

Underage Marriage in Maqashid Sharia Review: Reconstructing the Understanding of Contemporary Islamic Law

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ABSTRACT

Underage marriage is still a concerning phenomenon in Indonesia despite the regulation of Law No. 16 of 2019 which sets a minimum age limit of 19 years. This study aims to analyze the law of underage marriage in the perspective of maqashid sharia and formulate a reconstruction of a more contextual understanding of contemporary Islamic law. The research uses a juridical-normative method with an analytical qualitative-descriptive approach. Primary data sources include the Qur'an, Hadith, classical and contemporary fiqh books, and laws and regulations. The data analysis technique uses the ushul fiqh approach with the maqashid sharia theoretical framework of Imam Ash-Syatibi. The results show that underage marriage is contrary to the fundamental principles of maqashid sharia, specifically: (1) hifdzun nafs because it threatens the physical and mental health of children; (2) hifdzun 'aql because it inhibits the right to education and cognitive development; (3) hifdzun nasl because it increases the risk of mother-child mortality and stunting; and (4) it fails to realize the purpose of marriage, namely sakinah, mawaddah, warahmah. This study concludes that although there is no explicit prohibition in the text, early marriage must be prevented because its madarat is greater than its maslahat. The reconstruction of contemporary Islamic legal understanding must be based on a contextual approach that integrates maqashid sharia with the findings of modern science to realize the true benefit for children.

1. Introduction

Child marriage is still a crucial social issue in Indonesia. Although the government has made various prevention efforts, the practice of child marriage still occurs massively in various regions. Data from the Central Statistics Agency (BPS) in 2020 shows that the prevalence of child marriage in women aged 20-24 years who married before the age of 18 reached 10.82%, placing Indonesia at the 8th highest in the world and 2nd in ASEAN after Cambodia¹. This figure has decreased from 2018 which reached 11.21%, but the decline is considered insignificant considering the government's target to end child marriage by 2030 in accordance with the Sustainable Development Goals (SDGs)²

¹ Badan Pusat Statistik BPS, *Pencegahan Perkawinan Anak Percepatan Yang Tidak Bisa Ditunda* (Jakarta: BPS, 2020).

² (PPPA, 2024).

The phenomenon of underage marriage has various negative impacts that are multidimensional. From a health aspect, research published in the Journal of Adolescent Health in 2021 shows that women who marry under the age of 18 have a 5 times higher risk of experiencing complications of pregnancy and childbirth, and 3 times more risk of maternal death compared to women who marry at the age of 20 and above³. Psychologically, children who marry early experience higher levels of depression and anxiety because they are not mentally prepared to carry out their roles as spouses and parents⁴. In terms of education, the United Nations Children's Fund (UNICEF) reports that 60% of girls who marry underage drop out of school and lose the opportunity to develop their potential⁵. The economic impact cannot be ignored either, with child marriage costing the global economy trillions of dollars in lost productivity and increased health costs⁶.

Responding to this issue, the Indonesian government has revised the Marriage Law through Law No. 16 of 2019 which changes the minimum age of marriage for women from 16 years to 19 years, equalizing the minimum age limit for men. This change was motivated by considerations of child protection, the right to education, and biological-psychological maturity to form a quality family. The Constitutional Court in Decision No. 22/PUU-XV/2017 emphasized that the disparity in the age of marriage between men and women is discriminatory and detrimental to the constitutional rights of girls⁷.

However, the implementation of Law No. 16/2019 faces serious challenges in the form of a high number of marriage dispensation cases in the Religious Courts. Supreme Court data shows that in 2020, there were 64,211 marriage dispensation applications submitted to the Religious Courts, 97% of which were granted⁸. In 2021, this figure increased to 59,709 applications with the approval rate remaining high. This phenomenon indicates that although juridically there are restrictions on the age of marriage, the dispensation mechanism is a loophole that perpetuates the practice of child marriage. A study conducted by Rumah KitaB in 2021 revealed that the main reasons for dispensation applications were pregnancy outside marriage (39%), parental encouragement (28%), and economic reasons (18%)⁹.

The high rate of marriage dispensation raises fundamental questions about the philosophical and theological foundations used by judges in deciding cases. From an Islamic legal perspective, the issue of underage marriage is a complex and multi-interpretative issue. On the one hand, there is a view in classical fiqh that allows marriage after the child reaches puberty, which is biologically marked by signs of puberty such as menstruation for women and wet dreams for men¹⁰. This view refers to the practice of marriage during the time of the Prophet Muhammad, especially the Prophet's marriage to Aisyah r.a. which is told in various hadith narrations¹¹. A literalist understanding of these arguments is often used as justification by some people that child marriage is a practice that is allowed, even encouraged in Islam.

Contemporary scholars propose a critical perspective on this understanding by considering the socio-historical context, the development of science, and the substantive objectives of Islamic law. Prof. Dr. Quraish Shihab in his work "Women" explains that the context of

³ (Sujata Jain, 2021)

⁴ Nour El-Mowafi, 'Mental Health Outcomes of Child Marriage: A Systematic Review', *International Journal of Mental Health Systems*, 14.1 (2020), 1–15.

⁵ (UNICEF, 2021)

⁶ (World Bank, 2017)

⁷ (Constitutional Court of the Republic of Indonesia, 2018).

⁸ (Directorate General of Religious Courts of the Supreme Court of Indonesia, 2021)

⁹ Rumah Kitab, *Analisis Putusan Dispensasi Kawin Di 6 Pengadilan Agama* (Jakarta: Rumah KitaB, 2021).

¹⁰ Wahbah Az-Zuhaili, 'Al-Fiqh Al-Islami Wa Adillatuhu', in 7, 7th edn (Damaskus: Dar al-Fikr, 2008), pp. 165–68.

¹¹ (Muhammad bin Ismail Al-Bukhari, 2002)

marriage during the Prophet's time was very different from the present context, both in terms of physical maturity, social conditions, and expectations of the institution of marriage¹². Husein Muhammad, a scholar and gender activist, emphasizes the importance of distinguishing between historical-contextual aspects and universal principles in Islamic law, as well as the need to consider the welfare of children as a priority in the formation of law. Yusuf al-Qaradawi in "Fiqh Priorities" also emphasizes that Islamic law must be responsive to changing times and social conditions, and must be oriented towards achieving the ultimate benefit (*maslahah haqiqiyah*), not just legal formalities¹³.

This difference in understanding shows the need for a more comprehensive approach in studying the law of underage marriage, namely through the perspective of *maqashid sharia* (the objectives of sharia). *Maqashid sharia* is a theoretical framework in *ushul fiqh* developed by Imam Ash-Syatibi (d. 790 H/1388 AD) in his magnum opus "*Al-Muwafaqat fi Ushul ash-Syari'ah*", which emphasizes that every Islamic law must be oriented towards achieving benefit and avoiding harm to humans¹⁴. Imam Ash-Syatibi formulated five basic principles that must be protected by sharia (*al-kulliyat al-khams* or *al-dharuriyyat al-khams*), namely: protection of religion (*hifdzun din*), soul (*hifdzun nafs*), intellect (*hifdzun 'aql*), offspring (*hifdzun nasl*), and property (*hifdzun mal*). These five principles are universal and become the standard for assessing whether a practice or law is in line with the objectives of sharia or contradicts them.

The *maqashid sharia* approach is very relevant in analyzing underage marriage for several reasons. First, this approach allows a holistic analysis by considering the comprehensive impact of child marriage on various aspects of life, not just the legal-formalistic aspects¹⁵. Second, *maqashid sharia* provides a framework for conducting contemporary *ijtihad* that is responsive to modern scientific findings, such as medical research on the impact of early pregnancy and psychological studies on emotional maturity¹⁶. Third, this approach is in line with the principle of dynamic and contextual Islamic law, as stated by the *fiqh* rule: "*taghayyur al-ahkam bi taghayyur al-azminah wa al-amkinah wa al-ahwal wa al-awaaid*" (changes in the law in accordance with changes in times, places, conditions, and habits)¹⁷.

Several previous studies have examined underage marriage from various perspectives. Child marriage from a human rights perspective and found that this practice is a serious form of child rights violation¹⁸. Implementation of Law No. 16 of 2019 and found that there is still a gap between legal norms and social practices.¹⁹ From a *fiqh* perspective, the views of classical and contemporary scholars on the age limit of marriage and concluded that there is a development of thought from a biological approach to a holistic approach²⁰. However, research that specifically uses the *maqashid sharia* framework to analyze underage marriage and formulate a reconstruction of contemporary Islamic legal understanding is still limited.

This research seeks to fill this gap by conducting an in-depth analysis of underage marriage using the *maqashid sharia* theoretical framework, especially the principles of *dharuriyyat* (primary needs) which include the protection of the soul, mind and offspring. This research is not only descriptive-analytical of the arguments and opinions of scholars, but also critical-

¹² M. Quraish Shihab, *Perempuan* (Tangerang: Lentera Hati, 2018).

¹³ (Yusuf al-Qardhawi, 2016)

¹⁴ Abu Ishaq Al-Syatibi, '*Al-Muwafaqat Fi Ushul Al-Syari'ah*', in 2 (Kairo: Dar al-Hadits, 2016), pp. 324–38.

¹⁵ (Auda, 2016b)

¹⁶ (Atmasasmita, 2021)

¹⁷ (Al-Suyuthi, 2018)

¹⁸ (Ch, 2019)

¹⁹ Dian Kusumaningrum Dina Afrianty, 'The Implementation of Law No. 16/2019 on Child Marriage Prevention in Indonesia: Challenges and Opportunities', *Journal of Indonesian Islam*, 16.1 (2022), 117–40.

²⁰ (Mukhtar, 2020)

constructive in formulating a more contextual and humanist reconstruction of understanding. By integrating shar'i arguments, the views of classical and contemporary scholars, and modern scientific findings, this research is expected to make a theoretical contribution to the development of contemporary Islamic legal studies and a practical contribution to the formulation of child protection policies based on Islamic values.

Based on the above background, this research formulates three research questions as follows: (1) How is the concept of marriage in Islamic law viewed from the perspective of maqashid sharia? (2) How is maqashid sharia analysis of underage marriage practices associated with the principles of hifdzun nafs, hifdzun 'aql, and hifdzun nasl? (3) How is the reconstruction of contemporary Islamic legal understanding of underage marriage responsive to the social context and based on the benefit of children? This research aims to: (1) Analyze and explain the concept of marriage in Islamic law by using the maqashid sharia approach as an analytical framework. (2) Evaluate the practice of underage marriage from the perspective of maqashid sharia principles, particularly the protection of the soul (hifdzun nafs), intellect (hifdzun 'aql), and offspring (hifdzun nasl), by considering aspects of maslahah and mafsadah. (3) Formulating a reconstruction of contemporary Islamic legal understanding of underage marriage based on a contextual, integrative, and child-oriented approach.

Research on underage marriage has been conducted from various perspectives and approaches. This literature review examines previous studies to identify research gaps and position the novelty of this research. (1) The perspective of positive law and human rights, research on Early Marriage and Protection of Girls in the Perspective of Islamic Law and Human Rights.²¹ This research uses a normative-juridical approach and finds that child marriage is a serious form of violation of children's rights, including the rights to education, health, and protection from exploitation. (2) Limitation of Marriage Age: Perspectives of Islamic Law and Positive Law examines the views of classical and contemporary scholars on the age limit of marriage.²² Comparative study between the schools of fiqh and found that there is a development of thought from a biological approach (baligh) to a holistic approach that considers physical, psychological, and social maturity. (3) *Maqashid Sharia* and Women's Issues: Reinterpretation of Gender-Perspective Islamic Law uses the maqashid sharia approach to analyze various women's issues in Islamic law, including marriage.²³ (4) *Understanding the Consequences of Child Marriage: A Systematic Review of Health Outcomes* conducted a systematic review of 156 studies on the health impacts of child marriage.²⁴ This study found strong evidence that child marriage negatively impacts reproductive health, mental health, and maternal mortality.

From the review of existing studies, several research gaps can be identified: (1) Theoretical Gap, Although some studies allude to *maqashid sharia*, there is no research that comprehensively and systematically uses the *maqashid sharia* framework, especially the *dharuriyyat* principles (*hifdzun nafs*, *hifdzun 'aql*, *hifdzun nasl*) to analyze underage marriage by integrating modern scientific findings. (2) Methodological Gap, Previous studies tend to use a single approach (law, sociology, or gender), none have integrated a multi-disciplinary approach between ushul fiqh (maqashid sharia), positive law, and social-health science. (3) Practical-Applicative Gap, There is no research that explicitly formulates a reconstruction of contemporary Islamic legal understanding of child marriage that can be used as a practical reference for policy makers, Religious Court judges, and religious leaders

²¹ (Ch, 2019)

²² (Mukhtar, 2020)

²³ (Rofiah, 2021)

²⁴ (Sujata Jain, 2022)

2. Research Method

This research is *normative legal research* with a qualitative approach that is descriptive-analytical and prescriptive²⁵. Normative legal research is research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The main characteristics of this research focus on analyzing legal rules, norms, and doctrines contained in various legal sources, both written and unwritten law.

In the context of Islamic law, normative research is oriented towards the study of the texts of the Qur'an and Hadith, the opinions of scholars in the books of fiqh and ushul fiqh, as well as positive legal products related to Islamic law such as the Marriage Law and the Compilation of Islamic Law²⁶. This research does not conduct field observations or interviews with research subjects, but rather reviews and analyzes legal texts and literature relevant to the topic of underage marriage from the *maqashid sharia* perspective.

The qualitative approach in this research was chosen because of the nature of the data to be studied in the form of texts, concepts and thoughts that require in-depth interpretation. The approach to explore and understand the meaning that a number of individuals or groups derive from social or humanitarian problems, which in the context of this research is an understanding of the law of underage marriage²⁷. Qualitative research has five characteristics, namely: (1) the research setting is natural; (2) the researcher is the key instrument; (3) the data is descriptive; (4) focus on the process, not merely the results and (5) inductive data analysis²⁸. This research is descriptive-analytical, which describes systematically, factually, and accurately about the object of research, then analyzes it with a predetermined theoretical framework²⁹. The descriptive aspect of this research appears in the attempt to describe the concept of marriage in Islamic law, the views of classical and contemporary scholars on the age limit of marriage, and the principles of *maqashid sharia*. The analytical aspect is seen in the attempt to critically analyze the practice of underage marriage using the *maqashid sharia* framework, especially the principles of *dharuriyyat*.

In addition, this research is also prescriptive, namely providing recommendations or prescriptions on how Islamic law should understand and respond to the issue of underage marriage in the contemporary context³⁰. This prescriptive dimension is important because the research does not only stop at theoretical analysis, but also aims to make a practical contribution to the formulation of legal policies and practices. The data collection technique in normative legal research is *library research* or *documentary study*³¹. Literature study is carried out by reading, examining, reviewing, and recording various literature or library materials that are in accordance with the subject matter, then filtered and outlined in a theoretical framework.

Data analysis in normative legal research is carried out qualitatively using the *content* analysis method and interpretation of legal texts³². *Content analysis* to make replicable and valid inferences from text (or other meaningful material) to the context of its use. The main theoretical framework in this research is *maqashid sharia* theory³³. Every law in Islam has a goal (*maqashid*)

²⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2016).

²⁶ Amir Syarifuddin, 'Ushul Fiqh', in 2, 2nd edn (Jakarta: Kencana, 2014), pp. 315–20.

²⁷ (John W. Creswell, 2018)

²⁸ (Robert C. Bogdan, 2016)

²⁹ Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2015).

³⁰ Marzuki.

³¹ (Mukti Fajar ND, 2015)

³² (Philipus M. Hadjon, 2016)

³³ (Al-Shatibi, 2017)

to realize human benefits in this world and the hereafter. The *maslahah mursalah* theory is used to analyze the benefits and harms of underage marriage³⁴. *Maslahah mursalah* which is not explicitly mentioned in the nash (Al-Qur'an and Hadith) but is in line with the general objectives of sharia. *Maslahah* as "attracting benefit and rejecting harm in order to maintain the objectives of sharia".

This theory is based on the fiqh rule: "*Taghayyur al-ahkam bi taghayyur al-azminah wa al-amkinah wa al-ahwal wa al-awaaid*" (laws can change according to changes in times, places, conditions, and customs)³⁵. This theory is used to understand that the application of Islamic law must be responsive to changes in the social context, as long as it does not conflict with the fundamental principles of sharia. This research also adopts a contextual hermeneutic approach in understanding religious texts.

3. Results and Discussion

3.1. The Concept of *Maqashid Sharia* in Islamic Law

Maqashid sharia etymologically comes from the word *maqashid* (مقاصد) which is the plural form of *maqshad* (مقصد) which means purpose or intention, and *sharia* (شريعة) which means the path to the source of water or the laws of Allah. Terminologically, *maqashid sharia* is the goals to be achieved by Islamic law to realize human benefits in this world and the hereafter³⁶. *Maqashid sharia* as "the goals set by the sharia for human benefit" (*al-maqashid ash-shar'iyyah hiya tilka al-ghayat wa al-ma'ani al-mahmudah allati qashadaha ash-shari' fi jami' ahwal at-tasyri'*)³⁷.

The *maqashid* theory of *sharia* has become very important in the context of contemporary *ijtihad* for three main reasons³⁸. First, *maqashid* provides a framework for understanding the substance and spirit of sharia, not just the legal formalities. Second, *maqashid* becomes an instrument to resolve conflicts of arguments and aparent contradictions in religious texts. Third, *maqashid* allows Islamic law to be responsive to social change without losing its basic identity.

The classification of *maqashid sharia* consists of three levels based on the level of urgency³⁹:

- 1) *Al-Maqashid ad-Dharuriyyah* (Primary Needs), things that are essential for human life, which if not fulfilled will cause damage to life in this world and the hereafter. Five fundamental principles that must be protected (*al-kulliyat al-khams*): (1) *Hifdzun din* (protection of religion) (2) *Hifdzun nafs* (protection of life) (3) *Hifdzun 'aql* (protection of reason) (4) *Hifdzun nasl* (protection of offspring/respect) and (5) *Hifdzun mal* (protection of property). Contemporary scholars add new dimensions such as the protection of human dignity (*hifdzun karamah*) and justice (*hifdzun 'is*) as an extension of these five basic principles.
- 2) *Al-Maqashid al-Hajjiyyah* (Secondary Needs), things that are needed to eliminate difficulties and provide convenience in life, but if they are not fulfilled they do not fundamentally damage life.
- 3) *Al-Maqashid at-Tabsiniyyah* (Tertiary Needs), things that serve to beautify and perfect life, such as manners and ethics in interaction, cleanliness and beauty. If they are not met, they do not cause significant damage or hardship, but life becomes less perfect.

³⁴ (Quraishi & Kamali, 2000)

³⁵ (Al-Jauziyyah, 2017)

³⁶ Ahmad Ar-Raysuni, *Nazhariyyah Al-Maqashid 'inda Al-Imam Asy-Syatibi* (Herndon: IIIT, 2013).

³⁷ (Al-Shatibi, 2017)

³⁸ (Auda, 2016b)

³⁹ (Al-Shatibi, 2017) :

These three levels are hierarchical, with *dharuriyyat* being the top priority, then *hajiyyat* and finally *tahsiniyyat*⁴⁰. In conflict situations, *dharuriyyat* must take precedence over *hajiyyat* and *tahsiniyyat*. This principle is formulated in the fiqh rule: "*Dar'ul mafasid muqaddamun 'ala jalbil mashalih*" (rejecting damage takes precedence over achieving benefit). The key concepts in *maqashid sharia* are *maslahah* (benefit) and *mafsadah* (harm). *Maslahah* as "attracting benefits and rejecting harm in order to maintain the objectives of sharia"⁴¹. *Maslahah* in the perspective of sharia is not just material benefits or momentary pleasure, but the real benefits that are in line with Islamic values and do not conflict with the shar'i arguments.

Ulama ushul fiqh divide *maslahah* into three categories⁴²: (1) *Maslahah mu'tabarab*, which is a benefit recognized and supported by the text; (2) *Maslahah mulghab*, which is a benefit rejected by the text; and (3) *Maslahah mursalah*, which is a benefit for which there is no explicit support or rejection from the text. In the context of underage marriage, *maslahah-mafsadah* analysis becomes very relevant because there is no explicit prohibition in the nash, so it requires *ijtihad* based on *maslahah mursalah*. When there is a conflict between *maslahah* and *mafsadah*, the fiqh rule stipulates: "*Idza ta'aradha mafsadatani ru'ya a'dzhamuha dhararan bi-irtikabi akhaffihima*" (if there is a conflict between two harms, the greater harm is considered by doing the lesser)⁴³. However, the basic principle remains that preventing harm is prioritized over achieving benefit.

3.2. Marriage in Islamic Law: A Normative Overview

The Qur'an states that the fundamental purpose of marriage is to realize peace of mind (*sakinah*), love (*mawaddah*) and mercy (*rahmah*), as Allah says in QS. Ar-Rum [30]: 21: "*And among the signs of His greatness is that He created mates for you from your own kind, so that you may feel at ease with them, and that He may create in you love and affection.*" These objectives indicate that marriage is not just a legal contract, but a spiritual and social institution that requires emotional and psychological readiness⁴⁴.

In addition to these spiritual goals, marriage also has social goals: protection of honor (*hifdzun nasl*), distribution of biological needs in a halal manner, the formation of a *sakinah* family, and regeneration of mankind⁴⁵. Marriage in Islam is "a sacred bond that brings together two people of different sexes in a household that is full of love, complementary, and together to navigate life."⁴⁶ The scholars agree that one of the conditions for the validity of marriage is legal capacity (*ahliyyah*) which includes aspects of baligh (adulthood) and sound mind.⁴⁷ However, there are different interpretations of this "baligh" criterion. Classical scholars generally define baligh based on biological signs: menstruation for women, wet dreams for men, or reaching the age of 15 according to the popular opinion.

However, contemporary scholars argue that marriageability is not only determined by biological maturity, but also psychological, intellectual, and socio-economic maturity⁴⁸. Marriage is not just a biological relationship, but a great responsibility that requires physical, mental, and economic readiness. Therefore, the age limit for marriage must consider overall readiness, not

⁴⁰ (Ar-Raysuni, 2013)

⁴¹ Abu Hamid Al-Ghazali, 'Al-Mustasfa Min 'Ilm Al-Ushul', in 1, ed. by tahqiq Muhammad Al-Asyqar (Beirut: Mu'assasah al-Risalah, 2017), p. 286.

⁴² Quraishi and Kamali, xv.

⁴³ Felicitas Opwis, *Maslaha and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Leiden: Brill, 2010).

⁴⁴ M. Quraish Shihab, 'Tafsir Al-Misbah: Pesan, Kesan, Dan Keserasian Al-Qur'an', in 10, 10th edn (Jakarta: Lentera Hati, 2017), pp. 322–25.

⁴⁵ Az-Zuhaili.

⁴⁶ Shihab, *Perempuan*.

⁴⁷ (Rusyd, 2004)

⁴⁸ (Yusuf al-Qardhawi, 2016)

just the sign of puberty. One of the arguments often used to justify underage marriage is a reference to the Prophet Muhammad's marriage to Aisha r.a. which is narrated in various hadith reports⁴⁹. However, contemporary scholars emphasize the importance of historical contextualization in understanding this practice.

Husein Muhammad explains that the socio-cultural context in the 7th century CE was very different from the modern context: the physical maturity of children in the past was faster due to agrarian lifestyles and natural diets, life expectancy was shorter, there was no formal education system, and the social structure was very different⁵⁰. Therefore, past practices cannot be used as absolute standards without considering the changing socio-historical context. What needs to be taken are the universal principles: readiness, willingness, and benefit, not the age.

3.3. Maqashid Sharia Analysis of Underage Marriage

Underage marriage is proven to be a real threat to children's lives. Global research shows that women who marry before the age of 18 have a 5 times higher risk of maternal death than those who marry at the age of 20 and above⁵¹. In Indonesia, data from 2021 revealed that the Maternal Mortality Rate (MMR) in the under-18 age group reached 421 per 100,000 live births, much higher than the national average of 305 per 100,000⁵². Medical complications that often occur in young pregnancies include: eclampsia, hemorrhage, severe anemia, and obstructed labor due to an immature pelvis⁵³. Babies born to mothers under 18 years old are also at high risk of low birth weight, prematurity, and neonatal mortality.

From the perspective of maqashid sharia, *hifdzun nafs* (protection of the soul) is a non-negotiable dharuriyyat priority⁵⁴. The rules of fiqh emphasize: "*La dharara wa la dhirara*" (no harm allowed and no harm done). A marriage that threatens the life of the mother and child is clearly against this fundamental principle. The protection of life is the most fundamental maqshad, so any practice that threatens life must be prevented, even if there is evidence that it is permissible⁵⁵. Underage marriage systematically hinders children's intellectual development. UNICEF noted in 2021 that 60% of girls who marry before the age of 18 drop out of school and never continue their education⁵⁶. In Indonesia, research by the Supreme Court and UNICEF found that 93% of children who received marriage dispensation dropped out of school.

From a neuroscience perspective, brain development, especially the *prefrontal cortex* which is responsible for decision-making, planning and impulse control, only reaches full maturity at the age of 25⁵⁷. Adolescents under 18 do not yet have the cognitive capacity to make long-term decisions such as marriage. *Hifdzun 'aql* in maqashid sharia does not only mean the prohibition of intoxication, but also the obligation to develop the potential of reason and intellect⁵⁸. The Qur'an consistently encourages humanity to seek knowledge and use reason (QS. Al-Mujadalah [58]: 11; QS. Az-Zumar [39]: 9). Marriages that stop children's education contradict Islam's command to seek knowledge. The Prophet Muhammad (SAW) said: "*Thalabul 'ilmi faridhatun*

⁴⁹ (Muhammad bin Ismail Al-Bukhari, 2002)

⁵⁰ (Muhammad, 2019)

⁵¹ (Maternal Deaths and Disability Associated with Multiple Gestations in Adolescents: A Global Perspective, 2020)

⁵² (Indonesian Ministry of Health, 2022)

⁵³ (World Health Organization, 2020)

⁵⁴ (Al-Shatibi, 2017)

⁵⁵ (Ramadan, 2019)

⁵⁶ (UNICEF, 2021)

⁵⁷ (Sarah-Jayne Blakemore, 2016)

⁵⁸ (Auda, 2016a)

'*ala kulli muslimin wa muslimatin*' (Studying knowledge is an obligation for every Muslim man and woman).

Paradoxically, marriage, which is supposed to function for *hifdzun nasl* (preserving offspring), threatens the quality of offspring when it is done underage. Public health research shows that babies born to mothers under the age of 18 have a higher risk of stunting, impaired cognitive development and chronic diseases in adulthood⁵⁹. Children of mothers who marry early have an average IQ score 8-12 points lower and lower levels of educational attainment than children of mothers who marry at a mature age⁶⁰. This is because mothers who are still children do not have sufficient emotional maturity and knowledge to provide optimal parenting. *Hifdzun nasl* in the modern era must be interpreted not only as maintaining the quantity of offspring, but especially the quality of offspring both physically, mentally, spiritually, and intellectually⁶¹. Underage marriage that produces generations with low health and education quality is contrary to this maqshad.

Empirical data shows that underage marriages have a very high divorce rate. 50% of marriages entered into before the age of 18 end in divorce within the first 5 years, much higher than the national average of 22%. The main reasons for divorce are emotional immaturity, conflicts with in-laws, and economic inability⁶². Emotional immaturity makes it difficult for couples who marry early to manage conflicts, communicate healthily, and build a harmonious family⁶³. This contradicts the fundamental purpose of marriage in Islam: *sakinah, mawaddah, warahmah*. Marriages that do not achieve the goal of *sakinah*, instead causing conflict and suffering, are not in line with the will of sharia. Based on the maqashid sharia analysis above, it can be concluded that underage marriage contradicts three dharuriyyat principles: (1) threatening the life (*hifdzun nafs*); (2) inhibiting the development of the intellect (*hifdzun 'aql*); and (3) damaging the quality of offspring (*hifdzun nasl*). Thus, although there is no explicit prohibition in the text, underage marriage must be prevented because *its mafsadah* (harm) is far greater than *its maslahah* (benefit)⁶⁴.

3.4. Reconstruction of Contemporary Understanding of Islamic Law

A literalist understanding of the arguments about marriage often ignores the socio-historical context and the substantive purpose of sharia. The need to distinguish between: (1) universal messages and particular expressions; (2) ethical principles and specific laws; and (3) the spirit of the text and the letter of the text.⁶⁵ In the context of marriage, the universal principles are: readiness, welfare, protection and achievement of the purpose of marriage (*sakinah-mawaddah-warahmah*). The age limit is a particular application that can change according to the context.⁶⁶ What is sacred are the values of justice, welfare and protection. The age limit is a human interpretation that can change according to the benefit.

Some fiqh rules support the reconstruction of this understanding ⁶⁷:

⁵⁹ (Plass, 2018)

⁶⁰ (Seeman, 2019)

⁶¹ (Auda, 2016a)

⁶² (KitaB, 2022)

⁶³ (El-Mowafi, 2020)

⁶⁴ (Ahmad Imam Mawardi, 2020)

⁶⁵ Abdullah Saeed, *Islamic Thought: An Introduction* (London: Routledge, 2014).

⁶⁶ Abdullah Saeed, *Interpreting the Qur'an: Towards a Contemporary Approach* (London: Routledge, 2016).

⁶⁷ Ali Ahmad An-Nadwi, *Al-Qawa'id Al-Fiqhiyyah* (Damaskus: Dar al-Qalam, 2015).

- 1) *Taghayyur al-ahkam bi taghayyur al-azminah wa al-amkinah* (The law can change according to changes in times and places). This rule shows that Islamic law is dynamic and contextual, as long as it does not conflict with the fundamental principles of sharia.
- 2) *Al-bukmu yaduru ma'a 'illatib wujudan wa 'adaman* (The law revolves around its 'illat, whether it exists or not). The 'illat of marriage is the benefit if underage marriage brings harm, then the law changes.
- 3) *Dar'ul mafasid muqaddamun ala jalbil mashalih* (Rejecting harm takes precedence over achieving benefit). Preventing early marriage to avoid harm takes priority over allowing it to avoid zina.

Contemporary *ijtihad* must integrate scientific findings as part of *maslahah-mafasadah* considerations⁶⁸. *Maslahah* must be based on knowledge of the real effects of an action. In the modern context, this means considering medical, psychological, sociological and economic data on the impact of child marriage. A *systems approach* that is cognitive, holistic, open and multi-dimensional in understanding *maqashid*. This approach allows Islamic law to dialogue with various modern scientific disciplines without losing its basic identity.

Based on the analysis of *maqashid sharia* and integration with the findings of modern science, this study recommends that the minimum age of marriage is 19 years, as stipulated in Law No. 16/2019. This recommendation is based on the consideration of⁶⁹:

- 1) Medical: At 19 years of age, a woman's reproductive organs are fully mature, reducing the risk of complications of pregnancy and childbirth.
- 2) Psychological: At this age, adolescents begin to enter the *emerging adulthood* phase with greater emotional maturity.
- 3) Educational: Age 19 provides an opportunity to complete secondary education and start higher education or vocational training.
- 4) Economic: At this age, individuals have better opportunities to build skills and economic independence.

Marriage dispensation should only be granted in cases of extreme emergency with strict evaluation by a multi-disciplinary team (judge, psychologist, doctor, social worker) and by ensuring that the dispensation is truly in the *best interest of the child*.

3.5. Harmonization of Islamic Law and Positive Law

Law No. 16/2019 which sets a minimum age limit of 19 years for marriage is fully in line with *maqashid sharia*. The Constitutional Court in Decision No. 22/PUU-XV/2017 emphasized that the age limit for marriage aims to protect children's constitutional rights, including the right to grow and develop, the right to education and the right to health⁷⁰. These objectives are in line with *hifdzun nafs*, *hifdzun 'aql*, and *hifdzun nasl* in *maqashid sharia*. Law No. 16 of 2019 is a form of implementation of *maqashid sharia* in the Indonesian context, because it protects the basic rights of children which are part of *dharuriyyat*⁷¹. Thus, there is no contradiction between Islamic law and Indonesian positive law in terms of marriage age limits.

However, the implementation of Law No. 16/2019 faces serious challenges in the form of high marriage dispensation applications. Data from the Supreme Court in 2021 shows 59,709 applications for dispensation with an approval rate of 97%. Judges' considerations in granting

⁶⁸ (Auda, 2016b)

⁶⁹ (Mukhtar, 2020):

⁷⁰ (Constitutional Court of the Republic of Indonesia, 2018)

⁷¹ (Ch, 2019)

dispensation often emphasize avoiding the "disgrace" of pregnancy outside marriage, without considering the long-term impact on children⁷². Marriage dispensation has become a backdoor that perpetuates child marriage, contrary to the spirit of Law No. 16/2019 to eliminate the practice⁷³. From a maqashid sharia perspective, granting dispensation too easily creates a new mafsadah: the continued legitimization of child marriage to the detriment of children's best interests.

Based on the above analysis, this study recommends:

- 1) Tightening Dispensation Criteria, Dispensation requests can only be granted if they meet strict criteria: (1) an unavoidable emergency; (2) the child is at least 18 years old; (3) a comprehensive assessment by a multi-disciplinary team; (4) the free and informed consent of the child; and (5) there are guarantees of protection and support for the child.
- 2) Capacity Building for Judges, Special training for Religious Court judges on: (1) maqashid sharia and child protection (2) the impact of child marriage based on scientific evidence (3) psychosocial assessment techniques (4) the principle of best interest of the child.
- 3) Comprehensive Prevention Strategy, Prevention of child marriage requires a multi-sectoral approach: (1) comprehensive reproductive health education (2) strengthening access and quality of education for girls (3) family economic empowerment (4) changing social norms through education based on religious values (5) consistent law enforcement.
- 4) The role of Ulama and Religious Leaders, Ulama and religious leaders have a crucial role in changing people's understanding of child marriage. Socialization of the understanding of maqashid sharia that prohibits underage marriage must be carried out massively through sermons, recitations, fatwas, and social media. The Indonesian Ulema Council (MUI) and other Islamic organizations need to issue a firm fatwa on the prohibition of child marriage based on maqashid sharia.

4. Conclusion

The concept of marriage in Islamic law cannot be understood partially and legalistically, but must be understood holistically using the maqashid sharia approach. Maqashid sharia, particularly the dharuriyyat principles of *hifdzun nafs* (protection of the soul), *hifdzun 'aql* (protection of the intellect) and *hifdzun nasl* (protection of offspring), provides a comprehensive analytical framework to evaluate the practice of underage marriage. Marriage in Islam has a fundamental purpose to realize *sakinah* (tranquility), *mawaddah* (love) and *rahmah* (compassion), which requires multidimensional readiness not only biological maturity, but also psychological, intellectual, social and economic maturity.

A maqashid sharia analysis of the practice of underage marriage reveals a fundamental contradiction between the practice and the principles of dharuriyyat. From the perspective of *hifdzun nafs*, underage marriage has been empirically proven to threaten the lives and health of children, with a 5 times higher risk of maternal mortality and various other serious health complications. From the perspective of *hifdzun 'aql*, early marriage systematically impedes children's right to education, with 60% of married children under 18 years old dropping out of school and losing the opportunity to develop their intellectual potential. From the perspective of *hifdzun nasl*, underage marriage paradoxically damages the quality of offspring, with babies born at high risk of stunting, LBW, and impaired cognitive development. Furthermore,

⁷² (Kitab, 2021)

⁷³ (Dina Afrianty, 2022)

underage marriage fails to realize the fundamental purpose of marriage in Islam, with divorce rates reaching 50% in the first 5 years much higher than the national average.

Based on the *maslahah-mafsadah* analysis, it can be concluded that the harm (*mafsadah*) caused by underage marriage is far greater than the benefit (*maslahah*) to be achieved. In accordance with the fiqh rule "*Dar'ul mafasid muqaddamun 'ala jalbil mashalih*" (rejecting damage takes precedence over achieving benefit), then underage marriage must be prevented even though there is no explicit prohibition in the text. The absence of a textual prohibition does not mean absolute permissibility, but rather opens up space for *ijtihad* based on *maqashid* and *maslahah mursalah* to determine the law that best suits the essential human interests.

Underage marriage, although not explicitly prohibited in the texts of the Qur'an and Hadith, must be prevented and prohibited because it contradicts the fundamental principles of *maqashid sharia*, particularly the protection of the soul (*hifdzun nafs*), intellect (*hifdzun 'aql*) and offspring (*hifdzun nasl*). This prohibition is not a restriction on freedom of religion, but rather a true implementation of Islamic teachings that are oriented towards the ultimate benefit of human beings. *Maqashid sharia* teaches us that true obedience to Allah lies not in literal adherence to the letter of the text, but in achieving the substantial goals desired by the Lawmaker for human welfare.

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