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*by* Syufaat Syufaat

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# PROCEEDING OF

International Conference on Islamic Studies (ICIS)  
2018



THE ROLE OF KNOWLEDGE,  
TOLERANCE, MULTICULTURAL,  
AND SPIRITUAL DIMENSIONS  
IN SHAPING  
A NATION'S BETTER FUTURE

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## | Preface

Praise be to God, that today we are gathering here to attend the International Conference with a theme “The Role of Knowledge, Tolerance, Multicultural, and Spiritual Dimensions in Shaping a Nation’s Better Future”. On behalf of the committee, it is an honor and privilege for me to welcome you to this International Conference.

The theme of this international conference is inspired by the thought that quotes better future will be achieved by knowledge foundation, tolerance, plurality reality and spiritual dimensions. This theme will be elaborated by the local and international experts that will be classified into 3 (three) sub themes: (1) Islam Education, (2) Islamic-Family Law, and (3) other interesting sub themes.

This international conference successfully attracts 64 papers based on different areas of knowledge. In this occasion I would like to extend my gratitude to all my colleagues for their hard work to make this conference successful. And also, I would like to extend my appreciation to the Major of City of Pekalongan and staff for their invaluable input to this conference.

Finally, I would like to express our sincere apology if there are inconveniences happen during this conference. Thank you.

Pekalongan, December 17<sup>th</sup> 2018

Director,

Dr. H. Makrum, M.Ag

## Acknowledgment

First of all, I'd like to express my deep gratitude to Allah the Almighty for the abundance of blessings He gives, so that today the Postgraduate Program of IAIN Pekalongan is able to successfully hold the International Conferences on Islamic Studies 2018. We do hope this event goes smoothly without any obstacle. Secondly, may peace and salutation be upon Prophet Muhammad SAW along with his family, companions, and ummah, especially those who are present at today's international conference. Amiin.

In this nice occasion, I'd also like to welcome you all in Pekalongan City, the city of batik, the city of creativity. Hopefully, this city gives a nice impression and pleasant feeling to you all. Amiin. I'd also like to say "thank you very much" to our keynote speakers who have been willing to take time to share knowledge with us despite their busy schedules, of course.

The theme of today's international conference organized by the Postgraduate Program of IAIN Pekalongan is The Role of Knowledge, Tolerance, Multicultural, and Spiritual Dimensions in Shaping a Nation's Better Future.

This theme is crucial and interesting for us to discuss since one of the main problems and challenges faced by human beings today deals with the advancement of science and technology. The science and technology should be able to not only give birth to a tolerant civilization in the midst of a multicultural society but also maintain the spiritual dimension. Such an orientation is important in order to realize a better future for the nation.

The great nation is the one that is able to recognize and manage diversity in everything. This is because the diversity of a nation is something unavoidable; diversity is a sunnatulloh. Therefore, diversity should not lead us to uniformity. Instead, it should make us aware that difference does exist and we should accept it.

That is what Islam teaches us. "Walau sya-allahu laja'alakum ummatan wahidah walakin liyabluwakum fi ma atakum fastabiqul khairat." If Allah wills, then it is very easy for Him to make us one or united, but He intends to test us in what He has given, so that we may compete in goodness.

That is the significance of this conference; that is, to build a better future for the nation through the role of science and technology as well as to create a tolerant and multicultural civilization full of spiritual values. Here, we try to remind ourselves that the spirit of science and technology lies on humanity. We

need peace, not war. We must do salvation, not destruction. Therefore, we do hope that this conference can contribute ideas related to strategic ways we can take to minimize the negative impact of the advancement of science and technology for humanity.

We also hope this international conference may become one of the concrete evidences that IAIN Pekalongan supports the sustainability of human life. Humanity must be defended from all forms of destruction, including those caused by science and technology.

Finally, my gratitude also goes to all those who have participated and contributed to this international conference at IAIN Pekalongan IAIN, especially to the Mayor, the Director General, and the keynote speakers, as well as the Director of the Postgraduate Program of IAIN Pekalongan. May Allah the Almighty give the best reward to you all. Amiin. As the Rector, I want to apologize if you find imperfection in this international conference. This is how I end my speech. Thank you very much.

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Rector of IAIN Pekalongan,

Dr. H. Ade Dedi Rohayana, M.Ag

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## ANALYZING CHILDREN'S MARRIAGE (Sociological and Reproductive Legal Perspective)

Dr. H. Syufa'at M.Ag and Muthola'ah, M.PdI

### ABSTRACT

14 Article 7 paragraph (1) Law No. 1 of 1974<sup>23</sup> concerning Marriage, states that marriage is only permitted for those who have reached the age of 19 years (male) and 16 years (female) and if it has not reached that age the parties may request dispensation to the court. Child<sup>10</sup> marriage is not a simple problem because it does not only violate the law that stated in the article 6 paragraph (2) of Law Number 1 of 1974 concerning Marriage, but it also can damage the social<sup>25</sup> order. Hence, in this study, the authors try to analyze the relevance of marital age according to the Law No. 1 of 1974 concerning Marriage in term of sociological and reproductive juridical aspects. In addition, the author<sup>15</sup> wants to know what solutions should be taken to reduce the adverse effects of marriage at an early<sup>24</sup> age. This is a normative legal research with legal and conceptual approach. The legal material analysis technique used is legal reasoning using deduction method. The result of the study shows that early marriage causes many disadvantages and risks, especially in terms of reproduction. There is a necessity to reform Islamic family law, especially in the legal juridical aspect for example renewing the article relating to the marriage age limit of the bride and groom.

**Keywords:** *Marriage, Children*

### A. Introduction

Child<sup>22</sup> marriage is not a simple problem because it does not only violate the law, that is article 6 paragraph (2) of Law Number 1 of 1974 concerning Marriage, but child marriage can also damage the social order. Ironically, the marriage case of a 16-year-old boy with a grandmother in Bantaeng, Jenoponto, and the marriage of S (14) and R (16) in Maros Regency, South Sulawesi, which became media coverage was not new phenomenon.

Data from the Central Bureau of Statistics states that in 2015 the prevalence (how often the conditions occurred) of child marriages reached 23 percent. One in five women in the age of 20-24 years apparently had their first marriage

under the age of 18. Seeing from the condition of the prevalence area of child marriage, about 27, 11 percent live in rural areas while children in urban areas 17,09 percent. Provinces with the highest child marriage rates were West Sulawesi (34, 22 percent) followed by Central Kalimantan (33, 68 percent), West Kalimantan (32, 21 percent), and Central Sulawesi (31, 91 percent). Those data show that child marriage have been "institutionalized" in the social system of the society. People still think that marriage is just a matter of liking. The community also considers that underage marriage is "justified" by religious teachings. In fact, it is false understanding and cannot at all be justified in a common sense.

In preventing child marriage in Indonesia, the legal aspect seems to be the weakest point. In practice *isbat* marriage (remarrying in front of state officials) or marriage dispensation is an opportunity for child marriage which was originally illegal become legal. Moreover, both are forms of silent confession of the practice of state law that should be expressly declared illegal and have legal sanctions for violators.

## **B. Statement of the Problems**

1. How is the relevance of marriage age according to Marriage Law No. 1 of 1974 in term of juridical sociological aspects and reproduction?
2. What solutions should be taken to reduce the adverse effects of marriage at early age?

## **C. Theoretical Review**

1. Overview of Marriage

In Indonesian, marriage comes from the word "married" which means forming a family with the opposite sex, having sex or body relations (Dep.Dikbud, KBBI, 1994: 456). Marriage is also called marriage originating from the Arabic word *nikah*, which means gathering, entering one another, and being used for bodybuilding (Abdul Rahman Ghozali, Fiqh Munakahat, 2012: 7) The word *na-ka-ha* (mating) is found in Al -Qur'an as in:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ  
وَرُبَاعَ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَلِكَ أَدْنَىٰ أَلَّا تَعُولُوا - ٤:٣

<sup>3</sup> And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice]. (QS: An-Nisa: 3)

وَإِذْ تَقُولُ لِلَّذِي أَنْعَمَ اللَّهُ عَلَيْهِ وَأَنْعَمْتَ عَلَيْهِ أَمْسِكْ عَلَيْكَ زَوْجَكَ وَاتَّقِ اللَّهَ وَتُخْفِي فِي  
نَفْسِكَ مَا اللَّهُ مُبْدِيهِ وَتَخْشَى النَّاسَ وَاللَّهُ أَحَقُّ أَنْ تَخْشَاهُ ۗ فَلَمَّا قَضَىٰ زَيْدٌ مِنْهَا وَطَرًا  
زَوَّجْنَاكَهَا لِكَيْ لَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ إِذَا قَضَوْا مِنْهُنَّ  
وَطَرًا ۗ وَكَانَ أَمْرُ اللَّهِ مَفْعُولًا - ٣٣:٣٧

<sup>2</sup> And [remember, O Muhammad], when you said to the one on whom Allah bestowed favor and you bestowed favor, "Keep your wife and fear Allah," while you concealed within yourself that which Allah is to disclose. And you feared the people, while Allah has more right that you fear Him. So when Zayd had no longer any need for her, We married her to you in order that there not be upon the believers any discomfort concerning the wives of their adopted sons when they no longer have need of them. And ever is the command of Allah accomplished. (QS: Al-Ahzab)

Terminologically, Syafi'iyah scholars argue that marriage is a contract or agreement containing the intention of allowing sexual relations by using lafaz *na-ka-ha* or *za-wa-ja* (Amir Syarifudin, Islamic Marriage Law in Indonesia; between Munakahat Fiqh and Invite -Andang Perkawinan, 1990: 37).<sup>10</sup> According to Article 6 of the Marriage Law,<sup>4</sup> regarding bride candidate are regulated as follows:

- a. Marriage is based on the agreement of the two prospective brides.

b. To carry out a marriage, a person who has not reached the age of 21 (twenty one) years must obtain permission from both parents.

## 2. Overview of the Age of Marriage

If the prospective bride is not even 21 years old, the parties of the prospective bride can submit a marriage dispensation to the Religious Court as stipulated in Article 7 of the Marriage Law:

- a. Marriage is only permitted if the male reaches the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years.
- b. In the event that the deviation in paragraph (1) of this article can request dispensation to the Court or other officials requested by both the male or female parent.

In fact, the purpose of marriage according to the past religion is to fulfill religious instructions in order to establish a harmonious, prosperous and happy family. Harmonious in using the rights and responsibilities of family members; prosperity means the creation of peace of mind and soul caused by the fulfillment of the needs of life and inner life, so that happiness arises that is affection between families (Abdul Rahman Ghozali, Fiqh Munakahat, 2012: 22). In order to achieve that goal, the bride is expected to be able to maintain the household as well as establish good inner relationships.

In psychology, so far there has been no explicit limitations on the age of marriage. However, in the period of human development it has been divided into several periods, namely the period of birth, infancy, childhood, middle and late childhood, adolescence, early adulthood, middle adulthood, late adulthood. Adulthood begin at the age of twenty to thirty (Syamsunuwiyati Mar'at, Developmental Psychology Bandung, 2007: 61). Meanwhile psychologists generally determine the age of adults around the age of 20 as early adulthood and last until the age of 40-45 years. Thus, psychological review for the limit age of marriage shows aspects of maturity at the age of 20 to 40 years. This age

limit is not entirely absolute. Cultural aspects is very influential in determining one's maturity (John W. Santrock, Life Span Development, 1995: 22-23)

In Islamic law, there is a term called *al-aqidaini* (two perpetrators contract), the two perpetrators are the two brides and guardians. For the two marriages perpetrators, the jurists set the terms of a must-have conditions, they have to be *baligh* (*al-bulugh*) and perfect (*al-aqil*), one religion (*ittihad al-din*) and adults (*al-rusyd*). If these conditions have been fulfilled, marriage will become legal according to Islamic law.

Judicially reviewed, each applicable law in Indonesia has different sizes regarding adult terms such as shows on the table below:

Table 1. Adult Age Limit based on law

Batas Usia Dewasa berdasarkan undang-undang				
12 Tahun	14 Tahun	17 Tahun	18 Tahun	21 Tahun
16 Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak	Kitab Undang-Undang Hukum Pidana	Undang-Undang Nomor 24 Tahun 2013 Tentang Administrasi Kependudukan	- Undang-Undang No. 13 Tahun 2003 tentang Ketenagakerjaan - Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia - Undang-Undang No. 23 Tahun 2002 tentang Perlindungan Anak - Undang-Undang No. 44 Tahun 2008 tentang Pornografi - Undang-Undang No. 12 Tahun 2006 tentang Kewarganegaraan Republik Indonesia - Undang-Undang No. 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang	- Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan - Undang-Undang Hukum Perdata ( <i>Burgerlijk Wetboek</i> )



### 3. Review of Sociological and Legal Pluralism Theory

In questioning child marriage, the relevant theory used is the theory of Pluralism Law, a form of recognition for the practice of customary law and religious law, especially for family issues, including marriage, inheritance and endowments. In the context of family law, the State seeks to carry out legal unification through the Marriage Law No. I of 1974 and the application of the Compilation of Islamic Law (KHI) through Presidential instructions No. I of 1991. Through both regulations, citizens, including Muslims, are obliged to submit to national and at the same time affirm to the state legal authority over religious law

Sociological Legal: Stijn Van Huls, researcher on Islamic family law from the Netherlands, through his research in the Religious court in Cianjur and Bulukumba said that in relation to child marriage, laws that live in the community including norms can still be the judge's reference in giving dispensation as long as there is rigidity of minimum age limit. The problem is, in Indonesia there is no minimum age limit for submitting dispensations so that the discretion of giving dispensation is very large. Thus, in the case of child marriage, the State does not seem to have the firmness in implementing the age limit as stipulated in the Marriage Law. This shows that the role of religious law in the community outside State law is still very large or even greater, accompanying the religious political landscape in increasingly conservative public spaces.

Whereas as Michael Pelatz emphasized in his book, *Islamic Modern Religions Courts and Cultural Politics in Malaysia*, family law and its implementation by the religious court as an institution of the State in authority are very important for its existence to create citizens of a modern State (national citizens) which refers to national law and individual rights; and at the same time can liberate individuals, especially women from primordial bonds of tribes, customs, ethnicities, and gender which are seen as unfair.



## D. Research Methods

### 1. Type and Research Approach

The type of this research is normative legal research to analyze the coherence whether there are legal rules according to legal norms and norms in the form of prohibited orders according to legal norms (not only in accordance with legal rules) or legal principles. This study is also applied Law approach (Statue Approach) by examining all the Laws and Regualations related to the legal issues being handled, in this case the Marriage Law No. I of 1974 and KHI No. I Year 1991. In addition to the law approach, the author also uses the Sociological Legal Approach as according to Eisenbergh the German historian states that the law comes not in a vacuum, in reviewing the marriage of children many factors that circulate among other social cultural factors, economic motives, psychological factors and reproductive factors.

### 2. Data Sources (Primary and Secondary)

Primary sources are Law No. I of 1974 concerning Marriage and KHI of 1991, Al-Quran, Al Hadith and Islamic Jurisprudence (Jurisprudence). Secondary sources are taken from books and relevant information, such as family law legislation in the State Muslims and Decision of the Religious Courts in Indonesia

### 3. Data Collection Techniques

Data collection techniques are intended to obtain data in the research. If in the study it has been stated that using the law approach, what should be done is to look for legislation relating to the issue. To find the concepts, the author also collects concepts that intersect which are extracted from the existing literature sources.

### 4. Data Analysis Techniques

The data analysis technique used by the author in this study is using legal reasoning with deduction method. As syllogism taught by Aristotle, the use of this

method of deduction stems from a major premise, then a minor premise is proposed. From these two premises, a conclusion or conclusion is drawn

## **E. Discussion**

### **1. Relevance of Marriage Age Limits According to Law No. 1 of 1974 concerning Marriage in terms of Juridical Sociological and Reproductive Aspects**

In essence, early marriage is the second marriage bond or one prospective bride is less than specified in the legislation. In Law No. I of 1974 concerning marriage Article 7 paragraph 1 states that marriage is only permitted if the male has reached the age of 19 years and the woman has reached 16 years and is further explained in paragraph 2, namely in the case of verse deviation (1 ) that they can request dispensation to the court or other officials appointed by both male and female parents.

Early marriage causes many disadvantages and greater risks to young women, at a young age they are required to take care of the household, serve their husbands, conceive, give birth and then raise their children. In terms of health, the perpetrators who engage in early sexual intercourse are at risk of sexual trauma, increase the growth of cervic cancer (cervix), and exposed to infectious diseases. In addition, early marriage increases the risk of death by 2 to 4 times for women at the age 20 years or more.

Social context: Interpretations of the marriage of children in religion need to be placed in a social context. This context is important to frame whether the practice really happened or just a story of lies for fooling. The practice of child marriage is proof that the care and protection pattern is still not working. Child care is still understood as a power relationship. Parents are considered to be the most understanding and correct, while children are only weak little creatures.

Such care will continue to foster violence against children. Children will continue to be considered goods. They can be treated whatever according to the

wishes of adults as the owner. Parenting will be the main determinant of children's fate. The process of parenting parents will greatly influence whether the child will marry at the age of child or not. Even though it is clearly stated in the Child Protection Act Article 26, one of the obligations and responsibilities of parents is to prevent the occurrence of early marriage. (Rita Pranawati, Questioning Child Marriage, 2018: 7)

Reproductive aspects: immaturity of the reproductive organs causes early marriages at the age 10-14 years to experience death during childbirth. The risk is three times bigger for teenagers aged 15-20 years. In addition, women who marry at an early age are at risk of terrible diseases, such as cervical cancer, breast cancer, myoma and uterine cancer. (Shauqi Maulana, Reproduction Seminar, 2013).

## **2. Steps That Should Be Taken To Reduce Bad Impacts That Happen As A Result Of Marriage At Early Age**

Prevention efforts, early marriage: Child marriage polemic has actually been criticized by various parties. Many actions were taken to reduce the marriage rate of children in the form of campaigns to submit judicial review of the provisions. The Constitutional Court in its decision adjudicated and declared rejecting the petition of the Petitioners. According to the panel of judges, marriage in its implementation is closely related to sacred beliefs based on the rules and sacred values of religion that cannot be ignored. This is as stated in Article 28 B paragraph (1) of the 1945 Constitution which states, "Every person has the right to form a family and continue the descent through a legitimate marriage." This legal marriage understanding must be seen from two aspects; according to religious law and state law. All applicable religions in Indonesia have their own rules in marriage and the religious law is binding on all adherents, while the state provides services in the implementation of marriages under state rules including administrative records for legal certainty for couples and their offspring. (Hasan Haikal, Age of Marriage for Girls, 2015)

Educational function: Office of religious affairs (KUA) as a government organ that records marriage events needs to strengthen the education function to prevent child marriage. Strengthening this education is not only carried out when visiting / recording marriages. KUA needs to continue to build strengthening education and build communication so that people have good perspective on marriage as a grand agreement (*mistaqan ghalidza*). As a sacred agreement, marriage is not just to bring together two partners. However, they carry out the mandate of humanity, civilized beings, and continue their lives of morality and civilization.

Courts, in this case, have the authority to give dispensation must also prioritize the best interests of the child. Courts need to consider and/or reject applications for child marriages to maintain the dignity of the nation. Court courage to refuse will save Indonesian children from the problem of "children giving birth to children". In the end, marriage is not just a matter of the relationship. However, marriage is a medium to build national civilization through the smallest unit of the family.

## **F. Conclusion**

There is a need for Islamic family law reform, especially in the legal juridical aspect of renewing articles relating to the marriage age limit of prospective brides from the age of 19 to a minimum of 21 years and the limit of prospective brides from the age of 16 to 19 years. This has been done by other Islamic countries such as Egypt and Tunisia.

Regarding the case of underage marriages especially when the woman is already pregnant as happened in many of our communities, the judge should have to decide on the request related to the marriage dispensation by more carefully paying attention to the aspects of *madharat* and *masalahah* in the community.

BP4 in the KUA-KUA sub-district must be proactive in providing pre-marital education for adolescents as a provision to take part in a *sakinah* and

*mawadah* family with material on: faith, communication, economics and sex (reproductive) education. To get quality offspring, you need to choose superior seeds, fertile media (mature age) and *mongso* (right time).

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