



Dynamics of Jombang Religious Court Decision on Marriage Dispensation: Jaser Auda's Systems Theory Approach

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ABSTRACT

This research aims to analyze the dynamics of the Jombang Religious Court's marriage dispensation decisions during the period 2018-2021 from the perspective of the systems theory in maqāsid al-sharī'ah. Marriage dispensation is a crucial issue that often requires deep consideration regarding the interests of minors who are to be married. The systems theory developed by Jasser Auda offers a holistic and dynamic approach to understanding the interaction of various elements influencing court decisions, while maqāsid al-sharī'ah provides a normative framework for evaluating the alignment of decisions with the objectives of sharī'ah. This study focuses on the analysis of judges' decisions on marriage dispensation in the Jombang Religious Court's rulings from 2018-2021, using Jasser Auda's systems theory with its six features: cognition, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness. The research methodology employs a qualitative approach with a descriptive-analytical method. The analysis is conducted by observing patterns and trends in the decisions, as well as the factors influencing those decisions. This research also examines the extent to which these decisions reflect the principles of maqāsid al-sharī'ah, including the protection of religion, life, intellect, lineage, and property. The results indicate that from the perspective of systems theory, the complex interaction between elements creates dynamics in decision-making. From the perspective of maqāsid al-sharī'ah, most decisions have considered the protection of life and lineage, although there are still cases that require further evaluation concerning the long-term welfare of the child. A systemic approach in decision analysis provides more comprehensive insights into its dynamics. The application of maqāsid al-sharī'ah as a normative evaluation framework helps ensure decisions are procedurally and substantively just. Training for judges, strengthening coordination, and socializing the impacts of early marriage are recommended to improve the quality of decisions.

Keywords: *Marriage Dispensation, Systems Theory, Jasser Auda.*

INTRODUCTION

The Compilation of Islamic Law (KHI) clearly regulates the principle that the purpose of marriage is to form a happy and eternal family, therefore husband and wife need to help and complement each other so that each can develop their personality to help and achieve spiritual and material prosperity. A child is said to be ready both physically and psychologically if he meets the criteria, one of which is age. The older a person gets, the more prepared they are for the process of getting married, so they are ready physically and mentally. The age limit for someone who can be said to be eligible to become a bride and groom is if the man or woman has reached the age of 19 years based on Law no. 16 of 2019 amendments to Law no. 1 of 1974.

The existence of the provisions of the Law above certainly aims to avoid *harm* and create benefits if a marriage is carried out physically and psychologically, because if you are not fully ready, it will cause many disadvantages that will later be experienced, for example, you are not ready to accept your household situation, your emotions are still unstable. and also when you are not physically ready it can result in miscarriage so that the big risk experienced by underage couples is divorce, for this reason there is a need for a deeper understanding of marriage. According to findings conducted by PLAN, 44% of girls who marry early experience cases of domestic violence at a high frequency. And the remaining 56% who did not marry early experienced domestic violence at a low frequency. Girls aged 10-14 years are potentially five times more at risk during pregnancy and childbirth, compared to pregnant women aged 20-25 years. (Muntamah et al., 2019, pp. 1–12)

Judges at the Jombang Religious Court decide cases of requests for marriage dispensation using considerations, namely using the provisions of Article 7 paragraph (1) of Law Number 16 of 2020 concerning Amendments to Law No. 1 of 1974 concerning marriage, Article 8 of Law Number 2 months

1974 Jo. Article 39 paragraphs (1), (2), (3) and Articles 40, 41 and Article 44 of the Compilation of Islamic Law. The judge also agreed with the principle of Ushul Fiqh which states: " *Rejecting mafsadah (damage) takes precedence over attracting benefits* ." Determining marriage dispensations cannot be separated from Islamic law. In Islamic law, the term *maqāṣid al-sharī'ah* appears, the main aim of which is to create benefits and prevent mafsadat. *Maqāṣid al-sharī'ah* exists as a driving force for Islamic law that has been established thousands of years ago. The term marriage dispensation also has an influence on human social life. The increasingly changing pattern of life means that thought patterns also change so that for the benefit of humans in marriage the age limit also has an influence.

In *maqāṣid al-sharī'ah* according to *al-Shāṭibī* there are five safeguards that must be maintained, namely guarding the soul, mind, religion, lineage and property. (Auda, 2015) In the concept of marriage, limiting the age of marriage is the same as preserving offspring, because if you are not old enough, it can result in the birth of an abnormal child or the condition of the mother being less biologically mature. This actually brings *harm* to mankind. The government sets the age regulated by law, of course, not without reason. So it is important to study this in more depth regarding the importance of the marriage dispensation from a *maqāṣid al-sharī'ah perspective* . In Islamic law itself, the Koran and al-Sunnah do not clearly and firmly set age limits for people who marry. Both only provide signs, conditions, and guesses about how someone is considered worthy of marriage. Muslims are free to set a minimum age limit for marriage so that the minimum age limit for marriage can be transferred to the perpetrator without violating the provisions that have been determined and making adjustments in accordance with social conditions implemented by law.

Another view is that Islamic law which has been modified into positive law in Indonesia is the result of collecting and selecting opinions from various experts in the field of religion. Of course, all the regulations contained therein must reflect human values, respect women's rights, and balance the nuances of compassion and wisdom in order to realize the interests of all humanity. (Muzaiyanah & Arafah, 2021, p. 164) According to *al-Shāṭibī* , shari'ah was established to realize the benefit of servants, both in the world and in the afterlife. This benefit, in his view, becomes *maqāṣid al-sharī'ah* . In other words, the enactment of the Shari'a, both as a whole and in detail, is based on a motive for enacting the law, namely, realizing the benefit of servants.

The urgency of applying *maqāṣid al-sharī'ah* in determining the age limit for marriage is because the age limit for marriage is not clearly regulated in Islamic law, so the presence of *maqāṣid al-sharī'ah* in determining the law is primarily for the benefit of humanity and to avoid damage if married under age and the consequences of marrying a minor who is not yet in sufficient physical, psychological or physical condition and is ready to cause other damage such as divorce or miscarriage because the body is not yet ready to accommodate the fetus. From several marriage dispensation cases submitted to the Jombang Religious Court in 2018-2021, the author saw that all requests for marriage dispensation cases were granted by the panel of judges. So indirectly the author sees that there is a discrepancy between what has been determined and expected by law, in this case especially Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law regarding the minimum age limit for a person to enter into a marriage with the current in this reality.

On the other hand, *ius constitutum* (positive law) does not require underage marriage and the government also always tries and promotes so that violence against children does not happen again, so a kind of regulation or rule to prevent it has been made in the form of Law Number 23 of 2002 concerning Child Protection, no. there was another incident of domestic violence (KDRT) so that a kind of regulation or rule was made in the form of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the implementation of nine year and twelve year compulsory education programs so that a kind of regulation or rule in the form of education or free schools and then so that there are no deaths of mothers and children during the birthing process, a kind of regulation or rule is made in the form of Law Number 36 of 2009 concerning Health and the implementation of the minimum age limit for marriage as stated in Law number 1 of 1974 concerning Marriage and Instruction. President number 10 of 1991 concerning disseminating the Compilation of Islamic Law (KHI) and other laws.

According to Auda, Islamic law (*al-fiqh*) is seen as the result of cognitive construction or thoughts of Islamic legal experts (*al-fuqahā*) . Islamic law is the product of reasoning and *ijtihad* (serious efforts) of jurists in uncovering the hidden meaning or practical implications of the sources of Islamic law, namely the Koran and Hadith. This cognitive nature or the results of thinking causes variations in views among jurists in determining Islamic law, because each scholar has his own thoughts which may be different. (Prihantoro, 2017) the integrity of Islamic law can be seen from the holistic approach used by ushul fiqh scholars in establishing law. They consider *holistic evidence al-hujjah al-kulliy* or comprehensive arguments, not just focusing on one particular aspect. This approach reflects a comprehensive understanding of the sources of Islamic law. Apart from that, holistic or comprehensive thinking is also needed in studying Islamic legal philosophy. This is important to develop the semantics and science of *Kalām* (theology) which can answer contemporary challenges completely and comprehensively. A partial or limited approach will not be enough to understand and develop dynamic and relevant Islamic law. (Yaqin, 2018)

Auda is of the view that there is no concept of closing the door to *ijtihad* (closing new legal thoughts) in Islamic law. This is because Islamic law has the capacity to continue to develop according to the needs of the times and can adapt to new changes. Islamic law is flexible and can be adapted to the context of the time, circumstances and place of application. Islamic law is not something static and closed, but dynamic and open to new developments. *Ijtihad* (efforts to develop legal thinking) can continue to be carried out to maintain the relevance of Islamic law amidst changing times. In other words, the concept of closing the door to *ijtihad* does not apply in the Islamic legal tradition. Auda emphasizes the flexibility and ability of Islamic law to continue to develop according to society's needs, rejecting the view that the door to *ijtihad* is closed . (Auda, 2010)

Although in *maqāṣid al-sharī'ah* , as formulated by classical scholars such as *al-Shāṭibī* , there is a hierarchy or levels of *maqāṣid* , namely *darūriyāt* (primary needs), *hajjiyāt* (secondary needs), and *tahsiniyāt* (tertiary needs), in essence These three levels are interconnected and related to each other. This means that, although there are groupings based on level of interest, the three are actually a single unit that complements each other in fulfilling

sharia objectives. There is no absolute separation between the three, because basically all levels of *maqāṣid* are equally important in realizing human benefit. So, even though there is a hierarchy, *maqāṣid al-sharī'ah* must be seen as a unified whole, where *ḍarūriyyāt*, *ḥajjiyyāt*, and *taḥsīniyyāt* are interconnected and support each other in achieving the larger goals of Islamic law. In establishing Islamic law, ulama must think multi-dimensionally and comprehensively, not just focus on one or two dimensions. This is because Islamic law is a system consisting of various interrelated subsystems. With a multi-dimensional approach, legal issues can be resolved completely and proportionally, without any one-sided imposition of meaning. (Auda, 2012b)

Then, based on research that has been carried out, including Basic Health Research (2013), UGM Center for Population and Policy Studies (2011), BKKBN Research (2012), KNAKP Research (2012), PKBI Executive Director Research (2012) essentially states that Early marriage or young marriage results in the loss of children's rights, such as education, play, protection, security, reproductive health, maternal death, child death, domestic violence and others. The results of the research that has been carried out should also be used as a reference and consideration for Court judges in accepting, examining and deciding every case regarding the marriage of minors. Moreover, one of the National Medium Term Development Plans (RPJMN) is to increase quality and competitive Human Resources (HR) with a target of reducing child marriage from 11.2% to 8.74% in 2024. National Strategy for the Prevention of Child Marriage (STRANAS PPA) 2020 states that in February 2020, the Indonesian Government launched the National Strategy for the Prevention of Child Marriage (STRANAS PPA), the aim of which is to reduce child marriage from 11.2% to 6.9% by 2030 for women aged 20-24 who were married before the age of 20. 18 years. (Ministry of National Development Planning, 2020, p. 45)

Central Statistics Agency (BPS) data from the 2019 National Socio-Economic Survey (SUSENAS) shows that 18.47% of women aged 20-24 years were married before the age of 19. When this SUSENAS data is multiplied by the Inter-Census Population Survey (SUPAS) population data, it shows that two million girls/young women aged 20-24 years were married before 19 years, where another 1.2 million were girls who were married before 18 years. (UNICEF and PUSKAPA UI, 2020, p. 7) The rate of child marriage varies in various regions in Indonesia, with an average of 8% in Sumatra to 16% in Kalimantan in 2018. The graph below shows the distribution of underage child marriage 18 years throughout Indonesia. Indonesia is ranked eighth highest in the absolute number of child marriages in the world. According to *the United National Children's Fund* (UNICEF), Indonesia has the eighth highest absolute number of child brides in the world at 1,459,000. Nationally, 11.2% of girls are married before they are 18 years old and 0.5% of these girls are married when they are 15 years old. (UNICEF and PUSKAPA UI, 2020)

In 2018, Indonesia's divorce rate reached 408,202 cases, an increase of 9% compared to the previous year. The biggest cause of divorce in 2018 was continuous disputes and arguments with a total of 183,085 cases. Economic reasons ranked second with 110,909 cases. Meanwhile other problems were husband/wife leaving (17.55%), domestic violence (2.15%), and drunkenness (0.85%). (Australia Indonesia Partnership for Justice 2, 2019) According to data released by the Jombang Religious Court from 2018 to 2021, there were 1,277 cases of requests for marriage dispensation, with details of 124 cases in 2018, 260 cases in 2019, 450 cases in 2020, and 443 cases in 2021. (Supreme Court of the Republic of Indonesia, n.d.) Of the 1,277 petition cases, the reasons for the petitions submitted by the applicants are of course very varied, in this case the author only took samples from several of the cases above. In 2019, the Religious Court/Shar'iyah Court received 24,864 marriage dispensation cases, almost double the increase from the 13,800 marriage dispensation cases received in 2018 and four times more than the number of cases received in 2011. This number is very different from the Court District, where the District Court only accepted 201 marriage dispensation cases for non-Islamic citizens. AIPJ2's 2019 research on Analysis of Decisions in Marriage Dispensation Cases in Indonesia estimates that less than 5% of married girls in Indonesia were previously taken to the Religious Court or Syar'iyah Court to obtain marriage dispensation. (Australia Indonesia Partnership for Justice 2, 2019, p. 8)

Based on the information available, this article does not appear to have much previous research to cite. This article focuses on the analysis of the Jombang Religious Court's decision regarding marriage dispensation from the perspective of systems theory in *maqāṣid al-sharī'ah*, which is a topic that has not been widely researched before. However, there are several previous studies that may be relevant, including; Shoim (2024), Thesis "The Role of Judges in Marriage Dispensation as an Effort to Protect Children (Analytical Study of Determination of Judges at the Jantho Syar'iyah Court)", which examines the role of judges in marriage dispensation also using the Jantho Syar'iyah Court approach. (Shoim, 2024) Khoiri (2021), Dissertation "Marriage Dispensation reviewed according to *Maqāṣid al-Sharī'ah* : Analytical Study of the Decision of the Bengkalis Religious Court Judge", This dissertation discusses the application for marriage dispensation that occurred at the Bengkalis Religious Court in 2018 which granted 26 cases. (Khoiri, 2021) Jasmaniar and Muh. Zulkifli Muhdar (2021), journal article "Marriage Age Limit in Relation to Applications for Marriage Dispensation in Religious Courts". This article discusses changes to the marriage age limit regulations from Law number 1 of 1974 to article 7 of Law number 16 of 2019. (Jasmaniar & Muhdar, 2021)

For this reason, this article is novel from the perspective of the research site, namely at the Jombang Religious Court, and through Jasser Auda's System Theory approach in *maqāṣid al-sharī'ah* with six features, namely the cognitive dimension of religious thought (*cognition*), overallness (*wholeness*), openness, hierarchies of thinking that influence each other (*interrelated hierarchy*), religious thinking that involves various dimensions (*multidimensionality*), and *purposefulness*. And also from several symptoms, phenomena and problems as described and explained in the background above, therefore the author is very interested in researching, studying, discussing and analyzing further and in depth and more widely. again in a study entitled: "Dynamics of the 2018-2021 Jombang Religious Court Decisions Regarding Marriage Dispensation from a Systems Theory Perspective in *Maqāṣid Al-Sharī'ah*".

DISCUSSION

MARRIAGE DISPENSATION JUDGE'S RULING PENGADILAN AGAMA JOMBANG 2018-2021

The increase in marriage dispensation cases in Jombang Regency occurred significantly in 2018-2021. According to data from the Central Statistics Agency, in 2018 there were 105 marriage dispensation decisions. Then it rose to 196 cases in 2019. It increased drastically in 2020 to 409 cases. And there will still be an increase in 2021, namely 471 cases.

In this research, there are several samples that are used as examples for the data set. Namely three sample decisions in 2018, 2019, 2020 and 2021 respectively.

No	Decision	Age		Monthly Income	Consideration of Fiqh Principles
		Prospective Groom	Bride		
1	February 20, 2018	21 years 8 months	14 years 3 months	Rp. 1,500,000	تصرف الإمام على الرعية منوط بالمصلحة
2	March 15, 2018	18 years 1 month	16 years	Rp. 2,500,000	تصرف الإمام على الرعية منوط بالمصلحة
3	November 6, 2018	17 years 2 months	16 years	Rp. 1,700,000	تصرف الإمام على الرعية منوط بالمصلحة
4	March 21, 2019	15 years 8 months	17 years 3 months	Rp. 1,500,000	تصرف الإمام على الرعية منوط بالمصلحة
5	March 21, 2019	26 years 7 months	16 years 6 months	Rp. 1,500,000	تصرف الإمام على الرعية منوط بالمصلحة
6	November 5, 2019	22 years 2 months	15 years 8 months	Rp. 1,500,000	تصرف الإمام على الرعية منوط بالمصلحة
7	March 16, 2020	19 years 5 months	17 years 3 months	Rp. 1,500,000	تصرف الإمام على الرعية منوط بالمصلحة
8	March 25, 2020	24 years 8 months	16 years 3 months	Rp. 1,500,000	تصرف الإمام على الرعية منوط بالمصلحة
9	October 21, 2020	20 years 10 months	15 years 6 months	Rp. 1,500,000	تصرف الإمام على الرعية منوط بالمصلحة
10	March 15, 2021	15 years 7 months	15 years 6 months	Rp. 1,500,000	تصرف الإمام على الرعية منوط بالمصلحة
11	August 31, 2021	16 years 3 months	16 years 3 months	Rp. 3,000,000	تصرف الإمام على الرعية منوط بالمصلحة + درء المفاسد أولى من جلب المصالح
12	November 26, 2021	18 years 7 months	18 years 7 months	Rp. 1,200,000	تصرف الإمام على الرعية منوط بالمصلحة + درء المفاسد أولى من جلب المصالح

Based on the data obtained by the researcher and the results of interviews with judges at the Jombang Religious Court Office and the results of interviews with various parties related to the issue of marriage dispensation, several reasons can be put forward for the judge's consideration in determining the marriage dispensation, including those related to the judge who examines and adjudicates cases of requests for marriage dispensation and those for whom marriage dispensation is requested, namely; psychological reasons, health reasons, economic reasons and benefit reasons.

Next, we can explain the reasons for the judge's consideration in determining the marriage dispensation at the Jombang Religious Court based on the author's analysis as follows:

1. Psychological Reasons

Marriage law states that the purpose of marriage is to form a happy family. As stated in Law Number 1 of 1974 concerning Marriage, Article 1 which reads "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the belief in the Almighty God." (*Marriage Law Number 1 of 1974* . , tt)

To achieve the goal of marriage, namely forming a happy and eternal family and household based on belief in the Almighty God, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 Article 7 Paragraph 1 has set a minimum age limit for candidates. husband and wife are 19 years old. For more details, we can see the explanation of the changes to the law as follows:

Changes to norms in Law Number 1 of 1974 concerning Marriage extend to the age limit for marriage, improvements to norms include raising the minimum age limit for marriage for women to be equal to the minimum age limit for marriage for men, namely 19 (nineteen) years. The age limit referred to is considered to be mature in body and soul to be able to enter into marriage in order to realize the goals of marriage well without ending in divorce and to obtain healthy and quality offspring. It is also hoped that increasing the age limit higher than 16 (sixteen) years for women to marry will result in a lower birth rate and reduce the risk of maternal and child mortality. Apart from that, children's rights can also be fulfilled so as to optimize children's growth and development, including parental assistance and providing access to the highest possible education. (Explanation of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. , tt)

The explanation of the law above shows that the essence of increasing the marriage age limit for prospective brides is intended so that the prospective bride and groom are ready physically and mentally, are mature in body and soul to enter into marriage so that the goals of marriage can be realized well and do not end in divorce. . In addition, increasing the age limit for women to marry will reduce the birth rate and reduce the risk of maternal and child mortality.

As the judge considers in the Jombang Religious Court Marriage Dispensation Determination Number 312/Pdt.P/2020/PA.Jbg, as follows:

Considering, that to fulfill the provisions of Article 12 paragraphs (1) and (2) PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, the Judge has tried to advise the Petitioners about the risks of marriage that will be carried out and its impact on children in terms of education, health including the readiness of reproductive organs, psychological, psychological, social, cultural, economic and potential disputes and domestic violence, so the parties were advised to postpone until the minimum age for marriage, but to no avail.

Considering, that the word of Allah SWT., in the Qur'an Surah An-Nisa' verse 9:

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعْفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا

Meaning: "And let those who fear Allah leave behind them weak children, whom they fear for their (welfare). Therefore, let them fear Allah and let them speak the right words."

Considering that this paragraph is general in nature, it does not directly indicate that a marriage between a young couple, under the provisions of the marriage law, will produce offspring whose welfare is of concern. However, based on the experience of various parties, the low age of marriage causes more things that are not in line with the mission and purpose of marriage, namely the realization of peace in the household based on love or *sakinah mawaddah wa rahmah*. This goal will of course be more difficult to achieve, if each bride and groom have not yet matured in body and soul. Maturity and stable personal integrity will be very influential in resolving every problem that arises in dealing with a thousand and one household problems;

The judge's consideration in determining the marriage dispensation at the Jombang Religious Court is seen from several reasons, one of which is the psychological reasons for the prospective bride and groom (male and female). Thus, between one case and another, judges differ in providing legal considerations because they are casuistic in nature. As health experts have found, marriage at a young age not only has an impact on physical health but also has an impact on psychologic health. The reproductive organs are not yet fully mature, which can result in lacerations, urinary tract infections, *premature birth*, miscarriage, lack of blood which can lead to death. Psychologically, early marriage can cause trauma and a crisis of self-confidence, easily become emotional and stressed. Personalities tend to be closed, easily give up, and love themselves because they are not mentally ready to be mothers or parents, wives and sexual partners. It can also cause a lack of courage to make decisions, difficulty solving problems and impaired memory, so you can experience *baby blue syndrome* due to hormonal changes, fatigue, mental stress and a feeling of lack of help when giving birth. (Hellodoc, tt)

From the views above, it shows that the psychological reasons of the prospective bride and groom greatly determine a person's readiness to get married. Psychological reasons are the reasons that are the main consideration for a judge in deciding whether to reject or grant a request for a marriage dispensation.

2. Health Reasons

Early marriage has an impact on girls' reproductive health, from a physical perspective, teenagers are not yet strong, their pelvic bones are still too small, which can endanger the birthing process. Girls aged 10 – 14 years are five times more likely to die during pregnancy or childbirth compared to women aged 20 – 25 years, while girls aged 15 – 19 years are twice as likely to die. (Wiranto & Amalia, 2021)

This is what causes judges to make health reasons one of the considerations in examining and determining marriage dispensation cases as in the determination of marriage dispensation at the Jombang Religious Court Number: 0333/Pdt.P/2018/PA.Jbg, as follows:

Considering, that according to the provisions of Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage it is stated that "Marriage is only permitted if the man reaches the age of 19 years and the woman reaches the age of 16 years". Meanwhile, currently the Petitioner's child is only 19 years old. 17 years, 2 months, (who was born in Jombang on August 25 2001), so according to the applicable law, the Petitioner's child is considered not old enough to enter into marriage. However, the Petitioner's child has demonstrated maturity and has reached puberty as intended by Islamic law .

Considering, that the marriage law adheres to the principle that prospective husband and wife must be mature in body and soul to be able to enter into a marriage in order to realize the goal of marriage well without thinking about divorce and to be able to produce good and healthy offspring;

Health reasons were also mentioned as a consideration for the judge in the Jombang Religious Court Marriage Dispensation Determination Number: Number 312/Pdt.P/2020/PA.Jbg. as follows :

Considering, that to fulfill the provisions of Article 12 paragraphs (1) and (2) PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, the Judge has tried to advise the Petitioners about the risks of marriage that will be carried out and its impact on children in terms of education, health including the readiness of reproductive organs, psychological, psychological, social, cultural, economic and potential disputes and domestic violence, so that the parties were advised to postpone until the minimum age for marriage, but to no avail;

The explanation of the amendment to Law Number 1 of 1974 with Law Number 16 of 2019, states that one of the purposes of marriage is to obtain healthy and quality offspring. In addition, increasing the age of marriage will reduce the birth rate and reduce the risk of maternal death. children, as explained in the law as follows:

Changes to norms in Law Number 1 of 1974 concerning Marriage extend to the age limit for marriage, improvements to norms include raising the minimum age limit for marriage for women to be equal to the minimum age limit for marriage for men, namely 19 (nineteen) years. The age limit referred to is considered to be mature in body and soul to be able to enter into marriage in order to realize the goals of marriage well without ending in divorce and to obtain healthy and quality offspring. It is also hoped that increasing the age limit higher than 16 (sixteen) years for women to marry will result in a lower birth rate and reduce the risk of maternal and child mortality. Apart from that, children's rights can also be fulfilled so as to optimize children's growth and development, including parental assistance and providing access to the highest possible education . (Explanation of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage . , tt)

3. Economic Reasons

Financial capability is one of the supporting reasons for harmony between husband and wife in a household. If financial capacity does not exist, it will become a burden for the head of the family and family members in carrying out their daily lives. One of the sources or triggers of arguments (there are many risks of fighting) is economic reasons.

As the judge considers in the Jombang Religious Court Marriage Dispensation Determination Number 0095/Pdt.P/2021/PA.Jbg. as follows:

Considering, that based on the Petitioner's arguments, and the statements of witnesses and other evidence before the trial, there are facts as follows:

Whereas the Petitioner's daughter stated that she was ready to be a good wife, as well as her future husband stated that he was ready to be a good husband and take responsibility in building a household;

That the prospective husband is already working as a private employee, with a monthly income of IDR 1,500,000/month (one million five hundred thousand rupiah);

The explanation above shows that economic reasons are one of the judges' considerations in determining marriage dispensation cases. The description and analysis of the reasons for the judge's consideration in determining the marriage dispensation at the Jombang Religious Court, as stated above, indicates that considerations from the *maṣlaḥah* aspect of the case being handled are very much taken into account by the judges before giving a final determination or decision.

According to al-Tufi, the goal of Islamic law is benefit, so that all forms of *maṣlaḥah*, whether supported by *naṣ* or not, must be achieved. (Basri, 2011) Thus, all forms of prohibitions and orders from Allah SWT. and His Messenger contains *maṣlaḥah* for mankind. Imam al-Ghazali explains in his book *al-Mustasyfa* that originally *maṣlaḥah* means something that brings benefits and avoids *harm* , but the essence of *maṣlaḥah* (Syarifudin, 2014) is :

المحافظة على مقصود الشرع

Meaning: Maintaining sharia objectives in establishing laws

objectives of establishing law (*maqāṣid al-syari'ah*), namely maintaining religion (*ḥifẓ al-dīn*), maintaining the soul (*ḥifẓ al-nafs*), maintaining reason (*ḥifẓ al-aql*), maintaining offspring (*ḥifẓ al-nasl*) and maintaining wealth (*ḥifẓ al-māl*). If someone performs an action which is essentially to maintain the five aspects mentioned above, then that thing is called *maṣlaḥah* . Likewise, efforts made to resist all forms of harm are also a form of *maṣlaḥah* . (Hidayatullah, 2018)

Al-Shatibi mentioned that Allah swt. establishes His laws with the aim of realizing the benefit of human life both in this world and in the hereafter. The main purpose of establishing shari'ah in al-Shatibi's view is to maintain and implement three categories of law, namely *al-dharūriyah* , *al-hajjiyāh* and *al-tahsinīyyāh* with the aim of realizing the benefit of Muslims. (Basri, 2011)

4. Beneficial Reasons

The judge's considerations, which are no less important, are the reasons for the benefit of the prospective bride and groom who are already pregnant. The judge pays attention to reasons for the long-term good for the prospective bride and groom. The first reason that is most often based on applying for marriage dispensation is because of pregnancy out of wedlock or also known as Unexpected Pregnancy (KTD). Promiscuity among children and lack of insight into the reasons why women who have gone through puberty engage in promiscuity will lead to pregnancies outside of marriage.

One of the reasons a judge grants a request is because of urgent circumstances. Unexpected pregnancy is one of the reasons considered urgent for the judge in granting the request for dispensation. This is because unexpected pregnancy is a serious problem and no reason can be found to reject a request for a marriage dispensation. The judge also considers the benefit aspect, which will be obtained more if the request for a marriage dispensation on the grounds of an unexpected pregnancy is granted. The reason is for the child's own interests. If the judge refuses to grant the request, it is feared that the psychology of the child, especially the girl, will be disturbed.

As the judge considers in the Jombang Religious Court Marriage Dispensation Determination Number 356/Pdt.P/2019/PA.Jbg, as follows:

Whereas the Petitioner's child and her future husband have been dating and getting along well for quite a long time, and have had sexual relations many times;

Considering, that because the Petitioner's child named: (Child) has reached puberty and according to the Judge's assessment before the court he is mature enough both physically and mentally to become a wife and loves each other and gets along well between the Petitioner's child and her future husband named: Prospective husband , then the Petitioner's concern that if his child is not immediately married off, there will be more harm than good, is quite reasonable according to law;

Considering, that based on Article 53 paragraph (1) of the Compilation of Islamic Law (KHI) that a pregnant woman out of wedlock can be married to the man who impregnated her, the pregnancy of the prospective wife of the Petitioners' child does not constitute an obstacle to the marriage between the Petitioners' child and the prospective wife. her husband;

*Considering, that based on these considerations, connected with the provisions of Article 7 and Article 8 of Law Number 1 of 1974 and Article 53 of the Compilation of Islamic Law, the Panel of Judges in its deliberations is of the opinion that the arguments of the Petitioners' petition are quite reasonable and based on law, therefore petitum number 2 of the Petitioners' petition **should be granted.***

The description above illustrates that the reasons for consideration by judges in determining marriage dispensations are psychological reasons, health reasons, economic reasons and benefit reasons. These four reasons are taken into consideration by the judge in determining the marriage dispensation as stated by the judges during interviews and as stated in the marriage dispensation determination. These four reasons are based on one of the *maqāṣid al-sharī'ah* , namely protecting offspring (*hifẓ al-nasl*)

JASSER AUDA'S SYSTEMS THEORY

a. Cognition of Islamic Law (Cognitive nature)

According to systems theory, reality (*ṭabi'iyah*) and thinking (cognition) are interrelated and correlated. (Auda, 2012b) Thought does not stand alone , but is the result of a dynamic relationship between a subject and the context and reality it faces. In systems theory, human thinking is understood as part of a system involving complex interactions between individuals, context, and reality. Reality cannot be separated from human thinking, and conversely, human thinking is also influenced by existing reality. Thus, thought and reality influence and shape each other in a dialectical process. (Auda, 2012b)

Auda believes that understanding Islamic law is not only limited to textual aspects or laws that are laid down literally, but also involves a deeper understanding of the principles, goals and intentions underlying the law. In this case, Islamic legal cognition refers to an understanding that includes intellectual, cognitive and broader thinking aspects in understanding and applying Islamic law.

Auda also emphasized the importance of understanding the social context, history and developments of the times in understanding Islamic law. He acknowledged that social and cultural contexts have an important role in understanding and implementing Islamic law appropriately and relevantly. Therefore, Islamic legal cognition also includes contextual understanding that takes into account changing times and societal needs.

Thus, the concept of "cognition of Islamic law" in Jasser Auda's thinking refers to a holistic, contextual and rational understanding of Islamic law. This involves an understanding that goes beyond textual aspects, integrating the objectives of sharia, social context, and common sense in an effort to understand and apply Islamic law appropriately and relevantly. In his thoughts on "cognition of Islamic law", Jasser Auda advocates a holistic and comprehensive approach in understanding Islamic law. He argued that understanding Islamic law should not be limited to purely textual aspects, but should also involve a deeper understanding of the principles, aims and intentions underlying the law. The following is a more detailed explanation of the concept of Islamic legal cognition according to Auda (Saiban & Munir, 2022, pp. 12–24) :

Social and Cultural Context: Auda emphasizes the importance of understanding the social, cultural and historical context in understanding Islamic law. Every law or rule in Islam has a social and cultural context in which it is expressed. Therefore, a proper and relevant understanding of Islamic law requires a contextual assessment that takes into account changing times, cultural differences and societal needs. (Amrulloh, 2022)

Goals of Sharia: Auda proposes that understanding Islamic law must be based on the goals of sharia (*maqāṣid al-sharī'ah*). In a cognitive approach, understanding Islamic law must include an understanding of these goals and how certain laws contribute to the achievement of these goals. (Gumanti, 2018, pp. 97–118)

Rationality and Common Sense: Auda emphasizes that Islamic law is rational and can be understood by human reason. In Islamic legal cognition, common sense (*reason*) has an important role in understanding and interpreting law. It involves the use of common sense, critical thinking, and logical

reasoning in understanding and applying Islamic law. This emphasizes the importance of rational dialogue and an argument-based approach in understanding Islamic law. (Maulidi, 2022)

Cognitive Methodology: Auda proposes a cognitive methodological approach in understanding Islamic law. This involves steps such as analysis of the text, understanding the social and cultural context, interpretation based on the objectives of the Shari'a, and the use of common sense in reasoning and argument. A comprehensive and holistic understanding of Islamic law is achieved through combining all these elements

b. Overall (al-Kulliyah/Wholeness)

The advantage of using a systems approach is that it emphasizes wholeness and comprehensiveness. It exists as a critique and at the same time covers up the shortcomings of modern philosophy which is often trapped in partial and reductionist analysis. Therefore, research in natural and social sciences is currently starting to shift from partial analysis (*tahlil bi-al-qit'ah*) towards comprehensive analysis and viewing phenomena as a whole. (Auda, 2012a, p. 11)

The systems theory developed by Jasser Auda puts forward the concept of wholeness in the understanding and application of Islamic law. This concept emphasizes the importance of viewing Islamic law as a complete and holistic system, where every aspect is interconnected and influences each other. (Auda, 2007)

First, in his systems theory, Auda emphasizes that understanding Islamic law must involve all existing dimensions, including textual, historical, contextual aspects and the objectives contained in the Shari'a. He argues that only by understanding and integrating all these aspects can we achieve a comprehensive understanding of Islamic law. (Auda, t-c)

Second, the overall concept in Auda's system theory also means that every legal problem must be analyzed in a broader context, including social, economic, political and environmental implications. By considering the impact and interrelationship between these various reasons, we can make wiser and holistic decisions in determining Islamic law that is relevant to the conditions of the times. (Auda, t-d)

Third, Auda emphasized the importance of understanding that Islamic law is not static or rigid, but can adapt to changing times and society's needs. This overall principle allows us to integrate the general principles and objectives of Shari'a in formulating laws that are relevant and beneficial for contemporary society. (Tariq, n.d.)

Fourth, in his system theory, Auda highlights the importance of interdependence between various aspects of Islamic law. No aspect can be understood in isolation or ignored. Instead, we need to understand how each aspect is interconnected and contributes to the overall Islamic legal system.

Finally, the overall concept in Auda's system theory also includes spiritual dimensions and moral values in the understanding of Islamic law. Islamic law is not only about external rules and regulations, but also about building a meaningful relationship with Allah and developing good morals in everyday life. In understanding and applying Islamic law, we need to pay attention to this dimension so that the law can achieve the desired spiritual and moral goals. (Ahmed, n.d.)

The concept of wholeness in Jasser Auda's system theory involves the understanding that Islamic law must be viewed as an integrated and complete system. In this context, wholeness refers to the understanding that every aspect of Islamic law is interconnected and influences each other, and cannot be understood separately. *Wholeness* recognizes that Islamic law consists of various interrelated elements. This includes textual, historical, contextual aspects, the objectives of the Shari'a (*maqāṣid al-sharī'ah*), as well as social and moral implications. By understanding and integrating all of these elements, we can gain a more comprehensive understanding of Islamic law. (Ahmed, n.d.)

c. Hierarchy (Interrelated Hierarchy)

In a system consisting of various hierarchically interrelated sub-systems, dividing the system into smaller parts is a process that allows identifying similarities and differences between these parts. Each small part is a representation of a larger part, and vice versa. Jasser Auda revisits the traditional concept of *maqāṣid* (goals) by classifying it hierarchically into three parts.

First, there is *maqāṣid 'āmmah*, which is a general objective that can be observed in all areas of Islamic law. This *maqāṣid* includes *maṣlaḥah* (interests) that are universal, such as justice, tolerance, equality, convenience, and other important aspects, including the protection of religion, life, and other things that have been mentioned previously.

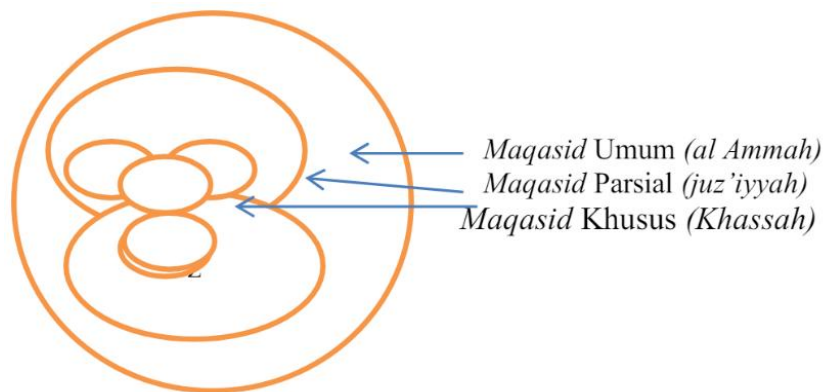
Second, *Maqāṣid Khassah* are more specific goals that can be observed in certain areas of Islamic law. Examples are child welfare in family law, the prohibition of harming women in the family context, or the prohibition of committing fraud in trade. This *maqāṣid* focuses on specific objectives in a particular legal context.

Third, *Maqāṣid Juz'iyah* are partial goals related to each goal of the Shari'a. An example is determining the number of witnesses to reveal the truth, where honesty and a strong memory are needed in giving testimony. *Maqāṣid* is related to more detailed goals in the context of sharia regulations.

By dividing *maqāṣid* into these three parts, Auda expands the scope of *maqāṣid* which was originally more particular to become more inclusive. This approach allows a more comprehensive and integrated understanding of the objectives of sharia in Islamic law. (Amrulloh, 2022)

maqāṣid building can be described as follows:

Figure 2.1



contemporary challenges, the scope and dimensions of *maqāshid theory* as it has been developed in classical Islamic law must be expanded. What was originally limited to individual benefit must be expanded in dimensions to include a more general area; from the area of the individual to the area of society or humanity at all levels.

d. Openness (*al-Infithah*)

According to Auda, the Islamic legal system is an open and dynamic system. According to him, the opinion which states that the proposed theory is perfect, without flaws, and does not need to be updated, will make Islamic law rigid and unable to develop. Moreover, almost all schools of jurisprudence consider *ijtihād* to be a necessity, because existing legal sources are very limited, while reality continues to develop.

Auda offers two reform concepts to realize openness and dynamism in Islamic law. First, he proposed reforms in the cognitive culture (*thaqafah al-mudrikah*) (Auda, 2012a) and worldview (*worldview/ru'yah al-'alam*) of *fiqh* experts. Auda explains that *fiqh* is the result of a scholar's thinking, and this thinking cannot be separated from the influence of the social context or the dominant world view that exists within the *fiqh* expert. This worldview or cognitive culture is shaped by various reasons such as religion, geography, environment, politics, society, economics and language. All of these elements influence anyone's thinking, including jurists. Therefore, Auda put forward the principle that "Changes in law are influenced by changes in cognitive culture and worldview." (*Tagayyur al-aḥkām bi-tagayyur al-thaqafah al-mudrikah aw ru'yah al-'alam*). (Auda, 2012a)

e. Multidimensional (*Multidimensionality*)

Overall, a multi-dimensional perspective provides a stronger foundation for dealing with the complexity and dynamics of reality, and produces more holistic, inclusive and sustainable conclusions and solutions. (Auda, n-b) According to Jasser Auda, there are two main advantages of using a multi-dimensional perspective in the study of Islamic law. First, this approach can dilute the dichotomy between *qaṭ'ī* (certain) and *ẓannī* (uncertain). Second, this approach is also able to mediate the problem of contradictory propositions (*ta'arud al-adillah*). (Auda, 2012b)

In Auda's view, a multi-dimensional perspective can also be used to resolve contradictions between postulates (*ta'arud al-adillah*). Auda divides contradiction into two forms: *tanāquḍ al-manṭiqī* and *tanāquḍ al-ẓāhirī*. *Tanāquḍ al-manṭiqī* occurs when two things conflict with each other and cannot possibly be compromised, for example existence and nonexistence, or two things that cannot happen at the same time and in the same place. Meanwhile, *tanāquḍ al-ẓāhirī* occurs when two things are not actually contradictory, but people perceive them as if they are contradictory. (Auda, t-a)

The majority of scholars agree that contradictions in the form of *tanāquḍ al-manṭiqī* do not exist in the Qur'an. (Auda, 2012a) It is impossible for Allah SWT to command something and forbid it at the same time. However, the contradictions that often occur are contradictions according to the *mujtahid's* assumptions alone, even though they are actually not contradictory if you look closely.

ANALYSIS OF MARRIAGE DISPENSATION DECISIONS BY JOMBANG RELIGIOUS COURT JUDGES FROM 2018 TO 2021 FROM JASSER AUDA'S SYSTEMS THEORY PERSPECTIVE

As explained in the previous chapter, there are six system features optimized by Jasser Auda in his *maqāshid thinking*, namely dimensions cognition of religious thought (*cognition*), wholeness, openness (*openness*), hierarchy think Which each other influence (*interrelated hierarchy*), think religious Which involve various dimensions (*multidimensionality*), and purposefulness (*purposefulness*).

After done elaboration to data Which obtained good through data Which sourced from copy determination dispensation marry Based on the judge's arguments and interviews with the Jombang Religious Court judge, a relationship was obtained quite significant with systems theory as one approach Which offered by *maqāshid shari'ah* Jasser Auda. Connection intended in a way can be briefly explained as follows:

1. Aspect Cognition (*cognition*)

Borrow opinion Ibn Taimiyah, Jasser Auda think that law in the sense of Islamic jurisprudence is the result of human *ijtihād* against *naṣ*, as efforts to uncover hidden meanings or practical implications. Muslim jurists and theologians emphasize this that 'God should not be called a *faqih*' because no

one is hidden from Him. So fiqh is part of *cognition/idrak* and human understanding (*fahm*) rather than part of the literal manifestation of God's command. (Auda, 2015)

When choose considerations law in disconnecting process A case, a judge No will can regardless from train of thought *ijtihadī* with maximizing aspect *idrak* or cognition by living Suite process see, pay close attention, And feel with the five senses as well as sense inner. Product Which generated Of course just is fiqh products in the form of understanding, perception, and cognition. (Auda, 2015)

Matter Which need underlined from something results process cognitive according to Jasser Auda is that truth cognitive No may be 'aligned' with 'God's truth', meaning a result of *ijtihad* Still use perception individual nor collective still must is at in corridor truth reason human Which nature *discursive*.

Mashlahah considerations take the form of *daf'u al-darār* in the decision P.A Jombang Already fulfil aspect cognitive judge, Because has based on belief which originates from knowledge of results elaboration facts the judge Good form evidence formal nor explanations from trial witnesses. The judge has also carried out a suitability analysis between concept and reality and the relationship between the two and analysis This Then produce confidence Which made judge as consideration in decide case. Short say, judge in deciding cases is based on the beliefs obtained through process see, feel, and sense sensing and inner.

Results cognitive judge Of course just No can shifted from understanding results, perception, And cognition Which nature *ijtihadī* to product of law Lord'. What Which has decided by judge is knowledge *ijtihadī* Which only applies on situation Which covering the matter Which submitted And Can changed based on situation room and time as well as case different. In other words, the judge's arguments are still discursive knowledge *and* can be debated for the sake of legal progress in the future.

From explanation in on can understood that parameter cognition as part from framework system in approach system Jasser Auda's *maqāshid* has become part of the pillars of the judge's argumentative reasoning decide case Which ends on giving marriage dispensation.

2. Aspect Overall (*wholeness*)

Use opinion Alfred Korzybski, Jasser Auda argues that current natural and social science research Already shifted from analysis Partial, equalization classic, And logical statements, towards explaining all phenomena in terms of systems Which holistic. (Auda, 2015)

Systems theory views each cause-and-effect relationship as one part from whole picture, in where group connection produce characteristics that emerge and combine to form a 'whole' that is more than just a 'summation' the parts'. (Auda, 2015)

In determination, looks that judge Jombang Court has consider various aspect Which later will become complete collage *maqāshid* of marriage. In among them is consideration a religious norm, norm morality, social economy, And maturity personality future husband/wife. Judge stimulate reason law For No just dwell on aspect black white law with try For go out from confinement narrative regulatory like Constitution Protection Children, marriage issues child, And also rights child, but try to Far projecting forward description consequence *darār* that arises from marriage No held.

Consideration of religious norms can be found throughout the argument determination of dispensation. The judge considered that what was done by candidate bride own potency violation to norm religion, such as the prohibition of adultery, limits on relations between men and women Which No Muhrim, And appearance potency chaos lineage If 'let' they Hang in there in connection 'forbidden'.

Consideration of moral norms also appears in most of the copies decision, like copy decision number 0333/Pdt.P/2018/PA.Jbg., 579/Pdt.P/2021/PA.Jbg, And a number of copy other decisions. Considerations such as having had relations with your husband wife, often going out together, a very close relationship, and so on etc is consideration aspect morality Which used by the judge.

In matter consideration aspect economy, judge Also have made ability candidate bride in a way economy as consideration section law, like found in copy decision number 0056/Pdt.P/2018/PA.Jbg. And 0098/Pdt.P/2018/PA.Jbg. Judge seems to understand that Economic aspects are an important part of the instrument resilience family so that need considered as part of intact from argumentation giving dispensation marry. Thereby also aspects social, in a number of copy decision judge considering the maturity of the prospective bride and groom as an important part in life social later on the bride life social.

Personality maturity as part of legal reasoning in explanation chapter 7 Act Marriage Also always become part from consideration judge, like found in copy decision number 333/Pdt.P/2018/PA.Jbg., 0093/Pdt.P/2019/PA.Jbg., and 0356/Pdt.P/2019/PA.Jbg. In several copies of the decision, argumentative reasons were found judge Which looking that though under review The aspect of the age of the prospective bride and groom is not yet sufficient, but in reality they have mature enough in thinking and acting. One thing that perhaps needs to be involved in consideration judge is review medical to the readiness of the prospective bride and groom, especially women, if they become pregnant in the future And give birth to. Consideration This apparently No found in a number of research data.

From findings in on can understood that in In making a decision the judge has considered various possible dimensions influential to achievement *maqāshid* of marriage. It means judge has do method think holistic And sufficient *wholeness* requirements as part from theory system.

3. Aspect Openness (*openness*)

Bertalanffy like quoted Jasser Auda connect openness features And intent with feature the system. System open have ability reach goals Which The same from condition- condition beginning Which different through alternatives valid which is equivalent. (Auda, 2015)

The nature of openness in the judge's argumentation can be seen from the judge's efforts to explore the basics of the argument, such as references regulative, reference scientific, testimony of witnesses which is presented in trial, exploration on history family life, potential *mashlahah* what can be achieved, harm to be avoided, and projections on the potential for achievement *maqāshid* of marriage. The entirety of the instrument argumentative in on later will merges in form considerations judge in set dispensation marry.

From a regulatory reference point of view, for example, the judge in his argumentation has referred to the marriage law and the legal compilation Islam and has implicitly accommodated parts of child protection law and elements of human rights. Only just according to economical writer, judge of course need more elaborate the components rights protection Woman And child in the process reason his argument so that later decision Which taken more can accommodate dimensions protection Woman And child. By This court religion in a way institutional Also can answer criticism during This Lots addressed to her mainly by parties consider that giving dispensation marry has open the way for marriage child.

Even though thereby, Actually in all over case Which handled found fact that para judge Already give suggestion to the applicant and interested parties that the marriage be postponed wait maturity And maturity age candidate bride, but applicant still on his stance For continue case. From The explanation above can be understood as referring to the Religious Courts in this case judges Which adjudicate case dispensation wedding early has implemented the principles of openness as one of the principle consideration deep argumentative decision-making.

4. Aspect Hierarchy Each other Influence (*interrelated hierarchy*)

Hierarchy each other influence open discourse discursive deep *maqāshid* room Which more wide. According to Amen Abdullah at least There is two aspect *maqāshid* yang increase its reach with application system This, Which First is aspect reach *maqāshid* itself from *maqāshid* specific traditional going to general *maqāshid* Which accommodate various dimensions *maqāshid* multidimensionally. Meanwhile the second is increasing range person Which covered *maqāshid* , from traditional *maqāshid* Which only reach person in a way individual towards the *maqāshid* reach public, nation, And even mankind. (Abdullah, 2008)

In argumentation Which used in almost all copy of decision, judge has do channel think hierarchical. Leave from exploration components problem Which faced by party who litigious judge Then do analysis to the facts are found during the judge like information applicant, person parents of the prospective bride and groom, witnesses, and existing material evidence. Various These facts are then discussed with the elements of knowledge ruled by judges such as *na ṣ* , laws and regulations, *fiqh*, *us hū l fiqh* , *fiqh* rules and so on. As a result, a hierarchy emerges knowledge which is then elaborated by the judge so that it is clear connection Which each other influence between these hierarchies.

Even though each court decision only covers certain cases tried, However decision Court Religion Jombang looks provides a fairly broad and interrelated picture of considerations between One And other. Reach potency his *maqāshid* even No only regarding prospective husband and wife who receive direct consequences from determination, but also has a beneficial impact on parents, families, his descendants later, And public Which during This follow affected normative conscience Because behavior candidate bride Which violate religious boundaries, morality, And social Which applies in public.

5. Aspect Multidimensional (*multidimensionality*)

Channel think multidimensional is antithesis from thinking one dimensional often often resulting in conflicting results rather than each other complete And become the 'match' must end with defeat One party And victory on the side other (*zero sum games*) compared 'match' Which can be won together (*win-win games*). (Auda, 2015)

Features of multi-dimensionality (*ta'addud al-ab' ā d; multidimensionality*), combined with approach *maqāshid* , can offer solution on dilemma postulates Which contradictory. The implications is law Islam become more flexible in facing problems contemporary Which complex. (Abdullah, 2008) Gaps between reason ideal age marriage as intended by legislation And theories psychology family with reality factual Which happen in public try For bridged by judge court religion. Argumentation based consideration benefit And disadvantage looks used judge as found in throughout copy determination.

Judge looks try do consideration multidimensional by marrying regulative-scientific components with factual-reality Which covering condition candidate bride with how to make *maqāshid* of marriage as *base* or footing primary consideration in considering the facts of the trial. Although there are considerations psychology And social concerning consequences negative marriage age early as allegedly by various circles during This Which looks A little ignored by judge, However eventually found the possibility of *mashlahah* with levels achievement on *maqāshid* yang more big If marriage still took place.

6. Aspect intent (*Purposefulness*)

Ultimately the whole systems approach to *maqāshid al-s y ar ī'ah* Jasser Auda ends on this aspect of intent. In essence, Jasser Auda emphasized that the *maqāshid* of Islamic law is objective core from all over methodology *ijtihad* linguistic *ushūl* nor rational. More Far, realization *maqāshid* from corner look maintain system openness, renewal, realism, And flexibility in the legal system Islam. (Abdullah, 2008)

Aspect *maqāshid* apparently Also become base at a time The main objective of determining marriage dispensations by the Jombang Religious Court. Various argumentation Which lifted by judge And stated in copy determination show reality This. By firm judge opinionated that creating *mashlahah* in particular for the bride And his descendants later is objective main Which want to achieve through Suite his argument. Objective This there is in all

decisions, though served in Language Which vary between one determination with determination other. For example in determination number 0056/Pdt.P/2018/PA.Jbg. judge mention :

Considering, that according to the provisions of Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage it is stated that "Marriage is only permitted if the man reaches the age of 19 years and the woman reaches the age of 16 years". Meanwhile, currently the Petitioner's child is only 19 years old. 14 years, 4 months (12 October 2003), so according to the applicable law, the Petitioner's child is considered not yet old enough to enter into marriage. However, the Petitioner's child has demonstrated maturity and has reached puberty as intended by Islamic law;

Considering, that because the Petitioner's child named: PROSPECTIVE WIFE has reached puberty and according to the assessment of the Panel of Judges before the trial she is mature enough both physically and mentally to become a wife and loves each other and gets along well between the Petitioner's child and her future husband named: CALON HUSBAND, then the Petitioner's concern that if his child is not immediately married off, it will do more harm than good is quite reasonable according to law.

In in Language Which other, for example in copy decision number: 0333/Pdt.P/2018/PA.Jbg. judge explain how *ḍarār as-syarʿī* Also own social consequences Which very large :

Considering, that with the fact that the prospective wife of the Petitioner's child is 2 months pregnant as a result of a relationship like husband and wife but outside of marriage with the Petitioner's child, then in accordance with article 53 paragraph (1) of the Compilation of Islamic Law, a woman who is pregnant outside of wedlock can be married to a man. who impregnated her, therefore the Petitioner's petition deserves to be considered for granting;

Considering, that based on these facts and considerations, the Panel of Judges is of the opinion that the Petitioner's request to marry off his child is deemed to have greater benefits and benefits than the mafsadat, in accordance with the rules of fiqh.

In side That, postulates *mashlahah* yang leave from the rules of *ushul al-fiqh* And Then taken as opinion assembly judges like *Dar'u al-mafāsīd muqaddamun 'ala jalbi al-mashāliḥ* (rejects everything Which damage more takes priority than interesting all beneficial), *Al-ḍarāru yuzālu* (disadvantage That must omitted), and *Al-ḍarāru al-ashad yuzālu bi al-ḍarār al-akhaf* (More suffering (*ḍarār*). heavy must removed with suffering (*ḍarār*) which lighter) which is almost always an option to consider judge everything ends on urgency *maqāshid* as a benchmark for *mashlahah* arguments . Placement of the *maqāshid* review which the judge always does at the end of his argument as if to confirm that Suite argumentation previously is features Which leads to intent law And own objective end form *maqāshid al-sharʿīah*.

Although in a way Specific No found indication that judge 'rules' pattern think approach system Jasser Auda However can be said that judge has use method think dimensions Even though Jasser Auda's 'style' system approach is not perfect adopt its features. Lack of perfection This seen for example in use features *openness*, *interrelated hierachy*, And *multidimensionality* Which looks Not yet in a way maximum used. Maximization use feature This can done for example with strengthen touches to Constitution women's protection And child, use witness expert like Commission Women's Protection and Children, expert in the field health, and psychiatrist for elaborate argumentation about rights Woman And children as well as aspects of reproductive health so that they can enrich considerations benefit And *disadvantage* Which become basis for determination in accordance *maslahah* argument Which used judge.

CONCLUSION

Based on an analysis of court decisions regarding marriage dispensations issued by Jombang Religious Court Judges from 2018 to 2021, it appears that the approach used by these judges reflects the application of several important concepts in systems theory developed by Jasser Auda. **First** , in the aspect of understanding the law, these judges use their own *ijtihad* (critical thinking) in understanding Islamic law, rather than treating it as absolute truth revealed from God. This suggests a more cognitive and humane approach. **Second** , these judges consider the overall aspect, taking into account the purpose of marriage (*maqāshid*) holistically, including religious, moral, economic, social norms and the personality maturity of the prospective partner. This reflects a more comprehensive understanding. **Third** , the judges try to maintain openness by exploring various bases of argumentation, including regulatory, scientific references and testimony at trial. This suggests a more transparent and participatory approach. **Fourth** , the judge's line of thinking which involves various knowledge to produce a comprehensive decision reflects the hierarchical aspects that influence each other. **Fifth** , judges' considerations that cover various dimensions of problems and offer solutions to complex dilemmas show a more multidimensional approach. **Sixth** , the judge's main objective in considering marriage dispensations, namely to create benefits for the prospective couple and their offspring, reflects the aspect of intention. Although not perfect, the judges' approach has moved in a direction that is in accordance with Jasser Auda's systems theory. This provides an illustration of how this theory can be applied in the context of complex legal decision making, such as marriage dispensations in Religious Courts.

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