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# ARTIKEL TENTANG REACTUALIZATION OF THE MARRIAGE AGE LIMIT ....pdf

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## Reactualization of the Marriage Age Limit in Indonesia (in the Perspective of Maslahah Mursalah)

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**Abstract:** Law is a structure that regulates the pattern of society to form a culture. The Islamic family culture in Indonesia is strongly influenced by the prevailing family law structure which includes marriage and divorce. This is regulated in the structural system of laws regarding marriage, namely Law No. 1 of 1974 as amended by Law No. 16 of 2019 concerning Changes in the Minimum Age of Marriage for Women. Articles which for some people believe have not accommodated the interests of all parties and have not met the times, so that this Law is felt by some women activists to be discriminatory which tends to reap injustice. Among the articles that are considered controversial, namely the Minimum Age for Marriage. study on the actualization of Indonesian Marriage Age Limits uses a qualitative descriptive method by using a literature study, so that the findings are that Law Number 1 of 1974 concerning Marriage which was amended by Law No. 1 of 2019 especially related to Article 7 concerning the age limit is already in line with and accommodate the interests of citizens, In the Qur'an and Hadith there is no mention of age limits but mentions "baligh" and "able" as a benchmark in the permissibility of marriage, Jumhur scholars accept Maslahah Mursalah as one of the reasons in establishing sharia law, but in the application and placement of conditions they have different opinions

**Keywords:** Legislation; Maslahah Mursalah; Re-actualization.

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### INTRODUCTION

Marriage regulations in Indonesia were officially promulgated on January 2, 1974, which became effective on October 2, 1975,

through Government Regulation of the Republic of Indonesia No. 9 of 1975 concerning Marriage.

UU no. 1 of 1974 concerning marriage has

been formally applied to the Indonesian people, and has become a positive law. In addition to upholding the principles, the Law also accommodates principles and provides a legal basis as a guide for various groups of Indonesian society.

Indonesia is a state of law as stated in the Constitution (UUD 1945) CHAPTER I article 1 paragraph (3)<sup>1</sup> so that in legal science there is the term legality principle, namely that legal subjects will not be subject to sanctions or legal consequences if there are no laws and regulations which regulates something (*principles of legality*)<sup>2</sup>. In criminal law the meaning of the principle of legality here is also regulated in Article 1 paragraph (1) of the Criminal Code, that no act can be punished, except for the strength of the criminal rules in existing legislation, before the act is committed.<sup>3</sup>

With *principles of legality*, it is not uncommon for judges to experience a deadlock in giving decisions in order to create justice in society because there is a legal vacuum or there are no rules that clearly contain the issue. As is the case with the provisions of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Changes in the Minimum Age of Marriage for Women.

In Law No. 1 of 1974 there is Article 7 which regulates the age limit that must be met by a person if he wants to carry out a mar-

riage.<sup>4</sup> this article is considered not to accommodate the interests of all parties and does not keep up with the times so that this law is then considered by some women activists there is discrimination that tends to benefit men and women who are always the victims. Article 7 paragraph 1 of the Marriage Law regulates the minimum age for marriage, male is 19 years old, female is 16 years old, before the judicial review or testing of the 1974 Marriage Law Article 7 paragraph 1 and paragraph 2 carried out by three women victims of child marriage, namely Endang Wasrimah, Rasmimah and Maryati, reached a dead end after the Constitutional Court in June 2015 rejected it using the *Open Legal Policy*.<sup>5</sup>

Two paragraphs submitted for review are paragraph 1 of article 7 which states that “marriage is only permitted if the man reaches the age of 19 years and the woman reaches the age of 16 years” while paragraph 2 of the same article states “in the case of deviations from paragraph 1 of this article. then you can ask for a dispensation from the court or other official appointed by both male and female parents.”

The Qur’an and hadith do not discuss the age limit issue, which is related to “baligh” and “capable” which is then translated the word baligh, capable by experts in jurisprudence or fuqaha with different versions according to the circumstances. In the book of

<sup>1</sup> *Undang-Undang Dasar Republik Indonesia '45 Yang Sudah Diamandemen Dengan Penjasannya* (Indonesia, 2002).

<sup>2</sup> JB Daliyo, *Pengantar Ilmu Hukum* (Jakarta: Gramedia Pustaka Utama, 1992).

<sup>3</sup> Moeljatno, *KUHP Kitab Undang-Undang Hukum Pidana* (Jakarta: Bumi Aksara, 2001).

<sup>4</sup> Yusuf, “Dynamics of Marriage Age Limits in Indonesia: A Study of Psychology and Islamic Law,” *JIL: Journal of Islamic Law* 1, no. 2 (2020): 1, <http://e-journal.iainptk.ac.id/index.php/jil/article/view/59>.

<sup>5</sup> Eva Mazrieva, “Mengapa Sulit Merevisi Batas Usia Dalam UU Perkawinan 1974?,” *VOA Indonesia*, last modified 2018, accessed February 17, 2022, <https://www.voaindonesia.com/a/mengapa-sulit-revisi-batas-usia-dalam-uu-perkawinan-1974-/4285424.html>.

*Syarah Fath Al-Qodir* it is permissible for a man and a woman to marry at a young age. This permissibility is due to the absence of a Qur'anic verse that *clearly* explains the minimum age for marriage and not in the hadith of the prophet which states. in detail.

Marrying at an early age has a health impact, especially on women under 20 years old, therefore unplanned pregnancies in their teens. will have a physical and psychological impact. The physical impact is experiencing early labor, complications in childbirth such as obstetric, infection, severe bleeding, anemia and eclampsia, which can cause death for both mother and baby. While the psychological impact that occurs is experiencing anxiety, depression and the opportunity to experience physical, sexual and emotional violence due to a lack of status and power in the household.<sup>6</sup>

Pregnancy at a young age is correlated with maternal mortality and morbidity. Women aged 10-14 years have a fivefold risk of dying during pregnancy or childbirth compared to the 20-24 year group, while this risk doubles in the 15-19 year age group. This is because the anatomy of the child's body is not ready for the process of conceiving or giving birth, so there are complications in the form of *obstructed labor* and *obstetric fistula*. Data from UNFPA in 2003, showed 15% -30% of premature deliveries were accompanied by chronic complications, namely *obstetric fistula* (damage to the female organs that causes urine or feces to leak into the vagina. Women

aged less than 20 years are very susceptible to *obstetric fistulas*).<sup>7</sup>

The readiness of each partner to start a new life is the most important factor in carrying out all their psychological and biological needs. Therefore, every couple planning to get married needs to understand the ways determined by religion and the legal provisions in force in their country<sup>8</sup>

. Significant influences related to child marriage include psychological impacts (anxiety, depression, even suicidal thoughts). For this reason, protection of children must be carried out from an early age, starting from the family, namely parents, schools, namely teachers, even in a wider scope , namely the community. and the government.<sup>9</sup>

From the background of the problem This is what is then interesting to research. related to the article in Law No. 1 of 1974 which is considered controversial and how to determine the age limit for marriage in Indonesia and how to actualize the age limit for marriage in Indonesia from the perspective of Masalah Mursalah,

## ANALYSIS AND DISCUSSION

### Theory Masalah Mursalah

<sup>7</sup> Arie Anggraini, Novia Sari, and Reffi Dhamayanti, "Novia Hubungan Pendidikan Dan Pekerjaan Dengan Usia Menikah Di KUA Depok Yogyakarta," *Jurnal Inovasi Penelitian* 1, no. 9 (2021): 1779–1786, <https://stp-mataram.e-journal.id/JIP/article/view/356>.

<sup>8</sup> Brigita DS Simanjorang, "Kajian Hukum Perkawinan Anak Dibawah Umur Menurut Undang Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974. Tentang Perkawinan," *Lex Privatum* 10, no. 1 (2022): 48–57, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/38068>.

<sup>9</sup> Fransiska Novita Eleanora and Andang Sari, "Pernikahan Anak Usia Dini Ditinjau Dari Perspektif Perlindungan Anak," *Progresif: Jurnal Hukum* 14, no. 1 (2020): 50–63, <https://journal.ubb.ac.id/index.php/progresif/article/view/1485>.

<sup>6</sup> A Halil Thahir and Nadlifatul Husna, "Upaya Pencegahan Meningkatnya Pernikahan Dini Di Masa Pandemi Covid-19: Studi Pendampingan Pengabdian Masyarakat Di Desa Ngetos Kabupaten Nganjuk," *Abdimas Indonesian Journal* 1, no. 2 (2021): 1, <https://journal.civiliza.org/index.php/aij/article/view/77>.

1. Definition *Maslahah*

In the study of ushul fiqh, the word *maslahah* is synonymous with the word benefit, which means good and contains benefits, from a linguistic point of view it can be understood that *maslahah* includes everything that brings benefits, either by doing an action or by refusing action and avoiding everything that brings harm and difficulty.<sup>10</sup>

According to the term is maintaining the goals of syara, meaning a job that aims to take advantage and reject harm with the aim of maintaining the goals of shari'a.<sup>11</sup>

There are five objectives of sharia in establishing the law, maintaining religion, soul, intellect, lineage and property, meaning that *maslahah* is something that is considered good by common sense because it brings good and avoids evil or damage to humans, in line with the objectives of sharia in establishing law.<sup>12</sup>

2. Classification *Maslahah*

Classification of *maslahah* for human life, ushul fiqh experts divide *maslahah* into three types, namely:

a. *Dharuriyat* (primary)

That is the level of human needs that must exist if these needs are not met it will result in a person's safety being threatened both from the side of the world and the hereafter. *Maslahah* consists of five elements, namely: maintaining religion, soul, mind, lineage and property, because by maintaining these

five elements, a person's primary needs will be achieved and fulfilled.

b. *Hajjiyyat* (secondary)

That is the level of need which if it does not materialize it does not reach the stage of threatening one's safety, it just causes difficulties such as the rukhsah that it is permissible to break the fast while on the way.

c. *Tahsiniyyat* (tertiary)

That is the level of needs which, if not fulfilled, will not harm the five primary needs and will not cause difficulties, meaning that this need is only complementary, such as wearing perfume when praying.

Based on these three levels of benefit, what a Muslim needs to pay attention to is the quality of the importance of the benefit so that it can be determined which benefit must be prioritized first, the benefit of *dharuriyyat* must take precedence over *hajjiyyat* and the benefit of *hajjiyyat* take precedence over *tahsiniyyat*.<sup>13</sup>

In the opinion of some scholars, the three levels of *maslahah mursalah*, then *maslahah* that is *dharuriyah* in nature can be used as a legal basis, because *maslahah* is closely related to the existence of human life.<sup>14</sup>

In terms of its existence by *syar'iyah*, it is divided into three, namely

1. *Maslahah mu'tabarah*

*Maslahah mu'tabarah* contained in the texts clearly states that it means *maslahah* recognized by sharia, such as orders to maintain property, and it is prescribed for the punishment of cutting off hands for people who steal.

<sup>10</sup> Said and Ramadhan Al-Budhi, *Dhawabuth Al Maslahah Fi Al-Syariah Al-Islamiyah* (Beirut: Muasasah Al risalah, 1977).

<sup>11</sup> Abu Hamid al- Ghazali, *Al- Mustasfa Fi Ilmi Al-Ushul* (Beirut: Dar al- Katub Alislamiyah, 1983).

<sup>12</sup> Abu Ishaq Asy-Syahibi, *Al-Muwafaqat Fi Ushul Al-Ahkam (Jilid 1)*, nd

<sup>13</sup> Firdaus, *Ushul Fiqh : Metode Mengkaji Dan Memahami Hukum Islam Secara Komprehensif* (Depok: Rajawali Pers, 1971).

<sup>14</sup> Wahbah Az Zuhayli, *Ilmu Ushul Fiqh*, h. 756

2. *Maslahah Mulghoh*

*Maslahah Mulghoh* is an act that is contrary to the provisions of the text, according to the scholars this *maslahah* must be rejected and cannot be used as a proof because there are arguments that have been clearly stated in the texts, both in the Qur'an and hadith.

As happened in ancient times, that there was one friend who did fasting continuously without breaking, then he did not marry and slept only praying, because they thought it would benefit them, and this was forbidden by the Messenger of Allah.

a. *Maslahah Mursalah*

*Maslahah Mursalah* is *maslahah* which is not clearly stated in the argument that rejects it or admits it, meaning that *maslahah* is silenced by *syara*, but this type of *maslahah* continues to develop in society along with the times.<sup>15</sup> Imam Asy Shafi'I defines *maslahah mursalah* as *maslahah* which contains characteristics that contain *syar'i* goals, but are not stated in certain arguments for using them or ignoring them, and they are integrated with the purpose of the law, namely bringing *benefit* or rejecting *harm* to humans.<sup>16</sup>

According to the opinion of Imam Al Gazali *Maslahah Mursalah* is defined as a method of legal *istimbath* to obtain benefits or reject harm, but not based on the desires or goals of creatures, but in accordance with the objectives of *syara*, namely to maintain the five elements, namely reli-

gion, soul, intellect, lineage and property. that contains the five elements is included in *maslahah*, and anything that is separated from the five elements is included in *mafsadat*, because rejecting *mafsadat* is *maslahah*.<sup>17</sup>

*Maslahah Mursalah* is basically not explicitly recognized by *syara*, but it is in harmony with the essential aspect of *shari'a* in general, namely maintaining the five benefits that are closely related to humans, as is the case in people's lives, regarding the presence of traffic signs, which if we examine in the texts there is no one that mentions these signs and there are also texts that refuse or prohibit, but when viewed from the side of the benefits of taking care of one's soul.

3. as *majority*

of scholars accept *Maslahah Mursalah* one of the reasons for establishing *syara* law, even though in the application and placement of conditions they differ in opinion, the argument of the majority of scholars in determining *maslahah mursalah* as evidence in establishing the law is as follows:

*First* the enactment of a law cannot be separated except for *benefit* of humans, when it is reviewed and estimated and it is believed that the law contains *benefits*, it is obligatory to practice the law, as the word of Allah SWT,

From the verse the word *rahmatan* means love, and the form of affection is realized by law that contains benefits for humans. *Second*, in fact human life will continue to develop, as well as *benefit* will always change influenced by the development of place, time and environment. If Islamic

<sup>15</sup> Firdaus, *Ushul Fiqh : Metode Mengkaji Dan Memahami Hukum Islam Secara Komprehensif*.

<sup>16</sup> Asy-Syahibi, *Al-Muwafaqat Fi Ushul Al-Ahkam (Jilid 1)*.

<sup>17</sup> Wahbah Azuhaily, *ilmu Ushul Fiqh*, h. 757

law is limited to existing laws, it will bring difficulties and have an impact on great harm, which in the end is no longer in line with the goals of sharia, namely bringing *benefit* and rejecting *harm*. As mentioned in the rules of fihiyyah.

“The law changes according to the changing times and places.”

*Third*, the majority of scholars also postulated by referring to some of the actions of friends, such as Umar bin Khatab not giving zakat to converts, because according to Umar bin Khatab, *benefit* of the people demanded that, Abu Bakr collected the Qur’an at the suggestion of Umar Bin Khatab as one of the *benefits* to preserve the Qur’an in one language accent in the time of Ustman bin Affan in order to maintain that there were no differences in the reading of the Qur’an itself.<sup>18</sup>

Furthermore, to be able to make *mashlahah mursalah* a method of determining law, the Malikiyah and Hanabilah scholars determine three conditions, namely as follows:

1. *benefit* in accordance with the aims and objectives of the syara and its *must* be supported by the texts in general
2. *benefit* . just an estimate, thus the law that is set will really provide benefits and avoid mafsadat.
3. *benefit* must have a relationship with many people, not only individual interests or only a small part.

Therefore, *maslahah mursalah* can be used as a method in determining Islamic law if the conditions are met, namely, *mashlahah* has a true or essential nature, not just *maslahah* that comes from prejudices and estimates, even *maslahah* has

been researched carefully so that true results can be found that provide benefits and reject harm, then *maslahah* applies to the public not only partially, and the most important thing is that it does not conflict with existing laws and determined in the Qur’an, hadith, and the consensus of the scholars.<sup>19</sup>

Opinions Some scholars who do not use *mashlahah mursalah* as evidence for establishing a law, including hanafiyah scholars. This opinion is based on several reasons, including the following:

- a. When *maslahah mursalah* is used as an argument, it will open up a wide gap for law makers, namely judges when deciding a case. So they use and based on lustful desires.
- b. Islamic law has determined the kinds of *benefits* as described in the Qur’an, hadith, ijma, and qiyas, meaning that there is no *benefit* that escapes the determination of the texts, therefore it is not justified if there are problems that were not stipulated by the previous Shari’a, because *Maslahah* as such is only an estimate and cannot be used as a basis in determining the law.
- c. Some scholars do not use *maslahah mursalah* as a method of establishing law on the grounds that *mashlahah mursalah* will lead to the determination of law based on lust and categorized into chapter taladzud or based on pleasure.

#### **Determination of the Minimum Age for Marriage, namely Article 7 paragraph (1) of Law no. 1 of 1974**

The provisions regarding the age limit for marriage were previously challenged by

<sup>18</sup> Wahab Az Zahra, *Ushul Fiqh*, jilid 1, h. 763

<sup>19</sup> Noer Iskandar, *Kaidah Kaidah Hukum Islam* (Jakarta: PT Rajagrafindo Persada, 2002).



a group of citizens who felt disadvantaged by the difference in the age limits of men and women. In article 7 paragraph 1 of the Marriage Law, the minimum age for marriage for men is 19 years while for women is 16 years, previously there was a judicial review or review of the 1974 Marriage Law Article 7 paragraph 1 and paragraph 2 which was carried out by three women victims of child marriage, namely Endang Wasrinah, Rasminah and Maryati, reached a dead end after the Constitutional Court in June 2015 rejected it using the *open legal policy argument*.<sup>20</sup> Two paragraphs that are submitted for review are paragraph 1 of article 7 which states that “marriage is only permitted if the male party reaches the age of 19 years and the female reaches the age of 16 years” while paragraph two of the same article states “in the case of deviations from paragraph 1 of this article. can ask for dispensation from the court or other official appointed by both male and female parents.

Coordinator of the Public Policy Reform Working Group of the Indonesian Women’s Coalition, Indry Oktaviani, told VOA that the judicial review failed because the panel of judges used moral reasons. According to him, there is a strong point of view among policy makers that if children are not immediately married, they will have free sex, this was felt during the trial, there was an unfinished debate because the definition of morality used was based on adult morals, which is religion. which is now very fundamentalist, one of the things that is difficult for the petitioners to solve at the 2015 Constitutional Court and becomes the judge’s basic consideration is moral, namely religious morals, the point is

<sup>20</sup> Mazrieva, “Mengapa Sulit Merevisi Batas Usia Dalam UU Perkawinan 1974?”

that there is no adultery.<sup>21</sup> The revision of article 7 regarding the age limit for marriage in the Marriage Law has become a serious focus on at least two things<sup>22</sup>

1. : To prevent child marriage, which has a continued impact on the occurrence of pregnant women and giving birth at a young age, which poses a high risk to the health of pregnant women and child-birth and child marriage In the context of psychological mental readiness, married couples are concerned about a high risk of divorce.
2. To protect the rights and interests of children, considering that according to Law No. 23 of 2002 as the implementation of the Convention on the Rights of the Child, it is stipulated that what is meant by children is up to the age of 18 years. A revision is also deemed necessary to the addition in paragraph 2 of article 7 which stipulates that even if the woman is still under the age of 16 years, if there is permission from her parents, it is permissible to marry. This provision is seen as violating the Convention on the Rights of the Child which mandates the best interests of the child not according to the interests of the parents.

In 2017, the second judicial review was re-submitted, but on this occasion the Constitutional Court considered the policy to be contrary to the 1945 Constitution and the Child Protection Law. The Child Protection Act states that children are those aged 18 years. So that anyone who is under the age of 18 is still in the category of children. “Thus the age

<sup>21</sup> Ibid.

<sup>22</sup> Antonius Wiwan Koban, “Revisi Undang Undang Perkawinan,” *The Indonesian Institute : Center for Public Policy Research* 4, no. 10 (2010): 3.

limit regulated in the Marriage Law is still in the category of children,” said judge member 1 Dewa Gede Palguna.<sup>23</sup> The regulation also causes differences in treatment between men and women, Palguna said that the minimum age limit of 19 years applied to men is considered to provide a longer span of time as children than women, referring to the provisions of Article 31 of the 1945 Constitution which states that every citizen has the right to get 12 years of basic education. If a woman marries at the age of 16, according to the judge, they will lose the right to 12 years of basic education, even though the right to education is a constitutional right that should be enjoyed on an equal basis with men.

However, the Constitutional Court cannot determine the appropriate age limit for marriage for women, it is the authority of the DPR as the legislator, for that the Court has given a maximum grace period of three years to the DPR to change the age limit provisions to make changes to marriage, especially with regard to marriage. minimum age limit for women in marriage.<sup>24</sup>

MK spokesman Fajar Laksono said the three-year rule was not contained in the law, but it was a moderate time and was taken according to the MK’s experience in dealing with previous cases, there were no rules for the three years, only the moderate views of the judges, such as during the trial of the Corruption Act. or the 2005/2006 State Budget Law, three years was the maximum limit, if a deci-

sion has been issued, the legislators should be able to act immediately. If within three years it is not completed, the decision will take effect automatically.” If within three years there are no changes, the law and the article being sued will be automatically amended in accordance with today’s decision, which is adjusted to the Child Protection Act where the minimum marriage limit is 18 years when the children are adults. Article 7 of Law Number 1 of 1974 has stated that the Minimum Age for marriage for women is 16 years and for women Men 19 years. according to the times, because who knows in the next 10 years or 15 years the definition is considered not according to the times and is considered irrelevant.<sup>25</sup>

The Constitutional Court’s Decision Number 22/PUU-XV/2017 in its ruling ordered the legislators to for a maximum period of 3 (three) years make changes to Law Number 1 of 1974 concerning Marriage. Changes to norms in Law Number 1 of 1974 concerning Marriage review the age limit for marriage, improve norms by increasing the minimum age limit for marriage for women. The minimum age limit for marriage for women who is raised to 19 years is believed to be mature in mind and body to be able to carry out marriages in order to realize the purpose of marriage properly without ending in divorce and obtaining healthy and quality offspring.

Another thing that has taken into consideration this change,

1. the Constitutional Court of the Republic of Indonesia has issued a decision of the Constitutional Court No. 22/PUU-

<sup>23</sup> Sidang Pleno Terbuka di Gedung MK, Jl. Merdeka Barat, Jakarta Pusat, Kamis 13 Desember 2018)

<sup>24</sup> “MK Kabulkan Gugatan Batas Usia Dalam UU Perkawinan,” *CNN Indonesia*, last modified 2018, accessed February 27, 2022, <https://www.cnnindonesia.com/nasional/20181213110330-12-353335/mk-kabulkan-gugatan-batas-usia-dalam-uu-perkawinan>.

<sup>25</sup> Rizal Bomantama, “Ini Penjelasan MK Tentang Revisi Batas Usia Pernikahan,” *Tribunnews.Com*, last modified 2018, accessed March 2, 2022, <https://www.tribunnews.com/nasional/2018/12/13/ini-penjelasan-mk-tentang-revisi-batas-usia-pernikahan>.

XV/2017 which one of the considerations of the Constitutional Court in the decision is:

“However, when the difference in treatment between men and women has an impact on or hinders the fulfillment of basic rights or constitutional rights of citizens, whether included in the group of civil and political rights as well as economic, educational, social and cultural rights which should not be distinguished solely on the basis of gender, then such differences are clearly discrimination

. At the same time, it is also stated that setting 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 of the rights and obligations of citizens, but also creates discrimination against protection and fulfillment of children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution, which reads:

- (1) Everyone has the right to form a family and continue offspring through legal marriage
- (2) . discrimination.

The stipulation that the minimum age of marriage for women is lower than that of men, so legally women can form a family faster, because of this, in its decision, the Constitutional Court ordered legislators to make changes to the law within a maximum period of 3 years. No. 1 of 1974 concerning marriage.

Referring to the provisions of Article 28B of the 1945 Constitution of the Republic of Indonesia, it is stated that everyone has the right to form a family and continue offspring

through legal marriage and the state guarantees the child's right to survival, growth and development and the right to protection from violence and discrimination.

The provisions contained in Article 7 paragraph (1) of Law No. 1 of 1974 states that marriage is only permitted if the man reaches the age of 19 years and the woman has reached 16 years. 1 point 1 of Law No. 35 of 2014 concerning child protection is defined that a child is someone who is not yet 18 years old, including children who are still in the womb.<sup>26</sup>

b. Changes in norms in Law No. 1 of 1974 concerning marriage reach the age limit for marriage, improvement of norms reaches by increasing the minimum age for marriage for women, namely Law Article 7 paragraph 1 No. 16 of 2019, in this case the minimum age for marriage for women is equalized. with a minimum age of marriage for men, which is 19 years.

The age limit of 19 years is considered to have matured mentally and physically to be able to carry out marriages in order to realize the purpose of marriage properly without thinking of ending in divorce, getting healthy and quality offspring and it is also hoped that an increase in the age limit higher than 16 years for women to marry will result in a lower birth rate and reduce the risk of maternal and child mortality, so as to optimize child growth and development including parental assistance and provide access to the highest possible education.<sup>27</sup>

The difference in the minimum age limit between a man and a woman to carry out a marriage begins with unequal treatment and

<sup>26</sup> Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, 2019.

<sup>27</sup> Ibid.

is considered to be unfair from a gender perspective, therefore, in 2019 a change was made to the minimum age limit for marriage with the enactment of Law of the Republic of Indonesia Number 16 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage

### Reactualization of the Marriage Age Limit in Indonesia in the Perspective of *Maslahah Mursalah*

One of the rules that are prescribed in the Islamic concept is to maintain the benefit / goodness of humans, either by benefiting or avoiding harm, whether to apply now or in the future. full of love and affection, and get offspring who will carry on the goodness passed down from previous generations.

A marriage can achieve the goal of the benefit of marriage by giving a thought or in the form of a new legal regulation at the time of pre-marriage, so that both are able to realize the purpose of marriage and the benefit can be realized, it is necessary to actualize a better legal regulation to produce better legal reform. , in order to realize its goal of *benefit*.

The renewal of the fiqh law is needed in line with the development of the reality of society in its conditions and times by using the theory of ushul fiqh in exploring a law from its source, namely the Qur'an and hadith, among the analytical theories in the science of ushul fiqh is the theory of *Maslahah Mursalah*,

Imam Al Ghazali stated that in *Maslahah* principle is: "Maintaining the Purpose of Syara"<sup>28</sup>

There are five objectives of Syara in establishing the law, namely maintaining religion, soul, mind, lineage and property, meaning that *maslahah* is something that is consid-

ered good by common sense because it brings good and avoids evil (damage).humans, in line with the objectives of syara' in establishing the law,<sup>29</sup>

marriage has a syara' goal, namely to maintain the soul, meaning that marriage will give birth to new souls and this is an initial application in the shari'a goal, namely to keep the soul born in accordance with sharia rules through legal marriage in accordance with sharia law. with Islam, apart from addition, marriage will protect itself from reproductive diseases by having a relationship that is lawful and according to Islamic rules

Marriage also aims to maintain offspring, namely protecting offspring in the future, in this case with offspring marriage, the lineage of the mother and father will be maintained, which clearly do not mix with each other or offspring produced outside of marriage.

Marriages carried out by ignoring age restrictions as regulated by law will have a negative impact on the souls of mothers and children who grow up not ideally such as stunting, for example, maternal and child mortality will increase and are vulnerable to disease attacks for babies and their mothers, so marriage minors do not achieve the purpose of marriage, both self-preservation and progeny.

In general, *maslahah* has several parts seen from various points of view, *Maslahah* based on its existence is divided into three types, namely:

1. *Maslahah Mu'tabarah*

*Maslahah Mu'tabarah* is, the benefits that are mentioned in the texts explicitly explain and acknowledge their existence, in other words, the benefits that are recognized by the syar'i explicitly with specific

<sup>28</sup>Ghazali, *Al- Mustasfa Fi Ilmi Al- Ushul*.

<sup>29</sup> Asy-Syahibi, *Al-Muwafaqat Fi Ushul Al-Ahkam (Jilid 1)*.

arguments, either directly or indirectly that provide guidance, are *maslahah* which are the reasons for establishing the law. .

Age restrictions in marriage as stipulated by law are not included in the criteria for *maslahah* , because there are no texts explicitly mentioning the benefits of limiting these elements

## 2. *Maslahah Mulghah*

*Maslahah Mulghah*, namely benefits that are contrary to the provisions of the texts, in other words, benefits that are rejected because there are arguments that show that they are contrary to the provisions of clear arguments, while the age restriction in marriage which is applied by the Marriage Law, is not a form of resistance to the texts because it does not there are texts that explicitly mention both in the Qur'an and Hadith regarding age restrictions in marriage, thus age restrictions in marriage are not included in the *Maslahah Mulghah*.

## 3. *Maslahah mursalah*

*Maslahah mursalah* , the benefit of which there is no explicit evidence that either admits it or rejects it, more strictly speaking, *mursalah maslahah* is a type of problem that is ignored by the texts, but in fact this type of benefit continues to grow and develop along with with the growth of society and the development of the times which are influenced by conditions and places.<sup>30</sup>

Imam Ash-Syatibi defines *Maslahah Mursalah* are *Maslahah* characteristics that contain syar'i goals, but are not stated in certain arguments to use them or ignore them, and they are integrated with the le-

gal purpose of bringing benefit or rejecting harm to humans.<sup>31</sup>

The age restriction in marriage which is applied by the Marriage Law is a benefit that explicitly and clearly there is no evidence in either the Qur'an or hadith that admits it or rejects it, but whether we realize it or not society continues to develop and recognize the benefits that arise and the age restriction. in a marriage, so it is not wrong if the age restriction in this marriage is included in the *Maslahah Mursalah*

scholars accept *Maslahah Mursalah* of the reasons for establishing syara' law even though in the application and placement of the conditions they have different *as one opinions* . into *taladzud* or based on pleasure.

According to the opinion of the Malikiyah and Hanabilah scholars, there are three conditions when making *Maslahah Mursalah* a proposition in applying the law, namely as follows.<sup>32</sup>

1. The benefit is in accordance with the will of the syara and is included in the type of benefit that is supported by the texts in general, and does not conflict with the goth'i arguments.

The age restriction in marriage which is applied in the Law in Article 7 No 16 of 2019 which is each male and female candidate aged 19 years, is a form of benefit for humans in running the household, and this benefit is supported by texts in general although not explicitly firmly determines the minimum age limit for marriage, as the Prophet SAW said in a hadith, where

<sup>30</sup> Muhammad Abu Zahrah, *Usul Fiqh, Trans. Saefullah Ma'sum* (Jakarta: Pustaka, 2003).

<sup>31</sup> Ash-Syahibi, *Al-Muwafaqat Fi Usul Al-Ahkam (Volume 1)*.

<sup>32</sup> Wahbab Az-Zuhayli, *Usul Fiqh* vol 8, p. 799

the hadith is a recommendation for people who are able to marry, in this case Islamic teachings teach humans to use their minds and knowledge to describe what is meant by the word capable. depending on conditions, places and so on, where each country, individuals differ in their level of ability and things that are applied as a rule but still have the principle of benefit for humans, this is in line with the application of the Age Restriction Law in Article 7 No. 16 of 2019 in marriage as an application of the word “capable” ordered by the Messenger of Allah.

- benefit is rational, not just an estimate, so that the law stipulated through *maslahah mursalah* is believed to produce benefits and avoid harm. Underage/young age marriages generally have an impact on health, especially for mothers and babies, as well as economic growth due to poor education and skills. they have is still minimal and has an impact on the high divorce rate.

The benefits of the law that apply age restrictions in marriage are correct and rational, the disadvantages of young marriage must be avoided

- The benefit concerns the interests of the people, not personal interests or certain small groups.

From the results of the study, it was found that marriages carried out at a young age generally did not benefit the marriage, where Allah has prescribed a marriage aimed at the benefit of humans, this will not only affect the bride and groom but will have an impact on the relationship between their respective extended families. each even to the point of breaking up the relationship due to quar-

rels between the two partners who are still the same, putting forward the ego in dealing with problems in the household due to unstable emotions. this also results in the mental growth of their children due to unstable family conditions both economically and mentally

. The benefits of limiting age in marriage as implemented by the Marriage Law are that each prospective groom and bride must be at least 19 years old, is a beneficial benefit

concept of age restriction in marriage in Article 7 of the Marriage Law is in line with the concept of *Maslahah Mursalah* applied by ushul fiqh scholars, namely, the benefit of limiting the age of 19 years is an actual benefit, not *maslahah* an alleged but based on research, caution and in-depth discussion and really bring benefits and reject damage, then the benefit in the form of a rational *maslahah* is proven by research that is general in nature, not for the benefit of individuals. n only, but for the majority of people, and the main thing this benefit is not contrary to the law that has been set by the *texts*.

#### **The review of Islamic law regarding articles that are considered controversial**

in Islam does not regulate what is the minimum age for a person to be eligible for marriage, but in the Qur'an Surah An-Nur verse 32 which means that:

*“And marry those who are alone between you and other people. - Those who are worthy (married) of male slaves and female slaves. If they are poor, Allah will enable them with His bounty. And Allah is All-Wise (His gift) and All-Knowing.”*

Eligible for marriage here is defined as a

person who is physically and mentally capable of building a household<sup>33</sup>, also in the hadith it is explained that the Prophet SAW recommended to every young man who has the ability to marry.

عَاطَتْسَا بَابِشَلَا ا : وِلَلَا لَ لَا : لَنَا دُوْعَسْمَ نَبَا  
نُصَحْأ رَصَبَلَلْ ضَنْغَا هُنَا ، جُوْرَتِيْلَ ءَءَابَلْأ  
ءَءَامَجَلَا . ءَا هَلْ هُنَا مُوَصَّلَا هِيْلَ مَلْ . جِرْفَلَلْ

*From Ibn Mas'ud, he said: Rasulallah SAW said, "O young men, whoever among you is able to get married, then get married, because indeed marriage is more able to lower the gaze and more able to guard the genitals. And whoever is not able, then let him fast, because fasting is for him (to be) a restraint of lust." [HR. Congregation]*<sup>34</sup>

From the several arguments above, it can be understood that the terms of marriage cannot be measured by age but by the ability and maturity of a person, because young people may actually be more mature than those who are old. Whereas in the Marriage Law, the dispute is how old can be considered mature even though old age does not guarantee a person's maturity in marriage.

### The Realization of Marriage Law in Indonesia

Judging from the history of the Indonesian people and the majority of the largest religion in Indonesia is Islam, the marriage law in Indonesia has been designed in such a way so as not to deviate from the rules of Islamic Shari'a. Islam also does not act arbitrarily against minorities, and Islamic law can be used by all religions to provide justice and clear boundaries for all religions and adher-

ents of other beliefs.

From some of the arguments of the Koran and the hadiths above, it is clear that Article 7 contained in the Marriage Law in Indonesia is so far in line with what is regulated in Islamic law, even when faced with current problems, Islam actually thinks ahead and is dynamic.

so that in this case, although it is considered that the Marriage Law still needs to be re-actualized, of course only technical in nature, but in principle the ideals of the Marriage Law certainly want to create order and legal certainty in accordance with what is in the Al-Quran and the Hadith of the Prophet Muhammad SAW

### CONCLUSION

From some of the discussions above that Law Number 1 of 1974 concerning Marriage which was amended by Law No. 1 of 2019 especially related to Article 7 concerning Age Limits is already in line and has accommodated the interests of citizens, in the Qur'an and the Hadith does not mention age limits but mentions "baligh" and "able" as a benchmark in the permissibility of marriage, Jumhur Ulama agreed in establishing the syara law of Maslahah Mursalah as one of the methods in its application but differing opinions in setting the conditions.

Legal norms of the Marriage Law by the Makers of Law Number 1 of 1974 at that time had been designed in such a way so that they could be used by the majority of religious adherents in Indonesia, namely Islam, but did not abandon the cultural values that developed in society. so that according to the author, the Marriage Law in Indonesia has represented all Indonesian people without discriminating against minorities, followers of religions and other believers.

<sup>33</sup> M. Quraish Shihab, *Tafsir Al Misbah* (Jakarta: Lentera Hati, 2005).

<sup>34</sup> Imam Muslim, *Sahih Muslim* (Beirut: Darul Kutub Al Ilmiah, 2003).

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