



DYNAMICS OF MARRIAGE AGE LIMITATION IN ISLAMIC LAW AND POSITIVE LAW

Muksalmina¹, Faisal², Teuku Yudi Afrizal³, Ramziati⁴
^{1,2,3,4} Legal Study Program, Faculty of Law, Universitas Malikulssaleh

Article Info

Received : 020/07/2022

Approved : 02/08/2022

Keywords:

Age of Marriage, Islamic Law, Positive Law.

Abstract

Islam does not limit the age for marriage but implicitly requires people who want to marry are physically and psychologically ready to get married to create a harmonious and peaceful family. Likewise, positive law in Indonesia, regarding the determination of the marriage age, aims to achieve a happy and blessed family. This study intends to examine legal benefits in a review of Islamic Law and Positive Law in Indonesia. This research employs library research by using primary and secondary data sources, and data analysis are normative qualitative. This study concludes that according to positive law, the maturity of the prospective bride and groom is determined according to the age limit for men and women, namely 19 years. Whereas in Islamic law what is very concerned is the maturity of the prospective groom in terms of economy, understanding of religion, and being physically and mentally healthy with the aim of not hurting women and creating a *sakinah, mawaddah warahmah* family (a blessed family).

This is an open access article under the [CC BY](#) license.



Corresponding Author:

Faisal

Email: faisal@unimal.ac.id

I. INTRODUCTION

The classical fiqh literature discusses 4 (four) main issues that become references in the order of life in the world and the hereafter, *first*, worship for the purpose of the benefits of the afterlife, second, *mua'malah* with worldly intentions by making good deed for the benefit of the afterlife, *third*, marriage due to one's lust only distributed after the stomach are filled, meaning that they must be economically capable of getting married, and *fourthly*, *jinayah* and *mukhasamah* arise due to economic problems and lust (Sayyid Abu Bakar Uthman bin Muhammad Syatha al-Dimyathi al-Syafi': tt, 253). The fiqh scholars distribute in such a way according to the hierarchy in human life prescribed by God (Allah, Exalted and Glorified is He).

Someone who wants to get married has two elements, namely worship, and *muamalah* so that the marriage lasts until the end of life. When these 2 (two) elements have been fulfilled, the person is recommended to perform the marriage, because human nature and instincts are filled with sexual desire, then these desires must be channeled properly, namely through marriage so that human dignity is maintained and to obtain pious offspring to have a quality generation. Thus, the purpose of marriage as regulated in Article 1 of Law Number 1 of 1974 concerning Marriage can be realized,

namely the inner and outer bond between a man and a woman as husband and wife to establish a happy and eternal family based on the belief and devotion in the one and only God.

Based on Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI), the purpose of marriage contained in Article 3, is to established a *sakinah, mawaddah, and rahmah* family (a blessed family). So, the principle of marriage is to create a harmonious and loving family without ending in divorce and getting pious offspring as the next generation in full of dedication to religion and the nation. Therefore, marriages also need to be recorded so that the marriage is legal according to Indonesian positive law. The marriage is carried out according to the religion and belief of each prospective bride and groom and is registered in accordance with applicable laws and regulations and is proven by a marriage certificate (Assy'ra, Faisal, et al: 2021, 174) and the marriage is not performed in *sirri* (under-recorded marriage) because it results in the rejection of marriage ratification so that it has an impact on children. That is, a child has not been recognized as a legitimate child based on state rules. Legal protection for children born to unrecorded married are related to their civil rights that will return to the mother of the child and do not receive an inheritance from their father (Nailal Amal, Faisal, Nurarafah: 2021).

Based on the purpose of marriage as stated in Law Number 1 of 1974 and KHI (Compilation of Islamic Law), the government makes a legal rule regarding the limitation of the age of marriage contained in Article 7 Paragraph (1), it is stated that marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) year. The restrictions as referred to in Article 7 Paragraph (1) of Law Number 1 of 1974 concerning Marriage were revised by Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. Changes in the provisions of Article 7 Paragraph (1) to Marriage are only permitted if the man and woman have reached the age of 19 (nineteen) years. The age restriction for men and women is equal because it is considered that they have matured physically and mentally to perform marriages so that they can realize the goals of marriage properly without ending in divorce and can give birth to pious offsprings (see Elucidation of the Law of the Republic of Indonesia, Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage).

However, in the noble Qur'an, there are 23 (twenty-three) verses that describe marriage and there is not a single verse that explicitly explains the minimum age restriction for marriage. However, some verses explain the eligibility of a person to marry. This is as stated in the Qur'an Surah An-Nisa Verse 6, which means:

"And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them. And do not consume it excessively and quickly, [anticipating] that they will grow up. (**An-Nisa [4]: 6**)."

Based on the meaning of the verse above, it does not explicitly indicate the age limit for marriage. However, in this verse, there is an emphasis on the *rusydan* sentence, meaning the

appropriateness of a person in using assets that can bring good. So, it is difficult to determine the age limit for marriage and whether someone is ready or not to marry.

Therefore, in realizing *a sakinah, mawaddah wa rahmah* family, several things need to be considered for the realization of the goal of marriage to become *mitsaqan ghalidhan* as aspired to in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI). So, this study examines the expected legal benefits in a review of Islamic law and positive law in Indonesia.

II. RESEARCH METHODS

This study is a normative qualitative analysis, meaning that the analysis of legal materials is based on Indonesian Positive Laws and Islamic Laws by finding new principles and information about problems related to the dynamics of limiting the age of marriage in Islamic laws and Positive laws. This research underlines the issues on the dynamics of limiting the age of marriage in a review of Islamic Law and Positive Law. So, this research is normative legal research (Peter Mahmud Marzuki: 2011, 93).

This research is analytical prescriptive. Prescriptive is research that studies the purpose of the law, values of justice, the legal validity, legal concepts, and legal norms. The technique used in collecting data is library research, namely through tracing laws and regulations, documents and books, and journal articles that are in accordance with the object to be studied. Meanwhile, the sources of legal materials consist of primary legal materials and secondary legal materials. Primary legal materials are authoritative legal materials, meaning those that have authority, consisting of legislation, official records, or minutes in making legislation. Meanwhile, secondary legal materials are in the form of publications related to the law that has been studied (Peter Mahmud Marzuki: 2011, 141).

III. RESULT AND DISCUSSION

3.1. Minimum Age Restriction for Marriage

Age is defined as a person's lifetime or since birth (Peter Salim and Yenny Salim: 1991, 1683). The word "age" is the span of a person's life. The word "married age" can be interpreted as the age that is considered physically and mentally suitable for marriage (Peter Salim and Yenny Salim: 1991, 998). Young marriage in classical Fiqh literature is known as *nikah as-sagīr/as-sagīrah*. Meanwhile, contemporary Fiqh uses the term *az-zawaj al-mubakkir* to refer to early-age marriage (Hussein Muhammad: 2001, 67).

In the Indonesian context, there is a law that regulates the determination of the minimum age restriction for marriage. The age restriction for marriage determines to avoid early-age marriage which is rampant. In 1974 the government issued a regulation on determining the age of marriage contained in Article 7 Paragraph (1) of Law Number 1 of 1974 concerning Marriage which stipulates

the age of marriage for a man to be 19 years and for a woman to be 16 years. Early-age marriage has become a dilemma and has been rampant in society. For example, the case of Pujiono Cahyo Widianro (Syekh Puji) married a 12-year-old girl (Lutfiana Ulfah). The marriage received strong reactions from various parties, one of which was the Central Java Women and Children Defenders Community. This is because, in Law Number 35 of 2014 concerning Child Protection, the age of 12 is still classified as a child, even though both marriages are legal according to Islamic teachings (Hilda Fentiningrum: 2017, 85). The results of the research show that the practice of early-age marriage has been carried out in the community for a long time. The causative factors also vary including economic problems, low education, cultural understanding, and certain religious values, or due to unwed pregnancy which is more popular among the Indonesian community with the term *married by accident* (Supriyadi and Yulkarnain Harahap: 2009, 589).

Submission of judicial review to the Constitutional Court submitted by Endang Wasrinah, Maryanti, and Rasminah, the community representatives who are members of a coalition of 18 above is to examine the material of Article 7 Paragraph (1) of Law Number 1 of 1974. In this case, the applicant admits to being a victim of child marriage. This is because in Article 7 Paragraph (1) there is a difference between the age of marriage for men and women. This distinction resulted in the violation of their constitutional rights, such as the rights to health, education, and growth and development that are guaranteed by the Constitution. Thus, arguments used in the review of Article 7 Paragraph (1) are Article 28 B Paragraph (2) and Article 31 Paragraph (1) of the 1945 Constitution. Furthermore, the Chairperson of the Assembly of the Constitutional Court read out the verdict numbered 22/PUU-XV/2017, the verdict was to order the member of the House of Representatives (DPR) within 3 (three) years to revise the Marriage Law related to the minimum marriage age restriction for women being the same as men (Agus Sahbani: 2020).

In 2019, the legislators carried out the mandate from the Constitutional Court to include the determination of the marriage age restriction for women, namely Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, so that the provisions of Article 7 Paragraph (1) stated: "Marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years". However, in Article 6 Paragraph (2) of Law Number 1 of 1974, it is stated that "To perform a marriage, a person who has not reached the age of 21 (twenty-one) years must obtain the permission of parents." So, if parents do not allow marriage to their children who have not reached the age of 21 years, the marriage registrar is prohibited from recording the marriage as regulated in Article 6 of Government Regulation (PP) Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage.

In Marriage Law, there are several basic principles for carrying out the noble ideals of marriage. These principles are, 1) Voluntary principles, 2) Family participation, 3) Divorce tightening, 4) Strictly limited polygamy, 5) The maturity of the bride and groom, and improving the status of

women's degrees (Sosroatmodjo and H.A. Wasit Aulawi: 1976, 35-38). Furthermore, concerning the basic principles for carrying out the noble ideals of this marriage, it can be explained as follows; *first*, as a volunteer, it is the willingness of husband and wife in the household. The principle of volunteering is very important to be realized in the family because every spouse must have their advantages and disadvantages. These principles bind couples to accept the advantages and disadvantages one another; *second*, family participation, in the family, it is necessary to work, to encourage, and to support each other in any activity according to their respective abilities; *third*, divorce is made to be complicated, in a household, there are no small or big problems, but any problem is tried to be solved in good and harmonious ways and to prevent the divorce. Therefore, the principle of Marriage Law in Indonesia is made to be difficult for each couple to prevent the divorce.

Fourth, polygamy is strictly limited, in the Marriage Law basically, a husband has one wife and if the parties (both husband and wife) wish, a husband may have more than one wife. Although the law regulates to allow polygamy for a husband, various requirements must be met to obtain a court decision; *fifth*, it is the maturity of the groom, and the improvement of the women's degree. The knowledge of the prospective groom are very influential in the married life. This knowledge resulted in the maturity of thinking that not only had an impact on him as a husband but also had an impact on his wife and also had an impact on his children. This maturity also includes emotional control for married couples which also affects their children.

The study shows the minimum age requirement is still often violated for all factors and reasons. Until 2019, Indonesia was still listed as the country with the highest early-age marriage ranked 7 (seven) at the world level, and ranked 2 (two) at the ASEAN level. With 23 (twenty-three) provinces that have a percentage of marriages above early-age marriages. The highest is in the province of South Kalimantan and the lowest is in the Special Region of Yogyakarta with various influencing factors including internal and external factors. This year, Law Number 16 of 2019 concerning marriage was made and ratified, especially the article concerning the minimum age limit for marriage has been changed with the provisions that each prospective husband and wife (male and female), has a minimum age of 19 years. This is expected to be able to minimize or even reduce the number of children's ill health, maternal and infant mortality, population explosion, low education, and domestic violence (Tinuk Dwi Cahyani and Halimatus Khalidawati Salmah: 2019, 93).

In other literature, it is explained that to achieve the goal of marriage as prescribed in the Qur'an, Islam prepares several principles as a guide for each couple to achieve a *sakīnah, mawaddah warrahmah* family. These principles include the principle of freedom to choose a partner, the principle of equality, the principle of *mu'asyarah bi al-ma'rif*, the principle of deliberation, and the principle of mutual acceptance (Mohamad Rana and Usep Saepullah: 2021, 130-133). Neglect of these principles is not uncommon in a family dispute that leads to divorce. Divorce occurs because of undissolved disputes and quarrels. It shows that the principles of deliberation and mutual acceptance

are not implemented optimally in family life.

The rule of the age of marriage is also reaffirmed in Article 15 Paragraph (1) of the Compilation of Islamic Law, namely, "For the benefit of the family, marriage may only be carried out by the prospective bride and groom who have reached the age specified in Article 7 Paragraph (1) of the Law. In marriage, the prospective husband and wife must reach the age of 19 (nineteen) years. Both of these regulations require age maturity for each prospective bride and groom. This can be seen from the age limit given by both of them which includes the word "only", implicitly indicating that marriages carried out by the bride and groom under the age limit are allowed on the condition that they must obtain a dispensation from the court on very urgent grounds as stipulated in Article 7 Paragraph (2) Law Number 16 of 2019 concerning Marriage in conjunction with Law Number 1 of 1974.

The age that has been determined in the Marriage Law mentioned above is the age restriction for marriage, but it is not a measure that can be used as a benchmark that a person is an adult who is 19 (nineteen) years old. This age limit is the minimum age of a person who may marry. Early adulthood is a time when a person is ready to accept a position in society along with other member of society, and has completed his growth so that he reaches maturity in various aspects. Early adulthood is passed after the end of adolescence; however, development does not stop when the individual reaches physical maturity in adolescence or social maturity in early adulthood (Rafi Bagus Adi Wijaya and Azis Muslim: 2021, 179).

Before the enactment of the Marriage Law, in Indonesia, it has been known as the Civil Code (KUH Perdata). The book also stipulates the conditions of a person to marry as stated in Article 29 "A boy who has not reached the age of eighteen years, as well as a girl who has not reached the age of fifteen years, is not allowed to bind herself in marriage. Meanwhile, in the case of important reasons, the president has the power to remove the prohibition by holding a dispensation". The age limit for marriage is also regulated in the Criminal Code (KUHP). Article 26 stipulates that the main conditions that must be met for a marriage to be valid are men who are 18 (eighteen) years old and 15 (fifteen) years old for a woman.

However, the regulations in both (the Civil Code and the Criminal Code) have been declared no longer valid, as explained in Article 66 of the Marriage Law, "For marriage and anything related to marriage based on this Law, therefore with the enactment of this Law the provisions stipulated in the Civil Code (Burgerlijk Wetboek), Indonesian Christian Marriage Ordinance (Huwelijks Ordonantie Christen Indonesiers S.1993 No. 74), Mixed Marriage Regulations (Regeling op de Gemengde Huwelijken S. 1898 No. 158) and other regulations governing marriage to the extent that it has been regulated in this Law, are declared null and void".

Based on the Marriage Law, it explicitly provides a minimum age limit for marriage for prospective brides and grooms, which is 19 (nineteen) years. The limitation on the age of marriage in

this law means that the prospective husband and wife have matured their bodies and souls in fostering a household with the aim of not ending in divorce and having devoted and pious offspring. Changes in the norm in setting the marriage age limit for men and women are the same as it is hoped that by increasing the marriage age limit for women to 19 (nineteen) years, it reduces the birth rate and risks to mothers and children (see Elucidation of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage).

Revisions to the minimum age limit for marriage have caused a lot of debate in society and the academic field. This is because the age limit for women has previously caused a lot of harm, such as a large number of unregistered marriages due to the age that has not yet reached the age stipulated by law. Even now, there is no firmness on the rules regarding the obligation to register marriages without being accompanied by sanctions that can deter those who violate the regulations. If referring to the legislation as the implementation of marriage procedures, in Regulation Number 9 of 1975, specifically Article 45, it is stated that the punishment for violations of marriage registration is only subject to a maximum fine of 7,500 (seven thousand five hundred rupiahs) (Itsnaatul Lathifah: 2015, 49). Moreover, with the increasing age limit for marriage, it is feared that there will be more cases of unregistered marriages as well as cases of early-age marriage by applying a marriage dispensation to the court (Rabiatul Adawiyah, Asasriwarni, and Hamda Sulfinadia: 2021, 260). However, if a person's maturity is only considered based on the age factor without considering other factors such as maturity in understanding religion, economics, or being physically and mentally healthy and not hurting women.

The causes of divorce within ten years in Indonesia are increasingly diverse. Although the reasons are in accordance with what has been written down by law, the triggering factors that underlie the couple deciding to divorce are also increasingly diverse. The divorce factor does not only come from one sector. Many sectors end up worsening the situation of the family and finally decide to divorce. The increasingly diverse social and cultural factors present in today's life, have an impact on the high divorce rate. Awareness of the situation increasingly makes couples able to take a stand in the household on what is happening in their marriage. Premarital education is not only present to be a process towards marriage. Unfortunately, many parties interpret premarital education as a formality, so that in the end their household faces a problem, the parties are unable to overcome it and end up with a divorce (Nibras Syafriani Manna, Shinta Doriza, and Maya Oktaviani: 2021, 19). Therefore, to prevent divorce apart from age maturity, education for the bride and groom is also needed which is then often called premarital education.

3.2. The minimum Age Restriction for Marriage According to Islamic Law

Islamic Law does not explicitly mention the age limit for marriage, not in the sense of relaxing the law against humans according to their will. However, Islamic Law has set the regulations for someone who wants to get married to achieve a family that is *mitsaqan ghalidhan* and to have pious offspring.

Therefore, there are 23 (twenty-three) verses of the Qur'an that explain marriage. However, there is no single verse that explains the age limit for marriage but emphasizes the eligibility of a person to marry. The eligibility for marriage is not influenced by the age factor, but by other factors. For example, for men who cannot manage their assets, physically and mentally disabled men who cannot work to meet the needs of their families, marriage is prohibited for those people.

To achieving a *sakinah mawaddah wa rahmah* family, it cannot be separated from 2 (two) factors, namely physical sustenance and mental sustenance but not one of them. So, one of the problems cause divorces is economic problems, especially in the covid-19 pandemic. It can be understood that Islam puts more emphasis on eligibility, not on age. This is a correlation with Surat al-Nur [24]: 32, which means:

“And marry the unmarried among you dan the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from his bounty, and Alah is all-encompassing and knowing.” (Q.S. al-Nûr [24]: 32).

The Verse is explained in Ibn Kathir's Tafsir which is an order to perform the marriage. Therefore, some of the scholars' opinions require marriage for those who are capable (Abu al-Fada 'Ismail bin Umar bin Katsir al-Qurasyi al-Damasyqi: 1999, 51). Furthermore, the hadith of the Prophet SAW stated which means:

“The Messenger of Allah (SAW) said: "O youths, whoever among you is able to settle down, then get married, because marriage can lower your gaze and protect your private parts. And whoever is not able, then let him fast, then indeed that can control the lust." (Narrated by Ibn Mas'ud).

Based on the explanation of the hadith above, it can be understood that Islam puts more serious emphasis on a person's ability financially, mentally, and spiritually to carry out a marriage. If a person is not able to do so, it is obligatory for that person to fast because fasting can control his lust. Therefore, age is not the main factor in determining a person's ability to establish a family that is *sakinah, mawaddah, wa rahmah*, or *mitsaqan ghalidhan* which is expected in the laws and regulations in Indonesia in order to have a good generation.

In Tafsir al-Tabari, it explains the interpretation of the verse above, "*it is forbidden for a person to marry that brings damage (fahisyah) to women who believe and people of the book who believe*" (Muhammad bin Jarir, Abu Ja'far al-Tabari: 2000, 589). This explanation can be understood if a person has not been able to marry because he is not financially, mentally, and spiritually capable.

So, it is forbidden for that person to marry because it can cause damage to women in the sense that the family is not able to run a harmonious family and have pious offspring as the successor of religion and nation.

According to al-Maraghi, the word "*wasshalihin*", allows men and women who are capable of marriage to carry out the duties of the husbands and wives, such as having property, being in good health, and so on. Furthermore, according to Quraish Shihab, it is interpreted that a person who is only allowed to marry must be mentally and spiritually capable of fostering a household because marriage not only requires material preparation but mental and spiritual preparation for men and women (Mustofa: 2009, 22).

In the Qur'an, Surah al-Nisa Verse 6 (six), it explains that a person may only get married when he is of age with the condition that he can manage assets, which means:

“And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them. And do not consume it excessively and quickly, [anticipating] that they will grow up. And whoever, [when acting as guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor – let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant (**An-Nisa [4]: 6**).”

It is explained in the Tafsir of the Verse of al-Ahkam that a person is said to be of puberty or maturity when he has a wet dream (dream of releasing semen) or secretes semen in a way by hand or with other objects, while women are in puberty when menstruating (Muhammad Alî al-Shabuny: 1999, 153). However, when semen does not come out for men and no menstruation for women, it is determined by the age limit, namely 18 years for men and 17 years for women (Mohd. Idris Ramulyo: 1996, 54).

Likewise in Tafsir al-Thabari, it is explained that a person may only get married when he/she has passed the test on religious understanding and is good at managing assets (Muhammad bin Jarir, Abu Ja'far al-Thabari: 2000, 574). This is to prohibit people to be extravagant (who cannot manage wealth), then that person is not allowed to manage their property so that their property is guarded by a guardian even though he has reached puberty (Abu al-Fada 'Ismail bin Umar bin Katsir al-Qurasyi al-Damasyqi: 1999, 214).

Therefore, it is believed that Islam in determining the conditions for marriage puts more serious consideration than the legal system in Indonesia. Although when the law was made regarding age restrictions, some people criticized it by comparing it with Islamic law, in Islam it does not burden someone to get married because marriage is *sunnatullah* (laws of Allah), so determining the age limit must be in accordance with the principles of Islamic Law, namely *baligh* (puberty). Even though the *baligh* alone is not enough as a condition for marriage.

In Tafsir al-Razi, it is explained that the condition for the new guardian to hand over the property when he knows or is sure that the child is good at managing assets, cannot be deceived by

others, and he is not extravagant, then the scholars have different opinions about *shalahu fi al-din* (good in understanding religion and practicing it). According to Imam al-Shafi'I, it is obligatory while according to Imam Abu Hanifa, it is not obligatory. According to al-Razi, the first opinion is stronger (al-Razi, Fakhru al-Din: 2000, 61). Even to create a harmonious family, special arrangements are needed in Family Law, as the results of research conducted by Jamaluddin et al, "*This study recommends the Government of Aceh to immediately enact the Aceh Qanun on Family Law and to provide special arrangements for strengthening of pre-marriage course to create a harmonious Acehese society*" (Jamaluddin, J., Faisal, F., & Amalia, N: 2018, 359-364).

Shaykh Muhammad al-Tihami Ibn Madani Kanu in his book *Qurratul Uyun* describes the law of marriage. There are five laws for marriage (Muhammad al-Tihami Ibn Madani Kanu: tt, 33); *first* is *wajib*, meaning that if you do it you are promised reward but if you leave it it fears the punishment from Allah, this law applies to someone who is able to get married, meaning that the person is ready to provide physical sustenance and mental sustenance including to fulfill sexual need for his wife, and is afraid to commit adultery if he is not married; *second* is *sunnah*, meaning that it is strongly recommended to do it but it is not a punishment if it is ignored which applies to someone who wants offspring and he is not afraid to commit adultery when he is not married; the *third* is *makruh*, meaning that it is rewarded if you leave it but it is not punishment if you do it which applies to people who have no desire to get married and do not expect offspring, and because marriage can cause them not to do non-obligatory worship; The *fourth* is *mubah*, meaning that it is neutral, neither punishment nor reward for doing it which applies to people who are not afraid of adultery, and do not expect offspring and cannot decide on worship that is not obligatory, and the *fifth* is *haram*, meaning if you do it, it is a punishment if you leave it you are rewarded which applies to people who can harm women, because they are unable to provide both physical sustenance and mental sustenance or have a job that haram, even though he wants to get married and is not afraid to commit adultery

However, the book *Mughni Muhtaj* by Imam al-Syarbini explains the law of marriage (Al-Syarbini: tt, 169-170). *First*, *sunnah* is for someone who wants to get married in the sense that he is able to provide mental sustenance including fulfilling the sexual need of his wife, and physical sustenance including dowry, clothing, housing, and daily living, even though they are in a faraway place. *Second*, it is *makruh*, namely, for people who are unable to provide physical sustenance, it is recommended for that person to fast, because fasting defeats lust, but when he has no plans to marry and there is no marriage fee for that person, it is also *makruh*. Therefore, a person's maturity (*baligh*) can be shown through dreams or the discharge of semen, however, in the case of marriage, it is not enough to rely on *baligh* but must be able to manage wealth and have adequate knowledge of religion because these two points are the core in fostering a *sakinah, mawaddah, warrahmah* family.

IV. CONCLUSION

It is concluded that in Positive Law in Indonesia, the maturity of the prospective bride and groom is determined according to the age limit, namely 19 years. Whereas in Islamic Law, what is very concerned about the maturity of the prospective bride and groom is age, economy, religious understanding, and being physically and mentally healthy with the aim of not hurting women. If a person does not have this ability, then he is not able to get married, so Islam provides a way out by fasting because fasting can control his lust. Therefore, age is not the main factor in determining a person's ability to have a family or *mitsaqan ghalidhan* which is expected in Indonesian laws, and to have pious offsprings.

It is hoped that the government and the legislature that have the authority to submit legislation necessarily pay attention to the values in Islamic Law regarding the maturity of the prospective bride and groom in order to have a family that is *sakinah, mawaddah wa rahmah*, and have pious offsprings.

BIBLIOGRAPHY

1. Book

- Mansur, T. M. (2017). Hukum Adat Perkembangan dan Pembaruannya di Indonesia. Banda Aceh: Bandar Publishing.
- Abu al-Fada' Ismail bin Umar bin Katsir al-Qurasyi al-Damasyqi, (1999), *Tafsir al-Qura'n al-'azim*, Jld. VI, Dar Thaibah
- al-Razi, Fakhru al-Din, *Tafsir al-Razi*, (2000). Jld. V, Bayrut: Dâr al-Kutub al-'Ilmiyyah.
- Al-Syarbini, *Mughni al-muhtaj*, Jld. III, Bayrut: Dar al-Ma'rifah, tt.
- Husein Muhammad (2001), *Fiqh Perempuan Cet1*, Yogyakarta: LKiS.
- Mohd. Idris Ramulyo (1996), *Hukum Perkawinan Islam*, Jakarta: Bumi Aksara.
- Muhammad Alî al-Shabuny, (1999), *Tafsîr Âyat al-Ahkam min al-Qur'an*, Bayrut: Dâr al-Kutub al-'Ilmiyyah.
- Muhammad al-Tihami Ibn Madani Kanu, *Qurrat al-'Uyun Syarh Ibn Yamun*, Bayrut : Dar Ibn Hazm, tt.
- Mustofa, (2009) *Perbandingan Hukum Perkawinan di Dunia Islam*, Bandung: Pustaka al-Fikriis
- Peter Mahmud Marzuki, (2011), *Penelitian Hukum*, Ed. I, Cet. VII, Jakarta: Kencana Prenada Media Group.
- Peter Salim dan Yenny Salim, (1991), *Kamus Bahasa Indonesia Kontemporer*. Cet 1, Jakarta: Modern English Press.
- Sayyid Abu Bakar Utsman bin Muhammad Syatha al-Dimyathi al-Syafi', t.t, *Iinah al-Thalibin*, Jld: III, t.t., Semarang: Toha Putra.
- Sosroatmodjo dan H.A. Wasit Aulawi (1976). Hukum Perkawinan di Indonesia, Jakarta: Bulan Bintang.

2. Journal Articles

- Assy'ra, Faisal, F., Aksa, F. N., & Effida, D. Q. (2021). Itsbat Nikah Dan Akibat Hukumnya (Studi Penelitian di Kota Lhokseumawe). *Ius Civile: Refleksi Penegakan Hukum dan Keadilan*, 5(1). [Vol 5, No 1 \(2021\)](#)
- Hilda Fentiningrum, Batasan Usia Perkawinan Dalam Perundang-undangan di Indonesia Perspektif Sadd Al-Dhari'ah, Isti'dal, *Jurnal Studi Hukum Islam*, Vol. 4, No. 1 2017, DOI: <https://doi.org/10.34001/istidal.v4i1>
- Nailal Amal, Faisal, Nurarafah, (2021), Akibat Hukum Penolakan Pengesahan Perkawinan Terhadap Pasangan Nikah Siri (Studi Putusan Number: 0650/Pdt.P/2017/MS.Bir), *Jurnal Ilmiah Mahasiswa, Fakultas Hukum Universitas Malikussaleh*, [Vol 4, No 1 \(2021\)](#), <https://doi.org/10.29103/jimfh.v4i1.4262>

- Jamaluddin, J., Faisal, F., & Amalia, N. (2018). The Reflection on the Implementation of Pre-Marriage Course in Aceh. *Indian Journal of Public Health Research & Development*, 9(12), 359-364.
- Itsnaatul Lathifah (2015). Pencatatan Perkawinan: Melacak Akar Budaya Hukum dan Respon Masyarakat Indonesia terhadap Pencatatan Perkawinan, *Al-Mazahib; Jurnal Perbandingan Hukum, Volume 3, Number 1, June 2015*.
- Muhammad bin Jarir, Abu Ja'far al-Thabari (2000). *Jami' al-bayan fi takwil al-Qur'an*, Jld. IX, Muassah al-Risalah.
- Mohamad Rana & Usep Saepullah (2021). Prinsip-Prinsip Perkawinan (Analisis Filosofis Implementasi dalam Meminimalisir Angka Perceraian), *Mahkamah: Jurnal Kajian Hukum Islam* 119 Vol. 6, No. 1, June 2021.
- Nibras Syafriani Manna, Shinta Doriza, & Maya Oktaviani (2021). Cerai Gugat: Telaah Penyebab Perceraian Pada Keluarga di Indonesia, *Jurnal Al-Azhar Indonesia Seri Humaniora*, Vol. 6, No. 1, March 2021. DOI: <http://dx.doi.org/10.36722/sh.v6i1.443>
- Rafi Bagus Adi Wijaya & Azis Muslim (2021). Konsep Diri Pada Masa Dewasa Awal Yang Mengalami Maladaptive Daydreaming, *Jurnal Psikologi Islam: Al-Qalb*, Vol. 12, No. 2, June 2021.
- Rabiatul Adawiyah, Asasriwarni, & Hamda Sulfinadia (2021). Analisis Batas Usia Perkawinan Pada UU No. 16 Tahun 2019 Atas Perubahan UU No. 1 Tahun 1974 Tentang Perkawinan (Studi Terhadap Pandangan Ilmuan Kota Padang tentang Perubahan Batas Usia Perkawinan), *jurnal Hukum Islam* Vol. 21, No. 2 December 2021 [396088-none-ed8c60ad.pdf \(neliti.com\)](https://doi.org/10.396088-none-ed8c60ad.pdf)
- Supriadi & Yulkarnain Harahap (2009). Perkawinan di Bawah Umur Dalam Perspektif Hukum Pidana dan Hukum Islam, *Jurnal Mimbar Hukum*, Volume 21, Number 3, October 2009. <https://doi.org/10.22146/jmh.16283>
- Tinuk Dwi Cahyani & Halimatus Khalidawati Salmah (2019). Tinjauan Normatif Batas Minimal Usia Anak Untuk Melakukan Perkawinan, *Jurnal de Jure* Volume 11 Number 2, October 2019. DOI: <https://doi.org/10.36277/v11i2.346>

3. Website

- Agus Sahbani, *Pembentuk UU Diperintahkan 'Rombak' Batas Usia Perkawinan!*
<https://www.hukumonline.com/berita/baca/lt5c12412a42765/pembentuk-uu-diperintahkan-rombak-batas-usia-perkawinan>