

**THE IMPLEMENTATION OF MARRIAGEABLE AGE PROVISION IN  
MALAYSIA AND INDONESIA**

**(Comparative Study of Regulation Number 1 Year 1974 and Enactment  
Islamic Family Law of Malacca Number 12 Year 2002 )**

**Thesis**

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**MALANG**

**2018**

**STATEMENT OF THE AUTHENTICITY**

In the name Allah SWT

With consciousness and responsibility towards the development of science,  
the author declares that thesis entitled:

**THE IMPLEMENTATION OF MARRIAGEABLE AGE PROVISION  
IN MALAYSIA AND INDONESIA  
(Comparative Study of Regulation Number 1 Year 1974 and  
Enactment Islamic Family Law of Malacca Number 12 Year 2002 )**

This thesis is truly the author's original work. It does not incorporate any material previously written or published by another person, except the references are mentioned correctly. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this research will be deemed legally invalid.

Malang, 08 May 2018



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(Comparative Study of Regulation Number 1 Year 1974 and  
Enactment Islamic Family Law of Malacca Number 12 Year 2002 )

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**THE IMPLEMENTATION OF MARRIAGEABLE AGE PROVISION  
IN MALAYSIA AND INDONESIA**

**(Comparative Study of Regulation Number 1 Year 1974 and  
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## MOTTO

Allah SWT said in the letter of An-Nisa ' 59:

وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ ۚ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ ۚ وَاللَّهُ عَلِيمٌ حَكِيمٌ

*"And when your children are baligh, they should seek permission, like those who before they ask permission. Thus Allah explains His verses. And Allah is Knower, Wise".*





## ACKNOWLEDGEMENT

All praise due to Allah (SWT), the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His Garce and Gidance, this thesis entitled “The Implementation Of Age Regulation for Marriage in Indonesia and Malaysia (Comparative Study of Regulation Number 1 Year Number 1974 and Enactment Islamic FamilyLaw of Malacca Number 12 Year 2002)” could be completed, and also with His benevolence and love, peace and tarnquallity of the soul. Peace be upon the Prophet Muhammad (saw) who had broght us from the darkness into the light, in this life. May we be together with those who believe and recieve intercession from Him in the day of Judgment. Amîn.

With all the support and help, discussions, and guidance and directions from all parties involved during the process of completing thsi thesis, the author wishes to express his utmost gratitude to the following:

1. Prof. Dr. Abdul Haris, M.Ag, as Rector of State Islamic University of Maulana Malik Ibrahim of Malang.
2. Dr. Saifullah, M.H, as Dean of the Sharia Faculty of State Islamic University of Maulana Malik Ibrahim of Malang.
3. Dr. Sudirman, MA. as head of the Al-Ahwal Al-Sakhsiyyah Department of the Sharia Faculty of State Islamic University of Maulana Malik Ibrahim of Malang. All at once as the thesis supervisor. The author expresses his gratitude for guidance and directional motivation given in the course of completing this thesis. May Allah (swt) shower him and his family with His blessings.
4. All lecturers for their sincere and dedicated teaching and supervisory efforts. May Allah (swt) shower them with His blessings.
5. Staff of the Sharia Faculty of State Islamic University of Maulana malik Ibrahim of Malang. The author expresses gratitude for all their support and co-operation during the course of completing this thesis.

6. My beloved father and mother and also my young sister and young brother who always giving supporting, inspiration and praying to the author so that it can be finished in time.
7. My special friends who always inspire me and encourage me whenever I lose my time to finish this writing.
8. My friends in International Class Program (ICP) of Al-Ahwal Al-Syakhsiyyah Department 2014 who always give the author support, encouragement, and knowledge and discussion that have helped and accompanied during their education.
9. My friends of Al-Ahwal Al-Syakhsiyyah Department 2014 and Sharia Faculty generally who always accompany and fight together from begin until the end and because by your support the author's finished this thesis.

Hopefully, by imparting what has been learned during the course of study in the Faculty of Sharia of State Islamic University, Maulana Malik Ibrahim, Malang, the benefit will be gotten all readers and the author herself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far perfection, the author appreciates constructive criticism and suggestions for the improvement and betterment of this thesis.

Malang, 30 May 2018

Marwa Atika Basyiroh  
14210045

## TRANSLITERATION GUIDENCE

### A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious" Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated January 22, 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

### B. Consonants

|   |   |          |   |   |                     |    |   |   |
|---|---|----------|---|---|---------------------|----|---|---|
| ا | = | unsigned | ش | = | sy                  | ن  | = | n |
| ب | = | b        | ص | = | sh                  | و  | = | w |
| ت | = | t        | ض | = | dl                  | هـ | = | h |
| ث | = | ts       | ط | = | th                  | ي  | = | y |
| ج | = | j        | ظ | = | dh                  |    |   |   |
| ح | = | h        | ع | = | ' (comma facing up) |    |   |   |
| خ | = | kh       | غ | = | gh                  |    |   |   |
| د | = | d        | ف | = | f                   |    |   |   |
| ذ | = | dz       | ق | = | q                   |    |   |   |
| ر | = | r        | ك | = | k                   |    |   |   |
| ز | = | z        | ل | = | l                   |    |   |   |



س = s                      م = m

The hamzah ( ء ) which is usually represented by *alif*, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards ( “ ), as oppose to a comma ( „ ) which replaces the “ ع ”

### C. Vocal, long and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written such as:

Elongated (a) vowel = â for example قال beomes qâla

Elongated (î) vowel = î for example قيل becomes qîla

Elongated (u) vowel = û for example دون becomes dûna

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represented by “i”, unless it is written as “iy” so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after *fathah* it is written as “aw” da “ay”. Study the following examples:

Diftong (aw) = و for example قول becomes qawlun

Diftong (ay) = ي for example خير becomes khayrun

#### D. Ta' marbûthah (ة)

*Ta' marbûthah* is transliterated as “t” if it is in the middle of word, but if it is *Ta' marbûthah* at the end, then it is transliterated as “h”. For example: الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or if it happens to be in the middle of a phrase which constitutes *mudlaf and mudlaf ilayh*, then the transliteration will be using “t” which is enjoined with the previous word, for example في رحمة الله becomes *fi rahmatillah*.

#### E. Definite Article

Arabic has only one article, “al” (ال) and it written in small letters, unless at the beginning of word while “al” in the pharase of lafadh jalalah (speaking of God) which is in the middle of a sentence and supported by and (idhafah), then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said....
2. Al-Bukhâriy explains in the prologue of his book....
3. *Masyâ' Allâh kâna wa mâ lam yasya' lam yakun.*
4. *Billâh 'azza wa jalla*

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## ABSTRAK

Marwa Atika Basyiroh, 14210045, *Implementasi Ketentuan Usia Perkawinan Di Indonesia dan Malaysia (Studi Komparatif Undang-undang No. 1 Tahun 1974 dan Enakmen Hukum Keluarga Islam Negeri Melaka No. 12 Tahun 2002)*. Skripsi, Jurusan Al-Ahwal As-Syaksiyyah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. Sudirman, M.A.

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**Kata Kunci:** Implementasi, Perbandingan, Usia Perkawinan di Indonesia dan Malaysia

Indonesia dan Malaysia merupakan negara yang memiliki perundang-undangan yang berbeda. Misalnya dalam undang-undang perkawinan, setiap negara menetapkan usia perkawinan yang berbeda-beda. Dalam perundangan di Indonesia, Usia perkawinan diatur dalam Undang-undang Nomor 1 Tahun 1974, sedangkan di Malaysia yaitu Negeri Melaka diatur dalam Enakmen Hukum Keluarga Islam Negeri Melaka Nomor 12 Tahun 2002 Perbedaan inilah yang dapat menimbulkan suatu fenomena yang beragam di masyarakat Indonesia dan Malaysia, salah satunya terkait masalah perkawinan dibawah umur, sehingga menjadi faktor penghambat dalam implementasi undang-undang tersebut.

Dalam penelitian, rumusan masalah yang ditentukan adalah: 1) Bagaimana ketentuan Undang-undang Nomor 1 Tahun 1974 dan Enakmen Hukum Keluarga Islam Negeri Melaka Nomor 12 Tahun 2002 diregulasikan?, 2) Bagaimana ketentuan usia perkawinan di Indonesia dan Malaysia diimplementasikan?. Penelitian ini termasuk jenis penelitian normatif. Karena menggunakan data kepustakaan ataupun bentuk *library research*. Pendekatan yang digunakan adalah pendekatan yuridis normatif yang menggunakan kombinasi pendekatan perundang-undangan, konsep, sejarah, kasus, dan perbandingan.

Berdasarkan hasil Penelitian, dapat dikemukakan bahwa Indonesia dan Malaysia menetapkan usia yang sama bagi calon mempelai perempuan yakni 16 tahun, akan tetapi untuk usia bagi laki-laki adalah untuk Indonesia 19 tahun sedangkan Malaysia 18 tahun. Selain itu, bagi mereka yang akan melaksanakan perkawinan dibawah umur kedua negara tersebut memberikan syarat yang sama yaitu dapat mengajukan dispensasi kepada pihak pengadilan/hakim diwilayahnya serta izin dari orang tua. Dalam segi implementasi, berdasarkan jumlah kasus perawinan dibawah umur, tercatat di Indonesia tahun 2012 mencapai 236. 404 khusus provinsi Jawa Timur dan Malaysia tahun 2012 hanya 1.095



## ABSTRACT

Marwa Atika Basyiroh, 14210045, *The Implementation of Marriageable Age Provision in Indonesia and Malaysia (Comparative Study of Regulation Number 1 Year 1974 and Enactment Islamic Law State of Malacca Number 12 Year 2002)*. Thesis, Department of Al-Ahwal As-Syaksiyyah, Faculty of Sharia, Islamic State University of Maulana Malik Ibrahim Malang. Advisor: Dr. Sudirman, M.A.

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**Keywords:** Implementation, Comparison, Age of Marriage in Indonesia and Malaysia

Indonesia and Malaysia have different legislation. For example in marriage law, each country sets different age of marriage. In Indonesian law, the age of marriage is regulated in regulation number 1 year 1974, while in Malaysia the State of Malacca is regulated in enactment islamic law state of Malacca Number 12 year 2002. This difference can cause a phenomenon in Indonesian and Malaysian society, one of them is underage marriage, thus becoming a factor inhibiting the implementation of the law.

In this research, the Statement of research determined are: 1) How is the rule of regulation Number 1 Year 1974 regulation and Enactment Islamic Family Law of Malacca Number 12 Year 2002 regulated, 2) How is the age of marriage regulation in Indonesia and Malaysia implemented?. This research is a normative research or library research. The approach used is a normative juridical approach that uses a combination of statutory approaches, concepts, history, cases, and comparisons.

Based on the results of the research, it can be argued that Indonesia and Malaysia set the same age for the prospective bride of 16 years, but for the age for men is for Indonesia 19 years while Malaysia 18 years. In addition, for those who will perform marriage under the age of both countries provide the same terms that can submit a dispensation to the court / judge in his area and the permission of the parents. In the implementation, based on the number of cases of underage marriage, recorded on 2012 the case reached 236.404 cases in Indonesia especially East Java Province and Malaysia reached 1.095 cases.



## ملخص البحث

مروة اتيك بشيرة ، ١٤٢١٠٠٤٥ ، تنفيذ تنظيم العمر للزواج في إندونيسيا وماليزيا (دراسة مقارنة لللائحة رقم ١ لسنة ١٩٧٤ و قانون إسلامي ولاية ملقا رقم ١٢ سنة ٢٠٠٢. بحث جامعي. شعبة الأحوال الشخصية، كلية الشريعة بجامعة مولانا مالك إبراهيم الإسلامية الحكومية بمالانج. المشرف: دكتور سدرمان، الماجستير.

**الكلمات الرئيسية:** التنفيذ، المقارنة، و العمر للزواج في إندونيسيا وماليزيا اندونيسيا وماليزيا لديهما تنظيمة مختلفة. على سبيل المثال في قانون الزواج ، يحدد كل بلد العمر للزواج. في القانون الإندونيسي ، يتم تنظيم العمر للزواج في اللائحة رقم ١ لسنة ١٩٧٤ ، بينما في ماليزيا يتم تنظيم قانون إسلامي ولاية ملقا رقم ١٢ سنة ٢٠٠٢. هذا الاختلاف يمكن أن يسبب ظاهرة في المجتمع الإندونيسي والماليزي ، واحد منهم هو زواج القاصر، وبالتالي أصبحت عاملاً يعوق تنفيذ القانون في هذا البحث ، بيان البحث الذي تم تحديده هو: (١) كيف يتم تنظيم رقم ١ لسنة ١٩٧٤ تنظيم و قانون إسلامي ولاية ملقا رقم ١٢ سنة ٢٠٠٢ ، (٢) كيف يتم تنظيم العمر للزواج في إندونيسيا وماليزيا نفذت؟ هذا البحث هو بحث معياري أو بحث للمكتبة. النهج المستخدم هو نهج قانوني معياري يستخدم مزيجاً من المقاربات القانونية والمفاهيم والتاريخ والحالات والمقارنات واستناداً إلى نتائج البحث ، يمكن القول إن إندونيسيا وماليزيا تحددان نفس العمر بالنسبة للعروس المرتقة التي تبلغ ١٦ عامًا ، ولكن بالنسبة إلى عمر الرجال ، فإن إندونيسيا هي ١٩ عامًا ، في حين أن ماليزيا ١٨ عامًا. بالإضافة إلى ذلك ، بالنسبة لأولئك الذين يؤدون الزواج تحت سن كلا البلدين ، يجب عليهم تقديم نفس الشروط التي يمكن أن تقدم الإعفاء إلى المحكمة / القاضي في منطقته وإذن الوالدين. في التطبيق ، استناداً إلى عدد حالات زواج القاصرين ، المسجلة في مقاطع المحاكم الدينية في اندونيسيا خصوصاً جاوى الشرقية تصل إلى ٢٣٦٤٠٤ الأعداد في عام ٢٠١٢ ، في حين أن ماليزيا إلى ١٠٩٥ الأعداد في عام ٢٠١٢.

## CHAPTER I

### INTRODUCTION

#### A. Background Of Research

Regulation Number 1 Year 1974 states that marriage is only permitted if the man the age is 19 years and the woman is 16 years old.

"Marriage is only permitted if the male reached the age of 19 (nineteen) years and the woman reached the age of 16 (sixteen) years"<sup>1</sup>

In the Marriage Law there is also a dispensation on the applicable marriage age limit of the Court or other Officials appointed by both parents / guardians. "In the case of irregularities in paragraph (1) of this article may require a dispensation to the Court or any other official requested by both the male or female parent" (Article 7 paragraph (2) of the Marriage Law).<sup>2</sup>

Another article that matters is the regulation of marriage of a person under 21 years of age must be made with the consent of the parent listed in Article 6 paragraph (2).

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<sup>1</sup> UU Nomor 1 Tahun 1974, pasal 7 ayat 1.

<sup>2</sup> Soemiyati, *Hukum Perkawinan Islam dan Undang-undang Perkawinan*, (Yogyakarta: Liberty, 1986), 8.

To marry a person who has not reached the age of 21 (twenty one) years must obtain the consent from both parents"<sup>3</sup>

Under this provision, this Act provides a dispensation to children for marriage. In fact, marriage must definitely involve parents, because in principle parents who marry off their children.

Definition of marriage according to regulation number 1 year 1974 on Marriage contained in article 1, which contains " Marriage is the bond external-internal between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One and Only God". Both husbands and wives should seek to maintain a calm and peaceful in the home.<sup>4</sup>

The implementation of regulation number 1 year 1974 in society is good, where this law doesn't recommend underage marriage happened in society. From this it is interpreted that regulation number 1 Year 1974 doesn't want the implementation of underage marriage. Minimum age restriction for marriage for citizens in principle is intended that people who will get married is expected to have thinking maturity, mental maturity and adequate physical strength. The possibility of household broken ending in divorce can be avoided, as the couple have mature awareness and understanding of the purpose of marriage that emphasizes the aspect of happiness.<sup>5</sup>

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<sup>3</sup> UU Nomor 1 Tahun 1974, pasal 6 ayat 2.

<sup>4</sup> Kamal Muhtar, *Asas-asas Hukum Islam Tentang Perkawinan*, (Jakarta: Bulan Bintang 1993), 15.

<sup>5</sup> Muhdiono, *Implementasi UU Nomor 1 Tahun 1974*, (Jakarta: Binakaraya 2003), 33.

Malaysia also outlined the minimum age of marriage. The law while prevail in Malaysia before interference the states British, is the tradition and adherence to most people of Malay in the country of nine and some areas of Malacca, and there was also Tumenggung in the peninsula. While people of Malay in Sarawak follow the Law of Sarawak Malay Court. The law is heavily influenced by Islamic law and primarily in matters of marriage, divorce and buying and selling. As for allied Malay States (Perak, Selangor, Negeri Sembilan, and Pahang) applied Registration of Muhammadan Marriages and Divorces Enactment 1885 and for non-aligned Malay countries or shaded states (Kelantan, Terengganu, Perlis, Kedah and Johor) enacted The Divorce Regulation of 1907.<sup>6</sup>

Family law enacted in Malaysia varies, because Malaysia is a federal state. The meaning different here, between country one with another country is different. One of the rules that will be the author of careful, that is the provision of marriage age in enactment Islamic family state of Malacca number 12 year 2002 Seksyen 8. Minimum age for marriage

"No marriage under this Enactment if the man is less than eighteen years old or the woman is less than sixteen except if Judge Syarie given the truth in writing and certain condition."<sup>7</sup>

Allah SWT said in the letter of An-Nisa ' 59:

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<sup>6</sup> Muhammad Amin Suma, *Hukum Keluarga Islam di Dunia Islam* (Jakarta : PT. Raja Grafindo Persada, 2004), Cet. 1, 181.

<sup>7</sup> Enakmen Hukum Keluarga Islam Negeri Melaka Nomor 12 Tahun 2002, seksyen 8.

وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ ۚ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ  
آيَاتِهِ ۚ وَاللَّهُ عَلِيمٌ حَكِيمٌ

*"And when your children are baligh, they should seek permission, like those who before they ask permission. Thus Allah explains His verses. And Allah is Knower, Wise".*

Based on case of data about underage marriage in Malaysia and Indonesia, for example on 2012 that in Malaysia there are 1.095 cases of underage marriage from The Department of Sharia Judicary Malaysia (*Jabatan Kehakiman Syariah Malaysia*) and in Indonesia there are 236.404 cases in Indonesia especially East Java from SUSENAS. Data above shows that underage marriage in Malaysia and Indonesia still high and have to minimize especially evaluation for government.

One of the maturity that becomes problem today is age adequacy of age. The adequacy of age in this case one's maturity becomes one of the conditions that must be fulfilled in marriage. Underage marriages that become polemics today are one of the most crucial issues.<sup>8</sup>

Almost all Islamic countries or Muslim countries have a minimum age of marriage in their marriage laws. Such restrictions are intended to measure the readiness, maturity and mental readiness of a person in assuming responsibility.

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<sup>8</sup> Zahrotun Nihayah, *Psikologi Perkembangan: Tinjauan Psikologi Barat dan Islam*, (Jakarta: UIN Jakarta Press, 2006), 33.



Age restrictions are basically to realize a marriage in accordance with the *maqasid al-shariah* among them is the achievement of the benefit.

Although age restrictions appear the pros and cons especially among Muslims but the restrictions on marriage age allegedly bring many benefits. Age restrictions are intended to avoid child marriage at an early age. Underage marriage can affect the rapid rate of population growth in the world, increasing beggary, health and mental health, and sexual exploitation for child.

The above regulation shows the difference between the regulations in Indonesia and Malaysia. In this case, the author is interested to do research by comparing the rules with the similarities, differences, and implementation.

#### **B. Statement Of Research**

Based on the background of research above, the statement of problems which become the object of discussion are as follows:

1. How do the regulation Number 1 Year 1974 regulation and Enactment Islamic Family Law of Malacca Number 12 Year 2002 regulate about marriageable age?
2. How is the age of marriage regulation in Indonesia and Malaysia implemented?

#### **C. Objective Of Research**

1. To find out and explain the determination of the rule Number 1 Year 1974 regulation and Enactment Islamic Family Law of Malacca Number 12 Year 2002 regulate about marriageable age.



2. To find out and explain the the age of marriage regulation in Indonesia and Malaysia implemented.

#### **D. Significance Of Research**

1. Theoretically, this study aims to describe, and analyze about age of marriage, it is expected to be a source or teaching material in the study of marriage in the world and one of marriage law in Malaysia to the students of the Faculty of Shariah Department of Al-Ahwal Al-Syakhsiyyah UIN Malang.
2. Practically, it is hoped that the results of this research can be used as a reference and information source in further research development, so that the research becomes a reference for researchers in making journals, scientific papers, and others.

#### **E. Operational Definition**

1. Implementation: is defined as a specified set of activities designed to put into practice an activity or program of known dimensions. According to this definition, implementation processes are purposeful and are described in sufficient detail such that independent observers can detect the presence and strength of the "specific set of activities" related to implementation.
2. Regulation: is rule made by a government or other authority in order to control the way something is done or the way people behave.
3. Age of Marriage: is the minimum age at which a person is allowed by law to marry, either as a right or subject to parental or other forms of consent.

## F. Previous Research

Previous research is needed to clarify, confirm, look at the advantages and disadvantages of various theories used by other authors in the study or discussion of the same problem. Researchers found some previous research results on the same topic but different in the object studied. Some of the results are as follows:

1. *“Tinjauan Hukum Islam dan psikologi terhadap Batas Usia Minimal Perkawinan”*

The first researcher, Habibi, Islamic State University of Maulana Malik Ibrahim. In this study, researchers look at the review of Islamic Law and Psychology as well as the relevance of the psychological concept and fiqh Shafi'iyyah about the ability to be responsible in marriage. from the results of this study obtained the conclusion that Islamic law does not limit a certain age to marry. but implicitly, the Shari'a wants married people to be mentally, physically, and psychologically, mature and understand the meaning of a marriage part of worship.

2. *“Batas usia perkawinan menurut pasal 7 Undang-Undang no. 1 tahun 1974 perspektif Undang-Undang no. 23 tahun 2002 tentang perlindungan anak.”*

The second researcher, Fatroyah Himsyah Asr, Islamic State University of Maulana Malik Ibrahim. In that study, the age limit proved to be disharmonized by the Child Protection Act that determines age under 18 years is the age of children and marriage at that age should be prevented. The

dissonance in these two laws is reinforced by the age-bound pluralism system in several articles in Law no. 1 Year 1974. This study aims to re-understand the existence of Marriage Law through the perspective of Law no. 23 of 2002 on the Protection of Children.

3. *“Batas minimal usia kawin dalam Undang-Undang nomor 1 tahun 1974 tentang perkawinan perspektif hakim Pengadilan Agama Kabupaten Malang dan dosen Psikologi UIN Malang.”*

The third researcher, Nizar Abdussalam, Islamic State University of Maulana Malik Ibrahim. This research explains the opinion of Religious Court Judge of Malang Regency and Lecturer of Psychology UIN Malang about the marriage age limit that exist in the law. And also to find out whether the minimum age of marriage in the Marriage Act is still relevant to apply at this time. Seeing that the formulation of this marriage age limit was conducted in 1974. It runs about 40 years to date. On the other hand based on the developmental psychology theory that the stage of human development both boilogis and psychic always change from year to year.

4. *“Batasan usia perkawinan dalam Undang-Undang No 1 Tahun 1974 tentang perkawinan dan Kompilasi Hukum Islam (KHI): Studi analisis praktik terhadap pernikahan di bawah umur masyarakat kampung nelayan di Desa Saletreng Kabupaten Situbondo.”*

The fourth researcher, Musdalifah, Islamic State University of Maulana Malik Ibrahim .As the problem discussed in this thesis is the view and application of the village community of Seletreng Village of Situbondo

Regency concerning the age of marriage in Law no. 1, 1974, and Compilation of Islamic Laws of the Study of the Practice of Underage marriage, First, the practice of early marriage which, by virtue of tradition, marries off their daughters under the age of reason, because they are in desperate need of family members in support of employment, the sea at sea, while the women help in marinating the fish. Second, the action of data manipulation that can not be done by law enforcement.

Clearly, the previous research is presented in the table as follows:

Title about age marriage regulation

| No | Name                 | Title   | Result of Research   | Differences   |
|----|----------------------|---|--|---|
| 1. | Habibi               | <i>Tinjauan hukum Islam dan psikologi terhadap batas usia minimal perkawinan.</i> Islamic University Of Maulana Malik Ibrahim Malang.   | Researchers look at the review of Islamic Law and Psychology as well as the relevance of psychological concepts and fiqh Shafi'iyah about the ability to be responsible in marriage.   | In this thesis researchers more discuss the age limit in the concept of psychology and fiqh Syafiiyahh.   |
| 2. | Fatroyah Himsyah Asr | <i>Batas usia perkawinan menurut pasal 7 Undang-Undang no. 1 tahun 1974 perspektif Undang-Undang no. 23 tahun 2002 tentang perlindungan anak.</i> Islamic University Of Maulana Malik Ibrahim Malang. | The age limit provisions apparently experienced disharmony with the Child Protection Act that determines the age under 18 is the age of the children and the marriage at that age should be prevented. The dissonance in these two laws is reinforced by the age-bound pluralism | In this thesis is more to discuss the marriage age limit according to Article 7 of Law no. 1 year 1974 perspective of Law no. 23 of 2002 on child protection. |

|    |                  |   |  |   |
|----|------------------|---|--|---|
|    |                  |   | system in several articles in Law no. 1 Year 1974.   |   |
| 3. | Nizar Abdussalam | <i>Batas minimal usia kawin dalam Undang-Undang nomor 1 tahun 1974 tentang perkawinan perspektif hakim Pengadilan Agama Kabupaten Malang dan dosen Psikologi UIN Malang.</i> Islamic University Of Maulana Malik Ibrahim Malang.  | This research explains the opinion of Religious Court Judge of Malang Regency and Lecturer of Psychology UIN Malang about the marriage age limit that exist in the law. And also to find out whether the minimum age of marriage in the Marriage Act is still relevant to apply at this time.  | This thesis is more to discuss the minimum age limit of marriage in Law number 1 year 1974 about marriage perspective judge of Religious Court of Malang Regency and lecturer of Psychology UIN Malang. |
| 4. | Musdhalifah      | <i>Batasan usia perkawinan dalam Undang-Undang No 1 Tahun 1974 tentang perkawinan dan Kompilasi Hukum Islam (KHI): Studi analisis praktik terhadap pernikahan di bawah umur masyarakat kampung nelayan di Desa Saletreng Kabupaten Situbondo.</i> Islamic University Of Maulana Malik Ibrahim Malang. | The views and application of the village community of Seletreng Village, Situbondo regency, concerning the limitation of marriage age in Law no. 1 year 1974, and Compilation of Islamic Law studies of the Practice Analysis of Underage Marriage, Firstly, the practice of early marriage which, by virtue of tradition, marries off their daughters while underage because they desperately need family | This thesis is more about the age limit of marriage in Law No. 1 Year 1974 about marriage and Compilation of Islamic Law (KHI): Study of practice analysis in Situbondo                                 |



|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  | members in support of work, the sea at sea, while the women help in marinating the fish. Second, the action of data manipulation that can not be avoided by law enforcement. |  |
|--|--|--|--|--|

### G. Research Methods

Scientific work of one of them is marked by the use of methods. Method derived from Latin: *methodus*, Greek: *methodos*, *meta* means after. In a scientific study, research method is a unit of system that must be listed and implemented during the research process is done. This is very important to do because it will determine the process of a research to achieve goals. In addition, the research method is a way to conduct an investigation by using certain ways that have been determined to obtain scientific truth, so that later research can be accounted for.<sup>9</sup>

#### 1. Type of Research

The type of research used is in the category of normative legal research. After looking at the background and problem formulation that has been described then this research type is Library research or library research, that is research which take and process data from source of library, that is research which take and process data from library source like books and theories of the book as literature that has relevance to the age of marriage.

<sup>9</sup> Marzuki, *Metodologi Riset*, (Yogyakarta: PT. Prasetya Widia Pratama, 2000), 4.



## 2. Research Approach

In legal research there are several approaches. With this approach, researchers will get information from various aspects of the issue that is being tried to find the answer. The approaches used in legal research are the approach of law, case approach, historical, comparative, and conceptual approach.<sup>10</sup> The approach used in this study is a comparative approach.

## 3. Sources of Data

The data source used consists of primary and secondary data sources. Among the data are:<sup>11</sup>

### a. Primary data

The main material used by the author in this study is Law Number 1 Year 1974 and Enactment Islamic Family Law of Melaka Number 12 Year 2002

### b. Secondary Data

Material supporting or secondary data that relevant with research object in the form of books, articles, scientific papers, journals, and others.

## 4. Collection Data Method

Library research conducted to obtain primary and secondary data as described. The documents to be studied, Number 1 Year 1974 and Enactment Islamic Family Law of Melaka Number 12 Year 2002. The researcher explores

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<sup>10</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2010), 93.

<sup>11</sup> Soerjono Soekanto dan Srimudji, *Penelitian Hukum Normatif*, (Jakarta: Rajawali, 1990), 14.

the materials obtained and classified according to the source to be studied comprehensively.

### **5. Processing Data Method**

In this study used the method of processing legal materials by editing, after which is the coding is to provide a note or a sign that states the type of source of legal material (literature, laws, or documents), copyright holders (author name, publishing year) and sequence formulation of the problem. Then the reconstruction of materials is to rearrange the legal material regularly, sequentially, logically, so easily understood and presented. The last step is to systematize the legal material of putting the legal material in a sequence according to the systematic framework of the discussion based on the order of the problem.<sup>12</sup>

### **6. Analyzing Data Method**

Analyzing data method is the process of simplification of data into a younger form read and interpreted. Data analysis technique used is Descriptive-Comparative analysis technique. Namely illustrate the terms of one's ideal age in the Law of Indonesia and Malaysia. And Comparing the stipulation of these rules then described the analysis of the comparison.

### **H. Structure Of The Discussion**

This thesis is preaped with a systematic procedure, and organized in four chapter. Each chapter its focused discussion as described as follows:

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<sup>12</sup> Abdul Kadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: PT. Citra Aditya Bakti 2004), 126.

Chapter I: Introduction. In this introduction chapter includes some explanations that explain the background of the problem as an explanation of the emergence of ideas and author basics. Furthermore from the background is made into a question which then compiled as a formulation of the problem. After that the researcher includes the objectives and benefits of the research, operational definition, and research method that includes the type of research, research approach, the source of legal materials used, data collection techniques, data processing techniques and analysis techniques. Then in chapter one is also described about previous research that is another research that is in line with the theme and title of this research. And the last systematic discussion.

Chapter II: Review Of Literature About Marriage. Contains the literature review, among others, concerning the definition of marriage, aims, conditions, base foundation from quran and hadith about age marriage.

Chapter III: Comparative Regulation For Marriage In Indonesia And Malaysia And Implementation. It Contains the history of regulation Number 1 Year 1974 and Enactment Islamic Family Law of Malacca Number 12 Year 2002 concerning marriage and stipulation of marriage age in the law and then comparative analysis of the two laws concerning the age limit of marriage, then proceeds by comparing the similarities and differences and implementation.

Chapter IV: Conclusion. This chapter contains the authors' conclusions and suggestions. The conclusion of this chapter is not a summary of the research done, but the short answer to the formulation of the problem that has been established. Suggestions are proposals or suggestions to related parties or

have more authority over the theme under study for the benefit of society or research in the future.



## CHAPTER II

### REVIEW OF LITERATURE ABOUT MARRIAGE

#### A. Definition Of Marriage

The marriage which in religious terms is called "*Nikah*" is a contract or covenant to bond between a man and a woman to justify the sexual relationship between the two parties to create a family life that is filled with compassion and serenity (*mawaddah wa rahmah*) in ways that are blessed by Allah SWT.<sup>13</sup> There is also a meaning of the word *Nikah* or *Zawaj* is derived from the Arabic language means "gather and crush" or other phrases meaning "akad or intercourse" which in syara 'means marriage contract.<sup>14</sup>

According to Islamic legal terms there are definitions of which are:

الزواج شرعاً وعقداً وضعه الشارع ليُفَيْدَ مِلْكَ استمتاع الرجل بالمرأة وحلَّ استمتاع المرأة

بالرجل<sup>15</sup>

<sup>13</sup> Soemiyati, *Hukum Perkawinan Islam dan Undang-undang Perkawinan*, (Yogyakarta : Liberty, 1989), 9.

<sup>14</sup> Ahmad Sudirman Abbas, *Pengantar Pernikahan Analisis perbandingan antar Mazhab*, Cet. 1, (Jakarta: PT. Prima Heza Lestari, 2006), 1.

<sup>15</sup> Abd. Rahman Ghazali, *Fiqh Munakahat*, Cet. 1 (Bogor: Prenada Media, 2003), 7.

*"Marriage according syara 'that is the contract that is placed syara' to allow fun between men and women and justify the istimta' of women with men"*

Abu Yahya Zakaria Al-Anshary defines:

النكاح شرعاً هو عقدٌ يتضمّن اباحاً وطئاً بلفظ انكاحٍ أو نحوه

*"Nikah according to syara'is term akad which contains the legal provisions of sexual intercourse with lafaz marriage or with words with him"*

The above understanding seems to be made to look at only one aspect, namely the legal permissibility in the relationship between a man and woman originally forbidden to allow. Yet every act of law has a purpose and effect or influence. These are the things that make human attention in general in daily life, such as divorce, lack of balance between husband and wife. So it requires affirmation of the meaning of marriage not only in terms of sexual intercourse but also in terms of objectives and legal consequences.<sup>16</sup>

Marriage will play a role after each pair is ready to perform a positive role in realizing goals in marriage. God does not make man like other creatures, who live freely following his instinct and relate between male and female freely or there is no rule. However, in order to safeguard human dignity and dignity, God provides demands appropriate to the dignity of the human person.

The form of marriage provides a safe path to the sexual instinct to nurture the offspring well and keep the self-esteem so that it is not like a grass

<sup>16</sup> Abd. Rahman Ghazali, *Fiqh Munakahat*, Cet. 1, 9.



that can be eaten by any cattle with arbitrary and indiscriminate.<sup>17</sup>

## **B. The Aim Of Marriage**

The aim of marriage according to Islamic law is to fulfill the religious instruction in order to create a harmonious, prosperous and happy family, the harmony in using the rights and obligations of a prosperous family member means the creation of calm or composure *lahir* and *bathin*. And fulfilled all the necessities of his life, so there arises happiness that is love between family members.<sup>18</sup> And according to the Compilation of Islamic Law article 3 explains the aim of marriage is to realize the life of a *sakinah* household, *mawaddah*, and *warohmah*.<sup>19</sup> Meanwhile, according to al-Ghazali then the aim of marriage are as follows:

- a. Getting married.
- b. Fulfill the intention of humans to channel lust and spill love.
- c. Fulfilling God's call, keeping from evil and destruction.
- d. Growing sincerity to be responsible for accepting rights and obligations.
- e. Build peaceful based on love and affection.

The wisdom that can be found in marriage is to block the eyes from looking at things that are not allowed by the shara 'and to keep the self-respect of falling into sexual destruction. Islam teaches and suggest for marriage because marriage will have a good effect on the couple themselves, society and all mankind. The wisdom of marriage are as follows:

<sup>17</sup> Slamet Dam Aminuddin, *Fiqh Munakahat I*, (Bandung : CV Pustaka Setia, 1999), 298.

<sup>18</sup> Abd Rahman ghazali, *Fiqh Munakahat*, Cet. 1, 7.

<sup>19</sup> Kompilasi Hukum Islam, Cet. 2, (Bandung: Fokus Media, 2007),7.

1. Getting married is the best and biologically appropriate way to channel and satisfy desire. With the marriage, the body so fresh, the soul so calm, eyes kept from seeing the haram.
2. Marriage is the best way to make children be noble, multiply descendants, preserve human life and maintain the nasab which Islam is very concerned.
3. Paternal and maternal instincts will emerge complementary in an atmosphere of life with children and will grow also the feelings of kindness, love and affection that are good human qualities.
4. Recognizing their responsibilities as a wife and husband will lead to a serious attitude in strengthening talent. He will deftly work, because of the encouragement of responsibility and take responsibility.
5. Division of duties and obligations, where one takes care of and regulates the household while others work for a living.<sup>20</sup>

### **C. Essential Principle and Terms of Marriage**

The essence of Marriage is the pillar of the marriage itself, without the essence of one of marriage, the marriage can not be implemented because the essence of marriage are part of the nature of marriage and must be fulfilled at the time of marriage.<sup>21</sup>

Even if the implementation of marriage is the implementation of religious law, it should be remembered that in the implementation of marriage

<sup>20</sup> Sayyid Sabiq, *Fiqh Sunnah*, Juz VI, (Bandung : PT. Al Ma'arif, 2000), 21.

<sup>21</sup> Nur Yasin, *Hukum Perkawinan Islam Sarak*, Cet. 1, (Malang: UIN Press, 2003), 57.

by religion determined elements that according to the legal term is called the essence of marriage, and its need conditions. To obtain a clear picture, it will be explained as follows, the conditions of marriage follow the pillars as in the following Khalil Rahman as follows:

1. Prospective of the groom
2. Prospective of the Bride
3. Guardian of Marriage
4. Witness Marriage
5. Ijab qobul

The condition of marriage are the basis for the validity of marriage. If these conditions are fulfilled, then the marriage is valid and in this marriage will result in obligations and rights for husband and wife. And they will be able to reach life happily in life.<sup>22</sup>

And the condition of marriage are:

- 1) Prospective of the groom
  - a) Islam
  - b) Men
  - c) Baligh
  - d) Understandably
  - e) Clearly the person
  - f) Can give consent
  - g) There is no marriage barrier

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<sup>22</sup> Sayyid Sabiq, *Fiqh Sunnah*, Juz VI, 22.

2) Prospective of the bride

a) Islam

b) Women

c) Clearly the person

d) Can be asked for approval

e) There is no marriage barrier<sup>23</sup>

From the above provisions on the terms of marriage is also stipulated on the provisions of the age limit of prospective groom and bride

#### **D. The Basic Foundation about Age Marrie**

Islamic Law explains that the majority opinion of scholars, there is no limitation of certain age of marriage. The absence of this limitation is due to the absence of the provisions of the Qur'an and al-Sunnah which set that limitation. In the Qur'an concerning marriage is only the determination of age baligh in the letter An-Nisa 'paragraph 59:

وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ ۚ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ  
آيَاتِهِ ۚ وَاللَّهُ عَلِيمٌ حَكِيمٌ

*"And when your children are baligh, they should seek permission, like those who before they ask permission. Thus Allah explains His verses. And Allah is Knower, Wise".*

The foundation used as the basis for marriage under the age of marriage is the religious behavior (*sunnah fi'liyyah*) of Prophet Muhammad SAW, while

<sup>23</sup> Ali Hasan, *Pedoman Hidup Rumah Tangga dalam Islam*, Cet. 1, (Jakarta: Siraja, 2003), 56.

marrying 'Aishah who at that time was still a young girl aged 6 years. The story of this marriage is recorded with sanad sahih in one of the best books in the study of hadith, and even as the narrator is the bride himself, 'Aishah ra;

*"The Prophet married me at the age of six, and lived with me at the age of nine."*

In historical studies, the above-mentioned marriage behavior is also one of the traditions among Arabs, either before or after the apostolate of Muhammad SAW.

However, the point that needs to be underlined from this historical fact is basically the absence of minimum age restrictions in marriage at that time because the main purpose of marriage is more intended to establish a relationship of *musahara* very useful to establish relationships for the spread of religion, not for the distribution of biological desires only.<sup>24</sup>

A person's maturity factor is taken into account in determining the age limit of the marital status, it also does not violate Hukum Syarak because in the Qur'an itself states based on the word of Allah SWT Surat An Nisa verse 6:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ ۖ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَن يَكْبَرُوا ۚ وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ ۚ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ۚ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ ۚ وَكَفَىٰ بِاللَّهِ حَسِيبًا

*"And test the orphan until they are old enough to get married. Then if you think they're smart (good at protect property), then give them their possessions. And don't eat the wealth of the orphan more than the right and the limits (do not hurry (spend it) before they grow up. Whoever (among the custodians) is capable, then let him refrain (from eating the orphan's property) and whoever*

<sup>24</sup> Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia* (Jakarta: Kencana, 2007), 67.



*is poor, then he may eat the property accordingly. Then when you give up their property, then prove it by witnesses (about the surrender) for them. And enough is Allah as a Supervisor (on the testimony) ".*

Surat An Nisa verse 6 has clarified that one of the conditions for qualifying a person to marry is dependent on the parties concerned to attain adulthood. According to the Islamic religion, the age of puberty is a limitation for a person responsible for Islamic law or called *taklif* and those who reach the age of the baligh are called *mukallaf*.<sup>25</sup>



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<sup>25</sup> Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, 68.

### **CHAPTER III**

#### **COMPARATIVE REGULATION FOR AGE MARRIAGE IN INDONESIA AND MALAYSIA**

#### **A. Regulation Number 1 Year 1974 and Enactment Islamic Family Law of Malacca Number 12 Year 2002**

##### **1. The History of Regulation Number 1 Year 1974**

##### **a. The Background of Regulation Number 1 Year 1974**

###### **1) First Orde Period**

Governance in post-independence is a government in the old order leadership (1945 - 1965), in the era of this old order the desire to have a marriage law applicable to the entire nation of Indonesia, it has not yet materialized. Some law of marriage of the Dutch colonial government is still applied to the Indonesian people according to their respective groups. The applicable law of marriage is as follows:

- a) For indigenous Indonesians, they apply the customary law.
- b) For indigenous Indonesians moeslim, they apply Islamic marriage law.

- c) For indigenous Indonesian Christians, they apply the Christian Marriage Ordinance (HOCl).
- d) For citizens of European and Chinese descent, they apply the Civil Code (BW).
- e) For mixed marriage apply Mixed Marriage Regulation (Staatsblad 1898 No. 158) or GHR.

Since Christianity and citizens of the offspring (Europe and China) have codified the law of marriage, then in practice, rarely encounter difficult problems in their marriage. This is different from those of the Muslims who do not have the legal code of marriage. The law of marriage used by the Islam is still spread in some books of *fiqh munakahat* created by mujtahid from the Middle East such as Imam Shafi'i for example. Understanding of the moeslim Indonesian to the books of *fiqh munakahat* created by mujtahid is often not same, so there are cases of marriage such as, children's marriages, forced marriage, and abuse of talak and polygamy.

This situation apparently received attention from the Government of the Republic of Indonesia, so in 1946 or exactly one year after Indonesia's independence, the Government of the Republic of Indonesia established Law Number 22 Year 1946 concerning Marriage, Divorce and Reconciliation that apply to Java and Madura regions, then by the Emergency Government of Indonesia it is also for Sumatra.<sup>26</sup> In the implementation of the Act was issued

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<sup>26</sup> Nani Suwondo, *Kedudukan Wanita Indonesia Dalam Hukum dan Masyarakat*, (Jakarta: Ghalia Indonesia, 1992), 96.

the Instruction of the Minister of Religion Number 4 of 1947 aimed at a Registrar Marriage Official (*Pegawai Pencatat Nikah*). The above-mentioned instructions on the implementation of Law Number 22 Year 1946 also contain the requirement for Registrar Marriage Official (*Pegawai Pencatat Nikah*) to prevent marriages of uneducated children, explaining polygamous husbands' obligations, explaining former husbands to ex-wife and children. Then in 1954 through law Number 32 Year 1954, Law Number 22 Year 1946 was declared valid for entire of Indonesia.<sup>27</sup>

In August 1950, the Women's Front in Parliament urged the Government to review marriage laws and to draft marriage laws. Because of the urgency of the Indonesian government finally, at the end of 1950 with the Letter of Order of the Minister of Religious Affairs number B/2/4299, 1 October 1950 established the Committee of Inquiry Regulation and Marriage Law, Divorce and Reconcile for Muslims. The committee arrange The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) and that could accommodate all the legal facts that lived and improved in society at that time. Because of its membership consisting of those who are considered experts on the common law, Islamic and Christian law of various group and the chief is Tengku Hasan.<sup>28</sup>

And the end of 1952, the committee make The Delineation draft of Marriage consisting of general rules, which were applicable to all group and religions and special rules that governed matters concerning their respective religious groups. Subsequently, on 1 December, 1952, the committee submitted

<sup>27</sup> Nani Suwondo, *Kedudukan Wanita Indonesia Dalam Hukum dan Masyarakat*, 78-79.

<sup>28</sup> Asro Soisroatmodjo, dan A. Wasit Aulawi, *Hukum Perkawinan Di Indonesia*, 9.

Delineation draft of Marriage to all central and local organizations with a request that each of them give their views on such matters as at the latest on 1 February, 1953.<sup>29</sup> The Delineation draft of Marriage has also tried to improve the state of society, among others:

- a) Marriage should be based on the volition of both sides, to prevent forced marriage set the age limit of 18 for men and 15 for women.
- b) Husband and wife have equal rights and position in the life of the household and social life together in society.
- c) Polygamy is permitted when permitted by religious law applicable to the person concerned and arranged in such a way as to qualify for justice;
- d) Inheritance and property acquired during marriage belong together;
- e) Divorce is governed by the decision of the District Court, for certain reasons, concerning divorce and reconciliation in the rules of Islamic Law;
- f) The status of the child is valid or not, the child's acknowledgment, adopting and authorizing the child, the rights and duties of the parent against the child, the removal of the parent's power and the guardianship.<sup>30</sup>

On 24 April 1953, the Committee of Marriage, Divorce and Reconciliation with community organizations was held a meeting, which in its

<sup>29</sup> Nani Suwondo, *Kedudukan Wanita Indonesia Dalam Hukum dan Masyarakat*, 177.

<sup>30</sup> Nani Suwondo, *Kedudukan Wanita Indonesia Dalam Hukum dan Masyarakat*, 178-179.



meeting in May 1953 Committee decided to arrange the Regulation of Marriage according to the prevailing system:

- a) The Basic Law which contains all the rules that apply to all people (uniform), with no offensive religion.
- b) The Organic Law, which regulates marriages according to their respective religions, for the Islamic, Catholic, and Protestant Christian groups;
- c) The law for the neutral group, not belonging to a religious group.<sup>31</sup>

In 1954 the committee finally succeeded in making draft Regulation of Marriage of Muslims which was later submitted by the Minister of Religious Affairs to the Cabinet at the end of September 1957 with an explanation that there will be further amendments.

The government also for years did not respond until in 1958 some members of the women's parliament under Soemari's leadership, proposed the most important design initiatives among them, at least for the Indonesian Islamic world a stirring problem that in the initiative's initiative it was established a necessity to monogamy. The government at that time had reacted by presenting a draft that only regulated the marriage of Islam.<sup>32</sup>

One and a half years after the proposed proposal, in October 1959, Soemari's Draft Law was withdrawn by its patrons, despite receiving great

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<sup>31</sup>T. Jafizham, *Persintuhan Hukum di Indonesia dengan Hukum Perkawinan Islam*, (Medan : Mestika, 1977) , 180.

<sup>32</sup> J.Prins, *Hukum Perkawinan Di Indonesia*, Alih Bahasa G.A. (Jakarta: Ticoalu, Ghalia Indonesia, 1982), 19-20.

attention from members of the House Representative, the draft did not seem to be an issue to discuss. The members of the Islamic Party held a resistance, especially against the monogamous principle contained in the Draft. Of course, as women's organizations protest the arguments used to justify polygamy. This is an internal factor that causes failed the Regulation of Marriage to be passed. There is also external factors emerged, that is the change of state administration system due to Presidential Decree 5 July, 1959.<sup>33</sup>

Until long-term government ends, the Regulation of Marriage aspired to by the Indonesian nation has not yet been established, because demands for immediate formation of marriage law continue to emerge, that is coming from both the government itself and those coming from social organizations such as from Congress Indonesian Women, National Congress For Social Workers (1960), Family Welfare Assembly (1960), and BP4 Central Conference (1962).<sup>34</sup>

## 2) New Order Period.

In the New Order period, during the session 1967-1971 Parliament (House of Representative-GR) reviewed the The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*), that are:

- a) The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) for Islam is from the Department of Religion, submitted to the House of Representative (DPR-GR) in May 1967.

<sup>33</sup> T. Jafizham, *Persintuhan Hukum di Indonesia dengan Hukum Perkawinan Islam*, 98.

<sup>34</sup> Asro Soisroatmodjo, dan A. Wasit Aulawi, *Hukum Perkawinan Di Indonesia*, 9.

- b) The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) Principal provision is from the Department of Justice, submitted to the House of Representative (DPR-GR) in September 1968.

The second discussion of The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) suffered congestion, because the Catholic Faction refused to discuss relating to religious law. Even though the catholic representatives are very small in number (only 8 out of 500 members), they are the cause of the discussion be congestion. For according to the order of Parliament at that time every decision must be agreed upon by the Catholic faction in its "Principles Mind concerning The Delineation draft of Marriage" contained in the daily edition of Operation (14 to 18 April 1969).<sup>35</sup>

The founding of the Catholic faction received a response from Muslims, among them from Hasbullah Bakry (Chief of PUSROH Islam POLRI) in Daily *Pedoman* (1-8-1969) as follows:<sup>36</sup>

"And if this Regulation does not happen, then the Catholic party does not achieve its political objectives. The law regulating about marriage with the predicate of religion adopted by the citizen has indeed existed since before the Pancasila was inaugurated and has been strengthened by the Pancasila State. And this does not mean that Republik of Indonesia has changed into a State of

<sup>35</sup> H.M Rasjadi, *Kasus RUU Perkawinan dalam Hubungan Islam dan Kristen*, (Jakarta : Bulan Bintang, 1974), 34.

<sup>36</sup> Hasbullah Bakry, *Pengaturan Undang-undang Perkawinan Ummat Islam*, (Jakarta : Bulan Bintang, 1970), 122.

Religion. On the rejection of the Catholic party, Indonesian citizen can consider that attitude to betray the social interests of the Indonesian nation.

In July 1973, the government through the Department of Justice who had formulated The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*), submitted back the draft to House of Representative (DPR) election result in 1971, consisting of 15 chapters and 73 articles.

The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) of 1973 turned out to be opposed by Muslims. All the Islamic organizations and figures are involved in matters concerning the religion, arguing that the The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) is contrary to religion and therefore contrary to Pancasila and the 1945 Constitution. Although at that time the government and the House of Representatives had not yet conducted internal discussions. According to Amak FZ, the PPP faction is the only fraction that opposes the bill as it is against the teachings of Islam.<sup>37</sup>

Rejection and reaction to The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) came from various communities, society, ulama and the government itself. The reactions that were in the spotlight came from the PPP faction chairman KH. Yusuf Hasyim who has recorded various errors in The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) and contrary to the Law of Marriage, that is, in a state based on the Pancasila of

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<sup>37</sup> Amak FZ. *Proses Undang-Undang Perkawinan*, (Bandung: PT al Maarif, 1976), 7.

the Supreme God, the marriage has a very close relationship with religious and spiritual elements.

The dictum of Yusuf Hasyim is not without reason, the rejection is derived from the mandate of the President of RI Number R.02/ P.U/ VII /1973 regarding the withdrawal of The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) from the House of Representatives whose purpose is more attention to the benefit of the ummah. Buya HAMKA also rejected which is considered contrary to the teachings of Islam. HAMKA said, the main teaching *tasyriul Islamy* is maintain the Shari'a five things, that are maintaining religion, soul, mind, descent and property.<sup>38</sup>

The rejection of Muslims, it got the attention of the government. President Soeharto himself received a delegation of the party F-PP (Fraksi/partai Persatuan Pembangunan), KH. Bisri Syamsuri (Chairman of DPP-PPP) and KH. Masykur (Chairman of the F-PP), give more attention to ideas of this group. President Soeharto convened a meeting with the delegate of the F-PP and ABRI faction. So finally a consensus was reached between the two factions. The consensus, which essentially contains that all Islamic Laws concerning what has been contained in the draft law will not be reduced, and consequently all the implementing regulations will also not be changed, not only all the things that are against the religion of Islam and it is impossible adjusted in the The Delineation draft of Marriage (*Rancangan Undang-undang*

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<sup>38</sup> Asro Soisroatmodjo, dan A. Wasit Aulawi, *Hukum Perkawinan Di Indonesia*, 27.



*Perkawinan*) removed.<sup>39</sup> With the consensus, The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) would inevitably have to be changed by referring to the things agreed upon in the Consensus.

The change of the *Rancangan Undang-undang Perkawinan* from the above Consensus results, was less favored by the Christians. In his view the Christian group argues that between state law and religious law must be separated. In other words this group does not agree to transform the norm of religious law into the norms of the state legislation. This view is in accordance with the doctrine of the Church, which shares the separation of religious affairs (church) with the affairs of the State. State affairs are governed by State law and religious affairs (church) governed by religious law (church).<sup>40</sup>

The debate about the *Rancangan Undang-undang Perkawinan*, which at that time become very hot topic, from all good circles of Islam, Christianity, Community Organizations, Youth Organizations, Women's Organizations and figures paying the most attention before the *Rancangan Undang-undang Perkawinan* was passed into law.

If viewed from history at the time then the discussion about *Rancangan Undang-undang Perkawinan* 1973 in the House of Representative in accordance with the ruler, that is through four levels. First, explanation of government about the *Rancangan Undang-undang Perkawinan*. Second, general view of each fraction and the Government's response to that general

<sup>39</sup> Asro Soisroatmodjo, dan A. Wasit Aulawi, *Hukum Perkawinan Di Indonesia*, 28.

<sup>40</sup> Amak FZ. *Proses Undang-Undang Perkawinan*, 12.

view. Third, meeting commission (Commission III and Commission IX) to discuss which in this case submitted to a committee of *Rancangan Undang-undang Perkawinan*. Fourth, decision making (ratification) with preceded by the last opinion (stemmotivering) from each faction.<sup>41</sup>

After amendments, on 22 December 1973 in the Plenary Session of the House of Representatives, as discussed in the fourth level above, to be passed into law. In the meeting all the factions raised their opinions, as well as the government represented by the minister of Justice gave the final word. On that same day the The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) was passed by the House of Representatives after three months of discussion. On 2 January 1974, was enacted as Law Number 1 Year 1974 on Marriage. LN Number 1 of 1974, additional LN Number 3019/1974.<sup>42</sup>

For the implementation regulation above, the government issued Government Regulation (*Peraturan Pemerintah*) Number 9 Year 1975 as the implementing regulation of the marriage. In the following years it turned out that the Religious Courts as a juridical institution that handles marital matters among Moeslims is in fact many of the disparities in applying the law, because there are things that are not covered in the marriage law and Government Regulation (*Peraturan Pemerintah*) implementing regulations, to handle things then through President Instruction Number 1 year 1991 on the enactment

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<sup>41</sup>Amak FZ. *Proses Undang-Undang Perkawinan*, 12.

<sup>42</sup>Amak FZ. *Proses Undang-Undang Perkawinan*, 12-13.

of Compilation of Islamic Law as a standard reference for Judges of Religious Courts in deciding cases.<sup>43</sup>

#### **b. The Basic Foundation of Regulation Number 1 Year 1974**

All the main sources of legislation in Indonesia are sourced from *Pancasila* and the 1945 Constitution. One of the precepts in *Pancasila* is the first principle of Belief in the One Supreme God. Then the ideas and aims of the first precepts are implemented in the 1945 Constitution that guarantees citizens in the implementation of religious teachings of each country-recognized religion. One of the religions with its greatest adherents is the religion of Islam.

Regulation Number 1 Year 1974 on Marriage based on MPRS decree number IV/MPR/1973 that has considered Regulation Number 1 Year 1974 is a government regulation established based on the philosophy of *Pancasila* and the aims for the development of national law, marriage law apply to all citizens.

The ideas contained in this regulation contain the meaning of legal unification in accordance with the philosophy of *Pancasila* in national unity including the marriage applicable to all citizens. Here are the rules regarding marriage issues before the Regulation of Marriage:

- 1) The provisions of the marriage law contained in Burgerlijk Wetboek (BW) apply to Europeans and foreign derivatives.
- 2) Indonesian Christian marriage Ordinance St. 1933 number 74 which applies to Javanese-Madurese and Minahasa Christian groups.

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<sup>43</sup> Amak FZ. *Proses Undang-Undang Perkawinan*, 18-19.

- 3) Mixed Marriage sb. 1898 number 158.
- 4) Other rules as long as those governed by marriage laws are declared no valid again.

Generally, Regulation Number 1 Year 1974 about the marriage has several principles. These principles for ensuring the lofty ideals of marriage. From this regulation is expected to make the Regulation of marriage can be more perfect from the previous period.<sup>44</sup>

**c. The Provision of Age Marriage According to Regulation Number 1 Year 1974**

The age limit on marriage has been determined in the Regulation Number 1 Year 1974 contained in Chapter II terms of marriage article 7 paragraph 1:

“Marriage is only permitted if the male reached the age of 19 (nineteen) years and the woman reached the age of 16 (sixteen) years”

The age limits regulated in the Regulation of Marriage is still higher than Christian Marriage ordinances as well as in the Civil Code. The age of 19 years and 16 years for someone more mature physically and psychologically than 18 years for men and 15 years for women as prescribed by civil law.<sup>45</sup>

In the history formation of the Regulation of Marriage is said that the consideration of the age limit of marriage is the biological maturity of a person.

<sup>44</sup> Yayan Sopyan, *Transformasi Hukum Islam ke Dalam Sistem Hukum Nasional*, (Jakarta: Disertasi Sekolah Pascasarjana UIN Jakarta, 2007), 216-217.

<sup>45</sup> Lili Rasjidi, *Hukum Perkawinan dan Perceraian di Malaysia dan Indonesia*, (Bandung: Alumni, 1982), 111.

Restriction of marriage age, according to Dyah Saptaningrum as revealed by Ratna Bantara Munti, at that time is intended to anticipate the rampant marriage of children whose issues are rolling since 1920s.<sup>46</sup>

The determination of the age limit of maturity in the law will refer to the definition of responsibility, that is to ensure that the attitude of a person are legally accountable and responsibility.

Regulation Number 1 Year 1974 on Marriage Article 50 Paragraph (1) states that;

"A child who has not reached the age of 18 (eighteen) years or has never held a marriage, which is not under the authority of a parent, is under the guardianship"

Beside that, the limit maturity for marriage is defined in Article 6 Paragraph (2) states that;

"To marry a person who has not reached the age of 21 (twenty one) years must obtain the consent from both parents." And then Article 7 Paragraph (1) "Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years".

Prof. Subekti said that the 18-years age limit can be viewed as a middle way between the age limit in the minds of the village and the city. Differences of opinion among lawyers about adult age limit, due to the various regulations

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<sup>46</sup> Ratna Batara Munti dan Hindun Anisah, *Posisi Perempuan Dalam Hukum Islam di Indonesia* (Jakarta: LBH-APIK, 2005), 53.



that call an age limit for certain things. It is also different views and interpretations.<sup>47</sup>

The history Regulation Number 1 Year 1974 on Marriage has created a new atmosphere in Family Law of Indonesia. Because the law not only regulates about marriage, but also other areas including Family Law, such as child's status, maturity, and parental responsibilities of children and children to parents, and about the guardianship of children.<sup>48</sup>

The provision about the age marriage in regulation of marriage is based on the previous regulation. The results of the formulation of course see the condition of the Indonesian nation itself considering the law is universal. Previously, The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) stipulates the marriage age for men is 18 years while the female is 15 years old. However, The Delineation draft of Marriage (*Rancangan Undang-undang Perkawinan*) has caused a lot of contra in various religions, because the bill is a lot of contradiction and the numbers are considered too small. So there is a need for changes in the law. Furthermore, the formulation of legislation passed by the House of Representatives is among others set the age limit for marriage for men is 19 years and women 16 years, and certainly until now.

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<sup>47</sup> Ratna Batara Munti dan Hindun Anisah, *Posisi Perempuan Dalam Hukum Islam di Indonesia*, 54-55.

<sup>48</sup> Catatan Djuhaedah Hasan, 'Masalah Kedewasaan dalam Hukum Indonesia', di <http://habibadjie.dosen.narotama.ac.id>. lihat juga Catatan Habib Adjie, 'Kajian Ulang Terhadap Batas Umur Dewasa (Kedewasaan)', di <http://habibadjie.dosen.narotama.ac.id>

Based on that, considerations and the customary aspects give to effect for Regulation of Marriage, especially in provision of the age limit of marriage, there is no specific definitive provisions related to maturity in marriage age. Nevertheless, age restrictions on marriage, socially, the aim of age restriction is for the parties / bridegroom to understand social responsibility, that is the ability to guide the family and responsibility to the community and maintaining peace through the household.

## **2. The History of Enactment of Islamic Family Law of Malacca Number 12 Year 2002**

### **a. The Background of Enactment of Islamic Family Law of Malacca Number 12 Year 2002**

The Western researches had an opinion that Islam reached and expanded in Indonesia archipelago since the 13 M. Meanwhile, the researches of Islamic history in Indonesia had made a summary in Medan in the year 1963 that Islam had reached Indonesia archipelago as early as the 7M. The Islamic researches in Malaysia had found proof that the Islam community had been here before 13M. As an example, the gold dinar that was found in Kelantan in the year 1914 shows that the Islamic kingdom was in Kelantan since 12 M. The tombstone that was found in Kedah in the year 1963 that was printed with the name and date which is “Syeikh Abdul Kadir Ibn. Syaikh Husin Syah Alam”

291H that has the same year as 903M clearly shows that Islam had long been here in Malaysia.<sup>49</sup>

Before the presence of Islamic law in the Malay states, was the local law and customary law. After the presence of Islamic law, it was absorbed into the customary law and local law. The Islamic law was the law of the state body in Tanah Melayu before the presence of British colonisers and even the British judges also admitted that the Islamic law were the laws of this country. This is proven in the case *Ramah bte Taat v Laton bte Malim Sutan*. The Court of Appeal decided that the Islamic law was not a foreign law to the country but a law that was accepted by the local people.

The first Sultanate of Malacca was Parameswara after converting to Islam religion accepted Islamic Law as the national law of Malacca. The first law of Malacca was written by Hang Sidi Ahmad. This law was divided into two parts which was Qanun Melaka which was enforced on land while Qanun Laut Melaka was enforced on the seas. These laws was assumed to be written on the year 1444M.

According to R.O. Windstedt, the Laws of Malacca was one of the earliest law ever created. Even though, there were many opinion that states that the Hukum Kanun Melaka was enacted on Sultan Mahmud Syah reign (1488 – 1511M) the last Malacca sultanate, there were no statements and evident to

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<sup>49</sup> Wan Hussien Azmi, *Islam di Malaysia. Kedatangan dan Perkembangan (Abad 7 – 20M) dalam Khoo Kay Kim. Tamadun Islam di Malaysia*. (Kuala Lumpur : Persatuan Sejarah Malaysia, 1980), 135.

deny the fact in Sejarah Melayu that it was enacted when the reign of Sultan Muzaffar Shah(1445 – 1458M).<sup>50</sup>

Liaw Yock Fang once gave his opinion that the original Laws of Malacca and possibility the Undang-undang Laut was enacted during the reign of Sultan Muhammad Shah(1424 – 1444M) and was perfected when Sultan Muzaffar Shah(1445 – 1458M) era, the Golden Era of Malacca Sultanate. The section related to Islamic law especially about trade and events maybe was arranged later.

The section related to state law and Johore State Constitution was maybe arranged as early on the 16<sup>th</sup> century when the Portuguese first came to Malacca. The Johore State Constitution was maybe enacted on the order of Sultan Mahmud Shah (1761 – 1821M), the prince heir to Sultan Abdul Jalil Shah (1760 – 1761M).<sup>51</sup>

The facts stated that the real date of formulation and the Sultanate that command the formulation of Hukum Kanun Melaka was not finalised because the Sejarah Melayu did not explained the details in detail. The similarities between Sejarah Melayu and Hukum Kanun Melaka is about the Malay Royal Etiquette. In the Sejarah Melayu, it was stated that Sultan Iskandar and Sultan Muhammad once gave an order to create the Laws of Malacca. If this is true, then there are a few possibilities that a few parts of the Laws of Malacca was

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<sup>50</sup> Wan Hussien Azmi, *Islam di Malaysia. Kedatangan dan Perkembangan (Abad 7 – 20M)* dalam Khoo Kay Kim. *Tamadun Islam di Malaysia*, 135-136.

<sup>51</sup> Wan Hussien Azmi, *Islam di Malaysia. Kedatangan dan Perkembangan (Abad 7 – 20M)* dalam Khoo Kay Kim. *Tamadun Islam di Malaysia*, 136.

enacted before the reign of Sultan Muzaffar Shah as claimed Richard Windstedt. Maybe it was enacted as soon as Malacca was opened because Malacca was opened by Parameswara that comes from Palembang and later establish a kingdom in Singapore before staying in Malacca. Parameswara was an experienced ruler so, it was not a problem to him to have a legal system for the Malacca state. So, the claim by Richard Winstedt cannot be accepted because it is very hard to imagine that how Malacca can be ruled without a legal system before the rule of Sultan Muzaffar Shah.<sup>52</sup>

Even though there are many opinion about the date of enactment of Hukum Kanun Melaka, but we should organise these opinion with the summary that Hukum Kanun Melaka was maybe enacted when Malacca first accepted Islam. According to Sejarah Melayu, Sultan Muhammad Shah (1424 – 1444M) was the first to enter to Islam religion. Later, it was perfected when reign of Sultan Muzaffar Shah (1445 – 1458).

The Islamic law that was implemented in Melayu had once been influenced by the Ottoman *kanun* in Turkey. This can be evidenced by the use of the terms of *kanun* laid down in the law. The term *kanun* is foreign in Melayu land and it is only used in the Ottoman empire in the period of Dhulghadhi rid Beg Alauddarullah Beg (1479-1515M) known as Kanunname Alauddarullah Beg. This *kanun* includes s on fiscal law, criminal law and government relations with individuals. The Ottoman *kanun* was introduced into

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<sup>52</sup> Azizan Abdul Razak, *The Law in Malacca Before and After Islam in Khoo Kay Kim, Tamadun Islam in Malaysia*, (Kuala Lumpur: Persatuan Sejarah Malaysia, 1980), 31.



the Ottoman regions and carried out extensively. This fact proves that the law ever implemented in the period of Malacca and other Malay states at one time had gained Turkish influence. The influence of Islamic law in Turkey can also be seen in some of the laws in the states. For example, *Mejellah al Ahkam al Adliyyah* has been the basis of the law contained in *Majellah al Ahkam Johor* in 1331H.<sup>53</sup>

In the early fifteenth century the influence of Islam began to dominate in Melayu through the activities of *arab* traders who came to trade and spread Islam. Malacca at that time became a leading trading center and became the center of international economic activity. Because of that strategic factor, then Islam can be disseminated effectively in a very short time.<sup>54</sup>

In the law of Malacca, it is evident that Islamic marriage laws, criminal law, sales and evidence have been carried out in the states and Malacca. Not only that, Islam has become the official religion of Malacca at that time. There were well-known judges during the Malacca era such as Kadi Yusof, Kadi Monawar, Kadi Sadar Johan and Sharif Muhammad Kebungsuan. The law of Malacca and the law covenant of the Malacca Sea Code were introduced since the fifteenth century by Sultan Mahmud Shah in 1444M. The law was adopted and implemented in other states such as Johor, Pahang, Selangor and Perak.

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<sup>53</sup> Abdul Monir Yaacob, *Sejarah Perundangan Islam*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1998), 5.

<sup>54</sup> Hamid Jusoh, *Kedudukan Undang-undang Islam Dalam Perlembagaan Malaysia, Suatu Rujukan Khas Terhadap Kes-kes Konversi Dalam Undang-undang Keluarga*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1992), 4-8.

This law incorporates customary elements and Shariah principles in harmony with the practice of society at that time.

The *kanun* of Malacca contains 6 Chapters consisting of;

- a) Pure the law of Malacca
- b) Sea of Law
- c) Marriages for Muslim
- d) Sales of law and description
- e) State of law
- f) Johor of law.
- 1) Islamic law during British rule

The arrival of the Portuguese, the Dutch and the Japanese government did not significantly affect the laws of Malaysia. British rule has influenced most of the application of Islamic law. The English law has begun entry through the Charter of Justice (*Piagam Keadilan*) 1807 and is followed by some of the adopted English laws. The Second Charter of Justice (*Piagam Keadilan*) 1826 and the Third 1885 then make English laws coordinated and implemented in the Straits of statute.<sup>55</sup>

The British had separated the jurisdiction in the administration of government between the state and religion. In 1902 and 1905, the English Criminal Code and (*kanun Aturcara Jenayah*) was introduced and enforced in Melayu. Initially the British introduced the English evidence law through the

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<sup>55</sup> Zulkifli Hasan, *Sejarah Undang-undang Islam di Malaysia*, Fakulti Syariah dan Undang-undang, Universiti Sains Islam Malaysia, 6-7.

Statutes of the Straits Settlements 1893. At the end of the British introduced a more comprehensive evidence law of the Evidence Act 1950 modeled by the India Evidence Act 1872 which was drafted by Sir James Stephen. This Statement of the Act is a British attempt to codify the principles of the 'Common Law' law in one act and to be a reference in the Court. With the introduction of the Evidence Act 1950, the Islamic evidence law is no longer the main reference of the Court even though it involves Muslims in which the principle of law of evidence is based on common law is adopted in accordance with the Act of Evidence Act 1950.

Islamic law in Malaysia is increasingly inapplicable. There are cases in which the Islamic evidence laws are set aside and the principles of English law are adopted. The Islamic information law is increasingly forgotten and is not practiced in the real sense. It is placed in certain cases covering family affairs and the administration of Islamic property. Although Islamic law encompasses such affairs, English law often interferes and interferes with the affairs of Muslims and decides a case under the 'Common Law' law.<sup>56</sup>

## 2) Islamic Law After Independence

Malacca is located on the west coast of the Melayu Peninsula. Since the 5th century AD, the inhabitants of the Melayu Peninsula are Hindus and Buddhists. The hypothesis is based on archaeological traces originating, for Hinduism and Buddhism, from the 5th to the 8th century AD. The influence of Buddhism increased and the religion improved as the Melayu Peninsula was

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<sup>56</sup>Zulkifli Hasan, *Sejarah Undang-undang Islam di Malaysia*, 7.

under the rule of the Sriwijaya Buddhist kingdom. From the 10th to the 13th centuries AD, the Peninsula improved rapid growth on trade factors. At that time, traders came from Middle East, India, Java, Cambodia, China and Burma.<sup>57</sup>

Malaysia had gained independence on 31 August 1957. Article 3 (1) The Institutionalization of the *persekutuan* insists that Islam is a first for the *persekutuan*, but other religion may be safely and peacefully everywhere in the *persekutuan*. Although this designation is indirectly like the dictates of Islamic law as a law covering all aspects of life, yet essentially the allotment of Islamic law in Malaysia is concerned only with family, inheritance and to the Muslims. Likewise with the statute of Islam, the use of Islamic statements is only valid in certain cases even it is not received proper attention.

Along with the development of independence and the needs of the people towards specific laws relating to the Islamic administration, in this case the enactment of the Islamic religion in Malacca was approved and it is the Enactment Islamic Law (State of Malacca) 1959.<sup>58</sup>

Although there is no specific provision of Islamic evidence in the laws of Islamic governance of states, it is still insufficient to make clear reference to the Syariah Court. Thus, the states have enacted and approved the enactment of Islamic law. The benefit also to the Evidence Act 1950 is not applicable at all in the Syariah Court after the enactment of the evidence of the Syariah Court of

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<sup>57</sup>Zulkifli Hasan, *Sejarah Undang-undang Islam di Malaysia*, 8.

<sup>58</sup>Zulkifli Hasan, *Sejarah Undang-undang Islam di Malaysia*, 8-9.

the states. The following are the enactments, acts or ordinances of Islamic evidence found throughout the country and adopted in the Syariah Court.<sup>59</sup>

- i. Enactment (State of Kedah) 1989/2007
- ii. Enactment (State of Terengganu) 2001
- iii. Ordinance (State of Sarawak) 2001
- iv. Enactment (State of Malacca) 2002
- v. Enactment (State of Kelantan) 2002
- vi. Enactment (State of Selangor) 2003
- vii. Enactment (State of Perlis) 2003/2006
- viii. Enactment (Negeri Sembilan) 2003
- ix. Enactment (State of Johor) 2003
- x. Enactment (State of Perak) 2004
- xi. Law (Sabah State) Enactment 2004
- xii. Enactment (Penang) 2004
- xiii. Enactment (State of Pahang) Enactment 2005
- xiv. Enactment (Federal Territories) 1997/2005

Enactment Islamic Law (State of Malacca) 1959 is the first Islamic law to be drafted and implemented in Malacca. Other states later followed Malacca's move and approved the enactment of the Syariah Court's. With respect to the Syariah Court's evidence law in Malacca, the first evidence law passed was the Enactment of 1983. This Enactment was however replaced by

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<sup>59</sup> Zulkifli Hasan, *Sejarah Undang-undang Islam di Malaysia*, 13



the Enactment (Malacca) Certificate 2002.<sup>60</sup>

Malaysia is a country that has a community of diverse ethnicity, religion, and community. The country is composed of Melayu which is the largest community in Malaysia with a total of 45 percent of its entire population. Chinese community (35%) and India (10%) are the largest populations in Malaysia after the Melayu. These two ethnicities enter Malaysia as merchants. This is because Malaysia is the juncture of Southeast Asia trade routes. The Melayu peninsula is also a gathering of various cultural and religious influences such as Islamic, Hindu, Buddhist, Christian and Confucian teachings in Southeast Asia. As with Indonesia, Malaysia is also a former Portuguese and Dutch colony. Later also England in the late 18th century. Obviously, this has influenced the legal product made in Malaysia, because it allows the law that the colonialists bring to the ground in Malaysia.

Malaysia is a country with thirteen states: Johor, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Perak, Perlis, Penang, Sabah, Sarawak, Sarawak and Trengganu and three federal territories. The Federal Territory here is one of the states or territories that forms the Melayu federation (Malaysia). The Federal Territory is ruled directly by the federal government under the power of the Prime Minister.<sup>61</sup>

The State of Malaysia was once under Portuguese and Dutch control before becoming a British colony. But after a long time, finally the Federation

<sup>60</sup> Zulkifli Hasan, *Sejarah Undang-undang Keterangan Islam di Malaysia*, 13

<sup>61</sup> Muhammad Rusfi, *Hukum Keluarga Islam di Malaysia*, Jurnal Fakultas Syariah IAIN Lampung: 2013, 167.

of Malaysia succeeded independence from British colony on 31 August 1957. According to Khoiruddin Nasution in that after the renewal of the Malaysian Legislation then if the grouping of the applicable Muslim family in Malaysia will be born two major groups: laws that follow the deed of communion namely Selangor, Negeri Sembilan, Pinang island, Pahang, Perlis, Terengganu, Sarawak and Sabah on the one hand, and Kelantan, Johor, Malacca and Kedah on the other hand, although noted many similarities but there are quite striking differences, from 134 articles there is a difference of 49 times.<sup>62</sup>

After independence, Malaysia seeks to reform the family law so that it covers all aspects related to marriage and divorce, not just marriage and divorce registration as in previous Laws. The effort began in 1982 by Malacca, Kelantan and Negeri nine which was then followed by other States. The current Islamic marriage law in Malaysia is a marriage law in accordance with the provisions of the Law of each State. The Family Law includes: enactment of Malacca 1983, enactment of Kelantan 1983, enactment of Sembilan 1983, enactment of *Wilayah Persekutuan* 1984, enactment of Perak 1984 (No.1), enactment of Kedah 1979, enactment of Pinang Island 1985, enactment of Trengganu 1985, enactment of Pahang 1987, enactment of Selangor 1989, enactment of johor 1990, ordinance of Serawak 1991, enactment of Perlis 1992, and enactment of Sabah 1992.<sup>63</sup>

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<sup>62</sup> Muhammad Rusfi, *Hukum Keluarga Islam di Malaysia*, 167.

<sup>63</sup> Muhammad Rusfi, *Hukum Keluarga Islam di Malaysia*, 167-168.

The reality of Malaysian society is that often marriages are preceded by engagement. For marriage to the East, marriage is a bond between families, so in some countries such as Negeri Sembilan, and Malacca, the engagement ceremony is always attended by the tribal chiefs of the engaged party. The presence of tribal leaders is considered as a symbol of family ties that will be strengthened again if then there is a marriage between the engaged party.

**b. The Basic Foundation of Enactment of Islamic Family Law of Malacca  
Number 12 Year 2002**

This Enactment is enforced to establish a institution fully by the Malacca state government responsible for the management of existing Islamic issues and is only given the name "Islamic Council of Malacca". And in 1978, under the law of the Malacca Islamic law, established the Syariah Court was introduced as a place to judge called the *Kadi* and the Grand Court.

Malacca Courts law continued to be adopted from enactment of 1959 to 1983 with some changes in the law of Malacca law, which contained some weaknesses in the law, as well as in conformity with the customary and Islamic laws that had taken place in particular Muslim population. This law contains more customary law provisions. Most of these provisions are in the form of family law regarding cases of divorce, marriage, divorce, and inheritance.

In August 17, 1990, the Malacca Shari'a Court was separated by its administration from the Malacca Islamic Council and the Islamic Department of Malacca, with the establishment of a new department.

Furthermore, the Malacca Legislative Assembly by the Malacca State Legislation has compiled the Law relating to the teachings of Islam especially on the matters of the Islamic Family. And on the date of the consent of the King on the Enactment Islamic Family of 2002 was 23 November 2002 and published in the 28 November 2002 news, and came into force on 14 June 2003.<sup>64</sup>

**c. The Provision of Age Marriage Accordin to Enactment of Islamic Family Law of Malacca Number 12 Year 2002**

One of the enactments discussed in this study is the enactment of Malacca Number 12 of 2002 section 8:

"No marriage under this Enactment if the man is less than eighteen years old or the woman is less than sixteen except if Judge Syarie given the truth in writing and certain condition."

Under the laws of Malaysia limits the minimum age of marriage to 16 years for the bride and 18 years for the groom. This provision is based on the Malaysian Act which reads: The age limit of marriage allowed for women not less than 16 years and men not less than 18 years. If one or both couples who want to get married are less than the age limit applied, it is necessary to seek the permission of the sharia judge first.<sup>65</sup>

<sup>64</sup> Hamid Jusoh, *Kedudukan Undang-undang Islam dalam Perlembagaan Malaysia*, (Selangor: Dewan Bahasa dan Pustaka), 15-16.

<sup>65</sup> Abdul Monir Yaacob, *An Introduction to Malaysia Law*, (Universiti Kebangsaan Malaysia, 1989), 96.

The State of Malacca has own jurisdiction in the face of a matter and establishes determination. The law is divided into 10 enactments, each of which contains different provisions, including:

- 1) Enactment Administration for the Religion of Islam (Malacca State) Enactment 2002.
- 2) Enactment Islamic Family Law (State of Melaka) 2002.
- 3) Enactment Syariah Criminal Procedure (State of Malacca) 2002.
- 4) Enactment Certificate of Syariah Court (State of Malacca) 2002.
- 5) Enactment *Mal* Syariah of Court (State of Malacca) 2002.
- 6) Enactment Islamic Religious Schools (State of Malacca) 2002.
- 7) Regulations for Registry of Islamic Religious Schools (Melaka) 2002.
- 8) Enactment Syariah Offense (State of Malacca) 1991.
- 9) Enactment Endowment (State of Melaka) 2005.
- 10) Enactment Inheritance (Melaka State) 2005.

The minimum age determination to marry in the enactment is to ensure that both men and women are prepared from all aspects of emotionally, physically and financially emotionally to marry so that marriages built by the couple can be enjoyed and understood by the responsibility that must be borne by them. This shows that, in every enactment provision in every country in the world, the age limit has become the basis for marriage.

According to the provisions under common law, a person is considered adult at the age of twenty-one. However, due to the absence of strong and reasonable grounds in the setting of twenty-one-year-olds as adult, most legal



systems in the western countries have changed the age of twenty-one to eighteen years of age. The Adult Age Act 1971 states, a person of eighteen years of age is considered an adult, unless otherwise provided in any written law. The age limit of eighteen years in this Act is similar to the provisions of the Law Reform (Marriage and Divorce) Act 1976. However, the age limit for Muslims and non-Muslims under the Child Care Act 1961 is different. Twenty-one-year-old is defined as the adult age of non-Muslims and eighteen years of Islam. However, for the purposes of marriage, Malaysian Muslim family law distinguishes between age and sex between men and women who are deemed eligible to marry legally, eighteen years for men and sixteen years for women. However, those who are less than the minimum are allowed to get married on the condition of getting permission from the court first.<sup>66</sup>

### **3. Comparison between The Provision of Regulation Number 1 Year 1974 and Enactment of Islamic Family Law of Malacca Number 12 Year 2002**

#### **a. The Similarity of Regulation of Marriage in Indonesia and Malaysia**

The researcher explains using table to easy and understand the readers about the similarity both regulation as follow:

| Num | The Similarities  |
|-----|---|
| 1.  | The people of Indonesia and Malaysia majority is Islam religion and |

<sup>66</sup> Zanariah noor, *Perkahwinan Kanak-kanak dan Tahap minimal umur perkahwinan dalam Undang-undang Keluarga Islam*, Jurnal Syariah Department of Islamic Studies, Faculty of Human Sciences, Sultan Idris Education University, 2013, 181.

|    |  |
|----|--|
|    | mazhab Syafii, so using Quran and Hadith in formulating legislation  |
| 2. | The principle same like monogamy, voluntary, difficult to divorce  |
| 3. | The similarity considering the biological aspect about age marriage for women, that is, 16 years old           |
| 4. | The administration for permission of undearage marriage to religious court or mahkamah sharia and both parents |

Indonesia and Malaysia are countries that have generally reformed classical family law through legislation with fiqh through state institutions policy. In the countries of Indonesia and Malaysia are equally using Syafi'I mazhab as one of the sources of the view of the jurisprudence which is used as guidance in formulating legislation.

Meanwhile, the unification pattern of law applied with the effort to unify various Islamic legal views from various ideology, because both countries accommodate the communities that follow the ideology. Thus both countries in the formulation of family law still insert views or opinions of other ideology of Islamic law.

In the similarity between the law especially the Islamic marriage law in the Islamic world, it is concerned with the principles or principles emphasized in the marriage law, the voluntary principle, the principle of family participation, the principle of complicating divorce, the principle of monogamy, the principle the maturity of the prospective bride and groom, the principle of increasing the degree of women. So that the similarity of marriage law in

Indonesia and enactment Islamic family because it has the same source of material law that is Al-Qur'an and Hadith.<sup>67</sup>

The similarity of the material law sources is normative in determining the marriage age of the Qur'an and Hadith, since no Muslim country or Muslim country denies the legitimacy of the two sources of fundamental law.

The standart in determining the limits of maturity has similarities in various aspects such as the biological aspect of women when it comes to menstruation, and the womb is able to grow the fetus, or is ready to conceive and give birth.

Based on the principle of maturity in the age of the prospective bride there are similarities in setting the ideal age in marriage for a bride candidate that is 16 years old. Whether it is found in the regulation number 1 of 1974 in paragraph (1):

"Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the 16-year-old woman", and it contained in the enactment Islamic Family number 12 years 2002 seksyen 8. Minimum age for marriage: " No marriage under this Enactment if the man is less than eighteen years old or the woman is less than sixteen except if Judge Syarie given the truth in writing and certain condition." In the two regulations above the age determination for women to marry is 16 years old.

This similarity considering the biological aspects of determining a woman's maturity is when it is menstruation and able to contain and give birth.

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<sup>67</sup> Muhammad Amin Suma, *Hukum Keluarga Islam Di Dunia Islam*, 202.

Furthermore, a woman's psychological aspect is ready to manage the household, nurture her child, and nurture her mentally prepared to be a mother in educating children. While the female maturity factor based on the medical aspect that is ready to contain the fetus and give birth to the child from the physical a prospective mother. For those women who have not reached the age of 16 have to have written permission from the court, and for not reaching the age of full adulthood, twenty one years required permission from the parent or guardian of the prospective bride. Because this in limiting the age of the final female candidate of the goal is marriage as the inner bond between husband and wife to form a happy and eternal home. With the maturity of a mature bride is expected to accept and resolve the household problem with logical reasoning and as well as having an adult mindset.

From the similarity of age for women at the age of 16 years there are some aspects that affect less ideally married at that age. Based on health or medical aspects, marriage at a young age causes high maternal mortality rate (MMR) in Indonesia is still relatively high compared to other countries in ASEAN. In Malaysia, the post-christmast mortality rate reached only 39 cases for 100,000 deliveries, while in Indonesia it reached 307 cases for 100,000 deliveries.<sup>68</sup> Another aspect of the psychological side, bat the age of 16 years of women entering the late adolescent period (Late Adolescent), in this phase marked the beginning of the growth of body shape and attitude of maturity.

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<sup>68</sup> Zaitunnah Subhan, *Menggagas Fiqh Pemberdayaan Perempuan*, (Jakarta: El-Kahfi, 2008), 222.

According to the psychological view ideally a woman married when in the early adult phase (Early Adulthood) are at the age of 21 years and above.

Sarlito Wirawan Sarwono said that the age of maturity for a person to enter a married life should be extended to 20 years for women and 25 years for men. This is necessary because the modern era demands to realize the benefit and avoid damage, both in terms of healthy and social responsibility. That age a woman is determined to have matured her soul and body, perfectly minded, and can be accepted as a member of society as a whole.<sup>69</sup>

In carrying out the duty of responsibility in educating a child the prospective bride must have matured body and spirit in order to fulfill the noble purpose of marriage and get a good and healthy offspring.

#### **b. The Difference of Regulation of Marriage in Indonesia and Malaysia**

The researcher explains using comparison table to easy and understand the readers about the difference both regulation as follow:

| Num | The Difference                                  | Indonesia  | Malaysia      |
|-----|---|--|---------------|
| 1.  | Country   | Republic State   | Federal state |
| 2.  | Legal System                                    | Civil Law  | Common Law    |
| 3.  | Age for marriage                                | 19 years old   | 18 years old  |
| 4   | The amount case of data about underage marriage | Case of underage marriage in Indonesia and Malaysia will be explained in the second statement of research. |               |

<sup>69</sup>Zaitunnah Subhan, *Mengagas Fiqh Pemberdayaan Perempuan*, (Jakarta: El-Kahfi, 2008), 222.



Malaysia is a federal state, until now the applicable marriage law in Malaysia is the marriage law of each country. Attempts to unify the Islamic Family Law in Malaysia have been conducted, headed by Tengku zaid. After obtaining approval from the Council of Kings, this draft is distributed to the countries adopted as Family Law, unfortunately not all countries accept the entire contents of this law. Kelantan, for example, does the federal government. As a result, the prevailing Islamic family law in Malaysia has not been uniform since before reaching independence until now.<sup>70</sup>

The Netherlands, for example, implemented the Continental law system in Indonesia, and the United Kingdom practiced its common law system in Brunei Darussalam, Malaysia and Singapore. Indonesia itself is a democracy country which has a unified legal system in the form of law in effect as a whole, because the difference from the application of the colonial legal system in its colonies with all the consequences caused also the imposition of Islamic law in Islamic countries and/or populated countries Muslim.<sup>71</sup>

The differences in the legal system adopted by both countries would have implications for the implementation of marriage-related regulations such as the regulation number 1 year 1974 and Enactment Islamic Family of Malacca number 12 year 2002. The differences include in terms of determining the age of marriage related to the maturity of the prospective groom.

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<sup>70</sup>Dedi Supriyadi dan Mustofa, *Perbandingan Hukum perkawinan di Dunia Islam*, Bandung: Pustaka Al-Fikriis, 2009), 32-33.

<sup>71</sup> Muhammad Amin Suma, *Hukum Keluarga Islam Di Dunia Islam*, 202.

From physical development, there is a difference between men and women in average height and hair growth patterns. In addition, men and women have hormonal physiological differences that affect variations of biological features, such as fertility.

That methodologically, the step of marriage age determination is based on the method of *maslahat mursalah*. In other words, the philosophy in this restriction is solely to achieve a *sakinah* household, *mawaddah warahmah*. Therefore, the limitation of marriage age is very important as the initial capital in the process of forming a household.<sup>72</sup>

The age difference is 19 years for the man according to the marriage law in Indonesia, while the enactment of Malacca is 18 years old. In the determination of the age 19 years more mature than the age of 18 years. In Indonesia for those who have not reached this age must seek permission from the court, and for the bride and groom who have not reached the age of 21 years must include parental consent. Based on Article 7 paragraph 2 of the Indonesian Marriage Law which requires dispensation from a court or official appointed by both the male and the female parent. And if not yet reached the age of 21 years for both must get permission from both parents as written in Article 6 paragraph 2 of the Marriage Law of Indonesia.

According to the Enactment Islamic Family of Malacca State section 8 if the age is less than 18-year-old male and the 16-year-old female, it is necessary the truth of the syariah court. It is technically not far in terms of

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<sup>72</sup> Dedi Supriyadi dan Mustofa, *Perbandingan Hukum perkawinan di Dunia Islam*, 51.

administration when both male and female couples are less than the age determined by the two rules and permission of both parents.<sup>73</sup>

The difference is not so influential on the age range of 1 year for the groom, when in Indonesia age set 19 years, while in enactment Malacca 18 years. But it still has an influence on maturity and maturity in thinking and acting in carrying out responsibilities as prospective head of the family. Minimum limit for male nine teen years is the realm of *ijtihad fiqh* of Indonesia scholars who have been becomed regulation. In addition, the condition of society and the level of male adulthood in each region varies depending on factors that support adulthood, such as educational, psychological, social, medical and other determinants.

From the comparative analysis of the similarities and differences in the enactment of rules on marriage age rules, the equations include the main legal sources used as reference in determining marriage age. While differences in general in terms of socio-historical, first the different legal systems, the two cultures and traditions each slightly affect the difference in marriage age.

But of all that considering the importance of determining the age limit of marriage in order to create an eternal family by fulfilling all aspects that affect the integrity of a family. However, any relevant rules for couples who have not reached the minimum age of marriage for marriage allow by first seeking approval from the court or parents/guardian.

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<sup>73</sup>Dedi Supriyadi dan Mustofa, *Perbandingan Hukum perkawinan di Dunia Islam*, 51.

## **B. Implementation of Regulation Number 1 Year Number 1974 and Enactment Islamic Family Law of Malacca Number 12 Year 2002**

In this research, researchers compared two different country in Indonesia and Malaysia. To find out how the application of marriage law especially regarding the age of marriage, the researchers took the number of marriage case data under the age in place then analyzed. In addition, researchers also describe the procedure of marriage for prospective brides under age in each place.

### **1. Indonesia**

**Table of provincial rankings according to the prevalence of adolescent marriage (15-19 years old), year 2012.**

| <b>Num.</b> | <b>Province</b>        | <b>Prevalence</b> | <b>Amount of<br/>adolescent have<br/>ever marriage</b> |
|-------------|------------------------|-------------------|--|
| 1.          | Bangka Belitung Island | 18,2              | 8.479  |
| 2.          | West Kalimantan        | 17,6              | 26.980   |
| 3.          | East Java              | 16,7              | 236.404  |
| 4.          | Nusa Southeast West    | 16,3              | 32.253   |
| 5.          | Gorontalo              | 15,7              | 7.560  |
| 6.          | West Sulawesi          | 14,6              | 8.053  |
| 7.          | Central Kalimantan     | 14,6              | 13.446   |
| 8.          | Central Sulawesi       | 14,6              | 15.273   |

|     |                   |      |         |
|-----|-------------------|------|---------|
| 9.  | Jambi             | 14,2 | 18.659  |
| 10. | Sulawesi Tenggara | 13,8 | 14.329  |
| 11. | West Kalimantan   | 13,7 | 25.922  |
| 12. | Central Java      | 13,5 | 160.273 |
| 13. | West Papua        | 13,5 | 4.200   |
| 14. | North Sulawesi    | 13,2 | 11.381  |
| 15. | Papua             | 12,7 | 14.913  |
| 16. | Lampung           | 12,4 | 37.606  |
| 17. | West Java         | 12,3 | 220.501 |
| 18. | South Sulawesi    | 11,4 | 40.500  |
| 19. | Bali              | 11,3 | 15.090  |
| 20. | South Sumatera    | 11,3 | 35.105  |
| 21. | North Maluku      | 10,6 | 5.045   |
| 22. | Bengkulu          | 10,2 | 7.424   |
| 23. | East Kalimantan   | 9,9  | 13.731  |
| 24. | Banten            | 9,5  | 45.564  |
| 25. | Riau              | 7,7  | 18.898  |
| 26. | DI Yogyakarta     | 7,2  | 9.769   |
| 27. | Maluku            | 7,0  | 4.799   |
| 28. | Nusa southease    | 6,9  | 14.497  |
| 29. | West Sumatera     | 3,9  | 8.011   |
| 30. | North Sumatera    | 3,6  | 20.835  |



|     |             |     |        |
|-----|-------------|-----|--------|
| 31. | DKI Jakarta | 3,3 | 12.520 |
| 32. | Aceh        | 3,3 | 6.824  |
| 33. | Riau Island | 3,1 | 1.882  |

Sumber: SUSENAS 2012

Underage marriage cases have occurred in many regions. Table 8 lists the provincial rankings according to the prevalence of adolescent marriage of the highest prevalence to the lowest. Furthermore, the table also provides information on the number of girls ever married in each province. Nationally, the prevalence of marriage of girls aged 15-19 years is 11.5 percent. The prevalence rate for each province is between 3.1 percent to 18.2 percent. The prevalence of adolescent marriage in women aged 15-19 is lowest in DKI Jakarta, Aceh, and Riau Islands with prevalence of 3.3 percent, 3.3 percent and 3.1 percent, respectively. Meanwhile, the highest prevalence is in the Bangka Belitung Islands, South Kalimantan, and East Java. Viewed from absolute figures, East Java and West Java have the highest number of adolescent girls ever married (236,404 and 220,501 respectively). Central Java also has an absolute number of female teen marriages with a large sum of 160,273. Although Bangka Belitung is a married area of adolescent girls with the highest prevalence, but the absolute number of adolescent girls who have ever married is one of the lowest in Indonesia. A dual approach to addressing the prevalence of child marriage is required from decision-makers if Indonesia is to progress

toward achieving new sustainable development goals (SDG's), eliminating child marriage by 2030.

In this case, researchers take cases of underage marriage that occurred in Indonesia. To find out data on the number of underage marriages, researcher describes some data above.

As explained in Article 7 paragraph (1) of regulation Number 1 Year 1974 concerning Marriage that the minimum age of marriage limit for men is 19 years, while for women 16 years old. In the explanation of Article 7 paragraph (1) of Law Number 1 Year 1974 stated that to maintain the health of husband and wife and descent, it is necessary to set age limits for marriage. On the provision that provides minimum limitation to married couples described in Article 7 paragraph (1). However, on the other in Article 7 Paragraph (2) it is explained that a couple who have not reached that age may submit a marriage dispensation to a Religious Court requested by both male or female parent.

Many of cases from numbers that exceed one thousand, it is questionable what causes the increasing of underage marriage. In this, researchers describe several factors that occur underage marriage. Factors underage marriage are mostly have closed to so long and they decided to marry rather than committing adultery, and also to parents' wishes, and most of those who submit a marriage dispensation to the Religious Courts are already pregnant. In line with that, based on the data it can be stated that many of the couples who married at the age of under 21 years have failed to build a household. In the practical level of divorce cases always exaggerate compared

with other cases. Alleged that one of the causes of the many cases of divorce is the unpreparedness of the couple in building a household. This unpreparedness is caused by the age of the couple when marriage is relatively underage.

**a. The Implementation Procedure of Underage marriage**

The procedure of underage marriage, researcher take sample procedure in region Religious Affairs Office (KUA). To register marriages for underage couples, there are certain requirements that must be met. Before applying for a wedding to the Religious Affairs Office (KUA), the two bride-to-be must prepare some supporting documents first. The documents are:

- 1) Photocopy of Family Card
- 2) Photocopy of Identity Card (KTP)
- 3) Photocopy of Birth certificate
- 4) Photocopy of the last diploma
- 5) Photo 2x3 = 3 pieces, 3x4 = 1 sheet, 4x6 = 1 sheet

If the document completed, then go to *RT* and *RW* to get blank N1-N4 (bridal data). Blanko N1 (Certificate of Marriage), N2 (Letter of Origin), N3 (Letter of Consent of the Bride), and N4 (Certificate of Parent), and N5 (Parent's License, if the Minors) will be signed by *lurah*. After the N1-N5 form is obtained, the blanks and the supporting data are taken to the local Religious Affairs Office (KUA) to register the marriage.

In marriage data, the marriage registry officer will examine the completeness of the marriage document, and check whether the bride is eligible or not. If the bride is under the age of the Religious Affairs Office (KUA) will

refuse it, instead the Religious Affairs Office (KUA) gives a letter of rejection to the party to be submitted to a religious court for dispensation. And it is called the marriage dispensation, which is a marriage permit application for parties who are under age.

Before to the religious court, the parties also need to prepare documents to be brought. In this case, the researcher took sample of submission of marriage dispensation in Religious Court. And the requirements that must be met are as follows:

- 1) Photocopy of identity card (KTP) of the parent of the person petitioned for Marriage Dispensation (stamped 6000, postmark).
- 2) Photocopy of Birth Certificate of the person petitioned for Marriage Dispensation (stamped 6000, postmark).
- 3) Rejection letter from the Religious Affairs Office (KUA).
- 4) An explanation / introduction from the Village Head, whose contents will take care of the Marriage Dispensation.
- 5) Letter of application for marriage dispensation addressed to Head of Religious Court.
- 6) Paying Down Payment of Case Cost .

These requirements must be met when applying for marriage dispensation in religious courts. In addition, before the applicant to court, must bring a letter of rejection from the Religious Affairs Office (KUA) because the requirements for marriage are not met because the age of the bride is insufficient.

As well as registering the petition with the court, the applicant will be notified of the court schedule by the clerk. On the day of court session, the petitioners gave the reason for the dispensation of marriage to the judges. Then after the applicant gives an excuse, the judge may decide directly on that day or on another day. After the decision is read, the applicant pays the court fee and takes the dispensation letter at table 3.

After obtaining a letter from the court, the letter is brought back to Religious Affairs Office (KUA) as a condition for underage marriage. From here, the next path is divided into two paths. The first is that if the marriage is implemented in the Religious Affairs Office and the second is the wedding is implemented outside the office, outside working hours. If the bride chooses to do marriage in the Religious Affairs Office, the advantage is not to pay the cost or free. Also here, after the blank requirement is declared complete by the Religious Affairs Office, the prospective bride and groom are just waiting for a call to be checked for pre-marriage file and counseling in Religious Affairs Office. Again, it's free. After receiving a call, the KUA officer conducts guardian and bride inspection / counseling. Only then can the marriage contract be held and the two bride-to-be get a marriage book.

If they choose the second path, there is a pocket to be paid for it. In other words you have to pay non-tax state revenue to the bank. Payment of Rp 600,000 is paid after the registration file is received by KUA. When the sign up process is complete, the prospective bride and groom data can be viewed on the central kemenag website. The page is located at *simkah.kemenag.go.id*. Then,



like first step prospective bride and groom have to do counseling by Religious Affairs Office (KUA). Then, the marriage contract can be executed by the delivery of marriage books to the bride.

The above description shows the procedure of how to register marriage in KUA for the bride and groom under the age, along with the requirements that must be fulfilled to get the letter of dispensation of marriage from the religious court.

## 2. Malaysia

The researcher shows the data of underage marriage in Malaysia from The Department of Syariah Judiciary Malaysia (*Jabatan Kehakiman Syariah Malaysia/JKSM*) as follows:

| Num | Year | Total       |
|-----|------|-------------|
| 1   | 2010 | 981 cases   |
| 2   | 2011 | 1.045 cases |
| 3   | 2012 | 1.095 cases |
| 4   | 2013 | 1.090 cases |
| 5   | 2014 | 1.032 cases |
| 6   | 2015 | 1.025 cases |

Data from website [m.utusan.com.my/kes-kahwin-bawah-umur](http://m.utusan.com.my/kes-kahwin-bawah-umur)

The Department of Syariah Judiciary Malaysia (*Jabatan Kehakiman Syariah Malaysia/JKSM*) recorded a total of 6,268 underage marriage cases for Muslims for the period 2010 to 2016, 981 cases On 2010, 2011 (1,045 cases),

2012 (1,095 cases), 2013 (1,090 cases), 2014 1,032 cases), 2015 (1,025 cases), and 2016 (1,116 cases).

In Malaysia, underage marriages are relatively small than Indonesia. That age for today can be said to be immature for now. The occurrence of underage marriage, due to the factors underlying the underage marriage. In this case, the researcher only explains the factors that generally occur underage marriage.

There are many factors that cause the underage marriage application to rise, among which are the sexually explicit free sex that causes many minors to choose to marry after their partner. Among other factors are current trends or cultures that show the displacement of young people who want to get married early in life before completing their studies. It is more annoying as many students still in high school choose to marry. Today, there are also parents who choose to marry their children for some reason. All of these are among the contributors to the increased number of marriage applications for those underage.

Based on the above data, underage marriage requests in Malaysia need to be minimized considering the impact that occurs after they are married will bring risks to both especially the women. The need for maturity and readiness in marriage, especially the ideal age when married, it is also an important factor considering the age limit in Malaysia is smaller than in Indonesia.

a. The Implementation Procedure of Underage Marriage

Enactment of Malacca number 12 year 2002 Seksyen 8. Minimum age for marriage

"No marriage under this Enactment if the man is less than eighteen years old or the woman is less than sixteen except if Judge Syarie given the truth in writing and certain condition."<sup>74</sup>

The above provisions indicate that when a person is underage must obtain the truth from the judge. Among them that must meet the requirements in accordance with applicable provisions that is to fill documents that have been mentioned by the court.

Before going to the Court, prospective bride and groom must complete the marriage documents in the *Jabatan Agama Islam* every state first. After the marriage registration helper (*Penolong Pendaftaran Perkahwinan*) checks the document, and declared the bride is still under age, it must get written information from Justice syar'i court to be allowed to marry. Before marriage, in Malaysia is required to attend the course at least 1 month before marriage.

The documents to be completed are:

1. Photocopy of identity card
2. Photocopy of Birth certificate
3. Single verification letter
4. Marriage counseling certificate
5. Photos for men use *songkok* while women are hijab and wear *kurung* cloth

<sup>74</sup> Enakmen Hukum Keluarga Islam Negeri Melaka Nomor 12 Tahun 2002, seksyen 8.

6. HIV / AIDS screening letter

7. After that, the application form of prospective bride/groom

In addition, if a prospective bride is under the age of the applicable law, it must bring the written permission of the written application from the syariah court. The necessary documents are required underage marriage application:

- 1) Information Form
- 2) Affidavit
- 3) Copy of Identity Card \*\*:
  - Applicant I (Parent / Guardian)
  - Applicant II (Child)
  - Be a prospective
- 4) Applicant's Birth Certificate II
- 5) Marriage / Ruju ' / Divorce Parents of Petitioners II
- 6) Declaration Letter / Islamic Confirmation Letter (for muallaf)
- 7) Other supporting documents
- 8) Resident Identification Form
- 9) Investigation Report from *Jabatan Agama Islam* every state
- 10) Payment

Upon getting a written consent letter from the court, the letter was sent to the marriage registration assistant to register the wedding. Once the requirements are met, then the Islamic Religious Department will notify the implementation of the marriage certificate for the candidate.

The implementation of age marriage regulation in accordance with the enactment of the Malacca is also a barrier to the implementation of the law. The number of underage marriage issues should not be taken lightly by all parties, both government, society, as well as couples who will marry because of the negative impact if not handled properly. Marriage requires a partner who has a high level of maturity to ensure good family life. High levels of maturity are rare among the underage. Those who are minors, especially women, will receive a more specific impact on health aspects such as those who are too young.

The other obstacle factor is sexual intercourse with children under the age of 16 is a raping offense. Deceased cases involving adult males were found to have raped children, then married to the child to avoid punishment, shame and so forth: The study also shows that those who are underage in marriage are forced to abandon this divorce after 2 or 3 years. This is due to their incompatibility and inadequacy. As a result, women will be neglected, their education is retarded and forced to find the cause of their own livelihood.

The above views in addition to family, environmental, economic, and other factors, sexual intercourse or adultery are a growing issue in the country. Especially done by minors. When a pregnant woman is out of wedlock plus her early age, there is an underage marriage as a way of closing the family. This is what causes the underage marriage. In this case, the victim is the woman.

#### 1. Comparison



Law enforcement varies by country. As is known, Indonesia and Malaysia difference in systems and laws, especially in terms of marriage. In this case, the author focuses on the application of laws concerning the age limit of marriage in both countries.

#### a. The Difference

Based on case data that each year changed in each place, the difference can be said far. In addition, it makes writers want to compare the two countries. The case of underage marriage in Indonesia more higher than Malaysia. The difference in numbers too far between the two countries is a factor for the government to immediately handle cases of underage marriage. Please note, the application of laws regarding the age limit of marriage to see the data should be an important discussion in government, and if there is a change in the minimum age limit of marriage it is also necessary to raise the minimum age limit for marriage if possible.

The case of underage marriage in Indonesia should be minimized because high marriage under age can cause a bad impact in the household later, due to lack of age. Moreover, if the marriage is forced, it will have an impact on divorce and one of the reasons is unpreparedness because the age is too young to marry so the responsibility as a partner is not fulfilled. In Malaysia, although underage marriage cases are fewer than in Indonesia, but the government should also minimize the case, because children who marry underage are the generation of every nation that must be kept and maintained.

#### b. The Similarities

The similarities can be seen in the provisions of marriage administration, ie if the prospective spouse is under the age of legislation, then there must be a statement from the court. in Indonesia, when the couple's parents register their children to marry in KUA, but the age has not reached the age of 21 years, then there must be a statement from the court. In Malaysia, when a prospective spouse is under the age of a provision if a man is under 18 years of age and a woman under 16 years old, there must be a statement from a judge of syari or court.

Another similarity is dilihat of the procedure of registration of marriage. In Malacca, the place of marriage registration is in the Islamic Religious Offices as well as in Indonesia is Religious Affairs Office (KUA). In addition, the completeness of the document is similarly albeit slightly different, only in Malaysia especially Malacca requiring a marriage certificate and a letter of HIV/AIDS screening. While in Indonesia these requirements are not mandatory requirements.

Viewed from the historical side, the formulation of the Marriage Law is the government's response to several demands on the unification of marriage rules. In the explanation of Article 7 paragraph (1) of Law Number 1 Year 1974 stated that to maintain the health of husband and wife and heredity, it is necessary to set age limits for marriage. The reason why chose the numbers 19 and 16, there are no references that explain in detail about this. Indirectly it may be said that the Marriage Law is a form of fulfillment of the "needs" of those who contribute to the formulation of the law. So that not all existing chapters

can accommodate the public interest. In Malaysia according to the 1961 childhood care act, age twenty-one is defined as an adult age for non-Muslims and eighteen for Muslims.

In the enactment of Malacca, the age set for marriage is also smaller than in Indonesia. Age 18 years for men can be considered too small to build a household, while 16 years for women as well as in Indonesia is also relatively small to carry the mandate as a mother.

The minimum age is less able to accommodate the interests of the people. From the above explanation the researcher can draw a conclusion that the minimum of age marriage in Indonesian and Malaysian marriage law is questionable its existence. Whether these limits are still applicable to our society, or just the opposite. It appears that the minimum conquest of marriage age needs to be reconstructed. If two options arise, whether the age limit is raised or even lowered. So the researchers replied that should the age limit is raised, at least 21 for men and 18 for women.

Underage marriage in Indonesia is relatively high. Inclusion of minimum marriage age limits on the Marriage Law aims to protect the public from some of the impacts arising from marriage at a young age. Whether it's the impact of health and the impact on family harmony. In terms of health, marriage at an early age has a negative impact on the health of reproductive organs, especially for women. But more than that more important is the condition of family harmony that really must be maintained, this can be anticipated by avoiding marriage at a young age.

If the age of marriage is raised, then this can realize the noble ideals of marriage, which is to form a family *sakinah, mawaddah, and rahmah*. Because by raising the age of mating, then the bride will be more mature in fostering households. Furthermore, the application of marriage dispensation cases based on the above data from year to year is still relatively high. In order for this proposal to be implemented properly, it should be accompanied by the addition of articles to the marriage sub-dispensation which describes the terms of the marriage dispensation application. This is so that the judge is easier to examine and decide the case of this marriage dispensation. It is also suggested that the requirements for submission of this marriage dispensation be tightened, so that this case of marriage dispensation can be minimized.

## CHAPTER IV

### CONCLUSION

#### A. Conclusion

From the explanation of the chapters above, the author write some conclusions:

- a. Regulation of marriage Number 1 year 1974 article 7 in Indonesia has determined the age for prospective bride and groom for marriage, that is age of 19 years for men and 16 years for women. Meanwhile, according to Islamic family law of Malacca Number 12 year 2002 section 8 about age regulation for marriage although different provisions, age for the male is 18 years while the 16-year-old for woman. The comparison found in this study is that Indonesia and Malaysia set the same age for prospective brides; 16 years, and about prospective groom is different, that is in Indonesia 19 years and Malaysia 18 years.
- b. In the implementation, the researcher take data on the number of cases that are in the Indonesia and Malaysia as well as procedures for the implementation of marriage registration for underage brides, in this case the researcher take samples in SUSENAS and *Jabatan Kehakimah Syariah*



*Malaysia.* Based on the number of cases, Indonesia reaches more one thousand than in Malaysia. For example on 2012 there were 1.095 cases in Malaysia and 236.404 cases in Indonesia especially East Java. In this case explained that underage marriage cases in Indonesia more than in Malaysia. The similarity is can be seen from the administration of marriage, if the prospective marriage partner underage of the legislation, then there must be ask permission from the court and parental consent. In addition, it can be seen from the procedure of marriage registration and the completeness of documents is almost the same although slightly different, only in Malacca require the existence of marriage and letter letter letter HIV/AIDS. While in Indonesia these requirements are not mandatory requirements

## **B. Suggestions**

Based on the analysis and conclusion on the issues that have been discussed about Islamic family law from both countries, the researcher provide suggestions as follows:

1. The government should be committed seriously in enforcing applicable law regarding underage marriage so that parties who want to do think twice before doing it. In addition, the government should increasingly actively socialize laws related to underage marriage and explain the risks that can occur due to underage marriage to the community.
2. The synergy between the government and the community is the greatest stance to prevent the occurrence of underage marriages so that the future is expected no more children who become victims of the marriage.

Thus, the children of Indonesia, Malaysia and even the world can be more optimistic in facing the future.



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### **C. Website**

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SUSENAS.com

[m.utusan.com.my/kes-kahwin-bawah-umur](http://m.utusan.com.my/kes-kahwin-bawah-umur)



*Appendixes***UNDANG-UNDANG REPUBLIK INDONESIA****NOMOR 1 TAHUN 1974****TENTANG****PERKAWINAN**

DENGAN RAHMAT TUHAN YANG MAHAESA

PRESIDEN REPUBLIK INDONESIA,

Menimbang :

bahwa sesuai dengan falsafah Pancasila serta cita-cita untuk pembinaan hukum nasional, perlu adanya Undang-undang tentang Perkawinan yang berlaku bagi semua warga negara.

Mengingat :

1. Pasal 5 ayat (1), Pasal 20 ayat (1), Pasal 27 ayat (1) dan Pasal 29 Undang-Undang Dasar 1945;
2. Ketetapan Majelis Permusyawaratan Rakyat Nomor IV/MPR/1973.

Dengan persetujuan Dewan Perwakilan Rakyat Republik Indonesia.

MEMUTUSKAN :

Menetapkan:

UNDANG-UNDANG TENTANG PERKAWINAN.

**BAB I****DASAR PERKAWINAN****Pasal 1**

Perkawinan ialah ikatan lahir bathin antara seorang pria dengan seorang wanita sebagai suami isteri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Mahaesa.

### **Pasal 2**

- (1) Perkawinan adalah sah, apabila dilakukan menurut hukum masing-masing agamanya dan kepercayaannya itu.
- (2) Tiap-tiap perkawinan dicatat menurut peraturan perundang-undangan yang berlaku.

### **Pasal 3**

- (1) Pada azasnya dalam suatu perkawinan seorang pria hanya boleh mempunyai seorang isteri. Seorang wanita hanya boleh mempunyai seorang suami.
- (2) Pengadilan, dapat memberi izin kepada seorang suami untuk beristeri lebih dari seorang apabila dikehendaki oleh fihak-fihak yang bersangkutan.

### **Pasal 4**

- (1) Dalam hal seorang suami akan beristeri lebih dari seorang, sebagaimana tersebut dalam Pasal 3 ayat (2) Undang-undang ini, maka ia wajib mengajukan permohonan kepada Pengadilan di daerah tempat tinggalnya.
- (2) Pengadilan dimaksud data ayat (1) pasal ini hanya memberikan izin kepada seorang suami yang akan beristeri lebih dari seorang apabila:
  - a. isteri tidak dapat menjalankan kewajibannya sebagai isteri;
  - b. isteri mendapat cacat badan atau penyakit yang tidak dapat disembuhkan;
  - c. isteri tidak dapat melahirkan keturunan.

### **Pasal 5**

- (1) Untuk dapat mengajukan permohonan kepada Pengadilan, sebagaimana dimaksud dalam Pasal 4 ayat (1) Undang-undang ini, harus dipenuhi syarat-syarat sebagai berikut:
  - a. adanya persetujuan dari isteri/isteri-isteri;
  - b. adanya kepastian bahwa suami mampu menjamin keperluan-keperluan hidup isteri-isteri dan anak-anak mereka;
  - c. adanya jaminan bahwa suami akan berlaku adil terhadap isteri-isteri dan anak-anak mereka.

- (2) Persetujuan yang dimaksud pada ayat (1) huruf a pasal ini tidak diperlukan bagi seorang suami apabila isteri/isteri-isterinya tidak mungkin dimintai persetujuannya dan tidak dapat menjadi pihak dalam perjanjian, atau apabila tidak ada kabar dari isterinya selama sekurang-kurangnya 2 (dua) tahun, atau karena sebab-sebab lainnya yang perlu mendapat penilaian dari Hakim Pengadilan.

## **BAB II**

### **SYARAT-SYARAT PERKAWINAN**

#### **Pasal 6**

- (1) Perkawinan harus didasarkan atas persetujuan kedua calon mempelai.
- (2) Untuk melangsungkan perkawinan seorang yang belum mencapai umur 21 (duapuluh satu) tahun harus mendapat izin kedua orang tua.
- (3) Dalam hal salah seorang dari kedua orang tua telah meninggal dunia atau dalam keadaan tidak mampu menyatakan kehendaknya, maka izin dimaksud ayat (2) pasal ini cukup diperoleh dari orang tua yang masih hidup atau dari orang tua yang mampu menyatakan kehendaknya.
- (4) Dalam hal kedua orang tua telah meninggal dunia atau dalam keadaan tidak mampu untuk menyatakan kehendaknya, maka izin diperoleh dari wali, orang yang memelihara atau keluarga yang mempunyai hubungan darah dalam garis keturunan lurus keatas selama mereka masih hidup dan dalam keadaan dapat menyatakan kehendaknya.
- (5) Dalam hal ada perbedaan pendapat antara orang-orang yang disebut dalam ayat (2), (3) dan (4) pasal ini, atau salah seorang atau lebih diantara mereka tidak menyatakan pendapatnya, maka Pengadilan dalam daerah hukum tempat tinggal orang yang akan melangsungkan perkawinan atas permintaan orang tersebut dapat memberikan izin setelah lebih dahulu mendengar orang-orang tersebut dalam ayat (2), (3) dan (4) pasal ini.
- (6) Ketentuan tersebut ayat (1) sampai dengan ayat (5) pasal ini berlaku sepanjang hukum masing-masing agamanya dan kepercayaannya itu dari yang bersangkutan tidak menentukan lain.

#### **Pasal 7**

- (1) Perkawinan hanya diizinkan jika pihak pria sudah mencapai umur 19 (sembilan belas) tahun dan pihak wanita sudah mencapai umur 16 (enam belas) tahun.

- (2) Dalam hal penyimpangan terhadap ayat (1) pasal ini dapat meminta dispensasi kepada Pengadilan atau Pejabat lain yang ditunjuk oleh kedua orang tua pihak pria maupun pihak wanita.
- (3) Ketentuan-ketentuan mengenai keadaan salah seorang atau kedua orang tua tersebut dalam Pasal 6 ayat (3) dan (4) Undang-undang ini, berlaku juga dalam hal permintaan dispensasi tersebut ayat (2) pasal ini dengan tidak mengurangi yang dimaksud dalam Pasal 6 ayat (6).

### **Pasal 8**

Perkawinan dilarang antara dua orang yang:

- a. berhubungan darah dalam garis keturunan lurus kebawah ataupun keatas;
- b. berhubungan darah dalam garis keturunan menyamping yaitu antara saudara, antara seorang dengan saudara orang tua dan antara seorang dengan saudara neneknya;
- c. berhubungan semenda, yaitu mertua, anak tiri menantu dan ibu/bapak tiri;
- d. berhubungan susuan, yaitu orang tua susuan, anak susuan, saudara susuan dan bibi/paman susuan;
- e. berhubungan saudara dengan isteri atau sebagai bibi atau kemenakan dari isteri, dalam hal seorang suami beristeri lebih dari seorang;
- f. mempunyai hubungan yang oleh agamanya atau peraturan lain yang berlaku, dilarang kawin.

### **Pasal 9**

Seorang yang masih terikat tali perkawinan dengan orang lain tidak dapat kawin lagi, kecuali dalam hal yang tersebut pada Pasal 3 ayat (2) dan Pasal 4 Undang-undang ini.

### **Pasal 10**

Apabila suami dan isteri yang telah cerai kawin lagi satu dengan yang lain dan bercerai lagi untuk kedua kalinya, maka diantara mereka tidak boleh dilangsungkan perkawinan lagi, sepanjang hukum masing-masing agamanya dan kepercayaannya itu dari yang bersangkutan tidak menentukan lain.

### **Pasal 11**

- (1) Bagi seorang wanita yang putus perkawinannya berlaku jangka waktu tunggu.
- (2) Tenggang waktu jangka waktu tunggu tersebut ayat (1) akan diatur dalam Peraturan Pemerintah lebih lanjut.

**Pasal 12**

Tata-cara pelaksanaan perkawinan diatur dalam peraturan perundang-undangan tersendiri.







**ENAKMEN 12 TAHUN 2002**  
**ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI**  
**MELAKA) 2002**

|                                     |                            |
|-------------------------------------|----------------------------|
| Tarikh Persetujuan DiRaja           | 23 November 2002           |
| Tarikh disiarkan dalam <i>Warta</i> | 28 November 2002           |
| Tarikh mula berkuatkuasa            | 14 Jun 2003 [M.P.U. 17/03] |

**SUSUNAN SEKSYEN**

Mukadimah

**BAHAGIAN I - PERMULAAN**

Seksyen 1. Tajuk ringkas dan permulaan kuat kuasa.

Seksyen 2. Tafsiran

Seksyen 3. Kecualian prerogatif

Seksyen 4. Pemakaian

Seksyen 5. Kriteriaum bagi memutuskan sama ada seseorang itu orang Islam.

Seksyen 6. Perkahwinan yang masih berterusan hendaklah disifatkan sebagai didaftarkan di bawah Enakmen ini dan boleh dibubarkan hanya di bawah Enakmen ini.

**BAHAGIAN II - PERKAHWINAN**

Seksyen 7. Orang yang boleh mengakadnikahkan perkahwinan.

Seksyen 8. Umur minimum untuk perkahwinan.

Seksyen 9. Pertalian yang melarang perkahwinan.

Seksyen 10. Orang daripada agama lain

Seksyen 11. Perkahwinan tak sah

Seksyen 12. Perkahwinan yang tidak boleh didaftarkan.

Seksyen 13. Persetujuan dikehendaki

Seksyen 14. Perkahwinan seseorang perempuan.

Seksyen 15. Pertunangan

***Permulaan Kepada Perkahwinan***

Seksyen 16. Permohonan untuk kebenaran berkahwin.

Seksyen 17. Mengeluarkan kebenaran berkahwin.

Seksyen 18. Rujukan kepada dan tindakan oleh Hakim Syarie.

Seksyen 19. Kebenaran perlu sebelum akad nikah.

Seksyen 20. Tempat perkahwinan

Seksyen 21. Mas kahwin dan pemberian

Seksyen 22. Catatan dalam Daftar Perkahwinan.

Seksyen 23. Poligami

Seksyen 24. Akad nikah perkahwinan di Kedutaan-kedutaan, dsb., Malaysia di luar negeri.

**BAHAGIAN III - PENDAFTARAN PERKAHWINAN**

Seksyen 25. Pendaftaran

Seksyen 26. Perakuan nikah dan surat perakuan ta'liq.

Seksyen 27. Melaporkan perkahwinan yang tak sah atau salah di sisi undang-undang.

Seksyen 28. Pelantikan Ketua Pendaftar, Pendaftar, Timbalan Pendaftar dan Penolong Pendaftar Perkahwinan, Perceraian, dan Ruju' Orang Islam

Seksyen 29. Buku dan Daftar hendaklah disimpan mengenai semua perkahwinan.

Seksyen 30. Salinan catatan hendaklah dihantar kepada Ketua Pendaftar.

Seksyen 31. Pendaftaran perkahwinan luar negeri oleh orang yang bermastautin dalam Negeri Melaka.

Seksyen 32. Daftar yang tidak sah di sisi undang-undang.

Seksyen 33. Pendaftaran sukarela perkahwinan orang Islam yang diakadnikahkan dahulunya di bawah mana-mana undang-undang.

Seksyen 34. Kesan pendaftaran di sisi undang-undang.

#### **BAHAGIAN IV - PENALTI DAN PERUNTUKAN PELBAGAI YANG BERHUBUNGAN DENGAN AKAD NIKAH DAN PENDAFTARAN PERKAHWINAN**

Seksyen 35. Tidak hadir di hadapan Pendaftar dalam masa yang ditetapkan.

Seksyen 36. Pelanggaran seksyen 32.

Seksyen 37. Gangguan terhadap perkahwinan.

Seksyen 38. Akuan atau pernyataan palsu untuk mendapatkan perkahwinan.

Seksyen 39. Akad nikah perkahwinan yang tidak dibenarkan.

Seksyen 40. Kesalahan yang berhubungan dengan akad nikah perkahwinan.

Seksyen 41. Kebenaran untuk mendakwa.

Seksyen 42. Membetulkan kesilapan.

Seksyen 43. Pemeriksaan Daftar Perkahwinan dan indeks perkahwinan.

Seksyen 44. Bukti.

#### **BAHAGIAN V - PEMBUBARAN PERKAHWINAN**

Seksyen 45. Takat kuasa untuk membuat apa-apa perintah.

Seksyen 46. Pertukaran agama.

Seksyen 47. Perceraian dengan talaq atau dengan perintah.

Seksyen 48. Timbang tara oleh Hakam.

Seksyen 49. Perceraian khul' atau cerai tebus talaq.

Seksyen 50. Perceraian di bawah ta'liq atau janji.

Seksyen 51. Perceraian dengan li'an.

Seksyen 52. Hidup semula sebagai suami isteri atau ruju'.

Seksyen 53. Perintah untuk membubarkan perkahwinan atau fasakh.

Seksyen 54. Anggapan mati.

Seksyen 55. Penyenggaraan Daftar Perceraian dan Pembatalan.

Seksyen 56. Pendaftaran perceraian.

Seksyen 57. Pendaftaran perceraian di luar Mahkamah.

Seksyen 58. Mut'ah atau pemberian sagu hati kepada perempuan yang dicerai tanpa sebab yang patut.

Seksyen 59. Hak terhadap mas kahwin, dsb., tidak akan tersentuh.

**BAHAGIAN VI - NAFKAH ISTERI, ANAK DAN LAIN-LAIN**

Seksyen 60. Kuasa Mahkamah memerintahkan nafkah bagi isteri, dan kesan nusyuz.

Seksyen 61. Kuasa Mahkamah untuk memerintahkan nafkah bagi seseorang tertentu.

Seksyen 62. Pentaksiran nafkah.

Seksyen 63. Kuasa Mahkamah untuk memerintahkan cagaran diberi bagi nafkah.

Seksyen 64. Mengkompaun nafkah.

Seksyen 65. Lamanya tempoh perintah nafkah.

Seksyen 66. Hak terhadap nafkah atau pemberian selepas perceraian.

Seksyen 67. Kuasa Mahkamah untuk mengubah perintah nafkah.

Seksyen 68. Kuasa Mahkamah untuk mengubah perjanjian nafkah.

Seksyen 69. Nafkah yang kena dibayar di bawah perintah Mahkamah tidak boleh dipindahkan hakmiliknya.

Seksyen 70. Menuntut tunggakan nafkah.

Seksyen 71. Nafkah sementara.

Seksyen 72. Hak tempat tinggal.

Seksyen 73. Kewajipan menanggung nafkah anak.

Seksyen 74. Kuasa Mahkamah memerintahkan nafkah bagi kanak-kanak.

Seksyen 75. Kuasa Mahkamah memerintahkan cagaran bagi nafkah seseorang anak.

Seksyen 76. Kuasa Mahkamah mengubah perintah mengenai penjagaan atau nafkah seseorang anak.

Seksyen 77. Kuasa Mahkamah mengubah perjanjian penjagaan atau nafkah seseorang anak.

Seksyen 78. Menuntut tunggakan nafkah seseorang anak.

Seksyen 79. Kewajipan menanggung nafkah kanak-kanak yang diterima sebagai anggota keluarga.

Seksyen 80. Lamanya tempoh perintah bagi nafkah anak.

Seksyen 81. Kewajipan menanggung nafkah anak-anak tak sah taraf.

## **BAHAGIAN VII - PENJAGAAN**

### ***Hadhanah atau Penjagaan Kanak-Kanak***

Seksyen 82. Orang yang berhak menjaga kanak-kanak.

Seksyen 83. Kelayakan yang perlu untuk penjagaan.

Seksyen 84. Bagaimana hak penjagaan hilang.

Seksyen 85. Lamanya penjagaan.

Seksyen 86. Penjagaan anak tak sah taraf.

Seksyen 87. Kuasa Mahkamah membuat perintah mengenai penjagaan.

Seksyen 88. Perintah tertakluk kepada syarat-syarat.

### ***Penjagaan ke atas Orang Dan Harta***

Seksyen 89. Orang yang berhak kepada penjagaan.

Seksyen 90. Kuasa ke atas harta tak alih dan harta alih.

Seksyen 91. Pelantikan penjaga-penjaga oleh Mahkamah.

Seksyen 92. Pelantikan ibu sebagai penjaga melalui wasiat.

Seksyen 93. Penjaga bersama dengan ibu.

Seksyen 94. Perubahan kuasa penjaga harta.

Seksyen 95. Pemecatan penjaga.

Seksyen 96. Cagaran hendaklah diberi.

Seksyen 97. Had kuasa bagi penjaga yang dilantik oleh Mahkamah.

Seksyen 98. Penjaga tidak boleh memberi akuan penyelesaian mengenai harta modal.

Seksyen 99. Penjaga boleh menanggung kanak-kanak daripada pendapatan.

Seksyen 100. Perintah khas mengenai harta kecil.

Seksyen 101. Permohonan untuk mendapatkan pendapat, dsb.

Seksyen 102. Perintah larangan oleh Mahkamah.

Seksyen 103. Penjaga bagi anak yatim.

Seksyen 104. Mahkamah hendaklah mengambil perhatian tentang nasihat pegawai-pegawai kebajikan, dll.

Seksyen 105. Kuasa Mahkamah menghalang anak dibawa keluar dari



Malaysia.

Seksyen 106. Kuasa Mahkamah membatalkan dan manahan perpindahan yang dimaksudkan untuk mengecewakan tuntutan nafkah.

Seksyen 107. Injunksi terhadap gangguan.

Seksyen 108. Perintah tegahan melupuskan harta sepencarian.

### **BAHAGIAN VIII - PELBAGAI**

Seksyen 109. Pengiktirafan perkahwinan orang Islam yang dilakukan di luar Negeri Melaka.

Seksyen 110. Pengiktirafan perkahwinan yang dilakukan di Kedutaan, dsb., di Negeri Melaka.

#### ***Kesahtarafan Anak***

Seksyen 111. Siapakah yang dikaitkan sebagai bapa.

Seksyen 112. Kelahiran lebih daripada empat tahun selepas pembubaran perkahwinan.

Seksyen 113. Kelahiran selepas pengakuan bahawa ‘iddah telah tamat.

Seksyen 114. Persetubuhan syubhah.

Seksyen 115. Syarat-syarat bagi pengakuan yang sah.

Seksyen 116. Anggapan daripada pengakuan boleh dipatahkan.

Seksyen 117. Pengakuan oleh perempuan yang sedang dalam ‘iddah.

Seksyen 118. Mengakui seorang lain sebagai ibu atau bapa.

Seksyen 119. Pengakuan lain daripada sebagai anak, ibu atau bapa.

Seksyen 120. Pengakuan tidak boleh dibatalkan.

#### ***Perintah Supaya Hidup Bersama Semula***

Seksyen 121. Permohonan oleh isteri yang ditinggal langsung.

#### ***Pembahagian Harta Sepencarian***

Seksyen 122. Kuasa Mahkamah memerintah pembahagian harta sepencarian.

#### ***Rayuan***

Seksyen 123. Rayuan.

### **BAHAGIAN IX - PENALTI**

Seksyen 124. Poligami tanpa kebenaran Mahkamah.

Seksyen 125. Perceraian di luar Mahkamah dan tanpa kebenaran Mahkamah.

Seksyen 126. Tidak membuat laporan.

Seksyen 127. Meninggal langsung isteri.

Seksyen 128. Menganiaya isteri atau suami.

Seksyen 129. Tidak memberi keadilan yang sewajarnya kepada isteri.

Seksyen 130. Isteri tidak menurut perintah.

Seksyen 131. Percubaan menjadi murtad untuk membatalkan perkahwinan.

Seksyen 132. Persetubuhan luar nikah antara orang yang bercerai.

Seksyen 133. Kecuaian dengan sengaja untuk mematuhi perintah.

Seksyen 134. Percubaan dan subahat.

#### **BAHAGIAN X - AM**

Seksyen 135. Kuasa bagi membuat kaedah-kaedah.

Seksyen 136. Pemansuhan.

### **ENAKMEN 12 TAHUN 2002 ENAKMEN UNDANG-UNDANG KELUARGA ISLAM (NEGERI MELAKA) 2002 BAHAGIAN II – PERKAHWINAN**

#### **Seksyen 7. Orang yang boleh mengakadnikahkan perkahwinan.**

- 1) Sesuatu perkahwinan di Negeri Melaka hendaklah mengikut peruntukan Enakmen ini dan hendaklah diakadnikahkan mengikut Hukum Syarak oleh—
  - a. wali di hadapan Pendaftar;
  - b. wakil wali di hadapan dan dengan kebenaran Pendaftar; atau
  - c. Pendaftar sebagai wakil wali.
- 2) Jika sesuatu perkahwinan melibatkan seorang perempuan yang tiada mempunyai wali dari *nasab*, mengikut Hukum Syarak, perkahwinan itu hendaklah diakadnikahkan hanya oleh wali Raja.

#### **Seksyen 8. Umur minimum untuk perkahwinan**

Tiada perkahwinan boleh diakadnikahkan di bawah Enakmen ini jika lelaki itu berumur kurang daripada lapan belas tahun atau perempuan itu berumur kurang daripada enam belas tahun kecuali jika Hakim Syarie telah memberi kebenarannya secara bertulis dalam hal keadaan tertentu.

### Seksyen 9. Pertalian yang melarang perkahwinan.

- 1) Tiada seorang lelaki atau perempuan, mengikut mana-mana yang berkenaan, boleh, oleh sebab *nasab*, berkahwin dengan—
  - a. ibunya atau bapanya;
  - b. neneknya atau datuknya hingga ke atas, sama ada dari sebelah bapanya atau dari sebelah ibunya;
  - c. anak perempuannya atau anak lelakinya dan cucu perempuannya atau cucu lelakinya hingga ke bawah;
  - d. saudara perempuannya atau saudara lelakinya seibu sebapa, saudara perempuannya atau saudara lelakinya sebapa, dan saudara perempuannya atau saudara lelakinya seibu;
  - e. anak perempuan atau anak lelaki kepada saudara lelakinya atau saudara perempuannya hingga ke bawah;
  - f. ibu saudara atau bapa saudara sebelah bapanya hingga ke atas; dan
  - g. ibu saudara atau bapa saudara sebelah ibunya hingga ke atas.
- 2) Tiada seorang lelaki atau perempuan, mengikut mana-mana yang berkenaan, boleh, oleh sebab pertalian kahwin, berkahwin dengan—
  - a. ibu mertuanya atau bapa mertuanya hingga ke atas;
  - b. ibu tirinya atau bapa tirinya, iaitu isteri bapanya atau suami ibunya;
  - c. nenek tirinya atau datuk tirinya, iaitu isteri kepada datuknya atau suami kepada neneknya, sama ada dari sebelah bapa atau sebelah ibu;
  - d. menantunya, lelaki atau perempuan; dan
  - e. anak perempuan tirinya atau anak lelaki tirinya hingga ke bawah daripada isteri atau suami yang perkahwinan telah disatukan.
- 3) Tiada seorang lelaki atau perempuan pun, mengikut mana-mana yang berkenaan, boleh, oleh sebab sesusuan, berkahwin dengan mana-mana perempuan atau lelaki yang ada hubungan dengannya melalui penyusuan yang, jika hubungan itu adalah melalui kelahiran dan bukan melalui penyusuan, perempuan atau lelaki itu tetap dilarang berkahwin dengannya oleh sebab *nasab* atau pertalian kahwin.

- 4) Tiada seorang lelaki pun boleh mempunyai dua orang isteri pada satu masa jika isteri-isteri itu adalah bertalian antara satu sama lain melalui *nasab*, pertalian kahwin, atau sesusuan yang perkahwinan antara mereka tidak sah mengikut Hukum Syarak.





KEMENTERIAN AGAMA  
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**CONSULTATION PROOF**

Name : Marwa Atika Basyiroh  
Student Number : 14210045  
Department : Islamic Family Law (Ahwal Syakhshiyah)  
Supervisor : Dr. Sudirman, M. A.  
Thesis Title : THE IMPLEMENTATION OF MARRIAGEABLE AGE IN  
INDONESIA AND MALAYSIA (Comparative Study Of Regulation Number 1 Year 1974  
and Enactment Islamic Family Law Of Malacca Number 12 Year 2002)

| No. | Day/Date                       | Subject of Consultation      | Signature |
|-----|--------------------------------|------------------------------|-----------|
| 1.  | November 22 <sup>th</sup> 2017 | Proposal                     |           |
| 2.  | November 27 <sup>th</sup> 2017 | Proposal                     |           |
| 3.  | November 29 <sup>th</sup> 2017 | Review Proposal              |           |
| 4.  | December 01 <sup>st</sup> 2017 | Acc Proposal                 |           |
| 5.  | January 10 <sup>th</sup> 2018  | Chapter 1, 2 and 3           |           |
| 6.  | January 30 <sup>th</sup> 2018  | Review Chapter 1, 2 and 3    |           |
| 7.  | February 15 <sup>th</sup> 2018 | Chapter 4 and 5              |           |
| 8.  | February 26 <sup>th</sup> 2018 | Review All Chapter           |           |
| 9.  | March 28 <sup>th</sup> 2018    | Abstract                     |           |
| 10. | April 04 <sup>th</sup> 2018    | ACC Chapter 1-5 and Abstract |           |

Malang, 08 May 2018

Acknowledged by:

Head of Al-Ahwal Al-Syakhshiyah  
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## Curriculum Vitae

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### **Formal Education**

2001-2003 : RA Al Hikmah

2003-2008 : MI Al Hikmah

2008-2011 : MTs. Negeri Pasuruan

2011-2014 : MAN 2 Kota Malang

2014-sekarang : Universitas Islam Negeri Maulana Malik Ibrahim Malang