

Review of Islamic Family Law on Child Marriage Practices in Indonesia

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ABSTRACT

Child marriage remains a complex social issue in Indonesia, with the main causal factors being poverty, culture, inappropriate understanding of religion, and weak law enforcement. Law Number 16 of 2019 has raised the minimum age for marriage to 19 years, but the loopholes in marriage dispensation are often exploited by the community, so that this practice remains widespread. This study aims to analyze the phenomenon of child marriage from the perspective of Islamic Family Law, using qualitative descriptive methods. Data were collected through a review of primary and secondary legal literature, including the Compilation of Islamic Law, fatwas of scholars, and previous research. The results of the study show that although Islamic Law does not set an explicit age limit for marriage, the principle of *maslahah* emphasizes physical, mental, and economic readiness as the main requirements. The practice of child marriage often violates the *maqashid sharia* because it has negative impacts, such as poor reproductive health, dropping out of school, and intergenerational poverty. Therefore, collaborative steps are needed between the government, religious institutions, and the community to strengthen the protection of children's rights through stricter education and supervision. This study contributes to strengthening legal arguments to prevent early marriage in accordance with the principles of justice and *maslahah* in Islam.

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1. INTRODUCTION

Child marriage is still a worrying social phenomenon in Indonesia, even though various prevention efforts have been made. Based on data from the Central Statistics Agency (BPS), in 2022, around 10.82% of women in Indonesia were married before reaching the age of 18. This figure is more dominant in rural areas and areas with low levels of education, where poverty, culture, and inappropriate understanding of religion are often the main driving factors. In addition, parents often marry off their children at an early age on the grounds of maintaining family honor and preventing actions that are considered to violate religious norms. Unfortunately, this practice

has a negative impact on the reproductive health, psychological development, and educational opportunities of girls, thus hindering the achievement of family welfare in the future.¹

In terms of law, Law Number 16 of 2019 has set the age limit for marriage at 19 years for men and women. However, the practice of granting marriage dispensation by religious courts is still a legal loophole that is exploited by the community.² According to data from the Directorate General of Religious Courts (Ditjen Badilag), the number of applications for marriage dispensation has increased significantly after the amendment to the Marriage Law. This dispensation is often granted for subjective reasons such as preventing adultery, without considering the physical and mental readiness of the child which is a basic principle in building a household.³

From the perspective of Islamic Family Law, there is no explicit age limit for marriage, but Islam emphasizes the principle of *maslahah* (goodness) and preventing *mafsadah* (damage). Nurul Huda's (2020) research states that child marriage carried out without physical, mental, and economic readiness will conflict with the principle of *maslahah* in Islam, thus potentially leading to early divorce, poverty, and health problems.⁴ In addition, Fitriani and Rahmah (2019) stated that harmonization between Islamic law and positive law needs to be continuously carried out so that existing policies can prevent the practice of child marriage more effectively.⁵ Rahmatullah's (2021) research also emphasizes that the policy of easy-to-grant marriage dispensation can be counterproductive to child protection efforts in Indonesia.⁶

This study aims to analyze the practice of child marriage in the perspective of Islamic Family Law and explore the solutions offered by Islamic principles to prevent the negative impacts of child marriage in Indonesia. It is hoped that this study can provide a deeper understanding of the Islamic legal perspective on the practice and provide recommendations related to efforts to protect children's rights in the context of Islamic family law.

2. RESEARCH METHODS

The research method used in this study is a qualitative descriptive method that aims to provide a comprehensive picture of the perspective of Islamic Family Law on the practice of child marriage in Indonesia. The data used consists of primary data and secondary data. Primary data is obtained from legal literature, such as the Compilation of Islamic Law (KHI), relevant fatwas, and religious court decisions related to marriage dispensation. Meanwhile, secondary data is collected from various books, scientific journals, and previous research results that examine the problem of child marriage from the perspective of Islamic Family Law. The data analysis technique is carried out qualitatively descriptively, namely by reducing, classifying, and interpreting data to describe the views of Islamic law on the practice. Through this approach, it is hoped that the research can provide a deeper understanding of the views of Islamic Family Law on child marriage, as well as the solutions offered from an Islamic perspective.

¹Central Statistics Agency (BPS), *People's Welfare Statistics 2022*, Jakarta: BPS, 2022.

² Sakirman, "Analisis Profesi Hakim dalam Epistemologi Hukum Islam," *Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan* 17, no. 1 (1 Juni 2017): 135–54, <https://doi.org/10.18326/ijtihad.v17i1.135-154>.

³Directorate General of Religious Courts, *Annual Report on Marriage Dispensation 2022*, Jakarta: Directorate General of Religious Courts, 2022.

⁴Nurul Huda, *Islamic Marriage Law*, Bandung: PT Remaja Rosdakarya, 2020, p. 45.

⁵Fitriani and Rahmah, "Child Marriage in the Perspective of Islamic Law and Human Rights," *Indonesian Journal of Islamic Law*, Vol. 7, No. 2, 2019, p. 125.

⁶Rahmatullah, "Effectiveness of Marriage Dispensation Policy after Revision of Marriage Law," *Journal of Islamic Family Law*, Vol. 9, No. 1, 2021, p. 88.

3. RESULTS AND DISCUSSION

3.1. Overview of Child Marriage

Child marriage is a marriage performed by individuals who have not reached the legal or sharia age of adulthood.⁷ In the perspective of Islamic law, adulthood is often associated with signs of puberty or biological maturity, such as menstruation in women and wet dreams in men. However, this biological maturity is not always accompanied by mental and emotional maturity which are requirements for readiness to build a household.

3.1.1. Definition of Child Marriage According to Islamic Law

In Islamic law, there is no age limit for marriage explicitly mentioned in the Qur'an or Hadith. However, the general principle adopted is that marriage must be carried out by individuals who are physically, mentally, and emotionally ready. This is based on the word of Allah in Surah An-Nisa' verse 6 which means:

“And test the orphans until they are old enough to marry. Then, if in your opinion they are intelligent (good at looking after wealth), then hand over their wealth to them...” (QS. An-Nisa': 6).

This verse emphasizes that individual maturity is seen from the ability to manage wealth, which can be interpreted as an indicator of maturity in thinking and acting.

3.1.2. Ulama's Views on the Age Limit for Marriage

The classical scholars of the four schools of thought have varying views regarding the age of marriage:⁸

- a) Hanafi school : Permits the marriage of minors with a guardian, but the consummation of the marriage (husband-wife relationship) is postponed until the child reaches puberty .
- b) Shafi'i School : Considers puberty as a valid sign of maturity for marriage.
- c) Hanbali school : Same as Shafi'i, age of puberty is the measure, but emphasizes the importance of physical readiness.
- d) Maliki school : Emphasizes mental and physical readiness, although according to Islamic law, puberty age is the minimum measure.

In the modern context, this view is criticized because the age of puberty does not always indicate an individual's maturity in facing domestic life.

3.1.3. Marriage Age Limit According to:

Islamic Family Law

In Islamic family law, there is no age limit for marriage that is explicitly stated in the Qur'an and hadith. However, the majority of scholars determine baligh (puberty) as the minimum requirement for marriage. This puberty is marked by biological changes, such as menstruation for women and wet dreams for men. Some of the arguments that are often used to support this opinion include:

- a) Al-Qur'an Surah An-Nur verse 32: "And marry those who are alone among you, and those who are worthy (to marry) from your male servants and your female servants..."

This verse orders marriage for those who are “fit” to marry, which some scholars interpret as having reached the age of puberty.

⁷ Elvi Era Liesmayani dkk., “Determinan Kejadian Pernikahan Dini Pada Remaja,” *Nursing Care and Health Technology Journal (NCHAT)*, 2022, <https://doi.org/10.56742/nchat.v2i1.37>.

⁸ Ahmad Fawwaz, Tali Tulab, dan Zaenurrasyid Zaenurrasyid, “Studi Pandangan Ulama' Kec. Sumbang Banyumas Tentang Konsep Al Baah pada Pernikahan Dini,” *Juernal Ilmiah Sultan Agung*, 2023.

b) Hadith of the Prophet Muhammad SAW: “O young men, whoever among you is able to marry, let him marry. For indeed, marriage is more effective in lowering the gaze and guarding the private parts.” (Narrated by Bukhari and Muslim).

In this hadith, the word "capable" is not only interpreted physically, but also includes mental, economic, and responsibility readiness in building a household.

However, contemporary scholars emphasize that the age limit for marriage must be adjusted to the principles of *maslahah* (benefit) and *maqashid sharia* (objectives of sharia), such as preserving life (*hifdz al-nafs*) and offspring (*hifdz al-nasl*). Marrying off children who are not mentally and physically ready can cause greater harm.

Compilation of Islamic Law (KHI)

In Indonesia, the Compilation of Islamic Law (KHI) regulates the age limit for marriage in Article 7 paragraph (1) which states: "Marriage may only be carried out if the prospective groom has reached the age of 19 (nineteen) years and the prospective bride has reached the age of 16 (sixteen) years."⁹

However, this provision must then be adjusted to the amendment to the Marriage Law through Law No. 16 of 2019 which states: ¹⁰"Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years."

This change aims to: Protect children's rights to obtain better educational opportunities and mental development, Avoid health risks due to early marriage, such as maternal mortality and impaired child development.¹¹

The Compilation of Islamic Law remains a guideline in resolving family law issues in Indonesia, especially in the Religious Court environment, but must be in line with applicable laws and regulations.

3.1.4. Factors Causing Child Marriage From an Islamic Law Perspective

Child marriage has a number of causes that are rooted in religious, social, cultural, and economic factors. In the perspective of Islamic law, these causes need to be viewed through the *maslahah* (benefit) and *maqashid sharia* approaches. The following are the main factors causing child marriage:¹²

1) Misunderstanding of the Concept of Baligh as a Requirement for Marriage

In Islamic law, the age of puberty is often used as a sign of a person's readiness to marry. Puberty is marked by biological signs such as menstruation for women and wet dreams for men. This understanding causes some people to consider children who have reached puberty worthy of marriage. In fact, puberty is only one aspect of maturity, while mental, emotional, and economic aspects must also be taken into account. This is in accordance with the hadith of the Prophet Muhammad SAW: "O young men, whoever among you is able (physically and financially) to marry, then marry..." (HR. Bukhari and Muslim).

This hadith emphasizes that readiness is not only biological, but also the ability to shoulder household responsibilities.

2) Economic Factors and Poverty

⁹ Yopani Selia Almahisa dan Anggi Agustian, “Pernikahan Dini Dalam Perspektif Undang-Undang Perkawinan Dan Kompilasi Hukum Islam,” *Jurnal Rechten : Riset Hukum dan Hak Asasi Manusia*, 2021, <https://doi.org/10.52005/rechten.v3i1.124>.

¹⁰Ibid p.7

¹¹ Sakirman Sakirman dan Yulia Rizki Amanda, “Effectiveness of Marriage Age Limit According to Law Number 16 of 2019 in East Lampung,” *MILRev: Metro Islamic Law Review* 1, no. 2 (27 Desember 2022): 164–75, <https://doi.org/10.32332/milrev.v1i2.6206>.

¹² Sri Handayani, Syarifah Nuraini, dan Rozana Ika Agustiya, “Faktor-Faktor Penyebab Pernikahan Dini di Beberapa Etnis Indonesia,” *Buletin Penelitian Sistem Kesehatan*, 2021, <https://doi.org/10.22435/hsr.v24i4.4619>.

Poverty is often the main cause of child marriage, especially in rural areas. Parents marry off their daughters in the hope of reducing the family's economic burden or obtaining financial assistance from their husbands. This phenomenon is contrary to the purpose of marriage in Islam, which is to form a family that is *sakinah* (calm), *mawaddah* (full of love), and *rahmah* (affectionate). As mentioned in Surah Ar-Rum verse 21:

"And among His signs (of His greatness) is that He created partners for you from your own kind, so that you will be inclined and feel at ease with them..." (QS. Ar-Rum: 21).

Marriage based on economic pressure has the potential to cause harm and hinder the achievement of these goals.

3) Cultural Factors and Customs

In some areas in Indonesia, the tradition or culture of marrying off children at an early age is still strong. This is done under the pretext of maintaining family honor, avoiding adultery, or as part of hereditary customs.¹³

In Islamic law, custom (*urf*) can indeed be a source of law (*al-'urf shahih*) as long as it does not conflict with the principles of sharia. However, if the custom causes greater *mafsadah* (damage), then it must be abandoned.¹⁴

Imam As-Syatibi in *Al-Muwafaqat* explains: "Customs or customs that apply in society can be made into law if they bring benefit, not harm."

4) Low Level of Education

Low levels of education are often directly proportional to high rates of child marriage. Lack of understanding of children's rights, health impacts, and the importance of education for the future of children makes this practice continue. In fact, Islam emphasizes the importance of education as a means of creating a quality generation. The Prophet Muhammad SAW said: "Seeking knowledge is an obligation for every Muslim (male and female)." (HR. Ibn Majah).

5) Weak Law Enforcement and Marriage Dispensation

In Indonesia, although Law No. 16 of 2019 has set the minimum age for marriage at 19 years, the practice of child marriage is still rampant through the marriage dispensation mechanism submitted to the Religious Court. Weak supervision and the ease of granting dispensations are often loopholes exploited by the community.

In the context of Islamic law, marriage dispensations must truly consider the aspects of benefit and *mafsadah* for the prospective bride and groom. If the marriage actually brings harm, then it should not be continued.

3.2. Child Marriage Practices in Indonesia

3.2.1. Overview of Child Marriage in Indonesia from the Perspective of Islamic Law

Child marriage is still a worrying phenomenon in Indonesia. Although the Marriage Law has set a minimum age limit for marriage, this practice still occurs frequently, especially in rural areas and areas with strong cultural traditions. In the perspective of Islamic law, marriage must be carried out by paying attention to the physical, mental and economic readiness of the prospective bride and groom, in accordance with the principles of *maslahah* (benefit) and *maqashid sharia*.

¹³ Adiyana Adam, "Dinamika Pernikahan Dini," *AL-WARDAH*, 2020, <https://doi.org/10.46339/alwardah.v13i1.155>.

¹⁴ S Sakirman, "Epistimologi Ushul Fiqh Dalam Konstruksi Historis," *EMPIRISMA: JURNAL PEMIKIRAN DAN ...*, no. Query date: 2023-08-24 21:33:18 (2016).

Indonesia is one of the countries with a fairly high rate of child marriage in Southeast Asia. According to data from the Central Statistics Agency (BPS) in 2022, around 9.23% of women under the age of 18 have been married. This figure is higher in several provinces such as West Nusa Tenggara, West Sulawesi, and South Kalimantan which have low cultures and education levels.¹⁵

In the context of Islamic law, this phenomenon is often motivated by the public's understanding that women who have reached puberty are eligible for marriage. However, when viewed from the principle of maqashid sharia, this practice often does not bring benefits to girls, and even tends to cause mafsadah (damage).

Some factors that exacerbate this phenomenon in Indonesia include:¹⁶

- 1) Local Customs and Traditions: The culture of marrying off girls at an early age is still strong in some areas for reasons of maintaining family honor and avoiding adultery.
- 2) Economic Factors: Poverty forces parents to marry off their children to reduce the economic burden.
- 3) Lack of Education: Children who drop out of school tend to marry earlier due to lack of access to knowledge and economic opportunities.

From an Islamic perspective, customs can only be justified as long as they do not conflict with sharia values. If the custom brings harm, then it must be abandoned.

3.2.2. Child Marriage Data and Statistics

According to data from the Central Statistics Agency (BPS) in 2022, the prevalence of child marriage in Indonesia reached 9.23% of the total female population aged 20-24 years who married before the age of 18. This figure has decreased from previous years, but is still quite high compared to other countries in Southeast Asia.¹⁷

The following table illustrates the number of child marriages in several provinces in Indonesia:

Province	Percentage of Child Marriage
West Nusa Tenggara	15.79%
South Kalimantan	14.52%
West Sulawesi	13.99%
West Answer	10.67%
East Java	10.45%

(Source: Central Bureau of Statistics, 2022)

This figure shows that areas with low levels of education and strong cultural influences have higher rates of child marriage. Some of the main factors that contribute to the high rate of child marriage include:

- 1) Poverty: Families with difficult economic conditions tend to marry off their children early to ease the burden of life.
- 2) Low Level of Education: Children who drop out of school are more likely to marry at an early age.
- 3) Culture and Tradition: The practice of marrying off girls at an early age is still strong in many regions.

¹⁵ Noviyanti Soleman dan Rifki Elindawati, "Pernikahan Dini di Indonesia," *AL-WARDAH*, 2019, <https://doi.org/10.46339/al-wardah.v12i2.142>.

¹⁶ Delva Shalsabilla Nurselin dkk., "Analisis Faktor Penyebab dan Dampak Pernikahan Dini di Desa Pakuon Kecamatan Sukaresmi Kabupaten Cianjur," *proceedings UIN Sunan Gunung Djati Bandung*, 2021.

¹⁷ Badan Pusat Statistik dan UNICEF, "Analisis Data Perkawinan Usia Anak di Indonesia," *Unicef Indonesia*, 2016.

4) COVID-19 Pandemic: The pandemic has worsened the situation, leading to an increase in child marriages due to economic factors and hampered education.

UNICEF's 2021 report noted that the COVID-19 pandemic has had a significant impact on increasing the number of child marriages in Indonesia, especially in rural and remote areas. The high statistics on child marriage reflect the various negative impacts on children, both in terms of health, education, and social.¹⁸

- 1) Health Impacts: Girls who marry at an early age are vulnerable to pregnancy complications, such as premature birth and maternal death.
- 2) Impact on Education: Many girls who marry young are forced to drop out of school and lose access to proper education.
- 3) Social Impact: Early marriage often results in mental and emotional unpreparedness, which leads to divorce and family problems.

In the context of Islamic law, this impact is contrary to the principle of maqashid sharia which emphasizes protection of the soul (*hifdz al-nafs*) and descendants (*hifdz al-nasl*).

3.2.3. Government Regulations and Policies Regarding Child Marriage Practices

The Indonesian government has implemented various regulations and policies to reduce the number of child marriages. This step aims to protect children's rights and realize the welfare of the younger generation in accordance with the principles of justice and welfare. Islamic law also supports this effort by emphasizing the importance of protecting *hifdz al-nafs* (protection of the soul) and *hifdz al-nasl* (protection of offspring). The main regulations governing the age of marriage in Indonesia are:¹⁹

- a) Law Number 1 of 1974 concerning Marriage: Article 7 Paragraph (1) of Law No. 1 of 1974 states that the minimum age for marriage is 16 years for women and 19 years for men. However, this limitation was later deemed no longer relevant to current developments because it did not take into account the negative impacts of early marriage.
- b) Revision of the Marriage Law – Law Number 16 of 2019 : In 2019, Law Number 1 of 1974 was revised through Law No. 16 of 2019, which raised the minimum age for marriage to 19 years for both men and women.

The objectives of this revision are: To provide protection for children from the risk of early marriage, to reduce the number of school dropouts due to child marriage, and to reduce the impact of reproductive health on girls.

From an Islamic legal perspective, this policy is in line with the principle of *maslahah* (public interest) which is the aim of sharia to protect the lives and future of children.

Although the marriage age limit has been raised, Article 7 Paragraph (2) of Law No. 16 of 2019 provides an opportunity to apply for a marriage dispensation if the prospective bride and groom have not reached the minimum age of 19 years. The application for a marriage dispensation is submitted to the Religious Court for those who are Muslim. Then the Judge will consider urgent reasons and look at the physical, mental, and economic readiness of the prospective bride and groom.

Marriage dispensation in Islamic law can be considered as a form of *rukhsah* (legal leniency) in emergency conditions. However, the granting of this dispensation must really pay attention to the principle of benefit and avoid *mafsadah* (damage).²⁰In addition to legal

¹⁸ UNICEF, "Data Perkawinan Anak," Jakarta, 2020.

¹⁹ Nurnazli Nazli, "Penguatan Regulasi Dalam Pencegahan dan Penanggulangan Perkawinan Anak," *ADHKI: Journal of Islamic Family Law*, 2019, <https://doi.org/10.37876/adhki.v1i1.4>.

²⁰ Mughniatul Ilma, "Regulasi Dispensasi dalam Penguatan Aturan Batas Usia Kawin bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019," *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam*, 2020, <https://doi.org/10.37680/almanhaj.v2i2.478>.

regulations, the government also issues supporting policies to suppress the practice of child marriage, including:

- a) Government Regulation Number 70 of 2020 concerning the Implementation of Child Protection: This regulation regulates measures to protect children from early marriage, exploitation, and violence. The central and regional governments are required to carry out: Child marriage prevention campaigns, and Counseling the community about the importance of children's education and health.
- b) National Strategy for the Prevention of Child Marriage (Stranas PPA): Launched by the Ministry of Women's Empowerment and Child Protection (KPPPA), this program aims to: Increase public awareness of the impact of child marriage, Provide assistance and support to children and their families, and Strengthen coordination between the government, community, and religious organizations.

Religious institutions such as the Indonesian Ulema Council (MUI) also play a role in providing education and fatwas related to child marriage. MUI emphasizes that marriage must consider the principles: Physical, mental, and economic readiness of the prospective bride and groom, and Compliance with the maqashid sharia which aims to protect offspring (hifdz al-nasl) and avoid harm.

MUI also supports the government's policy of raising the age limit for marriage as a step to realize the welfare of the people.

3.2.4. Religious Court Perspective in Handling Marriage Dispensation Applications

Religious Courts have an important role in handling marriage dispensation requests, especially after the enactment of Law Number 16 of 2019 which raised the minimum age limit for marriage to 19 years for men and women. Marriage dispensation requests are submitted as a form of exception for urgent reasons regulated in the legislation.

Application for marriage dispensation is regulated in:

- a) Article 7 Paragraph (2) of Law No. 16 of 2019, which states that if the prospective bride and groom have not reached the age of 19, parents or guardians can submit a marriage dispensation application to the court.
- b) Compilation of Islamic Law (KHI), Article 15 states that a prospective bride and groom must meet the age requirements set by law. However, in certain circumstances, the court may grant permission for marriage based on considerations of public interest.

The Religious Court is obliged to examine this application carefully so that it does not conflict with the maqashid sharia, namely the principle of protecting the soul (hifdz al-nafs) and descendants (hifdz al-nasl).

The process of applying for a marriage dispensation at the Religious Court includes the following stages:²¹

- 1) Submission of Application: Parents or guardians of prospective brides and grooms who have not reached the age of 19 years submit a written application to the Religious Court.
- 2) Reason Examination: The judge examines the compelling reasons submitted, such as pregnancy out of wedlock or certain cultural factors.
- 3) Mediation Approach: Before deciding a case, the judge is required to mediate between the two parties to achieve the best solution.
- 4) Judge's considerations: The judge considers the health, mental, educational and economic readiness of the prospective bride and groom, and bases the decision on the principles of benefit and prevention of mafsadah.

²¹ Muhajir, "Prosedur dan Penyelesaian Dispensasi Nikah di Bawah Umur di Pengadilan Agama," *Jurnal Studi Islam*, 2019.

Religious Court judges in granting marriage dispensation consider several aspects, including:

- a) Physical and Mental Health Conditions: The prospective bride and groom must be assessed as being able to carry out the marriage in terms of health and mentality.
- b) Urgent Factors: Usually involves an out-of-wedlock pregnancy as the primary reason for the application.
- c) Economic and Social Impact: Judges evaluate the financial readiness of prospective brides and grooms to avoid ongoing poverty.

Judges are also guided by the principle of *maslahah* in Islamic law, where decisions taken must bring goodness and prevent future harm.²² In practice, there are several challenges in handling marriage dispensation applications, including:

- a) Number of Applications: Although the law has raised the age limit, the number of applications for marriage dispensation is still quite high. For example, in 2022, the Supreme Court recorded more than 50,000 applications for marriage dispensation across Indonesia.
- b) Weak Urgent Reason: Many cases of applications are not accompanied by a strong or urgent reason.
- c) Low Public Awareness: Traditions and cultural factors are often the main reasons for child marriage, even though the negative impacts are quite clear.

In the perspective of Islamic law, granting marriage dispensation can be considered as a form of *rukhsah* (leniency) in an emergency. However, Islam also emphasizes the importance of mental and physical readiness of the prospective bride and groom so that there is no harm (damage) in the future.

3.3. Analysis of Islamic Family Law on Child Marriage

3.3.1. Analysis of *Maslahah* and *Mafsadah* in Child Marriage According to Islamic Law

In the perspective of Islamic Family Law, the concepts of *maslahah* (benefit) and *mafsadah* (damage) are the two main principles used to evaluate whether an action or decision is permissible or not. These two concepts are very important in determining whether child marriage can be accepted in Islamic law, because marriages that do not bring harm or even risk causing *mafsadah* can conflict with the main aim of Islamic law, namely the protection of the soul, mind, offspring and property.²³

There are several aspects that can be considered as problems in child marriage, including:²⁴

- a) Protection of Honor: In some cultures, especially in rural communities, early marriage is often seen as a way to maintain family honor and avoid adultery. In this context, marriage can be seen as a benefit that avoids negative behavior.
- b) Social Problem Solving: In some situations, especially in areas with high poverty rates, marriage can be a solution to solving socio-economic problems, such as reducing the burden on parents or giving legal status to an existing relationship.

²² Agus Khalimi, Triana Sofiani, dan Tarmidzi Tarmidzi, "Dispensasi Nikah dalam Perspektif *Maslahah*," *Al-Hukkam: Journal of Islamic Family Law*, 2021.

²³ Mulyadi, Dody Wahono, dan Farah Dila Hasanah, "Studi Komparatif Menurut Hukum Positif dan *Maslahah* terhadap Pernikahan dini," *ASA*, 2021, <https://doi.org/10.58293/asa.v3i1.48>.

²⁴ Eka Gifriana, H.B.Syafuri, dan H. E. Zaenal Mutaqin, "Dispensasi Nikah Usia Dini : Perspektif *Maslahah* Mursalah (Analisis Yuridis Putusan Perkara Nomor : 1635/Pdt.P/2019/Pa.Srg)," *Journal of Legal and Cultural Analytics*, 2022, <https://doi.org/10.55927/jlca.v1i3.1284>.

- c) Psychological and Social Needs: In some cases, children involved in early marriage may feel more secure and have a purpose in life, although this depends greatly on the readiness of each individual.

However, from an Islamic perspective, if child marriage causes mafsadah, then this must be avoided. Some of the negative impacts that can arise from child marriage include:²⁵

- a) Physical and Mental Health: Children who marry at a young age often face serious health problems, especially during pregnancy and childbirth. Several studies have shown that women who marry at an early age are more susceptible to medical complications during pregnancy and childbirth, such as preeclampsia, premature birth, and maternal death.
- b) Delayed Education: Child marriage often prevents children from continuing their education, especially for girls. Delayed education can reduce a child's quality of life in the long term and reduce employment opportunities and skills development.
- c) Poverty and Economic Dependence: Children who marry young often do not have the skills or income to support themselves and their families, potentially leading to poverty.
- d) Insufficient Mental Readiness: Many children are not emotionally and psychologically mature enough to take on the role of husband or wife, which can lead to problems in household relationships, such as divorce or domestic violence.

In assessing whether child marriage brings masalah or mafsadah, Islamic law refers to the maqashid sharia (sharia objectives), which includes five important things:²⁶

- 1) Hifdz al-Din (Preserving Religion): Marriage must support the continuation of religion and prevent moral decay.
- 2) Hifdz al-Nafs (Protecting the Soul): Marriage that carries a health or death risk to the child is contrary to the principle of protecting the soul.
- 3) Hifdz al-Aql (Protecting Reason): Children who marry at a young age are often not mentally and emotionally mature, which can interfere with the development of reason and critical thinking skills.
- 4) Hifdz al-Nasl (Protecting Offspring): Child marriage has the potential to disrupt the quality of offspring due to the physical and mental unpreparedness of the parents.
- 5) Hifdz al-Mal (Protecting Wealth): Marriages that force children to manage the household without economic readiness can cause greater material losses, both for the children and their families.

If child marriage risks violating one or more of the principles of maqashid sharia, then the marriage should not take place.

The Indonesian Ulema Council (MUI) in several of its fatwas emphasized that child marriage should be avoided because it can cause greater harm than good. Fatwa MU I emphasized that child marriage can harm the child's future, both in terms of health, education, and economy. The fatwa also emphasized the importance of supervision of early marriage practices, especially by paying attention to the age suitability and physical readiness of the prospective bride and groom.²⁷

3.3.2. Islamic Family Law's View on Marriage Dispensation

²⁵ Dini Fadilah, "Tinjauan Dampak Pernikahan Dini dari Berbagai Aspek," *Pamator Journal*, 2021, <https://doi.org/10.21107/pamator.v14i2.10590>.

²⁶ Nurhadi Nurhadi, "Undang-Undang No. 1 Tahun 1974 Tentang Pernikahan (Perkawinan) di Tinjau dari Maqashid Syariah," *UIR Law Review*, 2018, [https://doi.org/10.25299/uirlrev.2018.vol2\(02\).1841](https://doi.org/10.25299/uirlrev.2018.vol2(02).1841).

²⁷ Mendra Siswanto, "Fatwa Fatwa Hukum Keluarga Majelis Ulama Indonesia Tahun 1975-2012 Dalam Perspektif Maqashid Al Syari'ah," *Hukum Islam*, 2022, <https://doi.org/10.24014/jhi.v21i2.11520>.

In Islamic Family Law, marriage dispensation can be granted if there are certain reasons that are considered urgent or require special policies, in accordance with the principles of maqashid sharia. However, granting marriage dispensation for minors has caused debate, because it has the potential to violate basic principles in Islam related to the physical, mental, and social readiness of the prospective bride and groom.²⁸

In Islamic Law, there is no definite age limit mentioned in the Quran regarding child marriage. However, many scholars emphasize the importance of physical, mental, and emotional readiness in marriage, as well as the ability to carry out responsibilities as a husband or wife. As part of the maqashid sharia, marriage must ensure the benefit and avoid harm for both parties, especially the child.

The hadith of the Prophet Muhammad SAW which states that marriage is “half of the religion” shows that marriage in Islam is not only about age, but also readiness to bear responsibility. In this case, if a child marriage is carried out, then a marriage dispensation becomes a legal option that can be taken.

In Indonesian positive law, marriage dispensation is regulated in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, which sets the age limit for marriage for women at 19 years, and for men at 19 years. However, under certain conditions, the Religious Court can grant permission to marry even though the age does not meet these requirements.²⁹

Article 7 Paragraph (2) of the Marriage Law states that marriage under the specified age can be carried out with a dispensation from the court which is given after considering the factors underlying the marriage. In this case, the religious court has the authority to grant a marriage dispensation if a valid and urgent reason is found. This is further regulated in the Islamic Law Complication (KHI) which provides space for religious courts to grant permission for those who apply for a marriage dispensation based on certain reasons, such as pregnancy out of wedlock or the family's socio-economic conditions.

In general, Islamic Family Law stipulates that early marriage is only permitted in certain urgent circumstances and prioritizes maslahah (benefit) for all parties involved, not just to fulfill the wishes of parents or parties who wish to marry off their children.³⁰

The scholars stated that in the case of marriage dispensation, if the age of the prospective bride and groom has not reached the required age, then there must be a very urgent reason and be considered carefully, including health factors and psychological readiness. Several fatwas, such as those issued by the Indonesian Ulema Council (MUI), state that marriage dispensation may only be given in truly urgent conditions and cannot be postponed further. Marriage dispensation, if carried out without careful consideration, risks causing greater damage (mafsadah) than its benefits.

3.3.3. Efforts to Prevent Child Marriage in Islamic Law

Prevention of child marriage practices is an important step to protect children's rights, especially in the context of health, education, and social welfare. In Islamic Family Law, this

²⁸ Maimunah, “Dipensasi Nikah Anak Perempuan : Suatu Fenomena Masyarakat Modern dalam Konteks Agama dan Negara,” *Syakhsia: Jurnal Hukum Perdata Islam*, 2020.

²⁹ Kamarusdiana Kamarusdiana dan Ita Sofia, “Dispensasi Nikah Dalam Perspektif Hukum Islam, Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam,” *SALAM: Jurnal Sosial dan Budaya Syar-i*, 2020, <https://doi.org/10.15408/sjsbs.v7i1.14534>.

³⁰ Z Zuhri dan S N Faizah, “Pertimbangan Pengadilan Agama Bawean Atas Dispensasi Nikah Anak Di Bawah Umur,” *JURISY: Jurnal Ilmiah Syariah*, 2021.

prevention can be done in various ways, either through education, regulation, or awareness-building among the community. In addition, prevention must be done by prioritizing the principle of *maslahah* and avoiding *mafsadah*, so that child marriage does not harm the most vulnerable party, namely the child itself.³¹

4. CONCLUSION

Child marriage in Indonesia remains a complex social problem, influenced by various factors such as misunderstanding of religion, cultural traditions, poverty, and low levels of education. This practice has significant negative impacts, including reproductive health risks, limited access to education, and psychological and emotional unpreparedness of children to build a household. From the perspective of Islamic Family Law, although there is no strict age limit, the main requirement for marriage is physical, mental, and economic readiness, in accordance with the principle of *maslahah* which aims to avoid *mafsadah*. Law Number 16 of 2019 has raised the minimum age limit for marriage to 19 years, but the existence of marriage dispensations is often exploited and becomes a challenge in enforcing this regulation. Therefore, collaboration between the government, society, and religious institutions is needed to strengthen child protection, through education, supervision, and increasing awareness of the importance of marriage readiness. This step is expected to reduce the practice of early marriage and support the creation of better family welfare.

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³¹ Reza Zulaifi, Ahmad Yani, dan M. Zainuddin, "Penyuluhan Upaya Pencegahan Pernikahan Dini," *Jurnal Dedikasi Madani*, 2022, <https://doi.org/10.33394/jdm.v1i1.6483>.

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