



ANALYSIS OF MAQĀSID ASY-SYARI'AH ON THE LIMIT OF MARRIAGE IN LAW NUMBER 16 OF 2019 CONCERNING MARRIAGE

Kamila Hayati Alkhifny

Faculty Of Sharia and Islamic Economics, Institut Agama Islam Negeri Syekh Nurjati Cirebon

Kamilaalkhifny@Gmail.Com

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Abstract

The divorce rate in indonesia continues to increase. One Of the reasons is the lack of readiness of the husband and/or wife for marriage. Marriages that are carried out at a very early age result in a lack of readiness of the bride and groom to get married. The stipulation of the marriage age limit which was originally 19 years for men and 16 years for women was changed to 19 years for men and women in law number 16 of 2019. However, early marriages are still common in indonesia, so the divorce rate is still quite high. Then the question arises that whether the regulation of changing the age limit for marriage can change the value of marriage in indonesia for the better or is it just a meaningless regulation. But of course, a regulation is made to improve the existing situation and benefit the community. This study aims to find out what the purpose of law no. 16 of 2019 is by examining it with the value of maqāsid ash-syarī'ah. This study uses qualitative research methods, and the data collected comes from a literature review which was analyzed by descriptive analysis method. The results of this study are that the renewal of the marriage age limit in law number 16 of 2019 is in line with the values in maqāsid ash-syarī'ah namely hifz ad-dīn, hifz an-nafs, hifz al-aql, hifz an-nasal, and hifz al-māl. Marriage at a more mature age will improve the quality of religion in the family, protect the physical and psychological health of family members, strengthen the family foundation in dealing with household problems, form quality offspring, and maintain family finances.

Keywords: Marriage Age Limit; Law Number 16 The Year 2019; Maqāsid Asy-Syarī'ah.

Introduction

According to wirianingsih, the family is the original foundation stone and the oldest institution that is indispensable in building society. society will not be good unless with a good family building (Iqbal, 2020). The formation of good or bad character in humans begins and depends on upbringing in the family. Therefore, of course, everyone wants a good and harmonious family. of course, marriage is one way to build a family.

At present marriage is an important spotlight in people's lives because the marriage bond determines the future of the nation. a failed marriage will have a huge impact on people's lives. First, it has an impact on children, including juvenile delinquency, suicide, and drug abuse. second, the increase in the poverty rate is due to minimal (lack of) economic considerations and planning in the household. Third, the quality of human resources (hr) is weak due to the inability of parents to educate and raise their children (Iqbal, 2020).

In recent years, the divorce rate in indonesia has continued to increase. the average divorce rate has increased by 3% per year (From 2014-2016). Factors that cause divorce are economic problems, domestic violence (Kdrt), family conflicts, infidelity, drug use, not practicing religion, and so on. the indonesian government already has a good program for preparing prospective brides. However, the implementation of the program is still not going well.

Divorce befalls many young couples as a result of their mental unpreparedness in entering the marriage stage. Many young couples get divorced because they failed to plan a dream family or household concept. they are not ready to live independently. They are not well prepared to enter the death stage (Iqbal, 2020).

Therefore it can be concluded that marriage at a very young age is less effective because many deficiencies must be completed to be effective. getting married at a young age also has more risks than when you are mature. There are many risks created by getting married at a young age and many do it in indonesia, so civil society is also paying attention by urging the government to change regulations regarding marriage at a young age. on october 14, 2019, law no. 16 of 2019 was passed concerning amendments to law no. 1 of 1974 concerning marriage.

The impact of underage marriage is taken into consideration from changes in the limit of marriage age, starting from women who give birth at the age of 15-19 years with a risk of dying two times greater than women who give birth at the age of 20 above, family harmony and divorce, psychology of young families, to violation of children's rights. several studies are closely related to this research, including:

Muhammad Fadli Prawiro's thesis entitled "Perception of The People Of Percut Sei Tuan Sub-District Towards Changes In The Age Limit For Marriage In Law Number 16 Of 2019 Concerning Amendments To Law Number 1 Concerning Marriage." This Research Focuses More on The Views Of The People Of Percut Sei Tuan District, Deli Regency Towards Law No. 16 Of 2019 Concerning Marriage.

Azhar Yushfi Mahasin's thesis with the title "Maslahah Analysis of Changes In The Minimum Age For Marriage Based On Law Number 16 Of 2019 Concerning Marriage." Previous Research

Contains Tracing the Reasons For The Need To Change The Minimum Age Limit For Marriage In Indonesia By Using Maslahah Mursalah Analysis.

Rosidah's thesis entitled "The Impact of Enforcement Of Law Number 16 Of 2019 Concerning Marriage (In Talang Segegah Village, Kec. Renah Pembarap, Merangin Regency)." leading research focuses its research on the application of law no. 16 of 2019 in talang segegah village, kec. renah pembarap kab. martin. of the four previous studies, the author is interested in studying the provisions on the marriage age limit contained in law number 16 of 2019 which is studied by maqāṣid asy-syarī'ah, with research entitled "Analysis Of Maqāṣid Asy-Syarī'ah On The Marriage Age Limit In Laws Law Number 16 Of 2019 Concerning Marriage."

Methods

This study uses a type of qualitative research, the type of data used in this research is to use literature review, there are two kinds of data sources in this study, namely, primary data sources and secondary data sources, technical data analysis using descriptive analysis techniques.

Results And Discussion

A. Definition Of Marriage

There are two mentions of the word marriage in fiqh, namely nikah (نكح) and zawaj (زوج). these two words are used by the arabs in their daily lives and are found in many places in the quran and the sunnah of the prophet. as for the language, marriage has the meaning of "Joining" (Dhamma), ([Wafa, 2018](#)) "Collection" (Jambu) "Enters (Tadakhul), Sexual Intercourse" (Swathi), And Also Means "Contract" (Contract) ([Wafa, 2018](#)).

Marriage in terminology is a contract according to which it is permissible to have fun with women and to have sex, which women are not haraam both from the point of view of lineage, breastfeeding, and family.

According to wahbah az-zuhaili, marriage is defined as a contract that has been determined by the shari'a whose function is to give ownership rights for a man to be able to have fun with women and justify a woman having fun with a man ([Az-Zuhaili Et Al., 2007](#)).

The definition of marriage or marriage in article 1 of law number 1 of 1974 marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family based on the belief in one almighty god. according to the compilation of islamic law (Khi) that marriage is a very strong contract (Mistaken Ghalidzan) to obey allah's commands, and its implementation is worship. So marriage is not only interpreted by the relationship between men and women to live together based on mere biological needs ([Wafa, 2018](#)).

Therefore, it can be said that marriage is a bond between a man and a woman that is carried out with a contract so that it is lawful for both of them to have sexual intercourse which results in rights and obligations between the two.

B. The Marriage Age Limit In The Perspective Of Jurisprudence And Legislation

Islam does not set a detailed age limit for marriage and has never set an age limit for marriage. A certain thing is a provision that a person must be considered an adult ([Wafa, 2018](#)).

adults in islam have various terms such as balig, mukalaf, rushdan, and asyuddah. tafsîr ayat al-ahkâm explains that a child is said to be mature if a man has had a dream, as it has been agreed by scholars that a child who has dreamed and then becomes junub (Comes Out Sweet) then he has reached puberty. While the characteristics of a woman, namely when she is pregnant or menstruating, that is the limit of puberty. The basic meaning of the word rushdan in tafsîr al-misbah is the accuracy and straightness of the road. So the birth of the word rushd for humans is the perfection of mind and soul that makes them able to adjust and act as accurately as possible (Asrori, 2015).

The signs of puberty according to the imam's school of thought are the signs of puberty for women with menstruation and discharge of semen or ihtilam for men and growing armpit hair. However, according to ash-syafi'i, because these signs are not the same for everyone, then puberty is determined by age, namely 15 years (Wafa, 2018).

According to scholars, the problem of age in marriage is closely related to actions. marriage is a legal act that demands responsibility and is burdened with certain obligations, so everyone who is going to get married is required to have his full abilities. So to get married, someone must have "Bah" or be able to provide provisions⁹. what is meant by batch is being able to have sex and being able to finance a marriage or household? (Wafa, 2018).

Physical readiness for marriage according to the qur'an is called seudah which refers to the physical strength of someone who has been released from childish nature. Physical strength must coincide with the perfection of the way and ability to think. Someone will reach the level of seudah at the age of 18 years, have been able to reproduce, and work to meet the needs of the family (Nurcholis, 2020).

The age limit for marriage in positive law in indonesia is contained in law number 16 of 2019. Law number 16 of 2019 is an update of law number 1 of 1974 concerning marriage, namely regarding the age limit for marriage, which was originally 16 years for women, then increased being 19 years old. The change in the marriage age limit for women is the same as the marriage age limit for men.

C. Definition Of Maqāṣid Asy-Syarī'ah

Etymologically, maqāṣid asy-syarī'ah comes from arabic, namely from the words maqāṣid and syarī'ah. The word mawashi is plural of maqṣud which means intentional or purposeful. meanwhile, syarī'ah or shari'a means "The Way To The Water" "The Path To Follow" Or "The Place where the water flows into the river" (Syukri & Nasution, 2020) in terms of terminology, syarī'ah is the path ordained by allah in which humans must direct their lives to realize his will to obtain happiness in their lives both in this world and the hereafter.

The definition of maqāṣid ash-syarī'ah according to yusuf al-qardhawi is the goal that is the target of texts and particular laws to be implemented in human life, in the form of orders, prohibitions, and permissibility. Maqāṣid ash-syarī'ah can also be interpreted with the pearls of wisdom that are the goals set by each law (Al-Qaradhawi, 2017). Maqāṣid Asy-Syarī'ah is a purpose for creating laws to benefit human life, the natural surroundings, and all creatures on earth.

D. Distribution Of Maqāṣid Ash-Syarī'ah

According to asy-syatibi, the benefit is seen from two perspectives, namely as follows:

1. Maqāṣid Ash-Syari' (God's Purpose)

Maqāṣid Asy-Shari' is god's purpose in establishing shari'a as a rule of law that is imposed on the mulatto. As For Maqāṣid Ash-Syari'ah In The Sense Of Maqāṣid Ash-Sharia Has 4 Aspects Namely (Bakri & Umar, 2016):

a. Qashdu Asy-Syari' Fi Wadh'i Asy-Syari'ah (God's Purpose In Establishing Shari'a).

The First Aspect Concerns The Content And Content Of Maqāṣid Asy-Syari'ah. The first aspect is the core of maqāṣid ash-syari'. asy-syatibi then divides maqāṣid ash-syari'ah or maslahat into three important parts, namely (Effendi, 2008):

1) Maqāṣid Ad-Daruriyyah

Maqāṣid Daruriyyah Can Be Called the Needs Of Daruriyat Or Primary Needs Or Basic Needs.

- a) Hifz Ad-Dīn means maintaining religion, namely in the form of the right to choose a religion, carry out religious teachings, and practice them in life.
- b) Hifz An-Nafs is taking care of the soul or guarding the soul in the form of preserving human dignity and protecting human rights (Nurhayati & Sinaga, 2018).
- c) Hifz Al-'Aql Is maintaining or guarding the mind in the form of freedom to think and express opinions to obtain justice and truth.
- d) Hifz An-Nasal is maintaining or maintaining offspring in the form of the right of every human being to have offspring.
- e) Hifz Al-Māl is maintaining assets in the form of freedom to seek, collect and use wealth for the benefit of oneself and one's life.

2) Maqāṣid Jizyah

Maqāṣid Jizyah is a legal provision that provides space for face-to-face to obtain convenience to realize the daruriyah provisions.

3) Maqāṣid At-Tahsiniyyah

Maqāṣid Tahsiniyyah or tahini at needs are needs that sustain an increase in one's dignity according to one's degree.

b. Qashdu Asy-Syari' Fi Wadh'i Asy-Syari'ah Lil Ifham (God's Purpose in Establishing Shari'a Is So That It Can Be Understood).

c. Qashdu Asy-Syari' Fi Wadh'i Asy-Syari'ah Li At-Taklif Bi Muqtadhaha (Sharia as A Taklif Law That Must Be Implemented).

d. Qashdu Asy-Syari' Fi Dukhul Al-Mukalaf Ahkam Ash-Syari'ah Throne (The Shari'a Aims to Bring Human Beings Under The Protection Of The Law)

4) Maqāṣid Al-Mukalaf (Purpose of Mukalaf)

According To Asy-Syatibi, Maqāṣid Al-Mukalaf Is One Part Of Maqāṣid Asy-Syari'ah Which Means The Purpose Of The Mulaf In Implementing The Shari'a.

E. Marriage Age Limit in Law Number 16 Of 2019 Concerning Marriage According To The Perspective Of Hifz Ad-Din

The purpose of the shari'a with the regulation of marriage is to fulfill religious orders, to establish a harmonious, prosperous, and happy household. In terms of carrying out balanced rights and obligations between husband and wife, to create willingness and responsibility in the household ([Muawwanah, 2019](#)).

In addition, the purpose of marriage is to form a family that is sakinah, mawaddah, and full of grace. The way to make it happen requires a lot of preparation including a deep understanding and practice of religious knowledge. Religious knowledge becomes punishment in the family. when the game is not there, it is easy for the family to succumb to the temptation of being crushed. In a family relationship that is sakinah, mawadah, and full of grace, the quality of religion in the family will always be maintained ([Jamil, 2021](#)).

The next preparation is a mature mental condition ([Asmani & Baroroh, 2019](#)). In addition, the husband and wife's concern is an important factor in the running of the household. acts of violation of rights and obligations in the family, it is often caused because the husband or wife is immature in dealing with a problem. so the attitude of immaturity leads to not maintaining the quality of religion. such as the occurrence of acts of violence, child abandonment, and divorce in a time sooner or later.

Someone who is 19 years old is more mature in the way he thinks and acts. the emotions of someone aged 19 years are also more stable and calm. These things also affect the quality of the religion that is owned. Based on the preparations for marriage described above, a person at the age of 19 is quite ready to get married.

So, it can be seen that the renewal of the minimum age limit for marriage was originally 16 years for women and 19 years for men. Being 19 is good for both girls and boys. In the context of maintaining the quality of religion (Hifz Ad-Din) it can be said to be quite good and is getting people closer to benefit. Because these reforms can prevent society, especially women from practicing early marriage. The couples who will later marry are also really mature so they can produce a family that has good religious qualities.

F. Marriage Age Limit In Law Number 16 Of 2019 Concerning Marriage According To The Perspective Of Hifz An-Nafs

At the age of 19 years entered the phase of late adolescence. someone who is 19 years old is not in the early adolescent phase where his emotions are still unstable and his physical and psychological development is better ([Ramadhany Et Al., 2016](#)). The 19-year-old who is in the final adolescent phase has the characteristics of starting to see himself as an adult, starting to show more mature mindsets, attitudes, actions, and emotions that are starting to stabilize ([Diantika, 2018](#)). In addition, late adolescents have calmer emotions and a more mature way of thinking, so they feel calmer even though they face problems or face disappointment, or other things that can cause anger. Having a realistic attitude, late adolescents begin to accept more of what is happening in their lives and are not too disappointed with the failures that occur with their

dreams or hopes (Bestari, 2016).

Rules regarding the increase in the age limit for marriage to 19 years for both men and women have been able to guarantee the physical readiness and psychological maturity of each prospective bride and groom which are the main requirements for the realization of the purpose of marriage (Nurcholis, 2020).

The readiness of each bride and groom is the key to the success of a marriage. if the readiness is sufficient then the marriage will go well. meanwhile, if the readiness of the prospective bride and groom is minimal, then the marriage will be easily exposed to many trials. Changing the age limit for marriage for women to 19 years has had a good impact on women, especially from a reproductive perspective. The reproductive condition of someone who is 19 years old is better than someone who is 16 years old. Uu No. 16 Of 2019 which regulates that the minimum age for marriage for women is increased to 19 years is a way that is expected to minimize medical problems for mothers who will give birth and children who will be born (Rambe, 2021).

These medical problems are low birth weight babies, birth defects or premature babies, miscarriages or even death in the mother and/or baby, bleeding during childbirth, sexually transmitted diseases, cervical cancer, experiencing difficulties during childbirth, experiencing pregnancy poisoning, and the mother is at risk of anemia. This medical problem is due to immature reproductive organs and the occurrence of sexual intercourse at a very early age. the previous marriage age limit of 16 years for women would make it possible for the medical problems mentioned above to occur. Increasing the age limit for marriage to 19 years, which is close to 20 years, will greatly reduce these medical problems. this of course has a good impact on one's life and the health of mothers will be maintained. therefore, the change in the age limit for marriage in law no. 16 of 2019 highly upholds the value of hifz an-nafs by paying attention to the reproductive health of a mother and the health of the baby to be born.

Married at the age of 19 years as the marriage age limit that has been determined in law no. 16 of 2019 has a pretty good impact on household harmony compared to getting married at age 16. someone who is 19 years old has been able to regulate emotions and take actions with care and consideration (Adila, 2020).

The change in the age limit for marriage in law no. 16 of 2019 is an effort by the government to maintain honor and equalize one's rights. Women who marry at an early age are at high risk for their physical and psychological health, as well as the possibility of domestic violence (Sudarmaji, 2021).

G. Marriage Age Limit In Law Number 16 Of 2019 Concerning Marriage According To The Perspective Of Hifz Al-Aql

Someone who is 19 years old or who is in their late teens experiences changes in their cognitive or way of thinking. Cognitive in psychology is defined as the ability to think, observe, and behave to know something (Mustopa, 2015). In terms of education, someone who is 19 years old is currently or has even gone through a mandatory educational process. So that it can be said that having sufficient educational provisions will be better prepared for marriage (Anshori, 2019)

Compared to those with less education. the level of education will affect the maturity level of one's personality. Therefore someone who has sufficient educational provisions will form a more mature personality.

The change in the rules for the limit of marriage age, which was originally 19 years for men and 16 years for women, then became 19 years for both men and women if it is related to maintaining or maintaining the mind, it can be said that it is good enough and benefits are increasingly prioritized. The renewal will guarantee rights to public education, especially women's rights to be able to complete the 12-year compulsory education program ([Jamil, 2021](#)).

Uu No. 16 Of 2019 which increases the age limit for marriage from 16 years for women to 19 years is very much by *hifz al-'aql* because it prioritizes the function of reason first by studying at school and the right to education can be fully obtained. after the right to education has been properly obtained, then the path to marriage is permissible. Someone who is 19 years old has a more mature way of thinking so that they can make mature decisions so can solve the problems they face properly. The mindset of a 19-year-old is more mature than a 16-year-old. maturity or maturity must be owned by someone who wants to get married.

H. Marriage Age Limit In Law Number 16 Of 2019 Concerning Marriage According To The Perspective Of *Hifz An-Nasl*

Someone who is 19 years old is in the final adolescent phase and has started to think about his actions so as not to harm or become a burden to other people, parents, or society ([Fajarini & Khaerani, 2014](#)). Someone who is 19 years old begins to approach the phase Of Responsibility, Both responsibility to himself, his partner, and also his descendants or family. this phase is very necessary for the longevity of a household ([Mustopa, 2015](#)). A harmonious household will be able to give birth to quality offspring. The change in the age limit takes into account the quality of the offspring of the married couple. The increase in the age limit for marriage aims to regulate birth processions so that the children born get good affection and get proper educational opportunities to face a bright future ([Muawwanah, 2019](#)). By increasing the ideal age for marriage for prospective mothers, the aim is for mothers to be able to give birth to healthy and quality successors to the nation and reduce miscarriage rates ([Adila, 2020](#)).

The renewal of the marriage age limit in law number 16 of 2019 in the context of protecting offspring or *hifz an-nail* is quite good. changing the marriage age limit to 19 years for women is an effort to create a strong and quality generation. Changing the age limit for marriage for women to 19 years has had a good impact on women, especially from a reproductive perspective. The reproductive condition of someone who is 19 years old is better than someone who is 16 years old. The bad potential for babies born to mothers at the age of 16 has bad consequences for the baby and the mother ([Hamzah, 2019](#)).

The change in the age limit for marriage also aims to maintain family institutions. marriages carried out at a more mature age will make it possible to prevent households from violent events, both physical, psychological, and economic violence, and neglect. at an adult age, a person already understands what must be done and avoided to maintain the integrity of the household ([Fitria, 2021](#)).

I. Marriage Age Limit In Law Number 16 Of 2019 Concerning Marriage According To The Perspective Of Hifz Al-Māl

Based on the 12-year compulsory education program made by the government, a person who is 19 years old should have entered the age of graduating from high school (sma). therefore, they have received sufficient education, so they can work well and can manage and manage their finances. So that the age of 19 years can be said to be quite ready to work. law number 16 of 2019 stipulates that the minimum age for marriage for men and women is 19 years. The age of 19 years is included in the productive age. At that age, a person will begin to focus on finding a job that is sufficient to meet the needs of his life and that of his family (Mustopa, 2015). The purpose and wisdom of changing the marriage age limit are to increase economic readiness to live in the economy. the change in these rules prevents a person from economic unpreparedness.

Conclusion

The results of the review of law number 16 of 2019 concerning changes to the limit of marriage age with the five basic principles of maqāsid asy-syarī'ah are as follows:

Hifz Ad-Dīn In the renewal of the marriage age limit is marked by an increase in the quality of a person's diversity because of a sufficiently mature age. Couples who marry at a mature age will produce a family that has good religious qualities. Hifz An-Nafs in the renewal of the marriage age limit is marked by paying attention to the safety of the body when women are pregnant and give birth. fulfillment of reproductive health rights and minimize medical problems for mothers and children to be born. Hifz Al-'Aql in renewing the marriage age limit is marked that everyone is encouraged to go through the 12-year compulsory education program before getting married. With the fulfillment of one's right to education, one will be more mature in thinking, acting, and making decisions so that one is ready to live a married life.

Hifz An-Nail In the renewal of the marriage age limit is marked by protecting the safety of the mother and child, so that the offspring can be well preserved. Family Institutions are maintained and can give birth to quality children who can respect their parents. Hifzi Al-Māl in the renewal of the marriage age limit is marked by the maintenance of family finances because, at the age of 19, a person can work and provide for his family and manage his finances.

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