

REVISITING THE LEGALITY OF UNDERAGE MARRIAGE IN THE VIEWS OF ISLAMIC LEGAL SCHOLARS

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Abstrak: Pernikahan di bawah umur sering kali menjadi salah satu perdebatan yang paling hangat di antara para ahli hukum Islam (*fuqahâ'*) dan bahkan ditentang oleh berbagai kelompok karena berbagai alasan, termasuk peraturan perundang-undangan, masalah kesehatan, sosial dan ekonomi, dan hak-hak anak. Artikel ini mengkaji legalitas pernikahan di bawah umur menurut para ahli hukum Islam. Penelitian ini merupakan penelitian kepustakaan dengan menggunakan pendekatan konseptual dan komparatif. Sumber data untuk penelitian ini meliputi teks-teks *fikih* terkemuka dari mazhab Mâlikî, Hanafî, Shâfi'î, Hanbalî, dan Syiah Imâmiyah. Data dianalisis dengan menggunakan metodologi analisis isi. Temuan penelitian ini menunjukkan bahwa empat mazhab Sunni dan mazhab Syiah Imamiyah mengakui kebolehan pernikahan anak, dengan berbagai syarat, terutama terkait *wali* yang menikahkan dan potensi manfaat atau mudharat dari pernikahan tersebut. Penelitian ini melengkapi penelitian tentang perspektif lima mazhab *fikih* besar mengenai legalitas pernikahan anak. Penelitian ini juga memberikan perspektif alternatif dalam menafsirkan peraturan hukum tentang pernikahan di Indonesia.

Kata Kunci: Pernikahan Anak, Maliki, Hanafi, Syafi'i, Hanbali

Abstract: Child marriage has often been one of the most heated debates amongst Islamic jurists (*fuqahâ'*) and is even opposed by various groups for a variety of reasons, including legislative regulations, health, social and economic concerns, and children's rights. This article examines the legality of underage marriage according to Islamic law scholars. This research is a library-based study using a conceptual and comparative approach. The data sources for this research include the prominent *fiqh* texts of the Mâlikî, Hanafî, Shâfi'î, Hanbalî, and Shia Imamiyya schools. The data is analyzed using content analysis methodology. The findings of this study indicate that the four Sunni schools and the Shia Imamiyya school recognize the permissibility of child marriage, with various conditions, particularly regarding the guardian (*wali*) who performs the marriage and the potential benefits or harms of the marriage. This study complements research on the perspectives of the five major *fiqh* schools regarding the legality of child marriage. It also provides an alternative perspective for interpreting the legal regulations on marriage in Indonesia.

Keywords: Child Marriage, Maliki, Hanafi, Shafi'i, Hanbali

INTRUDUCTION

The legality of child marriage remains a contemporary issue in the legal studies of Indonesia. According to Indonesian regulations, underage marriage is considered invalid and lacks legal recognition. The Marriage Law No. 1 of 1974 states that the mental and physical maturity of both spouses in a marriage is determined by the adequacy of their spiritual and physical readiness, which is at the age of 19. In this regulation, a woman may marry at 16, and a man must be 19 years old for the marriage to be legally recognized (*Undang-Undang (UU) Nomor 1 Tahun 1974 Tentang Perkawinan*, n.d.). However, Law No. 16 of 2019 revises the marriage age limit, setting the minimum marriage age for both men and women at 19 years (*Undang-Undang (UU) Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*, n.d.).

Article 20 of Law No. 1 of 1974 also stipulates that the Marriage Registration Officer (PPPN) is prohibited from performing or assisting in a marriage if they are aware of violations of Articles 7 (1), 8, 9, 10, and 12, based on complementary regulations concerning the duties and authorities of Religious Affairs Offices (KUA). Although underage marriage is not explicitly prohibited by law (*Undang-Undang (UU) Nomor 1 Tahun 1974 Tentang Perkawinan*, n.d.), such marriages are not registered by the PPPN. Unregistered marriages are considered *sirri* (secret) marriages without legal status, indicating that the state does not recognize the marriage. However, couples can seek an

exception from the District Court for non-Muslims or from the Religious Court for Muslims. Article 1 (5) of the Supreme Court Regulation No. 5 of 2019 on Guidelines for Marriage Dispensation explains that marriage dispensation is the process of granting court approval for couples who are under the age of 19 (*Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Dispensasi Nikah*, n.d.). However, marriage dispensation is not automatically granted without consideration of *mashlahah* (benefit).

On the other hand, under Islamic law, there is no specific age limit for marriage for a Muslim, meaning that, in principle, underage marriage is permitted. However, in the literature of Islamic jurisprudence (*fiqh*), the legal rulings regarding the marriage of minors have been discussed. It is stated that a father is permitted to marry off his young son, with the following considerations:

ويجوز للاب ان يزوج الصغير من لا تكافئه بباقي
الخصال كنسب وحرقة ويثبت له الخيار اذا بلغ في
الاصح ومقابل له لايجوز.

A father is permitted to marry off his young son to a woman who is not considered *kufu'* (equal in status) to him in certain aspects, such as lineage or profession. Upon reaching the age of maturity (*baligh*), the son is granted the right of *khiyar* (option to annul the marriage), according to the prevailing opinion. However, an opposing view holds that such a marriage is impermissible (Al-Nawâwî, n.d.).

Ibn Hajar al-Haitamî, a prominent scholar of the Shafi'i school, emphasized that it is permissible for a guardian to marry

off a young child if there is *mashlahah*. He stated:

(وله) أي الأب فالجد (تزويج صغير عاقل) غير مسموح (أكثر من واحدة) ولو أربعاً إن رآه مصلحة.

It is permissible for a father, and subsequently the grandfather, to marry off a young son, who has not yet reached puberty, to more than one wife, even up to four, if there is a perceived benefit (Al-Haitamî, 2009).

It is evident that there are differing views between Islamic jurists and Indonesian legal regulations concerning underage marriage. This article explores the legality of underage marriage according to Islamic jurists across different schools of thought. Research on the legality of underage marriage has been limited in the field of Islamic family law. Some studies address this topic but with different focuses and data sources, such as those by Oguzhan Tan, Quentin Wodon, Nazir Ullah, et al., and Kasjim Salenda (Tan, 2018; Ullah et al., 2021; Wodon, 2015). Likewise, studies by researchers like Eka Gifriana, Agus Khalimi, Waluyo Sudarmaji, Hamzah Hasan, et al., and others (Abriansyah et al., 2024; Ahmad Fadli Fauzi, Jumarim, 2022; Amalia, 2017; Eka Gifriana et al., 2022; Khalimi et al., 2021; Rivki et al., 2020; Sudarmaji, 2021; Zuhriah & Sukadi, 2022) do not compare the legality of underage marriage according to the five major Islamic schools of thought: Mâlikî, Hanafî, Shafi‘î, Hanbalî, and Shia Imamiyya. Therefore, the issue discussed in this article has not been addressed by researchers, making this study theoretically significant for the development of Islamic family law studies.

METHOD

This research is a library study that examines the legality of underage marriage according to the scholars of the Mâlikî, Hanafî, Shafi‘î, Hanbalî, and Shia Imamiyya schools. Library research involves a series of activities related to data collection, reading, recording, and processing research materials (Zed, 2018). The approach used in this study is conceptual and comparative (Marzuki, 2012). The primary data sources for this research are books by Islamic jurists. Secondary data include books, journal articles, and dictionaries that are closely related to the topic under discussion. The data are analyzed using content analysis, a scientific research technique aimed at understanding the characteristics of content and drawing conclusions from it (Eriyanto, 2001).

RESULT AND DISCUSSION

In Islamic legal tradition, particularly in the Shafi‘î fiqh school, there is no explicit mention of a specific age limit for marriage. However, the age of marriage is generally determined by an individual’s maturity and readiness to shoulder the responsibilities of family life. This is implied in Q.S. An-Nisâ’ verse 6, which states: “And test the orphans until they reach marriageable age. And if you perceive in them sound judgment, then release to them their property...” (Ministry of Religious Affairs of the Republic of Indonesia, 2007). In this verse, “marriageable age” refers to the desire and readiness to take on the responsibilities of marriage and family life (Mujieb, 1994). However, a broader interpretation of Q.S.

Ath-Thalaq verse 4 suggests the possibility of valid marriage for a woman who has not yet menstruated, indicating that marriage to a girl who has not yet reached puberty is recognized as valid. The verse reads: "And those who no longer expect menstruation among your women, if you doubt, then their *'iddah* is three months; and for those who have not menstruated..." (Q.S. Ath-Thalaq/65: 4) (Departemen Agama Republik Indonesia, 2007). Based on this verse, most scholars from the four Sunni schools of jurisprudence have concluded that marriage for minors is permissible and valid. Sheikh Wahbah az-Zuhaili explains:

أما الصغر فقال الجمهور منهم أئمة المذاهب الأربعة بل ادعى ابن المنذر الإجماع على جواز تزويج الصغيرة من كفاء واستدلوا عليه بما يأتي: بيان عدة الصغيرة . وهي ثلاثة أشهر . في قوله تعالى: (واللاتي يئسن من الحيض من نساءكم إن ارتبتم، فعدتهن ثلاثة أشهر واللاتي لم يحضن) (الطلاق: 4/65) فإنه تعالى حدد عدة الصغيرة التي لم تحض بثلاثة أشهر كاليائسة، ولا تكون العدة إلا بعد زواج وفراق، فدل النص على أنها تزوج وتطلق ولا إذن لها.

Regarding the legality of marriage for minors, most scholars, including the four imams of the madhhabs, and according to Ibn Munzir, there is consensus on the permissibility of marriage for a young girl to a man who is not her equal (*kufu'*) in certain aspects such as lineage or profession. They base their legal argument on several points, the first being the explanation of the *'iddah* for a young girl, which lasts three months, as stated in the verse: "And those women who despair of menstruation..." (Q.S. Ath-Thalaq/65: 4). This verse sets the *'iddah* for a young girl who has not

menstruated to be three months, the same as for a menopausal woman. It is impossible for her to undergo this period unless she has been married and divorced. This indicates that such a girl must have been married and divorced (az-Zuhaili, 1989).

This interpretation is further supported by scholars of tafsir, including Imam al-Qurthubi, who interprets the verses in context with the opinions of earlier scholars. He writes:

وقال أبو عثمان عمر بن سالم: لما نزلت عدة النساء في سورة "البقرة" في المطلقة والمتوفى عنها زوجها قال أبي بن كعب: يا رسول الله، إن ناسا يقولون قد بقي من النساء من لم يذكر فيهن شيء: الصغار وذوات الحمل، فنزلت: واللاتي يئسن الآية.

Abu 'Utsman, whose name was 'Umar bin Salim, narrated: When the verses in Surah al-Baqarah regarding the waiting period (*'iddah*) for divorced women and widows were revealed, 'Ubay bin Ka'ab said: "O Messenger of Allah, indeed the people say that there are still women whose waiting periods are not mentioned in the Qur'an, namely young girls who have not yet reached puberty and pregnant women." Then, the verse was revealed: "And those of your women who no longer expect menstruation..." Thus, this matter was clarified through the revealed verse (Al-Qurthubi, n.d.).

From this explanation, it is clear that the question raised by 'Ubay ibn Ka'ab about wives who had been left by their husbands included the young girls who were not yet menstruating. Likewise, Sheikh Wahbah az-Zuhaili explains that the phrase "women who do not menstruate" refers to young girls (*shaghirah*). He further clarifies:

واللائي لم يحضن أي الصغيرات، فعدتهن ثلاثة أشهر أيضا.

“Women who do not menstruate” refers to young girls (*shaghirah*), and their *‘iddah* is also three months (az-Zuhailî, 1418).

This demonstrates that the Qur’an recognizes the validity of a marriage to a young girl, implying that marriage to minors is sanctioned in the Qur’an. Imam al-Qurthubi continues:

وقال مقاتل: لما ذكر قوله تعالى: والمطلقات يتربصن بأنفسهن ثلاثة قروء [البقرة: (228)] قال خلاد بن النعمان: يا رسول الله، فما عدة التي لم تحض، وعدة التي انقطع حيضها.

Maqatil said, when Allah’s statement about the *‘iddah* of divorced women was revealed, a question was raised about the *‘iddah* of a woman who has never menstruated, and the *‘iddah* of a woman who has reached menopause (Al-Qurthûbi, n.d.).

This interpretation is supported by Sheikh Hasan Ibn Muhammad an-Naisaburi in his tafsir as follows:

وإن كانت حائلا فإن امتنع الحيض في حقها إما للصغر المفرط أو الكبر المفرط فعدتها بالأشهر لا بالأقراء.

If a woman is neither pregnant nor menstruating due to being very young or very old, her *‘iddah* is calculated by months, not by the period of purity (An-Naisaburî, 1416).

This interpretation clearly shows that the Qur’an recognizes the legitimacy of marriage to a young girl, even if she is underage, and permits a guardian (father or others) to marry off a young girl. In fact,

Islam does not specify a minimum marriage age. Most scholars agree that a guardian or parent may marry off their daughter at any age. This view holds that age is not a criterion for the eligibility of marriage partners. Therefore, they consider the marriage of a young child to be valid. Sulaiman ibn ‘Umar ibn Manshûr al-Jamal explains:

ولأب تزويج بكر) أي سواء كان له على مالها ولاية كأن كانت صغيرة أو بلغت سفيهة أو لم يكن له عليه ولاية كأن بلغت رشيدة.

It is permissible for a father to marry off his daughter, whether she has authority over her property or not, if the girl is young or of age but lacks control over her own property, such as a mature but foolish girl or one without authority over her wealth (Al-Jamâl, 2014).

The Four Sunni Schools of Thought on the Legality of Child Marriage

The following are the opinions of the Mâlikî, Hanafî, Shâfi‘î, Hanbalî schools and Shia Imamiyya school regarding the legality of child marriage:

a. Hanafî School

In the book *al-Mabsûth*, it is stated:

[باب نكاح الصغير والصغيرة] (قال): وبلغنا «عن رسول الله ﷺ أنه تزوج عائشة وهي صغيرة بنت ستة سنين وبني بها وهي بنت تسع سنين، وكانت عنده تسعا» ففي الحديث دليل على جواز نكاح الصغير والصغيرة بتزويج الآباء.

Chapter on the marriage of a child who has not reached puberty. A hadith has reached us that the Prophet Muhammad married ‘Â’ishah when she was six years old and consummated the marriage when she

was nine. ‘Ā’ishah lived with the Prophet for nine years. From this hadith, it is understood that there is evidence permitting the marriage of young children, both male and female, with the marriage contract conducted by the parents (As-Sarkhasī, n.d.).

b. Mālikī School

In the book *al-Mudawwanah*, it is stated:

أرأيت إذا زوج الصغيرة أبوها بأقل من مهر مثلها أيجوز ذلك عليها في قول مالك؟ قال: سمعت مالكا يقول يجوز عليها إنكاح الأب، فأرى أنه إن زوجها الأب بأقل من مهر مثلها أو بأكثر فإن ذلك جائز إذا كان إنما زوجها على وجه النظر لها.

What is your opinion regarding a father marrying off his young daughter with a dowry less than the customary dowry? Imam Mālik answered that a father may marry his underage daughter, whether with a customary dowry or not, if the marriage is deemed beneficial for the child (Anas, 1994).

c. Hanbalī School

In the book *al-Mughnī*, it is stated:

مسألة؛ قال: (وإذا زوج الرجل ابنته البكر، فوضعها في كفاءة، فالنكاح ثابت وإن كرهت، كبيرة كانت أو صغيرة) أما البكر الصغيرة، فلا خلاف فيها. قال ابن المنذر: أجمع كل من نحفظ عنه من أهل العلم، أن نكاح الأب ابنته البكر الصغيرة جائز، إذا زوجها من كفاء، ويجوز له تزويجها مع كراهيتها وامتناعها. وقد دل على جواز تزويج الصغيرة قول الله تعالى: ﴿واللاتي يئسن من المحيض من نسائكم إن ارتبتم فعدتهن ثلاثة أشهر واللاتي لم يحضن﴾.

If a father marries off his virgin daughter, and the marriage is conducted with compatibility (*kafā’ah*), then the marriage is valid

even if the bride does not consent. Whether the bride is an adult or not does not affect this ruling. In the case of a virgin child, there is unanimous agreement among the scholars that it is permissible to marry her off. Ibn al-Munzir even stated that this is a consensus of the scholars. This opinion is based on the verse of the Qur’ān, Sûrah at-Talâq, verse 4 (Qudâmah, 1997).

d. Shāfi’ī School

In the book *Minhâj al-Ṭalibîn*, it is stated:

وللأب تزويج البكر صغيرة وكبيرة بغير إذنها.

A father may marry his daughter, whether she is an adult or has not yet reached puberty, even without her consent (an-Nawawî, 2005).

From the above explanations, it can be concluded that the four Sunni schools of *fiqh* share the same view regarding the permissibility of marrying underage children. This opinion is based on the marriage that the Prophet Muhammad himself conducted with Sayyidah ‘Ā’ishah when she was still prepubescent. Additionally, this view is supported by Sûrah ath-Thalâq, verse 4, which mentions the waiting period for a girl who has not reached puberty, indirectly acknowledging the validity of her marriage.

The Shia Imamiyya Perspective on the Legality of Child Marriage

The Shia Imamiyya school also provides explanations regarding the legality of child marriage. In the book *Tahrîr al-Wasîlah*, it is stated:

يستحبّ التعجيل في تزويج البنت، وتحسينها بالزوج عند بلوغها.

“It is recommended to marry off a girl as soon as she reaches puberty while ensuring that the marriage is conducted in a proper manner” (Khomaini, 1392).

The same book also states:

(مسألة ٤): يشترط في صحّة تزويج الأب و الجدّ و نفوذه عدم المفسدة، وإلا يكون العقد فضولياً كالأجنبيّ، يتوقّف صحّته على إجازة الصغير بعد البلوغ، بل الأحوط مراعاة المصلحة. (مسألة ٥): إذا وقع العقد من الأب أو الجدّ عن الصغير أو الصغيرة مع مراعاة ما يجب مراعاته لا خيار لهما بعد بلوغهما، بل هو لازم عليهما. (خميني، روح الله، رهبر انقلاب و بنیان گذار جمهوری اسلامی ایران).

Issue 4: It is a condition for the validity of marriage that the father or grandfather marrying off his daughter must ensure there is no *mafsadah* (harm or detriment). If there is harm, then the marriage contract is considered *fudhûlî* (an interference in another's affairs), like a marriage conducted by someone without a direct relationship, where the validity of the contract depends on the child's consent once they reach adulthood. It is even more prudent if the marriage is based on the consideration of *maslahah* (public benefit). If the marriage of a child is conducted by a father or grandfather with the consideration of all necessary safeguards, they do not have the option (*khiyâr*) to continue or annul the marriage once the child reaches puberty. In fact, the validity of the marriage becomes obligatory (Khomaini, 1392).

In the book *Tawdîh al-Masâ'il*, it is stated:

مسألة ٢٣٨٤ - پدر و جدّ پدری می‌توانند برای فرزند نابالغ یا دیوانه خود که به حال دیوانگی بالغ

شده است ازدواج کنند. و بعد از آن که آن طفل بالغ شد یا دیوانه عاقل گردید، اگر ازدواجی که برای او کرده‌اند مفسده‌ای نداشته نمی‌تواند آن را به هم بزند و اگر مفسده‌ای داشته می‌تواند آن را به هم بزند. (بروجردی).

The father and paternal grandfather may marry off their daughters or granddaughters who have not reached puberty or are mentally incapacitated, once they reach puberty or recover from their mental condition. If the marriage does not result in *mafsadah*, the marriage cannot be annulled after puberty or recovery. However, if there is harm, they may have the right to annul or continue the marriage (Burujerdi, 1392).

In the book *al-Fiqh 'alâ al-Mazâhib al-Khamsah*, it is stated:

و قال الإمامية: لا ولاية إلا للأب، و الجد للأب، و الحاكم في بعض الحالات، ... و اشتروا لنفوذ عقد الولي أبا كان أو جداً أو حاكماً ان لا يكون فيه ضرر على المولى عليه، فإذا تضرر الصغير بالزواج يخيّر بعد البلوغ و الرشد بين فسخ العقد و بقاءه.

The Shia Imamiyya view is that the guardian's (wali's) right is held only by the father, paternal grandfather, or the judge (Shari'ah judge: *marja taqlid*) in specific circumstances... For the validity of the marriage contract, it is required that there is no harm to the ward. If the marriage harms the child, they are given the option, once they reach adulthood, to annul or continue the marriage (Mughniyah, 1421).

In the book *Tawdîh al-Masâ'il*, it is stated:

(مسألة ٢٣٨٤) - پدر و جد پدری می‌توانند برای فرزند پسر یا دختر نابالغ یا دیوان خود که به حال دیوانگی بالغ شده است ازدواج کنند و بعد از آن که

طفل بالغ شد یا دیوانه عاقل گردید، اگر ازدواجی که برای او کرده‌اند مفسده‌ای نداشته، نمی‌تواند آن را بهم بزند و اگر مفسده‌ای داشته، می‌تواند آن را امضاء یا رد نماید.

The father or paternal grandfather may marry off their male and female children or grandchildren who have not reached puberty, as well as those who are mentally incapacitated but later recover. If the child or grandchild reaches puberty or recovers, and the marriage does not cause *mafsadah*, the marriage cannot be annulled. However, if there is harm, the marriage may be annulled or continued (Khui, 1422).

In the book *Minhâj al-Shâlihîn*, it is stated:

(مسألة ۱۲۳۶): للأب الولاية على الصغيرين و المجنونين البالغين. كذلك و لا خيار لهما بعد زوال الوصفين إلا إذا كان العقد حين وقوعه مفسدة عند العقلاء فلا يصح إلا بالإجازة بعد البلوغ و العقل. (تبریزی).

Issue 1236: A father has the right to act as a guardian for his minor children (both male and female) and for mentally incapacitated adults. Similarly, the children or adults involved do not have the *khiyâr* (right to choose to annul or continue the marriage) unless, according to the judgment of a rational person, there is *mafsadah* in the marriage contract. If there is harm, the contract is invalid unless the child or adult gives consent once they are of age or recovered from their mental condition (Tabrizi, 1426).

Based on the above statements, it can be concluded that the Shia Imamiyya scholars agree that a guardian (in this case, the father or paternal grandfather) has the right to marry off his children. However, the

marriage contract must avoid causing harm to the minor. If harm is caused, the child has the right to choose whether to annul or continue the marriage. Ruhollah Khomeinî particularly emphasized this point, arguing that in addition to avoiding harm, it is more prudent for the guardian to consider the *maslahah* (public benefit) when entering the marriage contract. From the above explanation, it can be understood that Shia Imamiyya jurists believe in the validity of child marriage under certain conditions.

3. Argument Regarding the Validity of Marriage for Minors

Sheikh Wahbah az-Zuhayli outlines at least five perspectives that support the permissibility of child marriage under Islamic law, as follows:

a. The Majority of Scholars from the Four Sunni Schools Permit Marriage for Minors

أما الصغر فقال الجمهور منهم أئمة المذاهب الأربعة بل ادعى ابن المنذر الإجماع على جواز تزويج الصغيرة من كفاء واستدلوا عليه بما يأتي: بيان عدة الصغيرة - وهي ثلاثة أشهر - في قوله تعالى: (واللاتي يمسن من الحيض من نسائكم إن ارتبتم، فعدتهن ثلاثة أشهر واللاتي لم يحضن) (الطلاق: 4/65) فإنه تعالى حدد عدة الصغيرة التي لم تحض بثلاثة أشهر كاليائسة، ولا تكون العدة إلا بعد زواج وفراق، فدل النص على أنها تزوج وتطلق ولا إذن لها.

Regarding the validity of marriage for young children, most scholars, including prominent figures from the four Sunni schools of thought, hold that marriage for minors is permissible.

Ibn Munzir even reported an *ijma'* (consensus) on the acceptability of marriage for young girls to men who are not of equal social status (*kufu'*). They base this legal ruling on several arguments, the first being the explanation of the waiting period (*'iddah*) for young girls, which is three months as mentioned in Allah's words: "And those who no longer expect menstruation among your women, if you doubt, then their *'iddah* is three months; and [for] those who have not menstruated" (Quran, Surah Ath-Thalaq/65: 4). This verse indicates that the waiting period for a young girl who does not menstruate is three months, the same as for a woman who has reached menopause. This would not be the case unless she had already been married and subsequently divorced. Thus, the verse implies that such a girl must have been married and divorced, confirming the validity of marriage for minors (az-Zuhaili, 1989).

This explanation suggests that the command for the waiting period in Surah Ath-Thalaq, verse 4, addressed to women in general, regardless of age, serves as proof of the legitimacy of child marriage. If the waiting period applies to girls, even those who are underage, it demonstrates the legality of such marriages.

b. There is a Command to Marry Off Girls, Even If They Are Still Minors

الأمر بنكاح الإناث في قوله تعالى: (وأنكحوا الأيامى منكم) (النور: 24/32) والأيم: الأنتى التي لا زوج لها، صغيرة كانت أو كبيرة

The second is the command to marry women as stated in the words of Allah the Exalted: "Marry those among you who are single" (Surah An-Nur, verse 32). The term *ayâmâ*

refers to women without husbands, whether they are young girls or adults (az-Zuhaili, 1989).

Based on this explanation, it is evident that Surah An-Nûr verse 32, which commands marriage using the term *ayâmâ*, carries a general meaning—encompassing both adult women and young girls under the age of maturity. Consequently, this verse indirectly permits the marriage of underage girls and affirms the validity of such marriages.

c. The Prophet's Marriage to Aisha, Who Was a Minor

زواج النبي بعائشة وهي صغيرة فإنها قالت: «تزوجني النبي وأنا ابنة ستٍ وبني بي وأنا ابنة تسع» وقد زوجها أبوها أبو بكر رضي الله عنهما. وزوج النبي صلى الله عليه وسلم أيضاً ابنة عمه حمزة من ابن أبي سلمة وهما صغيران.

The third argument is the marriage of the Prophet Muhammad to Sayyidah Aisha, who was still a child when she was betrothed to him. Sayyidah Aisha herself said: "Marry me to the Prophet when I was six years old and consummate the marriage when I turned nine." Abu Bakr, the Prophet's companion, arranged for this marriage. Similarly, there is a narration where the Prophet married his cousin's daughter, Sayyidah Hamzah, to a man, and both were children (az-Zuhaili, 1989).

The third proof for the legitimacy of child marriage is the marriage of the Prophet to Sayyidah Aisha, who was six years old at the time of their betrothal and lived with him once she reached the age of nine. This shows

that the marriage of minors, as practiced by the Prophet, is not invalid.

d. Many of the Prophet's Companions Married Off Their Young Daughters

آثار عن الصحابة: زوّج (أي عقد) علي ابنته أم كلثوم وهي صغيرة من عروة بن الزبير وزوج عروة بن الزبير بنت أخيه من ابن أخيه وهما صغيران ووهب رجل بنته الصغيرة لعبد الله بن الحسن بن علي فأجاز ذلك علي رضي الله عنهما وزوجت امرأة بنتاً لها صغيرة لابن المسيب بن نجبة، فأجاز ذلك زوجها عبد الله ابن مسعود رضي الله عنه

The fourth argument comes from the practices of the Prophet's companions. For instance, the Prophet married his daughter, Umm Kulthum, while she was still a child, to 'Urwah bin Zubair. Similarly, 'Urwah bin Zubair married his niece to the son of another relative, and both were young children. Several other companions, including Abdullah bin Mas'ud, also married off their daughters while they were still children (az-Zuhaili, 1989).

In addition to the practice of the Prophet Muhammad, many of his companions also married off their young daughters, and there is no recorded objection either from the Prophet or from other companions. This consensus (*ijma'*) among the companions indicates the permissibility and validity of marriage for minors at that time.

e. The Necessity of Ensuring Public Welfare (*Mashlahah*)

قد تكون هناك مصلحة بتزويج الصغار، ويجد الأب الكفاء، فلا يفوت إلى وقت البلوغ وهناك رواية: معقولة: وهي بنت ثلاث عشرة.

The fifth argument is the consideration of public welfare in the marriage of young girls. If the marriage is beneficial to the young girl and the family, and the father sees a balance in the social and economic status (*kufu'*), then such a marriage would be permissible until the girl reaches puberty. There is also a narration indicating that in some cases, a girl might marry at the age of 13 (az-Zuhaili, 1989).

(وله) أي الأب فالجد (تزوج صغير عاقل) غير مسموح (أكثر من واحدة) ولو أربعاً إن رآه مصلحة.

Sheikh Ibn Hajar al-Haytami also shared a similar opinion regarding the permissibility of marrying off young boys, provided there is a clear benefit in doing so. He stated that a father, or even a grandfather, may marry off a minor son to multiple wives, if there is a perceived benefit (Al-Haitamî, 2009).

This explanation suggests that, despite numerous legal proofs for the validity of child marriages, scholars maintain that such marriages must be based on the principle of public welfare (*mashlahah*). The guardian's role is that of a proxy in the marriage contract, and the guardian must act in the best interest of the minor.

On the other hand, some scholars firmly reject the permissibility of underage marriages entirely. They base their argument on Surah An-Nisâ'/4: 6, which sets a limitation on the age of marriage. As cited in the following statement:

المبحث الأول - أهلية الزوجين: يرى ابن شبرمة وأبو بكر الأصم وعثمان البتي رحمهم الله أنه لا يزوج الصغير

والصغيرة حتى يبلغا، لقوله تعالى: {حتى إذا بلغوا النكاح} [النساء: 4/6] فلو جاز التزويج قبل البلوغ، لم يكن لهذا فائدة، ولأنه لا حاجة بهما إلى النكاح. ورأى ابن حزم أنه يجوز تزويج الصغيرة عملاً بالأثار المروية في ذلك. أما تزويج الصغير فباطل حتى يبلغ، وإذا وقع فهو مفسوخ.

The first discussion pertains to the criteria for prospective spouses. Ibn Syubrumah, Abu Bakr al-Asham, and Uthman al-Bitti RA opine that minor boys and girls cannot be married until they reach *bāligh* (maturity), based on the verse “until they reach the age of marriage” (Surah An-Nisa’, verse 6). They argue that if marriage is conducted before they attain maturity, such a marriage yields no benefit, as neither party has a need for marriage at that stage. On the other hand, Ibn Hazm permits the marriage of underage girls, citing several hadith narrations on the matter. However, he maintains that the marriage contract of minors is void until they truly reach *bāligh*. If the marriage nonetheless takes place, it becomes subject to *fasakh* (annulment).

Based on this explanation, one of the conditions for marriage is that the individuals must have reached an appropriate age, which implies that both parties should meet the criteria of maturity. This includes physical maturity (*bulūgh*), mental soundness (*aql*), and maturity in judgment (*rushd*) (Zakia, 2020). According to the *Fath al-Mu’în*, a person reaches adulthood at the age of 15, witnessed by two righteous witnesses, or upon the onset of puberty (Al-Hadharamî, 1994).

In a comparative legal context, the laws concerning marriage age in several

Arab countries are like those in Indonesia. For example, in Syria, the legal age for marriage is 18 for men and 16 for women. In Indonesia, according to Law No. 1 of 1974 on Marriage, marriage is only allowed if the male is 19 years old and the female is 16 years old (*Undang-Undang (UU) Nomor 1 Tahun 1974 Tentang Perkawinan*, n.d.). The age of marriage is also regulated in Article 15 of the Compilation of Islamic Law (KHI), which states that only individuals who have reached adulthood may marry. Article 7 of Law No. 1 of 1974 stipulates that the groom must be at least 19 years old, and the bride must be at least 16 years old (*Kompilasi Hukum Islam*, n.d.). In 2019, Law No. 16 amended the law, stating that the minimum age for marriage is now 19 for both men and women.

CONCLUSIONS

Based on the insights from both classical and contemporary Islamic law scholars, as well as the Indonesian Compilation of Islamic Law, it can be concluded that underage marriage is legally justifiable within the framework of Islamic Family Law. However, regarding the marriage age limit, Islamic law is guided by two main considerations: the age of *bāligh* (puberty) at fifteen years, or the presence of *mashlahah* (benefit) for both prospective spouses. Therefore, a guardian (father or other male relative) may only marry off their underage child to a partner if there is a clear benefit in the marriage, considering maturity, physical health, and the requirement for educational maturity. In general, the four Sunni madhhabs and the Shia Imamiyya

madhhab acknowledge the permissibility of child marriage, with various conditions, particularly concerning the marriage guardian and the potential for either *mashlahah* or *mafsadah* (harm). This study has successfully compared the views of the jurists (*fuqaha'*) of the five madhhabs on the law of child marriage. However, it does not examine the perspectives of other fiqh schools. Future research could continue this study by exploring the views of other madhhabs, such as the Zhahiri madhhab, on the legality of child marriage.

REFERENCES

- Abriansyah, Ativa, & M.Thahir Maloko. (2024). Analisis Masalah Mursalah Terhadap Dispensasi Nikah Karena Kehamilan di Luar Nikah. *Madani: Jurnal Ilmiah Multidisiplin*, 2(July), 189–199. <https://doi.org/10.5281/zenodo.10517647>
- Fauzi, A. F. F., & Sofyan, M. S. (2022). Fenomena Perkawinan di Bawah Umur Perspektif Al-Maslahah Mursalah. *Al-Ihkam: Jurnal Hukum Keluarga Islam Fakultas Syariah UIN Mataram*, 14(1), 1-28. <https://doi.org/10.20414/alihkam.v14i1.5072>
- Al-Hadharamî, S. bin S. (1994). *Safinah al-Nâjah* (A. K. Al-Jufri (Ed.)). Mutiara Ilmu.
- Al-Haitamî, I. (2009). *Tuhfah al-Muhtâj ilâ Syarh al-Minhâj* (Vol. 7). Dâr al-Fikr.
- Al-Jamâl, S. bin U. bin M. (2014). *Hâsiyyah Al-Jamâl 'alâ Syarh Al-Manhaj* (Vol. 4). Maktabah Syamilah Ar-Raudah v.3.61.
- An-Naisaburî, Hasan Ibnu Muhammad. (1416). *Tafsîr al-Naisaburî: Garâ'ib al-Qur'ân wa Ragâ'ib al-Furqân*. Dâr Al-Kutûb al-'Ilmiyyah.
- An-Nawawî, A. Z. Y. ibn S. (n.d.). *Sirâj al-Wahhâj*. Dâr al-Kutûb al-Islamiyyah.
- An-Nawawî, Y. (2005). *Minhâj al-Thâlibîn*. Dâr al-Fikr.
- Al-Qurthûbi, M. ibn A. (n.d.). *Al-Jâmi' li Ahkâm Al-Qur'ân* (Vol. 18). Dâr Al-Kutûb al-Mishriyah.
- As-Sarkhasî, M. (n.d.). *Al-Mabsûth* (Vol. 4). Dâr al-Magfirah.
- Az-Zuhailî, W. (1418). *Tafsîr al-Munîr fî al-'Aqîdah wa al-Syarî'ah wa al-Manhaj*. Dar al-Fikr al-Ma'ashir.
- Az-Zuhailî, W. (1989). *Fiqh Islam Wa Adillatuhu*. Dar al-Fikr.
- Amalia, D. (2017). Pernikahan dibawah umur perspektif hukum islam dan peraturan perundang-undangan di Indonesia. *Jurnal Al-Ashriyyah*, 3(1), 87–103.
- Anas, M. Bin. (1994). *Al-Mudawwanah* (V. 2 (Ed.)). Dâr al-Kutub al-'Ilmiyyah.
- Burujerdi, H. (1392). *Taudhih al-Masail*. Muassase Tandzim wa Nasyr_e Atsar_e Emam Khomaini.
- Departemen Agama Republik Indonesia. (2007). *Al-Qur'an dan Terjemahnya*. Diponegoro.
- Eka Gifriana, H.B.Syafuri, & H. E. Zaenal Mutaqin. (2022). Dispensasi Nikah Usia Dini : Perspektif Masalah Mursalah (Analisis Yuridis Putusan Perkara Nomor : 1635/Pdt.P/2019/Pa.Srg). *Journal of Legal and Cultural Analytics*, 1(3), 199–216. <https://doi.org/10.55927/jlca.v1i3.1284>
- Eriyanto. (2001). *Analisis Isi: Pengantar Metodologi untuk Penelitian Komunikasi dan Ilmu Sosial Lainnya*. Remaja Rosdakarya.
- Khalimi, A., Sofiani, T., & Tarmidzi, T. (2021). Dispensasi Nikah dalam Perspektif Maslahah. *Al-Hukkam: Journal of Islamic Family Law*, 1(2), 173–190. <https://e->

- journal.uingusdur.ac.id/al-hukkam/article/view/587
- Khomaini, R. (1392). *Tahrirul Wasilah* (Vol. 2). Muassasah Tandzim wa Nasyr Atsar al-Imam Khomaini.
- Khui, S. A. Q. (1422). *Taudhih al-Masail* (Vol. 2). Muassasah Ihya Atsar al-Imam al-Khui.
- Kompilasi Hukum Islam*. (n.d.). Retrieved June 10, 2024, from <https://perpustakaan.mahkamahagung.go.id/assets/resource/ebook/23.pdf>
- Marzuki, P. M. (2012). *Penelitian Hukum*. RajaGrafindo Persada.
- Mughniyah, M. J. (1421). *al-Fiqh Ala al-Mazahib al-Khamsah* (Vol. 2). Dar al-Tayyar al-Jadid.
- Mujieb, M. A. (1994). *Kamus Istilah Fiqih*. Pustaka Firdaus.
- Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Dispensasi Nikah*. (n.d.). Retrieved June 10, 2024, from <https://jdih.mahkamahagung.go.id/legal-product/perma-nomor-5-tahun-2019/detail>
- Qudâmah, I. (1997). *Al-Mugnî* (Vol. 9). Dâr ‘Alam al-Kutub.
- Rivki, M., Bachtiar, A. M., Informatika, T., Teknik, F., & Indonesia, U. K. (2020). Batas Usia Pernikahan dalam Islam: Analisis Ulama Mazhab Terhadap Batas Usia Nikah. *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab*, 1(3), 703–722.
- Sudarmaji, W. (2021). Pertimbangan Hakim dalam Memutuskan Perkara Dispensasi Nikah Berdasarkan Analisis Masalah (Studi Penetapan Hakim No. 266/Pdt.P/2020/PA.Pwr di Pengadilan Agama Purworejo). *Al-Syakhsyiyah: Journal of Law & Family Studies*, 3(1), 131–144.
- <https://doi.org/10.21154/syakhsyiyah.v3i1.3068>
- Tabrizi, J. (1426). *Minhaj al-Shalihin* (Vol. 2). Madin.
- Tan, O. (2018). Childhood And Child Marriage in Islamic Law. *Cumhuriyet İlahiyat Dergisi*, 2. <https://www.ceeol.com/search/article-detail?id=726011>
- Ullah, N., Aziz, S. N. B. A., & Idrees, R. Q. (2021). Child marriages: International laws and islamic laws perspective. *Journal of Educational and Social Research*, 11(3), 60–70. <https://doi.org/10.36941/JESR-2021-0051>
- Undang-undang (UU) Nomor 1 Tahun 1974 tentang Perkawinan*. (n.d.). Retrieved June 10, 2024, from [https://peraturan.bpk.go.id/Download/36382/UU Nomor 1 Tahun 1974.pdf](https://peraturan.bpk.go.id/Download/36382/UU%20Nomor%201%20Tahun%201974.pdf)
- Undang-undang (UU) Nomor 16 Tahun 2019 tentang Perubahan atas Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan*. (n.d.). Retrieved June 10, 2024, from [https://peraturan.bpk.go.id/Download/113523/UU Nomor 16 Tahun 2019.pdf](https://peraturan.bpk.go.id/Download/113523/UU%20Nomor%2016%20Tahun%202019.pdf)
- Wodon, Q. (2015). Islamic Law, Women’s Rights, and State Law: The Cases of Female Genital Cutting and Child Marriage. *The Review of Faith & International Affairs*, 13(3). <https://doi.org/10.1080/15570274.2015.1075762>
- Zakia, A. (2020). *Analisis Batas Usia Perkawinan Menurut Undang-undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan dalam Perspektif Hukum Islam* [Universitas Islam Negeri Walisongo Semarang]. <https://eprints.walisongo.ac.id/id/eprint/15396/>

Zed, M. (2018). *Metode Penelitian Kepustakaan*. Yayasan Pustaka Obor Indonesia.

Zuhriah, E., & Sukadi, I. (2022). Strategi Penanggulangan Perkawinan Anak Pasca Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 Perspektif Teori Masalah. *De Jure: Jurnal Hukum Dan Syar'iah*, 14(1), 160–178. <https://doi.org/10.18860/j-fsh.v14i1.16076>