

From Wasīlah to Natījah: Consistency of the Application of Sadd al-Dzarī'ah in the Judge's Ratio Decidendi on the Dispensation of Child Marriage

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Abstract

This study examines how consistently the principle of Sadd al-Dzarī'ah is applied in judges' ratio decidendi in child marriage dispensation cases, by tracing the chain of reasoning 'illat-wasīlah-natījah that ideally underpins every preventive ruling. The object of study is four cases decided by the Kolaka Class IB Religious Court in 2024. This research is normative legal research of the library research type, employing a statute approach and a conceptual approach, and analyzed descriptively and analytically against operational indicators of consistency. The results show that the petitioners' grounds were dominated by concerns about very close relationships, including premarital sexual relations and out-of-wedlock pregnancy. Of the four cases, two were granted, one was withdrawn, and one was dismissed because the petitioners did not appear; only the two granted cases reached an examination of the merits, so the analysis of ratio decidendi rests on them. The judges' reasoning formally complied with Articles 12 and 13 of Supreme Court Regulation No. 5 of 2019, but its substantive consistency differs: only one decision (No. 205) explicitly cited the maxim dar'u al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ and set out a fully traceable chain of reasoning, whereas the other (No. 45), despite a higher risk profile, offered a chain that cannot be traced textually. In the withdrawn case (No. 126), the judge's advice shows an indication of misdirected application, because it addressed the risks of child marriage rather than the petitioners' primary concern about premarital relations. These findings indicate that the application of Sadd al-Dzarī'ah in marriage dispensation practice remains reactive and not yet fully substantive and forward-looking; therefore, technical guidelines, professional psychological assessments, and risk mitigation measures that bind in the ruling need to be strengthened.

INTRODUCTION

Marriage in Islam is a very strong contract (*mitsaqan ghalidzan*) that requires the physical and mental readiness of both parties, not only as a means of distributing biological needs, but also as a way to peace of life (*litaskunu ilaiha*). This readiness can only be built if the bride-to-be has reached adequate psychological and physical maturity, because marriage at a very young age tends to correlate with low awareness of household responsibilities and an increased risk of divorce in the future.¹²

Recognizing this risk, the state raised the minimum age of marriage through Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, from 16 years old to 19 years old for women and remaining 19 years old for men. This policy is intended to prevent the negative impact of child marriage on the health, education, and future of the younger generation, while reflecting the principle of gender equality in marriage institutions.³

Reality on the ground shows that the practice of child marriage has not been fully prevented by the regulation. Socio-cultural, economic, and close romantic relationships between children still encourage parents to apply for marriage dispensation to the religious court⁴ as a limited deviation mechanism, which can only be granted if there is a "very urgent reason" as required by Article 7 paragraph (2) of Law Number 16 of 2019 *in conjunction with* Article 13 of Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications (hereinafter referred to as PERMA Number 5 of 2019). Preliminary data at the Kolaka Religious Court Class IB shows a similar pattern: there were 40 applications in 2023, 30 applications in 2024, and 38 applications in 2025, a figure that, although fluctuating, still shows that this problem is far from over.⁵

In these conditions, the judge occupies a very decisive position. Every determination of the marriage dispensation should be born from a comprehensive consideration of the juridical, sociological, psychological, and *best interests of the child*, not just verification of

¹ Wahyu Wibisana, "Marriage in Islam," *Journal of Islamic Religious Education Ta'lim*, Vol. 14, No. 2 (2016), p. 168.

² Hastin Melur Maharti and Winarini Wilman D. Mansoer, "The Relationship between Marriage Satisfaction, Religious Commitment, and Marriage Commitment in Indonesia," *Journal of Family Welfare Health and Education*, Vol. 5, No. 1 (2018), p. 71.

³ Parahdina Dona Salwa Soraya and Al Ghiffary Abidzar, "Implications of Changes to the Marriage Law on the Marriage Age Limit in the Family Law System in Indonesia," *Journal of Islamic and Law Studies*, Vol. 8, No. 1 (2024), p. 138.

⁴ M. Abdusalam Hisbullah, "The Existence of Marriage Dispensation on the Implementation of Child Protection in Indonesia," *Hawa Journal: Gender and Child Mainstream Studies*, Vol. 1, No. 2 (2019).

⁵ Kolaka Religious Court Class IB, "Case Tracking Information System (SIPP) of the Kolaka Religious Court, Marriage Dispensation Case Data in 2023–2025."

the completeness of administrative requirements. Because the judge's decision not only determines the legal status of a marriage, but also determines the direction of a child's life for many years to come.⁶

The Islamic legal framework provides one of the relevant analytical instruments to assess the quality of these considerations, namely the rule of *Sadd al-Dzari'ah*, the principle of fiqh that requires the closure of every path (*wasīlah*) that has the potential to lead to damage (*mafsadat*), even if the act itself is originally *mubah*. In the context of the dispensation of child marriage, marriage can serve a dual function: on the one hand it closes the path to adultery or provides certainty of the legal status of the child conceived, but on the other hand it can actually open the way to a new *mafsadat* in the form of school dropouts, domestic violence, or psychological unpreparedness. Because of its two-way nature, the quality of the application⁷⁸ of *Sadd al-Dzari'ah* depends heavily on the judge's meticulousness in tracing the chain of reasoning between *'illat* (cause), *wasīlah* (the means or deeds in question), and *natījah* (the expected consequences that arise) in each case in a case-by-case case.⁹

Previous studies on judges' considerations in marriage dispensation cases can be grouped into three tendencies. *First*, studies that identify dominant factors such as out-of-wedlock pregnancies, such as Nasyim (2023) who classify judges' considerations into legal considerations and societal justice considerations without exploring the structure of reasoning further.¹⁰ *Second*, a study that assesses judges' considerations with general benchmarks, namely the theory of the legal system Lawrence M. Friedman in the study of Herviani and Erfaniah (2022), the analysis of *maslahat* in the study of Sudarmaji

⁶ Abdul Rahman Kanang, "The Perspective of Child Protection in Indonesia," *Al-Risalah: Journal of Sharia and Legal Sciences*, Vol. 17, No. 1 (2017), p. 2.

⁷ Imam Fawaid, "The Concept of Sadd al-Dzari'ah in the Perspective of Ibn al-Qayyim al-Jauziyah," *Journal of Oral Al-Hal*, Vol. 13, No. 2 (2019), pp. 326-327.

⁸ Yusuf Kawakib and Syuhud Hafdz, "Sadd al-Dzari'ah as a Proof of Islamic Law (A Comparative Study of Ibn al-Qayyim al-Jauziyah and Ibn Hazm)," *Al-Bayan: Journal of Qur'an and Hadith Science*, Vol. 4, No. 1 (2021), p. 2.

⁹ Muhammad Idris Sarumpaet and Tanjung Dhiauddin, "Al-Adillah al-Mukhtalaf Fiha: Sadd al-Zari'ah," *Journal of Law, Politics and Social Sciences*, Vol. 3, No. 4 (2024), p. 45.

¹⁰ Prayudi Nasyim, "Judges' Considerations on Marriage Dispensation for Minors Due to Pregnancy Out of Wedlock," *HUKAMAA: Islamic Family Law Journal*, Vol. 1, No. 2 (2023), p. 1.

(2021),¹¹¹² the perspective of *maqāṣid syarī'ah* in the study of Baihaqi and friends (2024),¹³ and the principle of the best interests of children in the studies of Hernawan and Widigdo (2023) and Al Hasan and Yusup (2021).¹⁴ Third, studies that examine the basis or effectiveness of dispensation, such as Ikchsan (2022) on the effectiveness of marriage dispensation in suppressing divorce due to early marriage, Shafi'i and Chaosa (2021) on the comparison of marriage dispensation from the perspective of Islamic law and positive law in general, and Ashari (2024) on the reconstruction of the meaning of "very urgent reasons".¹⁵¹⁶¹⁷

As far as the author can trace, these studies have two limitations that are the basis of this article. First, the framework of *maqāṣid syarī'ah*, *maslahat-mafsadat*, and the best interests of the child is generally used as a benchmark to assess whether the outcome of the decision is in accordance with the purposes of sharia or child protection, not to examine how the judge reasoned from the reason for the application to the consequences to be prevented. Second, the studies rarely compared variations in elaboration between cases with different risk profiles within the same jurisdiction, so the question of consistency of reasoning across cases has not been answered.

The 'illat-wasīlah-natījah chain of reasoning offers a different methodological contribution for three reasons. First, it is derived from the structure of the *Sadd al-Dzari'ah* itself, which does work by weighing the consequences of a means, so as not to borrow measures from the outside. Second, it breaks down the judgment of the judgment into stages that can be traced in the text of the judgment: what concerns are the reasons ('illat),

¹¹ Femilya Herviani and Zuhriah Erfaniah, "Judges' Considerations in the Granting of Marriage Dispensation Perspective of Lawrence M. Friedman's Legal System Theory at the Malang Religious Court," *Journal of Intellectualita: Islam, Social, and Science*, Vol. 2, No. 1 (2022), p. 1.

¹² Waluyo Sudarmaji, "Judges' Considerations in Deciding Marriage Dispensation Cases Based on Maslahah Analysis (Study on Judge Determination No. 266/Pdt.P/2020/PA. Pwr at the Purworejo Religious Court)," *Al-Syakhsyiah: Journal of Law & Family Studies*, Vol. 3, No. 1 (2021), pp. 131-144.

¹³ Yusuf Baihaqi, Arini Nurjanah, and Uswatun Hasanah, "Judicial Considerations in Agreeing to Marriage Dispensation Maqāṣid Syarī'ah Perspective," *KnE Social Sciences*, Vol. 9, No. 2 (2024), pp. 85-95.

¹⁴ Hernawan and Mohammad Syifa Amin Widigdo, "The Role of Judges' Considerations in the Determination of Marriage Dispensation from a Children's Best Interest Perspective: A Case Study of the Wonosari Religious Court," *Al Qalam: Scientific Journal of Religion and Society*, Vol. 17, No. 5 (2023); Fahadil Amin Al Hasan and Deni Kamaluddin Yusup, "Marriage Dispensation in Indonesian Legal System: Protecting Children's Best Interests through Judges' Decisions," *Al-Ahwal*, Vol. 14, No. 1 (2021), pp. 86-98.

¹⁵ Nur Ikchsan, "The Effectiveness of the Implementation of Marriage Dispensation as an Effort to Reduce the Divorce Rate in Early Marriage in Semarang City" (Sultan Agung Islamic University Semarang, 2022), p. 1.

¹⁶ Imam Shafi'i and Chaosa Freede Intang, "The Determination of Marriage Dispensation by Judges (A Comparative Study of Islamic Law and Positive Law)," *Mabahits: Journal of Family Law*, Vol. 1, No. 2 (2021), p. 1.

¹⁷ Hasan Ashari, "Reconstruction of Considerations of Very Urgent Reasons in Marriage Dispensation Cases in Religious Courts," *Al Qalam: Scientific Journal of Religion and Society*, Vol. 18, No. 2 (2024).

what means are in question (*wasīlah*), and what consequences are weighed (*natījah*). Third, because it can be tested textually, this chain allows comparisons between cases with the same indicators. This is where the novelty of this article lies.

Departing from this description, this article aims to explore the extent to which the principle of *Sadd al-Dzarī'ah* is applied consistently in the judge's *ratio decidendi* in the four decisions on child marriage dispensation at the Kolaka Religious Court Class IB Year 2024, by answering three main questions: the reasons underlying the applicant's application, the ideality of the judge's consideration is reviewed from the juridical, sociological, psychological, and best interests aspects of the child, and the level of consistency in the application of *Sadd al-Dzarī'ah* across the four cases studied.

Theoretical Framework

1. *Sadd al-Dzarī'ah*, *Fath al-Dzarī'ah*, and *Kaidah Dar'u al-Mafāsīd*

Dzarī'ah in language means a path or means to something. In the proposition of jurisprudence, this term is understood as an act that is originally *mubah* but can lead to other prohibited acts or bring damage.¹⁸ *Sadd al-Dzarī'ah* means to close the path if the harm it causes is more dominant, while *Fath al-Dzarī'ah* is the opposite, which is to open the path that leads to benefits if the benefits are stronger. Both are based on the same principle, namely that the legal status of a means follows the status of the goal it wants to achieve (*al-wasā'il lahā aḥkām al-maqāṣid*).

The rule of *dar'u al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* works on a different level of the two concepts. This rule is the principle of *tarjih* that is used when *mafsadat* and *maslahat* meet and cannot be avoided at the same time: the prevention of *mafsadat* takes precedence if the degree is equal or greater, while much larger *maslahat* should not be sacrificed for the sake of a smaller *mafsadat*. In this article, the relationship between the three is formulated as follows: *Sadd al-Dzarī'ah* and *Fath al-Dzarī'ah* are two possible outputs on a means (closed or opened), while *dar'u al-mafāsīd* is the scale that determines which output is chosen in a given case. With this formulation, the ruling granting dispensation does not automatically contradict *Sadd al-Dzarī'ah*: the atonement can be a controlled *Fath al-Dzarī'ah* if the *mafsadat* of rejection is greater than the *mafsadat* of the atonement.

2. Classification of the Level of Certainty of *Dzarī'ah* and Its Operational Parameters

¹⁸ Fawaid, "The Concept of *Sadd al-Dzarī'ah* in the Perspective of Ibn al-Qayyim al-Jauziyah," pp. 326–327.

Not every means that have the potential to give rise to mafsadat must be closed; the degree of possibility of the occurrence of mafsadat determines the strength and weakness of the reason for closure. Following al-Syātibī's formulation in *al-Muwāfaqāt*, the literature on jurisprudence distinguishes four levels: the definite means (*qath'ī*) that lead to mafsadat; the means that according to strong conjecture (*zhann ghālib*) lead to him; the means that are frequent but not dominant in leading to him; and the means that rarely lead to him.¹⁹ The first two levels are commonly used as the basis for closure, the third level is disputed, and the fourth level is generally not enough to close a facility.

Since the court's decision does not explicitly classify *dzarī'ah*, this article uses operational parameters that rely on facts and evidence as stated in the judgment. First, *dzarī'ah* is placed at the level of *qath'ī* or close to *qath'ī* when the mafsadat has been partially realized and supported by direct facts, i.e. pregnancy as evidenced by a medical certificate or intercourse recognized at trial. Second, *dzarī'ah* is placed at the level of *zhann ghālib* if there are no direct facts but there are strong indications that are indirect, such as a very close relationship, proposal, or long-term courtship. Third, *dzarī'ah* is below the level of *zhann ghālib* if the reason for the request is only a general concern without indication. This parameter is the author's operationalization of the above taxonomy, not the classification stated by the judge, so the result is an interpretation that is open to testing. In this article, the *risk profile* of a case is understood as the combined level of *dzarī'ah* according to these parameters and the age of the child as recorded in the decision.

3. The Chain of Reasoning of 'Illat-Wasīlah-Natījah as an Instrument of Evaluation

The 'illat-wasīlah-natījah *chain of reasoning* is used to assess whether a *ratio decidendi* traces the consequences of the means in question. 'Illat is the reason or concern underlying the request, e.g. the fear of adultery; *wasīlah* is the means in question, i.e. child marriage or rejection thereof; and *natījah* is the effect that is weighed, both the mafsadat to be prevented and the new mafsadat that may arise. *Ratio decidendi* is considered to be substantively consistent if the three elements can be traced in the overall construction of the argumentation of the verdict. The inclusion of fiqh rules is explicitly treated as a marker of textual traceability, not as the only evidence of reasoning.

METHODS

This research is a normative legal research based on *library research*, focusing on legal documents in the form of laws and regulations and copies of court decisions. The main object is the judge's legal considerations (*ratio decidendi*) in four cases of child marriage

¹⁹ Al-Syātibī, *Al-Muwāfaqāt fī Uṣūl al-Syarī'ah*, Vol. 2.

dispensation resolved by the Kolaka Religious Court Class IB in 2024, namely Number 45/Pdt.P/2024/PA. Klk, 126/Pdt.P/2024/PA. Klk, 130/Pdt.P/2024/PA. Klk, and 205/Pdt.P/2024/PA. Klk (hereinafter referred to as Number 45, Number 126, Number 130, and Number 205). The research uses a statute *approach* to assess the suitability of the decision with positive law, as well as a *conceptual approach* to examine judges' considerations through the rules of *Sadd al-Dzari'ah*, a theory of Islamic law that emphasizes the principle of closing the path of harm. The data sources consist of primary data (Law Number 1 of 1974 *in conjunction with* Law Number 16 of 2019, PERMA Number 5 of 2019, and four copies of decisions from SIPP and the Directory of Supreme Court Decisions), secondary data (books, journals, and scientific works related to marriage dispensation, judges' considerations, and *Sadd al-Dzari'ah*), as well as tertiary data (legal dictionaries, encyclopedias, and online legal databases) collected through literature studies.

The selection of the four cases was based on the availability of copies of the judgment. Of the 30 applications for marriage dispensation registered at the Kolaka Religious Court Class IB in 2024, only four cases had copies of their decisions accessible in their entirety through the Supreme Court Decisions Directory and SIPP at the time of data collection, and all four cases were fully analyzed. This selection carries the consequence that the research findings are not representative of all marriage dispensation cases in the jurisdiction and are not intended to be generalized.

The application of *Sadd al-Dzari'ah* to each verdict is assessed by five indicators derived from the theoretical framework and applied in the same way to each verdict: (1) the risk profile of the case, i.e. the level of *dzari'ah* based on the direct facts (sexual relationship or pregnancy) and the age of the child; (2) the explicit inclusion of fiqh rules, as a marker of the traceability of the text; (3) the suitability of direction, i.e. whether *the dzari'ah* is closed or opened in accordance with the applicant's main concern; (4) risk mitigation in legal considerations; and (5) risk mitigation in a binding amar. The traceability of *the 'illat-wasīlah-natijah chain* in each verdict is inferred from the combination of the five indicators and from the overall construction of the verdict argumentation, so that there is no single indicator, including the inclusion of fiqh rules, that stands as the only measure. The results of the application of the indicators are summarized in Table 2.

The data were analyzed qualitatively by an analytical descriptive method through four stages: classification of legal materials; normative analysis of the conformity of the verdict with positive law; conceptual analysis of the judge's considerations in the perspective of *Sadd al-Dzari'ah* by tracing the chain of reasoning of *'illat-wasīlah-natijah*

using the above indicators; and synthesis and interpretation of the results to formulate conclusions regarding the ideality of the judge's consideration and the consistency of the application of *Sadd al-Dzari'ah*. In the presentation of the results, the facts stated directly in the judgment are distinguished from the author's interpretation of the facts. Cases that are revoked and those that are dissolved do not result in an examination of substance equivalent to those that are granted; both are therefore analyzed limited to the stages available in the copy of the judgment and are not used to assess *the ratio decidendi*.

The validity test is carried out through cross-verification between legal materials. The term triangulation here is not intended in the sense of empirical research that compares data from several informants, but rather as cross-checking that is adjusted to the character of normative legal research: source triangulation, which is comparing the provisions of laws and regulations, the Compilation of Islamic Law, and the opinion of fuqaha; and theoretical triangulation, which is to test the coherence of judges' considerations with the positive legal framework and *Sadd al-Dzari'ah* comparatively. Because the main data is in the form of the text of the verdict and not an interview, this study cannot confirm the judge's considerations that are not written in the copy of the verdict.

RESULTS AND DISCUSSION

1. Case Profile and Pattern of Reasons of Applicants

A search of the Directory of Decisions of the Supreme Court of the Republic of Indonesia and the Case Tracking Information System (SIPP) of the Kolaka Religious Court Class IB found four cases of child marriage dispensation that were registered and resolved throughout 2024 and copies of the decisions were accessible, out of a total of 30 applications recorded that year. The time span between registration and verdict in the four cases ranged from one to four weeks, in line with the spirit of acceleration required by PERMA Number 5 of 2019 for the sake of certainty of the legal status of children. The facts stated in the copy of the decision are summarized in Table 1, while the *dzari'ah level classification* of these facts is the author's interpretation and is described after the table.

Table 1. Recapitulation of Copy of the Decision of the Kolaka Religious Court Class IB
 Year 2024

Case Number	Child's Age	The Age of the Prospective Husband	Main Reasons	Results
45/Pdt.P/2024/PA. Klk	15 years	17 years	Very close relationship;	Granted

			premarital body relationship 1x	
126/Pdt.P/2024/PA. Klk	18 years old	21 years old	Close relationship, having proposed; Fear of adultery without evidence	Revoked
130/Pdt.P/2024/PA. Klk	17 years	25 years	2 years of romance, very close	Fall
205/Pdt.P/2024/PA. Klk	17 years	31 years old	Pregnancy ± 29 weeks	Granted

Source: Case Tracking Information System (SIPP) of the Kolaka Religious Court Class IB, processed by the author.

Of the four cases, two cases (50%) were granted, one case (25%) was withdrawn on the initiative of the applicant after being advised by the judge, and one case (25%) was declared null and void because the applicants were not present; not a single case was found that ended in a denial. Only two cases were granted (Number 45 and Number 205) that reached the main examination of the case and contained *a ratio decidendi* that could be analyzed substantively. Both were granted when there were real facts that could be proved, namely sexual relations or pregnancy. This number is too small to conclude that there is a general tendency of the judges of the Kolaka Religious Court, so the pattern is treated as a descriptive pattern for the four cases studied. The cases that are withdrawn and dropped do not result in an equal examination of substance; Both were analyzed limited to the stages available in the copy of the decision and were not used to assess *the ratio decidendi*. Whether the "closure" of the road to dispensation in both cases also means the closure of the road to the mafsadat that the applicant fears will be tested in the discussion section.

In Case Number 45, the facts stated in the verdict were a very close relationship between a 15-year-old and her 17-year-old husband-to-be, both of whom publicly admitted to having sexual intercourse once during a three-month courtship period. According to the author's analysis, this fact places *the 'illat* of this plea on a stronger level than mere abstract concerns about the possibility of future adultery: *the dzari'ah* in this case has moved from the level of *zhann ghālib* to one approaching *qath'ī*, because the risk of out-of-wedlock pregnancy and the psychological impact on the 15-year-old girl are no longer purely probabilistic, but have been partially realized.

In Case Number 126, the facts stated in the verdict are the relationship between an 18-year-old child and a 21-year-old prospective husband who has reached the application stage and is considered to be very close, without the fact of bodily relations or pregnancy during the trial examination. The reasons submitted are preventive, namely concerns

about the possibility of violating religious norms in the future without direct evidence support. According to the author's analysis, with parameters in the theoretical framework, *this application* is at the level of *zhann ghālib* because it relies on indirect indications (proximity and proposal) and has not been supported by the fact of sexual intercourse or pregnancy, so it does not meet the qualifications of very urgent reasons. The applicant finally withdrew the application after being advised by the judge. Because the case ends before the examination of the subject matter, the analysis of this case is limited to the judge's advice and is not used to assess *the ratio decidendi*.

Case Number 130 presents a different picture. The facts stated in the verdict are the romantic relationship between a 17-year-old child and a 25-year-old husband-to-be that has lasted two years and is considered to be very close; the applicants were not present in two official summonses so the judge declared the application to be aborted without a substance examination. The absence can be read as an indication that the urgency of the application is not as strong as postulated in the application letter, but this reading is conjectural because the reason for the absence cannot be ascertained from the available data. This case is therefore used to complete the profile of the case, not to assess the consistency of the judge's consideration.

In Case Number 205, the facts stated in the verdict are the pregnancy of the applicant's 17-year-old child with a gestational age of about 29 weeks, evidenced by a medical certificate, with a 31-year-old husband-to-be. Premarital pregnancy is the strongest condition as a "very urgent reason", because it contains an urgent interest to provide certainty of legal status for the child to be born; postponement of marriage has the potential to place the child as an out-of-wedlock child who only has a civil relationship with his mother. According to the author's analysis, in the perspective of *Sadd al-Dzarī'ah*, this condition activates the principle of *dar'u al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* and places the matter at the level of *dzarī'ah* that is close to *qath'ī*, because the fascscation due to rejection is considered greater than the scafsadatan due to the curse.

Based on the analysis of the four cases, a pattern was found that the granting was given in two cases that contained real, urgent, and objectively proven circumstances, namely bodily relations and pregnancy, while cases that only relied on concerns without direct evidence did not proceed to the examination of the subject matter (revoked or dismissed). This pattern is consistent with the principle of proof in the civil procedure law which requires that each postulate be supported by valid evidence, but only describes the four cases being studied.

2. The Ideality of Judges' Considerations: Juridical, Sociological, and Psychological Aspects

The ideal juridical consideration requires the judge to refer comprehensively to all relevant legal instruments, namely Law Number 16 of 2019, PERMA Number 5 of 2019, the Compilation of Islamic Law, and Law Number 35 of 2014 concerning Child Protection, as well as making the assessment of the qualification of 'very urgent reasons' the core of *the ratio decidendi*, not just verification of administrative completeness. Article 12 of PERMA Number 5 of 2019 specifically requires judges to advise the applicant and the child before examining the subject matter, with an assessment that should be carried out in a caustic manner based on the concrete risk profile of each case.²⁰

In practice, the four decisions follow a relatively standard juridical consideration structure: considering the intent of the application, considering the implementation of the advice in accordance with Article 12, considering the facts of the trial, and considering the fulfillment of the "very urgent reasons" qualification. However, significant gaps were found at the level of elaboration: the editorial of the judge's advice in Decisions No. 45 and No. 205 used an almost identical sentence structure, mentioning reproductive health risks, economic, social, psychological impacts, and potential domestic violence, although the profiles of the two cases were much different: a 15-year-old with a history of sexual intercourse in the first case, and a 17-year-old child 29 weeks pregnant in the second case. This uniformity of editorial indicates that juridical considerations function more as the fulfillment of procedural obligations (*legal formalism*) than as a reflection of prospective caustic analysis of the level of concrete merit of each case as required by the principle of *Sadd al-Dzarī'ah*.

The ideal sociological aspect places economic conditions, family support, cultural background, and social impact as substantive parts of *the ratio decidendi*, not just an administrative complement. In practice, Case No. 45 shows quite substantive sociological considerations: economic conditions, education levels, and the absence of formal educational activities of the bride and groom also strengthen the assessment of urgency, while Case No. 205 notes the commitment to continue the education of children through the package chase program as part of social impact mitigation. In Case No. 126, the judge's advice on social risks succeeded in encouraging the withdrawal of the application,

²⁰ See Mochammad Agus Rachmatulloh and Chafidz Syafiuddin, "The Practice of Marriage Dispensation Applications in the Court (Study of Supreme Court Regulation Number 5 of 2019)," *Al-Qadau Journal: Islamic Family Justice and Law*, Vol. 9, No. 1 (2022), pp. 1-15.

but the advice focused on the risk of child marriage, not on the root of the applicant's concerns regarding the potential for adultery due to a close premarital relationship.²¹

The fundamental gap in the sociological aspect lies in its function more as a narrative of the background of the case than as a variable that actively influences the verdict. In Case Number 45, for example, weak economic conditions and low parental educational background are actually used as a basis for granting the request, not as a factor that encourages prudence considering the limited capacity of families to accompany children after marriage. This condition shows that sociological considerations in judicial practice are still descriptive-administrative, have not been positioned as a prospective impact analysis and are oriented towards long-term child protection.

Ideal psychological considerations include three components: professional psychological assessment as recommended in Article 15 letter d of PERMA Number 5 of 2019, in-depth and structured digging of children's information, and the use of comprehensive readiness parameters including the child's emotional maturity and understanding of his or her rights in marriage. This standard is important because the child's psychological readiness is one of the determining factors for the ²² *degree of natījah* (consequences) of the marriage to be held.

In practice, it shows three main gaps. *First*, none of the four cases included the results of psychological assessments from professionals, even though it was explicitly recommended by PERMA Number 5 of 2019. *Second*, the readiness parameters used were domestic-functional (ability to take care of the household, virgin or *jejaka* status, whether or not there was coercion), which was far from adequate to measure psychological readiness to face the complexities of married life. *Third*, the child's testimony tended to function as a confirmation of the parent's plea postulate rather than an independent expression of will, as seen from the similarity in substance between the postulates of the application and the child's testimony in the four cases. Even in Decision Number 205 which contains an explicit assessment of the child's mental readiness, the assessment is solely sourced from the judge's subjective observations at the trial, not verified professional evaluations.

3. The Basis of the Best Interests of the Child and Protection of Children's Rights

The principle of the *best interest of the child* occupies the highest hierarchical position in the consideration of marriage dispensation as affirmed in Article 2 of PERMA Number

²¹ Cindy Maris, Evi Fitriyanti, and Sri Utami, "An Overview of Family Harmony Reviewed from the Roles of Husband and Wives," *Journal of Social Science Education (JPIPS)*, Vol. 13, No. 2 (2021), p. 135.

²² Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, Article 15 letter d.

5 of 2019, Article 2 of Law Number 35 of 2014 concerning Child Protection, and Article 3 of the Convention on the Rights of the Child. This principle requires judges not only to assess the child's condition at the time of application, but also to project the long-term impact of the decision on the child's right to education, reproductive health, and socio-economic welfare, in line with the two elements of ²³*maqāṣid syarī'ah*, namely *ḥifẓ al-nasl* (protection of offspring) and *ḥifẓ al-naḥs* (protection of life). The application to the four rulings is very varied: the weakest in Case Number 45 which grants dispensation to a 15-year-old child without any conditions in the amar, and the most balanced in Case Number 205 which records a mitigation plan even though it is not binding.

The biggest gap in the application of this principle lies in the time orientation of judges' considerations, which tend to *be present oriented*, i.e. assessing whether the reasons for urgency, baldness, and work of the prospective husband have been fulfilled today, without adequately projecting the impact of the decision on the children of five, ten, or twenty years in the future as demanded by a *future-oriented* approach. The second gap is the absence of an institutional *follow-up mechanism* : even in Decision No. 205 which is the most comprehensive consideration, the interests of the post-decision child are fully left to the good faith of the parties without coordination with the Office of Women and Child Empowerment or any reporting obligations.

The protection of children's rights should be a transversal dimension that covers all aspects of consideration, juridical and sociological, and not stand-alone. In practice, such protection is most strongly implemented through the mechanism of judicial advice, but the risks that have been comprehensively identified in the advice are not translated into binding conditions or recommendations in the judgment. As a result, the protection of children after marriage depends entirely on the good faith of the parties, not on verifiable institutional oversight mechanisms; conditions that indicate that the function of judges in marriage dispensation cases still stops at the entrance of the marriage, has not yet reached the protection of children throughout the course of the marriage itself.

4. Consistency of the Application of Sadd al-Dzari'ah in Ratio Decidendi

In the two decisions granted (Number 45 and Number 205), the judge has carried out the advisory stage in accordance with Articles 12 and 13 of PERMA Number 5 of 2019 with almost identical formulations textually, mentioning the risks of reproduction, economic, social, psychological, and potential domestic violence. In the perspective of

²³ Hernawan and Mohammad Syifa Amin Widigdo, "The Role of Judges' Considerations in Determining Marriage Dispensation from the Perspective of Children's Best Interest," p. 34; Miasiratni, Sri Agustini, and Gokma Toni Parlindungan, "The State's Obligation to Protect Children's Rights Under National and International Law," *Ekasakti Journal of Law and Justice*, Vol. 2, No. 2 (2024), pp. 149–158.

Sadd al-Dzarī'ah, this finding is important because it shows that the judge has identified *dzarī'ah* (marriage as *wasīlah*) and its *natījah* at the advisory stage. A more fundamental analytical question is whether the identification is then integrated into *the ratio decidendi* or ceases to be a mere procedural narrative.

Decision No. 205 shows the most positive answer to this question. The judge explicitly listed the rules of *fiqhiyyah dar'u al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* and integrated it with the concrete fact of pregnancy at 29 weeks gestation, so that the postponement of marriage was considered to magnify the mafsadat compared to the abortion. The judge also explicitly noted the plan to continue the child's education through the package chase program and reproductive health education, so that this decision can be read as a controlled *form of fath al-dzarī'ah*, i.e. *the way opened* after weighing that the fath due to rejection is greater than the fath due to the appropriation. However, the mitigation note is only contained in legal considerations, not in the amar of binding determination, so that the rule of *al-ḍ arar yuzāl* has not been fully fulfilled because there is no mechanism to ensure that the plan is actually implemented.

A contrast is found in Decision No. 45, which presents a higher risk profile when measured from the age of the child (15 years), with a history of sexual relations that is openly acknowledged at the trial. This comparison is relative, because Decision No. 205 also contains other vulnerability factors, namely continued pregnancy and a 14-year age difference between the child and the husband-to-be. Based on *the taxonomy of dzarī'ah* according to the level of certainty of mafsadat, the relationship that has occurred puts *dzarī'ah* at a level close to *qath'ī*. In the *ratio decidendi* section, the judge did not explicitly include the fiqh rule as in Decision No. 205, and did not elaborate on why the case with a much younger child did not require additional conditions or mitigation. The absence of an explicit rule does not necessarily mean the absence of substantive reasoning: this decision contains the judge's advice, an assessment of the facts of the trial, and sociological considerations about economic and educational conditions. What can be said is that the *'illat-wasīlah-natījah* chain in this decision is less textually traceable, especially at the *natījah* stage, i.e. as a result of the adoption of a 15-year-old child, so that the elaboration is not proportional to the level of concrete risk. This is relevant because al-Syāṭibī in *al-Muwāfaqāt* asserts that the strength of the application of *Sadd al-Dzarī'ah* lies precisely in the assessment of the degree of mafsadat in each case, not in the uniform application of general norms.²⁴

²⁴ Al-Syāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Syārī'ah*, Vol. 2, ed. 'Abdullāh Darāz (Beirut: Dār al-Ma'rifah, 1997).

The comparison with Cases No. 126 and No. 130 needs to be read carefully because they do not reach the examination of the subject matter. In Case No. 126, the applicant's reason is similar to Decisions No. 45 and No. 205, namely the concern of adultery due to a very close relationship, but the level of *dzarī'ah* is lower because there is no fact of bodily or pregnancy relations. The judge's advice at this stage focuses on the risks of child marriage (reproductive health, economic, and psychological), not on the root of the applicant's concerns. In other words, the road that is closed is the road to marriage, while the road to premarital relationships that the applicant describes is very closely not discussed.

On that basis, the judge's advice in Case Number 126 shows an indication of the *misdirected application of Sadd al-Dzarī'ah*, namely *the closed dzarī'ah* is not *the dzarī'ah* that is the main concern of the applicant. This assessment needs to be limited to three notes. First, the judge's authority in the marriage dispensation case is limited to deciding the application and providing advice as stipulated in Article 12 of PERMA Number 5 of 2019; the judge is not authorized to regulate or supervise the behavior of the parties outside the trial process, so that the closure of the road to adultery is not fully within the reach of the verdict. However, within the limits of that authority, the judge can still include *the applicant's 'illat* in the advice, for example by emphasizing parental supervision and child assistance, so that *the reasoning of wasīlah-natījah* covers both sides. Second, there is an alternative reading that cannot be ruled out: since there is no evidence of sexual intercourse, the revocation of the application can be read as a reasonable *application of dar'u al-mafāsīd*, because the mafsadat of child marriage is more certain than the new mafsadat of adultery that is conjecture. Third, the available copy of the judgment does not allow the author to assess the judge's unwritten considerations. Therefore, the label "misdirection" here is an indication, not a definitive conclusion about the quality of *the ratio decidendi*.

The case Number 130 that was dropped shows another form: the application ends without judicial intervention on the substance of the case, so it cannot be ascertained whether the mafsadat that is worried about is really closed. This also leaves a problem because the child who is the subject of the application has never been heard and his condition has never been assessed. This case is not assessed for consistency because there are no considerations that can be analyzed.

Table 2. Comparison of indicators of the application of *the principle of Sadd al-Dzarī'ah* in Decisions No. 45, No. 126, and No. 205

Indicator	Number 45	Number 126	Number 205
Premarital Sex	Yes (1x)	No	Yes

Pregnancy	No	No	Yes ($\pm$ 29 weeks)
Explicit fiqh rules	None	None	Ada (<i>dar'u al-mafasid</i>)
Alignment of the direction with the applicant's concerns	Not elaborated	Indication of directional confusion (advisory level)	Appropriate (delay is considered to enlarge mafsadat)
Risk mitigation in consideration	None	Irrelevant (revoked)	There (pursue packages, reproductive health education)
Risk mitigation in amar	None	Irrelevant (revoked)	None (under consideration only)
Traceability of the ' <i>illat-wasīlah-natijah chain</i>	Less traceable	Limited to the advisory stage	Most complete; mitigation is not binding

Source: The author's analysis of the copy of the decision is based on the indicators of the application of the principle of *Sadd al-Dzari'ah*. Note: Case Number 130 was not included because it was dropped without a substance examination; Case Number 126 was withdrawn so that it was only assessed at the judge's advisory stage.

The synthesis of the four cases shows that the application of *Sadd al-Dzari'ah* in the Kolaka Religious Court Class IB in 2024 is consistent at the procedural level but not yet consistent at the substantive level. At the procedural level, all cases that have reached the trial stage carry out advisory obligations in accordance with PERMA Number 5 of 2019. At the substantive level, consistency is measured from the traceability of the '*illat-wasīlah-natijah chain*' in the overall construction of the verdict argumentation. Of the two judgments examined for substance, the chain is the most complete in Decision No. 205, although the mitigation has not been outlined in the amar, and it is less traceable in Decision No. 45.

The same pattern is seen in all four aspects of consideration. In the juridical aspect, *Sadd al-Dzari'ah* is most manifested in Decision No. 205 through the inclusion of explicit *fiqhiyyah rules*, while in Decision No. 45 this dimension is present as the fulfillment of procedures without integration into casostic reasoning. In the sociological aspect, weak economic and educational conditions have not been read as an indicator of an increase in the degree of mafsadat, but rather strengthen the postulate of the urgency of the award. In the psychological aspect, the absence of professional assessment in all cases eliminates the empirical basis for assessing the degree of *natijah* in terms of children's mental readiness. In the aspect of maslahat-mafsadat, which is the heart of *Sadd al-Dzari'ah*, explicit weighing is found only in one verdict, while in other verdicts it is implicitly present in the judge's advice without being translated into a textually traceable chain of reasoning. This repetitive pattern suggests a procedural-reactive approach: more profound elaboration arises when mafsadat, such as pregnancy, has materialized, not

when the degree of mafsadat is assessed prospectively before it occurs. The *Sadd al-Dzarī'ah approach* thus contributes methodologically to the assessment of the ideality of judge's considerations because it provides an operational criterion that can be tested textually, i.e. the existence or absence of the '*illat-wasīlah-natījah* chain in the *ratio decidendi*, which complements the general assessment based on *maqāṣid syarī'ah* or the best interests of the child.

CONCLUSION

This study concludes three things. First, the applicant's reason for applying for a child marriage dispensation at the Kolaka Religious Court Class IB in 2024 is dominated by concerns about a relationship that has been very close, including premarital relationships and out-of-wedlock pregnancies. Second, the ideality of the judge's consideration has not been fully achieved: juridical and sociological considerations are relatively formally fulfilled, but psychological considerations are weak because none of the cases include professional psychological assessments, and the principle of the best interests of the child is still oriented to the current conditions without a post-decision follow-up mechanism. Third, the application of *Sadd al-Dzarī'ah* is consistent at the procedural level but not yet consistent at the substantive level: of the two decisions examined for substance, only Decision No. 205 whose chain of '*illat-wasīlah-natījah* can be traced most completely, while in the case that was revoked (No. 126) there are indications of misguided application at the advisory stage.

Theoretically, this study shows that the '*illat-wasīlah-natījah* chain can be used as an instrument of *ratio decidendi* evaluation through three steps: identifying the '*illat* postulated by the applicant; tracing the *wasīlah* in question and the *natījah* that the judge weighed; and testing whether the *closed or opened dzarī'ah* is in accordance with the '*illat*. This instrument complements the assessment based on *maqāṣid shari'ah* and the best interests of the child with criteria that can be tested textually, without equating the absence of explicit fiqh rules with the absence of reasoning.

The recommendations that are a direct consequence of the findings are addressed to the judge and the court: explicitly outline the '*illat-wasīlah-natījah* chain in the *ratio decidendi*, tailor the elaboration of advice to the risk profile of each case, and pour a risk mitigation plan into a binding amar. The following recommendations are policy recommendations that require further study before they can be implemented: the obligation of professional psychological assessments and maturity assessment instruments through the revision of PERMA or judges' pocketbooks, post-decision follow-up mechanisms, and reproductive education and poverty intervention programs

by the Ministry of Religion and local governments. This study was limited to four cases in one jurisdiction and one year of observation, and analyzed the text of the verdict without interviews. Follow-up, comparative research across regions, involving interviews with judges and forensic psychologists, and tracing the long-term impact of dispensation judgments on children's lives is needed to test these findings more broadly.

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