

THE EARLY MARRIAGE IN KALIBOTO KIDUL ON MAQASID SHARIA PERSPECTIVE

Sarkowi

Universitas Islam Negeri
Maulana Malik Ibrahim
Malang
sarkowi777@gmail.com

Roshiful Aqli Qosyim

STAI Miftahul Ulum Lumajang
roshifulaqli24577@gmail.com

Abstract

The practice of early marriage breeds many problems. This case also quite a lot happened in Kaliboto Kidul, Lumajang. This study traces why the phenomenon occurs. The article also looks at the practice with the perspective of maqashid sharia. Therefore, the important debate is whether the practice of early marriage is entirely problematic or on the other hand has benefits. This paper is packed with an interdisciplinary approach; normative, sociological, and philosophical. This article found that the main reason for the practice of early marriage is because of pregnancy out of wedlock, among other reasons. For this reason, in the perspective of Maqasid Shari'ah, the practice of early marriage can be the best choice to protect women and children (*hifz an-nafs* and *an-nasl*), although it still gives birth to new effects, namely during childbirth. However, the danger is still assessed at a lower level of dharuri than allowing the child to be trapped in adultery. Therefore, this article confirms that in the normative, sociological, and philosophical context the practice of early marriage does not fully present harm, but it becomes an option to protect other potential harms.

Key Words: Maqasid Sharia, Marriage, Early Age

Abstract:

Praktik nikah dini melahirkan banyak masalah. Kasus ini juga cukup banyak terjadi di Kaliboto Kidul, Lumajang. Kajian ini melacak mengapa fenomena tersebut terjadi. Artikel ini juga melihat praktik tersebut dengan perspektif maqashid sharia. Karena itu, perdebatan pentingnya adalah apakah praktik nikah dini sepenuhnya bermasalah atau di sisi lain memiliki manfaat. Tulisan ini dikemas dengan pendekatan interdisipliner; normatif, sosiologis, dan filosofis. Artikel ini menemukan bahwa alasan utama praktik nikah dini adalah karena hamil di luar nikah, disamping alasannya lainnya. Dengan alasan ini, dalam perspektif Maqasid Syari'ah, praktik nikah dini bisa menjadi pilihan terbaik untuk memproteksi perempuan dan anak (hifz an-nafs dan an-nasl), meskipun tetap melahirkan dampak baru, yaitu saat melahirkan anak. Namun, bahaya tersebut masih dinilai dalam tataran level dharuri yang lebih rendah daripada membiarkan anak terperangkap pada hubungan zina. Oleh karena itu, artikel ini menegaskan bahwa dalam konteks normatif, sosiologis, dan filosofis praktik nikah dini tidak sepenuhnya menghadirkan kemudharatan, tetapi ia menjadi pilihan untuk memproteksi potensi kemudharatan lain.

Keywords: Maqashid Syariah, Pernikahan, Usia Dini

Introduction

Islamic religious law does not explicitly state a certain age limit for carrying out marriages and marriages. So it is necessary to have studies and research from experts in the field of religion in terms of age

AL-HUKAMA

The Indonesian Journal of Islamic Family Law
Volume 13, Number 01, June 2023; E-ISSN: 2548-8147

and ideal age for marriage. The results of these studies and research certainly also consider biological, psychological and sociological conditions without violating the provisions and regulations set by the government. These efforts are made in order to realize the goodness of the world hereafter and avoid the badness of the world hereafter. In other words, the results of the study and research must include aspects of human values, women's rights, and maintaining the nuances of mercy and wisdom in efforts to realize the interests and welfare of mankind.

In various studies related to the limit of marriage age, opinions and views are found that are not the same. The *fuqaha'* (scholars) agree that a father has the right to marry off his son or daughter who is still immature.¹ The same thing was conveyed by Imam Abu Hanifah that the marriage of young children with the permission of their guardian is considered legal.² However, when the child reaches adulthood (*baligh*), then the child has the right to continue or terminate the marriage bond.³

In a study of discussions at the *bahtsul masail* forum at the 32nd NU congress in Makassar, it was agreed and decided based on the majority of scholars that there is no age limit for marriage in Islam. The *kiai* (scholars) who were present at the *bahtsul masail* forum recommended that marriage should be carried out after reaching the age of puberty (age enough with the assumption of benefit). This opinion is based on Zuhaili's explanation by citing the quote of *Syafi'iyah* scholars. They stated that in marrying young girls, the benefit must be realized".⁴

In terms of quantity, the number of early marriages has increased since the community was hit by the covid 19 pandemic. The existence of social distancing caused many children to drop out of school, so they chose the option of getting married, or being married off. The reason some parents deciding to marry off their daughters is that they think it's better to get married than to just stay at home. This decision was also based on the idea that this step could help reduce the economic burden

¹Muhammad bin Ahmad bin Muhammad bin Ahmad bin Rusyd al qurthuby al Andalusy, *Bidayah al Mujtahid wa Nihayah al Muqtahid*, Juz II. (Surabaya: Hidayah, TT), 5.

²Abu Abdillah Muhammad bin Abdurrahman al Dimasyqi al 'Ustmani al Shafi'i, *Rahmah al Ummah fi Ikhtilaf al Aimmah* (Surabaya: Hidayah, TT), 27.

³Asghar Ali Engineer, *Women's Rights in Islam*, Translated by Farid Wajidi and Cici Farikha Assegaf, Cet, 1 (Yogyakarta: Bentang Budaya Foundation, 1994), 94

⁴ Syekh Wahbah Az-Zuhaili, *Al-Fiqhul Islami wa Adillatuh*, [Beirut, Darul Fikr: undated], chapter IX, 74.

on the family, which was increasingly difficult due to the impact of the COVID-19 pandemic.

In fact, marriage at an early age will have various direct impacts on the survival of the bride and groom's household. They are not mature enough to bear and behave according to their new status and role as husband or wife. It takes readiness in the physical, mental and financial aspects. If not, it will have an impact on the emergence of harmony in family life, such as unresolved conflicts and can trigger a divorce. This is evident from the results of research conducted by Badruzaman, that marriage at a young age is very influential on the high rate of divorce in court. Religion Antapani Bandung, meaning that the younger a person is in marriage, the impact is the higher the divorce rate.⁵

Cases of early marriage also occur in Lumajang Regency. In 2021, Lumajang Regency is ranked second as the city with the most cases of child marriage in East Java. And every year many young couples under 17 years old apply for a marriage dispensation letter to the Religious Courts. In fact, according to Sofan Afandi, the young clerk of the Lumajang Religious Court, said that based on data from 2020, there were at least 1,046 young couples applying for a marriage dispensation. Their average age is still under 17 years.⁶ The village of Kaliboto Kidul is a contributor to the number of women who marry and are married off at an early age.⁷

Based on the research context above, this research will describe and analyze early marriages for women at an early age in the village of Kaliboto Kidul Jatiroto Lumajang. In this study, the research focus will be studied, namely how Islam views and laws regarding the age of marriage, the problem of early marriage for women in the village of Kaliboto Kidul, and what if it is understood through the perspective of maqasid sharia. What is meant by marriage at an early age in this study is marriage carried out by a man and a woman where both parties or one of the

⁵Dudi Badruzaman, "Pengaruh Pernikahan Usia Muda Terhadap Gugatan Cerai Di Pengadilan Agama Antapani Bandung", *Jurnal Muslim Heritage*, June, 6 / 1, 2021, 69-89

⁶ Lumajang Runner Up for Early Marriage Rates in East Java (lumajangsatu.com)

⁷ Kaliboto Kidul Village is one of the villages in Jatiroto District, Lumajang Regency, which is located at height \pm 30 m than from sea level, with air temperature between 34oC with. The average rainfall is 47 mm per year. With area of \pm 827.246 Ha with the total population 7,554 souls. Kaliboto Kidul Village is divided into 7 (seven) hamlets, namely: Pondoksari Hamlet, Petung Jaya Hamlet, Petung Hamlet, Wonokerto Hamlet, Persil Umbulsari Hamlet, Persil Pondokrejo Hamlet, Persil Ranupakis Hamlet. With the development of the times, Kaliboto Kidul Village is progressing and the population is increasing.

parties is not old enough according to Law No. 1 of 1974 concerning marriage. However, in this study the authors specifically examined women who married at an early age or under the age of marriage.

Several studies of early marriage in the perspective of maqashid sharia have been conducted by researchers. Juwandini asserted that the practice of early marriage is irrelevant and even violates the principles of maqashid sharia.⁸ The same statement was also conveyed by Musfiroh. He asserts that early marriage is incompatible with the goals of marriage; fostering serenity, happiness, and love in the family.⁹ In an empirical context, Azizah and friends found that early marriage can have both negative and positive impacts. This depends on how the perpetrators of early marriage lead a domestic life.¹⁰ Ayun and Hasyim, in observing early marriage in Selok Anyar, mapped three important factors in the practice of early marriage, namely biological, sociological, and theological factors.¹¹

This study is different from some previous studies. This paper does not only focus on what are the factors behind and how maqashid shari'ah views the practice of early marriage. Through maqasid shari'ah, a clear picture of how to determine the ideal age limit for marriage is carried out. Therefore, the objective of applying Islamic marriage law will be realized. Conversely, it can also be seen that the age that is not ideal for marriage is when the marriage takes place the goals of marriage will not be achieved. If they are able to achieve these goals, basically the achievement is not at the maximum level. This is the principle of the ideal age limit for marriage. Deploying normative, sociological, and philosophical approaches, this article intends to question again whether early marriage really has a concrete impact on harm.

⁸ Yohana Juwandini, "Underage Marriage: Customary Perspectives and Sharia Maqashid" (Syarif Hidayatullah State Islamic University, Jakarta, 2021).

⁹ Mayadina Rohmi Musfiroh, "Early Marriage and Child Protection Efforts in Indonesia," *De Jure: Journal of Law and Shar'iah* 8, no. 2 (2016): 64–73, <https://doi.org/10.18860/j-fsh.v6i1.3192.3>.

¹⁰ Nurie Azizah, Fauzik Lendriyono, and Oman Sukmana, "Portrait of Early Marriage in Indonesia (Case Study in Jatimulyo Village, Lumajang Regency)," *Journal of Social Intervention and Development (JISP)* 2, no. 2 (2021): 102–16, <https://doi.org/10.30596/jisp.v2i2.7867>.

¹¹ Qurroti Ayun and Rizky Putri Awaliyah Hasyim, "Early Marriage Motives of Selok Anyar Pasirian Lumajang Community," *Dakwatuna: Journal of Da'wah and Communication* 4, no. 1 (2018).

Discussion

The Standard Age of Marriage

The definition of marriage is a contract that contains the meaning of lawful relations between husband and wife.¹² In this sense, it shows and indicates the lawful intimate relationship between husband and wife without any explanation of the time limit of a marriage. In line with the Law Number 1 of 1974 concerning Marriage (the Marriage Law), the definition of marriage is intended to portray a relationship physically and spiritually between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the Belief in One Almighty God. This understanding implies that marriage is not a game. In this context, both husband and wife have to maintain the family forever by trying and maintaining the harmony based on faith and trust in God Almighty.

Then, at what age does a man or woman get married? In the Qur'an and al-hadith there is no clear text that states at what age a person can marry. Therefore, the marriage contract will be valid without regarding the age, whether they are toddlers, children, adolescent, and adult. It means that a father as a guardian has the right to marry both sons and daughters who are still immature.¹³ Abu Hanifah's opinion stated that it is legal to carry out child marriages with the permission of their guardian.¹⁴ However, later when the child reaches adulthood (*baligh*), the child has the right to continue or break the marriage bond.¹⁵ This right applies, either in continuing or deciding, as long as there has not been sexual intercourse between the bride and groom.¹⁶ This decision is absolute and no one can interfere with the decision, including parents.¹⁷ Thus, the granting of full rights to children who have reached

¹²Ibrahim al Bajury, *Hasyiyatu al Baijury ala Ibni Qasyim al Ghazy*, (Beirut: Daru Ihya'i Turats al-Araby, 1996), 100.

¹³Muhammad bin Ahmad bin Muhammad bin Ahmad bin Rusyd al qurthuby al Andalusy. *Bidayah al Mujtahid wa Nihayah al Muqtahid Juz II*. (Surabaya: Hidayah, TT), 5.

¹⁴Abu Abdillah Muhammad bin Abdurrahman al Dimasyqi al 'Ustmani al Shafi'i, *Rahmah al Ummah fi Ikhtilaf al Aimmah* (Surabaya: Hidayah, TT), 27.

¹⁵Asghar Ali Engineer, *Hak-hak Perempuan dalam Islam*, Translated by Farid Wajidi and Cici Farikha Assegaf, Cet, 1 (Yogyakarta: Benteng Budaya Foundation, 1994), 94

¹⁶Khoiruddin Nasution, *Fazlur Rahman, Tentang Wanita*, (Yogyakarta: Tazafa, 2002), 229

¹⁷Asghar Ali Engineer, *Hak-hak Perempuan dalam Islam*, Translated by Farid Wajidi and Cici Farikha Assegaf, Cet, 1 (Yogyakarta: Benteng Budaya Foundation, 1994), 94

puberty to decide whether to continue their marriage or not shows that Islamic law pays attention to a person's maturity. Because someone who is not yet an adult is not considered competent to act under the law. On the other hand, an adult child is considered to be able to understand what is right to do and what should not be done.

The Marriage Law stipulates the standard age of marriage in Article 6. This article stated that a person may only marry at 21 years old, both male and female. However, a person who has not reached 21 years old must obtain permission from both parents. In addition to licensing requirements from parents, the Marriage Law limits the minimum age for marriage, 19 years old for men and 16 years old for women. This is regulated in Article 7 paragraph (1) of the Marriage Law.

In reality, many marriages are underage. This is because the government provides media to the public through the application of marriage dispensation in the Religious Court. The reasons for this request really need to be considered because those who want to get married are still too early. There is still no physical and psychological readiness. This marriage dispensation is regulated in Article 7 paragraph (2) of the Marriage Law. This article suggests the parents to apply marriage dispensation proposal to the Religious Court.

In terms of the age limit for marriage, the Complication of Islamic Law also stipulate the same as the Marriage Law. It is stated in Article 15. This article explained that regarding the safety of the family and household, marriage may only be carried out by the bride and groom who have reached the standard age, 19 years old for men and 16 years old for women. Moreover, this article stated that the prospective brides who have not reached the age of 21, they must obtain permission as regulated in Article 6 of the Compilation of Islamic Family Law.¹⁸

The differences in regulations between *fiqh* and state law, including Islamic law created by state, above can certainly give birth to polarization of views. Some consider that following Islamic law is more obligatory because it is a manifestation of God. These people might argue that any violation of state regulations will have an impact only on mundane affairs. Whereas, violation of God's law will have an impact on the affairs of the world and the hereafter. However, the fact is that the

¹⁸Presidential Instruction of 1991 Number 1

difference between the two laws mentioned above that are equally recognized in Indonesia, does not let either of them cripple. However, making the Marriage Law a new regulation was born rather than *fiqh*, never deviating from Islamic law. If there are differences in rules, when laws related to marriage regulate something that is not regulated in *fiqh*, it is understood that this is aimed at the common good.¹⁹

Problems of Early Childhood Marriage in Kaliboto Kidul Village

Early marriage takes place on the bride and groom who are under a productive age, less than 20 years old for women and less than 25 years old for men.²⁰ The Marriage Law Article 7 paragraph (1) as a positive law in Indonesia, it stipulates that marriage is only permitted if the man has reached the age of 19 years old and the woman has reached 16 years old. Therefore, marriage is said to be an early marriage if one of the marriage partners is under 19 years of old.

In the case of women marrying at an early age in the village of Kaliboto Kidul, based on observations, it was found that a high number of women married or were married off at an early age. It is based on the statement of the head of Neighborhood Association (RT) of Petung Jaya, Kaliboto Kidul Village. He said that many people in Kaliboto Kidul marry their daughters after graduating from high school. Therefore, few women continue on to college. It is the way to avoid the early marriage planned by their parents. Another way they do is by migrating to a big city or abroad to work as a maid or household assistant.²¹ In this position it can be known that the age for women to marry in Kaliboto Kidul village is 17 years, after completing senior high school. Of course, this matter deserves to be called early marriage.

This finding strengthens the results of research related to the presence of marriage at an early age caused by several factors. The causative factors can come from within the adolescent itself, internal factors, like social problems with friends who negatively influence the

¹⁹Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, (Jakarta. Kencana Prenada Media. 2006), 29.

²⁰Eka Yuli Handayani, "Factors Associated with Early Marriage in Young Women in North Tambusai District, Rokan Hulu Regency", *Journal of Maternity and Neonatal*, Vol, 1, No. 5, 2014, 2. accessed March 30, 2022

²¹Observation results on September 16, 2022

teenager, the problem of adolescent sex itself and the problem of social status. It was stated in Atmei Lubis' research that the main factor causing women is physical sexual maturity. Women who engage in early marriages are physically mature in sex. It is because they want to engage in sexual activity that they should not be allowed to do. It was then followed by the educational factor, where the women who engaged in early marriage were bored and no longer interested in continuing their education. They prefer to build a household life that is considered more interesting and more enjoyable.²²

Under these conditions, a woman's psychic preparation is not fully maximized. They also do not have enough knowledge about marriage, reproduction, building a harmonious family, and especially as a wife of their partner and prospective mother of their children. The impact is rising quarrels in the family and making the marriage less harmonious. This is reinforced by Rudi's experience marrying women who have just graduated from senior high school. When his marriage was six months old, his wife was often jealous and also often misunderstood so that he often argued and even led to violence because of his height emotion.²³

In an interview with Maryam, who married after graduating from high school, regarding the reasons why she married underage. She explained that before graduating from high school, she had an arranged marriage with a man who was her father's friend. Therefore, when graduated from high school, she hastened to get married.²⁴ In line with that, Munawati, who married one year after graduating from high school, said that when her parents found out that she was already dating and often went out with male friends, she were immediately asked to get married. In this position, she we would not get involved in actions that resulted in pregnancy before marriage.²⁵

This is in accordance with what was expressed by one of the guardians of women who married at an early age, Marwan. He we want girls to get married when they graduate from high school, because there

²²Anggreni Atmei Lubis, "Latar Belakang Wanita Melakukan Perkawinan Usia Dini", *Jurnal Ilmu Pemerintahan dan Sosial Politik*, vol. 4 nos, 2, 2016, 150-160

²³Rudi, Kaliboto Kidul Village Interview, September 20, 2022

²⁴Maryam, Interview, September 21, 2022

²⁵MUnawati, Interview, September 21, 2022

are concerns that they will be affected by prolonged dating which is prohibited by religious rules. This way will lead them to not fall into adultery and get pregnant first or commit adultery. Marwan confirmed that the large number of pregnancy out of wedlock among his girl friends is due to promiscuity itself. They engage in promiscuity, such as walking or hanging out with the opposite sex regardless of the time after school. Some stay until midnight and some also hang out while getting drunk with the opposite sex, so that unwanted things happen.²⁶

Ismail, a religious leader in Kaliboto Kidul, stated marriage is the right of every person, including at what age a person can get married. He then explained that Islamic law itself allows and does not prohibit underage marriages, although the scholars differ on this matter. Based on this argument, he confirmed the true validity of marriage is not in the power of the government. He believed that the validity of marriage is only determined by God through His rules manifested in the Qur'an and hadist. Therefore, with his position at the KUA, he felt that he does not have the authority to prohibit underage marriages that are conducted without being registered in Religious Affairs Office (KUA).²⁷

In a similar perspective, Bambang, as an educator in the local area, supported what Ismail said. He agreed with the granting of a marriage dispensation. This argument has to do with his current observations which to him are quite terrible. This is because nowadays many young people are easily fall into adultery because of weak parental control from their parents. Thus, the decision of parents to marry off their daughters at an early age can be one of the solutions. However, on the other hand, he disagreed because there were many negative impacts on reproductive health.²⁸ Some of the results of the interviews above corroborate what Suhendi found that among the reasons underlying someone marrying underage are because they do not go to school, are already working, are forced to marry, and get pregnant out of wedlock. The factors behind the underage marriage are: religious factors, social factors, educational factors, economic factors, psychological factors²⁹

²⁶Marwan, Interview, September 22, 2022

²⁷Ismail, Interview, September 23, 2022

²⁸Bambang, Interview, September 23, 2022

²⁹Hendi Suhendi, *Pengantar Studi Sosiologi Keluarga*. (Bandung: Pustaka Setia, 2001), 49.

Based on the discussions with several village community leaders in Kaliboto Kidul,³⁰ there are also various factors influencing early marriage. Some of these factors are economic difficulties, low education, culture and customs of the local environment, self-will or encouragement, and free association. In more detail, the following is an explanation of the factors that lead to early marriage.

1) Factors of Economic Difficulties

Many residents of Kaliboto Kidul village work as agricultural laborers and sugarcane laborers. Many of them are experiencing economic difficulties, especially when hit by the Covid 19 pandemic. This marriage is a solution to family economic difficulties. By getting married, their parents hoped that it will reduce the economic burden on the family so that it will be able to overcome economic difficulties. Besides that, low economic problems and poverty cause parents to be unable to provide for their children's needs and are unable to pay for school fees.

2) Educational Factors

Women in the village of Kaliboto Kidul who have low education are at risk for early marriage due to the lack of daily youth activities so that young people choose to have early marriage. If there are teenagers who have higher education, the longer it takes to get married. Therefore, the teenagers avoid early marriage. In this part, it can be stated that a low level of education or not continuing school for a teenager can encourage someone to get married quickly.

3) Parental Factors

Some parents marry off their daughters early, because they are worried that their children will fall into promiscuity and have negative consequences. The parental education factor is also very influential in early marriage. The lower the parents' education, the greater the parents will marry their children at an early age. In this context, parents have quite a large role in early marriage. Lack of understanding of parents regarding education is important for the progress of their children, this makes most parents marry their children at an early age.

4) Local Customs and Customs

³⁰Focus of discussion, September 25, 2022

There is a belief that exists in society about marriage proposal. People believe that it is not permissible to refuse someone's proposal to their daughter even if they are under the age of 18 years old because this would be considered insulting to the party proposing so that this would cause the parents to marry their daughter. Based on this fact, in certain families, it can be seen that there are those who have a tradition or habit of marrying off their children at a young age, and this goes on continuously. So that the children in these families will automatically follow this tradition. In this part, we know that habits and customs in the local environment influence the habits of its citizens to marry at an early age. The reason they married at an early age was in order to avoid to be called as the old maids, and those who were proposed were prohibited from refusing because it could make it difficult to get a mate.

5) Due To Pregnant Out of Wedlock

The occurrence of pregnancies outside of marriage is caused by the act of children having relationships that violate norms. The parents then force them to do early marriages, in order to clarify the status of the children they are carrying. This marriage forces them to marry and be responsible for acting as husband and wife as well as being a father and mother. This case has an impact on premature aging, because they are not ready physically and spiritually. Besides that, the pregnancy of a child out of wedlock makes parents afraid. It encourages parents to marry their children at a young age. Getting pregnant out of wedlock is one of the factors for children getting married at a young age, because parents are worried about the perceptions of the community in their environment and this makes parents marry off their children at an early age, to cover up the family's disgrace.

Islamic law can change according to circumstances and conditions. The change must be realized to preserve the important values of Islamic law (*sharia*). In the maqashid sharia perspective, marrying women in early age marriage who are already pregnant can be categorized as an emergency. Emergency is a situation that forces someone to do something that is actually not allowed. When viewed from the aspect of the law on marriage, it is not permissible to marry in early

age. However, due to the condition that the daughter has become pregnant without a husband, it is for the good of the daughter and her fetus so that the marriage that has not yet reached its due date must be carried out.

There some impacts can be concluded form the early age marriage. It is based on discussions with several women who practice early marriage about.

1) Positive Impact.

- a. The marriage causing man and woman becoming more mature and responsible. It is because there are responsibilities to husbands, children and family, as well as a wider social interaction space, not only with peers, but with parents in various activities.
- b. This marriage may help the economy because it can help reduce the economic burden on the family, namely the release of parental responsibilities to married daughters.
- c. The early marriage can avoid adultery.

2) Negative Impact

- a. The marriage can create psychological impact. In the early days of marriage there was psychological pressure (anxiety and stress) because before the wedding they used to play with their friends. Then, when they were married there was a change. They rarely met and played with friends and were more often at home with their husbands. In fact, it is not uncommon to have an impact on disputes between the two due to the nature of women who are involved in early marriage, which tend to be fickle because of their immature age, which can easily lead to estrangement in the family.
- b. The early marriage impacts on social perception. The community will evaluate negatively the occurrence of an early marriage. If it is caused by an incident of pregnancy out of wedlock, the perpetrators will become gossip and even ostracized by society.
- c. This marriage also impacts on economic values. The implementation of early marriage will also have a negative impact on the new family economy if the husband does not have sufficient income.
- d. The most important thing is impact on education. When they are married, women cannot continue their education. Women even

stop due to time management factors and also responsibility to husband and children.

Maqasid Sharia Perspective on the Early Marriage

In terms of language, *maqashid* is derived from the word *maqshud*, which comes from the word *qashada*. It means a strong desire, holding fast, and encouraging, or intending to.³¹ While the word *sharia* is a path that must be followed or literally means the way to a spring.³² By understanding the meaning of the two words above, *maqashid* and *sharia*, in simple *maqashid sharia* can be interpreted as the intention or purpose of God in legislating a law. It is line with Syatibi's opinion that the unity of Islamic law means unity in its origin and especially unity in its legal purpose.³³ So that the *maqashid sharia* review can be used as a reference to legitimize the provisions on equalizing the minimum age limit for marriage for the sake of realizing the goals of marriage. Thus, in the view of *maqashid sharia*, there is a starting point for whether a regulation is justified or not to be applied. It is returned to the realization of a purpose of the regulation.

In the development of law, adulthood is an urgent matter in the formation of a lasting and happy family. A man is said to be an adult if he is 25 years old, while a woman is 20 years old, or at least 18 years old for both. However, this age limit in marriage is not an absolute limit to be a measure of one's maturity, because maturity also depends on each individual by looking at their physical and psychological conditions.³⁴ Although the most important thing that must be considered is that in order to realize the goal of marriage, the husband and wife must be mature physically and mentally. The age of children, especially under 16 years old for women and 19 years old for men in the Marriage Law cannot be said to be mature and immature from the soul and body. Even if there are children at that age, they are able to think of adults because of environmental factors, but biologically they are still said to be

³¹Ahsan Lihasanah, *Al-Fiqh Al-Maqashid 'Inda Al-Imam Al-Syatibi*, (Dar Al-Salam: Egypt, 2008), 11.

³²Abdur Rahman I. Doi, *Inilah Syari'ah Islam*, (Jakarta: Pustaka Panji Mas, 1991), 1

³³Abu Ishaq Al-Syatibi, *Al-Muwafaaqat Fi Ushul Al-Syari'ah*, Juz 1 (Beirut: Dar AlMa'rifah, 1975), 90.

³⁴Moh. Idris Ramulyo, *Hukum Perkawinan Islam: suatu analisis dari undang-undang no. 1 tahun 1974 dan kompilasi hukum Islam*, (Jakarta: Bumi Aksara, 1996), 51.

children. This condition is very dangerous for women's reproductive health.³⁵

Actually, there is a limit on the age of marriage for the purpose of preventing child marriages. It correlates to the readiness of the body and soul, as well as being able to think and behave maturely, is very necessary to form an eternal and happy family. This limitation is also to avoid the early divorce which has happened a lot, to give birth the quality offspring, and to hinder population growth.³⁶ On the other hand, in the case of women and children, marriage at an early age often results in human rights violations, sexual harassment, exploitation and trafficking.

If you understand the reflection of the provisions on the marriage age limit above, it is very unfortunate when women get less rights to study and are limited compared to men's rights. Even though Islam positions women as mothers for the formation of quality generations and human resources, how is it possible that a woman as a mother to become a caretaker, protector and as a source of knowledge and morals for her children if she has low knowledge? Therefore, women's obligation to study is, as Khoiruddin Nasution said, to strengthen the basis of the process of sustaining social change in a better direction.³⁷

The basic principle is that humans must fulfill their basic needs and desires with great effort to achieve success and happiness. This is basic principle in Islamic law. However, it must also be understood that in fulfilling the needs, he is limited by the needs and interests of other people. In order to avoid conflict, it is necessary to have social bonds between individuals so that the cooperation are established to achieve these goals. This kind of Islamic legal principle prefers a small loss to gain a greater fortune, and sacrifices a small fortune to avoid greater harm.³⁸

The issue of limiting the age of marriage in the prophetic era was not the main issue. This is because the main purpose of the time was to spread the teachings of Islam by seeking to protect the rights of women through marriage, including men. While the rules in force in Article 7 of

³⁵Soemiyati, *Hukum Perkawinan Indonesia, dan undang-undang perkawinan (UU No. 1 tahun 1974 tentang perkawinan)*, (Yogyakarta; Liberty, 1982), 30.

³⁶Hilman Hadikusuma, *Hukum Perkawinan Indonesia, Menurut Perundangan Hukum Adat Hukum agama*, (Bandung: Bandarmaju, 2003), 48.

³⁷Khoiruddin Nasution, Fazlur Rahman, *Tentang Wanita*, (Yogyakarta: Tazzafa, 2002), 230

³⁸Sidney Hook et al, *Human Rights in Islam, Cet. 1*. Translated by Harun Nasution and Bahtiar Efendy (Jakarta: Pustaka Firdaus, 1987), 171

the Marriage Law, that the minimum age for marriage for women is 16 years old and 19 years old for men, is also based on the needs of the Indonesian people and as a middle ground between the age limit that is too low and the age limit that is too high. In fact, the new age limit that applies equally to both men and women, 19 years old, as explained in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage (the Revision of the Marriage Law) is evidence that there are changes in community needs. Regardless these rules, the question is this marriage age limit actually ideal for realizing the goal of legalizing marriage? The answer could lead to the assumption that even though Islamic law and positive law are declared valid, they are not yet said to be ideal because they are considered unable to realize the goals of Islamic law.

The understanding the practice of marriage at an early age in Kaliboto Kidul village mentioned above can be caused by several factors. Among the causative factors, coming from within the adolescent itself (internal), for example, social problems with friends who negatively influence the teenager, the problem of adolescent sex itself and the problem of social status. This right is as stated by one of the women who did early marriage that female who marry at an early age are physically mature. They are also bored and no longer interested in continuing their studies. Therefore, they prefer to building a household life that is considered more interesting and more enjoyable.³⁹

However, based on the data we have collected on Kaliboto Kidul's early marriage practice, we can state that this issue cannot be seen from one side only, such as maintaining offspring. There are many sides that must be explored and traced the value of benefits based on maqashid sharia. There are at least three important sides in maqashid studies that are considered to be correlated with this issue; hifz an-nafs, hifz al-nasl, and hifz al-mal. These three perspectives have an important role to play in looking at the case objectively.

In the context of hifz an-nafs, it is undeniable that early marriage in Kaliboto has an impact on the domestic lives of men and women. Both will live quite hard lives in the context of financial ability and the ability to regulate emotions. In fact, when they are not ready to become parents,

³⁹Aisyah, Interview, September 23, 2022

it is impossible that extreme measures such as aborting children will be chosen as a solution. On the one hand, pregnancy at a young age can be at risk of cancer and even have an impact on the death of women at an early age. Another possible risk is that the baby is born with a birth defect because the space in a young woman's pelvis is not large enough so that it will make it difficult for the baby to move when turning around to come out. This kind of condition is even at risk of infant death. In this position, it can be stated that early marriage threatens the realization of *hifz al-nafs*, care for the soul.

However, another thing that should not be overlooked from the practice of early marriage here is that it can prevent young men from committing adultery. This protection is also important. This step is an effort to guard against acts that violate religious and state norms and of course to maintain the clarity of the *nasab*.

On the other hand, with the obligation to look after and maintain property (*hifz al-mal*), a married person will bear a great responsibility in terms of providing for his family. Skills and work experiences are needed. The initial intention of parents to marry their children at an early age is that they can be economically independent. In reality, early marriage couples are unable to meet their needs due to lack of work experience. Eventually, they become a burden on parents again because parents have to bear the necessities of their lives.

On the basis of this explanation, the practice of early marriage in Kaliboto Kidul in the perspective of *maqashid sharia* gives birth to major problems. Many negative impacts are caused that violate three important principles of protection in *maqashid sharia*. The positive side of the practice of early marriage in Kaliboto Kidul is also an important note that must be seen.

Conclusion

The practice of early marriage in Kaliboto Kidul is dominated by women. The main factor of this practice is to distance adultery. However, it also found other factors; economic and education factors. In the other hand, that implementation and practice cannot be banned haphazardly because it is only viewed from negative impacts. The implementation of women's marriage at an early age is dependent on the value of the

benefits that will be obtained and the elements of harm that are in it and must be avoided. Harm and benefit must be measured in a measurable manner based on consideration problem level respectively, namely level consideration on *dharuriyah* (emergency needs), *hajiyah* (secondary needs) and *tahsiniyah* (tertiary needs). Level *dharuriyah* of course, should take precedence over *hajiyah* and *tahsiniyah*. Therefore, in a certain context, early marriage in the village of Kaliboto Kidul could be the best choice when it is believed to be certain to save someone from committing adultery or sexual relations outside of marriage (*hifz alnasl*). Although in its implementation has the potential to give birth to other mafsada but this harm does not reach the emergency level. While keeping the private parts from adultery is urgent. However, if there is no urgent condition then early marriage must be avoided in order to create a prosperous family with the aim of marriage, namely to form a family that is intact, lasting and eternal forever. Besides that, there is a need for pre-marital counseling education in order to solve problems and avoid problems. In this position, we view that early marriage because to avoid adultery is a real effort to guard against sinful deeds and the chastity of lineage. However, other impacts that arise after early marriage are allegations that are still unclear. Therefore, for us, the practice of early marriage in Kaliboto Kidul does not entirely present new problems, but it can actually be another way to protect them from other negative impacts.

Bibliography

- Abdurrahman, Association of Laws and Regulations concerning Marriage, Jakarta: Akademika Presindo, 1986.
- Abu Abdillah Muhammad bin Abdurrahman al Dimasyqi al 'Ustmani al Shafi'i, Rahmah al Ummah fi Ikhtilaf al Aimmah (Surabaya: Hidayah, TT)
- Abu Daud Sulaiman bin al As'ats, Sunan Abi Daud, Juz 2, Beirut: al Maktabah al Ashriyyah, 2006.
- al 'Asqalani, Ahmad bin 'Ali bin Hajar, Fathul Bari bi Syarhi Shahih al Bakhary Juz 9, Beirut: Dar al Ma'rifah, TT
- Syaifuddin, Amir, Islamic Marriage Law in Indonesia; Between Fiqh Munakahat and Marriage Law, Jakarta: Kencana, 2007.

- Arikunto, S. *Prosedur Penelitian Suatu pendekatan Praktik*. Jakarta; Rineka, 2010.
- Auda, Jasser, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A System Approach*. London & Washington: The International Institute of Islamic Thought, 2008
- Ayun, Qurroti, and Rizky Putri Awaliyah Hasyim. "Motif Pernikahan Dini Masyarakat Selok Anyar Pasirian Lumajang." *Dakwatuna: Jurnal Dakwah Dan Komunikasi* 4, no. 1 (2018).
- Azizah, Nurie, Fauzik Lendriyono, and Oman Sukmana. "Potret Pernikahan Dini Di Indonesia (Studi Kasus Di Desa Jatimulyo Kabupaten Lumajang)." *Jurnal Intervensi Sosial Dan Pembangunan (JISP)* 2, no. 2 (2021): 102–16. <https://doi.org/10.30596/jisp.v2i2.7867>.
- Azzam, Abdul Aziz Muhammad and Abdul Wahhab Sayyed Hawwas, "Al Usroh wa Ahkamuha fi Al Tasyri 'Al Islamy" translated by Abdul Majid Khon, *Fiqh Munakahat*, Jakarta: Amzah, 2009.
- Badruzaman, Dudi, *Pengaruh Pernikahan Usia Muda Terhadap Gugatan Cerai Di Pengadilan Agama Antapani Bandung*, Jurnal Muslim Heritage. Vol. 6 No, 1 Juni 2021.
- BKKBN. 2012. *Guidelines for Management of Information Centers and KAdolescent and Student Counseling(PIC RM)*. Jakarta: Directorate of Adolescent Health Development
- Eka Yuli Handayani, Faktor Yang Berhubungan Dengan Pernikahan Usia Dini Pada Remaja Putri Di Kecamatan Tambusai Utara Kabupaten Rokan Hulu, *Journal of Maternity and Neonatal*, Vol, 1, No. 5, 2014.
- Engineer, Asghar Ali, *Women's Rights in Islam*. Translated by Farid Wajidi and Cici Farikha Assegaf, Yogyakarta: Benteng Budaya Foundation, 1994
- Ghazali, Abd. Rahman. *Fiqh Munakahah*. Jakarta: Kencana, 2006 M.
- Hamid, *Metode Penelitian Kualitatif*, Bandung: Alfabeta, 2007.
- Hidayah, Khoirul, *Dualisme Hukum Perkawinan Di Indonesia (Analisis Sosiologi Hukum Terhadap Praktik Nikah Siri*, *Jurnal Hukum* 8, no. 1, 2008.
- Hilman Hadikusuma, *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat dan Hukum Agama*, Bandung: Mandar Maju, 2007.

- Hook, Sidney, et al, *Human Rights in Islam*, Translated by Harun Nasution and Bahtiar Efendy. Jakarta: Firdaus Library, 1987
- Law Against the Practice of Marriage Sirri. *Journal of Legal Perspectives*. Vol 8.No. 1, May 2008.
- Ibrahim al Bajury, *Hasyiyatu al Baijury „ala Ibni Qasyim al Ghazy*, (Beirut: Daru Ihya'i Turats al-Araby, 1996), 100
- Ibrahim al Bajury, *Hasyiyatu al Baijury „ala Ibni Qasyim al Ghazy*, Beirut: Daru Ihya'i Turats al 'Araby, 1996.
- Jamaluddin 'Atiyyah, *Nahwa Taf'il Maqasid Shri'ah*. Damascus: Dar al-fikr, 2001
- Juwandini, Yohana. "Pernikahan Di Bawah Umur Perspektif Adat Dan Maqashid Syariah." Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2021.
- Kuzari, Achmad, *Nikah Sebagai Perikatan*, Jakarta: Raja Grafindo Persada, 1995.
- Khalaf, Wahhab. *Ijtihad in Sharia*. Jakarta: Al-Kautsar Library, 2015 M.
- Khoiruddin Nasution, Fazlur Rahman, *Tentang Wanita*, Yogyakarta: Tazzafa, 2002.
- Kurdish, Underage Marriage Perspective of Maqashid Al-Qur'an, *Journal of Islamic Law*, Vol. 14, No. 1, June 2016
- Lexy J. Moloeng, *Metodologi Penelitian Kualitatif*, Bandung: Youth Rosda Karya, 2002,
- Lubis, Anggreni Atmei, Background on Women Doing Early Marriage (*Journal of Government and Social Politics*, vol. 4 no, 2, 2016)
- Lumajang Runner Up for Early Marriage Rates in East Java (lumajangsatu.com)
- Mas'ud, Muhammad Khalid, *Shatibi's of Islamic Law*, Islamabad: Islamic Research Institute, 2015
- Maulana Ahmad Usmani, *Fiqh Al Qur'an*. Volume 1, Karachi: 1980
- Mawardi, Ahmad Imam, *Fiqh Minoritas fiqh al-Aqlliyat and dan Evolusi Maqashid alSyari'ah dari konsep ke pendekatan*, Yogyakarta: Lkis, 2010
- Moleong, Lexy J. *Metode Penelitian Kualitatif*. Revised edition, Bandung: PT Remaja Rosyakarya, 2006 M.

- Muhammad al Amin bin Abdullah al Harary al Syafi'i al Kaukab al Wahhaj wa Raudh al Bahhaj fi Syarbi Shahihi Muslim bin al Hajjaj, Volume 15. Jeddah: Dar al Minhaj, 2009.
- Muhammad bin Ahmad bin Muhammad bin Ahmad bin Rusyd al qurthuby al Andalusy. Bidayah al Mujtahid wa Nihayah al Muqtahid Juz II. (Surabaya: Hidayah, TT),
- Musa, Muhammad Yusuf, *Aḥkām al-Aḥwāl asy-Syakṣiyyah fi al-Fiqh al-Islāmī*, Egypt: Dār al-Kitāb, t.th.
- Musfiroh, Mayadina Rohmi. "Pernikahan Dini Dan Upaya Perlindungan Anak Di Indonesia." *De Jure: Jurnal Hukum Dan Syar'iah* 8, no. 2 (2016): 64–73. <https://doi.org/10.18860/j-fsh.v6i1.3192.3>.
- Muzdhar, Atho' and Khoiruddin Nasution (ed), (2003). *Family Law in the Modern Islamic World: A Comparative Study and the Expansion of Modern Laws from the Books of Jurisprudence*, Jakarta: Ciputat Press
- Nurhasanah, Umi, 'Young Marriage and Divorce', *Journal of Psychology*, UIN Bandung, 2012.
- Rifqi, Muhammad Jazil. "Dinamika Perkembangan Batas Usia Perkawinan Dalam Perspektif Hukum Progresif." *Arena Hukum* 15, no. 2 (August 31, 2022): 285–306.
- Rohman, Holilur, *Batas Usia Ideal Pernikahan Perspektif Maqasid Shariah*. *Journal of Islamic Studies and Humanities* Vol. 1, No. 1, 2016.
- Sabiq, Sayyid. *Fiqh Sunnah*. Beirut: Dar Al-Fikr, 1983 M.
- Saifuddin Azwar, *Metode Penelitian*, Yogyakarta: Student Library, 2005.
- Sugiyono, *Memahami Penelitian Kualitatif*, Bandung: Alfabeta, 2005
- Suhendi, Hendi, *Pengantar Studii Sosiologi Keluarga*. Bandung: Pustaka Setia, 2001.
- Sumbulah, Umi, and Faridatul Jannah, (2012), *Pernikahan Dini dan Implikasinya Terhadap Kehidupan Keluarga Pada Masyarakat Madura*, *Jurnal Egalita*, Vol. VII, Number 1 2012
- Syarifuddin, A, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*. Kencana Prenada Media. 2006.
- Shaṭibi, Imam Ash, *al-Muwafaqat fi Uṣūl al-Aḥkām*, but: Dar al-Rasyād al-Ḥadīṣah Syaṭibi, t.th