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Disparities in Marriage Dispensation Due to Pregnancy: Analysis of Vage Women Norm and Maşlahah Mursalah

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ABSTRACT

This study examines the disparity in marriage dispensation decisions in cases of pregnancy outside marriage at the Pangkalan Bun Religious Court. The research examines the ambiguity of the phrase “very urgent reasons” in Indonesian marriage law, which affords broad judicial discretion and may lead to inconsistent decisions. **The objective of this study is to analyze** how judges interpret and apply this provision in deciding marriage dispensation cases involving pregnancy. This research employs a qualitative normative approach by analyzing 32 court decisions issued by the Pangkalan Bun Religious Court, complemented by interviews with judges. The data were analyzed using thematic coding to identify recurring patterns in judicial reasoning. The findings reveal two dominant orientations in judicial considerations. The first orientation emphasizes protecting the unborn child's lineage and legal status, which often leads to approval of dispensation requests. The second orientation focuses on long-term child protection, considering factors such as psychological maturity, economic readiness, and the sustainability of future family life, resulting in the rejection of some petitions despite pregnancy. The disparity in decisions reflects the open-ended nature of the legal norm and demonstrates the dynamics of judicial *ijtihad* in balancing legal certainty and public interest. This study recommends the development of clearer interpretative parameters to promote consistency while ensuring stronger child protection in marriage dispensation **practices.**

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1. INTRODUCTION

Marriage in Islam is a normative institution with social, theological, and *maqāṣidī* dimensions. It is positioned as a means of preserving religion, honor, and **lineage** (*ḥifẓ al-dīn*, *ḥifẓ al-‘ird*, and *ḥifẓ al-nasl*), as emphasized **in** classical and contemporary Fiqh literature [1]–[6]. From this perspective, marriage is not merely a social contract but also a

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normative instrument designed to realize social benefit (*maṣlahah*) and prevent harm (*mafsadah*) in both individual and communal life. Consequently, Islamic legal discourse consistently places marriage within a broader ethical and social framework that emphasizes responsibility, protection of family structure, and the sustainability of lineage.

In the Indonesian legal context, the institution of marriage has a strong regulatory dimension, as it is governed by state law in order to protect the rights of children and women. The revision of the minimum age for marriage through Law No. 16 of 2019, reinforced by Supreme Court Regulation No. 5 of 2019, represents a significant legal reform aimed at reducing child marriage while strengthening the principle of child protection in judicial decision-making regarding marriage dispensations [7]–[9]. However, despite these reforms, empirical conditions indicate that marriage dispensation petitions remain relatively high in various regions, including at the Pangkalan Bun Religious Court. One of the most common reasons for such petitions is pregnancy outside of marriage, which is frequently perceived as an urgent situation requiring legal legitimization through marriage. This situation creates a normative tension between the legal commitment to child protection and the socio-religious pressures that encourage early marriage as a solution to premarital pregnancy [7], [10]–[12].

Normatively, marriage dispensation may only be granted when there are “very urgent reasons.” This phrase represents what legal scholars describe as a vague or open-textured norm, namely, a legal provision deliberately formulated in general terms and therefore allowing for multiple interpretations [9], [13], [14], [15]. The absence of clear operational parameters for determining what constitutes an “urgent reason” places judges in a position of significant interpretative discretion. In practice, this discretion often leads to variations in judicial reasoning and outcomes. Several recent studies indicate that the open-ended formulation of dispensation norms contributes to disparities in judicial decisions, particularly in cases involving pregnancy outside of marriage [7], [11], [16].

Within the framework of Islamic legal theory, such interpretative flexibility may be understood through the concept of *maṣlahah mursalah*, which allows legal reasoning based on public interest when explicit textual guidance is absent or insufficient [1]–[3]. In the context of marriage dispensation due to pregnancy, considerations of public interest do not merely relate to the protection of lineage and the legitimacy of the child's status but also include broader concerns such as psychological readiness, economic stability, family resilience, and the long-term welfare of the child [6], [10]. Therefore, judicial decision-making in these cases involves balancing immediate social pressures with the broader objectives of child protection and family sustainability.

From a global perspective, the issue of marriage dispensation and child marriage is closely connected to international debates on child protection and human rights. Reports from UNICEF indicate that child marriage remains a persistent global challenge affecting millions of children worldwide [17]. Furthermore, the Convention on the Rights of the Child (CRC) emphasizes the best interests of the child as the primary consideration in all decisions affecting children. Nevertheless, comparative studies show that even in countries that have raised the minimum age of marriage, legal mechanisms such as marriage dispensation still provide considerable space for judicial discretion, which often leads to variations in interpretation and decision-making practices [18], [19]. Socio-legal research also

demonstrates that the implementation of the best interests principle is inherently indeterminate and frequently shaped by the social, cultural, and institutional context in which courts operate [20], [21]. In legally pluralistic societies such as Indonesia, where state law interacts with religious norms and local social values, the dynamics of judicial interpretation become even more complex in the practice of religious courts [22].

Several previous studies have examined judges' considerations in marriage dispensation cases and the issue of legal certainty following the amendment of the minimum marriage age [9], [12], [16]. These studies generally describe patterns of judicial reasoning or highlight the social consequences of dispensation practices. However, most of them remain descriptive and have not systematically integrated the theory of open-textured norms with the concept of *maṣlahah mursalah* within a localized socio-legal analysis of court decisions. As a result, there is still a limited scholarly explanation of how disparities in judicial decisions emerge as a structural consequence of open legal norms interpreted through public-interest considerations within specific judicial contexts. This gap highlights the need for a more comprehensive analysis that connects legal theory, Islamic jurisprudence, and empirical judicial practice.

Based on this background, the present study aims to analyse the nature of disparities in marriage dispensation decisions regarding pregnancy outside marriage at the Pangkalan Bun Religious Court. Specifically, this research seeks to explain how judges interpret the phrase “very urgent reasons” as an open-textured legal norm and how the concept of *maṣlahah mursalah* is operationalized in balancing legal certainty with the principle of child protection. By integrating open-textured norm theory and public-interest reasoning into a socio-legal analysis of court decisions, this study is expected to contribute to the theoretical development of legal interpretation methodology in religious courts. In addition, the findings are anticipated to provide practical insights for strengthening interpretative guidelines that promote greater consistency in marriage dispensation decisions while maintaining a strong commitment to child protection. In addition, unlike conventional punishments, customary sanctions serve as a form of punishment and can strengthen social cohesion and cultural resilience within the community [43].

2. METHOD

This study uses a qualitative approach with a socio-legal case study design to analyze how vague norms regarding the phrase “very urgent reasons” are interpreted in the practice of marriage dispensation in cases involving pregnancy outside of marriage at the Pangkalan Bun Religious Court. A qualitative approach was chosen because it allows for an in-depth exploration of the construction of judges' considerations, which are laden with social, legal, and religious values [23]. Normatively, the analysis is based on Law Number 16 of 2019 and Supreme Court Regulation Number 5 of 2019, treating the phrase as a vague norm, as conceptualized in the theory of open texture of law [24].

The primary data consisted of 32 marriage dispensation decisions issued between 2021 and 2023 that had obtained permanent legal force and were accessed through the Supreme Court Decision Directory. The sampling technique used was purposive sampling with the following inclusion criteria: (1) marriage dispensation cases due to pregnancy

outside of marriage; (2) decided by the Pangkalan Bun Religious Court; and (3) containing substantive legal considerations related to the interpretation of “very urgent reasons.” Cases that did not meet these criteria were excluded. The 32 cases represent the entire population of decisions that met the criteria during the research period (population-based within-case sampling).

The analysis was conducted through thematic coding to identify patterns in the interpretation of urgency, arguments related to public interest, and orientations toward child protection in judicial reasoning, drawing on established qualitative research thematic analysis techniques [25]. The coding process was carried out systematically using a coding scheme based on the theory of vague norms and judicial discretion [26], [27]. To ensure analytical reliability, the coding process was verified through repeated reading of the decisions, cross-checking of coded segments, and the use of an audit trail to maintain the dependability and consistency of the analysis [28].

To enrich the empirical dimension of the study, semi-structured interviews were conducted with four judges of the Pangkalan Bun Religious Court who had experience in examining marriage dispensation cases. Each interview lasted approximately 45-60 minutes and explored judges’ perspectives on the interpretation of “very urgent reasons,” the role of social considerations in decision-making, and the application of *maṣlahah* in judicial reasoning. With participants' consent, the interviews were audio-recorded and subsequently transcribed verbatim to ensure accuracy in the analysis. The transcripts were then coded thematically together with the decision texts to identify converging and diverging patterns of interpretation. All informants provided informed consent, their identities were anonymized, and the research process followed the ethical principles of socio-legal research.

Theoretically, the analysis is integrated with the concept of *maṣlahah mursalah* in *uṣūl al-fiqh* as an evaluative framework for judicial discretion [5], [29]. The consistency of arguments across decisions is then assessed within the framework of legal certainty and the integrity of judicial reasoning [30], recognizing that unexplained disparities can weaken the internal morality of the law and undermine the coherence of judicial interpretation [31]. The limitation of this study lies in its single-case design, which is not intended for statistical generalization. In addition, document-based analysis of court decisions does not fully capture the internal deliberative dynamics among members of the judicial panel. However, this design allows for an in-depth exploration of legal reasoning in a specific institutional context and contributes theoretically to the broader debate on judicial discretion in open-textured legal norms concerning children's rights.

3. RESULTS AND DISCUSSION

Disparities in Judgments and Problems with Vague Norms in Marriage Dispensations

This study found that requests for marriage dispensations due to pregnancy outside of marriage in the Pangkalan Bun Religious Court show significant variations in judicial decisions, even though the factual characteristics of the cases are relatively similar. Over the past three years, 32 rulings were analyzed with broadly comparable factual profiles: the female applicants were generally between 15 and 17 years old; the average pregnancy period ranged from three to five months (with a range of two to six months), and both families had

given their consent to the proposed marriage. Despite these similarities, the decisions demonstrate substantial variation in judicial reasoning.

In fact, marriage requires thorough preparation, both psychologically, materially, and physically, so that before embarking on the concept of marriage, it is necessary to make preparations that are not easy. The phenomenon of early marriage is a reality that needs to be reduced so that teenagers can actualize their potential for a bright future [44]. In line with this reality, the results of the analysis of marriage dispensation decisions at the Pangkalan Bun Religious Court show variations in judges' patterns of decision-making in handling petitions related to pregnancy outside of marriage, as shown in Table 1 below.

Table 1. Distribution of Marriage Dispensation Rulings Due to Pregnancy Outside of Marriage

No	Category of Decision	Number of Cases	Percentage	Argumentative Character
1	Granted in full	20	62,5%	Focus on social urgency and family protection
2	Granted, with additional considerations	8	25%	Includes counseling requirements, educational commitments, or economic support
3	Rejected/postponed	4	12,5%	In-depth analysis of psychological readiness and long-term risks

The data indicate that the disparity does not originate from variations in legal facts but from different interpretive constructions of the phrase “urgent reasons.” In many decisions granting the petition, pregnancy is positioned as an objective indicator of urgency. One judicial reasoning states: “*Considering that the petitioner's pregnancy has reached four months and in order to avoid greater harm and to protect the lineage of the child, the Panel is of the opinion that there are urgent reasons to grant the petition.*”

This formulation reduces the meaning of urgency to the biological fact of pregnancy itself, emphasizing the legitimacy of the child's status and the prevention of social stigma. In contrast, more restrictive decisions show a different analytical approach. In one ruling, the panel stated: “*Considering that although the Petitioner is pregnant, the Council assesses that the prospective husband does not yet have a permanent job and neither of them has demonstrated sufficient emotional maturity, so that marriage at this time has the potential to cause further harm.*”

In this reasoning, urgency is not automatically derived from pregnancy but is assessed through projections of long-term risk, including economic readiness and emotional maturity. These differences reveal two dominant paradigms of judicial reasoning: an immediate stabilization approach and a long-term child protection approach. The first prioritizes rapid legal resolution in order to reduce the social stigma associated with premarital pregnancy, whereas the second emphasizes prospective welfare by considering psychological readiness, educational continuity, and economic stability.

Normatively, the immediate stabilization approach carries the risk of reproducing the practice of child marriage through legalized dispensation mechanisms. When pregnancy is automatically interpreted as an “urgent reason,” legal restrictions on the minimum age of marriage lose their preventive function, and the principle of the best interests of the child

may be reduced to the legitimacy of legal status rather than long-term child welfare protection.

Comparative research suggests that this pattern is not unique to the Pangkalan Bun Religious Court. Kurniawan and Refiasari reported that approximately 74% of marriage dispensation petitions due to pregnancy were granted in a religious court in Central Java [16], while Ekasari and Gibtiah found an approval rate of around 68% in South Sumatra [11]. With a rate of 62.5% in Pangkalan Bun, the tendency to affirm pregnancy as an indicator of urgency appears relatively consistent at the national level. Butt et al. argue that following the revision of the Marriage Law, the practice of marriage dispensation in Indonesia reflects a form of judicial adaptation: while legislation strengthens age restrictions, judicial discretion may soften their application in practice [18]. Daly similarly notes that the best interests of the child standard remains inherently indeterminate and highly dependent on interpretive frameworks in judicial practice when clear operational parameters are absent [20].

Within the theoretical framework of legal interpretation, the phrase “compelling reasons” represents an example of open texture in law [24]. Open-textured norms inevitably create a zone of interpretive uncertainty in which judges must exercise discretion. However, Hart emphasizes that such discretionary space must be filled through rational and principled reasoning rather than arbitrary judgment [24], [32]. Dworkin further argues that judicial discretion is legitimate only when it remains consistent with the moral principles underlying the legal system [30].

Interview data confirms that judicial interpretation is not constructed solely from legal texts but is also shaped by social realities. One judge explained: “*Social pressure in this area is quite strong. If they are not married immediately, the family feels a moral burden.*” This statement illustrates how community expectations and social stigma surrounding premarital pregnancy influence the construction of urgency in judicial reasoning. Judges, therefore, interpret legal norms not only through statutory provisions but also through the lens of local social dynamics.

From a socio-legal perspective, this interaction between legal norms and social expectations demonstrates that judicial discretion may function not only as an interpretive mechanism but also as an institutional response to community pressures. Structurally, when 62.5% of petitions are granted, many of which emphasize the legitimacy of lineage, the dispensation mechanism risks functioning as an ex post legitimizing mechanism for relationships formed before the legal age of marriage. Wodon et al. show that the effectiveness of minimum age of marriage reforms depends heavily on consistent implementation at the judicial level, because overly permissive exceptions may weaken the norm's preventive power [19]. From a critical perspective on judicial discretion, discretion that operates without clear operational standards also risks reproducing social inequality and reinforcing dominant social pressures [27].

Thus, disparities in the Pangkalan Bun Religious Court should not be understood merely as a technical consequence of vague legal norms. Rather, they reflect the interaction between open-textured legal provisions, judicial discretion, and the broader social environment in which judicial decisions are produced. The legitimacy of these disparities



ultimately depends on the quality and orientation of the arguments supporting them. When discretion is exercised to strengthen long-term risk assessment and substantive child protection, it remains consistent with the principle of legal integrity. However, when discretion primarily serves to alleviate short-term social pressure, it risks undermining the broader objectives of marriage age restriction reform and the child protection regime embedded in contemporary family law policy.



The Construction of *Maṣlahah Mursalah* and the Orientation of Child Protection

The variation in marriage dispensation decisions at the Pangkalan Bun Religious Court cannot be explained solely by the ambiguity of statutory language but must be understood within the broader framework of open-textured legal norms. The phrase “very urgent reasons” serves as a normative gateway, allowing judges to exercise interpretive discretion when statutory provisions do not provide strict operational parameters. In the theory of open texture proposed by Hart, such norms contain a “penumbra” in which judges must rely on interpretative reasoning when legal rules do not clearly determine the outcome of a case [24]. In this interpretative space, judges are required to construct the meaning of urgency by considering legal norms, social realities, and the principle of child protection.

Hart emphasizes that discretionary authority must be filled through rational reasoning rather than arbitrary judgment [24]. Likewise, Dworkin argues that judicial decisions should remain coherent with the moral principles underlying the legal system, particularly the protection of fundamental rights [24], [33]. Dworkin and Campos & Bedé further assert that discretion is only valid if it is coherent with the moral principles of the legal system as a whole [30], [34]. In marriage dispensation cases, this normative principle directly relates to the protection of children, as mandated by Indonesian legal reform and international child protection standards. Consequently, the meaning of “urgent reasons” becomes a critical point of interpretation in determining whether pregnancy outside marriage justifies the granting of a dispensation.

The analysis of 32 court decisions reveals two dominant orientations in the construction of urgency. These orientations represent different judicial approaches to balancing social realities and children's long-term interests.

Table 2. Orientation of Judicial Reasoning in Marriage Dispensation Decisions

Orientation of Decision	Main Consideration	Decision Tendency	Implication
Immediate Stabilization	Pregnancy as an objective indicator of urgency; protection of lineage and avoidance of social stigma	Mostly granting dispensation	Focus on legitimizing the child's status
Long-Term Protection	Psychological maturity, economic readiness, and the sustainability of marriage	More selective; some petitions rejected	Emphasis on child welfare and long-term family stability

In decisions adopting the immediate stabilization orientation, the ratio decidendi tends to reduce urgency to the biological fact of pregnancy. One decision state: “*Considering that the Petitioner is four months pregnant and in order to maintain lineage and avoid greater harm, the Panel is of the opinion that there are urgent reasons to grant the petition.*”

This formulation positions pregnancy as an objective indicator of urgency. Judicial reasoning in such cases prioritizes lineage legitimacy and the prevention of social stigma, often resulting in concise legal arguments oriented toward rapid resolution.

In contrast, decisions reflecting the long-term protection orientation contain more elaborate reasoning. One ruling states: “*Considering that although the Petitioner is pregnant, the prospective husband does not yet have a permanent job and neither of them has demonstrated emotional maturity; therefore, the Panel considers that marriage at this time has the potential to cause new harm and does not necessarily fulfil the element of urgency.*” Here, urgency is not automatically inferred from pregnancy. Instead, judges evaluate broader indicators of readiness, including psychological maturity, economic stability, and the sustainability of family life. The disparity between decisions, therefore, lies not in the legal facts but in the depth of the construction of public interest.

From the perspective of Islamic legal theory, this variation reflects different constructions of *maṣlahah mursalah* within judicial reasoning. The concept allows judges to consider public interest when explicit textual guidance is limited or absent [5]. In marriage dispensation cases, the principle of *maṣlahah* becomes an interpretative framework for balancing immediate social pressures with the long-term welfare of children. The system-based *maqāṣid* approach developed by Auda emphasizes that public interest should be understood in a multidimensional manner, including the protection of education, health, and social sustainability rather than merely the legitimacy of lineage [38]. Therefore, a construction of public interest that focuses solely on immediate stabilization risks becoming reductionist if it ignores broader dimensions of child welfare.

Empirical evidence from interviews confirms the influence of social context in shaping judicial reasoning. One judge stated, “*Social pressure in this area is quite strong. If they are not married immediately, the family feels a moral burden.*” This statement illustrates how judicial interpretation is shaped by the social environment of West Kotawaringin Regency, where premarital pregnancy is perceived as a collective moral concern. From a hermeneutic perspective, Gadamer describes this interpretive process as a fusion of horizons, in which the legal text interacts with the interpreter's social horizon [35]. Socio-legal scholarship likewise emphasizes that legal interpretation is often influenced by the interaction between formal legal norms and living social norms within a particular community [36].

Comparative studies also demonstrate that the tendency to treat pregnancy as an urgent reason is not unique to the Pangkalan Bun Religious Court. Kurniawan and Refiasari reported that approximately 74% of marriage dispensation petitions due to pregnancy were granted in Central Java [16], whereas Ekasari and Gibtiah reported an approval rate of approximately 68% in South Sumatra [11]. In the present study, the approval rate of 62.5% indicates a pattern similar to that observed nationally. These findings support the argument that marriage dispensation practices represent a form of judicial adaptation following legislative reform. Research by Butt et al. and Purwanti and Natalis shows that, following the revision of the Marriage Law in Indonesia, courts often renegotiate the law's practical meaning through discretionary interpretation [18], [37].

From a broader perspective, this phenomenon reflects the inherent indeterminacy of the best interests of the child principle. Daly argues that the application of this principle is highly dependent on the interpretative framework judges use and the social context in which decisions are made [20]. International research further highlights the risks associated with early marriage. Studies by Nour, Raj et al., and Sezgin & Punamäki demonstrate strong correlations between child marriage and increased vulnerability to reproductive health and social problems [39]–[41]. Wodon et al. and Melnikas et al. also emphasize that the effectiveness of reforms raising the minimum marriage age depends heavily on consistent judicial implementation, because overly permissive exceptions may weaken the law's preventive power [19], [42].

The disparities observed in the Pangkalan Bun Religious Court should therefore be understood as the result of a structural interaction between open legal norms, judicial discretion, and social context. Open-textured provisions create interpretative space; judges fill that space through constructions of public interest, and social expectations and moral considerations shape those constructions. In this sense, discretion may function either as a mechanism for substantive child protection or as a means of stabilizing short-term social pressures.

The normative legitimacy of such disparities depends on how discretion is exercised. When judicial reasoning incorporates multidimensional considerations of child welfare, discretion supports the objectives of marriage law reform. However, when pregnancy is automatically interpreted as an urgent reason, the dispensation mechanism risks functioning as an ex-post legitimization mechanism that structurally perpetuates the practice of child marriage in legalized form. For this reason, the development of clearer interpretative parameters grounded in maqāṣid-oriented child protection principles is essential to maintain a balance between judicial flexibility and legal certainty in the practice of marriage dispensation.

4. CONCLUSION

This study demonstrates that disparities in marriage dispensation decisions related to pregnancy outside marriage at the Pangkalan Bun Religious Court are closely connected to the open-textured nature of the legal provision concerning “very urgent reasons.” Such a formulation inevitably creates interpretative space for judges, making judicial discretion an integral element of legal reasoning in dispensation cases. Rather than simply reflecting inconsistency, these variations illustrate the dynamics of legal interpretation in situations where judges must reconcile statutory provisions, child protection principles, and socio-religious realities.

The findings indicate that judicial reasoning generally moves between two normative orientations. The first prioritizes immediate social stabilization through the legitimization of lineage and the child's legal status, while the second emphasizes long-term child protection by considering psychological maturity, economic readiness, and the sustainability of family life. The integration of open-textured norm theory with the concept of *maṣlaḥah mursalah* highlights that judicial discretion in such cases functions as a form of legal reasoning aimed at balancing legal certainty with public interest. At the same time, the study reveals that

when pregnancy is automatically interpreted as an urgent reason, judicial discretion may unintentionally weaken the broader objective of child protection embedded in the reform of marriage law.

From an academic perspective, this research contributes to socio-legal studies by demonstrating how open legal norms operate in practice within a pluralistic legal system and how social, cultural, and institutional contexts shape judicial interpretation. At the same time, the study contributes to Islamic legal studies by showing how the concept of *maṣlahah mursalah* functions as an evaluative framework for judicial discretion in contemporary religious court practice. By bridging these two perspectives, the research offers a conceptual framework for understanding the relationship between legal indeterminacy, judicial reasoning, and public interest within Islamic family law adjudication.

The practical implications of this study suggest the need for more structured interpretative parameters in marriage dispensation cases. First, the development of standardized interpretive guidelines could help clarify the operational meaning of “very urgent reasons” while still allowing room for contextual judgment. Second, the introduction of mandatory psychosocial assessments conducted by qualified professionals may assist judges in evaluating the child's psychological readiness and welfare more comprehensively. Third, strengthening jurisprudential consistency by systematically using precedent and judicial guidance may reduce unnecessary disparities while maintaining judicial independence.

This study has several limitations. As a single-court case study, the findings are not intended for statistical generalization to all religious courts in Indonesia. In addition, the analysis primarily relies on written decisions and interviews, which may not fully capture the deliberative processes within judicial panels. Nevertheless, the depth of the qualitative analysis provides valuable insight into how judicial discretion operates within a specific institutional context.

Future research should expand the scope of analysis by conducting comparative studies across multiple religious courts, enabling a broader understanding of how marriage dispensation norms are interpreted in different regions. Longitudinal studies examining the long-term social and psychological impacts of marriage dispensations on children would also be essential to evaluate whether the current judicial approach effectively supports child welfare. Furthermore, interdisciplinary research involving legal scholars, psychologists, and social workers could strengthen the empirical basis for policy reforms in this area.

For the broader public and policymakers, this research highlights the importance of ensuring that marriage dispensation mechanisms do not merely serve as administrative solutions to social pressure but remain aligned with the fundamental objective of protecting children's best interests. Strengthening maqāṣid-based interpretive frameworks and institutional guidelines is therefore essential to maintain a balance between judicial flexibility and legal certainty in the adjudication of marriage dispensation cases.

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