



The Problems of The Marriage Age Changing in Indonesia in the Perspectives of Muslim Jurists and Gender Equality

Eni Zulaiha^{1*}, Ayi Zaenal Mutaqin²

¹ UIN Sunan Gunung Djati Bandung, Indonesia; enizulaiha@uinsgd.ac.id

² Bandung City Office of Ministry of Religious Affairs, Indonesia; ayizamut@gmail.com

* Correspondence

Received: 2021-07-30; Accepted: 2021-08-12; Published: 2021-08-13

Abstrak: Aturan mengenai batasan usia untuk menikah sebagaimana tertuang dalam 7 UU no. 1 Tahun 1974, menyatakan bahwa usia minimal untuk menikah bagi laki-laki adalah 19 tahun dan bagi perempuan adalah 16 tahun. Aturan ini diubah melalui undang-undang no. 16 Tahun 2019, yang mengatur bahwa batas usia untuk menikah, baik bagi laki-laki maupun perempuan, adalah pada usia yang sama, yaitu 19 tahun. Perubahan ini dimaksudkan untuk membawa manfaat pernikahan meminimalkan konflik dalam rumah tangga. Namun pada kenyataannya perubahan batas usia untuk menikah masih menimbulkan beberapa permasalahan, misalnya tidak sedikit umat Islam yang berpandangan bahwa dalam Islam tidak ada ketentuan mengenai batasan usia dan ada dispensasi bagi mereka yang dipaksa menikah di bawah usia yang telah ditentukan. Penelitian ini bertujuan untuk mengetahui problematika hukum perubahan batas usia perkawinan. Pendekatan penelitian yang digunakan kualitatif dengan metode analisis deskriptif dan studi pustaka. Hasil penelitian menunjukkan bahwa terdapat beberapa permasalahan mengenai batasan usia antara lain: Pertama, hukum Islam tidak menetapkan usia minimal untuk menikah, sehingga sebagian orang tidak mengindahkan ketentuan tersebut; Kedua, ada beberapa aturan mengenai dispensasi bagi mereka yang ingin menikah pada usia 19 tahun dengan mengajukan ke pengadilan. Ini adalah kesempatan untuk melanggar aturan; Ketiga, perubahan undang-undang yang menaikkan batas usia perkawinan, pada kenyataannya di masyarakat belum mampu menghentikan angka perkawinan usia dini.

Kata Kunci: Batas usia perkawinan; dispensasi; fuqaha; hukum Islam; hukum Perkawinan.

Abstract: The rules regarding the age limit for marriage as contained in Article 7 of Law no. 1 of 1974, which states that the minimum age of marriage for men is 19 years and for women is 16 years. These rules were amended through law no. 16 of 2019, which stipulates that the age limit for marriage, both for men and women, are in the same age, 19 years old. This change is intended to bring benefits of marriage minimizes the conflict in the household. But in fact, the changing age limit for marriage still creates some problems; for example, not a few Muslims view that in Islam, there are no provisions regarding age limits and there are dispensations for those forced to marry under a predetermined age. This research aims to find out the problematics of the law on changing the age limit for marriage. The research approach used qualitative with descriptive analysis methods and literature review. The results of the study indicate that there are several problems regarding the age limit between First, Islamic law does not stipulate a minimum age for marriage, so that some people do not heed the provision; Second, there are some rules regarding dispensation for those who want to get married at the age of 19 by putting forward to the court. This is an opportunity to violate the regulations; Third, changes to the law that have raised the age limit for marriage, in reality, in society, have not been able to stop the rate of early-age marriage.

Keywords: Dispensation; fuqaha; Islamic law; marriage age limit; marriage Law.

1. Introduction

Marriage is common in Islam (*Shari'a*), making the forbidden relationship between non-mahram men and women valuable in reward. Marriage is meant to bind the relationship between a man and a woman, both physically and mentally, to build a happy family based on Islamic provisions and values. Marriage is also seen as an opportunity to achieve happiness in life in this world and the hereafter and give birth to the next generation, who will continue the previous generation's struggle.

In the perspective of Fiqh, one of the factors that are important in preparation for marriage is the age factor or called for maturity. Because, in general person will be able to determine whether he is mature enough to act or not. The adult and attitude of each bride and groom is an essential factor in household life, so that it is expected to reach a *sakinah, mawaddah and warahmah* (serene, full of love, and grace).

However, the age limit for marriage has been a big problem for a long time and is quite complicated. One of the reasons for this polemic is in Islamic law; there is no specific provision regarding the age limit for marriage. In Islam itself, the age limit, which is a barometer of a person to get *taklif* law and considered capable of holding a marriage, is found in puberty for men and women.

For men, they have felt ejaculating or have reached 15 years old. Meanwhile, women have felt the menstruation or have reached nine years old (Hakim, 2000). Also, suppose you examine the books of fiqh. In that case, there is no agreement on the age limit for marriage, even one, such as in the book of Sharh Fath al-Qadir, it written that the young men/women are allowed to hold the marriage at the young age, because there is no evidence from the verse of The Qur'an that explicitly (*mantūq*) states the minimum age for marriage. It is not found in the hadith that explains it. Even the Messenger of Allah (Muhammad) married Siti Aisyah, who was six years old, even though she only had sex when she was nine years old.

Meanwhile, in the marriage law in Indonesia, some articles regulate the age limit for marriage. It is Article 7 of Law no. 1 of 1974 stipulates that the minimum age of marriage for men is 19 years and for women 16 years. The regulation was amended through Law no. 16 of 2019 which stipulates the minimum marriage limit for men and women who will marry is the same, at least 19 years old. It is understood that the law was made to regulate people's lives as the *ijtihad* of the legislators to bring the benefit of the people. Thus, the law should read the condition of the people who will be the object of the application of the law.

2. Research Methods

This research used a qualitative approach. Some of the research methods used are normative legal methods with descriptive-analytical research specifications. This research also uses the library research method. The primary data used is Law No. 1 of 1974 Article 6 paragraph 2 and Article 7 paragraph 1 and Law No. 16 of 2019. There is a fiqh book also that discusses the age limit for marriage and contains the opinion of scholars about the age limit for marriage. At the same time, the secondary legal materials are from research books and research articles related to the discussion of this research.

3. Result

The Dynamics of Changes in Marriage Age Law

Since the enactment of the Marriage Law in 1974, the Indonesian people have made the law as a guide in every marriage. One of the principles adopted by the marriage law in Indonesia is that the prospective husband and wife must be mature in both mental and physical to marry. every prospective husband and prospective wife who wants to enter into marriage life, must be physically and psychologically mature (*spiritual*), or be physically and spiritually ready following what is stated in the meaning of marriage itself. "Marriage is an inner and outer bond between a man and a woman" (Suma, 2005). With this principle, the purpose of marriage will be more easily achieved if both the bride and groom have matured their bodies and souls. Concerning the principle of maturity, the standard used is from the determination of age.

According to Law No. 1 of 1974, the maturity of the age of marriage is measured based on the maturity of body and soul, and it said that to have matured in both mind and body to marry when they are 21 years old. This provision is contained in Chapter II article 7 paragraph (1) which states that marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years.

By the time passed, the stipulations on the age of marriage in Indonesia contained in Law Number 1 of 1974 need to be adjusted. So, it deemed necessary to make efforts to renew the age of marriage in Indonesia. Starting from the issuance of Law Number 35 of 2014 that 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. It means that every person who is under 18 years old are still included in the child category.

Then there were efforts made to submit a Judicial Review to the Constitutional Court regarding the issue of the age limit for marriage in Indonesia, namely in the Constitutional Court's decision Number 30-74/PUUXII/2014, but in this decision the Panel of Judges decided the case by rejecting all of the petitioners' requests.

Furthermore, on April 20, 2017, a judicial review was submitted to the Constitutional Court by three applicants who submitted the same application, namely the change in the age limit for marriage in Indonesia. And finally, in this second attempt, the Panel of Judges of the Constitutional Court accepted the applicant's request to renew the marriage age limit in Indonesia.

As for the decision of the Constitutional Court no. 22/PUU-XV/2017 which grants the petitioner's request and orders the legislators (DPR RI) for a maximum period of 3 (three) years to make amendments to Law Number 1 of 1974 concerning Marriage, particularly with regard to boundaries. The minimum age for marriage for women is 19 years. Thus, the mandate of the Constitutional Court Decision becomes the basis for reforming and amending Law Number 1 of 1974 concerning Marriage, after 45 years of having never experienced any changes. In September 2019 the Indonesian House of Representatives officially passed Law no. 16 of 2019 as an Amendment to Law Number 1 of 1974 concerning Marriage as mandated by the Constitutional Court (MK). On October 14, 2019 Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage was officially ratified by President Joko Widodo in Jakarta. The new rule makes limited revisions to Article 7 paragraph 1 of the Marriage Law Number 1 of 1974 regarding the minimum age limit for marriage for men and women.

Another consideration is changing the age limit, because the regulation of the minimum age limit for marriage that is different between men and women not only creates the discrimination in the context of the implementation of the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, but also creates discrimination. towards the protection and fulfillment of children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In this case, when the minimum age of marriage for women is lower than for men, legally women can form a family earlier (Heriawanto, 2019). Because of this, in its ruling, the Constitutional Court ordered the legislators to make changes to the 1974 Marriage Law within a maximum period of 3 (three) years.

In addition, the changes of article 7 paragraph (1) of the 1974 Marriage Law, that this provision allows for child marriages for girls because in Article 1 number 1 of the Child Protection Law it is defined that child is someone who is not 18 (eighteen) years old yet as children who are still in the womb. So, the amendment to the 1974 Marriage Law with the 2019 Marriage Law amendment, namely by increasing the minimum age for marriage for women which is equated with the minimum marriage age for men, which is 19 (nineteen) years, so that it is in line with the Child Protection Act, because the age limit set for marriage is above 18 years.

The age limit in is considered to have matured mentally and physically to be able to carry out a marriage in order to realize the purpose of marriage properly without divorce and obtaining healthy and quality offspring. It is also hoped that an increase in the age limit higher than 16 (sixteen) years for women to marry will low the e the risk of maternal and child mortality. In addition, it can also fulfill

the rights of children so as to optimize the growth and development of children including parental assistance and provide children with access to education as high as possible.

Some Problems Related to Changing The Marriage Age Limit in Marriage Law

Marriage Dispensation

As contained in the Marriage Law no. 1 of 1974, the new Marriage Law also (Law No. 16, 2019) contains rules for dispensation of marriage, which is difference in formulation from Law no. 1 of 1974. Dispensation is the granting of the right to a person to marry even though he has not reached the minimum age of 19 years. In principle, a man and a woman are allowed to marry if they are 19 years of age and over. If it is possible, the marriage can be carried out even though one of the spouses or both have not reached the said age.

Thus, in Article 7 paragraph 3 of Law no. 16 of 2019 provides an opportunity for men and women who want to get married but still not 19 years old yet to apply for a marriage dispensation to the court with good reasons. It seems that this provision is feared to cause the potential for submitting a marriage *isbat* in a religious court, because marriage *isbat* is one of the administrative requirements that must be met by prospective husband and wife couples (Sudirman & Iskandar, 2020).

Regarding the marriage dispensation for those whose age still not eligible as stated in the law, there is no adequate explanation on the reasons for being allowed to apply for or obtain a marriage dispensation, but it is only stated that if there is a very urgent interest for the family, then a marriage dispensation will be obtained (Heriawanto, 2019). What is meant by 'urgent reason'? The Marriage Law explains that the reason for urgency is that there is no other choice and it is imperative that the marriage takes place. The urgent reason cannot be just as claim. There must be sufficient supporting evidence. According to the new Marriage Law, which explains that sufficient supporting evidence is a certificate proving that the age of the bride and groom is still under the provisions of the law and a certificate from a health worker that supports the parents' statement that the marriage is very urgent to be carried out.

In the newest Marriage Law, in fact, it has tried to accommodate the necessity of sufficient evidence, including a certificate regarding the age of the bride and groom which is still under the provisions of the law and a certificate from health workers supporting the parents' statement that the marriage is urgent to be carried out. In addition, regarding the parents of the bride and groom, if previously the judge asked for information was only limited to the applicant (who filed a dispensation) in this new Marriage Law, the judge must hear the statements of the bride and groom, namely the applicant and also the information from the prospective parent.

However, marriage under the age limit is not a simple matter, in one hand the *ius constitutum* that applies in Indonesia does not require underage marriage, and in the other hand the law also opens up opportunities for other things beyond that. So as the Religious Courts, the judicial institutions authorized in the case of marriage dispensations (for Muslims) in adjudicating marriage dispensation cases are faced with considering two existing disadvantages, namely the harm due to marriage at an early age and the harm if the dispensation is rejected.

From these two considerations, the judge more often to grant the marriage dispensation application by considering that the harm arising from the rejection of the dispensation application is greater than the harm that occurs as a result of underage marriage itself. From a rejected application, it is very possible to damage the offspring (*al-nasl*) and also the honor (*al irdl*) of the two prospective brides.

For this, in his legal reasoning, the judge can give a determination based on the existing legal facts by referring to the information from the parents (applicant and prospective parent), the prospective bride and groom and the witnesses who were presented in court. The judge's determination must also take into account various perspectives, both *syar'i*, juridical, sociological and also health considerations.

If it is related to *maqashidu al sharia* (the purpose of Islamic law), in the opinion of the author, as stated by A. Khisni (2010) that there are at least three main things that must be considered in imposing

a marriage dispensation, which must refer to: 1) The safety of the child's soul related to with the aim of protecting the soul (*hifzh al-nafs*); 2) Continuation of children's education related to the purpose of protecting the mind (*hifzh al-aql*); and 3) the safety of descendantss related to the purpose of protecting descendants (*hifzh al-nasl*).

However, the reality cannot see as it is simple, because if it is examined the provisions regarding people who are entitled to apply for a marriage dispensation according to the new regulation, they are: 1) Both parents, both still in harmony and divorced, 2) one of the parents but must have a court decision on the custody of the child for whom marriage dispensation is requested, 3) one of the parents, if one of the spouses has died, 4) the guardian of the child, if both the child's parents have died, 5) a legal representative , if parents or time is unable.

It becomes a problem if the article 6 number (2) states that event the parents are divorced, the application for dispensation is still filed by both parents, or one of the parents who has custody of the child based on a court decision. Thus, even though both parents are divorced, have a new family, whether the relationship is good or not good between them, the dispensation they must be applied by both. If the communication between them is good then there is no problem. On the other hand, if they don't get along, or if they live far apart, which is not easy to meet, is that possible for them applied for the dispensation. This is sure to difficult the application, especially if there is no longer good communication between the two parents.

In general, the judge's reasons for granting the dispensation are: 1) children are at risk of violating social, cultural, and religious values, and 2) both partners love each other. From these reasons, it can be seen that the granting of marriage dispensation is based on the subjectivity of the judge which involves values, norms and culture. In fact, the reasons for granting the dispensation are not proportional to the negative impacts that will arise from the child marriage.

Other issues related to marriage dispensation is marriage by accident. The next thing to do is to clarify Law no. 16/2019 regarding the scope of reasons that can be categorized as urgent for filing a marriage dispensation. So that in its implementation, both judges and parents who apply for a marriage dispensation for children have references that can be taken into consideration during the submission process. In addition, providing technical guidelines for judges as a follow-up to the existence of PERMA No. 5 of 2019 also needs to be realized. PERMA No. 5 actually already includes the considerations that need to be used by the judge to grant/cancel the marriage dispensation. However, it is still necessary to explain in detail how these considerations can cover the needs of children and why these considerations are needed in order to provide judges with a best interest perspective for the child.

Nothing determination of the age limit for marriage in Islam and differences of opinion among the fuqaha

The main revision of the marriage law is on the provision regarding age, which states that the age limit for men and women is the same, 19. there are some who support but also who oppose these provisions. For example, the Indonesian Ulema Council (MUI) initially did not agree with the new regulation to increase the age limit for marriage, and asked the Constitutional Court (MK) to maintain the marriage age limit of 16 years for women, and argued that Article 7 paragraph 1 of the 1974 Marriage Law already contains religious values (Islam), so it must be declared constitutional and not contradictory to the 1945 Constitution. In addition, in the view of MUI as stated by Amidhan, that Islam does not set a marriage age limit. Islam only regulates *baligh* (maturity) in several signs, namely: firstly, girls are 9 years old or older and have menstruated (menstruation). Second, the boy or girl is 9 years old or older and has had the ejaculation. Third, men or women have reached the age of 15 years without menstruation and ejaculation. So, maturity in Islam is in the age range between 9 to 15 years so that the determination of the minimum age for marriage of 16 years for women reflects the needs of society and Islamic values (Sasongko, Mariyanti, & Safitri, 2020).

The MUI's view is based on the general view of fiqh experts that in Islam there are no strict provisions governing the minimum age limit for marriage. This is according to Yanggo's opinion (Yanggo & Anshary, 2002), that Islam does not determine the age limit in a marriage. Islam also does

not specify the maturity requirements for the two prospective brides. The absence of these limits is seen as a form of grace (leniency) in Islam, because maturity to marry includes the issue of *ijtihadiyah* at what age a person deserves to be married (Yanggo & Anshary, 2002). Therefore, the *Fuqoha'* differ on the age requirement for marriage. The first is to determine maturity with signs, namely *al-ikhtilam* (dream of having sex with husband and wife), with the arrival of menstruation (menstruation), a loud or loud voice, *inbat* (growth of hair in the armpits or hair around the genitals). With this sign, a person is considered to have reached puberty by nature (*al-bulug ath-thabi'i*) and this kind of maturity is usually found in 12-year-old boys and 9-year-old girls (T. Yanggo, 2004).

The second is to determine maturity by age, there are various opinions on this matter, including the opinion of the *Syafi'iyah Ulama* and Hanabilah who determined that adulthood starts at the age of 15 years. Even though they have received such signs, but because the arrival is not the same for everyone, maturity is determined by age, the age of maturity is equal for men and women because maturity is determined by reason, by reason of *taklif* and because of reason there is also Islamic criminal law (As-Shiddieqy, 2000).

It is different to Abu Hanifah sight, that maturity comes from the age of 19 years for men and 17 years for women, while according to Imam Malik it is determined for men and women aged 18 years (T. Yanggo, 2004). Yusuf Musa said that the age at which a person is declared an adult is when he is 21 years old (T. Yanggo, 2004). Meanwhile, according to the Shia Imamiyah, the age of puberty for men is 15 years while for women it is 9 years (Mughniyah, 1994). Sarlito Wirawan Swasono believes that the age of maturity for men is 25 years and for women is 20 years. Mr. Hendry Frank said that marriage should be done at the age range of 20 to 25 years for women and between 25 to 30 years for men. Religious psychology experts through religious maturity in a person does not occur at the age of 20 years (Yanggo & Anshary, 2002). The age limit for marriage is indeed a complicated problem. Because it is understandable that the adult age limit at which a person deserves and deserves to marry in each country is different (Supriadi, 2011).

Jumhur Ulama state that Islam does not set an age limit for marriage because the *fuqoha* do not require reason and puberty for the implementation of a marriage. However, there are indeed opinions that differ from the views of the majority of scholars. For example, the views of Ibn Shubramah, Abu Bakr al-Ashamm and Ustman al-Butti which forbid the marriage of small boys and young girls until they reach the age of puberty. The argument used is QS An-Nisaa: 4, "Until they are age enough to marry (*balaguh nikah*)". Ibn Hazam is of the opinion that it is permissible to marry a young girl as an application of the *atsar* on this matter, but marrying a male child is vanity and will invalidate the marriage. Ibn Shubramah's opinion has been adopted into state law, one of which is the state of Syria (Al-Zuhaili, 2011).

Wahbah Zuhaili (2016) in the interpretation of the verse says that *balagh al-nikaaah* is the age of puberty, marked by having cum dreams or having even reached puberty, which is even 15 years according to Imam Syafii and Imam Ahmad for men. As for women, it is marked by menstruation or pregnancy. Nevertheless, according to Hatta (2016), that the commentators have varied views in the interpretation of this verse, because there are those who argue that the size of the arrival time of marriage is not only physical maturity but also psychological maturity.

For them, referring to the views of the scholars about the absence of strict rules in Islam regarding the age limit for marriage, they criticize the argument that equating the minimum age for marriage between men and women is an effort to eliminate discrimination against women. Because, in the Islamic tradition, which has been proven to have produced great scientists and female figures, the *fuqoha* never argue about the minimum age for marriage. Even if there is a discussion, the scholars are more focused on determining the age limit for puberty if physical signs are not experienced by the child as a condition for the validity of a marriage. But if a woman has experienced physical signs such as menstruation, the scholars agree that the marriage will be valid regardless of the age of the woman, especially if the marriage is intended to bring more obedience to Allah swt. and prevent someone from immoral behavior.

In addition, one of the wisdoms of not setting a minimum age limit for marriage by the ulama is actually so that Muslims focus more on efforts to accelerate the process of children's maturity, namely being able to be responsible, have manners and knowledge that is useful for life, both in this world and in the hereafter. Moreover, at this time the culture of consumerism has complicated human life so that the standard of financial independence has become even higher. Men, especially in urban areas, not a few think about postponing marriage on the grounds that they do not have material stability. In fact, the lifestyle of the "modern" society has accelerated the emergence of sexual urges/libido in children, but it is not followed by maturity in thinking and behaving due to easy access to pornographic and pornographic content. The law can indeed be adapted to conditions and time, but when deciding a case related to Muslims, religious values should be the most important consideration. Do not let the effort to increase the minimum age limit for women's marriage will actually backfire when the way of immorality seems to be wide open due to the absence of laws in Indonesia that prohibit adultery and other sexual crimes such as LGBT.

Child Marriage, After Changing of the Minimum Age for Marriage

Child marriage in Indonesia is indeed not an easy problem to overcome, because it is closely related to aspects of tradition, culture and also economic problems. Some of the factors suspected to contribute are poverty, geography, lack of access to education, culture, gender inequality, social conflict and disasters, lack of access to comprehensive reproductive health services and information, and social norms that reinforce certain gender stereotypes (for example, women should married young).

Revision of the minimum age for marriage for women, from 16 years to 19 years. In addition, the Supreme Court Regulation (PERMA) No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation is basically an effort by the government to reduce the number of child marriages, so that the Law is expected to contribute to reducing the number of child marriages. The 2020-2024 National Medium-Term Development Plan (RPJMN) has also set a target for reducing the number of child marriages, from 11.21% in 2018 to 8.74% in 2024. So how is the development of child marriage practices in Indonesia after the minimum age limit? marriage was raised and the enactment of PERMA No. 5 years 2019.

The Ministry of Women's Empowerment and Child Protection (KPPPA) also stated that Indonesia is the 2nd country in ASEAN with the highest number of child marriages. In addition, since the COVID-19 pandemic hit Indonesia, cases of child marriage have increased. This was conveyed by KPPPA that since the COVID-19 pandemic, child marriage has reached 24 thousand. The COVID-19 pandemic is a special condition that makes many people lose their jobs, this then has implications for the practice of child marriage, where some parents want to release the economic burden by marrying off their children. In addition to economic factors, the pandemic also requires the teaching and learning process to be carried out online and increase children's free time, so to avoid unwanted pregnancies (KTD) some parents marry off their children (Zulaiha, 2017).

Thus, increasing the minimum age for marriage in Article 7a of the Marriage Law, does not necessarily guarantee that child marriage can be prevented. This is because the Marriage Law allows a dispensation application if the prospective bride and groom do not meet the marriage age requirements. In addition, in some cases it is possible that child marriages are not legally registered because they do not meet the requirements of the marriageable age.

The lack of information on the Right to Sexual and Reproductive Health (HKSR) also makes the position of children more vulnerable. Lack of information about SRHR has implications for children's lack of knowledge to protect themselves from risky acts such as free sex. This will lead to unwanted pregnancies and then encourage the practice of child marriage. So that comprehensive SRHR education is needed to strengthen children's understanding of risk factors to prevent child marriage.

In addition, based on the condition of the practice of child marriage and the challenges of preventing child marriage in Indonesia, it is important to harmonize policies at the central, regional and village levels to protect children from child marriage and support the abolition of child marriage. Furthermore, it must be ensured that the policy is formed and implemented based on the principle of

non-discrimination, has a gender perspective and prioritizes children's rights. So that the imposition of sanctions needs to be reviewed. The repressive approach is not accompanied by synergy in the prevention aspect by the state, it has the potential to open up gaps in child marriage, especially when social, economic and political conditions do not provide many options for families to live a dignified life (Rahman, 2016).

Overcoming the poverty, which is one of the factors to child marriage, also needs to be a priority. In terms of this intervention, of course, it must be accompanied by a child protection approach (Rahman, 2011), strengthening the capacity of parenting patterns, and strengthening the child welfare system. Finally, further support for research that focuses on the impact of child marriage on children in each region of Indonesia to identify different impacts that can be used to design appropriate interventions in different regions.

Analysis of Marriage Age Limit In Law Number 16 Year 2019

As has been discussed, that in Islam there is no definite set of marriage age limits, because no specific (explicit) arguments can be found, both in the Qur'an and Sunnah. This is seen as a legal vacuum that needs to be followed up by the government to give birth to clear rules regarding the age limit for marriage aimed at the benefit of the people. In Indonesia, various efforts have been made to regulate marital problems. As evidence, with the issuance of Law Number 1 of 1974 concerning Marriage, it was first legalized and promulgated on January 2, 1974, after going through a very long process from pre-independence to independence.

The enactment of Law Number 1 of 1974 concerning Marriage provides fresh air for the community because it already has a strong grip on carrying out every marriage. This went on for a long time, and in general, the public did not object to the rules contained in the Marriage Law. Then came the idea of the age limit for marriage which is considered the main problem with the widespread practice of young marriage and the number of divorces that happen to young couples (Rosyad, Mubarak, Rahman, & Huriani, 2021).

This reality is actually a natural phenomenon in the midst of current developments, because the changing times certainly have its own impact on every law that has existed for a long time. And this is in accordance with what was stated by al-Maraghi (1974) that in fact these laws were promulgated for the benefit of humans who have different characters and interests, both from time and place. A law that is made needed may be when the basic need no longer exists, then it is considered wise if the law is abolished and replaced with a new law that is more in line with the demands of the times (Truna, 2020).

Rasyid Rida (1987) stated that the law can actually be different, either because of differences in time, environment, situation and conditions. If a law is initially needed by the community, but then the law is no longer needed, then the old law should be immediately updated with a new law in accordance with the situation and conditions, time, and place in the community that implements the law.

In the context of the enactment of Law Number 16 of 2019 is a positive response from the Indonesian government which also considers that the age limit for marriage is appropriate to be raised. In this case the government is very serious about making a new law that replaces the old law. First, that in accordance with the mandate of the Constitutional Court which gave a grace period of three years for legislators to complete the law, it turned out that before three years the amendment to the law on the age limit for marriage had been completed and promulgated. Second, the government determines the age limit for marriage from 16 years to 19 years based on strong and accurate considerations in setting the age limit so that there is no gap to cause negative impacts again, both for men and women.

The equalization of the age limit for marriage between men and women, namely both must be 19 years old, because this indicates that the law in our country, especially those that regulate marriage issues, has given a clear picture of the realization of the purpose of the law itself, which has provided the principle Justice (*gerechtigheit*), Benefit (*zweckmatigheit*) and Certainty (*rechsecherheit*) to the wider community (Manan, 2006). Thus, there will be no more anxiety, demands and allegations that there is discrimination against one party when getting married.

In addition, setting the age limit in marriage with the same age between men and women will positively impact the psychology of each candidate (Wibisono, 2020). Because at the age of 19 years, he has entered the stage of maturity in the level of one's maturity, so he is more alert and ready to face various challenges and problems that will be faced when building a household. This means that this will also be a way for married couples to realize the main goal of a marriage.

However, in reality there is an undeniable fact that even though the age limit for marriage in Indonesia has been raised to 19 years, it is possible for marriages to occur under the age of 19. So that in this case it really needs serious attention and efforts by both parents and the government. At least for everyone who wants to get married under the age of 19, they must have a strong reason to continue to marry, in terms of the benefits and positive impacts for them when they are married (Wibisono, 2021). When the age limit for getting married has not reached 19 years, but indeed when they continue to marry it will provide good for their lives then they can be allowed to stay married, but on the contrary when the age for marriage is enough and 19 years have passed, but when they get married will cause harm or damage, then it is still inappropriate for marriage. So, the age limit for marriage was raised solely as a form of government attention and seriousness in preventing a high rate of early marriage, and also to provide guarantees for children's rights and provide full justice for both men and women so that no one is abused. discriminated against before the law, especially in the marriage law.

4. Conclusion

Changing the age limit for marriage in Indonesia has gone through a long dynamic and process, at least since Indonesia was not yet independent until the birth of Law Number 1 of 1974 concerning marriage, which was later renewed by Law Number 16 of 2019. Several factors are allegedly influencing the issuance of Law Number 16 of 2019. First, the previously determined age limit can no longer stem the existence of marriage practices that violate the marriage age limit, as can be seen in the widespread practice of young marriage, which has indirectly encouraged an increase in divorce and domestic violence courses. Second, many people are restless and discriminated against from the old rules, so they have submitted two Judicial Reviews to the Constitutional Court to change (increase) the marriage age limit for women. Third, there are at least 3 basics that become the driving force and are considered in the process of changing the marriage age limit, namely from a philosophical, sociological, juridical perspective. The change in the age limit for marriage as stated in the new law must be acknowledged that it has not been able to resolve the problems of marriage in the community fully. Some of these problems are related to the dispensation of marriage whose arrangements are not yet detailed. Many Muslims think that Islam does not contain rules regarding the minimum age limit for marriage; There are still many early marriages.

5. References

- Al-Maraghi, A. M. (1974). *Tafsir al-Maraghi* (Juz I). Mesir: Musthafa al-Baby al-Halaby wa Auladuh.
- Al-Zuhaili, W. (2011). *Fiqh Islam wa Adillatuhu* (Jilid 9). Jakarta: Gema Insani.
- As-Shiddieqy, H. (2000). *Tafsir Al-Qur'anul Madjid An-Nuur*. Semarang: Pustaka Rizki Putra.
- Hakim, R. (2000). *Hukum Perkawinan Islam*. Bandung: Pustaka Setia.
- Hatta, M. (2016). Batasan Usia Perkawinan dalam Perspektif Ulama Klasik dan Kontemporer. *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam*, 19(1), 66–88.
- Heriawanto, B. K. (2019). Interfaith Marriages Based on Positive Law in Indonesia and Private International Law Principles. *UNIFIKASI: Jurnal Ilmu Hukum*, 6(1), 94–100.
- Khisni, H. A. (2010). *Hukum Peradilan Agama*. Semarang: UNISSULA Press.
- Manan, A. (2006). *Aneka masalah hukum perdata Islam di Indonesia*. Jakarta: Kencana.
- Mughniyah, J. (1994). *Fiqh Lima Madzhab*. Jakarta: Basry Press.
- Rahman, M. T. (2011). *Glosari Teori Sosial*. Ibnu Sina Press.
- Rahman, M. T. (2016). Rasionalitas Sebagai Basis Tafsir Tekstual (Kajian atas Pemikiran Muhammad Asad). *Al-Bayan: Jurnal Studi Al-Qur'an Dan Tafsir*, 1(1), 63–70.
- Ridha, M. R. (1987). *Tafsir al-Manar* (Juz I). Kairo: Dar al-Fikr al-'Arbi.
- Rosyad, R., Mubarak, M. F., Rahman, M. T., & Huriani, Y. (2021). *Toleransi Beragama dan Harmonisasi Sosial*. Bandung: Digital Library UIN Sunan Gunung Djati Bandung.

- Sasongko, B., Mariyanti, S., & Safitri, S. (2020). Hubungan Dukungan Sosial Dengan Resiliensi Pada Perempuan Yang Mengalami Infertilitas. *JCA of Psychology*, 1(2), 114–123.
- Sudirman, S., & Iskandar, I. (2020). Resolusi Isbat Nikah di Indonesia: Sebuah Pendekatan Masalah. *JIL: Journal of Islamic Law*, 1(1), 100–114.
- Suma, M. A. (2005). *Hukum Keluarga Islam di Dunia Islam*. Makassar: Rajawali Press.
- Supriadi, D. (2011). *Fiqh Munakahat Perbandingan (Dari Tekstualitas sampai Legilasi)*. Bandung: Pustaka Setia.
- T. Yanggo, C. (2004). *Fiqh Anak: Metode Islam Dalam Mengasuh Anak Serta Hukum-Hukum Yang Berkaitan Dengan Aktivitas Anak*. Jakarta: PT. Al-Mawardi Prima.
- Truna, D. S. (2020). Islam Dan Pluralitas Agama di Indonesia. In *Modul Sosialisasi Toleransi Beragama*. Bandung: Prodi S2 Studi Agama-Agama UIN Sunan Gunung Djati Bandung.
- UU. UU 16 Tahun 2019 tentang Perubahan Atas UU 1 Tahun 1974 tentang Perkawinan. , (2019).
- Wahbah, A. (2016). *Tafsir Al-Munir Aqidah Syariah Manhaj* (Jilid 4). Jakarta: Gema Insani.
- Wibisono, M. Y. (2020). *Sosiologi Agama*. Prodi P2 Studi Agama-Agama UIN Sunan Gunung Djati Bandung.
- Wibisono, M. Y. (2021). *Agama dan Resolusi Konflik*. Bandung: Lekkas dan FKP2B Press.
- Yanggo, C. T., & Anshary, H. (2002). *Problematika Hukum Islam Kontemporer* (Cetakan II). Jakarta: Pustaka Firdaus.
- Zulaiha, E. (2017). Tafsir Kontemporer: Metodologi, Paradigma dan Standar Validitasnya. *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya*, 2(1), 81–94.



© 2021 by the author. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<https://creativecommons.org/licenses/by-sa/3.0/>).