
Early Marriage in Hadith and Law: Analysis of Aisha's Marriage and Legal Age Provisions

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ABSTRACT

The phenomenon of early marriage remains a complex social and legal issue in Indonesia, illustrating the ongoing gap between religious texts, legal regulations, and social realities. This research departs from debates surrounding the hadith of the Prophet Muhammad's marriage to 'Aisha ra., which is often used as a religious justification for child marriage practices. The study aims to critically analyse the hadith through a socio-historical approach and the framework of *maqāṣid al-shari'ah*, while assessing its conformity with Indonesian positive law. This research employs normative legal research with a qualitative perspective, relying on literature analysis of hadiths contained in *Kutub al-Sittah*, the views of classical Islamic jurists (*fuqahā'*), and national legal policies, particularly Law Number 16 of 2019 concerning the minimum marriage age. The findings reveal that classical scholars generally permitted marriage to *al-saghirah* based on specific historical and social contexts. However, contemporary scholars emphasise the need for contextual and purposive interpretation to ensure the protection of children from physical, psychological, and social harm. From the perspective of *maqāṣid al-shari'ah*, this study highlights *maṣlahah* and harm prevention as fundamental legal principles. From a positive legal standpoint, setting the marriage age at 19 reflects harmonisation between Islamic law and child protection norms.

Keywords: Aisha's Hadith; Early Marriage Law; *Maqāṣid Al shari'ah*; Positive Law; Child Marriage

A. INTRODUCTION

The phenomenon of early marriage remains a prominent issue in various Muslim countries, including Indonesia. Child marriage often leads to a variety of problems, from high divorce rates and reproductive health issues to hindered education for girls. Data from the Central Statistics Agency (BPS) shows that although the rate of early marriage has decreased, Indonesia remains among the countries with the highest prevalence in the ASEAN region.¹ This fact demonstrates a gap between legal regulations, religious teachings, and social realities. In the Islamic context, some groups often use the history of the Prophet Muhammad's marriage to 'Aisha (ra) as justification for permitting early marriage, yet this issue requires deeper analysis from both the hadith and contemporary law.²

On the other hand, the highest rates, according to Statistics Indonesia (BPS), were found in West Nusa Tenggara (14.96%) and South Papua (14.40%), highlighting serious challenges related to poverty, traditional social norms, and limited access to education and reproductive information in these areas. Other provinces that also show high rates include West Sulawesi (10.71%), West Kalimantan (10.05%), Central Kalimantan (9.89%), and Southeast Sulawesi (9.40%), which also show a concentration of early marriage in certain areas (BPS). Overall, these regional disparities illustrate that while efforts to reduce child marriage are underway, they are not evenly distributed – most successful in metropolitan regional centres, but still facing structural and cultural barriers in outermost and marginalised areas. This emphasises the importance of more focused and adaptive intervention strategies, particularly in areas with high rates, to make child protection and delaying the age of marriage more effective.

Based on data from the Ministry of Women's Empowerment and Child Protection (2024), there has been a consistent downward trend in the percentage of child marriages over the past three years. In 2021, the child marriage rate decreased from 10.35 per cent to 9.23 per cent. It then fell to 8.06 percent in 2022, and to 6.92 percent in 2023. However, efforts to eliminate child marriage must be ongoing by all parties. To this end, the government, along with development partners, has developed a Practical Guide for the Implementation of STRANAS PPA in the Regions. Although there has been a decline in the national rate of early marriage, this problem remains prominent in rural areas. Data from the Central Statistics Agency (2024) shows a significant gap between urban and rural areas. The percentage of married women under 18 in rural areas is almost three times higher than in urban areas.³ This fact demonstrates a gap between legal regulations, religious teachings, and social realities.

¹ Badan Pusat Statistik (BPS), "Statistik Perkawinan Anak 2020," Jakarta: BPS, 2020, 12.

² Muhammad ibn Ismā'īl al-Bukhārī, *Šaḥīḥ Al-Bukhārī*, *Kitāb al-Nikāh*, (n.d.).

³ Adela Puspita Sari and Fatma Nurul Aulia, *Dampak dan Faktor Penyebab Pernikahan Dini di Indonesia*, 3 (2022): 389.

In the Islamic context, some groups often use the history of the Prophet Muhammad's marriage to 'Aisha (ra) as justification for permitting early marriage, yet this issue requires deeper analysis from both the hadith and contemporary law.⁴

Child marriage is a serious problem in Indonesia and other countries around the world. According to data from childmarriagedata.org, India has the highest number of child marriages in the world, reaching 216.6 million, or one-third of the total number of child marriages globally. This figure far exceeds other countries such as Bangladesh (41.6 million), China (35.4 million), Indonesia (25.5 million), Nigeria (24.4 million), Brazil (21.6 million), Pakistan (19.4 million), Ethiopia (18.6 million), Mexico (10.2 million), and Iran (10 million). This data shows that the practice of early marriage remains a serious phenomenon in many developing countries, with India being the largest contributor to such cases. Child marriage can occur due to various factors such as poverty, social norms, customary laws, or religions that legalise the practice.⁵ In her book "Sociology of Nursing," Noor Kasiani explains that the impacts of early marriage include general, limited environmental, and family impacts. Among the general impacts are negative impacts on population programs. Within the local community, these impacts include the fading of traditional or cultural values. Finally, families experience less than optimal parenting and education.⁶

The researcher's concern in this paper is the recent emergence of critical studies highlighting Aisha's age when she married the Prophet Muhammad (peace be upon him). Although initially motivated by a spirit of defence and cleansing the Prophet Muhammad (peace be upon him) from the stigma and cruel accusations of pedophilia, a kind of inferiority complex is clearly visible among the proponents of these critical studies, especially when dealing with the community.⁷ Other religions. The increase in applications for marriage dispensation in religious courts in Indonesia due to these changes, initially intended to minimise the occurrence of early marriages that lead to early divorces, has it actually increased the number of applications for marriage dispensation? Of course, it also becomes a study of the relevance of the Marriage Law to Islamic Law, which is examined using the *fiqh* and *maqāṣid al-shari'ah* approaches. Another concern is that the author feels that there are relevant legal changes in Islamic law, especially the Hadith of Aisha, which can be interpreted or translated textually. Even though the law can change according to place and time. The formulation of the

⁴ ibn Ismā'īl al-Bukhārī, *Sahīh Al-Bukhārī*, *Kitāb al-Nikāh*.

⁵ Tri Samnuzulsari, Selsi Oktariyani, and Agustika Safitri, "Child Marriage in Indonesia and Its Contributing Factors: A Literature Review Approach," *TEMALI: Jurnal Pembangunan Sosial* 8, no. 1 (January 2025): 49.

⁶ Noviyanti Soleman and Rifki Elindawati, "Pernikahan Dini di Indonesia," *AL-WARDAH* 12, no. 2 (November 2019): 145.

⁷ Yusuf Hanafi, *Kontroversi usia kawin aisyah ra dan kaitannya dengan legalitas perkawinan anak di bawah umur dalam islam*, 15, no. 2 (2016): 297.

problem in this study focuses on two main things. *First*, how is the understanding of the hadith of 'Aisha's marriage, which has often been used as a basis for justifying marriage at an early age? *Second*, how are the provisions regarding the minimum age of marriage determined from the perspective of classical and contemporary Islamic law, and how are the regulations regulated in positive Indonesian law? These two problem formulations are important because they relate to the need for harmonisation between religious texts, *maqāṣid al-shari'ah*, and applicable laws and regulations.⁸

The purpose of this study is to critically analyse the hadith about the marriage of 'Aisyah, taking into account its socio-historical context, while simultaneously examining how Islamic law and positive law regulate the minimum age for marriage. This analysis is expected to provide a more proportional understanding of the position of the hadith of 'Aisyah in the issue of early marriage, as well as explain the relevance of legal ijtihad in protecting children's rights, maintaining family resilience, and creating welfare in the contemporary era. Thus, this study seeks to present a synthesis between the normative-religious dimension and the juridical-positive aspect in responding to the problem of early marriage in Muslim society, particularly in Indonesia.⁹

This study offers novelty by integrating a critical analysis of the hadith concerning the Prophet Muhammad's marriage to 'Aisha ra. Through a socio-historical approach, the framework of *maqāṣid al-shari'ah*, and Indonesian positive law within a single comprehensive analytical model. This approach does not treat the hadith merely as a normative religious text, but as a historical narrative that must be contextualised and evaluated in light of the objectives of protecting life, dignity, and the welfare of children. By connecting the principles of *maqāṣid al-shari'ah*, particularly child protection and harm prevention, with national legal provisions, especially Law Number 16 of 2019 on the minimum marriage age, this study presents a new perspective for bridging the tension between classical religious discourse and modern legal demands. The novelty of this research lies in its synthesis of hadith studies, contemporary Islamic legal reasoning, and Indonesian legal policy to produce an adaptive, contextual, and justice-oriented normative argument focused on the protection of children's rights.

B. RESEARCH METHODS

This research uses a normative-prescriptive approach with qualitative methods based on library research. The normative-prescriptive approach was chosen because

⁸ Wahbah al-Zuhayli, *Al-Fiqh al-Islāmī Wa Adillatuh*, VII (Beirut: Dār al-Fikr, 2004), 147.

⁹ Lembaga Negara Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 16 Tahun 2019," unpublished manuscript, 2019, 186.

this research focuses on analysing Islamic legal norms and Indonesian positive law governing the minimum age for marriage, as well as efforts to formulate an ideal (prescriptive) legal perspective in accordance with the principles of *maqāṣid al-shari'ah* and child protection.

Qualitative methods were used to examine the data in depth and contextually through the interpretation of legal texts and religious sources. The primary data sources consisted of primary literature in the form of hadith books (*Kutub al-Sittah*), works by classical scholars such as *Al-Majmū'* by *Al-Nawawi*, *Al-Mughnī* by *Ibn Qudāmah*, and books on *tafsir* and *fiqh* (Islamic jurisprudence) related to early marriage. Secondary sources included scientific journals, contemporary Islamic law books, and national regulations such as Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning Marriage and Constitutional Court Decision No. 22/PUU-XV/2017.

C. RESULTS AND DISCUSSION

1. Hadith Analysis

Two hadiths from Aisyah explain the age of marriage. The following is an explanation of the hadiths, along with their meanings and interpretations:¹⁰

a. The Hadith of the Marriage of 'Aisha (may Allah be pleased with her) at the age of six, narrated by Imam Bukhari in the book النكاح, Sub chapter تزويج الأب، أبنته، من الإمام

حَدَّثَنَا مُعَلِّي بْنُ أَسَدٍ حَدَّثَنَا وَهِبْ بْنُ عَرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَزَوَّجَهَا وَهِيَ بِنْتُ سِتٍّ سِنِينَ وَبَنِي بِهَا وَهِيَ بِنْتُ تِسْعَ سِنِينَ قَالَ هِشَامٌ وَأَنِيْتُ أَنَّهَا كَانَتْ عِنْدَهَا تِسْعَ سِنِينَ

Mu'alla bin Asad told us Wuhaib from Hisham bin Urwah from his father from Aisha that the Prophet (peace and blessings of Allaah be upon him) married her when she was six years old and began consummating her relationship with her when she was nine. Hisham said: And it was reported to me that Aisha lived with the Messenger of Allah (peace and blessings of Allaah be upon him) for nine years. (Narrated by Bukhari)

b. The hadith of the marriage of 'Aishah ra at the age of seven narrated by Imam Abu Dawūd in the book الصغار, Sub chapter تزويج الصغار

حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ وَأَبُو كَامِلٍ قَالَا حَدَّثَنَا حَمَادٌ بْنُ رَيْدٍ عَنْ هِشَامٍ بْنِ عَرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ تَزَوَّجَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا بِنْتُ سَبْعٍ قَالَ سُلَيْمَانُ أَوْ سِتٌّ وَدَخَلَ بِي وَأَنَا بِنْتٍ تِسْعَ

¹⁰ Suryati, "Pernikahan Dini Dalam Perspektif Hadis (Studi Hadits Pernikahan 'Aisyah r.a Dengan Rasulullah SAW)" (2017).

Sulaiman bin Harb and Abu Kamil narrated to us. They said: Hammad bin Zaid narrated to us from Hisham bin 'Urwah from his father from Aisha, she said: The Messenger of Allah (peace and blessings of Allah be upon him) married me when I was seven years old. Sulaiman said: or six years old, and he had intercourse with me when I was nine years old. (Narrated by Abu Dawud)

Various Hadiths in the Kutubus Sittah explain about Aisyah's marriage at the age of 6 years.

- a. Imam Muslim in the book **النَّكَاح** Sub chapter تزويج الأب البكر الصغيرة و حَدَّثَنَا يَحْيَى بْنُ يَحْيَى أَخْبَرَنَا أَبُو مُعَاوِيَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ حَوْلَهُ حَدَّثَنَا عَبْدَهُ هُوَ أَبْنُ سُلَيْمَانَ عَنْ هِشَامٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ تَرَوَجَنِي النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا بِنْتُ سِنْنَيْنَ وَبَنَى بِي وَأَنَا بِنْتُ تِسْنَعِ سِنِينَ

And Yahya bin Yahya told us, Abu Mu'awiyah told us from Hisham bin 'Urwah. And it was narrated from another path, Ibn Numair told us, while the wording was from him, 'Abdah told us, namely Ibn Sulayman, from Hisham, from his father, from 'Aisha, who said: "The Prophet (peace and blessings of Allaah be upon him) married me when I was six years old, and he took me (to establish a household with me) when I was nine years old." (HR. Imam Muslim)

- b. Imam Nasa'i in the book **النَّكَاح** Sub chapter إِنْكَاحُ الرَّجُلِ ابْنَتَهُ الصَّغِيرَةِ أَخْبَرَنَا إِبْرَاهِيمُ قَالَ أَبْنَانَا أَبُو مُعَاوِيَةَ قَالَ حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَرَوَجَهَا وَهِيَ بِنْتُ سِنْنَيْنَ وَبَنَى بِهَا وَهِيَ بِنْتُ تِسْنَعِ

Ishaq bin Ibrahim told us, Abu Muawiyah bin Ibrahim told us, Hisham bin Urwah told us from his father from 'Aisha that the Messenger of Allah (peace and blessings of Allah be upon him) married 'Aisha when she was 6 years old, then married her when she was 9 years old. (HR. Sunan Nasa'i)

- c. Sunan Ibnu Majah in the book **النَّكَاح** Sub chapter يُنكَاحُ الصَّعَارِ يُزْوِّجُهُنَّ الْأَبَاءِ حَدَّثَنَا سُوَيْدُ بْنُ سَعِيدٍ حَدَّثَنَا عَلَيُّ بْنُ مُسْهِرٍ حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ تَرَوَجَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا بِنْتُ سِنْنَيْنَ فَقَدِمْنَا الْمَدِينَةَ فَزَرَلَنَا فِي بَنِي الْحَارِثِ بْنِ الْحَوْرَجِ فَوَعَكْتُ فَتَمَرَّقَ شَعْرِي حَتَّى وَفَى لَهُ جُمِيَّةً فَاتَّنَتِي أُمِّي أُمُّ رُومَانَ وَإِنِّي لَفِي أَرْجُوْحَةٍ وَمَعَنِي صَوَّاحِبَاتٍ لِي فَصَرَّخْتُ بِي فَاتَّنَتِي وَمَا أُدْرِي مَا تُرِيدُ فَلَاحَتْ بِيَدِي فَأَوْقَنَتِي عَلَى بَابِ الدَّارِ وَإِنِّي لَأَنْهَجْ حَتَّى سَكَنَ بَعْضُ نَفْسِي ثُمَّ أَخَذْتُ شَيْئًا مِنْ مَاءٍ فَمَسَحْتُ بِهِ عَلَى وَجْهِي وَرَأْسِي ثُمَّ دَخَلْتُ الدَّارَ فَإِذَا نِسْوَةٌ مِنْ الْأَنْصَارِ فِي بَيْتٍ قَفَلَنَ عَلَى الْخَيْرِ وَالْبَرَكَةِ وَعَلَى حَيْرٍ طَائِرٍ فَأَسْلَمْتُنِي إِلَيْهِنَّ فَأَصْلَحْنَ مِنْ شَأْنِي قَلْمَ بِرْ عَنِي إِلَّا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ضُحَى فَأَسْلَمْتُنِي إِلَيْهِ وَأَنَا يَوْمَئِذٍ بِنْتُ تِسْنَعِ سِنِينَ

Suwa'id bin Sa'id told us, he told us Ali bin Mushir told us, he told us Hisham bin Urwah, from his father, from Aisha, she said, "The Messenger of Allah (peace be upon him) married me when I was 6 years old. Then we arrived in Medina, and we lived in the village of Bani al-Harith ibn al-Khozroj. I had a fever, so my hair fell out until a lot

of it fell on my shoulders. Then my mother Umm Ruumaan came to me, I was playing with a seesaw with my girlfriends, then my mother called me, I went to her and I did not know what she wanted, she took my hand, then my mother placed me at the door of the house, I was really nervous until finally some of my nerves calmed down, then my mother took water, to wash my face and head, then put me in a house, and there were already some Anshor women, they said "may goodness and blessings and good fortune be upon you". Then my mother greeted me to them, and then they dressed me up. "I did not meet the Messenger of Allah except during Druha, then my mother greeted me, and I was 9 years old at that time." (HR. Sunan Ibn Majah)

In another Hadith of Aisyah, it is stated that Aisyah's marriage lasted 7 years:

- a. Imam Ibnu Majah in the book **النَّكَاحُ** Sub chapter **نِكَاحُ الصَّغَارِ يُرْوَجُهُنَّ الْأَبَاءِ**
- حَدَّثَنَا أَحْمَدُ بْنُ سِنَانٍ حَدَّثَنَا أَبُو أَحْمَدَ حَدَّثَنَا إِسْرَائِيلُ عَنْ أُبِي إِسْحَاقَ عَنْ أُبِي عَبْيَدَةَ عَنْ عَبْدِ اللَّهِ قَالَ تَرَوَّجَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَائِشَةَ وَهِيَ بُنْتُ سَبْعٍ وَبَنِي بِهَا وَهِيَ بُنْتُ نِسْعَ وَتُؤْتِي عَنْهَا وَهِيَ بُنْتُ ثَمَانِي عَشْرَةَ سَنَةً

Ahmad bin Sinaan told us, Abu Ahmad told us, Israa'il and Abi Ishaq told us from Abi Ubaidah from Abdullah he said "The Prophet, may Allah bless him and grant him peace, married Aisha (may Allah be pleased with her) when she was 7 years old, then established a household at the age of 9 and the Prophet (peace and blessings of Allah be upon him) died when Aisha was 18 years old." (Narrated by Ibn Majah)

- b. Musnad Imam Ahmad bin Hambal

حَدَّثَنَا حَسَنُ بْنُ مُوسَى قَالَ حَدَّثَنَا حَمَادُ بْنُ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَ ثَرَوَجَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مُتَوَفِّيَ خَدِيجَةَ قَبْلَ مَحْرَجِهِ إِلَى الْمَدِينَةِ سِنَتَيْنِ أَوْ ثَلَاثَةِ وَأَنَا بُنْتُ سَبْعِ سِنِينَ قَلَمَّا قَدِمْنَا الْمَدِينَةَ جَاءَتِنِي نِسْوَةٌ وَأَنَا الْغُبُّ فِي أَرْجُوْحَةٍ وَأَنَا مُحَمَّةٌ قَدْهَبَنِي فِي فَهِيَانِي وَصَنَعْتُنِي ثُمَّ أَتَيْنِي بِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَبَنَى فِي وَأَنَا بُنْتُ تِسْعَ سِنِينَ

Hasan bin Musa narrated to us, he said: Hammad bin Salamah narrated to us, from Hisham bin Urwah, from his father, from Aisha, who said: The Messenger of God, may God bless him and give him peace, married me after Khadijah died, two or three years before he left for Madinah, and I was seven years old. When we arrived in Madinah, some women came up to me while I was playing on the swing. And I was dehydrated, so they took me and prepared me and cheered me up, then they brought me to the Messenger of Allah, may God bless him and grant him peace, and he consummated the marriage with me when I was nine years old.

To determine which is stronger: Aisha's own testimony or the conclusions of the narrators, the most credible is the account of the person who experienced the historical event firsthand. Therefore, the narration stating that Aisha was married

to the Prophet Muhammad (peace be upon him) at the age of 6 is the strongest and most reliable. The Issue of Minimum Age for Marriage in Islamic Law.¹¹

2. Classical Jurisprudence (*Fiqh*)

In classical jurisprudence, scholars differ on the minimum age for marriage. The Hanafi school of thought holds that marriage of minors is permissible through a guardian, but that marital relations should not be consummated until the wife reaches puberty.¹² The Shafi'i and Hanafi schools also permit the marriage of minors through a mandatory guardian, citing the practice of the Prophet's marriage to 'Aisha (may Allah be pleased with her), although the consummation of marital relations is postponed until puberty.¹³ The Malikiyah school of thought is stricter; although it recognises the validity of a marriage contract for a child, it forbids a husband from having sexual intercourse with his wife until she is physically ready.¹⁴ Thus, classical jurisprudence emphasises puberty and the agreement of guardians, not the setting of a specific age. Implications for the structure of Islamic jurisprudence are directly correlated with the social institutions of Muslim society. The evidence, based on the reports of the narrators of the hadith about Aisha RA who was married by the Prophet SAW at the age of 6 and began living with him at the age of 9, the majority of jurists from the four schools of thought (*al-madhahib al-'arba'ah*) issued a fatwa on the permissibility of marrying young girls (*marriage al-shaghirah*) without any minimum age limit.¹⁵

The definition of puberty in Islamic law, as applied by Islamic jurisprudence scholars, is reaching the age at which a person is biologically ready to marry. For men, having had a semen-ejaculating dream, and for women who have started menstruating, they are considered biologically ready for marriage. Scholars differ on the age of puberty, including:

- a. Imam Malik, al-Layth, Ahmad, Ishaq, and Abu Thawr argue that the age of puberty is the growth of pubic hair, while most scholars of the Maliki school of thought hold that the age of menstruation for both men and women is 17 or 18 years.
- b. Abu Hanifah holds that the age of puberty is 19 or 18 years for men and 17 years for women.

¹¹ Hanafi, *Kontroversi Usia Kawin Aisyah Ra Dan Kaitannya Dengan Legalitas Perkawinan Anak Di Bawah Umur Dalam Islam*, 297.

¹² al-Zuhayli, *Al-Fiqh al-Islāmī Wa Adillatuh*, VII, 142.

¹³ Al-Nawawī, *Al-Majmū' Sharḥ al-Muhadhdhab* (Beirut: Dār al-Fikr, 1997), 16:237.

¹⁴ Ibn Rushd, *Bidāyat Al-Mujtahid Wa Nihāyat al-Muqtaṣid* (Kairo: Dār al-Ḥadīth, 1997), 2:17.

¹⁵ Hanafi, *Kontroversi usia kawin aisyah ra dan kaitannya dengan legalitas perkawinan anak di bawah umur dalam islam*, 298.

- c. Shafi'i, Ahmad, Ibn Wahab, and the majority believe that it is the perfect age of 15 years.

Even Imam Syafi'i once met a woman who had menopause at the age of 21 years, and she menstruated at exactly 9 years old and gave birth to a baby girl at exactly 10 years old. And something like this happened again to his daughter.¹⁶ The differences between the above-mentioned schools of thought regarding the age of puberty are greatly influenced by the environment and culture of their respective places of residence. Imam Abu Hanifah lived in Kufa, Iraq. Imam Malik lived in the Prophet's city of Medina. Imam Shafi'i lived in various places, from Medina to Baghdad, the Hijaz, and finally to Egypt, where he died. Imam Ahmad lived in Baghdad. Understanding the age of puberty clearly demonstrates that biological capacity is insufficient to enter into marriage without the necessary financial and psychological resources.¹⁷

The concepts of *baligh*, *'aql*, and *rusyd* are the primary criteria for determining readiness for marriage according to Islamic jurisprudence. *Baligh* is understood as a biological sign, such as menstruation or wet dreams, while *'aql* refers to the ability to think rationally and distinguish between good and evil.¹⁸ Furthermore, Islamic scholars emphasise the importance of *rusyd*, namely emotional and social maturity, for managing a household. Therefore, although minors are permitted to marry according to Islamic law, classical Islamic scholars assert that marriage will not achieve its ideal goals without *rusyd*.¹⁹

From the perspective of *maqāṣid al-shari'ah*, marriage is not only viewed from the legal aspect of the contract, but must also fulfil the objectives of sharia. *First*, the principle of *hifz al-nafs* (protection of the soul) requires that marriage not endanger the physical and psychological health of the bride and groom, especially women.²⁰ *Second*, *hifz al-nasl* (protection of offspring) emphasises that early marriage can pose risks to the quality of the next generation, both in terms of reproductive health and the child's educational readiness. *Third*, the goal of family welfare suggests that marriage is only appropriate if the prospective husband and wife are physically, mentally, and socially mature, so that the household can be a source of peace (*sakinah, mawaddah, wa rahmah*).²¹

¹⁶ Ibn Hajar al-Asqalani, *Fathul-Bari Sharah Sahih Al-Bukhari*, *Tt* (n.d.), 5:310.

¹⁷ Azlan, *Pernikahan Usia Dini Menurut Hukum Islam* (2010), 41.

¹⁸ Ibn Qudāmah, *Al-Mughnī* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1994), 9:343.

¹⁹ al-Zuhayli, *Al-Fiqh al-Islāmī Wa Adillatuh*, VII.

²⁰ Jasser Auda, *Maqāṣid Al-Shari'ah as Philosophy of Islamic Law* (London-Washington: IIIT, 2008), 45.

²¹ Ahmad al-Raysūnī, *Nażariyyat Al-Maqāṣid 'inda al-Imām al-Shāṭibī* (Beirut: al-Mu'assasah al-Jāmi'iyyah, 1992), 122.

Thus, although classical scholars allow early marriage based on normative texts, the *maqāsid al-shari'ah* approach provides a strong foundation for setting a minimum age limit for marriage for the sake of benefit. This *maqāsid* principle later became the basis for modern regulations, including Indonesia's policy in Law No. 16 of 2019, which equalised the minimum age of marriage for men and women at 19 years old.²² This approach is in line with the views of contemporary scholars, such as Yusuf al-Qaradawi and Jasser Auda, who emphasise the importance of contextual ijtihad so that Islamic law can respond to the challenges of the times.

3. Legal Harmonisation

Initially, the minimum age for marriage was regulated in Article 7 paragraph (1) of Law No. 1 of 1974 concerning Marriage, which stipulates a minimum age of 19 years for men and 16 years for women. However, this regulation was widely criticised for being considered discriminatory and inconsistent with the principle of gender equality. After undergoing a judicial review at the Constitutional Court, Law No. 16 of 2019 was finally born, revising Article 7 paragraph (1), with the provision that both men and women may only marry if they are at least 19 years old. This change shows harmonisation with international norms regarding child protection and the elimination of gender discrimination. In the Constitutional Court Decision Number 22/PUU-XV/2017, it became an important milestone in changing the minimum age for marriage. The Constitutional Court considered that the difference in minimum age between men and women violates the principle of equality before the law as guaranteed by the 1945 Constitution Article 28B paragraphs (1) and (2). In addition, the Constitutional Court emphasised that marriage at a young age is prone to having negative impacts, both in terms of education, reproductive health, and the future of the child. Therefore, the Constitutional Court recommended that the DPR and the Government amend the law, which was then realised with the ratification of Law No. 16 of 2019.

The change in the minimum marriage age in Law No. 16 of 2019 essentially aims to protect children from early marriage. This regulation aligns with the Child Protection Law (Law No. 23 of 2002 jo. Law No. 35 of 2014), which affirms that every child has the right to optimal survival, growth, and development. By setting the minimum age at 19, the state seeks to ensure that prospective brides and grooms are physically and mentally mature enough to establish a household. In addition to child protection, this regulation also relates to reproductive health and divorce prevention. Data from the National Population and Family Planning Agency (BKKBN) shows that early marriage often results in high maternal and infant

²² Fathurrahman Djamil, "Pembaharuan Hukum Islam Dalam Hukum Perkawinan Di Indonesia," *Jurnal Ahkam* 17, no. 2 (2017): 231.

mortality rates due to the risks of unprepared reproductive health.²³ Meanwhile, research also shows that child marriage carries a higher risk of divorce due to a lack of emotional and social maturity. Therefore, changing the minimum marriage age to 19 is a progressive legal step to reduce the social problems caused by early marriage.²⁴

The development of the international discourse on human rights has encouraged many parties to concretely recognise it at the national level through various legal instruments. Currently, the majority of countries have declared the minimum legal age of marriage to be 18. This policy implements the International Convention on the Rights of the Child, established by the UN General Assembly in 1989.²⁵ In line with this, through Presidential Decree Number 36 of 1990, Indonesia also ratified the Convention on the Rights of the Child (CRC), which contains regulations on child protection. As an implementation, the government then passed Law Number 23 of 2002 concerning Child Protection (UU PA). Meanwhile, marriage law in Indonesia, through Law Number 1 of 1974 on Marriage and Presidential Instruction Number 1 of 1991 on the Compilation of Islamic Law (KHI), has set a minimum age for marriage, namely 19 years for men and 16 years for women.²⁶

Early marriage can also occur due to parental pressure, especially from guardians. Early marriages involving guardians have significant social and psychological impacts on girls. Socially, girls who marry at a young age often lose access to education. They are forced to assume the roles of wife and mother, which require emotional maturity and physical readiness. This is exacerbated by the fact that they may not be financially or mentally prepared for married life, often leading to dependence on their husbands or extended family for daily needs.²⁷ National legal policies regarding early marriage in Indonesia still provide space for guardians through marriage dispensations. Despite revisions to the Marriage Law that raised the minimum age for marriage, dispensations granted by religious courts are often based on social or economic reasons, rather than solely in the child's best interests. This demonstrates a conflict between the protection of children's

²³ Badan Kependudukan dan Keluarga Berencana, "Laporan Perkawinan Usia Anak Dan Dampaknya," unpublished manuscript, Jakarta 2018, 22.

²⁴ Djamil, "Pembaharuan Hukum Islam Dalam Hukum Perkawinan Di Indonesia," 231.

²⁵ Hanafi, *Kontroversi usia kawin aisyah ra dan kaitannya dengan legalitas perkawinan anak di bawah umur dalam islam*, 298.

²⁶ Ibid., 299.

²⁷ Hafid Taufik dan, "Tinjauan Hukum Islam Terhadap Wewenang Imam Masjid Sebagai Wali Muhakkam Dalam Pernikahan Bawah Tangan," *Familia: Jurnal Hukum Keluarga* 2, no. 1 (2021).

rights under national law and the exercise of the guardian's authority based on Islamic legal tradition.²⁸

4. *Maqasid Approach*

The theoretical application of *maqāṣid al-shari‘ah* can be strengthened by demonstrating that early marriage potentially violates several core objectives of Islamic law and therefore justifies legal restriction. First, early marriage endangers *hifz al-nafs* (protection of life) due to heightened risks of maternal mortality, reproductive health complications, and physical harm to underage girls. Second, it undermines *hifz al-aql* (protection of intellect), as child marriage often results in school dropout and limits intellectual development and critical capacity. Third, early marriage compromises *hifz al-nasl* (protection of lineage) by increasing the likelihood of unstable families, poor child-rearing conditions, and intergenerational vulnerability. Fourth, it violates *hifz al-ird* (protection of dignity and honour), since minors are exposed to psychological harm, loss of autonomy, and unequal power relations within marriage. Finally, early marriage threatens *hifz al-māl* (protection of property), as economic dependency and lack of skills frequently lead to structural poverty. These violations demonstrate that early marriage contradicts the essential aims of Islamic law, thereby providing strong normative support for legal restrictions such as the minimum marriage age under Law Number 16 of 2019 as a legitimate instrument of *taqyid al-mubāh* to prevent harm and realise *maṣlahah*.²⁹

D. CONCLUSION

Some classical scholars understood this hadith as evidence for the permissibility of child marriage, but contemporary scholars emphasise the need to interpret the hadith within the *maqāṣid al-shari‘ah* approach, so that the practice of early marriage is not taken as a fixed rule. The hadith of 'Aisha is more appropriately understood as a historical event related to the social, cultural, and health conditions of Arab society at that time.

Therefore, the hadith of 'Aisha cannot be used as absolute legitimacy to permit early marriage in all contexts and eras. In fact, the spirit of sharia emphasises maturity (baligh, aqil, and rusyd) and the benefit (*maslahah*) in marriage. Therefore, in the current context, the hadith must be interpreted in line with the principles of protecting the soul (*hifz al-nafs*), protecting offspring (*hifz al-nasl*), and maintaining family honour, which align with the minimum age for marriage regulations in Indonesian positive law.

²⁸ Ali Mutakin, "Kontroversi Wali Mujbir Dalam Kasus Pernikahan Dini Di Indonesia," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 2024, 1752.

²⁹ Nurul Asiah, "Pernikahan Usia Anak Dalam Perspektif Maqasid Syariah," *Jurnal Al-Syir'ah* 17 (2019).

From a *fiqh* perspective, scholars differ on the minimum age for marriage. The Hanafiyah and Hanabilah schools of thought allow the marriage of children who have not reached puberty, provided that it is carried out by a guardian, although the implementation of husband and wife relations is suspended until puberty. The Malikiyah and Syafi'iyah schools place greater emphasis on considering benefits and maturity (*rusyd*) as important conditions for marriage. This difference shows that puberty, *aqil*, and *rusyd* are the main indicators of readiness for marriage, not certain age numbers. However, within the framework of *maqāṣid al-shari'ah*, early marriage, which has the potential to threaten life (*hifz al-nafs*), destroy offspring (*hifz al-nasl*), and weaken the family institution, is contrary to the objectives of the *shari'a*. Thus, Islam does not set a standard age number, but emphasises the principles of maturity and the benefit of the family as the basis for the ability to marry.

In Indonesian positive law, the minimum age for marriage has developed. UU no. 1 of 1974 sets the minimum age at 19 years for men and 16 years for women, but through Law no. Law No. 16 of 2019 standardised the minimum age for both marriages to 19 years. This change was based on the Constitutional Court's consideration that the age difference violates the principles of equality and child protection. The regulation aims to prevent early marriage practices that have the potential to cause negative impacts, such as reproductive health problems, high divorce rates, and the deprivation of children's rights to optimal development. Therefore, this regulation represents a progressive step by the state to safeguard child protection, create healthy families, and ensure harmony between national law and human rights principles. According to the International Human Rights, the majority of countries have declared that the minimum legal marriage age of marriage is 18 years. Regarding Guardians in classical Islamic jurisprudence or in Indonesian law, although there have been revisions to the Marriage Law that have raised the minimum age for marriage, dispensations granted by religious courts are often based on social or economic reasons, not solely in the best interests of the child.

This study is urgently needed for contemporary *fiqh*, legal harmonisation, and child protection because ongoing debates on child marriage often rely on literal readings of classical texts without adequate consideration of social change, legal developments, and the higher objectives of Islamic law. Such interpretations continue to create tension between religious discourse and national legal standards, particularly Law Number 16 of 2019 on the minimum marriage age, while also exposing children to physical, psychological, and social harm. By reexamining the hadith of the Prophet Muhammad's marriage to 'Aisha ra. Through a socio-historical approach and the framework of *maqāṣid al-shari'ah*, this study offers an adaptive *fiqh* perspective that prioritises *maslahah* and harm prevention. At the same time, it provides a normative

bridge between Islamic legal reasoning and Indonesian positive law, strengthening the legitimacy of child protection policies within religious communities and contributing to a more coherent, justice-oriented legal framework that safeguards children's rights in contemporary society.

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