

Age of Marriage in the Perspective of Maqashid Sharia

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ARTICLE INFO	ABSTRACT
Volume: 2	This article discusses the Age of Marriage in the Perspective of Maqashid Syariah, the main topic of this article is about the problem that arises due to the phenomenon of early marriage among the community, this is considered to have violated the law on marriage where the minimum age limit for marriage between men - men and women, namely 19 years old, and absolutely with the occurrence of early marriage can cause bad effects for the married couple. Young marriage in Indonesia has become a national phenomenon, the influencing factor is culture, because it has a major influence on the pattern of life in society, including underage marriages. By definition, young marriage is understood as a marriage that is carried out at a young age, that is, it has reached the age limit regulated in the law, namely the age of 19 years. Today many young people decide to marry young on the grounds that they want to avoid committing adultery. The purpose of writing this article is to find out the context of the marriage itself and how maqhasid sharia complies with the rules regarding the minimum age limit for marriage. The author uses a qualitative research approach with library research data collection techniques (<i>Library Research</i>). The author takes data from books, scientific journals, literature and other publications that are worthy of being used as a source for this research. Qualitative research that the author uses is research that produces information in the form of notes and descriptive data contained in the text under study. The results of the research that the authors describe in this article state that the provisions for the age limit in marriage if it is based on the maqhasid sharia provisions in building a household, the principle must be fulfilled that the prospective husband and wife are ready mentally and physically, so that they can realize the goals of marriage well without ending in divorce and get good and healthy offspring, therefore underage marriages must be prevented. Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 Article 7 paragraph (1) states that marriage can only be permitted if a man and a woman has reached the age of 19 (nineteen) years. The change in the wording of the Article raises expectations that there will be a decrease in the number of early marriages which were previously still being carried out.
KEYWORDS	
Marriage, Maqashid Sharia	

1. Introduction

According to Fiqh, marriage is one of the most important basic principles of life in a perfect association or society. Marriage is not only to regulate household life and offspring, but also to introduce one people to another. Marriage is considered valid if

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it is carried out according to the marriage law of each religion and belief and is registered by an authorized institution according to the applicable laws and regulations. (Sudarto, 2017, pp. 2-3)

Young marriage in Indonesia has become a national phenomenon, the influencing factor is culture, because it has a major influence on the pattern of life in society, including underage marriages. By definition, young marriage is understood as a marriage that is carried out at a young age, that is, it has reached the age limit regulated in the law, namely the age of 19 years. Today many young people decide to marry young on the grounds that they want to avoid committing adultery.

Young marriage is different from early marriage (underage marriage), where early marriage is carried out below the regulated marriage age limit, which is around the age of 18 and under. Early marriage usually occurs because there has been a pregnancy outside of marriage where the perpetrator is a school child or a child under the age limit of marriage.

Underage marriages have many negative impacts, ranging from depriving children of education, child exploitation, and divorce. Not only that, women who are underage are considered not ready for their reproductive organs to become pregnant and give birth. As a result, young mothers are very vulnerable to miscarriage and have an impact on death. Conversely, men who marry underage have the same consequences as women, moreover physical, material and/or more importantly psychological readiness to row a family boat which is very loaded with patience, sincerity and tenacity.

In Islamic Law, regarding the age limit for marriage is not specifically explained by the Qur'an and hadith. The two main sources only emphasize that a person who is about to get married is an appropriate and mature person so that they can manage and live their household life well, with this maturity the husband and wife are able to fulfill their obligations and rights reciprocally.

If the age limit for marriage is based on the maqshid sharia provisions in building a household, the principle must be fulfilled that the prospective husband and wife are ready physically and mentally, so that they can realize the goals of marriage well without ending in divorce and get good and healthy offspring, therefore underage marriages must be prevented.

2. Literature Review

The meaning of marriage according to the study of fiqh, namely the word An-nikah according to language literally means alwath'u (coitus) and in majazi or legal terms is al-'aqdu which means bond. All the words an-marriage in the Koran mean al 'aqdu except for one verse, namely al-Baqarah verse 230. There are also various definitions from several jurists, namely:

- 1) Hanafiyah scholars, marriage is an agreement held for the purpose of obtaining pleasure from a woman on purpose. The meaning is to allow a man to obtain pleasure (istimta') from a woman. This definition avoids the confusion of the contract of sale and purchase (woman), which means an agreement made to have a female slave.
- 2) Ash-Syafi'iyah scholars define, marriage is an agreement that contains the element of allowing intercourse by using the words inkah (I marry you oh fulan with fulanah) or tazwij (I marry you fulan with fulanah).
- 3) Maliki scholars, marriage is an agreement to legalize pleasure with a woman who is not Mahram or Magian women, women of the book through a vow.
- 4) Hanabilah scholars, a marriage contract is an agreement in which there is a word of inkah or tazwij or translation used as a guide.

Of all the definitions of marriage, a conclusion can be drawn that leads to one point, namely the permissibility of intercourse or the permissibility of obtaining pleasure (with a woman) with certain pronunciations. (Nasution, 2020, pp. 1-3).

Then there is the notion of marriage from several figures, including according to Prof. Dr. Wirjono Prodjodikoro, SH Marriage is living together between a man and a woman who have fulfilled certain conditions. According to Prof. R. Subekti, SH. Marriage is a legal relationship between a man and a woman for a long time. Then in article 1 of the Marriage Law No. 1 of 1974 stated that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in One Almighty God. (Dakhi, 2019, p. 1)

In language, maqashid sharia consists of two words, namely maqashid and sharia. Maqashid is the plural form of maqsud which means intentional or purposeful. Meanwhile, in language, it means the road to the spring. This can be said as the path of the main source of life.

Maqashid sharia in language means human effort to get the perfect solution and the right path based on the main source of Islamic teachings, the Qur'an and the hadith of the Prophet SAW. As for the definition of maqashid sharia according to

Wahbah al-Zuhaili, namely the meanings and objectives that can be understood/recorded in each law and to glorify the law itself, or it can also be defined by the ultimate goal of Islamic sharia and the secrets set by al-Syari' on every law He instituted. (Busyro, 2019, pp. 9-11)

Thus, maqashid sharia is the goal and direction of syara' law, where all mujtahids must direct their attention there. One of the principles put forward in maqashid sharia is to take the middle way and not exaggerate in its application, because the maslahah to be realized must refer to revelation, not merely the result of thoughts. (Busyro, 2019, p. 12)

3. Methodology

This research is library research, the data collection technique used in this research is library research where library research is the activity of collecting research-related materials from books, scientific journals, literature and publications. Other publications that are worthy of being used as a source for research that the author will examine by describing and describing the data are through several expert opinions. This study uses a qualitative research approach, namely research that produces information in the form of notes and descriptive data contained in the text under study.

4. Results and Discussion

4.1 Definition of Marriage

The meaning of marriage according to the study of fiqh, namely the word An-nikah according to language literally means al-wath'u (coitus) and in majazi or legal terms is al-'aqdu which means bond. All the words an-marriage in the Koran mean al-'aqdu except for one verse, namely al-Baqarah verse 230. There are also various definitions from several jurists, namely:

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4.2 Legal Basic of Marriage

Allah SWT says in QS (Al-A'raaf: 189) it reads :

هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا.

Translated:

"He is the One who created you from one soul (Adam) and from it He created its mate, so that he would be pleased with him."

So that marriage is to create a family life between husband and wife and children and parents in order to achieve a life that is safe and peaceful (*Sakinah*, association that loves each other (*Mawadah*) and supports each other (*Rohmmah*). (Sudarto, 2017, p. 4)

4.3 Definition of Maqashid Sharia

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Maqhasid sharia in language means human effort to find a perfect solution and the right path based on the main sources of Islamic teachings, the Qur'an and the hadith of the Prophet SAW. As for the definition of maqhasid sharia according to Wahbah al-Zuhaili, that is the meanings and purposes that can be understood/recorded in every law and to glorify the law itself, or it can also be defined with the final purpose of Islamic law and the secrets set by al Shari' on every law that He has established. (Busyro, 2019, pp. 9-11)

Thus, the maqhasid syariah is the goal and qibla of syariah law, where all mujtahids must turn their attention there. One of the principles put forward in maqhasid sharia is to take the middle path and not exaggerate in applying it, because the maslahah that will be created must refer to revelation, not merely the result of mere thought. (Busyro, 2019, p. 12)

4.4 Legal Basis of Maqashid Sharia

The legal basis of *maqashid al-shariah* has been stated in the text of the Qur'an and also the sunnah of the Prophet SAW. And God has sent the whole of the messengers to achieve the sharia as a human guide so that it can be practiced. (Shidiq, 2011, p. 229)

As the word of Allah SWT. In QS (An-nisa:165).

رُسُلًا مُّبَشِّرِينَ وَمُنذِرِينَ لِئَلَّا يَكُونَ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ الرُّسُلِ وَكَانَ اللَّهُ عَزِيزًا حَكِيمًا.

Translated:

"The messengers are bearers of good news and warnings, so that there is no reason for people to oppose God after the messengers are sent. God Almighty, Wise."

The verse above implies that Allah SWT in determining a law always wants benefit so that humans are protected from things that are harmful and detrimental.

4.5 Age Limit for Marriage According to Law Number 16 of 2019

Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 Article 7 paragraph (1) states that marriage can only be permitted if a man and a woman have reached the age of 19 (nineteen) years. The change in the wording of the Article raises expectations that there will be a decrease in the number of early marriages which were previously still being carried out. However, Article 7 paragraph (2) states, if there is a deviation from the minimum age requirement, the parents of both the male and female are permitted to apply for dispensation in court for very urgent reasons accompanied by evidence. This provision seems to have broken the big expectations for changes to Article 7 paragraph (1). (Ilma, 2020, pp. 136-137)

In the same consideration, it is also stated that the regulation regarding the different minimum age limit for marriage between men and women has not only created discrimination in the context of exercising the right to form a family, as guaranteed in Article 28B paragraph (1) of the 1945 Constitution, but has also created discrimination against protection children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution. In this case when the minimum age for marriage for women is lower than for men, legally women are faster in form a family. Therefore, in the decision of the Constitutional Court ordered the formation of a Law within a period of 3 (three) years to make changes to Law Number 1 of 1974 concerning marriages that reach the age limit for carrying out marriages, improvement of norms reaches by increasing the minimum age limit marriage for women. In this case the minimum age for marriage is the same as the age limit for men and women, namely 19 (nineteen) years.

4.6 Age limit for marriage according to Maqashid Sharia

Maqashid sharia consists of two words, namely maqashid and sharia. The word maqashid is the plural form of maqashid which means aims and objectives, while sharia has the meaning of the laws of Allah SWT which have been determined by humans so that they are guided in achieving happiness in this world and the hereafter. Or, in simple language, the aim of the dispensation of law, which means that the dispensation of the law has benefits for every human being to obtain good benefits, because the purpose of syara in establishing law is for the benefit of the world and rejecting mafsadah for humans for the benefit of the hereafter. (Gani, 2020, p. 69)

Maqashid sharia of course also does not regulate the age of marriage, especially in the matter of the equality of the minimum age limit for marriage in a certain country's legislation. However, maqashid sharia can accept the provisions on equalizing the minimum age limit for marriage through the realization or non-realization of the goals of sharia marriage. This shows that if the purpose of marriage can be realized, both maximally and minimally through the existence of rules that regulate the equalization of the minimum age limit for marriage, then these regulations can or have the potential to eliminate the purpose

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of marriage, then these rules should be rejected. So that there is a starting point whether something is true or not regulations, in the view of maqashid sharia, is returned to whether or not a purpose is realized or whether there is a regulation. (Gani, 2020, pp. 69-70)

Changes to the minimum age limit for marriage contained in the decision of the Constitutional Court is one form of reforming Islamic law to respond to various developments of the times and the needs of society, in line with the objectives of Islamic law itself, to realize benefit. The purpose of benefit is contained in the womb of maqhasid sharia, namely there are five forms or what is called al-kulliyat al-khamsah (five general principles), namely; hifdzu din (protecting religion), hifdzun nafs (protecting the soul), hifdzu aql (protecting the mind), hifdzu nasab (protecting offspring), hifdzu mal (protecting property). From the point of view of kulliyat al-akhamsah (five general principles of maqashid sharia) the minimum age limit for marriage above has a purpose where there is a provision for the age of marriage, namely to maintain soul, health, will and posterity. (Rizki, 2020, p. 8)

The change in the minimum age limit for marriage contained in the decision of the Constitutional Court is a form of renewal of Islamic law in order to respond to the challenges of the times, the needs of society, in line with Islamic law itself to realize benefit. In this case, preserving the soul, then with the principle laid down in the Marriage Law, especially in Article 7 paragraph (1). That the prospective husband and wife must be mentally and physically mature so that the purpose of the marriage can be well realized and does not end in divorce and to get good offspring for both parents, the surrounding community, as well as the nation and country. (Gani, 2020, pp. 70-71)

Maqashid sharia has provided an understanding that benefit is the most important part of Islam, so to achieve benefit itself requires various aspects, especially in forming a family. namely economic, social, intellectual and psychological factors that are maturely needed by every husband and wife to run their household. In this modern era, education is one of the most essential things because it is related to the level of family welfare and education is also the right of every citizen to pursue education as high as possible.

The author assesses the new minimum age for marriage, the author hopes that the government still needs to study more deeply about the ideal minimum age for marriage, which is in accordance with the times and examines more deeply about various problems in society. Besides that, the writer hopes that the role of people parents in maintaining the association of children is very important, in order to make a generation that is moral and to prevent promiscuity so that it can create order in the age of marriage among the community.

5. Conclusion

If the age limit for marriage is based on the maqhasid sharia provisions in building a household, the principle must be fulfilled that the prospective husband and wife are ready physically and mentally, so that they can realize the goals of marriage well without ending in divorce and get good and healthy offspring, therefore underage marriages must be prevented.

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