

***Maqashid al-Sharia Review of Marriage Age Limit
in Law Number 16 of 2019***

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Abstract: *This article discusses the age limit for marriage based on the maqasid al-sharia perspective in marriage law. This research is library research with the main data source being Law Number 16 of 2019. The data that has been collected is then analyzed using qualitative descriptive methods. The results of the study indicate that although there is no clear text that regulates the minimum age for marriage, the presence of a revision of Law Number 16 of 2019 concerning Marriage which regulates the minimum age for marriage is not contrary to the spirit of Islamic law, because the regulation is an effort from the government. to encourage the realization of the purpose of marriage, namely creating a serenity family, love, and affection. In addition, the regulation is also under the purpose of applying the law (maqasid as-sharia), namely hifz al-nasf (guarding the soul) and hifz al-nasl (guarding offspring).*

Keywords: *Maqasid al-Shariah, The Marriage Law, Marriage Age Limit*

***Analisis Maqashid al-Syariah terhadap Batas Umur Perkawinan
Dalam Undang-Undang Nomor 16 Tahun 2019***

Abstrak: Artikel ini membahas batas umur perkawinan berdasarkan perspektif *maqasid al-syariah* dalam undang-undang perkawinan. Penelitian ini adalah penelitian kepustakaan dengan sumber data utama adalah Undang-Undang Nomor 16 Tahun 2019. Data yang telah terkumpul kemudian dianalisa menggunakan metode diskriptif kualitatif. Hasil penelitian menunjukkan bahwa meskipun tidak ada nash sharih yang mengatur tentang batas minimal usia perkawinan, akan tetapi hadirnya revisi Undang-Undang Nomor 16 Tahun 2019 tentang Perkawinan yang mengatur batas minimal usia perkawinan tidaklah bertentangan dengan semangat hukum Islam, karena regulasi tersebut merupakan usaha dari pemerintah untuk mendorong terealisasikannya tujuan dari perkawinan, yaitu menciptakan keluarga sakinah, *mawaddah warahmah*. Selain itu, regulasi tersebut juga telah sesuai dengan tujuan diterapkannya hukum (*maqasid as-syariah*), yaitu *hifz al-nasf* (menjaga jiwa) dan *hifz al-nasl* (menjaga keturunan).

Kata Kunci: *Maqasid al-Syariah, Undang-Undang Perkawinan, Batas Usia Perkawinan*

A. Introduction

The phenomenon of early marriage is not new in Indonesia, there are hundreds or even thousands of cases of underage marriage that do not come to the surface. Many factors cause the massive early marriage, one of which is the variety of regulations regarding the definition of children and the absence of binding sanctions related to persons involved in early marriage, not to mention the religious law which does not regulate significantly and even seems to legalize it, so that the situation this creates gaps that lead to violations of children's rights.

Darwish for example, quoted from the Encyclopedia of Islamic Law that although the age of puberty differs from one person to another, fiqh scholars suggest that the minimum age for women is 9 years and for boys is 12 years. However, if until the age of 15 years there has not been a sign of puberty for them, then the age of 15 years is used as the maximum limit for the *mumayyiz* period and the child is considered *aqil-balig*. Likewise, what is written in Law number 39 of 1999, article 1: a child is every human being under 18 (eighteen) years of age and unmarried, including children who are still in the womb if it is in his interest.¹

Several laws regulate the minimum age limit for marriage, namely Law number 16 of 2019 concerning amendments to Law number 1 of 1974 concerning Marriage which states that the minimum limit for men and women who will marry is at the age of 19 years, Law number 23 of 2002 concerning Child Protection article 1 states that "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb" and in article 26 paragraph 1 point c it is stated, family and parents obliged to prevent marriage at the age of children.

Based on the legal theory of *lex specialis derogate legi generalis* which states that special laws (*lex specialis*) override general laws (*lex generalis*), it can be concluded that the minimum age for marriage is 19 years old under Law Number 16 of 2019 concerning the amendment to Law number 1 of 1974 concerning Marriage.

¹Rizal Darwis, "Fiqh Anak di Indonesia," *Jurnal Al-Ulum* 10, no. 1 (2010); 119-140. See, Republik Indonesia, *Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak*, pasal 1.

During the legal controversy that regulates the minimum age limit for marriage, the early marriage that occurs in society is also caused by the interpretation of religious teachings. The argument that says that early marriage is carried out based on the example of the prophet Muhammad SAW who married Siti Aisyah when she was 9 years old is always used as a legal argument. In the traditional literature of Islam (*fiqh*) there is no minimum limit for a person to be allowed to marry, and even the majority of scholars agree on the legality of early marriage.

When examined further, it appears that there are significant differences between state law and religious law in interpreting the term early marriage. In the law, a marriage is categorized as early marriage if it is carried out below the minimum age limit for marriage that has been determined. Whereas in religious law, it is called early marriage if it is carried out by a couple who has not yet reached puberty.

Based on the description above, the main problem that concerns the author to study is how the law limits the age of marriage and how *maqasid sharia* views the minimum age limit for marriage.

B. Description of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage

Law number 1 of 1974 in article 1 states that marriage is a bond both physically and mentally between a woman and a man as a husband-and-wife couple and has the goal of having an eternal and happy household based on the one and only God.

The bond of birth and mind or in the diction of the Koran is called *mitsaqan ghalizan* - a very strong agreement in the above definition indicates that to undergo a marriage it takes maturity and readiness of inner birth, moreover the ultimate goal of a marriage is to form an eternal family and happiness based on obedience to God Almighty.

Therefore, to achieve this noble goal, the law stipulates the conditions that must be met by someone who will carry out a marriage, these requirements include, among others, as explained in Law number 16 of 2019 article 7 concerning the

minimum age limit for marriage is 19 years, Law number 1 of 1974, article 6 paragraph 1 states that "marriage is based on the approval of the two prospective brides", meaning that there is mutual love and there is no element of coercion in carrying out the marriage is an important capital that must be owned by the two prospective brides so that the purpose of the marriage can be achieved.

The next question is what if there is an urgent need for a marriage to be held but the age requirements have not been met? although the law has set a minimum age limit for marriage, article 7 (2) of Law number 16 of 2019 provides a dispensation if the minimum age for marriage has not been met, the male parent and/or female parent may request a dispensation from the Court. with very urgent reasons accompanied by supporting evidence.

Article 6 of Law number 1 of 1974 has also explained in detail the conditions for marriage, among others, namely in Article (1) "marriage is based on the consent of the bride and groom", then article (2) explains if the minimum age has not been met to carry out a marriage. Marriage must be with the permission of the parents.

If you pay close attention to Law number 16 of 2019 concerning Amendments to Law number 1 of 1974 concerning Marriage, all matters relating to marriage have been regulated, but there are inconsistencies in it, especially concerning the minimum age limit for marriage. In article 7 paragraph (1) of Law number 16 of 2019, it is explained that the minimum age limit for marriage is 19 years, then in the article (2), it is stated that if there are certain conditions to carry out marriage but have not reached the age of 19, a dispensation is given. And this dispensation is often misused by some parties so that they continue to carry out marriages even though the age limit has not yet reached 19 years. In addition, the sanctions contained in the marriage law are only in the form of administrative sanctions so they do not have full power to bind the rules.

Islamic law does not regulate the minimum and maximum age limits for carrying out marriages. This is understood as a form of leeway for humans to regulate. The Qur'an only hints that the person who is going to get married must be ready and able. This is explained in QS. An-Nur/24: 32:

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۖ إِن يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ
وَاسِعٌ عَلِيمٌ

And marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allāh will enrich them from His bounty, and Allāh is all-Encompassing and Knowing.²

The scholars understand the word (الصالحين) with the meaning "fit for marriage" which is for those who are mentally and spiritually capable of building a household.³ In line with these words, the Prophet Muhammad also advised young people to immediately get married if they already have the ability.

حَدَّثَنَا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ حَدَّثَنَا أَبِي حَدَّثَنَا الْأَعْمَشُ قَالَ حَدَّثَنِي عُمَارَةُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدٍ قَالَ دَخَلْتُ مَعَ عَلْقَمَةَ وَالْأَسْوَدِ عَلَى عَبْدِ اللَّهِ فَقَالَ عَبْدُ اللَّهِ كُنَّا مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ شَبَابًا لَا نَحْدُ شَيْئًا فَقَالَ لَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصْرِ وَأَحْصَنُ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ (رواه البخاري)⁴

We have been narrated from Amru bin Hafsh bin Ghiyats, has narrated to us [my father] has narrated to us [Al A'masy] he said; Has narrated to me [Umarah] from [Abdurrahman bin Yazid] he said; Me, Alqamah and Al Aswad once met [Abdullah], and he said; When we were young, we used to be with the Prophet *sallallahu 'alaihi wasallam*. At that time, we did not do anything, so the Messenger of Allah, may God bless him and grant him peace, said to us: "O young men, whoever among you has the ability, then let him marry, because marrying can lower his gaze, and also better protect his private parts. However, whoever is not able to, should fast, because that can ease his lust (HR al-Bukhari).

Referring to the two arguments above, it can be understood that one of the important assets in carrying out a marriage is maturity. In terms of adult age, Islamic

²<https://quran.com/24/32?translations=18,19,20,21,41,48,85,95>, accessed June 20, 2022.

³M. Quraish Shihab, *Tafsir al Misbah*, Vol. IX (Cet. IV; Jakarta: Lentera Hati, 2005), 335.

⁴Abdullah Muhammad bin Ismail al Bukhari, *Shahih al Bukhari*, Juz V (Beirut: Dar al Kitab al 'Ilmiyyah, 1992), 438.

literature (*fiqh*) determines by physical signs, namely the perfect age of 15 (fifteen) years for men, wet dreams (*ihtilam*) for men and menstruation for women with a minimum age of 9 (nine) years.⁵

If there is an abnormality or delay in the physical development of a child, that is, in general, semen has been issued for men and menstrual blood for women, but the person has not yet shown signs of maturity, the age of puberty is calculated according to general practice,⁶ in Islam is called *baligh*.

The scholars have disagreements in determining the age limit for children who are considered *baligh*. Here's the explanation:

1. Shafi'iyah and Hanabilah scholars stated that:

و قال الشافعية و الحنابلة أن البلوغ بالسن يتحقق بخمس عشرة سنة في الغلام و الحاربية

Boys and girls are considered to be mature when they reach the age of 15 years.⁷

2. Hanafiyyah scholars determine the age of a person who is considered *baligh* as follows:

و قال الحنفية ثمان عشرة في الغلام و سبع عشرة في الحاربية

Boys are considered mature when they are 18 years old and 17 years for girls.⁸

3. While the Imamiyyah scholars stated:

و قال الإمامية خمس عشرة في الغلام و تسع في الحاربية

Boys are considered mature when they are 15 years old and 9 years old for girls.⁹

⁵Salim bin Samir al Hadhramy, *Safinah an Najah* (Surabaya: Dar al 'Abidin, t.th.), 15-16.

⁶Direktorat Jenderal Pembinaan Kelembagaan Agama Islam, *Ilmu Fiqh*, Jilid II (Jakarta: Departemen Agama, 1985), 3-4.

⁷Muhammad Jawad Mughniyyah, *al-Ahwal al-Syakhsiyyah* (Beirut: Dar al 'Ilmi lil Malayain, t.th.), 16.

⁸*Ibid.*

⁹*Ibid.*

Maturity as measured by the *baligh* criteria is relative,¹⁰ the meaning is, if there is a very urgent condition that requires the bride and groom to be married immediately then it is permissible, this is as an implementation of the *sadd al-zari'ah method* to avoid the possibility of bigger harm.

Marriage is a very strong contract/agreement (*miitsaqan ghalizan*) which requires everyone who is bound in it to fulfill their respective rights and obligations with full justice, harmony, harmony and balance, so that to carry out the sunnah it is not enough if it only requires puberty. old enough) only. More important than that is if the prospective bride is required to be a *mukallaf*, namely someone who is reasonable and able to understand well the *taklif* addressed to him.

The legal imposition (*taklif*) is based on reason (*aqil, mumayyiz*), *baligh* (age enough) and understanding. This means that a person can only be burdened by law if he is reasonable and can understand well the *taklif* addressed to him.¹¹ So the writer agrees that the condition for the prospective bride is a *mukallaf*.¹²

Mumayyiz (*al-mumayyiz*, adjective from *mawayyaza* - set aside), that is, a child who can distinguish something good and something bad, that is when he was 7 years old year. Mustafa Ahmad al-Zarqa stated that according to *ushul fiqh*, *mumayyiz* is the period after the time of *al-thufūlah* (small child who are not yet able to distinguish between the useful and the harm to himself) and approaching puberty. In condition normally, the *mumayyiz* period starts from the age of 7 until the coming of puberty, that is, with the coming of menstruation for children's girls and sexual dreams for boys.¹³

The phenomenon of the occurrence of underage marriages is actually inseparable from the right of *ijbar*, namely the right of the guardian to marry off his

¹⁰Ahmad Rofiq, *Hukum Islam di Indonesia* (Cet. VI; Jakarta: Rajawali Press, 2003), 78.

¹¹Ali Imron, *Kecakapan Bertindak dalam Hukum (Studi Komparatif Hukum Islam dengan Hukum Positif di Indonesia)*, (Semarang: Badan Penerbit Universitas Diponegoro, 2007), 3

¹²Imam Abu Husain Muslim bin Hajjaj al-Qusyairi, *Shahih Muslim*, Juz I (Bandung: Dahlan, t.th.), 595.

¹³Abdul Azis Dahlan, et.al., *Ensiklopedi Hukum Islam*, Jil. IV (Cet. 1; Jakarta: Ihtiar Baru van Hoeve, 1996), 1225.

daughter without having to get prior approval or permission, provided that the child is not a widow.

Scholars who allow guardians to marry off their underage daughters are generally based on the following Hadith:

و حَدَّثَنَا يَحْيَى بْنُ يَحْيَى وَإِسْحَقُ بْنُ إِبْرَاهِيمَ وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَأَبُو كُرَيْبٍ قَالَ يَحْيَى وَإِسْحَقُ أَخْبَرَنَا وَ قَالَ الْأَخْرَانِ حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ عَنِ إِبْرَاهِيمَ عَنِ الْأَسْوَدِ عَنِ عَائِشَةَ قَالَتْ تَزَوَّجَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهِيَ بِنْتُ سِتِّ وَبَنَى بِهَا وَهِيَ بِنْتُ تِسْعٍ وَمَاتَ عَنْهَا وَهِيَ بِنْتُ ثَمَانَ عَشْرَةَ (رواه مسلم)¹⁴

It has been told to me Yahya bin Yahya, Ishaq bin Ibrahim, Abu Bakr bin Abi Syaibah and Abu Karib. Yahya and Ishaq have said: Have told us and said al Akhrani: Has told me Abu Mu'awiyah from al A'masyi from al Aswad from 'Aisha ra. said: Rasulullah SAW married me when I was 6 years old and lived with me when I was 9 years old and he died when I was 18 years old (HR. Muslim).

The above hadith narrates that Abu Bakr ra. married 'Aisyah with the Messenger of Allah when she was a child without any prior approval. Because at that age the agreement cannot be considered perfect. On the other hand, some scholars are of the opinion that this marriage is an exception or a specialty for the Prophet Muhammad himself, as the Prophet Muhammad was allowed to have more than four wives, which his people should not follow.¹⁵

However, the right of coercion/*ijbar* owned by the guardian cannot necessarily be exercised with arrogance. *Ulama* Syafi'iyah are of the opinion that in order to exercise the right of *ijbari* on underage boys, it is required to contain benefits. As for girls, several conditions are needed, including:

1. There is no real enmity between the daughter and her guardian i.e. her father or grandfather.
2. There is no real enmity (hatred) between her and her future husband.

¹⁵Mahmud Yunus, *Hukum Perkawinan dalam Islam* (Jakarta: Hidakarya Agung, 1985), 69.

3. The prospective husband must be *kufu* (appropriate/equivalent).
4. The prospective husband is able to give a proper dowry.

Although the *ulama* agree that there is no prohibition against underage marriages, this marriage is also not recommended because they are considered not to have the ability to manage assets (*rusyd*), and they are also feared that they will not be able to fulfill the obligations that must be carried out in carrying out their duties. life as husband and wife.

Basically, the age of eligibility for marriage is the age of ability to act and receive rights (*ahliyyatul ada' wa ahliyyatul wujub*). *Ahliyyatul ada'* is the nature of a person's legal ability to act who has been considered perfect to be responsible for all his actions, both positive and negative actions. *Ahliyyatul wujub* is the nature of a person's ability to accept the rights to which he is entitled and is not yet capable of being burdened with all obligations.¹⁶

C. Analysis *Maqashid al-Sharia* of Early Marriage

Islam is a religion that carries a noble mission in the form of universal benefit or known as *rahmatallil'alam*, this applies to ritual construction (worship) and social construction (*muamalah*). Universal benefit must be achieved in every teaching that is imposed on humans (*taklif*), namely by presenting benefits and avoiding harm (*maqashid al-shari'h*).

Maqashid al-sharia the purpose of making law is the spirit in an effort to give birth to a legal product, therefore a maker of law (laws) or other rules must always adhere to *maqashid al-sharia* in every *ijtihad* process.

Law number 16 of 2019 concerning amendments to Law number 1 of 1974 concerning Marriage, article 7 has stipulated that the minimum age limit for carrying out marriages is 19 years. Even if you refer to the texts (Qur'an and Hadith) there is not a single argument that clearly explains the age limit. However, there is a verse in

¹⁶Ali Imron, *Kecakapan Bertindak dalam Hukum*, 18.

the Qur'an that provides an illustration in determining the minimum age for marriage, namely:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ
أَمْوَالَهُمْ... ط

And Then if in your opinion they are intelligent (good at maintaining wealth), then hand over to them their wealth (QS. an-Nisa'/4: 6)

Rusydan in the editorial of the verse above is interpreted as "intelligent". The intelligence in question is certainly not only cognitive intelligence but also sociological and psychological intelligence.

The *nash* (Qur'an and hadith) do not clearly stipulate the minimum age limit for marriage, so it is the State's obligation to regulate it, because setting the minimum age limit for marriage is a massive anticipatory action against young marriages in society which can cause negative impacts and social problems, one of which is only thing that is rife lately is the behavior of abortion being a temporary solution in the midst of the complexities of building a household. The following are the negative impacts of early marriage:

1. Unharmonious marriage

Married is not something simple, marriage requires maturity and readiness physically and psychologically. In early marriage, couples are usually immature physically and psychologically, so when in the process they are faced with problems, the ego is the first to appear, as a result the marriage rate in young couples is very high.

2. Loss of opportunity to continue education in Higher Education.

Of course, this is very reasonable, because someone who is married has heavy responsibilities, ranging from busy taking care of the household, the possibility of pregnancy, giving birth and taking care of children, to the economic burden that must be borne. Because a mother is a *madrasat ul ula* for her children, it is necessary to get

the highest and best education possible in order to create an intelligent and quality generation.

3. Health

Problems Pregnancy that occurs in women at an early age is very risky for both the mother and the baby. The body becomes stooped, the bones become brittle and break easily, cervical cancer to the death of the mother and baby.

4. Lack of knowledge about sexual and reproduction

The age limit provisions as stated in Article 7 of the Marriage Law no. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is based on considerations of the benefit of creating a *sakinah, mawaddah wa rahmah family*, avoiding evil, namely the occurrence of divorce due to unresolved family problems.

The rules of *fiqhiyah* explain:

1. "danger must be removed" ¹⁷

In language *dlarar* is the antonym of benefit, while in terms *dlarar* defined as pain or discomfort that arises in the heart.¹⁸ Based on the explanation above, the negative impact caused by early marriage is part of *dlarar*, so it absolutely must be avoided or kept away from human life. This is in accordance with the hadith of the Prophet:

لا ضرر ولا ضرر

"Do not endanger yourself and others"

2. "preventing harm is more important than bringing good" ¹⁹

This rule applies in general, namely if there is a problem in which there are elements of *maslahah* and *mafsadat*, then what must be won is to reject *mafsadat*.

¹⁷Muhammad Shidqi bin Ahmad al-Burnu, *al-Wajiz fi Idlah Qawa'id al Fiqh al Kulliyah*, (Beirut: Mu'assasah al Risalah, 1983), 77.

¹⁸Komunitas Kajian Ilmiah Lirboyo 2005, *Formulasi Nalar Fiqih* (Surabaya: Khalista, 2005), 212.

¹⁹Taj al-Din al-Subuki, *Asybah wa al-Nazhair* (Beirut: Dar al-Kutub al-Ilmiyah, 1991), 42.

Because the prophet as the holder of the legal authority gave considerable attention to things that were forbidden rather than things that were commanded. This is in accordance with the words of the prophet narrated by Muslim:

عَنْ أَبِي هُرَيْرَةَ عَبْدِ الرَّحْمَنِ بْنِ صَخْرٍ رَضِيَ اللَّهُ عَنْهُ قَالَ : سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ : مَا هَيَّئْتُكُمْ عَنْهُ فَاجْتَنِبُوهُ، وَمَا أَمَرْتُكُمْ بِهِ فَأَتُوا مِنْهُ مَا اسْتَطَعْتُمْ، فَإِنَّمَا أَهْلَكَ الَّذِينَ مِنْ قَبْلِكُمْ كَثْرَةُ مَسَائِلِهِمْ وَاجْتِلَافُهُمْ عَلَى أَنْبِيَائِهِمْ (رواه مسلم)²⁰

From Abu Hurairah Abdurrahman bin Sakhr *radhiallahu anhu*, he said: I heard the Messenger of Allah (ﷺ) say, "What I have forbidden for you, avoid. What I have ordered you [to do], do as much of it as you can. For verily, it was only the excessive questioning and their disagreeing with their Prophets that destroyed [the nations] who were before you (HR Muslim)

In the context of early marriage, avoiding/not doing it before it is really ready to take precedence over forcing the will to carry it out because *mafsadat* will be obtained if the marriage is carried out without any maturity (physical and psychological) for the bride and groom.

In addition, the creation of a strong generation in terms of religion, economy, culture, politics, law, and so on is a shared responsibility and a religious commandment, as explained in the Quran:

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعْفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا

And fear (of Allah) those who if they leave weak offspring behind them who they worry about (welfare). Therefore, let them fear Allah, and let them speak with the right words." (QS an-Nisa'/4: 9)

And to get a strong offspring in accordance with the command of the *text* above, of course, requires the maturity of parents before carrying out the marriage. Maturity can be interpreted physically and psychologically when the bride and groom

²⁰Imam Abul Husain Muslim bin al-Hajjaj bin Muslim bin Kausyaz al-Qusyairi an-Naisaburi, *Shahih Muslim*, no hadis 1337 (Kairo: Darul Hadits, 2010)

are 19 years old in accordance with Article 7 of Law no. 16 of 2019 concerning Marriage.

The arguments above would be more than sufficient to explain that early marriage is an act which contains *mafshadat* danger so that it must be avoided so that the main purpose of marriage can be realized.

It is true that not all early marriages cause negative, there are some good things in them, but when viewed comprehensively it can be found that the negative values of early marriages are more dominant than the positive values, so the Shari'a orders to stay away from/leave them, as the *fiqhiyah* rules state:

إِذَا تَزَاوَعَتِ الْمَصَالِحُ قُدِّمَ الْأَعْلَى مِنْهَا وَإِذَا تَزَاوَعَتِ الْمَفَاسِدُ قُدِّمَ الْأَخْفُ مِنْهَا

If there are several benefits colliding, then the larger benefit must take precedence, and if there are several *mafsadat* collide, then the lightest *mafsadat* is chosen.

Islam does not regulate *the* minimum age for marriage, the existing arguments only explain globally about the necessity of marriage for someone who is already in the adult phase, while maturity in Islam is often known as *baligh*, and the size of *baligh* is interpreted differently by the Ulama.

The existence of these differences indicates that the minimum age limit for marriage is an area of *ijtihadi* which in the process of its formulation must prioritize the *maslahah* and must not go out of the frame of primary human needs (*al-dharuriyat al-khams*), which includes religion (*al-din*), soul (*al-nafs*), human intellect (*al 'aql*), offspring (*al-nasl*) and property (*al-mal*). Especially not getting out of guard against the soul and guarding the offspring for marriage actors under the marriage age limit which in this study if married under the minimum age limit for marriage is found *mafsadat* as described previously

Therefore, it is correct if the state in this case Indonesia stipulates a regulation regarding the minimum age for marriage as stated in Article 7 of the Marriage Law number 16 of 2019 concerning amendments to Law number 1 of 1974 concerning Marriage. In the article it is explained that the minimum age limit for the

bride and groom to be allowed to marry is 19. However, due to other urgent matters, the marriage can be carried out under this provision with a regulated procedure known as a marriage dispensation.

The state's effort to determine the minimum age limit for marriage is certainly not a denial of the Sharia, but it is an obligation of the state to protect its people by opening the way for the benefit as wide as possible, as explained in a rule:

التصرف على الرعية منوط بالمصلحة

The above method comes from the word of Allah:

إِنَّ اللَّهَ يُأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۗ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Indeed, Allah commands you to convey the message to those who are entitled to receive it, and when you judge among people, to judge with justice. Verily, Allah is very good in the advice He gives you. Verily, Allah is All-Hearing, All-Seeing (QS an-Nisa'/4: 58)

Hadith of the Messenger of Allah:

عَنْ أَبِي إِسْحَاقَ، عَنِ الْبَرَاءِ قَالَ: قَالَ لِي عُمَرُ بْنُ الْخَطَّابِ رَضِيَ اللَّهُ عَنْهُ: إِنِّي أَنْزَلْتُ نَفْسِي مِنْ مَالِ اللَّهِ بِمَنْزِلَةِ وَالِي الْيَتِيمِ، إِنْ احتَجْتُ أَخَذْتُ مِنْهُ، فَإِذَا أيسرْتُ رَدَدْتُهُ، وَإِنْ استعفتُ استعفتُ

From Isaac from Barak he was blessed, Umar ibn Khattab said to me, Indeed I put myself in the care of Allah's property like the position of a guardian of an orphan, if I need it I take it from him, if I am in ease I return it, and if I have sufficient I will return it. stay away from it. (Thabaqat Ibn Saad)

D. Conclusion

Islamic law does not *sharihically* the minimum age limit for marriage, so this issue is included in the area of ijtihadi. In terms of determining the minimum marriage limit QS. an-Nur/24: 32 gives a signal with the word الصالحين which is then

understood by scholars with the meaning of "fit for marriage" namely for those who are mentally and spiritually capable of building a household.

The presence of the State with the issuance of Law number 16 of 2019 concerning amendments to Law number 1 of 1974 concerning Marriage which regulates the minimum age for marriage is 19 years is an attempt by the government to encourage the realization of the purpose of marriage, namely creating a *sakinah family, mawaddah warahmah*. In addition, the regulation is also in accordance with the purpose of applying the law/*maqasid as-syariah*, namely *hifz al-nasf* (guarding the soul) and *hifz al-nasl* (guarding offspring).

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