

MARRIAGE DISPENSATION WITH URGENT REASONS IN THE STUDY OF *MUBADALAH* AMONG URBAN MUSLIMS

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Marriage Dispensation with Urgent Reasons in The Study of *Mubadalah* Among Urban Muslims Licensed Under a Creative Commons Attribution-ShareAlike 4.0 International License

Abstract

Laws and regulations in Indonesia have regulated the existence of a new regulation on the marriage age limit, namely 19 years applicable to men and women, as stipulated in Law Number 16 of 2019 in response to the birth of the Constitutional Court Decision Number 22/PUUXV/2017, the marriage dispensation will be granted if two conditions are met, namely; *First*, it is urgent and has *Second*, it has sufficient evidence. This rule often makes it difficult for the community, so finally, many efforts to dispense Marriage are carried out to be able to carry out marriage contracts formally among urban Muslims. The problem is how the judge's efforts in responding to the application for marriage dispensation for children far from the minimum age limit of Marriage, which is 19 years for men and women, and what is their contribution to efforts to reform the marriage law in Indonesia? This research aims to contribute new thinking to the reform of marriage law scientifically and logically. This research is a type of literature research, with a scientific-ratio approach to the minimum age limit for Marriage in Law Number 16 of 2019, with the theory of *sadd al-dzariah* as an effort to be able to present legal justice. The conclusion is that the determination of the judge of the Religious Court regarding the dispensation of Marriage for urgent reasons is the main argument, so there are often decisions on marriage dispensation at the age of under 16 years. However, according to the evidence submitted, *sadd al-dzariah* is a solution that logically violates the scientific ratio rules.

Keywords: Dispensation; *Mubadalah* review; Urgency.

A. Introduction

Everyone who holds a wedding expects peace in the household, which is called harmony or *sakinah* in the context of religion (Hermanto, 2019). Despite this reality, not all marriages undertaken by both married couples meet their expectations and wishful thinking before Marriage, so the fulfillment of the implementation of the rights and obligations of husband and wife is often adjusted according to the ecology they are facing (Hidayatulloh, 2019; Ikrom, 2015; Nurani, 2021). Not a few marriages that are

not appropriately prepared are hit by waves that can shake the Marriage until domestic violence occurs and leads to divorce (Basri, 2002). So, everyone who wants to get married must possess an understanding of household resilience (Sukmawati & Khadafi, 2022).

The vulnerability of divorce is often caused by young Marriage or early Marriage; this can be caused by a lack of readiness to get married or not being ready to face the waves that hit so that the integrity of the household cannot be realized. Whether you know it or not, marriage psychology must also be owned by couples, both men and women, as an effort to be able to realize a family that can be carried out happily and eternally (Dwi Bawarni & Mariana, 1993). A mature young man is not determined by his physical appearance but by his ability to think clearly and solve problems rationally without being influenced by emotions. In this modern era, many young people are considered mature biologically, politically, and physically, but economically and psychologically, they still show signs of immaturity (Ahmadi, 1997).

Marriage is a common need. Lawful promiscuity is an opportunity to meet urgent biological needs, but it also comes with a divine responsibility to continue procreation (Kuzari, 1995). The purpose of Marriage is to form a strong bond between two individuals who love and respect each other and build a happy and prosperous family. One of the essential aspects of Marriage is to form and raise children with good values and strong morals; in the future, they will grow up individually responsible and have a positive contribution to the community (Asymuni, 2005), namely children who are righteous, good, and valuable for the Nation and State (Sahrani, 2009). Regarding the minimum marriage limit, there have been several studies, including According to Nizat Abdussalam, a Judge who is at the Religious Court of Malang Regency, East Java, and is also a Lecturer in Psychology at UIN Malang East Java, regarding the age limit in the current Marriage Law is not completely relevant to the context of the existing era. They argue that increasing the age of marriage restrictions would be more appropriate to ensure physical, psychological, and economic maturity. This step is expected to support the realization of a harmonious, lasting, and happy marriage relationship (Abdussalam, 2015).

Another research conducted by Susman and colleagues, who researched the Marriage Age Restriction in Law Number 16 of 2019 on the Practice of Underage Marriage among Urban Muslims in Bogor City, found that there was an increase in the number of underage marriages, especially in the city of Bogor, Tanah Sareal District, both before and after the enactment of Law Number 16 of 2019 in October 2019 (Susman et al., 2022). This is evidenced by the increasing percentage of early marriage rates in Bogor yearly. In addition, based on the study's results, several backgrounds cause early Marriage in the city of Bogor, including factors such as lack of religious understanding, economic factors, lack of education, and pregnancy out of wedlock.

In addition, Minin Mintarsih's research on the 'Minimum Age Limit for Marriage According to the Perspective of Positive Law in Indonesia and Islamic Law' has significantly contributed to the realm of social institutions and Islamic law. It is an initial guide for legal practitioners regarding determining the minimum age limit for Marriage per the current context. In addition, it serves as momentum for further research in the appropriate field in this (Mintarsih & Sa'adah, 2020). Muchlis Ibrahim and Sri Endang Erlitna also wrote the writing that is in tune, Legal Synchronization of Age Limits for Minors in a Positive Legal Perspective in Indonesia, Under the Child Protection Act, a person is considered a child until he reaches the age of 18, but the marriage rules stipulate that a man who can marry at the age of 19 and a woman must be 16 years old. This creates an inconsistency between the two laws, so agreeing on a

minimum age limit for Marriage is necessary. The enactment of Law Number 16 of 2019 has set the minimum age of 19 years for women and 21 years for men in Marriage, and it is hoped that the harmful risks of early Marriage can be reduced (Ibrahim & Erlitna, 2022).

As mentioned above, there has not been a single study that focuses on a study of marriage dispensation as an effort *Sadd al-Dzari'ah* In an attempt to fulfill the principle of granting the marriage dispensation application with urgent conditions and providing scientific evidence, who is on the provisions of the United Nations Convention on the Rights of the Child and Law No. 2 of 2002 concerning the Protection of Children (KPAI, 2011). Amar Decision on the Constitutional Court Number 22/PUUXV/2017 realizing the birth of UUP Number 16 of 2019, as an implementation of the principal equality before the law, Article 7 paragraphs (1) and (2), if the article is seen from status quo, if you want to apply for a marriage dispensation, you must meet two conditions cumulative that is, there is an urgent reason. There is sufficient evidence that this legal loophole is taken advantage of by the person applying for a marriage dispensation.

In response to the birth of the Constitution UUP Number 16 years 2019, the Supreme Court of the Republic of Indonesia (MA-RI) has issued a Supreme Court regulation regarding Number 5 of 2019 containing Guidelines for Adjudicating Dispensation Cases against Marriage, which can be guided by judges in adjudicating Marriage Dispensation cases as a deviation/ *contra legem* from article 7 paragraph 2 to prevent child marriage in Indonesia. In reality, many Religious Courts still grant marriage dispensations for various reasons, even though marriage dispensations actually only apply to those who are urgent/ *dharurat*. The question in this study is how the judge's efforts in responding to the application for marriage dispensation for children who are far from the minimum age limit of Marriage, which is 19 years for men and women, and what is their contribution to the efforts to reform the marriage law in Indonesia. This study is interesting if juxtaposed with the theory of *sadd al-dzari'ah* to analyze the rules and regulations regarding the marriage age limit following Law Number 16 of 2019 concerning the existence of a minimum age limit on Marriage.

B. Methods

This research uses this type of research. Library research utilizes three approaches: the approach to laws and regulations/ statute approach, the conceptual approach, and the case approach (Moleong, 2018). The primary data used is regarding Law Number 16 of 2019 concerning the existence of a minimum age limit for Marriage. This study analyses the minimum age of Marriage, 19 years, for men and women among urban Muslims by applying the theory of *sadd al-dzari'ah* to ensure that marriage dispensation is only granted on urgent grounds and can be supported by relevant evidence.

C. Findings and Discussion

1. Findings

Mubadalah Studies in Marriage Bonds

Mubadalah is an Arabic term that refers to exchange activities in physical contexts, such as trade, and non-physical contexts, such as acting with compassion (Kodir, 2021). *Mubadalah* it contains the meaning of reciprocity, reciprocity, or mutually beneficial relationships. This concept voices efforts against all forms of authoritarian, descriptive, dominant behavior, values, and injustice. *Mubadalah* encourages changes in norms and views on the relationship between women and men to create values of mutual respect,

loyalty, cooperation, equality, and solidarity to create a better, juster, peaceful, and prosperous life, both in this world and in the hereafter. All of this is aimed at mutual happiness for both.

Many verses are the basis for the concept of *Mubadalah* in Islam. One of the significant verses in this context is verse 71 of surah At-Taubah. The verse confirms that men and women have equal roles and need each other, where both become supports, helpers, affections and supports each other. There are several classical books of interpretation, both textual and reasoning, that interpret the phrase "*ba'duhum awliyā' ba'din*" means to love each other (*taḥābub*), help each other (*tanāṣur*), support each other (*ta'āduḍ*) and love each other (*tarāḥum*). In this context, the phrase indicates equality between men and women.

The verses in the Quran underline the perspective of equality between men and women, both in the social and domestic spheres. Examples can be found in verses such as Al-Baqarah (2:197; 2:232; 2:233), Ali Imran (3:195), and An-Nisa (4:19) (Santoso, 2020). Among the general verses affirming the importance of reciprocity in life are the verses Al-Maidah (5:2) and Al-Anfal (8:72) in the Quran. The most inspiring hadith about *Mubadalah* is the following narration: "*It is not a believer among you to love for his brother what is loved for him.*" (Sahih Bukhari no. 13, Sahih Muslim no. 179, Sunan at-Turmudhi no. 2705, Sunan an-Nasai no. 5034, Sunan Ibn Majah no. 69, and Musnad Ahmad no. 14083).

Concept *Mubadalah* is related to gender issues and functions as a counterweight to the gender theory, which is inclined liberal. The concept of *Mubadalah* will be the basis for interpreting textual and inspiring inclusive fiqh reform, especially in gender relations. With this approach, texts originally intended for one gender can have the same relevance for the other, provided that the text message is general and about both genders. In contrast, the separation between texts aimed at men and women has resulted in an exclusive, sexist interpretation of Islam and perpetuates injustice against women. This separation has also reinforced a culture of domination that is detrimental to one gender, becoming dominant and, ultimately, destructive (Kodir, 2021).

The period that marks a person's maturity is known as the puberty phase, in which the individual has reached full awareness of himself. There is a great responsibility at this stage, especially in religious and social aspects. According to Ikhwan al-Shafa, this phase is the second realm of performance, where humans are expected to fulfill the covenant made in the first realm of performance, namely the realm of the spirit. Al-Ghazali calls this phase the '*aqil*' phase, the period when the intellectual level reaches its peak so that a person can distinguish between right and wrong behavior, as well as good and evil (Mujib & Mudzakir, 2002).

From a psychological point of view Development, adolescence is understood through 2 main parts: physical and mental growth. Physically, this period is characterized by the maturity of the reproductive organs and the development of the body as a whole, where the body reaches its mature form and the organs function correctly. Meanwhile, in adolescent religious life, this development is related to the growth of psychological functions such as observation, thoughts, emotions, desires, memories, and instincts. This level of development varies depending on the extent of access and utilization of educational factors. The religious life of adolescents is a follow-up result of the influence of education in childhood, which also has a distinctive psychological impact on puberty and adolescence. Therefore, it is essential to pay special attention and supervision to adolescents during this period (Arifin, 1998).

Adolescence is a progressive stage that consists of several subphases, including adolescence, puberty, and sexual maturity. In line with physical and spiritual growth,

adolescents' religious experiences are connected to these phases in understanding religious teachings and practices. In modern society, the minimum age for Marriage can vary from country to country; generally, the age *bâligh* signifies the maturity in Islam to get married ranges from 15 to 21 years old (Supriadi & Mustofa, 2009). In contrast to the favorable legal provisions in Indonesia, which are stated in Article 7 of Law Number 1 of 1974 paragraph (1) that "marriage is only allowed if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years," the provisions regarding the age limit in Marriage are explained in the compilation of Article 15 paragraph (1) which states that the age limit in Marriage is based on considerations of family interests and home harmony ladder. This is in line with the principle of marriage law, which emphasizes that prospective husbands and wives must be mentally and physically mature so that they can have a good marriage without the risk of divorce and healthy offspring. Therefore, marriages involving underage individuals should be avoided.

2. Discussion

Marriage Dispensation and Its Contribution to the Renewal of Marriage Law in Indonesia

Determining the age limit in the compilation of laws is part of the *ijtihad* process, a continuous effort to update *fiqh* thinking. Although Surah An-Nisa verse 9 does not directly establish a marriage age limit, the interpretation of the verse requires reasoning and understanding because it is general. However, based on observations, Marriage at a young age tends to cause problems contrary to the purpose of Marriage, which is to create harmony in the household based on affection. This is not easy to achieve if both partners are mentally and physically mature. Therefore, personal solid maturity and integrity are very influential in facing the challenges of household life.

The marriage age limit in Indonesia differs from that of other countries, although it still follows the general standard. The difference is that the standard marriage age limit in Indonesia follows the general provisions, with the minimum age usually 19 years for men and 16 years for women. However, there is a higher age limit in the law; Marriage can occur when the bride and groom reach the age of 21. This is regulated in Law Number 1 of 1974 concerning Marriage, which is explained in Article 7. The philosophy behind this rule is reflected in the general explanation of the law, which regulates the principles of Marriage and its relationship to population issues. Implementing a lower age limit for women in Marriage has the potential to increase the birth rate compared to a higher age limit. Therefore, the law sets a minimum age limit for Marriage, which is 19 years for men and 16 years for women (Sakirman et al., 2022).

In the Compilation of Islamic Law (KHI), the affirmation of the age limit for Marriage is stated in Article 15, paragraphs 1 and 2 as follows: First, to maintain family interests and household harmony, Marriage may only be held by the prospective bride who has reached the age as stipulated in Article 7 of Law Number 1 of 1974, which is a minimum of 19 years for the prospective husband and a minimum of 16 years for the prospective wife. Second, if the prospective bride has not reached the age of 21, the permit must be obtained following the provisions in Article 6 paragraphs (2), (3), (4), and (5) of Law Number 1 of 1974 (Abdurrahman, 2007). Although it is still considered irrelevant by some parties, the age limit for Marriage in Indonesia still applies and is the current reference, which is a minimum age of 16 years for women and 19 years for men. The demand to increase the

minimum age limit for women in Law Number 1 of 1974 concerning Marriage has been rejected by the Constitutional Court Assembly. The decision has caused controversy in the community. The refusal by the Constitutional Court is seen as not paying attention to Law Number 35 of 2014 concerning Child Protection, which stipulates that the minimum age of children is 18 years old. Some consider this to be a legitimacy against the practice of child marriage. However, from a medical, social, and economic perspective, the negative impact of child marriage has been proven through various studies to outweigh the positive effects (*Constitutional Court Refuses to Increase the Marriage Age Limit for Women*, 2015).

Mixed reactions to the law are common, especially in Indonesia, which is rich in ethnic, cultural, religious, and sectarian diversity. This results in various interpretations of the law, depending on the viewpoint. Nevertheless, the law has shown its wisdom in dealing with multiple issues, especially regarding the minimum age limit for Marriage. A child is defined as someone who has not reached the age of 18, including those who are still in the womb, as affirmed by the United Nations (UN) Convention on the Rights of the Child, along with Law Number 23 of 2002 concerning Child Protection.

In reality, as conveyed by Nur Jannah Syaf, Director of Religious Court Administration Supervisor of the Directorate General of the Religious Court Agency, 90 percent of marriage dispensation cases in the Religious Court are granted for urgent reasons. Although it is true that the Supreme Court Decision Number 22/PUXV/2017, which later gave birth to Law Number 16 of 2019, was a positive response regarding the age limit of Marriage being 19 years for both men and women, it means that when people get married under the predetermined age, it will violate the rules that have been set unless there is a marriage dispensation. However, the provision that the dispensation of Marriage under the minimum age will also cause new cases of child maturity.

This is in line with the opinion of jurists that humans can regulate the minimum age limit for Marriage by paying attention to the benefits and goodness of society (Fiteriana, 2023). Based on the point of view of *sadd adz-dzari'ah*, the issuance of a minimum age limit regulation is an effective and solutive step to prevent losses that will be caused by Marriage at a young age. This means that the limits made are an effort for the good of the family couple in the future. The principle of *Saad al-Dzari'ah* is a principle that prioritizes preventive actions (Hidayat, 2022). However, proving the reason is urgent and essential in examining marriage dispensation. An urgent reason is that the relationship between the prospective bride and groom cannot be postponed anymore because the minimum age of Marriage is not enough, considering the more significant negative impact on both.

Although the dispensation can be carried out by the Religious Court, through its decision, it will violate the rules if the decision is not reviewed more deeply; the risks that may occur are: *First*, many school children drop out of school at high school age; *Second*, the high risk of death for mothers when giving birth under the age of 19; *Third*, the high number of fatalities born to mothers under the age of 19; *Fourth*, the risk of stunting; *Fifth*, the economic impact of young Marriage on child support; *Sixth*, increased risk of domestic disputes and violence.

A judge can conduct marriage dispensation for urgent reasons and through an in-depth review, so the decision is the best (Sugiarto & Sulistiyono, 2024). Based on the law on marriage no. 16 of 2019, it was found that this rule is widely guided, while in reality, when deciding a case, many new problems arise, such as risks *stunting*. Therefore, in determining a marriage, a judge needs to see this risk as an

effort to reform the marriage law in Indonesia (Judiasih et al., 2020). The government and law enforcement must also educate the public about the importance of education and the dangers of early Marriage to health and reproduction at a young age. In addition, counseling and socialization efforts must be carried out continuously to reduce the various risks above, the impact of Marriage under the age of 19.

D. Conclusion

In conclusion, Law Number 16 of 2019 stipulates that the minimum age for Marriage is 19 years for both men and women. This means that marriage permission is given only to those above the age limit. At the same time, the determination of the judge of the Religious Court on the dispensation of Marriage with urgent reasons is the main argument, so there are often decisions on the dispensation of Marriage at the age of under 16 years, even though *sadd al-dzariah* is a solution according to the evidence submitted. However, logically, it violates the rules of scientific-ratio. A judge can conduct marriage dispensation for urgent reasons and through an in-depth review, so the decision is the best.

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F. Author Contributions Statement

The writing of this article is the result of a series of events related to marriage cases in Indonesia. All the exposure results, from the background of the problem, methods, findings, and analysis to conclusions, are the work of personal authors.

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