

Not Marriage, But Maturity: Rethinking Child Marriage in Malaysia through *Maqāṣid al-Sharī'ah* and Educational Reform

Nurul Ain Hazram¹, Mashitah Abdul Mutalib²
Fakulti Syariah dan Undang-Undang, Universiti Sains Islam Malaysia

Email: ainhazram@usim.edu.my

ABSTRAK : Perkahwinan bawah umur kekal sebagai isu yang mencabar dalam masyarakat Islam moden, yang melibatkan pertembungan antara keperluan syariah, norma budaya dan perlindungan hak kanak-kanak. Kajian ini bertujuan menganalisis amalan kehakiman dalam meluluskan permohonan perkahwinan bawah umur di Mahkamah Syariah Kelantan dengan menggunakan pendekatan maqasid al-shariah dan fiqh al-muwāzanah. Kajian ini menggunakan metodologi kualitatif melalui temubual separa berstruktur bersama empat orang hakim Mahkamah Rendah Syariah serta analisis kandungan dokumen rasmi kes perkahwinan kanak-kanak antara tahun 2019 hingga 2020. Dapatan menunjukkan bahawa hampir semua permohonan yang dikemukakan telah diluluskan, dengan justifikasi utama untuk mengelakkan mudarat lebih besar seperti zina dan kehamilan luar nikah. Elemen utama maqasid yang dijadikan pertimbangan ialah *ḥifẓ al-dīn* (pemeliharaan agama), *ḥifẓ al-nafs* (pemeliharaan nyawa) dan *ḥifẓ al-nasl* (pemeliharaan keturunan). Namun begitu, aspek *ḥifẓ al-'aql* (pemeliharaan akal) didapati kurang diberi penekanan dalam keputusan kehakiman. Pendidikan jarang dijadikan pertimbangan utama, sedangkan ia adalah elemen kritikal dalam membina kematangan dan keupayaan membuat keputusan rasional. Kajian mencadangkan pelaksanaan modul pendidikan praperkahwinan, penilaian kematangan psikososial, serta penyediaan alternatif sokongan psikososial kepada remaja yang terlibat. Kesimpulannya, pendidikan harus diangkat sebagai instrumen maqasid yang utama dalam menangani isu perkahwinan awal kanak-kanak dan mengimbangi antara maslahat jangka pendek dan kepentingan jangka panjang remaja Muslim.
Kata kunci: Perkahwinan kanak-kanak, *Hifẓ al-Aqal*, *Maqasid al-Shariah*, *Fiqh al-Muwazanah*, Maslahah.

ABSTRACT : Child marriage remains a pressing issue in modern Muslim societies, involving a complex intersection between Shariah requirements, cultural norms, and the protection of children's rights. This study aims to examine judicial practices in approving underage marriage applications in the Syariah Court of Kelantan, using the framework of *maqāṣid al-sharī'ah* and *fiqh al-muwāzanah*. Employing a qualitative methodology, data were collected through semi-structured interviews with five Syariah Court judges and content analysis of official case documents from 2019 to 2020. Findings revealed that nearly all applications were approved, primarily justified as a means to prevent greater harm such as premarital pregnancy and illicit relationships. Key *maqāṣid* elements considered included *ḥifẓ al-dīn* (preservation of religion), *ḥifẓ al-nafs* (preservation of life), and *ḥifẓ al-nasl* (preservation of lineage). However, the aspect of *ḥifẓ al-'aql* (preservation of intellect) through education was rarely emphasized in judicial reasoning. Education, which plays a vital role in developing intellectual and emotional maturity, was often overlooked. This study recommends the implementation of pre-marital education modules, psychosocial maturity assessments, and alternative psychosocial support for affected adolescents. In conclusion, education must be elevated as a central *maqāṣid* mechanism in addressing child marriage, balancing short-term societal interests with the long-term intellectual and emotional well-being of Muslim youth.
Keywords: Child Marriage, Preservation of Intellect, *Maqasid al-Shariah*, *Fiqh al-Muwazanah*, Maslahah.

1. INTRODUCTION

The attraction between the sexes is an inherent human instinct created by Allah SWT as part of the natural mechanism for the survival and reproduction of humankind. This intrinsic disposition is clearly articulated in Surah al-Nisā', verse 1, where it is stated that humankind was created from a single man and woman, and from them emerged countless descendants (al-Nisā':1). The emergence of sexual desire during adolescence is a natural development resulting from hormonal and physiological changes that accompany the attainment of puberty (Che Anuar, 2018). Consequently, such desires must be guided and regulated proactively to prevent offences against religious values and social norms.

Without comprehensive moral guidance and Islamic-based sexual education, adolescents experiencing these biological transformations are vulnerable to various harms, including social problems among teenagers, premarital sexual activity, and unintended pregnancies. In this regard, Uswatun Hasanah (2018) asserts that among the primary factors contributing to child marriage applications are social issues such as promiscuity and unplanned pregnancies. Marriage is often viewed as a means of legitimising relationships and avoiding the sin of fornication, especially among teenagers who have already engaged in sexual relations. This assertion is supported by field research conducted by Nurul Ain (2022), which found that the majority of child marriage applicants in the state of Kelantan were couples who had engaged in premarital sexual activity, with a significant proportion of them already pregnant with illegitimate children.

The phenomenon of child marriage is not merely a localised issue; rather, it constitutes a global problem that directly impacts the well-being of children, particularly in terms of education, reproductive health, and social development. UNICEF (2022) reports that early marriage is among the most serious violations of children's rights, and Malaysia is not exempt from this concern. According to the UNICEF Malaysia report (2022), of the 1,856 recorded child marriage cases in 2018, 1,542 involved Muslim children, while the remaining cases involved non-Muslims. Alarmingly, 63 percent of these cases involved adolescent girls who were already pregnant before marriage, indicating a strong correlation between out-of-wedlock pregnancies and early marriage.

From a legal standpoint, Malaysia maintains different statutory minimum marriage ages based on religious affiliation. For Muslims, the minimum age of marriage is 18 for males and 16 for females, although states such as Selangor and Kedah have equalised this threshold to 18 for both genders. For non-Muslims, the statutory minimum is uniformly set at 18 years of age. Nevertheless, exceptions remain in place. For Muslim children, the Islamic Family Law Enactment allows marriage below the minimum age upon obtaining judicial consent. Specifically, under Section 8 of the Islamic Family Law (Negeri Sembilan) Enactment 2003, a Muslim female under the age of 16 or a male under 18 may marry if permission is granted by a Shariah Court judge. This indicates that the Shariah judiciary plays a pivotal role in determining the validity and appropriateness of each application through a discretionary process that considers factors such as maturity, social conditions, and familial background. It also implies that the statutory age restriction is not an absolute prohibition but is subject to judicial evaluation.

However, a critical observation reveals that most judicial approvals are often grounded in short-term considerations, such as mitigating immediate social consequences, rather than long-term *maqāṣid* based concerns such as education and the preservation of intellect (*ḥifz al-'aql*). UNICEF (2022) outlines numerous adverse effects associated with child marriage, including heightened risk of domestic violence, complications during pregnancy and childbirth, and early school dropouts (Aye et al., 2018). These consequences severely undermine a child's ability to achieve a stable and meaningful life trajectory. Although empirical studies consistently highlight that early

marriage undermines the physical, mental, and social well-being of adolescent girls (Sultana & Salam, 2017), national statistics from the Department of Statistics Malaysia (DOSM) continue to reflect a significant number of cases. A total of 2,288 cases were recorded in 2016, 2,107 in 2017, 1,856 in 2018, 1,459 in 2019, and 1,124 in 2020. Although the data shows a downward trend, the persistence of such cases year after year suggests that the issue has yet to be addressed holistically.

Hence, child marriage must not be addressed solely through legalistic frameworks, but also through a value-based evaluation of the higher objectives of Islamic law (*maqāṣid al-sharī'ah*), particularly those that prioritise education and the preservation of intellect. In this context, the present article seeks to examine child marriage through the lenses of *fiqh al-muwāzanah* and *maqāṣid al-sharī'ah*, and to explore how education can serve as a proactive deterrent against early marriage among children.

2. LITERATURE REVIEW

Child marriage is not a new phenomenon in either social or legal discourse. Each year, this topic gains attention from scholars, politicians, policymakers, and child rights activists. International studies have demonstrated that child marriage is widespread globally, particularly in developing countries. Statistics from 2000 to 2011 reveal that 34% of young women aged 20–24 were married before the age of 18, with 12% married before the age of 15. South Asia and Sub-Saharan Africa record the highest rates of this phenomenon (Kidman, 2017). According to UNICEF (2016), 51% of girls in Sub-Saharan Africa are married before reaching 18 years of age, while rates in Bangladesh, India, Nepal, and Somalia each reach up to 44% (United Nations, 2013).

Malaysia is not exempt from this global issue. UNICEF Malaysia (2022) reported that in 2018 alone, there were 1,856 recorded cases of child marriage, with a significant proportion involving pregnant adolescents. Furthermore, most child marriages in Malaysia involve Muslim girls and often arise as a response to premarital pregnancies (Nurul Ain, 2022).

A review of the literature identifies multiple contributing factors to child marriage, including economic hardship and poverty (Nor Jana Saim et al., 2018), cultural and traditional norms (Fucharria et al., 2018), low educational attainment and underdevelopment (Free Malaysia Today, 2018), and social issues such as premarital sex and unplanned pregnancies (Uswatun Hasanah, 2018; Kohno et al., 2019). Rasyid et al. (2018) found that adolescents involved in social misconduct often come from unstable family backgrounds or receive insufficient parental attention.

In Malaysian context, early marriage is also seen as a solution to avoid the sin of *zinā'*, preserve family honour, and legitimise relationships that have gone beyond permissible boundaries (Kohno et al., 2020). Several cases in Sarawak revealed that marriage was chosen as an alternative to abortion, as respondents were aware of its religious prohibition and health risks (Kohno et al., 2020).

The consequences of early marriage for children—especially girls—have been extensively documented. Kidman (2017) stated that girls who marry early are more vulnerable to domestic violence. In addition, Sultana et al. (2017) and Nour (2006) highlighted their susceptibility to mental health issues such as depression and emotional stress due to the burdens of being a wife and mother at an early age. Eucharria et al. (2018) also reported reproductive health complications, including closely spaced pregnancies.

However, not all studies report solely negative outcomes. Some findings indicate that adolescent marriage can prevent illicit sexual relations, reduce the incidence of illegitimate births, and encourage a sense of responsibility and independence among teenagers (Saim et al., 2013). Stein (2013) supports this perspective, while Kohno et al.

(2020) found that some respondents believed early marriage helped cultivate patience and a more positive outlook.

From the perspective of Islamic law, the ruling on marriage is flexible and varies according to individual circumstances. It may be classified as obligatory, recommended, permissible, discouraged, or forbidden depending on surrounding factors and a person's capability. In cases of underage marriage, the authority of the wali mujbir (compelling guardian) is not absolute but is instead subject to the approval of the Syariah Court (Madiah et al., 2011). Zanariah (2013) affirms that the legal framework granting discretionary powers to the court to evaluate each application individually is appropriate and responsive to Malaysia's socio-legal context.

In conclusion, the literature suggests that most early child marriages are pursued as short-term solutions to social problems. However, the long-term negative impacts on the physical health, education, and emotional well-being of children are far more concerning. Therefore, this review affirms the need for an approach rooted in *Maqāṣid al-Sharī'ah* and *fiqh al-muwāzanah* to provide a balanced evaluation of the benefits and harms related to child marriage.

3. METHOD

This study adopts a qualitative approach that is both descriptive and analytical in nature, aiming to gain an in-depth understanding of judicial practices and *fiqh*-based reasoning in the issue of child marriage. The selection of this methodology aligns with the study's objective to examine the process of legal justification and the balancing of *maslahah* (public interest) and *mafsadah* (harm) within the framework of *maqāṣid al-sharī'ah*.

Two primary data collection methods were employed: semi-structured interviews and document content analysis. Interviews were conducted with five Syariah Court judges serving at the lower court level in the state of Kelantan. Respondents were selected based on their willingness to participate and their experience in adjudicating child marriage cases. These interviews were carried out face-to-face using a semi-structured protocol, allowing for flexible and reflective data collection. The interview questions focused on aspects such as judicial justifications, evaluation of social and religious factors, and the judges' awareness of *maqāṣid al-sharī'ah* principles.

In addition to the interviews, the study also involved content analysis of official court case files related to child marriage applications approved by the Syariah Court between 2019 and 2020. These documents were accessed through the researcher's examination of official court records of child marriage applications. The analysis concentrated on the reasons presented in the applications, judicial justifications documented in court hearing minutes, and narrative elements reflecting considerations of *maslahah* and *mafsadah* in judicial decision-making.

To ensure coherence between theoretical constructs and the realities of judicial practice, the data were analysed thematically using the framework of *maqāṣid al-sharī'ah*, with specific focus on the elements of *ḥifẓ al-'aql* (preservation of intellect) and *ḥifẓ al-nasl* (preservation of lineage), along with the theory of *fiqh al-muwāzanah* (the jurisprudence of balancing benefit and harm). This analytical approach enabled the researcher to assess the extent to which these principles were applied in judicial decisions regarding early marriage applications, and to examine the degree of judicial sensitivity towards the role of education as a preventive mechanism.

4. RESEARCH CONCEPTUAL FRAMEWORK

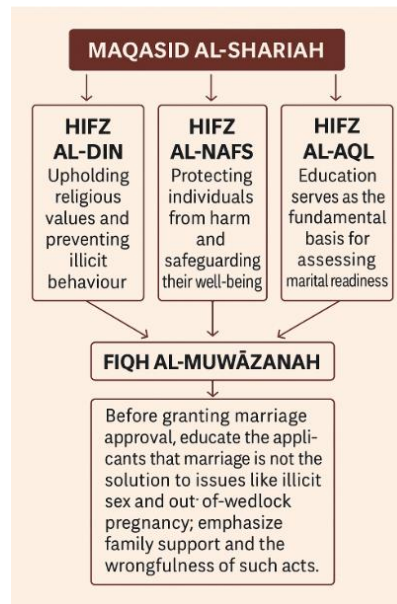


Figure 4.1: Research Conceptual Framework

The conceptual framework of this study is grounded in the principles of *Maqāṣid al-Sharī'ah*, which emphasises five fundamental objectives. In this context, three of these objectives are adopted as the primary analytical framework, which are the preservation of religion (*ḥifẓ al-dīn*), the preservation of life (*ḥifẓ al-nafs*), and the preservation of intellect (*ḥifẓ al-'aql*). These three *maqāṣid* serve as the core considerations in Syariah Court deliberations when approving underage marriage applications.

The first and most important, according to Islamic legal hierarchy, is *ḥifẓ al-dīn*, which refers to the safeguarding of religious values and the prevention of immoral acts such as *zinā'* (fornication). In most cases of underage marriage applications, approvals are granted on the grounds of protecting the applicants from continuing illicit relationships, in line with the principle of *sadd al-zarī'ah*. Nevertheless, this approach must be accompanied by educational efforts to ensure that the child applicants are made aware that marriage is not the sole solution to such issues. Instead, religious guidance and strong familial support must be prioritised.

The second objective is *ḥifẓ al-nafs*, which pertains to safeguarding the physical and emotional well-being of the child. The Syariah Court often considers risks such as out-of-wedlock pregnancies, emotional distress, and social stigma faced by the applicants. In such instances, the approval of marriage is viewed as a form of protection. However, this perspective must be examined more critically to avoid overlooking long-term consequences, such as the risk of domestic abuse and the psychological burden of assuming adult responsibilities prematurely.

Lastly, *ḥifẓ al-'aql* underpins the necessity of education in addressing this issue. Education is not only seen as a means for intellectual development, but also as a prerequisite for achieving emotional and moral maturity before entering marriage. Therefore, the principle of *fiqh al-muwāzanah* (jurisprudence of balance) is employed to evaluate the equilibrium between *maṣlaḥah* (benefit) and *mafsadah* (harm) in each application. Education functions as a critical tool to strengthen rational thinking and informed decision-making, ensuring that children comprehend the implications of hasty marital commitments. This framework proposes that approvals for underage marriage must be based on a comprehensive assessment that takes into account all aspects of

Maqāsid al-Sharī'ah. In the long term, education should be elevated as the primary mechanism to prevent child marriage, through an approach that integrates religious values, personal safety, and intellectual maturity.

5. RESULT AND DISCUSSION

The findings of this study indicate that nearly all underage marriage applications submitted to the Syariah Court in Kelantan were approved. These decisions were largely influenced by the consideration of avoiding greater harm (*mafsadah*) that could arise if the marriage were not permitted. The following are the key findings from interviews conducted in 2021 with selected Syariah Court judges in the state of Kelantan.

| THEME OF FINDINGS | SYARIAH SUBORDINATE COURT 1 | SYARIAH SUBORDINATE COURT 2 | SYARIAH SUBORDINATE COURT 3 | SYARIAH SUBORDINATE COURT 4 |
|---|---|--|---|--|
| Out-of-wedlock pregnancy and preserving family honour | Majority of applicants were pregnant due to zina and wanted to preserve family honour | Many applicants had out-of-wedlock children and wanted to legitimise the child's lineage | A large number of applicants had committed zina and wished to protect the family's dignity | Almost all cases involved applicants who were pregnant due to out-of-wedlock relationships |
| Preventing the continuation immoral acts | Concern that the couple would continue committing zina if not allowed to marry | Applicants were at risk of repeating zina if not married | Marriage was considered to prevent further acts of zina | Couple had been in a relationship for a long time, raising concern over continued zina |
| Economic and social factors | Some families viewed marriage as a solution | Some families agreed to the marriage due to economic burden | Family's economic condition influenced the decision to approve marriage | Some families saw marriage as a way to reduce financial burden |
| Illegal marriage in Thailand | Avoiding the couple marrying illegally in Thailand | Concern that the couple would attempt marriage in Thailand | Kelantan's proximity to Thailand raised concern over possible illegal marriage | Court aimed to prevent couples from marrying outside Malaysia's legal framework |
| Couple's maturity and readiness | Male applicant was employed and ready to support a family | Judge assessed maturity level of applicants before approval | Couples showing maturity were more likely to be approved | Judges assessed financial and psychological readiness before deciding |
| Drop out of school or have no further educational plan | Applicants had dropped out of school before applying | Some applicants were already out of school before submitting their application | Marriage was not seen as a barrier to education as most applicants were already out of school | Most applicants were no longer in school and had no further education plans |

Table 5.1: Judicial Considerations from the Kelantan Syariah Subordinate Courts in Child Marriage Applications

Based on interviews with Syariah Court judges and an examination of case documents, the study found that nearly all underage marriage applications brought before the Syariah Court in Kelantan were approved. The primary justification cited was the prevention of greater harm (*mafsadah*), such as the birth of children out of wedlock, the continuation of relationships without a valid marriage, and the risk of couples marrying illegally in neighbouring countries such as Thailand.

An analysis of judgments from four selected Syariah Subordinate Courts revealed several consistent themes in the reasoning behind these approvals. First, premarital pregnancy was a dominant factor in allowing early marriage. The Court considered pregnancy outside of wedlock as a serious social and religious harm. Marriage was viewed as a means to preserve lineage (*ḥifẓ al-nasl*) and protect family honour (*ḥifẓ al-ʿird*). This justification reflects the application of *fiqh al-muwāzanah* (jurisprudence of balancing), in which benefits outweigh the anticipated harms.

Second, marriage was perceived as a safeguard against continued immoral behaviour. Judges were concerned that couples who had already engaged in sexual relations might repeat such acts if not married. Therefore, the principle of *sad al-zarīʿah* (blocking the means to harm) was applied to prevent further moral decay and sin. Third, economic and social factors also played a role. In some cases, low-income families viewed marriage as a solution to financial burdens or a form of protection for their daughters. However, this approach requires reassessment, as it risks sidelining the importance of education.

Fourth, Kelantan's geographical proximity to Thailand raised concerns that couples might resort to illegal cross-border marriages. This encouraged courts to consider applications more flexibly, aiming to avoid complications regarding marital status and the legal rights of children. Fifth, courts also assessed the couple's maturity and readiness. Applicants who were already employed and displayed a sense of responsibility were often deemed more eligible. This assessment included psychological, social, and economic factors. While underage marriages were approved, such approvals were typically conditional on the couple's readiness to bear responsibilities.

In summary, interviews with judges revealed that the primary motivations presented by applicants were to prevent the birth of illegitimate children, to protect family honour, and to avoid entering into syndicate-arranged marriages across the border. Content analysis of case documents confirmed that the majority of applications were submitted after couples had engaged in premarital sex, with some cases involving pregnancy. In such circumstances, marriage was seen as an immediate remedy to preserve dignity by enabling the child to be registered under the biological father's name, and to avoid social stigma. As such, *ḥifẓ al-nasl* and *ḥifẓ al-ʿird* were the core foundations for judicial approval.

However, the findings also revealed that education was seldom given meaningful consideration in judicial decisions. Almost all applicants had dropped out of school before applying for marriage, and thus marriage was not seen as an obstacle to education, as formal schooling had already ceased. This raises significant concerns regarding the preservation of intellect (*ḥifẓ al-ʿaql*), one of the higher objectives of *maqāṣid al-sharīʿah*. In this context, the absence of efforts to restore or ensure continued education after marriage reveals a major gap between social considerations and educational goals in child development.

From the perspective of *fiqh al-muwāzanah*, approving underage marriage to avoid *mafsadah* such as premarital sex and illegitimate pregnancy may be permissible under emergency circumstances. However, prioritising short-term solutions over long-term benefits warrants serious re-evaluation. Decisions should align with broader, long-term interests such as personal development, mental health, and intellectual capacity, supported through formal and non-formal education. *Ḥifẓ al-ʿaql* entails more than

avoiding sin, it involves nurturing critical thinking, religious understanding, and the ability to make sound decisions.

Thus, prioritising education as a preventive mechanism against early marriage is a *maqāṣid*-based imperative. Education not only empowers adolescents emotionally and intellectually but also equips them with awareness of their rights, life skills, and the responsibilities of marriage. Granting underage marriage without integrating an educational rehabilitation plan reflects a significant shortfall in implementing *maqāṣid al-sharī'ah* in a holistic manner. Moreover, allowing marriage solely on the basis that the couple has engaged in sexual relations risks sending a problematic message to society, that issues of illegitimate pregnancy and premarital sex can be simply resolved through marriage. This could inadvertently contribute to the normalisation of such behaviours.

Therefore, it is crucial for the Syariah Court and relevant institutions to view education as a critical factor in evaluating underage marriage applications. Delaying marriage does not mean denying a solution to social problems; rather, it provides a structured, sustainable, and comprehensive path grounded in education and intellectual development.

6. CONCLUSION

Child marriage remains a complex and challenging issue, particularly when it involves balancing religious imperatives, cultural norms, and the best interests of the child. This study examined the issue through the lens of *Maqāṣid al-Sharī'ah* and *Fiqh Al-Muwāzanah*, focusing on the element of *ḥifẓ al-'aql* (preservation of intellect), which should be strengthened through education. The analysis of Syariah Court decisions in Kelantan revealed that most approvals of underage marriage were granted on the basis of avoiding greater harm, such as premarital pregnancy, illicit relationships, and social pressure. However, the emphasis on education and intellectual maturity has not yet been consistently integrated as a primary consideration in judicial reasoning.

Based on these findings, this study asserts that approaches prioritising short-term benefits, such as preserving family honour or preventing social issues like promiscuity, should not outweigh the imperative to protect the long-term intellectual potential and overall well-being of children. Marriage should not be regarded as the sole solution to issues like premarital sex or unplanned pregnancies. In fact, in many cases, marriage may lead to even greater harm if undertaken without adequate preparation or deep understanding of its consequences. To effectively address the issue of child marriage, a multi-pronged strategy is essential. This includes implementing comprehensive premarital education for underage applicants, focusing on emotional maturity and marital responsibilities, empowering families and communities through continuous training grounded in Islamic ethics, and revising Syariah court procedures to include educational and psychosocial maturity indicators. Furthermore, the national curriculum should integrate Islamic-based sexual education rooted in *Maqāṣid al-Sharī'ah*, promoting moral and legal awareness. Support alternatives such as counselling and temporary shelters should be made available for adolescents facing premarital pregnancy, offering compassionate and development-focused solutions. Finally, sustained research must be conducted to assess the long-term impact of early marriage on education, mental health, and family stability.

In summary, *Maqāṣid al-Sharī'ah* offers a dynamic and holistic framework for evaluating the issue of child marriage. In this context, *ḥifẓ al-'aql* is not limited to the preservation of mental capacity, but also encompasses the recognition of a child's right to grow, to think critically, and to make informed decisions. Education, therefore, is not a supplementary concern, it is a foundational right that must be safeguarded before the right to marry is conferred.

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