

The Reconstruction of Aisyah's Marriage Age as a Resolution for Child Marriage Practices Phenomenon

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Abstract: *The Reconstruction of Aisyah's Marriage Age as a Resolution for Child Marriage Practices Phenomenon.* The marriage of Aisyah bint Abu Bakr at a young age with the Prophet Muhammad is often used to legitimize the permissibility of marrying small children in the Islamic world. This is what makes the practice of child marriage difficult to eradicate in Muslim-majority countries. This study aims to see how the impact of child marriage on children, the efforts of Muslim scientists in eradicating the practice of child marriage through the reconstruction of Aisyah's marriage age as well as the government's efforts to eliminate the practice of child marriage during the pandemic. This study is library research using a qualitative approach. The results show that Aisyah's marriage at the age of 6 years was not relevant to the existing evidence. Second, it is true that Aisyah bint Abu Bakr married the Prophet Muhammad at a very young age of 9 or 10 years, but that age was considered appropriate for marriage in the cultural context of people around the world at that time. Third, the government's action to increase the age of marriage to 19 years for men and women is something that is in line with the objectives of Islamic law (*maqāshid al-shari'ah*). Based on these findings, the practices of early child marriage should be prevented, and even prohibited because it is against Islamic Law.

Keywords: Aisyah bint Abu Bakar, child marriage, age at marriage, reconstruction

Abstrak: *Rekonstruksi Usia Perkawinan Aisyah Sebagai Penyelesaian Fenomena Praktik Perkawinan Anak.* Perkawinan Aisyah binti Abu Bakar dalam usia belia dengan Nabi Muhammad SAW, seringkali dijadikan legitimasi tentang kebolehan menikahkan anak kecil di dunia Islam. Hal inilah yang kemudian membuat praktik perkawinan anak sulit diberantas di negara-negara berpenduduk mayoritas muslim. Penelitian ini bertujuan untuk melihat dampak perkawinan anak dan upaya para ilmuwan muslim dalam menghapus praktik perkawinan anak melalui rekonstruksi sejarah usia kawin Aisyah, serta upaya pemerintah dalam menghapus praktik perkawinan anak yang semakin marak di masa pandemi. Penelitian ini merupakan penelitian kepustakaan dengan pendekatan analisis data kualitatif. Penelitian ini menemukan fakta bahwa pertama, perkawinan anak memiliki banyak dampak negatif, baik secara kesehatan, ekonomi, psikologi hingga sosial. Kedua, berdasarkan fakta sejarah, Aisyah menikah pada 9 atau 10 tahun dan berkumpul pada usia 14 atau 15 tahun. Itu adalah usia yang dianggap pantas untuk menikah dalam konteks budaya masyarakat di seluruh dunia pada zaman itu. Ketiga, tindakan pemerintah meningkatkan usia kebolehan kawin menjadi 19 tahun untuk laki-laki dan perempuan merupakan sesuatu yang sejalan dengan

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tujuan disyariatkannya hukum Islam (*maqâshid al-syarî'ah*). Berdasarkan temuan tersebut, perkawinan anak usia dini harus dicegah bahkan dilarang karena bertentangan dengan hukum Islam.

Kata kunci: Aisyah binti Abu Bakar, perkawinan anak, usia perkawinan, rekonstruksi

Introduction

Indonesia is prone to child marriage. The closure of schools during the Covid-19¹ pandemic has contributed to the growth of the practice of child marriage in Indonesia.² Data from the Ministry of Women's Empowerment and Child Protection states that during the Covid-19 pandemic there was an increase in the number of cases of early child marriage. Allegedly the number reached 24,000 cases. Records from the Directorate General of the Religious Courts Agency show that in the January to June 2020 period alone, there were 34,000 applications for a marriage dispensation, 60% of those applying for a dispensation were children under 18 years of age.³ Based on data from the Central Statistics Agency (BPS) and the National Development Planning Agency (Bappenas), it is stated that Indonesia is ranked the 7th highest child marriage in the world, and number 2 in ASEAN.⁴

Child marriage is one of the important issues in modern marriage law. This practice is very inhumane and contrary to human rights (HAM) so it often becomes the spotlight and concern of the international community. One of the arguments used to justify it is by referring to the marriage of the prophet Muhammad SAW and Aisyah bint Abu Bakr, a young girl who was 6 or 7 years old. This is a dilemma, however, the majority of Muslims have never thought of marrying their 6-year-old

¹ About Covid-19, see Zaelani, A. Q., Disemadi, H. S., & Rumawi, M. The Company's Contribution to Overcome the Economic Crisis Due to Covid-19 Pandemic in Indonesia Through Corporate Social Responsibility Policy. *NeuroQuantology*, (2022), 457-466.

² See Heri Susanto. "Trend Pernikahan Antar Pelajar pada Masa Pandemi Covid-19 di Desa Selebung Rembiga Kecamatan Janapria Kabupaten Lombok Tengah." PhD diss., (Mataram: UIN Mataram, 2021).

³ See Tasya Anggraeni, "Kasus Pernikahan Dini Meningkatkan Selama Masa Pandemi." (2021).

⁴ See Mardi Candra. *Pembaruan Hukum Dispensasi Kawin dalam Sistem Hukum di Indonesia*. (Jakarta: Prenada Media, 2021), p. 7-8.

daughter to an adult man who is more worthy of being her grandfather. Even if this is the case, then the perpetrator 'today' will be declared a pedophile, namely someone who has a sexual disorder because he 'likes' minors. Is it worthy of the Prophet Muhammad to be pinned with that title? This study seeks to clarify the truth of Aisyah's marriage age and how the government's efforts to eliminate the practice of child marriage through the renewal of the marriage age limit in Indonesia.

Recognition of human rights in modern times has encouraged many Muslim clerics and scholars to conduct critical studies highlighting the age of Aisyah RA when she married the Prophet SAW. This critical study was pioneered by Muslim scholars from the Indian subcontinent from Maulana Muhammad Ali to Habib-ur-Rahman Siddiqui Kandhalvi. According to them, there was an error in interpreting the factual age of Aisyah when she married the Prophet, Muhammad. All authentic hadiths stating that Aisyah RA married Rasulullah SAW at the age of 6 years and started a household at the age of 9 years only come from one narrator, Hisham bin 'Urwah, the hadith has weaknesses and contradicts other narrations about Aisyah.⁵ Historians also carry out historical criticism by comparing Aisyah's age with her sister, Asma bint Abu Bakr, who has an age difference of ten years. At the beginning of the hijrah, Asma was twenty-seven or twenty-eight years old. Therefore, it is estimated that Aisyah's age when she married was not at the age of 6 years but older than what is understood by Muslims so far.⁶

Research related to child marriage as well as the controversy over Aisyah RA's Marriage Age has been conducted by several scholars. To begin with, Yusuf Hanafi in his research entitled "*The Controversy of Aisyah RA's Marriage Age and Its Relation to the Legality of Underage Marriage in Islam*" rejects the criticism of the hadith by the reforming scholars.

⁵ Habibur Rahman Siddiqui Kandhalvi, *A Research Work: Age of Aishah, the Truthful Woman*, (Karachi: al-Rahman Publishing Trust, 1997) p. 37-38. See Yusuf Hanafi, *Aisyah dinikahi Nabi di Usia Kanak-kanak Mitos atau Fakta?* (Malang: IKIP Malang, 2015), p. 5; Wahyuni Shifatur Rahmah, "Mengkritisi Hadis-hadis tentang Usia Pernikahan Aisyah", *Musawa Jurnal Studi Gender dan Islam*, 8.2 (2009), 163-183.

⁶ Putri Rahayu dan Ahmad Muzhaffar, "Perempuan dan Pernikahan dalam Perspektif Hukum Islam", *Jurnal Musawa*, 21.1 (2022), 46.

According to Yusuf Hanafi, the traditions that report the marriage of the Prophet Muhammad with Aisyah RA at a young age are absolute "no problem", both from the *sanad* (chain of hadith narrators) and *matn* (hadith content) side, even the hadiths are categorized as having reached the *mutawâtir* (qualified hadith) level. On the other hand, the effort to criticize the hadith has the opportunity to undermine the credibility of the Sunnah of the Prophet as a source of law in Islam. For this reason, Yusuf Hanafi provides a legal breakthrough to overcome the practice of child marriage, namely by combining approaches between texts (religious texts), *Maqâshid al-Sharî'ah* (ideal-moral), and international human rights instruments and national laws. The editor of the text must be combined with the actual reality, by exploring the universal-moral-ideal contained in the text, which allows it to be used as a foothold or starting point for the different and conditional praxis of reality. This is very important to do considering the understanding of religion will be more appreciated with the parameter: how much it contributes to human benefit.⁷

Next, Adamy in his Thesis entitled "Hadith on Aisyah Marriage (Hermeneutical Hadits Approach of Khaled Abou El-Fadl) attempted in reviewing the Hadits of Aisyah's age when she was marrying the Prophet Muhammad SAW by using hermeneutical approach of Khaled Abou El-Fadl. Adamy has a concern about the justification of early marriages in the name of God's Command by taking the story of Aisyah wedding. This notion is still debatable. The study showed that the hadits related to Aisyah marriage at a young age are considered to rise the values of universality, something commanded in that era id considering the socio-historical structures, economic, and political condition. Relating to historical circumstances, the marriage of the prophet Muhammad to Aisyah in Mecca firstly was not obligated in Qur'an, but it was only his dream. The focus of Muhammad was to protect the Muslims in order not to be *kufir*. Regarding social as well as moral consequences, the hadits may have tremendous potential to make contradiction of social structure in today's era. The hadits should not be used as a source if there is no

⁷ Yusuf Hanafi, "Kontroversi Usia Kawin Aisyah Ra dan Kaitannya dengan Legalitas Perkawinan Anak di Bawah Umur dalam Islam", *Jurnal Istinbath*, 15.2 (2016), 163-334.

reason to humanize them. This hadits should be comprehended with a contextual perspective.⁸

In addition, Moch. Nurcholis and his friend conducted another research mainly focused on the substantive maturity of Aisyah's marriage.⁹ The research finding concluded that although the marriage of Aisyah was conducted at a very young age, the element of substantive maturity namely physical maturity such as reproduction and non-physical (intellectuality) has been fulfilled. The contextualization of Aisyah marriage age as reflected in hadits was carried out by sorting and determining the element of purpose (*al-hadaf*) and the element of means (*wasilah*).

Maisarah and friends studied *the minimum marriage age: Study of Fiqh of Four Madhabs*.¹⁰ In the research, the formulation of the problem mainly focused on how the interpretation of the four madhabs (Islamic jurisprudence) of thought is used and whether are there other arguments that can be used in reinterpreting the existence of a minimum age of marriage. While Maisarah study the four madhabs, Imam Subchi and friends conducted research entitled *Legal Policy of Child Marriage in the Covid-19 Pandemic Period*.¹¹ The research showed that the government's policy during the covid-19 pandemic has had a huge impact on the communities' order, especially the economic factor. Regulation related the education played a significant role in the increase in the number of child marriages. The pandemic has forced the teaching and learning system to be modified into a remote learning program (PJJ). Home learning circumstances resulted in too much free time misuse, promiscuity, and causing an unwanted pregnancy. Thus, children's rights violations become unavoidable.

⁸ Ahmad Yusuf Adamy, *Hadith on Aisyah Marriage (Hermeneutical Hadits Approach of Khaled Abou El-Fadl)*, (Semarang: Faculty of Ushuluddin and Humaniora, 2016).

⁹ Moch. Nurcholis, Mohammad Fajrul Falah Afandi, Maila Aflahul Karimah, and Abdul Latif, "Substantive Maturity in Aishah's Marriage", *Hikmatuna: Journal for Integrative Islamic Studies*, 7.2 (2021).

¹⁰ Maisarah, Afrizal, Zulfahmi, Fizal Mauliza, and Faisal Murni, "Minimum Marriage Age: Study of Fiqh of Four Madhabs". *Britain International of Humanities and Social Sciences Journal*, 1.2 (2019).

¹¹ Imam Subchi, Qosim Arsadani, Muhammad Ishar Helmi, and Efin Faridho, "Legal Policy of Child in the Covid-19 Pandemic Period". *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 5.2 (2021).

Research Method

This research is a literature study that uses qualitative data analysis, aiming at knowing the negative impact of child marriage, the efforts of Muslim scientists in eliminating the practice of child marriage, as well as the government's efforts to increase the marriage age to eliminate the practice of child marriage. There are several approaches used In this study, namely; 1) the conceptual approach, 2) the historical approach, and 3) the legislation approach. The data is processed through three stages, namely data reduction, data presentation, and conclusion drawing.

Negative Impact of Child Marriage

Classical fiqh books term child marriage as *al-shagîr* or *al-shagîrah* marriage, the opposite is *al-kabîr* or *al-kabîrah*. While modern fiqh books call it *al-zawaj al-mubakkir* or early marriage.¹² According to the language *shagîr* and *shagîrah* means small, but what is meant here is a male or female who is still young, not yet mature, and baligh. The majority of *fuqahâ* define marriage *al-shagîr* as a marriage performed by a child who has not yet reached puberty for men and has not reached the age of menstruation for women.¹³

In men, it can be said to be puberty when they have experienced *ihtilâm*, namely the release of sperm either in a dream state or in a conscious state. While the provisions for puberty in women are marked by the arrival of menstruation or menstruation which according to the Shafi'i school occurs at the age of 9 years. A woman can also be considered puberty because she has been pregnant or is pregnant. If there are no these signs, then the criteria for *bâligh* and *bâlighah* are determined based on age. Abû Hanîfah argues that the age of puberty for boys is 18 years and for girls 17 years. Meanwhile, Abû Yusuf bin Hasan and al-Shâfi'i stated that the age of 15 years for both men and women. According to

¹² Nurkholis, "Penetapan Usia Dewasa Cakap Hukum Berdasarkan Undang-undang dan Hukum Islam", *Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam*, 8.1 (2017).

¹³ Muamal Hamidy dkk, *Terjemahan Nail al-Authar*, Vol. 6 (Surabaya: Bina Ilmu, 2005), p. 252.

Faudzil Adzim, two terms are often used when talking about underage marriage, namely early marriage and age marriage.¹⁴

In the Indonesian Dictionary (KBBI), the word "early" or "underage" means "early morning" or not yet. So early marriage can be interpreted as marriages carried out to couples who are not yet married. It is also stated that early marriage is the marriage of a man or a woman who has not yet reached puberty.¹⁵ If the age of puberty is determined by the year, then early marriage is marriage under the age of 15 according to the majority of fiqh experts, and under 17 or 18 years according to Abu Hanifah. However, the analysis of age in marriage is still controversial.

Early marriage has many bad impacts not only on the girls who are the perpetrators but also on their offspring. These negative impacts include:

1. Health Impact

The majority of women who marry at a young age do not yet have mature reproductive organs so when used for marital relations, they are prone to causing bleeding, infection, trauma, uterine cancer, and neuritis which are very dangerous for the woman. Female reproductive organs that are not ready to be fertilized are also prone to miscarriage.¹⁶ In addition, a pregnancy that occurs at a young age prevents the mother from getting adequate health services, thereby damaging the growth and development of the baby in the mother's womb and the risk of the child being born experiencing stunting or lack of nutrition. It is very important to understand that pregnancies that occur in women under the age of seventeen are at risk for medical complications, both for the mother and child. Children who are pregnant at the age of ten to fourteen years are considered to have five times the risk of dying during pregnancy or

¹⁴ Muhammad Faudzil Adzim, *Indahnya Perkawinan Dini*, (Jakarta: Gema Insani Press, 2002), p. 123.

¹⁵ Muhammad Husein, *Fiqh Perempuan: Refleksi Kiai atas Wacana Agama dan Gender*, (Yogyakarta: Ircisod, 2019), p. 67.

¹⁶ Akh Syamsul Muniri dan Nur Shofa Ulfiati, "Kondisi Anak Perempuan dan Dampak Perkawinan Anak", *Almawarid: Jurnal Syari'ah dan Hukum*, 3.1 (2021), 1-12.

childbirth. The risk will be doubled in women who become pregnant at the age of fifteen to nineteen years.¹⁷

2. Psychological Impact

Young couples who marry at a young age are prone to psychological problems. Early marriage causes the young couple to have to leave school and leave their teenage years early, plus suddenly having to take care of children as a result they are more likely to experience depression.¹⁸ Mentally, young couples are not ready to face changing roles and various problems that arise in their new life after marriage so their marriage is prone to conflict.¹⁹

3. Economic Impact

The United Nations Population Fund (UNFPA) predicts that the COVID-19 pandemic in the 2020-2030 period will produce 13 million child marriages. There are two main reasons for the increase in the practice of child marriage during the pandemic. First, the abolition of face-to-face meetings because schools were closed due to the pandemic, caused teenagers to spend more time dating and eventually asking for marriage on the grounds of avoiding adultery.²⁰ In addition, the increasing poverty rate as a result of the pandemic has also increased the practice of child marriage.²¹ For poor families, daughters are considered an economic burden, and marriage is considered a solution because, after marriage, the husband's needs for food, clothing, and shelter are the responsibility

¹⁷ Susanto, "Persepsi Masyarakat Terhadap Praktik Perkawinan Dini di Sukabumi Jawa Barat", *Jurnal Aspirasi*, 3.2 (2012). See Fachria Octaviani, Dampak Pernikahan Usia Dini Terhadap Perceraian di Indonesia, *Jurnal Kesejahteraan Sosial Humanitas*, 2.2 (2020), 33-52.

¹⁸ Triantini Saraswati Hamoes, "Tradisi Pernikahan Dini dalam Sosial Budaya Psikologi" in *Buletin KPIN*, 6.20 (2020).

¹⁹ La.Yono, Agus Soumokil dan Jumiati Tuharea, "Persepsi Masyarakat Terhadap Perkawinan di Bawah Umur Ditinjau dari Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan (Studi Fenomena di Desa Waepandan Kecamatan Kepala Madan Kabupaten Buru Selatan)", in *Jurnal Pattimura Civic*, 1.1 (2020).

²⁰ Jannatun Nikmah, "Pernikahan Dini Akibat Hamil di Luar Nikah Pada Masa Pandemi: Studi di Desa Ngunu.", *Sakina Jurnal of Family Studies*, 5.3 (2021), 7.

²¹ Sri Handayani dkk, "Pernikahan Usia Dini di Masa Pandemi dan Permasalahannya", *Jurnal Kajian Hukum*, 5.2 (2020), 1-12.

of the husband. However, in practice, the condition of many children in their new family is not better than before marriage. They still find it difficult to meet their food needs, adding to the burden on their parents. Early marriage plays a major role in contributing to the 'poverty cycle in the family. As sources of income are low while the number of family members increases it adds greater economic pressure on households. Thus, couples who marry because of poverty will tend to live in poverty as well.

4. Social Impact

During the Covid-19 pandemic, the total divorce in all regions of Indonesia increased by 5 percent.²² For the April-May 2020 period alone, there were registrations of 20 thousand divorce cases which then increased to 57,000 cases in the June-July 2020 period.²³ Most divorce cases were filed by the wife.²⁴ The provinces that contributed the most divorce rates during the pandemic were West Java, Central Java, and East Java.²⁵

The decline in the family economy is one of the main factors causing divorce during the pandemic.²⁶ On the other hand, the factor of early marriage is also one of the main contributors to the high divorce rate in Indonesia. This is in line with the research results of Mies Grinjis and Hoko Horii which show that there is fifty percent of early marriages end in divorce, and divorce is carried out when the marriage age is only one to two years. This can happen due to a lot of incompatibility between husband and wife and the inability to fulfill their economic needs for their daily life.²⁷

²² Atika Suri Fauziah dkk, " Analisis Maraknya Perceraian Pada Masa Pandemi COVID-19", *Mizan Juournal Islamic and Law*, 4.2 (2020), 181-192.

²³ Salsabila Rizky Ramadhani dan Nunung Nurwati, "Dampak Pandemi Covid-19 Terhadap Angka Perceraian", *Jurnal Pengabdian dan Penelitian Kepada Masyarakat*, 2.1 (2021), 88-94.

²⁴ Sonny Dewi Judiasih, "Dampak Pandemi Covid-19 Terhadap Perceraian Yang Diajukan oleh Pihak Isteri", *Jurnal Veritas et Justitia*, 7.2 (2021), 506-528.

²⁵ Aris Tristanto, "Perceraian di Masa Pandemi Covid-19 dalam Perspektif Ilmu Sosial", *Jurnal Sosio Informa*, 6.3, (2020), 295-296.

²⁶ Abuzar Alghifari dkk, "Faktor Ekonomi dan Dampaknya Terhadap Kasus Perceraian Era Pandemi Covid-19 Dalam Tinjauan Tafsir Hukum Keluarga Islam", *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law*, 1.2 (2020).

²⁷ Fachria Octaviani, "Dampak Pernikahan Usia Dini Terhadap Perceraian di Indonesia", *Jurnal Kesejahteraan Sosial Humanitas*, 2.2 (2020), 33-52.

Reconstruction of Aisyah R.A's Marriage Age in the Islamic World

Construction means the arrangement, model, and layout of a building.²⁸ Reconstruction means rearranging; demonstration (re-example), (according to previous behavior/action); repetition (as before).²⁹ Thus, reconstruction is a re-formation or rearrangement to restore the real thing so that what was originally not true becomes true. This terminology is very appropriate to describe the efforts of contemporary scholars in contextualizing the understanding of the permissibility of early childhood marriage in Islam.

The majority of Muslims accept and acknowledge the historical fact that the Prophet Muhammad SAW married one of his wives named Aisyah RA bint Abu Bakr at a very young age. It was at the age of 6 years and had gathered as husband and wife at the age of 9 years. On this basis then, the *fuqahâ* of the four schools (*al-mazâhib al-arba'ah*) issued a fatwa regarding the permissibility of marrying young girls (marriage *al-shagîrah*) without any minimum age limit.³⁰ Even for children under the age of six though.

Aishah RA is the daughter of 'Abd Allah bin Abû Quhafah Uthman bin 'Amir bin Ka'ab bin Sa'd bin Ta'im bin Murrah bin Ka'b bin Fih bin Malik, who is more popularly known as Abû Bakr al-Siddiq, one of the companions of the Prophet Muhammad. She is an ummul believer (mother of believers) who is best known for her love for the Messenger of Allah for her so she was nicknamed "humairah" which means rosy beauty. Aisyah is the only wife of the Prophet Muhammad who was married as a virgin. Meanwhile, the wives of the other prophets were widows.

There is no definite historical record of the year of birth of Aisyah RA. Therefore, historians have different opinions about when Aisyah was born and how old she was when she was married to the Prophet

²⁸ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, (Jakarta: Gramedia, 2011), p. 942.

²⁹ Pius Partanto, M.Dahlan Barry, *Kamus Ilmiah Populer*, (Surabaya: Arkala, 2001), p. 671.

³⁰ See Syams al-Din al-Sarakhasi, *al-Mabsûth*, vol. 4 (Beirut: Dâr al-Ma'rîfah, 1406 H), p. 212, Ibn Abd al-Barr al-Namri, *al-Kafi*, (Beirut: Dâr Kutub Ilmiyah, 1407 H), p. 231.

Muhammad. According to Ibn Atsir (d.630 H), Aisyah was born in Mecca in the 2nd year after the Prophet Muhammad was appointed as an Apostle.³¹ While some other historians such as Ibn Sa'ad (d.230 H) stated that Aisyah was born in the 4th year after the apostolate. However, according to Sulaiman al-Nadawi, this opinion is not correct considering that if Aisyah RA was born at the beginning of the 4th year after the prophethood, then Aisyah's age when married to the Prophet SAW (in the 10th year of the apostolate) was 7 years, not 6 years as stated, listed in many authentic narrations.³²

There are many hadiths that state that Aisyah married the Apostle in childhood and these traditions are narrated by all the scholars of hadith collectors in *al-Kutub al-Sittah*³³ and in the Musnadnya of Ahmad bin Hanbal (164-241 H), besides that it is also narrated by al-Baihaqi (384-458 H/994-1066 AD) in *al-Sunan al-Kubrâ*, *al-Hâkim* (321-405 H/933-1014 AD) in *al-Mustadrak*, and *al-Thabranî* (260-340 H /873-952 AD) in *al-Mu'jam al-Kabîr*. In essence, the hadith narrations that reported so many were that it could be concluded that the information had reached the mutawatir level. Ibn Kathir (1301-1372 AD) himself in *al-Bidâyah wa al-Nihâyah* stated that the marriage of the Prophet SAW with Aisyah RA was the consensus of everyone (*lâ khilâf fih bain al-nas*).³⁴

Based on a study of the editorial substance (*matn*) of the hadith, it was found that there were 2 different narrations, one of which stated that the age of Aisyah RA when she married the Prophet SAW was 6 years, as she said herself. But there is also a hadith that reports that Aisyah RA at that time was 7 years old and was collected at the age of 9 years.

The first hadith reads:

From Hishâm from his father ('Urwah bin Zubair) Aisyah RA said: "*The Prophet (PBUH) married me when I was 6 years old. When we arrived in Medina, we stayed in the village of Bani al-Harith bin al-Khazraj. At*

³¹ Izz al-Din ibn al-Atsir al-Jazari, *Usud al-Ghabah fi Ma'rifat al-Shahabah* (Beirut: Dâr al-Fikr, 1995), p. 191.

³² Sulaiman Al-Nadawi, *Aisyah, The True Beauty*, (Jakarta: Pene Pundi Aksara, 2007), p. 6.

³³ M. Abu Syuhbah, *Kutubus Sittah*, (Surabaya: Pustaka Progresif, 2006) hal. 19.

³⁴ Abu al-Fida Isma'il bin Umar al-Qurasyi al-Dimasqi bin Katsir, *al-Bidâyah wa al-Nihâyah*, (Beirut: Dâr al-Kutub al-'Ilmiyyah, 2001).

that time I had a fever, and my hair fell a lot on my shoulders. One day, my mother ('Ummu Ruman) came to me, at that time I was playing on the swing with some of my friends. He called out to me and I then went to him (while wondering in my heart) what the hell he wanted. Mom then took me by the hand and stopped me at a door until I was breathless. After that, I calmed myself down until my breathing was normal. Then mother took water and rubbed it on my face and head. Then put me in a house which turned out to be filled with Ansar women. They then rollickingly say congratulations on getting goodness and blessings and good luck. Mother then handed me to them to dress up. Suddenly the Prophet SAW came to me at the time of dhuha. Then my mother gave me to him. I was 9 years old at the time."³⁵

The second hadith reads:

"Has told us Ahmad bin Sinân, told us Abû Ahmad he said, told us Isroil and Abî Ishâq from Abî Ubaidah from Abdullah he said "The Prophet of Allah alaihi wa sallam married 'Aisha ra when Aisha was 7 years old, then built household at the age of 9 years and the Prophet died when 'Aisha was 18 years old." (HR. Ibn Majah).³⁶

From the two hadiths above, it can be understood that early marriage occurred in Aisyah, the wife of the Prophet Muhammad. When the Prophet asked for her hand, at that time he was still very young, maybe he had not even reached puberty. But history records that Aisyah was a smart and beautiful child, perhaps at that age, maturity, psychic maturity, and intellectuality had emerged in her.³⁷ The marriage of the Prophet Muhammad SAW with 'Aisyah bint Abu Bakr had an important influence on the da'wah and the development of Islamic teachings and its laws in various aspects of life, especially those related to female issues where many women asked the Prophet Muhammad through 'Aisyah RA. Aisyah is known as a capable and intelligent woman so she has become a storehouse and source of knowledge throughout the ages. Aisyah is known as the only sahabiyah or female friend who has narrated the most hadiths from the Prophet Muhammad, which is as many as 2210

³⁵ Abu 'Abd Allah Muhammad bin Ismail al-Bukhari, *Sahih al-Bukhârî*, Vol.8 (Cairo: Dâr al-Hadith, 2004), p. 232.

³⁶ Imam Ibn Majah, *Sunan Ibn Mâjah*, (Beirut: al-Maktabah al-Syâmilah, 1999), p. 178.

³⁷ Mumtaz Moin, *Ummul Mu'minin A'isyah Shiddiqah*, Translator: Siti Robi'ah Sarnap, 1st edition (Johor Bahryu: Perniagaan Jahabersa, 1995), p. 9.

hadiths. He occupied the fourth position after the companions of Abu Bakr, Ibn Umar, and Anas bin Malik. The fact that Aisyah's marriage age was later allegedly becoming a strong reason and the main cause of the phenomenon of entrenching and rooting the tradition of underage marriage in Muslim-majority countries. Reflecting on Aisyah's marriage age, Muslims conclude that it is permissible for young children to be married off and that to avoid slander, girls should be married off as soon as they enter a marriageable age.³⁸

Indonesian people have been shocked by the news about the marriage of an underage girl by Pujiono Cahyono or commonly known as Syekh Puji, a 45-year-old billionaire from Semarang. Sheikh Puji married his second wife, Lutviana Ulfa, who was 12 years old on August 8, 2008. Even more excited, it turns out that Sheikh Puji, who is the caretaker of the Miftahul Jannah Islamic boarding school, plans after marrying Ulfa to marry two other runny girls aged 7 and 9 years so that the total number of wives is even four.³⁹ When the news then surfaced, the pros and cons emerged. The majority of Indonesians reject it and accuse Sheikh Puji of suffering from pedophilia, which is a mental illness in the form of sexual attraction to minors. Not to forget, the Indonesian Ulema Council (MUI) also issued a fatwa regarding the prohibition of Sheikh Puji's actions in marrying the underage girl.⁴⁰ Sheikh Puji argued that his actions were following the guidance of the Shari'a, because the Prophet had exemplified this when he married Aisyah RA when Aisyah was 6 years old.⁴¹ Sheikh Puji's actions received support from Fauzhan al-Ansari (former Head of the Data and Information Department of the Indonesian Mujahideen Council (MMI)) and Puspo Wardoyo (owner of a Wong Solo restaurant which is famous for its 'polygamy juice' and has received a Polygamy Award). They argued that Muslims who reject

³⁸ Mufid Syakhlani, "Dilema Perkawinan Usia Dini: Antara Tradisi dan Regulasi", *Muharrrik: Jurnal Dakwah dan Sosial*, 2.2 (2019), 137-149.

³⁹ National News Headline, "Syekh Puji married a 12-year-old boy", *Suara Media* (16 October 2008), p.1.

⁴⁰ Yusuf Hanafi, "Perkawinan Anak di Bawah Umur dalam Perspektif Hukum Islam." *Ulumuna*, 12. 2 (2008), 249-274.

⁴¹ See Suryati, S. "Pernikahan Dini dalam Perspektif Hadits (Studi Hadits Pernikahan Aisyah dengan Rasulullah SAW)." (PhD diss., UIN Raden Intan Lampung, 2017).

polygamy are rejecting and denying the sunnah of the Prophet, and in turn, their faith is questioned.⁴²

In 2010 Saudi Arabia was also shocked by the public marriage controversy which was famous for the case of "Buraidah Girl Case". The case of the "Buraidah Girl" began when the father of an 11-year-old girl from the Buraidah area of the Central Province of al-Qassim married his daughter to an 80-year-old old man in exchange for a large dowry without the consent of the child's mother. The mother then asked the Saudi Arabian Human Rights Commission for help. Saudi Arabia then made international media headlines and finally, Saudi Arabia came under fire from the United Nations.⁴³ Similarly, the story of a young girl named Rawan who came from Yemen. 8-year-old Rawan was forced to marry a 40-year-old man in 2013. As a result, the little girl suffered lacerations to her genitals and heavy bleeding on the first night and later died. This news later became international mass media coverage and sparked criticism from the United Nations.

The development of the discourse on Human Rights (HAM) internationally has raised awareness among Muslims about the rights of women and children in their respective countries. The UN General Assembly Forum in 1989 issued the International Convention on the Rights of the Child, one of which stipulates that a person's age of maturity is in the range of 18 years. This then inspired some Muslims living in the modern world to improve the fate of women through the abolition of the practice of child marriage. On the other hand, this group also feels uncomfortable if its leader, the Prophet Muhammad SAW, is accused of being a pioneer in the practice of child marriage (*nikâh al-shaghîrah*). They intend to clear the good name of Prophet Muhammad SAW from the stigma and vile slander as a pedophile. This is what lies behind the emergence of a critical study on Aisyah's marriage.

⁴² Yusuf Hanafi, *Aisyah Dinikahi Nabi di Usia Kanak-Kanak, Mitos atau Fakta?*. Cet I (Malang: Universitas Negeri Malang, 2015).

⁴³ Aegi, 80-year-old male married 12-year-old teenager in <https://internasional.kompas.com/read/2010/01/21/19544644/Pria.80.Tahun.Nikahi.Remaja.12.Tahun> accessed December 17, 2020.

Among these critics was Muhammad Ali (1874-1951 CE), chairman of the Ahmadiyya Anjuman Ishaat-i-Islam (Ahmadiyya Association for the Propagation of Islam). He was the first Muslim scientist to openly correct the classical records regarding the age of Aisyah RA when she married the Prophet Muhammad. Muhammad Ali even dared to conclude that the age of 6 or 7 years when Aisyah got married and the 9 years when she started her household was a great misconception. Muhammad Ali presented 4 evidence that the reports about Aisyah in the hadith literature are inaccurate. First, Abu Bakr had planned the marriage of Aisyah RA with Jubair bin Mut'im when he moved to Habasyah in the 8th year before the hijrah. Second, Aisyah was 5 years younger than the daughter of the Prophet, Fatimah, who was born 5 years before the prophethood coincided with the renovation of the Kaaba. Third, Aisyah was a young girl when QS. Al-Qamar was revealed in the 6th year of prophethood, with evidence that he remembered and memorized some of his verses. Fourth, it is found that there is a lot of evidence that his domestic life began to take place in the 2nd year of hijrah in the month of Shawwal, which indicates that 5 years had passed between the marriage ceremony and the beginning of his domestic life. According to Muhammad Ali, Aisyah was at least 9 or 10 years old at the time of marriage and 14 or 15 years old when she started a household.⁴⁴

Maulana Muhammad Ali also added evidence in the form of Aisyah's participation in the Battle of Badr (2 H) and the Uhud war (3 H). According to Muhammad Ali, Aisyah began living her domestic life only 1 year before the Uhud war. Based on the opinion of the majority of scholars, Aisyah RA at that time was 10 years old which was certainly not suitable to be involved in a war situation. This fact indicates Aisyah is not that young. In addition, on the previous occasion (i.e. the Battle of Badr), when many Muslim children wanted to go to war with Muslim troops on the battlefield, the Prophet SAW sent them

⁴⁴ Check in the following books of Maulana Muhammad Ali, *The Prophet of Islam* (Ohio USA: Ahmadiyya Anjuman Isha'at Islam Lahore, 1924), 30; Muhammad, *the Prophet* (Ohio USA: Ahmadiyya Anjuman Isha'at Islam Lahore, 1993), 183-184; *Living Thoughts of the Prophet Muhammad* ((Ohio USA: Ahmadiyya Anjuman Isha'at Islam Lahore, 1992), 30.

home considering their very young age. Because it was very unlikely, if Aisyah was still 10 years old, the apostle let her follow the troops to the battlefield. Muhammad Ali stated that Aisyah was at least 15 years old when she accompanied the Prophet in the year 2 Hijriyah. And the marriage took place 5 years earlier.⁴⁵

After Muhammad Ali, Abu Tahhir 'Irfani in his work *Rukhsati kai Waqt Sayyida Aisha Siddiqah ki Umar* (Age of Sayyidah Aisyah When Married) also presented new evidence regarding the error in determining Aisyah's age in the hadith literature. First, the classical Muslim historian, Ibn Jarir al-Thabari (838-923 AD) wrote in his *Date* that all of Abu Bakr's children, including Aisyah RA, were born in the era of ignorance. This means that Aisyah was born before the prophetic year i.e. 610 AD. Secondly, a famous hadith collector named Muhammad bin 'Abd Allah al-Khâtib wrote about the narrators of hadith in his book *Misykât al-Mashâhib* noting that Asma, the eldest daughter of Abu Bakr, was the sister of Aisyah. al-Shiddiqah (the wife of the Prophet) was 10 years older than Aisyah. Asma died at the age of 100 years in 73 H.⁴⁶ These data show that Asma was aged between 27-28 years in 1 H, the year the hijrah event occurred, and Aisyah at that time was 17 or 18 years old. Aisyah entered into the contract in the third year before the hijrah, which is when Aisyah was 14 or 15 years old and began to enter her household life in the 2nd year of prophethood, meaning that at that time she was at least 19 years old.⁴⁷

Another correction to Aisyah's age was also made by Habib al-Rahman Siddiqui Kandhalvi, a well-known cleric from Pakistan. He is a hafiz of the Quran, a leading scholar in the field of tafseer and hadith as well as a translator of Arabic literature into Urdu. According to Kandhalvi, the problem is the hadith which states that Aisyah married the Prophet

⁴⁵ Maulana Muhammad Ali, *Fadl al-Bari*, (lahore: Kirsi Salim, t.t.) p. 501; Yusuf Hanafi, *Aisyah Married the Prophet at an Early Age Myth or Fact?*, (Malang: IKIP Malang, 2015), p. 5.

⁴⁶ Muhammad bin 'Abd Allah al-Khathib, *Misykat al-Mashahib*, (Delhi: Kutubkhanah Rashadiyah, 1955), p. 300-301.

⁴⁷ Compare also with the statement of the famous classic Mufassir Ibn Katsiur in his book *al-Bidayah wa al-Nihayah*. See Yusuf Hanafi, *Aisyah Married the Prophet at an Early age Myth or Fact*, p.7.

when she was 6 years old, which was narrated by al-Thabari, al-Bukhari, Muslim, Abû Daud, and others, all of which came from the narration of one person (single line) namely Hisham bin 'Urwah (60-164 H) or narrations from the people of Iraq. Hisham bin 'Urwah moved from Medina to Kufa (Iraq) at the age of 71 years, was very old and it is said that his memory had suffered a severe decline. So there is a possibility that the number 16 years will be 6 years, and 19 years will be 9 years. In addition, this history about Aisyah's age only emerged after Hisham's move to 'Iraq in 131 H. Whereas previously, while living in Medina, there was no history of Aisyah RA's age when she married. This then sparked doubts and raised questions about its historical claims.⁴⁸

Furthermore, the pros and cons of Aisyah's marriage age have been going on for a long time. Ibn Qutaibah in the book *al-Ma'ârif* mentions that Aisyah died in 58 H/678 AD at the age of 70 years. According to some narrations, Rasulullah SAW married Aisha 3 years before the hijrah or in the 10th year after the apostleship. So according to Ibn Qutaibah, Aisyah married the Prophet Muhammad at the age of 9 years.⁴⁹ The Muslim historian Ibn Ishaq revealed that Aisyah married the Prophet Muhammad at the age of 18 years.⁵⁰ Ibn Ishaq reasoned that Aisyah was one of the first to convert to Islam and at that time Aisyah was still about 7 years old (not even 8 years old). So when Aisyah married 10 years later, it was estimated that Aisyah's age at that time was 18 years. Another fact that can be used to find out how old Aisyah was when she married the Prophet was to look at the age of her sister Asma' bint Abû Bakr. Asma is 10 years older than Aisyah. At the time of the migration, Asma was 27 years old. If the marriage took place in the first year of hijrah, then Aisyah's age would be 17 years.⁵¹

⁴⁸ Habibur-Rahman Siddiqui Kandhalvi, *A Research Work: Age of Aishah, the Truthful Woman*, (Karachi: al-Rahman Publishing Trust, 1997), p. 37-38.

⁴⁹ Ibn Qutaibah, *al-Ma'arif*, cet.2. (Cairo: al-Hai'at al-Mishriah al-ammah lil Kitab, 1992), p. 133-134.

⁵⁰ Taqi Zadeh Dawari, *Tashwir-e Khanewadeh-e Payambar*, (Dar daereh el-Ma'arif al-Islami), p. 92-93 as quoted by Yusuf Hanafi, *Aisyah Married the Prophet at an Early age Myth or Fact*, p. 16.

⁵¹ Yusuf Hanafi, *Aisyah dinikahi Nabi di Usia Kanak-kanak Mitos atau Fakta?*, p. 5.

Apart from these differences of opinion, several things should be underlined. First, the narration which states that Aisyah married at the age of 6 is not worthy of acceptance. 'Aisyah's age 6 years' feels inappropriate to be attached to the marriage of the Prophet Muhammad. The age of 6 years is the age at which a person begins to enter childhood. At this age, a child will begin to change milk teeth.⁵² In Indonesia, the age of 6 years is the age when a child begins to sit in kindergarten. Teachers or educators call this period the preschool age.⁵³ What can a six-year-old child do in his marriage? So here the author agrees more with the opinion of Maulana Muhammad Ali which states that the marriage of Aisyah and Rasulullah SAW occurred in the second year of hijrah at the age of 9 or 10 years, and only gathered as husband and wife five years later when Aisyah was 14 or 15 years old, a common age for marriage in those days.

In some narrations about the marriage of young women in the Prophet's family environment is a common thing to get married at the age of 9 years. Historical facts show that the daughters of the Prophet SAW were also married at a very young age. His first daughter, Zainab married Abu Ash bin Rabi at the age of 9 years. His sister, Ruqayyah bint Muhammad was married to her cousin Utbah bin Abu Lahab when she was not yet 10 years old, and her sister Umm Kultsum bint Muhammad SAW married Utaibah bin Abu Lahab when she was not even 9 years old.⁵⁴ Getting married at an early age is normal for Arab society at that time.

The cases of early marriage not only occur in the classic era, but also occur in the mid-ages era. Alexander Francis Chamberlain in his book "The Child and Childhood in folk-Thought" quotes from the research of Dr. F.J. Furnivall in the territory of the Diocese of Chester, Cheshire England 1561-1566, stated that the marriage of children and even toddlers

⁵² Murni, Perkembangan Fisik, Kognitif, dan Psikososial Pada Masa Kanak-Kanak Awal 2-6 Tahun", *Bunayya: Jurnal Pendidikan Anak*, 3.1 (2017), 23.

⁵³ Miftahul Jannah, "Tugas-tugas Perkembangan Pada Usia Kanak-kanak", *Gender Equality: International Journal of Child and Gender Studies*, 1. 2 (2015), 87-98.

⁵⁴ Aisyah Abdurrahman, *Biografi Putri-putri Muhammad: Zainab, Ruqayyah, Ummu Kultsum dan fatimah*, (Jakarta: Samara Publishing, 2009), p. 105.

often occurred in the medieval church.⁵⁵ For instance, according to Britannica, In 1158 Henry The Young King called Henry Fitzhenry was betrothed to Marguerite (daughter of Louis VII of France and his second wife) when he was only three years of age on condition that Margaret's dowry would be the Vexin, the border region between Normandy (then held by England) and France. Henry II took advantage of Pope Alexander III's political difficulties to secure the Pope's permission for the children to be married in 1160.⁵⁶ At that time, Marguerite was still just a baby of two or three-year-old when she was betrothed to Henry II of England's eldest surviving son and heir presumptive.⁵⁷ In addition, another case happened in York. Anne Mowbray (Richard was born on 17th August 1473), Duchess of York, was married as a child to Richard, Duke of York (born on 17th August 1473), son of Edward IV. The ceremony was held on 15th January 1478 in St Stephen's chapel in the Palace of Westminster and the bridegroom was only five years old.⁵⁸ In conclusion, the practice of early child marriage existed and was acceptable not only in the central east but also in the west.

The marriage of the Prophet Muhammad with Aisyah took place in May 620 AD.⁵⁹ Of course, the social conditions of Arab society at that time were very different from the situations and conditions faced by society in modern times, especially when it was associated with the rights and position of women. In general, the Arabs, both during the period of ignorance and after the arrival of Islam, placed women in a lower position than men. Before marriage, the daughter is completely under the control of her father and after marriage, she becomes the dependent

⁵⁵ Alexander Francis Chamberlain, *The Child and Childhood in folk- Thought*, (USA: Project Gutenberg, 2005), p. 232.

⁵⁶ See Harrington, Helen Margaret, *Marriage and Love in the Narrative Lay in French (12th and 13th Centuries): A Historical and Literary Study*. (University of London, Royal Holloway and Bedford New College (United Kingdom), 1989).

⁵⁷ See Maurer, Helen E. *Margaret of Anjou: Queenship and Power in Late Medieval England*. (Boydell Press, 2005).

⁵⁸ See Watson, Bruce, and William White. "Anne Mowbray, Duchess of York: a 15th - Century Child Burial from the Abbey of St Clare, in the London Borough of Tower Hamlets." [*Transactions of the London Middlesex Archaeological Society*] 66 (2015).

⁵⁹ W. Sasmita *Amazing Stories Kisah Mulia Wanita Syurga Ummul Mukminin Aisyah*, (Yogyakarta: Pustaka al-Uswah, 2020) p. 14.

of her husband. In general, girls are married in their early teens.

Today, although mankind has entered the 21st century, the statutory provisions regarding the age of consent in many countries are still relatively low. In Spain, a 13-year-old man is legalized for sexual activity. A 40-year-old man who has sexual relations with a 14-year-old girl would be called a pedophile in the United States, but not in China, which stipulates maturity at 14.

Thus, even if Aisyah ra's marriage with Prophet Muhammad SAW occurred at a very young age, namely 9 years, it would not be a disgrace for that era. The incident was following the tradition and the physical and psychological development of girls at that time. However, it will be a problem if it is applied in this day and age. This an era in which science and technology have discovered the fact that early marriage is very vulnerable to danger, especially for girls and their offspring. This is where the importance of efforts to straighten out public perceptions about the permissibility of child marriage is. The scholars as a legal reference for society must be able to reconstruct the paradigm of thought and understanding of Muslims that child marriage is contrary to Islamic law. Child marriage is not in line with the objectives of Islamic law which is to realize the goodness and benefit of the ummah in this world and the hereafter.

Efforts to Abolish Child Marriage Practices Through Restriction of Marriage Age

Al-Quran and as-Sunnah as the main sources of Islamic law, do not explain explicitly the minimum age for marriage. In responding to this, the ulama is divided into two groups, namely conservatives who tend to stick to the concept of text literature and reformers who tend to understand textual texts contextually.⁶⁰ Conservative scholars reject the age restriction because the higher the age at marriage, the greater the chance of immorality, and free sex. This is because the age of puberty is too far from the age of

⁶⁰ Fadli Andi Natsif, "Problematika Perkawinan Anak (Perspektif Hukum Islam dan Hukum Positif)", *Jurnal al-Qada'u*, 5.2 (2018), 181.

marriage. Conservatives adhere to the fiqh literature which states that it is "permissible to marry a young man and woman" or "it is permissible to marry a young man to a young woman".⁶¹ Even in several fiqh literatures, a more extreme dictum is found, for example: "If a man marries a young woman, then the wife is breastfed by the husband's mother, then the wife becomes unlawful for him."⁶² This shows that women who are still babies can get married. Over time, however, after many Islamic countries achieved independence, the majority of countries with Muslim populations included the minimum age limit for marriage in their Marriage Laws. These restrictions are intended to measure a person's readiness, maturity, and mental readiness to assume responsibility. Age restrictions are basically to realize a marriage that is following maqosidus al-shariah, one of which is the achievement of benefit.

From the perspective of Islamic law, changing the age limit for marriage is a matter of *ijtihadiah*. As something that is *ijtihady* in nature, the truth of which is relative, this provision is not rigid, meaning that over time there may be an adjustment to the age of marriage based on benefit. However, when traced, the *syar'i* argument has a strong foundation. As Allah says in QS. An-Nisa: 9: "And fear Allah those who should leave behind them weak children, whom they worry about their welfare. Therefore, let them fear Allah and speak the truth".⁶³

Early marriage can cause many things that are not in line with the mission and purpose of marriage, namely the realization of peace in the household based on love and affection. If each of the bride and groom has not physically and psychologically matured they will find it difficult to solve any problems that arise in the intricacies of the household. As many cases show, such as in the Religious Courts Area in West Java, the number of divorces due to marriage at a young age is greater than other factors.⁶⁴

⁶¹ Ibn Hummam, *Sharh Fath al-Qadir*, (Beirut: Dar Kutub Ilmiah, 1995), p. 186-274.

⁶² Abd al-Rahman al-Jaziri, *Fiqh 'ala al-Mazahib al-Arba'ah*, (Kudus: Menara Kudus, 2008), p. 94.

⁶³ Depag RI, *Al-Quran dan Terjemahnya*, (Jakarta: Depag RI, 2017), p. 78.

⁶⁴ Ahmad Rofiq, *Pembaharuan Hukum Islam di Indonesia*. (Yogyakarta: Gama Media, 2016), p. 78. See Dudi Badruzzaman, "Pengaruh Pernikahan Usia Muda terhadap Gugatan Cerai di Pengadilan Agama antapani Bandung", *Jurnal Muslim Heritage*, 6.1 (2021), 70-89.

From an Islamic point of view, limiting the age of marriage is in line with the *maslahat mursalah* principle.⁶⁵ In *maqâsid al-syarî'ah*, maintaining offspring (*hifz al-nasl*) is an important thing. Naturally, marriage is formed by the natural elements of human life needs which include biological needs and functions, giving birth to offspring, the need for love and brotherhood, and raising children so that they can become perfect members of society. Underage marriages indirectly hinder the development of the mind to become capable human beings (*hifz al-'aql*), because they have been forced to grow up immediately and eliminate their instinctive traits as a child and then create a new family-building, which is not much different from the previous situation. In addition, efforts to limit the minimum age for marriage in modern times are in line with a theory of Islamic law which reads: "*Taghayyur al-abkâm bi taghayyur al-azminah wa al-amkinah wa al-akhwâl wa al-'awâid wa an-niyât*" which means "Law changes due to changing times, places, circumstances, habits, and intentions".⁶⁶ This adage states that socio-cultural changes and geographic location are important variables that influence changes in Islamic law.⁶⁷ This theory implies that change is a reality that cannot be denied. Based on this legal principle, the ulama together with the government can make changes to the law according to the situation and conditions faced by Muslim society in modern times

The existence of the Marriage Law No.1 of 1974 is a step forward for improving the degree and position of women in Indonesian society. The regulation, which was promulgated in 1974, seeks to answer various problems for women in Indonesia, one of which is related to the minimum

⁶⁵ Rachmat Djatnika, "Sosialisasi Hukum Islam", in Abdurrahman Wahid (et.al.), *Kontroversi Pemikiran Hukum Islam di Indonesia*, (Bandung: Rosda Karya, 1993), p 251.

⁶⁶ Ibn Qayyim al-Jauziyah, *I'lam al-Muwaqî' in 'an Rabbi al-Alamin*, (Beirut: Dar Kutub al-Ilmiyah, 1991), p. 14.

⁶⁷ This legal theory only applies in the field of mu'amalah and does not apply to matters of worship. In worship, especially makhdoh worship that applies is the principle of taabbudi or something that must be accepted as it is without having to be rationalized, according to the legal theory / rule "Al-Aslu fi al-ibadati at-taufiq wa al-itba" (The original law in worship is waiting for orders and follow guidance) See Abdul Azis Dahlan, et al. (ed.), *Encyclopedia of Islamic Law*, Vol. 5, (Jakarta: PT Icthar Baru van Hoeve, 2009), p. 1723.

age for marriage. In Article 7 (1) of the Marriage Law no. 1/1974, stipulated that the age limit for marriage is 19 years for men and 16 years for women.⁶⁸ This stipulation is based on the argument that a happy marriage can only be realized if the prospective husband and wife have matured physically and mentally.

Over time, Article 7 of the Marriage Law is felt to have loopholes and is considered less relevant for the context of modern times. First, the age difference between men at the age of 19 years and women at the age of 16 is discriminatory in the context of the implementation of the right to form a family. Second, the age of 16 for a woman is considered immature physically and mentally to be able to get married. In addition, Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection states that ages less than 18 years are still classified as children. This means that a person is declared an adult when he is 18 years old. According to Monks, the age of 18-21 years is the period of late adolescence. At this age, a person is considered an adult to take responsibility for his words and actions and is entitled to the rights of an adult.⁶⁹

Furthermore, In 2019, the Ministry of Women's Empowerment and Child Protection (PPPA) proposed that the minimum marriage age for women be equalized with the minimum marriage age for men, which is 19 years. The consideration of 19 years is based on the fact that at that age a person is considered to have matured mentally and physically to be able to carry out marriage, can reduce the lower birth rate, and reduce the risk of maternal and infant mortality as well as child labor and the fulfillment of children's rights to optimize child growth and development.⁷⁰ The National Population and Family Planning Agency or *BKKBN*, even view that the age of 19 for marriage is not yet ideal.

⁶⁸ Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

⁶⁹ F.J. Monks, *Psikologi Perkembangan Pengantar dalam Berbagai Bagiannya*, (Yogyakarta: Gadjah Mada University Press, 2001), p. 225.

⁷⁰ Elycia Feronia Salim dkk, "Persamaan Syarat Usia Perkawinan Sebagai Wujud Kesetaraan Gender dalam Meminimalisir Perkawinan di Bawah Umur di Indonesia", *Jurnal Acta Diurnal*, 5.1 (2021), 1-19.

BKKBN assesses that the ideal age for marriage should be 21 years for women and 25 years for men. There are many reasons why your mid-20s to early 30s are the ideal age for marriage. According to health science, a woman will mature biologically and psychologically at the age of 20-25 years and a man will mature biologically and psychologically at the age of 25-30 years. Adults are not only in terms of age but also in terms of emotional intelligence and maturity of thought patterns. The older you get, the more time you have to find yourself and know what you want in life.⁷¹ As many parties proposed the change of the law, The Government, together with the House of Representatives of the Republic of Indonesia (*DPR-RI*), made a new history by making a progressive breakthrough in the form of the ratification of Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, increasing the minimum age for marriage for women from 16 years to 19 years. Thus, the marriage age of men and women is equal, which is 19 years. The change in the minimum age of consent that has been approved by the House of Representatives must be appreciated because it is a step forward in efforts to eliminate the practice of child marriage. This is in line with Article 24 paragraph 1 and Article 1 28 of the 1945 Constitution which states that one of the rights of individuals is the right to grow and develop, get a decent life, and form a family through marriage. Thus, the practice of child marriage is a violation of children's rights which in turn will harm the growth and development of their lives in the future. Therefore, adults around children need to give children a correct understanding of the concept of family and marriage. The formation of the family's conception of young marriage will affect the child's perspective on early marriage.

Conclusion

Child marriage has many negative impacts not only on the perpetrators but also on the family, nation, and state. Therefore, the

⁷¹ Holilu Rahman, "Batas Usia Ideal Pernikahan Perspektif Maqasid Sharia", *Journal of Islamic Studies and Humanities*, 1.1 (2016), 77.

appropriateness of Aisyah ra's early marriage age should not be used to legitimize the permissibility of child marriage in modern times. Child marriage must be declared strictly contrary to Islamic law as well as Indonesian law for the benefit of the ummah. The government needs to carry out massive and simultaneous socialization at the national and regional levels to respond to changes in the minimum age for marriage in the law.

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