

REINTERPRETING THE HADITH OF 'AISYAH IN THE CONTEXT OF EARLY MARRIAGE: A MAQĀSĪD AL-SHARĪ'AH AND LEGAL ANALYSIS IN INDONESIA

***Muhammad Waliyuddin Yusuf, Nur Laili Hidayati , Masruhan, Nurlailatul
Musyafaah**

Faculty of Sharia and Law, UIN Sunan Ampel Surabaya

waliyuddinyusuf28@gmail.com*nrlailihidayati21@gmail.com**masruhan@uinsby.ac.id
nurlailatul@uinsa.ac.id****

Abstract

The phenomenon of early marriage remains a complex social and legal issue in Indonesia, reflecting the gap between religious texts, legal regulations, and societal realities. This research departs from the debate on the hadith of the Prophet Muhammad's marriage to 'Aisha ra. which is often used as a justification for the practice of child marriage. The purpose of this research is to critically analyze the hadith through a socio-historical approach and maqāṣid al-sharī'ah, and review its conformity with the provisions of Indonesian positive law. The research method used is normative legal research - perspective and qualitative study through literature analysis of the hadiths in Kutub al-Sittah, the views of classical fuqaha, and national legal policies such as Law No. 16 of 2019. The results of the study show that classical scholars permit al-saghirah marriage based on historical context, but contemporary scholars emphasize the need for contextual interpretation for the sake of child protection. The maqāṣid al-sharī'ah approach emphasizes the importance of principles and maslahah to prevent physical and social harm. From a positive legal perspective, changing the marriageable age limit to 19 represents a harmonization of Islamic law and the principle of children's rights. This study concludes that the hadith of 'Aisyah should be understood as historical fact, not normative legitimacy, and emphasizes the need for adaptive and just Islamic legal ijihad regarding the protection of children and families.

Key words: early marriage; 'Aisyah hadith; maqāṣid al-sharī'ah; Islamic law; Indonesian positive law.

Abstrak

Fenomena pernikahan dini masih menjadi isu sosial dan hukum yang kompleks di Indonesia, yang mencerminkan adanya kesenjangan antara teks agama, peraturan hukum, dan realitas masyarakat. Penelitian ini berangkat dari perdebatan hadis pernikahan Nabi Muhammad dengan 'Aisyah ra. yang sering dijadikan justifikasi praktik pernikahan anak. Tujuan penelitian ini adalah menganalisis hadis secara kritis melalui pendekatan sosio-historis dan maqāṣid al-sharī'ah, serta mengkaji kesesuaiannya dengan ketentuan hukum positif Indonesia. Metode penelitian yang digunakan adalah penelitian hukum normatif - perspektif dan studi kualitatif melalui analisis kepustakaan terhadap hadis-hadis dalam Kutub al-Sittah, pandangan fuqaha klasik, dan kebijakan hukum nasional seperti Undang-Undang No. 16 Tahun 2019. Hasil penelitian menunjukkan bahwa ulama klasik membolehkan pernikahan al-saghirah berdasarkan konteks historis, namun ulama kontemporer menekankan perlunya penafsiran kontekstual demi perlindungan anak. Pendekatan maqāṣid al-sharī'ah menekankan pentingnya prinsip dan maslahah untuk mencegah kerugian fisik dan sosial. Dari perspektif hukum positif, perubahan batas usia menikah menjadi 19 tahun merupakan harmonisasi hukum Islam dan prinsip hak-hak anak. Penelitian ini menyimpulkan bahwa hadis 'Aisyah harus dipahami sebagai fakta historis, bukan legitimasi normatif, dan menekankan perlunya ijihad hukum Islam yang adaptif dan adil terkait perlindungan anak dan keluarga.

Kata kunci: pernikahan dini; hadis 'Aisyah; maqāṣid al-sharī'ah; hukum Islam; hukum positif Indonesia.

INTRODUCTION

The phenomenon of early marriage remains a prominent issue in various Muslim countries, including Indonesia. Child marriage often leads to a variety of problems, from high divorce rates and reproductive health issues to hindered education for girls. Data from the Central Statistics Agency (BPS) shows that although the rate of early marriage has decreased, Indonesia remains among the countries with the highest prevalence in the ASEAN region. (Pusat Statistik (BPS), 2020, p. 12) This fact demonstrates a gap between legal regulations, religious teachings, and social realities. In the Islamic context, some groups often use the history of the Prophet Muhammad's marriage to 'Aisha (ra) as justification for permitting early marriage, yet this issue requires deeper analysis from both the hadith and contemporary law. (ibn Ismā'īl al-Bukhārī, n.d.)

On the other hand, the highest rates, according to Statistics Indonesia (BPS), were found in West Nusa Tenggara (14.96%) and South Papua (14.40%), highlighting serious challenges related to poverty, traditional social norms, and limited access to education and reproductive information in these areas. Other provinces that also show high rates include West Sulawesi (10.71%), West Kalimantan (10.05%), Central Kalimantan (9.89%), and Southeast Sulawesi (9.40%), which also show a concentration of early marriage in certain areas (BPS). Overall, these regional disparities illustrate that while efforts to reduce child marriage are underway, they are not evenly distributed—most successful in metropolitan regional centers, but still facing structural and cultural barriers in outermost and marginalized areas. This emphasizes the importance of more focused and adaptive intervention strategies, particularly in areas with high rates, to make child protection and delaying the age of marriage more effective.

Based on data from the Ministry of Women's Empowerment and Child Protection (2024), there has been a consistent downward trend in the percentage of child marriages over the past three years. In 2021, the child marriage rate decreased from 10.35 percent to 9.23 percent. It then fell to 8.06 percent in 2022, and to 6.92 percent in 2023. However, efforts to eliminate child marriage must be ongoing by all parties. To this end, the government, along with development partners, has developed a Practical Guide for the Implementation of STRANAS PPA in the Regions. Although there has been a decline in the national rate of early marriage, this problem remains prominent in rural areas. Data from the Central Statistics Agency (2024) shows a significant gap between urban and rural areas. The percentage of married women under 18 in rural areas is almost three times higher than in urban areas. (Sari & Aulia, 2022, p. 389)

The researcher's concern in this paper is the recent emergence of critical studies highlighting Aisha's age when she married the Prophet Muhammad (peace be upon him). Although initially motivated by a spirit of defense and cleansing the Prophet Muhammad (peace be upon him) from the stigma and cruel accusations of pedophilia, a kind of

inferiority complex is clearly visible among the proponents of these critical studies, especially when dealing with the community (Hanafi, 2016, p. 297). other religions. The increase in applications for marriage dispensation in religious courts in Indonesia due to these changes, initially intended to minimize the occurrence of early marriages that lead to early divorces, has it actually increased the number of applications for marriage dispensation? Of course, it also becomes a study of the relevance of the Marriage Law to Islamic Law which is examined using the *fiqh* and *maqāṣid al-sharī'ah* approaches. Another concern is that the author feels that there are relevant legal changes in Islamic law, especially the Hadith of Aisha, which can be interpreted or translated textually? Even though the law can change according to place and time. The formulation of the problem in this study focuses on two main things. First, how is the understanding of the hadith of 'Aisha's marriage which has often been used as a basis for justifying marriage at an early age? Second, how are the provisions regarding the minimum age of marriage determined from the perspective of classical and contemporary Islamic law, and how are the regulations regulated in positive Indonesian law? These two problem formulations are important because they relate to the need for harmonization between religious texts, *maqāṣid al-sharī'ah*, and applicable laws and regulations (al-Zuḥaylī, 2004, p. 147).

This study occupies a significantly different position from previous studies on early marriage. Three previous studies that serve as comparisons are "Socioeconomic Analysis of the Impact of Early Marriage Among Adolescents," (Junita Friska et al., 2024), "Prevention of Early Marriage in Adolescents," (Utami et al., 2023), and "Analysis of the Causes and Impacts of Early Marriage (Case Study in Rejosari Village, Bojong District) (Mutiah et al., 2024)." All three focused on empirical aspects including social, economic, educational, health, and psychological factors of adolescents without examining normative debates related to religious texts. None of these studies discussed the hadith of 'Aisha, even though this hadith is often used as religious legitimacy to justify the practice of early marriage. Previous studies have not analyzed the *sanad* and *matan* of the hadith, have not reviewed its historical relevance, and have not used the *maqāṣid al-shari'ah* approach to assess whether the practice is in line with the objectives of sharia such as *hifz al-nafs*, *hifz al-'aql*, and *hifz al-nasl*. Furthermore, no previous research has integrated hadith studies with Indonesia's positive legal framework, including Law No. 16 of 2019 and the practice of marriage dispensation in the Religious Courts. Therefore, the study, "Reinterpreting the Hadith of 'Aisyah in the Context of Early Marriage: An Analysis of *Maqāṣid al-Syari'ah* and Law in Indonesia," fills an important scientific gap by presenting a normative-textual analysis that combines hadith criticism, *maqāṣid al-Syari'ah*, and modern legal studies. This approach not only complements existing empirical studies but also offers a new contribution in the form of a stronger theological and juridical foundation for child protection and the formulation of marriage policies in Indonesia.

The purpose of this study is to critically analyze the hadith about the marriage of 'Aisyah, taking into account its socio-historical context, while simultaneously examining how Islamic law and positive law regulate the minimum age for marriage. This analysis

is expected to provide a more proportional understanding of the position of the hadith of 'Aisyah in the issue of early marriage, as well as explain the relevance of legal *ijtihad* in protecting children's rights, maintaining family resilience, and creating welfare in the contemporary era. Thus, this study seeks to present a synthesis between the normative-religious dimension and the juridical-positive aspect in responding to the problem of early marriage in Muslim society, particularly in Indonesia. (Negara Republik Indonesia, 2019, p. 186)

METODE PENELITIAN

This study uses a normative-prescriptive approach with a qualitative method based on library research, because the focus is not only to describe Islamic legal norms and Indonesian positive law regarding the age limit for marriage, but also to formulate an ideal legal view in accordance with the principles of *maqāṣid al-sharī'ah* and child protection. The data collection process was carried out through a strict selection of primary and secondary sources. Primary sources include hadith books such as *Sahih al-Bukhārī*, *Sahih Muslim*, and *Sunan Abī Dāwud*, as well as classical *fiqh* works such as *Al-Majmū'* by *Al-Nawawī* and *Al-Mughnī* by *Ibn Qudāmah*, which were selected based on their authority and relevance in discussing the age limit for marriage. Secondary sources include scientific journals, contemporary Islamic legal literature, and national regulations such as Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 and Constitutional Court Decision No. 22/PUU-XV/2017 to illustrate the dynamics of modern law. After data collection, all information was classified into three categories: classical normative data, modern normative data, and analytical-conceptual data to facilitate the comparison process between classical *fiqh* views and contemporary regulations.

The next stage was data analysis using content analysis and comparative textual analysis techniques. At this stage, the hadith of 'Aisha was analyzed through a study of the *sanad* (chain of narration) and *matan* (translation of narrations) as well as comparisons between narrations to determine the historical context and the level of validity of the narrations. The results of this study were then interpreted using the theory of *maqāṣid al-sharī'ah* (the legal principle), particularly the aspects of *hifz al-nafs* (the principle of self-determination), *hifz al-'aql* (the principle of self-determination), and *hifz al-nasl* (the principle of self-determination), to assess the relevance of the hadith to child protection in the modern context. Furthermore, national legal data was analyzed prescriptively to examine the synergy between positive legal norms and *maqāṣid* values in determining the minimum age for marriage and the marriage dispensation mechanism. The synthesis of both types of data is used to draw prescriptive conclusions that offer an ideal legal framework regarding the understanding of the hadith of 'Aisyah and its application to the issue of early marriage in Indonesia.

HADITH OF THE MARRIAGE OF 'AISHA

There are two hadiths from Aisyah that explain the age of marriage. The following is an explanation of the hadiths, along with their meanings and interpretations (Suryati, 2017) :

a. The Hadith of the Marriage of 'Aisha (may Allah be pleased with her) at the age of six, narrated by Imam Bukhari in the book *التَّكَاح* Sub chapter *مَنْ ابْنَتْهُ مِنْ*

الإمام

حَدَّثَنَا مُعَلَّى بْنُ أَسَدٍ حَدَّثَنَا وَهَيْبٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَزَوَّجَهَا وَهِيَ بِنْتُ سِتِّ سِنِينَ وَبَنَى بِهَا وَهِيَ بِنْتُ تِسْعِ سِنِينَ قَالَ هِشَامٌ وَأَنْبِئْتُ أَنَّهَا كَانَتْ عِنْدَهُ تِسْعَ سِنِينَ

Mu'alla bin Asad told us Wuhaib from Hisham bin Urwah from his father from Aisha that the Prophet (peace and blessings of Allaah be upon him) married her when she was six years old and began consummating her relationship with her when she was nine. Hisham said: And it was reported to me that Aisha lived with the Messenger of Allaah (peace and blessings of Allaah be upon him) for nine years (Narrated by Bukhari).

b. The hadith of the marriage of 'Aishah ra at the age of seven narrated by Imam Abu Dawūd in the book *النكاح* Sub chapter *في تزويج الصغار*

حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ وَأَبُو كَامِلٍ قَالَا حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ تَزَوَّجَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا بِنْتُ سَبْعٍ قَالَ سُلَيْمَانُ أَوْ سِتٌّ وَدَخَلَ بِي وَأَنَا بِنْتُ تِسْعٍ "

Sulaiman bin Harb and Abu Kamil narrated to us. They said: Hammad bin Zaid narrated to us from Hisham bin 'Urwah from his father from Aisha, she said: The Messenger of Allah (peace and blessings of Allah be upon him) married me when I was seven years old. Sulaiman said: or six years old, and he had intercourse with me when I was nine years old. (Narrated by Abu Dawud)

Various Hadiths in the Kutubus Sittah which explain about Aisyah's marriage at the age of 6 years.

To determine which is stronger: Aisha's own testimony or the conclusions of the narrators, the most credible is the account of the person who experienced the historical event firsthand. Therefore, the narration stating that Aisha was married to the Prophet

Muhammad (peace be upon him) at the age of 6 is the strongest and most reliable. The Issue of Minimum Age for Marriage in Islamic Law (Hanafi, 2016, p. 297).

In the literature narrating these two hadith, there are two main narratives regarding the age at which 'Aisha (may Allah be pleased with her) married. The most well-known narration is in Ṣaḥīḥ al-Bukhārī's Kitāb al-Nikāḥ, which states that the Prophet (peace be upon him) married 'Aisha at the age of six and then consummated her relationship with her when she was nine. Criticism of this narration's chain of transmission arises because the key narrator, Hisham ibn 'Urwah, lived in Iraq where some scholars believe his memory declined in his old age, thus casting doubt on the reliability of some of his narrations (Shifatur Rahmah, 2009). Another narration, from Sunan Abī Dāwūd, states that 'Aisha was seven years old at the time of her marriage (or six according to other narrators), while the age of consummation remains nine. Both of these narrations use the chain of transmission from Hisham, so the variations in the numbers reflect differences in the narrations rather than substantial changes. However, most interpretations of this narration remain textual, without considering the socio-historical context of 7th-century Arabia for example, the definitions of adulthood, puberty, and age according to the standards of the time differ significantly from today's understanding. (*The Age of Aisha: Rejecting Historical Revisionism & Modernist Presumptions*, n.d.) Furthermore, contemporary scholarly analysis presents alternative historical evidence suggesting that 'Aisha may have been older than claimed in the traditional narrations, but such critical discourse has not yet become widely accepted in general scholarship. Therefore, understanding 'Aisha's marriage narration should be complemented by an evaluation of the quality of the sanad (chain of transmission), analysis of the inter-narrations, and contextual interpretation, so as not to stop at a mere literal reading.

ISLAMIC JURISPRUDENCE PERSPECTIVE (*FIKIH*)

In classical jurisprudence, scholars differ on the minimum age for marriage. The Hanafi school of thought holds that marriage of minors is permissible through a guardian, but that marital relations should not be consummated until the wife reaches puberty (al-Zuhaylī, 2004, p. 142). The Shafi'i and Hanafi schools also permit the marriage of minors through a mandatory guardian, citing the practice of the Prophet's marriage to 'Aisha (may Allah be pleased with her), although the consummation of marital relations is postponed until puberty (Nawawī, 1997, p. 237). The Malikiyah school of thought is stricter, although it recognizes the validity of a marriage contract for a child, it forbids a husband

from having sexual intercourse with his wife until she is physically ready (Rushd, 1997, p. 17). Thus, classical jurisprudence emphasizes puberty and the agreement of guardians, not the setting of a specific age. implications for the structure of Islamic jurisprudence that is directly correlated with the social institutions of Muslim society. The evidence, based on the reports of the narrators of the hadith about Aisha RA who was married by the Prophet SAW at the age of 6 and began living with him at the age of 9, the majority of jurists from the four schools of thought (*al-madhahib al-'arba'ah*) issued a fatwa on the permissibility of marrying young girls (*marriage al-shaghirah*) without any minimum age limit (Hanafi, 2016, p. 298).

The definition of puberty in Islamic law, as applied by Islamic jurisprudence scholars, is reaching the age at which a person is biologically ready to marry. For men, having had a semen-ejaculating dream and for women who have started menstruating, they are considered biologically ready for marriage. Scholars differ on the age of puberty, including:

a. Imam Malik, al-Layth, Ahmad, Ishaq, and Abu Thawr argue that the age of puberty is the growth of pubic hair, while most scholars of the Maliki school of thought hold that the age of menstruation for both men and women is 17 or 18 years.

b. Abu Hanifah holds that the age of puberty is 19 or 18 years for men and 17 years for women.

c. Shafi'i, Ahmad, Ibn Wahab, and the majority believe that it is the perfect age of 15 years. Even Imam Syafi'i once met a woman who had menopause at the age of 21 years and she menstruated at exactly 9 years old and gave birth to a baby girl at exactly 10 years old. And something like this happened again to his daughter (al-Asqalani, n.d., p. 310). The differences between the above-mentioned schools of thought regarding the age of puberty are greatly influenced by the environment and culture of their respective places of residence. Imam Abu Hanifah lived in Kufa, Iraq. Imam Malik lived in the Prophet's city of Medina. Imam Shafi'i lived in various places, from Medina to Baghdad, the Hijaz, and finally to Egypt, where he died. Imam Ahmad lived in Baghdad. Understanding the age of puberty clearly demonstrates that biological capacity is insufficient to enter into marriage without the necessary financial and psychological resources (Azlan, 2010, p. 41).

The following is a comparison table of the 4 schools of thought :

No.	Sect	The Law of the Marriage Contract	Sociable	Basic Thinking
1	Hanafi	Valid through a guardian	Not allowed before puberty	Focus on puberty as a condition of biological activity

2	Maliki	Legal, but Makruh/Not recommended	Haram until you are physically ready, even though you have reached puberty	Physical protection & child welfare
3	Syafi'i	Valid through wali mujbir	Postponed until puberty	Referring to the History of Aisyah
4	Hambali	Valid through a guardian	Delayed by Samoai Puberty	Biological Signs As a condition

The Malikiyah school of thought on the readiness of children to marry is more relevant in a modern social context because it emphasizes “physical readiness” over mere puberty, which aligns with current health standards regarding the risks of early marriage. From the perspective of *maqāṣid al-sharī‘ah*, this emphasis aligns with the principle of *ḥifz al-nafs* (protection of the soul), as forced marriage before the body is fully ready can lead to obstetric complications, anemia, and psychological disorders in young women (Marwa, 2021). Furthermore, the Malikiyah view of delaying marital relations until physical readiness also reflects the “non-maleficence” approach meaning, avoiding harm which is crucial in modern family law. An article on marriage age reform in Indonesia states that limiting marriage through a *maslahah* approach can accommodate social benefits and protect children from the negative impacts of early marriage (Mariani, 2022). Because the Malikite school of thought places the greatest importance on welfare (*maslahah*) as the basis of Islamic jurisprudence, its views serve as a strong normative foundation for modern legislation, such as the Indonesian Marriage Law, which stipulates a minimum age (Law No. 16 of 2019). This demonstrates that while classical *ijtihad* permits child marriage contracts, in the current context, the Malikite interpretation can bridge the gap between traditional Islamic jurisprudence principles and contemporary child protection.

The concepts of *baligh*, *‘aql*, and *rusyd* are the primary criteria for determining readiness for marriage according to Islamic jurisprudence. *Baligh* is understood as a biological sign such as menstruation or wet dreams, while *‘aql* refers to the ability to think rationally and distinguish between good and evil (Qudāmah, 1994, p. 343). Furthermore, Islamic scholars emphasize the importance of *rusyd*, namely emotional and social maturity for managing a household. Therefore, although minors are permitted to marry according to Islamic law, classical Islamic scholars assert that marriage will not achieve its ideal goals without *rusyd* (al-Zuhaylī, 2004).

From the perspective of *maqāṣid al-sharī‘ah*, marriage is not only viewed from the legal aspect of the contract, but must also fulfill the objectives of *sharia*. First, the principle of *ḥifz al-nafs* (protection of the soul) requires that marriage not endanger the physical and psychological health of the bride and groom, especially women (Auda, 2008, p. 45). Second, *ḥifz al-nasl* (protection of offspring) emphasizes that early marriage can pose risks to the quality of the next generation, both in terms of reproductive health and the child's educational readiness. Third, the goal of family welfare suggests that marriage

is only appropriate if the prospective husband and wife are physically, mentally, and socially mature, so that the household can be a source of peace (*sakinah, mawaddah, wa rahmah*) (al-Raysūnī, 1992, p. 122).

The maqāṣid al-sharī'ah approach provides a comprehensive framework for reassessing the practice of early marriage in a modern context. The principle of ḥifz al-nafs (protection of the soul) demands that marriage not endanger the safety of women, as contemporary fiqh research indicates that child marriage carries the risk of health complications and psychological distress (Marwa, 2021, pp. 381–384).¹ The principle of ḥifz al-nasl (protection of offspring) is also relevant because early pregnancy has been shown to threaten the quality of the generation and reproductive health, making the Malikiyah view of postponing marital relations until it is truly safe more in line with the objectives of sharia (Asiah, 2019, pp. 105–110). Meanwhile, ḥifz al-'aql (protection of the mind) emphasizes the importance of mental maturity in building a household, while the requirement of puberty alone, as in some classical opinions, does not guarantee psychological maturity (*rushd*). The principle of family *maslahah* also emphasizes that the goal of *sakinah-mawaddah-wa-rahmah* cannot be achieved if the couple is not yet emotionally and socially mature. Therefore, although classical scholars permitted *al-saghīrah* marriage, the maqāṣid approach provides the normative basis for limiting the age of marriage. This principle is used to legitimize sharia in Indonesian positive legal policies, particularly Law No. 16 of 2019, which equalizes the minimum age for marriage at 19. This approach also aligns with the thinking of contemporary scholars such as Yusuf al-Qaradawi and Jasser Auda, who emphasize the importance of contextual *ijtihad* to safeguard human well-being (Auda, 2008).

Thus, although classical scholars allow early marriage based on normative texts, the maqāṣid al-sharī'ah approach provides a strong foundation for setting a minimum age limit for marriage for the sake of benefit. This maqāṣid principle later became the basis for modern regulations, including Indonesia's policy in Law No. 16 of 2019, which equalized the minimum age of marriage for men and women at 19 years old (Djamil, 2017, p. 231). This approach is in line with the views of contemporary scholars, such as Yusuf al-Qaradawi and Jasser Auda, who emphasize the importance of contextual *ijtihad* so that Islamic law can respond to the challenges of the times.

Minimum Age for Marriage in Indonesian Positive Law

Initially, the minimum age for marriage was regulated in Article 7 paragraph (1) of Law No. 1 of 1974 concerning Marriage, which stipulates a minimum age of 19 years for men and 16 years for women. However, this regulation was widely criticized for being considered discriminatory and inconsistent with the principle of gender equality. After undergoing a judicial review at the Constitutional Court, Law No. 16 of 2019 was finally born, revising Article 7 paragraph (1), with the provision that both men and women may only marry if they are at least 19 years old. This change shows harmonization with international norms regarding child protection and the elimination of gender

discrimination. In the Constitutional Court Decision Number 22/PUU-XV/2017, it became an important milestone in changing the minimum age for marriage. The Constitutional Court considered that the difference in minimum age between men and women violates the principle of equality before the law as guaranteed by the 1945 Constitution Article 28B paragraphs (1) and (2). In addition, the Constitutional Court emphasized that marriage at a young age is prone to having negative impacts, both in terms of education, reproductive health, and the future of the child. Therefore, the Constitutional Court recommended that the DPR and the Government amend the law, which was then realized with the ratification of Law No. 16 of 2019.

The change in the minimum marriage age in Law No. 16 of 2019 essentially aims to protect children from early marriage. This regulation aligns with the Child Protection Law (Law No. 23 of 2002 jo. Law No. 35 of 2014), which affirms that every child has the right to optimal survival, growth, and development. By setting the minimum age at 19, the state seeks to ensure that prospective brides and grooms are physically and mentally mature enough to establish a household. In addition to child protection, this regulation also relates to reproductive health and divorce prevention. Data from the National Population and Family Planning Agency (BKKBN) shows that early marriage often results in high maternal and infant mortality rates due to the risks of unprepared reproductive health (Kependudukan dan Keluarga Berencana, 2018, p. 22). Meanwhile, research also shows that child marriage carries a higher risk of divorce due to a lack of emotional and social maturity. Therefore, changing the minimum marriage age to 19 is a progressive legal step to reduce the social problems caused by early marriage (Djamil, 2017, p. 231).

The development of the international discourse on human rights has encouraged many parties to concretely recognize it at the national level through various legal instruments. Currently, the majority of countries have declared the minimum legal age of marriage to be 18. This policy implements the International Convention on the Rights of the Child, established by the UN General Assembly in 1989 (Hanafi, 2016, p. 298). Sejalan dengan itu melalui Keppres Nomor 36 Tahun 1990, Indonesia turut meratifikasi konvensi Hak Anak (KHA) Berisi Peraturan perlindungan anak. Sebagai implementasinya, pemerintah kemudian mengesahkan UU Nomor 23 Tahun 2002 tentang Perlindungan Anak (UU PA). Adapun hukum perkawinan di Indonesia, melalui UU Perkawinan Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam (KHI) Inpres Nomor 1 Tahun 1991, telah menetapkan batas usia minimal untuk menikah, yakni 19 tahun bagi laki-laki dan 16 Tahun bagi perempuan (Hanafi, 2016, p. 299).

The changes to the minimum marriage age regulation through Law No. 16 of 2019 are increasingly relevant when linked to judicial practices in Religious Courts. Several recent decisions from 2023–2024 show that despite the minimum age being raised to 19, requests for marriage dispensations remain high. For example, Sidoarjo Religious Court Decision No. 1835/Pdt.P/2023/PA.Sda granted a marriage dispensation for a 16-year-old

girl on the grounds of “avoiding promiscuity.” (Putusan Mahkamah Agung Republik Indonesia, n.d., pp. 4–6). Similarly, in Bandung Religious Court Decision No. 1225/Pdt.P/2024/PA.Bdg, the judge granted a dispensation for a 15-year-old girl due to social pressure and the family's economic situation (Putusan MA, n.d., pp. 3–5). This phenomenon shows the distance between legal regulations designed to protect children and social practices that still place mujbir guardians as dominant actors.

Early marriage can also occur due to parental pressure, especially from guardians. Early marriages involving guardians have significant social and psychological impacts on girls. Socially, girls who marry at a young age often lose access to education. They are forced to assume the roles of wife and mother, which require emotional maturity and physical readiness. This is exacerbated by the fact that they may not be financially or mentally prepared for married life, often leading to dependence on their husbands or extended family for daily needs (Taufik dan, 2021). National legal policies regarding early marriage in Indonesia still provide space for guardians through marriage dispensations. Despite revisions to the Marriage Law that raised the minimum age for marriage, dispensations granted by religious courts are often based on social or economic reasons, rather than solely in the child's best interests. This demonstrates a conflict between the protection of children's rights under national law and the exercise of the guardian's authority based on Islamic legal tradition. (Mutakin, 2024, p. 1752)

In the perspective of *maqāṣid al-sharī'ah*, the practice of this loose dispensation has the potential to conflict with the principles of *ḥifẓ al-nafs*, because early marriage can threaten women's physical and psychological safety; not in line with *ḥifẓ al-nasl*, because early pregnancy disrupts the quality of the generation; and ignoring *ḥifẓ al-'irdh* (protection of dignity), because girls often lose autonomy in decision making (al-Zuhaylī, 1986, pp. 1045–1048). Thus, even though national regulations have been progressive, social practices through dispensations often undermine the goal of child protection, so that the application of the principle of *maqāṣid al-sharī'ah* becomes important in judges' considerations so that dispensations are given only in truly emergency conditions.

CONCLUSION

The study's conclusion recommends a more critical and contextual understanding of the hadith analysis surrounding the marriage of 'Aisha (may Allah be pleased with her). Both of the primary narrations—six years in Bukhari's and seven years in Abu Dawud's—come from the same narrator, Hisham ibn 'Urwah, so the numerical differences are more a function of narration than of actual differences. Additionally, several hadith scholars questioned the accuracy of Hisham's memorization during his time in Iraq, creating room for a critical analysis of the historical facts pertaining to the marriage's age. Additionally, historical analysis demonstrates that 7th-century norms regarding age, maturity, and puberty were very different from those of today. Therefore, rather than being a universal legal rule that can be used as normative legitimacy for the practice of early marriage in

the modern era, the hadith of 'Aisha is better positioned as a historical fact reflecting the social conditions of the time.

A more thorough foundation for evaluating the practice of child marriage in the framework of modern Islamic law is provided by an interpretation grounded in the *maqāṣid al-sharī'ah* (laws of the law). Given the significant medical and psychological risks connected to early pregnancy, the principle of *ḥifẓ al-nafs* highlights the duty to protect girls from physical and psychological harm. According to the *ḥifẓ al-nasl* (laws of the law) principle, pregnancy that takes place before biological maturity will jeopardize the continuation of offspring. Similarly, the signs of puberty alone cannot ensure mental and emotional maturity, which is necessary for the principles of *ḥifẓ al-'aql* and *rusyd* (laws of the law of the law). In this instance, the Malikiyah strategy of delaying husband-wife interactions until they are beneficial and physically ready is more in line with contemporary social demands and the child protection principle. Therefore, rather than citing exact texts, modern Islamic law typically bases the minimum age for marriage on *maslahah* (benefit) and harm prevention.

This research has implications for Indonesian positive law, as evidenced by the harmonization of national regulations, specifically Law No. 16 of 2019, which sets the minimum age of marriage at 19 for both male and female candidates, with the principles of *maqāṣid al-sharī'ah* (the objectives of Islamic law). This policy supports the state's efforts to mitigate the social, psychological, and health risks associated with early marriage as well as the child protection principle. Nonetheless, the 2023–2024 Religious Court marriage dispensations practice revealed a discrepancy between social reality and legal requirements. Dispensations are frequently given due to social pressure, economic factors, and the presence of *mujbir* guardians; as a result, the regulatory goals of lowering the number of early marriages are not entirely met. This circumstance highlights the necessity of tightening dispensation mechanisms and interpreting Islamic jurisprudence (*fiqh*) more adaptably in order to conform to the *maqāṣid* (the goals of Islamic law) and constitutional protection for children.

This study suggests a more progressive Islamic legal *ijtihad* (*ijtihad*) focused on child protection in light of these findings. In order to evaluate early marriage practices based on actual harms and wider benefits, legal interpretation should give priority to the *maqāṣid al-sharī'ah* (objectives of Islamic law), not just the text. It is necessary to examine the idea of guardian *mujbir* (guardian) to make sure it does not infringe upon the rights of children or the benefit principle. Marriage dispensations should be restricted to emergency situations and strengthened with explicit medical, psychological, and social requirements. Additionally, a national fatwa is required to confirm that Islamic law forbids early marriage because it is harmful and goes against the *maqāṣid* (the goals of Islamic law). To guarantee that Islamic legal *ijtihad* remains applicable and capable of offering the best possible protection for children in the context of modern society, it is

also crucial that judges incorporate up-to-date health and psychological data into their rulings.

DAFTAR PUSTAKA

- al-Asqalani, I. H. (n.d.). *Fathul-Bari Sharah Sahih Al-Bukhari*, tt (Vol. 5).
- al-Raysūnī, A. (1992). *Nazariyyat al-Maqāṣid 'inda al-Imām al-Shātibī*. Beirut: al-Mu'assasah al-Jāmi'iyyah.
- al-Zuhaylī, W. (1986). *Uṣūl al-Fiqh al-Islāmī*. Damaskus: Dār al-Fikr.
- al-Zuhaylī, W. (2004). *Al-Fiqh al-Islāmī wa Adillatuh: Vol. VII*. Beirut: Dār al-Fikr.
- Asiah, N. (2019). Pernikahan Usia Anak dalam Perspektif Maqasid Syariah. *Jurnal Al-Syir'ah*, 17.
- Auda, J. (2008). *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law*. London–Washington: IIIT.
- Azlan. (2010). *Pernikahan Usia Dini Menurut Hukum Islam*.
- Djamil, F. (2017). Pembaharuan Hukum Islam dalam Hukum Perkawinan di Indonesia. *Jurnal Ahkam*, 17(2).
- Hanafi, Y. (2016). *Kontroversi usia kawin aisyah ra dan kaitannya dengan legalitas perkawinan anak di bawah umur dalam islam*. 15(2).
- ibn Ismā'īl al-Bukhārī, M. (n.d.). *Ṣaḥīḥ al-Bukhārī, Kitāb al-Nikāḥ*,.
- Junita Friska, Diana Agatha Nainggolan, Ira Syafitri Siregar, Ismaina Hamda Siregar, Sri Dina Br Purba, & Theresia Agustine Tuka. (2024). Analisis Sosial Ekonomi Dampak Pernikahan Dini Dikalangan Remaja. *Aliansi: Jurnal Hukum, Pendidikan dan Sosial Humaniora*, 2(1), 40–64. <https://doi.org/10.62383/aliansi.v2i1.636>
- Kependudukan dan Keluarga Berencana, B. (2018). *Laporan Perkawinan Usia Anak dan Dampaknya*.
- Mariani, M. (2022). Reactualization of the Marriage Age Limit in Indonesia (in the Perspective of Maslahah Mursalah). *Lambung Mangkurat Law Journal*, 7(1), 93–107. <https://doi.org/10.32801/lamlaj.v7i1.309>
- Marwa, M. H. M. (2021). Mitigasi Bencana Perkawinan Anak Sebagai Upaya Mewujudkan Keluarga Sakinah: Perspektif Fikih Perlindungan Anak. *Veritas et Justitia*, 7(2), 349–379. <https://doi.org/10.25123/vej.v7i2.4314>
- Mutakin, A. (2024). Kontroversi Wali Mujbir dalam Kasus Pernikahan Dini di Indonesia. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*.
- Mutiah, N. R., Zulfa, I., & Hami, W. (2024). *Analisis Penyebab dan Dampak Pernikahan Dini (Studi Kasus di Desa Rejosari, Kecamatan Bojong)*. 7(1).
- Nawawī, A.-. (1997). *Al-Majmū' Sharḥ al-Muhadhdhab* (Vol. 16). Beirut: Dār al-Fikr.
- Negara Republik Indonesia, L. (2019). *Undang-Undang Republik Indonesia Nomor 16 Tahun 2019*.
- Pusat Statistik (BPS), B. (2020). *Statistik Perkawinan Anak 2020*. Jakarta: BPS.
- Putusan MA, D. (n.d.). *Pengadilan Agama Bandung, Putusan Nomor 1225/Pdt.P/2024/PA.Bdg*.

- Putusan Mahkamah Agung Republik Indonesia, D. (n.d.). *Pengadilan Agama Sidoarjo, Putusan Nomor 1835/Pdt.P/2023/PA.Sda*.
- Qudāmah, I. (1994). *Al-Mughnī* (Vol. 9). Beirut: Dār al-Kutub al-‘Ilmiyyah.
- Rushd, I. (1997). *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Vol. 2). Kairo: Dār al-Ḥadīth.
- Sari, A. P., & Aulia, F. N. (2022). *Dampak dan Faktor Penyebab Pernikahan Dini di Indonesia*. 3.
- Shifatur Rahmah, W. (2009). Mengkritisi Hadis-Hadis Tentang Usia Pernikahan Aisyah. *Musāwa: Jurnal Studi Gender Dan Islam*, 89. <https://doi.org/10.14421/musawa.2009.82.163.183>
- Suryati. (2017). *Pernikahan Dini Dalam Perspektif Hadist (Studi Hadits Pernikahan ‘Aisyah r.a dengan Rasulullah SAW)*.
- Taufik dan, H. (2021). Tinjauan Hukum Islam Terhadap Wewenang Imam Masjid Sebagai Wali Muhakkam Dalam Pernikahan Bawah Tangan. *Familia: Jurnal Hukum Keluarga*, 2(1).
- The Age of Aisha: Rejecting Historical Revisionism & Modernist Presumptions*. (n.d.).
- Utami, A. S., Andini, P., Angeli, A., Wahyuni, A. J., & Adrianti, D. O. (2023). Pencegahan Pernikahan Dini pada Remaja. *EJOIN: Jurnal Pengabdian Masyarakat*, 1(9), 1082–1087. <https://doi.org/10.55681/ejoin.v1i9.1606>