

## The Concept of *Sadd Al-Dzāri‘ah* from the Perspective of Asy-Syāṭibī and Al-Qarāfi Towards Minimum Marriage Age Policy in Indonesia

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**Abstract:** The amendment of Indonesian Marriage Law No. 16 of 2019 which raises the minimum marriage age to 19 for both men and women is a crucial step by the government to reduce the prevalence of child marriage and the wide-ranging impacts on reproductive health, education, and social welfare. From the perspective of Islamic law, this policy reflects the principle of *Sadd al-Dzāri‘ah* which is a preventive legal method aimed at blocking any avenue leading to harm (*mafsadah*). Therefore, this study aimed to analyze the application of *Sadd al-Dzāri‘ah* as conceptualized by Imam Asy-Syāṭibī and Al-Qarāfi using a library analysis and a normative juridical method. The results showed that revising the minimum marriage age supported the preventive essence of *Sadd al-Dzāri‘ah*, as it mitigated negative consequences including psychological immaturity, maternal health risks, and socioeconomic inequality. Therefore, this policy embodied the legal protection for society and also actualized the objectives of Islamic law (*maqāsid asy-syari‘ah*) in preserving life (*hifz an-nafs*), intellect (*hifz al-‘aql*), and lineage (*hifz an-nasl*), reaffirming the relevance of fiqh (Islamic jurisprudence) in addressing contemporary legal and social issues.

**Keyword:** amendment to marriage law; Asy-syāṭibī; Al-qarāfi; *Sadd al Dzāri‘ah*; minimum marriage age.

### 1. Introduction

Child marriage is a serious social problem in Indonesia. According to data from the Central Statistics Agency (BPS), child marriage rate reached 6.9% in 2024, down from 8.7% in 2022. However, it remains far from the "zero child marriage" target set in the 2030 Sustainable Development Goals (SDGs)<sup>1</sup>. This phenomenon has far-reaching impacts including increased reproductive health risks and maternal mortality, high school dropout rates, and the evolution of new social and economic inequalities.<sup>2</sup> In the

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<sup>1</sup>Badan Pusat Statistik, 'Proporsi Perempuan Umur 20-24 Tahun Yang Berstatus Kawin Atau Berstatus Hidup Bersama Sebelum Umur 18 Tahun Menurut Provinsi (Persen)', 2025, 1.

<sup>2</sup>Florencia Marsa, 'Angka Pernikahan Anak Di Indonesia Terus Menurun', 2024, 1.



socio-cultural context, some communities still perceive marriage after puberty as normal, even necessary to prevent adultery (*zina*)<sup>3</sup>. However, this perception often overlooks the psychological maturity and socioeconomic readiness of prospective young couples.<sup>4</sup>

In response to this situation, the government revised Law Number 1 of 1974 concerning Marriage by enacting Law Number 16 of 2019, which sets the minimum age for marriage at 19 for both men and women. This revision is intended to reduce the number of child marriages and protect children's rights from practices that can lead to social and biological harm<sup>5</sup>. Legally, the change represents state intervention in providing legal protection for the citizens. Ethically and religiously, the policy can be understood as an application of the principle of prevention (*dar' al-mafāsid*) in Islamic law.

Marriage is a divine law and a human necessity. Therefore, the law explicitly stipulates this in Article 28 B, paragraph (1), of the second amendment to Marriage Law Number 16 of 2019, which states: "Everyone has the right to establish a family and continue the lineage through a legal marriage." This regulation clearly states that marriage is a constitutional right of all Indonesian citizens. No Indonesian citizen may prohibit marriage in Indonesian jurisdiction, provided marriage complies with applicable Indonesian laws, including the minimum age for marriage. The regulation of the minimum age for marriage in Marriage Law is a state control measure to prevent deviations.<sup>5</sup>

Child marriage is a sensitive issue because it is closely related to the legal consciousness in society (the living law). Disagreements over determining the minimum age for marriage often arise, leading to deadlocks in legal interpretation. Consequently, society frequently ignores the risks arising from child marriage.<sup>6</sup> The minimum age for marriage still plays a crucial role because marriage requires psychological maturity from both parties.<sup>7</sup> The risks of child marriage are significant, as a person's age indirectly influences the mindset, character, and family environment. At an immature age, a person tends to be more easily offended, jealous, withdrawn, quiet, and have difficulty

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<sup>3</sup> Eddy Fadlyana and Shinta Larasaty, 'Pernikahan Usia Dini Dan Permasalahannya', *Sari Pediatri* 11, no. 2 (2016): 136, <https://doi.org/10.14238/sp11.2.2009.136-41>.

<sup>4</sup> Rina Yulianti, 'Dampak Yang Ditimbulkan Akibat Perkawinan Usia Dini', *Pamator Journal* 3, no. 1 (2010): 1–5, <https://doi.org/10.21107/pamator.v3i1.2394>.

<sup>5</sup> Nahdiyanti, Ahyuni Yunus, and Nurul Qamar, 'Implementasi Perubahan Kebijakan Batas Usia Perkawinan Terhadap Perkawinan Di Bawah Umur', *Journal of Lex Generalis* 2, no. 1 (2021): 116–28, <https://doi.org/10.52103/JLG.V2I1.313>.

<sup>6</sup> Siti Qomariatul Waqiah, 'Diskursus Perlindungan Anak Perempuan Di Bawah Umur Pasca Perubahan Undang-Undang Perkawinan', *An-Nawazil* 1, no. 2 (2019): 65–79, <https://doi.org/10.69784/annawazil.v1i02.54>.

<sup>7</sup> Yulianti, 'Dampak Yang Ditimbulkan Akibat Perkawinan Usia Dini'.

controlling the emotions.<sup>8</sup> To avoid these risks and harms, the government amended the 1974 Marriage Law in 2019 to raise the minimum marriage age. Previously, the minimum marriage ages were 19 for men and 16 for women, but subsequently raised to 19 for both gender.

The implementation of this new law, particularly regarding the change in the minimum age for marriage, has raised concerns in the community among child rights advocates. These concerns relate not only to gender equality but also to the fulfillment and protection of the rights of children entering marriage. For example, although the previous minimum age for girls was 16, child marriages are still common in society with girls aged 15 or younger often married off by the parents. There are concerns that the number of child marriages could actually increase with the change in the minimum age for marriage to 19, given the various influencing social and cultural factors.<sup>9</sup>

The government's efforts when connected to the concept of Islamic law are referred to as *Sadd al-Dzāri'ah* efforts, namely efforts to block or prevent any idea that could lead to something forbidden or harmful. This concept comprises the principle of duality or binary opposition, namely between *mafsadah* (harm or damage) and *maslahah* (goodness or benefit), which correlates with natural law or *Sunnatullah*. The principle of sharia (Islamic law) is to realize goodness while preventing evil, or to attract benefits and repel harm (*madharat*).<sup>10</sup> An important point is that the application of *sadd al-Dzāri'ah* in the reconstruction of contemporary Islamic family law in Indonesia has been adopted in several current marriage issues, such as restrictions on approval for polygamy and the minimum marriage age,<sup>11</sup> which is the focus of this study.

Many studies have examined the minimum age for marriage, focusing on the consequences of child marriage or on changes to the law. These include Siti Qomariatul Waqiah's study,<sup>12</sup> "Diskursus Perlindungan Anak Perempuan di Bawah Umur Pasca Perubahan Undang-Undang Perkawinan (Discourse on the Protection of Underage Girls Following Amendments to Marriage Law)," asserting that the amendments improved protection for underage girls by raising the minimum marriage age.

<sup>8</sup> Abdul Aziz, 'Batas Usia Perkawinan Dalam Undang-Undang Nomor 16 Tahun 2019: Analisis Psikologi Dan Maslahah Mursalah', *Tasyri: Journal of Islamic Law* 1, no. 1 (2022): 25–44, <https://doi.org/10.53038/tsyr.v1i1.3>.

<sup>9</sup> Siti Qomariatul Waqiah, 'Diskursus Perlindungan Anak Perempuan Di Bawah Umur Pasca Perubahan Undang-Undang Perkawinan'.

<sup>10</sup> Ahmad Farikhin, Ahmad Hasan Ridwan, and Heni Mulyasari, 'Kajian Historis Maqasid Syariah Sebagai Teori Hukum Islam', *Asy-Syari'ah* 24, no. 2 (2022): 93–209, <https://doi.org/10.15575/as.v24i2.19332>.

<sup>11</sup> Fajar Rachmadhani, 'Fajar R\_The Use Of *Sadd al Dhari'ah* in Contemporary Islamic Family Law In Indonesia Concept and Practice', *Malaysian Journal of Syariah and Law* 12, no. 1 (2024): 206–15, <https://doi.org/10.33102/mjsl.vol12no1.505>.

<sup>12</sup> Siti Qomariatul Waqiah, 'Diskursus Perlindungan Anak Perempuan Di Bawah Umur Pasca Perubahan Undang-Undang Perkawinan'.

Lisman Lubis's study stated that the amendments to Marriage Law No. 1 of 1974 were intended to prevent child marriage and prioritize the best interests of children.<sup>13</sup> Meanwhile, Neng Poppy Nur Fauziah conducted a study on the implementation of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage regarding child marriages at the Religious Affairs Office in Cipatat District, West Bandung Regency. The study asserted that child marriage refers to a marriage conducted below the legal age stipulated in the Marriage Law. However, these marriages are permitted provided that a dispensation letter is obtained, supported by valid reasons and appropriate evidence.<sup>14</sup>

However, most of these studies remain descriptive and have not explicitly examined this policy from the perspective of the theory of *istinbāt* in Islamic law, specifically the concept of *Sadd al-Dzāri‘ah*. This concept plays a crucial role in anticipating harm and maintaining social welfare through a preventative method in Islamic law<sup>9</sup>. This study aims to make academic contributions by analyzing the application of the concept of *Sadd al-Dzāri‘ah*, as stated by Imam Ash-Syāṭibī and Al-Qarāfi, to the amendments to Marriage Law Number 16 of 2019. The analysis is expected to show that preventive Islamic legal values can be integrated into national legal policies to achieve the welfare of society (*jalb al-maṣālih*) and prevent harm (*dar’ al-mafāsid*).

## 2. Methods

This study used a qualitative data analysis with a normative juridical method and analyzed secondary data in the form of library materials. Therefore, this study served as a Library Research that focused on secondary materials. The main sources used were the works of Imam Syihabuddin Abu al-Abbas Ahmad bin Idris al-Maliki al-Qurafī, namely the book *Al Furuq* and *Al-Muwafaqat fi Usul Al-Syari'at* by Abu Ishaq Al-Syathibi, which were analyzed comparatively to assess the legal basis for the amendment to Law No. 16 of 2019. Subsequently, the study presented statistical data from official BPS publications,<sup>15</sup> which were analyzed descriptively and qualitatively to show the relationship between marriage-age policy and the decline in child marriage.<sup>16</sup> Meanwhile, the secondary sources included various literature, both in book and journal

<sup>13</sup>Lisman Lubis, ‘Dispensasi Kawin Jelang Dua Tahun Pasca Perubahan Undang - Undang Perkawinan’, *Law Jurnal* 2, no. 1 (2021): 1–9, <https://doi.org/10.46576/lj.v2i1.1447>.

<sup>14</sup>Neng Poppy Nur Fauziah and Aliesa Amanita, ‘Pelaksanaan Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Terkait Perkawinan Di Bawah Umur Di Kantor Urusan Agama Kecamatan Cipatat, Kabupaten Bandung Barat’, *Jurnal Dialektika Hukum* 2, no. 2 (2020): 129–47, <https://doi.org/10.36859/jdh.v2i2.513>.

<sup>15</sup>Marsa, ‘Angka Pernikahan Anak Di Indonesia Terus Menurun’, 2024.

<sup>16</sup>Annisa Ramadhannia, ‘Tahun 2024 Pemerintah Berupaya Turunkan Pernikahan Anak 8,74%’, *RRI Digital*, 2024.

form, relevant to the study regarding changes to Marriage Law and the theory of *Sadd al-Dzāri'ah* in determining Islamic Law.

### 3. Results and Discussion

#### 3.1. Impact of Changing the Minimum Marriage Age in Marriage Law Number 16 of 2019.

Marriage represented *Sunnatullah* (the law of God) and the sunnah of the Prophet Muhammad (peace be upon him). It was one of the most important things in maintaining human survival. Human life could not continue and be sustainable without nurturing a good generation, and nurturing a good generation was through marriage.<sup>17</sup> Furthermore, the Prophet Muhammad (peace be upon him) directly justified the importance of marriage in Islam, as stated in a hadith: "*By Allah Almighty! I am the most pious and fearful of you all. I fast and break my fast, pray and sleep, and also marry a woman. Whoever dislikes my actions is not one of me.*"<sup>18</sup> Marriage in Islam was a method to avoid disobedience to Allah SWT and to protect oneself from *zina*. Therefore, it was natural that Islam regulated marriage in detail and carefully, because marriage served as an avenue for humans to gain glory and honor, as humans were indeed noble creatures compared to other creatures.<sup>19</sup>

Based on the growing awareness of the importance of avoiding *zina*, many Muslim communities in Indonesia married off children before the legal age of marriage. This was further intensified by the social stigma among certain groups in rural areas, regarding marriage after puberty as a disgrace.<sup>20</sup> Leading to a high rate of child marriage in Indonesia, this phenomenon was not limited to rural areas but also occurred in urban areas. In certain areas, child marriage was considered commonplace. According to BPS data, the rate of child marriage was over 10%, spread evenly across all provinces in Indonesia.<sup>21</sup> Considering this phenomenon, the fear of *zina* was a positive factor. However, parents and those engaged in child marriages were unaware of the significant legal and health risks.<sup>22</sup> Marriage was a bond that formed a new family, a crucial

<sup>17</sup>M. Tatam Wijaya, 'Faith and Wisdom in Balik Pernikahan', NU Online, 2019, 1–4, <https://nu.or.id/nikah-keluarga/faidah-dan-hikmah-di-balik-pernikahan-LYuw3>.

<sup>18</sup>Muhammad bin Ismail bin Ibrahim al-Bukhari, *Shabih Al-Bukhari* (Mesir: ad-Dāru al-Ālamiyah, 2015).

<sup>19</sup>Ahmad Supandi Patampari, 'Konsekuensi Hukum Pembatalan Perkawinan Menurut Hukum Islam', *Al-Syakhsiyah: Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 2, no. 2 (2020): 86–98, <https://doi.org/10.35673/as-hki.v2i2.894>.

<sup>20</sup>Fadlyana and Larasaty, 'Pernikahan Usia Dini Dan Permasalahannya'.

<sup>21</sup>Neng Hilda Febriyanti and Anton Aulawi, 'Kesadaran Hukum Masyarakat Terhadap Perkawinan Dibawah Umur Ditinjau Dari Undang-Undang No. 16 Tahun 2019 Tentang Perubahan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan', *Pro Patria: Jurnal Pendidikan, Kewarganegaraan, Hukum, Sosial, Dan Politik* 4, no. 1 (2021): 34–52, <https://doi.org/10.47080/propatria.v4i1.1111>.

<sup>22</sup>Suryono Suwikromo and Rudolf S. Mamengko, 'Kajian Hukum Perkawinan Anak Dibawah Umur Menurut Undang Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974.

element in social and national life, regulated by law, both Islamic law and state law.<sup>23</sup> The continued high rate of child marriage is shown in the following table.

Table 1. Percentage of Marriage Cases by Age in Indonesia 2023–2024

NO	USIA	2023	2024
1	10-15	8.34	8.16
2	16-18	25.53	25.08
3	19-24	49.01	49.58
4	25+	17.12	17.18

Source: Central Statistics Agency, *Indonesian Social Statistics 2023–2024*

Table 1 showed that child marriage remained quite high at 33.87%, although there had been a decline since 2023 and 2024. This decline in child marriage cases correlated with the government's target. Woro Srihastuti, Head of the Department of the Ministry of Women and Children's Empowerment and Development, stated that efforts to reduce child marriage had reached the target of 6.92% by 2023<sup>24</sup>.

Eliminating child marriage was a government priority as one of the targets of SDGs, which aimed to achieve zero child marriage by 2030. This step was crucial, given the numerous negative impacts child marriage had on girls<sup>25</sup>.

To realize this program, the government had taken several steps, including the amendment of Article 7 (1) of Marriage Law No. 1 of 1974, which stated the minimum age for marriage by reducing the minimum age for men from 19 to 18 years and for women from 16 to 18 years. Furthermore, the minimum marriage age for men and women was raised to 19 years in Law No. 16 of 2019. There was a decrease in the number of cases of child marriage with this change, as indicated in the following diagram.

Tentang Perkawinan', *Journal of the Japan Welding Society* 91, no. 5 (2022): 328–41, <https://doi.org/10.2207/jjws.91.328>.

<sup>23</sup> Nur Fauziah and Amanita, 'Pelaksanaan Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Terkait Perkawinan Di Bawah Umur Di Kantor Urusan Agama Kecamatan Cipatat, Kabupaten Bandung Barat'.

<sup>24</sup> Ramadhannia, 'Tahun 2024 Pemerintah Berupaya Turunkan Pernikahan Anak 8,74%'.

<sup>25</sup> Florensia Marsa, 'Angka Pernikahan Anak Di Indonesia Terus Menurun', *GoodStats*, 2024.

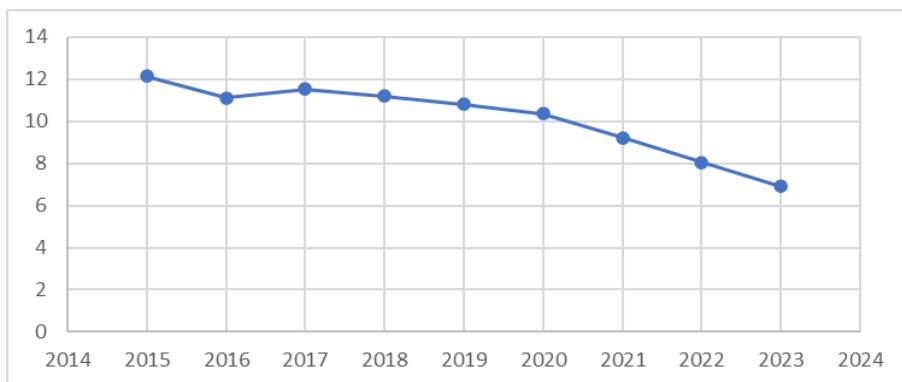


Figure 1. Diagram of the Decline in the Number of Child Marriages in Indonesia

Based on the data from 2018 to 2023, there has been a continuous decline in the number of child marriage cases. In 2015, the percentage of women married under the age of 18 was recorded at 12.14% and became 11.11% one year later. However, in 2017, there was a slight increase of 0.43%, bringing the number of marriages under the age of 18 to 11.54%. Subsequently, the prevalence declined to 11.21% in 2018, decreased further to 10.82% in 2019, fell again to 10.35% in 2020, reduced to 9.25% in 2021, and reached 8.06% in 2022. In 2023, the number of women who got married before reaching age 18 would be only 6.92%.<sup>26</sup> Given this downward trend, the government's objective of reducing the number of child marriages to 0.00% by 2030 was achievable.

Considering the government's programs and targets, a feasible measure was to adjust the minimum marriage ages which were previously set at 19 years for men and 16 for women under Marriage Law No. 1 of 1974. This change should be adjusted or changed to 19 years, as stipulated in the latest Marriage Law, Law No. 16 of 2019. This change started with the enactment of Law No. 35 of 2014, which amended Law No. 23 of 2002 concerning Child Protection. Article 1, paragraph (1), defined a child as a person under 18 (eighteen) years of age, including unborn children.<sup>27</sup>

More specifically, regarding the minimum age for marriage and the amendments, it was stated in Article 7, paragraph (1) of Marriage Law, that "Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years." This provision of Article 7 paragraph (1) was then amended into Law of Indonesia No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage (hereinafter referred to as the Amended/New Marriage Law). The amendments were as follows, "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years."<sup>28</sup>

<sup>26</sup> Marsa, 'Angka Pernikahan Anak Di Indonesia Terus Menurun'.

<sup>27</sup> Febriyanti and Aulawi, 'Kesadaran Hukum Masyarakat Terhadap Perkawinan Dibawah Umur Ditinjau Dari Undang-Undang No. 16 Tahun 2019 Tentang Perubahan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan'.

<sup>28</sup> Febriyanti and Aulawi.

The partial amendment of Marriage Law No. 1 of 1974 to Marriage Law No. 16 of 2019 was not a short process, but a fairly lengthy one. It started with a judicial review by a group of people against Article 7(1) of Law 1/74 at the Constitutional Court (hereinafter referred to as the MK), aiming to make the article conditionally constitutional, namely provided it read as 18 (eighteen) years. The lawsuit against Article 7 (1) of Law 1/74 with the constitutional basis of Article 28 of the 1945 Constitution of Indonesia, in the Constitutional Court Decision No. 30-74/PUU-XII/2014, to increase the minimum age of marriage for women.<sup>29</sup> The reason for this judicial review was the high number of divorces, health problems, and social problems faced by women due to the practice of child marriage.

### **3.2. The Concept of *Sadd al-Dzāri‘ah* According to Asy-Syātibī and Al-Qarāfi**

Asy-Syātibī's full name was Abu Ishaq Ibrahim Ibn Mus'ab al-Garnati, and the name was derived from his family's hometown, which originated in *Syātibah* (also called *Xativa* or *Jativa*). According to Muhammad Mawardi Djalaluddin<sup>30</sup>, his family background remained uncertain. Asy-Syātibī came from an Arab family and was part of Lakhmi tribe. Although referred to as a person from the land of *Syātibah* and traditionally related to Asy-Syātibī, Abu Ishaq was not believed to have been born in that city. Based on history, *Jativa* was under Christian control, and the Muslims were expelled in 1247 (645 AH), a century before Asy-Syātibī's lifetime. It was possible that Asy-Syātibī's family left the country during the expulsion and settled in Granada.<sup>31</sup>

Al-Syatibi was a *mujaddid* and *mujtahid* whose works were renowned in Islamic legal philosophy and recognized as references by figures such as Muhammad Iqbal and al-Mawdudi in various countries, including Indonesia. Part of the most famous works was the book "*al-Muwafaqat fi Usul al-Syari'at*," which summarized the ijtihad views focused on the interests of humanity.

Related to the focus of this article, which was *Sadd al-Dzāri‘ah* (Islamic rulings). There were many definitions of *Sadd al-Dzāri‘ah* according to scholars, including those of Ash-Syatibi and Al-Qarāfi. However, the definition of *Sadd al-Dzāri‘ah* was a compound word (tarkib idhafi) consisting of two words namely, *sadd* and *Dzāri‘ah*. Etymologically, the word *Sadd* implied a barrier or obstruction, as stated in Surah al-Kahfi verse 94: "*Ala an taj'ala baynana wa baynahum saddan*" (so that you make a barrier between them and us). Or it implied a lock or closing, as the Arabs say,

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<sup>29</sup>Nahdiyanti, Yunus, and Qamar, 'Implementasi Perubahan Kebijakan Batas Usia Perkawinan Terhadap Perkawinan Di Bawah Umur'.

<sup>30</sup> Mawardi Djalaluddin, 'Pemikiran Abu Ishaq Al-Syatibi Dalam Kitab Al-Muwafaqat', *Al Daulah : Jurnal Hukum Pidana Dan Ketatanegaraan* 4, no. 2 (n.d.): 289–300, <https://doi.org/10.24252/ad.v4i2.1483>.

<sup>31</sup> Djalaluddin.

"*sadda al-bab saddan ay aghlaqub*" (he closed the door tightly)<sup>32</sup>. The word *Dzāri'ah* suggested a path to an aspect. When the word *Sadd* was combined with the word *al-Dzāri'ah*, the meaning became closing the door, which aimed to avoid damage. For every action that caused damage or loss closed the door to prevent further loss or damage. According to Asy-Syātibī, the definition of *Sadd al-Dzāri'ah* was as follows.

"The fact is that using something that initially seems profitable can cause losses later. For example, someone makes an initial purchase transaction for an item for ten (dinars or dirhams) paid in installments over a certain period. Generally, this transaction is considered valid because buying and selling generally bring various benefits and advantages. However, when the transaction ends with the seller selling the item back to the buyer for five (dinars or dirhams) in cash, the ultimate consequence is that the owner of the item initially sold it to the buyer for five (*dinars* or *dirhams*) in cash and bought it back for ten (*dinars* or *dirhams*) in installments. In this situation, the merchandise becomes a meaningless formality in the transaction because the primary purpose of a valid sale—that is, a real benefit from the exchange of goods—is not met"<sup>33</sup>

Based on the statement communicated by Asy-Syātibī, *Sadd al-Dzāri'ah* was an aspect previously considered permissible, but led to another that was prohibited. Therefore, an action that was previously permissible became forbidden or not permitted. The basis for allowing *Sadd al-Dzāri'ah* to become a legal basis according to Asy-Syātibī was the word of Allah SWT in the QS. Al An'am verse 108, as he said in his book, as follows.

"That the clearly stated provisions regarding *Sadd Al-Dzaara'i* (prohibiting the causes of evil) are included in this category, as Allah Ta'ala says: "And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge..." (QS. Al-An'am: 108).<sup>34</sup>

Based on Asy-Syātibī, the verse provided the legal basis for the permissibility of *Sadd al-Dzāri'ah* as a basis or source for determining Islamic law. The argument was that in this verse, Allah SWT instructed humans to avoid any harmful or threatening idea.

The *Ushull* scholars who used *Sadd al-Dzāri'ah* as a source for determining Islamic law were Imam Al-Qarāfī, whose full name was Shihāb al-Dīn Abū al-Abbās Aḥmad ibn Idrīs al-Qarāfī (1228–1285 CE). He was a prominent scholar of the Maliki school of thought, known for his contributions to fiqh (Islamic Jurisprudence) and *usul al-fiqh* (principles of Islamic jurisprudence). Shihāb was born in Egypt and of Berber ethnicity.

<sup>32</sup>Muhajirin Muhajirin, 'Implementasi *Sadd Al-Dzāri'ah* Dalam Akad Muamalah', *Tatar Pasundan: Jurnal Diklat Keagamaan* 14, no. 1 (2020): 87–99, <https://doi.org/10.38075/tp.v14i1.39>.

<sup>33</sup> Ibrāhīm bin Mūsā bin Muḥammad al-Lakhmī al-Gharnātī Asy-Syātibī, *Al-Muwāfaqāt*, 5th edn (Kairo: Dār Ibni 'Affān, 1997).

<sup>34</sup> Asy-Syātibī.

Al-Qarāfi was recognized as one of the most influential jurists of his time, with the works serving as primary references in the study of Islamic law. He was called Al-Qarāfi because, as Ibn Farhun stated in Al-Dibaj, some of his students said he was known by the nickname Al-Qaraf.<sup>35</sup> The definition of *Sadd al-Dzāri‘ah*, according to Al-Qarāfi is:

“*Saddu al-dzāri‘i*” implied blocking the path or preventing any means that could lead to harm as a form of prevention. Therefore, if an act that was essentially free from harm becomes a means to harm, Imam Malik forbade the act”.<sup>36</sup>

The term *dzari‘ah* (means) was more often used to refer to the intermediaries that led to damage (*mafṣadatan*). This was where the concept of *saddu az-zarā‘i* (closing the path to evil) evolved. *Sadd al-Dzāri‘ah* was one of the methods of legal exploration (*istinbath al-hukm*) in Islam and a source of its law. However, some scholars of *usul al-fiqh* considered *Sadd al-Dzāri‘ah* a *mukhtalaf* (disagreed upon) source of law.<sup>37</sup> *Sadd al-Dzāri‘ah* had attracted the attention of scholars of *usul al-fiqh* because many verses of the Quran indicated the use in legal determination.<sup>38</sup> *Sadd al-Dzāri‘ah* was widely applied and was the primary reference among Malikiyah and Hanabilah circles. In the literature of Hanafiyah and Shafi‘iyah circles, few scholars explicitly mentioned the method of *legal istinbath* through *Sadd al-Dzāri‘ah* method. However, in certain cases, the concept of *Sadd al-Dzāri‘ah* was used as a reference in legal determination.

Scholars used *Sadd al-Dzāri‘ah* as an avenue of legal exploration in Islam. Several verses in the Quran indicated the concept of *Sadd al-Dzāri‘ah* as a method of determining law, such as in Surah al-An‘am, verse 108. This verse prohibited insulting the idols of other religions. Insulting the idols of other religions was a means of insulting Allah SWT. Those whose idols were insulted were inclined to insult Allah SWT. In psychological theory, this was called a Defense Mechanism: an individual whose religion was insulted may retaliate by insulting the religion of the person who insulted them. This was a preventive measure, or, in fiqh, *Sadd al-Dzāri‘ah*. Another Quranic verse that indicated the concept of *Sadd al-Dzāri‘ah* was the legal provision in Surah An-Nur, verse 31, as quoted below:

“... And let them not stamp their feet to make known what they conceal of their adornment...” (QS. An Nuur [24]: 31)<sup>39</sup>

The verse explained that it was forbidden to strike the ground with one's feet, causing one's jewelry to be heard. Although the original law of women striking the

<sup>35</sup> Syihabuddin Ahmad bin Idris, *Al-Dzakirah*, Juz 12 (Beirut: Darul Ghorb Al Islami, n.d.), hlm. 10.

<sup>36</sup> Syihab ad-Din Abu al-Abbas al-Qarafi, *Anwar Al-Baruq Fi Anwa al-Furuq*, Juz 2 (Beirut: Dar-al-Kutub al-Ilmiah, 1998), Hlm. 58.

<sup>37</sup> Hifdhotul Munawwaroh, ‘*Sadd Al-Dzari‘at* Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer’, *Ijtihad : Jurnal Hukum Dan Ekonomi Islam* 12, no. 1 (2018): 63, <https://doi.org/10.21111/ijtihad.v12i1.2584>.

<sup>38</sup> Amir Syarifuddin, *Ushul Fiqh*, Jilid 2, cet. Ke 4 (Jakarta: Prenada Media Group, 2008), 400.

<sup>39</sup> Departemen Agama RI, *Al Qur‘an Dan Terjemahnya* (Bandung: CV. Dipenogoro, 1990), 354.

feet on the ground was permissible, striking the feet could cause the hidden jewelry to be seen by others and potentially arouse anyone who sees or hears it, specifically when it was done in front of men who were not mahram (a male relative), leading to slander. Therefore, it was prohibited by Allah SWT to be a preventive measure.<sup>40</sup>

The preventive measures taken in *Sadd al-Dzāri‘ah* law aimed to prevent events that could have detrimental negative impacts. The legal method was an important part of Islamic intellectual heritage, particularly in the context of Islamic family law.<sup>41</sup> This was because the minimum marriage age was a topic in Islamic family law. Al-Qarāfi and Ash-Syāṭibī divided *al-Dzāri‘ah* into three types, based on scholarly consensus:

- 1) Something that had been agreed not to be prohibited, even though it could become a path for a prohibited act. Examples included growing grapes, even though there exists a potential to process them into alcoholic beverages, or living side by side with neighbors, despite the potential for conflict.
- 2) Something that was agreed to be prohibited, such as cursing idols if one knew or strongly suspected that the idol worshipper would immediately retaliate by cursing Allah.
- 3) Something that was still disputed as to whether it was prohibited or permitted, such as futures trading, due to concerns about usury.

Meanwhile, when viewed from the aspect of damage, Asy-Syāṭibī as quoted by Nasru Haroen<sup>42</sup>, divided *Sadd al-Dzāri‘ah* into four parts, namely:

- 1) The act committed would certainly cause harm. For example, digging a well in front of someone else's house at night, causing the homeowner to fall into it. The person concerned would be punished for doing this intentionally.
- 2) Permissible acts were those that rarely include harm, such as selling food, and usually do not cause harm.
- 3) Acts that could cause harm. For example, selling weapons to the enemy, which could potentially be used to kill.
- 4) Essentially permissible acts were those that contained benefits but could potentially cause harm. For example, *bai' al-ajal* (a sale and purchase at a higher price than the original price because it is not paid in cash).

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<sup>40</sup>Munawwaroh, 'Sadd Al-Dzari‘at Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer'.

<sup>41</sup>Amra Wandri and Wirdatul Jannah, 'Sadd Al-Dzari‘ah Dapat Membantu Menjaga Standar Moral Dalam Hukum Keluarga', *ICSSIS Proceedings* 7, no. 1 (2023).

<sup>42</sup> Nasrun Haroen, *Ushul Fiqih* (Jakarta: Logos, 1997), 109.

### **3.3. Analysis of *Sadd Al-Dzari'ah* from the Perspective of Imam Ash-Syātibī and Imam Al-Qarāfi on the Amendment to Marriage Law Number 16 of 2019**

Regarding the ratification of the amendment to Marriage Law Number 16 of 2019, which amended Law Number 1 of 1974 concerning Marriage—specifically Article 7 paragraph (1) regulating the minimum marriage age—the law previously stipulated that “Marriage was only permitted if the man had reached the age of 19 years and the woman had reached the age of 16 years.” The minimum marriage age for both men and women was raised to 19 years with the amendment. As explained, this change had a significant impact, contributing to a reduction in the number of marriages including individuals at a very young age.

This change was certainly not without reason, but the government and legislative bodies provided fundamental justifications. The impacts of early marriage were extensive, affecting physical, intellectual, psychological, and emotional development, including serious health consequences for children. Furthermore, child marriage almost led to school dropouts—particularly among girls—and led to non-fulfillment of the mandatory 12-year education program. Child marriage also reduced opportunities for young people to develop the potential to become independent, knowledgeable, and productive adults. Girls who married at a young age were vulnerable to various forms of oppression and violence, both sexual and non-sexual, in marriage<sup>43</sup>.

Another impact of child marriage was that young women faced various psychological problems, such as anxiety and depression, with the most severe risk being suicidal ideation due to the unpreparedness for marriage and the responsibilities of adulthood. Additional risks also affected children born to parents who had married at a young age, the mother's immaturity increased health risks for the unborn child, including a higher possibility of infant mortality. At the societal level, these conditions created the potential for new cycles of poverty.<sup>44</sup>

The revision of Marriage Law Number 16 of 2019 reflected the application of the principle of *Sadd al-Dzāri'ah* in positive law, aiming to prevent negative social impacts originating from child marriage, such as psychological immaturity, health risks for mothers and children, and structural poverty. This policy was based not only on sociological considerations but also represented a concrete manifestation of the implementation of *maqāṣid ash-sharī'ah* through the preventive role of Islamic law.

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<sup>43</sup> Nahdiyanti, Yunus, and Qamar, ‘Implementasi Perubahan Kebijakan Batas Usia Perkawinan Terhadap Perkawinan Di Bawah Umur’.

<sup>44</sup> Febriyanti and Aulawi, ‘Kesadaran Hukum Masyarakat Terhadap Perkawinan Dibawah Umur Ditinjau Dari Undang-Undang No. 16 Tahun 2019 Tentang Perubahan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan’.

Although the government's efforts to change the minimum age for marriage were not initially purely governmental, they originated from public pressure through a judicial review of Marriage Law No. 1 of 1974 at the Constitutional Court. This judicial review was undertaken as a public effort to protect constitutional rights related to the minimum age for marriage. It remained the government's obligation to consider the welfare of its citizens, in accordance with the following fiqh principles.

تَصَرُّفُ الْإِمَامِ عَلَى الرَّعِيَّةِ مُنْظَرٌ بِالْمَصْنَاعَةِ

"The policies of the imam/government for the people must be based on *maslahah*."<sup>45</sup>

This principle serves as the basis for the government to ensure that every policy issued reflects the interests and concerns of all citizens. The rule originates from the guidance of Allah SWT in Surah An-Nisa, verse 58:

"Indeed, Allah commands you to render trusts to whom they are due, and when you judge between people, to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing". (QS. An Nissa [2]: 58)<sup>46</sup>

There were many ways to address legal problems in Islamic legal theory, including *Sadd al-Dzari'ah* theory. *Sadd al-Dzari'ah* in Islamic law was a method used by mujtahids to determine legal rulings to promote goodness and prevent harm. As explained in the previous point, *Sadd al-Dzari'ah* functioned as a preventive measure taken by mujtahids to avoid potential harm. Many scholars of fiqh and *uṣūl al-fiqh* used this method in legal determination, including Imam Ash-Syāṭibī and Imam Al-Qarāfī.

Imam Ash-Syāṭibī and Imam Al-Qarāfī, in adopting *Sadd al-Dzari'ah* as a method for determining legal rulings, argued that Allah, in stipulating His laws, often used *Sadd al-Dzari'ah*. An example was the prohibition for a woman to strike her feet on the ground, because it would show her hidden jewelry and might stimulate those who saw or heard it, specifically in the presence of non-mahram men, leading to possible slander (fitnah). This prohibition served as a form of preventive legislation.

However, not all scholars agreed with the broad application of *Sadd al-Dzari'ah*. For instance, the Shāfi'i school was more cautious in applying *Sadd al-Dzari'ah* as a legal methodology in certain cases, fearing that excessive restriction might limit individual freedoms permitted by shari'ah. When the resulting harm was imminent or highly probable (*ghalabat al-zann*), they still used the method to determine legal rulings.<sup>47</sup>

<sup>45</sup> Amrullah Hayatudin dan Panji Adam, *Pengantar Kaidah Fikih* (Jakarta: Amzah, 2023).

<sup>46</sup> Departemen Agama RI, *Al Qur'an Dan Terjemahnya* (Bandung: PT. Putra Gema Risalah, 2009).

<sup>47</sup> Munawwaroh, 'Sadd Al-Dzari'at Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer'.

When it comes to limiting marriage age, those who opposed such regulations—such as scholars in *Shāfi‘i* school—argued from the perspective of *taysīr* (ease) in marriage. They contended that the potential mafsadah was either insufficiently strong or not yet established as *ghālib al-żann*, making it unjustified to prohibit a practice that was originally permissible. The implementation of the minimum marriage age policy also drew criticism in practice, such as concerns over increasing marriage dispensations and unregistered marriages. For this reason, the application of *Sadd al-Dzāri‘ah* in this context needed to be balanced with the principle of *taysīr*, not to create new difficulties.

However, scholars perceived the changes in marriage age in Indonesian legislation, when linked to the theory of *Sadd al-Dzāri‘ah*, as a form of legal prevention. In principle, marriage in Islam, provided its pillars and conditions were fulfilled, was valid, and marrying at a young age was essentially permissible. However, because young marriage often causes, or is very inclined to cause harm, and this harm has been identified and was *ghālib al-żann* (very likely to occur), as expressed by Eddy Fadlyana<sup>48</sup> in his study. Therefore, young marriage was prohibited, which was known as legal prevention, or *Sadd al-Dzāri‘ah*.

The policy of changing marriage age in Indonesian legislation, when connected to *Sadd al-Dzāri‘ah* theory as articulated by Imams Ash-Syāṭibī and Al-Qarāfī, was viewed from the perspective of scholarly reasoning. Controversy remained regarding whether the regulation was prohibited or permissible, provided that child marriage was feared to cause harm, even though its occurrence was not guaranteed.

From another perspective, increasing the minimum marriage age under Marriage Law was considered permissible due to the benefits it brought, though it also entailed certain harms. As explained earlier, many parents married off children at a young age to prevent *zīnā*. Although this was beneficial in principle, it also had the potential to generate negative consequences.

The theoretical foundation of Islamic law held that harm should be avoided, as stated in the *fiqh* maxim, “*al-Darar yuzāl*” (harm must be eliminated).<sup>49</sup> Similarly, a derivative maxim stated:

دَرْ أَلْمَفَاسِدُ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

“Efforts to prevent harm must take precedence over efforts to achieve benefits.”

The principle of *Dar’ al-Mafāsid muqaddam ‘alā Jalb al-Maṣāliḥ* meant that averting harm was prioritised over pursuing benefit.<sup>50</sup> In the context of changing marriage age,

<sup>48</sup> Fadlyana and Larasaty, ‘Pernikahan Usia Dini Dan Permasalahannya’.

<sup>49</sup> Imam Kamaluddin et al., ‘Dinamika Penerapan Qawaид Fiqhiyyah Dalam Fatwa Ekonomi Syariah Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI)’, *AL-AFKAR : Journal for Islamic Studies* 7, no. 4 (2024): 1332–43, <https://doi.org/10.31943/afkarjournal.v7i4.1221.Dynamics>.

marrying off children at a young age indeed carried the benefit of avoiding *zinā*, but it also brought psychological and health-related risks, as previously described. Since the act carried both benefit and harm, the principle dictated that avoiding harm should take precedence over seeking benefit.

Therefore, the amendment to Law No. 16 of 2019, which equalized the minimum marriage age for men and women at 19 years, could be understood from both legal and ethical-religious perspectives. Legally, the amendment represented state intervention aimed at protecting citizens through the implementation of *Sadd al-Dzari'ah*. It constituted a preventive measure against social harms such as structural poverty, domestic violence, reproductive health risks, and educational inequality. Ethically and religiously, the policy reflected the application of the principle of *dar' al-mafāsid* in Islamic law.

The change in the minimum marriage age regulated under Law Number 16 of 2019 in the national legal framework served as concrete evidence of the application of *Sadd al-Dzari'ah* principle characterized as *hājiyyāt*—a measure undertaken to preserve social welfare by preventing probable harms such as domestic violence, family instability, and stunting. This method correlated with *maqāṣid al-shari'ah*, which prioritized the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), and lineage (*hifz al-nasl*), as explained by Ash-Syāṭibī in *al-Muwāfaqāt*, without negating the fundamental permissibility of marriage.

#### 4. Conclusion

In conclusion, this study stated that the adjustments to Marriage Law Number 16 of 2019, which raised the minimum age for marriage, were in accordance with the principle of *Sadd al-Dzari'ah* in Islam, particularly as articulated by Imams Ash-Syāṭibī and Al-Qarāfi. The purpose of this change was to prevent the negative impacts of child marriage, such as the lack of mental maturity among young couples, reproductive health risks, and social and economic inequality. According to Imam Ash-Syāṭibī and Al-Qarāfi, *Sadd al-Dzari'ah* functioned as a preventive measure against acts that could lead to harm (*mafsadah*). Therefore, the policy of raising the minimum marriage age served as a form of legal protection that aligned with the objectives of *shari'ah*, specifically the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), and lineage (*hifz al-nasl*). Therefore, the amendment of Marriage Law was not based solely on legal considerations but also rested on a strong foundation in Islamic jurisprudence, serving

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<sup>50</sup>Isniyatın Faizah, Alantama Prafastara Winindra, and Dewi Niswatin Khoiroh, 'Implementasi Kaidah Dar'ul Mafasid Muqaddamun 'Ala Jalbil Mashalih Terhadap Pencatatan Perkawinan Di Indonesia', *As-Sakinah Journal of Islamic Family Law* 2, no. 1 (2024): 1–11, <https://doi.org/10.55210/jhki.v1i2.333>.

as a step toward achieving societal benefit and reducing the risks associated with child marriage. The concept of *Sadd al-Dzārī’ah* was crucial for ensuring public welfare, particularly for the government in its efforts to establish legal certainty, specifically in Indonesian marriage law. As incorporated in Law No. 16 of 2019, *Sadd al-Dzārī’ah* fell in the category of *hājiyyāt* because it aimed to prevent social and health-related harms without negating the fundamental permissibility of marriage.

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