

The Minimum Age for Marriage in Law Number 16 Of 2019 Perspective *Maqashid Sharia* Abdul Majid Al Najjar

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ABSTRACT

This research departs from changes in the minimum age limit for marriage and the reality that occurs in society. The age of marriage is not a requirement and harmony in marriage. It's just that, the age of marriage proves that there are benefits that will be achieved in the future if implemented properly. As for marriage itself, which should bring benefits, it seems that it cannot be achieved if the provisions of these restrictions are not implemented properly. Therefore, it is necessary to research to obtain solutions to these problems. This research broadly wants to answer three problem formulations. First, the minimum age requirement for marriage. Second, the minimum age requirement for marriage in law number 19 of 2019. Third, the perspective of Maqasid al-Shari'ah Abdul Majid al-Najjar is the minimum age limit for marriage. By using a qualitative methodology and using the Library Research approach, verbal data regarding the minimum age limit for marriage will be obtained. The data collected is then analyzed using the theory of Maqasid al-Shari'ah Abdul Majid al-Najjar so that the right solution will be found regarding the problem within the minimum age limit of marriage. The results of this study indicate that the minimum age limit for marriage, which is 19 years for both men and women, is an appropriate and effective step in achieving universal benefit in the form of becoming an ideal individual. The ideal individual will produce an ideal family, where the ideal family can form an ideal society in the future.

Keywords: "Maturity, Minimum Age of Marriage, Maqasid al-Shari'ah"

Abstrak

Penelitian ini berangkat dari perubahan ketentuan batas minimal usia perkawinan dan realitas yang terjadi dalam masyarakat. Pada dasarnya, usia perkawinan bukan merupakan syarat dan rukun dalam perkawinan. Hanya saja, usia perkawinan membuktikan bahwa terdapat kemaslahatan yang akan tercapai dimasa depan apabila dilaksanakan dengan tepat. Adapun tujuan perkawinan sendiri, dimana seharusnya membawa kemaslahatan rupanya tidak dapat tercapai apabila ketentuan pembatasan tersebut tidak dilaksanakan dengan baik. Oleh karena itu, perlu diadakan penelitian supaya didapatkan solusi mengenai permasalahan-permasalahan tersebut. Penelitian ini secara garis besar hendak menjawab tiga rumusan masalah. Pertama, ketentuan usia minimal perkawinan. Kedua, ketentuan usia minimal perkawinan dalam undang-undang no.19 tahun 2019. Ketiga, perspektif Maqasid al-Shari'ah Abdul Majid al-Najjar dalam batas minimal usia perkawinan. Dengan menggunakan metodologi kualitatif dan dengan pendekatan Library Research, maka akan didapatkan data-data verbal mengenai ketentuan batas minimal usia perkawinan. Data yang dikumpulkan kemudian dianalisis menggunakan teori Maqasid al-Shari'ah Abdul Majid al-Najjar sehingga akan ditemukan solusi yang tepat mengenai permasalahan dalam batas minimal usia perkawinan. Hasil penelitian ini menunjukkan bahwa pembatasan usia minimal perkawinan yaitu 19 tahun bagi laki-laki dan perempuan, merupakan langkah yang tepat dan jitu dalam upaya mencapai kemaslahatan universal berupa menjadikan individu yang ideal. Individu yang ideal, akan menghasilkan keluarga yang ideal, dimana keluarga ideal, dapat membantu masyarakat yang ideal pada masa mendatang.

Kata Kunci: Kedewasaan, Usia Minimal Perkawinan, Maqasid al-Shari'ah

A. Introduction

According to Wahbah al-Zuhaiy, marriage is a contract that has the form of legalization *Istimta'* with women, including sex, kissing, wrestling, and so on. Where the wife is not a woman *Mahram*.¹ Even though, *Mahram* lineage, breastfeeding, and marriage (*Musaharah*). The law itself in defining marriage in Law Number 1 of 1974 is as follows:²

1 Wahbah Zuhaily, *Al-Fiqh Al-Islāmy Wa 'Adillatuhu* (Damaskus: Dar al-Kutub al-Ilmiyah, 1985), 29.

2 Republik Indonesia, "Undang-Undang Perkawinan No. 1 Tahun 1974," n.d., <https://peraturan.bpk.go.id/Home/Details/47406/uu-no-1-tahun-1974>.

”Perkawinan adalah ikatan lahir batin antara seorang pria dengan seorang wanita sebagai suami istri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan ketuhanan yang maha esa.”

Thus, it can be seen that marriage is an important matter which firmly has definite legal provisions. Therefore, the existence of marriage law means having goals to be achieved. The goal is stated in Al-Qur’an Surah *al-Rum* verse 21 which reads:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً ۗ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ٢١

“And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.”

From this verse, it seems clear that the purpose of marriage is to achieve *Sakinah* (peace of soul). The so-called *Sakinah* is a feeling that is achieved by making a partner a part of his life. This can be fostered with love, loyalty, and togetherness in living life. Next is *Mawaddah* (affection). The affection in question is not only between husband and wife. But also to all relatives and families from both sides. Both from the husband’s family and the wife’s family. Last is *Rahmah* (mercy). Compassion here is the result of *sakinah* and *mawaddah*. Where this compassion is directed to the descendants who appear later in the day. Until purpose, *Rahmah* will get bigger when *Sakinah* and *Mawaddah* are well achieved.³

To be able to contain these goals, of course, efforts and provisions are needed that must be implemented. Among these efforts and provisions is to provide a minimum age limit for executors of marriage. The minimum age limit for marriage itself is not a requirement and harmony in the implementation of marriage and does not receive a detailed explanation in the literature *fiqh*.

The Prophet Muhammad (PBUH) himself did marry Aisha RA. at a very young age when Aisyah was 9 years old. In his explanation, the hadith only has a character *Khabariyyah*. No suggestions were found to do (*Khitab al-Talab*) or recommendations not to do (*Khitab*

3 Muhammad Rashid Rida, *Al-Hayah Al-Zaujiyah* (Cairo: Dar al-Fikr, n.d.), 10–86.

al-Tark). So it cannot be concluded that the hadith can be used as a basis for limiting the minimum age of marriage.⁴

Furthermore, in general, the Qur'an's explanation regarding the minimum age limit for marriage is in one of the verses which read:

وَأَبْتُلُوا أَلْيَمَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ ۚ فَإِنْ أَنْسَبْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا ۗ وَمَنْ كَانَ عَنِيًّا فَلْيَسْتَعْفِفْ ۖ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ۚ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ ۗ وَكَفَىٰ بِاللَّهِ حَسِيبًا ٦

“And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgement, release their property to them. And do not consume it excessively and quickly, [anticipating] that they will grow up. And whoever, [when acting as guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor - let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant.”

Regarding this verse, the majority of classical scholars (*al-Ulama al-Turats*) believe that the size of a child who can be said to be an adult is when he can operate a property independently. While the problem of certainty of age itself, there are differences between one scholar and another. Regarding such differences of opinion, Ibn ‘Ashur gave further comments, that the age of adulthood in one region to another will have differences. So that the age of adulthood can be returned to the customs of each community. It’s just that, Ibn ‘Ashur made sure by looking at the perfection of reason and the desire to marry children who are already at an adult age.⁵ Muhammad Rashid Rida added, that the size of the age referred to in the verse besides being able to operate assets independently is when a child can give birth to offspring. That is what makes the child accept legal burdens and responsibilities (*Taklif*).⁶ In this case, according to law number 16 of 2019, the minimum age for marriage as stated in article

4 Moh. Ali Wafa, “Telaah Kritis Terhadap Perkawinan Usia Muda Menurut Hukum Islam,” *AHKAM : Jurnal Ilmu Syariah* 17, no. 2 (2017): 393,

5 Muhammad Al Tahir Ibn ‘Asyur, *Al-Tahrir Wa Al-Tanwir* (Tunis: Dar Tauzi’ li al-Nashar, 1984), 238–39.

6 Muhammad Rashid ibn ‘Ali Riḍā, *Tafsir AL-Manar* (Cairo: Dar al-Manar, 1949), 387.

1 is 19 years for both men and women. This limitation is due to the many negative impacts that will be received by perpetrators of early marriage (especially for young wives).

The data presented by the Central Bureau of Statistics (Badan Pusat Statistik) states that there are at least 3 negative impacts that will be received for perpetrators of early marriage, including the following.⁷ The first impact of early marriage is gender inequality. This impact will be felt by female actors. Where the female perpetrator will feel in an inferior position to her husband. This position then causes another problem. Where 41% of marriage actors aged 15-19 authorize their husbands to commit domestic violence (domestic violence) for themselves for any reason. Second, the loss of educational opportunities. Perpetrators of early marriage, perpetrators will lose the opportunity to continue their education. Good when still in a marriage bond even after a divorce. This lost opportunity is caused by shame because of their status as already or having been married and their responsibility in taking care of their family. In addition, most school institutions in Indonesia refuse married children (girls). The long-term impact that will be received by actors from the loss of education is the loss of opportunities to get decent work. This is due to the lack of opportunities to receive a formal education, so the quality of human resources is low. Third, the impact on female actors and the children they are born with. Mothers who give birth at the age of under 18 years have a greater risk of death in childbirth compared to mothers who give birth over the age of 18 years. Children born to mothers who are under 18 years of age are also at a very large risk of premature birth, stunting, and death. Children who are raised by mothers who are under the age of 18 are also at risk of getting parenting. This is because mothers who are under the age of 18 have a low level of knowledge in parenting and psychology as a mother.

Based on this explanation, if a child does not get the right to education and care, but instead gets married prematurely. Then a good individual cannot be achieved. If good individuals cannot be achieved, then the family that is formed also does not have maximum quality. So that the offspring produced are also not optimal because

7 Badan Pusat Statistik and UNICEF, "Kemajuan Yang Tertunda : Analisis Data Perkawinan Usia Anak Di Indonesia," Unicef Indonesia (Jakarta, 2016), 8–10, <https://doi.org/978-978-064-963-6>.

they are not based on knowledge of family patterns, parenting and education for their offspring. M. Ali Wafa (2017) carried out studies related to this research. Wafa proved that the minimum age for marriage is a matter of *Ijtihad* which cannot be overlooked. Although literature *fiqh* didn't mention it explicitly. However, Wafa offers a solution in the form of *Maslahah Mursalah* to prevent the many negative impacts that occur related to violations of the minimum age of marriage.⁸ Other research was also raised by A.A. Mashdar Hilmy (2018). Hilmy in this case also proved that the minimum age for marriage is following the principle of *problem which was appointed by Sa'id Ramadan al-Buti*. Where the principle is not opposed to Shariah goals, not opposite the tracking, and not contrary to the more urgent problem.⁹ Further research was also carried out by Ghufron. Ghufron concluded that the minimum age for marriage, in article 7 of the marriage law, is not following the child protection rights stipulated by the child protection law. This discrepancy, considering that what is called the age of a child is someone under the age of 18 years. If there is no change in the minimum age of marriage, then the child's right to education, self-actualization, and access to quality human resources will be hindered and cannot be achieved as a result of the child's marriage being legitimized by the state.¹⁰ A similar conclusion was also given by Xavier Nugroho. In his research, Xavier emphasized, that the unequal age of marriage between men and women causes gender bias and degraded socio-moral values in society. Based on this explanation, previous studies only discussed the benefits of the minimum age of marriage that occurs in the present. There is no further review regarding the benefits that can be achieved in the future. The minimum age of marriage can have a considerable impact both in the present and in the future. This research seeks to explore benefits that can be realized in the present and the future.¹¹

8 Wafa, "Telaah Kritis Terhadap Perkawinan Usia Muda Menurut Hukum Islam." *ihitilām*, rushd

9 AHMAD ARIF MASDAR HILMY, "Analisis Terhadap Perbedaan Batas Usia Minimal Perkawinan Dalam Pasal 15 Kompilasi Hukum Islam (KHI) Perspektif Teori *Maslahah Said Ramadhan Al-Buti*" (UIN Sunan Ampel, 2018).

10 M Ghufron, "Makna Kedewasaan Dalam Perkawinan," *AL-HUKAMA'* 6, no. 2 (2016): 319–36, <https://doi.org/10.15642/alhukama.2016.6.2.319-336>.

11 Xavier Nugraha, Risdiana Izzaty, and Annida Aqila Putri, "Rekonstruksi Batas Usia Minimal Perkawinan Sebagai Bentuk Perlindungan Hukum," *Lex Scientia Law Review* 3, no. 1 (2019): 40–54.

The type of research that will be used this time is qualitative research using a literature approach (Library Research). With a library approach, the author does not need to go directly to the field (Field Work), except only dealing with the sources contained in the library. So that data collection is enough for document study. The data analysis technique used is content analysis according to Miles and Huberman. Miles and Huberman state that qualitative data analysis consists of “three concurrent flows of activity: data reduction, data display, and then conclusion drawing and verification.”¹²

This research is expected to be able to become an academic contribution so that the determination of the minimum age of marriage is a consideration for all parties. In addition, this research is also expected to be a reference, both for academics, legal practitioners, and the wider community.

B. Discussion

1. Size of Maturity in Marriage

Adulthood in marriage, expressed in Al-Qur'an Surah al-Nisa' verse 6 which reads:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ ءَانَسْتُمْ مِّنْهُمْ رُّشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَن يَكْبَرُوا ۚ وَمَن كَانَ عَنِيًّا فَلْيَسْتَعْفِفْ ۖ
وَمَن كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ۚ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ
وَكَفَىٰ بِاللَّهِ حَسِيبًا ٦

“And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgement, release their property to them. And do not consume it excessively and quickly, [anticipating] that they will grow up. And whoever, [when acting as guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor - let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant.”

Several laws are closely related to each other in this verse. First, regarding giving away the property of orphans when they reach the age of maturity to marry. Second, the caregivers of the orphans

12 Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis* (London: Sage Publication Ltd., 1994), 10.

test the maturity of the orphans so that they can receive property that is rightfully theirs.¹³

As for maturity, in the verse, it is expressed in lafadh *al-Rushd*. Lafadz *al-Rushd* etymologically different meanings among scholars. Mujahid interprets it by reason. Qatadah means competent in thinking and practising religion. Ibn Abbas interprets it as a good condition so that he is proficient in operational assets.¹⁴

As for terminology, meaning *Sinn al-Rushd* according to the majority of scholars is a skill in wealth. These skills include operating assets, and maintaining and developing them. In this case, the majority of scholars explain that this skill is not limited by wickedness. In addition, what is called maturity in this case is being able to distinguish something that can provide benefits or not (*Mumayyiz*). So from that explanation, what is called an adult in terms *Rushd* is the ability and awareness to thinking.¹⁵

Imam al-Shafi'iy, al-Hasan, and Ibn Mundhir in this regard have different views. Mature in terminology *Sinn al-Rushd* according to them is a skill in managing property and religion. Because according to them, competence in property cannot be the basis for a person to be competent in obtaining legal burdens (*Taklif*). Conversely, if someone is proficient in religion, then automatically that person is proficient in operating assets. In such differences, the authors tend to the opinion of the majority of scholars. This is as expressed by Muhammad Tahir Ibn Asyur, that the purpose of measuring maturity in this verse is to maintain the property (*Hifz al-Mal*), not religious observance (*Hifz al-Din*).¹⁶

Tahir Ibn 'Asyur further argues again, that maturity in marriage is very likely to experience differences from one region to another. This is due to the geographical, climatic and personal physical conditions of one region to another. This opinion is in line with the opinion of Ahmad bin Muhammad Abu al-Zarqa and Jalal al-Din al-Suyuti which includes the age of maturity in the provisions of customary rules that can be used as legal provisions (*al-'Adah*

13 Fakhr al-Raziy, Mafatih Al-Ghayb (Beyrut: Dar al-Fikr, 1981), 194.

14 Riḍā, Tafsir AL-Manar, 388.

15 Fakhr al-Raziy, Mafatih Al-Ghayb, 196.

16 Ibn 'Asyur, Al-Tahrir Wa Al-Tanwir, 238.

Muhkamah).¹⁷ In these rules, it is also explained that some texts of the al-Qur'an or hadith which means general ('*am*) sometimes have no special (*takhsis*) in the Qur'an or hadith as well. So customs are sometimes allowed to become special (*takhsis*) in some sentences with a general meaning ('*am*). Even further Ibn 'Abidin emphatically stated, that custom is one of the arguments of Shari'a (*nas*) which is not edited.¹⁸

From this explanation, knowing the characteristics of a person's maturity requires an explanation from several perspectives. Both from the perspective of the text of the al-Qur'an or hadith (*nas*) as well as from the perspective of several sciences related to maturity. So that the size of maturity can be categorized broadly and deeply.

Fakhr al-Razi gives five characteristics. Three characteristics exist in both men and women, namely: wet dreams (*Ihtilam*), age, and the growth of fine hairs around the genitals. Then two of them are only found in women, namely menstruation and being able to conceive. The age in this explanation is based on the opinion of fiqh scholars. Imam Hanafi argues that the age of adulthood for men is 19 years and 17 years for women. This is because the age of adulthood for women generally precedes men. Meanwhile, according to Imam Malik, the age of adulthood is 18 years for both men and women.¹⁹

Furthermore, in sociological theory, the measure of one's maturity is based solely on society's views. Where the public's view of maturity is broadly by looking at a person's skills or abilities in taking care of himself.²⁰ These skills are then measured into several indicators. Among them is the ability to make a living, the ability to carry out leadership tasks and physical (biological) maturity.²¹

Broadly speaking, adulthood in sociology only looks at physical

17 Ahmed. Al-Zarqa, *Sharah Al-Qawaed Al-Fiqhiya* (Damaskus: Dar al-Qalam, 1989), 219–20.

18 Jalaluddin Al-Suyuthi, *Al-Ashbah Wa Al-Nazair* (Beyrut: Dar al-Kutub al-Ilmiyah, 1983), 90.

19 Fakhr al-Razi, *Mafatih Al-Ghayb*, 195–96.

20 Abdul Rahim Hakimi et al., "Customarys Dynamic Relationship with Islamic Law in Terms of Afghan Womens Rights," *International Journal of Advanced Academic Studies* 4, no. 2 (2022): 185, <https://doi.org/10.33545/27068919.2022.v4.i2c.805>.

21 Edi Yuhermansyah and Mohd Hakim Bin Mohd Akhir, "Implementasi Batas Umur Pernikahan (Studi Kasus Di Mahkamah Rendah Syari'ah Bukit Mertajam Pulau Pinang)," *Samarah* 2, no. 2 (2018): 23, <https://doi.org/10.22373/sjhh.v2i2.4749>.

development and behaviour patterns. Psychological characteristics are given less attention in sociological theory in discussing the age of maturity. Therefore, an explanation is needed in psychology in terms of the age of maturity.²² In psychology, maturity in marital skills is called early adulthood.²³ This period is when a person experiences a physically productive period, develops creativity, and can choose and sort out values that will become principles in life. 7 characteristics exist in adulthood. Among others are:

- a. *Always trying to be independent.*
- b. *Able to accept statements.*
- c. *Able to adapt to various environments.*
- d. *Able to provide the right response to all that is faced.*
- e. *Able to balance the mental state.*
- f. *Have empathy for others.*
- g. *Able to control anger.*

Abraham Maslow in this case also has his own opinion regarding psychological maturity. Among others are:²⁴

- a. *There is no or able to overcome psychoneurotic syndromes such as fear, anxiety, and worry.*
- b. *Able to always live optimistically and positively.*
- c. *Able to make spontaneous decisions.*
- d. *Able to solve problems objectively.*
- e. *Do not have excessive dependence on others.*

2. Provisions for Minimum Age for Marriage in Law Number 16 of 2019

Law 16 of 2019 is an amendment to article 7 paragraph 1 of marriage law number 1 of 1974 concerning the minimum age for marriage. In article 7 paragraph 1 of the marriage law number 1 of 1974 states that the minimum age for someone who wants to carry

22 Sri Rahmawati, "Batas Usia Minimal Pernikahan (Studi Komparatif Hukum Islam Dan Hukum Positif)," *Syakhsia* 21, no. 1 (2020): 87, <https://doi.org/10.37035/syakhsia.v22i1.2918>.

23 Elizabeth Bergner Hurlock, *Developmental Psychology: A Life Span Approach* (New Delhi: McGraw-Hill, 1999), 265.

24 Frank G. Goble, *The Third Force: The Psychology of Abraham Maslow* (New York: Washington Square Press, 1971), 187.

out marriage is 19 years for men and 16 years for women.²⁵

Furthermore, the emergence of a change in the age of marriage which equalizes the age of men and women to 19 years, is viewed from at least three aspects.²⁶ First, the difference in the minimum age of marriage is proven to cause discrimination between men and women before the law. This is inconsistent with Article 28D of the 1945 Constitution which reads:²⁷

”Setiap orang berhak atas pengakuan, jaminan, perlindungan, dan kepastian hukum yang adil.”

Contradictions also occur with child protection law number 23 of 2002. Marriage Law Number 1 of 1974 violates the definition and rights of children that should be obtained. In Article 1 paragraph 1 it is stated that what is called a child is someone who is not yet 18 years old including children who are still in the womb. The rights of children (women) who are injured by the marriage law are stated in paragraph 2 of article 1 of the child protection law which reads:²⁸

”Perlindungan Anak adalah segala kegiatan untuk menjamin dan melindungi Anak dan hak-haknya agar dapat hidup, tumbuh, berkembang, dan berpartisipasi secara optimal sesuai dengan harkat dan martabat kemanusiaan, serta mendapat perlindungan dari kekerasan dan diskriminasi.”

Second, from a health point of view, children who get married and become pregnant at the age of under 18 years have a high risk of death. Babies who are born are also at risk of stunting, premature, and death. Babies born to a child under the age of 18 are also at risk of getting the wrong parenting style. Where the error is because the child lacks education and knowledge about parenting.²⁹

25 Indonesia, “Undang-Undang Perkawinan No. 1 Tahun 1974.”

26 Nugraha, Izzaty, and Putri, “Rekonstruksi Batas Usia Minimal Perkawinan Sebagai Bentuk Perlindungan Hukum,” 52.

27 Republik Indonesia, “Undang-Undang Dasar Negara Republik Indonesia Tahun 1945,” n.d.

28 Republik Indonesia, “Undang-Undang No 23 Tahun 2002 Tentang Perlindungan Anak,” 2002.

29 Badan Pusat Statistik and UNICEF, “Kemajuan Yang Tertunda : Analisis Data Perkawinan Usia Anak Di Indonesia,” 8.

Third, in terms of education, children who are married under the age of 18 will lose the opportunity to get an education. This is because the needs and rights to education have been diverted to the needs and responsibilities of the family. Moreover, many educational institutions refuse to accept a married child.³⁰

Fourth, from a social perspective, gender inequality will occur in the family structure. A child who married under the age of 18 admitted to feeling inferior to her husband. Furthermore, they even legitimize domestic violence for themselves for whatever reason.³¹

Based on these arguments, the Constitutional Court then conducted a judicial review of the age limit for marriage contained in Marriage Law number 1 of 1974. The Constitutional Court justified these reasons because of the negative impacts that will be received by women who marry, such as reproductive health, education, psychology and children's rights.³²

The Constitutional Court subsequently issued two decisions. First, the government and the Legislative Assembly of the Republic of Indonesia (DPR RI) immediately revise marriage law number 1 of 1974 and tightened the rules for the dispensation of the marriage age. Second, the minimum age difference for marriage is equalized. Where previously the minimum age of marriage for men was 19 years and for women 16 years, now it is 19 years for both men and women.

3. Perspective Minimum Marriage Age *Maqasid Shari'ah* Abdul Majid al-Najjar

Basically, the minimum age limit for marriage is not given much attention in the study of classical Islamic law. Age is not a requirement or pillar that determines whether a marriage contract is

30 Nurohman, "Analisis Yuridis Terhadap Batas Usia Minimal Perkawinan (Studi Putusan Mahkamah Konstitusi Nomor: 22/PUU-XV/2017)," 2019, 61.

31 Sofia Hardani, "Analisis Tentang Batas Umur Untuk Melangsungkan Perkawinan Menurut Perundang-Undangan Di Indonesia," *Jurnal Pemikiran Islam* 40, no. 2 (2015): 12.

32 Defanti Putri Utami, Finza Khasif Ghifarani, and Rizki Pangestu, "Minimum Age of Marriage in Indonesia Perspective of Islamic Law , Positive Law and Medical Views Batas Minimal Usia Pernikahan Di Indonesia (Prespektif Hukum Islam , Hukum Positif Dan Pandangan Medis)," *Al- ' Adalah : Jurnal Syariah Dan Hukum Islam* 6, no. 2 (2021): 190.

valid or not. Nevertheless, the ever-changing reality seems to make demands in determining the age limit for marriage. Law number 16 of 2019 provides a limit of 19 years for men and women who wish to get married. This is considering the many negative impacts that will occur if there is no law governing these restrictions. In this case, the scholars have not explained the law explicitly. Both in the Qur'an and Hadith as well as in fiqh literature. If this is looked at previous studies, the age of adulthood in marriage is used to this day only to project particular benefits. There has been no discussion regarding the urgency of restrictions in the framework of realizing the benefit of society at large.

Furthermore, the minimum age limit for marriage in the Qur'an and Hadith for scholars is only intended so that the orphan's property can be given on time. This is evidenced by the Qur'an surah al-Nisa verse 6. Another argument from the hadith which mentions the age of maturity in marriage so far only mentions signs of maturity such as wet dreams or menstruation. The scholars try to explore further by adding physical signs such as the growth of hair around the genitals. Furthermore, the scholars fully surrender signs of maturity to the reality that occurs in society.³³

The reality that needs to be considered is that the age of maturity in marriage is not only a physical review. A review from the social and psychological side is also needed. Remembering the noble goal of marriage which can only be achieved if all the preparations are made thoroughly. In simple terms, from a social perspective, maturity is measured by people's assessment of their ability to take care of themselves and their ability to lead. Meanwhile, from a psychological standpoint, maturity is measured by the ability to control emotions, intelligence in making decisions, and the ability to evaluate things objectively.³⁴ Abdul Majid al-Najjar in this case provides a methodology *Maqasid* to be able to answer such legal problems. He is in practice *Maqasid* her, trying to discuss *nas* with the reality that happened. This is because there may be misunderstandings in realizing the benefits contained in *nas*.

33 Achmad Asrori, "Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Islam," *Al-Adalah* 7, no. 4 (2017): 810.

34 Bagus Riyono, "Keluarga Sebagai Fondasi Peradaban Bangsa: Sebuah Strategi Memanfaatkan Bonus Demografi Secara Optimal," *Buletin Psikologi* 30, no. 1 (2022): 22, <https://doi.org/10.22146/buletinpsikologi.68234>.

Or it could be that reality provides additional consideration *toin nas* until the benefits contained in *nas the* can level up. As for the classification theory *Maqasid* al-Najjar, is divided into 4 categories. First *Maqasid* in the maintenance of human values (*Maqasid fi Hifdzi Qimah al-Hayah al-Insaniyyah*). *Maqasid* This is oriented towards the maintenance of things that are natural for humans. In this case, the revelation in the form of Shari'a is evidence that the state of nature must be maintained as well as possible.³⁵ This is because the projection of this conception is to make humans remain in their position as managers of the universe (*caliph*). Second, *Maqasid* in the maintenance of humanitarian entities (*Maqasid fii Hifdzi al-Dzat al-Insaniyyah*). Orientation on *Maqasid* is an attempt to make the ideal individual. These efforts are then contained in the conception of family law. This is because the family is the most concrete part of forming humans as individuals. Therefore, the projection to be achieved in this conception is about how to make humans ideal individuals. Third, *Maqasid* in community maintenance (*Maqasid fi Hifdz al-Mujtama'*). After efforts to make the individual carried out, then the next thing to do is to maintain it so that it becomes an ideal society. This maintenance aims to maintain the social structure and society to remain balanced. The sides that are touched on in this maintenance are the political side and the social relations side. Fourth, *Maqasid* in resource maintenance (*Maqasid fi Hifdzi al-Muhit al-Maddiy*). This maintenance aims to protect the environment and the economic system. As is known, basic human needs in the form of clothing, food and shelter are needs provided by nature. Thus, the maintenance of basic needs is directly proportional to the maintenance of the economy and the environment. This is endeavoured to prevent the exploitation of nature on a large scale under the pretext of improving the community's economy. Meanwhile, the determination of the minimum age for marriage in law number 16 of 2019 can be seen through two classifications, namely *Maqasid* maintenance of humanitarian entities and *Maqasid* social maintenance.

a. ***Maqasid* Maintenance of Humane Entities (*Maqasid fi Hifdzi al-Dzat al-Insaniyyah*)**

In this classification, the minimum age for marriage in law number 16 of 2019 can be seen through two theories, viz *H{ifz} al-*

35 Holilur Rohman, "Batas Usia Ideal Pernikahan Perspektif Maqasid Shariah," *Journal of Islamic Studies and Humanities* 1, no. 1 (2017): 70, <https://doi.org/10.21580/jish.11.1374>.

Nafs (Maintenance of body and soul) and *Hifz al- 'Aql* (Maintenance of sense). In this case, it will be explained as follows:

1) *Hifz al-Nafs* (Maintenance of body and soul)

Nafs has two meanings. Material and non-material meanings. materially, *Nafs* has a physical meaning. Meanwhile, non-materially *Nafs* have soul meaning *ruh*. Materially, maintenance of body and soul means maintenance of everything that allows an increase in one's physical quality. As well as the prevention of anything that can physically weaken a person. First, on the maintenance of physical quality, al-Najjar termed the Maintenance of the Soul with Self-Preservation and Potential (*Hifz al-Nafs bi Asbabi al-Baqa' wa al-Quwwah*). This maintenance aims to seek the maximum quality that can be achieved by a person. If looked at the purpose of enforcing the minimum age limit for marriage in law 16 of 2019, the purpose of the law is following the conception *Maqasid* this.³⁶ Further matters that need to be considered regarding the age limit for marriage as the initial formation of a family, are the following considerations, namely: Being a good person, forming a good family, breastfeeding children, and raising children, as well as children's education.

Second, the maintenance of the body and soul to prevent damage to the physical is termed *Hifz al-Nafs bi Daf' i al- 'Iwadi* (Maintenance of body and soul by preventing weakening). On *Maqasid*, In this case, anything that has the potential to physically weaken humans must be prevented and eliminated. The age limit for marriage based on published Central Bureau of Statistics data provides evidence that 19 years of age is the ideal age for someone to marry. This is because marriages that occur at the age of under 19 years have the potential to threaten reproductive health and potentially cause death. Furthermore, babies born to someone under the age of 19 are in danger of their health and potentially death.

At the second level, *Hifz al-Nafs* has the meaning of maintenance of the soul (spirit). The desired projection at this level is psychological perfection. Therefore, the things that

36 'Abd al-Majīd Al-Najjār, *Maqāṣid Al-Sharī'ah Bi Ab'ād Jadīdah* (Tunis: Dar al-Gharb al-Islamiy, 2008), 250.

need attention are cleaning the soul and maintaining a sense of security. Cleansing the soul in this case is termed *Hifz al-Nafs bi al-Tazkiyah*.³⁷ The projection of this maintenance is so that the psychological state becomes stable so that it can achieve peace in life. This is following one of the goals of marriage namely *Sakinah*. Where *Sakinah* is interpreted as peace of mind that is created between husband and wife.³⁸ This goal can only be achieved if the husband and wife have psychological maturity. Where maturity must be pursued by one of them limiting the minimum age of marriage.

2) *Hifz al-'Aql*

As *Hifz al-Nafs*, *Hifz al-'Aql* (maintenance of reason) also has a material and non-material meaning. Materially, the reason is defined by the brain. Therefore, material maintenance of the mind has the meaning of preventing anything that can weaken the brain. Meanwhile, non-materially, the reason is defined as the power to think. Where serves to distinguish between good and right. Then from this thinking power has implications for a person's behaviour patterns.³⁹

In this case, the minimum age limit for marriage which is limited to 19 years has the aim of maintaining reason both materially and non-materially. Materially, maintenance of reason within this minimum age limit does not have clear implications. Does the minimum age limit for marriage affect brain power? It's just that, non-materially, the minimum age limit for marriage is known to maintain one's thinking power. Thinking power can be maintained through freedom of thought and education. The minimum age limit for marriage provides space for a person to continue to develop his thoughts through education. Someone married at the age of under 19 years, has low expectations in continuing education. Educational institutions, especially secondary schools, also mostly reject students who have been married. So that the right to

37 Muhammad Al Tahir Ibn 'Asyur, *Maqasid Shari'ah Islamiah* (Ordon: Dar al-Nafais, 2001), 80.

38 Muhammad Al Tahir Ibn 'Asyur, *Ushul Al-Nizam Al-Ijtima'iy Fi Al-Islam* (Tunis: Dar Tauzi' li al-Nashar, 1985), 80.

39 Al-Najjār, *Maqāṣid Al-Sharī'ah Bi Ab'ād Jadīdah*, 129–40.

education cannot be well received.⁴⁰ In this case, Farida Ulvi Naimah argues that the minimum age limit for marriage and the postponement of the age of marriage makes a person's hopes for education higher. This is because someone who has married is no longer concerned with marital affairs and is more concerned with family matters. Therefore, limiting the minimum age of marriage is the right effort in maintaining the mind (*Hifz al-'Aql*).

b. Community Care (*Hifz al-Mujtama'*)

Maintenance of society begins with the establishment of rules on the family structure. Given that family, the structure is part of the formation of society. Therefore, limiting the minimum age for marriage is one of the efforts in forming a good family so that a good society can be achieved. So that the maintenance of society must be pursued through the maintenance of offspring (*Hifz al-Nasl*) and maintenance of community existence (*Hifz al-Kiyan al-Ijtima'iy*).

1) *Hifz al-Nasl* (Maintenance of Offspring)

Maintenance of offspring in the period of classical scholars has a projection on the prevention of free sex. Where this projection is actualized with the determination of punishment for adultery.⁴¹ However, recently the maintenance of offspring has a different projection. Where the projection aims to maintain the family structure in order to achieve an ideal society. The minimum age limit for marriage in this case also has this goal. Where these restrictions want an ideal family structure that is able to produce offspring ideally as well. These restrictions also have projections so that an ideal society can be achieved.⁴²

There are two things that need to be reviewed in raising this breed. First *Hifz al-Nasl bi al-Injab* (Maintenance of offspring by regeneration). The purpose of this maintenance

40 Nurkholis Nurkholis, "PENETAPAN USIA DEWASA CAKAP HUKUM BERDASARKAN UNDANG-UNDANG DAN HUKUM ISLAM," YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam 8, no. 1 (2018): 80, <https://doi.org/10.21043/yudisia.v8i1.3223>.

41 Nur din Khadimiyy, *Ilm Maqashid Al-Shari'ah* (Riyadh: Maktabah al-Ubaykan, 1992), 83.

42 Ibn 'Asyur, *Ushul Al-Nizam Al-Ijtima'iy Fi Al-Islam*, 115.

is an effort to improve the quality of offspring. Things that have the potential to weaken offspring must be minimized and eliminated in order to realize an ideal society. The minimum age limit for marriage also has the same projection. Where this age limit wants offspring with maximum quality. This is evidenced by Central Bureau of Statistics data, where under 19 years of age have a high risk of giving birth. These risks are in the form of health threats that lead to death due to the reproductive system is not fully prepared. Children who are born also have a high risk of experiencing stunting, premature, to death. Furthermore, the child is at risk of getting the wrong parenting style because the mother does not have enough childcare knowledge.

Second, *Hifz al-Nasl bi Hifz al-Nasab* (maintenance of offspring with lineage maintenance). The projection of this maintenance is so that family relationships can be seen clearly so that the rights and obligations of family members can be carried out properly. Restrictions on the minimum age of marriage in this case want this clarity.⁴³ This is because underage marriages have a negative impact on the perpetrators and the children born. The negative impact is that there is a habit of rights and obligations between husbands and wives who do early marriage. This is evidenced by Central Bureau of Statistics data which states that perpetrators of early marriage for women legitimize domestic violence for themselves for whatever reason.⁴⁴

2) *Hifz al-Kiyan al-Ijtima'iy* (Maintenance of the existence of society)

Maintenance of community existence is an effort that is contrary to the maintenance of offspring. The maintenance of offspring is the effort of the smallest particle of society in the form of an individual, becoming a family, then becoming a community. While maintaining the existence of society is an effort that starts from organizing society towards good individuals. There are two things to note in this maintenance. First, *Hifz al-Mu'assisiyah al-Ijtima'iyyah* (Maintenance of

43 Al-Najjār, Maqāṣid Al-Sharī'ah Bi Ab'ād Jadīdah, 115.

44 Badan Pusat Statistik and UNICEF, "Kemajuan Yang Tertunda : Analisis Data Perkawinan Usia Anak Di Indonesia," 10.

the structure of society). This maintenance has a projection to make the family the main foundation of the structure of society.⁴⁵

Things that need to be considered in this maintenance are the structure of society, state administration, and government agencies. Restricting the minimum age of marriage is an effort to form an ideal family for the creation of an ideal society. The state administration in limiting the minimum age for marriage plays a role in determining the rules which prevent and tighten the rules regarding marriage dispensation. The government, which is a state agency, also plays a big role in limiting the minimum age for marriage. Where the government has the responsibility to ensure the welfare of society through minimal restrictions on marriage. This is considering the negative impact that will occur if there is early marriage.

Second, *Al-Hifz bi ilaqah al-Ijtimaiyah* (Maintenance of Public Relations). The purpose and objective of this maintenance are so that there is an ideal pattern of interaction between individuals and community groups. The minimum age limit for marriage in this case seeks to carry out the objectives contained in this maintenance. These goals are the maintenance of brotherly relations among members of society (*Al-Hifz bi Rabitah al-Ukuwah*), the maintenance of justice and balance (*Al-Hifz bi Mizan al-'Adl*), and maintenance of tolerance and solidarity in society (*Al-Hifz bi 'Ilaqah al-Takaful*).

Furthermore, conditions where ideal individuals and society can be achieved, can directly affect human values (*Maqasid fi Hifdzi Qimah al-Hayah al-Insaniyyah*) and available resources (*Maqasid fi Hifdzi al-Muhit al-Maddiy*). Conditions in which the ideal individual and society can be achieved, making humans able to carry out their natural duties as *khalifa* (Earth manager). Existing resources also become appropriate in management. Circumstances where there is exploitation and destruction of the environment, become unavoidable.

C. Conclusion

45 Al-Najjār, *Maqāṣid Al-Sharī'ah Bi Ab'ād Jadīdah*, 129.

Minimum age of marriage in law number 16 2019 is 19 years for boys and girls. This age is mature physically, socially, and psychologically. The practice of marrying under the age of 19 is a violation and has been proven to cause a lot of harm. Perspective *Maqasid al-Shari'ah* Abdul Majid al-Najjar supports limiting the minimum age for marriage as an effort to make society ideal. This is because without making an ideal individual, an ideal society cannot be achieved either. After the ideal society is achieved, then this situation can significantly affect human values and existing resources.

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- The Minimum Age for Marriage in Law Number 16 Of 2019 ...*
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