

UNDERAGE MARRIAGE IN THE CLASSICAL AND CONTEMPORARY Fiqh PERSPECTIVE

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Abstract

Young marriage or in the current context called child marriage has long been a culture in Indonesian society. It takes a hard struggle to inhibit the rate of child marriage in Indonesia. The existence of the term young marriage or child marriage is after the provisions of laws and regulations regarding the minimum age limit for marriage, while in Islamic law there is no terminology of young marriage or child marriage. The high rate of child marriage in Indonesia is because Indonesian society still adheres to the understanding that after reaching puberty it is permissible to marry, regarding age is a freedom given by Allah to determine for themselves based on the situation and conditions of each individual. This understanding is not without reason, however based on the absence of a verse of the Qur'an that clearly and specifically mentions the age limit for marriage and there is no hadith of the Prophet that directly mentions the age limit. As time goes by and science becomes more sophisticated, this understanding must be immediately shifted to the understanding that the minimum age limit must be understood as an effort to save the future of the nation by using Muhammad Syahrur's limit theory as an analytical tool.

Kawin muda atau dalam konteks kekinian disebut perkawinan anak telah lama membudaya di masyarakat Indonesia. Dibutuhkan perjuangan keras untuk menghambat laju angka perkawinan anak di Indonesia. Adanya istilah kawin muda atau perkawinan anak adalah setelah adanya ketentuan peraturan perundang-undangan terkait batas minimal usia kawin, sedangkan dalam hukum islam tidak ditemukan terminologi kawin muda atau perkawinan anak. Tingginya angka perkawinan anak di Indonesia disebabkan karena masyarakat Indonesia masih berpegang pada pemahaman bahwa setelah mencapai baligh dibolehkan menikah, terkait usia adalah kebebasan yang diberikan Allah untuk menentukan sendiri berdasarkan situasi dan kondisi masing-masing individu. Pemahaman itu bukan tanpa alasan, akan tetapi didasarkan pada tidak adanya ayat al-Qur'an yang secara jelas dan terarah menyebutkan batas usia perkawinan dan tidak pula hadits Nabi yang secara langsung menyebutkan batas usia. Seiring perjalanan waktu dan semakin canggihnya ilmu pengetahuan, pemahaman tersebut harus segera digeser dengan pemahaman bahwa pembatasan usia minimal harus difahami sebagai upaya menyelamatkan masa depan bangsa dengan menggunakan teori limit Muhammad Syahrur sebagai alat analisis.

Keywords: *Culture, Young Marriage, Classical and Contemporary Fiqh*



A. INTRODUCTION

The phenomenon of marrying at a young age has been widely found in Indonesia. Marrying young often raises polemics because it is considered a trigger for high divorce rates. This is because young people who marry young are usually unstable and not ready to build a household.

Despite much opposition, the habit of marrying young is still widely found in several regions in Indonesia. A number of young marriage groups consider that marrying at a young age is a solution for young people to avoid sin or to live independently so as not to burden the family. Five regions known for the habit of marrying young are Madura, Indramayu, South Sulawesi, West Sulawesi and West Sumatra.¹

Early marriage, which in the current context is more often called child marriage, cannot be separated from the social, economic, cultural and religious conditions that develop in society. A number of social, cultural, economic and political factors that vary from one context to another perpetuate the practice of child marriage. UNICEF data shows that social norms that accept child marriage are influential at all economic levels in society. Marriage is sometimes used as an outlet for the stigma associated with women's sexual experiences outside of marriage, including due to sexual abuse and teenage pregnancy.²

The problem of underage marriage practices still occurs frequently and has a significant influence on the quality of human resources caused by education, culture or environment, economy, public legal awareness, free association, social media, and pregnancy outside of marriage (married by accident).³

The Law on Marriage requires that in order to marry a person who has not reached the age of 19 (nineteen) years, the age of marriage has a logical consequence of the purpose of marriage, namely that prospective husband and wife are required to have physical, mental, physical and spiritual maturity when entering the world of marriage and have an impact on the household that is to be built so that it can produce offspring who are physically and mentally healthy and of good quality. It is undeniable that, in addition to its positive values, underage marriage also has many negative consequences, such as divorce, domestic violence, psychological and mental, family resilience, high maternal, infant and child mortality rates. Medically, it is susceptible to cervical cancer.⁴

¹ Lima Daerah di Indonesia yang Punya Tradisi Nikah Muda, <https://news.okezone.com/read/2016/02/04/340/1305079/lima-daerah-di-indonesia-yang-punya-tradisi-nikah-muda?page=2>

²Mardi Candra, Marriage Dispensation Law Update in the Indonesian Legal System, Jakarta, Kencana, 2021, p. 52.

³Abdurrahman, Compilation of Islamic Law in Indonesia, (Jakarta: Akademika Pressindo, 1992), p. 114.

⁴Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage

There are many factors that cause early marriage. Some of them are because the perpetrators, especially women who marry early, avoid free association or have already done free association.

In addition to the factor of free association, the occurrence of early marriage is also inseparable from local culture. Why is culture considered to have a role in the occurrence of early marriage? This is as stated by Hamoes who said that in living in society, all human thoughts and views are interconnected with the socio-cultural context which eventually forms into a habit that changes with the times. Basically, all forms of habits in social and cultural matters always start from social interactions that occur because of the perspectives of individuals in a social group. This reciprocal relationship then forms a socio-cultural system.

Furthermore, Kistanto (in Hamoes, 2020) stated that the dynamics and development of socio-cultural systems are closely related to the conditions of socio-cultural regions, population, social organizations and institutions of society and human thinking in society. A socio-cultural system is basically initiated by the ability of humans to think and organize themselves so that they have the capacity to control the environment, until finally the environment can also shape the humans in it.⁵

Indonesia is one of the countries with the largest Muslim population in the world. For Indonesian Muslims, marrying at a young age is still controversial and still a polemic because of the assumption that it was exemplified by the Prophet through the hadith about his marriage to Aisyah.

The hadith relating to Aisha's marriage to the Prophet is a hadith in the form of an action (fi'liyah), although scholars still differentiate whether this action applies generally or specifically to the Prophet.⁶

The above doctrine then gave birth to the understanding that from the side of sharia, child marriage finds its justification. In fact, of course, it can be distinguished between the formulation of sharia as God's "command" and the fiqh narrative as the result of the intellectual creation of the scholars.⁷

In addition to the assumption exemplified by the Prophet, the culture of early marriage is driven by strong traditions and beliefs in certain myths. The rooted tradition of early marriage is related to the continued strong belief in myths about girls. As expressed by Suwandi, a marriage registrar in Tegaldowo Rembang, Central Java, "The custom here is that if someone proposes to a daughter, she must accept it, if she is not accepted, she may not be available for a long time."

⁵Yudho Bawono, Setyaningsih, Lailatul M Hanim, Masrifah, Jayaning S Astuti, Culture and Early Marriage in Indonesia, <https://journals.usm.ac.id/index.php/jdsb/article/view/3508>

⁶Imron Rosyadi, Reconstruction of the Epistemology of Islamic Family Law, Jakarta, Kencana, 2023, p. 127.

⁷Fadil and Nor Salam, New Directions of Family Law in Indonesia, Magnum Pustaka Utama, Yogyakarta, 2020, p. 62.

Teenagers are already married, and many are already widows because their parents do not care whether their children are willing to be married or not. The most important thing, according to the parents, is to marry them first, even if they are divorced later.⁸

The emergence of the term young marriage or child marriage is due to the issuance of provisions regarding the minimum age limit for marriage as regulated in Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage which has been amended by Law Number 16 of 2019. Before the provisions regarding the minimum age for marriage were changed in 2019, the minimum age limit for marriage was 19 for men and 16 for women.

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.⁹ especially when compared to the Philippines which allows boys to marry at the age of 15 and girls who have reached puberty.¹⁰

Why Indonesia takes a minimum marriage age limit that is quite high compared to other countries, this may be due to the lack of synchronization of existing laws and regulations. For example, Law Number 23 of 2002 concerning Child Protection states that a child is someone who is not yet 18 years old, including a child who is still in the womb.¹¹ Based on the provisions of this article, a person who is not yet 18 years old is called a child, so that a person who marries at the age of under 18 years is categorized as a person who marries at a child's age.

From the description above, it is clear that early marriage or child marriage has become a culture in Indonesian society, the culture of early marriage in Indonesia is still relatively high, and the perpetrators are mostly Muslims. Therefore, in order to gain a comprehensive understanding of the still high culture of early marriage in Indonesia, in this study the researcher wants to examine the problems related to how the law of early marriage or early marriage is from the perspective of classical Islamic jurisprudence. And how is the study of contemporary Islamic jurisprudence (Islamic jurisprudence) when it is confronted with the provisions of the minimum age limit for marriage in Indonesia?

B. METHODOLOGY

The theory used in this research is the *first theory* of welfare based on the principles of ushul fiqh:

⁸Strong Tradition, One of the Causes of Early Marriage, <https://www.dw.com/id/kuatnya-tradisi-lahan-satu-pembabab-pernikahan-dini/a-4897834> accessed June 13, 2024 at 13.00

⁹Ahmad Tholabi Kharlie, Asep Syarifudin Hidayat, Muhammad Hafiz, Codification of Contemporary Islamic Family Law, Jakarta, Kencana, 2020, p. 201.

¹⁰Ahmad Tholabi Kharlie et al, Codification of Family Law, p. 209

¹¹Article 1 paragraph (1) of Law Number 23 of 2002 concerning Child Protection.

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Rejecting mafsadah (damage) takes priority over taking benefits.

The second limit theory or The Limit Theory (Nazariyah al-Hudud) which was initiated by Muhammad Shahrur. 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 makân). 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).¹²

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.¹³ This research is a normative legal research with a literature study data collection method or documentary study with data sources of several expert opinions. Data processing and data analysis with a qualitative approach.

C. DISCUSSION AND RESULT

1. Early Marriage Perspective of Islamic Fiqh with Mafsadat and Maslahah Approaches.

Marriage is a common thing experienced by everyone. It can be called a personal right of every individual who wants to carry it out. In addition to God having radiated nature to every living creature, especially humans, to continue their descendants, marriage can also allow for maintaining human dignity. Many people want to find happiness through marriage. They assume that marriage is an easy matter and is considered the best door to earning a living. What is meant is that God in His word promises that those who marry will be given a path to finding a living. Moreover, if it is then added with other verses that ensure that every being on earth has been guaranteed a living by God.¹⁴ So, in this way, anyone has the right to marry without any shadow of administrative and formalistic nuances.

The fact is, married life is not all sweet as people imagine, various problems that arise before and after marriage become an interesting phenomenon in itself. To build an ideal household, it turns out that it is not just love or a pile of wealth,

¹²Abdul 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>

¹³Bambang Waluyo, *Legal Research in Practice*, Sinar Grafika, Jakarta, 2002, p. 17

¹⁴Abdurrahman, *Compilation of Islamic Law* (Jakarta: Akademika Pressindo, 1995), p. 35.

there are still many things that must be prepared and owned, especially the readiness of both prospective brides and grooms. Many cases show that a lasting marriage will occur if both husband and wife are equally ready to sail the ship of the household that is not free from various problems, all of which are summarized in the word maturity.¹⁵

Determining the age limit for marriage is very important. Because a marriage requires not only biological but also psychological maturity.¹⁶ Because marriage for a person or society is a sacred thing, because in marriage it aims to build a harmonious relationship between husband and wife. However, the reality proves that to maintain harmony and sustainability together, it is not an easy thing to do for husband and wife, even in terms of affection it is difficult to realize due to psychological, biological, economic factors and differences in the tendency of the outlook on life.¹⁷

Before discussing early marriage in more depth, it is first necessary to explain what is meant by early marriage. Early marriage or underage marriage is a marriage that is carried out before the minimum age limit for marriage set by law, which is 19 years.¹⁸

The definition of early marriage is marriage under the age permitted by the Indonesian Child Protection Law and the Indonesian Marriage Law with various causes. Early marriage is marriage that occurs to children. Children, according to the nationally accepted definition, are people aged between 0-18 years. If married or married at that age, then the marriage is considered a child marriage or early marriage.¹⁹

In Indonesia, early marriage by both men and women is still quite high. The rampant early marriage in various regions is a major concern for the Ministry of Women's Empowerment and Child Protection. This section provides an overview that although religious and cultural norms in some communities reject early marriage, communities in certain regions still use religious and cultural interpretations as justification for this early marriage practice. That is why norms, culture and values in society that support this early marriage practice must receive special intervention. For example, by introducing a new narrative and culture that the ideal marriage is at an adult age and the function of the family in a pluralistic Indonesian society.²⁰

¹⁵Santi WE Soekanto, *Challenges of Modern Women* (Jakarta: Erlangga, 1995), p. 104

¹⁶Muh. Hatta, *Age Limits for Marriage in the Perspective of Classical and Contemporary Ulama*, *Jurnal Al Qānūn*, Vol. 19, No. 1, June 2016.

¹⁷Minnuril Jannah, RN, & Halim, A. *Premarital Education as an Effort to Prevent Divorce from the Perspective of Islamic Law and Positive Law*, *Amalee: Indonesian Journal of Community Research and Engagement*, Volume, 3. No, 1, (2022), pp. 167–178.

¹⁸Imron Rosyadi, *Reconstruction of Legal Epistemology*, p. 121

¹⁹Kartika Sri Rohana, *Early Marriage from an Islamic Law Perspective*, *Article History: STIS Darussalam Bermi*, Volume 2, No, 1, 2023, p. 134.

²⁰Mayadina Rohmi Musfiroh, 'Early Marriage and Child Protection Efforts in Indonesia', *De Jure: Journal of Law and Sharia*, Volume, 8. No, 2, 2016, p. 64–73.

According to Indonesian law or positively explained in the Civil Code (KUHP) before the existence of Law Number 1 of 1974 concerning marriage has outlined the age limit for marriage. The Civil Code (KUHP) Article 29 states that men who have not reached the age of eighteen full years and women who have not reached the age of fifteen full years, cannot enter into marriage. While the limit of maturity of a person based on the Criminal Code Article 330 is the age of 21 (twenty one) years or has never been married. However, based on the Closing Provisions of Law Number 1 of 1974 concerning Marriage Article 66 that for marriage and everything related to marriage based on this Law, then with the enactment of this Law, the provisions regulated in the Civil Code are declared invalid. One of them is the invalidity of the provisions on the age limit for marriage because Law Number 1 of 1974 concerning Marriage also regulates the age limit for marriage. While the changes to the Marriage Law number 1

Until now, scholars have not found an absolute minimum age limit for someone to get married in Islam, it is not stated that someone can only get married after a certain age. The ambiguity regarding the minimum age limit for someone to get married is what then produces different opinions.

Child marriage, or often called early marriage, is a serious problem faced by developing countries including Indonesia. Various studies have concluded the need to stop child marriage due to its extraordinary impact on humanity, especially maternal and infant mortality. Efforts to identify causal factors are an absolute requirement in order to formulate strategic policies to prevent child marriage in developing countries.²¹

Child marriage is a complex issue. Factors that are suspected to be the causes of early marriage include poverty, geography, lack of access to education, gender inequality, social conflict and disasters, lack of access to comprehensive reproductive health services and information, social norms that reinforce certain gender stereotypes (for example, girls should marry young) and culture (interpretation of religion and local traditions).²²Such outreach should be carried out in areas that are the places that contribute the most data on early marriages.

The issue of early marriage is still a problem and a subject of debate. The area of study also covers various aspects and involves many parties, such as religious institutions, government institutions (executive and legislative), and mass media (online, print, and television). In relation to this issue, Muslims are divided into two groups, namely those who allow it and those who prohibit it. Apart from all that, the problem of early marriage is an ancient issue that was once covered by piles of history and has resurfaced. If examined further, the phenomenon of early marriage is not new in Indonesia. Many of our ancestors used to marry underage.

²¹Heny Sunaryanto, Socio-Economic Analysis of Factors Causing Child Marriage in Bengkulu, *Journal of Sociology of Nusantra*, Volume, 5. No, 1. Year 2019.

²²Ministry of National Development Planning/Bappenas, *National Strategy for Preventing Child Marriage* 2020.

Even at that time, marriage at a 'mature' age would set a bad precedent for society. Women who did not get married immediately would actually get negative responses.²³

Marriage that is carried out before adulthood (nikah al-shighar) can indeed have several positive impacts, such as avoiding sexual deviation or adultery, gaining peace and affection in a legitimate relationship, quickly having children as the Prophet wanted so that his people would be numerous, and so on.²⁴ However, it cannot be denied that early marriage also has the potential to cause several negative impacts. Among them are the unpreparedness of the reproductive organs so that they are not ready to have sexual intercourse, an unbalanced emotional condition so that there is the potential for disputes and quarrels that can result in a failed marriage, economic instability caused by the inability to earn a living which will have an impact on the low level of family welfare, and so on. Psychologically, early marriage can also have a negative impact, where children do not understand and are not ready to have physical relations so that it can cause psychological trauma that is difficult to eliminate. The limitations of couples under the age of adulthood have the potential to have a negative impact on the survival of the family, which can disrupt harmony and even lead to domestic violence and divorce. Of course, we do not deny that in some cases of early marriage, these negative impacts do not occur.²⁵

It must be admitted that child marriage has become a culture that is rooted in the lives of society. Many things encourage the perpetuation of this tradition, starting from theological assumptions to legal problems that do provide opportunities for marriage for children under the age of marriage.

Theological support comes from the hadith of the Prophet which tells of his marriage to Sayyidah Aisyah. This hadith was then clarified by the practices of the companions, as was done by the Prophet's uncle named Hamzah, where he married his daughter to the son of Abu Salamah, where both were still young, the same thing was done by Ali bin Abi Tholib who married his daughter, Ummi Kulthum to Umar Ibn Khattab, where Ummi Kulthum was still young at that time.

The above doctrine then gave birth to the understanding that from the side of sharia, child marriage finds its justification. In fact, of course, it can be distinguished between the formulation of sharia as God's "command" and the fiqh narrative as the result of the intellectual creation of the scholars.²⁶ This understanding is then assumed to give people the flexibility to determine their own age of marriage.

²³Adiyana Adam, "Dynamics of Early Marriage", Al-Wardah, Volume, 13. No, 1. (2020), p. 14.

²⁴Kurdi, 'Underage Marriage from the Perspective of Maqāsid al-Qur'an', Journal of Islamic Law, Volume, 14. No, 1, (2016), p. 76.

²⁵Dwi Rifiani, 'Early Marriage in the Perspective of Islamic Law', De Jure: Journal of Sharia and Law, Volume, 3. No, 2, (2011), p. 127.

²⁶Fadil et al, New Directions of Law, 62.

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 maturity and psychological. QS al-Nur (24) verse 32

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِنَّ يَكُونُوا
فُقَرَاءَ يُغْنِيهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

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.²⁷

The minimum age limit for marriage is not discussed in fiqh books. Fiqh books even allow marriage between men and women who are still small, whether this permissibility is stated clearly, such as the expression: "it is permissible to marry between a man who is still a child and a woman who is still a child", or "it is permissible to marry a man -small men and small women" as contained in the book of syarh Fath al-Qodir (Ibnu al-Humam, 274 and 186). Likewise, this ability is mentioned indirectly, as every fiqh book mentions the authority of mujbir guardians to marry children who are still small or virgins. Even in contemporary fiqh literature, the expression is found: "if a man marries a young woman, then the wife is breastfed by the husband's mother, then his wife becomes haram for him." (Al-Jaziry, IV:94)

This permissibility is based on the absence of a verse in the Qur'an that clearly and specifically states the age limit for marriage and there is also no hadith of the Prophet that directly states the age limit.²⁸

²⁷Imron Rosyadi, Reconstruction of Legal Epistemology, p. 130

²⁸Amir Syarifuddin, Islamic Marriage Law in Indonesia, Kencana, 5th Edition, 2014, p. 66

The benefit of early marriage is to prevent forbidden behavior such as extramarital sexual relations, so that the goal of sharia to preserve offspring can be achieved. However, the harm that may arise from early marriage is also not small, such as the child's unpreparedness in living a household life which can have an impact on the child's psychology, the risk of maternal and child death, and so on. Therefore, the sunnah law can change to obligatory, makruh, or haram, depending on the consideration of the benefits and harms, in accordance with the substance of Islamic law which aims to realize the benefits for humans and provide mercy for the entire universe.²⁹

Based on the explanation above, it can be concluded that early marriage, although originally legal, does not absolutely apply to everyone and in all conditions. This is because in certain conditions that can cause harm, the law can change to makruh or even haram. The provisions of law in Islam are inseparable from the positive and negative values that arise from it. However, the views of Islamic jurisprudence on the regulations contained in the Indonesian Marriage Law can differ. Although there is a discrepancy between the rules of marriage age in the Law and the rules of Islamic jurisprudence, if viewed from the moral message of the marriage law and the substance of Islamic law which is committed to realizing welfare, then the rules are in line with the objectives of the law. However, the state must pay attention to matters of concern to religion regarding emergency reasons that can open up opportunities for marriage under the age determined by the state.³⁰

Due to the absence of a clear and targeted age limit regarding age, society generally considers the benefits and harms of a child being married off immediately or not. Although in general marriage according to Islamic jurisprudence is permissible, it can change according to the situation and conditions. If a person has the ability to marry and if he does not marry he is worried about slipping into adultery, then the law of marriage for him is no longer permissible but obligatory. Likewise, if a person does not have the ability to marry and is worried that if he marries he will neglect his wife or will not be able to fulfill his obligations to his wife and vice versa the wife will not be able to fulfill her obligations to her husband, then marriage for him is forbidden.³¹

Thus, early marriage from the perspective of Islamic law is permissible, but it is very dependent on the situation and conditions that influence it. Based on the change in its illat, the law of marriage can change to sunnah, obligatory, makruh, and haram.³²

²⁹Taqiy al-Dīn al-Nabhanī, *Al-Syakhsīyah al-Islāmiyyah* Juz 3 (Beirut: Dār al-Kutub 'Ilmiyah, 1953), p. 19.

³⁰Zulfahmi, 'Marriage Age According to Islamic Law and Positive Law', *At-Tabayyun*, Volume. 2, No. 2, (2020), p. 63.

³¹Anwar Rachman, Prawita Thalib and Saefudin Muhtar, *Indonesian Marriage Law in the Perspective of Civil Law, Islamic Law, and Administrative Law*, Jakarta, Kencana, 2022, p. 109

³²Mardani, *Islamic Family Law in Indonesia*, Jakarta, Kencana, 2017, page 36

2. Increasing the minimum age limit for marriage from the perspective of the theory of limits Muhammad Syahrul

In the previous description it was explained that the Qur'an uses parameters of suitability for someone who wants to get married.

If the Qur'an uses the word worthy, then now the question is how measure a person's eligibility for marriage. In One verse of Allah links marriage with "baligh" and "rusyd", QS al-Nisa' (4) verse 6 states:

وَأَمْوَالَهُمْ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ ۖ فَإِنْ أَنْسَتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ
أَمْوَالَهُمْ...

"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).³³

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 his wealth.³⁴ 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.³⁵

Islamic law does not limit a certain age for marriage. However, implicitly, Islamic law requires that people who want to get married are truly people who are mentally, physically and psychologically ready, mature and understand the meaning of marriage which is part of worship, just like understanding what prayer is for people who perform prayer, hajj for those who perform hajj, trade transactions for business people.

³³Imron Rosyadi, *Reconstruction of Legal Epistemology*, p. 131

³⁴Hamka, *Tafsir Al-Azhar Juz II*, Singapore, Pustaka Nasional Pte Ltd, 2003,

³⁵Quraish Shihab, *Tafsir Al-Misbah: Impressions, Messages and Harmony of the Qur'an*, 7th ed., Jakarta, Lentera Hati, 2006, vol 2, p. 351

The absence of a specific age in the matter of age actually gives freedom to the people to adjust the matter depending on the situation, interests, personal conditions of the family and/or local community customs, what is clear is that the physical and spiritual maturity of both parties is a priority in religion.³⁶

One of the principles of benefit that must be taken into consideration is in order to create a household that is summarized in the words *sakinah, mawaddah wa rahmah*. On the other hand, it is also closely related to the prohibition indicated by the Qur'an so as not to leave behind a weak generation as stated in Surah al Nisa' Allah says:³⁷

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

"And let those people fear (Allah) if they leave weak offspring behind them whose (welfare) they fear. Therefore, let them fear Allah, and let them speak with correct speech. "

In line with the verse, in the context of Indonesia, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage has been born, which changes the minimum marriage age limit for men and women to the same 19 years. This is also possible for the same reason, namely that there are no specific theological or cultural provisions that definitively indicate the minimum age limit for marriage.³⁸

Through this verse, Allah also directs humans not to leave behind a weak generation. One way to realize this message is by give provisions on marriage that can only be carried out by prospective couples who are physically and mentally mature. In the context of the Marriage Law in Indonesia, the provisions on physical and psychological readiness referred to are when the prospective bride and groom have reached the age of at least 19 years.³⁹

Regarding the review of the age of marriage in Islamic Law in Indonesia, it is stated in Law No. 1 of 1974, Article 6 paragraph 2, which reads, 'to carry out a marriage, a person who has not reached the age of 21 must obtain permission from both parents'. Article 7 paragraph 1 also explains "marriage is only permitted for men who are 19 years old and women who have reached the age of 16 years'. However, in September 2019 the Indonesian House of Representatives officially ratified Law No. 16 of 2019 that men and women to carry out marriage must both be 19 years old as an Amendment to Law Number 1 of 1974

³⁶Kurniawan, Young Marriage in the Perspective of Islamic Fiqh, <https://nu.or.id/opini/nikah-muda-dalam-kacamata-fikih-islam-cPtZ0>

³⁷Qs an-Nisa' verse 9

³⁸Fadil et al, New Directions of Law, p. 65.

³⁹Fadil et al, New Directions of Law, p. 67.

concerning Marriage. This change in the minimum limit for marriage is certainly intended that the age of marriage becomes an inherent part of the purpose of marriage and inspires the basis of marriage, and it is hoped that in the future it can minimize conflict in the household. The indications contained in this law need to be changed by considering the psychological quality aspect. However, it needs to be emphasized that this thinking is ijihadi in nature, so it requires trial and error, but what is meant is building the quality of the Indonesian generation towards a superior future.⁴⁰

Changes and developments in the era necessitate the need for new methodologies and approaches in interpreting the Qur'an. This is because no matter how great an interpretation product is, it is a product of the children and epistern (way of thinking) of its interpreters. Muhammad Syahrur is a contemporary critical thinker from Syrian Arabia, to try to "offer" a new methodology with the theory of limits (nazhariyyah al-hudud) in interpreting the Qur'an. A theory that is indeed 'original', but at the same time controversial. It is said to be original, because the theory is the result of scientific experimentation that tries to interconnect the science of interpretation with modern linguistic theory and modern science, especially mathematical theory, it is called controversial because for some scholars, the theory is considered to violate the interpretation model of previous scholars.⁴¹

Comments from some circles that Syahrur was greatly influenced by extra analysis in understanding a text found its performative momentum when exploring his limit theory. Syahrur was influenced by Isaac Newton's mathematical analysis model (at-tahlil ar-riyadhi) which he described with two vertical and horizontal ordinate points. The vertical line symbolizes the law that is always changing while still considering God's frame (hadd), while the horizontal line is symbolized as an objective condition where the law is applied in a certain historical context.⁴²

In other words, the Theory of Limits (Nadzariyyat al-Hudud), a theory that is a breakthrough in the field of ushul fiqh. Which according to Hallaq in the introduction to the book Principles and Basics of Contemporary Islamic Legal Hermeneutics is greatly influenced by his educational background in the field of natural sciences, especially Mathematics and Physics, from here Syahrur's reconstruction of Islamic law becomes interesting and unique.⁴³

⁴⁰Yusuf, "Dynamics of Marriage Age Limits in Indonesia: A Study of Psychology and Islamic Law." *Journal of Islamic Law*, 2 (2020), pp. 9-8.

⁴¹Abdul Mustaqim, "Muhammad Syahrur's Hudud Theory and His Contribution to the Interpretation of the Qur'an." *Journal of Al Quran and Hadith Studies*, 1(2017), p. 2.

⁴²Asriaty, "Questioning the Islamic Legal Thoughts of Muhammad Shahrur." *Journal of Islamic Law*, 2 (December, 2014), p. 228.

⁴³Mia Fitriah Elkarimah, "Syahrur's Language Approach in the Study of the Text of the Qur'an." *Deixis Journal*, 2 (May, 2015), p. 139.

Syahrur's theory of limits offers provisions for minimum limits (*al-hadd al-adna*) and maximum limits (*al-hadd al-'la*) in implementing Allah's laws. This means that Allah's laws are positioned as elastic, as long as they remain between the minimum and maximum limits that have been determined. The area of human *ijtihād* according to Muhammad Syahrur is between the minimum and maximum limits. The elasticity and flexibility of Allah's law can be described as the position of a football player who is free to play the ball, as long as he remains on the existing field lines.⁴⁴

Marriage is not for momentary needs but for life because marriage contains noble values, with the existence of a physical and spiritual bond between a man and a woman which is built on sacred values because it is based on the Almighty God which is the first principle of Pancasila, meaning that marriage is not enough with just a physical bond or a spiritual bond, but must be both, the establishment of a physical and spiritual bond is the foundation in forming a happy and eternal family.⁴⁵In order for a marriage to achieve its goals, rules are needed to realize it, the logical consequence of this goal is that men and women who will marry are required to have physical and spiritual maturity before entering the world of marriage. This is closely related to the age of the two prospective brides and grooms. Thus, the age of marriage is more related to physical ability and mental readiness to build a household.⁴⁶

In society, there are many problems with marriage law, one of which is underage marriage. This is considered a serious problem, because it raises controversy in society, not only in Indonesia but also an international issue, in fact this kind of marriage often occurs for a number of reasons and views, including because it has become a tradition or habit of society that is considered bad. Because in customary law there is no age limit for adults or not yet adults and there is no fiction like in civil law. Customary law only recognizes incidentally whether a person is related to age and mental development should be considered competent or not, able or not to carry out certain legal acts in certain legal relationships, not yet competent means not being able to calculate and maintain their own interests.⁴⁷

Regarding the minimum age limit for marriage, if we refer to the limit theory initiated by Muhammad Syahrur, based on his study of legal verses, Syahrur concluded that there are six forms in the limit theory that can be described in mathematical form as stated, one of which is *Halah hadd al-adna*

⁴⁴M. Zainal Abidin, "The Idea of Muhammad Syahrur's Limit Theory and Its Significance for Enriching the Science of Usul Fiqh." *Al-Mawarid Journal* (2006), p. 108.

⁴⁵Sonny Dewi Judiasih, *Underage Marriage in Indonesia* (Bandung: PT Refika Aditama), p. 1.

⁴⁶Yusuf, "Dynamics of Marriage Age Limits in Indonesia: A Study of Psychology and Islamic Law." *Journal of Islamic Law*, (2020), p. 3.

⁴⁷Sonny Dewi Judiasih, *Underage Marriage in Indonesia*, (Bandung: PT Refika Aditama, 2018), pp. 2-5.

(minimum limit position). The resulting area is in the form of an open curve that has one minimum limit point, and is placed adjacent to a line parallel to the X-axis. For this case, it can be seen in QS An-Nisa: 22-23, regarding 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.⁴⁸

Likewise, the age of marriage is not clearly and specifically mentioned in the Qur'an. Although marrying under the age specified by law is not forbidden according to the Qur'an, it can be forbidden if based on research that marrying under that age results in bad things for the perpetrators.

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.⁴⁹

Based on several research results and one of them as described above, then the minimum age limit for marriage is one form of government *ijtihad* to save the future of the nation. Related to this condition, *Halah hadd al-adna* (minimum limit position) as initiated by Muhammad Syahrur should be implemented.

⁴⁸Adji 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 humans.>

⁴⁹Imron Rosyadi, *Reconstruction of Legal Epistemology*, p. 123

According to Syahrur, as people living in modern times, we should not use the glasses of our predecessors to solve problems. problem and the challenges we face today. Because, the humanitarian problems we face today are very different from the humanitarian problems in the time of the prophet. If we have to refer to the interpretations of the previous people, it means we are thinking backwards. This attitude will not only result in stagnation of thought, but will also lead Muslims to decline and backwardness. Therefore, Syahrur strongly criticized the thinking model of the previous people (salafiyah) who always refer to the thinking model of the salaf, namely the generation of companions, tabi'in, and tabi'ut tabi'in. Because, according to Syahrur, if this kind of thinking model is followed, then Islamic thought, which is in fact the result of interpretations of previous scholars, will become an ideology that must be accepted as taken for granted without criticism. According to Syahrur, if Muslims want to progress, there must be moral-intellectual courage to break out of the confines of the hegemony of past thought.⁵⁰

Thus, contemporary scholars suggest that marriage is not only required to have reached puberty, because puberty only indicates that someone is biologically capable, but in addition to puberty, someone who wants to get married must also have *rusyd* or intelligence in the sense that he is an adult in the true sense of maturity, because marriage is not only about biological relationships but also concerns all aspects of life. If marriage is only required to have puberty which is marked by wet dreams, while someone who is going to get married does not yet have the characteristics of maturity in the true sense of being able to face all the problems of household life, then it is very feared that such a marriage will bring great harm. Whereas religion teaches that harm must be eliminated.

Based on these considerations, a person who wants to get married with considerations of public interest and avoiding harm needs to meet minimum age requirements.

Viewed from the perspective of classical fiqh, the permissibility of marriage is indeed conditioned on the person reaching the age of puberty, which is around 15 or 16 years for men and has menstruated for women. This is based on the absence of texts in the Qur'an or Hadith that determine or direct marriage at a certain age.

However, along with the development of the era, technology is increasingly sophisticated. A person's understanding of health is increasing along with research results indicating that marriage at a young age is very bad for the reproductive and psychological health of the mother who gives birth and the child who will be born. So by referring to the results of research both in terms of reproductive and psychological health of a person, the law of early marriage or

⁵⁰Abdul Mustaqim, *Epistemology of Contemporary Interpretation*, LKiS, Yogyakarta, 2011, p. 124.

child marriage can be forbidden because it will cause harm to the perpetrator and the child who is born.

The minimum age limit for marriage implemented in Indonesia, if tested using Muhammad Syahrur's limit theory, can be justified by considering Rejecting mafsadah (damage) takes priority over taking benefits.

D. CONCLUSION

Classical Islamic fiqh generally justifies early marriage or child marriage for the reason that There is no verse in the Qur'an that clearly and specifically states the age limit for marriage and there is no hadith of the Prophet that directly states the age limit..

Contemporary Islamic jurisprudence suggests that marriage is not only required by someone reaching the age of puberty, because puberty only indicates that someone has biological abilities, but besides puberty, someone who wants to get married must also have *rusyd* or intelligence in the sense that he is an adult in the true sense, because marriage is not only about biological relationships but also concerns all aspects of life. The law of early marriage or child marriage can be haram because it will cause harm to the perpetrator and the child who will be born.

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