

## VIEW OF THE ISSUE ABOUT CHANGES IN THE AGE OF MARRIES FOR WOMEN IN LAW NUMBER 16 OF 2019

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### Abstract

With regard to marriage problems in Indonesia, the age limit of marriage is regulated in positive law contained in Law Number 1 of 1974 and KHI, namely Marriage is only permitted if the male has reached the age of 19 (nineteen) years and the woman has reached the age 16 (sixteen) years, which was later revised in Law Number 16 of 2019 which states that marriage is only permitted if a man and woman have reached the age of 19 (nineteen) years, then if seen from the *maslahah* concept this determination is at the *daruriyyah* level, namely maintaining the safety of the soul (*hifzu al-nafs*), maintaining the safety of the mind (*hifzu al-'aql*), and maintaining the safety of the offspring (*hifzu al-nasl*). The change in the minimum age of marriage that occurs in the Marriage Law Article 7 paragraph (1) No. 1 of 1974 contains more *maslahah* and is more in accordance with *maqasid sharia*. Because at the age of 19, it is hoped that the ideal marriage can be accomplished and be able to realize the goals of marriage, such as maintaining offspring, creating a *sakinah mawaddah wa rahmah* family, maintaining lineages, creating patterns of family relationships, maintaining diversity in the family and preparing for economic aspects.

**Keywords:** Marriage, family relationship, age, marriage law

### A. INTRODUCTION

According to Law No.1 of 1974 the maturity of the age of marriage is measured based on the mental and physical maturity for marriage, namely when it is 21 years old. This provision is contained in Chapter II Article 7 paragraph (1) which states that marriage is only permitted if the male party has reached the age of 19 years and the woman has reached the age of 16 years (Armia, 2018 : 236).

Along with the times, the provisions on the age of marriage in Indonesia which are in Law Number 1 of 1974 need to be adjusted again. So it is deemed necessary to make efforts to renew the age of marriage in Indonesia. Starting from the issuance of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, in Article 1 paragraph (1) what is meant by a child is someone who is not yet 18 (eighteen) years old, including children who still in the womb (Laksana, 2018 : 78). This means that everyone who is under the age of 18 is still categorized as a child.

The Constitutional Court Decision Number 30-74 / PUU-XII / 2014 is the basis for reforming and amending Law Number 1 of 1974 concerning Marriage, after 45 years it has never undergone any changes at all. This is very crucial for the statutory system, especially in the laws governing marriage. This is evidence of the historical reform of Islamic law regarding the age of marriage in Indonesia which has had a huge impact on Indonesian society.

Meanwhile, in the texts of the al-quran and sunnah as well as the fiqh scholars state that the minimum age of marriage for a man is until baligh. Age of adulthood here is until dreaming of jima and releasing semen. For women aged over age, it starts with the discharge of menstruation. In the jurisprudence of the four schools of thought, the age limit is not a legal requirement for marriage. In fact, even a small child can marry a woman who is also young. The marriage contract in this case is carried out by each of the two guardians (Zulhaily, 2005 : 6534).

Several Islamic jurists from the West have seriously studied the development and reform of Islamic law that is taking place in several countries today. The reformation here is carried out with three main ingredients, namely (a) there is a means of obtaining recognition of the validity of the law for the demands submitted by the syari'ah. (b) The principle which says that as a substitute for the implementation of the dominant views of a particular school, such as those of the Hanafi school, on detailed matters (furû'). Here the legislative body is allowed to apply certain variations of these views, as stated by several other schools of thought and (c) the treatment of procedural law rules to complement the shari'ah whose implementation is accompanied by criminal sanctions (Tohari, 2015 : 408).

With the issuance of Law No. 16 of 2019 on the amendment to Law No. 1 of 1974, now the age of marriage is limited, namely that men and women are 19 (nineteen) years old. This contradicts the opinion of the fiqh scholars who set the age limit for marriage according to the age of baligh in the al-quran. Therefore it will definitely have an impact on the community who will carry out the marriage.

The phenomenon of different conceptions between fiqh and statutory regulations, as explained above, makes this research interesting and it really needs to be done further. So that they can produce products that suit the needs of the Muslim community in Indonesia.

This phenomenon is very worthy to be discussed and dissected by exploring what is the factor in the renewal of the age of marriage in Law Number 16 of 2019. According to Indonesian Islamic law experts, the reform of Islamic law that is happening today is caused by several factors, including: first, to fill in legal vacuum because the norms contained in fiqh books do not regulate it, while the legal needs of society continue to develop; second, the influence of economic globalization and science and technology; third, the influence of reforms in various fields that provide opportunities for Islamic law to become a reference in national law; and fourth, the influence of renewal of Islamic legal thought, both by international Islamic legal experts and national Islamic law experts, especially regarding the development of science and technology as well as gender issues (Manan, n.d. : 408).

The theoretical framework or frame of mind is a reasoning framework consisting of concepts that are used as references in the process of research activities. For this reason, in the description of the framework of thought, a theoretical basis is stated in this study. The theories that are used as the basis for this research are legal theories derived from the Al-Qur'an and books related to the renewal of Islamic law.

Researchers in an effort to answer research questions as stated above, the authors use the following theories: first, for the main theory (grand theory), the rule of law theory is used;

second, Middle Range Theor, Taqin theory and Legislation theory are used, meanwhile applied theory uses maqhasid syari'ah theory (Maslahah theory);

## **B. METHOD**

This type of research is qualitative in nature, that is, a method in which the data is stated in a reasonable state and is not made in the form of symbols, numbers, or formulas. The approach used is a normative juridical approach. As a method, this method seeks to identify the stages of legal development, which can be reduced in scope to statutory regulations. In addition to reviewing the decision, it is customary to identify the factors that influence the development of laws and regulations (Sunggono, 2015 : 98). This approach is very helpful for researchers to understand the philosophy of the rule of law over time and understand changes and developments in the philosophy underlying the rules (Nuruddin, 2010 : 53).

## **C. RESULT AND DISCUSSION**

The original teachings of the Koran and Hadith have always been able to answer the problems of society throughout the ages and in all places. Therefore, in determining the law on a problem, the mujtahid must immediately return to the original teachings of the Koran and Hadith by means of ijihad to understand and interpret these original teachings and pay attention to their general basics or principles. Thus the provisions of Islamic law produced by ijihad are truly able to answer the problems of society, in the sense that they are able to realize the benefit of mankind which is the goal of Islamic law (Fanani, 2010 : 79).

In the previous chapter, it was stated that maslahah can be seen from the point of view of the objectives of the syarak in stipulating law, which relates directly or indirectly to the five basic principles of human life, namely religion, soul, mind, descent and property. It can also be seen from the level of needs and demands of human life for these five things.

Islamic law must be dynamic, so that it is not spared from reforms, changes and legal reforms that occur in Indonesian Islam based on the following factors:

- a. To fill the legal vacuum, because the norms in the classical fiqh book do not clearly regulate it, while the community's need for laws and problems that occur is very urgent to be applied.
- b. The influence of economic globalization and science and technology that continues to progress so that there is a need for laws to regulate it.
- c. The influence of reform in various fields has provided opportunities for Islamic law to be used as a legal reference in making national law.
- d. The influence of Islamic legal thought leaders, both national and international, especially those related to science and technology (Fanani, 2010 : 76).

With regard to marriage problems in Indonesia, the age limit of marriage is regulated in positive law contained in Law Number 1 of 1974 and KHI, namely Marriage is only permitted if the male has reached the age of 19 (nineteen) years and the woman has reached the age 16 (sixteen) years, which was later revised in Law Number 16 of 2019 which states that marriage is only permitted if a man and woman have reached the age of 19 (nineteen) years, then if seen from the maslahah concept this determination is at the daruriyyah level, namely

maintaining the safety of the soul (hifzu al-nafs), maintaining the safety of the mind (hifzu al-'aql), and maintaining the safety of the offspring (hifzu al-nasl).

Maintaining the safety of the soul (hifzu al-nafs), as it has been stated that marriages under the age of 19 are prone to cervical cancer (cervix). Therefore, underage marriage contributes to the high maternal mortality rate. With the change in the age limit for marriage to 19 years, the mother's soul is saved.

Maintain the safety of reason (hifzu al-'aql), that marriages under the age of 19 cause school opportunities and time for self-development for girls to be cut off and shorter than for men. Whereas basically the intellectual development, knowledge, talents, skills of men and women grow in the same age standard. With the change in the age limit for marriage to 19 years, the right to school and study for women will be protected.

Maintaining the safety of the offspring (hifu al-nasl), that underage marriage, one of the factors is that a woman has become pregnant outside of marriage or not through a legal marriage, so that the prospective baby in the womb if the man and woman who committed adultery are not married immediately, then legally Islamic law the candidate for the baby does not get the lineage from his father. So by increasing the age limit for marriage, it is hoped that adolescents can control their relationships with the opposite sex and understand more about the meaning of marriage.

Then when viewed from the point of view of the limitations of the problem, the stipulation of Law Number 16 of 2019 can be categorized into two, namely:

- a) Whereas Law Number 16 of 2019 has a benefit that is oriented towards the welfare of all society and the spirit of nationality, in this case it is called *maslahah ammah*. The determination of the age of 19 years for each prospective bride has a positive or beneficial impact on the state, including: first, that the age of 19 means that they have legal skills or *Ahliyah al-Ada' 'Ka' milah*, namely someone who already has perfect prowess. So that with this they can carry out the law perfectly. Second, in terms of their economy they are also mature and strong in working to support their families, and help strengthen Indonesia's economic growth and reduce poverty. Third, launching one of the government programs, namely towards a child-friendly Indonesia, this is one of the flagship programs of the Indonesian government in 2030 through the Ministry of Women's Empowerment and Child Protection (KPPPA) which is legally based on the Declaration of Human Rights, the Convention on the Rights of the Child, and World Fit for Children at the international level, as well as the 1945 Constitution.
- b) Law Number 16 of 2019 has benefits for each individual, in this case it is called *maslahah khassah*. Determination of 19 years of age for each prospective bride has a positive impact or benefits including, namely being able to develop themselves or explore the abilities and talents of each by attending a higher school, for women it can increase the maturity and fertility productivity of the uterus as a woman's nature, namely to contain .

Furthermore, if the stipulation of this law is analyzed using the concept of *maslahah* division, there are two possibilities:

- 1) Amendments to the Law can be analyzed by looking at the similarity of illat or substantial values of facts that occur in society with legal arguments that have been disclosed in texts or other legal considerations in this rule.
- 2) The amendment of the Law can be analyzed by conducting istinbat or legal stipulation whose problems are not explicitly regulated in the Koran and Hadith, but emphasizes more on the benefit aspects of this rule.

In terms of the *maslahah* concept, according to the author, in the stipulation of Law Number 16 of 2019, it is included in the category of *maslahah mursalah*, which directly does not have any arguments, but fulfills benefits in accordance with the objectives of Islamic law, because the purpose of Islamic law is to bring benefit and keep away *kemadharatan* as the law of *fiqh*:

“Rejecting badness (*mafsadat*) takes precedence over achieving goodness (*maslahat*) (Djazuli, 2019 : 29).”

This rule emphasizes that when we are faced with a choice between rejecting badness and achieving goodness, what is chosen is to reject badness (*mafsadat*). Because rejecting *mafsadat* is the same as achieving *maslahat*, because the main objective of Islamic law is to gain benefit in the world and in the hereafter.

In other rules, it explains the prohibition of doing something dangerous, namely:

“Do not accuse and do not accrue "" Kemudharatan must be eliminated” (Djazuli, 2019 : 16).

In this principle, it is emphasized that regulations must not impose a danger on the people or endanger the state structure. Therefore, the government as legislators in making laws and regulations must look at the benefit side of its citizens, and this is in accordance with the *fiqh* rules which state:

“The policy of a leader (government) towards the people must be oriented towards their benefit” (Djazuli, 2019 : 15).

Thus the change in the age limit for marriage in Law Number 16 of 2019 should be properly stipulated. This change is in line with the rules of *fiqh* which reads:

“Fatwas change and differ according to changing times, places, circumstances, intentions, and customs (Al-Zarqa, 2001 ; 227).”

Islamic law is always humanist and always brings blessings to the universe. It is intended that Islamic law is always up to date, relevant and able to respond to the dynamics of the times (Syafe'i, 2000 : 294). The jurisprudence scholars put forward the general purpose of legislation, including maintaining *al-umuru al-dharuriyah* (primary needs) of humans. *Al-umuru al-dharuriyah* are things that are the foundation of human life existence that must exist for their benefit. Without the fulfillment of this need, the benefit will not be achieved. Included in *al-umuru al-dharuriyah* are:

- a. Islam safeguards the rights and freedom of belief and worship and prohibits the imposition of religions and schools of thought

- b. The first right given by Allah is the right to life (protection of the right to life)
- c. Protection of the mind which is a source of knowledge, guidance and a medium for human happiness in the world and the hereafter. Intellect makes humans perfect and different from other creatures.
- d. Protection of honor and offspring.
- e. Property protection.

What needs to be remembered then is, that Allah does not make laws or syari'at playfully and carelessly. The shari'ah law is established for big goals with the benefit of the world and the hereafter that returns to me, so that welfare will be evenly dominated by a sense of security.

In this regard, marriage is a human need regarding the formation of a family that produces offspring and reproduces into a society as a social system of human life. The purpose and purpose of making marriage as a gateway to human social life is to protect honor and offspring. Therefore, Islamic law does not only regulate matters of marriage from a physical point of view, but marriage is to unite the commitment of a pair of people of different types to live in a household with all its consequences which also concern the issue of man's inner worship to Allah.

In the life of Muslims in Indonesia, the rules of marriage law already have a reference with the promulgation of Law no. 16 of 2019 concerning Marriage. This law emphasizes the validity of religious rules, which aim to benefit the people. In this regard, the government regulates the minimum age for marriage by prioritizing psychological, health, population and child protection considerations. This is in line with Islamic law which is formed based on universal benefit for all people in order to eliminate harm.

There is no specific age requirement in Islamic law, because fiqh does not set an age limit for marriage. Islamic law only stipulates that the benchmark for allowing a woman to marry and carry out her obligations as a wife is her physical readiness for sexual intercourse, and this is marked by the entry of puberty (bulugh). Islamic law which is sourced from the Qur'an textually does not specify the age limit of marriage, proving its universal application and the flexibility of Islamic law itself. If the age is certain, of course its enforceability is inflexible. This is because physical, psychological problems and the rules of human life can change according to the conditions of certain areas.

Fuqaha have different opinions in estimating the age limit for adulthood, the majority of jurists from the Hanafi school of thought are of the opinion that a person is not considered an adult before entering the age of 18, whereas according to the Syafi'i and Hanbali schools of thought that the maturity phase arrives at the age of 15. The change in norms in Law Number 1 of 1974 concerning Marriage covers the age limit for marriage, the improvement of the norms referred to is by increasing the minimum age of marriage for women. In this case the minimum age of marriage for women is equal to the minimum age of marriage for men, which is 19 (nineteen) years.

With this age limit, the intention or body is considered to be mature in order to carry out a marriage in order to realize the goal of marriage properly without ending in divorce and obtaining healthy and quality offspring. It is also expected that an increase in the age limit of

more than 16 (sixteen) years for women to marry will result in lower birth rates and reduce the risk of maternal and child mortality. In addition, children's rights can also be fulfilled so as to optimize children's growth and development including parental assistance and provide children's access to education as high as possible.

With the increase in the minimum age of marriage for women in Law Number 16 of 2019 in Article 7 paragraph (1) to 19 years, there will be no more conflicts with the Child Protection Law and other laws. In addition, 19 years of age are considered physically and psychologically feasible, in this case readiness for reproduction. Apart from that, the age of 19 years is also the age where women have passed the maturity phase (bulugh) according to the opinion of Jumhur Fuqaha.

The benefit of humans can be well realized if religion or belief, soul, mind, descent and property as the main elements in human life are preserved. Likewise, the purpose of State law is formed in the framework of developing thoughts and answering all problems that occur in society that have not been properly regulated by Al-Qur'an and hadith. Changes in law that occur along with changing times are solely to emphasize that shari'ah can bring benefits to humans. The problem of determining age in the Marriage Law and in the Compilation of Islamic Laws is indeed *ijtihadiah*, but if the shari'ah references are traced it turns out that the limitation on the age of marriage has a strong basis. One of them is as stated in the letter An-Nisa verse 9 which means:

“and fear Allah those who may leave behind them weak children, whom they fear for their (welfare). Therefore, let them have devotion to Allah and let them speak the right words” (Betawi, n.d. : 33).

If seen in detail, the above verse is indeed general in nature, it does not directly explain that children who are married below at a young age as stipulated in the Marriage Law Article 7 paragraph (1) no. 1 of 1974 will produce offspring whose welfare is feared. However, there are many facts in the field that prove that marriages that occur at a young age cause many things that are not in line with the mission and purpose of marriage.

The concept of *maqasid syari'ah* (the meaning of the formation of a law) emphasizes that the purpose of Islamic law is to create the benefit of mankind and to avoid *mafsadah* both in the world and in the hereafter (Mutakin, 2017 : 584). *Maqasid syari'ah* divides the needs and benefits of humans into three types, namely *daruriyat*, *tahsiniyat*, and *hajiyyat* (Rafi', 2011 : 209). What needs to be emphasized here is that the three human needs mentioned above cannot be separated from one another in achieving the *maslahah* perfection desired by the Shari'ah.

*Maslahat daruriyah* is a *maslahat* that is primary, that is, on which human life is very dependent on it. So this interest is an interest that cannot be left behind in human life. *Daruriyat* needs are the most important and basic needs for realizing the existence of the five main goals of Islamic law, namely religion, mind, soul, descent and property (Kasdi, 2014 : 57). The determination of the minimum age limit for marriage mainly tends to benefit in the maintenance of the soul, the maintenance of offspring and the maintenance of reason.

To nourish the soul (*hifdzu an-nafs*) Allah prohibits all actions that will damage the soul. Humans must strive to improve the quality of life, as well as to maintain the honor of themselves and their families. So from the point of view of *maslahah*, especially the maintenance of the soul, the determination of the minimum age for marriage (especially 16 years for women) which is contained in the Marriage Law article 7 paragraph (1) of 1947 according to dr. Ali Sibra M, is not suitable as a benchmark for allowing a person to marry, because at that age, from a mental perspective, a girl has not yet reached maturity, while in a biological perspective her reproductive organs are immature and not ready to experience pregnancy and the stages that will be passed until childbirth.

Apart from having an impact on the mother-to-be, there are also many risks that may occur to the child's psyche, for example, such as miscarriage, marital difficulties or low birth weight, death at birth and many more. What is feared then is that a marriage that is held at this age will not bring benefits to both parties, both male and female, and the noble goals of marriage will not be achieved (Syarifudin, 2011 : 229).

So with the change in the provisions of Article 7 paragraph (1) of the Marriage Law Number 1 of 1974 concerning the minimum age of marriage (i.e. 19 years for women), it is hoped that the *maqasid syaria'ah* and the objectives of marriage in Islam will be well and fully realized. with happiness.

In caring for offspring (*hifdzu an-nasl*) Allah has commanded humans to maintain and continue their offspring through marriage. In relation to the minimum age limit for marriage stipulated in Article 7 paragraph (1) of the Marriage Law Number 1 of 1974 (16 years for women) is that the results of survey research conducted by the National Population and Family Planning Board (BKKBN) were conducted at 1993 proved that marriage at a young age can provide opportunities for women in their teens to become pregnant at high risk. Pregnancy at a young age causes many complications for both mother and baby, such as profuse bleeding, lack of blood, poisoning, preterm pregnancy and eclampsia. According to the BKKBN survey results, many women who are pregnant at the age of under 20 years, besides that marriage at a young age also brings a higher risk of death compared to mothers who give birth at the age of 20-30 years, proving that babies born to mothers who still young people more often experience the incidence of prematurity, namely babies born before the age of the womb, body weight decreases and the mortality rate increases.

The things mentioned above can also cause physical and mental defects in babies such as epilepsy, seizures, blindness, deafness and others. So, how can the *maqasid sharia* of marriage especially maintaining offspring be accomplished if just producing offspring is very risky for the child and the mother-to-be. With the change in the minimum age limit for marriage that occurred in the Marriage Law no. 1 of 1974, it is hoped that the *maqasid sharia* of these changes can be implemented, namely maintaining offspring. This goal is considered very important for the sustainability of human life.

In order to maintain reason (*hifdzu al-akl*), Allah has said a lot that we as the only creatures who are given a mind must be able to guard our minds and thoughts from things that can damage the mind. In addition, Allah has said many things that studying is compulsory. Even an old adage says "demand ilmu even in China". In the framework of maintaining reason, the



1945 Constitution of the Republic of Indonesia has stated that everyone has the right to education and to benefit from science.

If the Marriage Law stipulates that the minimum age for marriage is 16 years (for women), then this is very risky for the loss of girls' rights to education. Because those who get married at an early age will not be able to continue their schooling. It could be due to embarrassment, or high school and junior high school regulations that prohibit students from getting pregnant during school days or it could be because of her obligation as a wife who not only takes care of herself but also has responsibilities to take care of her domestic life.

With the change in the minimum age limit for marriage, at least a girl has completed her compulsory education in high school. If you see that the elementary school age is 8 years old, she will spend elementary school up to 13 years, then continue to junior high school for 3 years, then he will finish his junior high school until the age of 16, and finally 3 years of high school, so at least he will complete his compulsory education period of up to 19 years. This age is in line with the results of changes in the minimum age limit for marriage contained in the Marriage Law 1947. So at least, from the point of view of maintaining reason, changes to the minimum age limit for marriage contained in the Marriage Law 2019 article 7 paragraph (1) are in accordance with the objectives of maqasid of sharia.

According to the author, the change in the minimum age limit for marriage that occurs in the Marriage Law Article 7 paragraph (1) No. 1 of 1974 contains more *masalah* and is more in accordance with *maqasid sharia*. Because at the age of 19, it is hoped that the ideal marriage can be accomplished and be able to realize the goals of marriage, such as maintaining offspring, creating a *sakinah mawaddah wa rahmah* family, maintaining lineages, creating patterns of family relationships, maintaining diversity in the family and preparing for economic aspects. In addition, at the age of 19, he is considered ready and mature from the medical, psychological, social, and of course religious aspects so that he can create a family that is in accordance with the *maqasid syariah* of marriage..

However, no matter how hard the government tries to raise the minimum age limit for marriage to avoid child marriage or other moral problems, if it is not accompanied by good moral and moral education, this effort will not succeed. To avoid wrong associations, children must be taught to be clever in choosing close friends. Because association will greatly affect ethics, morals, and morals. Because the human personality will be affected by the association itself. Other than that, increasing faith and piety by means of gratitude, patience and pious deeds.

By getting closer to Allah, being diligent in worshiping, doing good deeds will certainly make us avoid actions that are not in accordance with Islamic morals. Not only has a negative impact, getting married at a young age also has a myriad of benefits and positive impacts. Among them, if the risk of promiscuity is unavoidable and has a high risk, then getting married at a young age is the best choice. The positive impact is to prevent someone from actions that lead to promiscuity. In addition, getting married at a young age also has many other benefits, including making life happier, making couples more adaptable, exercising emotional control, chasing dreams together, practicing responsibility, having friends to share, higher fertility rates and becoming adults with a partner.

## D. CONCLUSION

The provisions for the age limit of marriage in Indonesia are contained in Law No. 1 of 1974 at the present time is no longer relevant to the situation and circumstances, so the Law, especially regarding the age limit of marriage, must be immediately revised for the benefit of the Indonesian Muslim community. Therefore, the newest Law was born, namely Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, as in the previously regulated age limit of marriage, for women 16 years and men aged 19 years, has been changed to 19 years between the ages of men and women, this is in accordance with Article 7 paragraph (1) which states that marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.

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