



THE LEGAL STATUS OF DP3A'S RECOMMENDATIONS IN CHILD MARRIAGE DISPENSATION: A *MAQĀṢID AL-SHARĪ'AH* AND *QAWĀ'ID FIQHIYYAH* PERSPECTIVE IN BONE REGENCY

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Abstract

The high rate of child marriage dispensation cases in Bone Regency underscores the urgency of strengthening child protection within the framework of Islamic family law. In this context, the recommendations issued by the Department of Women's Empowerment and Child Protection (DP3A) have become a crucial component in judicial considerations at the Religious Court, despite ongoing debates about their legal status. This study investigates the legal standing of DP3A's recommendations in child marriage dispensation cases using an Islamic legal approach grounded in *qawā'id fiqhiyyah* and *maqāṣid al-sharī'ah*. A qualitative method was employed, with fieldwork conducted at the DP3A office and the Watampone Religious Court. Data were collected through observation, documentation, and in-depth interviews, and analyzed using descriptive qualitative techniques. The findings reveal two key points: first, DP3A's recommendations are based on government policy aimed at preventing child marriage and are designed to protect four key aspects of *maqāṣid al-sharī'ah*: the preservation of life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), wealth (*ḥifẓ al-māl*), and dignity (*ḥifẓ al-'ird*) of the child. Second, although not formally binding by law, the recommendations are treated as mandatory for marriage dispensation applicants at the Watampone Religious Court and are aligned with Islamic legal principles through the lens of *qawā'id fiqhiyyah* and *maqāṣid al-sharī'ah*. These recommendations reflect a constructive synergy between regional policy and Islamic law in promoting child protection. This study contributes to the advancement of contemporary Islamic legal thought and supports the development of local regulations that are more responsive and grounded in public interest (*maṣlaḥah*).

Keywords: Child Marriage; DP3A Recommendation; Marriage Dispensation; *Qawā'id fiqhiyyah*

Abstrak

Tingginya angka dispensasi kawin di Kabupaten Bone menunjukkan urgensi penguatan perlindungan anak dalam sistem hukum keluarga Islam. Dalam konteks ini, rekomendasi Dinas Pemberdayaan Perempuan dan Perlindungan Anak (DP3A) menjadi instrumen penting dalam pertimbangan hukum di Pengadilan Agama, meski status hukumnya diperdebatkan. Penelitian ini mengkaji status hukum rekomendasi DP3A dalam perkara dispensasi kawin melalui pendekatan *qawā'id fiqhiyyah* dan *maqāṣid al-sharī'ah*. Metode yang digunakan adalah kualitatif, berlokasi di Kantor DP3A dan Pengadilan Agama Watampone, dengan data dari observasi, dokumentasi, dan wawancara, dianalisis secara deskriptif-kualitatif. Hasil penelitian menunjukkan: Pertama, rekomendasi DP3A didasarkan pada kebijakan pemerintah untuk mencegah perkawinan anak, dengan tujuan melindungi empat aspek penting dalam *maqāṣid al-sharī'ah*, yakni menjaga jiwa (*ḥifẓ al-nafs*), akal (*ḥifẓ al-'aql*), harta (*ḥifẓ al-māl*), dan kehormatan (*ḥifẓ al-'ird*) anak. Kedua, secara normatif, rekomendasi ini memiliki kekuatan hukum yang bersifat wajib bagi pemohon dispensasi kawin di Pengadilan Agama Watampone dan dinilai sejalan dengan prinsip-prinsip hukum Islam melalui pendekatan *qawā'id fiqhiyyah* dan *maqāṣid al-sharī'ah*. Rekomendasi ini menjadi wujud sinergi antara kebijakan daerah dan hukum Islam dalam perlindungan anak. Penelitian ini berkontribusi pada pengembangan hukum Islam kontemporer dan pembentukan regulasi daerah yang lebih responsif dan maslahat.

Kata kunci: Perkawinan Anak; Rekomendasi DP3A; Dispensasi Kawin; *Qawā'id fiqhiyyah*

INTRODUCTION

The prevalence of child marriage in Bone Regency in 2019 reached 25%, a figure that is twice the national prevalence rate of 11%.¹ This rate is considered high compared to the average prevalence across regencies in South Sulawesi Province, which stands at only around 12.11%.² However, from 2020 to 2023, there has been a significant decline in the rate of child marriage. Data from the Watampone Religious Court (PA Watampone) show that there were 178 marriage dispensation cases in 2020, 63 cases in 2021, 36 cases in 2022, and only 27 cases by December 2023. The total number of marriage dispensation cases in the past four years amounts to 308, a figure lower than the 419 cases recorded in 2019 alone.³

All 308 marriage dispensation cases over the past four years involved recommendations from the Bone Regency Office of Women's Empowerment and Child Protection (hereafter referred to as DP3A). This requirement is based on the revised legal minimum age for marriage. Previously, the legal age requirement stipulated that male brides must be at least 19 years old, and female brides at least 16 years old, as set forth in Law No. 1 of 1974 Article 7 Paragraph (1), in conjunction with Article 15 Paragraph (1) of the Compilation of Islamic Law (KHI). This law was amended by Law No. 16 of 2019 on Marriage, specifically Article 7 Paragraph (1), which now sets the minimum age for both male and female spouses at 19 years.⁴

This legal update was grounded in research, such as the 2020 UNICEF report,⁵ which revealed that child marriages under the age of 19 are vulnerable to various harms and tend to be detrimental to the child. Child marriage deprives children of their rights to joy, freedom of expression, education, and health.⁶ Such practices are contrary to Article 26 Paragraph (1)(c) of Law No. 35 of 2014 on Child Protection, which mandates parents to prevent child marriages.⁷ The report even stated that young mothers under the age of 18 are five times more likely to die during childbirth compared to mothers aged 20–24 during their first pregnancy. In developing countries, this risk increases to six times.⁸

The amendment of the law concerning the minimum age of marriage,⁹ particularly for females, was welcomed by the Ministry of Women's Empowerment and Child Protection (PPPA) as a boost for implementing the National Strategy to prevent child marriage. Bone Regency also took a proactive stance in child marriage prevention through a program known as "Sip-Peka"

¹ DIANA PAKASI, "Child Marriage in Indonesia: Practices, Politics, and Struggles," *Masyarakat: Jurnal Sosiologi* 24, no. 1 (25 Januari 2019), <https://doi.org/10.7454/MJS.v24i1.10956>.

² Syarifah Suhra dan Fatmawati F, "PERAN MUSLIMAT NU DALAM MENCEGAH PERKAWINAN ANAK DI KABUPATEN BONE ANALISIS PERSPEKTIF PENDIDIKAN ISLAM," *AN-NISA* 16, no. 1 (7 September 2023): 39–48, <https://doi.org/10.30863/an.v16i1.5243>.

³ Bagian arsip kepaniteraan, Wawancara oleh penulis di Pengadilan Agama Watampone kelas 1A, 1 Desember 2023.

⁴ Rizky Irfano Aditya dan L.B. Waddington, "The Legal Protection Against Child Marriage in Indonesia," *BESTUUR* 9, no. 2 (24 November 2021): 126, <https://doi.org/10.20961/bestuur.v9i2.55144>.

⁵ www.unicef.org/indonesia/media/2851/file/Child-Marriage-Report-2020.pdf

⁶ Dede Kania dan Siti Nur Fatoni, "Protecting Children's Rights in Marriage Dispensation Cases: Evidence from Religious Courts in Indonesia," *Ayy-Syari'ah* 25, no. 2 (2023): 79–98, <https://doi.org/10.15575/as.v25i2.43846>.

⁷ Abdul Rahman dan Anwar Sadat, "MAJELIS TA'LIM AS SOCIALIZATION MEDIA OF CHILD PROTECTION IN WEST SULAWESI," *Al-Qalam* 27, no. 1 (21 Juli 2021): 85–94, <https://doi.org/10.31969/alq.v27i1.923>.

⁸ Eddy Fadlyana dan Shinta Larasaty, "Pernikahan Usia Dini dan Permasalahannya," *Sari Pediatri* 11, no. 2 (25 November 2016): 136–41, <https://doi.org/10.14238/sp11.2.2009.136-41>.

⁹ Mukhlis Mukhlis, "PEMBAHARUAN HUKUM PERKAWINAN DI INDONESIA," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 11, no. 1 (2017): 59–78, <https://doi.org/10.15575/adliya.v11i1.4852>.

(Child Marriage Prevention Strategy).¹⁰ This initiative was a response to the alarmingly high rate of child marriage in Bone Regency in 2019, prompting the local government to take action by launching the Sip-Peka program.¹¹ One of the steps taken under this program was the establishment of agreements or Memoranda of Understanding (MoUs) among 13 regional government agencies related to child marriage, including DP3A and the Religious Court.

The Religious Court (PA) was included in the initiative because it has jurisdiction over marriage dispensation cases. According to Supreme Court Regulation (PERMA) No. 5 of 2019, Article 15(d), judges may request recommendations from child protection agencies to ensure the mental and psychological readiness of the child before marriage.¹² These legal provisions indicate that judges have the authority to rule on marriage dispensation cases without being obliged to seek recommendations from DP3A; such recommendations are optional.

However, based on the MoU established in Bone Regency, one of DP3A's functions is to provide recommendations for children seeking marriage dispensation at the PA. It was also agreed that only pregnant minors outside of wedlock would receive such recommendations from DP3A.¹³ Yet, as previously noted, Article 7 Paragraph (2) of Law No. 16 of 2019 does not limit "urgent reasons" to pregnancies outside marriage. Likewise, Article 15(d) of PERMA No. 5 of 2019 only offers the option—not the obligation—for judges to consult any agency, including DP3A. The issue arises when judges at the Religious Court treat DP3A's recommendations as the sole or mandatory consideration, making such recommendations appear more binding than statutory law and potentially interpreted as offering leniency to individuals who have engaged in premarital sex.

This raises an urgent legal question: What is the legal status of DP3A Bone Regency's recommendations as judicial considerations in marriage dispensation rulings at the PA? Since the issue involves substantive law at the Religious Court, which is inherently Islamic law, it is essential to analyze it using a normative Islamic legal approach. This includes the application of *Qawa'id fiqhyyah* as legal arguments to determine the legal status of the DP3A's recommendations.

METHODS

The type of research employed in this study is qualitative, as the data analyzed is not statistical in nature but is instead based on the opinions and conceptual insights of the informants.¹⁴ This study adopts a combined juridical, normative, and empirical approach, since the research object—namely the DP3A recommendation document—is juridically and empirically treated as a requirement for marriage dispensation at the Watampone Religious Court. However, from a juridical-normative perspective, it has not yet been regulated by statutory or Islamic law.

¹⁰ Muljan Muljan dkk., "Preventing Child Marriage in Bone District, South Sulawesi: Perspective of Islamic Family Law," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (30 Juni 2024): 110–27, <https://doi.org/10.22373/ujhk.v7i1.22482>.

¹¹ Andi Adhe Amalya, Risma Niswaty, dan Herman H, "Innovation Strategy to Prevent Child Marriage in Bone Regency (Early Marriage Innovation Case Study)," *Jurnal Ad'ministrare*, 25 April 2025, 325–37, <https://doi.org/10.71309/administrare.v11i2.4782>.

¹² Regita Hikmatul Fadhilah, "Judge's Considerations in Deciding The Case Of Marriage Dispensation Based Upon Perma Number 5 Of 2019 And Maqashid Sharia (Analysis Of Ruling Number 369/Pdt.p/2023/Pa.Smn)" (Thesis, Universitas Islam Indonesia, 2024), <https://dspace.uui.ac.id/handle/123456789/50017>.

¹³ Muljan dkk., "Preventing Child Marriage in Bone District, South Sulawesi."

¹⁴ Muhammad Tolchah Hasan, "Lokasi: Metode Penelitian Kualitatif (Tinjauan Teoritis dan Praktis)," diakses 8 November 2024, <https://onsearch.id/Record/IOS4866.slims-1689>.

The research was conducted at the Office of the Department of Women's Empowerment and Child Protection (DP3A) of Bone Regency and the Watampone Religious Court (PA Watampone). This dual-site approach was chosen because the DP3A issues the marriage dispensation recommendations, while their implementation occurs at the Religious Court. Thus, it was essential to conduct research at both locations. The subjects of this study consist of seven key informants selected through purposive sampling, as they possess in-depth knowledge of the DP3A recommendations, as evidenced by their professional roles. Among the seven informants, three serve as judges at the Watampone Religious Court, two as court clerks at the same institution, and the remaining two as division heads at the DP3A Office of Bone Regency. This composition supports data validity through source triangulation by gathering information from a range of relevant actors.

The data used in this study comprises primary data collected directly from the research sites. Primary data includes field observations, documentation, and the results of interviews with informants.¹⁵ Secondary data consists of theoretical legal materials obtained from secondary sources.¹⁶ Including literature such as Law No. 16 of 2019 and Supreme Court Regulation (PERMA) No. 5 of 2019, research reports, academic articles, and various references such as classical fiqh books and other theoretical works that serve as the foundation of this study. Data analysis utilizes content analysis techniques to examine the recommendation documents. In addition, comparative analysis is employed to assess the legal status of the recommendations from the perspective of Islamic law, using *qawā'id fiqhiyyah* and *maqāṣid al-sharī'ah* as the basis for legal reasoning.

RESULTS AND DISCOSSIONS

1. DP3A's Recommendation: Sociological and Legal Perspectives

This section discusses the procedures that must be followed by applicants to obtain a recommendation from the Department of Women's Empowerment and Child Protection (DP3A) of Bone Regency. The research found that DP3A does not issue recommendations automatically or proactively. Instead, recommendations are issued only upon request from individuals seeking marriage dispensation at the Watampone Religious Court.

Based on interviews with two key informants, Agung Rachmadi and Kamiluddin, it was revealed that several documents must be submitted, including a referral letter from the village head, a referral from the Office of Religious Affairs (KUA), personal identification, and—most importantly—a medical certificate stating that the applicant is pregnant. According to both informants, “*pregnancy outside of marriage is the only condition considered urgent enough to warrant a recommendation*”.¹⁷ Other reasons, such as romantic involvement, arranged marriage, or family pressure, are not deemed valid.

This policy reflects DP3A's position that pregnancy is a form of social emergency requiring a legal solution—not a justification for premarital relations. In fact, Agung Rachmadi noted that DP3A had once been accused in the media of legitimizing fornication due to its policy of recommending pregnant minors for marriage dispensation. He strongly rejected this claim,

¹⁵Eko Putro Widoyoko, “Teknik Penyusunan Instrumen Penelitian,” Perpustakaan Sekolah Tinggi Ilmu Kepolisian (STIK) (Pustaka Pelajar, 2012), <http://library.stik-ptik.ac.id>.

¹⁶Muhammad Teguh, “Metodologi Penelitian Ekonomi: Teori Dan Aplikasi,” Perpustakaan Sekolah Tinggi Ilmu Kepolisian (STIK) (Grafindo persada, 2005), <http://library.stik-ptik.ac.id>.

¹⁷Agung Rachmadi, Kepala UPT Perlindungan Perempuan dan Anak dan Kamiluddin, Kasi data dan sistem informasi DP3A Kabupaten Bone, Wawancara oleh penulis di Kantor DP3A Kabupaten Bone, 06 februari 2024.

clarifying that the true purpose of the policy is to educate the public that “*pregnancy outside of marriage is shameful and must be prevented*”¹⁸ through social intervention. Similarly, Kmd. emphasized that the recommendation serves as a “*remedial solution once pregnancy has already occurred*”,¹⁹ not an incentive to get pregnant for the sake of receiving legal approval. Furthermore, Kamiluddin explained that the number of marriage dispensation requests at the Watampone Religious Court has declined steadily in recent years, suggesting a decrease in premarital pregnancies among adolescents. This statement is corroborated by official court records:

Table 1. Marriage Dispensation Cases at the Watampone Religious Court

No.	Year	Number of Marriage Dispensation Cases
1	2020	178
2	2021	63
3	2022	36
4	2023	27

Source: archives section of the Watampone Religious Court

This consistent downward trend holds both statistical and sociological significance. It reflects a clear shift in public perception toward child marriage. While marriage dispensation was previously regarded as a means of restoring family honor or resolving economic difficulties, it is now increasingly associated with social stigma—particularly due to its link with out-of-wedlock pregnancies. A study by Andi Nurfikriana et al. supports this shift, indicating that the people of Bone Regency are beginning to see early marriage not as a cultural norm to be upheld, but as a social problem that should be prevented.²⁰

In this context, the DP3A recommendation plays a strategic role not only within legal proceedings but also in shaping cultural transformation. It serves as a screening mechanism to ensure that only cases with legitimate urgency—specifically, pregnancy—are processed. At the same time, the recommendation contributes to the broader objective of reducing the prevalence of child marriage. The policy therefore embodies a combination of preventive, educational, and legal functions, which together support child protection efforts in Bone Regency.

Comparable practices can be found in other regions of Indonesia. For example, in Aceh, the DP3A—through a Memorandum of Understanding with the Mahkamah Syar’iyah—requires marriage dispensation applicants to undergo psychological counseling, parenting education, and reproductive health consultations prior to receiving a recommendation.²¹ Similarly, in Ngawi Regency, DP3A mandates premarital counseling, family function education, and psychological

¹⁸Agung Rachmadi, Wawancara oleh penulis, 06 februari 2024.

¹⁹Kamiluddin, Wawancara oleh penulis, 06 februari 2024.

²⁰ Andi Nur Fikriana Aulia Raden, Azmil Fauzi Fariska, dan Mariana Mariana, “Peralihan Cara Pandang Masyarakat Terhadap Praktik Pernikahan Dini,” *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 15, no. 2 (30 September 2021): 163–78, <https://doi.org/10.15575/adliya.v15i2.13778>.

²¹ 211010009 Ayu Darisah, “Strategi Perlindungan Anak Pada Kasus Pernikahan Usia Dini (Studi Di DP3A Provinsi Aceh)” (masters, UIN Ar-Raniry Pascasarjana Hukum Keluarga, 2023), <https://repository.ar-raniry.ac.id/id/eprint/31892/>.

support for both underage brides and their parents or guardians before any recommendation is issued.²²

These regional policies reflect a more preventive and educational approach compared to Bone, where the issuance of recommendations is primarily based on proof of pregnancy. In Aceh and Ngawi, more holistic interventions—covering education, counseling, and health—are designed to reduce the incidence of child marriage and provide applicants with a deeper understanding of its risks before any legal process begins.

In comparison, Bone's DP3A plays a more reactive role, engaging only after a pregnancy has occurred. By contrast, the DP3A offices in Aceh and Ngawi take a proactive stance, offering educational and psychological support from the outset. This distinction highlights the variation in how local governments implement child marriage prevention policies, depending on regional capacity and strategic focus. It also contributes to the broader discourse on balancing emergency legal responses with long-term preventive strategies in the realm of family law and child protection.

2. DP3A Recommendation: Law and Practice

Interviews with judicial officials at the Watampone Religious Court confirm that the DP3A recommendation is grounded primarily in Supreme Court Regulation (PERMA) No. 5 of 2019. Judge Dasri Akil underlined that the regulation provides a procedural framework aimed at reducing child marriages and safeguarding the welfare of children.²³ Judges Musabbiah. and Sitti Amirah affirmed that the recommendation has been in place since the PERMA was issued, and that its implementation is reinforced through a formal *Memorandum of Understanding* (MoU) between the court and DP3A Bone Regency.²⁴

Court clerk Lukman Patawari added that the legal foundation of the recommendation is not limited to PERMA alone but is also supported by the Marriage Law and the Compilation of Islamic Law (KHI), particularly after the 2019 amendment which raised the legal minimum age of marriage to 19 years.²⁵ These legal instruments establish a normative structure that necessitates procedural safeguards, including the role of institutions like DP3A in providing protective mechanisms for underage applicants.

This interpretation aligns with Mihfa Wahyuni's research, which affirms that the authority of DP3A Bone to issue recommendations in marriage dispensation cases is explicitly grounded in PERMA No. 5 of 2019. Her study supports the conclusion that DP3A's involvement is not merely consultative, but part of a legally and institutionally integrated effort to protect minors within the religious court system.

Nevertheless, Article 15(d) of PERMA No. 5/2019 states that judges *may* request a recommendation, not that they must. This language reflects discretionary authority, which potentially reduces the enforceability of such recommendations, As Dasri Akil acknowledged. This opens space for variable interpretation and application.²⁶ In regions like Jepara and Blitar, as shown

²² Achmad Baihaqi, "WAHYU IRSYAD JALALUDDIN 101210202," t.t.

²³ Dasri Akil, Hakim PA Watampone, Wawancara oleh penulis di Kantor PA Watampone, 21 februari 2024.

²⁴ Musabbiah dan Sitti Amirah, Hakim PA Watampone, Wawancara oleh penulis di Kantor PA Watampone, 14 Maret 2024.

²⁵ Lukman Patawari, Hakim PA Watampone, Wawancara oleh penulis di Kantor PA Watampone, 6 Maret 2024.

²⁶ Dasri Akil, Wawancara oleh penulis di Kantor PA Watampone, 21 februari 2024.

in studies by Setiawan and Wibawa (2021)²⁷ and Eka Karunia Putri (2023) in Blitar.²⁸ recommendations are indeed treated as optional and advisory.

However, Bone Regency has responded differently by establishing an MoU between the Religious Court and DP3A, transforming what was a discretionary provision into a de facto procedural obligation. According to Dasri Akil and Sitti Amirah, the MoU stipulates that no marriage dispensation case will proceed unless the DP3A recommendation is included in the application file. Applicants without it are referred back to DP3A before their case can be registered.²⁹ As Musabbiah, phrased it, the recommendation has become "*a necessity, if not an outright obligation*."³⁰

This practice reflects a doctrinal shift, from a soft law approach rooted in judicial discretion, to an administratively binding requirement that directly affects access to legal remedy. In legal theory, this creates tension between contractual inter-institutional agreements (MoU) and formal statutory authority, which usually requires a clear legislative mandate to impose binding obligations. Yet, as court clerks Lukman Patawari and Hayyad Jusa confirmed, in practice, the DP3A recommendation functions as a gatekeeping document: cases without it are returned for correction or simply not processed.³¹

Although Dasri Akil mentioned that in exceptional cases, judges may weigh other factors—such as psychological maturity, social conditions, and *maqāṣid al-sharīʿah*—to justify accepting a case without a recommendation, such discretion is largely theoretical. For instance, he described a hypothetical involving a mature, orphaned girl as an example where a judge *might* approve a dispensation without formal documentation. However, both Msb. and SA confirmed that since the MoU came into effect (2020–2023), no case has been approved without a DP3A recommendation, reinforcing the de facto binding status of the recommendation within the procedural regime.³²

This institutional design yields both strengths and limitations. On one hand, it enhances child protection by filtering cases before they reach the court—functioning as a preventive mechanism aligned with the principle of *ḥifẓ al-nafs* (protection of life). On the other hand, by restricting recommendations to pregnancy-related cases only, it risks excluding children facing other urgent but non-physical vulnerabilities, such as domestic instability or forced marriage threats.

²⁷Agus Setiawan dan Iskandar Wibawa, “PERANAN DINAS PEMBERDAYAAN PEREMPUAN PERLINDUNGAN ANAK, PENGENDALIAN PENDUDUK DAN KELUARGA BERENCANA (DP3AP2KB) KABUPATEN JEPARA DALAM MEMBERIKAN REKOMENDASI PERNIKAHAN DINI DI PENGADILAN AGAMA JEPARA,” *Jurnal Suara Keadilan* 22, no. 2 (2021): 129–47, <https://doi.org/10.24176/sk.v22i2.8532>.

²⁸ Eka Karunia Putri, “Penerapan peraturan Bupati Blitar nomor 6 tahun 2019 tentang pencegahan dan penanganan perkawinan usia anak: Studi di Dinas Pemberdayaan Perempuan Perlindungan Anak Pengendalian Penduduk dan Keluarga Berencana Kabupaten Blitar” (undergraduate, Universitas Islam Negeri Maulana Malik Ibrahim, 2023), <http://etheses.uin-malang.ac.id/52202/>.

²⁹Dasri Akil dan Sitti Amirah, Hakim PA Watampone, Wawancara oleh penulis di Kantor PA Watampone, 14 Maret 2024.

³⁰ Musabbiah, Hakim PA Watampone, Wawancara oleh penulis di Kantor PA Watampone, 14 Maret 2024.

³¹Lukman Patawari dan Hayyad Jusa, Hakim PA Watampone, Wawancara oleh penulis di Kantor PA Watampone, 6 Maret 2024

³² Musabbiah dan Sitti Amirah, Hakim PA Watampone, Wawancara oleh penulis di Kantor PA Watampone, 14 Maret 2024.

From a legal-theoretical standpoint, the MoU reflects a functional normative innovation—it fills a legal gap left by national regulations by reinforcing judicial procedures through local institutional collaboration. However, it also raises the question of legitimacy and legal enforceability, since MoUs lack the formal authority of statutory instruments. This reveals a structural challenge in Indonesia's plural legal landscape, where soft legal mechanisms are often used to implement child protection policy in the absence of unified legal mandates.

In sum, while Bone Regency's model demonstrates strong institutional coordination and a clear protective intention, it also illustrates the limits of administrative mechanisms when applied rigidly and without accommodating diverse sociological realities. A more balanced approach may be required—one that integrates the legal flexibility of PERMA with the procedural clarity of the MoU, while maintaining alignment with both national legal norms and the objectives of Islamic law.

3. Alignment with *Maqāṣid al-sharī'ah*

As previously explained in the research findings, to obtain a recommendation from the DP3A of Bone Regency, the applicant must first complete the required documents for the recommendation request. The study found that one of the required documents is a medical certificate stating that the applicant is pregnant. This certificate is the determining factor for whether or not the recommendation will be granted by the DP3A.

To assess the legal status of the DP3A recommendation — whether it aligns with Islamic law or contradicts it — the objective or substance of the recommendation must first be understood. To accurately determine its legal status, a comparison is needed between the purpose of the recommendation and the objectives of Islamic law (*maqāṣid al-sharī'ah*). If the objectives are aligned, then the recommendation can be considered part of Islamic law. As stated in the *qaidah fiqh*:

حيثما كانت المصلحة فثم شرع الله

Meaning: "Where there is benefit, there is the law of Allah."³³

As found in the research, the main objective of the DP3A recommendation is to prevent child marriage in Bone Regency. However, this prevention policy still offers a solution for cases where marriage at a young age is urgently needed. It is important to understand that the recommendation does not aim to promote marriage for those who are already pregnant. On the contrary, the DP3A seeks to prevent out-of-wedlock pregnancies by implementing other measures, such as forming model villages and schools. In these model villages, DP3A provides community education and support regarding the dangers of early marriage and pregnancy. In the model schools, a new subject — life skills education — is introduced in 12 junior high schools in Bone Regency.³⁴

The DP3A recommendation cannot be interpreted as legalizing fornication. On the contrary, statistical data shows that since the introduction of the recommendation, the number of child marriages involving pregnancy outside of marriage — which result in a marriage dispensation

³³ Jumarni, Achmad Musyahid, dan Lomba Sultan, "KONSEP MASLAHAT MUDARAT, CONTOH KASUS DAN PENETAPAN HUKUMNYA," *Nasr al-Islam: Jurnal Kajian Literatur Islam* 6, no. 3 (1 Agustus 2024), <https://journalpedia.com/1/index.php/jkli/article/view/3141>.

³⁴ Muljan dkk., "Preventing Child Marriage in Bone District, South Sulawesi."

being granted by the Religious Court (PA) of Watampone — has been declining year by year: 178 cases in 2020, 63 in 2021, 36 in 2022, and 27 cases as of December 2023. In fact, the existence of the recommendation and dispensation programs has led to a new social stigma: if someone's marriage dispensation is granted, it is assumed that the person was pregnant outside of wedlock — a shameful label for most.

Thus, the purpose of the DP3A recommendation is to reduce the high rate of child marriage in Bone Regency. To evaluate whether the DP3A recommendation is in line with or against *maqāṣid al-sharī'ah*, we must further understand why child marriage should be prevented. According to a 2020 UNICEF report,³⁵ child marriage (under 19) poses various dangers and is generally harmful to children. It deprives them of their rights — to happiness, freedom of expression, education, and health. The report also states that mothers under 18 are five times more likely to die during childbirth than those aged 20–24 during their first pregnancy. In developing countries, this risk increases sixfold.³⁶

Considering the risks associated with child marriage and the success of the DP3A recommendation in reducing child marriage cases, it can be concluded that the recommendation aligns with *maqāṣid al-sharī'ah*. At least three aspects would be violated if child marriage occurs and are preserved by the recommendation: the protection of life (*ḥifẓ al-naḥs*), protection of intellect (*ḥifẓ al-'aql*), and protection of wealth (*ḥifẓ al-māl*), even though the second and third aspects are not classified as *ḍarūriyyāt* in al-Imām al-Shāṭibī's concept of *maqāṣid al-sharī'ah*.³⁷

The first aspect is the protection of life (*ḥifẓ al-naḥs*). As reported by UNICEF and other studies, child marriage can potentially lead to death if the girl becomes pregnant at a young age, such as 18. This puts both the mother and fetus at risk, based on global statistics. Therefore, child marriage contradicts *maqāṣid al-sharī'ah*, which prioritizes preserving life by avoiding harm and seeking every possible way to protect human life — much like seeking medical treatment for illness. In this context, the recommendation serves as a preventive measure against the dangers of child marriage.

The second aspect is the protection of intellect (*ḥifẓ al-'aql*). In reality, child marriage disrupts children's right to education, as 18 is still a compulsory school age. Many who marry at this age end up dropping out of school, which contradicts *maqāṣid al-sharī'ah*, which aims to preserve the human mind and prevent intellectual decline due to lack of education. Although the obligation to seek worldly knowledge is *fard kifāyah*, from the perspective of *maqāṣid al-sharī'ah*, education is considered a *ḥājjiyyāt* need -not on the same level as *ḍarūriyyāt*, such as the prohibition of alcohol which directly impairs intellect.

The third aspect is the protection of wealth (*ḥifẓ al-māl*). As a chain reaction, children who drop out of school due to early marriage often lack the qualifications to secure decent employment. As a result, they face more complex household issues, especially financial problems, which can lead to divorce. While not all child marriages end this way, the tendency is significant. This contradicts Islamic principles and *maqāṣid al-sharī'ah*.

On the other hand, the DP3A recommendation serves to protect and provide solutions for children who become pregnant outside of marriage, by allowing them a legal path to marriage. The

³⁵www.unicef.org/indonesia/media/2851/file/Child-Marriage-Report-2020.pdf

³⁶ Fadlyana dan Larasaty, "Pernikahan Usia Dini dan Permasalahannya."

³⁷ Abu Ishaq Al-Syathibi, *Al-muwafaqat fi usul al-Shariah*, vol. ii, ii (beirut: Matabah al-Asyritah, 2003).

author considers this the best of the available solutions. While Islamic law prescribes *ḥadd* punishments for adultery — 100 lashes and exile — it must be remembered that Indonesia has not implemented *ḥudūd* (Islamic criminal law). Forcing it now could cause greater harm. Currently, Indonesia applies Islamic civil law, and Article 53(1) of the Compilation of Islamic Law (KHI) states: “*A woman who is pregnant outside of marriage may be married to the man who impregnated her.*”³⁸ There is wisdom in why the scholars who drafted the KHI arrived at this conclusion.

One significant wisdom is the preservation of the dignity of Muslim families in Indonesia, amid a moral crisis. Imposing *ḥudūd* now could result in many Muslims being punished. We can take a lesson from the Prophet's early *da'wah* period, where he prioritized creed and ethics before enforcing legal rules. The protection of honor (*ḥifẓ al-'ird*) among Muslims is also considered part of *maqāṣid al-sharī'ah*, and according to Muḥammad Ṭāhir ibn 'Āshūr, falls under the *ḥājjiyyāt* level.³⁹

4. Analysis of *Qawā'id fiqhiyyah*

While the previous section demonstrated that the DP3A recommendation aligns with the core objectives of Islamic law (*maqāṣid al-sharī'ah*), a further examination is needed to assess its legal status from the perspective of *qawā'id fiqhiyyah* —Islamic legal maxims. These maxims serve as guiding principles in deriving rulings, especially when facing contemporary issues not explicitly covered in classical texts.

Given these facts, and based on the evaluation of the DP3A recommendation procedure—which the author deems aligned with the concept of *maqāṣid al-sharī'ah*—the recommendation should be considered a crucial factor in deciding marriage dispensation cases at the PA Watampone. Marriage dispensation is the last gate to prevent dangerous child marriages. As defined by al-Imām al-Shāṭibī, *maqāṣid al-sharī'ah* refers to anything that safeguards the welfare of humanity, both in this world and the hereafter.⁴⁰ Therefore, the DP3A recommendation used as a consideration in marriage dispensation cases at PA Watampone qualifies as “something that ensures human welfare,” as stated by al-Shāṭibī.

This means the actions of judges at PA Watampone, who consider the DP3A recommendation in their rulings, are in line with *maqāṣid al-sharī'ah*. In fact, the DP3A recommendation would lose its significance if it were not treated as a primary consideration in deciding these cases. On the contrary, it must be made a primary and obligatory consideration so that it holds binding legal power and fulfills its purpose within the framework of *maqāṣid al-sharī'ah*. Therefore, its legal status is reinforced by the *qaidah fiqh*:

تصرف الإمام على الرعية منوط بالمصلحة

Meaning: "The leader's decisions regarding the people must be based on public interest."

As known, the existence of the DP3A recommendation is a result of policies by the local government of Bone Regency. These policies aim to protect society from the harms of child marriage and preserve the honor of Muslim families from the shame of fornication. For these noble objectives, its legal status is further supported by another *qaidah fiqh*:

درء المفساد مقدم على جلب المصالح

³⁸Republik Indonesia, Inpres No. 1 Tahun 1991 tentang Kompilasi Hukum Islam, Pasal 5

³⁹Muhammad Tahir Ibnu Asyur, *Maqashid al-Syari'ah al-Islamiyah* (Qatar: Wazirat al-awqaf, 2014).

⁴⁰ Al-Syathibiy, *Al-muwafaqat fi usul al-Shariah*.

*Meaning: "Preventing harm takes precedence over securing benefits."*⁴¹

This confirms that the DP3A recommendation aligns with Islamic law, as it conforms to *maqāṣid al-sharī'ah*, both in preventing harm and promoting benefits - particularly through its success in reducing child marriage rates in Bone Regency.

CONCLUSION

This study found that the DP3A recommendation in Bone Regency has a clear legal and procedural foundation as a primary requirement in marriage dispensation cases at the Watampone Religious Court, and it holds binding legal force (obligatory). This finding is supported by its alignment with the objectives of *maqāṣid al-sharī'ah*, particularly the protection of life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), wealth (*ḥifẓ al-māl*), and honor (*ḥifẓ al-'ird*) of children and Muslim families.

Normatively, this finding indicates that the DP3A recommendation is legally recognized in Islamic law through the lens of *qawā'id fiqhīyyah*, and from a public policy perspective, it serves as an important instrument for integrating child protection into religious court procedures. However, its implementation must be carefully monitored to avoid policy bias, such as the normalization of out-of-wedlock pregnancy as the sole valid justification for marriage dispensation.

Future research is recommended to examine the institutional effectiveness and legal implications of MoUs between Religious Courts and DP3A in other regions, and to explore the possibility of broadening the basis for issuing recommendations to address other forms of social vulnerability beyond pregnancy.

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⁴¹ Neneng Hasanah dan Hamzah Hamzah, "KAIDAH-KAIDAH ISLAM MENJAWAB PERMASALAHAN SOSIAL DAN EKONOMI UMAT," *Ayy-Syari'ah* 21, no. 1 (23 Juli 2019): 39–54, <https://doi.org/10.15575/as.v21i1.4617>.

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