



Early Marriage in The Perspective of Fikih and Positive Law Between Textual and Contextual Islamic Family Law in Indonesia

Muhammad Hatami

hatamiaja03@gmail.com

Institut Agama Islam Al-Manan NU Lombok Timur

Abstract

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Early marriage is one of the important issues in Islamic family law in Indonesia because it involves a tug-of-war between textual and contextual views of Sharia law. On the one hand, classical fiqh legitimizes marriage before adulthood by using puberty as a benchmark for readiness to marry, and bases its arguments on historical practices such as the marriage of the Prophet Muhammad to Aisha. On the other hand, contemporary social dynamics show that early marriage often causes harm, such as mental unpreparedness, reproductive health risks, divorce, and economic instability. This study uses a normative legal research method with a comparative approach, through a literature review of fiqh books, contemporary literature, the Qur'an and hadith, as well as legal documents such as the UUP and KHI. The results of the study show that the differences between the textual and contextual groups produce contrasting legal interpretations. The textual view emphasizes the validity of classical practices and does not impose restrictions on the age of marriage, while the contextual view emphasizes maqāṣid al-syarī'ah, public interest, and social change, thereby encouraging minimum age restrictions as a means of protecting children and families. Indonesian positive law is in line with the contextual approach by strictly regulating age limits and dispensations.

INTRODUCTION

One of the important teachings in Islam that has been made into a strong covenant is marriage.¹ Due to the importance of marriage in Islam, there are a number of verses in the Qur'an that discuss the issue of marriage. Marriage is one way to channel the sexual instincts of husband and wife within the household, as well as a means of producing offspring. What distinguishes humans from animals in terms of channeling sexual instincts is through marriage, so that any negative consequences arising from improper sexual behavior can be avoided as early as possible. Therefore, Islamic scholars state that marriage is the only correct and legitimate way to channel sexual instincts, so that each party does not have to worry about the consequences.² Marriage is a legitimate way for humans to be born on earth and is a human nature given by Allah Ta'ala to His servants.

However, marriage is not only a matter of creating a happy family, but marriage issues will have an impact on almost all aspects of social life. Therefore, marriage is not only a matter for the parties who will get married. Society also has an interest in the orderly conduct of marriage, both administratively and substantively. The requirements for marriage are regulated so that the marriage has legal certainty and as a means of realizing the noble goals of marriage.³ Islamic law has a high position in Muslim society in Indonesia, as evidenced by the fact that many Muslims and their clerics always refer various issues that arise in society back to the clerics as figures who can provide solutions and actions that are correct and do not violate Islamic law, especially in matters of marriage.

The laws that prevail in society are divided into three categories, which are ranked according to the hierarchy of public compliance, namely Islamic law, customary law, and positive law.⁴ In matters of marriage, the community never thinks twice if it does not conflict with Islamic law and customary law, then it is considered no problem. For example, in the case of underage marriage, the community ignores the rules issued by the government regarding the age limit for marriage. Basically, if we look back, Islamic law has been part of Indonesia

¹ Allah berfirman :

وكيف تأخذونه وقد أفضى بعضكم إلى بعض وأخذن منكم ميثاقا غليظا

It means; "And how can you take it back while you have been intimate with each other, and they (your wives) have taken a firm covenant from you." (An-Nisa: 21)

² Agustina Nurhayati, Marriage in the Perspective of the Quran, ASAS, Vol.3, No.1, January 2011, pp. 99-111

³ Ali Imron, 'Protection and Welfare of Children,' Al-Tahrir Journal, Vol. 13, No. 2, November 2013, p. 255.

⁴ Marzuki Wahid and Rumadi, Fiqh of the Nation's School of Thought: Critique of Islamic Legal Politics in Indonesia, 1st ed., (Yogyakarta, LKiS, 2001), p. 23.

since before independence. In Indonesia, where the majority of the population is Muslim, Islamic law certainly has the highest position in society. The Islamic law that the community believes in is still in the form of laws found in fiqh books. Fiqh is not a positive law that has been formulated, but rather the content of Islamic law which is the doctrine of Islamic law or, more precisely, the opinions of the imams of the madhhab.⁵

In the early 1950s, the Minister of Religious Affairs, KHA. Wahid Hasjim, formed the Committee for the Investigation of Marriage, Divorce, and Reconciliation Laws, abbreviated as the NTR committee, chaired by Teuku Muhammad Hassan and consisting of people who were competent in the field of law from various religions and sects.⁶ In 1953, the NTR committee decided to draft three marriage bills, namely a general bill, an organic bill for each religion, and a neutral bill,⁷ meaning that Muslims would have their own laws in accordance with Islamic rules. The religious doctrine that there is no law better than the law made by Allah Ta'āla, as well as the opinions of the Imams of the madhhabs that the community follows, were the main factors that led them to the opinion that the law was not in accordance with Islam. It is necessary to reconstruct the community's view of the law by providing an understanding of the legal arguments used by the drafters of the law and the objectives for which the law was enacted.

In fiqh munākahāt, it is explained that Islam never sets an age limit for marriage other than puberty. However, Article 7 paragraphs (1) and (2) of the UUP set a fairly high age limit of 19 years for both men and women. Efforts to create a law-abiding society need to be made by socializing the law to the general public and religious leaders in particular, by providing a good understanding of the law and the purpose for which it was enacted. There are various ways this can be done, namely by reviewing the law on marriage in relation to Islamic law, or through religious leaders.⁸

In their view, early marriage is permissible and there are no restrictions, so government policy on this issue is not implemented and is not in accordance with Islamic law.⁹ To eliminate suspicion of the rules recorded in positive law, it

⁵ Muhammad Yahya Harahap, *Information on Islamic Law Compilation Material: Positivizing the Abstraction of Islamic Law*, n.p., (Jakarta, Logos, 1999), p. 23.

⁶ Nani Soewando, *The Position of Indonesian Women in Law and Society*, 4th ed., (Jakarta, Ghalia Indonesia, 1984), p.86

⁷ Bani Syarif Maulana, *Islamic Legal Sociology in Indonesia*, 1st ed., (Malang, Aditya Media Publishing, 2010), p. 107.

⁸ Khoiruddin Nasution, "Prologue: The Direction of Study of Indonesian Islamic Family Law," in ADHKI Team, *Progress of Islamic Family Law in Indonesia Post-Reform (National Law Dimension-Islamic Jurisprudence-Local Wisdom)*, p.7.

⁹ Interview with Ustaz Shodiqul Wa'di, he sees that if early marriage is prevented, it could cause many problems due to uncontrolled social interactions. In Islam, there has never been an

is necessary to re-read the laws on early marriage. Among Muslims today, there are sharp differences of opinion and heated debates between textual and contextual groups in their interpretation of Islamic teachings. The first group calls on Muslims to return to the Qur'an and hadith in a textual sense, that is, to practice what is written in the text. Other scholars disagree, arguing that context cannot be ignored in interpreting the contents of the Qur'an and the hadith of the Prophet. Context, defined as socio-historical reality, is an important element in determining a law. Knowledge of the reality behind a legal decision is essential.¹⁰

Referring to Abdullah Saeed's statement, people who understand Islamic law can be divided into three groups, namely textual, semi-textual, and contextual.¹¹ These three models will give rise to different perspectives, especially at this time. Therefore, in order to adapt Islamic law to the context of the times and places and to the appropriate way of thinking, we must understand and reexamine the correct perspective on today's problems. Textual refers to ideas, lessons, or understandings based on written sources, whether from the Qur'an and hadith or the writings of earlier scholars. Textualism is a term that refers to scholars or religious figures who, in understanding the hadith, tend to focus on historical data with an emphasis on grammatical analysis of the language. As a result, the thoughts of earlier scholars are understood as final and dogmatic. Therefore, revelation is understood without considering the socio-historical context of when and where it was revealed.¹²

According to Abdullah Saeed, early Muslims had not yet reached the peak of intellectual achievement in the fields of interpretation and jurisprudence, but were in a phase of continuous improvement, progress, and change, as well as the accumulation of knowledge. Today is an era of great sociological and technological change that requires intellectual contributions that connect the meaning of the Qur'an with the needs of Muslims today.¹³ The needs of Muslims today are very different from those of the past, especially in the teaching of the Qur'an, particularly regarding legal ethics that are in line with the needs of

age limit for marriage; rather, past scholars considered reaching puberty as a sign of readiness for marriage. This was also mentioned by Ustaz Zainal 'Abidin during the interview.

¹⁰Sholihin, *Moderation in Understanding Islam Between Textualists and Contextualists*, Jurnal An Nuur, Vol.11, No.2, 2021, p. 2.

¹¹Abdullah Saeed, *Paradigms, Principles, and Methods of Contextual Qur'an Interpretation*, translated by: Lien Iffah and Ari Henri, 3rd ed., (Yogyakarta, Baitul Hikmah Press, 2017), p.6.

¹²Suryadi, 'Methodological Reconstruction of Hadith Understanding,' in Hamim Ilyas and Suryadi (Eds.), *Bunga Rampai on Contemporary Hadith Studies*, (Yogyakarta, Tiara Wacana, 2011), p. 141.

¹³Abdullah Saeed, *Paradigms, Principles, and Methods of Contextualist Interpretation of the Qur'an*, p.10.

Muslims today, which is to view and interpret the Qur'an and hadith in accordance with today's context, taking into account many considerations and problems of today.

Today's problems connected with the verses of the Qur'an and hadith are sometimes irrelevant and inconsistent with the original concept of Islam as a religion of compassion and protection, such as polygamy, early marriage, and the marginalization of women. This requires a contextual re-reading of the foundations of Islamic law, namely Islamic law understood in accordance with the situation and conditions in which Islam was developed.¹⁴ Ulil Abshar Abdalla says that Islam is contextual, in the sense that its universal values must be interpreted in a specific context. However, contextual forms of Islam are only cultural expressions, and we are not obliged to follow them.¹⁵

The endless debate between textualists and contextualists with their respective arguments is what prompted the author to discuss Early Marriage in the View of Fiqh and Positive Law Between Textual and Contextual Islamic Family Law in Indonesia. This research is expected to make a meaningful contribution to the development of Islamic family law, particularly in dealing with modern social dynamics related to non-sexual forms of adultery. Through a comparison of two different legal systems, this study aims to identify best practices and opportunities for legal reform that can preserve the integrity of the institution of marriage, while taking into account the complexity of interpersonal relationships in the modern era.

METHOD

The type of research used in this study is normative legal research and uses a comparative law approach. Normative legal research was chosen because this study uses literature studies and analysis of legal documents such as laws, regulations, and relevant court decisions, as well as arguments in the Qur'an and hadith. Thus, the focus of the research is on the study of applicable legal doctrines and norms, which are then compared between the laws of early marriage found in Islamic jurisprudence and the laws and regulations in Indonesia. The research subjects consist of legal documents in Indonesia, such as the KHI, the Marriage Law, and all forms of documents that support the research and arguments that are relevant to the research. The data collection technique used by the author in this study is a library study with data collection sourced from scientific writings (reading sources), both published and unpublished, especially books that examine early marriage, research results,

¹⁴Sholihin, Moderation in Understanding Islam Between Textualists and Contextualists, *An Nuur Journal*, Vol.11, No.2, 2021.

¹⁵Ulil Abshar Abdalla, 18-11-2002, Refreshing the Understanding of Islam, Jakarta, Kompas.

journals, theses, dissertations, official documents such as laws, government regulations, and other regulations related to this research.

RESULT AND DISCUSSION

Between Textualists and Contextualists, the Law of Early Marriage from Classical to Contemporary Times.

Marriage is a bond between a man and a woman so that they can live together legally. The practice of marriage has existed since before the arrival of Islam, as evidenced by the various methods used by the community at that time, such as polygamy, wife swapping, betrothal, borrowed marriage, polyandry, and prostitution. These types of marriages were later abolished when Islam arrived to elevate the status of women. Islam came to promote equality and elevate the status of women, with various changes, including in the area of marriage.¹⁶ Islam teaches its followers to prepare for marriage in terms of physical, mental, and financial readiness. This is explicitly stated in a hadith of the Prophet, which encourages marriage for those who are physically and financially capable, meaning:

(يا معشر الشباب من استطاع منكم الباءة فليتزوج فإنه أغض للبصر وأحصن للفرج)

Meaning: “O young people, whoever among you is able to afford the cost of marriage should marry, for it can lower the gaze and protect the private parts. Whoever is not yet able should fast, for it can control you.”¹⁷

The important word in the above hadith is ((الباءة), Al-qurtubiy says: what is meant by this word is the ability to provide for both spiritual and physical needs. Whoever is not yet able should fast as commanded, so that he is considered able.¹⁸

{وليستعفف الذين لا يجدون نكاحا حتى يغنيهم الله من فضله}

Meaning: “And those who cannot afford to marry should maintain their chastity until Allah provides them with His bounty.”¹⁹

When explaining this verse, the exegetes saw that those who are not yet able to marry should be patient and stay away from things that are forbidden until Allah Ta'ala provides them with the means to marry.²⁰ According to Imam

¹⁶Khoiruddin Nasution, Fazlurrahman on Women, 1st ed., (Yogyakarta, Academia+Tazzafa, 2002), p. 37.

¹⁷Imam Muslim bin Hajjaj, Sahih Muslim, (Beirut, Dār at-Ṭayibah, 2006 CE/ 1427 AH), II: 1019, hadith number: 1400, “Book of Marriage, Chapter on the Recommendation of Marriage.” A hadith from ‘Abdurahman from Abdullah from the Messenger of Allah (peace be upon him), this hadith is authentic.

¹⁸ As- Sayyid Sābiq, *fikih as-Sunah*, cet. Ke-1, (Mesir, asy- Syarikah ad-Dawliyah li at-Ṭaba’ah, 2004), hlm. 502.

¹⁹ An-Nur (24): 33.

²⁰ Muhammad bin Jarir At-Ṭabari, *Tafsir At-Thabari*, cet. Ke- 1, (Kairo, Dār Hijr Il At-Thob’ah,2001), hlm. XVII: 275. Lihat juga; Muhammad bin Idris Asy-Syafi’i, *Tafsir Al-Imām Asy-Syāfi’i*, jet. Ke- 1, (Saudi Arabiah, Dār At-Tadammuriah, 2006), hlm. III:141. Lihat; Al-Husain

Al-Qurtubi in his interpretation, this verse is divided into four parts. First, in the words of Allah (وليستعفف الذين), the verse refers to those who are free, not those who have control over others.²¹ Second, the word (استعفف) in the science of shorof cet. used in the verse is استعمل, which means to ask to make him a pure, chaste, and virtuous person. This verse explains that whoever is unable to marry and unable to maintain his chastity should seek things that can be used for marriage, or seek a woman who is willing to be married with a small dowry.²²

Third, in the sentence لا يجدون نكاحا, it means that they do not have the ability to marry, namely in terms of dowry and maintenance. Fourth, whoever is ready to marry, then marriage is sunnah for him, and if there are those who are unable or unprepared, then they must be patient in maintaining their purity, even if it means fasting.²³ Mental readiness for marriage cannot be underestimated, because mental readiness is very helpful in fostering and building a household that is sakinah, mawaddah wa rahmah. In a hadith, it is mentioned that a strong mentality is the beginning of building a household. The Prophet Muhammad said:

(أمسك لسانك فاليسعك بيتك وابك على خطئتك)

Meaning: “Guard your tongue, and your home will be spacious, and weep for your mistakes.”²⁴

The message contained in the above hadith is how to prepare mentally, for those who are about to marry or are already married, how to guard one's ego, whether it be the husband or wife. This is important to prepare in order to build a family that is sakinah, mawaddah, and rahmah. Looking at the three main factors above, which will then be aligned with the purpose of marriage, the focus will be on one issue, namely the ideal age for marriage. This is because, from the perspective of benefit, especially in this day and age, a person's maturity, both physically and mentally, is greatly determined by their age.

Physical and mental maturity and adulthood are the main considerations when getting married. Adulthood is relative depending on the perspective used, because maturity from a sociological perspective is not necessarily the same as positive law, nor is it the same as customs, especially from a religious

bin Mas'ud Al-Baghawi, *Tafsir Al-Baghawi*, cet Ke- 4, (Beirut, Dār Ihyā' At-Turats, 1997), hlm. VI:40.

²¹ Muhammad bin Abdillāh Al-Qurthubi, *Tafsir Al-Qurtubi*, cet. Ke- 2, (Kairo, Dār al-Kutub al-Mishriah, 1964), hlm. XII: 243.

²² Muhammad bin Abdillāh Al-Qurthubi, *Tafsir Al-Qurtubi*, hlm. XII: 243.

²³ *Ibid.*

²⁴ Muhammad bin'Isa at-Tirmidzi, *Sunan at-Tirmidzi*, cet. ke- 2, (Mesir, Syarikah maktabah wa maṭbu'ah muṣṭafa al-bāb, 1975), hlm. V/505, no. Hadis. 2406. Hadis hasan, lihat; Muhyiddin Yahya bin Syarif an-Nawawi, *Riyadh ash-Sholihin*, cet. ke- 1, (Bairut, Dār ibn Katsir, 2007), hlm. I/423.

perspective. However, if we conclude by taking general provisions, then mental balance and social stability constitute adulthood.²⁵

To interpret the law today in a contextual manner, it is necessary to understand the arguments of previous scholars regarding marriage, because in essence, those who disagree with age restrictions on marriage and agree with the practice of early marriage are the opinions of previous scholars. Therefore, it is necessary to explain the opinions of earlier scholars in order to see how their opinions were formed, whether textually or by considering the context of the times of each scholar.

1. Classical scholars' views on early marriage

Maturity is the main thing that needs to be prepared for marriage, both physical and mental maturity. However, maturity is currently a topic of debate: does maturity go hand in hand with age, or is maturity not measured by age? This needs to be questioned because of the dualism of law in viewing the phenomenon of early marriage and the different legal bases. The earlier scholars agreed that there was no age limit for marriage, that puberty was a sign that one was ready to marry, both for men and women, and differed in their opinions regarding men and women who had not yet reached puberty.²⁶

Early scholars generally never set an age limit for marriage and provided sufficient space for those who wanted to get married. Early scholars used puberty as a benchmark and required the presence of a guardian for those who had not yet reached puberty. Imam Shafi'i,²⁷ Abu Hanifah,²⁸ and Imam Ahmad²⁹ were of the opinion that parents could marry off their children even if they were still young, whether they had reached puberty or not, and that the marriage must be performed by a guardian, namely the father (or someone older).

The argument used by Shafi'i here was the marriage of the Prophet to 'Aisha, which was performed directly by Abu Bakr.³⁰ In fact, Imam Shafi'i argues that there is no *khiyar* (choice) when the child has reached puberty. Abu Hanifah argues that if someone other than the father (or other male

²⁵ Sucipto, "Maturity in Marriage Contracts from an Interdisciplinary Perspective." In ASAS, Vol. 6, No. 2, July 2014, pp. 41.

²⁶ Muhammad bin Ahmad bin Rusyd, *Bidāyah al-Mujtahid wa an-Nihāyah al-Muqtasid*, t.c, (Kairo, Dār al-Hadis, 2004), hlm.III/34.

²⁷ Muhyiddin Yahya bin Syarf an-Nawawi, *Minhāj at-Ṭalibin*, cet. ke- 1, (Beirut, Dār al-Fikr, 2005), hlm. 206.

²⁸ Ali bin Abi Bakar al-Fargāni, *al-Hidāyah fī Syarh al-Bidāyah al-mubtadi*, t.c, (Beirut, Dār Ihyā at-Turāts, t.t), hlm. I/193.

²⁹ Mansur bin Yunus al-Bahuti al-Hanbali, *Kasyfu al-Qonā' min Matn al-Iqnā'*, cet. ke-1, (Berut, Dār al-Kutub al-ʿImiyah, 2009), hlm. V/43.

³⁰ Muhammad bin Idris asy-Syafi'i, *al-Umm*, t.c, (Beirut, Dār al-Ma'rifah,1990), hlm. V/18.

relative) marries off the child, then the child must choose when they reach puberty,³¹ and the parents have no right as wali mujbir (guardian) for children who have reached puberty.³²

Imam Malik argues that a father may marry off his young daughter, whether she is a widow or a virgin, especially if there is fear of harm, whether physical or social. A father is also permitted to marry off his daughter who has reached puberty and menstruates without her permission, while waiting for her consent to marry is sunnah.³³ In this case, Imam Malik has a different opinion from others, namely that the marriage guardian may be given to the person who is given the will.³⁴ The argument used by Imam Malik here is:

{ وَأَنْكَحُوا الْأَيَامَى مِنْكُمْ }

Meaning: "And marry those among you who are single."³⁵

Interpretation

{ أَيُّمَا امْرَأَةً نَكَحْتَ بِغَيْرِ إِذْنِ وَلِيِّهَا فَنَكَحَهَا بِاطِل }

Meaning: "Whoever among women marries without the permission of her guardian, her marriage is invalid."³⁶

{ وَأَنْكَحَ أَبُو بَكْرٍ الصِّدِّيقُ ابْنَتَهُ عَائِشَةَ وَهِيَ صَغِيرَةٌ بِنْتُ سِتٍّ أَوْ سَبْعٍ مِنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ }

Meaning: "And Abu Bakr Ash-Shiddiq married his daughter 'Aisha to the Messenger of Allah when she was six or seven years old."³⁷

If we look at the main legal basis used by earlier scholars regarding the absence of age restrictions in marriage, which is still used today, namely the hadith about the Prophet's marriage to 'Aisha when she was six years old and was with the Messenger of Allah at the age of nine, this hadith needs to be discussed in more depth and the opinions of the scholars on this hadith need to be known.

Imam Nawawi commented on this hadith by quoting the opinion of Imam Shafi'i, who said that Imam Shafi'i and his companions were of the opinion that it is recommended for a father not to marry off his daughter until she reaches puberty and gives her consent to be married so that there will be

³¹ Ali bin Abi Bakar al-Fargāni, *al-Hidāyah fi Syarh al-Bidāyah al-mubtadi*, hlm. I/193.

³² Ali bin Abi Bakar al-Fargāni, *al-Hidāyah fi Syarh al-Bidāyah al-mubtadi*, hlm. I/191.

³³ Yusuf bin Abdullah al-Qurtubi, *al-Kāfi fi Fikih Ahl al-Madinah*, cet. ke-2, (Riyadh, Maktabah ar-Riyadh al-Haditsah, 1980), hlm. II/523.

³⁴ Yusuf bin Abdullah al-Qurtubi, *al-Kāfi fi Fikih Ahl al-Madinah*, hlm. II/529.

³⁵ An-Nur: 32.

³⁶ Ali bin Umar ad-Dāruqūṭni, *Sunan ad-Dāruqūṭni*, cet. ke-1, (Beirut, Muassah ar-Risalah, 2004), hlm. IV/313, no. Hadis: 3520, hadis ṣahih. Lihat; Muhammad Nāṣiruddin al-Albāni, *Irwā' al-Ghlimil fi Takhrij Ahādīs Mānār as-Sabil*, cet. ke-2, (Beirut, al-Maktabah al-Islāmi, 1985), hlm. VI/243.

³⁷ Muhammad bin Isma'il al-Bukhari, *Shohih al-Bukhari*, cet. ke-1, (Beirut, Dār Ṭauq an-Najah, 1422 H), hlm. VII/17. No hadis. 5133.

no hatred in the family after the marriage.³⁸ Dawudi said that at that time, 'Aisha r.a.³⁹ had grown into a mature woman while she was with the Prophet. Ibn Shubrumah had a different view of the above hadith. He argued that a father should not marry off his daughter until she has reached puberty, and when she has reached puberty, he must wait for her permission. The above hadith is specific to the Prophet (peace be upon him).⁴⁰

There is a connection between Ibn Shubrumah's statement and another hadith which mentions that the marriage of the Prophet (peace be upon him) to 'Aisha (may Allah be pleased with her) was based on guidance from Allah Ta'ala, with the angel Jibril as the means of conveying that guidance: From Ibn Abi Malikah from 'Aisha, she said: Jibril, peace be upon him, came to the Messenger of Allah, peace and blessings be upon him, in a silk garment and said: "This is your wife in this world and the hereafter.

This hadith explains that the Prophet's marriage to 'Aisha was not based on personal desire, but rather on guidance from Allah Ta'ala and a command to marry. As the Messenger of Allah, the Prophet had to carry out this command, therefore the emphasis on this marriage being a special case for the Prophet must be highlighted so that it does not become a new justification for practicing early marriage.⁴¹ Historical records indicate that Asma bint Abi Bakr passed away at the age of 100 in the year 73 AH. If Asma died at the age of 100 and passed away in the year 73 AH, then Asma was 27 years old and Aisha was 17 years old at the time of the Prophet's migration to Medina. If the Prophet married Aisha one or two years after arriving in Medina, it means that Aisha was 18 or 19 years old when she got married.⁴²

The hadith about the Prophet's marriage to Aisha is found in the Sahih Bukhari, which is the most authentic book after the Qur'an, but there is criticism of one of the narrators named Hisyam regarding this hadith. It is said that when Hisyam was old, he became a very problematic person because he moved from Medina to Iraq, so Imam Malik did not accept hadith from Hisyam after his move from Medina to Iraq, because Hisyam experienced a

³⁸ Muhyiddin Yahya bin Syarf an-Nawawi, *al-Minhāj Syarh Shahih Muslim*, cet. ke-2, (Beirut, Dār Ihyā at -Turāts al-'Arabi, 1392), hlm. IX/ 206

³⁹ *Ibid.*

⁴⁰ Ali bin Hajar al-'Asqolāni, *Fathu al-Bāri Syarhu al-Bukhāri*, t.c, (Beirut, Dār al-Ma'rifah, 1379), hlm. IX/190.

⁴¹ Ahmad Rajafi, *Islamic Family Law Reasoning in Indonesia*, 1st ed., (Yogyakarta, Istana Publishing, 2015), p.108.

⁴² Syihab al-Din Ibnu Hajar al-Ashqalani, *al-'Iṣabah fi Tamyiz aṣ-Ṣahābah*, (Riyadh, Maktabah Riyadh al-Hadis, 1978), hlm. IV/377.

very noticeable decline in his thinking and memory,⁴³ while the hadith was known after his move from Medina to Iraq.

The main thing to note in responding to the above hadith is that 'Aisha was with the Prophet when she was already mature and grown up, as was the case with women in other places, and this was common practice according to custom. In Arabia at that time, it was normal and common for a girl who was not yet mature or who was mature to be married to an adult man, and this was a special case for the Prophet, peace be upon him. This was practiced by Ali bin Abi Talib, who married his daughter Ummu Kultsum to Umar bin Khattab, even though Ummu Kultsum was still young and not yet mature.⁴⁴

2. Contemporary scholars' views on early marriage

After reviewing the opinions of earlier (classical) scholars, the majority of whom deemed early marriage permissible and saw no reason to prevent it, as it was practiced by the Prophet (peace be upon him). However, in the issue of early marriage, it is essential to understand the views of contemporary scholars on underage marriage and their perspective on the Prophet's marriage to 'Aisha, as per the principle of Islamic jurisprudence that "the law changes according to place and time." Therefore, it is very important to understand the role of contemporary scholars in depth so that we do not rely solely on old laws and view today's issues through the lens of classical fiqh.

Yusuf al-Qardhawi has issued a fatwa on taqyid al-mubah (restriction of permissible things), which also includes early marriage because the restriction is based on maslahah (public interest).⁴⁵ According to Husein Muhammad, one of the factors that fuqaha consider in assessing the law of marriage is the presence or absence of the element of public interest or the concern of extramarital sexual relations. If this concern cannot be proven, then the marriage cannot be justified. This is because marriage at a young age can cause harm, such as reproductive dysfunction in women.⁴⁶

According to Amir Syarifuddin, the marriage between the Prophet and Aisha must be viewed in terms of its effect, which was to create a relationship of mushahaharrah. This marriage was carried out so that Abu Bakr could freely

⁴³ Husein az-Zahabi, *Mizan al-I'tidal fi Naqd ar-Rijāl*, cet. ke-1, (Beirut, Dār al-Ma'rifah li aṭ-Ṭabā'ah, 1963), hlm. IV/302.

⁴⁴ Muhammad Yusuf bin Muhammad Ilyās, *Hayatu aṣ-Ṣahābah*, cet. ke-1, (Beirut, Muassasah ar-Risalah, 1999), hlm. III/492.

⁴⁵ Musfiroh, Mayadina Rohmi, "Early Marriage and Efforts to Protect Children in Indonesia." *De Jure: Journal of Law and Sharia* 8.2 (2016): 64-73.

⁴⁶ Husein Muhammad, *Women's Fiqh: A Kiai's Reflection on Religious and Gender Discourse* (Yogyakarta: LKiS, 2007), 100.

enter the Prophet's house. However, in the modern context, the emphasis is on legalizing biological relationships, so age limits are relevant.⁴⁷

Abdul Mu'ti, general secretary of the Muhammadiyah central leadership, said that Muhammadiyah also highlights the issue of child marriage and is reviewing the arguments used to legitimize the practice of early marriage. In an online forum celebrating the 93rd anniversary of Nasyi'atul Aisyiyah, Abdul Mu'ti criticized that due to an uncontextual understanding of the hadith about the Prophet's marriage to 'Aisha RA, there have been many broken homes, divorces, and stunted children.⁴⁸ Muhammad Hasbi ash-Shiddieqy argued that the age of adulthood (when one is allowed to marry) is 21 years old,⁴⁹ while Moh. Idris Ramulyo argued that the ideal age for women to marry is 18 years old and 25 years old for men.⁵⁰ According to Hamka, *Bulugh al-nikah* is interpreted as adulthood. However, maturity does not depend on age, but on intelligence and maturity of thought.⁵¹

According to Muhammad Rasyid Ridha, *Bulugh al-nikah* means reaching the age of marriage, which is when boys have wet dreams and girls have their first menstruation. He believes that at this age, a person is capable of giving birth and having children, which motivates them to get married. At this age, all Islamic laws are imposed upon them. Therefore, they are allowed to make decisions and are able to do good and avoid evil. This is one of the proofs of the perfection of their intellect.⁵² Khoiruddin Nasution argues that underage marriage should not be allowed. Marriage requires maturity, and although classical texts allow early marriage, the basis for this thinking needs to be reexamined. Khoiruddin Nasution has a basis for his view on this issue.⁵³

First, the marriage of the Prophet Muhammad to Aisha was a special case.⁵⁴ Second, marriage is a special contract (ميثاقا غليظا) that should fulfill the

⁴⁷Amir Syarifuddin, *Islamic Marriage Law in Indonesia Between Fiqh al-Nikah and the Marriage Law* (Jakarta: Kencana, 2007), 67.

⁴⁸ <https://muhammadiyah.or.id/perkawinan-anak-tinggi-tarjih-dan-na-didorongrekonstruksi-pemahaman-hadis-pernikahan-aisyah/>, diakses pada 27 maret 2022.

⁴⁹ Muhammad Hasbi Ash-Shiddieqy, *Introduction to Islamic Law* (Jakarta: Bulan Bintang, 1975), p. 241.

⁵⁰ Moh. Idris Romulyo, *Islamic Marriage Law: An Analytical Study of Law No. 1 of 1974 and the Compilation of Islamic Law* (Jakarta: Bumi Aksara, 2002), p. 51.

⁵¹ Hamka, *Tafsir al-Azhalar*, Volume IV, Publisher, Pustaka Panji Masyarakat, Jakarta, 1984, p. 267.

⁵² Muhamad Rasyid Ridha, *Tafsir al-Manār*, t.c, (Mesir, Al-Manār, 1325H), hlm. IV/387.

⁵³Khoiruddin Nasution, *Indonesian Islamic Civil (Family) Law and Comparison of Marriage Laws in the Muslim World: Historical Study, Renewal Methods, and Material & Status of Women in Marriage Law*, 1st ed., (Yogyakarta, Academia+ Tazafafa, 2009), p.389..

⁵⁴ *Ibid.*

minimum requirements for marriage, namely maturity and sound mind.⁵⁵ Third, related to the purpose of marriage, which is to fulfill biological needs and regeneration, namely having children, from these two purposes of marriage it can be concluded that marriage requires physical and mental readiness, especially for mothers. This requires maturity and maturity to achieve the objectives of marriage.⁵⁶

The Indonesian Ulema Council (MUI) has issued a fatwa on early marriage. According to the MUI, Islamic jurisprudence does not contain detailed provisions regarding minimum or maximum age limits, because Allah Ta'ala says: "And marry those among you who are single, and those who are suitable (to marry) from your male servants and your female servants."⁵⁷ According to the MUI, marriage is only for those who are suitable, namely those who are capable of marrying. The majority of scholars do not actually have a problem with early marriage. According to the Indonesian Ulema Council (MUI), early marriage is lawful as long as the requirements and pillars of marriage are fulfilled. However, it is unlawful if the marriage only causes problems in the household.⁵⁸

The basis used by the MUI is "And test the orphans until they are of age to marry. Then, if you think they are intelligent (able to manage their wealth), hand over their wealth to them. And do not consume the wealth of orphans beyond what is appropriate, and do not be hasty (in spending it) before they reach maturity. Whoever among the guardians is capable, let him refrain (from consuming the orphan's wealth), and whoever is poor, let him consume it according to what is appropriate. Then when you hand over their property to them, let there be witnesses for them. And Allah is sufficient as a witness."⁵⁹

Then in the fiqh rules in *Qawaid al-Ahkam fi Mashalih al-Anam* by Izzuddin:

للو سائل أحكام المقاصد فالو سيلة إلى أفضل المقاصد
أفضل الوسائل... فمن وفقه الله للوقوف على تر بيت المصا
لح عرف فاصلها من مفضو لها

Meaning: "The ruling on the means is the same as the ruling on the intended purpose. The means to the most important purpose is the most

⁵⁵ Khoiruddin Nasution, Indonesian Islamic Civil (Family) Law, pp.389-390.

⁵⁶ *Ibid*, hlm 391.

⁵⁷ A-Nur ayat 32

⁵⁸ Provisions of the 3rd Indonesian Ulama Ijtima' of the National Fatwa Commission in 2009 on early marriage, p. 161.

⁵⁹ QS. An-Nisa : 6

important means... whoever is given the blessing of Allah to determine the order of benefit will surely know what is most important.”⁶⁰

The opinion of Ibn Shubrumah and Abu Bakr al-Asham, who stated that early marriage is prohibited, and stated that the Prophet's marriage to Aisha was a special case. The opinion of Ibn Hazm, who distinguished between the marriage of young boys and young girls. The marriage of a young girl by her father is permitted, while the marriage of a young boy is prohibited.⁶¹ The statement that there is no age limit for marriage in Islam is a very fatal mistake. Although their argument is based on the fact that earlier scholars never set an age limit for marriage, it is necessary to reexamine the fact that earlier scholars differed in their opinions on the age of puberty, which is the measure of suitability for marriage.

Abu Hanifah argued that puberty occurs at the age of 15 and is marked by wet dreams for boys and menstruation for girls. If these two signs have not yet appeared, then the age of marriage is set at 18 for boys and 17 for girls. Imam Shafi'i and Imam Ahmad set the age of puberty at 15 years for both men and women, while Imam Malik mentioned several signs of puberty, but if these signs are not apparent, the age of puberty is set at 18 years or close to 18 years for both men and women.⁶² From the differences in opinion among the Imams above, there are two important points that are very interesting. First, these differences of opinion are based on the interpretation of the text and the customs of a particular place. Second, the formation of marriage laws is derived from the fiqh books of the Imams and then adapted to the conditions of Indonesian society in order to build mutual benefit.

Another important consideration is the age of the Prophet when he married and the age of his wives when they married him. In one account, it is mentioned that the Prophet married at the age of 25,⁶³ and among his many wives, only Aisha married at a relatively young age, but at that time, Aisha had reached maturity and was clearly a mature young woman. Looking at the differences in opinion between earlier and contemporary scholars, they have the same goal, which is to view an issue from the perspective of Islamic law. Even though this leads to differences, it is only natural because different times and conditions can change the law. However, looking at the opinions of contemporary scholars, almost all of them agree with the existence of a minimum age for marriage because they see the benefits in it.

⁶⁰ Izzuddin Abd al-Salam, *Qawaid al-Ahkam fi Mashalih al-Anam*, t.c, (Beirut, Muassasah ar-Rayyan , 1990), hlm. I/51.

⁶¹ Provisions of the 3rd Indonesian Ulama Fatwa Commission Ijtima' in 2009 on early marriage, p. 165.

⁶² Abdurrahman bin Muhammad al-Jaziri, *al-Fikih 'Ala al-Mazāhib al-Arba'ah*, cet. ke-2, (Lebanon, Dār al-Kutub al-'Ilmiyah, 1360), hlm.II/235.

⁶³ Muhammad al-Qodiyāni, *Hayah Muhammad wa Risālatuhu*, cet. ke-3, (Lebanon, Dār al-'Ilm al-Malāyin, 1390H), hlm.249

Early marriage, as defined by earlier scholars, refers to marriage before reaching puberty. Today, in the Indonesian context, early marriage refers to marriage below the established age limit. The age limit for marriage was actually already set by earlier scholars, which is the difference, even though it is essentially the same, namely 19 years for men and women in the latest law. It should be noted that the age limit set by the government today follows the Hanafi school of thought, which sets a relatively high age. The law itself follows around five schools of thought, not just Hanafi or Shafi'i, and adopts opinions that are deemed appropriate for the context of life in Indonesia.

Contextualization of Early Marriage Law in Indonesia

Early marriage is prohibited under Indonesian law. In this case, the government takes such action to provide benefits and create happy and lasting families, as well as to avoid the harmful effects of marriage, such as miscarriages, divorce, and children's educational backwardness.⁶⁴ Dadang Hawari explains that the ideal age for marriage is basically 20-25 years old for women and 25-30 years old for men for several reasons. First, puberty in men and women does not mean that they are ready for marriage, but rather that puberty in men and women is a sign that the reproductive organs are beginning to mature.

Second, from a psychological perspective, teenagers who are not yet adults are still emotionally unstable and are not truly ready to become wives, let alone parents. Third, in terms of independence, most aspects of a teenager's life are still dependent on their parents.⁶⁵ From the above description, the effort to set a minimum age for marriage is a good effort for the benefit of the nation's children. The changes made in 2019 should be appreciated and implemented because they refer to the welfare and good of the nation's children and future generations. However, there are still groups that disagree with this law, so it is important to understand that the law is in accordance with Islam and adapted to the needs of today and the future.

1. Age Restrictions on Marriage in the 1974 Marriage Law

After independence, in order to build unity, many things needed to be improved, especially in the field of law. There were various legal regulations that applied to certain groups, which were considered discriminatory and would hinder national integration. Therefore, it was necessary to review these regulations to bring them in line with the spirit of the nation, and then codify and unify them so that legal certainty and unity could be achieved. The age limit for marriage was established to achieve the ideal age for marriage and maturity. Maturity is a very important issue, especially in marriage, because sometimes it influences life and the success of a household, as people who are mentally and physically mature are not necessarily able to build a household, let alone young people who are not yet ready for marriage. They

⁶⁴ Dhorifah Hafidhotul Hikmah, "The Influence of Marriage Age Limits in Law Number 1 of 1974 on the Number of Underage Marriages in Rembang Regency, Central Java Province" *Diponegoro Law Journal*, Vol. 6 No. 2 (2017), 2.

⁶⁵ Dadang Hawari, *The Qur'an, Knowledge of Psychiatry and Health*, (Jakarta, Bhakti Prima Yasa, 1996), pp. 251-252.

may not necessarily be able to resolve the problems that arise in a household, therefore maturity is very important in marriage.⁶⁶

According to William James and Carilange, emotions are the result of a person's perception of changes that occur in the body in response to stimuli that come from outside. A mature marriage can produce good and healthy offspring, resulting in a happy marriage without separation or divorce caused by instability and immaturity in the minds, emotions, and bodies of both husband and wife.⁶⁷ Therefore, a marriage that is not yet mature results in a poor physical response and weakness in the relationship between husband and wife, leading to a less harmonious marriage, poor offspring, and even risks for the mother who will give birth, because she is emotionally and mentally unstable and immature.

Marriage regulations in Indonesia impose age restrictions on marriage, namely that a person may not marry unless they have reached the ideal age as stipulated in Article 7 paragraph (1) of Law No. 1 of 1974 concerning marriage: "Marriage is only permitted if the man has reached the age of 19 and the woman has reached the age of 16." The reason for this law is to protect the health of the husband and wife, as well as their offspring. A similar provision is also recorded in the KHI (Compilation of Islamic Law) in Article 15 paragraph (1) For the benefit of the family and household, marriage may only be performed by prospective spouses who have reached the age specified in Article 7 of Law No. 1 of 1974, namely the prospective husband must be at least 19 years old and the prospective wife must be at least 16 years old.

Then, Article 6 paragraph 1 states that in order to get married, a person who has not reached the age of 21 (twenty-one) must obtain the permission of both parents.⁶⁸ Article 7 paragraph 2 of the UUP states that underage marriage can be carried out when a marriage dispensation is obtained after submitting an application to the local religious court. From the above explanation, it can be concluded that the law regulating the age limit for marriage is divided into three phases: The first phase is that marriages between men and women aged 21 years and above do not require parental consent. If they are under 21 years of age, they are not allowed to marry without parental consent. Men under 19 years of age and women under 16 years of age are not allowed to marry without obtaining a marriage dispensation as explained above.

2. Amendments to the Law on the Minimum Age for Marriage, Reasons and Objectives for the Amendments.

With the development of the times and the emergence of new perspectives on early marriage, Article 7 paragraph (1) of Law No. 1 of 1974

⁶⁶ Sri Rahmawati, "Minimum Age Limit for Marriage (A Comparative Study of Islamic Law and Positive Law)." *Syakhshia: Journal of Islamic Civil Law* 21.1 (2020): 85-110.

⁶⁷ Dewi Iriani, "Analysis of the Minimum Age Limit for Marriage in Law No. 1 of 1974," Department of Sharia and Economics, Stain Ponorogo, *Journal* Volume 12 No. 1 (June-July 2015), p.135.

⁶⁸Sudarsono, *National Marriage Law*, 2nd ed., (Jakarta: PT. Rineka Cipta, 1994), p. 209.

on marriage was subject to a judicial review to amend the minimum age for marriage, because it had not been raised, in other words, it had stagnated. Then, in 2014, a request for a judicial review was submitted to the Constitutional Court under case number 74/PUU-XII/2014.⁶⁹ The judicial review with case number 74/PUU-XII/2014 was unsuccessful, as it was rejected. The hearing was opened by Constitutional Judge Arief Hidayat and attended by all the petitioners.⁷⁰ The reason for the petitioners' judicial review of the 1974 Marriage Law was based on the phrase "16 years of age" because it contradicted other regulations, such as the regulation in Article 7 paragraph (1) of the Marriage Law, which had caused legal uncertainty and violated the rights of children as stipulated in Article 1 paragraph (3), Article 28B paragraph (2), and Article 28C paragraph (1) of the 1945 Constitution.

In addition, it can be concluded that: Child marriage will endanger the survival and growth of children and place them in situations prone to violence and discrimination. Marriage requires physical, psychological, social, economic, intellectual, cultural, and spiritual readiness. Child marriage cannot fulfill the marriage requirements stipulated in Article 6, namely the free will of the prospective bride and groom, because they are not yet adults. The Court essentially stated that determining age is an open legal policy, which means that in order to make legal changes, particularly regarding the determination of the minimum age for marriage, a lengthy legislative review process will be required.⁷¹

In this regard, I believe that it is time for immediate legal changes to be made regarding the issue of the minimum age for marriage, namely through a Court ruling as a form of law through social engineering (law as a tool of social engineering) which, in the case in question, will have an impact in the form of adjustments to the implementation of the Marriage Law, which will also have an impact on efforts to change the culture and tradition of child marriage as it has been practiced in society.⁷² Based on all of the above reasons and in order not to prolong the legal uncertainty that has prevailed so far, I am of the opinion that the Petitioners' request that the phrase "16 (sixteen) years of age" in Article 7 of the Marriage Law is constitutional if interpreted as "18 (eighteen) years of age" is legally justified. Therefore, the Court should grant the Petitioners' request.⁷³

The basis for the review is Article 1 paragraph (3): "contains matters concerning Indonesia as a state based on the rule of law, which means that all aspects of national, community, and state life are based on applicable law," Article 28A: "Every person has the right to live and the right to defend their life and livelihood." Article 28B paragraph (1): "Every person has the right to form a family and continue their lineage through a legal marriage." Article

⁶⁹ See the Minutes of the Constitutional Court Decision No. 74/PUU-XII/2014, p. 16

⁷⁰ See the Minutes of the Constitutional Court Decision No. 74/PUU-XII/2014.

⁷¹ See the Minutes of the Constitutional Court Decision No. 74/PUU-XII/2014, p. 21.

⁷² See the Minutes of the Constitutional Court Decision No. 74/PUU-XII/2014, p. 10.

⁷³ See the Minutes of the Constitutional Court Decision No. 74/PUU-XII/2014, p. 10.

28B paragraph (2), Article 28C paragraph (1), Article 28D paragraph (1), Article 28G paragraph (1), Article 28H paragraph (1), Article 28H paragraph (2), Article 28I paragraph (1), and Article 28I paragraph (2).

These articles give rise to contradictions, uncertainty, and legal ambiguity, thereby causing injustice.⁷⁴ Several religions practiced in Indonesia and various cultural backgrounds in the archipelago have different regulations regarding the age of marriage. One example is that Islam does not regulate the minimum age for marriage, but it is commonly understood that a person must be mature, of sound mind, able to distinguish between good and bad, and thus able to give their consent to marriage. As explained by witnesses, experts, and related parties during the trial, child marriage is indeed vulnerable and has the potential to face various problems, ranging from physical health, especially reproductive health, mental health, psychological and social barriers, and, last but not least, the potential for economic difficulties in meeting basic needs, all of which can lead to divorce and the abandonment of the children born to the couple.

Such marriages also add to the economic burden on the family left behind or those who bear the responsibility for the needs and livelihood of family members who have experienced divorce. The explanation of Article 7 paragraph (1) of the Marriage Law states, "To protect the health of husbands and wives and their offspring, it is necessary to set age limits for marriage." This is in accordance with the noble purpose of marriage and to avoid various problems. In this case, Ahmad Rajafi argues that Article 7 paragraph (1) of the 1974 Marriage Law is not only inconsistent and incompatible with the 1945 Constitution, but also incompatible with the law that was enacted after it, namely Law Number 23 of 2002 concerning child protection. Article 1(1) states that "A child is a person under the age of 18 (eighteen) years, including a child in the womb." Then, Article 1 Number (2) mentions that Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination.⁷⁵

Another reason for the judicial review petition is that the petitioners believe that the regulation has led to numerous cases of child marriage, particularly among girls, because it still stipulates that the minimum age for marriage for girls is 16, even though 16-year-olds are still considered children. According to the petitioners, this deprives children of their human rights and does not provide fair legal certainty as mandated in the 1945 Constitution.⁷⁶ In addition to the above, the petitioners also questioned Article 7 paragraphs (1) and (2), arguing that these provisions legitimize child

⁷⁴ Ahmad Rajafi, *The Progressiveness of Family Law in Indonesia: An Analysis of Constitutional Court Decisions on the Judicial Review of Several Articles in the Marriage Law*, 1st ed., (Yogyakarta, Istana Publishing, 2018), p. 70

⁷⁵ Ahmad Rajafi, *The Progressiveness of Family Law in Indonesia (Analysis)*, p. 71.

⁷⁶ See the Minutes of the Constitutional Court Decision No. 74/PUU-XII/2014, p. 12.

marriage in Indonesia. Another problem with these provisions is that they threaten children's reproductive health and cause problems related to children's education.⁷⁷

After submitting a request to the Constitutional Court for a judicial review of Law No. 1 of 1974 on marriage, particularly Article 7 paragraphs (1) and (2) on the minimum age for marriage, to be amended because the age of 16 is still too young and contradicts other laws, was rejected by the Constitutional Court judges. However, efforts to conduct a judicial review continued until it was approved for amendment. as evidenced by the enactment of a new law on the minimum age for marriage, namely Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. This law was passed on October 14, 2019, by the House of Representatives and the President of the Republic of Indonesia. Article 7 paragraph (1) states, "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years."⁷⁸ Therefore, under this new regulation, marriage is only permitted for those who have reached the age of 19. Those under the age of 19 are permitted to marry if they have obtained a marriage dispensation, which can be obtained for urgent reasons as stipulated in Article 7 paragraph (2) of 2019.⁷⁹

The government's reasons for amending Law No. 1 of 1974 on Marriage to Law No. 16 of 2019 are based on several considerations, namely: The state guarantees the rights of citizens to form families and continue their lineage through legal marriage, guarantees the rights of children to survival, growth, and development, and the right to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia. Marriage at a young age has a negative impact on children's growth and development and will result in the non-fulfillment of children's basic rights. In order to implement the decision of the Constitutional Court of the Republic of Indonesia Number 22/PUU-XV/2017, it is necessary to amend the provisions of Article 7 of Law Number 1 of 1974 concerning Marriage.⁸⁰

In the author's opinion, there is no difference between the first regulation and the second regulation after the amendment, except for the change in age, because when looking at the substance of the two laws, they have the same objective, namely the common good and preventing underage marriage or child marriage, given the many harmful effects, both

⁷⁷ See the Minutes of the Constitutional Court Decision No. 74/PUU-XII/2014.

⁷⁸ See the State Gazette of the Republic of Indonesia No. 186, 2019 concerning amendments to Law No. 1 of 1974, p. 3.

⁷⁹ Article 7 (2) "In the event of a deviation from the age requirements as referred to in paragraph (1), the parents of the groom and/or the parents of the bride may request a dispensation from the Court for very urgent reasons, accompanied by sufficient supporting evidence."

⁸⁰ See the State Gazette of the Republic of Indonesia No. 186, 2019 concerning amendments to Law No. 1 of 1974, p. 2.

psychologically and health-wise.⁸¹ From a psychological perspective, a person is considered an adult after passing through adolescence, and adolescence ends after childhood, marked by faster physical growth than before. Rapid physical growth in adolescents, both internally and externally, has many consequences for behavior, attitude, personality, and health.

According to health experts, the impact of early marriage on various aspects of health is also very dangerous. Even though the couple has experienced menstruation and wet dreams, it does not rule out the possibility that there are still many diseases that can affect both of them.⁸² For example, in women, a uterus that is not yet strong enough can result in a weak womb, and more dangerously, it can trigger uterine cancer. From the above explanation, the policy implemented by the government to impose age restrictions on marriage is an appropriate policy and does not deviate from the rules in Islamic law because it refers to the interests of those who are going to get married, both in terms of health, offspring, and physical well-being, as well as from the policies made, both from Law No. 1 of 1974 on marriage, specifically regarding the age limit for marriage, which was later amended to Law No. 16 of 2019, can grant rights to the Indonesian people.

CONCLUSIONS

Based on the above discussion, it can be concluded that marriage in Islam is a sacred institution that has both religious value and a profound social function. However, the practice of early marriage remains a complex issue among Indonesian Muslims, mainly due to differences in perspective between classical fiqh law, which is textual in nature, and positive law, which is contextual in nature. Classical fiqh views biological maturity (*balig*) as a measure of readiness for marriage, while Indonesian positive law through Law Number 16 of 2019 sets the age limit at 19 years as a form of protection for children and women. This difference requires harmonization through a contextual approach to Islamic teachings in order to be in line with *maqāsid al-syarī'ah*, which is to protect human life, offspring, and reason. Therefore, it is necessary to reconstruct the understanding of society and religious leaders regarding marriage law by emphasizing its objectives of benefit and social relevance, so that Islamic family law can develop dynamically in accordance with the needs of the times without abandoning the basic principles of sharia.

⁸¹ Zakiyah Daradjat, *Adolescents: Hopes and Challenges* Bandung: PT. Remaja Rosdakarya Offset, 1995), p. 8.

⁸² Novia Indah, [Http://Www.kompasiana.com](http://www.kompasiana.com), accessed on May 22, 2016, 7:29 PM.

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