

**FULFILLMENT OF CHILDREN'S RIGHTS IN MARRIAGE AGE  
RESTRICTION IN THE PERSPECTIVE OF MASHOOD A. BADERIN  
VIEW OF HUMAN RIGHTS  
(Sociological Study of Marriage Law Number 16 of 2019)**

**THESIS**

**by:**

**Ahmad Maulana Sabbaha**

**SIN 19210082**



**ISLAMIC FAMILY LAW DEPARTMENT**

**SYARIAH FACULTY**

**STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM MALANG**

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**2023**

## STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**FULFILLMENT OF CHILDREN'S RIGHTS IN MARRIAGE AGE  
RESTRICTION IN THE PERSPECTIVE OF MASHOOD A. BADERIN  
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(Sociological Study of Marriage Law Number 16 of 2019)**

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 10 April 2023

Writer,



**Ahmad Maulana Sabbaha**  
**SIN. 19210082**

## APPROVAL SHEET

After reading and correcting thesis of Ahmad Maulana Sabbaha Student ID Number 19210082, Department of Islamic Family Law, Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang entitled:

**FULFILLMENT OF CHILDREN'S RIGHTS IN MARRIAGE AGE  
RESTRICTION IN THE PERSPECTIVE OF MASHOOD A. BADERIN  
VIEW OF HUMAN RIGHTS  
(Sociological Study of Marriage Law Number 16 of 2019)**

the supervisor stated that this thesis has met the scientific requirements to be proposed and to be examined on the Assembly Board of Examiners.

Malang, 10 April 2023

Acknowledged by,  
The Head Department of Islamic Family Law

Supervisor,



**Erik Sabti Rahmawati, MA., M.Ag.**  
NIP. 197511082009012003



**Erik Sabti Rahmawati, MA., M.Ag.**  
NIP. 197511082009012003

## LEGITIMATION SHEET

The assembly board of thesis examiners of Ahmad Maulana Sabbaha SIN 19210082 student of Islamic Family Law Department, Syari'ah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang entitled:

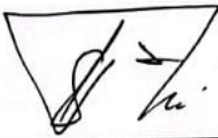
### FULFILLMENT OF CHILDREN'S RIGHTS IN MARRIAGE AGE RESTRICTION IN THE PERSPECTIVE OF MASHOOD A. BADERIN VIEW OF HUMAN RIGHTS

(Sociological Study of Marriage Law Number 16 of 2019)

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Board of Examiners:


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NIP. 198505052018011002

  
Chairman

2. Erik Sabti Rahmawati, MA., M.Ag.  
NIP. 197511082009012003

  
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NIP. 197901242009012007

  
Main Examiner

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Dean,  
  
Dr. Sudirman, MA.  
NIP. 197708222005011003



## MOTTO

مَنْ أَرَادَ الدُّنْيَا فَعَلَيْهِ بِالْعِلْمِ، وَمَنْ أَرَادَ الْآخِرَةَ فَعَلَيْهِ بِالْعِلْمِ، وَمَنْ أَرَادَهُمَا فَعَلَيْهِ بِالْعِلْمِ

*“Barangsiapa yang menginginkan (kebahagian) dunia hendaknya ia dengan ilmu, barangsiapa yang menginginkan akhirat, hendaknya ia dengan ilmu dan barangsiapa yang menginginkah kebahagiaan keduanya, hendak ia dengan ilmu”*

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Alhamdulillahirabbil'alamin, have given His rahmat and servan, so we can finish this thesis entitled “FULFILLMENT OF CHILDREN'S RIGHTS IN MARRIAGE AGE RESTRICTION IN THE PERSPECTIVE OF MASHOOD A. BADERIN VIEW OF HUMAN RIGHTS (Sociological Study of Marriage Law Number 16 of 2019)”. Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (uswatun hasanah) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end. Amien.

From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility the writer will expresses the gratitude which is unequaled to:

1. Prof. Dr. H. M. Zainuddin, MA. as the Rector of The State Islamic University Maulana Malik Ibrahim of Malang.
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3. Hj. Erik Sabti Rahmawati, MA., M.Ag. as the Head of Islamic Family Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
4. Hj. Erik Sabti Rahmawati, MA., M.Ag and R. Cecep Lukman Yasin, MA., Ph. D, as my thesis supervisor. The writer thanks for his spending time to guide, direct, and motivate to finish writing this thesis. The writer hopes that he and his family will be blessed by Allah.

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7. Staff of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
8. My Parent, my beloved father Drs. H. Suharto, M.H., and my beloved mother Eny Layinah Mawardah, that being a supporting system in my life, and who has guided me and prayed for me every time.
9. All of my family, especially my big sister Fatihatun Ni'mah, A.Md.RMIK, my big brother in law Ishlahul Kamal, S.Si., my little sister Nava' Kisthiya Faroha, and my little brother Muhammad Zamakhsyari Haedar who is a supporting system in my life also give me a spirit every time.
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With the completion of this thesis report, the hope that knowledge which we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for the forgiveness, criticism and suggestions from all parties for future improvement efforts.

## TRANSLITERATION GUIDENCE

### A. General

Transliteration is the transfer of Arabic script into Indonesian (*Latin*) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arabs, while Arabic names from nations other than Arabic are written as the spelling of the national language, or as written in the reference book. Writing the title of the book in the footnotes and bibliography, still use the provisions of this transliteration.

### B. Consonant

Arab	Latin	Arab	Latin
ا	Not symbolized	ط	T{
ب	B	ظ	Z{
ت	T	ع	' _____
ث	S	غ	G
ج	J	ف	F
ح	H{	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Z	م	M
ر	R	ن	N
ز	Z	و	W
س	S	هـ	H
ش	Sy	أ/ء	_____',
ص	S{	ى	Y

Arab	Latin	Arab	Latin
ض	D{		

Hamzah (ء) which is often symbolized by alif, if it is located at the beginning of a word, then in its transliteration follows the vowel, it is not symbolized, but if it is located in the middle or end of a word, it is symbolized by the comma above (‘), turning around with a comma (‘) to substitute for the “ع” symbol.

### C. Vocal, long pronounce, and dipthong

Vocal *fathah* = a

Vocal *Kasrah* = i

Vocal *Dlumah* = u

Long vocal (a) = Â e.g. قال become Qâla

Long vocal (i) = Î e.g. قيل become Qîla

Long vocal (u) = Û e.g. دون become Dûna

Especially for reading you Nisbet, it cannot be replaced with “î”, but is still written with “iy” to describe ya' Nisbat in the end. Likewise, for the sound of dipthongs, wawu and ya 'after fathah wrote with "aw" and "ay", as in the example below”

Dipthong (aw) = و e.g. قول become Qawlun

Dipthong (ay) = ي e.g. خير become Khayrun

### D. Ta' marbuthah (ة)

Ta' marbûthah translited as “t” in the middle of word, but if Ta' marbûthah in the end of word, it translited as “h” e.g. الرسالة المدرسة become *alrisalat li al-mudarrisah*, or in the standing among two word that in the form

of mudhaf and mudlaf ilaih, it transliterated as t and connected to the next word, e.g. في امان الله become *fi amanillâh*.

#### **E. Auxiliary Verb and Lafadh al-Jalâlah**

Auxiliary verb “al” (ال) written with lowercase form, expect if it located it the position and “al” in lafadh al-Jalâlah which located in the middle of two or being or become idhafah, it remove from writing.

1. Al-Imâm al-Bukhâriy said.
2. Al-Bukhâriy in muqaddimah of his book said.
3. *Masyâ Allah kâna wa mâ lam yasya ‘ lam yakun.*

#### **F. Indonesian Arabic Names and Words**

In principle, every word that comes from Arabic must be written using the transliteration system. When the name is the Arabic name of an Indonesian or an Arabic Indonesian, no need to write using the system transliteration.

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## ABSTRAK

Ahmad Maulana Sabbaha, 19210082, Pemenuhan Hak Anak dalam Pembatasan Usia Perkawinan Perspektif Pemikiran Hak Asasi Manusia Mashood A. Baderin (Telaah Sosiologis Undang-Undang Nomor 16 Tahun 2019), Skripsi, Program Studi Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing Erik Sabti Rahmawati, M.A., M.Ag.

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**Kata Kunci:** Hak Anak, Hak Asasi Manusia, Pembatasan Usia Perkawinan

Seiring dengan perjalanan pemberlakuan UU Perkawinan dalam praktiknya masih menyisakan problematika, Salah satu problem dalam UU Perkawinan adalah regulasi batas umur minimal perkawinan dalam Pasal 7 ayat (1) yang dinilai tidak memadai dan diskriminasi terhadap anak perempuan. Selain itu, akibat dari regulasi tersebut menjadi salah satu faktor praktik perkawinan anak di Indonesia. Implikasi dari adanya praktik perkawinan anak adalah banyak hak-hak anak yang tidak terpenuhi. Oleh sebab itu, Pemerintah Indonesia melalui kementerian hukum dan hak asasi manusia telah melakukan perubahan batas umur minimal perkawinan dalam UU Perkawinan dengan tujuan untuk mencegah terjadinya praktik perkawinan anak serta untuk melindungi hak-hak anak yang merupakan bagian dari hak asasi manusia.

Tujuan dari penelitian ini adalah untuk mengkaji aspek sosiologis perubahan batas umur perkawinan di Indonesia yang pada dasarnya menggunakan pendekatan Hak Asasi Manusia Universal sebagai instrumen utama dalam merevisi UU Perkawinan di Indonesia dengan menggunakan pandangan Hak Asasi Manusia yang dikemukakan oleh Mashood A. Baderin.

Penelitian ini merupakan penelitian yuridis normatif yang menggunakan pendekatan historis dan pendekatan konseptual. Hasil dari penelitian ini adalah terdapat dua aspek sosiologis yang mendasari perubahan batas usia minimal perkawinan di Indonesia, yaitu aspek kesehatan dan aspek pendidikan. Perubahan batas umur minimal perkawinan dimaksudkan untuk memperjuangkan hak-hak anak, terutama hak untuk mendapatkan kesehatan dan hak atas pendidikan. Menurut Mashood A. Baderin dalam hukum Islam, yaitu Al-Qur'an dan Hadis telah mengatur tentang hak-hak anak. Perubahan batas umur minimal perkawinan yang dimaksudkan untuk memperjuangkan hak-hak anak selaras dengan pandangan Mashood A. Baderin tentang hak-hak anak.

## ABSTRACT

Ahmad Maulana Sabbaha, 19210082, Fulfillment of Children's Rights in Marriage Age Restriction in the Perspective of Mashood A. Baderin View of Human Rights (Sociological Study of Marriage Law Number 16 of 2019), Thesis, Islamic Family Law Study Program, Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang, Supervisor Erik Sabti Rahmawati, MA, M.Ag.

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**Keyword:** Children's Rights, Human Rights, Marriage Age Restriction

Along with implementing the Marriage Law, there are still problems in practice. One of the problems in the Marriage Law is the regulation of the minimum age limit for marriage in Article 7 paragraph (1), which is considered inadequate and discriminates against girls. In addition, the impact of these regulations is one of the factors in the practice of underage marriage in Indonesia. The practice of underage marriage implies that many children's rights are not fulfilled. Therefore, through the ministry of law and human rights, Indonesian Government has made changes to the minimum age limit for marriage in the Marriage Law to prevent the practice of underage marriage and protect children's rights, which are part of human rights.

This research aims to examine the sociological factors of changes in the age limit for marriage in Indonesia, which basically uses the Universal Human Rights approach as the main instrument in revising the Marriage Law in Indonesia by using the view of human rights put forward by Mashood A. Baderin.

This research is a normative juridical research that uses a historical and conceptual approach. The results of this research show that two sociological aspects underlie changes in the minimum age limit for marriage in Indonesia, namely the health and education aspects. Changes in the minimum age limit for marriage are intended to fight for children's rights, especially health and education. According to Mashood A. Baderin, the Al-Qur'an and Hadith have regulated children's rights. Changes in the minimum age limit for a marriage intended to fight for children's rights align with Mashood A. Baderin's views on children's rights in Islamic law.



## ملخص البحث

أحمد مولانا سيح ، 19210082 ، أعمال حقوق الطفل كجزء في الحد من سن الزواج ، منظور التفكير في حقوق الإنسان ، مشود أ. بدرين (دراسة سوسولوجية للقانون رقم 16 لعام 2019) ، أطروحة ، برنامج دراسة قانون الأسرة الإسلامي ، الكلية الشريعة ، مولانا مالك إبراهيم جامعة ولاية مالانج الإسلامية ، مشرف إريك ستي رحمواي ، ماجستير ، ماجستير .

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### الكلمات الرئيسية: حقوق الطفل ، حقوق الإنسان ، قيود سن الزواج

جنباً إلى جنب مع تطبيق قانون الزواج ، لا تزال هناك مشاكل في الممارسة العملية .ومن المشاكل في قانون الزواج تنظيم الحد الأدنى لسن الزواج في المادة 7 فقرة (1) التي تعتبر غير كافية وتمييز ضد الفتيات .بالإضافة إلى ذلك ، فإن تأثير هذه اللوائح هو أحد العوامل في ممارسة زواج الأطفال في إندونيسيا .الأثار المترتبة على ممارسة زواج الأطفال هي أن العديد من حقوق الأطفال لا يتم الوفاء بها .لذلك ، قامت الحكومة من خلال وزارة القانون وحقوق الإنسان بإجراء تغييرات على الحد الأدنى لسن الزواج في قانون الزواج بهدف منع ممارسة زواج الأطفال وحماية حقوق الأطفال التي هي جزء من حقوق الإنسان .

الغرض من هذه الدراسة هو فحص التغييرات في الحد الأدنى لسن الزواج في إندونيسيا ، والذي يستخدم بشكل أساسي نصح حقوق الإنسان العالمية كأداة رئيسية في مراجعة قانون الزواج في إندونيسيا باستخدام وجهة نظر حقوق الإنسان التي طرحها مسعود أ . بدرين .

هذا البحث هو بحث قانوني معياري يستخدم مقارنة تاريخية ومنهج مفاهيمي .نتائج هذه الدراسة هي أن هناك جانبين اجتماعيين يكمن وراء التغييرات في الحد الأدنى لسن الزواج في إندونيسيا ، وهما الجانب الصحي والجانب التعليمي .تهدف التغييرات في الحد الأدنى لسن الزواج إلى النضال من أجل حقوق الأطفال ، وخاصة الحق في الصحة والحق في التعليم .وفقاً لمشود بدرين في الشريعة الإسلامية ، فإن القرآن والحديث ينظمان حقوق الطفل .تتماشى التغييرات في الحد الأدنى لسن الزواج التي تهدف إلى النضال من أجل حقوق الأطفال مع آراء مسعود بدرين حول حقوق الطفل .

# CHAPTER I

## INTRODUCTION

### A. Background

Underage marriage has become a national phenomenon in Indonesian society. At least three factors greatly influence the rampant practice of underage marriages in Indonesia. First, the cultural factor, most people still adhere to a culture that views daughters as an investment, so when they experience economic difficulties, marrying off their daughters is the fastest solution. In addition, local culture also views raising daughters as very heavy, so marriage is considered the best way to release responsibility.<sup>1</sup>

The second is religious interpretation. Some Muslim communities still practice biased interpretations of Islamic teachings, mainly regarding marriage requirements. Al-Qur'an and hadith texts outline the conditions for *baligh* and *rusyd* in marriage. Unfortunately, the practice in society interprets the terms of *baligh* as menstruation. If a girl is menstruating, she is considered eligible for marriage, even though *baligh* means physical and spiritual maturity. In addition, the conditions for *rusyd* are required, namely physical, mental and spiritual maturity. Therefore, allowing underage marriages to children based on religious teachings tarnishes religion's sanctity.<sup>2</sup>

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<sup>1</sup> Regina Kalosa et al., *Menikah Muda Di Indonesia: Suara, Hukum, Dan Praktik*, ed. Mies Grijns, I (Jakarta: Yayasan Pustaka Obor Indonesia, 2018), <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1192979#>.

<sup>2</sup> Kalosa et al.

The third factor is the development of Indonesian law. The law in force in Indonesia still provides an open space for early marriage because in marriage law number 1 of 1974 and the Compilation of Islamic Law (KHI), the legal age for marriage for girls is 16 years for women and 19 years for men.<sup>3</sup> Whereas Law Number 23 of 2003, amended to Law Number 35 of 2014 Concerning Child Protection, states that a person is said to be a child when he has not yet turned 18. It means that the marriage law in force in Indonesia does not yet support efforts to abolish underage marriages.

In Indonesia, the issue of underage marriage has become a particular problem. 2018 data shows underage marriages are found in all parts of Indonesia. A total of 1,184,100 women aged 20-24 years have been married at 18 years. The highest number is in Java, with 668,900 women.<sup>4</sup> From underage marriage data from the 2018 BPS National Socioeconomic Survey (SUSENAS), it is noted that the number of underage marriages in Indonesia is relatively high, reaching 1.2 million incidents. Of this number, the proportion of women aged 20-24 years who were married before 18 was 11.21% of the total number of children, meaning that around 1 out of 9 women aged 20-24 years was married when they were children. This number contrasts with men, where 1 in 100 men aged 20-24 are married

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<sup>3</sup> Kalosa et al.

<sup>4</sup> Yosepha Pusparisa, "Jutaan Anak Perempuan Indonesia Lakukan Pernikahan Dini," Databoks, 2020, <https://databoks.katadata.co.id/datapublish/2020/09/11/jutaan-anak-perempuan-indonesia-lakukan-pernikahan-dini>.

when they are children.<sup>5</sup> Various factors lie behind underage marriages. Some of them are solutions to family economic problems, the influence of local religious and cultural norms, and the lack of education regarding underage marriage.

The high number of underage marriages in Indonesia cannot be separated from the influence of the development of Indonesian law. Setting the minimum age limit for marriage in Law number 1 of 1974 which differs between men and women, has not only resulted in discrimination in the context of exercising the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution,<sup>6</sup> but also has led to discrimination against the protection and fulfillment of children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution.<sup>7</sup> In this case, when the minimum age for marriage for women is lower than for men, legally, women can form a family more quickly and cause discrimination against the age of marriage between men and women.

The minimum age limit for marriage is 16 years for women and 19 years for men, raising pros and cons in society. Several community institutions conveyed their arguments about the minimum age limit for marriage. Muhammadiyah organizations agree with setting an explicit age limit for men and women who wish to marry. In establishing the law,

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<sup>5</sup> Stop Perkawinan Anak, Kita Mulai Sekarang, <https://www.kemenpppa.go.id/index.php/page/read/29/2569/stop-perkawinan-anak-kita-mulai-sekarang>, 1/26/2023.

<sup>6</sup> Pasal 28B ayat (1) UUD 1945: Setiap orang berhak membentuk keluarga dan melanjutkan keturunan melalui perkawinan yang sah.

<sup>7</sup> Pasal 28B ayat (2) UUD 1945: Setiap anak berhak atas kelangsungan hidup, tumbuh, dan berkembang serta berhak atas perlindungan dari kekerasan dan diskriminasi.

Muhammadiyah criticized the hadith about Aisyah's age by saying that in the hadith, there are narrators whose memory is questionable because they are already at an advanced age.<sup>8</sup> The Legal Aid Institute of the Indonesian Women's Association for Justice (LBH APIK) Jakarta stated that it was necessary to amend the Marriage Law Number 1 of 1974, especially in the rules regarding the age limit for marriage because the UUP is not in accordance with the provisions in the newer Law, namely the Human Rights Law and Child Protection Act. In the provisions of the latest law, the age limit for children is 18 years. This means that UUP can be categorized as legitimizing underage marriages according to the Human Rights Law and the Child Protection Law. In addition, LBH APIK considers that the implementation of the UUP has taken too long, namely around 40 years since the legalization of the UUP in 1974. This is reasonable if many changes have occurred in society, especially concerning the situation of women.<sup>9</sup>

Based on the results of research by the Center for Women's Studies (PSW) of UIN Jakarta in 2000, it was found that the average age for women to marry was 19 years and for men 23 years. Marriage at an early age for women will pose various biological risks, such as damage to the reproductive organs, young pregnancy, and psychological risks in the form

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<sup>8</sup> Rifki Julian Wiranda, "Pro-Kontra Undang-Undang Pembatasan Usia Nikah Dalam Tinjauan Maqashid Syari'ah" (Universitas Islam Sultan Agung Semarang, 2021), <http://repository.unissula.ac.id/22504/>.

<sup>9</sup> Sahuri Lasmadi, Kartika Sasi Wahyuningrum, and Hari Sutra Disemadi, "Kebijakan Perbaikan Norma Dalam Menjangkau Batasan Minimal Umur Perkawinan," *Gorontalo Law Review* 3, no. 1 (2020): 1, <https://doi.org/10.32662/golrev.v3i1.846>.

of the inability to carry out reproductive functions properly because family life demands a significant role and responsibility.<sup>10</sup> In the medical world, at 16, a woman goes through puberty, namely the transition from children to adults. At 16, a woman is not ready physically and mentally to become a housewife. In pregnancies in their teens, complications to mother and child such as anaemia, preeclampsia, abortion, death, bleeding and obstetric surgery are more common than in those in the age group of 20 years and over.<sup>11</sup>

Along with the times, because of the things that have arisen, the provisions for the age of marriage in Indonesia contained in Law Number 1 of 1974 need to be adjusted again to benefit the future of the two brides and groom. Many international laws and conventions have been used as guidelines related to underage marriage , including covering issues regarding age, such as the UDHR ( *Universal Declaration of Human Rights* ), CEDAW ( *Convention on the Elimination of All Forms of Discrimination against Women* ) and CRC ( *Convention on the Rights of the Child* ). The most influential definition of underage marriage is from the CRC, which defines underage marriage as marriage occurring under the age of 18. Most

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<sup>10</sup> Fitri Yanni Dewi Siregar and Jaka Kelana, “Kesetaraan Batas Usia Perkawinan Di Indonesia Dari Perspektif Hukum Islam,” *Mahakim: Journal of Islamic Family Law* 5, no. 1 (2021): 1–10, <https://doi.org/10.30762/mh.v5i1.2416>.

<sup>11</sup> Syukron Septiawan, “Perubahan Batas Usia Nikah Bagi Perempuan Dalam Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Perspektif Masalah” (IAIN Purwokerto, 2020).

Muslim countries have adjusted the minimum age regulations for men and women concerning international conventions as follows:<sup>12</sup>

**Table 1. Minimum Age Limit for Marriage in Most Muslim Countries**

No.	Country	Minimum age limit for marriage	
		Man	Woman
1.	Algeria	19 years old	19 years old
2.	Egypt	18 years	18 years
3.	Iraq	18 years	18 years
4.	Albania	18 years	18 years
5.	Antigua and Barbuda	18 years	18 years
6.	Azerbaijan	18 years	18 years
7.	Bahamas	18 years	18 years
8.	Belarus	18 years	18 years
9.	Ethiopia	18 years	18 years
10.	Jordan	18 years	18 years
11.	Oman	18 years	18 years
12.	Morocco	18 years	18 years
13.	Tunis	18 years	18 years
14.	United Arab Emirates	18 years	18 years
15.	Malawi	18 years	18 years
16.	Nigeria	18 years	18 years
17.	Korea	18 years	18 years
18.	Kenya	18 years	18 years

Indonesia ratified the CRC ( *Convention on the Rights of the Child* ) in 1990 through Presidential Decree Number 36 of 1990. Following this decision, the government legalized Law Number 39 of 1999 concerning Human Rights and Law Number 23 of 2002 concerning Child Protection, adapted to the CRC International convention. Included in the definition of a

<sup>12</sup> Badan Pembinaan Hukum Nasional, HASIL PENYELARASAN NASKAH AKADEMIK RANCANGAN UNDANG-UNDANG TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN, Bphn.go.id 96 (2019).

child is that what is meant by a child is someone who is not yet 18 years old, including a child who is still in the womb. This means that everyone under or not even 18 years of age is included in the category of children, and every child has the right to get their rights as a child. So that the Marriage Law, which still provides for a minimum age of marriage of 16 years, needs to be adjusted again because it no longer follows the newer regulations.

On April 27, 2017, there was an attempt to revise the Marriage Law by conducting a Judicial Review to the Constitutional Court. One of the petitions is about changing the age limit for marriage in Indonesia. Finally, in this effort, the Panel of Judges of the Constitutional Court accepted the applicant's request to renew the age limit for marriage in Indonesia.<sup>13</sup> One of the results of the changes contained in Article 7, paragraph (1) indicates that the minimum age for marriage for men and women is 19 years. This confirms the existence of equality and minimum age alignment to carry out marriages for men and women, where this similarity did not exist before and is always different, with an age difference of 3 years.<sup>14</sup>

In essence, the revision of the Marriage Law regarding the minimum age limit for marriage contained in Article 7, paragraph (1) aims to realize equality before the law. In addition, the changes to these provisions are intended to protect and fulfill children's rights which are part of Human Rights (HAM). This has become a consequence of Indonesia having

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<sup>13</sup> Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017

<sup>14</sup> Rendika Aris Yudhanto, "Studi Kritis Terhadap Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Perspektif Hukum Islam" (UII Yogyakarta, 2020).



officially joined as a member of the United Nations (UN) to recognize and carry out the mandate in the Declaration of Human Rights.

In 1948 the UN General Assembly proclaimed the *Universal Declaration of Human Rights* (UDHR). This declaration contains the concept of universal human rights and applies internationally. The declaration contains 30 articles and is still morally binding and not juridical. Then on December 16, 1966, a convention was born *from* the UN general assembly, binding for the countries that ratified it.<sup>15</sup> The *convention* held in 1966 contained: First, an agreement on economic, social and cultural rights; Second, the agreement on civil and political rights.

The concept of human rights offered by the United Nations and in the various agreements that follow show that humans are seen from the perspective of secularism. Religion is not an order that binds society, the state, or international relations. Religion has no competence concerning law because the law must be enforced fairly regardless of religion.<sup>16</sup>

The secular orientation in the concept of human rights at the United Nations raises various responses among Muslims. One of the responses of Muslims to the concept of UN human rights is to completely reject the concept of UN human rights because it is based on their belief that shari'ah is eternal, independent, and the most correct and perfect legal system. They view UN human rights as something contrary to Islam, and the concept of

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<sup>15</sup> Mohamad Hudaeri, "Islam Dan Hak Asasi Manusia," *Alqalam* 24, no. 3 (2007): 363, <https://doi.org/10.32678/alqalam.v24i3.1664>.

<sup>16</sup> Izzuddin Washil and Ahmad Khoirul Fata, "HAM ISLAM DAN DUHAM PBB: Sebuah Ikhtiar Mencari Titik Temu," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 41, no. 2 (2018): 428–50, <https://doi.org/10.30821/miqot.v41i2.394>.

UN human rights are identified with Christianity. Because of that, according to them, Islam must develop an Islamic version of human rights.<sup>17</sup>

In 1990, Muslim countries that were members of the Organization of the Islamic Conference (OIC) declared a formulation of human rights in Islam. Later, this declaration was embodied in the formulation of the Cairo Declaration (*Cairo Declaration of Human Rights in Islam*). This declaration is a step taken by Muslims in responding to the concept of human rights at the United Nations, which according to them, is contrary to shari'ah.<sup>18</sup>

The Cairo Declaration contains 25 articles, the primary substance of which is the fulcrum of the implementation of human rights in the Islamic world, namely: *First*, all elements of human rights are upheld, but all must be subject to the shari'ah (Article 24); *Second*, the only reference is Islamic shari'ah (Article 25), for example in exercising political rights such as the right to express one's opinion freely, limited by provisions that do not conflict with shari'ah principles.<sup>19</sup>

In these two perspectives on human rights, Mashood A. Baderin tries to find common ground for human rights issues contained in international human rights law, which the United Nations declared with human rights principles in Islamic law. In his book entitled "*International Human Rights and Islamic Law*", Baderin believes that continuous dialogue on the

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<sup>17</sup> Moh Sholehuddin, "MERAJUT HARMONI ANTARA HAM INTERNASIONAL DENGAN SYARI'AT ISLAM (Telaah Terhadap Buku International Human Rights And Islamic Law Karya Mashood A Baderin)," *Al-Ahwal* 5, no. 1 (2013): 69–90.

<sup>18</sup> Washil and Fata, "HAM ISLAM DAN DUHAM PBB: Sebuah Ikhtiar Mencari Titik Temu."

<sup>19</sup> Agus Dedi Putrawan, "Membumikan Deklarasi Cairo Di Indonesia: Perlindungan Terhadap Hak Anak Dan Keluarga," *Tasamuh* 13, no. 2 (2016): 181–96, <https://journal.uinmataram.ac.id/index.php/tasamuh/article/view/166>.

principle of equality of the two human rights concepts will open up broad opportunities for the realization of a shared understanding of human rights which in turn will facilitate the achievement of the effectiveness of promoting and protecting human rights in the world. That way, it will open up more significant opportunities for realizing human benefit and welfare. According to Baderin, this dialogue will lead to meaningful discussions about the extent to which international human rights can be interpreted by Islamic law or vice versa.<sup>20</sup>

Therefore, from the explanation above, it is crucial to conduct this research to examine changes in the age limit for marriage in Indonesia, which uses a human rights approach as the main instrument in revising the Marriage Law in Indonesia. Baderin's human rights perspective was then considered essential to become an optical lens in observing the issues raised.

## **B. Formulation of the Problem**

From the background that has been described above, the authors formulate the formulation of the problem to be studied in this study as follows:

1. What is the sociological basis for changing the marriage age limit in Law Number 16 of 2019?
2. How is the sociological basis for changing the marriage age limit in Law Number 16 of 2019 viewed from the perspective of children's rights Mashood A. Baderin?

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<sup>20</sup> Mashood A. Baderin, *Hukum Internasional Hak Asasi Manusia & Hukum Islam, Komisi Nasional Hak Asasi Manusia*, II (Jakarta: MitraGrafindo Mandiri, 2019).

### **C. Research Purposes**

Based on the formulation of the problems raised, the objectives of this study are as follows:

1. To know the sociological basis for changing the marriage age limit in Law Number 16 of 2019.
2. To find out the sociological basis for changing the marriage age limit in Law Number 16 of 2019 viewed from the perspective of children's rights Mashood A. Baderin.

### **D. Benefits of Research**

The existence of this research is expected to provide benefits in the form of theoretical and practical benefits.

1. Theoretically, this research is expected to contribute ideas to the development of Indonesian marriage law in general and the law on the protection of children and women in particular, which is associated with the revision of Law Number 16 of 2019 concerning amendments to Law number 1 of 1974 concerning marriage. This research is expected to be a reference material and additional literature for academics to analyze underage marriages and children's rights in depth.
2. Practically, this research is expected to provide helpful information to the public regarding the impact of underage marriage on violations of children's rights.

## E. Research Methods

The research method is essential in a research, acting as a guide for researchers to achieve and determine the results of the problems posed. The method used in this research uses research methods which include:

### 1. Types of research

The type of research in this thesis is normative juridical research. Normative juridical research, commonly called normative legal research, includes research on legal principles, legal systematics, level of legal synchronization, legal history, and comparative law.<sup>21</sup> The writer thinks this type of normative juridical research is suitable for this research because it uses the Academic Text of the Draft Law on Amendments to Law Number 1 of 1974 concerning Marriage.

### 2. Research Approach

There are five approaches in normative research: the statute approach, case approach, historical approach, comparative approach, and conceptual approach. The approach used by researchers is the historical approach which examines the background and development of regulations regarding legal issues.<sup>22</sup> In this study, the author examines the background to the emergence of the renewal of Law Number 1 of 1974 concerning Marriage by examining the Academic Text of Draft Law Number 16 of 2019. In

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<sup>21</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017).

<sup>22</sup> Zaenul Mahmudi et al., *PEDOMAN PENULISAN KARYA TULIS ILMIAH TAHUN 2022* (Fakultas Syariah UIN Maliki Malang, 2022).

addition, the author uses a conceptual approach to examine concepts that depart from the views and doctrines that developed in the science of law and religion. In this research, the researcher uses the view of human rights put forward by Mashood A. Baderin as the analytical tool.

### 3. Data Type

In normative research, secondary data is obtained from written information in documents. This term is often referred to as legal material. Legal materials are divided into three types, namely primary legal materials, secondary legal materials, and tertiary legal materials.<sup>23</sup>

#### a) Primary legal material

Primary legal material is research data which is the main material in research. In this research, the primary legal materials are the Academic Paper of Draft Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage and a book by Mashood A. Baderin entitled *International Law of Human Rights & Islamic Law*.

#### b) Secondary legal material

Secondary legal materials are legal materials that support research, including theses, articles, journals and books related to the theme of this research.

#### c) Tertiary legal materials

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<sup>23</sup> Mahmudi et al.

Broadcast legal material is legal material that is supporting in nature. In this study, tertiary legal materials were used in the form of the Big Indonesian Dictionary (KBBI).

#### 4. Method of collecting data

The data collection method used in this study is the documentation technique. The author will collect various documentation following the theme of the problem the author is researching in the form of books, articles, journals, etc. The author collects books and journals related to revision marriage law, children's and human rights, as stated in the legal materials. In addition, it also collects previous studies that have themes in line with this research.

#### 5. Data Processing Methods

Processing legal materials is an effort carried out with procedures for processing legal materials and legal analysis following the approach used. In this study, data processing was carried out through several stages, including:

##### a) Editing

In this stage, the collected legal materials are re-examined to suit the focus of the research discussion. So in this section, the researcher needs to examine the clarity of meaning that is appropriate and relevant to the formulation of the problem and other data. The focus of this

research is on children's rights and human rights. The researcher uses Mashood A. Baderin's views on human rights.

b) Classifying

In this second stage, legal materials are classified based on research discussion. Theses, articles, books, journals, and references that have been collected are classified according to their respective divisions, namely related to children's rights and human rights.

c) Verifying

Verification of legal materials is proof of the truth to guarantee the validity of the legal materials that have been collected. This verification is carried out by requiring legal materials that are still valid. Therefore, the most recent references related to research are preferred.

d) Analyzing

This stage is the analysis stage. The researcher analyzes the change in the age limit for marriage in the Academic Text of Law Number 16 of 2019, then analyses Mashood A. Baderin's views on International Human Rights Law and Islamic Law.

e) Conclusion

The final step in data processing is the conclusion, namely, concluding legal materials that have been processed to get answers. At this stage, researchers have found answers from the results of research that has been done. At this stage, the research that has been carried out



will produce a brief, clear and easy-to-understand description. The analytical method used in this research is the descriptive analysis method.

## **F. Previous Research**

Previous research also has an important role. In this chapter, we will present related studies that have been carried out previously. Previous research is useful for anticipating the similarity of research. In addition, it is also useful as a reference to expand research material which can also be used to analyze research results. Related research that has been conducted, including:

1. Rendika Aris Yudhanto's research entitled "Studi Kritis Terhadap Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Perspektif Hukum Islam". This research examines the review of Islamic law on the construction and consideration of the age limit for marriage in Law number 16 of 2019 concerning marriage amendments to Law number 1 of 1974. This research is *library research* with a descriptive analysis method. The results of this study describe an overview of Islamic law regarding the change in the minimum age to be able to enter into marriage to 19 years for men and women in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage is based on considerations of achieving benefit in

general, namely minimizing the existence of harm to women, both in the aspects of health, education, and constitutional rights. More specifically, the *masalah* to be achieved is protecting the human soul, in this case, women, because getting married at a young age can harm a woman's health, including the child she will bear, and it will result in the non-fulfilment of other rights.<sup>24</sup>

2. M. Faiz Nashrullah's research entitled "Hukum Perkawinan Islam Indonesia Perspektif Hak Asasi Manusia dan Gender". The type of research in this research is normative juridical by using an approach to legal norms contained in statutory regulations. The results of this study explain that there are still provisions in Islamic marriage law in Indonesia that are not following the provisions in international human rights instruments because there is no principle of justice in it, such as in terms of the age limit for marriage, the hierarchy of guardianship in marriage, and the appointment of a husband as the head of the household. And wives as housewives. Furthermore, the study results explain that most of the Indonesian Islamic marriage law articles are gender aware. However, several articles still have the opportunity to cause gender discrimination. One of them is the minimum age limit for marriage for men and women, the guardianship hierarchy, which

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<sup>24</sup> Yudhanto, "Studi Kritis Terhadap Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Perspektif Hukum Islam."

closes the rights of women and men. Women, as well as provisions on rights and obligations that place men above women.<sup>25</sup>

3. Syukron Septiawan's research entitled "Perubahan Batas Usia Nikah bagi Perempuan dalam Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Perspektif Masalah". This study uses a qualitative research method with a normative juridical approach. The results of this study explain that the change in the age limit in Law Number 16 of 2019 is the state's commitment to realizing the life of the nation and state, which is far from discriminatory treatment, besides that this change is a government step in preventing early marriage. This study explains that changing the age limit for marriage is in line with the concept of *masalah*, namely creating good for humans and avoiding evil, including protecting the soul after childbirth ( *hifzu al-nafs* ), continuing education for women ( *hifzu al-aql* ), and protecting offspring for prospective baby ( *hifzu al-nasl* ).<sup>26</sup>
4. Sefti Triliya's research entitled "Pembatasan Usia Perkawinan ditinjau dari Undang-Undang Perlindungan Anak (UUPA) dan Maqashid Syari'ah". Marriage age limit can prevent underage marriages and support the success of the national Family Planning (KB) program. Furthermore, if viewed from Maqasid Syari'ah, the existence of a

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<sup>25</sup> M. Faiz Nashrullah, "Hukum Perkawinan Islam Indonesia Perspektif Hak Asasi Manusia Dan Gender" (UIN Maulana Malik Ibrahim Malang, 2017).

<sup>26</sup> Septiawan, "Perubahan Batas Usia Nikah Bagi Perempuan Dalam Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Perspektif Masalah."

marriage age limit can avoid harm such as postpartum death. This is in line with the goal of Islam, namely preserving human life (hifzu al-nafs). This research is library research ( *Library Research* ) using descriptive analysis.<sup>27</sup>

5. Ilham Ramdani Rahmat's research entitled "Implikasi Pernikahan Usia Dini terhadap Hak-Hak Anak (Studi di Desa Suntenjaya Kecamatan Lembang Kabupaten Bandung Barat)". This study uses field research supported by the literature. The results of this study explain that early marriage is viewed from the aspect of children's rights as aspired to by the Law on Child Protection (UUPA), and the purpose of marriage from Law no. 1 of 1974 concerning marriage has not been achieved because early marriage and the fulfilment of children's rights are very contradictory. The condition of the people in Suntenjaya Village, Lembang District, West Bandung Regency, is still in the lower middle-class category. Thus, as a result of obtaining the fact that early marriage is considered a solution to reduce the economic burden of parents, on the contrary, the economic burden is passed down from generation to generation.<sup>28</sup>

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<sup>27</sup> Sefti Triliya, "Pembatasan Usia Perkawinan Ditinjau Dari Undang-Undang Perlindungan Anak (UUPA) Dan Maqashid Syari'ah" (IAIN Curup, 2019).

<sup>28</sup> Ilham Ramadani Rahmat, "Implikasi Pernikahan Usia Dini Terhadap Hak-Hak Anak (Studi Di Desa Suntenjaya Kecamatan Lembang Kabupaten Bandung Barat)" (UIN Syarif Hidayatullah Jakarta, 2019). [tps://repository.uinjkt.ac.id/dspace/bitstream/123456789/45859/1/ILHAM RAMDANI RAHMAT-FSH.pdf](https://repository.uinjkt.ac.id/dspace/bitstream/123456789/45859/1/ILHAM_RAMDANI_RAHMAT-FSH.pdf).

6. Rini Fitriani's research entitled "Peran Penyelenggara Perlindungan Anak dalam Melindungi dan Memenuhi Hak-Hak Anak".<sup>29</sup> This research is normative research using the descriptive analysis method. The results of this study explain that arrangements regarding children's rights have been accommodated in several laws and regulations of the Republic of Indonesia. However, their implementation is still far from expectations because many cases have occurred in Indonesia, meaning that child protection providers still need to be able to guarantee the fulfilment of these rights. The right of children to live, grow, develop, and participate optimally following human dignity. In addition, to receive protection from violence, injustice, neglect, discrimination, exploitation, and other harmful actions.
7. Moh Sholehuddin's research entitled "Merajut Harmoni antara HAM Internasional dengan Syari'at Islam (Telaah terhadap Buku Internasional Human Rights and Islamic Law Karya Mashood A. Baderin)".<sup>30</sup> This research is library research using the descriptive analysis method. This research discusses the book International Human Rights and Islamic Law by Mashood A. Baderin. This study explains the distinctive feature of Baderin's work is that it describes each article on international human rights as contained in *The*

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<sup>29</sup> Rini Fitriani, "Peran Penyelenggara Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak-Hak Anak," *Jurnal Hukum : Samudra Keadilan* 11, no. 2 (2016): 250–58.

<sup>30</sup> Sholehuddin, "MERAJUT HARMONI ANTARA HAM INTERNASIONAL DENGAN SYARI' AT ISLAM ( Telaah Terhadap Buku International Human Rights And Islamic Law Karya Mashood A Baderin )."

*Universal Declaration of Human Rights (UDHR), The International Covenant on Civic and Political Rights (ICCPR), and Social and Culture Rights (ICESCR).* ) than dialogue with Islamic law. The two examples of the results of Baderin's *ijtihad* in this study are regarding the equal rights of men and women in article 3 of the ICCPR. In his book, Baderin states that the equality of rights for women recognized by Islam stands on the principle of " *equal but not equivalent* ". Second, regarding the prohibition of torturing, ill-treating, and treating or punishing with inhumane punishments. These regulations are contained in article 7 of the ICCPR. In his book, Baderin explains that *hudud* punishment which is the main issue when it comes to human rights in its implementation, must consider the context and circumstances.

**Table 2. Previous research**

<b>No</b>	<b>Name of Researcher, Title, and Year of Research</b>	<b>Equality</b>	<b>Difference</b>	<b>Research Originality</b>
1.	Rendika Aris Yudhanto, "Studi Kritis Terhadap Undang-Undang Nomor 16 Tahun	<ul style="list-style-type: none"> <li>- Research on changes to Law Number 16 of 2019</li> <li>- Normative</li> </ul>	<ul style="list-style-type: none"> <li>- Islamic law analysis</li> </ul>	<ul style="list-style-type: none"> <li>- Mashood A. Baderin's analysis of</li> </ul>

	2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Perspektif Hukum Islam", (2020)	research		children's rights
2.	M. Faiz Nashrullah, "Hukum Perkawinan Islam Indonesia Perspektif Hak Asasi Manusia dan Gender", (2017)	<ul style="list-style-type: none"> <li>- Marriage law in Indonesia</li> <li>- Normative research</li> </ul>	<ul style="list-style-type: none"> <li>- Gender studies</li> </ul>	<ul style="list-style-type: none"> <li>- Mashood A. Baderin's analysis of children's rights</li> </ul>
3.	Syukron Septiawan, "Perubahan Batas Usia Nikah bagi Perempuan dalam Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Perspektif Masalahah", (2020)	<ul style="list-style-type: none"> <li>- Research on changes to Law Number 16 of 2019</li> <li>- Normative research</li> </ul>	<ul style="list-style-type: none"> <li>- Masalahah analysis</li> </ul>	<ul style="list-style-type: none"> <li>- analysis of children's rights</li> </ul>
4.	Sefti Triliya, "Pembatasan Usia Perkawinan ditinjau dari Undang-Undang Perlindungan Anak (UUPA) dan Maqashid Syari'ah", (2019)	<ul style="list-style-type: none"> <li>- Restricted marriage age</li> <li>- Normative research</li> </ul>	<ul style="list-style-type: none"> <li>- Maqashid syari'ah analysis</li> </ul>	<ul style="list-style-type: none"> <li>- Mashood A. Baderin's analysis of children's rights</li> </ul>
5.	Ilham Ramdani Rahmat, "Implikasi	<ul style="list-style-type: none"> <li>- Research on children's rights</li> </ul>	<ul style="list-style-type: none"> <li>- Empirical research</li> </ul>	<ul style="list-style-type: none"> <li>- Mashood A. Baderin's</li> </ul>

	Pernikahan Usia Dini terhadap Hak-Hak Anak (Studi di Desa Suntenjaya Kecamatan Lembang Kabupaten Bandung Barat)", (2019)			analysis of children's rights
6.	Rini Fitriani, "Peran Penyelenggara Perlindungan Anak dalam Melindungi dan Memenuhi Hak-Hak Anak", (2016)	<ul style="list-style-type: none"> <li>- Research on fulfilling children's rights</li> <li>- Normative research</li> </ul>	<ul style="list-style-type: none"> <li>- Study of the role of child protection administrators</li> </ul>	<ul style="list-style-type: none"> <li>- Mashood A. Baderin's analysis of children's rights</li> </ul>
7.	Moh Sholehuddin, "Merajut Harmoni antara HAM Internasional dengan Syari'at Islam (Telaah terhadap Buku Internasional Human Rights and Islamic Law Karya Mashood A. Baderin)", (2013)	<ul style="list-style-type: none"> <li>- Harmonization of international human rights with Iskam's version of human rights from the perspective of Mashood A. Baderin</li> <li>- Normative research</li> </ul>	<ul style="list-style-type: none"> <li>- The study of the equal rights of men and women</li> <li>- Study on the prohibition of torturing, ill-treating, and treating or punishing with inhumane punishments</li> </ul>	<ul style="list-style-type: none"> <li>- Studies on children's rights</li> </ul>

## G. Discussion Systematics

The systematic discussion of normative legal research is divided into several sections, namely chapter I, which contains the introduction; chapter II which contains a literature review; chapter III discusses the results and



discussion; as well as chapter IV, which contains a closing that includes conclusion and suggestion.

Chapter I discusses the introduction, which consists of the research context covering the primary causes of underage marriage in Indonesia and data on the number of underage marriages carried out by women in 2018. Then it explains the decision of the Constitutional Court, which stated that the old Marriage Law needed to be revised. For this research to be more focused, this chapter determines the formulation of the problem, purpose and benefits of the research. This chapter also describes previous research with themes that align with the research.

Chapter II discusses the literature review used in the research. This chapter contains thoughts and juridical concepts as a theoretical basis for studying and analyzing problems. The foundation of these concepts and theories will be used in analyzing each problem raised in the research. This chapter explains the concept of human rights, studies the minimum age limit for marriage, and the concept of law as a tool of social change.

Chapter III discussion of research findings. In it will be presented the results of the research and then described to discuss and answer the formulation of the problem that has been described regarding the fulfillment of children's rights as part of human rights by using the theory of human rights according to Mashood A. Baderin.

Chapter IV contains conclusions and suggestions. It describes the conclusions of the analysis carried out in the previous chapter. In addition, it

also contains suggestions regarding the issues discussed and also suggestions for subsequent research that discusses the same research object.

## **CHAPTER II**

### **LITERATURE REVIEW**

#### **A. Human Rights**

##### **1. Human Rights Concept**

Formally the concept of Human Rights was born on December 10, 1948, when the United Nations proclaimed the Universal Declaration of Human Rights, which contained 30 articles, all of which explained the rights and obligations of humanity. There are five types of human rights according to the Universal Declaration of Human Rights, namely personal rights (right to guarantee personal needs), legal rights (right to guaranteed legal protection), civil and political rights, subsistence rights (right to guarantee the existence of resources to support life), and economic rights.<sup>31</sup>

In general, two opinions have developed regarding the nature and position of the concept of human rights in the study of human rights. One opinion perceives human rights, as contained in international human rights instruments, to be universal. They apply to every person or nation regardless of historical, political, economic, socio-cultural, religious, and other backgrounds. This

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<sup>31</sup> Mhd. Abduh Saf, "Persoalan HAM Dan Hukum Islam," *Al-Yasini* 3, no. 1 (2018): 34–48, [http://download.garuda.ristekdikti.go.id/article.php?article=1118864&val=16820&title=PERSONALAN HAM DAN HUKUM ISLAM](http://download.garuda.ristekdikti.go.id/article.php?article=1118864&val=16820&title=PERSONALAN%20HAM%20DAN%20HUKUM%20ISLAM).

view is widely held in Western European countries and the United States of America, which are developing countries. Meanwhile, other perceptions also viewed the concept of human rights as not completely universal but rather closely related to and influenced by the circumstances surrounding every human community. Developing countries widely embrace this relativistic perception of human rights.<sup>32</sup>

The perception of the universality of human rights, viewed from a historical perspective on the development of human rights thinking, was born from and influenced by the theory of natural rights (natural rights theory), which holds that human rights are rights that everyone has at all times and places based on existence as a human. There is no difference between human beings regarding ownership and respect for human rights. Meanwhile, the perception of the relativity of human rights stems from the cultural relativist theory, which is at odds with the theory of natural rights. The theory of cultural relativity holds that humans are products of the socio-cultural environment. Differences in cultural traditions among people cause differences in thoughts and perceptions about human beings, including human rights.<sup>33</sup>

At an ideal and theoretical level, the perception of the universality of human rights is more interesting to adhere to and

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<sup>32</sup> Ikhwan Matondang, "Universalitas Dan Relativitas HAM," *MIQOT* XXXII, no. 2 (2008): 203–14.

<sup>33</sup> Washil and Fata, "HAM ISLAM DAN DUHAM PBB: Sebuah Ikhtiar Mencari Titik Temu."

closer to the fundamental values in the concept of human rights, such as equality and equity. However, at the level of practical reality, it cannot be ruled out that there are significant variations in understanding the concept of human rights among existing nations, cultural traditions, and religions. Each has specificities and disparities in human rights, influenced by ideology, culture, history, politics, interests, etc. Each nation and tradition is also not immune from differences of opinion among themselves in formulating human rights.<sup>34</sup>

The Western perspective, in general, as it is commonly defined, is included in the UN human rights instruments. Human rights are rights that have naturally been inherent in humans since their existence. Without these rights, humans cannot live as human beings, "*Human rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings.*" Human rights are seen more as a cultural product. It was born from the history of conflict between oppressive rulers and oppressed people. It has created awareness of every person's primary and natural rights, which must be respected and protected.<sup>35</sup>

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<sup>34</sup> Matondang, "Universalitas Dan Relativitas HAM."

<sup>35</sup> Sholehuddin, "MERAJUT HARMONI ANTARA HAM INTERNASIONAL DENGAN SYARI' AT ISLAM ( Telaah Terhadap Buku International Human Rights And Islamic Law Karya Mashood A Baderin )."

Judging from the definition and philosophical basis, the western version of human rights is anthropocentric, individualist, and secular. Human rights as a gift from God are the main characteristics that distinguish between theocentric and anthropocentric views in the discourse on human rights. In a theocentric view, as represented by al-Mawdudi, human rights are God's gifts to humans as His caliphs on earth.<sup>36</sup> Armed with these human rights, humans are ordered to carry out worship activities and prosper life on earth. Meanwhile, in an anthropocentric view, as adopted by the Western world in general, human rights have been inherent naturally since human existence. Then human rights are strengthened and legitimized by regulations established by authorized bodies. These human rights serve human interests based on the standards and values created by humans themselves.<sup>37</sup>

The concept of human rights developed in the West places humans in a separate setting from God. The pattern of secularism as one of the leading products of Western culture has colored the thinking and implementation of human rights in the West. Meanwhile, the individualistic characteristics of the concept of Western human rights cannot be separated from the history of its development. The idea of human rights arose in the XVII and XVIII centuries as a reaction to the absoluteness of kings and

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<sup>36</sup> Washil and Fata, "HAM ISLAM DAN DUHAM PBB: Sebuah Ikhtiar Mencari Titik Temu."

<sup>37</sup> I Nyoman Surata, "Sejarah Perkembangan Konsep Hak Asasi Manusia," *Kertha Widya* 2, no. 1 (2014): 117.

feudal lords towards the people and workers. There were two significant layers of people at that time: the upper layer, the minority, and the lower layer, which was the majority. The lower layers have no rights and are treated arbitrarily by those in power. As a reaction to this situation, the idea arose to equalize the position of the lower layer and upper layers' positions because they are both human beings. The ideas of equality, fraternity, and freedom emerged, highlighted in the French revolution at the end of the eighteenth century.<sup>38</sup>

## **2. Child's Rights in the United Nations Convention on the Rights of the Child**

In 1966, the United Nations established an international civil and political rights convention. This Convention is a multilateral agreement established by the UN assembly after the declaration of Universal Human Rights. The international Covenant on Civil and Political Rights contains the child's rights, which are contained in article 24. The contents of the article are:<sup>39</sup>

- 1) Every child has the right to obtain the right to protective measures because of his status as a minor against his family, society and the State without discrimination based on race,

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<sup>38</sup> Surata.

<sup>39</sup> Resolusi Majelis Umum PBB, "KOVENAN INTERNASIONAL HAK-HAK SIPIL DAN POLITIK Ditetapkan Oleh Resolusi Majelis Umum 2200 A (XXI) Tertanggal 16 Desember 1966," Pub. L. No. 2200 A (XXI), 1 (1966).

colour, sex, language, religion, national or social origin, wealth or birth.

- 2) Every child must be registered immediately after birth and receive a name.
- 3) Every child has the right to acquire citizenship.

Then, the rights of the child in the Convention on civil and political rights are further regulated in the Convention on the Rights of the Child. The Convention on the rights of the child is one of the international instruments in the field of human rights, which specifically regulates the basic principles of protecting children's rights on earth. In international law, conventions are grouped as a source of international law, in addition to international custom, general principles of law recognized by civilized nations and decisions or resolutions of international organizations.<sup>40</sup>

The Convention on the Rights of the Child is a United Nations convention that most fully describes and recognizes human rights instruments in the history of the growth of this organization of nations. It stipulates in detail the rights of children and the benchmarks that the government must use in implementing children's rights in their respective countries. Born from a pluralist legal system and traditional values, the CRC has become an

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<sup>40</sup> Muhammad Maksum, "Hak Anak Dalam Islam Dan Hak Asasi Manusia," *Jurnal Misykat* III, no. 1 (2010): 22.



instrument that is not much questioned and debated by UN member states. It reflects the fundamental rights of children anywhere in the world.<sup>41</sup>

The fundamental rights of children contained in the CRC can be grouped into four categories of children's rights, namely: the right to live, to develop, to be protected from harmful influences, torture, and exploitation, as well as the right to participate fully within the family, cultural and social life. Here is the description:<sup>42</sup>

a. Right to live

Namely, children's rights to defend life and the right to obtain the best standard of health and care. In this category, children are entitled to a decent life and health services in the form of nutrition services, healthy living services, environmental health services, and freedom.

b. Children's Growth and Development Rights

In the CRC, the rights to the development of children are divided into two major parts: education rights and the rights to standards of living. The meaning is the child's right to obtain education in all its forms and levels, and the child's rights relating to an adequate standard of living for physical, mental, spiritual, moral, and social development.

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<sup>41</sup> Maksum.

<sup>42</sup> Raissa Lestari, "IMPLEMENTASI KONVENSI INTERNASIONAL TENTANG HAK ANAK (Convention on The Rights of The Child) DI INDONESIA (Studi Kasus : Pelanggaran Terhadap Hak Anak Di Provinsi Riau 2010-2015)," *JOM FISIP* 4, no. 2 (2017): 1–10.

c. Right of Protection

In this category, children are entitled to protection from child discrimination, child exploitation, and protection from crises and emergencies.

d. Right to Participate

In this category, children are entitled to the right to think and express opinions and assemble and associate.

In addition, according to the CRC (Convention on the Rights of the Child) which was ratified into Presidential Decree No. 36 of 1997, there are 10 Absolute Rights of the Child.<sup>43</sup> 1) The Right to Happiness, every child has the right to feel happy, and the happiness of a child must be fulfilled. 2) Right to Education, every child has the right to receive a proper education. 3) Right to Protection, every child has the right to protection, to be protected from all acts of violence and abuse. 4) The right to get a name, every child has the right to get a name, as one of the child's identities. 5) Right to Nationality, every child has the right to be recognized as a citizen and has a nationality. Children may not be patricide (without nationality). 6) Right to Food, every child has the right to obtain food to grow and maintain his life. 7) Right to Health, every child has the right to receive proper health services without discrimination, and children must be served in health. 8)

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<sup>43</sup> Lestari.

Recreation Rights, every child has the right to recreation for the refresh, and children must be involved in choosing the place of recreation they want. 9) Right to Equality, every child has the right to be treated the same wherever and whenever without discrimination. 10) The Right to Role in Development, every child has the right to be involved in the country's development because children are the nation's future.

### **3. Children's Rights in the Child Protection Law**

By officially joining Indonesia as a member of the United Nations on September 28, 1950, it had the consequence that Indonesia recognized the UN Declaration on Human Rights. To follow up on the universal declaration of human rights, Indonesia issued Law Number 23 of 2003 concerning Child Protection.<sup>44</sup> Based on Article 1 point 1 of the Child Protection Law, children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the state, government, and local governments. Children's rights in the Child Protection Law are divided into 5 clusters, namely:<sup>45</sup>

- a) civil rights and freedoms;
- b) family environment and alternative care;
- c) basic health and welfare;

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<sup>44</sup> Nasional, HASIL PENYELARASAN NASKAH AKADEMIK RANCANGAN UNDANG-UNDANG TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN, Bphn.go.id.

<sup>45</sup> UU Nomor 23 Tahun 2002 tentang Perlindungan Anak

- d) education, utilization of free time, and cultural activities; And
- e) special protection.

Furthermore, the 5 clusters of children's rights consist of children's rights, namely:

- 1) the right to play;
- 2) the right to recreation;
- 3) the right to participate fairly following human dignity;
- 4) the right to relate to parents if separated;
- 5) the right to worship according to their religion, think, and express themselves according to their level of intelligence and age under the guidance of their parents or guardians;
- 6) the right to freedom of assembly;
- 7) the right to freedom of association;
- 8) the right to live with parents;
- 9) the right to survival, growth, and development;
- 10) right to name;
- 11) right to identity;
- 12) right to citizenship;
- 13) the right to education;
- 14) right to information;
- 15) the right to the highest standard of health;
- 16) the right to a decent standard of living;
- 17) personal rights;

- 18) the right from arbitrary arrest;
- 19) the right from deprivation of liberty;
- 20) the right from cruel treatment, punishment, and inhumane treatment;
- 21) the right from physical and non-physical torture;
- 22) rights from kidnapping, selling, and trading or trafficking;
- 23) the right from sexual exploitation and sexual use;
- 24) rights from drug exploitation/abuse;
- 25) rights from exploitation as child labor;
- 26) rights from exploitation as a minority group/remote indigenous group;
- 27) the right to view, or circumstances which by their nature are not suitable for children to see;
- 28) the right to special protection in critical/emergencies;
- 29) the right to special protection as refugees/displaced/evicted people;
- 30) the right to special protection in the event of a legal conflict; And
- 31) the right to special protection in armed conflict or social conflict.

## B. Human Rights in Islam

Human rights in Islam differ from the mainstream human rights thinking developing in the West. Philosophically, Islamic thinkers view human rights as a gift from Allah SWT. to humans as a provision to carry out the functions of the caliphate and as a balance of the obligations imposed. The concept of human rights is closely related to views and doctrines regarding the position and function of humans and the purpose and mission of their existence as God's creatures, all of which can be referred to as the sources of Islamic teachings. When talking about human rights in Islam, what is meant is the fundamental rights given by God to every human being regardless of differences in citizenship, religion, and others. All humans have human rights solely because of their humanity. These rights are a gift from God, so no one can revoke them other than God. Human rights are such an integral part of the Islamic faith that all Muslims and Muslim rulers must accept, recognize and implement them.<sup>46</sup>

Judging from the definition and philosophical basis, human rights in Islam are theocentric. Human rights as a gift from God are the main characteristics of human rights discourse in Islam. The general view that is developing in the Islamic world views human rights as a gift from God so that every individual must be responsible to God. Because of this, the theological pattern is solid in coloring the thinking and implementation of human rights in the Islamic world.

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<sup>46</sup> Naimatul Atqiya, "Ham Dalam Perspektif Islam," *Islamuna: Jurnal Studi Islam* 1, no. 2 (2014), <https://doi.org/10.19105/islamuna.v1i2.565>.

Islam is a religion that respects and glorifies the status of the human race. In the teachings of fiqh, there is an essential provision that all creatures have the legal status of *Mukhtaram*. That is, their existence is respected, and it is forbidden to kill them as living beings. Humans are given priority over other creatures. This provision is based on the principle of *al-Karamah al-Insaniyah*, human honor, which shows the highest human dignity. This has been mentioned in the Al-Qur'an letter Al-Isra' verse 70:<sup>47</sup>

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَىٰ

كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا

Meaning: "And verily We have glorified the children of Adam, We transport them on land and in the sea, We give them sustenance from the good, and We exaggarate them with perfect advantages over most of the creatures We have created."

Islam's concept of human rights is elaborated from Islamic sources. Islamic Shari'a is essentially revealed to ensure the benefit of human life so that they can carry out the mission and achieve the goals of a life well. The benefit of human life can only be achieved if fundamental human rights relating to religion, soul, mind, lineage or honor, and property can be

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<sup>47</sup> Hudaeri, "Islam Dan Hak Asasi Manusia."

appropriately guaranteed and protected. This is the essence of human rights in the Islamic view.<sup>48</sup>

In principle, human rights in Islam refer to *al-Kulliyatul al-Khamsah* or *al-huquq al-insaniyah fi al-Islam* (human rights in Islam). This concept contains five main points put forward by Imam Ash-Syathibi that each individual, namely must maintain:<sup>49</sup>

- a) Guarding religion (*hifzd al-din*)
  - 1) Islam safeguards the rights and freedom of belief and worship. This means that every adherent of Islam has the right to his religion and school of thought, and there is no compulsion to follow or leave it. (QS. Al-Baqarah: 256, and QS. Yunus: 99).
  - 2) Islam also guards places of worship belonging to both Muslims and non-Muslims, protects the honor of their message, and even Islam allows war because it protects freedom of worship (QS.al-Hajj: 39-40).

From the explanation above, it is clear that Islam highly values tolerance by imposing that dhimmi's infidels in Islamic countries are under the responsibility of the state, just like Muslims. However, tolerance here is only limited to the field of mu'amalah, not to ubudiyah (QS.al-Kafirun: 1-6).

- b) Guarding the soul (*hifzd al-nafs*)

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<sup>48</sup> Washil and Fata, "HAM ISLAM DAN DUHAM PBB: Sebuah Ikhtiar Mencari Titik Temu."

<sup>49</sup> Saf, "Persoalan HAM Dan Hukum Islam."



Islam has great respect for the soul. Because only Allah is the giver of life, and He is also the one who kills (QS.al-Mulk: 2 and al-Isra: 33). In this context, a distinction must be made between murder and death. Murder means damaging the body's structure, which causes the soul to leave a healthy body with particular specifications by using a sharp weapon or bullets. While death is the exit of the soul from the body in good health, and only God can kill.

From the definition above, it can be distinguished that murder has an element of destruction or destruction before the soul leaves the body. In contrast, the death of the spirit leaves the body in perfect condition. Regarding this situation, Islam distinguishes between intentional and unintentional, as explained in the books of fiqh.

c) Guarding the mind (*hifzd al-'aql*)

The reason for the prohibition of all intoxicating objects or narcotics and the like. The reason is the source of wisdom or knowledge, the light of the estuary of the heart, the light of guidance, and the medium for human happiness in this world and the hereafter. Humans can carry out their role as caliph fi al-ard with their minds. Moreover, with reason, humans also become different from other creatures in this nature. With his

mind, God glorifies humans from other creatures (QS.al-Isra` : 70).

Therefore, Islam guards and protects the mind and provides sanctions in the form of had for violations that can damage the mind, such as drinking khamr (QS. al-Nisa': 43 and al-Ma'idah: 90) and other objects which, according to custom, cause loss of mind, in this case, other than for medical needs.

d) Guarding property (*hifzd al-mal*)

The reasons for cutting off the hands of thieves and forbidding usury and bribery or consuming other people's property in other vanity ways. Wealth is one of the core needs in life, and humans cannot be separated from it (QS. Al-Kahf: 46). The way to get wealth is by working. Therefore, Islam forbids acquiring wealth through vanity (QS. al-Baqarah:188, Al-Nisa':29, al-Baqarah:275-276, al-Baqarah:278-280). Islam strictly prohibits stealing, as emphasized in the Qur'an (QS.al-Maidah: 38).

e) Guarding offspring (*hifd al-nasl*)

The reason for the prohibition of adultery. In this case, Islam strongly recommends marriage for those who are considered and feel capable of doing so to protect offspring, wealth, and honor. This Islamic concern is to strengthen rules,

improve, calm, protect, and provide guarantees in life. It is based on wise rules.

Every Muslim must maintain these five main things to produce a more humane life order based on individual respect for individuals, individuals with society, a society with society, a society with the state, and religious communities with other religious communities.<sup>50</sup>

### C. Minimum Age Limit Study for Marriage

Marriage is conceptualized by Law Number 1 of 1974 as a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family or household based on Belief in the One Supreme God. More specifically, the Compilation of Islamic Law (KHI) states that marriage aims to create a *sakinah*, *mawaddah*, and *rahmah* household life. These marriage goals can only be achieved if one is physically and psychologically ready. The minimum age is one indicator of readiness used as a reference for someone to marry.<sup>51</sup>

The family's primary functions are expected to run well by limiting the marriage age. Sociologically, there are seven kinds of family functions, including:<sup>52</sup> (1) Biological function, marriage is carried out to obtain legal offspring both according to religion and country; (2) Educational function,

<sup>50</sup> Atqiya, "Ham Dalam Perspektif Islam."

<sup>51</sup> Abdul Fattaah, "PEMAHAMAN HUKUM MASYARAKAT KOTA MALANG TERHADAP PERUBAHAN KETENTUAN USIA MINIMAL PERKAWINAN DALAM UNDANG-UNDANG NOMOR 16 TAHUN 2019 (Studi Pada Pemohon Dispensasi Nikah Di Pengadilan Agama Kota Malang)" (UIN MAulana Malik Ibrahim Malang, 2021).

<sup>52</sup> Nur Ali, "Law Reform and Law Making (Kajian Batasan Usia Perkawinan)," *KHULUQIYYA: Jurnal Kajian Hukum Dan Studi Islam* 7, no. 2 (2014): 32–53.

the family is a place of education for all family members in the mental, spiritual, moral, intellectual and professional aspects; (3) Religious function, the family is a means of instilling religious values through understanding and awareness and practice in daily life; (4) Protective Function, the family becomes a safe place from internal and external family disturbances and overcomes all negative influences that enter it; (5) Socialization Function, the family is a place to prepare children to become good members of society; (6) Recreative Function, the family is a place to unwind and provide coolness from various activities of family members; (7) Economic Function, in the family have activities to earn a living, business development, budget planning, and how to make good use of income sources, distribute them proportionally.

In several regulations, differences are found in determining the minimum age limit for a person to be legally competent. In the customary law literature, a person is considered an adult if:<sup>53</sup> (a) *kuat gawe* (able to work independently); (b) capable of engaging in social life and being responsible for everything; (c) capable of managing his property and his own needs. Meanwhile, what is meant by minors, according to Soedjono Dirjosisworo, are those who have not shown concrete physical signs that they are adults.<sup>54</sup> In the *fiqh* literature, a person is considered to have

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<sup>53</sup> Asman, "Dinamika Usia Dewasa Dan Relevansinya Terhadap Batas Usia Perkawinan Di Indonesia: Perspektif Yuridis-Normatif," *JIL: Journal of Islamic Law* 2, no. 1 (2021): 119–38, <https://doi.org/10.24260/jil.v2i1.66>.

<sup>54</sup> Lasmadi, Wahyuningrum, and Disemadi, "Kebijakan Perbaikan Norma Dalam Menjangkau Batasan Minimal Umur Perkawinan."

matured which is marked by the release of sperm, both in a dream and in a conscious state. Whereas for women, it is marked by menstruation or pregnancy. A person's adult provisions are based on age if these indications do not appear.<sup>55</sup>

In sources of Islamic teachings, neither the Al-Qur'an nor the Hadith is found in detail setting the age limit for marriage and does not provide a definitive age limit when a person is considered an adult. The age limit for marriage is a matter of ijtihad. The absence of provisions regarding the minimum age limit for marriage is assumed to provide leeway for humans to regulate it. The Qur'an indicates that someone who wants to get married must be ready and able to follow QS. an n-Nur verse 32:<sup>56</sup>

وَأَنْكِحُوا الْأَيِّمَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ

اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

Meaning: "And marry those who are alone among you and those who are worthy (married) of your male slaves and your female slaves. If they are poor Allah will enable them with His grace. Moreover, Allah is Extensive (His gifts) and All-Knowing."

<sup>55</sup> Wiranda, "Pro-Kontra Undang-Undang Pembatasan Usia Nikah Dalam Tinjauan Maqashid Syari'ah."

<sup>56</sup> Syifa Fauziah, "BATAS MINIMAL USIA PERKAWINAN DI INDONESIA DAN BRUNEI DARUSSALAM DALAM PERSPEKTIF KESETARAAN GENDER" (UIN Syarif Hidayatullah Jakarta, 2021).

The word (الصالحين) is understood to mean worthy of marriage, that is, mentally and spiritually able to build a household. The Messenger of Allah advised young people to enter marriages with conditions of ability. Indirectly the Qur'an and Hadith acknowledge that maturity is essential in marriage. Islam provides a very elastic age limit for marriage so that it can apply to all places and times. This refers to QS. An-Nisa verse 6.<sup>57</sup>

وَأَتْلُوا أَلْيَتَمَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ ءَاذَنْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ

Meaning: "And test the orphans until they are old enough to marry. then if in your opinion they are smart (good at maintaining wealth), give them their wealth".

*Baligh al-nikahi* is marked with *al-rusyd*, which means intelligence. The *Rusyd* of a small child is when the goodness of his actions is seen in matters of religion and property. Marriage is recommended for those who want it, are ready physically and mentally, and can carry out their rights and obligations in the household.<sup>58</sup> The implementation of marriage is not only limited to sexual desires or desires but must fulfill the obligations and responsibilities of husband and wife. Marriage as a form of legal action is not enough to require puberty. Legal imposition is based on reason and understanding. A person can be

<sup>57</sup> Fattaah, "PEMAHAMAN HUKUM MASYARAKAT KOTA MALANG TERHADAP PERUBAHAN KETENTUAN USIA MINIMAL PERKAWINAN DALAM UNDANG-UNDANG NOMOR 16 TAHUN 2019 (Studi Pada Pemohon Dispensasi Nikah Di Pengadilan Agama Kota Malang)."

<sup>58</sup> Lasmadi, Wahyuningrum, and Disemadi, "Kebijakan Perbaikan Norma Dalam Menjangkau Batasan Minimal Umur Perkawinan."

burdened by law if he is wise and understands the legal burdens directed at someone.

In its development, fiqh scholars have made ijthihad to determine the age limit for marriage.<sup>59</sup> Abu Hanafiah argues that puberty for boys is 18 years, and for girls is 17. According to Imam Malik, the age of puberty is 18 years for both men and women. According to Ulama Syafi'iyah and Hanabilah, adulthood is determined by age, starting at the age of 15 and also by the presence of other signs, namely the discharge of sperm for men both in a dream and conscious state, for women characterized by menstruation that can occur at the age of 9 years. Because the signs are not the same for everyone, maturity is determined by age, 15 years. The equalization of age for men and women is because reason determines maturity.

The stipulation of the age limit for children contained in regulations or laws and regulations also varies. Likewise, the age limit related to the rights given to a person when he is considered capable or competent to act within the law also varies. In the laws and regulations that apply in Indonesia, there are several age limits for someone to be categorized as a child, including:<sup>60</sup>

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<sup>59</sup> Asman, "Dinamika Usia Dewasa Dan Relevansinya Terhadap Batas Usia Perkawinan Di Indonesia: Perspektif Yuridis-Normatif."

<sup>60</sup> Ali, "Law Reform and Law Making (Kajian Batasan Usia Perkawinan)."

**Table 3. Age Limit Provisions In Various Laws**

<b>Legislation</b>	<b>Information</b>
<i>Burgerlijk Wetboek</i> (BW)	Article 330 states that minors are those who have not yet reached the age of 21 and have not been married before.
Law Number 4 of 1979 concerning Child Welfare	Article 1 point 2 states that a child is someone who has not reached the age of 21 (twenty-one) years and has never been married.
Compilation of Islamic Law Inpres No. 1 of 1991	Article 98, paragraph (1) states that the age limit for a child who can stand alone or as an adult is 21 years, as long as the child is not physically or mentally disabled or has never been married.
Law Number 9 of 1999 concerning Human Rights	Article 1 point 5 states that a child is every human being under the age of 18 (eighteen) years and is not married, including children who are still in the womb if this is in his interest.
Law Number 35 of 2014 concerning Child Protection	Article 1 point 1 states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.
Law Number 13 of 2003 concerning Manpower	Article 1 point 26 states that a child is someone under the age of 18 (eighteen) years.
Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons	Article 1 point 5 states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.

#### **D. Harmonization of International Human Rights and Islamic Law**

**According to Mashood A. Baderin**



Mashood A. Baderin is a Muslim scholar from Africa who is a law professor at the University of London's SOAS (the School of Oriental And African Studies). His specialization is on human rights and its relation to Islamic law. Baderin has been prolific in writing works on Islamic law and human rights, both by himself and in collaboration with others. *International Human Rights And Islamic Law* is Baderin's monumental book. The book originates from his Ph.D. dissertation, which he completed at the University of Nottingham in 2001. Besides being a law professor, Baderin is also active in various international events, especially those related to human rights issues and the Islamic world.

In dialectizing human rights and Islamic law, Mashood A. Baderin introduces a thorough comparative analysis of international human rights law, namely the international covenant on civil and political rights as well as the covenant on economic, social and cultural rights, and Islamic law. According to Mashood A. Baderin, some reasons make it necessary to have a dialogue between human rights and Islamic law to achieve a common understanding. First, many UN member states are Muslim countries that enforce Islamic law, either wholly or partly domestic law. Thus, Islamic law, in various ways, influences the lifestyle of the population of Muslim countries.<sup>61</sup>

Although human rights are popular and widely accepted, there are differences of opinion regarding the conceptual interpretation and scope of

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<sup>61</sup> Baderin, *Hukum Internasional Hak Asasi Manusia & Hukum Islam*.

human rights. Baderin then cites Weston's opinion that widespread acceptance of human rights principles at the domestic and international levels is not the same as saying that there is general agreement about the nature of those rights or their substantive scope. This gives rise to the universalism and cultural relativism paradox in the international human rights discourse. These conceptual differences then have major consequences for the experience of human rights, so it is important to provide a common understanding of rights and freedoms to realize a comprehensive understanding of human rights. Likewise, dialogue is needed between international human rights law and Islamic law to promote the realization of human rights in the context of applying Islamic law in Muslim countries.<sup>62</sup>

Second, Muslim countries that are members of the United Nations (UN) work together to realize the goals of promoting and protecting international human rights. However, they also express declarations and doubts based on sharia or Islamic law when they ratify international human rights treaties. This doubt is raised by pessimism about the nature of international human rights principles, which cannot emphasize the relevance of Islamic legal principles to the effective implementation of international human rights.<sup>63</sup>

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<sup>62</sup> Baderin.

<sup>63</sup> Baderin.

Third, a general view in the West is erroneous or inaccurate about Islamic law, which is considered incompatible with international human rights. There is a wrong general perception in the West as if promoting and protecting human rights are ineffective in the Islamic legal system.<sup>64</sup>

Therefore, Baderin believes that continuous dialogue on the principle of equality of the two legal systems will open up vast opportunities to realize a shared understanding of human rights, which will facilitate the achievement of the effectiveness of promoting and protecting human rights.<sup>65</sup> That will open up more significant opportunities for realizing human benefit and welfare. According to Baderin, this dialogue will lead to an important question: how far international human rights can be interpreted by Islamic law or vice versa.

Departing from the main objective of writing Mashood A. Baedrin's book entitled "International Human Rights and Islamic Law", which is to find out the extent to which international human rights can be interpreted in a review of Islamic shari'ah and because of the nature of its presentation which begins with explaining the articles and verses contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and then followed by Islamic shari'ah comments on the

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<sup>64</sup> Baderin.

<sup>65</sup> Muhammad Zamroni, "Hukum Islam Dan HAM (Analisis Kritis Atas Pandangan Mashood A. Baderin)," *Qolamuna* 2 1, no. 2 (2016): 323–46.

contents of these articles, so Baderin named the approach he used in this book as the term a dialogical approach (dialogical approach).<sup>66</sup>

Baderin uses 5 (five) concepts as a theoretical framework, namely Islamic shari'ah ( *sources of Islamic law* ), maqashid al-shariah, fiqh ( *methods of Islamic law* ), maslahah ( *promotion of human welfare and prevention of harm* ) and about human rights. The five concepts are freshly interpreted by Baderin so that the five concepts are in sync and support each other.<sup>67</sup>

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<sup>66</sup> Sholehuddin, "MERAJUT HARMONI ANTARA HAM INTERNASIONAL DENGAN SYARI' AT ISLAM ( Telaah Terhadap Buku International Human Rights And Islamic Law Karya Mashood A Baderin )."

<sup>67</sup> Baderin, *Hukum Internasional Hak Asasi Manusia & Hukum Islam*.

## CHAPTER III

### RESULTS AND DISCUSSION

#### **A. Sociological Basis for Changes in the Age Limit for Marriage in Law Number 16 of 2019**

Along with the passage of the implementation of the Marriage Law, there are still problems related to both the substance of the Marriage Law and public awareness in understanding the Marriage Law due to the changing times, which have had an impact on the life of society and the nation.<sup>68</sup>

One of the problems in marriage is the practice of underage marriage . The practice of underage marriage has caused concern for the community, health observers, human rights observers, and the government. In addition to social problems that result in the practice of underage marriage , regulatory issues or setting the age of marriage stipulates a minimum marriage age of 16 years for women and 19 years for men. The provisions in Article 7, paragraph (1) of the Marriage Law are considered inadequate and discriminate against girls.<sup>69</sup>

The problem of underage marriage is a challenge for the State in guaranteeing children's rights to survival, growth and development and the

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<sup>68</sup> Asman, "Dinamika Usia Dewasa Dan Relevansinya Terhadap Batas Usia Perkawinan Di Indonesia: Perspektif Yuridis-Normatif."

<sup>69</sup> Ali, "Law Reform and Law Making (Kajian Batasan Usia Perkawinan)."

right to protection from violence and discrimination as stated in the 1945 Constitution of the Republic of Indonesia, Law Number 35 of 2014 concerning Amendments to Law Number 23 2002 concerning Child Protection (Child Protection Law), as well as the ratification of the Convention on the Rights of the Child. Besides that, underage marriage can hinder the human growth index, achieving the demographic bonus in 2045 and hinder the Sustainable Development Goals (SDGs), which have become a joint global commitment.<sup>70</sup>

Some of the implications of underage marriage include: children must drop out of school, there is discrimination at the age of marriage for men and women, women who are 16 years old or less than 16 years old are very vulnerable to the risk of health problems when undergoing marriage, and other.<sup>71</sup> For this reason, underage marriage, especially for girls, must be stopped immediately. There must be a policy to save future generations by amending Article 7, paragraph (1) of the Marriage Law. That is why the Public has judicially reviewed the Marriage Law at the Constitutional Court.

Judicial review of Article 7 paragraph (1) of the Marriage Law has been granted by the Constitutional Court through decision Number 22/PUU-XV/2017 because the article is discriminatory and inconsistent with Article 27 paragraph (1) of the 1945 Constitution of the Republic of

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<sup>70</sup> Asman, "Dinamika Usia Dewasa Dan Relevansinya Terhadap Batas Usia Perkawinan Di Indonesia: Perspektif Yuridis-Normatif."

<sup>71</sup> Ali, "Law Reform and Law Making (Kajian Batasan Usia Perkawinan)."

Indonesia regarding equal rights before the law and the Child Protection Law which states that boys and girls have the same fundamental rights. The Constitutional Court Decision Number 22/PUU-XV/2017 decided that Article 7 paragraph (1) throughout the phrase "16 (sixteen) years" of the Marriage Law is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. There are at least two primary considerations of the Constitutional Court. First, declaring the marriage limit for girls to be 16 years old is unconstitutional, a violation of human rights, and a form of child exploitation. Second, order the legislators within a maximum period of three years to make changes to the Marriage Law, especially concerning the minimum age limit for marriage.<sup>72</sup>

Considering the decision of Constitutional Court Number 22/PUU-XV/2017, comprehensive thoughts and results of studies and research are needed in providing solutions to the age limit for girls' marriage. Through the ministry of law and human rights, the government has conducted studies and research on the issue of the minimum age limit for marriage in Indonesia. The results of the studies and research are then published as academic papers. In the academic text, at least two essential aspects underlie changes in the minimum age limit for marriage in Indonesia: health and education.<sup>73</sup>

### **1. Health Aspect**

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<sup>72</sup> Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017

<sup>73</sup> Nasional, HASIL PENYELARASAN NASKAH AKADEMIK RANCANGAN UNDANG-UNDANG TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN, Bphn.go.id.

Following up on the Constitutional Court Ruling, based on the study, the Maternal Mortality Rate in Indonesia is still very high and is a serious problem. One of the contributors is the poor level of reproductive health because there is no readiness for pregnancy and childbirth.<sup>74</sup>

From the 2016 BPS data, 26.16% of women gave birth under 20. RSCM data 2014-2016 from the Obstetrics Emergency Room there were 520, there were 78 (15%) before the age of 20 experienced pregnancy with anaemia (OR2.08), Low Birth Weight (OR1.83). The 2012 IDHS survey found that mothers who gave birth were under 20 years of age contributed to the high mortality rate in childbirth. In the 2017 IDHS data, 7% of women aged 15-19 have given birth or are pregnant with their first child. Obstetrics and Gynecology state that the impact of teenage pregnancy includes many aspects, namely:<sup>75</sup>

1. Miscarriage (OR 3.3)
2. Anaemia in pregnancy (OR 2.95)
3. Maternal malnutrition (OR 2.5)
4. High blood pressure (OR 1.82)
5. Eclampsia (OR 3.18)
6. Premature birth (OR 1.77)

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<sup>74</sup> Nasional, Bphn.go.id.

<sup>75</sup> Nasional, Bphn.go.id.



7. LBW (OR 1.71)
8. Congenital abnormalities (OR 1.08)
9. CPD (OR 0.89)

In the agreement of the 2018 Indonesian Doctors Association (IDI) Working Meeting in Batam, it was stated that the minimum age for marriage is 18 years, and the minimum age for pregnancy is 20 years. Childbearing age requires physical and hormonal maturity. When viewed from the average span of puberty, girls finish at 18. This figure is calculated from 15 plus 3 years. Whereas for men, it is 20 years old, that is, from the calculation of the age of 16.5 years plus 3.5 years. Women under 20 have a high risk of disease and death when performing their reproductive functions.<sup>76</sup>

The minimum age for marriage is also based on data that pregnancy in girls aged 10-14 has a risk of death five times that of women aged 20-24. Cervical maturity for women is 19-21 years old, so the ideal marriage and pregnancy is 20-35 years. Marriage and pregnancy at this ideal age provide advantages for women in the period of highest fertility, lowest chromosomal abnormalities, the lowest risk of pregnancy complications, and prevention of cervical cancer. Apart from the health side, underage marriage

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<sup>76</sup> Nasional, Bphn.go.id.

results in a high risk of domestic violence, an increased risk of divorce and very low psychological maturity.<sup>77</sup>

The opinion of the Center for Analysis of Health Determinants (PADK) is based on research from the Ministry of Women's Empowerment and Child Protection (KPPPA), which states that underage marriage has complex impacts, namely reproductive health, violence, etc. From the aspect of intelligence, the process of prefrontal brain maturity is 18-35 years (as a human who can act wisely, full of planning). Thus what is called ripe is ripe: 20-23 years.<sup>78</sup>

Girls who enter into underage marriages tend not to have the "right" to speak out against their older husbands, including in sexual relations. This is exacerbated by the tradition of having children or "babies" as soon as possible after marriage which is still common in Indonesia. As a result, these girls face sexual activity that is too early with very close pregnancy spacing when their reproductive organs have not yet developed optimally.<sup>79</sup>

Research proves that girls in underage marriages are more at risk for complications because the child's body anatomy is not ready for conceiving or giving birth. Several medical events often occur in pregnant children or give birth too early, such as obstetric

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<sup>77</sup> Nasional, Bphn.go.id.

<sup>78</sup> Nasional, Bphn.go.id.

<sup>79</sup> Nasional, Bphn.go.id.

fistula; uterine prolapse; bleeding; premature baby birth; and even death.<sup>80</sup>

Not only girls in underage marriages to be victims, but pregnancy at a young age also impacts the children they are carrying. This is because the mother is still a growing child who needs nutrition. At the same time, the fetus she contains also needs nutrition, so there is competition for nutrition and nutrition between the mother and fetus. No wonder 14% of babies born to mothers under 17 years are premature.<sup>81</sup>

Underage marriage also has an impact on the psychological health of children. Field research conducted by the Center for Population and Policy Studies at Gadjah Mada University (PSKK UGM) shows at least two adverse effects of underage marriage on the child's psychological health. First, the child's mental health can be disturbed when faced with domestic fights triggered by trivial matters because children are immature in thinking and dealing with household fights. Second, the child's psyche will also be disrupted when he has to accept the burden of responsibility in taking care of the household, especially domestic work that is not appropriate for children at their age.<sup>82</sup>

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<sup>80</sup> Nasional, Bphn.go.id.

<sup>81</sup> Nasional, Bphn.go.id.

<sup>82</sup> Nasional, Bphn.go.id.

Pregnancy under 19 years of age increases the risk of medical complications for both the mother and the baby she is carrying. Pregnancy at a very young age is closely related to maternal morbidity and mortality. According to the Indonesian Demographic and Health Survey conducted in 2012, the number of births during adolescence (aged 15 to 19 years) is 48/1,000. This figure indicates a high risk of maternal and infant mortality. This means that the practice of underage marriage also contributes to the high Maternal Mortality Rate (MMR) in Indonesia, which continues to increase from previous years, namely 359/100,000 live births in 2012.<sup>83</sup>

Children born to mothers younger than 19 years have a 30-40 per cent increased risk of stunting for two years and failure to complete secondary school. Furthermore, the impact of underage marriage on girls will also be experienced by their children, with less opportunity to attain a higher level of education, a greater likelihood of remaining poor, and more vulnerability to domestic violence.<sup>84</sup>

According to dr. Fransisca Handy, in the case of a judicial review of the Marriage Law, said that there are at least five health consequences of pregnancy under the age of 18, namely: 1) the

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<sup>83</sup> Nasional, Bphn.go.id.

<sup>84</sup> Nasional, Bphn.go.id.

mental health of the mother; 2) infectious diseases; 3) pregnancy disorders; 4) birth problems; 5) the health of the newborn.<sup>85</sup>

## 2. Educational Aspects

Regarding education, Article 28C paragraph (1) of the 1945 Constitution states that everyone has the right to education and to benefit from science and technology, arts and culture, to improve the quality of life. For the welfare of humanity, Article 60 Law Number 39 of 1999 states that every child has the right to receive education and teaching in the framework of personal development according to his interests, talents and level of intelligence. Every child also has the right to seek, receive and provide information according to his level of intellect and age for his development.<sup>86</sup>

Even more explicitly, Article 28 of the Convention on the Rights of the Child states that every child has the right to primary education, which must be free from the State. Based on the Minister of Education and Culture Regulation 19 of 2016 concerning the Smart Indonesia Program, a 12-year compulsory education program is called for from elementary to secondary education. With this program, girls should have completed secondary education at 16. This is discriminatory when compared

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<sup>85</sup> Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017

<sup>86</sup> Nasional, HASIL PENYELARASAN NASKAH AKADEMIK RANCANGAN UNDANG-UNDANG TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN, Bphn.go.id.

to the age limit for men's marriage. With an age limit of 19, men have the right to complete secondary education.<sup>87</sup>

It is already a parallel where the younger the age of marriage, the lower the level of education the child achieves. Recent research has found that marriage directly results from dropping out of school for girls, not because of poverty. The entrenched tradition exacerbates this: girls are valued lower than boys, so education is not their main thing.

In Indonesia, dropping out of school due to underage marriage is common. Particularly nearing the National Examination period, the media reported a lot about the number of students who cancelled taking part in the National Examination because their parents had married them off beforehand, as happened in Jember (East Java), Lombok (West Nusa Tenggara), Indramayu (West Java), Jambi, Bali, Lampung, Bengkulu, and Porcupine (West Kalimantan). Delaying the marriage age is one way for children to receive higher education.<sup>88</sup>

Thus, the younger the age at which girls marry, the lower the level of education that can be achieved by the child concerned. Underage marriage often results in children dropping out of school because they have new responsibilities as wives, mothers-to-be, or

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<sup>87</sup> Nasional, Bphn.go.id.

<sup>88</sup> Nasional, Bphn.go.id.

parents who will play a bigger role in managing the household, being the backbone of the family and having to make a living. The national education system in Indonesia implements 12 years of compulsory education. Girls cannot enjoy their constitutional educational rights if a girl's marriage is carried out at 16 and the conditions are maintained. This condition differs from boys who are 19 years old and can complete 12 years of compulsory education.

Based on the results of studies and research in these academic texts, the purpose of aligning the age limit for marriage is to:<sup>89</sup>

- a) Reducing the risk of death in pregnant women and childbirth
- b) Increase opportunities for education

If a woman and a man's marriage is carried out at 19 or over, they can first complete the 12-year compulsory education (graduate high school). The calculation is that if elementary school is required to be 7 (seven) years old, then the age of graduating from high school is 19. By having an adequate education, a person who is married over 19 years of age can compete for a more decent job. This is expected to be a supporting factor in poverty reduction in Indonesia.<sup>90</sup>

In addition, one of the impacts of marriage over the age of 19 is the maintenance of psychosocial aspects. Someone over 19 has more sense of

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<sup>89</sup> Nasional, Bphn.go.id.

<sup>90</sup> Nasional, Bphn.go.id.

responsibility and obligation to become husband and wife. Girls, at 19, can carry out the responsibilities of being a wife, sex partner and mother, as well as the roles that adults should have.<sup>91</sup>

**B. Sociological Basis for Changing the Age Limit for Marriage in Law Number 16 of 2019 From the Perspective of Children's Rights**  
**Mashood A. Baderin**

The Spirit of Human Rights always aspires to protection, fulfillment, and respect for every fundamental human right. These fundamental human rights are based on international consensus, namely the Universal Declaration of Human Rights, including personal rights, political rights, economic rights, rights to protection, rights to equal standing before the law, including fundamental rights that must be given to a child who must be respected, protected and fulfilled.

Regarding children's rights, Indonesia has guaranteed these rights in the Child Protection Act Number 35 of 2014. This law is the result of the ratification of international conventions. The law has detailed the children's rights that the family and the state must fulfill. Among his rights are civil rights and liberties; family and nurturing environment; fundamental health and welfare rights; the right to education, unuse of free time, and cultural activities; as well as special protection rights.

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<sup>91</sup> Nasional, Bphn.go.id.



Concerning the change in the minimum age limit for marriage in Indonesia, this is a step by the Indonesian government in the context of reforming the law and protecting, fulfilling, and respecting the rights of children who have been deprived of in cases of underage marriage in Indonesia. Previously, the Indonesian Marriage Law provided a minimum age limit for marriage of 16 years for women and 19 years for men. However, as time went on, these provisions caused more and more problems, especially the problem of underage marriage which was increasingly prevalent. As a result of this practice of underage marriage, many children's rights are not fulfilled.

In the study and research on the results of the alignment of the academic draft of the law on amendments to law number 1 of 1974 concerning marriage, at least two sociological facts were found that underlie the change in the minimum age limit for marriage in Indonesia, namely from the health aspect, and the education aspect. First, from the health aspect, the government considers that the practice of underage marriage can pose complex health risks, especially for girls under 19 years of age, such as medical complications if pregnancy occurs in underage marriage couples. It can even cause death for the mother and the unborn baby. Not only that, but underage marriage also harms psychological health because children are immature in thinking and dealing with all problems in the household.

From the educational aspect, the government considers that if the minimum age for marriage for women is set at 16 years, discrimination will

occur when compared to the marriage age limit for men, with an age limit of 19 years, men have the right to complete secondary education, while women lose this right. So the younger the age of marriage, the lower the level of education the child achieves. The entrenched tradition exacerbates this: women are valued lower than men, so education is not the main thing for women.

These sociological facts do not align with the spirit of Human Rights, which aspires to protect and fulfill human rights, especially in fulfilling children's rights. The government's goal in making changes to the minimum age limit for marriage is to prevent underage marriage and to protect and fulfill children's rights which are part of human rights. Some of the children's rights that the government wants to fight for by changing the minimum age limit for marriage, namely the right to survival, the right to protection from all forms of discrimination, the right to health, and the right to education.

In line with that, the human rights spirit in Islam also highly upholds fundamental human rights. According to Mashood A. Baderin, the teachings of Islamic law oblige to fully respect and fulfill children's rights as part of human rights. Baderin said that Islamic law regulates children's rights. Islamic law also recognizes the need for protection for children because of their fragility. Many Qur'an verses and the Prophet's hadith remind parents and society about their responsibility towards their children. From the

context of the Qur'an and hadith, Baderin said that there are at least ten fundamental rights of children, namely:<sup>92</sup>

- 1) The right to the chastity of heredity.
- 2) Right to life.
- 3) Right to legitimacy and reputation.
- 4) The right to breast milk, shelter, livelihood, and care, including health care and nutrition.
- 5) Right to separate bed assignments for each child.
- 6) The right to a secure future.
- 7) The right to religious guidance and upbringing.
- 8) The right to education, sports, and self-defense training.
- 9) The right to fair treatment regardless of gender or other factors.
- 10) The right to lawful sources of funds in raising them.

Based on the description of the fundamental rights of children presented by Mashood A. Baderin, it can be seen that children's rights are guaranteed in Islamic law, both in the Al-Qur'an and hadith. In connection with aligning the spirit of International Human Rights and Islamic Law in protecting and respecting children's rights, Mashood A. Baderin's views must become a reference in viewing the policy of changing the minimum age limit for marriage.

a. Health Aspect

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<sup>92</sup> Mashood A. Baderin, *International Human Rights Law & Islamic Law, National Human Rights Commission*, II (Jakarta: MitraGrafindo Mandiri, 2019).

The stipulation of a marriage age limit of 16 years for women causes the practice of underage marriages. Many health consequences arising from the practice of underage marriages. Starting from physical health and mental can even cause death. Therefore, in the end, the minimum age limit for marriage was changed to 19 years for both men and women. This aims to protect and fulfill the rights of children who are neglected due to underage marriages, especially the right to health and survival.

Children's rights have been determined in the Convention on Rights (CRC) when associated with the provisions of International Human Rights Law. One of the provisions in the convention is that children have the right to defend their lives and obtain the best standard of health and care, in line with Mashood A. Baderin's view that one of the fundamental rights of children is the right to life and the right to breast milk, shelter, livelihood, and maintenance, including health care and nutrition.

b. Educational Aspects

The stipulation of a different minimum age for marriage between men and women in the marriage law, in addition to causing discrimination, also deprives girls of their right to education. The marriage law stipulates that the minimum age for marriage for women is 16 years. This creates discrimination when compared to the minimum age for marriage for men. With an age limit of 19 years, men have the right to complete secondary education. Therefore, the government is trying to fulfill children's right to education by changing the minimum age limit for marriage so that every

child has the right to complete the compulsory education program, at least up to the high school level.

The convention on the child's rights provides provisions that every child has the right to grow and develop. The right to child growth and development is divided into two major parts: education rights and the right to a standard of living. The meaning is the child's right to obtain education in all its forms and levels and the child's rights relating to an adequate standard of living for physical, mental, spiritual, moral, and social development.

In Mashood A. Baderin's view, the right to education is a fundamental right every child must obtain. Many verses in the Al-Qur'an and Hadith of the Prophet remind parents and society about their responsibilities towards their children, including fulfilling their children's right to education. In essence, education is a child's right, which is his parents' obligation. Children in the future can demand accountability from their parents if parents ignore and do not heed the obligation to educate their children.

Based on this description, it can be understood that in the view of Mashood A. Baderin, there is harmony between International Human Rights and Islamic law regarding recognizing children's rights. Children's rights regulated in International Human Rights are in line with and in line with children's rights guaranteed in Islamic law, both in the Al-Qur'an and

the Hadith of the Prophet. Every child has the right to have their fundamental rights fulfilled, especially the right to life, education, protection from discrimination, and the right to get health care for their survival. Therefore, in this case, the change in the minimum age limit for marriage is intended to fight for children's rights, especially children's fundamental rights such as the right to life, the right to protection from all forms of discrimination, the right to health, the right to education, and the right to for protection from exploitation, in line with Mashood A. Baderin's views on children's rights.

## CHAPTER IV

### CLOSING

#### A. Conclusion

Based on the discussion that has been described above, the writer can conclude as follows:

1. There are two aspects underlying the change in the age limit for marriage. First, from the health aspect, the government considers that the practice of underage marriage can pose complex health risks, especially for girls under 19 years of age, such as medical complications if pregnancy occurs in underage marriage couples. It can even cause death for the mother and the unborn baby. Second, from the aspect of education, the government considers that if the minimum age for marriage for women is set at 16 years, then discrimination occurs when compared to the age limit for men, with an age limit of 19 years, men have the right to complete secondary education, while women lose that right. Sociologically, changing the minimum age limit for marriage is an effort by the government to prevent underage marriage because many children's rights are not fulfilled in underage marriage. Some of the children's rights that the government wants to fight for by changing the minimum age limit for marriage, namely the right to survival, the right to protection from all forms of discrimination,

the right to health, the right to education, and the right to protection from exploitation.

2. Mashood A. Baderin believes there is harmony between International Human Rights and Islamic law, especially regarding recognizing children's rights. Baderin said Islamic law had regulated the rights of children. According to him, there are at least ten fundamental rights of children contained in the Al-Qur'an and Hadith, namely: 1) The right to the chastity of offspring; 2) the Right to life ; 3) The right to legitimacy and reputation; 4) The right to water mother's milk, shelter, livelihood and maintenance, including health care and nutrition; 5) The right to determine a separate bed for each child; 6) The right to guarantee the future; 7) The right to religious guidance and care; 8) The right to education and sports and self-defense training; 9) The right to fair treatment regardless of gender or other factors; 10) The right to lawful sources of funds in raising them. According to Baderin, every child has the right to have his fundamental rights fulfilled, especially the right to life, the right to education, the right to protection from discrimination or protection from things that harm him, such as exploitation, and also the right to get health care for the sake of his life. Therefore, in this case, the change in the minimum age limit for marriage is intended to fight for children's rights, especially children's fundamental rights such as the right to



life, the right to protection from all forms of discrimination, the right to health, the right to education, and the right to for protection from exploitation, in line with Mashood A. Baderin's views on children's rights.

## **B. Suggestion**

The minimum age to be able to marry for women has been updated from the previous 16 years to 19 years with the hope that the marriage regulations will have a better impact than before. However, times will continue to move forward, giving rise to demands for changing the age again. Considering there are current regulations in Indonesia stipulating that the age of adulthood is 21 years, plus there is research showing that marriage for women under 21 increases the risk of miscarriage. The view in developed countries is that adults are those who are already 21 years. In changing the age of adulthood, the DPR should be able to consider this more to anticipate the lack of maturity at the age of 19 years.

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**KEMENTERIAN AGAMA REPUBLIK INDONESIA UNIVERSITAS  
ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG  
FAKULTAS SYARIAH**

Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399 Faksimili (0341) 559399  
Website fakultas: <http://syariah.uin-malang.ac.id> atau Website Program Studi: <http://fhk.uin-malang.ac.id>

**CONSULTATION PROOF**

Name : Ahmad Maulana Sabbaha  
Student Number : 19210082  
Department : Islamic Family Law  
Supervisor : Erik Sabti Rahmawati, MA., M.Ag  
Thesis Title : FULFILLMENT OF CHILDREN'S RIGHTS IN MARRIAGE AGE  
RESTRICTION IN THE PERSPECTIVE OF MASHOOD A.  
BADERIN VIEW OF HUMAN RIGHTS (Theoretical and  
Philosophical Study of Marriage Law Number 16 of 2019)

No.	Day/Date	Subject of Consultation	Signature
1.	Thursday, 02-02-2023	Consultation Chapter I	
2.	Wednesday, 08-02-2023	ACC Chapter I	
3.	Thursday, 09-02-2023	Consultation Chapter II	
4.	Wednesday, 15-02-2023	ACC Chapter II	
5.	Thursday, 16-02-2023	Consultation Chapter II	
6.	Wednesday, 22-02-2023	ACC Chapter II	
7.	Thursday, 23-02-2023	Consultation Chapter IV	
8.	Thursday, 02-03-2023	ACC Chapter IV	
9.	Wednesday, 08-03-2023	Consultation Abstract	
10.	Thursday, 09-03-2023	ACC Abstract and ACC Thesis	

Malang, 09 Maret 2023  
Acknowledged by,  
Head Department of Islamic Family Law

Erik Sabti Rahmawati, M.A., M.Ag  
NIP.197511082009012003

## **CURRICULUM VITAE**



### **PERSONAL DETAILS**

---

Name : Ahmad Maulana Sabbaha  
 Place and Date of Birth : Pati, 22 March 2001  
 Gender : Male  
 Religion : Islam  
 Marital Status : Single

### **EDUCATION**

---

2008 SDN 02 Panggang, Jepara  
 2014 MTsN 01, Jepara  
 2017 SMAN 01, Jepara  
 2019 UIN Maulana Malik Ibrahim, Malang

### **ORGANIZATIONAL EXPERIENCE**

---

2019- Ikatan Pelajar Nahdlatul Ulama (IPNU) Ranting Dema'an  
 2019- Pergerakan Mahasiswa Islam Indonesia (PMII) Rayon "Radikal" Al-Faruq  
 2019- UKM Lembaga Kajian, Penelitian dan Pengembangan Mahasiswa (LKP2M)  
 2020- Himpunan Mahasiswa Program Studi (HMPS) Hukum Keluarga Islam, Devisi Minat dan Bakat  
 2021- Himpunan Mahasiswa Program Studi (HMPS) Hukum Keluarga Islam, CO Devisi Minat dan Bakat  
 2022- Direktur UKM LKP2M