

## THE ANALYSIS OF MINIMUM MARRIAGE AGE DETERMINATION IN INDONESIA AND OTHER ISLAMIC COUNTRIES

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### ABSTRACT

*The age of marriage is always a polemic in the household. This is based on the view that the age of marriage that is not mature mentally, physically, psychologically, and education is susceptible to unstable attitudes in taking policies or decisions. So that it is feared that they have not been able to respond to problems in the marriage. Indonesia is a country with Muslims as a major population regulating the minimum age of marriage, as well as Muslim countries in the world. The research method used is the juridical normative approach. There are some conclusions obtained. First, the Sharia does not explicitly set a minimum age for marriage, but legal age and understanding are elements that must be fulfilled for prospective brides, and especially for husbands who are positioned as heads of families. Second, every Islamic country, including Indonesia, has different rules regarding the minimum age of marriage, but the purpose of the restriction remains the same, which is to form a partner who is physically and resource fully ready to build a sakinah household.*

**Keywords:** Rules; Age; Marriage

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## INTRODUCTION

It is often argued that underage and early marriage are in the same terminology. There is a difference between two according to the author view. The early marriage has a broader range and consists of several supporting aspects. The opinions about equating the two into something commonly used to show a legal case of the marriage of the underage couple according to the law. It results in the terminology physically, biologically (reproductive), mentally, logically, psychologically immature. The old enough is not necessarily sufficient in thinking, mental, and personal maturity.

Every Muslim country in the world, including Indonesia, have set a minimum marriage age. Marriage is a legal situation considered sacred and a strong bond, hence the ability and the will (desire) from the prospective mate should be aligned in order to obtain legal recognition deemed valid legally. The modern era and the advancement of science and technology are increasingly supporting the development of thought and human life. The development of science and technology responded whether positively or negatively provide a major influence on a person's growth process. Social circumstances chaotic and full of global challenges raise the doubts about the maturity of the age. Therefore, this current development results in the raising of minimum marriage age.

The underage marriage is an old problem, but it is always interesting to be discussed. In social life, underage marriage is a common phenomenon. Indonesia. According to the results of the research conducted by the National Population and Family Planning Board (BKKBN) in 2014, it was approximately 46% or 2.5 million weddings that brides aged were between 15-19 years old each year in Indonesia, and 5% of them involving the brides were younger than 15 years old. In the previous year, BKKBN conducted research on the cases of early marriage. (Abdi Fauji Hadiono, 2018). Thus, the condition of children and adolescents are doubtful on their existence as a generation who have to get a higher education and as managers of the nation, so the shari'a and country objective on set the marriage age is for the good of society and country.

## RESEARCH METHODS

The method used was the juridical normative approach. This study referred to the rules, or applicable laws in the country or religious community and is regarded as binding law. This approach studied the principles and concepts of the laws. If it is associated with the age of marriage, the approach examines the laws in Muslim countries in the world. The data was divided into two: primary and secondary. Primary data was rules or laws relating to minimum marriage age, while secondary data was books or other literature to improve the understanding and the explanation of the problem.

## RESULTS AND DISCUSSION

### ***THE SOCIAL CONDITIONS IN THE MODERN ERA OR THE SCIENCE AND TECHNOLOGY DEVELOPMENT***

A long time ago, starting from the Prophet time until the days of empire and colonialism in Indonesia, the marriage under 18 years old were common. The divorce or crimewas still minimal. The life of society was a manifestation of cultural values, local customs, religion, and country. The education could be obtained through experience and learning with a visiting teacher or those who considered knowledgeable. In this era, a period of science and technology development has a big impact on the psychology of society. The development requires people to improve and be more creative in using natural resources. Many new things can help the progress of time. However, it is undeniable that human lifestyle is the implementation of science and technology development. Thus, the excessive consumption of unuseful values in science and technology makes children, teenagers, and even adults do not develop positively. In fact, the age is not a criterion for one who is called mature in thought and behavior.

The development of adults shows and western culture to the country, a child who has *baligh* forced to realize their desire and curiosity with sexual stimulation. Today, free sex has spread to the lives of youth and children. In addition, sexual violence to the children is not only done by people who are not known by the victim. The data regarding the number of sexual crimes, during 1995 to 2016, did not decrease significantly. The crime in various aspects increases every year. Furthermore, there is also the case that broadcasted on private television stations about mass rape by junior and senior high school students in East Java. Based on the inspection, the crime is caused by watching a pornographic VCD (Mughtaromah 2008).

The environment and media participated in demoralize students and families (Sanapiah & Andi, nd). The instability of social behavior has an impact on parenting style and the existence of children as a generation of people is doubtful. The divorce rate has also increased every year for economic reasons, the irresponsibility of husband on the family, domestic violence, cheating, and so forth. (Ministry of Religious Affairs, 2016). The essential problem source is not the age of the couple, but a crisis of morals and values causing teens, adults physically and immature parents properly. Thus, the age is not in line with the level of maturity.

### ***THE DEVELOPMENT OF REPRODUCTIVE, COGNITIVE, AND EMOTIONAL SYSTEM OF MEN AND WOMEN***

In general, men are mature physically and biologically at the age of 15 while women are minimum at 9 years old (Al Hadhramy, nd). Men and women have different developmental phases. The growth process of women reproduction sexually started from the age of 8-16.5. Meanwhile, the men are at 10-16 years old (Mughtaromah 2008). In terms of medical aspect, men and women have a different speed biological (sexual) organ development phase. Generally, women will be the first to have puberty symptoms rather than men.

Cognitively, the highest educational level of children begins at age 11 years to adulthood. The cognitive development is how someone took her opportunities in the learning process deeply. In general, children on the age of 11 has begun to analyze a problem logically. However, the environment greatly affects a person's spirit to develop cognitive abilities in increasing their knowledge (Muchtarmah 2008).

The field of personality, psychological (social psychology), family and social environment affect the attitude and maturity in social relationships (Muchtarmah 2008).

Therefore, basically, a person whose the age of 15 to 16.5 may have already reached mental maturity, education, and ways of thinking if they really use their potential sense, a good environment, and learning around. Physically, a person is already active in reproductive organs at least until the age of 16.5. However, the environment and time management methods have an impact on increasing the minimum marriage age or even adulthood age is not guaranteed to the maturity of thought. One of the most important things regulated in the Marriage Act is the qualification to perform marriages. Marriages performed not in accordance with the terms of marriage (minimum age for marriage) is then classified as an early marriage (Rosdalina, 2016).

### ***THE PUBERTY (BALIGH) AND MARRIAGE AGE IN FIQH***

The scholars have a different argument on minimum marriage for people who are considered to be puberty. Someone puberty is from different sides, some argue that it is based on age, while others see signs from someone.

*First*, the religious leaders of Syafiiyah and Hanabilah determine that adulthood is 15 years old. Although basically, adulthood is by looking at the signs, such as menstruation for women and dream for a boy, however, the signs are not at the same age of each person. To generalize the standard of puberty determination on age, the maturity is based on the intelligence in which people who have been sensible to do legal activities. *Second*, Abu Hanifah argues that maturity comes at the age of 19 for men and 17 for women. Meanwhile, *third*, Imam Malik assesses the maturity comes at the age of 18 for both men and women. *Fourth*, Ja'fari *mazhab* finds the marriage age for men is 15 years old and 9 years old for women (Sodikin, 2015).

The most contemporary Muslim legal experts have a different view of the law and tend to allow early marriage including classical scholars. However, they agreed that the puberty (*baligh*) requirements must have been met at the bride. In providing a view, they rely on the interpretation of several verses, including at-Thalak/65 verse 4, and the practice of the Prophet (Jahar, Nurlaelawati, & Aripin, 2013).

### ***THE MINIMUM ADULTHOOD AGE AND CAPABLE TO DO LAW EVENTS (MARRIAGE) IN INDONESIA***

The reason for the minimum marriage age is the consideration of the age of instability lead to someone is unable to manage the family. The age is

categorized as the age of the children. The underage marriage is considered to prohibit them to enjoy their childhood. Thus, need further study in the extent to which law in Indonesia setting the adulthood age.

### **The Indonesian Civil Code**

The Indonesian Civil Code states that a person is deemed adult and legally competent are at the age of 21 or above or a person under the age of 21 who had been married.

Article 330: Minors are those who have not reached the full age of twenty-one years and who have not previously entered into matrimony.

### **Act no. 3 of 1997 on Juvenile Justice**

This regulation stipulates that a person categorized to children if they are under the age of 18 or unmarried. It means that a married man who is under 18 years old is stated as an adult.

Article 1, paragraph 1: A child is a person aged 8 years old, has not reached 18 years old and has never been married.

### **Act no. 39 of 1999 on Human Rights**

Children age limitation is written in Article 1 paragraph 5 stating that children are one who has not reached the age of 18, while a married although they have not reached the age of 18, they have been declared an adult.

Article 1, paragraph 5: Children mean all unmarried persons under the age of 18, including, should this be in their interest, all unborn children.

### **Act no. 35 of 2014 on the Amendment of Act No. 23 of 2002 on Child Protection**

The Act No. 35 of 2014 on the amendment of Act No. 23 of 2002 stipulates that children are not reached the age of 18. It provides an understanding that a person who has reached the age of 18 has no protection due to they are not children.

Article 1 Paragraph 1: A "Child" shall mean a person under eighteen (18) years of age, including unborn.

### **Act no. 13 of 2003 on Labor**

The labor legislation which establishes a minimum age of an adult is 18 years old and above. Meanwhile, those whose under 18 years old refer to the child so it can not be accepted as a legal workforce. This rule can be seen in Article 1 point 26.

Article 1 Point 26: A child is every person who is under 18 (eighteen) years old.

### **Act no. 12 of 2006 on Citizenship**

The citizenship act provides adult minimum age contained in Article 9 letter a, in which a person is declared an adult and legally competent at the age of 18. While citizens who are married are mature and legally competent although they are under 18 years old.

Article 9 letter a: Requests for naturalization may be forwarded by the applicant upon meeting the following requirements: a. Aged 18 (eighteen) or married;

### **Act no. 1 of 1974 on Marriage Law**

Marriage Law is a national law which applies fully to all faiths in Indonesia. In Article 6, paragraph 2 set the legal age of an adult is 21 years old.

Article 6, paragraph [2]: A person who has not yet reached the age of 21 years shall obtain the consent of both parents.

Thus, under 21 years of age is legally allowed to marry in accordance with the consent of both parents. The minimum age for men is based on Article 7, paragraph 1 is 19 years old and 16 years old for women. People who do not reach the minimum age set in Article 7, paragraph 1, the dispensation of marriage will be implemented.

Article 7 (1) A marriage is only allowed when the male marriage candidate has reached the age of 19 (nineteen) years and the female marriage candidate the age of 16 (sixteen) years; (2) in deviation from the provision in paragraph (1) of this article, dispensation may be petitioned to the Court or other authority designated by the parents of both the male and female marriage candidate.

The Act no. 1 of 1974 on Marriage Law stipulates that any adult age for marriage is 21 years, but this limitation does not apply strictly, in which these regulations give marriage licenses to the age of 19 years for men and 16 years for women. Moreover, the law gives a concession, in terms of underage marriages have been defined, they are still given the opportunity, called the dispensation of marriage. Thus, the legal concession in setting the age of marriage is a form of uncertainty about the minimum marriage age. At other times and places, a person may be mature for reproductive organs and mentally although they have not reached the age of 21 years or even 19 years. Though the will to marry is embedded as one's intention, it is not right and wise if the law forces someone to wait for until 21 years old. Child marriage could bring negative impacts. The impact to women's health, family, community, and even to state, the union or binding of marriage in order to build small families which later on the families will build communities and eventually they will found a state (Rosdalina Bukido & Ismail Suardi Wekke, 2018).

Indonesian law does not provide a limitation in the manner of *ijma'* to a person who grows old and competent legally. Resulting in a clash in a number of regulations. The researcher found that there are at least three important things that must be clarified. Firstly, the law in Indonesia is not in *ijma* or agree on adulthood age. Secondly, the majority of regulations in Indonesia stipulates the age of 18 as an adult, but an exception to the marriage status gives the sense that the age under 18 is an adult due to the status. Thirdly, the different determination of adult and children age has implications for the uncertainty of Marriage Act as the law governing the minimum marriage age, so it is contrary to the Child Protection Act. Even though, other acts have set explicitly that a married person is considered an adult.

### ***THE MINIMUM MARRIAGE AGE IN OTHER ISLAMIC COUNTRIES***

*Ahliyah* and marriage age provision in the Family Law are different in some other Islamic countries. It will be explained in other Islamic countries law (Mardani, 2016).

#### **Pakistan**

In Pakistan, the codification of the law occurred in 1969, during the regime of Yahya Khan Agha Muhamed, and rolled in the form of "The Muslim Family Law Ordinance of 1961". The provision in the ordinance stipulated in *ahliyah* and established marriage age, for men (18) and women (16). Furthermore, it was arranged that a guardian can arrange the marriage of his daughter before reaching the age of marriage defined by the Ordinance through marriage dispensation request or Option of Puberty (*khiyarbulug*) to the court.

#### **Iraq**

*Ahliyah* and age of marriage provision in Law of Persona Status of 1959 stipulated that the marriage age in Iraq either male or female is 18 years old. *Mumayyiz* children (able to distinguish good and bad) are validly for marriage with their guardian consent because *Ahliyah* for it has not established (*naqishah*) yet. *Ahliyah* problem is one of the conditions in the marriage contract. Therefore, the existence of *ahliyah* in a contract must be evidenced by law (*qanuniyah*) and sharia requirements from the parties on a contract.

#### **Morocco**

In the Moroccan family law, named *Mudawwanah al-Ahwal al Syakhsyiah* or The Code of Personal Status of 1957-1958, set in article 8 and 9 on *Ahliyah* and the age of marriage. Marriage age in Morocco is 18 years old, both men and women. On the authority of a guardian for underage marriage can be performed by a court decision.

## Jordan

The development of law in Jordan was marked by the enactment of family law (Qanunal-Huquqal 'Ailah) in 1951 which replaced the on the Rights of the Family in 1917. Egypt accommodated several new provisions, but the discussion material of this law was not completely different from the Turkish law in 1917.

In 1976, Jordan has succeeded to separate the new family law, it was Act No. 61 of 1976 in a lieu of the same law in 1951, namely the Act of individuals legal status which had a broader scope. A year later the law was amended by Act No. 25 of 1977 on individual legal status to add provisions on *talaq*. It stipulated that *ahliyah* and marriage age for men are 16 years old and women are 15 years old.

## Egypt

The rules and procedures for the sharia court in 1897 required written documentation in marriage, divorce, and inheritance. In these rules, the minimum marriage age was 16 years old (F) and 18 years old (M). The court was entitled to reject a request for marriage if it does not meet the minimum age for marriage (Mardani, 2016).

The family law reform has indirectly happened since Napoleon Bonaparte conquered Egypt in 1798 because he affected the family law. Napoleon tried to perform the law of France in Egypt and to marginalize the Islamic law there. In French law, the minimum marriage age for a male was 18 years old and the female was 16 years old.

The minimum marriage age is as contained in paragraph (5) of article 99 of Law arrangement of Islamic Court in 1931, which stated that: "hearing a matrimonial case before the court that if the age of the wife and husband shall not be below 16 and 18 years of hijra respectively"

## Algeria

Algerian family law in 1984 explicitly showed the minimum marriage age rules in Article 7 that the determination of the prospective groom age is 21 years old and the bride is 18 years old. The age of marriage is considered higher than the other Islamic countries (Mudzhar & Nasution, 2003).

## Tunis

The minimum marriage age before updated is that the age of 15 years for a woman and 18 years old for man (Abdullahi A. An-Na'im, 2002: 158). After reforming the provision, in Tunis, man/woman can marry if they are at least 20 years old. This is a provision changing the contents of the Act on article 5 of 1956, in which before it was converted, the provision was 17 years old for women and 19 years old for men. Based upon this provision, to be able to marry, couples who are under 20 years old must be permitted by their



guardian. If the guardian does not provide consent, the case can be decided by the court (Article 5).

Islamic marriage laws of the Islamic countries around the world are different in determining the minimum age to marry, as can be seen in the following table: (Summa, 2005).

**Table 1**  
**The Minimum Marriage Age Determination in Indonesia And Other Islamic Countries**

No.	Country	Man	woman
1	Algeria	21	18
2	Bangladesh	21	18
3	Egypt	18	16
4	Indonesia	19	16
5	Iraq	18	18
6	Jordan	16	15
7	Lebanon	18	17
8	Libya	18	16
9	Malaysia	18	16
10	Morocco	18	15
11	North Yemen	15	15
12	Pakistan	18	16
13	Somalia	18	18
14	South Yemen	18	16
15	Syria	18	17
16	Tunis	19	17
17	Turkey	17	15

Source: The Minimum Marriage Age Determination in the book "*Hukum Keluarga Islam di Dunia*" (Summa, 2005).

Thus, the rules of the age of marriage in Muslim countries elaborated by the group. The grouping of Muslim countries in terms of the age of marriage range separation between the groom and the bride is:

1. The country which the age range is three years, is Al-Jazair, Bangladesh, Indonesia, and Morocco.
2. The country which the age range is two years, is Egypt, Libya, Malaysia, Pakistan, South Yemen, Tunis, and Turkey.
3. The country which the age range is one year, is Jordan, Lebanon, and Syria.
4. The country which has the same age, is Iraq, North Yemen, and Somalia.

Based on the table above, it can be concluded that the average of marriage age imposed on Islamic countries in the world is between 15-21 years old, except Iraq and Somalia which equate the age of marriage between man and woman, they are 18 years old. Generally, the age of marriage in Islamic countries distinguish between the groom and bride. For men, the average age of marriage is 16 to 21 years; the average age of marriage for women is between 15-18 years old. Thus, the age of marriage for women is younger generally between 1 and 6 years thanfor men (Summa, 2005).

## ***THE NASH OF MINIMUM MARRIAGE AGE***

### **Al-Qur'an**

“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”. (QS. Al-Nisa [4]: [6])

### **Hadith**

“We were with the Prophet while we were young and had no wealth whatever. So Allah's Messenger said, "O young people! Who ever among you can marry, should marry, because it helps him lower his gaze and guard his modesty (i.e. his private parts from committing illegal sexual intercourse etc.), and whoever is not able to marry, should fast, as fasting diminishes his sexual power". (HR. Bukhari No. 1772).

## ***THE REVIEW OF NASH***

Asbabun nuzul of QS. An-Nisa verse 6 is associated with *Tsabit bin Rifa'ah* and his *'amm* (uncle of the father), *Rifa'ah* died when his son, *Thabit*, was a child, and *Thabit* uncle came to the Messenger of Allah and said, "my brother's son is an orphan who is under my care, what is lawful for me from his property, and when I have to give it to *Tasbit*?" Then Allah revealed this verse (Az-Zuhaili, 2013).

There are two important things from Qs. Al-Nisa [4] verse 6. First, guardianship and the orphan's property. The command in the Qur'an mentions a guardian is not allowed to use or wear the orphan's property for the benefit of a guardian. Then, if the orphans are seen as capable and competent in managing assets based on test results or observations, the guardian must submit the assets to the orphans. Second, the verse also describes the time for a child to marry. It is not only based on age (puberty), Allah also mentions should be capable enough logically to get married. In terms of the minimum marriage age, Allah gives to the people according to the area, the culture and the life system of each person, but they should have proper age and be capable enough logically (thinking).

Furthermore, the content of Nash of Bukhari Hadith No. 1772 is a suggestion to people who have been able to get married. The ability can be measured from the age of the bride, reproduction, intellect, work, and desire. Allah does not require that they must be rich or have property for the bride to get married. Allah only states capable, in including able to earn income because Allah will give property based on their efforts. On the positive side, getting married can protect people from such a heinous act, such as adultery, hence the suggestion to marry is for anyone who is capable.

***THE ANALYSIS OF NASH, FIQH, AND REGULATION ON THE MINIMUM MARRIAGE AGE IN INDONESIA AND OTHER ISLAMIC COUNTRIES***

As noted earlier, that the *nash* mentioning about the appropriateness or maturity marriage is QS. Al-Nisa [4]: 6 and HR. Bukhari No. 1772. Allah says in the verse, that one should be old enough (puberty) to marry. Then there is the test command, then the object under test is certainly not his age (number), but the test physically and spiritually, including someone who is capable and willing to get married.

The previous research has described that Islam is not so firmly set on it, when in fact Allah has stated clearly, even though that there are no standards for certain age in number. The background is that in mental ability and maturity of each human being is different by culture, custom, education, and the lifestyle of each region. Thus, Allah gave to a human about the standard of age. However, they should be old enough, such as puberty (capable biologically) and capable in other aspects.

The next is Fiqh, Fiqh as scholars disagree about the minimum adulthood age. The agreement on the adult age is impossible because adults are not just about the age of a person, but it includes the mind, intellect, feelings, psychology, and others. It is not comparable in every region or culture. In fact, the social situation is very influential in the development of one's mind and psychology. A bad or chaotic social circumstance makes children grow unstable. The age does not have any effect, but the numbers always rise every year. Biologically, reproductive organs development begins at 8 to 16.5 years old. Its speed is different for everyone, some people are capable biologically at 14 years old, while others are at 16.5 years old. Thus, the adulthood age in one country cannot be equated to the other countries because it is influenced by many aspects.

Indonesia and other Muslim countries have different marriageable age. Some countries establish that the age of husband and wife is parallel, others set males are older than females. Based on a person's biological condition, it is certainly correct, because between men and women have different speeds in the development of reproductive organs and height. Women in the case are mature in reproduction earlier than men. Furthermore, each country has different challenges of time and social affecting psychological development and maturity of someone's thinking.

Several countries, including Indonesia, give the age range between husband and wife, the wife is younger than the husband, researcher considered that this is closely related to the position in the family. Based on the health sciences, man development phase is longer than a woman, such as height, muscles, and body. Thus, the body size of a man is bigger than a woman. In Islamic law, man or husband has been named as the protector and even a leader in the family, while women are counter balanced, peacemaker in the family. It can be seen in QS. Al-Nisa [4]: 34, about the man (husband), was protectors or even a leader in the family).

Moreover, the researcher understands that the problem source is not the age of marriage, but the social and educational conditions in which a person grows and develops. Hence, problem-solving is not only the age but how government, law, and society work together in an effort to improve social conditions and teach values and morals as well. However, the law on the standard age is not a wrong thing, but being the right step if it more focuses on the source of the problem.

## CONCLUSION

Basically, every Muslim country in the world provides a minimum marriage age. Some countries set the same age for both man and woman, but some set in a different age. The difference of marriage age is due to the Qur'an and the Hadith do not explicitly set the age of marriage so that everyone is given the opportunity to interpret the word capable and age based on the social conditions of each region. However, both al-Quran and al-Hadith are already clear that man/woman has to be old enough and capable enough in thinking, especially for a man.

The rules of minimum marriage age in Indonesia is still a polemic. The absence of *ijma* or agreement on the standard age of children in the Act makes a clash between the rules. Other countries like Indonesia in terms of looseness or the marriage dispensations for those who married under the minimum marriage age.

The consideration that marriage is a sacred event that is for a long-term to build a happy household, the household durability greatly affects. Therefore, it is needed physical and mental maturity. The environment has an important role in mental maturity.

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