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Legal Age Equality in Marriage According to Indonesian Positive Law in the Studies of Gender and Maqāṣid Al-Sharia

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Abstract:

Law No. 16 of 2019 has set the legal age allowed for marriage to 19 for both men and women and this change, from previously 19 for men and 16 for women, has sparked a discussion among scholars. This study aims to examine this provision from the aspects of gender and maqāṣid al-sharia. This research uses a normative juridical approach with qualitative data analysis, which concludes that equalizing the age of marriage between men and women at 19 years old has realized gender equality in terms of eliminating discrimination against women in obtaining their rights such as health, education, and economic rights, and can eliminate the dominance of a husband over his wife because marrying at the same age (adulthood) will have a positive effect on the way the couple treats each other. Marriage age equality from the perspective of maqāṣid al-sharia has realized maqāṣid al-tab'iyah (supporting objectives) at the level of al-tahṣīniyah because it makes marriage more prestigious and dignified.

Keywords: marriage age equality; maqāṣid al-sharia; maqāṣid al-tab'iyah, gender equality

Introduction

In the study of contemporary law and the challenges of the modern world, gender theory increasingly has its portion in the discussion of marriage which is quite engaging. The enactment of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is a concrete form that gender equality between men and women is increasingly being fought for.¹ This set of rules contains a legal substance that men and women have the same right to marry,² different from Article 7 of Law Number 1 of 1974 which stipulates that the marriageable age for men and women is 19 and 16 respectively. In addition, it is strongly suspected that this is also to ensure the implementation of the objectives of Islamic law (maqāṣid al-sharia).³

Studies discussing the minimum marriage age have attracted researchers' attention and there are several trends regarding this topic. First, the studies of the provisions on the minimum age of marriage in the fiqh school of thought (mazhab) conducted by Achmad Asrori,⁴ Nur Ihdatul Musyarrafa,⁵ Nur Fadhilah, and Khairiyati Rahmah⁶ and in the law tend to look at the normative aspect of the minimum age of marriage. Second, the studies on the implications or impacts of the stipulation of the minimum age limit of marriage conducted by Nahdiyanti, et.al.,⁷ Jasmaniar, and Muh Zulkifli Muhdar⁸ have a tendency to look at the effects or consequences of setting the minimum age limit of marriage. Third, the studies on the minimum age limit of marriage from various perspectives can be seen in a study conducted by Indrawati et.al.,⁹ Ahmad Masfulul Fuad,¹⁰ and Muhammad Fajri¹¹

¹ Busyro, "Female Imam and Khatib: The Progressive Tradition of Gender-Responsive Practices in Balingka, West Sumatera," *Journal of Indonesian Islam* 11, no. 2 (2017): 531–50, <https://doi.org/10.15642/JIIS.2017.11.2.531-550>.

² Taufik et al., "Menakar Keadilan Gender Atas Perubahan Regulasi Umur Nikah Dalam Uup No 16 Tahun 2019," in *Prosiding Muktamar Dosen PMII* (Pamekasan: STAI Miftahul Ulum, 2021), 603–13.

³ Busyro, *Maqashid Al-Syariah Pengetahuan Mendasar Memahami Masalah* (Jakarta, Indonesia: Prenada Media, 2019), 18.

⁴ Ahmad Asrori, "Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Muslim," *Al-'Adalah* 12, no. 4 (2015): 807–26.

⁵ Nur Ihdatul Musyarrafa, "Batas Usia Pernikahan Dalam Islam; Analisis Ulama Mazhab Terhadap Batas Usia Nikah," *Shautuna Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 1, no. 3 (2020): 703–22, <https://www.ptonline.com/articles/how-to-get-better-mfi-results>.

⁶ Nur Fadhilah, Khairiyati Rahmah, "Rekonstruksi Batas Usia Perkawinan Anak Dalam Hukum Nasional Indonesia," *De Jure: Jurnal Hukum Dan Syar'iah* 4, no. 1 (2012): 49–61, <https://doi.org/10.18860/j-fsh.v4i1.2151>.

⁷ Nahdiyanti, Yunus Ahyuni, and Qamar Nurul, "Implementasi Perubahan Kebijakan Batas Usia Perkawinan Terhadap Perkawinan Di Bawah Umur," *Journal of Lex Generalis* 2, no. 1 (2021): 116–28.

⁸ Jasmaniar and Muh Zulkifli Muhdar, "Batas Usia Kawin Dalam Kaitannya Dengan Permohonan Dispensasi Kawin Di Pengadilan Agama," *Indonesia Journal of Criminal Law* 3, no. 2 (2021): 17–23.

⁹ Septi Indrawati and Agus Budi Santoso, "Tinjauan Kritis Batas Usia Perkawinan Di Indonesia Dalam Perspektif Undang-Undang Nomor 16 Tahun 2019," *Amnesti Jurnal Hukum* 2, no. 1 (2020): 16–23, <https://doi.org/10.37729/amnesti.v2i1.804>.

¹⁰ Ahmad Masfulul Fuad, "Menelaah Kembali Ketentuan Usia Minimal Kawin Di Indonesia Melalui Perspektif Hermeneutika," *Al-Maslahah Jurnal Ilmu Syariah* 5 (2015): 1–24.



tend to look at the age from various perspectives, such as the hermeneutic, legal, and *maṣlahah* or maqāṣid al-sharia perspectives.

The studies on legal age equalization in marriage, according to positive law in Indonesia in the study of gender and maqāṣid al-sharia, have always been intriguing but they have not received much attention from researchers, as they generally focus on the minimum age of marriage and tend to ignore the aspect of equalizing the minimum age of marriage for men and women. While initially, almost all Muslim countries distinguish the minimum age limit of marriage, this research is increasingly engaging with a secular perspective, namely gender and the maqāṣid al-sharia religious perspective.

The purpose of this paper is to examine the extent to which a gender perspective is accommodated in Law 16 of 2019 which is then linked to the concept of maqāṣid al-sharia. At least there are several reasons that the author uses as a basis for researching this area. First, the changes in regulations of marriage law have a significant impact on the culture of society.¹² Second, in the structure of Indonesian society, which is predominantly Muslim, misperceptions about marriage exist, especially among laypeople who are blind to the law. Thus, the formulation of the problems to answer: first, what are the rationale and urgency that make the regulator set the same legal age of 19 years old in marriage for both men and women? Second, what kind of gender perspective and fulfillment of legal objectives (maqāṣid al-sharia) are contained in Law Number 16 of 2019?

The method used to answer the problems was the comparative analysis method, with the result that the data used in the study is not only developed in Indonesia but also seeks to compare it with the concepts of marriage age in other Muslim countries. Therefore, the conclusion drawn is quite comprehensive, covering a gender perspective and maqāṣid al-sharia. This study refers to liberal feminism as the gender theory which implies that there is no difference between men and women. Therefore, women must have the same rights as men. Followers of this theory still reject absolute equality between men and women. Meanwhile, in the view of maqāṣid al-sharia, it refers to the theory that *maṣlahah* can be realized if five main things (*al-ḍaruriyāt al-khams*) are maintained, namely religion, soul, lineage, mind, and wealth. Marriage itself has two objectives which are commonly referred to as the main objective (*maqāṣid al-aṣliyah*) and supporting objectives (*maqāṣid al-tabi'iyah*). The main purpose of marriage is to have children while the supporting goals are *sakinah*, *mawaddah*, and *rahmah*. Despite the different positions of these two goals, both of them must be realized without putting one of them aside.

Results and Discussion

Legal Age for Men and Women in Marriage According to Fiqh and Law in Muslim Countries

Certain countries that adhere to and stipulate Islamic law to create a marriage law in their countries will consider many aspects before enacting the law. These

¹¹ Muhammad Fajri, "Interpretasi Perubahan Batas Minimal Usia Perkawinan Perspektif Maslahat," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 7, no. 1 (2020): 59–69.

¹² Nur Lailatul Musyafa'ah, "Studi Hukum Perkawinan Islam Dalam Perspektif Gender," *Al-Qāmūn* 17, no. 2 (2014): 201–23.

aspects include the religion or people's beliefs and the purpose of the marriage. The religious aspect means that the religion is embraced by the majority because after all the law will be implemented if it is in accordance with the personality and beliefs of the community, while the goal aspect is the realization of a harmonious and happy life in a household.

Realizing the aspects of happiness or household harmony is often associated with a person's maturity. Thus, there is a provision in the law concerning the minimum age of marriage. Islam itself does not explicitly explain the minimum age of marriage for both men and women. Islam only explains the signs, such as nocturnal emissions in men and menarche in women. In addition, even *mujtahid* scholars also did not discuss the ideal age for marriage in detail when explaining marriage, especially about the pillars and conditions of marriage.¹³ The Quranic signal regarding the minimum age of marriage is as follows: "and test the orphans until they reach the marriage age", then in the Quran; An-Nisa [6] mentions, "If you find them mature of mind, hand over to them their property". In the interpretation of the verse of al-ahkam, a boy is considered to reach puberty when he has his nocturnal emission, as has been agreed upon by the scholars that a boy who has a wet dream and he ejaculates, then has reached puberty. Meanwhile, a girl is considered *baligh* (reaching puberty) when she gets her first period (menarche) or can be pregnant.

The age of puberty is marked with a sign in the form of a wet dream for men and menstruation for women,¹⁴ as explained in the book of *al-Fiqh 'ala Madzahib al-Arba'ah* according to Hanafi, a boy starts to have nocturnal emission and ejaculation, and a girl with menstruation. If both do not show any of these signs yet, the legal age in marriage refers to the minimum age of 18 and 17 for men and women respectively. According to Malik, reaching the age of adulthood is marked by ejaculation in a state of imagining or sleeping and this usually occurs in 17-year-old boys and girls. Meanwhile, according to al-Shafi'i, the age limit for hitting puberty is 15 years for men and 9 years for women. Then according to Hambali, it is indicated by having a wet dream for a boy or reaching 15, while for women it is marked by menstruation. The priests of the schools did not agree on the minimum age limit of marriage, but they agreed that *baligh* is an indication of one's maturity.¹⁵

Each of the *fuqaha* mentioned above, especially the most popular four schools of thought, had explained the criteria for a person's puberty, but they differ in estimating the age limit for the realization of these criteria. The difference in estimated age of puberty also differs between men and women, 18 for men and 17 for women according to the Hanafi school, and, 15 for men and 9 for women according to the Shafi'i school. Meanwhile, only the Maliki school of thought

¹³ Hanif Aidhil Alwana, "Aliran Pemikiran Ushul Fiqh Dan Pengaruhnya Terhadap Pendekatan Hukum Islam," *JURIS (Jurnal Ilmiah Syariah)* 19, no. 2 (2020): 147–62, <https://doi.org/10.31958/juris.v19i2.2375>.

¹⁴ Diana Ariswanti Triningtyas and Siti Muhayati, "Konseling Pranikah: Sebuah Upaya Meredukasi Budaya Pernikahan Dini Di Kecamatan Pulung Kabupaten Ponorogo," *JKI (Jurnal Konseling Indonesia)* 3, no. 1 (2017): 28–32.

¹⁵ Yulia Fatma, "Batasan Usia Perkawinan Dalam Hukum Keluarga Islam (Perbandingan Antar Negara Muslim: Turki, Pakistan, Maroko Dan Indonesia)," *JURIS (Jurnal Ilmiah Syariah)* 18, no. 2 (2019): 117–35, <https://doi.org/10.31958/juris.v18i2.1670>.



equates it to 17 years for both men and women.¹⁶ Muslim countries themselves, in general, distinguish between male and female marriage age limits. However, only some of them equate the legal age limit in marriage for men and women, as shown in the following table.¹⁷

Table 1. Minimum Age Marriage in Muslim Countries

No	Country	Minimum Marriage Age	
		Male	Female
1	Algeria	21 years old	18 years old
2	Bangladesh	18 years old	16 years old
3	Egypt	18 years old	16 years old
4	Indonesia	19 years old	16 years old
5	Iraq	18 years old	18 years old
6	Lebanon	18 years old	17 years old
7	Libya	18 years old	16 years old
8	Malaysia	18 years old	16 years old
9	Morocco	18 years old	18 years old
10	North Yemen	15 years old	15 years old
11	South Yemen	18 years old	16 years old
12	Pakistan	18 years old	16 years old
13	Somalia	18 years old	18 years old
14	Syria	18 years old	17 years old
15	Tunisia	20 years old	17 years old
16	Turkey	17 years old	15 years old
17	Jordania	18 years old	17 years old
18	Afganistan	18 years old	16 years old
19	Iran	18 years old	16 years old

The table indicates that only Iraq, Morocco, North Yemen, and Somalia equate the minimum age of marriage for men and women, namely 18 for Iraq, Morocco, and Somalia, and 15 for North Yemen. The table above also explains that Algeria provides the highest minimum age of marriage, which is 21 for men and 18 for women. Meanwhile, the lowest minimum age of marriage applies to North Yemen, which is 15 for both men and women. At least, two factors set the difference in the minimum age of marriage for men and women in Muslim countries as shown in the table above. The first factor is the school of fiqh adopted by each country. For example, Indonesia adheres to the Shafi'i school, Turkey to the Hanafi school, and Morocco to the Maliki school. The second factor is related to the social condition of the people who have not been much influenced by an outside culture. However, from time to time, some Muslim countries have equated

¹⁶ Lestari Nurhajati and Damayanti Wardyaningrum, "Komunikasi Keluarga Dalam Pengambilan Keputusan Perkawinan Di Usia Remaja," *Jurnal Al-Azhar Indoensia Seri Pranata Sosial* 1, no. 4 (2014): 236–48.

¹⁷ Ulfi Azizah and Nur Wahid, "Historisitas Dan Tujuan Aturan Umur Minimal Perkawinan Dalam Perundang-Undangan Keluarga Islam Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 2, no. 2 (2019): 163–77, <https://doi.org/10.24090/volksgeist.v2i2.2822>.

the minimum age of marriage for men and women, as shown in the following table of study results conducted by I Wayan Agus Vijayantera in 2020.¹⁸

Table 2. Minimum Age Marriage in Muslim Countries Updates

No	Country	Minimum Marriage Age	
		Male	Female
1.	Algeria	19 years old	19 years old
2.	Egypt	18 years old	18 years old
3.	Iraq	18 years old	18 years old
4.	Albania	18 years old	18 years old
5.	Antigua dan Barbuda	18 years old	18 years old
6.	Azerbaijan	18 years old	18 years old
7.	Bahamas	18 years old	18 years old
8.	Morocco	18 years old	18 years old
9.	Belarus	18 years old	18 years old
10.	Ethiopia	18 years old	18 years old
11.	Jordan	18 years old	18 years old
12.	Tunisia	19 years old	19 years old
13.	Kenya	18 years old	18 years old
14.	Nigeria	18 years old	18 years old
15.	Uni Emirate Arab	18 years old	18 years old
16.	Malawi	19 years old	19 years old
17.	Korea	18 years old	18 years old
18.	Oman	18 years old	18 years old

Both data above show the strong tendency of countries to equalize the minimum age of marriage. This tendency seems to be influenced by modernity. Modern society expects equality between men and women in various aspects of life, including equality in marital relations. Indonesia itself, based on Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, equates the minimum age of marriage to 19 years old. The change in the minimum age limit in marriage in Indonesia under Law Number 16 of 2019 was initiated by the issuance of Constitutional Court decision No. 22/PUU-XV/2017. The decision on the different minimum ages in marriage—16 and 19 for women and men respectively—is deemed to be discrimination. Therefore, the Constitutional Court declared null and void the provisions of Article 7 paragraph (1) of the Marriage Law, then the Constitutional Court "ordered" the DPR and the government to amend the marriage law no later than 3 years after the decision was read.

Enforcement of Legal Marriage Age According to Positive Law in Indonesia

References and legal guidelines in examining and adjudicating civil religious cases specifically for the Islamic religion refer to the Compilation of Islamic Law under Presidential Instruction Number 1 of 1990 concerning the Compilation of Islamic Law, and various forms of Compilation, as well as other successor

¹⁸ I Wayan Agus Vijayantera, "Jurnal Pendidikan Kewarganegaraan Undiksha Vol. 8 No. 3 (September, 2020)," *Jurnal Pendidikan Kewarganegaraan Undiksha* 8, no. 3 (2020): 22–28.



regulations. To some extent, some aspects regarding, inter alia, the age limit in marriage governed in Islamic law in Indonesia have changed. Constitutional Court Decision Number 22/PUU-XV/2017 asserts that the minimum age requirement for marriage set forth in Law Number 1 of 1974 is no longer relevant simply because it takes into account the health of reproductive health in women and gender equality. Thus, as a form of response to the Constitutional Court's decision which is binding and final, Law Number 16 of 2019 specifically regulates the substance of the minimum age of marriage based on equality before the law. However, efforts to reform family law have always faced heavy resistance, especially from groups that claim to be religiously authorized. Changing family law is considered dangerous because it means changing the essence of Islam. On the other hand, maintaining the marriage law despite its relevance to the needs of the people is seen as an effort to maintain the religion.¹⁹

There are several reasons serving as the basis for changing the marriage age limit set forth in Article 7 of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage. First, with regard to the high rate of child marriage, the data from the national statistics center (hereinafter referred to as BPS) reported that the number of child marriages under the age of 18 in Indonesia in 2013 accounted for 24% and decreased in 2015 to 23%. Meanwhile, according to UNICEF, Indonesia is ranked 7th in the world, or equivalent to 457.6 thousand women married under the age of 15. Second, with regard to the high divorce rate of women who were married under the age of 18, the data from BPS in 2015 alone shows that the number of women married under the age of 18 and divorced accounted for 4.53%, while those who divorced at a marriage age above 18 years tended to be smaller in number (3.02%). In urban areas, the percentage was even higher at 7.02% while those married over 18 represented 3.06%. This percentage increased from 2013 to 2015.

Third, in terms of the low level of education, the data from the Central Bureau of Statistics reported that women getting married before 18 on average attended school until grade 7 or elementary school level, while those getting married after the age of 18 on average finished junior high school. This shows that women who delay marriage until adulthood at the age of 18, are able to complete 9 years of compulsory education, while those who marry under the age of 18 tend to stop before graduating from basic education (elementary & junior high school).²⁰ The reasons and data above show that the dominant reason for changing the minimum age of marriage for women from 16 to 19, the same as the minimum age of marriage for men, is aimed for equality and justice between men and women. This equality includes aspects of the high rate of marriage of girls, the high divorce rate in marriages of girls under the age of 18, and the low level of education of girls if they marry under the age of 18.

¹⁹ Siti Musdah Mulia, *Islam Dan Inspirasi Kesetaraan Gender* (Yogyakarta: Kibar Press, 2007), 122.

²⁰ Hamda Sulfinadia Rabiatul Adawiyah, Asasriwarni, "Analisis Batas Usia Perkawinan Pada Uu No. 16 Tahun 2019 Atas Perubahan Uu No. 1 Tahun 1974 Tentang Perkawinan (Studi Terhadap Pandangan Ilmuan Kota Padang Tentang Perubahan Batas Usia Perkawinan)," *Hukum Islam* 21, no. 2 (2021): 256–78.

The Study of Gender Equality in Equalizing the Legal Age in Marriage for Men and Women from the Perspective of Positive Law in Indonesia

The term “gender” was first introduced by feminist circles in London as a sociological conception in the second half of the 20th century, precisely in 1997. Since then, feminists have no longer used patriarchal or sexist issues in their views.²¹ In Indonesian, the word gender is interpreted as sex. This meaning is inaccurate because gender has a sociological meaning which is used to distinguish the roles of men and women in the aspects of social and cultural life, while sex has a biological meaning which is used to identify men and women in terms of anatomy. This gender movement emerged as a response to hegemony, injustice, discrimination, violence, and oppression of women. In essence, this gender movement seeks to advance women in terms of their status and role in social life. Especially in family life, women are often subordinated in it. Women are often considered complementary and are obliged to carry out mere domestic chores²² due to the sense of motherhood they have. Meanwhile, in public matters, women are considered not to have the ability to perform formal tasks because they do not have adequate rational abilities. There are a number of theories that apply to this gender issue, where structural-functional theory, liberal feminism theory, social-conflict theory, radical feminism theory, eco-feminist theory, and psychoanalytic theory are popular among others.²³ Among these theories, the theory of liberal feminism seems suitable for the issue of age equality. This theory implies that there is no difference between men and women. Therefore, women should have the same rights as men. However, followers of this theory still reject absolute equality between men and women. This group demands that women be fully included in every role, including in public affairs. This is different from other theories that still link the role of women to their reproductive organs that prevent them from playing a role in the public sector.

The equalization of the age of men and women in Positive Law in Indonesia is actually in accordance with the theory of gender equality, especially the theory of liberal feminism as stated earlier because the difference in age between men and women in measuring a person’s maturity is only based on biological standards, not on sociological or psychological grounds. As Hanafi argued, if there are no signs of puberty such as having wet dreams for men and getting menstruation for women, then it is marked by a minimum age limit of 18 for men and 17 for women. According to Mālik, it is 17 years old for both males and females. Meanwhile, according to al-Shāfi’i, the age limit for reaching puberty is 15 for men and 9 for women.²⁴ This kind of age limit is gender-biased. Meanwhile, the meaning of marriage is not just the fulfillment of biological needs, but rather a social and

²¹ Fadhilatul Maulida and Busyro, “Nafkah Iddah Akibat Talak Ba`In Dalam Perspektif Keadilan Gender (Analisis Terhadap Hukum Perkawinan Indonesia),” *Alhurriyah Jurnal Hukum Islam* 3, no. 2 (2018): 113–29.

²² Ramadhita Ramadhita, “Bias Gender Dalam Hukum Acara Perceraian Di Indonesia: Latar Belakang, Dampak, Dan Solusinya,” *De Jure: Jurnal Hukum Dan Syar’iah* 14, no. 1 (2022): 1–20, <https://doi.org/10.18860/j-fsh.v14i1.15966>.

²³ Agustina Damanik, “Kesetaraan Gender Dalam Pandangan Islam,” *Jurnal Al-Maqasid* 4, no. 1 (2018): 71–83.

²⁴ Mulia, *Islam Dan Inspirasi Kesetaraan Gender*.



religious relationship (read: spiritual). In Law Number 1 of 1974 concerning marriage, it is stated that marriage is an inner and outer bond between a man and a woman to create a happy and eternal family based on God Almighty.²⁵

The equal minimum age of marriage for men and women in positive law in Indonesia is a manifestation of gender equality because, at the same age, both parties have the same mature way of thinking to reach the goal of marriage to form a happy and eternal family (household) based on belief in the one and Only God. On the other hand, the development of women's and children's empowerment in Indonesia is directed at improving the quality of life and the role of women, welfare, and child protection in various fields of development; reducing the number of acts of violence, exploitation, and discrimination against women and children; and strengthening gender and child mainstreaming institutions and networks at the national and local levels, including the availability of gender data and statistics.²⁶ The framework of thinking that is built in the design of the long-term development plan as described in the national vision above still looks very abstract and visionary, thereby requiring interpretation in the National Medium-Term Development Plan (referred to as RPJMN in Indonesian).²⁷ Focusing on the issue of raising the legal age in marriage as a form of protection for children and preventing child marriage, the government has formulated the RPJMN by including a clause on raising the marriage age as that increasing knowledge and understanding of reproductive health for adolescents through education and socialization regarding the importance of 12-year compulsory education in the context of maturity age in marriage and increasing the intensity of family planning services for young couples to prevent births at a young age.²⁸

On the other hand, the provision in the former law stipulating that the age of marriage was 16 for women and 19 for men indicates a violation of the rights of girls. This is contrary to human rights because marriage at this age seizes the freedom attached to children, resulting in the loss of children's rights. This is a form of gender inequality because the rights of women as children cannot be fulfilled as well as the rights of men. The lower age limit in marriage for women than men also has the potential for violence against women and puts them at high risk of exploitation, harassment, and violence. The age limit of 16 for women will certainly have adverse impacts on education, health due to early pregnancies, and the economy and such a practice certainly contravenes the Child Protection Law. The Indonesian government, under Presidential Decree No. 36 of 1990, stipulates that "Every child has the right to live, grow, develop, and participate reasonably in accordance with the dignity of humanity, and to receive protection from violence and discrimination." Children who marry at a relatively low age cannot be fully

²⁵ Fadhilatul Maulida and Busyro Busyro, "Nafkah Iddah Akibat Talak Ba`In Dalam Perspektif Keadilan Gender (Analisis Terhadap Hukum Perkawinan Indonesia)," *ALHURRIYAH: Jurnal Hukum Islam (Alhurriyah Journal Of Islamic Law)* 3, no. 2 (2018): 113, <https://doi.org/10.30983/alhurriyah.v3i2.720>.

²⁶ Ianatul Firdaussia, "Pandangan Masyarakat Terhadap Istri Berpendidikan Lebih Tinggi Dari Suami Perspektif Gender," *Sakina: Journal of Family Studies* 6, no. 2 (2022).

²⁷ Mohamad Ikrom, "Syariat Islam Dalam Perspektif Gender Dan Ham," *Humanika* 18, no. 1 (2019): 16–30, <https://doi.org/10.21831/hum.v18i1.23126>.

²⁸ Miftahus Sholehudin, "Legislasi Pendewasaan Usia Perkawinan Alternatif Perpektif Hukum Adat Dalam Pembangunan Hukum Nasional," *Jurnal Hukum Samudra Keadilan* 14, no. 1 (2019): 1–14, <https://doi.org/10.33059/jhsk.v14i1.1081>.

protected from violence and discrimination. The psychological immaturity of a woman in marriage triggers domestic violence. Global data shows that girls who marry before the age of 15 experience a 50% increase in their likelihood of experiencing domestic violence.²⁹

This analysis of legal age in marriage with the concept of gender is also closely related especially to the equalization of the minimum age limit of marriage. Gender studies in many cases are intended to provide equal rights for men and women, which in this case includes that men and women have the same right to marry without first asking the religious court for dispensation after the age of 19.³⁰ Then, the equality that is accommodated in the equalization of the marriage age also seeks to present one of the theories of Islamic law, namely having *kufu* (compatibility). The author considers that gender equality in a positive sense can also be interpreted as a crystallization of a fairly moderate *kufu* approach. Raising the legal age in marriage for women to that of men at 19 is also intended to minimize the impact of women's vulnerability in family dynamics.³¹ The authors, during their study of marriage laws, noted that it is also intended to protect women. Data from the National Population and Family Planning Agency (referred to as BKKBN in Indonesian) implies that one aspect that needs to be updated regarding the age limit for marriage is the hereditary cultural factor regarding child marriage.³² In addition, the BKKBN also released a very high risk for women to be married at a young age.³³

By setting 19 as the marriage age requirement for both men and women, it is possible to guarantee physical readiness and psychological maturity as the main requirements for the realization of maqashid marriage, of course (ideally) for each prospective bride and groom. This is perhaps where the idea and effort to accommodate the idea of equality can have positive implications for the survival of Muslim households in the future, which is also expected to improve the quality of relations and welfare because married life does not only depend on the role of a husband but also the role of a wife.³⁴ Thus, equating the minimum age of marriage between men and women will make them have the same biological, sociological, and psychological maturity, thereby allowing a harmonious dialogue between the

²⁹ Elycia Feronia Salim et al., "Persamaan Syarat Usia Perkawinan Sebagai Wujud Kesetaraan Gender," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 5, no. 1 (2021): 1–19.

³⁰ Rahmi Hidayati, "Pergumulan Undang-Undang Nomor 1 Tahun 1974 Dan Undang-Undang Tentang Perlindungan Anak (Di Balik Dinamika Pengaturan Usia Perkawinan)," *Jurnal Wasatiyah: Jurnal Hukum* 1, no. 1 (2020): 1–14.

³¹ Levana Safira, Sonny Dewi Judiasih, and Deviana Yuanitasari, "Perlindungan Hukum Terhadap Anak Yang Melakukan Perkawinan Bawah Umur Tanpa Dispensasi Kawin Dari Pengadilan," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 4, no. 2 (2021): 210–25, <http://jurnal.fh.unpad.ac.id/index.php/acta/article/view/521/363>.

³² Nailur Rahmi and Elimartati Elimartati, "Reason of Increasing Cases of Marriage Dispensation Against Women's Rights," *Agenda: Jurnal Analisis Gender Dan Agama* 3, no. 1 (2021): 23–33, <https://doi.org/10.31958/agenda.v3i1.2600>.

³³ Dwi Ratnasari, Norma Yuni Kartika, and Ellyn Normelani, "Indikator Yang Mempengaruhi Pernikahan Dini Di Provinsi Kalimantan Selatan," *Jurnal Geografika (Geografi Lingkungan Lahan Basah)* 2, no. 1 (2021): 35–42, <https://doi.org/10.20527/jgp.v2i1.3169>.

³⁴ Moch. Nurholis, "Usia Nikah Perspektif Maqashid Perkawinan: Telaah Syarat Usia Minimum Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor: 22/PUU-XV/2017," *Tafaqquh: Jurnal Penelitian Dan Kajian Keislaman* 8, no. 3 (2020): 1–17.



two. On the other hand, if men are older than women in terms of marriage, this condition will eternalize the dominance of men over women because after all an older person will be naturally more powerful than the younger one.

Equality of Legal Age in Marriage in Indonesia in the Maqāṣid al-Sharia Study

In Islamic law, the law is set for the realization of benefit or goodness for life. According to its theory, this benefit can be realized if five main things (al-ḍaruriyāt al-khams) are maintained, namely religion, soul, descendants, mind, and wealth. Marriage itself has two goals which are commonly referred to as the main goal (maqāṣid al-aṣliyah) and the supporting goal (maqāṣid al-tab'iyah). The main purpose of marriage is procreation while the supporting goals are *sakinah*, *mawaddah*, and *rahmah* (tranquility, love, and mercy). Even though they have different positions, these two goals must be realized without overriding one of them.³⁵

The equalization of the legal age in marriage between men and women is very much in accordance with the maqāṣid al-sharia as stated above because by equalizing the ages of men and women, both goals can be realized. Maybe for the main purpose of marriage to maintain lineage, the age difference between men and women does not cause problems, but the goal of realizing a *sakinah*, *mawaddah*, and *rahmah* (tranquility, love, and mercy) family or what so-called harmony, will create problems. Because, the harmony of a household will be determined by intellectual, social, and psychological maturity. In addition, in the viewpoint of Islamic law, marriage is not only a contract that legalizes sexual relations between men and women but also includes a contract of cooperation (*ta'āwun*) between men and women. Meanwhile, the cooperation agreement requires equal rights and obligations between the individuals involved in the agreement.

Specifically, regarding maqāṣid al-sharia, Shaṭibi divides it into three levels: *ḍaruriyāt*, *ḥājīyyāt*, and *taḥsiniyyāt*. This division is in line with the government's efforts to equalize the marriage age. According to the authors' analysis, the equalization of the legal age in marriage is under *taḥsiniyyāt* legal approach, because the purpose of the equalization determination of the legal age in marriage is to improve and ensure the quality of marriage in the future.³⁶ This update, as described previously, not only takes place in Indonesia, which seeks to legislate Islamic legal values into the state legal system, but other Muslim countries such as Algeria, Egypt, and Iraq also carry out legal renewal regarding the marriage age although with various reasons and considerations.³⁷

In the history of legal renewal regarding the legal age limit in marriage in Indonesia, there are two laws governing it: to amend Law No. 1 of 74 concerning marriage which stipulates the minimum age of 19 for men and 16 for women, and Law number 16 of 2019 concerning changes which essentially regulates the equalization of the marriage age between men and women at 19 as the minimum.

³⁵ Busyro, *Maqashid Al-Syariah Pengetahuan Mendasar Memahami Masalah*.

³⁶ Ramadhita, Sudirman, and Syabbul Bachri, "Model of Zakat Utilization in the Covid-19 Pandemic Era: Perspective of Maqashid Sharia," *Al-Istinbath Jurnal Hukum Islam* 7, no. 1 (2022): 245–68.

³⁷ Muhammad Nur Hasan Latief, "Pembaharuan Hukum Keluarga Serta Dampaknya Terhadap Pembatasan Usia Minimal Kawin Dan Peningkatan Status Wanita," *Jurnal Hukum Novelty* 7, no. 2 (2016): 196–208, <https://doi.org/10.26555/novelty.v7i2.a5467>.

The legal consequence of this update is that a person who has not reached the age of 19 and wishes to get married in Indonesia must apply for a marriage dispensation to a religious court in accordance with their jurisdiction.

Marriage in Islam is intended not only for the legality of husband-and-wife relations but if studied in depth and comprehensively, the concept of marriage is very multi-disciplinary. This statement requires everyone to ensure the quality of their marriage, in order that Allah's prayers and hopes for the person holding the marriage get the feeling of *sakinah*, *mawaddah*, and *rahmah* (tranquility, love, and mercy) when they have prepared and ensured efforts to improve the quality of their marriage. In the authors' academic observation, after examining both the legal consequences and the impact when the quality of marriage is not ascertained through the minimum age limit of marriage, there is something missing in fulfilling the marriage law according to Islam. Moreover, when the quality of the marriage is low and it is strongly suspected that it will reach the stage of divorce, such a marriage is hated by Allah which explains the concept of divorce Himself.

The renewal of the legal age in marriage to 19 for both men and women is highly relevant to the quality of prospective grooms or brides if it is measured by the stage of education in Indonesia. When a child begins to undergo education at the age of 7 years, then boys and girls have already gained 12-year formal and informal education when they reach 19. Thus, the suitability of efforts to improve the quality of human resources both through the education system and determining the marriage age should be interpreted as crystallizing the beneficial values contained in Islamic law. It is also unlikely that in the future the need for education will increase and the marriage age will also experience renewal again.³⁸ Thus, based on the author's analysis and research, the equalization of the marriage age through Law Number 16 of 2019 concerning amendments to Law Number 1 of 74 concerning marriage adopts facts and academic statements that the age of 16 for women has not been able to achieve *maqāṣid al-sharia*. Equating the minimum age of marriage for men and women, it is hoped that the basic principles of *maqāṣid al-sharia*, namely the realization of benefit and the rejection of all harm, will be realized. Particularly in a welfare marriage, giving birth to superior offspring and living a happy and prosperous life both physically and mentally are expected. Superior offspring or generation or what is commonly called the golden generation itself is not only the goal that certain people or families expect to have, but it also represents the goal of Indonesia.

Conclusion

Marriage age equality from a gender perspective for men and women can eliminate discrimination against women in obtaining their rights to health, education, and the economy. Equalizing the age of marriage can also eliminate male dominance over women because they marry at the same age (adulthood) which certainly has a positive effect on the treatment of each other. Equalizing the age of marriage between men and women, which is 19 years old, is appropriate for realizing gender equality. Based on the study of *maqāṣid al-sharia*, the reform of

³⁸ Mughniatul Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 2, no. 2 (2020): 133–66, <https://doi.org/10.37680/almanhaj.v2i2.478>.



Islamic marriage law in Indonesia by equalizing the age of marriage for men and women to 19 has realized maqāṣid al-tab'iyah (supporting and perfecting purposes) to strengthen the achievement of maqāṣid al-aṣliyah (the main purpose of marriage). In terms of the levels of maqāṣid al-sharia, this provision is at the level of al-tahsiniyah because it makes marriage more dignified, and has a tendency to be more responsible and authoritative when compared to marriages performed at a younger age.

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