

REEVALUATING LEGAL POLICY: RETHINKING THE MINIMUM AGE LIMIT FOR MARRIAGE THROUGH THE LENS OF ISLAMIC LAW

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Abstract - This paper explores the complex trajectory of marriage in Indonesia, examining the influence of religion, government, and women on the legal landscape. It delves into the intervention of religion in marriage affairs, the role of the state in establishing a legal framework, and the advocacy efforts of women for their rights within marriage laws. The focus is on Law No. 1 of 1974, which has faced criticism over time, particularly regarding the age limit for marriage stated in Article 7. The practical implementation of this regulation has led to challenges and negative consequences, such as early marriages and gender-based discrimination. The paper discusses the enactment of Law No. 16 of 2019, which amends Law No. 1 of 1974, as a progressive measure aimed at protecting women and curbing early marriages. It also examines the conceptual understanding of the age limit for marriage in Islamic law and national law, the historical trajectory that shaped legal policies, the underlying reasons for establishing a minimum age requirement, and the evolution of legal policies considering the perspective of Islamic law. The study utilizes qualitative methods, including a literature review and analysis of legal materials, to provide insights into the subject matter. The results and discussion section explores the concept of age of majority in national law, the establishment of the minimum age of marriage in the Marriage Law, the concept of age of marriage in Islamic law, and the legal policy changes to the minimum age of marriage from an Islamic legal perspective. The paper concludes by highlighting the significance of legal regulations that uphold societal needs, values, and norms to ensure effective implementation and public compliance

Keywords: Marriage laws: Age limit: Islamic law

INTRODUCTION

The legal landscape reveals a complex trajectory of marriage in Indonesia, often marked by the intertwining influence of religion, government, and women. The intervention of religion in marriage affairs stems from its role as a legal entity that aims to facilitate the formation of families (Hermanto, 2017). Within religious contexts, the family holds significance as the fundamental social unit entrusted with the responsibility of upholding religious teachings. This is particularly relevant for the majority of Indonesian Muslims who perceive national marriage laws as a means to implement their religious doctrines. Meanwhile, the state institution assumes a crucial role in establishing the necessary framework for enforcing religious teachings and ensuring the desired public order (Mubarok, 2012). The 1945 Constitution of the Republic of Indonesia, in Article 29 paragraph (2), guarantees state protection of the freedom to practice respective religious principles (Syarifuddin, 2009). Moreover, since the era of independence, women have been actively advocating for their rights and legal protection within the realm of marriage laws (Susetyo, 2007). Law No. 1 of 1974, serving as the national marriage law, has faced criticism over time as certain provisions were deemed out of touch with societal development and legal necessities. Notably, Article 7 paragraph (1), which addresses the age limit for marriage, has been subjected to scrutiny and efforts for its amendment by various stakeholders, particularly women activists (Maula, 2019). As per Article 7 paragraph (1), individuals must attain the age of 19 for men and 16 for women to enter into marriage. However, the practical implementation of this regulation presents numerous challenges, particularly when it involves underage participants. The enforcement of a minimum



marriage age of 16 for women, based on practical observations, has created a breeding ground for early marriages and has raised concerns regarding the far-reaching adverse consequences such as divorce, physical and psychological violence, sexual abuse, the transmission of HIV/AIDS, reproductive violations, and even maternal and neonatal mortality (Asnawi, 2016). Hasty child marriages, due to physical and mental unpreparedness and unstable financial circumstances, entail manifold detrimental outcomes (Yusuf, 2020).

Article 7 paragraph (1) has also faced criticism for its perceived discriminatory nature against women, contradicting the hierarchical opposition to discrimination in all its forms outlined in Article 28 paragraph (2) of the Indonesian Constitution of 1945 (Christian & Edenela, 2019). Furthermore, it has been argued that Article 7 paragraph (1) violates the rights enshrined in Article 27 paragraph (1) of the 1945 Constitution, including the right to education, access to healthcare, economic rights, political rights, social-cultural rights, and equal rights in the eyes of the law (Christian & Edenela, 2019). In response to these concerns, the community has submitted a judicial review of Law No. 1 of 1974 to the Constitutional Court of the Republic of Indonesia (Lestari, 2018). The enactment of Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage, signifies a new opportunity for the development and enhancement of marriage laws in Indonesia. The preamble of this new law explains that it was formulated in response to the decision made by the Constitutional Court of the Republic of Indonesia in Case Number 22/PUU-XV/2017. This ruling mandated the amendment of Law No. 1 of 1974 on Marriage within a period of three (3) years.

As previously mentioned, the ruling is intended to support a legal policy aimed at establishing a protective framework for women and curbing the prevalence of early marriage and child exploitation. This objective aligns with the constitutional obligation that must be fulfilled. The submission and approval of the application for a judicial review by the Constitutional Court signify progress in responsive and progressive governance, reflecting the advancement of the principles of the rule of law, particularly in addressing contemporary demands and societal needs amidst social transformation.

Numerous studies have been conducted, employing both normative and empirical research models, to investigate the age limit for marriage. Indrawati (2020) indicates that the revision of age limit provisions in marriage aims to prevent marriages involving underage individuals. Syaifullah (2015) highlights that the practice of early marriage, particularly among women in rural areas, often stems from familial intervention, as parents expect their children to marry financially stable men. Syaifullah further points out that this practice has faced criticism due to its perpetuation of adverse circumstances for women, stemming from the perception of women as being subordinate. According to a study conducted by Ilham Hidayatulloh et al. (2018), the perception of marriage among rural communities can contribute to the rise in child marriages. This disregards the rights of women, who should have an equal say with men in determining the age limit for marriage based on relevant values and norms. Additionally, Sholehudin (2019) found that maturity factors play a significant role in the sustainability of marriages, even though they are not formally required criteria. Moreover, the political landscape embedded in legal documents adds complexity to individuals' assessment of maturity, as they are concerned with the welfare of children.

Some of the findings from the aforementioned studies are correlated with the current research, as they all address the age limit for marriage. However, this study distinguishes itself by focusing on the legal policies that shaped the law establishing a balanced minimum age for marriage for both men and women from the perspective of Islamic law. Thus, this research complements previous studies. The objectives of this study are to delve into the concept of marriage age in Islamic law and national law, examine the historical context of the legal policies that led to the enactment of Law No. 1 of 1974, evaluate the regulations concerning marriage age limits in the Marriage Law, and analyze changes in legal policies regarding marriage age limits in the context of Islamic law.

Drawing upon the aforementioned background and information, several key questions arise, each addressing significant aspects of the subject matter. These inquiries encompass the conceptual understanding of the age limit for marriage in Islamic law and national law, the influence of the historical trajectory on the legal policies reflected in Law No. 1 of 1974 regarding the minimum age



of marriage, the underlying reasons and justifications for establishing a minimum age requirement for marriage within the Marriage Law, and the evolution of legal policies regarding the minimum age of marriage, particularly considering the perspective of Islamic law.

METHODS

This article presents a comprehensive literature review that employs qualitative methods as its underlying framework. The author's analysis centers around a normative juridical approach, incorporating Islamic law and relevant regulations. This approach serves to assess and scrutinize a range of documents and legal provisions concerning the alteration of the age requirement for marriage. To conduct this research, a variety of secondary data sources are utilized, encompassing primary laws, secondary laws, and tertiary laws. The primary legal material consists of Law Regulation Number 16 of 2019 leading to Law Number 1 of 1974 on Marriage, along with other pertinent regulations that remain in effect. The secondary legal materials encompass books, journal articles, magazines, and similar sources that serve as legal references to support or elucidate the primary legal material. In addition, tertiary legal materials such as encyclopedias, legal dictionaries, and other relevant dictionaries are employed in connection with the research topic. Subsequently, following the data collection phase, the analysis is conducted using descriptive qualitative methods. This analytical technique aims to elucidate and assess legal policies pertaining to modifications in the minimum age of marriage from the perspective of Islamic law.

RESULTS AND DISCUSSION

1. *The Concept of Age of Majority in National Law*

Determining the age of majority holds significant legal importance as it relates to an individual's capacity to perform actions and acquire legal rights. In the context of Indonesian law, there exist variations in the age of majority. Among legal practitioners, particularly judges, differing opinions arise regarding the age at which a person can serve as a witness in a trial. While some allow witnesses who are 18 years old, others argue against it, citing concerns about mental and emotional immaturity. Therefore, they propose that the minimum age for witnesses should be 21 years (Sudono, 2020).

According to Oka Mahendra, as quoted by Mardi Candra, the lack of uniformity in defining maturity signifies disharmony in legal regulations, which has implications for differences in interpretation and implementation, legal uncertainty, inefficiency and ineffectiveness of legal provisions, and even societal conflict resolution and improvement (Candra, 2018).

It is important to note that prior to the amendment, Law No. 1 of 1974 stipulated that men could marry at the age of nineteen (19) while women could marry at the age of sixteen (16). However, following the amendment, both men and women must be at least twenty (20) years old to marry. Nonetheless, Law No. 23 of 2002, as amended by Law No. 35 of 2014 on Child Protection, clearly designates individuals under the age of 18, including those in the womb, as children. Unfortunately, the law does not explicitly specify the minimum age for children to marry (Maula, 2019).

Paragraph (1) of Article 15 of the Compilation of Islamic Law emphasizes the importance of the safety and well-being of the family and household, stating that marriage is only permissible for individuals who have reached the age mentioned in Article 7 of Law Number 1 of 1974, with the prospective husband being at least 19 years old and the prospective wife being at least 18 years old.

In addition to age, the Civil Code, also known as the Civil Code, takes into consideration an individual's level of maturity as well as their marital status. Individuals who are married but have not yet reached the age of 21 are considered adults. Article 1, paragraph (5) of Law No. 39 of 1999 on Human Rights defines a child as someone under the age of 18 who is unmarried, including unborn children if it is in their best interests (Subhan, 2015).

Divergent interpretations of the age of majority as stated in laws and regulations can lead to implementation challenges. According to Mardi Candra, factors contributing to differences in determining the age of adulthood include: 1) variations in the formation of legal regulations carried



out by different institutions at different times; 2) changes in officials with the authority to establish legal regulations due to term limits or shifts in responsibilities; 3) a less effective systems approach to regulatory development compared to a sectoral approach; 4) insufficient coordination and participation from various stakeholders during the drafting of laws; 5) limited community engagement in accessing the law-drafting process (Candra, 2018).

2. *Establishing the Minimum Age of Marriage in the Marriage Law*

The initial legal objective behind Law No. 1 of 1974 on Marriage was to improve the status and social standing of women by setting different age limits for marriage between men and women, which was subsequently implemented nationwide (Maula, 2019). Field research indicates that the regulation regarding the age limit for marriage is influenced by the prevalence of domestic violence experienced by women, with implications for education, health, and the future psychological well-being of children (Gani, 2020).

This correlation serves as a consideration for policymakers when formulating Article 7, paragraph (1) of Law No. 1 of 1974, which governs the age limit for marriage. According to this article, men must be 19 years old and women 16 years old at the time of marriage, emphasizing the importance of physical and mental maturity. This contrasts with provisions in the civil code that set the age limits at 15 years for women and 18 years for men. Policymakers should thoroughly reflect on these differences (Nuruddin & Azhari, 2006).

However, over time, the application of Article 7, paragraph (1) has revealed several weaknesses and potential loopholes, leading to the prevalence of child marriages, particularly in rural areas, and contributing to gender-based discrimination. Furthermore, Article 6 stipulates that marriages before the age of 21 require parental consent. This highlights the influential role parents have in determining their children's marital decisions, including at a young age (Statistik & UNICEF, 2017).

The enactment of Law No. 16 of 2019, which introduces amendments to Law No. 1 of 1974 on Conjugal Ties, can be seen as a progressive and responsive legal measure. In essence, Article 7, paragraph (1) of Law No. 16 of 2019 aims to restrict early marriages, restore women's rights in accordance with the constitution, and protect children from exploitation. Consequently, this article mandates a minimum marriage age of 19 for both genders. The passing of this law on October 14, 2019, marks a significant milestone in the reform of marriage laws in Indonesia, which had remained unchanged for half a century.

3. *The Concept of Age of Marriage in Islamic Law*

The subject of marriage law, specifically regarding the age restriction for marriage, remains an area of significant interest and debate due to its profound legal implications for couples seeking to establish a strong and enduring family unit (Gani, 2020). Consequently, in response to societal changes, the importance of age in fulfilling the objectives of marriage is increasingly recognized. One such objective is the procreation of offspring and the preservation of human existence (Lestari, 2018).

Within the context of Islam, the essence of the religion encompasses various aspects of human life, including marriage. However, not all issues related to marriage, such as the age limit, are explicitly addressed in the Qur'an or Hadith. Islam does require individuals to reach physical maturity (puberty) before they can enter into marriage (Abror, 2020). According to Asghar Ali (1994), once children reach puberty, they are considered mature enough to be married with the consent of their parents. However, upon reaching adulthood, individuals are granted the autonomy to either continue or dissolve the marriage. Asghar Ali maintains that the Qur'an does not explicitly mention child marriage or specify an age limit, which serves as the basis for prohibiting such unions.

In Islamic terms, reaching maturity, known as puberty, is marked by signs such as nocturnal emissions for men or the onset of menstruation for women. However, as time progresses, the concept of maturity has become a topic of contention among jurists due to the challenges in defining and establishing the criteria for maturity, which are essential prerequisites for marriage. According to the perspective of Imam Shafi'i, fathers and grandfathers are advised to marry off



their daughters after they have reached adulthood, with the consent of the daughters, to avoid unwanted marriages (Gani, 2020).

Abu Haneefah, on the other hand, asserts that guardians other than fathers and grandfathers can marry off their daughters with the child's permission, and such marriages are considered valid. This viewpoint contradicts the perspectives of Hammad, Urwah, and Shuraih, who argue that guardians can marry off their daughters even if they have not yet reached adulthood. Al-Khathabi conveys this interpretation based on Imam Malik's opinion (Gani, 2020). However, once a child enters adulthood or reaches puberty, they have the freedom to choose whether to continue or dissolve the marriage without interference from anyone, including their parents or family. This decision rests solely with the child and should not be influenced by external parties. However, the ability to continue or dissolve the marriage, according to Khoiruddin Nasution, depends on certain conditions, one of which is that the couple has not engaged in sexual intercourse before (Gani, 2020).

The divergence of views among scholars of jurisprudence arises from the lack of clarity in the Qur'an regarding the ideal age for marriage. Islam only stipulates that individuals must have reached the age of puberty. The challenge lies in the absence of a comprehensive definition of maturity that encompasses various indicators, including the ability to assume responsibilities within a family. Consequently, a nuanced understanding of Islamic teachings, such as the Qur'an and Hadith, requires contextual comprehension. It is essential to grasp the progressive development of religious thought in order to offer interpretations that address contemporary needs, particularly regarding age limits in marriage.

The common interpretation that associates maturity with adulthood based on wet dreams for men and menstruation for women cannot serve as the sole criteria to determine an individual's intellectual and emotional maturity, especially when assuming the responsibilities of a married couple. Additionally, Soemiyati, in the work "Marriage Law and Marriage Law No. 1 of 1974," emphasizes the significance of age in marriage to achieve the objectives of this institution. Therefore, married individuals must demonstrate both physical and mental maturity (Sunarsi & Sumiati, 2019).

4. Legal Policy Changes to the Minimum Age of Marriage from an Islamic Legal Perspective

The amendment to Article 7, paragraph (1) of Law No. 1 of 1974 concerning Marriage, which sets the minimum age of marriage, reflects a resolute implementation by the government (executive and legislative) in response to the community's demand to eradicate any form of burden and prevent child marriages.

Article 28b, paragraph (1) of the Indonesian Constitution explicitly states that every individual has the right to recognition, guarantee, protection, fair legal certainty, and equal treatment before the law. Consequently, Muladi argues that all citizens should have equal rights and obligations regardless of their gender. In a society governed by the rule of law, the state is obligated to avoid treating its citizens differently based on religious beliefs, ethnic background, cultural diversity, race, gender, social status, and other factors (Muladi, 2009).

With the enactment of Law No. 16 of 2019, which amends Law No. 1 of 1974 concerning Marriage, significant changes have been made to Article 7, paragraph (1), specifically emphasizing "equal age of marriage for both men and women at 19 years." The explanation accompanying the latest Marriage Law highlights that the age limit is determined based on considerations of physical and mental maturity to ensure optimal marriages that lead to the birth of healthy and well-raised children, thus minimizing the risk of divorce.

Moreover, raising the age limit for women's marriages in this Act aims to reduce the risks of maternal and child mortality and to allow children to have a proper upbringing, development, and access to education up to university level. This demonstrates that the objectives outlined in Law No. 16 of 2019 are designed to protect women's dignity, eliminate inequality, and eradicate all forms of discrimination against them. The establishment of the age limit for marriage was initially intended to ensure justice, statute, and practicality in the drafting of the law.



Based on the aforementioned objectives, it can be concluded that these goals are in line with the philosophical principles of Islamic law, which aim to create long-term social benefits for humanity. While Islamic law does not explicitly specify the ideal age limit for marriage, it strictly prohibits child marriages that can lead to inequality and discrimination. Imam Ash-Shakakukani states in *Wablul Ghamam 'alaa Syifaa'il 'Awaam* that marriages involving children that do not yield any benefits should be annulled, and competent authorities have the power to dissolve such marriages. Children involved in such marriages have the right to terminate the marriage either during their childhood or when they reach adulthood (Badan Pembinaan Hukum Nasional Kemenkumham, 2019). Contemporary scholars place greater emphasis on the consequences of child marriages, aiming to prevent further harm and position Islamic law as a compassionate and blessed guide for all beings. Mardi Candra asserts that safeguarding offspring is one of the primary objectives of Islamic law, as the provisions related to children's rights must be protected to avoid issues such as humiliation and disasters (Candra, 2018).

Fundamentally, Islam strongly emphasizes principles of harmony, balance, and equality without distinction of gender, skin color, or ethnicity (Subhan, 2015). This concept confirms that the relationship between men and women is based on equal footing as creations of Allah SWT. Islam firmly rejects discrimination and upholds human rights. Mahmud Shaltut further supports this notion by stating that women and men are partners with equal rights and responsibilities, including the right to express opinions, access education, practice religion, and lead fulfilling lives (Subhan, 2015).

Analyzing the legal policy changes in the minimum age of marriage from an Islamic legal perspective requires considering the principles and objectives underlying the legislative process. One of the considerations of Law No. 16 of 2019 explains that early marriages have negative impacts on child development and can violate children's fundamental rights, including protection from violence and discrimination, civil rights, health rights, education rights, and social rights. This statement reflects the government's commitment to uphold the institution of marriage and fulfill the *maqasid Sharia*, which encompass the preservation of life, progeny, and reason.

Law No. 16 of 2019, as a result of legislative efforts, is substantially in line with the principles and values of Islamic law. In conclusion, an ideal legal system in a country is one that is accepted by all segments of society. Therefore, the formulation of legal regulations must consider societal needs, values, and norms to prevent conflicts and ensure effective implementation. Additionally, public awareness and compliance with the law are crucial aspects that should be prioritized.

CONCLUSION

The determination of the age of marriage holds significant importance in achieving the objectives of marriage effectively. However, there are differences of opinion among Islamic scholars regarding the specific age limit, as the Qur'an does not provide explicit guidance on this matter. Islamic law emphasizes the condition of reaching puberty and the ability to discern right from wrong as prerequisites for a valid marriage. On the other hand, at the national level, there are also divergent views on the age limit due to a lack of coordination and participation from various stakeholders during the lawmaking process.

The legal policy reflected in the development of Law No. 1 of 1974 aims to establish uniformity in marriage laws while considering the diverse Indonesian legal community. The recent change in the minimum age of marriage, setting it at 19 years for both men and women, is a crucial step towards enhancing the dignity of women, upholding their constitutional rights, and preventing child marriages that are susceptible to exploitation. These legal policy changes, from the perspective of Islamic law, offer significant benefits in safeguarding the well-being of individuals in terms of their physical, progeny, and mental aspects. The considerations outlined in Law No. 16 of 2019 on Marriage further emphasize the importance of these changes in promoting the welfare of individuals.

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