure that child protection is truly realized *de facto*, not just *de jure*. In the author's view, institutional synergy is an absolute requirement for the success of responsive law in Indonesia. Thus, the granting of dispensation is no longer viewed as the end of state protection but rather the beginning of stricter state supervision over the child's fate.

C. CONCLUSION

This research concludes that the practice of granting marriage dispensations in Indonesia following the revision of Marriage Law No. 16 of 2019 has undergone a paradoxical paradigm shift. The summary of findings indicates that the reasons of "love" and "fear of adultery," which dominate national data (67.16% in 2022 and remaining consistent through 2025), have hijacked the dispensation instrument—which should be exceptional in nature—into a regularized pathway. Through the analytical lens of *sadd adz-dzari'ah*, a fallacy was identified in the judges' *ijtihad* regarding partial *tahqiq al-manat*,

where the prevention of presumptive sin (*zina*), categorized as *mafsadah mauhumah*, inadvertently triggers actual harm (*mafsadah muhaqqaqah*) in the form of lost educational rights and threats to reproductive health. Consequently, the initial spirit of marriage age restriction intended for *sadd adz-dzari'ah* has reversed into *fath adz-dzari'ah* (opening the door to harm) due to the neglect of the *ma'alat al-af'al* (long-term consequences) aspect.

As a recommendation for reconstruction, this study proposes the concept of "Conditional Dispensation." Judges are required to shift from being mere administrative examiners to substantive examiners by mandating the active involvement of professional experts (psychologists/medical personnel) and formalizing parental commitments through an "Educational Integrity Pact." To suppress child marriage rates, the Supreme Court is recommended to issue a Supreme Court Circular Letter (SEMA) affirming that speculative reasons such as "love," "mutual consent," or "fear of adultery" cannot be classified as "urgent reasons" under Article 7 Paragraph (2) of Law No. 16/2019. Correspondingly, Religious Court judges must shift the paradigm regarding the involvement of psychologists or expert witnesses under PERMA No. 5/2019 from facultative to a juridical obligation to obtain objective evidence of harm (*mafsadah*). Lastly, DPR legislators need to tighten marriage dispensation loopholes through statutory revision by establishing an absolute age limit and restricting permissions solely to scientifically proven bio-medical emergencies

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