

TERAJU

Jurnal Syariah dan Hukum

Investigative Audit of Financial Losses to the State by the State Audit Agency in Corruption Cases

Siska Dwi Andini and Listyowati Sumanto

Islamic Legal References: Consensus and Disagreed-Upon Evidence

Muhammad Rifal Sabri, Zulfan, Erman, and Muhammad Fauzi

Legal Analysis of the Application of Polygamy Marriage Validation Regulations in the Sibuhuan Religious Court: Case Number 90/Pdt.P/2023/PA.Sbh and 217/Pdt.P/2022/PA.Sbh from the Perspective of Justice

Muhammad Yusuf Nasution, Muhammad Arsad Nasution, and Putra Halomoan Hasibuan

Several Theories in Criminology: Differential Association Theory, Strain Theory, Social Control Theory, Subculture Theory, The Self Theories

Aqilla Achmad Fathoniansyah, Linda Khasrima Putri, Rizky Habiba Romli Angelita, and Audina Rahmanita Sihab

The History of Islamic Economic Thought in Indonesia

Irtifa Umi Azizah, Muhammad Aswad, and Muhammad Aqim Adlan

The History of Family Law Reform in Islamic Countries

Endah Mustika Pertiwi, Syarifuddin, and Ali Murtadho Emzaed

Legal Protection of Patient Personal Data to Prevent Leaks on Social Media

Yulia Audina Sukmawan, Restiana Kartika Mantasti Hapsari, Dwi Damayanti, dan Saraya Aisya Awanis

Realising Consumer Data Protection in Peer-to-Peer Lending through Market Conduct

Taruna Prakarsa and Muhammad Abdul Ghofur

The Sovereignty of the Indonesian State in Addressing Rohingya Ethnic Refugees

Maylissabet, Ravee Tomong, Nasih Burhani, and Mohammad Saifa Abudillah

Legal Protection for Women in Marriage Law in Indonesia

Kudrat Abdillah

STAIN SULTAN ABDURRAHMAN KEPULAUAN RIAU

TERAJU: Jurnal
Syariah dan Hukum

Volume
7

Nomor
02

Halaman
151 - 137

Bintan
September 2025

E-ISSN 2715-386X
P-ISSN 2715-3878

TERAJU

Jurnal Syariah dan Hukum

Teraju: Jurnal Syariah dan Hukum, hadir dengan edisi perdana pada Maret 2019. Dalam Kamus Besar Bahasa Indonesia (KBBI), kata "**Teraju**" memiliki beberapa makna yang satu diantaranya berarti "timbangan" atau "neraca". Kehadiran **Teraju** tak lain ingin membawa pesan sebagaimana nilai yang termuat dalam namanya, yakni timbangan yang menggunakan dua buah piringan yang digantungkan dengan rantai (tali) pada kedua ujung lengannya yang merupakan identitas syariah dan hukum di berbagai belahan dunia.

Keberadaan **Teraju:** Jurnal Syariah dan Hukum, sebagai jurnal ilmiah dan media komunikasi ilmiah dengan fokus kajian pada ilmu syariah dan ilmu hukum. Jurnal ini diterbitkan dua kali dalam setahun, yakni pada Maret dan September oleh **P3M dan Jurusan Syariah dan Ekonomi Bisnis Islam STAIN Sultan Abdurrahman Kepulauan Riau** dengan **ISSN Online 2715-386X** dan **ISSN Print 2715-3878**. Berdasarkan Surat Keputusan Direktur Jenderal Pendidikan Tinggi, Riset, dan Teknologi Nomor 204/E/KPT/2022, tanggal 03 Oktober 2022 tentang Tingkat Akreditasi Jurnal Ilmiah Periode II Tahun 2022, **Teraju:** Jurnal Syariah dan Hukum **terakreditasi SINTA 5**. **Teraju** mengundang para peminat, pengkaji, peneliti, dan akademisi untuk mempublikasikan hasil penelitian dan karyanya yang berhubungan dengan ilmu syariah dan hukum di jurnal ini.

Focus and Scope

TERAJU: Jurnal Syariah dan Hukum merupakan Jurnal Ilmiah yang memiliki **focus** pada kajian **Syariah dan Hukum**. Sedangkan **scope** dalam Jurnal ini meliputi:

- **Syariah:** Usul Fikih, Fikih, Hukum Ekonomi Syariah, Hukum Keluarga Islam, Perbandingan Mazhab, dan Ilmu Falaq.
- **Hukum:** Filsafat Hukum, Hukum Bisnis, Hukum Pidana, Hukum Perdata, Hukum Tata Negara, Hukum Adat, Hukum Internasional dan Studi Perbandingan Hukum.

Pimpinan Redaksi :

M. Taufiq (SINTA ID : 6692134, ORCID iD: 0000-0002-1417-1316, STAIN Sultan Abdurrahman Kepulauan Riau)

Penyunting/Editor:

- Fathurrohman Husen (SINTA ID : 6722229, IAIN Surakarta)
- Bagus Anwar Hidayatullah (SINTA ID: 6656894, Universitas Widya Mataram Yogyakarta)
- Asrizal (SINTA ID : 6135029, STAIN Sultan Abdurrahman Kepulauan Riau)
- Rizki Pradana Hidayatullah (SINTA ID : 6669260, STAIN Sultan Abdurrahman Kepulauan Riau)
- Mohamad Tedy Rahardi (SINTA ID : 6716666, STAIN Sultan Abdurrahman Kepulauan Riau)

Redaktur/Reviewers:

- Muhammad Darwis (ID SCOPUS: 57217206490, SINTA ID : 6666928, UIN Sultan Syarif Kasim Riau)
- Elviandri (ID SCOPUS: 57203618843, SINTA ID: 6134045, Universitas Muhammadiyah Riau)
- Kudrat Abdillah (ID SCOPUS: 58994511000, SINTA ID: 6711517, IAIN Madura)
- Siti Nurhayati, (SINTA ID : 6042192, IAIN Kediri)
- Ainun Najib, (SINTA ID : 6684117, Universitas Ibrahimy Situbondo)
- Riza Multazam Luthfy (SINTA ID: 6730766, UIN Sunan Ampel Surabaya)

DAFTAR ISI

Volume 7 Nomor 02, September 2025

<p>Investigative Audit of Financial Losses to the State by the State Audit Agency in Corruption Cases <i>Siska Dwi Andini dan Listyowati Sumanto</i></p>	151 – 161
<p>Islamic Legal References: Consensus and Disagreed-Upon Evidence <i>Rifal Sabri, Zulfan, Erman, and Muhammad Fauzi</i></p>	162 – 180
<p>Legal Analysis of the Application of Polygamy Marriage Validation Regulations in the Sibuhuan Religious Court: Case Number 90/Pdt.P/2023/PA.Sbh and 217/Pdt.P/2022/PA.Sbh from the Perspective of Justice <i>Muhammad Yusuf Nasution, Muhammad Arsad Nasution, and Putra Halomoan Hasibuan</i></p>	181 – 193
<p>Theories in Criminology: Differential Association Theory, Strain Theory, Social Control Theory, Subculture Theory, The Self Theories <i>Aqilla Achmad Fathoniansyah, Linda Khasrima Putri, Rizky Habiba Romli Angelita, and Audina Rahmanita Sihab</i></p>	194 – 205
<p>The History of Islamic Economic Thought in Indonesia <i>Irtifa Umi Azizah, Muhammad Aswad, and Muhammad Aqim Adlan</i></p>	206 – 217
<p>The History of Family Law Reform in Islamic Countries <i>Endah Mustika Pertiwi, Syarifuddin, and Ali Murtadho Emzaed</i></p>	218 – 228
<p>Legal Protection of Patient Personal Data to Prevent Leaks on Social Media <i>Yulia Audina Sukmawan, Restiana Kartika Mantasti Hapsari, Dwi Damayanti, dan Saraya Aisyah Awanis</i></p>	229 – 239
<p>Realising Consumer Data Protection in Peer-to-Peer Lending through Market Conduct</p>	240 – 252

<i>Taruna Prakarsa and Muhammad Abdul Ghofur</i>	
The Sovereignty of the Indonesian State in Addressing Rohingya Ethnic Refugees <i>Maylissabet, Ravee Tomong, Nasih Burhani, and Mohammad Saifa Abudillah</i>	253 – 269
Legal Protection for Women in Marriage Law in Indonesia <i>Kudrat Abdillah</i>	270 – 289

TERAJU

Jurnal Syariah dan Hukum

Teraju: Jurnal Syariah dan Hukum
Volume 07 Number 02, September 2025
DOI: <https://doi.org/10.35961/teraju.v7i02.2484>

Legal Protection for Women in Marriage Law in Indonesia

Kudrat Abdillah

Faculty of Law, Gadjah Mada University, Indonesia.

E-mail: kudratabdillah@mail.ugm.ac.id

Abstrak:

Penelitian ini membahas posisi dan perlindungan hak-hak perempuan dalam hukum perkawinan Indonesia yang berlandaskan nilai-nilai Pancasila. Secara historis, perempuan sering ditempatkan sebagai kelas kedua dan mengalami diskriminasi, baik pada masa Yunani Kuno, zaman Jahiliyah, maupun setelah hadirnya Islam. Islam sendiri hadir untuk mengangkat martabat perempuan, terutama dalam ranah perkawinan. Dalam perkawinan Islam dan hukum positif Indonesia, perempuan memiliki kedudukan setara dengan laki-laki dalam hal peran, akses, serta hak berpendapat. Kajian ini menggunakan metode penelitian kualitatif dengan pendekatan normatif melalui studi kepustakaan. Hasil penelitian menunjukkan bahwa hukum perkawinan Indonesia sangat melindungi perempuan, baik secara fisik maupun psikis, melalui empat aspek penting. Pertama, hak memilih pasangan, di mana perkawinan hanya sah atas persetujuan kedua mempelai. Kedua, kewajiban pencatatan perkawinan sebagai bentuk kepastian hukum. Ketiga, penetapan batas usia minimal 19 tahun bagi calon mempelai untuk mencegah dampak negatif perkawinan dini. Keempat, taklik talak yang memberikan perempuan jaminan mengajukan perceraian jika hak-haknya diabaikan. Keseluruhan ketentuan ini mencerminkan nilai-nilai dasar Pancasila, yaitu ketuhanan, kemanusiaan, dan keadilan, yang menjadi ruh dan landasan filosofis bagi hukum perkawinan di Indonesia.

Kata Kunci: Perlindungan Hukum, Perempuan, Hukum Perkawinan

Abstract:

This study discusses the position and protection of women's rights in Indonesian marriage law based on Pancasila values. Historically, women have often been placed as a second class and experienced discrimination, both in Ancient Greece, the Jahiliyyah era, and after the advent of Islam. Islam itself came to elevate the status of women, especially in the realm of marriage. In Islamic marriage and Indonesian positive law, women have equal status with men in terms of roles, access, and the right to express their opinions. This study uses a

qualitative research method with a normative approach through a literature review. The results of the study show that Indonesian marriage law strongly protects women, both physically and psychologically, through four important aspects. First, the right to choose a partner, whereby marriage is only valid with the consent of both parties. Second, the obligation to register marriages as a form of legal certainty. Third, the setting of a minimum age of 19 for prospective spouses to prevent the negative effects of early marriage. Fourth, *taklik talak*, which guarantees women the right to file for divorce if their rights are ignored. All of these provisions reflect the basic values of Pancasila, namely divinity, humanity, and justice, which are the spirit and philosophical foundation of marriage law in Indonesia.

Keywords: Legal Protection, Women, Marriage Law



<https://creativecommons.org/licenses/by/4.0/>

Corresponding email: kudratabdillah@mail.ugm.ac.id

Introduction

Women have always been considered second-class citizens in a world where they face discrimination, both in terms of physical appearance, where they are considered less strong than men, and in terms of opinions that make them a source of slander. In historical records, the birth of a daughter was considered to lower the status of both parents. Unsurprisingly, many people hid and buried them alive for fear that the community would find out, as explained in Q.S. al-Nahl verses 58-59.¹ Yet Allah has stated in Surat Al-Hujurat verse 13 that humans are created equal, both men and women. Indeed, Allah created humanity in nations and tribes, but the difference between Allah's creations and the most noble of humanity lies in their level of piety. There is no need to worry about women, nor to take pride in men, as

quoted by Imam Ghazali in his book *Ihya Ulumuddin*.²

Before the advent of Islam and the Prophet Muhammad SAW as its bearer, many civilisations had formed and flourished throughout the world, such as Greece, Rome, India, China, Egypt, and other countries. In addition, there were the religions (teachings) of Judaism, Christianity, Buddhism, Zoroastrianism, and many other beliefs. However, in all of these civilisations and religions, there was no real concern for women. There was almost no discussion of women's rights, and they tended to be neglected. The situation was very sad, and women were even treated inhumanely.³ In ancient Greek society, women were treated as commodities to be bought and sold, confined to palaces, treated like objects, and subjected to other forms of discrimination. Even though the Greeks

² Imam Al-Ghazali, *Ihya' Ulumuddin Translated by Muhammad Zuhri* (Semarang: Asy-Syifa, 1990), 17.

³ R. Magdalena, 'The Position of Women in the Course of History (A Study of the Position of Women in Islamic Society)', *Harkat An-Nisa: Journal of Gender and Children Studies* 2, no. 1 (2017): 15.

¹ The Holy Quran Ministry of Religious Affairs of the Republic of Indonesia, *The Holy Quran and Its Translation* (Jakarta: Lajnah Pentashihan Mushaf Al-Quran, 2015).

were a nation with many philosophers, very few of them paid attention to women's rights and obligations.⁴ Said Abdullah even concluded that Greek women were divided into three categories, namely prostitutes, concubines, and wives who only took care of domestic affairs.⁵

In conclusion, in history before the arrival of Islam, women occupied a position far below men as fellow human beings. Some even considered women to have a lower status than male servants. Women did not inherit anything from their parents if they still had brothers. Women were even treated as commodities that could be easily bought and sold and became inherited property. Their fathers had the right to sell them when they reached the age of maturity. If a woman wanted to marry, everything she owned automatically became the property of her husband as well. Husbands had complete rights over their wives' property for as long as they were bound by marriage. If a wife found her husband with another woman, she could not protest, because her husband had complete authority over her and could do whatever he wanted.

Discrimination against women prior to Islam gradually began to disappear. When Islam arrived and developed, women were given all their rights, including inheritance and full ownership of their property.⁶ Women who were considered capable (*mukallaf*) could also make various agreements, oaths, and vows, both with other people and with God. No one was allowed to renege on their promises, oaths, or vows.⁷ Women

also had every opportunity to choose their own spouse; even their parents (guardians) had no right to force them into marriage. Therefore, a woman's marriage would not take place unless she gave her permission and consent. Islam emphasises that men and women have the same position and responsibilities under strict laws, and even gives women the same freedom in running their households, from choosing a partner to separation, whether by pronouncing *talaq* or not, or by pronouncing *khulu*.⁸ Thus, the presence of Islam as a religion has wisdom in placing women and men in a position of honour. Islam is very progressive in improving the dignity and status of women and strives to break the shackles of *jahiliyyah* customs, especially in raising the self-esteem of women.

Even though in Islam the status of women is considered equal to that of men, in the development and reality of society this is not fully implemented. There are still many attitudes and behaviours that discriminate against women. Even in the last decade, many scholars have discussed the issue of gender mainstreaming, particularly in relation to Islamic thought, in the form of interpretations of verses that discuss women's issues. The increase in this debate is largely due to the difference in the way women and men are treated in society.⁹ The position of women has always been associated with the domestic sphere, including working in the home, while men are often associated with the public sphere, including working outside the home. The relationship between women and men is often based on myths. One of these is the belief about the origin of women, namely that Eve was created from Adam's rib, the second

⁴ Sayid Muhammad Husain Fadhullah, *The World of Women in Islam* (Jakarta: Lentera, 2000), xi.

⁵ Said Abdullah Seib Al-Hatimy, *Cintra: A Woman's Identity in the Course of History* (Surabaya: Risalah Gusti, 1995), 5.

⁶ Nasaruddin Umar, *Arguments for Gender Equality*, II (Jakarta: Paramadina, 2010), 239.

⁷ Mutawally Sya'rawi, *Fiqh for Women* (Jakarta: Amzah, 2009), 108.

⁸ Salim Abd al-Ghani Ar-Rifa'i, *Ahkam Al-Ahwal al-Syakhsiyyah Li al-Muslimin Fi al-Gharb*, I (Beirut: Dar Ibn Hazm, 2002), 106.

⁹ Rizky Bangun Wibisono, 'Achieving Political Identity for Women in Indonesia', *Jurnal Mengkaji Indonesia* 1, no. 1 (9 March 2023): 5, <https://doi.org/10.59066/jmi.v1i1.61>.

creature after Adam, and also the myth about menstruation. However, there is not a single verse in the Qur'an that explains this, except for the verse that tells us that Adam and his partner were created from the same essence. This is as stated by Allah in the Qur'an, Surah An-Nisa', verse 1.¹⁰

Discussions about women are indeed endless, especially regarding their rights, none other than discussions about the relationship between men and women that lead to professional and proportional justice.¹¹ reveals the importance of enlightening studies on the position of women and men in public affairs in general and domestic affairs in particular. In public affairs, this includes rights in social, economic, cultural, and political matters, while in the domestic sphere, it includes family matters, such as choosing a life partner, becoming the head of the household, making decisions within the family, and other matters related to the concept of family. Why is it important to strengthen women's rights within the family? The family is the simplest unit in society. A strong society is formed by strong families. Thus, a strong country is formed by strong societies, including Indonesia.

Indonesia, as a country based on the rule of law and Pancasila, has a great responsibility to protect all citizens, including women, who have historically been discriminated against and need to be protected from crime and the deprivation of their rights. All regulations and rules passed by the state must be based on the values of Pancasila, because Pancasila has been established and agreed upon as the foundation of the Indonesian state, as *a way of thinking* and *a way of life* for the

¹⁰ Al-Quran Ministry of Religious Affairs of the Republic of Indonesia, *Alquran Dan Terjemahannya*.

¹¹ Husein Muhammad, Fikih Perempuan, ed. Faqihuddin Abdul Kodir, 2020, 3.

nation. As a foundation for thinking and a way of life, Pancasila is a paradigm that must be followed in the administration of government, including in the formulation of regulations. The formulation of regulations in Indonesia should be in line with Pancasila and reflect the character of the nation itself.

So far, there have been very few writings on marriage law based on the Pancasila paradigm. Some of these writings can be described as follows: The study by Tengku Erwinsyahbana focuses on marriage law in Indonesia, showing that marriage is not only viewed as a personal matter, but also as a family relationship based on religious values.¹² Miftahul Fauziyah examines the unity between Pancasila and the perspective of the Qur'an in Indonesian families.¹³ Another study on marriage law in Indonesia represents the Muslim community, but it cannot be denied that there are many other rules that can be used as considerations in marriage matters.¹⁴

This paper complements previous studies on marriage law in Indonesia that *did not focus* on the comprehensive internalisation of Pancasila values. This paper is based on the argument that the law must have a spirit and a Pancasila paradigm so that justice, benefit, and legal certainty can be achieved. The big question that will be addressed in this paper is how to internalise Pancasila values in Indonesian marriage law, particularly in the context of legal

¹² Tengku Erwinsyahbana, 'The Marriage Law System in a State Based on Pancasila', *Journal of Law, Faculty of Law, University of Riau* 3, no. 1 (2012).

¹³ Miftahul Fauziyah, 'Internalisation of Pancasila Values in the Family from the Perspective of the Qur'an, Surah Ar-Rum, Verse 21', *Syakhsiyyah Journal of Islamic Family Law* 1, no. 1 (2021).

¹⁴ Derta Nur Anita, 'Marriage Law in a State Based on Pancasila', *Innovative: Journal of Social Science Research* 3, no. 5 (2023).

protection for women. This question will be analysed using qualitative normative research and includes *library research* that reviews literature.¹⁵ This type of legal research views law as legislation (*law in text*) or law as a rule (norm) that serves as a benchmark for society in its behaviour (*doctrinal*).¹⁶ The object of this research is Marriage Law in Indonesia. Several regulations related to Marriage Law in Indonesia are Law Number 1 of 1974 concerning Marriage, Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, and Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.¹⁷ This study uses descriptive analysis, collecting relevant data which is then compiled and analysed to obtain an overview of the issues discussed.¹⁸

Pancasila Values in Indonesia

In the Great Dictionary of the Indonesian Language, value is a standard or measure (norm) used to measure something that is useful and beneficial to humans. For example, moral values, especially values for humans as whole individuals, such as honesty, are associated with morality, good and bad, which are embraced by a group of people.¹⁹ Values lie in the heart (conscience) and mind that

are believed and trusted.²⁰ *Values* are also part of axiology in the study of philosophy (ontology, epistemology, and axiology).²¹ Therefore, it can be understood that a value is an idea or concept about something that is relevant and useful in a person's life.

Pancasila is the foundation and ideology of the state. Pancasila was formed after being agreed upon by the founders of the nation when Indonesia gained independence. Pancasila emerged as an intermediary ideology in the context of the heated conflict between capitalism and communism. With the intelligence and wisdom of the nation's leaders, Pancasila does not lead to individualism or collectivism. Pancasila also does not adhere to theocracy or secularism. Instead, Pancasila seeks to be presented as a scientific, rational, and critical concept that supports world peace and promotes the welfare, justice, and prosperity of the Indonesian people.²²

The core values of Pancasila are the philosophical foundation of the state, which means that the administration of the state must adhere to these values in all fields. The values of Pancasila are the values of divinity, humanity, solidarity, humanity and justice. Pancasila is a guideline for life in every aspect of society and statehood. Pancasila as a way of life signifies the values of Pancasila as a guideline for daily life. Every layer of society, community activity, and state institution must be in line with the core values of Pancasila. Thus, the values of Pancasila are the spirit behind all actions,

¹⁵ Munir Fuady, *Legal Research Methods: Theoretical and Conceptual Approaches* (Depok: PT. Rajagrafindo Persada, 2018), 18.

¹⁶ Fuady, 18; Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Banyumedia Publishing, 2008), 45.

¹⁷ Maimun, Faidi, Kudrat, et al., *Practical Guide to Writing Scientific Papers for the Faculty of Sharia* (Pamekasan: Duta Media, 2019).

¹⁸ Lexy J Moleong, *Qualitative Research Methodology* (Bandung: Remaja Rosdakarya, 2014), 248.

¹⁹ Hasan Alwi et al., *Great Dictionary of the Indonesian Language* (Jakarta: Balai Pustaka, 2002), 783.

²⁰ Hamid Darmadi, *Fundamentals of Moral Education Concepts*, I (Bandung: Alfabeta, 2007), 50.

²¹ Atmorejo. Sudjito, *Legal Education: Efforts to Realise Pancasila Humanity* (Yogyakarta: CV. Istana Agency, 2023), 50.

²² Inggar Saputra, 'Actualising Pancasila Values as the Key to Overcoming Drug Abuse in Indonesia', *Journal of Pancasila and Citizenship, Muhammadiyah University Ponorogo* 2, no. 2 (2017).

attitudes, and behaviours in the life of the Indonesian nation and state.

Notonagoro, using the theory of cause and effect (*causal theory*), understands that the presence of Pancasila for Indonesian society can be proven scientifically. *The material cause* of Pancasila refers to the customs, culture, and religion of Indonesian society. The formal *cause* is the formulation of Pancasila as stated in the preamble to the 1945 Constitution. *The final cause* is the foundation of the state. The efficient cause of Pancasila, which is effective, is the foundation of state philosophy (*filasafat negara*).²³ Based on this theory of cause and effect (*causal theory*), in his scientific analysis of the nature and relationship between God Almighty and humans, Notonagoro concluded that God Almighty is the cause, the unshakeable motive, *sangkan paraning dumadi*. Meanwhile, the essence of humans as creatures of God Almighty consists of monadism, a single soul (soul-body, individual-society, male-female, and so on) that works in unity and wholeness to fulfil human needs that lead to perfection (absolute, absolute).

More deeply, Sudjito Atmorejo emphasises that God Almighty has bestowed various values of truth and justice upon the Indonesian people. These divine values are the source of inspiration and motivation for other values that arise.²⁴ Philosophically, values must originate from and be imbued with divine values, which means that all values of national and state life in Indonesia become a unified whole, a system of values. This system of values is embodied in the term Pancasila.

²³ Notonagoro, *Pancasila: The Philosophical Foundation of the Republic of Indonesia* (Jakarta: Bumi Aksara, 1971).

²⁴ Sudjito Atmorejo, *Pancasila Paradigm Law (Academic Struggle from Transcendence to Realisation)* (Yogyakarta: CV. Istana Agency, 2022), 4.

For the Indonesian people, Pancasila is accepted as a national agreement along with the three other pillars of the 1945 Constitution, *Bhinneka Tunggal Ika* (Unity in Diversity), and the Unitary State of the Republic of Indonesia. Pancasila was definitively ratified by the PPKI on 18 August 1945 as the foundation of the state, ideology, and philosophy of the nation. The formulation of Pancasila as stated in the Preamble to the 1945 Constitution, paragraph IV, consists of five principles, namely: (1) Belief in One God; (2) Just and civilised humanity; (3) Unity of Indonesia; (4) Democracy guided by the wisdom of deliberation and representation; (5) Social justice for all Indonesian people.²⁵

The material formulation of Pancasila contains basic human values, while as the foundation of the state, Pancasila has characteristics unique to the Indonesian people. Based on this foundation, the existence of Pancasila is essentially a very valuable asset, containing basic human values and natural values inherent in every human individual, which are recognised and accepted by Indonesian society. Observing the fundamental values inherent in human life, Notonagoro, who discusses Pancasila in a popular scientific manner, explains that by nature, humans have individual characteristics, but are also social beings. With the explanation of these basic human values, it is only natural that the values of Pancasila are accepted by the entire Indonesian nation as a nation whose foundation is the relationship between humans and God, His creation, their fellow humans, and the natural environment.²⁶

As a national ideology, the core values of Pancasila represent the ideals of

²⁵ Paulus Wahana, *Pancasila Philosophy* (Yogyakarta: Kanisius, 2001), 73.

²⁶ Notonagoro, *Pancasila: The Philosophical Foundation of the Republic of Indonesia*, 23.

Indonesian society and reflect the identity and character of the nation. To date, the identity of the Indonesian nation has been recognised as a religious, united, democratic, just, civilised, and humane nation. The expression of the nation's identity is manifested in the agreement to use the principles of humanity, justice, and God to resolve national issues.

From a socio-political perspective, Pancasila as an ideology contains values that are good, fair, right, noble and beneficial, which should be accepted by society. Based on empirical experience, society has made the values of Pancasila shared values, so that Pancasila has become the national ideology of the Indonesian people. In its position as the ideology of the nation, the values of Pancasila function as shared values and unifying values. From a legal perspective, Pancasila as the foundation of the state has become a legal ideal (*rechtsidee*), meaning that it must be used as the basis and objective of law in Indonesia.²⁷ This legal ideal is apriori normative and constitutive, a transcendent requirement that underlies all legitimate positive laws. This means that without a legal ideal, there would be no normative law. The core values of Pancasila are enshrined in the Constitution, particularly the 1945 Constitution, and in the form of provisions governing various aspects of Indonesian national and state life.

In addition to its values, Pancasila has five functions²⁸, namely: *First*, Pancasila as a guideline for life, in its function Pancasila becomes the foundation of all ideals in Indonesia. Pancasila must be a guideline in making

one's own decisions when facing problems. *Second*, Pancasila is the soul of the nation, in this function Pancasila must be the soul of the Indonesian nation. Therefore, Pancasila must be upheld in every institution, both institutional and individual, in Indonesia. *Third*, Pancasila is the character of the nation. With this function, Pancasila can also be referred to as the identity of the Indonesian nation. This means that Pancasila must exist within every individual to make Pancasila the national personality and also the characteristic of the Indonesian nation. *Fourth*, Pancasila is the source of law. In this function, Pancasila is the legal basis for all laws established in Indonesia. This means that as a nation, there must not be any entity that contradicts Pancasila. *Fifth*, Pancasila is the ideal of the nation. In this function, Pancasila is considered the goal of the state and the ideal of the nation. As a proud Indonesian nation, we must have the desire for our country to be a nation with a high sense of humanity, solidarity, mutual respect, and humility.

In its function as a source of law, Pancasila is interpreted to mean that the laws in Indonesia must embody the spirit of Pancasila.²⁹ This has an impact on the interconnection of other values that form a unity.³⁰ The values of Pancasila must be incorporated into the laws and regulations of Indonesia, including laws, government regulations, local regulations, and other regulations. The spirit of Pancasila is a path that leads to divinity, humanity, unity, democracy, and justice as the ideals of the nation. If the spirit of Pancasila is well internalised, then the ideals of the nation

²⁷ Abdul Kadir Besar, *Pancasila: Philosophical Reflections, Ideological Transformations, and the Necessity of a Method of Thinking* (Jakarta: Pustaka Azhary, 2005), 102.

²⁸ Ratna Sari and Fatma Ulfatun Najicha, 'Understanding the Values of Pancasila as the Foundation of the State in Community Life', *Jurnal Harmony* 7, no. 1 (2022).

²⁹ Asip Suyadi, 'Pancasila as a Paradigm for Legal Development', *Surya Kencana Satu Journal: Dynamics of Legal Issues and Justice* 9, no. 1 (2018): 5.

³⁰ Saafroedin Bahar, 'Pancasila as a Paradigm for National Development in the Socio-Political Field', *Jurnal Ketahanan Nasional* 7, no. 2 (2002): 11.

can be easily achieved. Discrimination and unfair treatment in society can be avoided.

Pancasila as a source of substantive law is determined by the content or substance contained in Pancasila. Pancasila has at least three characteristics, namely: *First*, the content of Pancasila is the philosophical substance of the Indonesian nation. *Second*, the content of Pancasila is the national legal identity. *Third*, Pancasila does not define commands, prohibitions, and punishments, but only defines the basic principles of law formation (meta-juris).³¹ These three material characteristics identify Pancasila as a source of substantive law.

Thus, philosophically, the essence of Pancasila's view as a model for legal development means that all aspects of legal development within the framework of national development must be based on the essence of Pancasila's values. As a model for legal development, Pancasila requires that development in society be the starting point for the existence of a legal product.³² Therefore, the purpose of law is to respond to changes in values in accordance with the needs of society, and the result is progress, innovation, and refinement of the law in relation to the issues it regulates. This process aims to maintain a genuine relationship between the law and the needs of society so that the law can be effective, certain, easily found, and understood by every community, which is certainly part of the Pancasila Law framework. This consequence mandates that all legal products in Indonesia must have a Pancasila paradigm. With a Pancasila paradigm, the legal products produced can respond to and meet the needs of society.

³¹ Fais Yonas Bo'a, 'Pancasila as a Source of Law in the National Legal System', *Jurnal Konstitusi* 15, no. 1 (29 March 2018): 32, <https://doi.org/10.31078/jk1512>.

³² Suyadi, 'Pancasila as a Paradigm for Legal Development', 7.

Legal Protection for Women in Indonesian Marriage Law

The term legal protection is relevant to the terms *legal protection* in English and *rechtsbecherming* in Dutch.³³ Legal protection does not necessarily have the same meaning, depending on the object being protected in the following sentence. Harjono understands legal protection as protection through legal means or protection determined by law. On the other hand, according to Philipus M. Hadjon, the principles of legal protection for the people are to protect their honour, dignity and integrity and to recognise the fundamental rights of legal subjects based on legal provisions against arbitrariness.³⁴ Furthermore, Hadjon refers to legal protection for the people as preventive and repressive actions by the government. Preventive legal protection aims to prevent disputes from occurring, requiring the government to be cautious in making discretionary decisions, while repressive legal protection aims to resolve disputes, including their handling in judicial institutions.³⁵ Therefore, it can be concluded that legal protection is an effort by the government to use legal instruments to protect the people in order to obtain their rights, both in terms of conflict prevention (preventive) and conflict resolution (repressive).

Prevention means prevention or other efforts aimed at preventing disputes from occurring. This can be done by using prevention through the drafting or formulation of regulations on a particular

³³ Harjono, *Legal Protection (Building a Legal Concept) – In the Constitution as the Home of the Nation* (Jakarta: Secretariat General and Registrar of the Constitutional Court, 2008), 374.

³⁴ Philipus M. Hadjon, *Protection of the People for the People in Indonesia (A Study of the Principles, Handling by the Courts in the General Judicial Environment and the Establishment of State Administrative Courts)* (Surabaya: PT. Bina Ilmu, 1987), 38.

³⁵ Philipus M. Hadjon, 29.

object. In a country governed by the rule of law, regulations (laws and other regulations) become a legal instrument that can both prevent (preventive) and resolve disputes (repressive). This protection is to protect all citizens, both men and women, because the principle of *equality before the law* means that all citizens are entitled to equal treatment. However, the facts show that women still occupy a subordinate position and are often discriminated against. This is why narratives of women's protection and gender mainstreaming are being promoted.

Why is legal protection for women important? Women are defined as individuals (human beings) who have a vagina, are capable of menstruating, becoming pregnant, giving birth, and breastfeeding. Simply put, women are a term for the human sex that is not male. Women are also considered weak, limited, emotional, and lacking in logic, and therefore unsuitable for work in the public sector. Even though there are women who work in the public sector, have careers, and are able to compete with men, they are still considered to be violating the nature of women.

Patriarchal culture views men as leaders and women as second-class citizens who must obey men.³⁶ This culture is found in various aspects and fields, such as economics, education, politics, and even law. Gender-based discrimination often results in women experiencing various forms of exploitative treatment, preventing them from playing a role in the public sector. This patriarchal culture has become a social culture, a culture of national life, and even a culture within families.

³⁶ Febri Saefulloh et al., 'The Influence of Patriarchal Culture on Women's Career Orientation', *Manifesto: Journal of Communication, Politics and Culture* 1, no. 1 (2023): 3.

The family, which is the smallest unit in society, should be a place that is strongly supported and protected so that basic human rights can be achieved. A strong society comes from strong families. This influence highlights the importance of protecting women in the domestic sphere (family and marriage) before they enter the public sphere. Upon closer examination, Indonesian marriage law greatly elevates and protects women's rights. This is inseparable from the underlying paradigm, namely Pancasila. As a result, the resulting marriage law embodies the spirit of Pancasila. Thus, the values of Pancasila are well internalised in the articles of marriage law in Indonesia. The values of Pancasila are explained in detail in the following forms of legal protection.

1. Taklik Talak

Taklik talak is a combination of two words, namely taklik and talak, which originate from Arabic (علق) with the meaning "to hang" and (طلق) with the meaning "to leave" or "to release."³⁷ The definition of taklik talak is a formulation of a marriage bond (agreement) that includes the conditions for the fulfilment of rights by the husband.³⁸ Sayuti Thalib defines taklik talak as the suspension of divorce on matters promised by the husband to be fulfilled for his wife. If the promised conditions cannot be fulfilled by the husband, then the wife has the opportunity to file for divorce.³⁹ Therefore, it can be concluded that taklik talak is an agreement between the prospective husband and wife that is contingent

³⁷ Mahmud Yunus, *Arabic-Indonesian Dictionary* (Jakarta: Yayasan Penyelenggara Penterjemah / Pentafsiran al-Qur'an, 1972), 227.

³⁸ Amir Syarifuddin, *Islamic Marriage Law in Indonesia* (Jakarta: Kencana, 2006), 225.

³⁹ Sayuti Thalib, *Indonesian Family Law* (Jakarta: University of Indonesia Press (UI-Press), 1986), 119.

upon certain circumstances that may occur in the future. If these conditions are violated, divorce may occur, provided that the wife files for divorce with the Religious Court.

Divorce in classical Islamic law is the domain and authority of men (husbands) to divorce their wives in marriage. This has a very negative impact, especially the arbitrary actions of husbands to divorce their wives easily, or to allow their wives to remain in an unhappy relationship.⁴⁰ Islam strongly rejects all forms of jahiliyyah practices, such as actions that harm women. Granting the husband prerogative rights in matters of divorce is certainly a wrong way of thinking if left unchecked.

The Compilation of Islamic Law stipulates in Article 116 that divorce can occur if the husband does not fulfil the agreement in the taklik talak. The wording of the taklik talak at the end confirms this. If the wife feels that she is not sincere, willing, or content, then she can file for divorce at the Religious Court and process the divorce. The consequence of this process is that the wife must provide compensation (*iwadh*) or ransom for the divorce.⁴¹ The wording of the taklik talak agreement has four important elements, namely: being abandoned or neglected for two consecutive years, not being provided for financially for at least three consecutive months, being physically or mentally abused, and being ignored for six months.

The Compilation of Islamic Law also explains in Article 116 that divorce can occur due to the following reasons: (1) One party leaves the other

for two consecutive years without the other party's permission and without a valid reason or due to circumstances beyond their control; (2) One of the parties is sentenced to imprisonment for five years or a heavier punishment after the marriage has taken place; (3) One of the parties commits cruelty or severe abuse that endangers the other party; (4) One of the parties has a physical disability or illness that prevents them from fulfilling their obligations as a husband or wife; (5) There are continuous disputes and arguments between the husband and wife and there is no hope of living harmoniously in the household again; (6) The husband violates the taklik talak; (7) One of the spouses converts to another religion.

In line with this, it can also be implicitly stated that the four elements of divorce are very much in accordance with and do not contradict the Compilation of Islamic Law. The matters agreed upon in the divorce agreement are issues concerning the granting of rights to the wife if the husband neglects his obligations. The application of this divorce agreement strongly encourages the fulfilment of women's rights, as it is in line with the concept of *khulu'*, which is decided in court. *Khulu'* can be filed by the wife on the following grounds:⁴² The husband is unable to fulfil basic needs such as food, clothing, shelter or (*sandang, pangan, papan*), as well as health care; (2) The husband suffers from a dangerous illness or impotence and other disabilities; (3) The husband commits physical or psychological violence; (4) The husband, without

⁴⁰ Ahmad Azhar Basyir, *Islamic Marriage Law* (Yogyakarta: UII-Press, 2000), 83.

⁴¹ Kamal Muchtar, *Principles of Islamic Law on Marriage* (Jakarta: Bulan Bintang, 1993), 207.

⁴² Ahmad Nur Fuad et al., *Human Rights in the Islamic Perspective* (Malang: Institute for the Enforcement of the Supremacy of Law and Human Rights, East Java Regional Leadership of Muhammadiyah, 2010), 71.

clear reason, abandons his wife for a long period of time.

This urgency confirms that the substance of taklik talak does not conflict with Islamic marriage law, because in practice, talak is indeed the husband's prerogative anytime and anywhere, but the wife also has the right to file for divorce to obtain her rights in marriage and for protection.⁴³ Of course, in this case, it is the position of taklik talak that can protect the rights of the wife. Taklik talak is intended to protect the wife from the husband's abuse of power through inappropriate actions, whether physical or non-physical.

Several forms of legal protection for women in taklik talak are: *First*: the condition "if the husband leaves his wife for two consecutive years" implies that a husband must be more careful when leaving his wife, so as not to neglect his obligations as a husband. It also gives the wife the authority to be released from a marriage that has been in limbo (unclear) for two years. *Second*, the condition "if the husband does not provide her with the obligatory financial support for 3 (three) months". Broadly speaking, rights and obligations in marriage cover two things, namely economic and non-economic rights and obligations.⁴⁴ Economic rights and obligations include the fulfilment of dowry and financial support, while non-economic rights and obligations include emotional support or aspects of sexual relations. A husband must fulfil his obligation to provide maintenance. If this obligation is neglected, then the wife's rights are not being fulfilled.

Thirdly, the condition "if the husband harms his wife's body or

physical well-being" makes cases of domestic violence very sensitive. Ironically, sometimes women who have experienced violence in their marriage cannot save themselves because they do not have the authority to do so. With the taklik talak, this point instils a moral promise in the husband not to hurt his wife, so that a level of caution is instilled from the beginning of the marriage. For men who are committed to their taklik talak promise, it will be very useful for family harmony and self-awareness.⁴⁵ Finally, on the *fourth* point, the condition "if the husband neglects (does not care for) my wife for 6 (six) months or more," the commitment to be together and complement each other, when reinforced by taklik talak in marriage, will have implications for the husband's commitment not to neglect his wife for a long time, and will make a wife cautious and careful to maintain communication with her husband.

The substance of the taklik talak is clearly to protect and safeguard the wife's rights to live happily and leave an unhappy marriage. Taklik talak guarantees the wife the opportunity to file for divorce. Likewise, the meaning contained in the substance of taklik talak accommodates family relationship issues, especially violence against wives. The existence of taklik talak is certainly one of the efforts to guarantee rights and will increase the prudence of every couple. Since its emergence, taklik talak has indeed aimed to protect the rights of wives.

2. Marriage Registration

Marriage registration is a new innovation in marriage law.⁴⁶ In

⁴³ Sudarsono, *Fundamentals of Islamic Law* (Jakarta: Rineka Cipta, 2001), 215.

⁴⁴ Muhammad, *Fiqh for Women*, 226.

⁴⁵ Muchtar, *Principles of Islamic Law on Marriage*, 208.

⁴⁶ Khoiruddin Nasution, *Marriage Law 1* (Yogyakarta: ACAdEMIA + TAZZAFa,

classical Islamic law, there is no evidence of a command to register marriages. In the books of fiqh, there is no evidence that explicitly indicates a command to register marriages. A marriage is considered valid if it fulfils the pillars and conditions. The command to register only exists in matters of muamalah, specifically debts, which is found in Surah al-Baqarah verse 282. Marriage in the early days of Islam was only accompanied by a verbal announcement to the general public by beating a *duff* or tambourine, and several hadiths recommend celebrating even if it is only by slaughtering a goat. Muhammad bin Hathib, *may Allah be pleased with him*, reported that the Prophet, peace and blessings be upon him, said:

فَصَلُّ مَا بَيْنَ الْحَلَالِ وَالْحَرَامِ الصَّوْتُ، وَضَرْبُ
الدُّفِّ

Meaning: "The distinction between what is lawful and unlawful (*farji*) is the sound (*singing*) and the beating of the tambourine."⁴⁷

Following the developments of the times, with constantly changing dynamics, many changes have occurred. The transition from oral culture to written culture is one of the characteristics of modern society, where written documents are used as authentic evidence, and living witnesses can no longer be relied upon, not only because they may die, but also because society may experience forgetfulness and error.⁴⁸ Even Ahmad Tholabi

Kharlie states that the cultural conditions of Islamic society have now been reversed; witnesses to marriage are still required in the contract, but in the context of the court, authentic evidence is stronger and more permanent. On that basis, a permanent means of evidence is required, known as a deed.⁴⁹

The importance of marriage registration is to maintain the continuity of the family in order to achieve the objectives of marriage itself. Some of these objectives are to form a peaceful family, reproduce or regenerate the extended family, fulfil biological (sexual) needs between husband and wife, maintain honour, and perform religious duties.⁵⁰ This registration will be one of the efforts to improve order and comfort for every individual who performs legal acts or relationships in modern times. Khoiruddin Nasution even categorised the typology of marriage registration regulations in Muslim countries into three groups. *First*, countries that impose sanctions on violators. *Second*, countries that only treat registration as an administrative matter. *Third*, countries that require marriage registration but also recognise the validity of unregistered marriages. According to Ahmad Tholabi Kharlie, almost all Muslim countries require marriages to be registered.⁵¹

Marriage registration is stipulated in Article 2 paragraph (2) of the Marriage Law, namely that every

from *Fiqh Law No. 1/1974 to KHI* (Jakarta: Prenada Media, 2004), 120.

⁴⁹ Sayuti Thalib, *Indonesian Family Law*, 184.

⁵⁰ Khoiruddin Nasution, *The Status of Women in Southeast Asia: A Study of Contemporary Muslim Marriage Legislation in Indonesia*, 158.

⁵¹ Ahmad Tholabi Kharlie, *Indonesian Family Law*, 3rd ed. (Jakarta: Sinar Grafika, 2019), 182.

2005); Khoiruddin Nasution, *The Status of Women in Southeast Asia: A Study of Contemporary Muslim Marriage Legislation in Indonesia* (Jakarta: INIS, 2002), 107.

⁴⁷ Imam Ahmad, *Musnad Ahmad* (Riyadh: Maktabah al-Ma'arif, n.d.).

⁴⁸ Amiur Nuruddin and Azhari Akmal Tarigan, *Islamic Civil Law in Indonesia: A Critical Study of the Development of Islamic Law*

marriage must be registered in accordance with the applicable laws and regulations. The requirement for marriage registration is also contained in the Compilation of Islamic Law Article 5 paragraph (1 and 2) with the aim of ensuring orderly marriages for Muslims in Indonesia. Marriage registration is an urgent matter and is even an administrative procedure that must be completed.⁵² The purpose is to make the marriage visible and provide evidence that the marriage has taken place, both for the parties concerned, for both families, for other people, and for the community, because the marriage event can be read in an official letter and in a list specifically created for that purpose, so that it can be used at any time, especially as authentic written evidence.

Marriage registration is the administrative recording of marriages managed by the marriage registration agency with the aim of creating legal order. Marriages that are legal according to the law must be reported by residents to the agency where the marriage took place no later than 60 (sixty) days from the date of the marriage. Marriage registration is, in principle, a basic right within the family. In addition, it also serves as a means of protecting wives and children by securing family rights such as inheritance and other rights. In other words, for those who marry under Islam, the registration is carried out at the Office of Religious Affairs (KUA), which is usually done in conjunction with the marriage contract because KUA officials are present at the time of the marriage.⁵³ Meanwhile, for

Catholics, Christians, Buddhists, and Hindus, the registration is carried out at the civil registry office after the bride and groom are married according to their respective religions. For example, for those who adhere to Catholicism or Christianity, the bride and groom will first conduct a wedding ceremony at a church with proof (marriage certificate) from the church, then the marriage is registered at the local civil registry office.

Under positive law, unregistered marriages have no legal force and are considered invalid. Marriages that are only in accordance with religious law and beliefs have no legal validity in the eyes of the law. Muslims who marry and do not register their marriage are considered to have entered into a secret marriage or *nikah sirri*. The term *nikah sirri* emerged in Indonesia with the enactment of Law No. 1 of 1974 on Marriage.⁵⁴ Article 2 paragraph (1) states that marriages must comply with the provisions of religion and belief, and marriages must be registered at the Office of Religious Affairs, as confirmed in paragraph (2). Therefore, marriages that only comply with paragraph (1) but are not registered are referred to as secret marriages or *nikah sirri*. This is reinforced by other regulations in the Compilation of Islamic Law Presidential Instruction No. 1 of 1991 in Article 5.

The Qur'an and Hadith do not regulate the details of marriage registration, but the community considers this registration to be important. Therefore, it is regulated in Law No. 1 of 1974 and the Compilation of Islamic Law (KHI).

⁵² Sulistyio Irianto, *Women and Law* (Jakarta: Yayasan Obor Indonesia, 2006), 161.

⁵³ Satri Effendi M Zein, *Contemporary Islamic Family Law Issues: Jurisprudential Analysis with an Ushulliyah Approach* (Jakarta: Prenada Media, 2005), 31.

⁵⁴ Mohammad Amin, 'The Dualism of Secret Marriage Law in Indonesia from the Perspective of Indonesian Fiqh', *Jurnal ANALISIS: Jurnal Studi Keislaman* 15, no. 1 (2015): 5.

The registration of marriages has a positive purpose, namely to maintain order in the administration of marriages in society. Marriage registration has a meaning that is achieved in order to protect the sacred bond of marriage. This registration is evidenced by a marriage book or marriage certificate, which is made in triplicate for the husband, wife, and the Office of Religious Affairs.

Marriage registration is a form of renewal in marriage law. Although there is no explicit commandment (in the Qur'an or Hadith) regarding marriage registration, considering its functions and benefits, marriage registration is important as a form of protection for the institution of family in a legal society. Through registration, there is authentic evidence that safeguards the respective rights and obligations between husband and wife.

3. Marriage Age Limitation

As with marriage registration, there is no age limit for marriage in classical fiqh, whether for women or men. Even the Prophet Muhammad married Siti Aisyah at the age of six, as explained in several hadiths. This fact has become a subject of debate in various circles regarding child marriage or underage marriage.⁵⁵ Several hadiths explain that Sayyidah Aisha married the Prophet at the age of six and lived with him at the age of nine. One of these hadiths is the Hadith of Bukhari:

أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَزَوَّجَهَا وَهِيَ بِنْتُ سِتِّ سِنِينَ ، وَبَنَى بِهَا وَهِيَ بِنْتُ تِسْعِ سِنِينَ . قَالَ هِشَامٌ وَأُنَيْبُتُ أَنَّهَا كَانَتْ عِنْدَهُ تِسْعَ سِنِينَ

"The Prophet, peace be upon him, married Aisha when she was 6 years old. And he lived with Aisha when she was 9 years old."

For classical scholars, this hadith is understood verbatim (text), thus concluding that a marriage contract for children aged six years and above is valid. This is supported by physical conditions, as children were considered mature at that time (in Hijaz). However, the marriage was only a contract and the girl did not live (together) or have sexual relations. However, when understanding this hadith in context, it is merely a piece of news (khabar) and not a doctrine (khitab) that must be implemented or abandoned, because it is possible that in the Hijaz during the time of the Prophet Muhammad SAW, the age of nine or even younger was considered physically and mentally mature (ready for marriage). As a piece of news or a hint, this hadith is not a command to marry at the age of six, as was the case with Aisha when she was married to the Prophet Muhammad SAW.

In Islamic law, adulthood is defined as baligh. The definition of puberty (baligh) is relative and based on the cultural and social conditions of each society, which of course differ from one society to another.⁵⁶ Therefore, the rules regarding the age of adulthood for marriage among the scholars who are members of this school of thought are accumulated according to four opinions determined based on age and specific signs, namely: *First*, the Shafi'i and Hanbali schools of thought stipulate that adulthood begins at the age of fifteen, although they can accept adulthood based on the signs of menstruation for girls and wet dreams for boys. *Second*, Abu Hanifah argues that adulthood begins at the age of nineteen for boys and seventeen for girls. *Third*, Imam Malik stipulates that adulthood is

⁵⁵ Ahmad Tholabi Kharlie, *Indonesian Family Law*, 201.

⁵⁶ Zein, *Contemporary Islamic Family Law Issues: Jurisprudential Analysis Using the Ushulliyah Approach*, 57.

eighteen years of age for both boys and girls.⁵⁷ *Fourth*, the Ja'fari school of thought argues that a person is considered an adult and can be married if they are fifteen years old for boys and nine years old for girls.⁵⁸

In positive law, the concept of adulthood is highly variable, especially the concept of a child or a person who is considered an adult and therefore potentially responsible. In Law Number 3 of 1997 concerning Juvenile Courts, Article 1 paragraph (1), a child is defined as a person who, in a case of juvenile delinquency, is (eight) years of age but has not reached the age of (eighteen) and has never been married. Law No. 23 of 2002 on Child Protection, Article 1 paragraph (1), states that children are those under the age of eighteen. The age of a child in Law Number 13 of 2003 concerning Manpower, Article 26: "A child is any person under the age of eighteen (18) years." Meanwhile, the definition of a child in Law No. 4 of 1979 concerning Child Welfare, Article 2, states: A child is a person who has not reached the age of 21 (twenty-one) years and has never been married. Law No. 35 of 2014 states that a child is a person who has not yet reached the age of 18 (eighteen) years, including a child who is still in the womb.

According to Helmi Karim, maturity is an important issue, especially in the institution of marriage. This is because it affects family welfare. Even mature members of society, both physically and mentally, are still unable to build and maintain a perfect household, let alone the younger generation who are not yet mature. The

key to a successful marriage requires the support of physical, mental, and emotional growth and maturity from prospective spouses who are about to or want to get married.⁵⁹

Regulations on the minimum age for marriage in Indonesia are specifically contained in Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, and Law No. 16 of 2019. In Law 1/1974, the minimum age for marriage for men is 19 years and for women 16 years. This provision is reinforced in the Compilation of Islamic Law article 15. Then in 2019, there was a change in the age limit for marriage in Law 16/2019, namely that the minimum age for marriage for men and women is 19 years.

The explanation of Article 7 of Law 1/74 states that the purpose of this article is to protect the health of husbands, wives and their children. However, according to ongoing research, marriage at the age of sixteen has many health implications for women. Anatomically, a child's body is not ready for conception or childbirth, which can lead to complications such as obstetric fistula. This means that women under the age of eighteen are five times more likely to experience pregnancy complications and have a higher mortality rate during childbirth than women aged twenty and above.⁶⁰

Apart from health issues, setting a minimum age for marriage is also an effort to legally protect the right to education. Basically, everyone has the right to education, in accordance with Article 31 paragraph

⁵⁷ Abdul Qadir Audah, *Al-Tasyri' al-Jinai al-Islami* (Cairo: Dar al-Urubah, 1964), 603.

⁵⁸ Muhammad Jawad Mughniyah, *Fiqh of the Five Madhhabs* (Jakarta: Lentera, 1999), 318.

⁵⁹ T Yanggo and Hafiz Anshary, *Contemporary Islamic Law Issues* (Jakarta: Pustaka Firdaus, 1996), 64.

⁶⁰ Nugraha X, 'Reconstructing the Minimum Age for Marriage as a Form of Legal Protection for Women (Analysis of Constitutional Court Decision No. 22/Puu-Xv/2017)', *Lex Scientia Law Review* 3, no. 3 (2022): 55.

(1) of the 1945 Constitution of the Republic of Indonesia. The implementation of the right to education for children is then outlined in the compulsory education programme regulated in Article 7 of Law 20/2003. The current compulsory education programme is 12 (twelve) years and is implemented by the Government in accordance with Article 2 letter a of the Minister of Education and Culture Regulation Number 19 of 2016 concerning the Indonesia Pintar Programme.

In addition, child marriage also has an impact on the psychology of girls, and the psychology of children under 18 (eighteen) years of age is not yet optimally developed. This psychological immaturity can also increase the risk of domestic violence (DV). As noted by the National Commission on Violence Against Women, domestic violence is the most common form of violence experienced by Indonesian women. Indonesia itself has created a legal instrument for the elimination of domestic violence through Law No. 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter referred to as Law 23/2004). In addition, child marriage is also more likely to end in divorce.

The age restriction in marriage gives women the right to prepare themselves physically and mentally before marriage. Physical and mental readiness greatly influences the achievement of the objectives of marriage. Physically, they must be ready to start a family, bear children, give birth, and breastfeed. Mentally, they must be ready to run a household, face problems, and solve them.

4. Women's Right to Choose a Partner (Prospective Husband)

Every human being has the right to determine their own path in life, including choosing a life partner in the family they will build. The choice of partner has a significant impact on the goals of the marriage that will be achieved. This determination of a partner is also reinforced by Musdah Mulia with five principles of marriage,⁶¹ namely the principle of monogamy, the principle of *mawaddah wa Rahmah* (love and compassion), the principle of complementing and protecting each other, the principle of getting along well in sexual and social relationships, and the principle of choosing a life partner, whether male or female. In this regard, Nasution emphasises that marriage has a *partnership* principle,⁶² which is interpreted as a cooperative relationship between husband and wife. Thus, the relationship between husband and wife that is built becomes easier to achieve the goals of marriage.

Among the five basic principles of marriage above, the principle of choosing a life partner for women according to Islamic law is very interesting to study. Indeed, in fiqh, a woman's right to choose a life partner is determined by her guardian. This is what has become the focus of many circles, that fiqh in the selection of female partners is very discriminatory. If Muslim men have the right to decide who to marry, then Muslim women have the right to choose their partners, which is the responsibility of their parents on behalf of Islamic law. The discourse on women's right to choose their partners was also agreed upon at the International Conference on Population and Development (ICPD)

⁶¹ Siti Musdah Mulia, *Women and the Law* (Jakarta: YOI, 2008), 67.

⁶² Khoiruddin Nasution, *Marriage Law 1*, 63.

in Cairo, Egypt, in 1994, which stated that women have their own reproductive rights that need to be protected and maintained. One of the demands of reproductive rights is the right of women to choose their partners.⁶³

In Islamic law, there is a term called hak ijbar or the right of a guardian to force his female ward. Ijbar in Arabic is similar in meaning to akraha and alzama, which mean coercion or compulsion. The right of ijbar belongs to the parents, meaning that parents have the right to marry off their daughters without their consent. Thus, marriage by right of ijbar is a marriage between a man and a woman to form a family as husband and wife under the coercion of her parents without regard to the consent of the person under their guardianship. Masdar Farid Mas'udi states in the Shafi'i school of thought that the right to consent can be used by parents as a form of protection and responsibility for their children. However, the concept of guardianship becomes problematic if, in reality, it is only used as a tool by parents who do not have a high sense of responsibility to "lock" their daughters in a cage or according to the wishes of someone else, such as the father. If this happens, the girl's father will hide behind religion in the name of "ijbar rights".⁶⁴

According to Husein Muhammad, the position of wali mujbir and the right of ijbar over parents under certain conditions in the Shafi'i school of thought is a requirement for women and a reference for women's desire to marry

at that time. However, today this concept needs to be re-examined and the phrase "marriage of a woman without her permission" must be understood as "without an explicit statement from the woman". The reason given by Husein Muhammad is that the meaning of ijbar as coercion by a father against his daughter negates the element of consent, which is the basis or foundation of an agreement or transaction, including a marriage contract. According to Islamic jurists, coercion (ikrah) will result in the marriage being invalid.⁶⁵

By linking the right of ijbar and the position of wali mujbir with human rights, Wahbah Az-Zuhaili's view is in line with the concept of human rights, which always emphasises human dignity and honour.⁶⁶ It is very important to emphasise human rights in all areas of life, especially in marriage, in order to build a family. It is inevitable that the family is a small community in which a number of individuals live together because of a sacred bond (*mitsaqan ghalidza*). Therefore, it is only fitting that marriage, as the gateway to family formation, should uphold the principles of humanity and dignity.

Article 16 of the Compilation of Islamic Law reinforces women's rights in choosing a life partner or prospective husband. Marriage must be based on the consent of both parties, namely the prospective bride and groom. This consent can be in the form of verbal, written, or sign language, or even silence that is interpreted as consent without refusal. This consent is implemented in the marriage process. The Marriage Registrar (P2N) will ask both parties in front of witnesses. This is to ensure

⁶³ Syafiq Hasyim, *Things That Are Unthinkable About Women's Issues in Islam* (Bandung: Mizan, 2001).

⁶⁴ Masdar Farid Mas'udi, *Islam and Women's Reproductive Rights* (Bandung: Mizan, 1997).

⁶⁵ Muhammad, *Fiqh of Women*.

⁶⁶ Wahbah Az-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuhu* (Beirut: Dar al-Fikr, 1989).

that the marriage has been mutually agreed upon and is desired. If one of the parties does not agree, the marriage cannot proceed, as stated in Article 17 of the Compilation of Islamic Law. Saiful Ibad considers this to be part of an *intra-doctrinal reform* in the provision regarding the requirement for consent to proceed with the marriage. The provisions in this article do not distinguish between women who are virgins and women who are widows for prospective brides. Both are considered equal in legal terms.⁶⁷

The consent of both parties to proceed with the marriage or not is highly relevant because both will be living together in the marriage. This greatly protects women who have often been forced into marriages and seemed to be obedient to their parents' choices. Article 16 of the KHI gives women the right to express their opinions and be heard regarding their wishes. This right significantly impacts the purpose of marriage, which is a happy family life.

Conclusion

Marriage law in Indonesia strongly protects women's rights, both physically and psychologically. In this case, there are four aspects that are examined. (1) The right to choose a partner. Indonesian marriage law stipulates that without the consent of the prospective bride and groom, the marriage cannot take place. This provision gives every citizen the right to have the opportunity to choose to form a family of their choice. (2) Marriage Registration. In marriage registration, every marriage must be recorded as a form of authentic evidence and legal certainty. (3) Marriage Age Limit. Indonesian marriage law stipulates that the minimum

age for marriage is nineteen years old. This is regulated because, physically and mentally, Indonesians are generally considered ready for marriage at that age to avoid various negative consequences. (4) Taklik Talak. This taklik talak agreement strengthens women's rights in marriage, with the guarantee of easy access to file for divorce if their rights are not fulfilled by their husbands. From the several aspects discussed, the values of Pancasila that form the spirit of Indonesian marriage law are the values of divinity, humanity, and justice.

References

- Ahmad, Imam. *Musnad Ahmad*. Riyadh: Maktabah al-Ma'arif, n.d.
- Ahmad Nur Fuad, et al. *Human Rights in the Islamic Perspective*. Malang: Institute for the Enforcement of the Supremacy of Law and Human Rights, East Java Regional Leadership of Muhammadiyah, 2010.
- Ahmad Tholabi Kharlie. *Indonesian Family Law*. 3rd ed. Jakarta: Sinar Grafika, 2019.
- Al-Ghazali, Imam. *Ihya' Ulumuddin*. Translated by Muhammad Zuhri. Semarang: Asy-Syifa, 1990.
- Al-Hatimy, Said Abdullah Seib. *Cintra: A Woman's Identity in the Course of History*. Surabaya: Risalah Gusti, 1995.
- Al-Quran Ministry of Religious Affairs of the Republic of Indonesia. *The Quran and Its Translation*. Jakarta: Lajnah Pentashihan Mushaf Al-Quran, 2015.
- Alwi, Hasan, et al. *Great Dictionary of the Indonesian Language*. Jakarta: Balai Pustaka, 2002.
- Amin, Mohammad. 'The Dualism of Secret Marriage Law in Indonesia from the Perspective of Indonesian Fiqh'. *Jurnal ANALISIS: Jurnal Studi Keislaman* 15, no. 1 (2015).

⁶⁷ Saiful Ibad and Rasito, 'The Response of Islamic Boarding School Leaders to KHI Material in Indonesia (A Case Study in the City of Jambi)', *Kontekstualita, Journal of Religious Social Research* 21, no. 1 (2006): 101.

- Amir Syarifuddin. *Islamic Marriage Law in Indonesia*. Jakarta: Kencana, 2006.
- Amiur Nuruddin, and Azhari Akmal Tarigan. *Islamic Civil Law in Indonesia: A Critical Study of the Development of Islamic Law from Fiqh Law No. 1/1974 to KHI*. Jakarta: Prenada Media, 2004.
- Ar-Rifa'i, Salim Abd al-Ghani. *Ahkam Al-Aḥwal al-Syakhsiiyah Li al-Muslimin Fi al-Gharb*. I. Beirut: Dar Ibn Hazm, 2002.
- Atmorejo, Sudjito. *Pancasila Paradigm Legal Science (Academic Struggles from Transcendence to Realisation)*. Yogyakarta: CV. Istana Agency, 2022.
- Atmorejo. Sudjito. *Legal Education: Efforts to Realise Pancasila Humanity*. Yogyakarta: CV. Istana Agency, 2023.
- Audah, Abdul Qadir. *Islamic Criminal Law*. Cairo: Dar al-Urubah, 1964.
- Az-Zuhaili, Wahbah. *Islamic Jurisprudence and Its Evidence*. Beirut: Dar al-Fikr, 1989.
- Bahar, Saafroedin. 'Pancasila as a Paradigm for National Development in the Socio-Political Field'. *Journal of National Security* 7, no. 2 (2002).
- Basyir, Ahmad Azhar. *Islamic Marriage Law*. Yogyakarta: UII-Press, 2000.
- Besar, Abdul Kadir. *Pancasila: Philosophical Reflection, Ideological Transformation, Necessary Method of Thinking*. Jakarta: Pustaka Azhary, 2005.
- Bo'a, Fais Yonas. 'Pancasila as a Source of Law in the National Legal System'. *Constitution Journal* 15, no. 1 (29 March 2018): 21. <https://doi.org/10.31078/jk1512>.
- Darmadi, Hamid. *The Basis of Moral Education Concepts*. I. Bandung: Alfabeta, 2007.
- Derta Nur Anita. 'Marriage Law in a Legal State Based on Pancasila'. *Innovative: Journal of Social Science Research* 3, no. 5 (2023).
- Erwinsyahbana, Tengku. 'The Marriage Law System in a State Based on Pancasila'. *Journal of Law, Faculty of Law, University of Riau* 3, no. 1 (2012).
- Fadhullah, Sayid Muhammad Husain. *The World of Women in Islam*. Jakarta: Lentera, 2000.
- Fauziyah, Miftahul. 'Internalisation of Pancasila Values in the Family from the Perspective of the Qur'an, Surah Ar-Rum, Verse 21'. *Syakhsiiyah Journal of Islamic Family Law* 1, no. 1 (2021).
- Fuady, Munir. *Legal Research Methods: Theoretical and Conceptual Approaches*. Depok: PT. Rajagrafindo Persada, 2018.
- Harjono. *Legal Protection (Building a Legal Concept) – In the Constitution as the Home of the Nation*. Jakarta: Secretariat General and Registrar of the Constitutional Court, 2008.
- Hasyim, Syafiq. *Unthinkable Things About Women's Issues in Islam*. Bandung: Mizan, 2001.
- Ibad, Saiful, and Rasito. 'The Response of Islamic Boarding School Leaders to KHI Material in Indonesia (Case Study in Jambi City)'. *Kontekstualita, Journal of Religious Social Research* 21, no. 1 (2006).
- Ibrahim, Johnny. *Theory and Methodology of Normative Legal Research*. Malang: Banyumedia Publishing, 2008.
- Irianto, Sulistyono. *Women and Law*. Jakarta: Yayasan Obor Indonesia, 2006.
- Khoiruddin Nasution. *Marriage Law 1*. Yogyakarta: ACAdEMIA + TAZZAFa, 2005.
- . *The Status of Women in Southeast Asia: A Study of Contemporary Muslim Marriage*

- Legislation in Indonesia. Jakarta: INIS, 2002.
- Mahmud Yunus. Arabic-Indonesian Dictionary. Jakarta: Foundation for the Translation and Interpretation of the Qur'an, 1972.
- Maimun, Kudrat, and others Faidi. Practical Guide to Writing Scientific Papers for the Faculty of Sharia. Pamekasan: Duta Media, 2019.
- Mas'udi, Masdar Farid. Islam and Women's Reproductive Rights. Bandung: Mizan, 1997.
- Moleong, Lexy J. Qualitative Research Methodology. Bandung: Remaja Rosdakarya, 2014.
- Muchtar, Kamal. Principles of Islamic Law on Marriage. Jakarta: Bulan Bintang, 1993.
- Mughniyah, Muhammad Jawad. Fiqh of the Five Madhhabs. Jakarta: Lentera, 1999.
- Muhammad, Husein. Fiqh for Women. Edited by Faqihuddin Abdul Kodir, 2020.
- Mulia, Siti Musdah. Women and Law. Jakarta: YOI, 2008.
- Notonagoro. Pancasila: The Philosophical Foundation of the Republic of Indonesia. Jakarta: Bumi Aksara, 1971.
- Philipus M. Hadjon. Protection of the People for the People in Indonesia (A Study of the Principles, Handling by the Courts in the General Judicial Environment and the Establishment of State Administrative Courts). Surabaya: PT. Bina Ilmu, 1987.
- R. Magdalena. 'The Position of Women in Historical Development (A Study of the Position of Women in Islamic Society)'. Harkat An-Nisa: Journal of Gender and Children Studies 2, no. 1 (2017).
- Saeffulloh, Febri, et al. 'The Influence of Patriarchal Culture on Women's Career Orientation'. Manifesto: Journal of Communication, Politics and Culture 1, no. 1 (2023).
- Saputra, Ingggar. 'Actualising Pancasila Values as the Key to Overcoming Drug Abuse in Indonesia'. Journal of Pancasila and Citizenship, Muhammadiyah University of Ponorogo 2, no. 2 (2017).
- Sari, Ratna, and Fatma Ulfatun Najicha. 'Understanding Pancasila Values as the Foundation of the State in Community Life'. Harmony Journal 7, no. 1 (2022).
- Sayuti Thalib. Indonesian Family Law. Jakarta: University of Indonesia Press (UI-Press), 1986.
- Sudarsono. Fundamentals of Islamic Law. Jakarta: Rineka Cipta, 2001.
- Suyadi, Asip. 'Pancasila as a Paradigm for Legal Development'. Surya Kencana Satu Journal: Dynamics of Legal Issues and Justice 9, no. 1 (2018).
- Sya'rawi, Mutawally. Fiqh for Women. Jakarta: Amzah, 2009.
- Umar, Nasaruddin. Arguments for Gender Equality. II. Jakarta: Paramadina, 2010.
- Wahana, Paulus. The Philosophy of Pancasila. Yogyakarta: Kanisius, 2001.
- Wibisono, Rizky Bangun. 'The Achievement of Women's Political Identity in Indonesia'. Jurnal Mengkaji Indonesia 1, no. 1 (9 March 2023): 67–80. <https://doi.org/10.59066/jmi.v1i1.61>.
- X, Nugraha. 'Reconstruction of the Minimum Age for Marriage as a Form of Legal Protection for Women (Analysis of Constitutional Court Decision No. 22/Puu-Xv/2017)'. Lex Scientia Law Review 3, no. 3 (2022).
- Yanggo, T, and Hafiz Anshary. Contemporary Islamic Legal

- Issues. Jakarta: Pustaka Firdaus, 1996.
- Zein, Satri Effendi M. Contemporary Islamic Family Law Issues: *Jurisprudential Analysis with an Ushulliyah Approach*. Jakarta: Prenada Media, 2005.