

## Philosophy and Greek Philosophy on Marriage Dispensation: Normativity and Historicity

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### Abstract

*The study examines the relationship between Islamic and Greek philosophy to understand the concept of marriage dispensation, with an interdisciplinary approach that emphasizes two main aspects: normativity and historicity. Marriage dispensation is understood as a form of legal exception that allows marriage below the ideal age based on considerations of welfare. Marriage dispensation is not just a legal policy, but a reflection of the meeting between rationality, ethics, and responses to social reality. Greek philosophy, especially in the thoughts of Plato and Aristotle, views marriage as part of a social structure that plays an important role in achieving moral virtue and social order. Marriage is based on the principles of natural law and teleology. Everything is directed to achieve noble and rational goals. Marriage in Islamic philosophy, especially according to Al-Farabi, Ibn Sina, and Al-Ghazali, adopts many aspects of Greek philosophy, but by integrating elements of revelation, spiritual values, and the framework of sharia into thought. One of the main pillars in Islamic legal philosophy that is the meeting point between rationality and religious norms is *maqāṣid al-syarī'ah*, namely the theory of the objectives of Islamic law which include protection of religion, soul, mind, descendants, and property. Marriage dispensation can be seen as an effort to fulfill the objectives of Islamic law when ideal conditions are not met. Through a historical approach, this study traces the path of intellectual transmission from Greece to the Islamic world and how philosophical thought was transformed in the context of Islamic law. While normatively, this study shows that Islamic philosophy does not only passively inherit Greek ideas, but actively adapts them to divine values. The results of this study confirm that the philosophical approach to marriage dispensation has great potential in strengthening Islamic legal reform to be more adaptive, rational, and ethical amidst contemporary social dynamics.*

**Keywords:** *Islamic Philosophy, Greek Philosophy, Historical, Normative*

### INTRODUCTION

The discourse on marriage dispensation is not limited to the realm of positive law or religious norms, but also touches on deeper philosophical dimensions, especially in the aspects of ethics, rationality, and justice. This study is closely related to the concept of *maqāṣid al-syarī'ah* (goals of Islamic law) and the practice of legal *ijtihad*, which plays a role in adapting the law to dynamic social conditions.<sup>1</sup>

Many basic concepts in Islamic philosophy are the result of transformation and assimilation of Greek philosophy, especially in the fields of epistemology and ethics. Muslim philosophers such as Al-Farabi, Ibn Sina, and Al-Ghazali have adopted and adapted the thoughts of Greek philosophers such as Plato and Aristotle into the Islamic framework based on revelation. The transformation shows the existence of intense intellectual interaction between the two great philosophical traditions which then formed the basis for the development of rational and contextual Islamic law.<sup>2</sup>

<sup>1</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*, The International Institute of Islamic Thought, 2008, p.188.

<sup>2</sup> Al-Farabi, *Ara' Ahl al-Madina al-Fadila*, terjemahan oleh Richard Walzer, Oxford University Press, 1985, p.50.

Marriage in Greek philosophy, especially thought of Aristotle, is seen as a social institution that aims to achieve eudaimonia (happiness) and maintain order in society. This concept is based on the principles of natural law and teleology, where everything is directed to achieve noble and rational goals.<sup>3</sup>

Islamic philosophy in the thoughts of Al-Farabi, Ibn Sina, and Al-Ghazali adopted many aspects of Greek philosophy, but by integrating elements of revelation, spiritual values, and the framework of sharia into their thoughts. One of the main pillars in Islamic legal philosophy that is the meeting point between rationality and religious norms is *maqāshid al-syarī'ah*, namely the theory of the goals of Islamic law which include protection of religion, soul, mind, descendants, and property.<sup>4</sup>

Marriage dispensation in the context of *maqāshid al-syarī'ah*, can be seen as an effort to fulfill the goals of marriage when ideal conditions are not met. Marriage dispensation can be understood as an effort to balance legal norms with social reality, in order to achieve greater benefits.<sup>5</sup>

The historicity approach in this study aims to trace how Greek philosophical thought was transmitted and transformed in the Islamic context, and how this intellectual heritage influenced views on contemporary family law. Meanwhile, the normative approach focuses on the analysis of the values and norms underlying the practice of marriage dispensation, in order to understand how ethical and justice principles are applied in the dynamic context of Islamic law.<sup>6</sup>

Understanding the relationship between Islamic philosophy and Greek philosophy in the context of marriage dispensation will provide deeper insight into how the intellectual heritage of the past shapes and influences the current practice of Islamic law. It also opens up space for the development of Islamic law that is more adaptive, rational, and just, in accordance with the demands of the times and the needs of society.<sup>7</sup>

## METHOD

The relationship between Islamic and Greek philosophy on marriage dispensation is studied using a philosophical-historical and normative approach to understand marriage dispensation in Islamic legal practice.<sup>8</sup> Philosophical analysis explores the ideas of ethics, rationality, and justice found in the classical texts of Greek philosophy.<sup>9</sup> The historical approach traces the process of transmission and transformation of Greek thought into Islamic philosophy, the works of Greek philosophers translated into Arabic and integrated into the framework of Islamic thought by Muslim scholars.<sup>10</sup> The data of classical texts of Greek and Islamic philosophers were obtained from primary sources Aristotle, Nicomachean Ethics, Plato, The Republic of Al-Farabi, Al-Madina, al-Fadila Ibn Sina, Al-Shifa and Al-Ghazali *Ihya' Ulum al-Din*. Secondary data of marriage dispensation were obtained from contemporary literature, scientific journals, books, and relevant legal documents. The data analysis was conducted comparatively to identify similarities and differences in the views of Greek and Islamic philosophy on marriage dispensation. The normative approach evaluates the values contained in Greek and Islamic philosophy translated in the context of Islamic family law, including the principles of *maqāshid al-sharī'ah*, such as protection of offspring (*hifz al-nasl*), and the use of these principles to justify marriage dispensation in certain situations.<sup>11</sup>

<sup>3</sup> Aristoteles, *Nicomachean Ethics*, terjemahan oleh W.D. Ross, Oxford University Press, 2009.

<sup>4</sup> Al-Ghazali, Al-Mustasfa min 'Ilm al-Usul, Dar al-Kutub al-Ilmiyyah, 1993, p.218.

<sup>5</sup> Faturrahman Djamil, *Filsafat Hukum Islam*, Logos Wacana Ilmu, 1997, p.15.

<sup>6</sup> Nurhadi, "Maqashid Syari'ah Hukum Perkawinan dalam Kompilasi Hukum Islam (KHI)", *Al-Fikra: Jurnal Ilmiah Keislaman*, Vol. 16, No. 2, 2017

<sup>7</sup> Syahrul Sidiq, "Maqasid Syari'ah & Tantangan Modernitas: Sebuah Telaah Pemikiran Jasser Auda", *IN RIGHT: Jurnal Agama dan Hak Azazi Manusia*, Vol. 7, No. 1, 2017.

<sup>8</sup> Kartini et al., "Pendekatan Historis dan Pendekatan Filosofis dalam Studi Islam," *Jurnal Ilmiah Multidisiplin*, Vol. 2, No. 3, Mei 2023, p.106-114.

<sup>9</sup> Sri Haryanto, "Pendekatan Historis dalam Studi Islam," *Jurnal MQ*, Universitas Sains Al-Qur'an, p.127.

<sup>10</sup> Abuddin Nata, "Metodologi Studi Islam," dalam *Metodologi Studi Islam: Pendekatan Normatif dan Historis*, p.83-84

<sup>11</sup> Abuddin Nata, "Metodologi Studi Islam," dalam *Metodologi Studi Islam: Pendekatan Normatif dan Historis*, p.83-84

## RESULTS OF LITERATURE REVIEW AND DISCUSSION

### Historicity: The path of transmission of thought

In the study of the historicity of Islamic philosophy, especially in relation to the transmission path of thought from Greek philosophy, the golden age of Islam (8<sup>th</sup> to 12<sup>th</sup> centuries Anno Domini) became a crucial point in the intellectual development of the Islamic world. During this period, there was a large-scale translation process of the works of Greek philosophers into Arabic, which was not merely a translation, but also involved the assimilation and reinterpretation of philosophical concepts into the framework of Islamic thought.

Aristotle, known in the Islamic tradition as “*al-Mu‘allim al-Awwal*” (The First Teacher), had a great influence on Islamic philosophy. Thinkers such as al-Farabi and Ibn Sina not only translated Aristotle’s works, but also developed and systematized his thoughts in the context of Islam. Al-Farabi, for example, is known as the “Second Teacher” because of his role in developing Islamic political philosophy influenced by Plato’s *The Republic* and Aristotle’s *Politics*. He attempted to combine the thoughts of Plato and Aristotle in his work *Harmonization of the Opinions of Two Philosophers*, which shows a synthesis between Greek and Islamic philosophy.<sup>12</sup>

In the legal context, Greek philosophy made significant contributions to the understanding of legal rationality and the concept of justice. These concepts are relevant in the discussion of marriage dispensation as an exception to the general norm for the sake of the benefit. This process of transmission of thought shows the existence of intense intellectual interaction between two great philosophical traditions, which later formed the basis for the development of rational and contextual Islamic law.

During this period, centers of learning such as Baghdad became places where Islamic philosophical thought flourished. Caliph al-Ma‘mun established the *Bayt al-Hikmah* (House of Wisdom) in Baghdad, which became a center for translation and scientific study. It was here that many of the works of Greek philosophers were translated into Arabic, allowing Muslim scholars to study and develop these thoughts.<sup>13</sup>

The influence of Greek philosophy was not only limited to the aspects of rationality and logic, but also penetrated the fields of ethics and metaphysics. Ibn Sina, for example, developed a theory of emanation influenced by Neoplatonism, and integrated it with Islamic concepts of creation and the existence of God. This thought shows how Greek philosophy was adapted and adjusted to Islamic teachings to form a comprehensive philosophical system.<sup>14</sup>

In the context of family law, especially marriage dispensation, Greek philosophical thought provides the basis for the development of the concept of *maqāṣid al-syarī‘ah* in Islam. This concept emphasizes the noble goals of Islamic law, such as the protection of descendants and the welfare of the community. Thus, marriage dispensation can be understood as an effort to balance legal norms with social reality, in order to achieve greater welfare.

Overall, the historicity of the transmission path of thought from Greek philosophy to Islamic philosophy shows a complex process of adaptation and integration. This process not only enriches the intellectual treasury of Islam, but also provides a foundation for the development of Islamic law that is more rational, contextual, and in accordance with ethical values and justice.

### Normativity: Ethics, goals, and rationality

The discourse on marriage dispensation in Islam does not only focus on the positive legal aspect, but also touches on deeper normative dimensions, especially in terms of ethics, goals, and rationality. This dimension reflects the interaction between the legacy of Greek philosophy and the principles of revelation in Islam, which together form an adaptive and contextual normative framework of Islamic law.

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<sup>12</sup> Al-Farabi, *Ara’ Ahl al-Madina al-Fadila*, terjemahan oleh Richard Walzer, Oxford University Press, 1985, p.150.

<sup>13</sup> Nur Aqiqah Wahda1, Indo Santalia, *Pengaruh Filsafat Yunani Terhadap Pemikiran Islam*, Socius: Jurnal Penelitian Ilmu-Ilmu Sosial Volume 1, Nomor 12, July 2024, 306-312

<sup>14</sup> Hadi Suprpto, *AL-FARABI DAN IBN SINA (Kajian Filsafat Emanasi dan Jiwa dengan Pendekatan Psikologi)*, Jurnal panca budi: Volume II No 02 Edisi Januari-Juni 2017, 443-451

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### **Eudaimonia and the purpose of marriage in Greek philosophy**

In Greek philosophy, especially the thought of Aristotle, the concept of eudaimonia (happiness or well-being) is the highest goal of human life. Eudaimonia is achieved through the practice of virtue (aretē) and a life in accordance with reason. Marriage is seen as a social institution that supports the achievement of eudaimonia, because through marriage, individuals can carry out social roles, fulfill biological needs legitimately, and form harmonious families.<sup>15</sup>

Aristotle emphasized that marriage is not merely a means of reproduction, but is also part of a broader political and social life. In the *Nicomachean Ethics*, he argued that true happiness is achieved through an active and virtuous life, in which individuals participate in the life of society and fulfill their social roles well.<sup>16</sup>

### **Integration of the concept of *maslahah* and *maqāṣid al-sharī'ah* in Islamic philosophy**

Islamic philosophy adopted and adapted the concepts of ethics and rationality from Greek philosophy through integration with the principles of revelation. The concept of *maslahah* (benefit) and *maqāṣid al-sharī'ah* (objectives of Islamic law) developed from the roots of Greek rationalism but were combined with Islamic values. Imam al-Ghazali, for example, emphasized that the purpose of sharia is to obtain *maslahah* by maintaining five things: religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al-aql*), descendants (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*).<sup>17</sup>

Al-Ghazali also classified *maqāṣid al-sharī'ah* into three levels: *darūriyyāt* (primary needs), *ḥājjiyyāt* (secondary needs), and *taḥsīniyyāt* (tertiary needs). This classification shows that Islamic law does not only aim to fulfill basic human needs, but also to improve the quality of life and morality of society.<sup>18</sup>

### **Marriage dispensation in perspective of *maqāṣid al-sharī'ah***

In the context of marriage dispensation, the principle of *ḥifẓ al-nasl* is the main consideration. Marriage dispensation can be understood as an effort to balance legal norms with social reality, in order to achieve greater welfare and prevent damage (*mafsadah*) in certain situations. For example, in certain cases, marriage under the ideal age can be given a dispensation if it is considered to prevent greater damage, such as adultery or pregnancy outside of marriage, which can damage the family's lineage and honor.<sup>19</sup>

However, granting a marriage dispensation must be done very carefully and taking into account various aspects, including the physical and mental readiness of the couple, as well as the social and legal impacts that may arise. This is in line with the principle of *maqāṣid al-sharī'ah* which emphasizes achieving benefit and preventing *mafsadah*.

### **Legal and ethical rationality in marriage dispensation**

Legal rationality in Islam cannot be separated from ethical considerations and legal objectives. In the context of the marriage dispensation, legal rationality demands strong justification based on the principles of *maqāṣid al-sharī'ah*. Dispensation must not be given solely because of social pressure or certain interests, but must be based on real and accountable benefit considerations.<sup>20</sup>

Islamic ethics emphasizes justice, compassion, and protection of the weak. Therefore, in granting marriage dispensation, it is necessary to ensure that the decision does not harm either party, especially women and children, who are often the vulnerable parties in early marriage.

<sup>15</sup> Aristotle. *Politics*. Translated by Benjamin Jowett. New York: Dover Publications, 2000, p.306.

<sup>16</sup> Aristotle. *Nicomachean Ethics*. Translated by Terence Irwin. Indianapolis: Hackett Publishing Company, 1999, p.106.

<sup>17</sup> Al-Ghazali, Abu Hamid. *Al-Mustasfa min 'Ilm al-Usul*. Beirut: Dar al-Kutub al-'Ilmiyyah, 1993, p.206.

<sup>18</sup> Auda, Jasser. *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. London: IIIT, 2008, p.56.

<sup>19</sup> Wahyuni, Sri. "Dispensasi Nikah dalam Perspektif Maqasid al-Shari'ah." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 12, no. 2 (2019), 123–138.

<sup>20</sup> Mas'udi, Masdar F. *Perempuan dalam Pandangan Islam*. Yogyakarta: LKiS, 2001, p.46.

### **Contextualization of marriage dispensation in the modern era**

In the modern era, the practice of marriage dispensation faces new challenges, including increasing awareness of children's and women's rights, as well as protection against exploitation and domestic violence. Therefore, the application of marriage dispensation must be contextualized by considering contemporary social, legal, and ethical developments.

The *maqāṣid al-sharī'ah* approach provides a flexible framework for adapting Islamic law to the context of the times, without ignoring the basic principles of sharia. In this way, the marriage dispensation can remain relevant and in accordance with the values of justice, benefit and protection of the weak.

### **Contemporary application: Marriage dispensation in a modern context**

In practice, marriage dispensation often becomes a meeting point between traditional values and the challenges of modernity. Islamic philosophy, rooted in the Greek philosophical tradition but framed by revealed norms, allows for legal flexibility through *ijtihād*. Therefore, marriage dispensation can be considered normative if it meets the requirements of *maqāṣid*, not just an administrative formality. Herein lies the relevance between the legacy of past philosophy and the challenges of present-day ethics.

### **Social and legal challenges**

Marriage dispensation in Indonesian is often granted to couples who have not reached the minimum age for marriage as stipulated in Law Number 16 of 2019, which revised the minimum age limit for marriage to 19 years for men and women. However, in practice, many requests for marriage dispensation are still submitted, especially due to factors such as pregnancy outside of marriage, social pressure, or economic reasons. Research in Bantul Regency shows that marriage dispensation is often granted without careful consideration of the physical and mental readiness of the couple, as well as its long-term impact.<sup>21</sup>

### **Maqāṣid al-sharī'ah approach in marriage dispensation**

The *maqāṣid al-sharī'ah* approach emphasizes the achievement of benefits and prevention of harm. In the context of marriage dispensation, the principle of *ḥifẓ al-nasl* (protection of offspring) is the main consideration. However, granting marriage dispensation must consider the physical, mental, and economic readiness of the couple, as well as the potential negative impact on the child to be born. Research at the East Jakarta Religious Court shows that judges' considerations in granting marriage dispensation often do not fully refer to the principles of *maqāṣid al-sharī'ah*.

### **The role of *ijtihād* in the modern context**

*Ijtiḥād* as a method of Islamic legal reasoning allows the adaptation of law to the context of the times. In the case of marriage dispensation, *ijtiḥād* can be used to evaluate whether the granting of dispensation truly brings benefits or opens the door to *mafsadah*. For example, *ijtiḥād* can consider empirical data on the negative impacts of early marriage on reproductive health, education, and child welfare. Thus, *ijtiḥād* plays an important role in ensuring that marriage dispensation is not only legally valid, but also in accordance with the objectives of sharia.<sup>22</sup>

### **Public policy and education**

The government and religious institutions have an important role in educating the public about the risks of early marriage and the importance of being prepared to build a family. Public campaigns, counseling, and sex education that are in accordance with Islamic values can help reduce the number of requests for marriage dispensation. In addition, training for judges and legal officials on the application of *maqāṣid al-sharī'ah* in marriage dispensation cases can improve the quality of court decisions.<sup>23</sup>

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<sup>21</sup> Faida Hilyasani, Agus Moh. Najib, Reiki Nauli Harahap, "Dispensasi Nikah: Analisis Kontemporer Dimensi Pernikahan Dini Menurut Berbagai Aktor di Kabupaten Bantul D.I Yogyakarta", *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam*, Vol. 4, No. 2, Desember 2022.

<sup>22</sup> Agus Hermanto, *Maqashid Al-Syari'ah: Metode Ijtihad dan Pembaruan Hukum Keluarga Islam*, Penerbit Litnus, 2023

<sup>23</sup> "Edukasi, Dispensasi Kawin, Maqashid Syariah, Putusan Hakim", Bhakti Nagori: Jurnal Pengabdian kepada Masyarakat, Universitas Islam Kuantan Singingi, 2024

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## CONCLUSION

Marriage dispensation, in the contemporary context, cannot be understood solely as an administrative response to social reality, but must be seen as part of the dynamics of Islamic law that is normative and adaptive. Through the integration of traditional ethical values rooted in Greek philosophy and the principles of Islamic revelation, especially through *maqāṣid al-sharī'ah*, the practice of marriage dispensation can be directed towards achieving *maslahah* and preventing mafsadah.

In the modern era marked by increasing awareness of children's and women's rights, as well as demands for protection against exploitation and violence, marriage dispensation demands a rational, ethical, and contextual approach. Ijtihad is the main instrument in evaluating the relevance and validity of marriage dispensation, so that it is not misused as legitimacy for dangerous early marriage practices. Therefore, the *maqāṣid al-sharī'ah* approach provides a strong foundation for assessing marriage dispensation, not only in terms of legality, but also in terms of morality and public welfare.

By strengthening legal and ethical literacy among the community and increasing the capacity of judges in using the *maqāṣid* approach, marriage dispensation can be placed in the right position: as an emergency legal mechanism that is carried out with caution, not as a routine procedure. This confirms that Islamic law, when applied normatively and contextually, remains relevant and provides solutions in dealing with modern social problems, without losing the roots of its values of justice.

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