

## **MANAGING *BALIGH* IN FOUR MUSLIM COUNTRIES Egypt, Tunisia, Pakistan, and Indonesia on the Minimum Age for Marriage**

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### **Abstract**

In Islamic law, the concept of *baligh* has long been debated among clerics. The debate also appears to have resulted in different rules regarding the minimum age of marriage among Muslim countries. This paper aims to reveal the maturity standard regarding the minimum age of marriage in four Muslim countries: Egypt, Pakistan, Tunisia, and Indonesia. This paper is based on library research and employs a comparative study approach. This paper argues that Egypt, Pakistan, Tunisia, and Indonesia have a different minimum age for

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marriage. In Egypt and Pakistan, the minimum age for marriage is 18 years for men and 16 years for women. However, Pakistan has gone further by instituting legal sanctions if the regulation of the minimum age is violated. In Tunisia, the minimum age for marriage is 18 years for men and women, while in Indonesia it is 19 years for men and women. The determination of the minimum age for marriage is intended for several purposes, including limiting the number of early marriages, reducing the divorce rate, and preparing a strong national generation through the maturity of the marriage age. These interests, from the perspective of Islamic law, are the manifestation of the principle of *maslahah* (fundamentally aimed at achieving goodness and rejecting harm concerning marital life).

[Dalam hukum Islam, konsep balig sudah lama diperdebatkan di kalangan ulama. Perdebatan tersebut juga tampaknya telah menghasilkan aturan yang berbeda mengenai usia minimum pernikahan di antara negara-negara Muslim. Tulisan ini bertujuan untuk mengungkapkan standar kedewasaan mengenai usia minimum menikah di empat negara Muslim: Mesir, Pakistan, Tunisia, dan Indonesia. Makalah ini didasarkan pada penelitian kepustakaan dan menggunakan pendekatan studi komparatif. Tulisan ini berpendapat bahwa Mesir, Pakistan, Tunisia, dan Indonesia memiliki perbedaan usia minimum untuk menikah. Di Mesir dan Pakistan, usia minimum untuk menikah adalah 18 tahun untuk laki-laki dan 16 tahun untuk perempuan. Namun, Pakistan telah melangkah lebih jauh dengan memberikan sanksi hukum jika peraturan usia minimum dilanggar. Di Tunisia, usia minimum untuk menikah adalah 18 tahun untuk pria dan wanita, sedangkan di Indonesia adalah 19 tahun untuk pria dan wanita. Penetapan usia minimal menikah dimaksudkan untuk beberapa tujuan, antara lain membatasi jumlah pernikahan dini, menekan angka perceraian, dan mempersiapkan generasi bangsa yang kuat melalui pendewasaan usia pernikahan. Kepentingan-kepentingan tersebut, dalam perspektif hukum Islam, merupakan manifestasi dari prinsip *maslahah* (menarik kebaikan dan menolak keburukan dalam kehidupan berumah tangga).]

### Keywords

Minimum age for marriage, *baligh*, Muslim countries

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### Introduction

The minimum age for marriage is a significant aspect of legal renewal within the field of marriage, particularly concerning maturity. In modern Muslim countries, the minimum age for marriage represents a dynamic element of legal reforms that signifies ongoing adaptations and responses to societal advancements. Therefore, when implementing legal reforms, it is imperative to consider sociological factors that are rooted in the continuous social dynamics.<sup>1</sup> These social dynamics often necessitate evolutionary or revolutionary legal reforms within a country. This reality aligns with the fact that laws consistently evolve alongside societal progress. Hence, Muslim countries consistently strive to reform laws across various domains, including the age restriction for marriage.<sup>2</sup>

The matter concerning the age restriction for marriage is intrinsically linked to a nation's stance on its priorities, such as population control, poverty alleviation, and the mitigation of adverse effects associated with early marriages, which hinder a country's development. The attitudes displayed by several countries worldwide are connected to legal reforms about the criterion of maturity in establishing the minimum age for marriage. Notably, Egypt stands out as a country that has implemented moderate legal reforms to accommodate contemporary demands and advancements.<sup>3</sup> In addition to Egypt, Pakistan is another country that has undergone legal reforms concerning the age restriction for

<sup>1</sup> Abdullahi Ahmed An-Na'im, "Shari'a and Islamic Family Law: Transition and Transformation," *Abfad Journal* 23, no. 2 (2006): 2–30.

<sup>2</sup> Irem Ebetürk, "Global Diffusion of Laws: The Case of Minimum Age of Marriage Legislation, 1965–2015," *European Journal of Cultural and Political Sociology* 8, no. 3 (2021): 294–328, <https://doi.org/10.1080/23254823.2021.1887749>.

<sup>3</sup> Afiq Budiawan, "Nalar Metodologi Pembaharuan Hukum Perkawinan Di Dunia Muslim," *Jurnal Hukumab* 1, no. 1 (2017): 21–32, <https://doi.org/10.55403/hukumah.v1i1.68>.

marriage after applying CEDAW.<sup>4</sup> Following its independence, Pakistan enacted the Muslim Family Law Ordinance (MFLO) in 1961, which serves as a significant family law legislation.<sup>5</sup> This regulation encompasses legal provisions on the determination of the age restriction for marriage. Similarly, Tunisia is another country that has established regulations concerning the minimum age for marriage.<sup>6</sup> Tunisia took significant steps in reforming its family law by enacting the *Majallat al-Ahwal al-Syakhsbiyyah* number 66 of 1956 (Code of Personal Status). This legislation marked the first instance of formalizing the legal minimum age for marriage in Tunisia.<sup>7</sup> In Indonesia, the process of renewing family law began with the introduction of Marriage Law No. 1 of 1974. This law initiated changes, including revisions to the regulations concerning the minimum age for marriage. These modifications were implemented as part of the Indonesian government's efforts to update the provisions regarding the minimum age for marriage.<sup>8</sup>

The attitudes of these countries in formulating the concept of maturity concerning the minimum age for marriage tend to vary based on their specific needs and demands. These variations can be attributed to diverse interpretations stemming from the Islamic law (*fiqh*) perspectives adopted by each country regarding age-related matters.<sup>9</sup> These differences present intriguing subjects for scholarly investigation, encompassing scientific studies and the evolution of family law. Examining these variations provides valuable insights into the dynamic developmental processes occurring within each country, as well as facilitates comparisons between countries in terms of defining maturity with regard to the minimum age for marriage.

<sup>4</sup> Anita M Weiss, "Interpreting Islam and Women's Rights: Implementing CEDAW in Pakistan," *International Sociology* 18, no. 3 (2003): 581–601, <https://doi.org/10.1177/02685809030183>

<sup>5</sup> M. Atho Mudzhar, "Hukum Keluarga Di Pakistan (Antara Islamisasi Dan Tekanan Adat)," *Jurnal Al-Adalah* XII, no. 1 (2014): 11–24, <https://doi.org/10.24042/adalah.v12i1.165>.

<sup>6</sup> M. Atho Mudzhar, *Hukum Keluarga Di Dunia Islam Modern* (Jakarta: Ciputat Press, 2003).

<sup>7</sup> Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia (Studi Syariah Dalam Konteks Negara-Negara Modern Di Dunia Islam)," *Jurnal Kordinat* XVIII, no. 1 (2019): 194–225.

<sup>8</sup> Euis Nurlaelawati, "Islamic Justice in Indonesia: Family Law Reform and Legal Practice in the Religious Courts," *Asia-Pacific Research Center Bulletin* 9 (2013): 25, <https://rci.nanzan-u.ac.jp/asiapacific/en/journal/item/bn09.pdf>; uis Nurlaelawati and Arskal Salim, "Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia," *Al-Jami'ah: Journal of Islamic Studies* 51, no. 2 (2013): 247–78, <https://doi.org/10.14421/ajis.2013.512.247-278>; Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts*, 1st ed. (Amsterdam: Amsterdam University Press, 2010).

<sup>9</sup> Ahmad Bunyan Wahib, "Reformasi Hukum Keluarga Di Dunia Muslim," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 1 (2014): 1–19, <https://doi.org/10.18326/ijtihad.v14i1.1-19>.

Numerous literature studies have been conducted by experts focusing on the minimum age for marriage. One such study was carried out by Fatma, who researched several Muslim countries, including Turkey, Pakistan, Morocco, and Indonesia, with regard to their minimum age for marriage. The findings of the study indicated variations in the determination of the marriage age across these countries. These differences can be attributed in part to variances in the schools of thought followed and also to variations in the social conditions prevalent in each country.<sup>10</sup> Another significant study on the minimum age for marriage was conducted by Mu'in, comparing Egypt and Indonesia. Mu'in's findings highlighted that Egypt no longer relies solely on specific schools of law, such as the Hanafi and Shafi'i schools. Instead, Egypt has adopted a comprehensive approach that encompasses various schools of thought, which are considered relevant for implementing legal reforms, including determining the minimum age for marriage. Notably, there are differences between Egypt and Indonesia regarding the minimum age for marriage. In Egypt, the legal age is 18 for men and 16 for women, while in Indonesia, both men and women must be at least 19 years old. Mu'in suggests that Indonesia is more progressive in this regard, as it appears to consider a range of factors, including psychological and health aspects, in formulating an ideal age for marriage.<sup>11</sup> Komarudin's research includes a comparative analysis of family law in Tunisia and Indonesia. Although the article provides a broad overview rather than a specific examination of legal materials, it extensively discusses the minimum age for marriage. According to Komarudin's findings, Tunisia utilizes *Majallat al-Ahwal al-Syakhsbiyyah* number 66 of 1956 as its legal basis for determining the minimum age for marriage. In Tunisia, the legal age for marriage is set at 20 years for both men and women.<sup>12</sup> This provision has indeed undergone an update, as evidenced by Munawarah's writings, which state that Tunisia has revised the article concerning the minimum age for marriage through the enactment of Law No. 23 of 2007.

<sup>10</sup> Yulia Fatma, "Batasan Usia Perkawinan Dalam Hukum Keluarga Islam (Perbandingan Antar Negara Muslim: Turki, Pakistan, Maroko Dan Indonesia)," *Jurnal Ilmu Syari'ah* 18, no. 2 (2015): 117–35, <https://doi.org/10.31958/juris.v18i2.1670>.

<sup>11</sup> Fathul Mu'in, "Analisis Perbandingan Batas Usia Perkawinan Di Mesir Dan Indonesia," *Jurnal El-Izdiwaj* 1, no. 1 (2020): 71–86, <https://doi.org/10.24042/el-izdiwaj.v1i1.7086>.

<sup>12</sup> Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia (Studi Syariah Dalam Konteks Negara-Negara Modern Di Dunia Islam.)"

According to this law, the age of marriage in Tunisia is set at 18 years for both men and women.<sup>13</sup>

Several other studies have shed light on the need for further in-depth exploration of the dynamics involved in formulating the concept of maturity with regard to the minimum age for marriage in various Muslim countries. These studies also emphasize the importance of examining these issues in relation to the objectives of Islamic law, particularly through the lens of *maqasid al-Shariah*, which serves as a crucial paradigm for understanding the underlying goals of Islamic law. It is crucial to recognize that the determination of the minimum age for marriage in Islamic countries is inherently connected to the principles that aim to fulfill the *maqasid al-Shariah*. Therefore, this paper aims to focus on understanding the dynamics of development and conducting comparative analyses of how maturity regarding the minimum age for marriage is determined in Egypt, Tunisia, Pakistan, and Indonesia. Additionally, this study aims to explore the relevance of maturity determination in relation to the realization of values within *maqasid al-Shariah*.

This paper was prepared using library research methods, specifically relying on extensive literature resources. Adequate literature support is crucial in gathering the necessary data for this research. The approach employed is a comparative study, which enables the comparison of information on the minimum age for marriage regulations for marriage in each country, as derived from a wide range of collected literature.

### **Baligh to the Minimum Age for Marriage in Four Muslim Countries: Deducing from Classical *Fiqh Madzhab***

Based on the premise that legal reform processes in countries respond dynamically to contemporary issues, it is evident that multiple factors contribute to this dynamism. Notably, experts assert that several reasons underpin the dynamic nature of legal reform in Muslim countries. These reasons encompass diverse interpretations among scholars of different *madhabs* (Islamic legal schools) concerning contemporary issues that lack regulatory frameworks. This diversity, coupled with the pressing need for law enforcement

<sup>13</sup> Ana Latifatul Muntamah, Dian Latifiani, and Ridwan Arifin, "Pernikahan Dini Di Indonesia: Faktor Dan Peran Pemerintah (Perspektif Penegakan Dan Perlindungan Hukum Bagi Anak)," *Widya Yuridika: Jurnal Hukum* 2, no. 1 (2019): 1–12, <https://doi.org/10.31328/wy.v2i1.823>.

within communities, fosters the urgency for legal reforms.<sup>14</sup> The progressions in science and technology during the process of globalization have significantly influenced the rule of law. Consequently, legal frameworks must adapt to these advancements, particularly in areas where a legal framework does not yet exist. Legal reforms spanning various fields provide avenues for the transformation of Islamic law into national legal systems. This process facilitates the integration of Islamic legal principles into the broader framework of national laws.<sup>15</sup> These aforementioned reasons collectively contribute to the inherent dynamism observed in legal reform processes within Muslim countries, influenced by factors such as diverse scholarly interpretations, advancements in science and technology, opportunities for legal integration, and the evolution of Islamic legal thought.<sup>16</sup>

In the realm of classical *fiqh* studies, the issue of determining the age for marriage remains uncertain. *Fiqh* scholars primarily focus on legal competence based on the criteria of *aqil* (mental competence) and *baligh* (reaching physical maturity), with *aqil baligh* being indicated by nocturnal emissions in males and the onset of menstruation in females.<sup>17</sup> Consequently, discussions on the minimum age for marriage are not extensively addressed in *fiqh* scholarship. However, as time progresses, rapid developments necessitate countries to undertake reforms in response to these changes. Simultaneously, early marriage is recognized as a threat to the well-being of future generations in numerous countries. Consequently, several Muslim countries have implemented age restrictions for marriage as a means to control and reduce early marriages.<sup>18</sup> The process of renewing Islamic family law on an international scale was initiated by the transformation of Islamic law into family law legislation, which commenced in 1917 with the introduction of the "Ottoman Law of Family Rights" by the Turkish government. This significant reform was subsequently

<sup>14</sup> Norman Anderson, "Law Reform in the Muslim World," 1976.

<sup>15</sup> Ratno Lukito, "Trapped Between Legal Unification and Pluralism: The Indonesian Supreme Court's Decision on Interfaith Marriage," in *Muslim-Non-Muslim Marriage*, ed. Gavin W. Jones, Chee Heng Leng, and Maznah Mohamad (Singapore: ISEAS Publishing, 2009), 33–58, <https://doi.org/https://doi.org/10.1355/9789812308221-005>.

<sup>16</sup> Abdul Manan, *Reformasi Hukum Islam Di Indonesia* (Jakarta: Rajawali Press, 2006).

<sup>17</sup> See another note in Fatum Abubakar, Euis Nurlaelawati, and Ahmad Bunyan Wahib, "Interpreting 'Bulugh': Enhancement of Women's Right through Management of Marriage within Salafi Community in Wirokerten Yogyakarta.," *Indonesian Journal of Islam and Muslim Societies* 12, no. 1 (2022): 139–63, <https://doi.org/10.18326/ijims.v12i1.139-163>.

<sup>18</sup> Lilis Hidayati Yuli Astutik and Muhammad Ngizzul Muttaqin, "Positifkasi Hukum Keluarga Di Dunia Muslim Melalui Pembaharuan Hukum Keluarga," *Jurnal Islamika: Jurnal Ilmu-Ilmu Keislaman* 20, no. 01 (2020): 55–65, <https://doi.org/10.32939/islamika.v20i01.568>.



followed by other modern Muslim countries, including Egypt in 1920, Iran in 1931, Syria in 1953, Tunisia in 1956, Pakistan in 1961, and Indonesia in 1974. These countries undertook legal reforms to modernize their family law systems and align them with contemporary needs and societal changes.<sup>19</sup>

### 1. Egypt

Egypt is situated in the northeastern region of Africa, predominantly inhabited by Sunni Muslims.<sup>20</sup> Initially, the legal framework of Egypt was primarily influenced by the Shafi'i school of thought.<sup>21</sup> However, following the influence of Turkish power, there was a shift towards adopting the legal principles of the Hanafi school.<sup>22</sup> The process of legal reform in Egypt dates back to 1874, when the country gained independence in terms of jurisdiction, albeit remaining part of the Ottoman Empire. During the period from 1875 to 1883, this process was characterized by the introduction of innovative legal administration concepts, including the establishment of mixed (*mukhtalath*) justice and expert (native) courts. Following the increased influence of the British during the late 19th century, Egypt started incorporating Western-oriented laws into its legal system. These included criminal law, trade law, and maritime affairs, among others. However, individual law remained unchanged by these developments until 1920, despite the efforts of Qudri Pasha, an Islamic jurist in Egypt, who aimed to bring it in line with the principles of the Hanafi school of thought.<sup>23</sup>

In the domain of family law, Egypt initiated its legal reform efforts in 1915 by establishing a committee, known as the Egyptian Committee, under the leadership of Sheikh Al-Maraghi, the rector of al-Azhar. Subsequently, from 1920 to 1952, several laws were enacted, including Law No. 25 of 1920 concerning Livelihood and Divorce, Law No. 56 of 1923 concerning the Age of Marriage, Law No. 25 of 1929 concerning Divorce, Law

<sup>19</sup> Mudzhar, *Hukum Keluarga Di Dunia Islam Modern*.

<sup>20</sup> Hayat Kabasakal and Muzaffer Bodur, "Arabic Cluster: A Bridge between East and West," *Journal of World Business* 37, no. 1 (2002): 40–54, [https://doi.org/10.1016/S1090-9516\(01\)00073-6](https://doi.org/10.1016/S1090-9516(01)00073-6)

<sup>21</sup> Lama Abu-Odeh, "Modernizing Muslim Family Law: The Case of Egypt," *Vand. J. Transnat'l L.* 37 (2004): 1043; Kenneth M Cuno, "Reorganization of the Sharia Courts of Egypt: How Legal Modernization Set Back Women's Rights in the Nineteenth Century," *Journal of the Ottoman and Turkish Studies Association* 2, no. 1 (2015): 85–99, <https://doi.org/10.2979/jottturstuass.2.1.85>

<sup>22</sup> Tahir Mahmood, *Family Law Reform in The Muslim World* (New Delhi: India Press, 1972).

<sup>23</sup> Enid Hill, "Al-Sanhuri and Islamic Law: The Place and Significance of Islamic Law in the Life and Work of Abd Al-Razzaq Ahmad Al-Sanhuri, Egyptian Jurist and Scholar, 1895-1971," *Arab Law Quarterly*, 1988, 33–64, <https://doi.org/10.2307/3381741>.



no. 77 of 1943 concerning Inheritance, and Law no. 71 of 1946 concerning Will.<sup>24</sup> Based on the aforementioned statement, it can be concluded that the process of legal reform in the field of family law in Egypt commenced in 1920. This marked the issuance of Law No. 25 of 1920, which specifically addressed matters concerning livelihoods and divorce. This legislation served as the initial legal framework governing family law in Egypt.

Regarding the legal provisions concerning the determination of the minimum age for marriage in Egypt, a significant milestone was reached with the introduction of Law No. 56 of 1923.<sup>25</sup> This law represents a notable example of successful legal reform implemented by Egypt. Article 1 of the law explicitly stipulates that the minimum age for marriage is set at 18 years for men and 16 years for women.<sup>26</sup> Not only in Law No. 56 of 1923, the same arrangement is also found in Article 99 of the Law on the Composition of the Religious Courts of 1931.<sup>27</sup> The article states: "No family lawsuit is heard if the wife is less than 16 years old or the husband is less than 18 years old. This is meant to maintain household harmony".<sup>28</sup> The urgency demonstrated by the Egyptian government in establishing the minimum age for marriage stems from its commitment to fostering harmonious households. Recognizing the significance of adequate preparation for married life, including the consideration of psychological factors, the government has deemed it necessary to devise legal provisions regarding the minimum age for marriage. This objective materialized through the enactment of Law No. 56 of 1923, which governs the age of marriage in Egypt, setting it at 18 years for men and 16 years for women.<sup>29</sup>

## 2. Tunisia

Tunisia, officially known as the Republic of Tunisia, is an Arab country situated in North Africa. Its capital, Tunis, is located on the coast of the Mediterranean Sea. Geographically,

<sup>24</sup> Khairuddin Nasution, *Status Wanita Di Asia Tenggara: Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer Di Indonesia Dan Malaysia* (Jakarta: INIS, 2002).

<sup>25</sup> Nadia Sonneveld, "Rethinking the Difference between Formal and Informal Marriages in Egypt," *YB Islamic & Middle EL* 15 (2009): 53, <https://doi.org/10.1016/j.ssresearch.2016.01.005>.

<sup>26</sup> Budiawan, "Nalar Metodologi Pembaharuan Hukum Perkawinan Di Dunia Muslim."

<sup>27</sup> Kurniati, "Hukum Keluarga Di Mesir," *Jurnal Al-Daulab* 3, no. 1 (2014): 24–34, <https://doi.org/10.24252/ad.v3i1.1497>.

<sup>28</sup> Mu'in, "Analisis Perbandingan Batas Usia Perkawinan Di Mesir Dan Indonesia."

<sup>29</sup> AliceAnn Crandall et al., "Women's Age at First Marriage and Postmarital Agency in Egypt," *Social Science Research* 57 (2016): 148–60, <https://doi.org/10.1016/j.ssresearch.2016.01.005>; N M Elden and Hanan Mosleh, "Impact of Change in Law on Child Marriage in Egypt a Study in Two Egyptian Governorates," *The Egyptian Journal of Community Medicine* 33, no. 4 (2015): 25–37, <https://doi.org/10.21608/EJCM.2015.695>.

Tunisia shares borders with Algeria to the west and Libya to the south and east. The predominant religion in Tunisia is Islam, with approximately 98 percent of the population identifying as Muslims. The remaining population comprises Christians and Jews.<sup>30</sup> Tunisia is considered one of the modern Muslim countries that has undertaken significant revolutionary reforms in the field of family law.<sup>31</sup> Fundamentally, the process of reforming and codifying Islamic law in Tunisia shares similarities with the developments that occurred in Egypt and other Middle Eastern nations. Prior to the influence of the Ottoman Empire in Tunisia, the majority of Tunisian Muslims adhered to the Maliki school of thought.<sup>32</sup> However, after the Turkish government officially adopted the Hanafi school of thought for the region, it also influenced the application of Islamic law in Tunisia.<sup>33</sup> Consequently, the Tunisian judiciary consisted of two sets of judges representing the Maliki and Hanafi schools, each with jurisdiction over their respective areas.<sup>34</sup>

During subsequent developments, as French influence permeated Tunisia, France delegated family law matters, such as marriage, divorce, inheritance, and land ownership, to the jurisdiction of *Shariah* courts<sup>35</sup> led by judges from the Maliki and Hanafi schools. However, this arrangement was contingent upon compliance with the principles of the rule of law established by France. In 1955, France started recognizing Tunisia's autonomy, and in March 1956, Tunisia achieved formal independence.<sup>36</sup> Following independence, Tunisia embarked on a process of reform and codification of laws aligned with the Maliki and Hanafi schools. Notably, the introduction of the *Majallat al-Ahal asy-Syakhsiyah* Number 66

<sup>30</sup> Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia (Studi Syariah Dalam Konteks Negara-Negara Modern Di Dunia Islam.)"

<sup>31</sup> Mounira M Charrad, "Family Law Reforms in the Arab World: Tunisia and Morocco," in *Report for the United Nations Department of Economic and Social Affairs (UNDESA), Expert Group Meeting, New York*, 2012, 15–17, <https://doi.org/10.24042/adalah.v17i2.8031>; Mounira M Charrad, "Tunisia at the Forefront of the Arab World: Two Waves of Gender Legislation," *Wash. & Lee L. Rev.* 64 (2007): 1513, <https://scholarlycommons.law.wlu.edu/wlulr/vol64/iss4/11>

<sup>32</sup> Anne Wolf, *Political Islam in Tunisia: The History of Ennahda* (Oxford University Press, 2017); Kamel Ghazzi, "The Study of Resilience and Decay in Ulema Groups: Tunisia and Iran as an Example," *Sociology of Religion* 63, no. 3 (2002): 317–34, <https://doi.org/10.2307/3712472>; Maaïke Voorhoeve, *Gender and Divorce Law in North Africa: Sharia, Custom and the Personal Status Code in Tunisia* (Bloomsbury Publishing, 2014).

<sup>33</sup> Kiki Adnan Muzaki, Asep Saepudin Jahar, and Muhammad Amin Suma, "Reform of the Law of Inheritance in Turkey and Tunisia," *Al-Adalah* 17, no. 2 (2020): 249–68, <https://doi.org/10.24042/adalah.v17i2.8031>.

<sup>34</sup> Mudzhar, *Hukum Keluarga Di Dunia Islam Modern*.

<sup>35</sup> Maaïke Voorhoeve, "Law and Social Change in Tunisia: The Case of Unregistered Marriage," *Oxford Journal of Law and Religion* 7, no. 3 (2018): 479–97, [https://doi.org/10.1386/ijfs.19.1.15\\_1](https://doi.org/10.1386/ijfs.19.1.15_1).

<sup>36</sup> Ryo Ikeda, "Tunisian Internal Autonomy and the Transformation of the French Colonial Empire," *International Journal of Francophone Studies* 19, no. 1 (2016): 15–27, [https://doi.org/10.1386/ijfs.19.1.15\\_1](https://doi.org/10.1386/ijfs.19.1.15_1)

of 1956 (Code of Personal Status) sparked considerable controversy due to its perceived liberal interpretation of *Shariah*.<sup>37</sup> This law has been amended several times through Law Number 70 of 1958, Law Number 77 of 1959, Law Number 41 of 1964, Law Number 49 of 1966, and Law Number 1 of 1981.<sup>38</sup>

The Tunisian government has placed significant focus on legal reforms, particularly in relation to determining the minimum age for marriage. Initially, based on the provisions outlined in Article 5 of the 1956 law, the Tunisian government set the marriage age at 20 years for men and 17 years for women. Subsequently, this rule was modified to establish a uniform age of 20 years for both men and women. However, in 1981, the minimum age for marriage was reverted to its original arrangement of 20 years for men and 17 years for women.<sup>39</sup> Notably, individuals who intend to marry before reaching the designated minimum age for marriage must seek special permission from the court.<sup>40</sup> In addition, marriages under the specified minimum age for marriage must also obtain permission from the guardian, if the guardian refuses by not giving permission, then the court in this case can decide this case.<sup>41</sup> In the case of the issue of court permission for marriage problems in Tunisia, the court cannot simply give permission without being based on strong reasons and a firm desire from each party who wants to enter into a marriage. Therefore, even if the guardian refuses to give permission, if the parties have a strong desire to get married, then the case can be decided by the court.<sup>42</sup> The court in this case has the authority to make decisions related to marriage licenses for couples who wish to marry, but their age is still below the standard age set by the Tunisian government.

In relation to the minimum age for marriage, the Tunisian government carried out a renewal process in 2007 through the issuance of Law Number 32 of 2007. This law

<sup>37</sup> Lia Noviana, "Status Wanita Di Negara Muslim Modern: Studi Terhadap Hukum Keluarga Di Tunisia Dan Indonesia," *Jurnal Kodifikasia: Jurnal Penelitian Islam* 13, no. 2 (2019): 197–214, <https://doi.org/10.21154/kodifikasia.v13i2.1832>.

<sup>38</sup> Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam University Press, 2007).

<sup>39</sup> Amel Grami, "Gender Equality in Tunisia," *British Journal of Middle Eastern Studies* 35, no. 3 (2008): 349–61, <https://doi.org/10.1080/13530190802525148>

<sup>40</sup> Noviana, "Status Wanita Di Negara Muslim Modern: Studi Terhadap Hukum Keluarga Di Tunisia Dan Indonesia."

<sup>41</sup> Komarudin, "Hukum Keluarga Di Tunisia Dan Indonesia (Studi Syariah Dalam Konteks Negara-Negara Modern Di Dunia Islam.)"

<sup>42</sup> Aulia Rahmat, "Kompleksitas Hukum Keluarga Islam Di Tunisia," *Jurnal Al Muqaranab* V, no. 1 (2014): 29–54.

introduced amendments to the provisions governing the minimum age for marriage, establishing it at 18 years for both men and women.<sup>43</sup> In comparison to the previous provisions stipulated in Law No. 1 of 1981, which prescribed different ages for marriage between men and women (20 years for men and 17 years for women), the disparity was eliminated in the 2007 provisions. The amendments entailed a reduction of the minimum age for marriage for men from 20 to 18 years, while for women, it was increased from 17 to 18 years. Consequently, the result is an equal age requirement of 18 years for both men and women.

### 3. Pakistan

Pakistan, officially known as the Islamic Republic of Pakistan (*Islami Jumhuriyah yi Pakistan; Urdu*), is a country situated in the South Asian region. It shares borders with Iran and Afghanistan to the west, India to the east, China to the northeast, and Tajikistan to the north. Historically, Pakistan was part of India, which was under British colonial rule. However, on August 14, 1947, Pakistan achieved independence by declaring itself as the Islamic Republic of Pakistan.<sup>44</sup> Pakistan and India both attained their independence on the same date due to their shared struggle against British colonialism. Initially, Pakistan was composed of two regions: West Pakistan and East Pakistan. However, a civil war erupted in 1971, resulting in the secession of East Pakistan, which became the independent nation of Bangladesh. As a consequence, present-day Pakistan encompasses the territory that was formerly referred to as West Pakistan. Originally, Karachi served as the capital of Pakistan before it was later relocated to Islamabad. The majority of Pakistan's population, amounting to approximately 97 percent, adheres to the Islamic faith. The remaining population includes Christians, Hindus, and Parsis.<sup>45</sup> The Hanafi school of thought has emerged as the dominant school of jurisprudence within Pakistan's Muslim community.<sup>46</sup>

<sup>43</sup> Ismail Marzuki and Lathifah Munawaroh, "Politik Hukum Keluarga Islam Di Tunisia," *Jurnal AL-'Adl* 12, no. 1 (2019): 78, <http://dx.doi.org/10.31332/aladl.v12i1.1384>

<sup>44</sup> Fatma, "Batasan Usia Perkawinan Dalam Hukum Keluarga Islam (Perbandingan Antar Negara Muslim: Turki, Pakistan, Maroko Dan Indonesia)."

<sup>45</sup> Lucy Carroll, "The Muslim Family Laws Ordinance, 1961: Provisions and Procedures—a Reference Paper for Current Research," *Contributions to Indian Sociology* 13, no. 1 (1979): 117–43, <https://doi.org/10.1177/006996677901300105>.

<sup>46</sup> Mudzhar, *Hukum Keluarga Di Dunia Islam Modern*.

The application of Islamic law in Pakistan has a deep-rooted history that predates its separation from India and the Declaration of Independence.<sup>47</sup> Family law was among the first areas to be regulated. Following independence, Pakistan embarked on a series of legal reforms and exemplified by the enactment of the Muslim Family Laws Ordinance (MFLO) in 1961, known as the *Mudawmanah al-Ahwal al-Syakhshiyyah*.<sup>48</sup> Prior to independence, when Pakistan was under British colonial rule, it should be noted that the territory was part of India, which already had the Muslim Personal Law Application Act of 1937 governing family law.<sup>49</sup> However, this law did not encompass matters related to land and agriculture, which were governed by customary law. The 1937 law specifically addressed issues pertaining to family and inheritance. Additionally, the Dissolution of Muslim Marriages Act of 1939 was enacted within the territorial jurisdiction of Pakistan, focusing on the regulation of divorce.<sup>50</sup> This law provided women with the opportunity to file for divorce in court based on valid reasons.<sup>51</sup>

In Pakistan, the issue of the minimum age for marriage is regulated by the Child Marriage Restraint Act of 1929.<sup>52</sup> This law prohibits marriages involving underage individuals.<sup>53</sup> During that time, it was common for both Muslims and Hindus to engage in child marriages. To address this practice, the law prohibiting underage marriages was

<sup>47</sup> Anita M Weiss, *Islamic Reassertion in Pakistan: The Application of Islamic Laws in a Modern State* (Syracuse University Press, 1986).

<sup>48</sup> Carroll, "The Muslim Family Laws Ordinance, 1961: Provisions and Procedures—a Reference Paper for Current Research."

<sup>49</sup> Kanak Kanti Karmakar, "Significance as to Codification of Muslim Personal Law in Bangladesh," *Significance as to Codification of Muslim Personal Law in Bangladesh* (March 28, 2023), 2023, <https://doi.org/10.4324/9781315867830-4>; Nausheen Ahmed, "Family Law in Pakistan: Using the Secular to Influence the Religious," in *Adjudicating Family Law in Muslim Courts* (Routledge, 2013), 70–86, <https://doi.org/10.1353/jsa.2019.0006>.

<sup>50</sup> Muhammad Ifzaal Mehmood, "Judicial Separation At The Wife's Initiative: A Study of Redemption (Khul ʿ) In Islamic Law And Contemporary Legislation In Pakistan And Malaysia," *Journal of Islamic Legal Studies* 2, no. 1 (2016): 1–25; Muhammad Khalid Masud, "Modernizing Islamic Law in Pakistan: Reform or Reconstruction?," *Journal of South Asian and Middle Eastern Studies* 42, no. 2 (2019): 73–97.

<sup>51</sup> Mehmood, "Judicial Separation At The Wife's Initiative: A Study of Redemption (Khul ʿ) In Islamic Law And Contemporary Legislation In Pakistan And Malaysia"; Masud, "Modernizing Islamic Law in Pakistan: Reform or Reconstruction?"

<sup>52</sup> Sofia Naveed and Dr Khalid Manzoor Butt, "Causes and Consequences of Child Marriages in South Asia: Pakistan's Perspective," *South Asian Studies* 30, no. 2 (2020), <http://111.68.103.26/journals/index.php/IJSAS/article/view/3011>; Fatum Abubakar, "Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan)," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 4, no. 2 (2019), <https://doi.org/10.22515/alahkam.v4i2.1667>.

<sup>53</sup> Abubakar, "Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan)."

enacted in 1929. Subsequently, it was further amended through the Muslim Family Laws Ordinance (MFLO) number 8 of 1961.<sup>54</sup> According to the provision of this ordinance, a child is defined as an individual who is 18 years old for boys and 16 years old for girls.<sup>55</sup> Additionally, the Muslim Family Laws Ordinance (MFLO) in Pakistan includes provisions related to the consequences of marrying individuals below the specified minimum age for marriage.<sup>56</sup> According to the MFLO, if a man above the age of 18 marries a woman below the age of 16, he can face a maximum punishment of one month's imprisonment or a fine of up to one thousand Rupees. Similarly, if a woman above 16 years of age marries a man below 18 years of age, she can be subject to legal sanctions, unless there is compelling evidence proving that the marriage is not considered underage (child marriage).<sup>57</sup>

Furthermore, there are regulations in place concerning the responsibility of parents or guardians who facilitate marriages below the specified minimum age for marriage. If parents or guardians are found to have coerced or neglected their duty by allowing such marriages to occur, they can face a maximum punishment of one month's imprisonment or a fine of up to one thousand Rupees. In some cases, they may face both imprisonment and a fine, with the exception that women are not sentenced to imprisonment. In situations where the court or relevant parties have issued warnings against conducting the marriage, yet it still takes place, parents or guardians may face up to three months imprisonment, a fine of one thousand Rupees, or both penalties concurrently.<sup>58</sup>

Upon examining the provisions outlined in Pakistan's family law pertaining to the minimum age for marriage, it becomes apparent that this country has made notable advancements in comparison to other Muslim nations. Pakistan has successfully established legal measures, such as sanctions or fines, to address violations of the minimum age for marriage set by the country. These measures primarily target the parents or guardians of the parties involved. Incorporating such mechanisms into the legal system allows for greater

<sup>54</sup> Shaheen Sardar Ali, "Testing the Limits of Family Law Reform in Pakistan: A Critical Analysis of the Muslim Family Laws Ordinance 1961," *Int'l Surv. Fam. L.*, 2002, 317, <https://wrap.warwick.ac.uk/72318/>.

<sup>55</sup> Mudzhar, *Hukum Keluarga Di Dunia Islam Modern*.

<sup>56</sup> Mumtaz Ahmad, "The Muslim Family Laws Ordinance of Pakistan," *International Journal on World Peace* 10, no. 3 (1993): 37–46, <https://www.jstor.org/stable/20751912>.

<sup>57</sup> Abubakar, "Islamic Family Law Reform: Early Marriage and Criminalization (A Comparative Study of Legal Law in Indonesia and Pakistan)."

<sup>58</sup> Mahmood, *Family Law Reform in The Muslim World*.



adherence to specific legal provisions, serving as a form of control and regulation within society, in addition to enforcement measures.

#### 4. Indonesia

When examining the regulation of the minimum age for marriage within the Indonesian legal system, its historical development is closely tied to the enactment of Marriage Law No. 1 of 1974. The establishment of this law unfolded amidst a dynamic political configuration and ongoing social dynamics in Indonesia, which significantly influenced its creation. Regarding the formulation of the minimum age for marriage, input from multiple stakeholders, including the government, legislature, and the community, shaped the process of formulating marriage laws in Indonesia. Their collective involvement played a crucial role in the development of these laws.<sup>59</sup>

Taking a historical perspective, the development of legal provisions pertaining to the minimum age for marriage in Indonesia commenced during the New Order era. Under this policy, marriage laws were enacted, which were widely perceived as successful in transforming Islamic law into regulatory frameworks. Notably, Law No. 1 of 1974 on Marriage played a central role in this regard. Complementing this law were the corresponding implementing regulations outlined in Government Regulation No. 9 of 1975. Additionally, the government successfully enacted Law No. 7 of 1989 on Religious Courts during that period. This was followed by the issuance of Presidential Instruction (*Inpres*) Number 1 of 1991, which pertained to the Compilation of Islamic Law. Collectively, these legal instruments shaped the legal landscape concerning the minimum age for marriage in Indonesia during the New Order era.<sup>60</sup>

The enactment of various laws and regulations, as mentioned previously, is widely regarded as a realization of the objective to unify marriage laws in Indonesia. This is seen as a response by the state to the need for a nationally unified legal instrument that can facilitate the agenda for legal development in the country. Consequently, it is believed that the issuance of these national laws represents a significant achievement by the government

<sup>59</sup> Ahmad Masfuful Fuad, "Ketentuan Batas Minimal Usia Kawin: Sejarah, Implikasi Penetapan Undang-Undang Perkawinan," *Jurnal Petita* 1, no. 1 (2016): 32–47, <https://doi.org/10.22373/petita.v1i1.77>.

<sup>60</sup> Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts*; Warkum Sumitro and K.N. Sofyan Hasan, *Dasar-Dasar Memahami Hukum Islam Di Indonesia* (Surabaya: Karya Anda, 1994); Manan, *Reformasi Hukum Islam Di Indonesia*.



in effectively addressing ongoing conflicts within the legal system.<sup>61</sup> Furthermore, the government recognizes the importance of a legal modernization agenda within the realm of family law, particularly concerning the determination of the minimum age for marriage. The government acknowledges that certain legal traditions, such as underage marriages and arranged marriages, are considered outdated and in need of reform to ensure the progress of the nation. Consequently, there is a consensus that legal modernization in family law is necessary to align with societal advancements and meet the evolving needs of the country.<sup>62</sup> Initially, the determination of the minimum age for marriage was stipulated in Article 7, paragraph (1) of the 1973 Marriage Draft Law. According to this provision, the minimum age for marriage was set at 21 years for men and 18 years for women. However, this formulation faced significant opposition from various stakeholders, leading to concerns over potential conflicts. As a result, the discussion regarding the formulation of this article was ultimately postponed.<sup>63</sup> The potential for conflict was effectively addressed through the enactment of Law No. 1 of 1974 on Marriage. This law revised the minimum age for marriage, setting it at 19 years for men and 16 years for women, as stated in Article 7, paragraph (1) of the Marriage Law.<sup>64</sup> Additionally, the law introduced provisions for parties who wished to marry but did not meet the age requirements. They were given the opportunity to submit a dispensation request to the court for consideration.<sup>65</sup> Indeed, the provision for the minimum age for marriage does not apply universally as there is an opportunity for parties who do not meet the age requirements to seek a dispensation from the court. This allows for individual circumstances to be taken into consideration,

<sup>61</sup> Lukito, “Trapped Between Legal Unification and Pluralism: The Indonesian Supreme Court’s Decision on Interfaith Marriage”; Ratno Lukito, “The Enigma of Legal Pluralism in Indonesian Islam: The Case of Interfaith Marriage,” *Journal of Islamic Law and Culture* 10, no. 2 (2008): 179–91, <https://doi.org/10.1080/15288170802236457>.

<sup>62</sup> Susan Blackburn and Sharon Bessell, “Marriageable Age: Political Debates on Early Marriage in Twentieth-Century Indonesia,” *Indonesia*, no. 63 (1997): 107–41, <https://doi.org/10.2307/3351513>.

<sup>63</sup> Fuad, “Ketentuan Batas Minimal Usia Kawin: Sejarah, Implikasi Penetapan Undang-Undang Perkawinan.”

<sup>64</sup> Muhammad Jihadul Hayat, “Historisitas Dan Tujuan Aturan 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>.

<sup>65</sup> Fuad, “Ketentuan Batas Minimal Usia Kawin: Sejarah, Implikasi Penetapan Undang-Undang Perkawinan.”

providing an alternative avenue for parties who are below the prescribed minimum age for marriage to apply for a marriage dispensation.<sup>66</sup>

There have been changes in the provisions for the minimum age for marriage as they were formulated in the draft law and subsequently formalized by the government. These changes have occurred due to various reasons, including the following: Firstly, in the realm of theoretical studies concerning the minimum age for marriage, there remains disagreement between Indonesian Muslims and the state. This divergence is further evidenced by prevailing marriage practices within Muslim society, which still witness a considerable number of underage marriages. Secondly, in the context of actual marriage practices, there is a prevailing tendency for communities to rely on existing fiqh interpretations and local customs. Thirdly, traditional gender relations persist within society, presenting challenges for the state in enforcing rules of the minimum age for marriage as envisioned within the formulation of marriage law. These reasons collectively demonstrate that the issue of determining the minimum age for marriage in Indonesia is intricately entangled in the ongoing debate between Islamic tradition and the interests of the state.<sup>67</sup> The debate between Muslims and the state regarding the minimum age for marriage in Indonesia stems from the dissatisfaction within the Indonesian Muslim community towards the government's efforts to standardize marriage practices through the unification of national law. Since the formulation of the 1973 draft marriage law, many Muslim groups have expressed their disagreement with several articles in the draft, considering them to be inconsistent with Islamic teachings. Nevertheless, the government, in collaboration with the DPR (Representative House), proceeded to enact Marriage Law No. 1 of 1974, introducing several amendments to various articles. One of the key changes pertained to the minimum age for marriage, which was revised from 21 years for men and 18 years for women to 19 years for men and 16 years for women. This change, viewed by some legal observers, is regarded as a successful step by the government in reforming

<sup>66</sup> Kholifatun Nur Mustofa, "Provisions of Minimum Age of Marriage in Indonesia: Amendments Efforts and Responses," *Ay-Syir'ab: Jurnal Ilmu Syari'ab Dan Hukum* 52, no. 2 (2018): 289–312, <https://doi.org/10.14421/ajish.v52i2.573>.

<sup>67</sup> Ratno Lukito, *Hukum Sakral Dan Hukum Sekuler: Studi Tentang Konflik Dan Resolusi Dalam Sistem Hukum Indonesia* (Pustaka Alvabet, 2008).

marriage laws, with the potential to yield positive outcomes for the Indonesian legal system surrounding marriage in the future.<sup>68</sup>

Since the enactment of Law No. 1 of 1974, there have been no significant updates to the law for an extended period. Consequently, there was a recognized need to revise this law to align it with contemporary needs, particularly in relation to the provisions concerning the minimum age for marriage. To initiate legal reforms in this matter, a Judicial Review was submitted to the Constitutional Court. However, this effort encountered challenges as all requests made were rejected, as stated in the Constitutional Court decision Number 30-74/PUU-XII/2014. Subsequently, in 2017, another application was filed to review the legal provisions regarding the minimum age for marriage. This effort yielded a favorable outcome, with the acceptance of the request for a change in the minimum age for marriage. The Constitutional Court's decision in Amar No. 22/PUU-XV/2017 instructed the legislature, specifically the DPR of the Republic of Indonesia, to effect changes to Law No. 1 of 1974 concerning Marriage within a maximum period of 3 years. The focus of the revision was primarily on the legal matter of the minimum age for marriage for women. Eventually, the DPR RI and the government reached an agreement, resulting in the amendment of Article 7 Paragraph (1) of Law No. 1 of 1974. The amendment, enacted through Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, revised the minimum age for marriage to 19 years for both men and women. Notably, the changes were limited to one article, specifically Article 7 Paragraph (1), which specifies the minimum age for marriage.<sup>69</sup> The deferent in the minimum age for marriage among those four countries is summarized in the following table 1.

<sup>68</sup> Fuad, “Ketentuan Batas Minimal Usia Kawin: Sejarah, Implikasi Penetapan Undang-Undang Perkawinan.”

<sup>69</sup> Muhammad Yusuf Rangkuti and Armi Agustar, “Change in Act Number 16 Of 2019 As An Amendment to Law Number 1 of 1974 Islamic Law and Gender Perspective,” *Jurisprudensi: Jurnal Ilmu Syariah, Perundangan-Undangan Dan Ekonomi Islam* 14, no. 1 (2022): 51–62, <https://doi.org/10.32505/jurisprudensi.v14i1.5245>.

**Table 1:** Minimum Age for Marriage in Egypt, Tunisia, Pakistan, and Indonesia

Aspect Comparison	Countries			
	Egypt	Tunisia	Pakistan	Indonesia
<b>Latest minimum age of marriage</b>	Male: 18 Years Female: 16 Years  Source: - Law No. 56 of 1923 - Law on the Composition of the Religious Courts of 1931	Male: 18 Years Female: 18 Years  Source: Law No. 32 of 2007	Male: 18 Years Female: 16 Years  Source: <i>Muslim Family Laws Ordinance</i> (MFLO) number 8 of 1961.	Male: 19 Years Female: 19 Years  Source: Undang-undang No. 16 Law No. 16 of 2019
<b>Minimum age of marriage before renewal</b>	-	Male: 20 Years Female: 17 Years  Source: Law No. 1 of 1981	Male: 18 Years Female: 16 Years  Source: <i>Child Marriage Restraint Act</i> of 1929	Male: 19 Years Female: 16 Years  Source: Undang-undang No. 16 Law No. 1 of 1974
<b>Legal implications</b>	-	-	- Legal sanction of 1 month or a fine of 1000 Rupees for underage married couples; - Legal sanction of 3 months or a fine of 1000 Rupees for parents or guardians who marry off minors.  Source: <i>Muslim Family Laws Ordinance</i> (MFLO) number 8 of 1961.	-
<b>Alternative provisions</b>	-	Application for a marriage license from the court for parties who are not yet of marriageable age.	-	Dispensation to the court for parties who are not yet of marriageable age.

### Minimum Age for Marriage Reformed Objectives: Balancing *Fiqh Madzhab* and Sociological Goals

In Muslim countries, including Egypt, Tunisia, Pakistan, Indonesia, and others, the establishment serves the purpose of achieving the objectives of family law enforcement in each respective country. One of the primary objectives is the reduction of early marriages, as the negative consequences associated with such unions pose significant challenges to the enforcement of family law. Moreover, setting a minimum age for marriage is also aimed at fostering a higher quality of family life by ensuring the maturity of individuals entering into marriage.<sup>70</sup> Consequently, the determination of the minimum age for marriage is considered

<sup>70</sup> Ulfi 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>.

crucial in the pursuit of this goal, given its significance in promoting the realization of a prosperous and fulfilling family life.<sup>71</sup>

The determination of maturity concerning the minimum age for marriage has been a subject of extensive scholarly debate among contemporary Islamic jurists due to the lack of explicit guidance in *fiqh* literature. Although a specific minimum age for marriage is not explicitly mentioned, *fiqh* scholars emphasize the importance of considering maturity in the context of marriage.<sup>72</sup> They delve into the concept of *baligh*, which signifies a person's legal competence in fulfilling religious obligations. In *fiqh* literature, the permissible age for marriage is closely linked to the onset of puberty.<sup>73</sup> This understanding finds support in a verse from the Qur'an, specifically Surah An-Nur, verse 59, which instructs children to seek permission once they have reached the age of puberty, similar to the practice of their predecessors. This verse underscores the significance of maturity as a prerequisite for marriage. Another verse, found in Surah An-Nisa, verse 6, pertains to the testing of orphans until they are capable of managing their wealth. These verses collectively indicate that marriage becomes permissible upon reaching the age of maturity (*baligh*). Indicators of maturity include experiencing wet dreams (*ibtīlam*) and reaching a state of semen discharge (*junub*) for men, while menstruation or pregnancy serves as a marker for women. Notably, the verse in Surah An-Nisa, verse 6, also mentions the requirement of logically competence (*rushdan*), implying that a person of legal competence (*baligh*) should possess the ability to responsibly manage wealth and foster personal benefit. This implies that maturity for marriage encompasses more than just physical development, encompassing the capacity for responsible decision-making and independence. Overall, while variations may exist in the determination of the minimum age for marriage across different countries, the concept of maturity (*baligh*), based on signs of physical development and the ability to manage self, assumes a significant role in the scholarly discourse within *fiqh* literature.<sup>74</sup> In the sense that a person is already able to provide an assessment and distinguish between good and bad about something in his life so that it brings benefits to him. Another indication in

<sup>71</sup> Ian Romadhan Sitorus, "Usia Perkawinan Dalam UU No. 16 Tahun 2019 Perspektif Masalah Mursalalah," *Jurnal Nuansa* XIII, no. 2 (2020): 190–99.

<sup>72</sup> Abubakar, Nurlaelawati, and Wahib, "Interpreting 'Bulugh': Enhancement of Women's Right through Management of Marriage within Salafi Community in Wirokerten Yogyakarta.'"

<sup>73</sup> Siti Jahroh, "NOT NINE BUT EIGHTEEN: Husein Muhammad on Aisha's Marriage Age," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (2022): 59–81, <https://doi.org/10.14421/ahwal.2022.15104>.

<sup>74</sup> Mustofa, *Perbandingan Hukum Perkawinan Di Dunia Islam* (Bandung: Pustaka al-Fikriis, 2009).

determining the criteria for legal competence (*baligh*) is in terms of age that is when it reaches the age of 15 for both women and men. At that age, a person is capable of physical perfection and is able to establish social life amid society, and can understand the legal burden imposed on him.<sup>75</sup> At this age, an individual is deemed capable of assuming responsibility when entering into a marriage as a legal act, which necessitates legal competence on the part of the individual. Upon closer examination, this indication underscores both the physical and psychological dimensions. From a physical standpoint, individuals have attained maturity in terms of their reproductive organs and overall physical condition, signifying the acquisition of a complete form and functionality.<sup>76</sup> Furthermore, from a psychological perspective, maturity is reflected in an individual's ability to comprehend matters about themselves, including distinguishing between right and wrong and demonstrating an understanding of ethical principles.<sup>77</sup> This is what is meant by *rushdan*, in its explanation regarding the maturity of marriage age.

There are variations in formulating the aspect of maturity concerning the minimum age for marriage across different countries, as there is no explicit statement in Islamic law specifying the exact age requirements for marriage. Additionally, *fiqh* literature does not provide a definitive minimum age for marriage. However, within the *fiqh* discourse, the aspect of maturity can be inferred from various perspectives related to a person's legal competence in practicing Islamic teachings. It is emphasized that reaching the age of puberty, marked by *rushdan*, understanding, and appropriateness in managing one's affairs and promoting goodness, is significant in determining maturity in Islamic law. Regarding the specific age issue, there are differences among scholars. The Shafi'i and Hanbali schools of thought consider the age of puberty to be 15 for both males and females. On the other hand, Imam Hanafi suggests 19 for males and 17 for females, while the Maliki school of thought proposes 18 for both males and females.<sup>78</sup> Other signs beyond the age criteria are having menstruation for women.

<sup>75</sup> Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia* (Jakarta: Rajawali Pers, 2012).

<sup>76</sup> 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>.

<sup>77</sup> Ahmad Tafsir, *Cakrawala Pemikiran Pendidikan Islam* (Bandung: Mimbar Pustaka, 2002).

<sup>78</sup> Nur Ihdatul Musyarrafa, "Batas Usia Pernikahan Dalam Islam: Analisis Ulama Mazhab Terhadap Batas Usia Nikah," *Jurnal Shautuna* 1, no. 3 (2020): 703–22, <https://doi.org/10.24252/shautuna.v1i3.15465>.

The differences in *fiqh* perspectives among scholars from various schools of thought serve as a basis for determining maturity and subsequently influence each country's approach to determining the minimum age for marriage. However, the current reform is not in the absence of social demand. The affiliation of a country with specific schools of *fiqh* shapes its policies and reforms in Islamic law. For instance, in Tunisia, the Maliki school of thought has a significant influence and is widely followed in the country. In Egypt, where the dominant schools of thought are the Maliki and Shafi'i schools, the formulation of maturity regarding the minimum age for marriage is influenced by these schools. According to the Maliki school of thought, a person is considered *baligh* when they reach the age of 18 for both men and women. The Shafi'i school of thought has its own interpretation and understanding of maturity, which may impact the minimum age for marriage in Egypt.<sup>79</sup> Pakistan's affiliation with the Hanafi school also plays a significant role in formulating the minimum age for marriage in the country. The Hanafi school of thought, which is widely followed in Pakistan, influences the legal provisions regarding maturity and the minimum age for marriage. Following the Hanafi madhhab, the minimum age for marriage in Pakistan is typically determined as 18 years for men and 16 years for women. This reflects the influence of the Hanafi's school interpretation and understanding of maturity in relation to marriage.<sup>80</sup>

Indeed, the determination of maturity and the minimum age for marriage in certain countries can be influenced by various factors, including affiliation with specific schools of *fiqh* and considerations beyond traditional *fiqh* views. In Pakistan, although the dominant affiliation is with the Hanafi madhhab, the legal provisions regarding the minimum age for marriage differ from the specific Hanafi view, with the age set at 18 years for men and 16 years for women. This suggests that other considerations, such as social, cultural, and psychological factors, may have influenced the formulation of the minimum age for marriage in Pakistan. Similarly, in Indonesia, where the majority adheres to the Shafi'i school of thought, the legal provisions for the minimum age for marriage are set at 19 years for both men and women, deviating from the Shafi'i view of 15 years for maturity. This indicates that the determination of maturity and the minimum age for marriage in

<sup>79</sup> Nur Lailatul Musyafaâ, "Penerapan Syari'at Islam Di Mesir," *Al-Daulab: Jurnal Hukum Dan Perundangan Islam* 2, no. 2 (2012): 208–36, <https://doi.org/10.15642/ad.2012.2.2.208-236>.

<sup>80</sup> Mudzhar, "Hukum Keluarga Di Pakistan (Antara Islamisasi Dan Tekanan Adat)."



Indonesia also involves considerations beyond the strict adherence to a specific *fiqh* view, and may take into account societal and developmental factors. These dynamic approaches to formulating the minimum age for marriage demonstrate the complexity of the issue and the need to consider various perspectives, including *fiqh* traditions, social norms, psychological development, and the evolving needs of society.

As previously mentioned, while Islamic law does not offer a specific minimum age for marriage, determining the minimum age for marriage can be undertaken to promote benefits and prevent harm in the realm of family law. This objective aligns with the mandate found in Surah An-Nisa, verse 9, which emphasizes the importance of ensuring the strength and well-being of future generations. In line with this mandate, establishing a minimum age for marriage aims to consider both physical and psychological maturity. Physical maturity pertains to individuals' biological readiness to fulfill the responsibilities and challenges associated with marriage. It encompasses factors such as the development of reproductive organs and overall physical well-being. On the other hand, psychological maturity relates to individuals' mental and emotional preparedness to navigate the complexities and responsibilities of married life. It encompasses factors such as emotional stability, decision-making abilities, and comprehension of the rights and responsibilities entailed in marriage. By considering both physical and psychological maturity, the establishment of minimum age for marriage seeks to promote well-being while mitigating potential harm. This approach reflects the broader objectives of family law, which seek to foster stability, harmony, and prosperity within families and society.

It is crucial to note that the determination of the minimum age for marriage should be contextualized within the social and cultural fabric, taking into account the evolving needs and challenges faced by individuals and communities. Striking a balance between tradition, religious teachings, and the well-being of individuals is of paramount importance when formulating effective legal provisions regarding the minimum age for marriage.<sup>81</sup> The dominant aspect to consider in determining the minimum age for marriage is the physical and psychological maturity of individuals, primarily assessed through their age. This is significant as it aligns with the objective of establishing strong and resilient families,

<sup>81</sup> Kurdi, "Pernikahan Di Bawah Umur Perspektif Maqashid Al-Qur'an," *Jurnal Hukum Islam* 14, no. 1 (2016): 65–92, <https://doi.org/10.28918/jhi.v0i0.673>.

ensuring that future generations do not find themselves in a vulnerable position. Consequently, the determination of the minimum age for marriage is oriented towards fulfilling the *Maqasid al-Shari'ah*, aiming to achieve benefit and prevent harm in various situations that may not be explicitly addressed in the Qur'an and Sunnah.<sup>82</sup>

In relation to setting the minimum age for marriage, these benefits can be identified from efforts to reduce the number of early marriages which are very vulnerable to divorce.<sup>83</sup> This condition is due to the fact that the household life of early married couples tends to be unstable.<sup>84</sup> The aforementioned rationale substantiates the use of setting a minimum age for marriage as a means to regulate early marriages, which are susceptible to higher rates of divorce. Furthermore, from an alternate perspective, early-age marriages carry inherent risks across multiple dimensions, encompassing health, psychological well-being, and economic considerations. This underscores the importance of discouraging early marriages and promoting the establishment of minimum age for marriage that prioritizes the overall well-being and stability of the individuals involved.<sup>85</sup> Therefore, it is at this level that setting the minimum age for marriage in the narrative of Islamic law is seen as an effort to gain benefit and reject harm for the world of Islamic family law enforcement.

## Conclusion

The determination of maturity concerning the minimum age for marriage varies among several Muslim countries in accordance with their respective legal tradition. In Egypt, as stipulated in Law No. 56 of 1923 and the Law on the Composition of the Religious Courts of 1931, the maximum age for marriage is set at 18 years for men and 16 years for women. Similarly, in Tunisia, the minimum age for marriage is 18 years, which applies to both men and women, as specified in Law No. 32 of 2007. Pakistan also follows the same minimum age for marriage as Egypt, with 18 years for men and 16 years for women, as outlined in

<sup>82</sup> Badrul Munir, "Batas Usia Perkawinan Dalam Undang-Undang Keluarga Islam Negeri Selangor Tahun 2003: Analisis Perspektif Maqasid Al-Syari'ah," *Jurnal Samarab* 3, no. 2 (2019): 271–94, <https://doi.org/10.22373/sjkh.v3i2.4957>.

<sup>83</sup> Muhammad Fahrezi and Nunung Nurwati, "Pengaruh Perkawinan Di Bawah Umur Terhadap Tingkat Perceraian," *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat* 7, no. 1 (2020): 80–89, <https://doi.org/10.24198/jppm.v7i1.28142>.

<sup>84</sup> Moh Ali Wafa, "Telaah Kritis Terhadap Perkawinan Usia Muda Menurut Hukum Islam," *AHKAM: Jurnal Ilmu Syariah* 17, no. 2 (2017): 389–412, <https://doi.org/10.15408/ajis.v17i2.6232>.

<sup>85</sup> Dewi Iriani, "Analisa Terhadap Batasan Minimal Usia Pernikahan Dalam UU No. 1 Tahun 1974," *Jurnal Justitia Islamica* 12, no. 1 (2015): 129–46, <https://doi.org/10.21154/justicia.v12i1.262>.

the Muslim Family Laws Ordinance (MFLO) number 8 of 1961. One interesting aspect in Tunisia is the presence of legal implications that impose sanctions to enforce the minimum age for marriage. Offenders, including those who engage in underage marriages and parents or guardians who neglect this regulation, can face imprisonment for a maximum of one month or a fine of up to one thousand Rupees. Notably, this provision applies even if the parents or guardians have received prior warnings from the court or other parties not to marry off their children below the specified minimum age. In such cases, the penalty may be increased to a maximum of three-month imprisonment or a fine of one thousand Rupees. It is worth mentioning that this provision is not widely observed in other Muslim countries. On the other hand, in Indonesia, the legal minimum age for marriage is defined in Law No. 16 of 2019, which sets the age at 19 years for both men and women.

Furthermore, Tunisia and Indonesia are among the countries that require a marriage license or dispensation for couples who have not yet reached the specified age. Differences in determining maturity for the minimum age for marriage across countries arise from the absence of a definitive statement regarding maturity in Islamic law. These differences can be attributed to the countries' affiliations with specific schools of *fiqh* and considerations of societal developments, both psychologically and sociologically. Additionally, these variations are influenced by the need to exercise societal control in line with national interests, such as preventing underage marriages, reducing divorce rates, and fostering resilient generations through the maturity attained in marriage. These endeavors reflect the values of pursuing benefits and rejecting harm in upholding family law on an international scale.

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