

Revitalization of Fiqh Rules in the Reform of Modern Islamic Family Law

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Abstract

The purpose of marriage is to form a harmonious and happy family. However, the impact of globalization, technology, and diverse social life in society makes the goal of marriage difficult to achieve. Issues related to marriage require a solution, therefore, these Islamic jurisprudence principles serve as a guide in addressing marriage issues, resulting in a more responsive and adaptive renewal of Islamic family law. This study uses a qualitative approach with a literature study approach. Primary data sources are Ihya' Ulumiddin and Al-Faraidul Bahiyyah, and secondary data are from books and journals. Data collection techniques through literature reviews. The analysis process is carried out by separating relevant data, then analyzing it in the form of descriptive analysis, and drawing conclusions by linking the data on marriage issues to relevant Islamic jurisprudence principles. The results of the study show that there are three rules of Islamic jurisprudence that are relevant to marriage issues 1. Al-umuru bi maqasidiha (All actions depend on their purpose) This rule is used as the basis for a judge to decide the law on marriage confirmation. 2. Al Aslu fi asyaya' al ibahah hatta yadulla al dalil ala tahrim (The origin of something is permissible, so there is evidence that prohibits it) This rule provides legal confirmation about the permissibility of doing something until there is an argument that prohibits it, in the context of marriage, namely the permissibility of doing walimatul usr according to his ability. 3. Addararu yuzalu (harm must be eliminated) This rule seeks to realize the purpose of the law, namely for the benefit by rejecting all damage, in the context of marriage, namely the existence of a marriage dispensation by a judge for those who have not met the formal and material requirements of marriage.

Keywords: Fiqh Principles, Marriage, Update of Islamic Family Law

Abstrak

Pernikahan mempunyai tujuan membentuk keluarga yang sakinah mawaddah warahmah membentuk keluarga yang harmonis dan bahagia. namun dampak dari globalisasi, teknologi dan kehidupan sosial yang beragam dimasyarakat membuat tujuan pernikahan sulit terwujud. Isu-isu terkait pernikahan perlu adanya jalan penyelesaian maka dari itu kaidah fikih

ini sebagai panduan dalam menyikapi isu-isu pernikahan sehingga ada pembaharuan hukum keluarga Islam yang lebih responsif dan adaptif. Penelitian ini menggunakan jenis kualitatif dengan pendekatan studi pustaka. Sumber data primer adalah Ihya' Ulumiddin dan Al-Faraidul Bahiyyah dan data sekunder dari buku dan jurnal. Teknik pengumpulan data melalui literatur review. kemudian proses analisis dilakukan dengan memisahkan data relevan, kemudian dinarasikan berbentuk deskripsi-analisis, serta tarik kesimpulan dengan pengaitkan data isu pernikahan pada kaidah fikih yang relevan. Hasil penelitian menunjukkan bahwa ada tiga kaidah fikih yang relevan dengan isu-isu pernikahan 1. Al-umuru bi maqasidiha (Segala perbuatan tergantung pada tujuannya) kaidah ini digunakan landasan seorang hakim untuk memutuskan hukum tentang isbat nikah. 2. Al Aslu fi asyya' al ibahah hatta yadulla al dalil ala tahrim (Asal Sesuatu adalah boleh, sehingga ada dalil yang mengharamkannya) Kaidah ini memberikan penegasan hukum tentang bolehnya melakukan sesuatu sampai ada dalil yang melarangnya, dalam konteks pernikahan yaitu kebolehan melakukan walimatul usr ala kemampuannya. 3. Addararu yuzalu (kemudaratatan harus dihilangkan) Kaidah ini berupaya untuk mewujudkan tujuan hukum yaitu untuk kemaslahatan dengan menolak segala kerusakan, dalam konteks pernikahan yaitu adanya dispensasi nikah oleh seorang hakim bagi yang belum memenuhi syarat formil maupun materiil pernikahan.

Kata kunci: Kaidah Fiqh, Perkawinan, Pembaharuan Hukum Keluarga Islam.

A. Introduction

Indonesian society is currently facing social changes ranging from social structure to family life. Because the influence of technology and cross-cultural marriage makes dynamics in family life always exist¹. As is the case, applications for marriage compensation and isbat nikah are increasing. Many rules are textual and less responsive to the social dynamics that occur in society. Exacerbated by the fact that the Islamic family law response to this change is still limited, coupled with the lack of literature related to family law. Family law issues require literature that responds to family dynamics in accordance with current problems.

Looking at previous research, it focuses more on the historical aspect. For example, the study of the history of the growth and development of Islamic family law² and the codification of Islamic family law. The study stops at normative descriptions only to collect various theories in the development

¹ Doni Azhari and Asmuni Asmuni, "Progressive Steps in Reforming Indonesian Islamic Family Law Through Gender Studies," *Syakhshiyyah Journal of Islamic Family Law* 3, no. 2 (2023): hlm. 208.

² Achmad Yasir Sinulingga and Faisar Ananda, "Sejarah Dan Urgensi Hukum Keluarga Islam Dalam Transformasi Sistem Hukum Nasional," *Jurnal Review Pendidikan Dan Pengajaran (Jrpp)* 7, no. 4 (2024): hlm. 87.

of Islamic family law without exploring how these theories can be applied to solve dynamic field problems³. Meanwhile, the community is always waiting for new legal answers to the family problems they face.

Contemporary issues of marriage such as marriage dispensation and isbat nikah require a contextual and solutional approach. Therefore, the rules of fiqh offer a solution as a flexible method of ijtihad and rooted in the goals of shari'a. The rules of fiqh do not stop at the sound of nash but explore in depth how the rules of fiqh can be used as a basis in answering the issue of marriage so that it can formulate responsive family law, the formulation of the rules of fiqh in answering the issue of marriage will be harmonized with *its Maqashid al-shari'ah* to produce the law of maslahat. This approach will make the Islamic family law a solutive tool to adapt to the changing times without going out of the scope of shari'a provisions⁴.

There are three rules of fiqh that will be used in answering the issue of marriage, namely *Al-umuru bi maqasidiha*⁵ (All deeds depend on their purpose), *Al Aslu fi asyaya' al ibahah hatta yadulla al dalil ala tahrim* (The origin of something is permissible, so there is evidence that prohibits it⁶) and *Addararu yuzalu*⁷ (harm should be eliminated). Meanwhile, in the maqashid As-Sharia, there are five main elements that will be involved in the formation of the law⁸, namely *hifz ad-din* (protection of religion), *hifz an-nafs* (protection of life), *hifz al-mal* (protection of property), *hifz al-aql* (protection of reason), *hifz an-nasl* (protection of offspring) and *hifz al-ird* (protection of honor)⁹. From these two concepts, it will be used as a revitalization of modern Islamic family law to produce laws that are beneficial in overcoming marriage problems such as marriage dispenasi and isbat nikah. This is where the novelty of this research lies.

All family problems have basically been discussed in the Qur'an and hadith, but sometimes these problems are not explained explicitly so that

³ Muchammad Hammad, "Urgensi Kodifikasi Hukum Keluarga Islam Dalam Dunia Muslim," *At-Tahdzib: Jurnal Studi Islam Dan Muamalah* 6, no. 1 (2018): hlm. 170.

⁴ Samsul Arifin, "Rekonstruksi Hukum Islam Melalui Pendekatan Maqashid Syari'ah," *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsiyyah* 5, no. 1 (2022): hlm. 109.

⁵ Abu Bakar bin Al-Qasim, "*Al-Faraidul Bahiyyah*", Cet.I (Bairut: Bairut Lebanon, 2009). hlm. 23.

⁶ Muhammad Iqbal, "Urgensi Kaidah-Kaidah Fikih Terhadap Reaktualisasi Hukum Islam Kontemporer," *Edutech: Jurnal Ilmu Pendidikan Dan Ilmu Sosial* 4, No. 2 (2018). Hlm. 64.

⁷ Abu Bakar bin Al-Qasim, "*Al-Faraidul Bahiyyah*", Cet.I (Bairut: Bairut Lebanon, 2009). hlm. 23.

⁸ Hendra Gunawan, "Jual Beli Jabatan Perspektif Fiqh Jinayah," *Yurisprudencia: Jurnal Hukum Ekonomi* 5, no. 2 (2019): hlm. 108.

⁹ Syamsul Anwar, *Studi Hukum Islam Kontemporel*, I (Jakarta: Rm Books, 2007). hlm. 254.

they need help in understanding them¹⁰, so the rules of fiqh will answer them. However, it does not stop there and certainly requires an outpouring of thoughts to explore these principles to contemporary family problems, this is where the importance of thinkers such as the heads of mission and others is important. Although many researchers and academics discuss Islamic family law, they have not combined the rules of fiqh with *Maqashid asshari'ah* in the excavation of the law. Therefore, with the approach of the rules of fiqh and *maqashid as shari'ah* in this study, it is hoped that it will be able to make a new contribution to the development of Islamic family law that is more contextual, solutive, and in accordance with the goals of shari'a.

B. Research Methods

This study uses a qualitative approach with a literature study design. The qualitative approach was chosen because the purpose of the research is to understand the meaning, value, and context of contemporary marriage issues that cannot be quantitatively measured. Literature studies were conducted to review the literature on fiqh rules that are relevant to Islamic family law. This method is used because the rules of fiqh are conceptual and require an in-depth analysis of classical and contemporary texts. Peripheral sources are in the form of books such as *Ihya' Ulumiddin* and *Al-Faraidul Bahiyyah*. Secondary sources are books, scientific journals, and articles that discuss Islamic family law and modern marriage issues. Data collection techniques through literature review. And the literature data is analyzed to compile a theoretical framework for applicable fiqh rules. This technique was chosen so that the data obtained was in-depth and contextual. The data obtained is described thematically, then analyzed using the rules of fiqh. The analysis process is carried out by separating relevant data, then analyzed in the form of descriptions-analyses, and conclusions are drawn by relating the data on marriage issues to relevant fiqh principles. This approach ensures that the legal solutions offered are inseparable from social realities while still adhering to sharia principles.

C. Discussion and Results

Maqashid Sharia as the Basis of the Dynamics of Islamic Family Law

The social changes that have occurred in modern society require Islamic law to remain relevant without losing the substance of its teachings. Within the framework of fiqh proposals, this dynamic can be answered through *the maqashid al-shari'ah approach*, which is the purpose of establishing laws to protect human welfare. There are five main elements of

¹⁰ Neneng Hasanah, "Kaidah-Kaidah Islam Menjawab Permasalahan Sosial Dan Ekonomi Umat," *Asy-Syari'ah* 21, Number (2019). hlm. 39.

maqashid as-shari'ah to attract benefits and avoid damage¹¹, first, *hifz ad-din* (religious protection), Islamic Shari'at teaches to create an attitude of respect and maintain existing beliefs, so that in a society that is in a variety of religions can coexist peacefully, take care of each other and respect each other¹². Second, *hifz an-nafs* (protection of the soul), Islam teaches to maintain and respect the security and safety of human beings and maintain human dignity as an anugraha from Allah SWT. The impact will ensure peace and the condition of a polite and barbaric society. Third, *hifz al-aql* (protection of the intellect), reason is the most important minence in human life. Reason will determine the good and bad of an action. Therefore, Islam teaches to maintain the intellect and develop it. Fourth, *hifz an-nasl*¹³. (protection of offspring), Islam teaches to preserve and respect the family and its security, so that each person has a clear family ratio and line for the sake of the interests in the society in order to create a peaceful, calm and happy life. Fifth, *hifz al-mal* (protection of property), Islam teaches to maintain legitimate ownership to create a profitable, polite and civilized economy, respecting each other and maintaining ownership.

Of the five aspects of *maqashid as shari'ah* is used to answer the dynamics of family law. Then it is contextualized in today's era, namely maintaining religion means protecting and respecting religious freedom. Safeguarding the soul means maintaining, protecting and respecting human dignity and safeguarding human rights. Maintaining reason is interpreted as involving doubling down on scientific mindset and prioritizing travel to seek knowledge. Taking care of descendants is oriented to family protection, more concern for the family. Safeguarding wealth prioritizes social care, promotes human welfare and eliminates the gap between poor and rich.¹⁴ Current problems in a family because there is no protection and care for the family. Meanwhile, according to As-Satibi that the dynamics of marriage law must be based on *maqashid as-shari'ah*, especially in the aspect of protecting offspring.

The Concept and Function of Fiqh Rules in Legal Istimbath

Fiqh rules function as a methodological framework that bridges normative texts with social reality. As a rule, *kullu* summarizes the laws

¹¹ Totok Jumanoro dan Samsul Munir Amin, *Kamus Ilmu Ushul Fikih*, cet. 2 ((Jakarta: Amzah, 2009). hlm. 196.

¹² Ahmad Al-Mursi Husain Jauhar, *"Maqashid Syari'ah"* (Jakarta: Amzah, 2009). hlm. 20.

¹³ Anwar, *Studi Hukum Islam Kontemporel*, I (Jakarta: Rm Books, 2007). hlm 254.

¹⁴ Arina Haqam, *Rekontruksi Maqasyid As-Syar'ah Jesser Auda* (Kajian Islaman, 2018). hlm. 152.

of *furu'* so as to simplify the *istimbath* process and maintain legal consistency. The rules of *Al-umuru bi maqasidiha*, *Al Aslu fi asyaya' al ibahah hatta yadulla al dalil ala tahrir*, and *Addararu yuzalu* are the basis for formulating contextual laws. In Islamic family law, this rule allows for the settlement of new cases that are not explicitly regulated in the *nash*, based on the purpose of the *sharia*. The function of *fiqh* rules as a relevant tool to maintain a balance between the firmness of principles and the flexibility of the application of the law. There are three relevant *fiqh* rules in answering the issue of modern marriage, namely;

1. *Al-umuru bi maqasidiha*¹⁵ (All deeds depend on their purpose)

The understanding of this rule is that the law will have implications for a matter arising from an act or word depending on its intention and purpose. If a person's action leaves things that are forbidden to be done because of obedience to the stipulations that have been *shari'a*, then the action will be rewarded. However, if the action is related to a habit or feeling and then abandons it without seeing the prohibition, then the action does not get a reward¹⁶. This means that the law will have implications for a person's actions or actions accompanied by their intentions and goals.

This rule gives legal affirmation to an act based on its intention or purpose. In the context of marriage, this rule serves as a principle that connects formalism with the substantive purpose of a marital relationship¹⁷. In court, this rule is used as the basis for a judge to decide the law. This rule is based on the hadith of the Prophet Muhammad PBUH, "*Indeed, charity depends on its intention.*" (HR. Bukhari Muslim from Umar bin Khattab). From this hadith that every act of legitimacy will be determined by its intention. Likewise in legal aspects, including Islamic family law¹⁸. In the judge's decision, when deciding a law, he must look at his intention and purpose.

¹⁵ Abu Bakar bin Al-Qasim, "*Al-Faraidul Bahiyyah*", Cet.I (Bairut: Bairut Lebanon, 2009). hlm. 23.

¹⁶ Agus Hertanto, *Al Qawaid Fiqhiyyah*, Cet. I (Cv. Leterasi Nusantara Abadi, 2021). hlm. 19.

¹⁷ Eko Bambang Rahmono et al., "Legal Maxim Dalam Perkawinan: Analisis Hukum Islam Kontemporer Berdasarkan Kaidah Fikih Dan Aplikasinya Di Indonesia," *Jurnal Education And Development* 14, no. 1 (2026): hlm. 422.

¹⁸ Andiko Toha, "Ilmu Qawā" Id Fiqhiyyah: Panduan Praktis Dalam Merespon Problematika Hukum Islam Kontemporer," (*Yogyakarta: Teras*, 2011). hlm 12.

2. *Al Aslu fi asyya' al ibahah hatta yadulla al dalil ala tahrim* (The origin of something is permissible, so there is evidence that prohibits it).¹⁹

This rule provides legal affirmation about the permissibility of doing something until there is evidence that prohibits it, meaning that through this rule the shari'a does not aim to burden, but to maintain benefits and provide space for humans²⁰. This rule is rooted in a general principle in Islamic law which states that there are no limits or prohibitions except those set by the shari'a.

All acts done in Islamic law are permissible unless there is a clear legal evidence that prohibits it. Example In the context of marriage, this rule serves as a basic principle for a person who will perform isbat nikah even though basically marriage without court recognition is legal according to Islamic law. However, if the marriage isbat is not carried out, it will be able to change the basic law. This rule provides flexibility in applying the law, especially in dealing with social changes in today's life²¹.

3. *Addararu yuzalu* (harm should be eliminated)²².

This rule seeks to realize the purpose of the law, namely for the benefit of rejecting all damage, even the damage that will be caused by useful things must be rejected.²³ This means that all actions that cause *dharar* (harm) both to oneself and to others must be abandoned or eliminated. The Prophet Muhammad PBUH strictly forbade not to act carelessly without considering the consequences that will arise from his actions. According to the hadith, "*there should be no danger and there should be no harm to others*" (HR. Malik, Ahmad, Ibn Majah, Hakim, Baihaqi, and al-Daruquthi.)

This rule emphasizes that harm that will arise due to a decision or action must be eliminated. In the context of marriage, this rule serves to prevent damages caused in marriage. For example, in the context of marriage there is a marriage dispensation, the judge in deciding a marriage

¹⁹ Muhammad Iqbal, "Urgensi Kaidah-Kaidah Fikih Terhadap Reaktualisasi Hukum Islam Kontemporer," *Edutech: Jurnal Ilmu Pendidikan Dan Ilmu Sosial* 4, No. 2 (2018). hlm. 21.

²⁰ Mohammad Hamdan Sany, "ةقشمللا بلجت ريسيتلا" (Kesulitan," *Kaidah Fiqhiyyah: Menjawab Problematika Hukum Islam Modern*, (2025). hlm. 16.

²¹ Nanik Khanifah, "Kaidah Fiqhiyah Mengenai Hukum Asal Sesuatu Menurut Imam Syâfi'iy Dan Imam Abû Hanîfah: Studi Komparatif" (Universitas Islam Negeri Maulana Malik Ibrahim, 2008). hlm. 12.

²² Abu Bakar bin Al-Qasim, "*Al-Faraidul Bahiyyah*", Cet.I (Bairut: Bairut Lebanon, 2009). hlm. 23.

²³ Bunyana Sholihin, *Kaidah Hukum Islam* (Yogyakarta: Kreasi Total Media, 2006). hlm. 169.

dispensation case must look at the damages that will arise afterwards, if a judge does not give a marriage dispensation, it will have an impact on his home life. This is where it is important to have legal flexibility for judges' decisions for the benefit²⁴.

Revitalization of Fiqh Rules in Answering Contemporary Marriage Issues

The application of the principles of jurisprudence in a contextual manner has proven to be relevant to answer the problem of modern marriage. The rules of jurisprudence *Al-umuru bi maqasidiha* (All deeds depend on their purpose) can be used to assess the validity of isbat nikah if the purpose and intention is to build a family of *sakinah mawaddah warahmah*. While the rule of *Addararu yuzalu* (harm must be eliminated) can be the basis of legal protection for those who apply for marriage dispensation, to avoid much greater harm the court or a judge must grant it. There are two contemporary marriage issues, namely;

1. Marriage Isbat

The conditions for the validity of marriage are inseparable from the terms and harmony. The conditions and pillars of marriage based on the opinion of Imam Madhhab Shafi'i²⁵ are the existence of a husband, wife, guardian, two witnesses and a *sitat*. However, according to Law No. 1 of 1974 regarding marriage, marriage in Indonesia is not sufficiently fulfilled in terms of its conditions and harmony but must be recorded at the Office of Religious Affairs with the aim of making a child certificate and managing inheritance. Therefore, for those whose marriage has not been recorded, they should be asked to carry out isbat nikah in the religious court because based on the results of interviews with the applicant for isbat nikah as a practical solution to social reality that is not accommodated by formal law, in this case there is no recognition of inheritance if there is no marriage registration and there is no legal force to demand child²⁶ support. In this case, the judge often grants marriage applications by considering the aspects of the welfare of children and families, this is in line with the rules of jurisprudence *Al-umuru bi maqasidiha* (All deeds depend on their purpose) and *maqashid as-sharia*, namely to

²⁴ Rizki Fathul Anwar Sabani, "Analisis Hadis Lā Dharara Walā Dhirāran Sebagai Dasar Fatwa Keharaman Rokok," *Jurnal Penelitian Ilmu Ushuluddin* 2, No. 2 (2022): hlm. 268–293.

²⁵ Abdurrahman Al-Jazairi, "*Kitaabul Fiqhi 'Alal Mazaahib Al-Arba'Ah*", Cet. IV (Beirut: Darul Kutub Al-Ilmiyah, 2010). hlm. 716.

²⁶ Wawancara Dengan Pak Sudir Selaku Pemohon 12 April 2025

protect offspring. However, there is no need for a repetition of the marriage contract when there is a submission of a marriage isbat in the Court, but the court needs to ensure the realization of the purpose of the marriage, such as building a harmonious family *sakinah mawadda warahmah*.²⁷

Based on religious court data, the legalization of isbat nikah is often carried out for nikah sirri, which means that the religious court legalizes marriage seen from the intention and purpose, the sincerity of the couple makes a legitimate family according to religion and law. Based on the rule of *Al-umuru bi maqasidiha* (All deeds depend on their purpose) as the basis for the judge to decide on the validity of his marriage. And these rules make it possible to provide flexibility in understanding the new norms in marriage law.

Marriage Isbat Graph Data Submitted to the Religious Court²⁸

YEAR	NUMBER OF CASES DECIDED	STATUS DATA
2024	2.790	Final
2025	53.323	Final
2025	2.124	Running (January-April)

2. Marriage Compensation

The legal requirements for marriage are regulated in law number 1 of 1994 including material requirements and formal requirements. Material requirements are requirements regarding the candidate's self, while formal requirements concern procedures that must be met before and during the marriage. The material conditions themselves are generally applicable to all marriages, there are specific only for certain marriages²⁹

General material requirements;

- a. There must be the consent of both brides.
- b. The bride-to-be is at least 19 years old.

²⁷ Ach Syaifur Rizal, Samsul Arifin, And Ahmad Rezy Meidina, "Regulasi Poligami Dalam Pendekatan Maqashid As-Syari'ah," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6, No. 1 (2024): hlm. 230–243.

²⁸ "Https://Pusatdata.Badilag.Net/Perkara/Jenisperkara/Filterdata," 2026,

²⁹ Asmin, "Status Perkawinan Antar Agama Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974" (Jakarta: Dian Rakyat, 1986). hlm. 20.

- c. Not to be bound by the marriage cord with another person except in the case permitted as stipulated in law number 1 of 1974.

The waiting time for divorced women is;

- 1) 130 days for a marriage to break up due to death.
- 2) 3 times holy or at least 90 days if you break up due to divorce and are still menstruating.
- 3) 90 days if the marriage breaks up due to divorce but does not come to a month.
- 4) The waiting time until giving birth, if the widow is pregnant.
- d. There is no waiting time, if there has never been sexual intercourse.
- e. Calculate the waiting time since the fall of a court decision that has permanent legal force for a divorce and from the day of death if the marriage is dissolved due to death.

Specific material requirements :

- a. Do not violate the prohibition of marriage as stipulated in articles 8, 9 and 10 of Law number 1 of 1974 which include, among others:
 - 1. Blood relations in a straight line down and up.
 - 2. Blood relations from the bloodline to the side.
 - 3. Correspondence.
 - 4. Have a relationship with a brother as an aunt or nephew of the wife.
 - 5. Still tied to the marriage rope with someone else.
- b. Parental permission for those under the age of 21.

The formal requirements for marriage include:

- 1. Notice of knowledge of his will will to hold the marriage to the marriage registrar.
- 2. Announcement by the registrar of marriages.
- 3. The implementation of marriage according to their religious laws and beliefs.
- 4. Marriage registration by marriage registrar.

Based on religious court data, applications for marriage dispensation increased on the grounds of pregnancies outside marriage and customary insistence. Therefore, in the midst of the community, there are some who do not meet the material and formal requirements of marriage, for example, the age has not reached 19 years so that marriage registration cannot be carried out, it can be submitted to an application for marriage dispensation to the religious court by parents. In this case, the religious court can accept the

application based on the rules of fiqh *Addararu Yuzalu* (harm must be eliminated) means that if the marriage application is not granted, it can be detrimental to the life of the family, not getting the right to legal protection, especially the recognition of children and heirs and this is in line with *Maqashid as-Syari'ah* Namely taking care of the offspring. Therefore, the Religious Court is present to solve the problem by granting a marriage dispensation. This is supported by Al Ghazali in the book *Ihya' Ulum ad-Din* the dispensation of marriage is important for several reasons; Acquire legal descendants, Prevent adultery, Pleasant and soothing to the soul, Organize the household, Efforts to find halal rizki and Cultivate a sense of responsibility from the husband.³⁰

However, there are several mechanisms that must be carried out when applying for a marriage dispensation by parents.

1. Submit an application letter to the prameja to get an explanation on how to liaise, how to make an application letter and at the prameja can ask for help to make an application letter.
2. The application letter that has been made and signed is submitted to the applicant's sub-secretariat and the applicant faces the first desk who will ask about the cost of the case and write it on the power of attorney to pay it (SKUM).
3. Then the applicant faces the cashier by submitting an application letter and SKUM and paying the case fee.
4. After getting the signature of the SKUM from the cashier and getting the case number, the applicant then faces desk II by submitting the application letter and the SKUM that has been paid.
5. Then the process of resolving the case of the application for marriage dispensation was carried out at the Religious Court ³¹.

Marriage Dispensation Data in the Religious Court.³²

YEAR	NUMBER OF CASES DECIDED	STATUS DATA
2024	31.217	Final
2025	26.974	Final

³⁰ Abu Hamid Muhammad, *"Ihya' Ulum Ad Din"*, ed. Volume 2 (Beirut: Dar Al-Fikr, 1989). p. 27.

³¹ Sri Ahyani, "Pertimbangan Pengadilan Agama Atas Dispensasi Pernikahan Usia Dini Akibat Kehamilan Di Luar Nikah," *Jurnal Wawasan Yuridika* 34, No. 1 (2016): hlm. 31-47.

³² "Https://Pusatdata.Badilag.Net/Perkara/Jenisperkara/Filterdata."

2025

1.563

Running (January-April

The Conceptual Model of Maqashid As-Sharia'ah and Fiqh Rules on the Issue of Marriage

The submission of marriage isbat applications at the religious court every year is always increasing, this is triggered by the difficulty of inheritance recognition and when divorce occurs, there is no legal force to be responsible for child support. It is necessary to have a marriage isbat in the Court. In *maqashid as shari'ah* there is a benefit that must be maintained, namely *hifz an-nafs* (protection of the soul), which means the necessity to maintain honor so that there is peace and harmony between families. Besides that, there is *hifz an-nasl*. (protection of offspring), maintaining and maintaining order, so that each person must have a clear family line in order to realize a peaceful, calm and happy life. This is in line with the rules of fiqh *Addararu yuzalu* harm must be eliminated, meaning that when there is no recognition of inheritance and there is no clear legal responsibility for maintenance, there will be a dispute. Therefore, to avoid greater damage, Isbat nikah should be carried out. This is where it is important for the court to consider the benefits when there is an application for isbat nikah and it is no less important to also look at the purpose or intention of the marriage according to the rules of fiqh *Al-umuru bi maqasidiha* (All actions depend on the purpose).

The same is true in the submission of marriage dispensation applications. The court must grant the marriage dispensation. Because of the problems related to adolescent children getting pregnant out of wedlock. There needs to be recognition of the child's biological father who will be responsible for his support. This, if there is no care, will have a much greater impact on harm and it is contrary to the purpose of the shari'a. In *Maqashid as shari'ah* there is an obligation to take care of offspring, *hifz an-nasl*. (protection of offspring), maintaining and maintaining order, so that each person must have a clear family line in order to realize a peaceful, calm and happy life. It is further strengthened in the rules of fiqh *Addararu yuzalu* harm must be eliminated. Therefore, the religious court must accept the application for marriage dispensation, of course, without ignoring the conditions that must be met first. With the note, still consider *the maqashid as shari'ah* first.

D. Conclusion

There are three rules of fiqh that are the basis for the renewal of family law in responding to marriage issues; 1. *Al-umuru bi maqasidiha* (All deeds depend on their purpose) This rule is used as the basis for a judge to

decide the law on isbat nikah. A Judge in granting an application for isbat nikah looks at the purpose or seriousness of a person in building a family that is sakinah mawaddah warahmah. 2. *Al Aslu fi asyysa' al ibahah hatta yadulla al dalil ala tahrim* (The origin of something is permissible, so there is evidence that prohibits it) This rule provides legal affirmation about the permissibility of doing something until there is evidence that prohibits it, which means that through this rule the shari'a does not aim to burden, but to maintain benefits and provide space for humans. In the context of marriage, that is, the ability not to carry out isbat nikah, but if there is greater harm, it is necessary to perform isbat nikah. 3. *Addararu yuzalu* (harm must be eliminated) This rule seeks to realize the purpose of the law, which is for the benefit of rejecting all damages, even the damage that will be caused by useful things must be rejected. In the context of marriage, there is a marriage dispensation by a judge for those who have not met the formal and material requirements of marriage. A judge may grant the application on the basis that it will cause greater harm if it does not obtain a marriage dispensation.

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