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Child Marriage from the Perspective of Islamic Law and the Marriage Act

Fadel Muhammad

Postgraduate Programme, Sultan Syarif Kasim Riau State University
fadelmuhammad080620@gmail.com

Muhammad Khairul Musthafa

Undergraduate, Sultan Syarif Kasim Riau State University
m.khairulmusthafa@gmail.com

Johari

Undergraduate Programme, Sultan Syarif Kasim Riau State University
johari@uin-suska.ac.id

Akbarizan

Undergraduate Programme, Sultan Syarif Kasim Riau State University
akbarizan_fasih@yahoo.co.id

Abstrak

Kajian ini menganalisis pernikahan anak di bawah umur (pernikahan dini) melalui perspektif hukum Islam dan Undang-Undang Perkawinan Indonesia (UU No. 1 Tahun 2019), serta mengkaji implikasi perbedaan landasan hukum antara keduanya. Pada kajian ini, penulis menggunakan pendekatan penelitian kualitatif dengan metode penelitian hukum normatif (library research). Analisis dilakukan melalui inventarisasi, identifikasi, dan sistematisasi sumber hukum primer (Al-Quran, hadis, UU) dan sekunder (literatur ilmiah). Berdasarkan pembahasan, maka dapat disimpulkan bahwa Hukum Islam menekankan kesiapan fisik-mental (baligh) dan kemampuan ekonomi sebagai prasyarat pernikahan, tanpa batasan usia mutlak. Sumber hukumnya bersumber bersifat dinamis (al-Qur'an, hadis, ijtihad ulama) dengan pertimbangan maslahat dan maqasid syariah. Hukum Positif Indonesia (UU Perkawinan) menetapkan batasan usia kaku (19 tahun untuk pria, 16 tahun untuk wanita-direvisi menjadi 19 tahun untuk kedua pihak pada 2019) yang bersumber pada hukum materil (norma sosial, adat, perlindungan anak). Berdasarkan hal itu, maka dapat disimpulkan bahwa meskipun kedua sistem hukum sah secara formal, perbedaan sumber hukum (syariat vs positivisme) menimbulkan ketegangan praktis. Rekomendasi kebijakan memerlukan integrasi prinsip maqasid

syariah (perlindungan keturunan, jiwa) dengan perlindungan hak anak dalam hukum nasional.

Kata Kunci : *Pernikahan Anak, Hukum Islam, Undang-Undang Perkawinan, Dispensasi Kawin, Maqasid Syariah*

Abstract

This study analyses the marriage of minors (early marriage) through the perspective of Islamic law and the Indonesian Marriage Law (Law No. 1 of 2019), and examines the implications of differences in legal basis between the two. In this study, the author employs a qualitative research approach utilising normative legal research methods (library research). The analysis is conducted through the inventory, identification, and systematisation of primary (the Qur'an, hadith, law) and secondary (scientific literature) legal sources. Based on the discussion, it can be concluded that Islamic Law emphasises physical and mental readiness (baligh) and economic capability as prerequisites for marriage, without an absolute age limit. The sources of law are dynamic (the Qur'an, hadith, and the ijtihaad of scholars), taking into account maslahat and the maqasid of Sharia. Indonesian Positive Law (Marriage Law) sets a rigid age limit (19 years for men, 16 years for women – revised to 19 years for both parties in 2019) which is based on material law (social norms, customs, child protection). Based on this, it can be concluded that although both legal systems are formally valid, the difference in legal sources (Sharia vs positivism) creates practical tensions. Policy recommendations call for the integration of the principles of maqasid sharia (protection of offspring, protection of the soul) with the protection of children's rights in national law.

Keywords: *Child Marriage, Islamic Law, Marriage Law, Marriage Dispensation, Maqasid Syariah*



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Correspondence email: fadelmuhammad080620@gmail.com

Introduction

According to Islamic teachings, marriage is a form of worship undertaken by a man and a woman through a valid contract with the aim of achieving a life of Sakinah (tranquillity and peace), mawaddah (mutual love and affection), and warahmah (a life pleasing to Allah).¹

The family is the smallest social unit in society, serving as a means of cultural transmission between generations and a source of renewal for future generations. In the pattern of human life, marriage plays a very important role. Marriage can form a social bond between two individuals of the opposite sex who are

¹Muhammad Hafis, *The Concrete Application of Marriage Laws in Indonesia (The Harmony Between 'Islamic Law' and 'National Law')* (Yogyakarta: PT Penamuda Media, 2024), 39.

formally obliged to become husband and wife.²

In the Kamus Besar Bahasa Indonesia (KBBI), the definition of marriage is a marital bond (contract) entered into in accordance with legal provisions and religious teachings; early marriage, on the other hand, can be described as premature. Furthermore, marriage is a contract between a man and a woman to become husband and wife (officially).³ Under Law

No. 1 of 1974 on Marriage, Chapter 2, Article 7, Paragraph 1 states: "Marriage is only permitted if the male party has reached the age of 19 (nineteen) years and the female party has reached the age of 16 (sixteen) years". The content of Minister of Religious Affairs Regulation No. 20 of 2019 on Marriage Registration, Chapter II, Article 4, states: "written consent from the parents or guardian for prospective spouses who have not yet reached the age of 21 (twenty-one)". And in that article, under point (j), it states: "a dispensation from the court for a prospective husband who has not reached the age specified in Law No. 1 of 1974 on Marriage".⁴

Early marriage has been a recurring issue from the past to the present; the perpetrators of such marriages are mostly young people with limited education.⁵

²Achrory and Siska Iriani, "The Phenomenon of Early Marriage from an Islamic Perspective (A Case Study in Kalikuning Village)," *Journal of Islamic Studies* 14, no. 2 (2018).

³Language Centre, Ministry of National Education, *Indonesian Dictionary* (Jakarta: Language Centre, 2008), 1003.

⁴ "Official Gazette of the Republic of Indonesia: Regulation of the Minister of Religion of the Republic of Indonesia No. 20 of 2019 on the Registration of Marriages" (Jakarta, 30 September 2019), 6.

⁵ Muhammad Hafis and Jumni Nelli, *Indonesian Islamic Family Law: The Concept of Maslahah*

Adolescents are individuals undergoing a transitional phase from childhood to adolescence, characterised by the accelerated development of various aspects such as physical, psychological, and social growth. Naturally, this adolescent period is filled with uncertainty and a strong desire to experiment, leading adolescents to often become entangled in harmful social circles that are detrimental to themselves.⁶

Recently, the issue of early marriage has resurfaced due to a significant number of applications for dispensations for early marriage, with figures remaining relatively high. According to a summary of data on marriage dispensation cases in the Religious Courts for 2022, the Pekanbaru High Religious Court received 1,169 cases; the total number of cases was 1,174; 60 cases were withdrawn; and 1,110 cases were decided.⁷ Based on data obtained from the Pekanbaru High Religious Court, there are several factors underlying marriage dispensations. These include lack of parental consent, pregnancy before marriage, and promiscuity.

From a societal perspective, marriage can be seen as a means of avoiding promiscuity. Increasingly unrestrained promiscuity can lead to children engaging in sexual activity without supervision, which can result in

in the Development of Islamic Family Law in Indonesia (Yogyakarta: Deepublish, 2023), 27.

⁶ Saifuddin Zuhri, "The Lives of Muslim Adolescents in Surabaya (An Analysis of Morality and the Influence of Social Media Communication on the Lives of Muslim Adolescents in Surabaya)," *Murabbi: Scientific Journal in the Field of Education* 03, no. 02 (July 2020): 37.

⁷ "Summary of Data on Types of Marriage Dispensation Cases in Religious Courts in 2022," http://kainsatker.badilag.net/JenisPerkara/perkara_persatker/362/2022, 23 November 2023.

pregnancy. Pregnant children are usually married off by their parents, but early marriage can cause financial instability within the family due to the young age and low income of the couple. A lack of maturity in resolving various family issues will lead to many arguments and conflicts, which may ultimately result in divorce.⁸

Immature thought processes, the turbulence of youth, and unpredictable emotions are the causes. Early marriage also has adverse effects on a young person's health, as they face a higher risk of pregnancy later in life.⁹ Although Law No. 23 of 2002 on Child Protection stipulates that parents have a duty to prevent child marriage, in practice, parental supervision of their children is not as strict as required by the law. This is because the Act does not include provisions for criminal sanctions against parents, meaning that parents who marry off their daughters at a young age cannot be prosecuted. Parents bear a great sense of responsibility towards their children and must teach them about the appropriate age for marriage, even though the law cannot punish them for doing so.¹⁰

Based on the above issues, the researcher is interested in examining the comparison between Islamic legal rules and the Marriage Act in the context of underage marriage, under the title "Early

Marriage from the Perspective of Islamic Law and the Marriage Act".

This research is a *library* study of a normative legal nature, employing a descriptive-analytical approach, with the aim of obtaining a systematic and comprehensive overview, as well as elucidating existing facts or circumstances. Based on its form, this research is a prescriptive study, meaning it is intended to provide recommendations on what should be done to resolve or address specific issues, particularly those examined by the author.¹¹

Meanwhile, the research employs two approaches: *the statutory approach* and *the conceptual approach*.¹² The legal sources utilised are primary and secondary legal sources; the analysis of the legal materials involves inventorying, identifying, classifying, and finally systematising them.¹³ Each piece of legal material obtained is thus used to describe the issues under study as descriptive material in this research.

Discussion

Early Marriage from the Perspective of Islamic Law

The essence of Islamic law is to bring about social welfare for humanity, both in the present and in the future. Islamic law is broad and flexible, humanistic, and always brings mercy to all humanity in this world.¹⁴ Included within the realm of

⁸ Brian Henry, Fanny Lesmana, and Desi Yoanita, "Managing Marital Communication Journal 8, no. 2 (2020): 2.

⁹ Andi Marlah Susyanti Akbar and Halim, "Strategies for Preventing Early Marriage Through the Implementation of the Youth Information and Counselling Centre (Pik-R) at State Vocational High School 1 Bulukumba," *Journal of Public* 26, no. 2 (August 2020): 117.

¹⁰ Gusnarib and Rosnawati, "The Impact of Early Marriage on Parenting Styles and Children's Character," *PALITA: Journal of Social-Religion Research* 5, no. 2 (October 2020): 95.

¹¹ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 1986).

¹² Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review*, (PT. Raja Grafindo Persada, Jakarta, 2007)

¹³ Muhaimin, *Methods of Legal Research* (Mataram, Mataram Press, 2020), p. 67.

¹⁴ Imam Syathibi, *Al-Muwafaqot* (Beirut, Lebanon: Darul Kitab Ilmiah, n.d.), 220.

thought on this matter are the verses and hadiths of the Prophet that address the issue of marriage, as, in principle, all actions of a Muslim who has reached the age of maturity cannot be separated from Sharia law. In the Qur'an, Surah An-Nur, verse 32, explains the encouragement to marry, which reads:

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ

إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ

Meaning: "Marry those among you who are single, and also the righteous among your male and female slaves. If they are poor, Allah will enrich them through His bounty. Allah is All-Encompassing (in His bounty) and All-Knowing." (Q.S An-Nur:32)

In principle, a marriage is permissible if it fulfils the conditions set out in Islamic law; however, if the purpose of the marriage is to cause harm to one of the spouses, then the marriage becomes forbidden. There are many verses of the Qur'an and Hadiths that discuss the legal basis of marriage; however, regarding certain matters, the *ijtihad* of *the fuqaha* is required to resolve issues and establish legal validity. For example, for those who wish to marry but fear committing adultery if they do not marry, it is obligatory to prioritise marriage over the Hajj. However, if there is no fear of committing adultery, then Hajj must take precedence. Similarly, other *farḍu kifayah* obligations, such as seeking knowledge and jihad, must be prioritised over marriage. This is to ensure there is no risk of falling into adultery.¹⁵

There are several rulings regarding marriage: Firstly, marriage is obligatory for someone who is financially capable and also at high risk of falling into adultery. This is because guarding oneself against adultery is obligatory. Therefore, if the only way out is through marriage, then marriage is certainly obligatory for someone who is on the verge of falling into the abyss of adultery. The scholars are in agreement regarding the obligation for a person to marry if they are capable and fear the risk of falling into adultery; secondly, marriage is recommended. Meanwhile, those who are not obliged to marry are those who are capable but do not feel afraid of falling into adultery. Perhaps this is because they are still young or because their environment is quite good and conducive; Third, marriage which is forbidden. Normally, there are two main reasons why it is forbidden for someone to marry. Furthermore, if there are other physical defects that would generally not be accepted by a partner, these must be disclosed before the marriage. In addition to the two points above, there are other specific reasons that render marriage haram. There are also marriages that are forbidden from another perspective, such as marriages that do not fulfil the conditions and pillars. Such as marrying without a guardian or without witnesses. Or marrying with the intention of divorcing, thus becoming a temporary marriage known as a contract marriage; Fourth, marriages that are Disliked (Makruh) It is disliked for a person who has no income whatsoever and lacks the full capacity for sexual relations to marry.

¹⁵ Manisa et al., "The Islamic Legal Perspective on Female Students Who Marry While

at University," *Al Furqan: Journal of Religion, Society, and Culture*, 3 No. 4 (July 2024): 2104.

However, if the prospective wife consents and possesses sufficient wealth to support their livelihood, then it is still permissible for them to marry, albeit with a degree of disapproval; Fifth, marriages that are Mubah (Permissible) A person situated in a middle ground between factors that necessitate marriage and those that prevent it, for whom the ruling on marriage becomes mubah or permissible.¹⁶

There are many lessons to be learned from a ruling, whether it be mubah, sunnah, wajib, makruh, or haram. Upon closer examination, we find that early marriage can have a positive impact on the common good if it occurs without coercion, whether due to parental pressure or because the child is already pregnant.¹⁷

Islam does not prohibit early marriage provided that both partners fulfil all the requirements and the marriage is conducted to strengthen the religious bond between the two parties. Given that the negative consequences outweigh the positive ones, it is advisable not to marry early if the sole purpose is to satisfy personal desires. The reason this is not permitted is that it can be harmful. The dangers include the marriage leading to domestic violence, the purpose of the marriage not being in accordance with Islamic law, and having a detrimental effect on one of the parties.¹⁸

¹⁶ Jenuri and Ariz Najib, "Early Marriage from the Perspective of Islamic Law and Indonesian Law," *Al-Masblabah: Journal of Islamic Law and Islamic Social Institutions*, 130–131.

¹⁷ Dwi Rifiani, "Early Marriage from the Perspective of Islamic Law," *de Jure, Journal of Sharia and Law* 3, no. 2 (December 2011): 132.

¹⁸ Uswatun Khasanah, "The Islamic View on Early Marriage," *Terampil, Journal of Basic Education and Learning* 1, no. 2 (December 2014): 317.

The term 'early marriage' is a contemporary one. 'Early' refers to time, meaning very early in a given period. Its opposite is 'late marriage'. For people living in the early 20th century or earlier, a woman marrying at the age of 13 or 14, or a man at 17 or 18, was commonplace, not unusual. But for today's society, this is considered an oddity. A woman marrying before the age of 20 or a man before 25 is regarded as unusual, or, as the term goes, "too early".

Muslim culture involves marrying girls between the ages of 10 and around 15, and young men from the onset of puberty until the age of 18. Early marriage is a vital necessity for them, especially given the ease with which it can be arranged. No complex studies or military equipment are required to bring it about. Marriage is akin to the need for food, drink and clothing for them. A particular man will require a particular woman, and vice versa; nothing can prevent them from uniting as a lawful couple.¹⁹

The majority of young people are sexually active from the age of ten for girls, and from puberty for boys, with all the dangerous consequences such as abortion, the proliferation of illegitimate children on the streets and in poor neighbourhoods; the emergence of various diseases, adultery, infidelity, and suicide; as well as the rise of homosexuality, child trafficking, and so on.

Islamic law generally encompasses five principles: the protection of religion, life, lineage, property, and reason. Of

¹⁹ Halim Setiawan, "Early Marriage According to Islamic Law," *Borneo: Journal of Islamic Studies*, 3, no. 2 (July 2020): 68–69.

these five universal Islamic values, one is the preservation of lineage (*hifdzu al nasl*). Regardless of all this, the issue of early marriage is an age-old problem that had been buried beneath the weight of history. And now, this issue has resurfaced. This is evident from the fierce clash of ideas among classical Islamic scholars in responding to this issue.²⁰

To date, Islamic scholars have not established an absolute minimum age for marriage. Islam does not specify that one may only marry after reaching a certain age; such a stipulation does not exist. It is precisely this absence of guidance regarding a minimum age for marriage that has led to differing opinions. However, there are numerous texts from both the Qur'an and the Hadith that encourage those who are capable to marry promptly.

As for the understanding of Islamic legal scholars regarding the term 'early marriage', the majority define it as a marriage performed by a person who has not yet reached the age of puberty, which is when a boy experiences a wet dream and a girl begins menstruating. Scholars differ in their views regarding the age at which a person is considered to have reached puberty. Scholars of the Shafi'i and Hanbali schools state that both boys and girls are considered to have reached puberty upon turning 15 years of age. Scholars of the Hanafi school set the age at which a person is considered to have reached puberty as 18 years for boys and 17 years for girls. Meanwhile, scholars of the Imamiyyah school state that boys are considered to have reached puberty at the age of 15 and girls at the age of 9.

²⁰ *Ibid.*

Although there are no explicit texts in the Qur'an or Sunnah regarding the minimum age for marriage, the theory of Maqasid al-Shari'ah is capable of addressing the objectives and purposes of Islamic law, thereby enabling the formulation of an ideal age limit for entering into marriage. This ideal age limit from the perspective of Maqasid al-Shari'ah naturally takes into account many aspects, such as an examination of the texts of the Qur'an and Sunnah regarding the purpose of marriage, as well as contemporary scientific perspectives such as medicine, psychology, anthropology, sociology, and others, so that the resulting understanding is comprehensive and integral.²¹

Hurrying to marry is a good and beneficial matter. The Prophet Muhammad (peace be upon him) said:

يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغْضُ لِلْبَصَرِ وَأَخْصَنُ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ، فَإِنَّهُ لَهُ وَجَاءٌ (رواه البخاري)

Meaning: "O young people, whoever among you is able to marry, let him marry, for indeed marriage is more effective in lowering the gaze and guarding one's chastity. And whoever is unable, let him fast, for fasting is a restraint for him." (Narrated by al-Bukhari).

However, one must be prepared both physically and mentally. If a person has found a partner who can accompany them on their journey to attain His pleasure and

²¹ Habibah Nurul Umah, "The Phenomenon of Early Marriage in Indonesia: A Perspective on Islamic Family Law," *Jurnal Al Wasith: Journal of Islamic Legal Studies*, 5, no. 2 (2020): 112–113.

is prepared both physically and mentally, then they should marry without delay. In Islam, there is indeed no age limit for marriage, so early marriage is permissible. However, those who marry should have attained maturity in physical, psychological and mental terms. For these qualities will serve as a foundation for facing all obstacles and challenges in navigating the journey of marriage. Therefore, thorough preparation is essential to establish a family that is peaceful, harmonious and produces a high-quality generation.²²

One factor that often makes many people afraid to take the plunge is financial readiness. But as a believer, there is actually no need to worry about this. Has not Allah guaranteed provision for His servants who wish to marry?

The Messenger of Allah also said:

ثَلَاثَةٌ حَقُّ عَلَى اللَّهِ عَوْنُهُمْ : الْمُجَاهِدُ فِي سَبِيلِ اللَّهِ،
وَالْمُكَاتَبُ الَّذِي يُرِيدُ الْأَدَاءَ، وَالتَّائِبُ الَّذِي يُرِيدُ الْعَفَاةَ"
(رواه الترمذي)

Meaning: "There are three people whom Allah will assist: the one who strives in the cause of Allah, the mukâtab slave who has a contract for redemption and wishes to fulfil it, and the one who marries seeking to preserve chastity (from fornication)." (Narrated by at-Tirmidhi).

Islam has granted flexibility to anyone who is capable of marrying immediately and does not delay in doing so. This is especially true in these end times, where temptation and corruption are almost ubiquitous.

In addition to providing an important lesson for young married

couples so that they can learn first-hand how to survive and take responsibility, early marriage is a Sharia solution that prevents many sins such as adultery or sins less severe than adultery. This is because young married couples can engage in sexual relations that are lawful in the eyes of religion and legal in the eyes of the law, and do not cause their parents to worry, thus avoiding pregnancy outside of marriage.²³

Readiness for marriage from an Islamic legal perspective encompasses three aspects, namely: First, intellectual readiness, which is the understanding of the fiqh laws relating to marriage, including pre-marital laws such as khitbah (proposal), the requirements and pillars of the marriage contract during the ceremony, and post-marital laws such as the obligation to provide for the family, divorce, and reconciliation. This first requirement is based on the principle that it is a Fardhu 'ain (an individual obligation) for a Muslim to know the laws governing the daily actions they perform or intend to perform; Secondly, financial readiness; the wealth referred to here comprises two types: wealth as a dowry (mahar) and wealth as the husband's maintenance for his wife to meet her basic needs (*al-hajat al-asasiyyah*) in the form of clothing, food, and shelter, which must be provided in a reasonable manner (*bil-ma'ruf*); Thirdly, physical readiness or health, particularly for men, meaning the ability to fulfil one's duties as a husband and not being impotent. Caliph Umar bin Khaththab once granted a one-year deferment to a man (a husband) who was impotent so that he could seek treatment.

²² Abu Umamah, Milk and Pomegranate: A Guide to Marriage for Achieving Sakinah, Mawaddah and Rahmah (Gresik: Press Syuhada, 2018), pp. 95–96.

²³ *Ibid.*, pp. 96–97.

This demonstrates that this aspect of physical readiness requires serious attention.

Although it is said that early marriage is, in principle, permitted under Islamic law, this does not mean that it is absolutely permissible for all women in all circumstances. This is because, for some women, there are certain circumstances that suggest it is better for them not to marry at a young age. There are several provisions that need to be taken into account in an early marriage so that it does not result in negative effects, as reported by many circles, the majority of whom view early marriage as always having negative connotations.²⁴

Early Marriage as Viewed under the Marriage Law

The aim of forming a family that unites a man and a woman is the fundamental purpose of marriage (Law of the Republic of Indonesia of 1974). Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage, enacted by President Soeharto on 1 April 1975 in Jakarta, and the Compilation of Islamic Law, together with government regulations, also set age limits for prospective spouses. These legal documents govern marriage in Indonesia as a nation. The topic of early marriage is not specifically addressed, but Article 29 of the Civil Code (KUHP) stipulates that a woman must be at least 15 years old and a man must be 18 years old to enter into marriage, whilst Article 330 of the

Civil Code sets the age of 21 as the upper limit of legal adulthood.

The aim of forming a family that unites a man and a woman is fundamental to the meaning of marriage.²⁵ Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage, which was enacted by President Soeharto on 1 April 1975 in Jakarta, and the Compilation of Islamic Law as well as Government Regulations also regulate the age limits for prospective spouses.²⁶

The provisions in the Civil Code are deemed inapplicable based on an analysis of Law No. 1 of 1974 on Marriage, which states in Article 66 that all matters relating to marriage are based on this Law. This also applies to the age restrictions imposed by the Civil Code, as Law No. 1 of 1974 regulates the minimum age for marriage.

According to Article 7(1), a woman must be at least 16 years old and a man must be at least 19 years old to marry. Both prospective spouses must obtain their parents' consent before marrying, in accordance with Indonesian government regulations (Law of the Republic of Indonesia of 1974). It is stated in Article 2 that a person may request a dispensation from the court or other competent authority if there is a deviation from paragraph 1. The government grants regulatory leniency to couples intending to

²⁵ Muhammad Hafis, "A Study of the Theological Principles in Surah An-Nisa' Verse 129 Regarding the Concrete Rules of Monogamy," *Journal of Community Studies and Development* 6, no. 2 (29 December 2023): 194–201.

²⁶ Fitri Yanni Dewi Siregar and Jaka Kelana, "Equality in the Minimum Marriage Age in Indonesia from the Perspective of Islamic Law," *Mabakim Journal of Islamic Family Law* 5, no. 1 (January 2021): 3.

²⁴ Ahmad Habibi, "Early Marriage from the Perspectives of Islamic Law and Psychology," *Mitsaqan Ghalizān: Journal of Family Law and Islamic Legal Thought*, 2, no. 1 (2022): 62–63.

marry. Parents are required by Law No. 23 of 2002 on Child Protection to safeguard children from early marriage. This highlights the importance of parents supporting and preparing their children so that when they decide to marry, they are emotionally and physically ready.²⁷

The Indonesian Marriage Law outlines modifications to the minimum age requirements for individuals permitted to marry. Previously, men were only permitted to marry at the age of 19, and women at the age of 16. Currently, both prospective spouses must be at least 19 years of age to marry and assume the associated responsibilities.²⁸ Once a couple has reached the age specified in Article 7 of Law No. 1 of 1974, the marriage must also take into account the welfare of the family and the household. Article 15 of the Compilation of Islamic Law provides an explanation of this.

Based on the above explanation, if the marriage were to proceed, this would indicate that a number of laws have been disregarded, including Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons and several laws relating to child protection policies (Article 26(1)). Laws are enacted to protect children from exploitation and to safeguard them from acts of violence. The purpose of the law is to ensure that children's rights are upheld so that they may grow and develop in life.²⁹

Islam teaches that *sakinah*, *mawaddah*, and *warahmah* are the objectives of marriage, which is entered into by a man and a woman through a contract.³⁰ A couple of the opposite sex who are formally obligated to become husband and wife within a family unit can form social bonds through marriage, which plays a vital role in human life. From a societal perspective, marriage can be viewed as a means of avoiding the phenomenon of promiscuity.³¹ However, in the early stages of marriage, psychological issues and immaturity remain the primary causes of problems within the household. The increasing prevalence of promiscuity can lead to children engaging in extramarital sexual relations, resulting in pregnancy. In Surah An-Nur, verse 32, Allah commands His followers to marry. Allah intends for men and women to marry so that their union may produce a new generation of humanity that will ensure the continued existence of humankind on earth.

From a cultural and traditional perspective, there are several regions in Indonesia that consider early marriage to be a normal practice. The reason why early marriage is not prohibited is because they believe that "a girl who has been proposed to must be accepted". If this is not accepted, the girl must not be sold (or given in marriage) for a long period of time. The attitudes and views of the

²⁷ Zulham Hamidan Lubis and R. Nunung Nurwati, "The Impact of Early Marriage on Parental Child-rearing Practices," *Journal of Community* 1, no. 1 (December 2020): 2.

²⁸ Legislative Body, 19 Years Set as Minimum Age for Marriage (13 September 2019).

²⁹ Muhammad Raul Akbar and Olivia Anggie Johar, "Legal Protection Against Violence Against Children Within the Family in Indonesia,"

SENKIM: National Seminar on Multidisciplinary Scientific Works 1, no. 1 (August): 311.

³⁰ Halim Setiawan, "Early Marriage from the Perspective of Islamic Law," *BORNEO: Journal of Islamic Studies* 3, no. 2 (July 2020): 62.

³¹ Ning Arum Tri Novita Sari and Nunik Puspitasari, "Analysis of the Causes and Impacts of Child Marriage," *Jurnal Ilmiah Permas: STIKES Kendal* 12, no. 2 (April 2022): 401.

community that permit early marriage reflect a lack of awareness regarding the negative impacts experienced by those who marry young, both in terms of health and well-being. Furthermore, economic difficulties can lead communities—particularly those in vulnerable economic circumstances—to marry off or even force their children into marriage at a young age to alleviate the family's financial burden.³²

There are several factors and solutions that must be considered when entering into early marriage, as the purpose of marriage is to create a happy family. If forming a family is deemed premature, it would be better to get to know one another properly first, particularly as adolescence is a time for learning and self-discovery. Although there are many reasons for early marriage, a number of factors—including economic circumstances, customary law, education, promiscuity, and access to technology—are believed to have a very strong impact. Inappropriate early marriage will undoubtedly affect a person's physical and mental health; to prevent early marriage, parents must exercise full control over their children's behaviour, and attention is required from various parties that may encourage someone to marry young.³³

Although early marriage is not permitted, Article 7(2) of Law No. 16 of 2019 allows for exceptions to the 19-year-

old age requirement, namely where the parents of the bride and/or groom request a dispensation from the court on urgent grounds, accompanied by sufficient supporting evidence. What is meant by 'urgent reasons' is a situation where there is no other option and the marriage must be conducted under duress, as stipulated in Article 7(2) of Law No. 16 of 2019. Thus, based on the above provisions, early marriage is still legally possible. However, such a marriage cannot be conducted arbitrarily and must meet certain requirements.

When considered in relation to the principles of child protection, early marriage can be described as an act that violates the principles of life, growth and development, and the best interests of the child.³⁴ Children under the age of 19 are not yet psychologically or intellectually ready to lead a married life. As children of that age are not yet settled and still have unstable minds, they can be regarded as not yet ready to consider matters that are premature for them. At that age, they are studying at school and some are still enjoying their childhood. Therefore, the Child Protection Act requires parents not to marry off their children before they meet the age requirement stipulated in the Act.³⁵

It is noteworthy that one of the stated objectives of the Guidelines for Adjudicating Applications for Marriage

³² Winardi Triyanto, "The Impact of Underage Marriage from the Perspective of Islamic Law and Law No. 1 of 1974," *Lex Privatum* 1, no. 3 (July 2013): 78.

³³ Yeni Herliana Yoshida, Junita Budi Rachman, and Wawan Budi Darmawan, "Indonesia's Efforts to Address Child Marriage as an Sustainable *Aliansi: Journal of Politics, Security and International Relations* 1, no. 3 (December 2022): 164.

³⁴ Azni Azni et al., "Pseudo-Maṣlaḥah and Epistemological Failure in Marriage Dispensation at Indonesian Religious Courts," *Peuradeun Scientific Journal* 13, no. 2 (30 May 2025): 1399–1420.

³⁵ Fadli Andi Natsif, "The Problem of Child Marriage (Perspectives of Islamic Law and Positive Law)," *Al-Qadān Journal of Islamic Judiciary and Family Law* 5, no. 2 (December 2018): 184.

Dispensations is to enhance parental responsibility in the prevention of child marriage; this aligns with one of the obligations and responsibilities of parents as stipulated in Law No. 35 of 2014 Amending Law No. 23 of 2002 on Child Protection, namely to prevent marriage at a child's age.

Based on the explanation provided above, if a marriage takes place, it means that several laws established in relation to child protection policies (Article 26(1)) and also Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons have been disregarded. Children are protected by law from acts of violence; laws are also enacted to protect children from exploitation. Through these laws, children are protected from discrimination. Children can grow and develop in life with their right to life protected; this is the essence of the law's mandate.

Parents must protect their children from early marriage, as stipulated in Article 26 of Law No. 23 of 2002 on Child Protection (Law of the Republic of Indonesia No. 1974); this highlights the vital role of parents in guiding and preparing their children so that they are truly ready, both in terms of age and mental maturity, when deciding to start a family.³⁶

The issue of early marriage involving children also requires the government's attention, as there is concern that this could constitute a criminal act of human trafficking, given

that economic factors also influence the occurrence of such crimes, as stipulated in No. 21 of 2007, which mandates that parents must continue to protect their children so that they retain the right to live, grow and develop, and are protected from acts of violence, exploitation and discrimination. Therefore, if early marriage occurs based on such reasons, it must be prevented as it will have many negative consequences, given that the prospective couple lacks the physical, mental and material readiness required for married life.³⁷

There are several factors leading to early marriage that are frequently encountered in the community. Firstly, personal choice, as both parties feel they are in love, and thus those who already have a partner or lover are influenced to marry at a young age. Secondly, economic factors; early marriage occurs due to families living in poverty, where a young girl is married off to alleviate her parents' burden. Thirdly, education: the low level of education and knowledge among parents and the community leads to a tendency to marry off underage children. Fourthly, family circumstances: parents are unable to afford their children's education, so they are married off quickly; also, due to the child's lack of desire to continue their education, they are married off as soon as a suitable partner is found. Fifth, tradition: early marriage occurs because it is viewed as normal for marriage to take place during childhood or adolescence; this has become a tradition

³⁶ Mas Agus Priyambodo, "Early Marriage from the Perspective of Indonesian Positive Law and Its Issues," *Pro Hukum Journal: Gresik University Law Research Journal*, 11, no. 4 (November 2022): 394–395.

³⁷ Yana Indawati et al., "Factors and Impacts of Early Marriage from the Perspective of the Marriage Law," *Indonesian Journal of Social Sciences and Humanities*, 4, no. 1 (2024): 84–85.

that is difficult to prevent within that community.³⁸

A comprehensive and integrated strategy is required to address child marriage, taking into account logical, legal, and religious factors. The following are some potential solutions: *First*, Logical Factors: (1) Awareness and Education: Educating and raising public awareness of the harmful effects of child marriage on physical, mental, and social health. (2) Community Approach: Encouraging a shift in social norms to prioritise children's rights by involving families, religious leaders, and community figures in efforts to delay marriage. *Second*, Legal Factors: (1) Law Enforcement: Enhancing the effectiveness of law enforcement in combating violations related to child marriage, and imposing clear penalties on offenders. (2) Regulatory Reform: Reviewing and, where necessary, amending child marriage laws to make them stricter and more protective of children. *Third*, Sharia Factors: (1) Reinterpretation: Examining, through the *ijtihad* of knowledgeable experts, how Islamic law interprets child marriage in the context of the current situation. (2) Fatwas and Education: Issuing fatwas that support raising the minimum marriage age and launching educational initiatives to inform Muslims that child marriage contradicts the primary purpose of marriage in Islam, which is to ensure the well-being of all parties involved.

³⁸ Wifa Lutfiani Tsani, "Trends in Encouraging Early Marriage Examined from Positive and Negative Perspectives," *El-Usrah: Journal of Family Law*, 4 No. 2 (July–December 2021): 425–426.

Conclusion

In conclusion, differing views on early marriage stem from differences in the sources, nature, and approach between positive law and Islamic law. Positive law derives from norms, customs, and social developments which are subsequently formalised in legislation by setting clear and measurable age limits through specific figures, thereby providing legal certainty. Conversely, Islamic law, which is derived from the Qur'an and Hadith, employs indicators of maturity such as reaching puberty (*baligh*) and capability (whether physical, mental, or economic), which are more flexible and allow for *ijtihad* and interpretation by scholars in accordance with the context of the times and the conditions of society. This flexibility allows for legal reform without departing from the fundamental principles of Sharia. Therefore, in addressing the issue of child marriage, strong synergy is required between the government, religious scholars, and society to formulate solutions that are not only in accordance with positive law but also aligned with Islamic values, with the primary aim of protecting the rights, best interests, and overall well-being of the child.

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