

Perkawinan Anak dalam Al-Qur'an dan Implikasinya terhadap Hukum Keluarga di Indonesia

Child Marriage in the Qur'an and Its Implication toward Family Law in Indonesia

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Abstrak : *Prevalensi perkawinan anak di Indonesia masih tinggi, menempatkan negara ini di peringkat ketujuh secara global. Baik praktik budaya maupun adat istiadat sangat berkontribusi terhadap persistensi ini, meskipun telah ada reformasi hukum yang diberlakukan melalui UU No. 16 Tahun 2019, yang mengatur peningkatan usia minimum perkawinan. Pada saat yang sama, beberapa ayat Al-Qur'an seringkali ditafsirkan sebagai melegitimasi perkawinan anak, menciptakan ketegangan antara interpretasi agama dan peraturan hukum kontemporer. Artikel ini menawarkan kontribusi baru dengan menghubungkan konteks sosial-historis ayat-ayat Al-Qur'an yang berkaitan dengan perkawinan anak dengan lintasan reformasi hukum Indonesia, dari UU No. 1 Tahun 1974 hingga UU No. 16 Tahun 2019. Melalui pendekatan sosial-historis, studi ini menunjukkan bahwa ayat-ayat Al-Qur'an tentang perkawinan di bawah umur merupakan respons terhadap*

kondisi sosial tertentu di Arab abad ketujuh, bukan sebagai dukungan normatif. Temuan ini menyiratkan bahwa hukum keluarga Indonesia juga harus mengadopsi kerangka kerja yang responsif terhadap konteks yang mempertimbangkan dinamika budaya lokal dan standar pembangunan manusia global. Oleh karena itu, artikel ini berpendapat bahwa menyelaraskan kebijakan hukum dengan arah etika Al-Qur'an, khususnya penekanannya pada keadilan, kedewasaan, dan kesejahteraan sosial, memberikan landasan yang lebih kuat untuk mengatur perkawinan anak di Indonesia kontemporer.

Kata kunci: *Perkawinan anak; UU No. 16 Tahun 2019; pendekatan sosio-historis; UU No. 1 Tahun 1974; konteks budaya.*

Abstract : *The prevalence of child marriage in Indonesia remains high, placing the country rank seventh globally. Both cultural and customary practices considerably contribute to this persistence, despite the legal reform enacted through Law No. 16 of 2019, which provisioned the raise of minimum marriage age. At the same time, several Qur'anic verses are every so often interpreted as legitimizing child marriage, creating tension between religious interpretation and contemporary legal regulations. This article offers a novel contribution by linking the socio-historical context of Qur'anic verses recounted to child marriage with the trajectory of Indonesia's legal reforms, from Law No. 1 of 1974 to Law No. 16 of 2019. Through a socio-historical approach, this study exhibits that the Qur'anic passages to underage marriage were responses to specific social conditions in the seventh-century Arabia rather than normative endorsements. This finding implies that Indonesian family law should likewise adopt a context-responsive framework that considers local cultural dynamics and global human development standards. Consequently, the article argues that aligning legal policy with the Qur'an's ethical trajectory, particularly its emphasis on justice, maturity, and social welfare, provides a stronger foundation for regulating child marriage in contemporary Indonesia.*

Keywords: *Child marriage; UU No. 16 2019; socio-historical approach; UU No. 1 1974; cultural context.*

A. Introduction

Marriage is a sacred entity in Islam. Although the implementation is still debated by scholars on whether it is a form of worship or not, Islam still outlines the rules that need to be measured for a Muslim about to get married. The rules are sometimes based on human psychological conditions, such as fears of falling into adultery or tyrannizing their partners because they feel unable to bear the burden after marriage.¹ These considerations will hold an impact on the law that will be attached to a marriage carried out by the *mukallaf* (accountable person). Evidently, this also affects the level of a person's need for marriage as a form of someone's eligibility for marriage.²

However, the conditions mentioned cannot always be justified as specified. Several factors, such as cultural factors, underlie distinctive aspects in determining when a person deserves to marry. Marriages affected by cultural factor sometimes does not reflect on the psychological side of a person before deciding eligibility; even marriages tend to be held as children step into maturity. This situation is suitable in the context of the local cultural scope but is contradictory when examined from the religious laws mentioned above and the global benefit. If assessed from a global benefit, child marriage is counterproductive to the rise in the human development index. This is evidenced by the potential for child marriage to perpetuate the cycle of death, increasing the risk of maternal and infant mortality and disrupting harmony due to the psychology of adolescent couples who are not prepared to settle down. Hence, they are prone to domestic violence (KDRT) and the risk of divorce.³ In terms of health, it also causes problems, including the undeveloped reproductive organs of women under age 19.

Assuming it is related to the legal context in Indonesia. In that case, the disrupted global benefit is justified to by the new regulation passed in 2019, Law No. 16 of 2019, concerning marriage

to amend Law No. 1 of 1974. This is a response to the high number of child marriages in Indonesia in 2018, reaching 11,21 percent.⁴ Apart from traditional factors, poverty also contributes to the number of child marriages in Indonesia, although it is not merely a factor encouraging child marriage.⁵ This happens after school-age children do not proceed their education because of financial problems, so marriage becomes an escape from the inability to complete education. This is evidenced by a survey conducted by *Susenas* (National Social Economic Survey) in March 2018 regarding the percentage of age at first marriage and the highest level of education, as shown in Tables 1.1 and 1.2.

Table 1.1 Percentage of Women aged 20-24 by the Age of First Marriage and School Participation, 2018

Age of First Marriage	School Participation		
	No/ Never Schooled	Still at School	No Longer in School
(1)	(2)	(3)	(4)
Unmarried	0,72	35,39	63,89
<18	0,83	5,57	93,60
18+	0,49	10,09	89,42

Data Source: *Susenas* (Survei Sosial Ekonomi Nasional), March 2018

Table 1.2 Percentage of Women aged 20-24 by the Age of First Marriage and School Participation, 2018

Age of First Marriage	School Participation		
	No/ Never Schooled	Masih Bersekolah	No/ Never Schooled
(1)	(2)	(3)	(4)
Unmarried	0,75	24,39	74,86
<18	0,80	8,16	91,04
18+	0,63	8,12	91,24

Data Source: *Susenas* (Survei Sosial Ekonomi Nasional), March 2018

The government's response by designating a legal product in the form of Law No. 16 of 2019 has been carried out to correspond to the Qur'an reference on the phenomenon of child marriage that has long occurred in the Arabian Peninsula. The use of the word orphan in the context of marriage,⁶ plus the phrase *al-wildān* (young man) as written in Surah An-Nisā' [4]: 127:

And they request from you, [O Muhammad], a [legal] ruling concerning women. Say, "Allah gives you a ruling about them and [about] what has been recited to you in the Book concerning the orphan girls to whom you do not give what is decreed for them - and [yet] you desire to marry them - and concerning the oppressed among children and that you maintain for orphans [their rights] in justice." And whatever you do of good - indeed, Allah is ever Knowing of it. (Surah An-Nisā' [4]: 127)

This verse indicates that there was a law against child marriage cases at that time. However, this law was addressed to the guardians of orphaned children in the Arabian Peninsula. Guardians who want to marry off orphans who are their dependents were not obliged in paying dowries to orphans who are married, so this verse is a warning to them.

In addition to the verse above, another verse responds to the phenomenon of child marriage, which has become a custom in the Arabian Peninsula. Thus, this article explains how the Qur'an reacts to this custom by reviewing the socio-historical aspects behind the revelation of these verses so that it becomes a basis for determining family law measures in Indonesia. In addition, this article also explores the possible implications generated by the Qur'anic response to child marriage, which has an impact on the legal consequence to the previous law reform. This article also reviews several cases of child marriage in Indonesia which were driven by *adat* (customs) factors as recommendations for the state in realizing *adat*, which does not be incompatible with the global benefit.

At the same time, it debates surrounding child marriage in Muslim-majority societies which often citing to Qur'anic verses that are interpreted as legitimizing underage marriage, particularly Surah At-Talaq [65]: 4 as interpreted below and Surah An-Nisā' [4]: 127.

And those who no longer expect menstruation among your women - if you doubt, then their period is three months, and [also for] those who have not menstruated. And for those who are pregnant, their term is until they give birth. And whoever fears Allah - He will make for him of his matter ease. (Surah At-Talaq [65]: 4)

These verses are frequently cited without adequate attention to the socio-historical context in which they were revealed. Existing studies lean towards to focus either on the normative interpretation of these verses or on the legal-sociological analysis of Indonesian marriage law. However, few studies have systematically connected the Qur'an's socio-historical responsiveness to seventh-century Arabian social conditions with the evolution of Indonesia's legal reforms on child marriage.

The problem of child marriage is an noteworthy issue to study from an academic point of view, mainly when it is associated with Islamic law, as research conducted by Hasan Bastomi titled "*Pernikahan Dini dan Dampaknya (Tinjauan Batas Umur Perkawinan Menurut Hukum Islam dan Hukum Perkawinan Indonesia)*" (Early Marriage and Its Impacts (An Analysis of the Marriage Age Limit According to Islamic Law and Indonesian Marriage Law) indicates that positive law regulation in Indonesia as the implementation of *sad al-ʿarīʾah* has prevented the negative impacts described in the study.⁷ However, since this research was published in 2016, the positive law being reviewed is Law No. 1 of 1974, while this article examines the latest regulation, which is a amendment of Law No. 1 of 1974 in response to the case of an increase in the number of child marriages in 2018. This article compares Indonesia's legal approach to child marriage] cases with the Qur'an's response to similar cases

that occurred during its revelation, which led to the revelation of verses addressing child marriage.

Elisabet Putri Lahitani conducted a more recent study from the above research titled "*Permasalahan Perkawinan Dini di Indonesia*," identifying the causes and impacts of child marriage in Indonesia. Unlike the main aim of the mentioned research, this article examines the causes of child marriage by analyzing the socio-historical contexts of Indonesia (or specific Indonesian regions where the practice is deeply entrenched) and comparing them with the social and historical circumstances present during the revelation of the Qur'an.

This article completes that gap by offering a novel analytical relation between the Qur'an's contextual response to child marriage and Indonesia's contemporary legal response through Law No. 16 of 2019. By examining the socio-historical background of the relevant Qur'anic verses, this study argues that references to underage marriage in the Qur'an were not prescriptive endorsements but contextual responses to prevailing social structures, particularly concerning the protection of orphaned girls. This insight provides a conceptual foundation for understanding Indonesia's legal reform as aligned with the Qur'an's ethical trajectory, which emphasizes justice, maturity, and social welfare.

Methodologically, this study employs a socio-historical approach to Qur'anic interpretation, analyzing *asbāb al-nuzūl* (cause of revelation), classical commentaries, and the social structure of early Arabian society. These are combined with a legal-historical analysis of Indonesia's marriage regulations from the colonial period to the enactment of Law No. 16 of 2019. The integration of these two approaches enables a comprehensive examination of how scriptural interpretation and legal policy both evolve in response to everchanging social contexts. Through this combined framework, the article demonstrates that the Qur'an's contextual responsiveness provides a regulatory basis for contemporary legal

reforms aimed at preventing child marriage. It further argues that Indonesian family law should persist to adopt a context-understanding approach that considers local cultural dynamics while aligning with global human development standards.

B. Child Marriage in the Indonesian Context

1. Child Marriage in Indonesia post-Colonialism

According to Clifford Greetz, marriage is a pivotal moment⁸, as a crucial moment that shows the time in which kinship takes place, so that it cannot be detached from the site and time where the backgrounds of the two families who have kinship took place. In other words, marriage is a historical phenomenon⁹. Therefore, tracing the vestiges of marriage in Indonesia is essential, so it is necessary to determine the right time to observe the phenomenon of child marriage in the history of the social life of the Indonesian people and the influence of the political and economic order that surrounds it.

Post-colonialism was a crucial period for Indonesia, where the colonial power previously coerced many societal changes, and these periods occurred around the 1920s to 1970s, known as the transitional period in Indonesian historiography.¹⁰ This period was the groundwork of social life in Indonesia as an independent country and regulates the life of its people. For this reason, following the traces of child marriage in Indonesia starts from this period.

Mutiah Amini, in her journal article entitled "*Perkawinan Dalam Sejarah Kehidupan Keluarga Jawa 1920AN-1970AN*", stated that around 1920-1950,¹¹ many expressions of child marriage were publicised through newspapers and magazines published in that period. She cited one mass media at that time as an example, namely "Pesat," which was published in 1939 and contained the expression of an unnamed woman who described her marriage she had experienced as follows.

Saja seorang perempuan jang ditinggalkan soeami dengan djalan thalak. Doea boelan soedah berlaloe hingga kini, saja ditinggal di rumah dengan empat anak. Sembilan tahoen jang laloe, saja dikawinkan oleh iboe bapa saja dengan soerang anak moeda jang tjakap. Katanja ini anak moeda akan dijadi teman, pelindoeng, dan pemimpin saja selama hidoep. Saja tjinta betoel kepada soeami saja. Sembilan tahoen kami hidoep bersama, sehingga kami mempoenjai 4 anak. Beberapa tahoen jang laloe ini, kami pindah ke Semarang. Dalam permoelaanja, keadaan kami biasa sadja. Setelah soeami saja masoek djadi lid dari soeatoe koempoelan, moelailah dia poelang djaoeh-djaoeh malam, kadang-kadang djam 2 malam baroe dia poelang; kalau saja bertanja, katanja dari roemah perkoempoelan. Saja insjaf kesalahan saja, soeami saja koebiarkan berhoeboengan ke mana-mana dengan ta' ada pengawasan. (Pesat, 9 Februari 1939, tahun pertama No. 20)

I am a woman whose husband left me by way of divorce. Two months have passed since then, and I have been left at home with four children. Nine years ago, my parents married me off to a handsome young man. They said this young man would become my companion, protector, and guide for life. I truly loved my husband. We lived together for nine years and had four children. A few years ago, we moved to Semarang. At first, our situation was normal. But after my husband joined an association, he started coming home very late at night, sometimes not until 2 a.m. When I asked, he said he was at the association's house. I now realize my mistake: I allowed my husband to come and go as he pleased, without any supervision.

The problem that arises as the background of this expression is due to forced marriages carried out by the woman's parents, whose motives are unknown. Although it is not stated in the above expression that marriages start at the age of children, the traditions Indonesian understand indicate that forced marriages are not at the level of readiness of a woman, whether mentally, physically, or even of sufficient age. Thus, it can be implied from the article that family integrity is a problem that is affected by child marriage.

Child marriages with brides under 18, which at that time were prevalent, were embedded in the life of the Javanese people. This can be noticed from the expression of an activist in women's rights, Abdoerachman, in response to the rise of child marriage cases at that time, which did not yet have clear regulatory rules because they still relied on customary and local religious law.

Kami akan sangat gembira jika saja perempuan di bawah usia 18 tahun dilarang menikah. Jika perkumpulan kita dapat membantu mengakhiri semua ini, dan secepatnya, suatu kebiasaan lama yang membawa para gadis yang baru saja meninggalkan masa kanak-kanaknya untuk menikah dengan seorang lelaki yang tidak dikenalnya dan bahkan tidak akan pernah dapat mencintainya.¹²

We would be overjoyed if marriage were prohibited for girls under the age of 18. If our organization could help put an end to all of this, and as soon as possible, an outdated custom that forces girls who have just left childhood behind to marry a man they do not know and could never truly love.

Therefore, in 1946, a draft law was outlined, which at that time was still disputable because it was still based on class. It was anticipated that this marriage law would become all-embracing and affect to all ethnic groups in Indonesia. This was only attained in 1954 when Mrs. Soemari, one of the women's activists, tried to bring together the interests of women, the state, and religion, in this case, it was Muslims who were the majority. Thus, a legal product that was collectively applicable to all Indonesian people was born without discrimination between race and class.¹³ Unfortunately, this law was not yet legitimate until the 1972 Marriage Law.

The difference between the two laws is in the subject matter of the two laws. The 1954 law concerned formal law, while the 1972 law addressed material law. The 1954 law is respected as formal regulation. It incorporated laws that can be enforced as these are originated from local community customs and contain doctrines derived from women's activist associations, even though they have

not been passed into law. At the same time, the 1972 law is considered material law, which was previously unknown to the Islamic group because it could not establish a law. However, this law stemmed from social conditions encouraged by women activists who wanted a law regulating marriage regulations in Indonesia. This petition was accomplished by the existence of rigorous rules regarding the minimum age of marriage, which were stated explicitly and later became formal law with the issuance of Government Regulation No. 9 of 1975¹⁴ concerning the implementation of Law No. 1 of 1974 concerning marriage.¹⁵

With the ratification of Law No. 1 of 1974, the marriage laws regulated by the KUHPer (Indonesian Civil Code) as a product of Dutch colonial law were abolished. This KUHPer was created to maintain that customary law still be relevant to indigenous people, although colonial policies opened up opportunities to establish universal law.¹⁶ So, it is inherent that the marriage law before the enactment of this law was still bound to custom. In addition, this KUHPer moderately discredited women so that it initiated women activists to produce new rules that are relevant to the social context of society, especially for women in the post-independence era.¹⁷

2. Marriage in Indonesia After the Stipulation of Law No. 1 in the Year 1974

To review Indonesia's socio-historical background about child marriage, it is compulsory to examine the progress of the legal provisions on child marriage as regulated in Law No. 1 of 1974. If you looked at the social background when this law was passed, marriage at the age of 16 years was common given the insignificant number of girls attending school at that time. In addition to customary and religious laws which had become formal law in Indonesia, these do not provide an age limit for marriage.¹⁸ Unfortunately, this law has experienced legal stagnation for four decades, so it is considered incapable to respond to the rapid social changes in Indonesian society. This dormancy was reinforced by

rebuffing the judicial review of Article 7 paragraph (1) dated June 18, 2015.¹⁹

This material trial run was driven by several factors that heralded social changes during those four decades. *First*, the emergence of laws that came later, one closely related to child marriage, was Law No. 23 of 2002 concerning Child Protection. More information is stated in Article 1, paragraph 2, which explains that all activities should assure and protect children and their rights so they can live, grow, develop, and participate fairly with human dignity and protection from violence and discrimination. Whereas in the previous article, it was elaborated that the category of a child is someone who is not yet 18 years old.²⁰ From the legal matter implied, it is clear that the age limit of 16 years in marriage stipulated by Law No. 1 of 1974 is no longer relevant, especially with the current context that prioritizes education. This, it can be stated that the age of 16 is the age of schooling which is entitled to achieve entire educational levels.

Second, as a consequence of the materialisation of the child protection law, the age limit of 16 years for marriage perpetuates the practice of child marriage because the age of 16 is still classified as a child. Therefore, if the Marriage Law was still constrained, then the law is not forward-looking. The former Marriage Law was still contrary to the purpose of marriage in the law itself, namely accomplishing a wonderful marriage without ending in divorce and obtaining good and healthy offspring. This was because child marriage interferes with children's rights as described in the Child Protection Law and threatens reproductive health.²¹ This is also stated in the 'General' section of Law No. 16 of 2019,²² ratified on October 14, 2019, in response to social changes and the laws and regulations correlated to these changes.

3. Child Marriage in Quranic Context

The Qur'an, as a primary source of Islamic law, indeed regulates matters related to marriage. However, the Quran does not specify

the minimum age requirement for marriage. This is the initial response of the Qur'an to the phenomenon of marriage that occurs in the social setting of society. Regarding child marriage, this phenomenon is observable from an account narrated by *Hakim* (guardian) regarding *asbāb an-nuzūl* Surah Ath-Thalaq verse 4 as follows.

أَخْبَرَنَا أَبُو إِسْحَاقَ الْمُفَرِّئِيُّ، أَخْبَرَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ حَمْدُونَ، أَخْبَرَنَا مَكِّيُّ بْنُ عَبْدِ اللَّهِ قَالَ: أَخْبَرَنَا أَبُو الْأَزْهَرِ، أَخْبَرَنَا أُسْبَاطُ بْنُ مُحَمَّدٍ عَنْ مُطَرِّفٍ، عَنْ أَبِي عُثْمَانَ عَمْرٍو بْنِ سَالِمٍ قَالَ: لَمَّا نَزَلَتْ عِدَّةُ النِّسَاءِ فِي سُورَةِ الْبَقَرَةِ فِي الْمُطَلَّاقَةِ وَالْمُتَوَقِّ عَنْهَا زَوْجُهَا، قَالَ أُبَيُّ بْنُ كَعْبٍ: يَا رَسُولَ اللَّهِ، إِنَّ نِسَاءً مِنْ أَهْلِ الْمَدِينَةِ يَقُلْنَ قَدْ بَقِيَ مِنَ النِّسَاءِ مَنْ لَمْ يُذْكَرْ فِيهَا شَيْءٌ، قَالَ: «مَا هُوَ؟» قَالَ: الصِّغَارُ وَالْكِبَارُ وَذَوَاتُ الْحَمْلِ، فَنَزَلَتْ هَذِهِ الْآيَةُ: {وَاللَّائِي يَئِسْنَ إِلَى آخِرِهَا (رواه الحاكم)²³

In the above hadith, it is recounted that the women in Medina asked questions regarding the 'iddah (waiting period) of women who have not been categorized in Surah Al-Baqarah verse 234. As mentioned by Ubay bin Ka'ab, they cover namely the group of women who are still classified as children, who are old, and who are pregnant. This verse was revealed after Surah Al-Baqarah verse 234 in response to the condition of married women in Medina.²⁴

In Surah At-Talaq verse 4, it is stated that the 'iddah of women who have not been mentioned in Surah Al-Baqarah verse 234, one of which is a woman who is still a child which is semantically referred from the word *wallā'ī lam yahidna*, namely women who

have not menstruated. In some interpretations, Wahbah Zuhaili, for example, interprets the word as *aṣ-ṣāgīrāt*, or it can be translated as a woman who is not old enough.²⁵ This understanding aligns with what Fakhruddin Ar-Razi wrote in his commentary *At-Taḥfīr Al-Kabīr*.²⁶ Al-Khatib Asy-Syirbini, in his commentary *As-Sirāj Al-Munīr fī al-I'ānati 'alā Ma'rīfati Ba'di Ma'āni Kalāmi Rabbīnā Al-Ḥakīm Al-Khabīr* added a new meaning related to *aṣ-ṣāgīrāt*, meaning a woman who has anymore menstruate even though she has passed her first menstruation period.²⁷

From the question asked by Ubay bin Ka'ab, it is well-defined that the women who are not old enough, marked by the arrival of menstruation at that time, are already married and divorced by their husbands. Thus, questioning the *'iddah* that must be met to remarry later. This explains that the social background when this verse was revealed to allow child marriage. So, the Qur'an fulfilled by determining the *'iddah* for this group of women, which means that child marriage is still legal. This verse also becomes confirmation for those who support child marriage regardless of the social and historical context in which the verse was revealed. On the other hand, this verse explains the period of *'iddah* for different groups of women that have not been mentioned in Surah Al-Baqarah verse 234, namely women who are divorced, not those whose husbands have died. Surah Al-Baqarah verse 234 also indicates that divorce has occurred in society at that time. This exhibits the cowed dignity of women in Arab society at that time.

The dire situation is described in the Qur'an Surah An-Nahl verses 58-59, which explains the feeling of shame in the community when people have a baby daughter. Then, at the end of verse 59, the Qur'an finishes the description of the social situation of women at that time by claiming this situation as a debauched custom. According to Khatib Syirbini, the context of the custom was due to their gloomy faces when they were given a daughter. *Second*, they feel excessive embarrass and distance themselves from social interaction. *Third*, their extreme guilt drives them to kill their daughters to elude their

shame.²⁸ By looking at these social circumstances, it is proper that the Qur'an raises the status of women slowly so that they receive a place in the social order, including involvement in the community to shape the social order through marriage and family. So, the legality of marriage at that time was not limited by a maturity, considering the lack of women's role outside home, including education, which men still dominated at that time. This can be identified from the various hadiths of the Prophet Muhammad PBUH, who answered women's questions, not at a *majlis* (gathering), but when they meet face to face with the Prophet.

The viable step of the Qur'an in escalating the fate of women's dignity in the social life of society at that time was to perceive justice in the social order. To begin with, the Qur'an provides justice to women from the lowest level in the community, the family, one of which is by regulating the same dowry between adult women and orphaned women who are in the care of their guardians. This was a response to the social conditions at that time, which allowed the deprivation of the rights of female orphans by not giving them an inheritance as stipulated in the Qur'an.²⁹ Uniquely, to change this condition, the Qur'an does not complement it with a harsh threat and a painful punishment, but rather, the Qur'an offers women a good offer that will benefit them and the female orphans. This offer of virtuousness implies the impartial nature of Allah SWT, which He wants to show His servants through this verse with the following redaction.

.... وَمَا تَفْعَلُوا مِنْ خَيْرٍ فَإِنَّ اللَّهَ كَانَ بِهِ عَلِيمًا

...And whatever you do of good, Allah is ever Knowing of it.³⁰

Another indication provided by the Qur'an in Surah An-Nisa verse 127 shows that child marriage was still a custom in the social conditions of society at that specific time. Particularly, in the case of a female orphan who was about to be married by her guardian for fear of the orphan's property being transferred to her husband

who married her. Thus, he would continue to take care of the orphan's property. Inevitably his guardian must marry off him even though the orphan does not want to marry him.³¹ However, in his commentary, Muhammad Rashid Rida states that this verse suggests that the guardian should not marry off him if he cannot do justice and if he wants the orphan's property to remain in his care.³² Of course, this suggestion is the first step of the Qur'an for reducing child marriages experienced by orphaned girls. This shows that fairness for women in the context of the household as the smallest institution in society is the main factor in the implementation of marriage. In addition, not marrying her off to another man while her guardian is still managing her property. This indicates that handing over the care of the orphan's property to the orphan is a measure of whether or not she can control her finances. This aligns with what the Qur'an explains in Surah An-Nisa verse 6.

وَابْتَلُوا الَّتِي تَمَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ وَكَفَىٰ بِاللَّهِ حَسِيبًا

And test the orphans [in their abilities] until they reach marriageable age. Then, if you perceive in them sound judgment, release their property to them. And do not consume it excessively and quickly, [anticipating] that they will grow up. And whoever, [when acting as guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor - let him take according to what is acceptable. Then, when you release their property, bring witnesses upon them. And sufficient is Allah as Accountant.³³

This verse elaborates the condition of Thabit bin Rifa'ah, who became an orphan after Rifa'ah's death. Then, his uncle came to the

Messenger of Allah and asked how he should manage his wealth and when his property was handed over to the orphan. If reviewing the context of the revelation of the verse, this verse is based on the condition of an orphan boy, namely Thabit bin Rifa'ah. However, the explanation of the Qur'an regarding the management of the assets of orphans when they are considered immature and their distribution after the orphans are considered adults. This shows an indication when a child, in this case, an orphan should hold full power to manage his property. In addition, the indicator of maturity for a child is determined by this verse through the word *rusyd*, which means if this indicator is encountered. Thus, the orphan has the right to manage his property independently. But first, it is necessary to identify the meaning of *bulūgu an-nikāh*, which is stated in verse.

Khatib Syirbini, in explaining the semantics of the sentence, cites a hadith that describes a companion who was not allowed to joined a war when he was 14 years old and only allowed to join the fight after he was 15 years old. Thus, Khatib Syirbini determined the limit of this *bulūgu an-nikāh* after he was 15 years old. In addition, he also includes the minimum limit of *bulūgu an-nikāh* by mentioning the signs of *bulūg* for a Muslim, which is nine years. Meanwhile, Muhammad Rasyid Rida, in his interpretation, makes *bulūgu an-nikāh* as the upper limit for the release of orphan status in a child because he quoted the meaning of orphan from *fuqahā*, which means a child whom his father abandoned. At the same time, he is still a child or has become the age of *bālig* (youth).³⁴ So when he reaches the age of *bālig*, the orphan status changes to the level of *rusyd*. In addition, Muhammad Rasyid Rida quoted his teacher Muhammad Abduh's explanation that the meaning of *bulūgu an-nikāh* here can be deciphered as the age of marriage.³⁵

Meanwhile, according to Rida, the semantic meaning of *rusyd* should hold aptitude and the ability to take care of property properly.³⁶ The definition of 'aptitude' here appears as the purpose of the previous verse, which explains the handing over of property

management to *as-sufahā*,³⁷ which, according to Muhammad Thohir bin 'Asyur, is the nature of orphans who are in the process of progressing to the *bulūg* period, which is the period in which the orphans are expected to achieve the excellence of reason and process from a weak state to a *rusyd* state. According to him, the use of the *bulūgu an-nikāh* editorial is to represent the *bulūg* period is based on the Arab customs at that time. It is someone who married off their daughters at an early age before reaching the *bulūg* period and their tradition of asking their sons to marry when they reached the age of *bulūg*. The period of *bulūg*, so according to him, as the Qur'an refers to it as the limit of the marriage age of a person.³⁸ In this case, the exact age limit for marriage is still debated by scholars, such as the opinion of Abu Hanifa. He states that the bare minimum age for men is 19 years old and for women 17 years old, as well as another opinion which cites the elaboration of Ibn Qasim which states the minimum age for both male and female are 18 years old.³⁹

One of the factors that underlie the differences above, according to Ṭāhir bin 'Āsyūr, is the difference in the geographical conditions of each country, from the wintry weather and tropical. It also answers the differences in the needs of the people, such as their physical strength and weakness or from the vigorous and sympathetic character.⁴⁰ This is evident from how each Muslim-majority country has different policies regarding limiting the minimum age of marriage. Previously, these countries still referred to the Qur'an, which does not specify a definite limit on the minimum age of marriage. Turkey drove this restriction by issuing the *Ottoman Law of Family Rights*, which regulated marriage regulations in 1917⁴¹ and was followed by other Muslim-majority countries. The standards for determining the age are by what is described above, namely the principles of maturity (*bulūg*) and adulthood (*rusyd*), which differ in each country, as illustrated in Table 2.⁴²

Table 2
Minimum Age for Marriage in Muslim Majority Countries

No	Country	Man	Woman
1	Algiers	21	18
2	Bangladesh	21	18
3	Egypt	18	16
4	Indonesia	19	16
5	Iraq	18	18
6	Jordan	16	15
7	Lebanon	18	17
8	Libya	18	16
9	Malaysia	18	16
10	Morocco	18	15
11	North Yamani	15	15
12	Pakistan	18	16
13	Somalia	18	18
14	South Yamani	18	16
15	Syria	18	17
16	Tunisia	19	17
17	Turkey	17	15
18	Israel	20	19
19	Cyprus	18	17

Data Source: Nurcholis, *Usia Perkawinan Di Indonesia: Landasan Akademis Dan Korelasinya Dengan Maqasid Perkawinan Dalam Hukum Islam*

This difference shows that the decision of the Qur'an not to establish the minimum age limit for marriage with certainty is a form of the flexibility of the Qur'an to respond to various social conditions of society, which, of course, will be different from the conditions in which the Qur'an was revealed. However, the Qur'an necessitates to explain the universal signs and limitations to achieve the goal of marriage as desired by the Qur'an, which is to form

healthy and robust offspring⁴³ who grow up in *sakīnah*, *mawaddah*, and *rahmah* (prosper, happy and compassionate) families.⁴⁴ However, the family will not be comprised if the Qur'an does not first perceive fairness for women from the smallest community institution, namely the family, amid social conditions at that Old Arabic custom, marginalized women so that they were cruel to women, both orphaned girls and adult women are commonplace, as explained by Muhammad Abduh in *Tafsir Al-Manār*.⁴⁵

4. The Implication of The Qur'an toward Materializing Law No. 16 of 2019

Quran as one of the sources for the Compilation of Islamic Law (KHI) in Indonesia, has influenced the Constitutional Court's consideration in reviewing Law No. 1 of 1974. This occurred when the Constitutional Court rejected several parties who submitted a judicial review of Article 7 paragraphs (1) and (2) of the Marriage Law No. 1 of 1974. Ahmad Rajafi, in his book *Progresivitas Hukum Keluarga di Indonesia*, stated that one of the decisions of the Constitutional Court rebuffed the application because several religions or cultural backgrounds in Indonesia have discrete regulations regarding the minimum age of marriage. This comprises also Islam as exemplified by the Constitutional Court (MK) by pointing out article 16 in KHI. The article does not find a definite minimum age limit for marriage because the Qur'an, a source of human law for Muslims, does not mention this. There is also lack of hadith of the Prophet Muhammad that regulates these regulations with certainty.⁴⁶

Such consideration of the Court exhibits that the Court draws legal conclusions from KHI, which recognizes the law from the Qur'an semantics. Behind these requests, social phenomena also occur in the community that produce new rules in response to these circumstances. By reviewing the socio-historical context related to child marriage, it can be understood that the minimum age limit for marriage, which the Qur'an does not determine, definitely proves that the Qur'an does not hinder the social development of society.

It is undoubtedly different from the social conditions in which the Qur'an was revealed. So, it can be said that the MK's interpretation cannot be justified for various reasons.

If reviewing the reasons for applying as mentioned above, the application is based on the principles of Law No. 23 of 2002 concerning child protection, which is in line with the standards of the 1945 Constitution of the Republic of Indonesia. It is to provide equal rights to boys and girls to grow fairly until they are 18 years old.⁴⁷ This shows the principle of fairness appended in Law No. 16 of 2019, which was inaugurated after going through various dismissal applications. This principle of justice is more evident in determining the minimum age for marriage that is equal between men and women, which is 19 years old. In addition, the minimum age for women is more mature than what has been determined in Law No. 1 of 1974 to provide equal rights of children, both boys and girls. This is how Law No. 16 of 2019 adopts the goal of fairness in regulation, which the Qur'an initiated in response to the status of women during the revelation of the Qur'an. Thus it can be expressed that the stipulation of Law No. 16 of 2019 is based on the justice contained in the 1945 Constitution of the Republic of Indonesia regarding the equal rights of citizens.

C. Conclusion

The Qur'an places human equality as a fundamental principle of social life. This is evidenced by how the Qur'an mentions the goal of fairness at the beginning of Surah An-Nisa as a prelude before positioning women as equal to men in obtaining the rights that have been determined. In other words, the perception of justice for women needed to be constructed in society at that time, starting from the family. Law no. 16 of 2019, which is an amendment of the Marriage Law, namely Law no. 1 of 1974, facilitated to construct this perception in the Marriage Law in Indonesia. Therefore, the new law does not oppose the tradition of child marriage that has been running on a custom in Indonesia, but giving equal rights to

girls for their growth. This differs from the Qur'an, which perceives justice amid customs not friendly to women's rights. However, it does not rule out the possibility of customs that are unpromising to women's rights in Indonesia.

Legal efforts in Indonesia to abate child marriage are common when looking at how the Qur'an has interpreted on it for centuries. Apart from the current global social context, which uncovers many negative impacts of child marriage, the national social context currently toiling for women's education that is another factor in seeking to revise the marriage law, which has been around for four decades. As a follow-up to these efforts, the law application instrument responsible for constructing the Marriage Law should begin socializing to the community as the Prophet Muhammad then carried out socialization to the Arab community through revelations that bestowed to him. Thus, the goal of justice promoted by Law No. 16 of 2019 can be realized up to the lower levels of society.

After reviewing the concept of marriage in the Qur'an, it can be concluded that the Qur'an's attempt to focus merely in Arab society at that time was a proof that although the marriage was one step in avoiding adultery, the marriage that did not meet the requirements of fairness and other mentioned conditions would spoil the sacredness of marriage in Islam. Then it also has an impact on social stability because the family as the minor institution in society should be able to construct welfare in the surrounding. It will also have an impact on other families which affect the formation of good society and social order. This is undoubtedly a new contribution for groups who still support and even require child marriage and oppose the Law No. 16 of 2019, set three years ago.

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