

### Analysis of the Minimum of Marriageable Age in the Perspective of Theology

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**Abstract:** *Early marriage is a reality occurred in society. Some parents still have an understanding that getting their children married as soon as possible is part of the solution to lighten the burden on the family. This research aims to reveal what the ideal age for marriage in the theological perspective. This research uses a qualitative approach. Data collection by means of literature study, while data analysis is descriptive qualitative. This research concludes that theologically the age of marriage does not mention numbers, but the principle of maturity of the groom and bride. Therefore, the validity of marriage is not only due to the fulfillment of the pillars, but also develops in the fulfillment of the conditions of marriage. We recommend that the minimum age for marriage still refers to the latest law, in the age of 19 for men and women. This is because if the minimum age is lower than 19, it is still classified as children's age and is no longer relevant to today's era. Age shows a person's maturity to be able to marry in the perspective of theology, health (reproduction), psychology, and the ability to fulfill rights and obligations as husband and or wife.*

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#### Introduction

Humans have a tendency to live together with others in a social life. In its smallest form, living together begins with the existence of a family. Marriage is sacred procession and has a noble purpose. It cannot be separated from the provisions prescribed by religion (Muhammad Asnawi, 2004) Marriage is defined as a contract or engagement to justify sexual relations between men and women in order to realize the happiness of family life which is filled with a sense of peace and love in a way that is pleasing to Allah SWT (Ahmad Azhar Bashir, 1997).

According to Law No. 1 of 1974 marriage is an inner and outer bond between a man and a woman as a wife with the aim of forming a happy and eternal family (household) according to the God Almighty. In the view of Islamic law, marriage is an act of worship, *sunnatullah* and *sunnah* of the prophet. Only through marriage, a person can be considered valid to have a

family life (household), and he can be protected from actions forbidden by Allah. Marriage is a means to born generation of human beings who have the duty of caliphate to prosper the earth. In addition, marriage also aims to create a harmonious household full of love and affection (Abdul Rahman Ghozali, 2010).

A good marriage is a marriage based on love among human beings. The implementation of this love is formulated in the Qur'an with the term *amar ma'ruf nahi mungkar* or social solidarity which aims to form an environment that is pleasing to God, equitable, civilized, and humanism (Muhammad Said Ramadhan Al-Buthi, 2013). The marriage must be a marriage full of joy and happiness in life, filled with loyalty and love (Bey Arifin, 1995). This is because love is a holy divine gift (Yusuf Sa'ad, 2005). In the Qur'an, the discussion of marriage in detail is mentioned no less than in 103 verses.

The word "marriage" are mentioned 23 times, which means gathering. The word *zawaja* which means a partner is repeated 80 times (Musdah Mulia, 2004). This number is interesting because the concept of compatibility of pairs (*azwaj*) is created by Allah with the principle of principle of symmetry of pairs (Nasarudin Umar, 2014). This is because the standard of living of the believer is the most important one in the ideal household ( Muhammad Amin, 2013).

Based on hadits of Prophet Muhammad SAW:

عن عائشة رضي الله عنها قالت أن النبي صلى الله عليه وسلم تزوجها وهي بنت سبع سنين، ورقت إليه وهي بنت تسع سنين، ولعنها معها، ومات عنها وهي بنت ثمان عشرة . (رواه مسلم)

*"From Aisyah RadhiaAllahu 'Anha said: The Prophet, may God's prayers and peace be upon him, married her when she was the daughter of seven years, and she was married to him when she was nine years old, and they played with them" (Muslim).*

The Qur'an explains that one of the goals of marriage is to create a *sakinah, mawaddah, and rahmah* family between husband, wife, and children (Quraish Shihab, 2011). The main purpose of marriage is to form a happy family full of peace of love and affection between husband, wife, and children. The main purpose of marriage is to get a quiet life, love and affection. This main goals can be achieved perfectly if other goals can be fulfilled. In other words, other purposes are complementary to fulfill this main purpose. By the achievement of the goals of reproduction, the purpose of fulfilling biological needs, the goals of self-preservation and worship, *insya Allah*, peace, love and compassion will also be achieved. Thus, other goals are complementary to achieve the main goals (Khoiruddin Nasution, 2013).

Marriage rules are part of law enforcement which have the intention of creating peaceful and equitable life. The noble ideals of the law are manifested in the form of an understanding that emphasizes that marriage is human nature. According to Nurcholis Madjid, denying the marriage rules is the same as denying the laws of the universe that have been created by God Almighty (Nurcholis Madjid, 1992).

Many cases prove that a lasting marriage will occur if both husband and wife are ready to navigate the household that cannot be separated from various problems, which is called as maturity. Then, has every married couple reached a degree of maturity? Many facts show that in the regions area marriage still becomes a concern. Many young couples especially women who are actually not ready to carry out the roles as wives and mothers of children.

Early marriage is not only a drama, but it also happens in real-life of society. This has not been completely resolved. It still needs attention and a comprehensive solution. The marriage law apparently tries to provide solutions, however it is still formalistic. The problem of early marriage is still a trend in society that is still difficult to overcome this problem especially for those with low education and lower economic class.

Marrying a daughter as soon as possible is seen as the most effective solutions to ease the burden on a family which is usually very hard, especially for the large family (Sudirman). To find out the expected ideal family, this is closely related to the prospective husband and wife. In this paper is discussed how is the person's readiness to become husband or wife in the scope of minimum marriageable age. This is due to age describing a person's condition in terms of readiness, ability, and management of family relationships.

This research to examine the material through literature and understand the problems and controversies related to analysis of the minimum age of marriage in the theological perspective.

### **Research Method**

Literature review is a data collection method that is directed at searching for data and information through documents, both written documents, photographs, pictures, and electronic documents that can support the writing process. Literature review is an important part of the overall steps of the research method. That literature review has several objectives, namely informing readers of other research results that are closely related to the research conducted at that time, linking research with existing literature, and filling in gaps in previous studies (Lexy J Moeloeng, 2017). So in this case to distinguish this research from previous research, the researchers took several previous studies including:

Marriageable age according to Islamic law varies. Some ulama' say that the minimum age for a person to get married is puberty with characteristics: Wet dreams for men and menstruation for women. The minimum age for marriage is not only seen from physical characteristics, but also from the perfection of mind and soul. Even though the age has not yet puberty, it does not prevent the validity of the marriage because not included in the pillars and conditions for a valid marriage (Reni Febrianti, 2020).

The physical impact on marriage at a young age has not been able to be burdened with work to earn income. In marriage, economic factors are a very important need to realize prosperity and happiness in marriage. Therefore, before marriage, teenagers must be ready from an ideological and biological perspective. not just one (K Sa'diyah, 2020).

## Discussion and Results

### The Legal Age of Marriage in Indonesia

The Indonesian government and DPR (the legislative) have agreed and ratified the minimum age for Indonesian people who want to marry, both male and female, is 19 years old. The agreement on the minimum marriageable age is decided at a meeting of the Committee for the Revision of Law Number 1 of 1974 concerning Marriage. The event is also attended by representatives of the Ministry of Women's Empowerment and Child Protection. The government and DPR agree to a limited revision of Article 7 paragraph 1 related to the minimum age for marriage. The article mentions the provisions on the minimum age for a person to marry. Before the revision, the minimum marriageable age for men is 19 years old and the minimum marriageable age for women is 16 years old (Fathul Mu'in, 2020).

The essence of the policy by the government and DPR is to raise the minimum age for marriage for men and women to be the same, which is 19 years old. This minimum age actually also follows the decision of the Constitutional Court which was knocked in 2017. DPR then carried out an order from the Constitutional Court based on the results of the judicial review to change the contents of article number 7 which regulates the minimum age for marriage due to age discrimination between men and women (Kompas, 2019).

Previously, this law regulates the minimum age for bridegroom candidate, both male and female. This is considered as a unique phenomenon because in Islam there is no regulation regarding to minimum marriageable age. However, social facts have strong influence in this phenomena. The rise of cases of marriage at a young age which ultimately ends tragically has inspired the importance of the minimum age of marriage.

The regulation of the minimum marriageable age are mentioned in Article 7 paragraph (1) (Depag, 1995). This is also mentioned in the law in Article 15 paragraph (1) of the KHI. The article states that marriage is only permitted if the man has reached the age of 19 years and the woman is 16 years old. The provision of the figure is based on consideration of the benefit of the family and household. This is in line with the principle in the marriage law that the prospective groom and bride must be mature mentally and physically. So, they can realize the purpose of marriage properly without having to separate. This minimum age regulation can also lead to a good and healthy offspring. For this reason, marriages between prospective husbands and wives who are still underage must be prevented. Meanwhile, for those who have not reached the minimum age for marriage but they decide to marry, the condition of a dispensation from the court or other official is required.

### Age of Marriage from a Theological Perspective

Islam does not regulate the minimum marriageable age in detail. Having no regulation of minimum or maximum age of marriage provides flexibility and leeway for Muslims to regulate the limitation age for marriage. However, in fact the Qur'an has indicated that Muslims who want to marry must have readiness and ability. As mentioned in Surah An-Nur verse 32

which states that the word (الصالحين) in this verse is understood by many scholars in the sense of "eligible for marriage" are person who mentally and spiritually capable of building a household (M. Quraish Shihab, 2005).

In deep, the Qur'an indirectly has acknowledged that the maturity of a person who wants to get married is very important. Maturity in *fiqh* is at least determined by the presence of physical signs of puberty in general, including the completion of the age of 15 years old for men, *ihtilam* for men and menstruation for women at the age of nine years. When they reach puberty, it is possible for both men and women to marry. Based on this, maturity in Islam is usually identified with *baligh* (Salim, tt).

Regarding the rules on the ability for men and women who want to marry, Islamic law does not specify the criteria, but there are law for puberty. Women have puberty on the age of nine or have menstruated. While, men have puberty in the age of 15, or has dreamed of intercourse (Rahmat Hakim, 2000).

Islamic law views that the ideal age for marriage is the same as the age of the Prophet Muhammad having marriage, which is in the age of 25. Therefore, the ideal age for men and women to marry is 25 years old. The argument of this theory is based on the consideration of *mashlahah* Imam Syatibi's (Muhammad Khalid Masud, 1977).

Among the *fuqoha*, in general the *imam* of the madhhab allow the practice of early marriage. It can be seen implicitly that Imam Malik admits that early marriage is permissible. According to Imam Malik, the marriage of an immature widow who has no coitus with her ex-husband, i.e. either separating as a result of being divorced or being left behind by death is having the same status as the girl, that the father has *ijbar* for her.

On the other hand, if the couple have sexual intercourse, the woman have status as a widow, so she have responsible for herself more than the guardian (Muhammad Sahnun, 1332H). The same opinion states by Kasini based on Hanafi madhhab according to the act of the Prophet Muhammad who marries Siti Aisah at the age of six (married by Abu Bakr) (Alay Al-Din Abi Bakar, 1996).

The majority of *Ulama* (Muslims scholars) have different views in determining the age of a person in getting married. Even regarding people who are considered *baligh*, each *Ulama* has different opinions. *Ulama* of *Syafi'iyah* and *Hanabilah* state that boys and girls can be said to be *baligh* if they reach the age of 15 (Muhammad Jawad, tt). Meanwhile, Hanafi madhhab concludes that the age of a person who is considered *baligh* is 18 years old for men and 17 years old for women. In contrast to the *Ulama* of *Imamiyyah* who state that men are categorized as *baligh* when they are 15 years old and women are 9 years old.

The Qur'an, the hadith nor opinion of the ulama (Muslims scholar) stipulate a specific age of marriage. This is indirectly giving freedom for Muslims to adjust, depends on the situation, personal and family conditions, interests and or habits of the local community. That the physical and spiritual maturity of the bridegroom candidate is a religious priority.

Most *fiqh* scholars set a minimum of marriageable age starting at the age of six, this may be motivated by the limitations of science at the time. If

the *Ulama* has known the harm of letting a six-year-old-child or at the beginning of the menstrual phase or *baligh* girl having marriage, the *Ulama* would have set the higher minimum marriageable age.

Based on the above arguments, in essence, the principle of maturity of the bride and groom needs to be considered. In this way, the validity of a marriage is not only due to the fulfillment of the pillars but also to the aspect of fulfilling the requirements of marriage. In Indonesia, regarding minimum marriageable age, the MUI also has a *Fatwa* (decision) that the eligible age for marriage is the age of ability to act and receive rights (MUI, 2009). The point is the person legal ability to act perfectly and responsible of his actions.

The legitimation of RUU (regulation planning) of Marriage which raises the age limit for marriage has a good responses from the Indonesian people, especially the psychologists. The Article 7 paragraph 1 explains the minimum age for marriage has changed to 19 years old for both men and women. This is very rational regarding to the enormous responsibility carried by the candidate of husband and wife in a family. It is necessary to prepare for psychological maturity as well as reproductive maturity and psychological abilities of the bridegroom (Mufidah, 2008). In terms of the maturity of the husband, this can be studied by psychological approach.

In general, psychology is a science that examines psychological symptoms related to the normal, mature, and civilized human soul (Jalaludin, 1998). Therefore, the purpose of marriage is to apply the religion of Allah in daily life, obtain offspring, and a harmonious life in a family (Muhammad Idris, 1996). This goal certainly cannot be achieved if both husband and wife are not mature or old enough and their souls are not yet mature. Maturity is a very important issue, because it can affect success in marriage.

Someone who has maturity both physically and mentally is not necessarily able to succeed in fostering a family. This can be worse if someone is still too young and not yet mature in age. Without maturity, every problem that arises in the family will be handled with emotion. Even married couples will be very easy to commit violence and even file a lawsuit or divorce to the religious court. Therefore, the key to a successful marriage is the need for maturity in terms of physical, mental and emotional aspects of the bride and groom (Helmi Karim, 1996).

According to developmental point of view, marriage readiness is one of the developmental tasks of young adults. According to Erikson, building intimate relationships (intimacy) is a very important task in the development of young adults. It is not the developmental task of late adolescence (12-22 years) which is the age of a person becoming a student in a college or university level (Santrock, 1995).

According to Papalia and Olds, the best age for marriage for women is in the age range of 19-25 years. While for men it is at the age of 20-25 years. This is categorized as teenagers. Steinberg suggests that adolescence is in the range of 12-22 years (Steinberg, 2002). Adolescence is a period of transition from childhood to adulthood, where there has been a change in a person in terms of biological, cognitive, or socio-emotional changes. The age range of 18-

22 years is the age at which a person study at the level of college or university (Adhim, 2002).

When the marriage is held, the wife and husband do not live theirselves as when they were children and teenagers. This husband and wife are members of two large families, of course, most of whom have different backgrounds. So, in order for the marriage bond and sacred promise to be well maintained, this married couple and extended family must be able to understand each other and fulfill their respective rights and obligations in accordance with the provisions of Islamic family law.

Both husband and wife must have awareness that between husband and wife have a balanced relationship, cooperate with each other and make each other happy. By maintaining and carrying out each other's rights and obligations physically and mentally, the weaknesses and shortcomings of partners will be covered by each other (Moh. Haitami Salim, 2013). With psychological maturity, both will realize that the position of husband and wife is equally important in the family. Therefore, this will produce a very strong relationship in the family and happiness in a family must be fought for together.

### **Conclusion**

This research concludes that theologically the age of marriage does not mention in numbers, but the principle of maturity of the candidate of husband and wife. Therefore, the validity of marriage is not only due to the fulfillment of the pillars, but also in the fulfillment of the conditions of marriage. Therefore, the standard or minimum age for marriage in Indonesia still refers to the latest law, in the age of 19 for men and for women. This is because the minimum age of 16 years is still considered the age of children and is no longer relevant today. Age shows a person's maturity to be able to marry, both from the theological point of view, health (reproductive organs), psychological, and the ability to fulfill rights and obligations as husband or wife. The results of the *Ijtihad* on minimum marriageable age of 19 years are expected to be able to create a *Sakinah* family and improve the high quality of family life of Indonesian Muslims.

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