

Minimum Legal Age of Marriage and *Maslahah Mursalah* in the Marriage Law in Indonesia

Nurnazli^{1*} Erina Pane¹

¹*Faculty of Syariah, Universitas Islam Negeri Raden Intan Lampung, Bandar Lampung, Indonesia*

^{*}*Corresponding author. Email: Nurnazlibukhari1971@gmail.com*

ABSTRACT

Chapter 7, verse (1) of the Marriage Law (UUP) in Indonesia formulates that the minimum age for marriage is 19 years for men and women. The basic consideration of the legislators forming the UUP is that the minimum limit is for the benefit (*maslahat*) of children. Nash (text) of the Qur'an and Hadith as the main sources of Islamic Law, do not set a minimum age limit for getting married, but only set conditions for having *baligh* (age of sexual maturity) for men and women. Then the focus of this research is to study the *maslahat* (the benefits) and its application in UUP legislation related to the minimum age of marriage. The research question to be examined is how to implement the concept of the *maslahah mursalah* (which is to get benefit from the stipulation of law from a particular case) in the legislation on Marriage Law in Indonesia, especially about setting the minimum age for marriage. The method used is literature research, using secondary data from legal sources and sources of Islamic law. The findings of this study conclude that the prosperity regulates the minimum age limit for marriage at the level of *Hajiyah* that is not in *tahsiniyyah* condition: therefore, it is justified to set the marriage age limit in the perspective of the *maslahah mursalah*. This *maslahat* (benefit) is in line with the purpose of the establishment of Islamic law, which is to bring *maslahah* or benefit, and to avoid *mafsadat* or damage due to the bad thing. The existence of rules about the minimum age for marriage can minimize marriages at the young age. The *mafsadat* of marriage at the young age is greater than its *maslahat*, because those aged less than 19 years are not yet mature physically and mentally.

Keywords: *Maslahah mursalah, minimum age of marriage, legislation*

1. INTRODUCTION

The issue of marriage at a young age is a very crucial in Indonesia so that it becomes one of the national legislation program agenda which receives its attention. Changes in the laws and regulations governing the minimum age of marriage face considerable challenges because they are related to political, cultural, religious, social, economic, and geographical factors.

The presence of Marriage Law Number 1 in 1974 which was later refined by Law Number 16 in 2019 (then referred to as Marriage Law), is the result of hard work forming the Marriage Law, by accommodating all the people's aspirations from various social elements so that it becomes one unit (unification). The establishment process caused many conflicts, debates, and differences of opinion, which was caused by the fact that Indonesian society was very pluralistic, multicultural, and multi-religious. On the other hand, Indonesia is a country that's the greatest Islamic followers and the number of followers is greater than other religions so that in the legislation process marriage law needs to consider the common interests. As a country whose population is predominantly Muslim, Indonesia is classified as a country that is lagging in updating marriage law regulations, which in 1974

Indonesia formed the unification of marriage law in Indonesia.[1]

Some things that are regulated in the Marriage Law in Indonesia are textually different from the texts of the Qur'an, Hadith and *fiqh* studies, even though the majority of Indonesia's population adheres to Islam. There are provisions in the Law that are not found regulating in the Qur'an, Hadith and classical *fiqh* books. Like, determining the minimum age of marriage, marriage dispensation, marriage registration, permit for polygamy, the validity of *thalaq* and divorce before the court, joint property, marriage agreements, marriage *isbat*, and so forth.

The formation of marriage law in Indonesia is inseparable from the dialectical tradition between local culture and Islamic law that has taken root in Indonesian society. The cultural dialectics is formed through multicultural and pluralistic models of acculturation and inculturation. On the next trip, inculturation began to be abandoned by the bearers of Islamic teachings to Indonesia, because the quantity of Muslims in Indonesia has been well developed.[2] Therefore, to dialogue between local culture and Islamic law requires understanding and applying methods of extracting Islamic law in the study of *Usul Fiqh*, one of which is *al-Maslahah Mursalah*, which is the focus of this study.

When there is no Qur'anic text or Hadith specifically referred to as *al-maqsih'alaih*, but it contains the purpose of *shara'* in general, such as to preserve the soul, preserve religion, preserve property, preserve offspring, and preserve reason, then it can be accepted as a legal basis. In the study of *usul fiqh* something of *maslahat* value that is in line with general instructions of the *shari'ah* and does not conflict with the general principles of *shari'ah*, which is called *maslahah mursalah*.

Based on the description above, a research question emerge which will be analyzed in this study, which is how to implement the concept of the *maslahah* in the Legislation on Marriage Law in Indonesia, specifically related to the determination of the minimum age of marriage.

Research related to *maslahah mursalah* of marriage law in Indonesia has been written by several previous researchers, including Mahmudin Bunyamin (2019) on the Application of the Concept of Maslahat in Marriage Law in Indonesia and Jordan.

Sulastrri Caniago (2015) related to Marriage Registration in the *Maslahah* Approach. This paper concludes that marriage registration should be made part of the marital harmony. To eliminate the *mudharat* (something that may cause negative effect) and give birth to the *maslahat* it is necessary to have strict sanctions in the application of marriage registration rules. [3]

Muhammad Jihadul Hayat (2018) the writing of The History and Purpose of the Minimum Age of Marriage in Legislation of Indonesian Muslim Families and Muslim Countries. The results of this study suggest that the minimum age of marriage needs to be regulated as an effort by the state to maintain public order and importance.[4]

2. RESEARCH METHODS

This research is a type of literary research by examining normative aspects that examine written legal aspects by analyzing marital regulations in Indonesia. The research data were obtained from secondary data in the form of the source of Islamic law in the Qur'an and Hadith, a positive source of law in the form of legislation relating to marriage. Then describe in detail and systematically some aspects that were made the object of study, including setting the minimum age of marriage, marriage registration, and marriage agreements. The approach used is an interdisciplinary approach, which synchronizes normative, juridical, philosophical and sociological studies. According to Khoiruddin Nasution, this synchronization can be raised in an integrated, interdisciplinary, and interconnective manner.[5] The analysis of the research was conducted in a descriptive qualitative manner. 1.1. Related Work

According to the generation type of assumptions, we divided the existed work into two categories.

3. DISCUSSION

3.1. *Maslahah Mursalah as a Source of Islamic Law*

The term *maslahah mursalah* is also known as *al-istislâh* or *al-istidlal al-mursal*, which is to get benefit from the stipulation of law from a particular case. Imam Malik was the first initiator of the concept of the *maslahah* which stated that the *maslahah* which could be used as a source of law must meet several criteria, which is in accordance with the objectives of the *syar'i* and generally supported by the texts and not against the texts. The term *maslahah mursalah* is also known as *al-istislâh* or *al-istidlal al-mursal*, which is to get benefit from the stipulation of law from a particular case.[6, p. 14]

The birth of thought to create new interpretations of the *nash* (texts), even leaving the *nash* by prioritizing *maslahah* in *istinbath* law turned out to have the support of certain scholars (*ulama*). This shows the awareness to accept the transformation of Islamic law, especially in the field of family law through rational methodological reform. This step is not only able to improve the study of Islamic law in Indonesia but also at the same time as *tabyîn*, *tahdîd*, and *takhshîs* the provisions of family law will experience a shift in the form of *tajdîd al-hukm* and *tabdîl al-hukm*. Laws that were considered the public interest in the past are not necessarily seen as *maslahah 'ammah* in the present.[7]

Everything that is considered good and in line with the aim of *syara'* in the stipulation as the law is called *maslahah*. *Jumhur ulama* (scholars) agreed, what according to reason is considered good and in line with the aim of *shariah'*, and there is no hint of *shariah'* which rejects it and is useful for many people, then it can be accepted as law. Therefore, this problem of *mursalah* is principally accepted by *fiqh* scholars in Indonesia. [8]

Maslahah mursalah can be applied when fulfilling the following requirements: *First*, *Daruriyah* (very essential and basic benefit). *Secondly*, *qath'iyyah* (the benefit it contains is very clear and firm). *Third*, *Kuliyyah* (the problem is universal). *Fourth*, *Mu'tabarah* (benefit based on the universal proposition of the whole *qarinah*).[9]

Malikiyyah Ulama (Scholar) and Hanafiyyah hold that the problem of the masses is the *hujjah syar'iyyah* and the proposition of Islamic law. The rationale is: (1) The command of al-Qur'an in Surah al-Nisa verse 59 to return to the Qur'an and Sunnah in resolving disputed issues. With the *wajh al-istidlal* where the dispute occurred because of new problems that are not found in the Qur'an and the Hadith. Solving these problems can be pursued through the *qiyas* method and can also with other methods such as *istislâh*, which is *maslahah mursalah* as a basis for legal considerations. (2) Hadith of the Messenger of Allah who gave the blessing to Muaz bin Jabbar to do the *jihad* when deciding on a problem that is not contained in the Qur'an and Sunnah with the *wajh al-istidlal*, that in doing *ijtihad* there are several methods that can be applied. (3)

The purpose of establishing the law for humans is for the benefit of humanity. The benefit is always changing and increasing in accordance with the development of the times. By that, the paradigm of meeting needs has also shifted. So that new problems arise that need solving. For the solution taken by various methods. If the problem of *mursalah* is not considered as part of the *ijtihad* method, so many *maslahat* are ignored.

Imam al-Ghazali set operational limits on the application of *maslahah mursalah* in the determination of the law, there are: 1) *Maslahah* must be in line with the objectives of the *shari'a*, which is protecting religion, life, reason, wealth, and descent/honor. 2) does not contradict the Qur'an and Hadith and also *ijmak*. 3) at the level of *dharūriyyah* (primary/basic) or *hajjiyyah* (secondary) at the level of *dharūriyyah*. 4) *Maslahat qath'i* or *zhanni* that are close to *qath'i*. 5) *dharūriyyah* and *kulliyyah*. [10].

3.2. Application of Mursalah Maslahah Theory in Determining Minimum Age for Marriage

The purpose of marriage in Indonesian Marriage Law the essence is to form a happy, eternal family, based on the almighty God, which in Islamic family law is sharpened by the terms *sakinah*, *mawaddah* and *rahmah* as the foundation to form a strong family, society and nation.[11] Maturity and the quality of the prospective husband and wife determine the achievement of the goals of the marriage, or in other words, marriages at a human age that are not enough have the potential to cause social problems, such as divorce, domestic violence, economic problems, maternal mortality, and other social problems.

Law Number 16 in 2019 concerning Amendment to Law Number 1 in 1974 concerning Marriage, has changed the provisions of Chapter 7, formulating that:[12] (1) Marriage is only permitted if men and women have reached the age of 19 years; (2) In the event of a deviation from the age requirement as referred to in Verse (1), the male parent and/or female parent may request a dispensation from the Court on the grounds that it is very urgent accompanied by sufficient supporting evidence; (3) The granting of dispensation by the Court as referred to in Verse (2) must listen to the opinions from both side of the prospective bride and groom who are going to get married; (4) Provisions regarding the condition of one or both parents of the prospective bride as referred to in Verse 6 Chapter (3) and Chapter (4) shall also apply the provisions concerning dispensation requests as referred to in paragraph (2) without reducing the provisions as referred to in Verse 6 Chapter (6).

This law adheres to the principle, that the prospective husband and wife's body and soul must have matured to be able to carry out the marriage, in order to realize the purpose of marriage properly without ending in divorce and get good and healthy offspring. For this reason, a marriage must be avoided between prospective husband and wife who are still underage.

Islamic law does not set a minimum and maximum age of marriage, but what regulated is the age of *baligh* as a measure to be ready to accept the imposition of *taklifi* law. Similarly, previous scholars did not discuss the minimum age limit but rather studied the law of marrying a young child. Child age marriage in *fiqh* is termed the marriage of *al-shaghir/shaghirah* or *al-zawwaj/al-mubakkir*, which is interpreted as a child. What is meant by the scholars is the boys and girls who have not yet reached the age of eight.[13]

Besides that Islamic law textually does not provide a limit on how old is allowed to get married, but the limits that exist in the guidance of Islamic law are *baligh*, think rational and *mumayyiz*. *Baligh* is not determined based on age but is measured by adulthood, like, for men marked by wet dreams, and for women marked by menstruation. Each person is not the same age when entering this period because it is strongly influenced by biological maturity. One of the decrees of Islamic *Shari'a* is to maintain the sanctity of offspring (*hifz al-nasl*) born from a legal marriage. To produce quality descendants requires physical and spiritual readiness for the prospective bride and groom and the age and physical maturity that are ready to carry out the procession of reproduction.

Baligh is a period of entering adulthood which is marked by passing semen for men and has menstruated for women. Of course, everyone does not have in common when and at what age he enters this period, for example, there are girls who start menstruating at the age of 9 years, there are those who start at the age of 16 years and so on because this is influenced by different biological maturity. Similarly, the maximum limit there is no uniformity.

Imam Abu Hanifah set the age of limit for the child's age after a person reaches the age of 18 for boys and 17 for girls. Meanwhile, according to *jumhur ulama*, which is if a person has reached the age of 15, both male and female.

Wahbah al-Zuhailiy explained *baligh* to marry with criteria until someone reached the age threshold to carry out marriage, in which according to the age of marriage until a man arrived at the time of *ihtilam* (dream), that is when he had reached the age of *baligh* and had been burdened with the law *taklifi*, and other *wadh'i* laws. If it is calculated, it happens at around 15 years of age according to Imam Shafi'i and Ahmad.[14]

The Qur'an provides guidance that someone who is going to get married must have the ability and readiness physically and mentally. Allah says in the Qur'an (QS: Al-Nur [24]: 32), which means, "And marry those who are alone among you and those who are worthy (of marriage) from your male servants and your female servants. If they are poor Allah will enable them with His blessings. And Allah is vast (His gift) and Omniscient".

In another verse, (QS: Al-Nisa [4]: 6) it is also explained that, "And test the orphans until they are old enough to marry. Then if in your opinion they are smart (good at maintaining the property), then give them their property. And do not eat the wealth of orphans more than the limits of propriety and (do not be) in a hurry (spend it) before they grow up. Whoever (among the caretakers) is capable, he should refrain (from eating the property of the orphan)

and whoever is poor, so he may eat the treasure according to what is appropriate. Then if you hand over their assets, you must hold witnesses (about the surrender) for them. And Allah is sufficient as the Superintendent (for that testimony)". (QS: Al-Nisa [4]: 6)

Also explained in the Hadith of the prophet Muhammad SAW, that "Abdullah Ibn Mas'ud Radliyallahu'anhu said: The Messenger of Allah said to us: "O young men, whoever among you has been able to get married, then marry, because it can lower your gaze and maintain your genitals. Whoever has not the power, then he should fast, because fasting can control you". (Bukhari and Muslim).

Rasulullah SAW requires the "ability" that can be interpreted by physical and mental readiness or physical and mental readiness of the prospective husband and wife to carry out responsibilities and household tasks, and this ability can only be exercised by people who have been physically and physically mature.

The excavation of marriage law and family law in Indonesia is not limited to four schools, but can also be taken in *talfiq* (combining the four existing schools or *mazhab*).^[15] An integrative-interdisciplinary understanding is needed in understanding the basic joints of fostering a happy family surrounded by love and affection. It is not enough to be understood only textually-monodisciplinary which only refers to one field of study. Likewise, in understanding the *nash* of marriage need to be highlighted with various aspects of the relevant law, among them is to use a sociological-anthropological approach, in which the texts or *nash* are revealed and applied.

Islamic teachings do not prohibit child marriages (early age), but also do not encourage and do not support child marriages, especially if carried out without considering the mental dimensions, the best rights of children, physical and mental factors of children (especially girls). The aim of *syara'* is the maturity of both sides in forming a household, so that *sakinah*, *mawaddah* and *rahmah* will be formed, and gives birth to strong and healthy offspring, not weak offspring.

One of the decrees of Islamic *Sharia* is to maintain the sanctity of offspring (*hifz al-nasl*) born from a legal marriage. To produce quality offspring requires physical and spiritual readiness for the prospective bride and groom and the age and physical maturity that are ready to carry out the procession of reproduction.

The application of *maslahah* in determining the age limit of marriage in Indonesia is also related to the existence of the *fiqhiyyah* rule "*al-dhararu yuzâl* (eliminating *kemudharatan* or bad thing is a must).

Ibn Syubrumah argued that underage boys and girls were not encouraged to be married until they reached the age of *baligh*, and with the consent of the concerned.^[16]

The age that is considered appropriate for marriage according to the MUI fatwa or legal edict is measured by the ability to do and receive rights (*Ahliatul ada' wa Ahliyyatul wujub*).^[17] *Ahliatul* is the nature of the ability to take legal action for someone who is considered perfect to account for his actions, both actions that are in accordance with the law and that is not in accordance with

the law. *Ahliyyatul wujub* is the ability to accept the rights that are his rights, and have not been able to be burdened with obligations and responsibilities. Therefore, young marriage is not recommended considering that a person who has not been able to manage wealth and has not been able to bear the obligations in life as a husband and wife.

The *maslahat* or benefit of regulating the Limitation of the minimum age of marriage is at the level of *Hajjyyah* that is not in *tahsiniyyah* condition. This *maslahat* or benefit is in line with the goal of establishing Islamic law, which is to bring benefit and avoid *mafsadat*. As is also in accordance with *qaidah fiqhiyyah* "rejecting *mafsadah* is prioritized over getting *maslahah*". If married men and women are not old enough, it is feared that they are not emotionally stable, not ready to give birth to offspring, especially for a woman because her reproductive elements are not ready to give birth to offspring. Pregnancy at young age risks premature birth, low birth weight, bleeding during labor, which can increase mortality. This certainly will bring *mafsadat* for the two prospective husband and wife. Determination of the minimum age of 19 years for marriage can be expected to reduce the birth rate and reduce maternal and child mortality due to the immaturity of the marriage age.

Consideration of determining (legislation) the minimum age of marriage in the view of health science is certainly inseparable from efforts to protect couples who are at risk of marriage at an early age. Immature marriages can cause pregnancy and early childbirth which are correlated with high maternal and maternal mortality rates. Generally based on research conducted by the Department of Health, women under the age of 19 have strong reproductive organs to have sex and give birth. It also correlates to the non-normal condition of maternal health after childbirth because women's physical and reproductive organs are not fully ready to give birth. Marriage at the age of the child is greater than the *maslahat mafsadat*, because those aged less than 19 years are not yet mature physically and mentally.

Girls aged 10 to 14 years are five times more likely to die in cases of pregnancy and childbirth than women aged 20 to 24 years. Globally the quantity of deaths caused by pregnancy is a major cause of death for girls aged 15 to 19 years.^[18]

Indeed, determining the age limit for marriage is the realm of *ijtihad* that can be highlighted in the eyes of the *maslahat*. Among them with the problem *mursalah*. Determination of the age of marriage in the Marriage Law in Indonesia is also part of the *al-mutaghyyirah maslahat*, which is *maslahat* or benefits that can change according to the development of society, and the situation and conditions.

Thus it can be understood that the determination of the minimum age of marriage contains benefits and positive values (benefit). The wisdom of *tasyri'* marriage is to realize a *sakinah* family and in order to obtain quality offspring (*hifdz al-nasl*). Maturity of marital age is one indicator of achieving marital goals, namely the *maslahat* or benefit of married life and security guarantees for a woman's pregnancy. So the existence of age restrictions on

marriage aims to realize and apply the concept of the *masalah mursalah* in marriage.

4. CONCLUSION

Legislation regulating the minimum age for marriage in Verse 7 of Law Number 1 in 1974 Jo Law Number 16 in 2019 in Indonesia is an implementation of the concept of the *masalah mursalah*, because the regulation on the minimum age for marriage is textually not found in the text of the Qur'an and hadith. Age 19 years for men and women in terms of physical and psychological aspects are considered ready for a marriage. Legally they have been able to account for their actions and have matured in making decisions.

Maslahat or benefit related to the minimum age of marriage is at the level of *Hajjyyah* that is not in the condition of *tahsiniyyah*, therefore it is justified to set the marriage age limit in the perspective of the *masalah mursalah*. This *masalah* is in line with the goal of establishing Islamic law, which is to bring benefit and avoid *mafsadat*. The existence of rules about the minimum age for marriage can minimize marriages at the young age. Marriage at the young age is greater the *mafsadat* than the *maslahat*, because those aged less than 19 years are not yet mature physically and mentally. The existence of age restrictions on marriage aims to realize and realize the purpose of marriage as outlined in the Qur'an and Hadith *nash* or texts.

REFERENCES

- [1] Khoiruddin Nasution, *Pengantar dan Pemikiran Hukum Keluarga (Perdata) Islam Indonesia*, 2nd ed. Yogyakarta: ACAdEMIA+TAZZAFA.
- [2] A. Rajafi, "Sejarah Pembentukan dan Pembaruan Hukum Keluarga Islam di Nusantara," *Aqlam J. Islam Plur.*, vol. Vol. 2, no. 1, 2017.
- [3] Sulastri Caniago, "Pencatatan Nikah Dalam Pendekatan Masalah," *JURIS (Jurnal Ilm. Syariah)*, vol. Volume 14, Nomor 2 (Juli-Desember 2015), no. Usia perkawinan, pp. 75–87, Dec. 2015.
- [4] M. J. Hayat, "Historisitas Dan Tujuan Aturan Usia Minimal Perkawinan Dalam Perundang-Undangan Keluarga Muslim Indonesia dan Negara Muslim," *J. Equitable*, vol. Vol. 3, no. 1, 2018.
- [5] Khairuddin Nasution, "Paradigma Implementasi Pendekatan Integrasi-Interkoneksi dalam Kajian Pendidikan Islam, Materi Diskusi pada Seminar Nasional," 2014, p. 9.
- [6] Moh. Mukri, *Rekonstruksi Hukum Islam Indonesia-Kontekstualisasi Konsep Masalah Imam al-Ghazali*. Yogyakarta: Idea Press, 2014.
- [7] Rifqi Kurnia Wazzan, *Epistemologi Masalah Sebagai Pijakan Fiqh Indonesia*. .
- [8] M. Asmara and R. Andira, "Urgensi Talak Di Depan Sidang Pengadilan Perspektif Masalah Mursalah," *AL-ISTINBATH J. Huk. Islam*, vol. 3, no. 2, p. 207, Dec. 2018.
- [9] Hamka Haq, *Al-Syathibi, Aspek Teologis Konsep Masalah dalam Kitab al-Muwafaqat*. Jakarta: PT Erlangga, 2007.
- [10] Al-Ghazali, *Al-Mustashfa min Ilmil Ushul*. Beirut: al-Risalah, 1997.
- [11] Nashih Nashrullah, "Revisi Usia Perkawinan, Muhammadiyah: Umur Nikah Ijtihad," *REPUBLIKA*, Dec-1441.
- [12] Jogloabang, "Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan," *Jogloabang*, Yogyakarta, Oct-2019.
- [13] M. Husein, *Fiqh Perempuan: Refleksi Kiai atas Wacana Agama dan Gender*. Yogyakarta: LKiS, 2009.
- [14] W. al- Zuhaili, *Tafsir al-Munir*. Jakarta: Gema Insani Pers, 2016.
- [15] Saifuddin Zuhri, "Masalah Sebagai Sumber Hukum dan Implikasinya Terhadap Liberalisasi dalam Pembaharuan Hukum Islam Di Indonesia," *Asy-Syir'ah J. Ilmu Syari'ah dan Huk.*, vol. Vol. 43 No. II, Jul. 2009.
- [16] Muhammad Husein, *Fiqh Perempuan (Refleksi Kiai atas Wacana Agama dan Gender)*. Yogyakarta: LKiS, 2009.
- [17] MUI, "Ijma' Ulama," 2009, p. 78.
- [18] Miftahus Sholehudin, "Legislasi Pendewasaan Usia Perkawinan Alternatif Perspektif Hukum Adat Dalam Pembangunan Hukum Nasional," *J. Huk. Samudra Keadilan*, vol. 14, Nomor 1, Jun. 2019.