

Unveiling the Enigma: Exploring Regulated Marriage Age Limits from the Lens of Maslahah Mursalah

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Abstract: *The purpose of this research is to ensure that the principle of maslahah mursalah should serve as the foundation for the formation of Islamic Law in terms of regulating changes that occur in society. The Indonesian government recently revised the minimum age for a woman to marry from 16 to 19 years. This inevitably gives rise to new complications in society, as can be seen from the large number of requests for marriage dispensations submitted to the Syariah Courts. This complication arises because if the marriage continues to be carried out under age then the marriage will become invalid. The emergence of a new regulation that regulates the age limit for a person to enter into a marriage has given rise to the author's enigma about whether it is in accordance with the concept of presenting maslahah mursalah in society or vice versa? To address the issues that arise, researchers use the data collection method employed in this research is the interpretative understanding constructivist approach with a phenomenological framework, primary data obtained in the Babelan, Bekasi. While secondary data were derived from the examination of ten Syariah Court Judges' rulings on underage marriage petitions and existing literature. The conclusion of this research is that the implementation of the Marriage Law which regulates the age limit for marriage is considered to have not been able to reduce the number of underage marriages. In terms of implementing these rules it is very weak and does not provide any benefits (maslahah mursalah) for the community, because the government was not serious about carrying out socialization about this matter. Consequently, this regulation falls short in safeguarding the community's welfare.*

Introduction

An fundamental principle in the formation of Islamic law is prioritizing the concept of *maslahah*. This problem is an argument for establishing a new problem that has not been explicitly mentioned in the main sources, the Quran and Sunnah. The concept of maslahah originated following the passing of the Prophet Muhammad SAW, which caused the cessation of the transmission of verses from the Quran and the sayings of the Prophet Muhammad (hadith), while the problems in society were increasingly developing and varying day by day. There are rules in the Quran and Hadith that do not explicitly regulate them so that they require ijtihad carried out by ulama and state leaders to form a law in society. This process aims to prevent legal vacuums and safeguard the welfare of society at large.

According to Article 7 paragraph 1 of Act Number 16 of 2019 which pertains to Amendments to Act Number 1 of 1974 on Marriage, the minimum age limit for marriage is one of the conditions that must be met to be able to carry out a marriage. Currently, the minimum age limit for marriage has been changed to 19 (nineteen) years for men and women, from previously 19 (nineteen) years for men and 16 (sixteen) years for women. Despite this alteration, in practice, underage marriages still occur. Because of this, many requests for marriage dispensation have been submitted to the Syariah Courts, thereby complicating the marriage process following the implementation of the 2019 Marriage Law.

The government, in conjunction with the legislature, certainly has very careful considerations to create regulations that apply in society. One of the things that prompted the establish of regulations in Article 7 of Act Number 16 of 2019 for Amendments to Article Number 1 of 1974 about Marriage, which confirms that marriage is only permitted if the man and woman have reached the age of 19 years old, is the decision of Constitutional Court Number 22/PUU-XV/2017. The decision rendered Article 7, paragraph (1) of the 1974 Marriage Law null and void due to its provision allowing girls as young as 16 years old to marry. This is considered to be contrary to Article 26 paragraph 1 (c) of the Child Protection Act Number 35 of 2014 which states that parents are obliged and responsible for preventing marriage at the child's age. Based on the provisions of the Child Protection Law Number 35 of 2014 (Child Protection Law/CPL), children are those who are not yet 18 years old in accordance with the provisions of article 1 point 1 of the CPL. This is what then sparked controversy in society because the Marriage Law shows that the Indonesian State still allows child marriage (Christian & Edenela, 2019). Additionally, the presence of disparate age limits for men and women is viewed as discriminatory and outdated, warranting reconsideration of its implementation.

In the decision of Constitutional Court Number 22/PUU-XV/2017 "mandated" that the Indonesian Parliament and the Government make changes to the 1974 Marriage Law no later than 3 years after the decision was read. The Constitutional Court considers that it is time to implement legal policies that can accommodate the rights of all citizens. Subsequently, following mutual deliberation, the government and the DPR (parliament) finally set the marriage age limit for women and man at 19 years, equivalent to the previous marriage age limit for men. (As regulated in the 2019 Marriage Law) It is important in this case to examine whether changes to the age limit for marriage according to the new Marriage Law are in accordance with *maslahah* and can avoid *Mufسادah*. For this reason, the author must first explain what is meant by the concept of *maslahah*. The unfortunate thing is that there are many regulations regarding individual protection in Syariah law but their implementation is very minimal. because these regulations are not firm and do not have the force of law. Consequently, the overarching objective of Sharia law to promote benefits (*maslahah*) is not effectively realized.

The importance of raising the age limit for marriage from 16 years to 19 years is underpinned by several factors, such as the readiness of a woman's reproductive organs, and mental and financial readiness to form a healthy

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family and nurture future generation. Beyond the enactment of this regulation, the government should have a way so that this rule can be implemented in society, even if it is just a rule that does not have any impact on society. Looking at the various decisions that have been issued by Syariah Court Judges, many of them only have permanent legal force up to the Supreme Court but are very weak at the time of executing the decision. Indonesia, recognized for its extensive legal framework, faces a persistent challenge in translating these regulations into tangible benefits for the community.

Research Method

The research employs qualitative research using interpretive methods constructivist understanding and phenomenological approach. The interpretive method provides focus on deep understanding of complex concepts and phenomena, while The phenomenological approach focuses on exploring the subjective meaning of perspective individual or group. Primary data was obtained in the Babelan District area, Bekasi City about request for permit underage married. Secondary data was collected through the results of reviewing 10 (ten) Syariah Court Judges' decisions regarding underage marriage applications, information from Syariah High Court in West Kalimantan, information from Badilag (Indonesia syariah judicial department) about request for dispensation marriage, and from literature study.

Results and Discussion

Maslahah dan Mafsadah Concept

Basically creating rules regarding Islamic law that are not explicitly regulated in the Quran and Hadith, the ulama and the government must consider the discovery of law by prioritizing the rules of *Mashlahah*, namely an effort to establish law through the will of *al-mashlahah* (benefit) which is not partially recognized by sacred text and is not explicitly rejected, but this benefit is generally accepted by the syariah. Such benefits are termed *al-mashlahah al-mursalah*. This concept is elaborated upon in several *maslahah* studies in the thoughts of Syafi'i and al-Ghazali written by Abdul Mun'im Saleh, and Tarmizi.

Abdul Mun'im Saleh in his study stated that during al-Shafi'i's era *maslahah* was not yet known as a technical term. However, al-Shafi'i established several rules which later became known as *al-qawaid al-fiqhiyah* rules which clearly emphasized the importance of using *al-mashlahah* in legal considerations. Tarmizi further stated in his study that the emergence of the *maslahah* theory in al-Ghazali's thought was aimed at protecting the objectives of the Shari'a (Saleh et al., 2024). So according to al-Ghazali, a benefit must be in line with the goals of syariah, even if it conflicts with humanistic goals, because humanistic benefits are often based on the desires of lust (subjectivity) (Haroen, 1978).

Etymologically, *mashlahah* is the same as benefit, both in terms of pronunciation and meaning. *Mashlahah* also refers to a benefit or a job that contains benefits. Meanwhile, in terms of terminology, according to Imam al-Ghazali, in principle, *mashlahah* is "taking advantage and rejecting *mafsadah*

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in order to maintain the goals of Syariah” (Al-Ghazali et al., 2017). Maslahah can be understood as the pursuit of benefits and rejecting harm (Al-Thufi et al., 1998).

In making regulations related to Syariah law, the government must consider whether these regulations provide benefits to society. If these regulations provide benefits in terms of protecting the interests of society, then the government must regulate them, in order to avoid chaos or legal vacuum in society. This is one of the reasons the marriage age limit for women has been changed, from 16 years to 19 years. This is done with various considerations, namely the physical and mental readiness of a woman to carry out married life and nurturing a healthy future generation.

Al-Ghazali explained that there are five forms of Syariah goals that must be maintained, namely: maintaining religion, soul, mind, offspring and property. If someone performs an action that essentially aims to maintain the five aspects of the Syariah' goals above, then that is called *al-mashlahah*, including efforts to resist all forms of harm related to the five aspects of the Syariah' goals. According to al-Syathibi, these benefits are not differentiated between the benefits of the world and the hereafter, because if they aim to maintain the five objectives of the syara' above are included in the concept of *mashlahah*. Therefore, according to al-Syathibi, the worldly benefit achieved by a servant of Allah must be aimed at benefiting the afterlife (Haroen, 1978).

“Al-Thufi's view is that the essence of all Islamic teachings contained in the texts is mashlahah (benefit) for humanity. This concept has been recognized by the ulama and therefore they formulated a well-known rule: "Where there is benefit, there is the law of Allah" (Al-Buti et al., 1977).

According to Saad al-Dzari'ah, the principle of *maslahah* can also be described as an effort to close all paths that lead to a prohibited act. This implies that a person does work that is initially permissible because it contains a benefit, but the intended goal to be achieved ends in a *mufsadah* (disadvantage act). Al-Syathibi stated three conditions that must be met for an act to be prohibited, are as follows: Actions that have the potential to lead to *mafsadah* (disadvantage); The disadvantage of the work is stronger than the benefit of the work; and, Carrying out permissible actions which contain more *mafsadah* elements (Haroen, 1978).

The word "*al-dzari'ah*" is preceded by "*saddu*" which means 'to close' or means 'to close the way for damage' then we arrive at the intended meaning "*saad al-dzari'ah*". Consequently we arrive at the intended meaning of "*saad al-dzari'ah*" is to close a path/do a job that originally contained benefits to lead to a disadvantage (*mafsadah*), even if the origin was permissible.

The original meaning of the word is *fasada- yafsudu-fasadan* which denotes something that is damaged. The linguistic meaning of *mafsadah* also signifies harm. When examined from another angle, *mafsadah* is considered the opposite of *maslahah* or the opposite of goodness. From the definition above, it become evident that *mafsadah* is harm that leads to destruction (Zakariyā et al., 2013)

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According to Imam al-Ghazali, *mafsadah* is something that brings about the erasure (partially or completely) of the five *maqâsid al-syari'ah* (Al Ghazali et al., 1999). In Imam al-Ghazali's view, this is known as *mafsadah haqîqiyyah*. *Mafsadah haqîqiyyah* is not only destructive part or all of the five *maqâsid al-syari'ah*, but also delete or damage things related to them (*wasilah*), known as *mafsadah majâziyyah*. 'Izzuddin Abdussalam stated that *mafsadah majâziyyah* is the cause of the emergence of *mafsadah haqîqiyyah* (Abdussalam, 1968). For example, adultery is a *haqîqiyyah mafsadah*, whereas looking at women those who are not mahram are *mafsadah majâziyyah*, since they serve as intermediaries in the occurrence of adultery. If the intermediary is strong, then the *mafsadah* will be stronger and vice versa.

Imam al-Ghazali posits that the pursuit of benefit and preventing harm (*mafsadah*) aims to maintain and safeguard the goals and desires of syarak. The concepts of *maslahah* and *mafsadah* have a close relationship, in fact the combination of these two concepts as a whole will lead to the achievement of true benefits and the achievement of societal objectives. For Imam al-Ghazali, the concepts of *maslahat* and *mafsadah* are only methods in determining law rather than mere proportions (Al Ghazali, 1999).

Government must pay close attention to whether these regulations provide more benefits or cause problems for the community. Essentially, rules are essential so that people are protected from all the problems they will face in the future. In order to maintain the stability of people's lives and fostering the development of a prosperous future generation.

Problems of Underage Marriage

Marriage at an underage inevitably leads to numerous challenges in the future due to the mental and physical unpreparedness of the couple involved. Many underage marriages are carried out because of marriage by accident (pregnant before marriage) or because of encouragement from a society's culture which forces someone to marry at an immature age. Perspectives in society sometimes force minors to marry. Social perspectives can sometimes compel minors into marriage, particularly in regions like Java, where marrying young is often glorified to avoid the stigma of being unmarried and they are afraid of their children being labeled unsold or spinsters. Apart from that, sometimes a lack of education causes young people not to think long and continue to get married. Even though marriage is a lifelong commitment and responsibility. A successful marriage requires proper education for the couple, mental maturity, and financial stability to ensure the well-being of future generations.

Underage marriage, also commonly known as early marriage is "a marriage carried out by a couple who according to positive law is still not sufficient to carry out the marriage (Sholehudin, 2019)." According to Article 7 paragraph (1) of the Act on Marriage, as amended by Act no. 16 of 2019, it is determined that the minimum age for marriage for men and women is 19 (nineteen) years. Thus, underage marriages are marriages entered into by those who have not reached the age of 19 (nineteen) years. Such marriages are undertaken out by those who have not reached the age required to be considered mature, both physically and spiritually (Rahajaan & Niapele, 2021).

In addition to its social and health impacts, early childhood marriage is also closely related to the construction of gender identity. Gender identity is the way individuals identify themselves as male, female, or another gender, as well as how they interact with the social norms associated with that gender. Early childhood marriage can affect children's gender identity development, because they are often compelled to face more mature gender roles before they are emotionally and psychologically ready. (Agustin, 2023)

Maturity is one of the principles of marriage stated in this law, that "the prospective husband and wife must be mature in body and soul to be able to enter into marriage (Marriage Act, 1974)." This aims to create a happy and eternal marriage, without ending in divorce, and aims to obtain good and healthy offspring. Thus, attaining maturity is paramount for a successful marriage.

Factors in Underage Marriage

a. Religion Factor

In Islam it is not explicitly explained when a person is allowed to marry. The conditions for someone to be able to marry are found from the interpretation of verses in the Quran, namely Q.S. An-Nisa[4:6] whose meaning is as follows:

“And test the orphans until they are old enough to marry. Then, if in your opinion they are intelligent (good at looking after wealth), then hand over their wealth to them. and do not eat more of the wealth of orphans than is appropriate and (don't) rush (spend) it before they grow up. whoever (among the guardians) is capable, then let him refrain (from eating the orphan's wealth) and whoever is poor, then he may eat the wealth according to what is appropriate. Then, when you hand over property to them, then you must provide witnesses (of the handover) for them. and Allah is sufficient as Supervisor (of that testimony).”

The word [وابتلوا] translates to train. The word [اليتمى] means orphans before reaching the age of puberty in terms of religion and their form of action in managing their property. [بلغوا اذا حتي] means until they reach *baligh* (mature), which is marked by having a wet dream or being 15 years old according to Imam Shafi'i. [رشد] means maturity and skill in managing and guarding property (Hartanti, 2021).

So people interpret this to mean that someone can get married at the age of 15 or is already having a wet dream. But basically *akil baligh* (puberty) here is a regulation regarding someone being given responsibility in the field of *amaliah* (the relationship between humans and Allah/one's obligation to worship). Meanwhile, if the regulations for *muamalah* (laws governing relations between humans and other humans) are not explained explicitly in the Quran and Hadith, the government can regulate them according to the conditions in their own jurisdiction.

The rules within the Islamic religion regarding the age limit for someone to be considered puberty (puberty) are only to determine that a person is obliged to carry out worship and bear his own sins. But this is often misunderstood by society to mean that the age limit for someone who can be

allowed to marry is puberty. This misinterpretation inevitably creates new problems, such as underage marriages initiated by parents.

b. Educational Factor

Low level of education can lead someone to think less about their future. This causes a person to act without knowing what consequences he will face when carrying out a child marriage. The lack of education provided by families and schools on the criteria for establishing a family can lead to challenges, because in forming a family there are several responsibilities that must be carried out by the couple carrying out the marriage. Couples who carry out marriage must have mature reproductive organs, self-control, religious education, and financial maturity. because marriage not only unites men and women in one house, but also how the couple can organize finances to run a family and provide a decent living for their children. so as not to increase the burden on the state due to the large number of generations dropping out of school due to parents' financial unpreparedness to provide a proper education for their children.

c. Cultural Factors

Indonesia is known for its strong social interaction. Apart from that, Indonesian are people who uphold cultural customs so that culture is quite influential in the social life of Indonesian society. If we take the example of West Java, women are encouraged to marry at a young age. According to Sundanese beliefs, if a woman has completed elementary school education, then she is fit to start a household. because it is considered that marriage over the age of 20 is a marriage that is past the age limit when women should marry. In general, women who marry after the age of 20 are considered unattractive to men. Even though this idea has diminished in urban communities, it is still believed by village communities. so the important role of the regional head through the village head is to change the mindset of the people in the village.

Child marriage is commonly prevalent in communities with low economic conditions, such as in village areas. Economic factors make parents prefer to marry their children because they do not have the money for school. There is still an opinion that when someone marries younger they will be more established in the economic field.

d. Factors of Pregnancy Out of Wedlock

Education about the dangers of sex at an early age and outside of marriage should be introduced at primary school level by parents and at school. Many women are unaware of the potential dangers of becoming pregnant outside of marriage, both physically and mentally, when they are not prepared for such responsibilities.

Apart from that, sometimes parents misunderstand pregnancies outside of marriage. There is still a way of thinking of parents in Indonesia that when their child becomes pregnant out of wedlock, the best way out to solve this problem is to marry off their child. In fact, underage marriages are prone to divorce, because marriages are based on compulsion (covering up disgrace) rather than on the basis of mature thinking and mental readiness of the couple.

Impact of Underage Marriage

a. Educational Impact

The Indonesian government's program is to realize 12 years of compulsory education for its people starting from the age of 6, this aims to (Kominfo, 2015):

1. Expanding educational equality and realizing social justice in the field of education,
2. Reducing the gap in secondary level educational attainment between community groups,
3. Improving the quality and competitiveness of the nation,
4. Prepare students to continue their education to a higher level.

So when someone has not completed 12 years of education, and gets married, it will be difficult to complete their education, because they have to carry out their responsibilities as husband and wife and/or their role as parents. What are the very detrimental consequences if underage marriage occurs? Such marriages can disrupt the educational pursuits of the couple due to the substantial responsibilities that accompany early matrimony. If both partners do not complete their educational level according to the government's recommendation to complete their education up to senior high school level, then in the future this couple will find it difficult to get a decent job and adequate salary to continue their married life. and other big problems will arise if they do not get a decent income.

b. Economic Impact

Immaturity in terms of education will affect the future careers of married couples who are underage. The potential for unemployment is greater due to lack of education. This results in a family that is economically weak and tends to be poor. When a family's economy is not strong (poor), this will clearly create new problems for a country. Inevitably this will increase the number of unemployed and poor people in Indonesia. If there is an increase in these two things, it will be difficult for the country to create a physically and spiritually healthy generation.

c. Social Impact

Apart from that, underage marriage can give rise to unemployment and poverty. This can be one of the factors that encourages criminal acts from someone due to inadequate financial needs. We can see from several news sources a father who steals to support his family and buy milk for his children. Of course this will disrupt the social order in society.

Underage marriage carries a high risk of divorce. This is because, at that age, thoughts and feelings are still not stable, so when small problems arise, arguments will easily occur. The existence of an argument can trigger domestic violence (KDRT) and sexual violence against girls. Apart from that, underage marriage can also give rise to child trafficking, such as prostitution, especially for girls (Sandi & Parwata, 2020).

d. Health Impact

Child marriage greatly affects reproductive health, particularly for girls. The possibility of disability in the unborn child is one of the impacts of underage marriage. This is because at that age a girl's cervix is still very sensitive, so there is a very high risk of developing uterine cancer in the future. Additionally, immature reproductive organs can also cause bleeding, even risking death for the mother during childbirth (Sekarayu & Nurwati, 2021).

The economic challenges associated with child marriage exacerbate health issues, lack of income from parents to provide proper health facilities for their children. the number of children who are not immunized or babies who face malnutrition problems.

e. Psychological Impact

The unpreparedness of a couple in a marriage in terms of mental, economic and educational readiness will inevitably disrupt the psychology of the couple when they encounter the problems they face in a marriage. The immaturity of parents who marry underage will also affect the psychology of the children of this couple. A psychologically unhealthy family will most likely give birth to a psychologically disturbed generation.

The immaturity associated with underage marriage makes individuals highly vulnerable to domestic violence. This is because, at that age, emotions, thoughts and feelings are still not stable. So, it can cause children to experience prolonged trauma, even difficult to heal (Zulfiani, 2017). The explanation regarding the impact of underage marriage is that it causes many *mafsadah*, whereas Islamic law teaches to prioritize avoiding *mufsadah* rather than seeking *maslahah*. Because avoiding *mafsadah* is a priority.

Case Study Before and After the 2019 Marriage Law was passed

Case of Underage Marriage at the Religious Affairs Office (KUA) Babelan District, Bekasi Regency.

Table 1. Case underage marriage at 2017-2018 in Babelan District

No.	Tahun	Men	Women	Total
1	2017	1	2	3
2	2018	3	2	5
	Total	4	4	8

Source : Religious Affairs Office (KUA) Babelan District, Bekasi Regency.

According to the table above, it is evident that the proportion of men and women entering into underage marriages at the Religious Affairs Office (KUA) in the Babelan District, Bekasi City is both are same 50%.

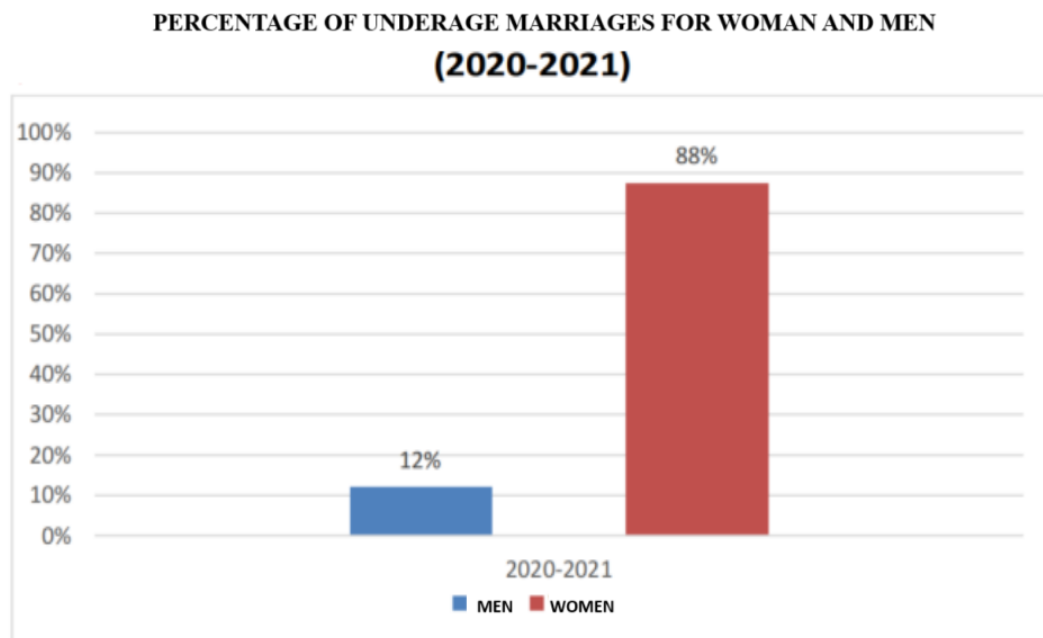
Table 2. Case underage marriage at 2020-2021 in Babelan District

No.	Tahun	Men	Women	Total
1	2020	1	4	5
2	2021	0	3	3
	Total	1	7	8

Source : Religious Affairs Office (KUA) Babelan District, Bekasi Regency.

Based on the table above, the formula for calculating the percentage of underage marriages for men and women in the 2020 and 2021 periods can be depicted with the following diagram 1:

Diagram 1: calculating the percentage of underage marriages for men and women in the 2020 and 2021



Source : Religious Affairs Office (KUA) Babelan District, Bekasi Regency.

Based on the results of the diagram above, the percentage of underage marriages carried out by men and women in the Babelan District Religious Affairs Office (KUA), Bekasi City experienced quite significant differences. The results of the diagram are clear that the percentage of underage marriages for women has increased to 88%, while for men it has decreased to 12%.

The enactment of Act Number 16 of 2019, amending Act Number 1 of 1974 concerning Marriage has notably impacted women, leading to an increase in underage marriages among them. The reason why cases of requests for dispensation increased among women was that when the regulation was changed that the minimum age limit for a woman to marry was 19 years, this did not necessarily change society's view about the dangers of marriage at a

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young age. So it is not the case that marriage at a young age is decreasing, but instead requests for dispensation for underage marriage are increasing.

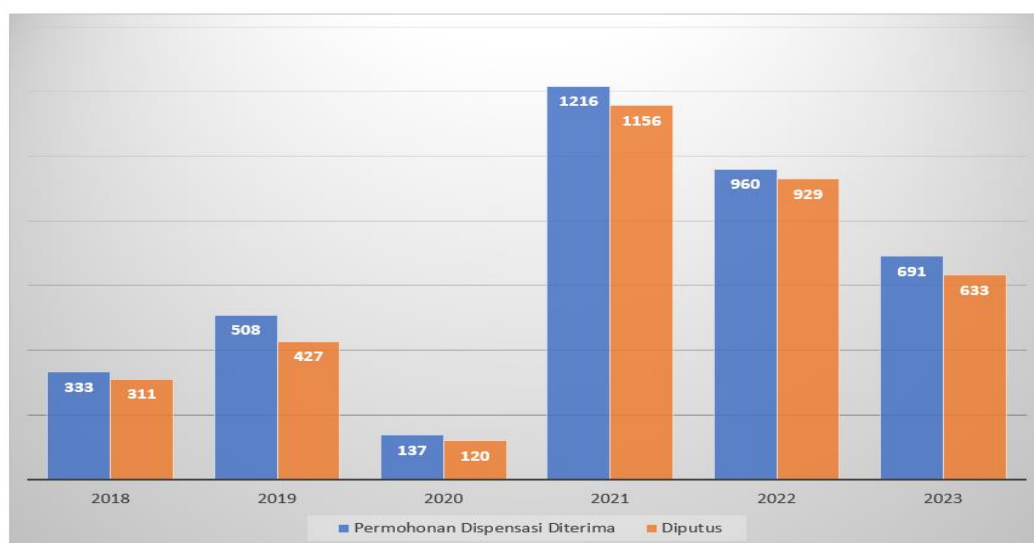
Base on this data, we can conclude that the government only changes the rules in written form but does not provide any influence or benefit to society. because the mindset regarding underage marriage is still considered normal by society. so that the aim of establishing this law was to avoid mufsadah resulting from underage marriages not being achieved.

Index of applications for Marriage Dispensation after the 2019 Marriage Law

Marriage dispensation constitutes a departure from statutory regulations outlined in the Law on Marriage. This, as regulated in Article 7 paragraph (2) of the Act on Marriage, as amended by Law no. 16 of 2019, that "in the event of a deviation from the age provisions as intended in paragraph (1), the man's parents and/or the woman's parents can request dispensation from the Court for very urgent reasons accompanied by sufficient supporting evidence." The meaning of marriage dispensation is also explained in Article 1 point 5 of Government regulation (Perma) No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, that "the court grants marriage permits to prospective husbands/wives who are not yet 19 (nineteen) years old to enter into marriage."

With the implementation of new regulations on marriage age limits, Indonesia has faced a recurring issue: a notable rise in marriage dispensation cases annually. Seeing the results of the report from the Public Relations of the Pontianak High Syariah Court, DR. Agus Yunih, S.H., M.Hi as Public Relations of PTA Pontianak stated that there was a very significant increase in marriage dispensation application cases from 2018 to 2023 in all Syariah Courts in West Kalimantan, namely as follows:

Diagram 2. Marriage dispensation application cases from 2018 to 2023



Source: Public Relations Departemen Pontianak Syariah High Court.

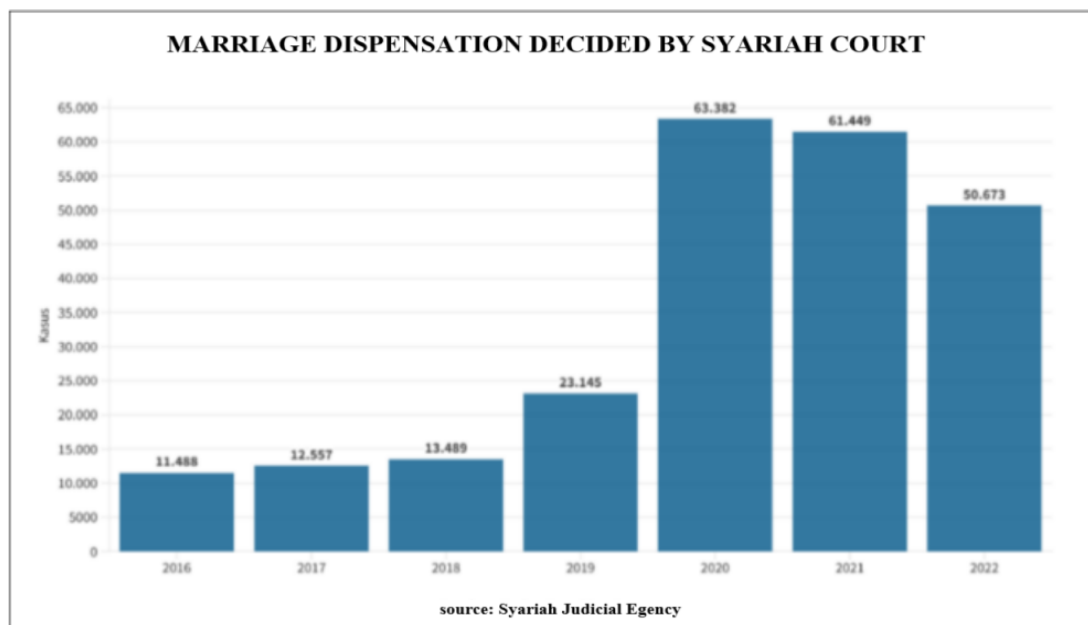
Based on the diagram above, it can be seen that there has been an increase in requests for marriage dispensation in the West Borneo region compared to 2018. Initially, cases in 2018 were only 333 requests for marriage dispensation, then it is clear that in 2019 it started to increase to 508 cases. Then, as reported by DR. Agus Yunih, S.H., M.H that in 2020 there was a drastic decrease in the number of marriage dispensation cases, namely only 137 cases, due to the Covid 19 pandemic. When the Covid 19 pandemic began to be controlled, the number of requests for marriage dispensation began again, namely the peak in 2021, requests for marriage dispensation increased to 1216 case. This represents an approximate 300% increase in marriage dispensation requests compared to previous years.

Starting in 2019 as depicted in the diagram, there was a very significant increase in requests for marriage dispensation (except in 2020 at the start of the Covid-19 pandemic), and the peak occurred in 2021. This is clearly because the government is not serious about making regulations to suppress marriage under age. The government easily changed the legal age limit for a woman to marry to 19, but there was no real outreach to the public to change their views about the dangers of underage marriage. It is clear that this law exists According to Article 7 paragraph (1) of the Act on Marriage, as amended by Act no. 16 of 2019 does not have any effect on society. Even though a rule related to sharia law must provide benefits (maslahah). Instead, due to insufficient socialization, many perceive this legal requirement as an unnecessary hurdle, requiring involvement of the Sharia court in marriage decisions.

Apart from that, we can also see applications for marriage dispensation throughout Indonesia that are submitted to the Syariah Courts. The Syariah Courts Board reported that there were 63,382 marriage dispensations that were terminated in 2020 in all regions in Indonesia, this figure is higher than applications for dispensation in 2018 which only had 13,489 cases (Mustajab, 2023). However, in 2021 and 2022 there has begun to be a decline in requests for marriage dispensation in Syariah Courts, although still considered quite numerous.

The reason why the number of underage marriages has not decreased is because the 2019 age limit law for women was implemented but there was no socialization from the government about the dangers and mufsadah that would be faced by underage marriage. Only the government knows the reasons for this rule, without providing socialization to the public. so it is clear that this rule does not have a beneficial effect on society. It's just a written rule that doesn't have a good influence on society.

Diagram 3. Marriage dispensation application cases from 2016 to 2022.



Source : Syariah Judicial Agency, Supreme Court.

Applications for marriage dispensation are still considered large, especially compared to the number of judges. The Religious Courts environment is experiencing a deficit of judges at the first level. In 359 religious courts, ideally there would be 5539 judges, but the current number is only 3078 judges. Thus, an additional 2461 judges are still needed (Badilag, 2015). In reality the cases under the jurisdiction of the Religious Courts are numerous and varied.

The author's analysis of why the change in regulations regarding the age limit for women to enter into marriage does not have any impact on society because the government's insufficient efforts to curb the rising in the number of marriages. Because a regulation must have efforts to socialize the public about the importance of a mature marriage. Because a mature marriage age will produce a household that is healthy both physically and mentally. Stability is a financial thing. So that couples who are mature both mentally and financially will produce a great generation who are healthy both physically and mentally.

Analysis of Court Determinations regarding Applications for Dispensation of Minor Marriages Before and After the Implementation of the 2019 Marriage Law

Prior to the Implementation of the 2019 Marriage Law Amendment (2016 - 2018 Period). The following is a description of the reasons for the sharia court judge's decision of request marriage dispensations that have been analyzed in above. It can be seen that in examining and adjudicating cases request for marriage dispensation, the Judge considers various things. The things that are taken into consideration by the Judge include the reasons for

the submission request for marriage dispensation, age of prospective bride and groom, background education, the child's physical and mental readiness, the social impact it will have arising, as well as the legal basis used. Therefore, based on the analysis of the 10 (ten) determinations of marriage dispensations, can be summarized as follows.

In the Nganjuk (East Java) sharia court decision, in case with registration number 0065/Pdt.P/2016/PA.Ngj (Nganjuk), The case was filed by the woman's parents that want to marry a daughter (15 years) to a man (20 years), and the daughter is 4 months pregnant. The reason this case was brought to court was to reduce bad consequences in the life that the prospective bride and groom will live. The Judge from the Nganjuk Sharia Court granted approval for this marriage dispensation.

In the Mempawah (West Kalimantan) sharia court decision, in case with registration number 85/Pdt.P/2017/PA.Mpw, The case was filed by the woman's parents that Want to marry a girl (15 years 6 months) with a boy (21 years). Fear of being in a relationship for too long will result in adultery, and both partners are ready to become husband and wife. The judge at the trial had tried to advise the parties to postpone the age limit according to the law but was unsuccessful. At the end Judge give a Granted a dispensation for marriage, because the age difference between the Petitioner's child and the marriage age provisions was still tolerable, secondly The prospective bride and groom are considered ready to form a household.

The othe case is in Wonogiri (Midle Java) sharia court decision, in case with registration number 0032/Pdt.P/2018/PA.Wng (Wonogiri), The case was filed by the woman's parents that Want to marry a daughter (14 years 9 months) with a man (19 years 1 month), and the daughter is 6 months pregnant. The reason this case was brought to court to avoid harm for reasons, because these two couples have been engaged for 2 (two) years and have had husband and wife relations, feared that if they are not married they will commit adultery, and to protect the rights of children who will be born. The judge granted the request for marriage dispensation.

In the Tulung Agung (East Java) sharia court decision, in case with registration number 0248/Pdt.P/2018/PA.TA (Tulung Agung), The case was filed by the woman's parents that want to marry a daughter (14 years 9 months) to a man (old enough), and the daughter is 1 month pregnant. Want to marry a daughter (14 years 9 months) to a man (old enough), and the daughter is 1 month pregnant. The reason this case was brought to court to Even though the Petitioner's biological child. In terms of age, he is not yet 16 years old, but if you look at it, her physical and way of thinking turned out to be quite appropriate to do so marriage, even seen from the perspective of the relationship with the candidate her husband who was so close and able worried about committing sin (adultery), then to avoid *mafsadah* that will arise and will be more benefits for his family, it needs to be implemented marriage immediately. At the End Judge granted this request, so they both allowed to get marry.

Different from the previous 4 judge's decisions. The judge from the Watasopeng Sharia Court, South Sulawesi rejected the request for a marriage dispensation in case with registration number 0008/Pdt.P/2017/PA.Wsp

(Watasopeng), The case was filed by the woman's parents that want to marry a girl (14 years 5 months) with a boy (27 years). The reason is that preparations for the wedding with the prospective groom are already underway prepared, even the dowry money has been received and used finished. The judge's reasons for rejecting this request for marriage dispensation are as follows: Judges not meeting the age required to marry according to the Marriage Law, The applicant's child is still a student, and Children must receive protection for their rights and for the benefit of the child.

After the Implementation of the 2019 Marriage Law Amendment (Period 2019 - 2021) In this paper, the researcher describes 5 (five) sharia court decisions regarding requests for marriage dispensation, we start with Case in Bangil (East Java) sharia court decision, in case with registration number 00144/Pdt.P/2019/PA.Bgl (Bangil), The case was filed by the woman's parents that want to marry a daughter (17 years 3 months) with a man (30 years). The reason is that these two couples love each other and are difficult to separate. Preparations and setting a wedding date have been determined, so the wedding must take place immediately. And base on this dispensation marriage request, Judge granted this request with the reason If the two of them are not married immediately, it will cause greater mafsadah, for this couple and for their respective families, it is better for both of them to be allowed to marry even though the age of the Petitioner's child has not yet reached statutory provisions.

In the Tais (Bengkulu) Sharia court decision, in case with registration number 158/Pdt.P/2020/PA.Tas (Tais), The case was filed by the woman's parents that want to marry a girl (16 years 11 months) with a boy (23 years). These two couples are too closely related and difficult to separate. Both couples had sexual intercourse, even though they were not pregnant. And base on this request Judges granted them to marry. The judges of the Salatiga Sharia Court granted permission for this marriage. Their decision was based on the closeness of the couple, the pregnancy of the daughter, the financial stability of the prospective husband who is employed, and the argument that permitting marriage reduces the risk compared to allowing them to remain in a sinful relationship, furthermore the couple is ready both physically and mentally to carry out the marriage.

In Salatiga (Midle Java) Sharia court decision, in case with registration number 194/Pdt.P/2020/PA.Sal (Salatiga), The case was filed by the woman's parents that want to marry a daughter (18 years 3 months) with a man (21 years). These two couples were engaged, and their relationship was very close, the applicant's child often came home at night, and the applicant's child was pregnant. Judges of Salatiga Shariah Court give Granted for this dispensation marriage request with the reason This couple's relationship is too close, even the future wife is already pregnant, and the future husband is too has worked and has an income, then Judge argued that granting permission to marry the Petitioner's child, and the risk is lighter than letting them in a sinful relationship.

In Tais (Bengkulu) Sharia Court decision, in case with registration number 29/Pdt.P/2021/PA.Tas (Tais), The case was filed by the woman's parents that want to marry a girl (16 years 11 months) with a boy (20 years).

These two couples are too closely related and difficult to separate. These two couples had sexual relations like husband and wife. The Petitioner's child has been 5 months pregnant. Based on this dispensation marriage request Judge gave a granted to them marry. The purpose of granting a marriage dispensation is "to reduce the consequences bad impact (*mufsadat*) on the life that the candidate will live bride.

Different from the previous 4 judge's decisions. The judge from the Cibinong Sharia Court, West Java rejected the request for a marriage dispensation in case with registration number 176/Pdt.P/2021/PA.Cbn (Cibinong). The case was filed by the woman's parents that Want to marry a daughter (14 years 6 months) with a man (24 years 8 months), and the daughter is 6 months pregnant. The reason this request was rejected because The Petitioner's child is too young to be a housewife and have children and there is no compelling reason to marry. Marriage carried out at this age has a very negative impact (*mafsadah*) because it poses a risk to reproductive health.

The author's assessment after looking at the reasons put forward by applicants for marriage dispensation is because they are afraid of adultery if the marriage is not carried out. This is a problem why minors are already thinking about wanting to have sex (*khalwat*), without a lack of knowledge about the responsibilities that will arise if pregnancy and having a child occurs but the partner's mental and physical readiness is not yet ready.

It is crucial for the government to conduct comprehensive socialization within schools and through local governance bodies, emphasizing that marriage entails more than just sexual relations. It involves financial maturity, emotional readiness of both partners, adequate religious knowledge, and the responsibility of maintaining each other's health.

Apart from that, the reason underage marriages are carried out is because the woman has become pregnant out of wedlock. This is because there is still a mindset that if you are pregnant you have to get married so that your child will have status. In fact, without marriage, a child has a clear family relationship (according to religion and state law) with his mother. And she doesn't have a lineage relationship with her husband so she has to be called bin or bint "Abdullah".

In developed countries, a child who has been born does not have to have a father to be recognized as a citizen. Simply having one's mother's lineage fulfills the requirements for a person to have the rights to become an Indonesian citizen. Moreover, pregnancy is the result of a woman being raped by a man. Obviously there will be no problems with a marriage led by a man who cannot respect a woman.

Conclusion

Marriage is basically muamalah law or law that regulates relationships between humans and other humans so that the government here is given the right to regulate rules that are not explicitly explained in the Quran and Hadith. These rules must be in accordance with the concept of *maslahah* and avoid *mufsadah* for society.

Al-mashlahah in principle is "taking benefits and rejecting *mufsadah* (or commonly known as *mudharat*/disadvantage) in order to maintain *Syariah*

goals." Apart from that, al-Thufi's view is that the essence of all Islamic teachings contained in the texts is *maslahah* (benefit) for mankind because the ruler's legal actions towards the people are based on benefit. According to Saad al-Dzari'ah, the principle of *maslahah* can also be described as an effort to close all paths that lead to damage/badness (*mafsadah*). Article 7 of the 2019 Marriage Law, made by the Government about the age limit for marriage with the aim of reducing underage marriages which are still vulnerable to marriage failure.

But in fact the author found the conclusion of this research is that the implementation of the Marriage Law which regulates the age limit for marriage is considered to have not been able to reduce the number of underage marriages and has actually increased requests for marriage dispensation to the Syariah Courts. There has been a significant increase in requests for dispensation to the Syariah Courts in Indonesia, since the enactment of the 2019 Marriage Law, this trend suggests that the current regulation has limited impact in dissuading underage marriages, highlighting a pressing issue for government attention. Therefore, the Government must have a more active policy so that people are aware of the dangers of underage marriage for the younger generation.

The author's suggestion that the government's goal of preventing early marriage in the community be carried out well is by making the following efforts: Carrying out education to the community through village officials about the dangers of early marriage on a regular basis, including a curriculum about human reproduction lessons in schools, making it mandatory for couples Those who want to get married must take part in pre-marital training (certified) as a condition for getting married at KUA, requiring children to complete 12 years of compulsory education up to high school level.

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