

NOT NINE BUT EIGHTEEN Husein Muhammad on Aisha's Marriage Age

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Abstract

The minimum age for marriage in *fiqh* has been a debated issue. This minimum limit is typically interpreted with reference to Aisha's marriage to the Prophet. Husein Muhammad argued, contrary to popular belief, that Aisha's age at the time of her marriage was eighteen, not nineteen. This paper explains the characteristics of Husein's views on the minimum age for marriage in Islam. The data was collected from reviews of Husein's and other researchers' works in which they discussed Husein's ideas. This paper argues that, according to Husein, it is demonstrably untrue to postulate that Aisha was nine years old when she married. Husein concluded that Aisha was at least eighteen when she wed the Prophet. This interpretation arises as a result of his comparison between Aisha's age and Asma's. Besides that, Husein also considers the *maqāṣid syarīah* principle, according to which the age of eighteen is the minimum age that is physically and psychologically ideal and more compatible with the soul preservation of women and their future offspring.

[Batas usia minimum perkawinan dalam fikih tidak ditetapkan secara pasti. Interpretasi batas minimum ini biasanya merujuk pada riwayat perkawinan Sitti Aisyah dengan Nabi. Berbeda dengan pendapat umumnya, Husein Muhammad berargumen bahwa usia Sitti Aisyah pada saat menikah adalah delapan belas tahun, bukan sembilan tahun. Beranjak dari ini, paper ini menjelaskan bagaimana karakteristik pemikiran Husein tentang batas usia minimum perkawinan dalam Islam. Data dikumpulkan dari telaah literatur yang ditulis langsung oleh Husein dan peneliti lain yang membahas pemikirannya. Paper ini berargumen bahwa menurut Husein, tidak benar jika dikatakan bahwa usia Sitti Aisyah ketika menikah dengan Nabi Muhammad Saw adalah sembilan tahun. Melainkan Husein berkesimpulan bahwa Sitti Aisyah setidaknya berusia delapan belas tahun saat menikah dengan Nabi. Interpretasi ini muncul karena dalam pemikirannya ia berkaca pada data sejarah

perbandingan Usia Sitti Aisyah dan Usia Asma. Selain itu, Husein dalam pemikirannya tidak terlepas dari pendekatan *maqāṣid syarīah*, di mana usia delapan belas tahun ia tafsirkan sebagai usia minimal yang paling ideal secara fisik dan psikis dan paling sesuai dengan pemeliharaan jiwa perempuan dan keturunannya kelak.]

Keywords

Age of marriage, Aisha marriage, *maqāṣid syarīah*

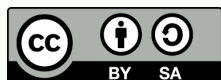
Article History

Received 9 July 2021

Approved for Publication 30 June 2022

To Cite this Article

Siti Jahroh, “NOT NINE BUT EIGHTEEN: Husein Muhammad on Aisha’s Marriage Age,” *Al-Ahwal: Jurnal Hukum Keluarga Islam*, vol. 15, no. 1 (2022): 61–82, <https://doi.org/10.14421/ahwal.2022.15104>.



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Introduction

Jurnal Perempuan informs that the practice of child marriage in Indonesia is massive in all provinces.¹ BPS (Central Bureau of Statistics) data and Unicef 2016 report show that one in four Indonesian women are married before reaching the age of 18.² At the global level, Indonesia is one of the seven countries with the highest absolute number of child marriages and the second-highest child marriages in the ASEAN region (Unicef 2010).

¹ See <https://www.jurnalperempuan.org/warta-feminis/indonesia-darurat-pernikahan-anak>, accessed at July 8, 2022.

² See <https://www.huseinmuhammad.net/nikah-anak-bagian-1/>, accessed on December 2, 2020. See also <https://www.rappler.com/world/bahasa-indonesia/168312-kongres-ulama-perempuan-perempuan-menikah-minimal-18-tahun/>, accessed at December 3, 2020.

During 2011-2012, there were 6211 cases of child marriage in 111 villages in 20 provinces (Pekka and Semeru Foundation, 2013). This marriage practice can easily be found in almost all parts of Indonesia.³

One of the contributing factors to early marriage is religious conservatism.⁴ According to one of the prevalent religious beliefs, Aisha's marriage was assumed to have occurred when she was 9 years old.⁵ However, is it true that Aisha's age at that time was nine years? This question was answered by Husein Muhammad—one of the most prominent advocates for women's rights in Indonesia. Husein Muhammad claimed that Aisha was 18 years old when she married the Prophet, not nine years as popularly thought.⁶ The remark of Husein Muhammad which appears to contradict traditional *fiqh* is intriguing to investigate appropriately. There are at least three reasons underlying this. First, Husein Muhammad's finding contrasts with mainstream religious views about the age of Aisha (9 years) when she married the Prophet, as stated in many authentic historical narrations. Second, Husein Muhammad's finding departs from texts equivalent to religious texts referred to by traditional Islamic scholars but produces different interpretations. Third, the figure of Husein Muhammad is one of the figures from the *pesantren* (Islamic boarding school) who is consistent in voicing women's rights.

Numerous studies have been conducted on the age limit for marriage, including the study of the age limit for marriage in the constitutions of Muslim countries by Büchler and Schlatter,⁷ Ernawati, Shohib, Baharudin, and Hikmawati;⁸ Azizah⁹ and Hayat carried out

³ *Ibid.* See also <https://republika.co.id/berita/pjoxyr428/alasan-batas-usia-perkawinan-harus-diubah>, accessed at December 14, 2020.

⁴ Susanto Susanto, "Persepsi Masyarakat Terhadap Praktik Perkawinan Dini Di Sukabumi Jawa Barat," *Aspirasi: Jurnal Masalah-Masalah Sosial* 3, no. 2 (2012): 191–209, <https://doi.org/10.46807/aspirasi.v3i2.270>.

⁵ Muhammad Makmun Abha, *Benarkah Aisyah Menikah Di Usia 9 Tahun?: Menggali Fakta Dan Hikmah Dari Pernikahan Rasulullah Saw Dan Aisyah Ra.* (Media Pressindo, 2015).

⁶ K H Husein Muhammad, *Fiqh Perempuan; Refleksi Kiai Atas Wacana Agama Dan Gender* (Yogyakarta: LKiS Pelangi Aksara, 2001).

⁷ Andrea Büchler and Christina Schlatter, "Marriage Age in Islamic and Contemporary Muslim Family Law: A Comparative Survey," *Electronic Journal of Islamic and Middle Eastern Law (EJIMEL)* 1, no. 1 (2013): 37–74, <https://doi.org/10.5167/uzh-78204>.

⁸ Moh Shohib Ernawati, Erwan Baharudin, and Elok Hikmawati, "Distortion of Marriage Age in Asian Muslim Countries," in *Proceedings of the 1st International Conference on Recent Innovations (ICRI, 2018)*, 525–31, <https://doi.org/10.5220/0009952005250531>.

the study of the age limit for marriage in the Indonesian constitution,¹⁰ Hadi,¹¹ Septarini and Salami,¹² and Nurnazli,¹³ Winengan;¹⁴ and studies on the age limit for marriage in the perspective of *fiqh* (Islamic law) were carried out by Hanafi,¹⁵ Asrori,¹⁶ Hatta,¹⁷ Atril,¹⁸ Rohman,¹⁹ Elkhairati,²⁰ and Al-Robin and Sodikin.²¹ Meanwhile, a study of Husein Muhammad's thoughts on the age limit for marriage was only carried out by Rizal.²² However, Rizal's finding only discusses the exploration of various schools of jurisprudence opinions conveyed by Husein Muhammad and does not discuss the characteristics of Husein Muhammad's thesis regarding Aisha's age when she married the Prophet, especially

- ⁹ Ulf Azizah and Nur Wahid, "Historisitas Dan Tujuan Aturan Umur Minimal Perkawinan Dalam Perundang-Undangan Keluarga Islam Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 2, no. 2 (2019): 163–77, <https://doi.org/10.24090/volksgeist.v2i2.2822>.
- ¹⁰ Muhammad Jihadul Hayat, "Historisitas Dan Tujuan Usia Minimal Perkawinan Dalam Perundang-Undangan Keluarga Muslim Indonesia Dan Negara Muslim," *Journal Equitable* 3, no. 1 (2018): 49–63, <https://doi.org/10.37859/jeq.v3i1.810>.
- ¹¹ Samsul Hadi, "Putusan Mk No. 22/PUU-XV/2017 Tentang Permohonan Judicial Review Pasal 7 Ayat (1) Uu No. 1 Tahun 1974 Tentang Usia Perkawinan Dalam Perspektif Masalah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 2 (2018): 174–83, <https://doi.org/10.14421/ahwal.2018.11206>.
- ¹² Rafiah Septarini and Umami Salami, "Analisis Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 Tentang Batas Usia Nikah Bagi Perempuan," *Ulumul Syari': Jurnal Ilmu-Ilmu Hukum Dan Syariah* 8, no. 1 (2019): 51–68, <https://doi.org/10.52051/ulumulyari.v8i1.41>.
- ¹³ Nurnazli Nazli, "Penguatan Regulasi Dalam Pencegahan Dan Penanggulangan Perkawinan Anak," *ADHKI: Journal Of Islamic Family Law* 1, no. 1 (2019): 75–87, <https://doi.org/10.37876/adhki.v1i1.4>.
- ¹⁴ Winengan Winengan, "Politik Hukum Keluarga Islam Di Aras Lokal: Analisis Terhadap Kebijakan Pendewasaan Usia Pernikahan Di Nusa Tenggara Barat," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 1 (2018): 1–12, <https://doi.org/10.14421/ahwal.2018.11101>.
- ¹⁵ Yusuf Hanafi, "Kontroversi Usia Kawin Aisyah Ra Dan Kaitannya Dengan Legalitas Perkawinan Anak Di Bawah Umur Dalam Islam," *Jurnal of Islamic Law/Jurnal Hukum Islam* 15, no. 2 (2016): 163–334.
- ¹⁶ Ahmad Asrori, "Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Muslim," *Al-'Adalah* 12, no. 2 (2015): 807–26, <https://doi.org/10.24042/adalah.v12i2.215>.
- ¹⁷ Moh Hatta, "Batasan Usia Perkawinan Dalam Perspektif Ulama Klasik Dan Kontemporer," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 19, no. 1 (2016): 66–88, <https://doi.org/10.15642/alqanun.2016.19.1.66-88>.
- ¹⁸ Zul Atril, 'Kontroversi Batas Usia Sebagai Salah Satu Syarat Dalam Perkawinan Antara Perundang-Undangan Perkawinan Dengan Fikih', *Proceeding LAIN Batusangkar*, vol. 1, no. 2 (2020), pp. 249–54.
- ¹⁹ Holilur Rohman, "Batas Usia Ideal Pernikahan Perspektif Maqasid Shariah," *Journal of Islamic Studies and Humanities* 1, no. 1 (2017): 67–92, <https://doi.org/10.21580/jish.11.1374>.
- ²⁰ Elkhairati Elkhairati, "Pembatasan Usia Perkawinan (Tinjauan Undang-Undang Dan Maqashid Asy-Syari'ah)," *Al-Istinbath: Jurnal Hukum Islam* 3, no. 1 (2018): 87–106, <https://doi.org/10.29240/jhi.v3i1.403>.
- ²¹ Ali Sodikin and Al-Robin Al-Robin, "Diversity in Determining Maturity Age in Indonesian Law: Maqasid Al-Shar'ah Perspective," *Justicia Islamica* 18, no. 1 (2021): 97–114, <https://doi.org/10.21154/justicia.v18i1.2621>.

from the perspective of *maqāṣid syarīah*. This paper attempts to describe Husein Muhammad's interpretation which states that Aisha's age when she married the Prophet was 18 years, not nine years. In addition, how Husein Muhammad put *maqāṣid syarīah* as the foundation of his reasoning.

To answer the research problems above, the authors conducted library research. First, the author collects data by examining Husein Muhammad's literature, followed by his actions in advocating *fiqh* oriented to women's interests. In addition to understanding Husein's works directly, the author collects indirect data by evaluating the academic works of academics who examine Husein Muhammad's ideas, particularly on issues relating to the age of marriage and Islamic marriage law in general. After collecting data, the author examines how Husein positions *maqāṣid syarīah* as the basis for his interpretation of argumentation. The results of this analysis are then detailed qualitatively in this paper.

Discourse on Minimum Age for Marriage: The Debate on *Balig* and Marriage Age

Classical *fiqh* books mention young marriage with the term *nikāḥ al-ṣaghīr/al-ṣaghīrah*, *qaṣirat* marriage. The opposite is *al-kabīr/al-kabīrah*. In comparison, the new *fiqh* books call it *al-ṣawāj al-mubakkīr* (early marriage).²³ *Ṣaghīr/ṣaghīrah*, literally means small. However, what is meant here is that men/women who are have not reached the ideal age or are yet *bāligh* (adult). *Bāligh* is marked in two ways. First is biological sign. In men, puberty is marked by *ihṭilām*, a wet dream. In woman, the maturity is marked by menstruation (*ḥaid*). If there are no biological indications, then *bāligh/bālighah* is determined based on age. The question is what is the minimum age limit for boys and girls? In this case, scholars have different views. Abu Yusuf, Muhammad bin Hasan, Imam al-Shafi'i, and Ahmad bin Hanbal all list 15 as the minimum age for both. Meanwhile, Imām Abu Hanifah argues that the age of puberty for men is 18 years and for women 17 years.²⁴

According to Husein Muhammad, the various views of *fiqh* scholars regarding the minimum age limit for a person's maturity in marriage are a source of reference for

²² Faisol Rizal, "Hak Kawin Muda Dalam Islam Sebuah Refleksi KH. Husein Muhammad," *Tafaqquh: Jurnal Penelitian Dan Kajian Keislaman* 8, no. 2 (2020): 260–73, <https://doi.org/10.52431/tafaqquh.v8i2.342>.

²³ Muhammad, *Fiqh Perempuan; Refleksi Kiai Atas Wacana Agama Dan Gender*.

²⁴ Muhammad.

legislation in the Islamic world. The minimum marriage age differs among Islamic nations.²⁵ Syria's Marriage Law stipulates 18 for men and 17 for women. This is stated in Article 16 of Syria's Marriage Law that for a man, the skill in marriage is at the age of 18 years, and for a woman, at the age of 17 years. In contrast, the Indonesian Marriage Law, No. 1/1974 Article 7 (before the judicial review) states that the minimum age for marriage is 16 years for women and 19 years for men.²⁶ However, later according to Law no. 16 of 2019, the minimum age for marriage in Indonesia is 19 years for both men and women.

Outside of these two countries, minimum marriage ages vary as well. In Morocco, Mudawwana 2004, article 19 specifies the same age for men and women, namely 18 years. Marriage under this age is allowed as long as there is a justifiable reason. According to article 20 of this law, a judge has the authority to allow marriage under this age but is required to give reasons for the decision and explain the decision after hearing statements from parents or guardians and assisted by medical experts or after conducting research.²⁷ In Egypt, the minimum age for women to be allowed to marry is 16 years, and for men, 18 years. However, recently, efforts have been made to amend the articles in this law by increasing the age of marriage for women to 18 years. The minimum age in Bangladesh is 18 for women and 21 for males. Algeria's age limit for males and girls is 19. Tunisia is 17 for women and 20 for men. While In Iran, the age of marriage for women is 13, and for men, it is 15. Marriage under this age requires court approval.²⁸ According to Husein Muhammad, most Muslim nations mentioned above have a minimum marriage age of at least 15 years for women. Even in Egypt, there is a fierce debate on how to amend the age of marriage for girls from 16 to 18 for both boys and girls.²⁹

In Indonesia, the debate about the age limit for marriage is inseparable from the high number of cases of child marriage.³⁰ The Indonesian Women's Ulema Congress (*Kongres Ulama Perempuan Indonesia* or KUPI) in 2017 was held at the Kebon Jambu Al-Islamiy Babakan Islamic Boarding School, Ciwaringin Cirebon, on April 25 to 27, 2017³¹. Congress

²⁵ Muhammad.

²⁶ Muhammad.

²⁷ Muhammad.

²⁸ Muhammad.

²⁹ Muhammad.

³⁰ Nazli, "Penguatan Regulasi Dalam Pencegahan Dan Penanggulangan Perkawinan Anak."

³¹ Husein Muhammad is the initiator of KUPI and also a member of the KUPI Deliberative Council. See Husein Muhammad, *Poligami: Sebuah Kajian Kritis Kontemporer Seorang Kiai* (Yogyakarta: IRCiSoD, 2020).

said that child marriage was harmful, so preventing it was required. Several recommendations to the relevant parties also followed the KUPI "Fatwa" statement. One of them is to amend Law No. 1/1974 Concerning Marriage, notably concerning raising the minimum age for a woman to be married from 16 to 18.³² Amending Law no. 1/1974 concerning Marriage was fruitful with the issuance of the Constitutional Court Decision Number 22/PUU-XV/2017. One of the considerations of the Constitutional Court in the decision is "*.....when the difference in treatment between men and women has an impact on or hinders the fulfillment of the basic rights or constitutional rights of citizens, whether they are included in the rights group or not. Civil and political rights, as well as economic, educational, social and cultural rights, should not be distinguished solely on sex, then such a distinction is clearly discrimination.*"³³ In the same consideration, it is also stated that regulation of a different minimum age for marriage between men and women not only creates discrimination in the context of the implementation of the right to form a family as guaranteed in Article 28 B paragraph (1) of the 1945 Constitution but also produces discrimination against protection and protection. Also, the fulfillment of children's rights is guaranteed in Article 28 B paragraph (2) of the 1945 Constitution.³⁴ In this case, when the minimum age of marriage for women is lower than for men, legally, women can start a family faster. Therefore, in its ruling, the Constitutional Court ordered the legislators within three years to make changes to Law Number 1 of 1974 concerning Marriage. Finally, 2019 Law Number 16 of 2019, concerning Amendments to Law Number 1 of 1974 concerning Marriage, was enacted.

³² See <https://www.rappler.com/world/bahasa-indonesia/kongres-ulama-perempuan-perempuan-menikah-minimal-18-tahun>, accessed at December 3, 2020. See Nur Shofa Ulfiyati, "Pandangan Dan Peran Tokoh Kongres Ulama Perempuan Indonesia (KUPI) Dalam Mencegah Perkawinan Anak," *Journal de Jure* 11, no. 1 (2019): 23–35, <https://doi.org/10.18860/j-fsh.v11i1.6488>.

³³ See the details of this review of the Constitutional Court's (MK) decision on Hadi, "Putusan Mk No. 22/PUU-XV/2017 Tentang Permohonan Judicial Review Pasal 7 Ayat (1) Uu No. 1 Tahun 1974 Tentang Usia Perkawinan Dalam Perspektif Masalah."

³⁴ Article 28 b, paragraph (1) "Everyone has the right to form a family and continue their offspring through a legal marriage," and Article 28B paragraph (2) "Every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination." On the other hand, Article 7 paragraph (1) of Law Number 1 of 1974 states that marriage is only permitted if the man reaches the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years child marriage for girls because in Article 1 point 1 of the Law on Amendments to Law Number 23 of 2002 concerning Child Protection it is defined that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.

Husein Muhammad's Life Story and Contributions

Husein Muhammad is claimed to be a 'male feminist' figure.³⁵ He is interested in the issues regarding women's oppression based on religion, culture, and patriarchal ideology. This attention can be seen from his actions in overcoming various forms of injustice against women in Indonesian society.³⁶ Husein Muhammad often becomes a keynote speaker in various meetings that discuss issues of justice, democracy, and women's empowerment. He has been involved not only domestic event but also abroad. For example, he was a speaker at an international conference themed *Trends in Family Law Reforms in Muslim Countries* in Kuala Lumpur. Previously, Husein Muhammad was also invited to Dhaka, Bangladesh, for an international conference. He also once taught a course by Nasr Hamid Abu Zayd, even though Zayd was not absent then. Zayd just wanted to see the caretaker of the Dar al-Tauhid Islamic boarding school in Cirebon enlighten his students.³⁷

³⁵ Differences in defining the term feminism often affect understanding of feminism itself. Yunahar Ilyas, for example, defines feminism as “awareness of gender injustice that afflicts women, both in the family and society and conscious actions by women and men to change this situation”. See Yunahar Ilyas, *Feminisme Dalam Kajian Tafsir Al-Qur'an: Klasik Dan Kontemporer* (Yogyakarta: Pustaka Pelajar, 1997). The word feminism comes from Latin, namely *femina* which in English is translated into feminine, which means having feminine characteristics. Then the word was added *ism* to become feminism, which means (the thing) understanding of women. The term first appeared in 1895, and since then feminism has become widely known. See Tuttle Lisa, *Encyclopedia of Feminism, New York: Facts of File Publication* (New York: Facts of File Publication, 1986). See also John M Echols and Hassan Shadily, *Kamus Inggris Indonesia, XIX* (Jakarta: PT Gramedia Pustaka Utama, 1996). Apart from being a movement (women liberation), feminism is also a method of analysis (point of view) in assessing the existence of women in a society and their relationship patterns. See Wafda Vivid Izziyana, “Pendekatan Feminisme Dalam Studi Hukum Islam,” *Istawa: Jurnal Pendidikan Islam* 2, no. 1 (2017): 139–58, <https://doi.org/10.24269/ijpi.v2i1.366>.

³⁶ According to Nuruzzaman, Husein Muhammad's awareness of the oppression of women emerged when in 1993 he was invited to a seminar on women in the view of religions organized by P3M Jakarta. Masdar F. Mas'udi was the director at that time, and he always invited Husein Muhammad to 'realize' religion. Husein Muhammad himself admitted that Masdar was the first to introduce critical religious ideas, including the issue of subordination of religious texts to women. See Muhammad Nuruzzaman, *Kiai Husen Membela Perempuan* (Yogyakarta: Pustaka Pesantren, 2005).

³⁷ In 2008, an *International Course for Quranic Exegesis* was held at the University of Muhammadiyah Magelang (UMM). The main speakers were Nasr Hamid Abu Zayd and Ali Mabrouk while the guest speakers were Husein Muhammad. Hearing Husein Muhammad's presentation, Nasr Hamid Abu Zayd and Ali Mabrouk were not only amazed by Husein Muhammad's memorization of various views of classical scholars, but also Husein Muhammad gave an example to Nasr Hamid Abu Zayd and Ali Mabrouk that in fact many views of classical scholars were actually very enlightening if read with the right approach and useful for today. See Ali Mursyid, “Husein Muhammad: Berfikir Maju dan Cerdas dengan Tetap Berpijak pada Turats” In Abdul Rosyidi, *Kiai Husein: Feminis dan Pemikir Islam Post-Tradisionalis di Mata Sahabat dan Santrinya* (Cirebon: Yayasan Fahmina, t.t.) pp. 101-102. See also, Mansur Zahri, “Kiai Husein Muhammad:

As a kind of protection against women, Husein Muhammad launched the Fahmina Institute in November 2000. Together with Sinta Nuriyah Abdurrahman Wahid, Mansour Fakih, and Mohamad Sobari, he established the Women's Empowerment Islamic Boarding School '*Puan Amal Hayati*' on July 3, 2000. In addition to establishing the RAHIMA Institute and the Interfaith Forum in 2000, he was appointed to the Expert Team of the Indonesian Forum of Parliamentarians on Population and Development three years later. Subsequently, in 2005, Husein Muhammad joined the board of The Wahid Institute Jakarta. Also, he is recognized as a member of the National Board of International Center for Islam and Pluralisme (ICIP). In addition to being designated as a Commissioner at Komnas Perempuan (National Commission of Women) and a consultant for the Balqis Foundation (*Yayasan Balqis*) for women's rights, Husein Muhammad spends his daily life writing various books and articles.³⁸

Ichwan's comparison of Husein Muhammad to transnational feminists such as Qasim Amin, Tahir Haddad in Tunisia, Asghar Ali Engineer in India, and Nasr Hamid Abu Zayd in Egypt is not surprising, given the description of Husein Muhammad's persona and character in the previous section. Not surprisingly, Abdalla also referred to him as "the scavenger of marginalized truth."³⁹ Husein Muhammad is one of the scholars who live

Pewaris Semangat Intelektualisme dan Aktiwisme Ulama-Ulama Salaf' in K H Husein Muhammad, *Spiritualitas Kemanusiaan* (Yogyakarta: IRCiSoD, 2021)..

³⁸ The list of published book are *Fiqh Perempuan, Refleksi Kiyai atas Wacana Agama dan Gender* (LKiS, Yogyakarta, 2001), *Islam Agama Ramah Perempuan, Pembelaan Kiyai Pesantren* (LKiS, Yogyakarta, 2005), *Spiritualitas Kemanusiaan, Perspektif Islam Pesantren*, (LKiS Yogyakarta, 2005). *Ijtihad Kyai Husein; upaya membangun keadilan* (2011), *Mengaji Pluralisme maha guru pencerahan*. While the collection or book chapter there are *Dawrah Fiqh Perempuan, Modul Kursus Islam dan Gender*, (Fahmina Institute, Cirebon, 2006), *Fiqh Anti Trafiking, Jawaban atas Berbagai Kasus Kejahatan Perdagangan Manusia dalam Perspektif Hukum Islam*, (Fahmina Institute, Cirebon, 2009), *Fiqh HIV Dan Aids, Pedulilah Kita*, (PKBI-Jakarta), *Kembang Setaman Perkawinan*, (Kompas, Jakarta). Apart from books, Husein Muhammad's articles were also spread in various media, both local and national and even international. He is also often invited to provide comments and introductions to various books. No one doubts the persistence of her struggle in defending women's rights. In fact, he does not hesitate to criticize books or books that are considered to discriminate against women. Together with *Forum Kajian Kitab Kuning*, for three years he discussed the content and re-examined the quality of the hadith contained in the book of *Uqud al Lujain fi Huquq al Zaujain*. As a result, he found 33% of *Maudu'* hadith, 22% of *doijs*' traditions, the rest are *Hasan* and *Sahih*, but from the point of view it is still debatable. The research was published under the title *Ta'liq wa Takbrif Syarh Uqud al Lujain* (LKiS, Yogyakarta, 2001).

³⁹ Regarding this nickname, the author received confirmation directly from Husein Muhammad who stated that he was always looking for useful and intelligent thoughts even though they were not used by the community, and they thought it was wrong. In another expression, Husein Muhammad stated that the

under the hegemony of the general perspective of the Indonesian people, which leads to discrimination against the human rights of Indonesian citizens. However, he shows views that are against and contrary to the idea in general. He even expressly shows his alignment with the seeding of Human Rights (HAM) ideas. He even demonstrates his explicit support for Human Rights concepts. In addition to generating discourses regarding the protection of human rights based on the reading of the Qur'an, he also made numerous attempts to advocate for the human rights of social groups in Indonesia that are subject to discrimination. In conclusion, Husein Muhammad was highly critical and an advocate. In conclusion, Husein Muhammad was highly critical and an advocate.⁴⁰

Departing from the two legal facts and legal theory of thought above, Husein Muhammad made efforts to transform thoughts as well as practical advocacy related to the formulation and determination of the age limit for marriage in the form of laws and regulations in Indonesia. Among Husein Muhammad's transformative and advocating efforts was his active role in the Indonesian Women's Ulama Congress (KUPI) in 2017. One of the KUPI fatwas from congress stated that child marriage was proven to bring harm. Therefore, preventing child marriage was mandatory. KUPI's "fatwa" statement was also followed by several recommendations to the relevant parties (the Indonesian government). One of the recommendations is to amend Law no. 1/1974, specifically related to the minimum limit for a woman to be married from 16 to 18 years.⁴¹ Based on the recommendation of the KUPI fatwa, at the end of 2017, the Constitutional Court then granted a *judicial review* in the form of an amendment to Law no. 1/1974 concerning marriage, especially Article 7 paragraph (1).

Not only through KUPI, but Husein Muhammad is also engaged in transformational and advocacy initiatives linked to extending the marriage age restriction in laws and

truth that is marginalized [by social, cultural, political, and other systems] is better than the error that is popular in society). Husein Muhammad. Interview at September 17, 2020.

⁴⁰ This critical-advocative reading of Al-Qur'an is one of the three frameworks of Husein Muhammad's ideas on the principles of Al-Qur'an interpretation integrated with human values (*mabadi' al-tafsir bi al-qiyam al-insaniyyah*). See Mohamad Sobirin, "Perlindungan Hak Asasi Manusia dan Pembacaan Al-Qur'an Kritis Advokatif Husein Muhammad", *Dissertation* Doctoral Program (S3) Postgraduate Islamic Studies UIN Sunan Kalijaga Yogyakarta (2019), pp. xiii, 9, and pp. 271-272.

⁴¹ See <https://www.rappler.com/world/bahasa-indonesia/kongres-ulama-perempuan-perempuan-menikah-minimal-18-tahun> Accessed on December 3, 2020. See also Ulfiyati, "Pandangan Dan Peran Tokoh Kongres Ulama Perempuan Indonesia (KUPI) Dalam Mencegah Perkawinan Anak."

regulations through the Non-Governmental Organizations (NGOs) he supports, including the Fahmina Institute, Rahima, and others. In addition, he is frequently invited to serve as a resource at various national and international conferences and workshops. Among them are National Seminars conducted in Lasem and Semarang, and he has served as a keynote speaker in national forums established by the Ministry of Religion of the Republic of Indonesia concerning the regulation of the marriage age restriction. Even at the forum, he was surrounded by specialists from different scientific disciplines, such as medical professionals and psychologists. In the end, Husein Muhammad's transformational and advocacy efforts culminated in the promulgation of Law no. 16 of 2019 regarding Amendments to Law no. 1 of 1974 concerning Marriage, particularly pertaining to the minimum age for marriage to 19 years for both men and women.⁴²

Characteristics of Husein Muhammad's Thoughts on the Minimum Age for Marriage: Maturity Interpretation

According to Husein Muhammad, marriage under the age of 15 years, 16 years, or 17 years for women, at present, is seen as not bringing goodness (*maṣlahāt*) to women in education, physical ability to work, ability to act in transactional matters, and especially from the aspect of reproductive health. For him, considering these aspects is significant and can create benefits for both women and men, as well as the future of the nation and state.⁴³ In order to strengthen his argument, Husein Muhammad quoted Gamal Surour's statement:

“At a young age, there is the possibility of things that are worrying if there is a pregnancy. Based on health data, it was found that pregnant women under the age of 18 are very susceptible to health problems, such as poisoning, difficulties in childbirth due to incomplete development of the hip bones (pelvis), the potential for abortion, potential for fetal death in the womb, premature birth. ...”⁴⁴

Another contemporary thinker quoted by Husein Muhammad is Sa'duddin Hilali, who said:

"Al-Qur'an is in harmony with society in accordance with its traditions and social character, and it agrees on this age restriction to protect and respect their rights as children and does not prohibit people who have reached the age of marriage from

⁴² Husein Muhammad. Interview at January 6, 2021.

⁴³ Muhammad, *Fiqh Perempuan; Refleksi Kiai Atas Wacana Agama Dan Gender*.

⁴⁴ Muhammad.

marrying. (Enforcement) the age limit varies in each era, and its location depends on human civilization's point of view. The standard of the age limit for marriage following Islamic law depends on the community itself. Whether it is raised or reduced depends on the benefit and efforts to avoid *mafsadat* itself. Therefore, it is mandatory for all parties to follow the new legislation, raising the age limit for marriage from 16 to 18 years.”⁴⁵

In line with Sa'duddin Hilali, Husein Muhammad argued for the statement of Ahmad Karimah, professor of the Department of Sharia Islamiyah, Al-Azhar University, that the age limit for marriage is under Islamic law with the following rationale: "*Indeed the most rājih (prominent) opinion of Hanafi, that is, the girl is not legal to transact in a syar'i and proper manner unless she is over 18 years of age.*"⁴⁶ According to Husein Muhammad, if Sa'duddin Hilali had spoken, other scholars would have followed his statement, considering that Hilali was the most authoritative figure. He is an expert who has formulated fatwas at the Al-Azhar and Egypt fatwa councils since the era of mufti Ali Jum'ah. In 2010, a local legal aid agency lawyer protested the mufti, believed to be someone with the power to issue fatwas, regarding the marriage of a 14-year-old girl in southern Geza. Shayḥ Ali Jum'ah replied that *ḡawāj al-ṡighār* (child marriage) is the sexual exploitation of children, and everyone involved in the marriage contract process must be punished, including the perpetrators, parents, legal experts, and liaisons.⁴⁷

There are 23 verses in Al-Qur'an that discuss marriage. No one explains the age limit for marriage explicitly. However, if examined further, there are at least three verses relating to a person's eligibility to marry: An-Nūr (24): 32 and 59, and An-Nisā (4): 6.⁴⁸ Tafsir Ibn

⁴⁵ Muhammad.

⁴⁶ Muhammad.

⁴⁷ Muhammad.

⁴⁸ Asrori, "Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Muslim." If we examine in depth various verses of Al-Qur'an related to marriage, then in fact there is one character of family law reform carried out by Al-Qur'an or rather the reconstruction of the legal system (family). Ali Sodiqin explained that there are at least three kinds of Al-Qur'an reformation characters, namely (1) Deconstruction of the belief system, (2) Transformation of modernity values, and (3) Reconstruction of the legal system. Furthermore see Ali Sodiqin, *Antropologi Al-Qur'an*, Yogyakarta: Arruz Media Group (Yogyakarta: Arruz Media Group, 2008); Ali Sodiqin, "Antropologi Hukum Sebagai Pendekatan Dalam Penelitian Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 7, no. 1 (2013): 115–26, <https://doi.org/10.24090/mnh.v7i1.581>; Ali Sodiqin, "Reformasi Al-Qur'an Dalam Hukum Perceraian: Kajian Antropologi Hukum Islam," *Al-Mazaahib: Jurnal Perbandingan Hukum* 2, no. 2 (2012): 261–84, <https://doi.org/10.14421/al-mazaahib.v2i2.1369>.

Kašīr explains that An-Nūr (24): 32 is an order to marry as, according to some Islamic scholars, it is mandatory for those who are able to marry. Furthermore, the word *aṣ-ṣālīḥīn* in verse, according to Al-Maraghy, are men or women who can marry and exercise the rights of husband and wife, such as being in good health, having property, and others. Meanwhile, Shihab interprets the word *aṣ-ṣālīḥīn* in verse as someone who is mentally and spiritually able to build a household, not meaning who is merely religious terms, because the function of marriage requires not only material preparation but also mental and spiritual preparation, both for male and female candidates.⁴⁹

The term 'maturity' for marriage is then implicitly mentioned in two verses, An-Nūr (24): 59 and An-Nisā (4): 6. Maturity in these two verses is called *bāliḡh* and *rusydan*. Adulthood (*bāliḡh*) for men is marked by 'wet' dreaming (*iḥtilām*), while for women is marked by menstruation and pregnancy. According to Tafsir Al-Misbah, the fundamental meaning of *rusydan* is the straightness and precision of the path, but the meaning of the word *rusyd* for humans is the perfection of reason and soul that enables them to conduct and act as precisely as possible.⁵⁰ According to Al-Maraghy, maturity (*rusydan*) is when a person understands how to use wealth appropriately and correctly. Meanwhile, *bāliḡh al-nikāh* is if a person's age is ready for marriage. It means someone who is not yet an adult is not burdened with specific problems. In contrast to Al-Maraghy, Rasyid Riḍā noted that the term *bāliḡh al-nikāh* signifies the age of a person to marry at the time of 'dreaming'; at this age, a person has been able to give birth to children and offspring; therefore, this person is motivated to marry. Religious law is also imposed on such worship and *mu'āmalah*, as well as the implementation of *ḥudūd*. Therefore, *rusydan* is a person's appropriateness in *taṣarruf* and brings goodness. Even if they are still lay and religiously ignorant, they are adept at being good at *taṣarruf* and utilizing wealth.⁵¹

Husein Muhammad stated that the vast majority of *fiqh* scholars authorized child marriage. According to them, puberty and the ability to reason are not prerequisites for the legality of a marriage. Among the reasons presented are the following:⁵² First, Al-Ṭalāq verse 4, talks about the '*iddah*' (waiting period) for women who have menopause and those

⁴⁹ Sodiqin, *Antropologi Al-Qur'an*.

⁵⁰ Sodiqin.

⁵¹ Sodiqin.

⁵² Muhammad, *Fiqh Perempuan; Refleksi Kiai Atas Wacana Agama Dan Gender*.

who have not menstruated. Period of *'iddah* for this group of women is three months. So, according to them, indirectly, this verse also implies that marriage can be carried out on young women (young age) because *'iddah* can only be applied to people who are married and divorced. Second, the verse of Al-Qur'an, Al-Nūr verse 32 mentioning the word *'al-ayāmā* includes adult women and young women. This verse explicitly allows or even recommends the guardian to marry them. Third, the narrations of Al-Bukhāri, Muslim, Abū Dāwud, and al-Nasāī mention the marriage of the Prophet with Aisha. "*The Prophet married me when I was six and lived with me when I was nine years old.*" The Prophet also married his uncle's daughter (Hamzah), Abū Salamah's son. Both at that time were still young age. Fourth, among the companions of the Prophet, some marry their sons and daughters or nephews. 'Ali bin Abi Talib married his daughter Ummi Kulṣūm to 'Umar bin Khaṭṭāb. Ummi Kulṣūm was also young at that time. 'Urwah bin Zubair also married his sister's daughter to another brother's son. Both nieces and nephews are both minors (under marriage age).⁵³

In contrast to the views of the majority of scholars previously are the opinions of Ibn Syubrumah, Abu Bakr al-Asyām, and Uṣmān al-Batti. According to Husein Muhammad, these three scholars believe that it is not legal for a man or woman to be married. They can only be married after puberty and through their explicit consent. They use Al-Qur'an verses, following surah al-Nisā verse 6 and Al-An'am verse 152.⁵⁴ Muqatil bin Sulaiman interprets the word "until strong or mature" by mentioning the age of 18 years. Al-Kalbi converts a strong/mature age between 18 to 30 years. Ibn Abbas said he was an 18 years old. According to the three *fiqh* experts, if these young children are allowed to be married before puberty, then what is the meaning of this verse? Ibn Syubrumah said that fathers should not marry their young daughters in marriage unless they have reached puberty and allow it.⁵⁵

According to Husein Muhammad, in various arguments about underage marriage or child marriage, the marriage of Aisha with the Prophet Muhammad is the argument that is most often mentioned. The hadith about Aisha's marriage is used in every conversation

⁵³ Muhammad.

⁵⁴ Muhammad.

⁵⁵ Muhammad.

and discourse regarding this issue by those who support early marriage.⁵⁶ This source of information (hadith) about Aisha's marriage in Islamic scientific disciplines has a very strong level of authenticity and validity because it was conveyed by Imam Bukhari and Muslim, two leading and unrivaled hadith experts. On this basis, most Muslims in various parts of the world agreed without any notes. Even though Ibn Syubrumah, a great mujtahid, disapproved of underage girls' marriage, he only accepted Ayesha's marriage. He argues that it is a mere exception or a specialty for the Prophet himself, which cannot be applied to his people. However, it is interesting that recently, Ayesha's statement about the age of her marriage to the Prophet has received sharp criticism from several scholars, including an expert on hadith from India, namely Habib Ar-Rahman Siddiqi al-Kandahlawi. Al-Kandahlawi argues that Aisha was between not less than 18 years when she married the Prophet. This opinion is based on tracing her life history.⁵⁷

If we trace the historical sources of Aisha,⁵⁸ according to Husein Muhammad, we find Imam Nawawi in the book of *Tahzīb al-Asmā, wa al-Lughab*, which states that Asma *binti* Abu Bakr⁵⁹ (Aisha's sibling) converted to Islam first after 17 people. Asma is older than Aisha. Maulana Habib al-Rahman Siddiqi Al-Kandahlawi then quoted Abdurrahman ibn Abi Zannad's statement, saying that Asma was 10 years older than Aisha. He also quoted Al-Hafizh Abu Na'im, who said that Asma was born 27 years before the Prophet migrated. According to Ibn Hajar Al-Asqalani, Asma lived to be 100 years old and died in 73 H (Al-Asqalani, *Taqrib al-Tahzīb*, p. 654). It means that if Asma died at the age of 100 years and in 73 H, then Asma was 27 according to *hijrah* time, so Aisha was $27-10 = 17$ years at the time. If the Prophet married Aisha one or two years after being in Medina, Aisha's marriage age would be 18 or 19 years. Another analysis states that Aisha was born when the Prophet was 36 years old. Four years later, he was appointed as a prophet and a messenger. After 13 preaching in Mecca, he moved to Medina. So Aisha's age at the time of the *hijrah* was 17. A year later, she married the Prophet. So when she married, Aisha was 18

⁵⁶ Yusuf Rahman, "Feminist Kyai, KH Husein Muhammad: The Feminist Interpretation on Gendered Verses and the Qur'an-Based Activism," *Al-Jami'ah: Journal of Islamic Studies* 55, no. 2 (2017): 293–326, <https://doi.org/10.14421/ajis.2017.552.293-326>.

⁵⁷ Muhammad, *Fiqh Perempuan; Refleksi Kiai Atas Wacana Agama Dan Gender*.

⁵⁸ For a detailed further discussion of the life history of Aisha, see K H Husein Muhammad, *Perempuan Ulama Di Atas Panggung Sejarah* (Yogyakarta: IRCiSoD, 2020).

⁵⁹ For a detailed further discussion of the life history of Asma bint Abu Bakr, see Muhammad.

years old. This last view is still very controversial in the Muslim world today. However, according to Husein Muhammad, it is more sympathetic and in line with benefit and reproductive health principles.⁶⁰

Husein Muhammad's transformation of the *fiqh* notion of the marriage age restriction must be considered when educating the broader community about the significance of paying attention to the minimum and ideal marriage age for both men and women (18 or 19 years or older). This is intended to help people accomplish the aims of marriage in their daily lives. According to Husein Muhammad, several scholars, while still agreeing on the age of Aisha's marriage as in the hadith as the previous study, put forward the argument of tradition (*'urf*) or sociological context. Underage marriages, as happened to Aisha, were common in the past. The tradition of the period authorized early marriage, according to Nadir Syah. Moreover, this happened not only in Arab society then but throughout the world, such as in Rome, medieval Europe, and the Chinese empire.⁶¹ Husein Muhammad stated that Shah's argument is inaccurate because Aisha's marriage to the Prophet Muhammad was not at an early age (6 years or 9 years) as historical facts related to the age and life of Aisha and her sister, Asma.⁶² At this point, based on Husein Muhammad's statement, we can see that there are two legal facts regarding the age limit for marriage, namely (1) the law established based on the *ijtihad* of the *fiqh* experts according to the opinion of the majority of *fiqh* scholars and Ibn Syubrumah and his friends, and (2) the law established by the constitution, such as the Syrian, Egyptian Marriage Law, and the Indonesian Marriage Law (No. 1/1974 and Law No. 16/2019).⁶³

In the theory of Islamic legal thought, according to Husein Muhammad, the product of *fiqh* thought has the status of a fatwa whose existence is not binding and compels everyone. It can be binding and coercive if it has become an opinion agreed upon by all *mujtahid ijma'*. Alternatively, at least, it is not known that there are scholars who have another opinion. If other *mujtahids* have different opinions, there is still an opportunity to vote. It is different from when the opinions of legal experts have become laws/constitutions or *qanūn*. Alternatively, if the legal product is decided by a court, it is a

⁶⁰ Muhammad, *Fiqh Perempuan; Refleksi Kiai Atas Wacana Agama Dan Gender*.

⁶¹ Muhammad.

⁶² Husein Muhammad. Interview at January 6, 2021.

⁶³ Muhammad, *Fiqh Perempuan; Refleksi Kiai Atas Wacana Agama Dan Gender*.

court decision (*qada*). Legislation-based court judgments are binding and remove disagreements. It is under the rules of legal experts: *ḥukmul qāḍī yarfa' al-khilāf* (the judge decides to force/bind and negate differences).⁶⁴

The Relevance of Husein Muhammad's Thoughts to the Purpose of Sharia

The primary basis of Husein Muhammad's thinking in reconstructing gender equality through reading the Qur'an is the concept of *tauhīd* (Islamic monotheism) as it is known that the first scholar who put forward the concept of monotheism related to gender relations was Wadud with the term *tauhīd* paradigm (*tauhīdic paradigm*).⁶⁵ Husein Muhammad, in his book *Ijtihād Kyai Husein*, stated that reconstructing a new understanding of gender relations is a task to uphold the principle of *tauhīd*.⁶⁶ In a different work, Husein Muhammad argues that equality is a logical consequence of *tauhīd*, the belief in the Oneness of Allah.⁶⁷ All humans with all different backgrounds come from the same source. He further emphasized that the proclamation of *tauhīd* had individual and social dimensions. Finally, he emphasized that all humans are equal in the name of God and must obey God and no one else.⁶⁸

In addition to the principle of *tauhīd*, Husein Muhammad based his thoughts on gender equality on universal Islamic values, such as justice (*'adālah*), equality (*musāwāh*), tolerance (*tasāmuh*), and peace (*iṣlāh*). On another occasion, he includes in these universal values five basic rights, known as *al-kullīyyāt al-khams* (five principles) proposed by Al-Ghazālī, namely the right to religion (*ḥifẓ al-dīn*), the right to physical welfare and life (*ḥifẓ al-naḥs*), the right to knowledge or opinion (*ḥifẓ al-aql*), offspring/reproductive rights (*ḥifẓ al-*

⁶⁴ Muhammad.

⁶⁵ See Amina Wadud, *Inside the gender jihad: Women's reform in Islam* (Oxford: Oneworld, 2006); Amina Wadud, "The Ethics of Tawhid over the Ethics of Qiwamah," in *Men in Charge*, ed. Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumminger (London: OneWorld Publications, 2015), 256–74.

⁶⁶ Husein Muhammad et al., *"Ijtihad Kyai Husein": Upaya Membangun Keadilan Gender* (Jakarta: Rahima, 2011).

⁶⁷ The consequence of this principle of monotheism is that humans are required to respect each other's existence and are also required to fight together for efforts to uphold goodness, truth, and justice among humans. Every human being also has the same rights and obligations to live the life he wants without any interference from anyone. In other words, humans are prohibited from degrading, exploiting, and tyrannizing each other. See Muhammad Husein, *Perempuan, Islam & Negara: Pergulatan Identitas Dan Entitas* (Yogyakarta: Qalam Nusantara, 2016).

nasl/al-'ird), and the right to wealth/social welfare (*hifẓ al-māl*). These are, according to Husein Muhammad, the universal ideals of Islam, which he sees as the central message of the Mecca verses of Al-Qur'an. He stated, "Texts from the Meccan period are mostly concerned with describing and defining monotheism and universal human values, such as equality, justice, freedom, plurality, and human dignity." On the other hand, the Medina period manuscripts deal with practical rules for people like those in Medina at that time, both for people who converted to Islam and those who followed other religions.⁶⁹

The explanation above shows certain characteristics in Husein Muhammad's thinking when producing a discourse on legal provisions.⁷⁰ As is well known, marriage between a man and a woman is also designed to ensure the continuation of healthy human life/offspring (*hifẓ al-nasl*), develop a loving family life between the husband and wife, and work together for the greater good.⁷¹ The verse of Al-Rūm, 33:21 has clearly stated this. This goal can only be achieved through the fulfillment of a number of aspects, including the physical ability to be ready to work, act in social and economic affairs, adequacy of the ability to think and be responsible, and last but not least, consideration of reproductive health aspects. Based on the objectives of the existence of marriage, according to Husein Muhammad, the minimum age for a person's marriage should not be less than 18 years.⁷² In order to strengthen his opinion, Husein Muhammad based his opinion on the principles of *fiqh*:

If benefit and harm come together, then if the benefit can be achieved and the damage is avoided, we do it because we carry out Allah's commands. If it is difficult to avoid damage and bring benefit, then if the damage is greater than the benefit, we avoid damage and allow the loss of benefit. If the benefit is greater than the damage, then we achieve the benefit by minimizing the damage. If the benefits and harm are

⁶⁸ Rahman, "Feminist Kyai, KH Husein Muhammad: The Feminist Interpretation on Gendered Verses and the Qur'ān-Based Activism."

⁶⁹ Rahman.

⁷⁰ According to Naely Eva Malichah, Sariyatun, and Hermanu Joebagio, there were several thoughts of the figures that also influenced Husein Muhammad's style of thought. The thoughts of the figures in question are: (1) Al-Ghazali's Principles of Humanity, (2) Abdurrahman Wahid's (Gus Dur) Humanism Theory, and (3) Qasim Amin's Theology of Women's Liberation. See Naely Eva Malichah and Hermanu Joebagio, "Pemikiran Husein Muhammad Tentang Perempuan, Islam Dan Negara," in *Otoritas Keagamaan, Politik Dan Budaya Masyarakat Muslim* (Yogyakarta: Graduate Forum Keluarga Mahasiswa Pascasarjana UIN Sunan Kalijaga, 2018), 300.

⁷¹ Muhammad, *Fiqh Perempuan; Refleksi Kiai Atas Wacana Agama Dan Gender*.

⁷² Muhammad.

the same, then sometimes we are asked to choose, sometimes we are postponed, and sometimes there is a difference in the level of damage.”⁷³

Maintaining the benefit of society in general, according to Husein Muhammad, is the state's obligation. This is in accordance with the rules “The government's policy for its people is to protect their well-being”. The concept of *yaḥẓu ẓarī'ah* (preventing harm/damage/badness) is a viable solution appropriate to apply in the context of the age limit of marriage, according to Husein Muhammad, if it is observed that many cases of abuse/harm result from marriages that take place when the bride is under 19 years of age.⁷⁴ The minimum age limit is 19 years for women and men to marry, according to the *maqāṣid ṣyarīah* perspective. The purpose of marriage as an effort to maintain the continuity of human life/descendants (*ḥifẓ al-nasl*) will not possibly be appropriately realized if their age is still underage and their level of maturity and physical maturity is low. Therefore, prioritizing the safety of their souls (*ḥifẓ al-naḥs*) by not marrying at an early age (under the age of 19 years) is much more critical and primary (*ḍarūrī*). Therefore, according to Husein Muhammad, prioritizing the soul's salvation (*ḥifẓ al-naḥs*) or the right to life is far more essential than merely offspring (*ḥifẓ al-nasl*).⁷⁵

Conclusion

The purpose of marriage is to maintain the continuity of healthy human life/offspring (*ḥifẓ al-nasl*), establish a household life filled with love between husband and wife, and help each other between two for the common good. According to Husein Muhammad, these goals can only be attained through the fulfillment of a number of interrelated aspects, namely the aspect of physical ability to be ready to work, the ability to act for social and economic affairs, the adequacy of the ability to think and be responsible, and lastly, a consideration of aspects of reproductive health. Based on the objectives of the existence of marriage, according to Husein Muhammad, the minimum age for a person's marriage should not be less than 18 years.

⁷³ Muhammad.

⁷⁴ Muhammad.

⁷⁵ According to Husein Muhammad that in fact al-Ghazali himself did not explain whether the order of *al-kulliyāt al-ḥams* (five basic universal rights) was based on the logic of thinking priority or not, but simply collected it, so that the priority choice was left to and in its own context. See K H Husein Muhammad, *Dialog Dengan Kiai Ali Yafie* (Yogyakarta: IRCiSoD, 2020).

The facts show that child marriage is still a live and massive practice in society. One of the arguments is the existence of hadith literature about the marriage of Aisha (age 6 years/9 years) to the Prophet Muhammad. This source of information (hadith) about Aisha's marriage in Islamic scientific disciplines has a very strong level of authenticity and validity because it was conveyed by Imam Bukhari and Muslim, two leading hadith experts. On this basis, most Muslims in various parts of the world agree without any notes. Based on his study and reinterpretation, Husein Muhammad decided that Aisha was 18 years old when she married the Prophet. In this context, Husein Muhammad's perspective differed from the religious establishment. The reinterpretation of the marriage age limit carried out by Husein Muhammad can be a bridge to overcome the gap and inequality between religious ideals and social reality that occurs because of the inability to distinguish between religious texts which mean "universal humanity" and those which mean "contextual humanity." According to Husein Muhammad, this can only be solved by critical intellectual efforts and breaking through religious texts used as guidelines, such as the study of Aisha's marriage age above.

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