

## The Current Development of Marriage Age Provisions in Indonesia and Malaysia: A Socio-Historical Approach

**Ibnu Radwan Siddik Turnip**

Faculty of Sharia and Law, Universitas Islam Negeri Sumatera Utara, Sumatera Utara, Indonesia, Jl. Williem Iskandar, Pasar V Medan Estate, 20371  
E-mail: [ibnuradwan@uinsu.ac.id](mailto:ibnuradwan@uinsu.ac.id)

**Zainul Fuad**

Doctoral Program in Islamic Law, Universitas Islam Negeri Sumatera Utara, Sumatera Utara, Indonesia, Jl. Jalan IAIN No. 1, Medan, 20235  
E-mail: [zainulfuad@uinsu.ac.id](mailto:zainulfuad@uinsu.ac.id)

**Nurhayati**

Doctoral Program in Islamic Law, Universitas Islam Negeri Sumatera Utara, Sumatera Utara, Indonesia, Jl. Jalan IAIN No. 1, Medan, 20235  
E-mail: [nurhayati@uinsu.ac.id](mailto:nurhayati@uinsu.ac.id)

### ABSTRACT

*This paper discusses how the current social history of Islamic law in the Southeast Asian region relates to the minimum age of marriage. Then also, it will be examined how socio-cultural and socio-political influences surround the change in the provisions of the minimum age of marriage in the two countries. This normative legal research focused on studying legal history using the social history approach of Islamic law. Data is analyzed with qualitative methods. The results showed a change in the age of marriage in Indonesia, from 19 years for men and 16 years for women to 19 years for both men and women. While in Malaysia, most states have not changed the minimum age of marriage, remaining at 18 years old for men and 16 years for women. The change in the age of marriage occurs in the state of Selangor alone, which determines the marriage age limit is 18 years for men and women. The difference in terms of the marriage age limit in these two countries is strongly influenced by the socio-cultural and socio-political dynamics in society. The aspirations of some groups of people towards changing the marriage age limit in both countries have also strengthened due to the growing number of cases of child marriage, extramarital pregnancy, and the practice of abortion in both countries.*

**Keywords:** *age of marriage; a social history of Islamic law; Indonesia; Malaysia.*

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## INTRODUCTION

The social history approach to Islamic law is a relatively new approach to understanding Islamic law. This approach is essential when the theological and normative practice of law does little to understand the development of Sharia, Islamic Jurisprudence, and Islamic law in general. In simple terms, Mudzhar (2003) defines the social-historical approach to Islamic law by understanding the products of Islamic legal thought by paying attention to the socio-cultural and socio-political aspects that influence it. This is based on the assumption that every product of Islamic law is the result of interaction between the jurists (*fuqaha*) and the socio-cultural and socio-political circumstances surrounding it at the time.

According to Azyumardi Azra, since the social history of Islamic law is a relatively new discipline that emerged at the end of the 20th century, not much work has been produced as a reference. Discussions in this area are still incomplete and not yet comprehensive. The existing literature in this field is relatively still small, both at the international, regional, and national levels of the Muslim world. In the international arena, big names have produced many works, such as Josep Schat., NJ. Coulson, and JN. Anderson. Josep Schat wrote 'The Origins of Muhammad Jurisprudence, An Introduction to Islamic Law, Islamic Law, Pre Islamic Background and Early Development of Jurisprudence'. His last work was in 'Theology and Law in Islam'. NJ. Coulson wrote a book titled 'A History of Islamic Law', and JN Anderson wrote 'Islamic Law in The Modern World'. These works are at least very helpful in understanding the development of Islamic law in historical perspectives and social interactions (Ya'qub, 2008). As for the Indonesian context, among the literature that uses the social history approach to Islamic law is Islam and Islamic Law In Indonesia: 'A Socio-Historical Approach' by Mudzhar (2003), 'Sejarah Sosial Dalam Studi Islam' (by Minhaji (2013) and Sejarah Sosial Hukum Islam by Ismatullah (2010).

According to Azra (2014), since the social history of Islamic law is a relatively new discipline that emerged at the end of the 20th century, not much work has been produced as a reference. Discussions in this area are still fragmentary, and not yet comprehensive. The existing literature by accordance with this field is relatively still small, both at the international, regional, and national levels of the Muslim world. In the international arena, there are actually big names who have produced many works such as NJ. Coulson and JN. Anderson. Coulson (2017) wrote a book with the title 'A History of Islamic Law' and Anderson (1959) wrote 'Islamic Law in The Modern World'. These works are at least very helpful in understanding the development of Islamic law in historical perspectives and social interactions (Tarigan, 2013).

However, according to Azra (2014), the development of the study of the social history of Islamic law gave rise to another version in its approach, namely the use of comparative perspectives in deciphering certain subjects or themes by comparing the dynamics of Islamic law in one Muslim country with another. This

comparative perspective may explain why differences among fellow Muslim countries are usually caused by socio-religious and political differences between countries.

A comprehensive study of the comparison of legal systems in Muslim countries, for example, has been conducted by several scientists compiled in a book entitled 'Sharia Incorporated a Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present'. The book, edited by Otto (2010), contains writings that describe the comparison of the legal system that applies in twelve Muslim countries in the world such as Egypt, Saudi Arabia, Pakistan, Turkey, Malaysia, and Indonesia. Mahmood (1972) has written two books on the renewal of 'family law in the Muslim world' and 'civil law in Muslim countries in terms of history, text, and comparative analysis'. The choice of the comparative study of Islamic family law in Muslim countries made by many scholars of Islamic law certainly has a reason. Unlike Islamic criminal law, family law is the most widely applied field of Islamic law in Muslim countries.

One of the provisions of the law relating to Islamic family law and much of the concern of observers of Islamic law is concerning the minimum age of marriage in some Muslim countries. The text of the Qur'anic verse does not explain the minimum age of marriage but describes the eligibility of age to carry out marriage at puberty (*baligh*). In determining the criteria of the age of puberty, the jurists differ their opinions so that they also differ in determining the minimum age of marriage. For example, Imam Shafi'i argues that the age of puberty for men is 15 years and for women is nine years, while Ulama Maliki determines the age of puberty by growing hair on some limbs (Asrori, 2015).

In line with efforts to transform Islamic law in the form of jurisprudence into the regulations of the law in Muslim countries, there seems to be a change in the minimum age of marriage in each country. Mahmood (1987) has collected data on the minimum age of marriage for men and women in 17 Muslim countries. The results of his research explained that the average minimum age limit that applies in some Muslim countries, both in Africa, Europe, the Middle East, South Asia, and Southeast Asia, ranges from 15 to 21 years for men and 15 to 18 years for women. What is interesting to note is the minimum age of marriage that applies in Muslim countries in Southeast Asia, which in the results of the study is represented by the governments of Indonesia and Malaysia. The two cognate countries have differences in determining the minimum age of marriage, wherein Indonesia is limited to 19 years for men and women aged 16 years, while Malaysia determines 18 years for men and 18 years 16 years for women. When traced further, the minimum age of marriage in Indonesia above is based on the provisions of Law No. 1 of 1974 on Marriage Article 7 paragraph (1) and Compilation of Islamic Law (KHI) Article 15 paragraph, which determines that a marriage license is only given to men who have reached the age of 19 years and for women running the age of 16 years. Meanwhile, the minimum age of marriage in Malaysia is under the Islamic Family Law (Federal Territories) Act. 1984.

The age of 16 is still relatively young, immature, and ready to be born in entering the marriage gate. Psychological review, reproductive health, and the world of education strengthen the desire to change the minimum age of marriage even higher. For the Indonesian context, finally, the aspiration has succeeded in changing the minimum union age with the birth of Law No. 16 of 2019 concerning Changes to Law No. 1 of 1974 on Marriage. Based on this law, the age of marriage contained in Article 7, paragraph 1 of the Marriage Law was changed from 19 years for men and 16 years for women to 19 years for both men and women. This means a significant change in the minimum age limit for women, from 16 to 19 years. Meanwhile, in Malaysia, ideas and aspirations to change the minimum age of marriage have also strengthened. Still, they have not succeeded in changing the provisions of the Islamic Family Law (Federal Territories) Act. 1984.

However, the latest development for the State of Selangor has realized these aspirations by amending the enactment of the Selangor Islamic Family Law in 2003. The amendment was approved by an elected state representative and passed by Selangor's ruler, Sultan Shafaruddin Idris Shah, ordering that the age of marriage for Muslims in the State be raised to 18 (Nursalikah, 2018).

Looking at the phenomenon of the latest development of the minimum marriage age limit provisions in these two Southeast Asian countries gives rise to the desire of researchers to explore more deeply the socio-cultural and socio-political dynamics that developed in both countries that affect changes in Islamic law provisions on the minimum age of marriage. The questions that come up are how exactly is the minimum age of marriage in Indonesia and Malaysia? What is the socio-cultural and socio-political influence surrounding the change in the minimum age of marriage in both countries? What are the similarities and differences in the provisions of the marriage age limit based on the perspective of the social history of Islamic law in both countries?

Research on the development of Islamic law in Southeast Asia has become a concern for international and national legal thinkers published in reputable journals. Hooker (2003) delivered an international readership on Southeast Asian Islamic law through his introduction: *Islamic in South-East Asia*. Meanwhile, Indonesian and Malaysian researchers also widely wrote research on the implementation of Islamic family law in Southeast Asia. Harisudin & Choriri (2021) write 'On The Legal Sanction'.

Against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda's Maqasid Al-Shariah Perspective. Anam (2017) wrote 'Application of Muslim Family Law in Southeast Asia: A Comparison'. Fathoni (2014) writes 'The Social History of Islamic Law in Southeast Asia (Study of the Implementation and Codification of Islamic Law in Malaysia)'. The last Malaysian researchers, Mohd & Kadir (2019), wrote an article entitled 'Minimum Age of Marriage under Islamic Law and The Islamic Family Law (Federal Territories) Act 1984: A Preliminary Study on The Ideal Age of Marriage in Malaysia'.

Based on the studies above, there has been no detailed study discussing the social history of Islamic law in Southeast Asia regarding the Minimum Age for Marriage in Indonesia and Malaysia. However, the studies that have been described above are essential references in this study, so the results of the above analysis are part of a necessary reference in this study. Thus, this research is significant to fill the void of research that has not been done to be useful both for academics, legal practitioners, and the general public.

## **METHODS**

From the purpose of legal research, this research is a type of normative legal research focused on legal history research-the approach used in the social history approach of Islamic law and the comparative practice of law. Through the social history approach of Islamic law, researchers will try to see the socio-cultural and socio-political dynamics in Indonesia and Malaysia related to the provisions of the minimum age of marriage in both countries. Through a comparative legal approach, researchers will look at the side of equality and differences in the requirements of the minimum marriage age limit in the historical perspective of Islamic law in both countries.

Data collection methods use library research methods. Data is obtained from secondary sources using primary, secondary, and high-quality legal materials. Primary legal material is obtained from Law No. 1 of 1974, the Malaysian Family Law Act (Federal Territories) Act 1984, and the Compilation of Islamic Law. Secondary legal materials are obtained from explanations of primary materials, such as draft laws, academic manuscripts, research results, and legal practitioners' work. The most specialized legal materials are obtained from dictionaries and encyclopedias. The method used in analyzing data is the qualitative analysis method.

## **RESULTS AND DISCUSSION**

### **Marriage Age Limit: Fiqh Perspective**

In classical fiqh studies, there is no absolute arrangement of the minimum age for marriage. There are at least 23 verses of the Qur'an relating to marriage, but there is not a single verse that explains the age limit of marriage. The Qur'an only describes a person's eligibility to marry, characterized by puberty and the ability to build a household. This reinforces the understanding that puberty age is not a reasonable condition for marriage. Thus, in the perspective of fiqh, marriages performed by those who have not reached the age of puberty (*baligh*) are still considered valid. Among the verses of the Qur'an that explain the feasibility of marital age is Surat al-Nur (24), verse 32, meaning: Marry off the 'free' singles among you, as well as the righteous of your bondmen and bondwomen. If they are poor, Allah will enrich them out of His bounty. For Allah is All-Bountiful, All-Knowing.

According to Ibn Kathir, the above verse explains the order to marry as the opinion of some scholars who require marriage for those who are already able (al-Damasqy, 2004). According to Al-Maraghi, the meaning of *al-sholihin* (the righteous) in verse is men or women who have been able to marry and exercise the rights of husband and wife, such as being able-bodied, having property, and others (Asrori, 2015). Quraish Shihab interprets the word as someone able mentally and spiritually to build a household, not to mean a religious believer, because the function of marriage requires preparation not only material but also mental and spiritual practice, both for male candidates and female candidates (Asrori, 2015).

The scholars differ in setting age limits for people who are considered puberty. Shafi'iyah and Hanabilah stated: Boys and girls are considered puberty when they are 15 years old. Hanafiyyah sets a person's age as follows: Boys are considered puberty when they are 18 years old, and 17 years old for girls. In comparison, the scholars of the Imamiyyah stated that boys are considered *baligh* when they are fifteen and nine years old for girls (Mughniyyah, n.d.).

There are two opinions among scholars against girls who are nine years old. *First*, Imam Malik, Imam Shafi'i, and Imam Abu Hanifah said that girls who are nine years old are under the same law as 8-year-olds, so it is considered not puberty. *Second*, he is thought to have puberty because it has been possible for menstruation, so it is permissible to hold a marriage even though there is no right to *khiyar* for him as owned by adult women (Qudamah, n.d.). Different from the jurists above, contemporary Islamic jurists see the need for a legal breakthrough in the legality of the marriage of minors. They assume that classical opinion is too rigid in interpreting the verses of the Qur'an and the practice of the Prophet Muhammad (peace be upon him) when marrying A'isyah, who was six years old. As a result, it allows the marriage of minors based on literal and rigid understanding. On the contrary, contemporary scholars see that religion in principle does not expressly prohibit underage marriage but also never advocates it, primarily if it is carried out without regard to the child's physical, mental, and rights dimensions. As for the Prophet's story, A'isyah is considered an exception and a privilege. In comparison, the view of contemporary scholars on the age limit of marriage is more constructive, looking until the time of marriage not only on physical characteristics (puberty) but its emphasis on the ability of reason and soul (*rushd*).

Rashid Ridha said that *bulugh al-nikah* means until a person to the age to get married, that is, to dream. At this age, a person can bear children and bear offspring, so he moved his heart to marry; at this age, someone charged religious laws both worship and hudud. Therefore, the meaning of *rushd* is the rightness of a person to make transactions (*tasharruf*) that bring good and stay away from evil. This is a testament to the perfection of his intellect (Athallah, 2006). Hamka argues *bulugh al-nikah* is interpreted by an adult. Maturity does not depend on age but the intelligence or maturity of the mind. Because there are also children whose age is immature but he has been clever, and some are adults, but their thinking is

not yet mature (Hatta, 2016). It should be underlined that all jurists agree, both classical and contemporary scholars, that a person's age has a relationship with responsibility. The responsibility in question relates to the loading of the law or being a *mukallaf*. Etymologically, *mukallaf* means being burdened with the rule of God's law. A *mukallaf* is already bound by the provisions of the law, whether it is an order or a prohibition (Jamal, 2016). Considering marriage is an act that requires proficiency, preferably by looking not only at physical characteristics (puberty) but also its emphasis on perfection of mind and soul (*rushd*) and other aspects. Thus, marriage requires both physical (biological) maturity and psychological, social, religious, and even intellectual maturity. With this concept, it is expected that a family built through the institution of marriage will be able to survive, and it is not easy to divorce because of minor problems only.

### **Minimum Age of Marriage in Indonesia**

Before the birth of Law No. 1 of 1974 on Perkawinan (Marriage), there was no clear and firm rule concerning the minimum age of marriage allowed for Muslims who want to hold weddings. Indonesian Muslim society refers to the provisions of fiqh that are relatively different between schools with each other than the minimum age of marriage. As explained above, the minimum age of marriage is closely related to the age of puberty determines the sign of puberty. Shafi'i School, which Muslims widely follow in Indonesia, gives *baligh* age limit to men and women when they are 15 years old. After the birth of Law No. 1 of 1974, the minimum marriage age requirement was stipulated under Article 7 of Law paragraph (1) No. 1 of 1974, which reads, 'Marriage is only allowed if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years'.

Historically, the Marriage Bill established that the marriage age limit for men was 21 years, while for women, it must be 18 years old. However, this marriage age limit invites the reaction of Muslims represented through the United Development Faction in the DPR. This faction rejected the age limit for two reasons. *First*, Islam has never set a marriage age limit. As long as the bride and groom are adults (*akil baligh*) and feel capable, marriage can be carried out. *Second*, the morals of the nation's children who have been affected by the modernization of promiscuity. With the high age limit, the practice of promiscuity will increase because they are prevented from having a valid marriage for reasons not old enough (Adawiyah, 2019).

In fact, in addition to the Article on the minimum age of marriage, there are still several more articles that get a strong reaction from Muslims. Seeing the rigors of the action of Muslims, the Suharto government began to soften and was willing to compromise, not inside parliament but outside parliament. Since October 1973, the Government, primarily through ABRI, held talks with Islamic figures, PPP, including KH. Bishri Syansuri. He is known as a strong scholar in terms of jurisprudent and was a famous jurist of Nadhlatul Ulama at that time. Generals such

as Soemitro, Daryatmo, and Soedomo inevitably had to deal with KH. Bishri Syansuri was elderly but did not want to compromise in terms of fiqh. KH. Bishri Syansuri gathered nine great scholars in Jombang and made a counter-plan, one of which was about the age limit allowed for marriage to be set at 16 years for women and 18 years for men, not 21 years for men and 19 years for women as in the bill (Adawiyah, 2019). Finally, with the consent of Muslims, a compromise was reached, which was finally accepted by the House of Representatives in December 1973. On January 2, 1974, the Marriage Act was promulgated by the Secretary of State in State Gazette Number 1 of 1974. The official decree applied to all citizens on October 1, 1975, based on Government Regulation No. 9 of 1975.

After running for decades, the issue of minimum marriage age in Indonesia is still reaping pros and cons among the public, especially with the limit of marriage for women. Many people consider the age of 16 years for women to be relatively young, not ready mentally and physically, and still in the age of education. This is narrowed to the desire to change the Marriage Law, especially concerning the age of marriage. One of the problems arising in the Marriage Law is Article 7 paragraph (1) which distinguishes the age limit of marriage based on gender where the marriage age limit for men is 19 years while for women 16 years. The age limit for men is not considered a matter of perceptive child rights because the age of 19 years has been categorized as adult age. However, the age limit for women still belongs to the age category of children. This is a form of discrimination based on sex, contrary to the laws and regulations in Indonesia as guaranteed by Article 3 paragraph (3) of the Human Rights Law and Article 1 of the Convention on women's Rights (CEDAW). Concerning the rights of children, the Child Protection Act has also stated that states, governments, and local governments are obliged and responsible to respect the fulfillment of children's rights regardless of ethnicity, religion, race, class, gender, ethnicity, culture, and language, legal status, birth order, and physical and/or mental condition. The provision is strengthened by the Joint General Comment of the Convention on the Rights of the Child No. 22 of 2017, dated November 16, 2017, explained that the discrimination includes based on the age of the child, parents, companion or family member, gender identity or sexual orientation, ethnicity, nationality, disability or economic status, migration status including marital status or family status.

The Academic Text of Amendment to Law No. 1 of 1974 explained that child marriage allowed through the Marriage Law has made girls experience discrimination in getting their rights as children. Such discrimination includes discrimination in the fulfillment of the right to health and education for girls. Based on Article 28B paragraph (2) of the NRI Constitution of 1945 jo. Article 53 paragraph (1) of Law No. 39/1999, every child is entitled to survival, growing up, maintaining life, and improving their standard of living. Article 62 of the Human Rights Law jo Article 8 of the Child Protection Act explains that every child is entitled to proper health and social security services under their spiritual, physical, and mental needs. From expert information at the Constitutional Court case hearing No. 30/PUU-XII/2014 and 74/PUU-XII/2014, no one has stated that marriage by a



16-year-old girl is ideal in terms of health. Pregnancy by child contributes to a maternal mortality rate six times higher for mothers under the age of 16. The marriage of girls not only affects physically but also impacts mental health to psychiatric disorders. The tendency for psychiatric disorders is higher in women who marry at 18 years than those who marry in adulthood (KPI, 2017).

Meanwhile, from the aspect of education, children are entitled to get an education by the guarantees in Article 28C paragraph (1) of the 1945 NRI Constitution states that everyone is entitled to education and benefits from science and technology, art and culture, to improve their quality of life and for the welfare of humanity and Article 60 of human rights states that every child is entitled to education and teaching in the framework of his personal development by their interests, talent, and the level of intelligence, every child has the right to seek, receive, and provide information by his intellectual status and age for the sake of their development and Article KHA which stipulates that every child is entitled to basic education that must be given free of charge from the state.

It is a parallel thing where the younger the age of marriage, the lower the level of education the child achieves. Child marriage also results directly from dropping out of school for girls. The entrenched tradition compounds that girls are more undervalued than boys, so education is not the main thing for them. In Indonesia itself, the phenomenon of dropping out of school because of child marriage is common. Especially approaching the National Examination (NE), many media reported the number of students who canceled the NE because it had been mated first by their parents, as happened in Jember (East Java), Lombok (West Nusa Tenggara), Indramayu (West Java), Jambi, Bali, Lampung, Bengkulu, and Hedgehog (West Kalimantan). Delaying the age of marriage is one way that children can get higher education (KPI, 2017).

The Sociological Foundations of Academic Manuscripts of Law No. 1 of 1974 mentioned that post-independence, the existence of Law No. 1 of 1974 on Marriage tends to change the legal politics related to child marriage. The women's movement at the time urged a minimum age of marriage, and the policymakers agreed to make the minimum age 16 for women. Thus, the existence of Law No. 1 of 1974 in his era is a jump from the previously no minimum age of marriage. The rules in the Marriage Act are an attempt by the State to protect the institution of marriage from an abusive marriage that can damage the institution of the family. Unfortunately, the implementation of this rule faces severe obstacles in the field. Marriage at an age below the minimum limit in the Marriage Law still occurs for various reasons, both related to the substance of the law and the influence of social, economic, and cultural factors of society and religious understanding. The above factors are very influential in the emergence of child marriage practices.

For example, there is a manipulation of data on the age of children under 16 years old who are "matured" deliberately for the benefit of the marriage administration of the creation of the document to be able to marry the child and get

a marriage license. In addition, under-handed marriage also occurs when the child does not allow legality. About 2 million Indonesian women under 15 are married and out of school. That number is expected to rise to 3 million by 2030 (KPI, 2017).

Finally, the proposed change in the provisions of the age limit was accepted and issued by Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Perkawinan (Marriage), passed by President Joko Widodo on October 14, 2019. This is one of the essential juridical moments for the development of Islamic civil law in Indonesia during the reign of Joko Widodo. Law No. 16 of 2019 changes one of the provisions relating to the age of marriage previously stipulated in Article 7 paragraph (1) of Law No. 1 of 1974. Article 7 paragraph (1) is: (1) 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) years. Under the above provisions, the marriage age for men is 19 years, while for women is 16. This age limit was changed by Law No. 16 of 2019 to both men and women with an age limit of at least 19 years. In the law affirmed: Article I Some provisions in Law No. 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia Year 1974 Number 1, Supplement to State Gazette of the Republic of Indonesia Number 3019) was amended as follows: 1. The provisions of Article 7 were amended so that they read as follows: Article 7 (1) Marriage is only allowed if men and women have reached the age of 19 (nineteen) years (Turnip, 2021).

### **Minimum Age of Marriage in Malaysia**

Malaysian Family Law can be grouped into two large groups. *First*, the Law follows the Federal Act, which are Selangor, Negeri Sembilan, Penang, Pahang, Perlis, Terengganu, Sarawak, and Sabah, although more or less there are still adjustments. *Second*, in Kelantan, Johor, Melaka, and Kedah, although it should be noted that there are still many similarities with the Federal Law, there are indeed quite striking differences (Nasution, 2019). According to Joned's account, as quoted by Nasution (2019), before the presence of a new law in the field of marriage in Malaysia, only the State of Johor had provisions on the minimum age of marriage. According to Johor's marriage law, the minimum general for women is 16 years and 18 years for men.

On the contrary, after there was a renewal, only Silver did not govern. The reason may be because it is considered contrary to shari'ah. As for the Federal Territory, Kelantan, Kedah, Melaka, Negeri Sembilan, Selangor, and Penang, arrange a minimum of 18 years for men and 16 years for women (Nasution, 2019). Section 8 of Act 303 of the Islamic Family Act (Federal Territories) of 1984 states: No marriage shall be solemnized under this Act if the man is less than eighteen years old or the woman is less than sixteen years old unless a Syariah Judge has given his consent in writing under certain circumstances. The same provision is also found in s 8 Enakmen Islamic Family Law (Negeri Melaka) 2002, which states: No marriage shall be granted under this Enactment if the man is less than eighteen years old or the woman is less than sixteen years old unless a Syariah judge has given his

consent in writing under certain circumstances. Then, Ordinance 43 Family Islamic State of Sarawak Year 200 also mentioned: No marriage shall be married under this Ordinance if the man is less than eighteen years old or the woman is less than sixteen years old unless a Syariah Judge has given his consent in writing under certain circumstances.

Based on the minimum marriage age provisions applicable in Malaysian laws and regulations, it is seen that there has been a renewal of Islamic law concerning the age limit of marriage. This can be seen from two perspectives. *First*, in classical fiqh, there is no official age restriction of minimum marriageable age, but in every Islamic Family Law in Malaysia, there is a restriction on the age of marriage which is 18 years for males and 16 years for females. *Second*, Malaysia, which officially adheres to the Shafi'i school, in the setting of the age of marriage, holds with the Hanafi school, which stipulates the age of puberty for men is 18 years and 16 years for women (Adawiyah, 2019).

In the latest development, the provision of the minimum age of marriage in Malaysia also drew criticism and proposed that the minimum age of marriage be raised. It said there were no clear guidelines or standard procedures for sharia judges in granting marriage licenses (dispensation) to those under 18 or 16. Similarly, the 'certain circumstances' in the marriage dispensation permit, as in the above provisions, have no guidelines and are based solely on the policies of sharia judges.

It was reported that among the main reasons sharia judges allowed underage marriages was to limit extramarital pregnancies and the issue of abandoned babies. Both activists and female politicians did not accept this reason. Based on the results of the study, getting married at a young age is preferred by parents who are the relatively strong practice their religion because they argue marriage can prevent their daughters from getting pregnant out of wedlock which is terrible and reprehensible to their lives (Mohd & Kadir, 2019).

Furthermore, parents and children tend to choose to get married as the best solution to cover up their embarrassment. Getting married at a young age has become a trend in Malaysia. Many parents state that their daughter has become beyond control. For example, according to Jamil, the main factors of child marriage in Pahang are accidental pregnancy (54%), mutual affection and preventing immorality (30%), being sexually involved with each other but not pregnant (8%), eager to marry early (4%) and engaged sexually with a partner. Statistics from Malaysia's Sharia Ministry of Justice show that 50% of underage marriage applications are involved in sexual relationships, wanting to hide their shame, and rape cases (4%). The only viable solution is to marry them for their protection (Abu Bakar et al., 2017).

The mass media's role that often preaching the marriage of young girls, especially those under the age of sixteen, often triggers a strong response from child protection activists and women and calls for banning the practice. For example, a

marriage between an eleven-year-old Muslim girl and a forty-one-year-old man as his fourth wife in Kelantan was detained for breaking the law after a Sharia Court judge found that the girl's father disapproved of the marriage. Then there was also an element of threat and coercion. Nonetheless, the case prompted women's rights groups in Malaysia to urge the government to increase the minimum age of marriage to eighteen (Mohd & Kadir, 2019).

Elsewhere in the case, a twelve-year-old girl's marriage to her nineteen-year-old boyfriend in Kedah has also prompted women's and children's activists to call for a ban on child marriage. The parents approved the wedding with the permission of the Sharia Court to prevent the couple from committing 'inappropriate' acts. In 2012 the Malaysian government said it would consider amending civil and Sharia law to ban underage marriages, particularly sharia courts under the auspices of the state government. However, the government noted that making laws takes time and persuasive steps taking into account the culture of the community. In 2016 the Ministry of Women, Family, and Community Development had engaged stakeholders, including various state religious affairs authorities, in a proposal to raise the minimum age of marriage to eighteen for Muslim girls.

However, in an amendment to the 2001 Children's Law of the same year, the Malaysian Human Rights Commission has expressed concern about the absence of a specific provision banning child marriage. The commission urged the government to change all domestic laws to raise the legal age of marriage to eighteen by the 2001 Children's Act, which defines children as those under eighteen. Pressure to ban child marriage in Malaysia has also begun at the international level. UNICEF has reminded Malaysia that the marriage of children under the age of eighteen is wrong because it goes against human rights grounds. Perhaps being aware of the negative impact of child marriage on couples and its implications for society has affected efforts by some states in Malaysia to revise the age of marriage for girls (Mohd & Kadir, 2019).

The only state that has successfully changed the minimum age of marriage in its family law is Selangor. The state has made history of renewing family law by raising the minimum age of marriage for women from 16 to 18. However, those over the age of 16 and under 18 are still allowed to marry as long as there is permission from the Sharia Court (marriage dispensation). This change was implemented by amending the Islamic family law (Selangor State) enacted in 2003.

Chief Minister Amirudin Shari mentioned that a comprehensive meeting and discussion had been held in July 2018 by the relevant institutions and individuals before the amendment was formulated. Among the agencies are the Selangor Sharia Ministry of Justice, Selangor Islamic Religious Council, Selangor Islamic Religious Department, Attorney General's Chamber, police, state Department of Health and Education, Selangor Sharia Prosecution Department, and Selangor Mufti's Office. In comparison, those representing the individuals present

came from academics and representatives from non-governmental organizations (Nursalikhah, 2018).

The results of the meeting revealed that it was found that there was indeed a need to change the minimum age of marriage for women from 16 years to 18 years by the Anaka Law of 2001. This amendment was made to protect the welfare of children under 18. For a Muslim woman to want to get married before she turns 16, she must go through various procedures to obtain consent. The amended provision requires parents or guardians to apply for a marriage license. Notice of application in the Sharia Court must be accompanied by an affidavit of support (marriage) by the mother, father, or guardian of a man or woman under 18.

The amendment was proposed and passed after Selangor's ruler, Sultan Sharafuddin Idris Shah, ordered that the age of marriage for Muslims in the state be raised to 18. Sultan Sharafuddin said he took a severe look at cases such as the recent marriage of a young Muslim girl because of the negative impact on the couple's future and its implications for society. Sultan referred to the case of a 41-year-old Kelantan man who married an 11-year-old girl (Nursalikhah, 2018).

In addition, it was reported that the state of Kedah was also ready to increase the age of marriage to eighteen years, as well as the State of Malacca. It aims to protect the rights of children. Recent studies on child marriage support increase the married age to eighteen because underage marriage is impractical and hurts child health. What's more, there is no proper support system for underage marriages.

### **Comparative Analysis**

Based on the explanation of the minimum age limit provisions applied in Indonesia and Malaysia, it can be analyzed through a comparative approach by looking at the side of the equation and the differences experienced by the two countries. *First*, Indonesia and Malaysia, geographically, are countries that are both in the Southeast Asian region. These two countries are directly adjacent to several lands and islands. Indonesia is one of the countries located in the Southeast Asian Region, which is crossed by the equator and is between the continental continent of Asia and Oceania, as well as between the Pacific and Indian Oceans. Indonesia is the largest archipelago in the world, with the number of islands reaching 17,504 pieces spreading from Sabang in Aceh to Merauke in Papua. Malaysia is also one of the countries in Southeast Asia, consisting of two central regions separated by the South China Sea. Malaysia has two (2) territories, the first on the Malacca Peninsula (West Malaysia) with the capital Kuala Lumpur, and the second in the northern part of the island of Borneo (East Malaysia) with the capital Kuching.

*Second*, in a socio-cultural context, these two countries are also known as cognate states, characterized by the presence of Malay tribes in both countries. The official language used is also the same, derived from Malay. Then, Indonesia and Malaysia both have a majority Muslim population, followed mainly by the shari'ah school. But the difference is that the territory of Indonesia is much broader and has

more ethnicities and languages than Malaysia. Of course, this issue of cultural and religious plurality will affect different policies for both countries.

The Indonesian state is a unitary state that runs a democratic multi-party presidential republic. Executive power is held by the president, assisted by the Vice President and the Cabinet. The President of Indonesia is the head of state, the head of government, and the commander-in-chief of the Indonesian National Army. The highest representative institution, the People's Consulted Assembly (MPR), is authorized to amend and establish the constitution and appoint and dismiss the president or vice president. This bicameral institution consists of 575 members of the House of Representatives (DPR) who come from political parties, plus 136 members of the Regional Representative Council (DPD) who are provincial representatives of the independent line.

Meanwhile, Malaysia is a federal state. The Federation of Malaysia is a constitutional monarchy. The head of state of the Federal State of Malaysia is Yang Dipertuan Agong, commonly called the King of Malaysia. The King of Malaysia was elected from and by the Nine Sultans of Malaya countries to serve for five years on a rotating basis; Four other state leaders, who hold the title of Governor, did not participate in the election. The legislature's power is divided between the federal legislature and the legislative legislature of the state. The bicameral parliament consists of the lower house, the house of people (similar to the DPR), and the Upper House, the Senate of the State Council (similar to the Regional Representative Council in Indonesia).

*Third*, reforming family law in these two countries also have similarities. Tahir Mahmood's theory mentions that the enactment of family law in Muslim countries can be divided into three groups. *First*, the group of countries that impose traditional Islamic family law, where classical-traditional Islamic family law is enforced as is according to the school of embraced as a hereditary inheritance, has never changed and is neither codified into the present. Among the countries in this group are Saudi Arabia and Qatar, which adhere to the Hambali school, and Yemen, which adheres to the Zaidiyah Shia school and the Shafi'i school. And Hanafi school, Bahrein adheres to the Maliki school, Shafi'i school, and some Shia schools (Mahmood, 1972). Similarly, Kuwait still maintains the Maliki school intact. *Second*, the group of secular states where Islamic family law has been abandoned and replaced with modern statutes or regulations that apply to the entire population regardless of their religion. Among them are Turkey and Albania. The third is the group of countries that have reformed Islamic family law. Muslim-majority countries that have reformed family law include Egypt, which has improved its marriage laws by combining Hanafi and Shafi'i schools. The same is true in Sudan, Jordan, Syria, Tunisia, Morocco, Algeria, Iraq, Iran, and Pakistan (Mahmood, 1972).

Based on this theory, Indonesia and Malaysia can be grouped into a third type of country, namely Muslim countries that have renewed their family laws from

the fiqh tradition (traditional) into the form of statutes and deeds and deeds. However, the difference is that in Indonesia, efforts to transform Islamic family law into a national legal system are relatively more accessible because the state system of the republic and its promulgation process is carried out in the House of Representatives only. While in Malaysia, with the Federal state system, many states have their benefits regarding family law that sometimes differ from state to state. So it takes a relatively long time to form the same legal union against family law cases.

*Fourth*, concerning the minimum marriage age provisions, the two countries have renewed the age limit of marriage as contained in the fiqh books into the laws and regulations. The difference, for Indonesia, by Law No. 1 of 1974 and compilation of Islamic law, The age of marriage for men is 19 years and for women 16 years, which is then changed to equally 19 years old for men and women Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 on Marriage. While in Malaysia, the provision is 18 years for men and 16 years for women by Act 303 of the Islamic Family Act (Federal Territories) of 1984 and the taste of other states.

*Fifth*, in the socio-cultural and socio-political review about the provision of minimum marriage age, there are social symptoms or similar phenomena in both countries to improve the marriage age limit, especially for women. The aspirations and proposed changes come from several circles, including women and child activists who consider the marriage age limit for women stipulated in the Law is incompatible with the human rights of children, interferes with women's reproductive health, and hinders children's education programs. In essence, the age of marriage is an immature age physically and psychologically for women. Aspirations to change the marriage age limit in both countries are also strengthening due to the growing number of cases of child marriage, extramarital pregnancy, and abortion practices in both countries. The fundamental difference is that Indonesia has succeeded in changing the minimum age of marriage that is more appropriate and ideal based on the community's aspirations, namely 19 years for men and women, as stipulated in Law No. 16 of 2019. It can be seen that there is a significant change in the minimum age limit for women, from 16 to 19 years.

Meanwhile, in Malaysia, ideas and aspirations to change the minimum age of marriage have also strengthened but have not succeeded in changing the provisions of the Islamic Family Law (Federal Territories) Act. 1984 and enactment in several countries. However, the latest development for the State of Selangor has realized these aspirations by amending the promulgation of the Selangor Islamic Family Law in 2003. The amendment was approved by the elected state representative and passed by Selangor's ruler, Sultan Shafaruddin Idris Shah, ordering that the age of marriage for Muslims in the State be raised to 18.

## **CONCLUSION**

The minimum age of marriage in Indonesia was initially 19 years for men and 16 years for women, as determined under Law No. 1 of 1974 and a compilation of Islamic law. Then, this age limit was changed to 19 years for both men and women by Law No. 16 of 2019. In Malaysia, the marriage age limit is 18 years for men and 16 years for women by Act 303 of the Islamic Family Act (Federal Territories) of 1984 and enactments in other parts of the country. From socio-cultural and socio-political perspectives, there has been an attempt to change the minimum age limit in both countries. Both countries are improving the age limit of marriage, especially for women. The marriage age limit for women stipulated in the law that has been in force in both countries is considered incompatible with children's rights, interferes with women's reproductive health, and hinders children's education programs. In essence, the age of marriage is an age that is not yet mature physically and erodes for women. The aspirations of some groups of people towards changing the marriage age limit in both countries have also strengthened due to the growing number of cases of child marriage, premarital pregnancy, and the practice of abortion in both countries. The fundamental difference is that Indonesia has succeeded in changing the minimum age of marriage that is more appropriate and ideal based on the aspirations of the community, namely 19 years for men and women as stipulated in Law No. 16 of 2019, while in Malaysia, in general, has not changed its provisions except in the state of Selangor which has amended its good and determined that the age of marriage for men and women is 18 years.

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## **REFERENCES**

- Abu Bakar, M. Z., Wan Ahmad, W. I., & Abu Bakar, M. (2017). Registration Problems of Illegitimate Children among Muslims in Malaysia. *Journal of Islamic Studies and Culture*, 5(1), 9–15. <https://doi.org/10.15640/jisc.v5n1a2>
- Adawiyah, R. (2019). *Reformasi Hukum Keluarga Islam dan Implikasinya Terhadap Hak-hak Perempuan dalam Hukum Perkawinan Indonesia dan Malaysia*. Penerbit Nusa Litera Inspirasi.
- al-Damasqy, I. K. (2004). *Tafsîr Ibnu Katsîr*. Dar al Kutub al ‘Ilmiyyah.



- Anam, A. K. (2017). Penerapan Hukum Keluarga Muslim di Asia Tenggara: Sebuah Perbandingan. *Jurnal Bimas Islam*, 10(1), 129–154.
- Anderson, J. N. D. (1959). *Islamic Law in the Modern World*. Univ. Press.
- Asrori, A. (2015). Batas Usia Perkawinan Menurut Fukaha dan Penerapannya dalam Undang-Undang Perkawinan di Dunia Islam. *Al-'Adalah*, XII(4), 807–826.
- Athaillah, A. (2006). *Konsep Teologi Rasional dalam Tafsir al-Manar*. Gelora Aksara Pratama.
- Azra, A. (2014). Azra, Azyumardi, *Sejarah Sosial Hukum Islam*. Republika.
- Coulson, N. J. (2017). *A history of Islamic law*. Routledge.
- Fathoni, A. (2014). Sejarah Sosial Hukum Islam Di Asia Tenggara; Studi Pemberlakuan Dan Pengkodifikasian Hukum Islam Di Malaysia. *Asy-Syari'ah*, 16(3), 188–193. <https://doi.org/10.15575/as.v17i1.638>
- Harisudin, M. N., & Choriri, M. (2021). On the legal sanction against marriage registration violation in Southeast Asia countries: A Jasser Auda's Maqasid Al-Shariah perspective. *Samarah*, 5(1), 471–495. <https://doi.org/10.22373/sjkh.v5i1.9159>
- Hatta, M. (2016). Batasan Usia Perkahwinan dalam Perspektif Ulama Klasik dan Kontemporer. *Al-Qanun*, 19(1), 66–88.
- Hooker, M. (2003). Introduction: Islamic Law in South-East Asia. *Studia Islamika*, 10(1), 1–22.
- Ismatullah, D. (2010). *Sejarah Sosial Hukum Islam*. TSAbita.
- Jamal, I. M. (2016). Criteria of Adult Age (Mukallaf) in Islamic Criminal Law (Kriteria(Mukallaf) dalam Bidang Jinayah). *Legitimasi*, 9(2), 178–196.
- Koalisi Perempuan Indonesia (KPI) untuk Keadilan dan Demokrasi. (2017). *Naskah Akademik RUU Perubahan UU No. 1 Tahun 1974 Tentang Perkawinan*.
- Mahmood, T. (1972). *Family Law Reform in the Muslim World*. The New India Press.
- Mahmood, T. (1987). *Personal Law in Islamic Countries: History, Text and Comparative Analysis*. Academy of Law and Religion.
- Minhaji, A. (2013). *Sejarah Sosial dalam Studi Islam: Teori, Metodologi dan Implementasi*, edisi revisi (2nd ed.). Suka Press.
- Mohd, A., & Kadir, N. A. (2019). Minimum Age of Marriage under Islamic Law and The Islamic Family Law (Federal Territories) Act 1984: A Preliminary Study on The Ideal Age of Marriage in Malaysia. *Al-Shajarah*, 24(1), 287–307.
- Mudhzar, M. A. (2003). *Islam and Islamic Law in Indonesia: A Socio-Historical Approach*. Kementerian Agama.
- Mudhzar, M. A. (2003). *Islam and Islamic Law in Indonesia: A socio-historical approach*. Office of Religious Research and Development and Training, Kementerian Agama.
- Mughniyyah, M. J. (n.d.). *Al-Ahwal Al-Syakhsyiyah*. Dar al 'Ilmi lil Malayain.
- Nasution, S. (2019). Islam Rasional. *IJTIMAIYAH Jurnal Ilmu Sosial Dan Budaya*, 3(1), 1–9.

- Nursalikhah, A. (2018, September 16). Batas Usia Menikah Gadis Muslim Selangor Dinaikkan. <https://www.republika.co.id/berita/pemdje366/batas-usia-menikah-gadis-muslim-selangor-dinaikkan>
- Otto, J. M. (Ed.). (2010). *Sharia Incorporated a Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. Leiden University Press.
- Qudamah, I. (n.d.). *Al-Mughni Juz 7*. Dar al Kutub al 'Ilmiyyah.
- Tarigan, A. A. (2013). *Sejarah Sosial Hukum Islam: Dinamika Fikih Pada Abad Pertengahan*. Cita Pustaka Media.
- Turnip, I. R. S. (2021). *Hukum Perdata Islam di Indonesia (Studi Tentang Hukum Perkawinan, Kewarisan, Wasiat, Hibah, dan Perwakafan)*. Jakarta: Rajawali Pers.