IMPLEMENTATION OF CHANGES IN THE MINIMUM AGE FOR MARRIAGE FOR MEN AND WOMEN IN VIEW OF ISLAMIC LAW IN INDONESIA

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ABSTRACT

Objective: Indonesia is a constitutional state with a Muslim majority that uses Islamic law as a source of law which is then codified in law (taqnin al-ahkam). This was born marriage law, judicial law, religion, zakat law, and waqf law. After the enactment of Law no. 16 of 2019 concerning Marriage there are changes regarding the minimum age limit for marriage.

Methods: This type of research is empirical juridical in nature which in other words is a type of sociological legal research and can also be called field research, which examines the legal provisions that apply and what actually happens in society.

Results: The results of this study concluded that there were many marriage dispensation applications to the Religious Courts. This is influenced by several factors, namely legal substance factors, educational factors and economic factors.

Conclusion: This research examines application of the marriage age limit must be updated in accordance with current Islamic law.

Keywords: minimum age limit, marriage, islamic law.

IMPLEMENTAÇÃO DE MUDANÇAS NA IDADE MÍNIMA PARA O CASAMENTO DE HOMENS E MULHERES EM VISTA DA LEI ISLÂMICA NA INDONÉSIA

RESUMO

Objetivo: A Indonésia é um estado constitucional com maioria muçulmana que usa a lei islâmica como fonte de direito, que é então codificada em lei (taqnin al-ahkam). Assim nasceram a lei do casamento, a lei judicial, a religião, a lei do zakat e a lei do waqf. Após a promulgação da Lei n° 16 de 2019 relativa ao casamento, houve mudanças em relação ao limite mínimo de idade para o casamento.

Keywords: limite mínimo de idade para o casamento, lei islâmica.

DOI: https://doi.org/10.55908/sdgs.v12i2.2773
Métodos: Esse tipo de pesquisa é de natureza jurídica empírica que, em outras palavras, é um tipo de pesquisa jurídica sociológica e também pode ser chamada de pesquisa de campo, que examina as disposições legais que se aplicam e o que realmente acontece na sociedade.

Resultados: Os resultados deste estudo concluíram que houve muitos pedidos de dispensa de casamento aos tribunais religiosos. Isso é influenciado por vários fatores, a saber, fatores de substância legal, fatores educacionais e fatores econômicos.

Conclusão: Esta pesquisa examina a aplicação do limite de idade para o casamento e deve ser atualizada de acordo com a lei islâmica atual.

Palavras-chave: limite de idade mínima, casamento, lei islâmica.

APLICACIÓN DE LOS CAMBIOS EN LA EDAD MÍNIMA PARA CONTRAER MATRIMONIO DE HOMBRES Y MUJERES A LA LUZ DE LA LEY ISLÁMICA EN INDONESIA

RESUMEN

Objetivo: Indonesia es un Estado constitucional de mayoría musulmana que utiliza el derecho islámico como fuente del derecho que luego se codifica en ley (taqnin al-ahkam). Así nacieron el derecho matrimonial, el derecho judicial, el derecho religioso, el derecho del zakat y el derecho del waqf. Tras la promulgación de la Ley nº 16 de 2019 relativa al matrimonio se han producido cambios en cuanto al límite mínimo de edad para contraer matrimonio.

Métodos: Este tipo de investigación es de naturaleza jurídica empírica que, en otras palabras, es un tipo de investigación jurídica sociológica y también puede denominarse investigación de campo, que examina las disposiciones legales que se aplican y lo que realmente sucede en la sociedad.

Resultados: Los resultados de este estudio concluyen que hay muchas solicitudes de dispensa matrimonial ante los tribunales religiosos. En ello influyen varios factores, a saber, factores de sustancia jurídica, factores educativos y factores económicos.

Conclusiones: Esta investigación examina la aplicación del límite de edad para contraer matrimonio debe actualizarse de acuerdo con la ley islámica vigente.

Palabras clave: límite de edad mínima, matrimonio, ley islámica.

1 INTRODUCTION

Indonesia is a constitutional state with a Muslim majority that uses Islamic law as a source of law that is then codified in legislation (taqnin al-ahkam). Thus, the marriage law, judicial law, religion, zakat laws, and endowment laws, for example, were born. In addition to other Sharia law publications like the President's Instructions for the Compilation of Islamic Law (KHI), or even at the fatwa level of the Indonesian Ulema Council with its Fatwa Commission and National Sharia Council. All of this serves as guidance for the Indonesian Muslim community in carrying out Shari'a.
The age limit for marriage is stipulated in Article 7 paragraph (2) of Law Number 1 of 1974, which specifies that "the age limit for marriage is 16 years for women and 19 years for men." This has been going on for around 35 (thirty-five) years, and various social and economic issues have arisen in practice, both in metropolitan communities and particularly in traditional/indigenous communities. One of the consequences is that girls' reproductive organs are not yet mature, contributing to the high mortality rate of mothers who give birth and their children, as well as malnourished babies and stunted toddlers.

Responding to issues raised by the impact of the marriage age limit, civil society encouraged the government to alter the Marriage Law's contents, particularly Article 7 of the Marriage Law. With Constitutional Court Decision Number 22/PUU-XV/2017 concerning the judicial review of Law Number 1 of 1974 concerning Marriage, specifically related to Article 7 paragraph 1, which can be implemented immediately, the Constitutional Court finally issued a decision to support the amendment to the Marriage Law.

This Marriage Law adheres to the premise that in order to carry out a marriage, a married pair must be mentally and physically mature. By preparing their body and soul for marriage, it is believed that the marriage would be free of divorce since it will last and generate excellent and healthy offspring. The government intends to execute this policy so that both husband and wife are at least 19 years old when they marry, so that the two spouses are psychologically, physically, and mentally prepared (Abror, 2020).

With the renewal of the preceding article, the legal age restriction for marriage in Indonesia is established at 19 years for both men and women. This restriction, however, can be circumvented by submitting a marriage dispensation to the Religious Courts. Even if the age limit for marriage is set in such a way under statutory laws, it does not rule out the possibility of an underage marriage. Marriages for youngsters under the age of 18 can be performed with a court order. The man's and/or woman's parents may petition the court for a dispensation for very urgent grounds, accompanied by suitable supporting evidence (Gios Adhyaksa, 2021).

The lack of established criteria or indications in the Marriage Law allows the panel of judges to make decisions on their own initiative, which frequently refer to fiqh books. The consequence is that most marriage dispensation applications are invariably approved, making the causes of underage weddings less evident. The age of marriage is not particularly addressed in Islamic Law. The Qur'an merely provides hints and signs for
Muslims to choose the optimal age limit, which is established by the conditions and signs chosen, and is finalized by where the law will be enacted (Kurniawati, 2021).

The number of divorces in Indonesia is increasing due to errors, one of which is the age of marriage, and for the reason of ensuring the rights of children for the sake of survival, growth, and development, as well as protecting them from prejudice regarding violence, the government altered the Marriage Law to raise the eligibility age for women's marriage to 19 years (Supriyadi, 2009). These boundaries are considered mature in terms of psychological, mental, and physical development. When a couple marries at a mature age, the problems that develop during marriage are minimized.

As a result of the foregoing background regarding changes to the age limit for marriage according to law number 16 of 2019 regarding amendment to law number 1 of 1974 concerning marriage, the author is interested in discussing how the implementation of changes to the age limit for marriage according to Islamic law in Indonesia is going.

2 LITERATURE REVIEW

In the compilation of Islamic law (KHI) marriage is called a strong agreement or mitsaqan ghalizhan. Or it can also be put forward as a reason to say that marriage is an agreement because there is a bond that has been arranged in advance, namely a marriage contract with certain terms and conditions.

The age limit for marriage is not explained, but this does not mean that Islam absolutely allows young marriages. Basically, in the Koran and al-Sunnah there is no clear statement regarding the age limit for marriage. These two sources only emphasize that the person who is going to get married must be a decent and mature person so that they can manage and live their home life well. With this maturity, husband and wife will be able to fulfill their rights and obligations reciprocally. As in Surah an-Nisa' verse 6 it is stated:

And test the orphans until they are old enough to marry. Then, if in your opinion they are intelligent (good at looking after wealth), then hand over their wealth to them.

This verse emphasizes that a person who marries must be old enough or in the language of puberty, because a person who is mature is considered capable of building a household. 7 And intelligent means being good at using wealth, even though he is still a
layman and ignorant in religion (Holilurrohman, 2016). In Thabqat al-Syafi‘iyyah, the prohibition on using property is lifted from people who are mature and intelligent, even though they are stupid in religion because if you look at the history of Siti Aiysah, the Prophet married her at the age of 6 (six) years and then took her home at the age of 9 years as the hadith says:

Rasulullah married her (Aisyah) at the age of six, and he started a household with her when she was 9 years old.” (H.R. Mutafaqunallaah).

As for Imam Hanafi’s opinion, the sign of puberty for a man is marked by dreams and the release of semen, while for women it is marked by menstruation, but if there are no signs of both then adulthood is marked by age, namely 18 years for men and 17 years for women. According to Imam Maliki, puberty is marked by the absolute release of semen in a dreaming state, even if he is asleep, or the growth of hair on the body parts. According to Imam Syafi‘i, the limit for puberty is 15 years for men and 9 years for women. According to Hambali, men are marked by dreams or 15 years, while women are marked by menstruation (Al-Jaziri, 2003).

According to several fiqh scholars, it is not an issue that is taken into consideration whether a person is allowed to marry, but Imam Malik, Imam Hanafi, Imam Syafi‘i, and Imam Hanbali are of the opinion that fathers may marry young daughters who are still virgins (not yet mature), so also his grandmother if the father was not there. Only Ibn Hazm and Subrumah are of the opinion that fathers should not marry off young daughters unless they are adults and have permission from them (Mardani, 2017).

Basically, marriages must be carried out by people who are adults, but sometimes marriages are carried out by people who are not psychologically, physically and biologically capable. Many people do not understand the purpose of marriage, marriage is to create a physical and spiritual bond with a valid contract in order to fulfill biological needs or channel one's desires to one's legal partner.

3 RESEARCH METHODS

This type of research is empirical juridical which in other words is a type of sociological legal research and can also be called field research, which examines the legal provisions that apply and what actually happens in society. Secondary data is taken by
means of library research, or by collecting various data in laws and regulations, literature books, papers and other scientific writings related to the object of research (Marzuki, 2011).

The data obtained will be arranged systematically. After all the data is compiled, the data will be analyzed using qualitative analysis methods. The qualitative method is an analysis based on the quality of data that is considered valid which is used to solve problems in research. Data will be poured in the form of descriptive or analytical descriptive research.

Primary data will be obtained from research in the field regarding the object that will be examined or self-described by the parties present at the time of the incident, namely by interview or observation and debriefing with sources. related, related scientific papers and writings as well as other related articles and newspapers. Further more tertiary data will be taken from all materials that support research.

4 DISCUSSION
4.1 REASONS FOR ISLAMIC LAW'S MARRIAGE AGE LIMIT IN INDONESIA

Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage essentially contains changes regarding the age limit for marriage, namely that men and women equal to the age of 19 are only allowed to marry.

From a historical standpoint, the Marriage Law is the government's response to many demands for the harmonization of marriage rules. According to the explication of Article 7 paragraph (1) of Law Number 16 of 2019, it is important to set age limitations for marriage in order to safeguard the health of husband and wife and progeny (Sama, 2004).

There are no references that explain why the ages of 19 and 16 were chosen in detail. In a roundabout way, the Marriage Law is a means of meeting the "needs" of the parties that participated in the law's formulation. As a result, not all current articles can suit society's interests.

The adoption of a minimum age limit for marriage in the Marriage Law tries to protect society from some of the consequences of early marriage. The impact on health as well as the impact on family peace (Hayat, 2018). Early marriage has a deleterious impact on the health of the reproductive organs, particularly in women. What is more
vital, though, is the state of family harmony, which must be preserved. This can be avoided by not marrying at an early age.

The fact that there is a minimum age limit does not accommodate the people's interests. The researcher can conclude from the argument above that the minimum age limit at The Existence of the Marriage Law should be questioned. Is it still appropriate to apply these boundaries to contemporary culture, or is it the other way around?

It appears that the minimum marriage age should be reconsidered. If two options show, the age restriction can be raised or lowered. As a result, the researchers proposed raising the age limit to at least 21 years for men and 18 years for women. This assertion is based on various field facts (Abdussalam, 2015).

However, some of them who are married before the age of 21 are unable to establish a household. Furthermore, this age selection is an attempt to avoid inconsistencies between laws and regulations (Elkhairati, 2018). Because the Child Protection Act states that minors are those under the age of 18, and their rights may not be exploited, including marrying them off at a young age.

Furthermore, according to Regulation of the Minister of Religion No. 11 of 2007 Concerning Marriage Registration Chapter IV article 8, "if a prospective husband has not reached the age of 19 (nineteen) years and a prospective wife has not reached the age of 16 (sixteen) years, must receive a dispensation from the court".

The articles described above are so explicit that there is almost no other interpretation: the legal age for marriage in Indonesia is 19 (nineteen) years for men and 16 (sixteen) years for women (Noviana, 2019). However, at the level of implementation, there are still conditions that the bride and groom must meet, namely if the prospective husband and wife are not yet 21 (twenty one) years old, they must have permission from their parents or marriage guardians, this is in accordance with the Regulations Minister of Religion No.11 of 2007 concerning Marriage Registration Chapter IV article 7 "If a prospective bride has not reached the age of 21 (twenty one) years old, she must have permission from her parents or marriage guardians."

The age limit for marriage in several Muslim nations is given below as a result of Tahir Mahmood's comparative analysis in the book Personal law in Islamic Countries.
While the Indonesian National Armed Forces (TNI) and the State Intelligence Agency (BIN) provide help, the Indonesian National Police (POLRI) is the primary factor in eliminating criminal acts of terrorism in Indonesia. In 2003, the Indonesian National Police formed the Anti-terrorist Special Detachment 88 (Densus). Presidential Regulation (Perpres) number 46 of 2010 concerning the National Counterterrorism Agency (BNPT) was issued by President Susilo Bambang Yudhoyono in response to suggestions made in 2009 for the formation of a specific counter-terrorism agency. Policies of prevention, protection, and deradicalization; law enforcement; and national readiness are all under the purview of this institution.

It can be seen from the table 1 above that scholars in Muslim countries agree to provide a limit for marriage after puberty, even though the range is not the same and varies, because in the discipline of fiqh, when baligh is associated with the age range, men are approximately 15 (fifteen) years and women are between 9 (nine) years.

Article 7 paragraph (2) of Law No. 16 of 2019. In the circumstances of paragraph (1), the passage may ask the Court for a waiver. For Muslims, the prospective bride and groom's parents/guardians must apologize to the Religious Court or district Syar'iyah Court in the area where the bride and groom live. The marriage ceremony can take place once permission has been restored.

The permission will then serve as the basis for VAT/Penghulu, and it will be included in the NB sheet of the marriage examination list, points II Prospective Husband
No 16 line 33.34 and III Prospective Wife No 16 line 71.72. Thus, underage marriages with the authorization of the court become valid and have legal validity.

4.2 FACTORS INFLUENCING VIOLATIONS OF MARRIAGE AGE LIMITS ACCORDING TO LAW NUMBER 16 OF 2019 REVIEWED IN ISLAMIC LAW

4.2.1 Legal Substance Factors

The benchmark for the effectiveness of applying administrative sanctions for violations of the marriage age limit is based on the substance of Law Number 16 of 2019 Article 7 paragraph (2), which states that parents of both men and women can seek dispensation from Religious Courts for very urgent reasons, accompanied by supporting evidence that Enough. However, the word urgent is not tightly regulated, thus it can be interpreted in a variety of ways (Shodikin, 2015).

People who marry minors are not doing so for religious reasons; in fact, most religious leaders in the community guarantee the continuation of marriage based on religious law. Parents prefer that their children marry off because it prevents something bad from happening. Parents considering marrying off their children for grounds of free association and fear of falling prey to Satan's lust.

With regard to parents who believe that marriage will lead to adultery, religion provides a shield to continue marrying their children even if they have not yet reached the age of marriage. Many underage or unregistered marriages occur due to fear of rejection from the KUA or Religious Courts regarding the dispensation of marriage, even though the Judge will consider the reasons from the unregistered marriage community, so whether we like it or not, we must grant it.

This does not violate Islamic teachings, but marriage legislation defines the age restriction and the existence of marriage records, because marriages must be documented administratively even to protect the public from harmful efforts from irresponsible parties.

4.2.2 Educational Factors

According to the Qur'an and Hadith, education is a must for all Muslims. Islam also holds a high regard for knowledge and those who seek it. There are numerous authentic and hasan hadiths that demonstrate the importance of study. Allah SWT stated
in the letter Al-Mujadilah, "Allah elevates believers and people of knowledge by several degrees."

The virtue of seeking knowledge in the hadith also states that: "Seeking knowledge is obligatory for every Muslim and Muslim woman from birth to the grave".

The hadith emphasizes unequivocally that education cannot be separated in this manner, even if they are already married, because family education is fundamental to the formation of a religious soul. In this context, the significance of parental education in fostering a religious attitude in children is also seen. It is hardly surprising, then, that the Apostle highlighted the need of both parents bearing responsibilities. Parents' function and role can even influence the direction of their children's ideas.

Marriage and seeking knowledge are said to go hand in hand. They're not toying with each other. Marriage, inshallah, does not prevent people from studying. Marriage has nothing to do with my lack of interest in studying. It appears that Allah cannot call for two things that are equally lovely, yet they are in fact contrary to one other (Khaerani, 2019).

4.2.3 Economic Factors

Some parents would utilize their daughters as an asset, hoping that when someone proposes to them, it will lessen the burden on the family and even enhance the family's prestige. This has become a common explanation; even parents or families do not consider the damage that occurs when their children are forced to shoulder the weight when their lives are insufficient; even if the spouse has a temporary work, it will be the parents' responsibility (Nida Chaerunnisa, 2017).

Of course, not only do you need to be mature in your thoughts, but you also need to be financially prepared or have the supplies to build a house. In other words, when a child is married off without even thinking about it because they can no longer afford to pay school fees to alleviate the family's financial load, one problem is solved, but another may arise.

5 CONCLUSION

Based on the explanation and discussion above regarding the application of Islamic law restrictions on marriage operations in Indonesia following the enactment of Law Number 16 of 2019, it is possible to conclude that Law Number 19 of 2019
concerning Marriage is more effective than before the law's existence. However, the regulation has not been effective in conformity with the Indonesian Islamic legal system since the law was promulgated till now. This is evidenced by the increasing number of marriage dispensations filed with religious courts, which allow for minor weddings. There are various determining elements, including legal substance, educational, and economic aspects. As a result, the entire marriage regulations must be modified to reflect the current situation. There must be obvious reasons, such as when a marriage dispensation is granted because the bride is already pregnant; this is done solely for legal protection and the interests of the child in the womb.
REFERENCES


