

FAMILY LAW REFORM IN INDONESIA: ANALYSIS OF AGE OF ADULTHOOD IN MARRIAGE

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ABSTRACT

This study discusses the problem of implementing Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 about Marriage. Previously, the age of marriage in Article 7 provided an age limit of 19 years for men and 16 years for Women. The enactment of Law no. 16 of 2019 changes the age limit for marriage to 19 years for men and women. However, the disputed problem is that the age limit set by law does not take into account biological, sociological and other preparations for determining the age of marriage. Marriage law reform must be able to achieve harmonization between husband and wife in maintaining family integrity. The focus in this research is the Implication of Minimum Age of Marriage According to the Perspective of Islamic Law. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage? The research method used in this study is a qualitative type (library research) which is descriptive analysis. The approach used in this research is the Islamic law approach. The results of this research are that the minimum age limit for marriage in Law Number 1 of 1974 is that men aged 19 years and women aged 16 years are still considered teenagers in terms of biological, sociological and psychological maturity. If the marriage age is set at 19 years for women and 19 year old men, they are considered adults and can continue married life in the view of Islamic law.

Keywords: *reform, age, adulthood, marriage, law, Indonesia*

INTRODUCTION

The existence of Islamic family law, especially in the study of limiting the age of marriage, needs attention because the mature age of marriage can determine happiness in the household after marriage, but also attracts the attention of legislators, academics and family law experts who study it from their point of view and perspective. Each scientific. If you study Islamic family law in depth regarding the age of marriage in Indonesia, of course it cannot be separated from the study of the social history of Islamic marriage law recorded in the study of Islamic law in the reform of Islamic family law, it is necessary to explore the important aspects behind the social dynamics in the discussion of Islamic family law (Cheema, 2018: 15). The Islamic family law justice system, as one part of the national legal system project (Sportel, 2020: 68). This can be seen based on the dynamics of the legislative process carried out by the government, although at the beginning of independence the government was not very concerned with Islamic judicial institutions. As a result, the government, which only regulates marriage administration issues, has an impact on the practice of family law which is still directly proportional to the existing law (Weitzer, 2020: 407).

The strengthening of understanding of law as a tool of social engineering and supported by legal instruments that have existed before, has an impact on the increasingly active government in issuing legal products in the form of regulations on family law. One of its achievements is the enactment of the Marriage Law no. 1 of 1974 concerning marriage (Muslih, 2020: 25). In this regard, the government has succeeded in articulating the important elements in the practice of Islamic family law into the standard legal language that has until now been applied nationally. The context of the initial period of enactment of the Marriage Law above, in historical records also cannot be separated from its socio-historical context (O'Connel, 2020: 10). On the one hand, this is due to the still strong taklid attitude of some Indonesian people towards certain schools of thought, while on the other hand, the position of Islamic law in the context of the state always reaps polemics, especially in the stage of state ideological debate, so that Islamic law seems to be at the midpoint between the paradigms of the state religion and state paradigm (Khalifaoui, 2020: 121). The development of the paradigm that the legal function is effective as a means of social engineering above, has made the state's efforts through the Marriage Law successful in changing several things related to the practice of marriage in Indonesia, including the issue of the age of marriage.

In historical records, the application and uniformity of the minimum age for marriage in Indonesia, initially, wanted to be regulated through the

contents of Article 7 paragraph (1) of the 1973 Marriage Law which states that the minimum age for marriage is 21 years for men and 19 years for women (Khaidarulloh, 2020: 48). However, because this draft law has drawn debates that are prone to conflict, it has to be postponed. This ended in the official stipulation of the 1974 Marriage Law but with minor changes, especially regarding the determination of the age of marriage which finally had to be lowered through Article 7 paragraph (1). The state stipulates that marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years (Murni, 2020: 226).

The provisions in fiqh explain that the age of marriage is different from the provisions of the legislation in Indonesia which stipulates the age of marriage in the same marriage law as 19 years based on the decision of the Constitutional Court (Horii, 2020: 510). In view of the rules governing the age of marriage in the Law of the Republic of Indonesia Number 1 of 1974 as well as the Compilation of Islamic Law, the regulations in the legislation need to be obeyed by all levels of Indonesian citizens.

Along with its development, in 1991, the regulation on the age of marriage in the 1974 Marriage Law was again clarified and strengthened by the emergence of the Islamic Law Compilation (Schenk, 2018: 16). With the same editorial, through Article 15 paragraph (1) and (2) Complications of Islamic Law, the state stipulates that a Muslim who wants to marry must be at least 19 years old for men and 16 years old for women. If you do not meet this age requirement, in accordance with Article 7 paragraph (2) of the Marriage Law, the prospective bride and groom can request a dispensation from the religious court (Wahyuningrum, 2021: 568). The debate about the age limit of children where a person is considered an adult in the context of marriage is related to readiness and maturity not only physically, but also psychologically, economically, socially, mentally, religiously, and culturally. This is because marriage at an early age often poses various risks, both biological risks, such as damage to reproductive organs, as well as psychological risks. The ambiguity in determining the limits of normative adulthood occurs because there are different legal perspectives on the problems that develop in society at all social levels (Epstein, 2020: 86).

The issuance of Law No. 16 of 2019 on the amendment of Law No. 1 of 1974 concerning marriage has provided great benefits where initially 16 years for women and 19 years for men have changed to 19 years for men and 19 years for woman (Bukido, 2020: 4). This should be appreciated because the struggle to revise law number 1 of 1974 has been approved by the Constitutional Court. Thus, the age provisions set by the Constitutional Court of 19 years for men are considered to have reached maturity in their attitude, capable of acting,

maintaining and being responsible for their actions. Meanwhile, a 19-year-old woman is considered to be an adult and able to run a household life.

The revision of Article 7 regarding the age limit for marriage in the Marriage Law has become a serious focus on at least four things. First, to prevent early marriage, which has a further impact on the occurrence of pregnant women and childbirth at a young age, which poses a high risk to the health of pregnant women and childbirth; as well as early marriage in the context of psychological mental readiness of married couples who are feared to be at high risk of divorce rates. Second, to protect the rights and interests of children, given that according to Law no. 23 of 2002 as the implementation of the Convention on the Rights of the Child, it is stipulated that what is meant by children is up to the age of 18 years. Third, considering the sociological readiness of the couples to become an autonomous family in the midst of society. Fourth, paying attention to economic readiness in relation to the complexity of household needs today which increasingly require careful planning (Hyseni, 2020: 515).

In formal juridical terms, the age limit for marriage in Indonesia is regulated in the Marriage Law No. 1 of 1974 and the Compilation of Islamic Law (Suhargon, 2021: 198). In the law there is an article that determines the age limit of a man and a woman who will carry out a marriage, which is contained in Article 7 Paragraph 1 which states that marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 19 years old. Avoiding the unequal age limit of men and women in marriage, giving encouragement and role models regarding the revision of the Marriage Law, the first step in realizing to carry out togetherness in order to protect rights before children in Indonesia (Nasution, 2021: 36). This method prioritizes togetherness and closeness to children, so that making decisions regarding children's rights is the responsibility of the parties involved. From that, reforming the age of marriage in the marriage law is the basis for upholding justice in the existing law in Indonesia.

Thus, to reform the limitation on the age of marriage, there is something that needs to be considered, namely the existence of equality at the age of adults in the Law of the Republic of Indonesia. Adult age, if still based on the Law of the Republic of Indonesia Number 23 of 2002 concerning protecting children, is eighteen years old, Therefore, the minimum age limit of 16 years for women and 19 years for men to get married, as stated in the Marriage Law and the Compilation of Islamic Law, was changed to 19 years for women and 21 for men. The principle of prioritizing the best interests of children in every decision-making concerning children is the obligation of all parties (Savirimuthu, 2020: 324). Therefore, reconstructing the age of marriage

in the marriage law is a concrete step as an effort towards Indonesian law enforcement, support and demands for the revision of the marriage law is a manifestation of the joint efforts of the citizens of this nation to save the future of Indonesian children, because basically children are only entrusted and a gift from God. The chronological explanation of the age of marriage problem above, indicates that the age of marriage is a complex problem. This issue is not only a concern of the state, but also a separate concern for both activists, academics and institutions.

RESEARCH METHODS

This study uses a qualitative method of literature. The literature qualitative method can be interpreted as an approach or search through the literature to explore and understand a central phenomenon (Semiawan, 2010: 10). While this type of research is using descriptive qualitative research with the aim of making a systematic, factual and accurate description of the facts and characteristics of a particular population or area (Suryabrata, 2013: 25). In addition, in collecting various information and data regarding the issues raised, researchers used literature studies sourced from relevant books, journals and internet media in accordance with the research analyzed.

The Essence of Marriage

The term marriage in the Marriage Law Number 1 of 1974 Article 1 paragraph 2 marriage is defined as 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, household based on the One Godhead (Lahilote, 2020: 135). Meanwhile, according to the Compilation of Islamic Law, as contained in article 2 it is stated that marriage in Islamic law is marriage, namely a very strong contract or *mišāqan galīzan* to obey Allah's commands and carry it out is worship (Suhargon, 2021: 198). Meanwhile, according to Anwar Hafidzi and Mohd Hatta Mohd Hani, it means that the word marriage is a translation of the words *nakaha* and *zawaja* (Hafidzi, 2020: 197). These two words are terms in the Qur'an to refer to marriage.

In the context of human creation, Allah SWT created His creatures in pairs based on the sunnatullah. In this regard, Marcia Inhorn views marriage as making a person have a partner (Inhorn, 2020: 112). The word of God in the letter al-Zāriāt verse 49 reads :

” And we created everything in pairs so that you may remember the greatness of Allah”.

This is confirmed by Allah in the Qur’an Surah al-Nisa’ verse 1 which reads:

”O mankind, fear your Lord who created you from a single person, and from him Allah created his wife; and from both of them Allah has produced many males and females. and fear Allah who by (using) His name you ask one another, and (maintain) friendly relations. Verily, Allah is always watching over you”.

Scholars define marriage in different syar’i terms. Beni Ahmad Syaebani quoted the opinion of Slamet Abidin and Aminudin, detailing several meanings of marriage according to several scholars (Saebani, 2021: 11-12), namely:

- a) Hanafi scholars define marriage or marriage as a contract that is useful for having mut’ah on purpose. This means that a man can control a woman with all his limbs to get pleasure and satisfaction.
- b) Shafi’iyah scholars say that marriage is a contract using the pronunciation of *nikāh* or *zauj*, which has the meaning of possessing. This means that with marriage a person can or get pleasure from his partner.
- c) Malikiyah scholars say that marriage is a contract that contains mut’ah to achieve satisfaction by not requiring a price.
- d) Hanabilah scholars say that marriage is a contract by using *inkāh* and *tazwīj* pronunciation to get satisfaction. That is, a man can get satisfaction from a woman and vice versa. In this sense, there are words belonging to the meaning of the right to own through a marriage contract. Therefore, husband and wife can take advantage of each other to achieve life in their household which aims to form a *sakinah mawaddah wa rahmah* family in the world.

However, the Hanafi, Malikiyah, Syafi’iyah and Hanabilah scholars have different opinions in giving the connotation (emphasis) on the ownership issue caused by the existence of the contract. For Hanafiyah scholars, the marriage contract has the consequence that the husband has the right to have pleasure (*milk al-mut’ah*) from his wife. For the Syafi’iyah scholars, the contract results in the husband having the opportunity to do *watī’* (intercourse) with his wife, while according to Malikiyah, the contract results in ownership for the husband to get delicacy from his wife. Meanwhile, Hanabilah scholars emphasize the take and give aspect of the benefits of the marriage contract for husband and wife (Hassan, 2017: 85).

In terms of the practice of worship, marriage is a sunnah practice that is firmly prescribed by the Qur'an and the Prophet Muhammad, in line with sexual character and in accordance with a lawful and clean channel to obtain offspring who can maintain self-respect, joy of heart, and inner peace. This small understanding refers to several provisions of fiqh and positive law in the form of the age of the bride and groom at marriage, namely the child who is not yet mature and is not psychologically ready to carry out household responsibilities (Noor, 2021: 1). Because the provisions of fiqh are qualitative in nature. In addition, marriage is the path chosen by God for His creatures, especially humans, to reproduce and preserve their lives. In this regard, Allah swt created humans not only in their perfect physical form but also equipped with software in the form of natural basic sexual instincts, the need for a partner and feelings of affection for the opposite sex (Perry, 2020: 14). Therefore, Allah also provides it with suggestions, commands and prohibitions so that humans can manage the software in the form of marriage.

The Urgency of Marriage Age in Islam Perspective of Imam Madhhab

Basically, Islamic law does not absolutely regulate the minimum age limit for marriage. The absence of religious provisions regarding the minimum and maximum age limits for marriage is assumed to provide leeway for humans to regulate it (Plümper, 2020: 3). The Qur'an indicates that the person who is going to get married must be someone who is ready and able. The word of God in QS. al-Nūr: 32:

“And marry those who are alone among you, and those who are worthy of marriage from your male slaves and your female slaves. if they are poor Allah will enable them with His bounty. And Allah is Extensive (His gift) and All-Knowing.”

Furthermore, the Messenger of Allah, in his words, advised young people to carry out marriages on the condition that they had the ability.

“It was narrated from Alqamah r.a that he said: I once walked in Mina with Abdullah r.a, we met Usman r.a who then approached Abdullah. After talking for a while, Usman asked: “O Abu Abdurrahman, will I set you up with a young woman? Hopefully it will be able to remind you of your good old days”. Hearing the offer Abdullah replied: What you say is in line with what the Messenger of Allah said to us: “O youth! Whoever among you has the physical and mental ability to marry, let him marry. Indeed, marriage can keep the eye and maintain honor. So whoever is not

capable, let him fast because fasting can keep lust. (H.R Bukhari dan Muslim) (Ghazaly, 2019: 11).

Indirectly, the Qur'an and Hadith acknowledge that maturity is very important in marriage. Adult age in fiqh is determined by physical signs, namely signs of puberty in general, among others, the perfect age of 15 (fifteen) years for men, *Ihtilām for men and menstruation for women is at least 9 (nine) years old* (Sitorus, 2020: 4). With the fulfillment of the criteria for puberty, it is possible for someone to get married. So that a person's maturity in Islam is often identified with baligh. If there is an abnormality or delay in physical or biological development, so that at the usual age a person has issued semen for men or issued menstrual blood for women but the person has not yet issued the signs of maturity, then start the return period based on the age that a person usually shows signs of puberty. The start of the age of puberty between one person and another is influenced by differences in the environment, geography and so on (Bougnères, 2002: 95).

The size of maturity as measured by the criteria for puberty is not rigid. That is, if it is casuistically very urgent, the two prospective brides must be immediately married, as a manifestation of the sadd *al-zārī'ah* method to avoid the possibility of greater harm. Scholars have different opinions in setting age limits for people who are considered adult. Syafi'iyah and Hanabilah scholars state that boys and girls are considered mature when they reach the age of 15 years (Zulaiha, 2021: 99). Hanafiyah scholars stipulate that the age of a person is considered baligh as follows boys are considered balig when they are 18 years old and 17 years old for girls. Meanwhile, scholars from the Imamiyyah group state that boys are considered mature when they are 15 years old and 9 years for girls. For girls who are 9 years old, there are two opinions. First, Imam Malik, Imam Shafi'i, and Imam Abu Hanifah said that a girl who is 9 years old is the same as an 8 year old child so that she is considered not yet mature. Second, a child is considered to have reached puberty or an adult because it has been possible to menstruate so that it is permissible to marry even though there is no agency for him as an adult woman has (Melnikas, 2020: 8).

Considering that marriage is a very strong contract or agreement (*mīšaqan galīzan*) which requires everyone who is bound in it to fulfill their respective rights and obligations with full justice, harmony, harmony and balance. Marriage as a form of legal imposition is not enough just to require balig (age enough). The legal imposition (*taklīf*) is based on reason (*aqil* and *mumayyiz*), balig (age enough) and understanding (Analiansyah, 2017: 1). This means that a person can only be burdened by law if he is reasonable and can understand well

the taklif addressed to him. Regarding the principle of maturity in marriage, scholars tend not to discuss the age limit for marriage in detail, but rather to discuss the law of marrying young children. Marriage of young children in fiqh is called *agīr* or *agīrah* marriage or *zawāj al mubakkir* (Afrianty, 2020: 66). *Agīr* or *agīrah* literally means small. However, what is meant by “*agīr*” or “*agīrah*” are men and women who are not yet mature. Underage marriage cannot be separated from the right of *ijbār*, namely the right of the guardian (father or grandfather) to marry off his daughter without having to obtain prior approval or permission from the girl to be married, as long as she is not a widow (Sultana, 2018: 5).

A father can marry off his young and virgin daughter as long as she is not yet mature without his permission and there is no *khiyar* rights for the daughter if she has reached puberty. On the other hand, fathers are not allowed to marry off their young sons. However, a daughter can not immediately be fertilized by her husband if she is still too young so that she is mature enough to have a relationship like husband and wife.

Scholars who allow guardians to marry off their underage daughters are generally based on the history that Abu Bakr ra. marry Siti ‘Aisyah ra. with the Messenger of Allah.

“Have told me Yahya bin Yahya, Ishaq bin Ibrahim, Abu Bakr and Abu Kuraib. Yahya and Ishaq have said: Have told us and said al Akhrani: Has told me Abu Mu’awiyah from al A’masyi from al Aswad from ‘Aisha ra. said : Rasulullah SAW married me when I was 6 years old and lived with me when I was 9 years old and he died when I was 18 years old. (HR. Muslim) (Muslim, 2014: 45).

Abu Bakr ra. had married ‘Aisyah with the Messenger of Allah when she was a child without her prior consent. Because at that age his agreement cannot be considered perfect. However, regarding the marriage of ‘Aisyah ra. With the Prophet Muhammad, some scholars are of the opinion that this is an exception or specialty for the Messenger of Allah himself, as the Messenger of Allah was allowed to have more than four wives, which his followers were not allowed to follow. Another opinion states that the marriage of the Prophet with ‘Aisyah is more motivated by *da’wah*. However, the right of father or grandfather’s *ijbār* cannot be exercised at will.

Ulama’ Syafi’iyah said that in order to be able to marry underage boys, it was necessary to have benefit (good interests). As for girls, several conditions are needed (Wiludjeng, 2020: 10), including:

1. There is no real enmity between the daughter and her guardian her father or grandfather.

2. There is no real enmity (hatred) between her and her future husband.
3. Prospective husband must be kufu (appropriate or equivalent).
4. Prospective husband is able to give a proper dowry.

According to Ibn Shubrumah, he has a different view from the view of the majority of scholars above. Ibn Shubrumah is of the view that it is not recommended for boys or girls to be married. They can only be married after reaching the age of puberty and through the explicit consent of the interested parties (Efevbera, 2020: 7). The word of Allah swt explains about age in QS. Al-Nisā': 6:

“And test the orphans until they are old enough to marry. Then if in your opinion they are intelligent (good at maintaining wealth) then hand over to them their wealth.”

Underage marriage is not recommended considering that they are not considered to have the ability to manage property (rusyd). Besides, they don't need marriage either. They are feared that they will not be able to fulfill the obligations that must be carried out in life as husband and wife, especially in managing household finances. As for the little girl who is widowed (either because her husband died or divorced) then her guardian is not allowed to marry her back as well as for someone else (guardian other than the father) to marry her until she is mature (Baugh, 2017: 78). So, a young child who is a widow has the same position as an adult widow, that is, he gives permission when he is about to be married.

“Has told us Qutaibah bin Sa'id: Has told us Sufyan from Ziyad bin Sa'ad from Abdillah ibn Al Fadhli: Have heard Nafi' bin Jabir with news from Ibn 'Abbas ra. that the Prophet SAW said: A widow has more rights over herself than her guardian and a virgin must be with her permission and her permission is her silence.” (HR. Muslim) (Ahmad, t,th: 148).

The Indonesian Ulema Council gave a fatwa that the age of marriage eligibility is the age of ability to act and receive rights (*ahliyyat al adā' and expertyyat al wujūb*) (Council, 2009: 78). *Ahliyyat al adā'* is the nature of a person's legal ability to act who has been considered perfect to be responsible for all his actions, both positive and negative actions. While *ahliyyat al wujūb* is the nature of a person's ability to accept the rights that are his rights and is not yet capable of being burdened with all obligations. The scholars of the madhhab agree that menstruation and pregnancy are evidence of a woman's puberty, pregnancy that occurs due to fertilization of the ovum by sperm, while menstruation has the same position as releasing semen for men (Gesink, 2020: 116-129). The opinion of Imam Maliki, Imam Shafi'i, Imam Hambali, and

Imamiyah say that the growth of armpit hair is proof of a person's maturity. Meanwhile, Imam Hanafi rejects this opinion, because armpit hair is no different from the hair that grows on other body parts.

Balig has the meaning until or clear. Namely children who have reached a certain age where it becomes clear to him all the affairs or problems they face. His mind has been able to consider or clarify what is good and what is bad. The puberty period is the adult period of everyone's life. Signs of maturity, when a man has released semen and when he has released menstrual blood or has become pregnant for a woman (Rowe, 2020: 224). The start of the legal age of puberty can vary from one person to another, due to differences in environment, geography, and so on. The legal limit for puberty is when a person is 12 years old for a boy and 9 years old for a girl.

While the final limit among the scholars there are differences of opinion. According to Imam Abu Hanifa, after a person reaches the age of 18 years for men and has reached the age of 17 years for women (Ullah, 2021: 60). From the above view, Abu Hanifah's thoughts are included in the maximum in determining a person's age. So that view is the basis for the regulation of the Marriage Law in the State of Indonesia. For more details, we can see the minimum age limit for marriage in various Islamic countries as a result of the study of the fuqaha, as shown in the following table (Khalfaoui, 2020: 91):

Table 1: Comparison of Marriage Age in Different Countries

No.	Country	Male	Female
1	Aljazair	21	18
2	Bangladesh	21	18
3	Indonesia	19	19
4	Irak	18	18
5	Libanon	18	17
6	Libya	18	16
7	Malaysia	18	16
8	Maroko	18	18
9	Mesir	18	16
10	Pakistan	18	16
11	Somalia	18	18
12	Suriah	18	17
13	Tunisia	19	17
14	Turki	17	15

15	Yaman Selatan	18	16
16	Yaman Utara	15	15
17	Yordania	16	15

This problem is real because the case of marriage in addition to entering into the sunna of worship called “*ubudiyah*”, and is a worship between humans called “*mu’amalah*” which in Islamic teachings is formed in global regulations. With this in mind, the *baliq* category in order to be able to hold a marriage must be able to interpret the term *ijtihadiah* meaning, because it must carry out thoughts related to the problem of limiting the age of marriage, adjusting the circumstances of the place and time of the regulations so that they can be implemented.

The perspectives of the jurists are different regarding the limitation of the age of marriage, due to the textual *pradikma* of the texts, both the Qur’an and *hadith*, as well as knowledge in contextuality based on the perspective of tradition, cultural perspective, social situation perspective, and physical perspective. The jurists of *fiqh* experts provide what requirements if a person wants to get married he is already *baliq*. The characteristics of *baliq* that are used are seen in body growth, namely menstruation has occurred for women and men have wet dreams. However, the jurists have set limits in terms of age. But it can be remembered, both parents have an obligation to marry off their children who are not yet mature. The appropriate age provisions applied to the Marriage Age Maturation plan are a good input in realizing *Maqasid Syariah* to foster households (Lei, 2020: 1801). The application of this is able to regulate the relationship between male and female partners; in keeping offspring, creating a *sakinah, mawaddah, warahmah* family; keep the lineage, maintain diversity in the family; set a good relationship model in the family and regulate the economic aspect in the family.

According to Ibn Kathir, the age for marriage has arrived, not based on a mature age, but on the maturity of the mind. Rasyid Ridho stated in *Bulug al nikah* that the arrival of a person to the age of marriage is to have a wet dream for men and menstruation for women. At that age, one can conceive an embryo and create a child to carry on the offspring, allowing one’s soul to immediately get married. At that age, every individual has had the burden of the regulations recorded in Islamic religious law that have been determined, both charity worship and *muamalah* and other worship. Interpreting the word “*rusyd*” means the feasibility of a person in carrying out *tas’arruf* so that he can take benefits and avoid those that are detrimental. This is a sign of the perfection of his mind (Ridha, 2020: 396-397)

Rashid Ridho agrees with Ibn Katsier's opinion, in the implementation of "*rusyd*". This explains until someone has reached the age of marriage, sees the development of the body, which is already menstruating for women and wet dreams for men. According to Buya Hamka, the word Bulug al-Marriage is defined as having reached puberty. Baliqh or maturity of one's mind is not focused on the age of each individual, but focuses on intelligence (intelligent) or mature thinking (Trakic, 2021: 43). It is also mentioned that someone whose age is not mature, allows him to be intelligent and there are also people who have reached the age of puberty, sometimes his thoughts are not necessarily mature.

Buya Hamka's opinion, which prefers to take the middle path, stated that the age limit is very relative, because each individual child is certainly not the same. In this case, the intelligence of the mind becomes the main focus so that the time is ready for marriage. From various perspectives according to the study, Ibn Kathir's opinion emphasizes natural maturity and has reached baliqh. According to Rasyid Ridho and Buya Hamka, it focuses on the maturity of the mind, which is looking at the behavior and nature in the life of each individual (Ridha, 2000: 396-397).

Looking at the efforts above, it explains that there have been differences in views between classical scholars and contemporary scholars in answering the question of whether or not someone is allowed to get married. The essential number of marriage is that it can meet most of the physical and spiritual needs and perpetuate it to the offspring. Therefore, there are things that do not yet exist for a child who is not in a state of puberty. He focused his goal towards marriage. In this case, Ibn Syubrumah tried to escape from the textual confines. To understand this problem, it is seen from a historical, social, and cultural review that exists in the community. In understanding the marriage of the Prophet Muhammad SAW with Aisyah r.a (who at that time Aisyah was only six years old), Ibn Syubromah's explanation said that there was a special rule for Nabiyullah Muhammad SAW that all Muslims should not follow in the teachings of Islam (Sawai, 2020: 25).

According to the author of a statement from contemporary jurists, it is better to look at so that the requirements for marriage are not seen in the form of adult body development (baliqh), can also be seen in the perfection of thought and spirituality (*rusyd*), in paying attention to the problem of limiting the age of marriage from various perspectives. With this, marriage does not require mental readiness (biological), but psychological readiness (physical), social readiness, religious readiness, and even readiness in spiritual intelligence. Changes that occur at the age of marriage, adjust from the set of all principles, thus enabling

a person to be ready to live in a household that is in accordance with Islamic advice. Thus, from actions based on Islamic law, it is very contrary to the laws and regulations in Indonesia, so in the view of Islam, actions like this can be used as a form of action against national law. From that, it is clear that the studies from previous fiqh books or books were in harmony and appropriate at that time, while at this time further in-depth discussion is needed to review the issue of legal content in legislation to realize the framework for achieving what is meant by Islamic law reform. , especially at this time in the era of globalization of human civilization which is increasingly advanced.

Existence Analysis of Law Number 16 Year 2019 Age of Marriage in Family Law Perspective

According to Law Number 1 of 1974, it is explained that the meaning of 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 based on God Almighty. If it is associated with child marriage that is not psychologically mature, then this can trigger disharmony and so on. If it is associated with child marriage that is not psychologically mature, then this can trigger disharmony. The rules are explained in Law Number 16 of 2019 regarding the amendment to Law Number 1 of 1974 concerning marriage. In Article 7 paragraph (1) of the Law which states that marriage can only be carried out if the male party reaches the age of 19 years and the female party has reached the age of 19 years. The provisions on the age limit are based on the benefit of the prospective bride and groom's household. With this age limit, it is hoped that the maturity of the two prospective brides can be achieved in running their household. Maturity in question is the maturity of the age of marriage, maturity in thinking, and acting so that the purpose of marriage as mentioned above can be carried out properly.

If examined further, the provisions regarding the age limit for marriage in the article appear to be more concerned with physical and biological readiness. This has not led to considering the psychological readiness of the two prospective brides. According to researchers, the age set by law, namely 19 years for boys and 19 years for girls is still classified as a juvenile stage, where a person at this time is still in the process of growing in reaching maturity. The process of developing maturity in question includes mental, emotional, social, and physical maturity. Psychologically, adolescence is a time when children feel they are on the same level as older people. Does not include children, and also does not include adulthood. Therefore, adolescence is often called a period of self-discovery.

In relation to building a happy family, the age limit regulation in the law is clearly not possible to be able to consult, cannot decide matters wisely between them, and the lack of support for their partners, due to their weak way of thinking. The purpose of marriage in creating happiness in the family, it can be achieved when the marriage is carried out by a couple who are in adulthood, which is 21 years old. The ability to master and control emotions, able to express emotions in ways that are more acceptable, can be achieved when someone is 21 years old, where someone enters adulthood. Although there are still emotional tensions at this time, which are related to the problems they experience such as issues of position, marriage, finances and so on, someone who has reached that age is more able to control his emotions. When an adult takes action, he not only relies on the impulse of lust, but also involves his mind. Channeling emotions by involving reason and common sense is a character of adult behavior.

In Islamic law itself, the age limit for a person who does marriage is not clearly and unequivocally defined in the Qur'an and Hadith. Both of them only provide signs, conditions, and guesses how a person is considered worthy to carry out a marriage. Muslims are given the freedom to set a minimum age limit for marriage, so that the minimum age limit for marriage is handed over to the perpetrators without violating the conditions that have been determined and also adjusted to the social conditions in which the law is enforced. In another view, Islamic law which regulates family affairs in particular, has been modified to be in the amendment of Law Number 16 of 2019 concerning marriage limits which is the result of the collection and selection of various expert opinions in the field of fiqh. Of course, all the rules contained in it have reflected human values, respecting the rights of women, evenly distributed nuances of grace and wisdom, and are able to realize the benefit of all mankind.

Maqāsid Syar'ah itself, which is the goal of Islamic law, has five main objectives (maintaining religion, soul, lineage, property, and reason). Everything that supports the achievement of the five main goals, he supports it and everything that is contrary to one of the five goals he prevents. In marriage, the protection of offspring is one of the elements maintained by the Shari'ah in order to maintain and protect offspring in the world, which is to be realized from the Marriage Law. In accordance with the objectives of Islamic law, namely taking benefit and avoiding harm (*jalbu al-maṣāliḥwa dar'u al-mafāsīd*). Therefore, marriages that are carried out at a young age need to be avoided in order to physically save the mother and baby from unwanted things. According to al-Ṣatiby, the shari'a stipulated as in the Marriage Law, especially in Article 7 regarding the age limit for marriage, must be able to realize the benefit of the servant (*maṣāliḥal-'ibād*), both in this world and in the hereafter.

This benefit, in al-Ṣatibi view, becomes *Maqāsid Syar'ah*. In other words, the determination of the rule of law, both in its entirety and in detail, is based on a motive for establishing the law, namely realizing the benefit of the servant.

Mental readiness is absolutely necessary in dealing with various problems that will be experienced by married couples in their household journeys. The ability to deal with various problems that will arise in the household, will be difficult to do when both are still in the category of teenagers aged 19 and 19 years. Therefore, adulthood is a requirement for everyone who will carry out marriage in order to maintain his mental readiness, and adulthood only occurs when a person is 21 years old. What is expected when the marriage occurs in adulthood, the husband and wife have been able to take responsibility, create good relationships, form a balanced relationship between the two (*mu'āsyarah bi al-ma'rūf*), and think with common sense. Intellect is an important part of the purpose of the Shari'ah that must be protected from its damage. Preventive prevention efforts that are carried out by Islamic law are actually aimed at increasing the ability of the mind and guarding it from various things that harm it.

The age of marriage in Islam is very concerned about the maturity between the two prospective husbands and wives. This has resulted in a prohibition against underage marriages as agreed in the legislation. This prohibition also cannot be solved by the existence of a dispensation, because the dispensation is only a case that cannot be comprehensive on the permissibility of underage marriage. Although there is a minimum age limit for marriage, in this case it appears that Law No. 16 of 2019 on amendments to Law No. 1 of 1974 concerning marriage in Article 7 paragraph (1) has equated the age of marriage. On the one hand, it emphasizes that in order to get married someone who has not reached the age of 19 years must obtain parental permission, while on the other hand it is stated that marriage is only permitted if the man has reached the age of 19 years and the woman has reached 19 years. The difference is that if you are less than 19 years old, parental permission is required and if you are less than 19 years old for men and 19 years old for women, you must get permission from the court. This is also reinforced in the Compilation of Islamic Law.

The different age limits of maturity in the Complications of Islamic Law that should be today should not occur. First, in the Complications of Islamic Law Article 98 Paragraph (1) related to child care, which reads: "The age limit for a child who is able to stand alone or as an adult is 21 years, as long as the child is not physically or mentally disabled or has never been married." While the rules of maturity in Law no. 1 of 1974 there are also differences.

For example, the first Article 6 Paragraph (2) reads: To carry out a marriage, a person who has not reached the age of 21 (twenty one) years must obtain the permission of both parents.

From the explanation of the maturity rules from both the KHI and Law Number 16 of 2019 it can be concluded that the Complications of Islamic Law more identify maturity at the age of 21 years, while Law Number 16 of 2019 is more likely to determine maturity at the age of 19 years. However, strangely, the two regulations both set a marriage age limit of 19 years for men and 19 years for women. The age of 19 if you look at the rules of maturity in the Compilation of Islamic Law is not an adult and can be said to be a minor. Meanwhile, when viewed from the maturity rules of Law Number 16 of 2019, the age of men and women can be said to be adults. This later became the point of critical analysis of researchers related to the marriage age of Indonesian Muslims.

The researcher concludes that if the age limit for marriage in Indonesia remains at 19 years for men and 19 years for women, while the maturity review in the Complications of Islamic Law is stated to be 21 years and in Law Number 16 of 2019 it is stated 19 years, then this is need to be discussed again. When the age of men is set at 21 years, it means referring to the maturity provisions set by the Complications of Islamic Law, while when the age of women is set at 19 years, it means referring to the maturity provisions referred to by Law Number 16 of 2019. Thus, the rules of maturity in this matter marriage will be more compact and sustainable. Thus, for the benefit of the household to be built, researchers believe that 21 years is the appropriate age for those who are getting married. Not at the age of 19 who are still classified as teenagers who need more learning in all aspects of their lives. Someone who reaches the age of 21 years, he is considered to have reached maturity in his attitude, capable of acting, and responsible for what he decides. Maturity in question is the maturity of the age of marriage, maturity in thinking, and acting so that the purpose of marriage as described in the law is to form a harmonious and eternal household life can be carried out properly.

The purpose of Allah in enjoining His law is to maintain the benefit of humans both in this world and in the hereafter. In order to realize the benefit, based on the research of ushul fiqh experts, there are 5 main elements that must be maintained and realized, the five points are (Helim, 2019: 24):

1. Maintaining Religion (*Hifz al-Dīn*)

Maintaining religion based on its importance, can be divided into three levels:

- a) Maintaining religion at the dharuriyah level, namely maintaining and carrying out religious obligations that are included in the primary level, such as performing the five daily prayers. If the prayer is ignored, then the existence of religion will be threatened.
- b) Maintaining religion in the Hajiyah level is carrying out religious provisions, with the intention of avoiding difficulties, such as congregational and qasar prayers for people who are traveling. If this provision is not implemented, then it does not threaten the existence of religion, but we only make it difficult for people who do it.
- c) Maintaining religion at the tahsiniyah level, namely following religious instructions in order to uphold human dignity, while at the same time completing the implementation of obligations to God, for example cleaning the body, clothes and place.

2. Nurturing the Soul (*Hifz al-Nafs*)

Nurturing the soul based on the level of importance is divided into three levels:

- a) Nurturing the soul at the dharuriyah level, such as meeting basic needs in the form of food to sustain life.
- b) Maintaining the soul at the hajiyat level, such as the permissibility of hunting animals to enjoy delicious and halal food, if this is ignored then it does not threaten the existence of human life, but only makes life difficult.
- c) Maintaining the soul at the level of tahsiniyat as stipulated in the procedures for eating and drinking.

3. Nurturing Reason (*Hifz al-'Aql*)

Maintaining reason in terms of importance is divided into 3 levels:

- a) Maintaining reason at the dharuriyah level is like drinking alcohol because it threatens the existence of reason.
- b) Maintaining reason at the level of hajiyat, as it is recommended to seek knowledge.
- c) Maintaining the mind at the level of tahsiniyat is like avoiding imagining and listening to things that are not useful.

4. Nurturing offspring (*Hifz al-Nasb*)

Caring for offspring in terms of the level of need is divided into three:

- a) Nurturing offspring at the dharuriyah level, as it is prescribed for marriage and forbidden to commit adultery.
- b) Maintaining descendants at the hajiyat level, as stipulated in the provisions of mentioning the dowry at the time of the marriage contract.
- c) Maintaining offspring at the level of tahsiniyat such as khitbah and walimah in marriage.

5. Maintaining property (*Hifz al-Mal*)

Maintaining treasure can be divided into 3 levels:

- a) Maintaining property at the dharuriyah level, such as the Shari'a regarding the procedures for property ownership and the prohibition of taking people's property in an illegal way.
- b) Maintaining property at the hajiyat level, such as the Shari'a on buying and selling regarding the sale and purchase of greetings.
- c) Maintain property at the level of tahsiniyat such as the provisions to avoid deception or fraud.

The *maqāṣid syarīah* above is a very clear picture of how to determine the ideal age limit for marriage. The ideal age limit is when marriage is carried out at that age, it is most likely that the *Maqāṣid syarīah* and the objectives of implementing Islamic marriage law will be realized. On the other hand, the age that is not ideal for marriage is when the marriage takes place where it is likely that the goals of marriage will not be achieved, even if they are achieved, they will not reach the maximum limit. This is the principle of the ideal age limit for marriage.

If you look at the Islamic law that was in effect at the time of the Prophet, the issue of age for marriage is not an urgent issue, because the Prophet is a human being who is *ma'um* (awakened from sin) while the companions as explained by the Prophet, are like the stars if we follow in his footsteps, then we will get clear instructions. Therefore, regardless of the age of marriage for men and women, it is not an important issue to realize the objectives of shariah law enforcement of Islamic marriage. While the rules that apply in Law Number 16 of 2019 article 7 paragraph (1) concerning marriage, that the minimum age for marriage for women is 19 years and 19 years for men, this is also based on the needs of the Indonesian people and as a middle ground. from an age limit that is too low and an age limit that is too high. But the question is, is the actual age limit for marriage ideal for realizing the goal of legalizing marriage? Although Islamic law and positive law are declared valid, they have

not been said to be ideal because they are considered unable to fully realize the goals of sharia.

The ideal marriage age is a marriage that is carried out by a man who is at least 25 years old and a woman at least 20 years old. The ideal age limit is considered to be ready and mature from the medical, psychological, social, and of course religious aspects so that it can create a family in accordance with the *Maqāṣid syarīah* marriage law. This age limit is considered to be ready both in terms of health and emotional development to face a just family life. Thus justice in determining the age of marriage can be interpreted as goodness, virtue and truth, which is a moral obligation that binds members of society with one another. Justice as a value is a goal that is mutually agreed upon by members of the community and strives to achieve it for the sake of justice itself. Another meaning of justice is as a result or a decision obtained from the application or implementation of the law. Justice is also defined as an ideal element, namely as an ideal or an idea contained in all laws.

An understanding of the foregoing shows that in the life of society and the state, what is in the common interest will be easily achieved if society is organized according to the ideals of justice. Justice demands that all people be treated equally, so justice is a value that embodies a balance between parts of society, between personal goals and common goals. This shows that one form of universal legal ideals is the demand for justice. The question of how to determine whether the law is fair or not? It does not depend or is not measured by the objective criteria of justice, but is measured by what society considers fair. To understand the law that reflects the community's sense of justice, one must first understand the true meaning of the law. According to the view held in the legal science literature, the meaning of the law is to realize justice in human life. This meaning will be achieved by the inclusion of the principles of justice in the regulation of living together.

The regulation of people's rights and freedoms using the criteria of justice, shows that in humans, there is a feeling of justice that brings people to an assessment of the factors that play a role in the formation of law. This realization of the feeling of justice is not only owned by citizens but also by the authorities. Therefore, by building on the principles of justice, justice can be referred to as legal principles or legal ideas. Every community must get their rights proportionally in order to achieve social justice for the community. In terms of age determination, people have the right to get the justice they aspire to, because justice belongs to a person from the beginning and must return to him in the justice process starting from physical and moral interests, relationships and the quality of various things, both familial and social. economic, physical

and intellectual work, to things that were not previously owned or owned but were later obtained through legal means.

However, because this age limit is not included in the legal requirements for a marriage, it is certainly not easy to disseminate this provision quickly and be accepted by all parties. However, of course, this provision cannot be enforced absolutely, therefore the existence of dispensation for those who wish to marry under the provisions of the minimum age limit that has been determined seems to still be able to be accommodated. However, of course, the government must provide clear limits on the reasons that can be used for prospective brides who are not old enough to hold a marriage so that the legal certainty of a law can be seen. It can be concluded, what needs to be considered is the issue of benefit and its impact is very relative in the public's attention. This state of the Republic of Indonesia transforms the formation of legislation in order to make citizens aware of the law. Throwing away justice in order to pursue togetherness does not take risks and deliberately avoids evil so that it is lighter, even though it is threatened by even more serious harm, should be considered carefully.

Avoiding inequality in the age limits of men and women in marriage, providing encouragement and role models regarding the revision of the Marriage Law, the first step in realizing togetherness to protect rights before children in Indonesia. This method prioritizes togetherness and closeness to children, so that making decisions regarding children's rights is the responsibility of the parties involved. From that, reforming the age of marriage in the marriage law is the basis for upholding justice in the existing law in Indonesia.

CONCLUSION

The concept of the age limit for marriage in national law is stated in the Law of the Republic of Indonesia Number 16 of 2019 amendments to Law Number 1 of 1974 concerning Marriage, from actions based on Islamic law, very contrary to the laws and regulations in Indonesia. From an Islamic point of view, actions like this can be used as a form of action against national law. From that, it really explains that studies from previous fiqh books or books are in harmony and appropriate at that time, while at this time more in-depth discussion is needed to review the issue of the content of the law in the legislation in order to realize the framework for achieving what is meant by Islamic law reform, especially at this time in the era of globalization of human civilization which is increasingly advanced.

It needs to be reviewed, whether it has been effective or not yet applied to the community in marriage and how the community responds to the Marriage

Law, The determination is very firm in determining what is stated in the Law of the Republic of Indonesia Number 16 of 2019 concerning Marriage, consideration of *maslahah* and harm is relative. The condition of the Republic of Indonesia requires stricter regulations. Creating justice for the common good so that it can create legal awareness in the Indonesian people in direct marriage regarding the provisions of adult age and marriage age for children.

The issue of the minimum age limit for marriage is an area of *ijtihadiah* so that it is always open to changes when conditions, society, time and place have demanded such changes. In this regard, the author offers to reconstruct this provision to 19 years for women and 21 years for men. This is based on consideration of aspects of biological, psychological, and socio-cultural maturity. As for men, at the age of 21 years, they have fulfilled the requirements to assume responsibility and are able (*rusyd*) to become family leaders.

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