

## MARRIAGE AGE RESTRICTIONS FROM THE PERSPECTIVE OF THE QURAN, REPRODUCTIVE HEALTH AND THE LAW

**Muhammad Rifai**

State Islamic University of Mataram  
*mrifai@gmail.com*

### Abstract

*The Qur'an when talking about the appropriate age for marriage does not use a specific age parameter, but uses terminology that refers to biological and psychological maturity so that society assumes that the mature age for marriage is human freedom to determine. Because of this assumption, the number of child marriages in Indonesia is still relatively high. If associated with Muhammad Syahrur's limit theory, then there is no prohibition as long as it does not cause harm, but it will be the opposite if based on research it can cause harm, in other words, it is necessary to provide a lowest limit that provides benefits to all humans. Based on the research results, although not entirely, child marriage has a negative impact not only on the child concerned, but also on the child who is born and leads to a bad future for the nation. Law Number 23 of 2002 concerning Child Protection explains that children's rights are part of human rights (HAM) that must be guaranteed, protected, and fulfilled by parents, families, communities, countries, governments and local governments. One way to protect children's rights is by increasing the minimum age of marriage. In addition to protecting rights, increasing the minimum age of marriage also aims to avoid the impression of gender discrimination because the minimum age of marriage for men is 19 years old while for women it is 16 years old.*

*Compared to other countries, the minimum marriage limit in Indonesia is relatively high. Although child marriage is not the only cause of the threat to the safety of mothers and children, it is better to avoid possible harm than to*

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## A. INTRODUCTION

### 1. Background

Law Number 1 of 1974 concerning Marriage, is truly the sweet fruit of women's long struggle to fight for legal certainty for their rights in the area of marriage law. This is of course because before the birth of the Law, women were easily divorced without any consequences including their rights after divorce.<sup>1</sup> This law not only regulates matters of marriage and divorce, but also many things related to marriage, including regulating the minimum age for marriage.

Based on the provisions of Article 66 of Law Number 1 of 1974, all regulations governing marriage and everything related to marriage to the extent regulated in the Marriage Law are declared no longer valid.<sup>2</sup>

After approximately forty-five years in effect, the law has never changed, until in 2017, three housewives, namely Endang Wasrinah, Maryanti and Rasminah, filed a judicial review of Article 7 Paragraph (1) of Law Number 1 of 1974 concerning Marriage against the 1945 Constitution of the Republic of Indonesia.<sup>3</sup> Based on the application through decision Number 22/PUU-XV/2017 the Constitutional Court granted the amendment to Law Number 1 of 1974 concerning the minimum age limit for marriage for women. The Constitutional Court also gave a deadline to the DPR and the Government for 3 years to increase the minimum age limit for marriage. Advocacy efforts continued to the Ministry of Women's Empowerment and Child Protection (KPPPA) to produce a draft amendment to the Marriage Law which would be included as a Government initiative bill but did not reach a meeting point.

In mid-August 2019, the 18+ Commission (which is also the power of the Applicants for the judicial review) held a hearing with the Legislative Body. After that, Baleg agreed to form a PANJA to conduct further discussions. On September 16, 2019, the DPR and the Government agreed to change the age limit for women through the revision of Law Number 1 of 1974 concerning Marriage with Law No. 16 of 2019.<sup>4</sup>

Before paragraph (1) of Article 7 of Law Number 1 of 1974 concerning Marriage, which stipulates that a man is only permitted to marry after reaching

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<sup>1</sup>Fadil and Nor Salam, New Directions of Family Law in Indonesia, Magnum Pustaka Utama, Yogyakarta, 2020, p. 1

<sup>2</sup>Anwar Rachman, Prawita Thalib and Saefudin Muhtar, Indonesian Marriage Law from the Perspective of Civil Law, Islamic Law, and Administrative Law, Jakarta, Kencana, 2022, p. 119.

<sup>3</sup>Fadil, New Directions of Law, p. 57

<sup>4</sup>Materials for the Indonesian Women's Coalition Workshop held at the Aryaduta Hotel, Central Jakarta, on May 15-19, 2023.

the age of 19 and a woman at the age of 16, was amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, many people came to court to apply for a marriage dispensation as a requirement for registering a marriage, which is also the mandate of paragraph (2) of Article 7 of the Law.

After the amendment of Article 7 of Law Number 1 of 1974 with Law Number 16 of 2019, which changed the minimum marriage age to be the same for men and women to 19 years, the wave of applications for marriage dispensation to the courts has actually increased.

It is noted that applications for marriage dispensation submitted to several Religious Courts in East Java have increased significantly, this is certainly contrary to the spirit of defending children's rights to obtain proper education and the opportunity to enjoy a sufficient childhood. This increase can be seen in the table<sup>5</sup>following:

NO	PA'S NAME	YEAR OF SUBMISSION		Caption
		Year 2018 (before change)	Year 2020 (after modification)	
1	PA. Madiun City	4	15	
2	PA. Madiun Regency	32	174	
3	PA. Pacitan	83	368	
4	PA. Situbondo	37	444	
6	PA. Malang City	81	258	
7	PA. Pamekasan	34	264	
8	PA. Kangean	0	139	

The increase in applications for marriage dispensation after the change in the minimum age for marriage is certainly not in line with the spirit of reducing the rate of increase in the number of child marriages and efforts to

<sup>5</sup>Source: Case Tracking Information System Website of each Religious Court, accessed on February 28, 2024, at 10.00.

protect children which are the forerunners of efforts to change the minimum age for marriage. Based on these facts, changes to the minimum age for marriage with the spirit of protecting children do not stop child marriage practices.

Not many marriage dispensations submitted to the Religious Court are rejected, but quite a few are granted. PERMA Number 5 of 2019 Concerning Guidelines for Adjudicating Marriage Dispensation Applications issued by the Supreme Court as a guideline for judges examining marriage dispensation applications is not enough to hinder the rate of child marriage.

The existence of the provisions of paragraph (2) of Article 7 of the Marriage Law provides an entry point for child marriage through a marriage dispensation application, even for very urgent reasons accompanied by sufficient supporting evidence.

The high number of marriage dispensation requests is an indicator that public compliance with regulations, especially in the field of marriage, is still low, this may also be due to child marriage in Indonesian society being considered not taboo, not considered taboo because it does not violate religious norms. In addition to being considered not violating religious norms, it also occurs because of free association which results in pregnancy before marriage.

## 2. Formulation of the problem

From the description in the background, it is depicted as if there is a conflict between the norms originating from the Qur'an and the laws and regulations. Therefore, to obtain a comprehensive understanding related to the provisions of child marriage law, in this study it is necessary to formulate several problems to be answered, namely:

- a. What is the appropriate age for marriage according to the Qur'an?
- b. What is the appropriate age for marriage according to medicine or the health world and why should the appropriate age for marriage be raised?

## 3. Theory and Methodology

- a. The first theory used in this research is the limit theory or The Limit Theory (Nazariyah al-Hudud) which was initiated by Muhammad Syurur. The theory is built on the assumption that the message of Islam brought by Muhammad SAW is a message that is global (âlamiyah) and dynamic, so that it will remain relevant in every era and place (shâlih li kulli zamân wa makâن). The advantage of the message of Islam is that it contains two aspects of movement. First, constant movement (istiqâmah) and second, dynamic

movement (hanîfiyyah). These two things cause Islamic teachings to be flexible. However, this flexible nature (al-murûnah) is within the framework of hudûdullâh (the limits of Allah).<sup>6</sup>

Based on his study of legal verses, Syahrur concluded that there are six forms in the theory of limits which can be described in mathematical form with the following details:

1. *The law of the world*(minimum limit position). The resulting area is in the form of an open curve that has one minimum limit point, and is located adjacent to the line parallel to the X-axis. For this case, it can be seen in QS An-Nisa: 22-23, about women who are forbidden to marry. According to Syahrur, the women mentioned in the verse are the minimum limit of women who are forbidden to marry. Therefore, women who are forbidden to marry are more than just those mentioned in the verse. For example, the verse does not mention cousins as women who are forbidden to marry. However, cousins can be included in women who are forbidden to marry, when it turns out that a study found that marriage with close relatives like that can result in mentally or physically disabled offspring.
2. *The law of the world*(maximum limit position), namely the result area (range) of the function equation  $Y = F(x)$  which is in the form of a curved line facing downward (closed curve), which only has one maximum turning point, coincides with a straight line and is parallel to the X axis. For this case, it can be seen in QS al-Maidah: 38. The punishment for male or female thieves is cutting off their hands. Cutting off hands here is the maximum punishment. Therefore, the punishment for thieves should not exceed cutting off their hands but may be lower than the punishment for cutting off their hands.
3. *Halal hadd al'ala wa al-adna ma'an*(maximum and minimum limit positions exist simultaneously). The resulting area is a closed and open curve, each of which has a maximum and minimum turning point. The two turning points are located adjacent to a straight line parallel to the X-axis. For this case, it can be seen in QS an-Nisâ' [4]: 3, regarding polygamy. According to Syahrur, people who want to practice polygamy must first meet two requirements. First, the quantity requirement. This requirement concerns the limit on the number of women who may be polygamized. According to Syahrur, the minimum limit for polygamy is two and the maximum

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<sup>6</sup>Abdul Mustaqim, Muhammad Syahrur's Hudûd Theory and His Contribution to the Interpretation of the Qur'an,<http://journal.iaincurup.ac.id/index.php/alquds/article/view/163>

limit is four. Second, the quality requirement. According to Syahrur, people who want to practice polygamy must have concerns in themselves that they cannot be fair to orphans. But he must still try to be fair. In addition, women who want to be polygamized must have the status of widows and have orphans.

4. *Halab al-mustaqim*(straight position). The resulting area is a straight line parallel to the X-axis. This position places the maximum turning point coincident with the minimum turning point. There is only one case like this in the Qur'an, namely QS An-Nur: 2, about adultery. According to Syahrur, in the case of adultery there is no other choice for us except to apply the punishment of flogging as mentioned in the verse above.
5. *Halab al-hadd al-a'la duna al-mamas bi al-hadd al-adna Abadan*(maximum limit position without touching the minimum limit line at all). The resulting area is an open curve formed from a starting point that almost coincides with the axisX and the final point that almost coincides with the Y axis. This straight line has no minimum or maximum limits and is only marked by one straight line point. The straight line is determined by Allah as sexual relations between men and women outside of marriage which is called zina.
6. *Halab hadd al-a'la mujab mughlaq la yajuz tajawuzuhu wa al-hadd al-adna cross yajuz tajawzuhu*(positive maximum limit position and negative minimum limit). The resulting area at this position is a wave curve with the maximum turning point in the positive area and the minimum turning point in the negative area. Both coincide with a straight line parallel to the X-axis. This sixth limit theory is used to analyze financial transactions. The highest limit in borrowing money is called interest tax and the lowest limit in giving is called zakat (Mustaqim, 2017).<sup>7</sup>

b. The theory of welfare based on the principles of ushul fiqh

God willing

Rejecting maf sadah (damage) takes priority over taking benefits.

Methodology, methodology comes from the words metodos and logos which means the way to. The core of the methodology in every legal research is to describe the procedures for how a legal research should be conducted.<sup>8</sup> This research is a normative legal research combined with empirical legal research with a literature study data collection method or documentary study with data

<sup>7</sup>Adji Pratama Putra, Muhammad Syahrur's Limit Theory in Islamic Studies,<https://journal-nusantara.com/index.php/JCEKI/article/download/1028/832#:~:text=Muhammad%20Syahrur%20offers%20theory%20limit,maximum%20for%20all%20deeds%20of%20humans>.

<sup>8</sup>Bambang Waluyo, Legal Research in Practice, Sinar Grafika, Jakarta, 2002, p. 17

sources of several expert opinions combined with observations in several Religious Courts in East Java, the jurisdiction of the Surabaya High Religious Court. Data processing and data analysis with a qualitative approach.

### 3. Relevant Research

The discussion on marriage dispensation is related to the limitation of the age of marriage. Although it is not a new thing, but over time and the change of laws and regulations, marriage dispensation has become a concern for many parties.

Previously conducted research that is relevant includes:

*First*, research conducted by Nor Fadillah entitled Correlation of Sadd Adz-Dzari'ah's Theory to Law No. 16 of 2019 Concerning Marriage Age Restrictions, The study concluded that:

Age restrictions according to Islamic Law, if reviewed textually, are not found in either the Qur'an or the Hadith, but in essence, age restrictions in marriage are the embodiment of texts that recommend someone to marry if they have reached adulthood or puberty in Islam, and are considered capable of marrying, namely being able to carry out the rights and obligations in marriage in the future, both in terms of physical, economic, mental and most importantly being capable in terms of religion, meaning being able to understand the rules that have been set by Religion regarding life in a household.<sup>9</sup>

*Second*, research conducted by Jahidin entitled Early Marriage in the Perspective of Health and Maqashid Syariah. The research concluded, among other things, that:

Age under 19 years is the age to get education for all Indonesian people. During this period, human organs are developing, so they are not ready to get married.. Early marriage brings physical and mental harm to the perpetrator, such as bleeding, miscarriage and even death. Mentally, many people experience stress due to the burden of living a life where couples in early marriages are usually not economically stable.<sup>10</sup>

## B. DISCUSSION

### 1. Appropriate Age for Marriage According to the Qur'an

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<sup>9</sup>Nor Fadillah, Correlation of Sadd Adz-Dzari'ah's Theory to Law No. 16 of 2019 Concerning Marriage Age Restrictions, <https://jurnal.uinantsasari.ac.id/index.php/tashwir/article/view/7492/pdf>, accessed March 23, 2024, 13.00

<sup>10</sup>Jahidin, Early Marriage in the Perspective of Health and Maqashid Syariah, <http://e-theses.iaincurup.ac.id/2722/>, accessed March 23, 2024, 13.00

The Qur'an, when talking about the appropriate age for marriage, does not use a specific age parameter, but tends to use terminology that refers to biological and psychological maturity. QS al-Nur (24) verse 32

وَلَكُحُوا إِلَيْنَا مِنْكُمْ وَالْمُلْحِنُونَ مِنْ عِنْدِنَا دُكُّ وَمَاتِكُمْ ۖ ۖ وَاللَّهُ وَاسْعَ عَلَيْهِ  
God bless you ۖ ۖ

*It means:* "And marry those who are single among you and those who are fit from among your male and female slaves; if they are poor, Allah will enrich them from His bounty."

The verse contains a recommendation to marry people who are worthy of marriage, both women and men. The Qur'an uses the terminology "ayama" which means people who are worthy of marriage and are still single.

Ibn Manzur explained that the word "al-ayama" is the plural of "ayim" which means people who do not have a wife or husband. According to Ali Al-Shabuni in its development, the meaning of "ayama" became broader to include men or women who live alone, including those who are widows because their husbands have died. The word "al-ayama" is used to mean people who are eligible to marry and are still single, not associated with a certain age or age, this shows the need to use social optics in seeing someone who is eligible to marry.<sup>11</sup>

QS. Al-Nur verse 32 is closely related to the recommendation to marry for those who are worthy, in line with the hadith:

"O young men, whoever among you is able to marry, then marry because marriage can divert the eyes and preserve the genitals and whoever is not able, then let him fast, because fasting protects the lust."

For young men who already have the ability (ba'ah) should get married. The ability (ba'ah) in the hadith does not only refer to biological ability, but also the ability to meet household needs (mu'nah). We can understand this from the recommendation to increase fasting for those who have not been given the ability to meet household needs. Maintaining purity by cultivating patience and fasting is the best and most honorable way to maintain purity, rather than falling into actions that are forbidden in religion.

In another verse, Allah associates marriage with "baligh" and "rusyd", QS al-Nisa' (4) verse 6 states:

وَلَا يَنْهَا إِلَيْنَاهُ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ ۖ ۖ فَإِنْ أَنْشَمُ مِنْهُمْ رُشْدًا فَادْفُونَ...God willing

<sup>11</sup>Imron Rosyadi, Reconstruction of the Epistemology of Islamic Family Law, Jakarta, Kencana, 2023, p. 130

*It means :“And test the orphans until they are old enough to marry. Then, if you think they are intelligent (good at looking after wealth), then hand over their wealth to them.”*

Although this verse has a sociological background about when is the right time for the property of orphans to be handed over to them, in terms of the text there is the issue of the age of marriage, especially in the sentence *hatta idza balaghu an-nikah* (until they are of the age of marriage).<sup>12</sup>

When a person is considered worthy of marriage, the commentators give different views. Ibn Kathir interprets *hatta idza balaghu an-nikah* with the meaning of *baligh* as a phase of physical maturity marked by the release of semen for men and menstruation for women.

If you have shown intelligence (*rusyd*), then that is the right time to hand over your assets to an orphan. The meaning of the words "fain anastum minhum rusydan" according to HAMKA, the meaning of *rusyd* in this verse is the presence of ingenuity, ability or ability to do business to develop one's assets.<sup>13</sup> Meanwhile, Quraish Shihab, the word *rusyd* used is not a form of *ma'rifat*, therefore the intelligence and mental stability referred to in this verse is a condition of entering the gate of adulthood in its true meaning.<sup>14</sup>

## 2. Suitable Age for Marriage According to Health Science

The struggle to improve the quality of the nation's generation by increasing the minimum age limit for marriage still requires struggle. The existence of regulations regarding the minimum age limit for someone to marry is not without clear reasons, this greatly affects the sustainability of the family that is built, especially for women. First, as a factor that according to research can cause cervical cancer (CRC) in women, among others, is marrying at a young age/coitus at a young age. Second, in relation to the marriage law which sets the age limit for marriage at 16 years for women, it can cause the following losses:

- a. At the age of 16 a woman is going through puberty and some of them are just getting their first period. So at the age of 16 they are actually not mentally and physically ready to become a housewife.
- b. At the age of 16 years old, it means that the woman has only received 9 years of education at most and most of them drop out of school after

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<sup>12</sup>Imron Rosyadi, Reconstruction of Legal Epistemology, p. 131

<sup>13</sup>Hamka, Tafsir Al-Azhar Juz II, Singapore, Pustaka Nasional Pte Ltd, 2003,

<sup>14</sup>Quraish Shihab, Tafsir Al-Misbah: Impressions, Messages and Harmony of the Qur'an, 7th ed., Jakarta, Lentera Hati, 2006, vol 2, p. 351

getting married. Whereas education in women affects various things, including children's education and the success of family planning programs as well as population.

- c. Getting married at a young age gives teenage girls the opportunity to get pregnant at high risk, because in teenage girls' pregnancies, complications for the mother and child such as anemia, preeclampsia, occlusion, abortion, premature birth, death, pregnancies, bleeding and obstetric surgery are more frequent compared to those aged 20 years and above.
- d. Marrying at a young age means extending the opportunity for reproduction. Delaying marriage means shortening the reproductive period. By delaying marriage and living with a small family, the effect on the population growth rate will be clear.<sup>15</sup>

According to the United Nations Children's Fund (UNICEF), Indonesia ranks eighth in the world for absolute numbers of child marriages. In 2018, around 11.2% of girls were married before the age of 18, 0.5% of whom were married before the age of 15. The Religious Court as an institution that has the authority to examine and decide on marriage dispensation cases for those who are Muslim, in 2018 decided on 13,815 marriage dispensation cases.

Child marriage has a negative impact not only on the child concerned, but also on the future of the nation. Some of the impacts of child marriage include:

*First*, marriage and birth at a young age increase the risk of stunting, stunting in children causes disruption of brain development, body metabolism and physical development.

*Second*, Infant Mortality Rate (IMR), babies born to mothers under 20 years old have a chance of dying before the age of twenty-eight days, or 1.5% greater than mothers aged 20-30 years.

*Third*, Maternal Mortality Rate (MMR), complications during pregnancy and childbirth are the second largest cause of death for women aged 15-19 years. Likewise, mothers giving birth at a young age are also vulnerable to damage to the reproductive organs due to not having reached the ideal reproductive maturity limit.<sup>16</sup> Biologically, a child's reproductive organs are still in the process of maturing and are therefore not yet ready to perform their

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<sup>15</sup>Mardi Candra, *Marriage Dispensation Law Update in the Legal System in Indonesia*, Jakarta, Kencana, 2021, p. 52

<sup>16</sup>Imron Rosyadi, *Reconstruction of Legal Epistemology*, p. 123

functions. A child's physical maturity is not the same as their psychological maturity, even though the child is big and has menstruated, their behavior remains like that of a child.<sup>17</sup>

Thus, from a medical or health perspective, marriages conducted at an age below 19 years old have more harm than good, so it is highly recommended that marriages be conducted after the age of 19 years.

### 3. Eligible Marriage Age According to Law

The Child Protection Law explains that children's rights are part of human rights (HAM) that must be guaranteed, protected, and fulfilled by parents, families, communities, the state, the government and local governments. Law Number 23 of 2002 concerning Child Protection states that a child is a person who is not yet 18 years old, including a child who is still in the womb. The provision on the minimum age limit for marriage for women, namely (16) years as stated in Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage, is considered to be in conflict with the Child Protection Law.

The state and community's concern for child protection has caused regulations governing child protection to undergo several changes, including the president using his authority to issue a Government Regulation in Lieu of Law (PERPU). Law Number 23 of 2002 has undergone several changes, namely being amended by Law Number 35 of 2014, then amended by Government Regulation in Lieu of Law Number 1 of 2016, then Law Number 17 of 2016 was born concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law.<sup>18</sup>

Because it is considered to be in conflict with the Child Protection Law, efforts to amend Law Number 1 of 1974 concerning Marriage continue to be made, including by submitting a Judicial Review to the Constitutional Court.

Based on the decision of the Constitutional Court of the Republic of Indonesia Number 22/PUU-XV/2017, one of the considerations of which reads "However, when the difference in treatment between men and women has an impact on or hinders the fulfillment of basic rights or constitutional rights of citizens, both those included in civil and political rights and

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<sup>17</sup>Mulyadi Fadjar, Maturation of Marriage Age,[https://dinkes.ntbprov.go.id/jurnal\\_jurnal-pendewasaan-usia-perkawinan/#](https://dinkes.ntbprov.go.id/jurnal_jurnal-pendewasaan-usia-perkawinan/#)

<sup>18</sup>Imron Rosyadi, Reconstruction of Legal Epistemology, p. 119

economic, educational, social and cultural rights which should not be differentiated solely on the basis of gender, then such differences clearly constitute discrimination.

In line with this, it is stated that the difference in minimum age for men and women not only results in discrimination in the implementation of the right to form a family as guaranteed by Article 28B paragraph (1) of the 1945 Constitution, but also has a negative impact on the protection and fulfillment of rights as guaranteed by Article 28B paragraph (2) of the 1945 Constitution. In this case, women can start a family earlier when the minimum age for marriage for women is lower than for men.<sup>19</sup>

Furthermore, in the ruling, the Constitutional Court ordered lawmakers to make changes to Law Number 1 of 1974 concerning Marriage within a maximum period of 3 years.

Finally, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage was born, which changed the provisions of Article 7 paragraph (1) so that the minimum age limit for marriage for men and women is the same, 19 years, so that marriages carried out before meeting the minimum age limit for marriage are a violation of legal provisions in the field of marriage.

## C. ANALYSIS

The absence of a minimum and maximum age limit for marriage in the Qur'an is assumed to provide leeway for humans to regulate it themselves. The Qur'an suggests that someone who wants to marry must be someone who is ready and capable as depicted in the word of Allah SWT in the letter of al-Nur verse 32

In the verse, the Quran mentions "worthy" of marriage without specifying age. In another verse, the Quran describes someone who is an adult or is categorized as worthy of marriage by being able to take care of his property, this is described by the Quran in Surah an-Nisa' verse 6.

In both verses, the standard that determines whether someone is allowed to marry is their suitability. Indicators of suitability for marriage include being considered intelligent in managing their property.

Explicitly, the Qur'an legitimizes that maturity is very important in marriage. The age of adulthood in fiqh is determined by physical signs, namely signs of puberty such as ihtilam for men and menstruation for women. By fulfilling the criteria of puberty, it is possible for someone to get married.<sup>20</sup>

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<sup>19</sup>Rahmani and Rukmina Gonibala Manoppo, Marriage Dispensation and Social Change Make Marriage Dispensation the Best Choice for Marriage, Yogyakarta, 2023, p. 49.

<sup>20</sup>Mardi Candra, Update on Dispensation Law, p. 52

The ability to marry underage is also based on Aisyah's history that she married the Prophet Muhammad at the age of six and then they came together to build a household together at the age of nine. This history is widely spread in several hadith books, the number of narrators who narrate this hadith reaches the level of mutawatir.

There are some writers who try to criticize Aisha's age that it is not true that she was nine years old when she married the Prophet Muhammad, but had reached seventeen years old, some even argue that she was nineteen years old. Unfortunately, this criticism is only based on logical assumptions and not based on facts. In terms of strength, Aisha's confession about her marriage is stronger than the narrations that are based on others.

Based on sociological studies, before Islam came, underage marriage had become part of the culture of Arab society. The practice of underage marriage did not only happen to Aisha but also to others. In a story, Urwah bin Zubair married his brother's daughter to his brother's son, both of whom were still minors. Ali bin Abi Tholib married his daughter named Umi Kulsum who was still a child to Umar Bin Khattab. Qudamah bin Math'ghun also married Zubair's daughter who was still a minor. Thus, the story of Aisha's marriage who was married to Abu Bakar is more appropriately understood as part of the culture that occurred at that time.

The hadith related to Aisha's marriage to the Prophet is a hadith in the form of an action (*fi'liyah*), scholars still differentiate whether the action applies generally or specifically to the Prophet.<sup>21</sup>

On the other hand, children are a mandate and a gift from God that must always be protected because they contain inherent dignity, honor and rights as human beings that must be upheld. From the perspective of national and state life, children are the future of the nation and the next generation of the nation's ideals, so that every child must be protected from acts of violence and discrimination. Parents, families, and communities, even the state must be present and responsible for maintaining and preserving these human rights in accordance with the obligations imposed by law.

Among the obligations that are inherent in all of us is to save them from underage marriage. Underage marriage is a marriage that is carried out before the minimum age limit for marriage set by law, which is 19 years.<sup>22</sup>

If the generality of the texts of the Qur'an which do not mention a minimum age limit for marriage is then linked to the theory of limits put forward

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<sup>21</sup>Imron Rosyadi, *Reconstruction of Legal Epistemology*, pp. 124-128

<sup>22</sup>Imron Rosyadi, *Reconstruction of Legal Epistemology*, p. 121

by Muhammad Syahrur, then it is possible that a woman who is still 16 years old can be judged as a woman who is forbidden to marry, when it turns out that based on research it has been proven that marriage at that age or below can result in serious reproductive and psychological health problems in a woman.

Therefore, the minimum age limit for marriage can be said to be an effort to provide protection to the community based on research results from the reproductive and psychological health aspects and the benefits for children to get enough time to receive adequate education.

The minimum age for marriage in Indonesia, when compared to other countries such as Malaysia, for example, which allows men to marry at the age of 18 and women at the age of 16, means that the minimum age for marriage for Indonesian citizens is quite high.<sup>23</sup> or compared to the Philippines which allows boys to marry at the age of 15 and girls who have reached puberty.<sup>24</sup> However, if we refer to the research results that have been explained above, that child marriage has the potential to cause harm to the mother who gives birth and the child who is born, then according to the rules of Islamic jurisprudence, avoiding harm is more important than getting a little good, such goodness as not being burdened by the child.

In addition to the reasons above, Law Number 23 of 2002 concerning Child Protection explains that children's rights are part of human rights (HAM) that must be guaranteed, protected, and fulfilled by parents, families, communities, countries, governments and local governments. One of these rights is the right to education. At the age of 16, a child only receives education up to the first level of junior high school, so it is very appropriate for marriage to be carried out after a child completes his/her senior high school education.

Underage marriage should be avoided as much as possible because it has a negative impact on the health of the mother and the child born. The negative impacts that can be caused are stunting, infant mortality, and maternal mortality. In addition, child marriage also has a negative impact on mental health, because children have to lose their childhood to play with their peers and get a decent education. Religion teaches that something that might bring harm should be avoided as much as possible as the rules of fiqh:

The Lord of the Rings

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<sup>23</sup>Ahmad Tholabi Kharlie, Asep Syarifudin Hidayat, Muhammad Hafiz, Codification of Contemporary Islamic Family Law, Jakarta, Kencana, 2020, p. 201.

<sup>24</sup>Ahmad Tholabi Kharlie et al, Codification of Family Law, p. 209

which means that the harm should be avoided or eliminated as much as possible. Indeed, child marriage has benefits, but the harm caused is greater than the benefits obtained, the rules of ushul fiqh:

God willing

Rejecting mafsadah (damage) takes priority over taking benefits. This rule is very appropriate as a guide to avoid bad things caused by early marriage or child marriage.

The stigma of Islam legalizing the practice of underage marriage must be corrected because it is contrary to the mission of Islamic law which respects and places humans in an honorable position. The results of the classical scholars' ijtihad on the minimum age of marriage we believe are in line with the context of the era at that time, but if it is drawn to the current era, it is certainly no longer appropriate considering the changing socio-cultural context. Therefore, a more dynamic understanding is needed through reinterpretation of religious texts with developing socio-cultural dimensions.

For that purpose, the government has tried to change the culture of child marriage by issuing several laws and regulations related to the minimum age of marriage. The provisions made by the government, in addition to being state law, are also laws for Muslims based on the word of Allah:

يَأَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَرَسُولَهُ ...God bless you

*Meaning: O you who believe! Obey Allah and obey the Messenger (Muhammad), and the ulil amri (holders of authority) among you...*

The regularity of the implementation of marriage will be realized if the community obeys the provisions made by the government. The still high number of child marriages in the community shows the still low level of public awareness of the impact of early or underage marriage, thus hard work is still needed by policy makers to provide understanding to the community.

## **D.CONCLUSION, SUGGESTIONS AND CLOSING**

### **1. Conclusion**

Until now, the government is still concerned about efforts to reduce the growth rate of child marriage by issuing several laws and regulations and socializing them to the public. After explaining the presentation from beginning to end, this paper is concluded as follows:

- a. The Qur'an when talking about the marriageable age does not use specific age parameters but rather suitability and readiness to marry. The Qur'an legitimizes that maturity is very important in marriage, but maturity is not related to age. The absence of minimum and maximum age parameters

suitable for marriage in the Koran is considered as the freedom given to humans to regulate it.

- b. Child marriage from a medical perspective is very bad for child marriage perpetrators, because biologically, the child's reproductive organs are still in the process of maturing so they are not ready to perform their functions, although this evil does not occur in all underage marriages. However, based on research, some of the potential evils caused by child marriage include stunting, infant mortality, maternal mortality, complications during pregnancy and childbirth, in addition, mothers who give birth to children (young) are also susceptible to damage to their reproductive organs due to not having reached the ideal reproductive maturity limit. Based on these reasons and for the future of the Indonesian nation, the age limit for marriage would be more beneficial if it was raised to 19 years for men and women.

## 2. Suggestions and Conclusion

The still high number of child marriages shows that society is not yet obedient to laws and regulations, especially in the field of marriage. This disobedience can be caused by their ignorance of existing provisions, or it can also be caused by the strong influence of culture. Therefore, the government through the Ministry of Religion must continue to conduct socialization by involving related agencies such as Religious Courts and others.

It is possible that, in order to create an orderly society, sanctions need to be applied to violators.

Thus is the short paper that I can convey, hopefully it is useful for myself and the readers.

Madiun, 14 Ramadan 1445 H

Writer,

Rashid Muzhar

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