

Age Limit of Marriage in Islamic Family Law: A Comparative Study between Morocco, Pakistan, Malaysia, and Indonesia

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Abstract:

The renewal of marriage laws in the Islamic world is not a new thing but has been debated since ancient times. The cause of these differences began with the rise of awareness from the community and scholars that the concept of Fiqh used was no longer in line with the times, so there needed to be a new legal reform that was in line with the demands of the Islamic community, especially in marriage in determining the age limit of marriage that occurred in Asian countries namely Morocco, Pakistan, Malaysia, and Indonesia. The development of knowledge about the situation and conditions of the developing community at that time was one of the factors that triggered family law reform. The method used in this writing is library research, with a legal analysis approach. so it involves an analysis of the legal regulations and provisions that apply in Islam. The regulation analysis carried out involves a comparison of family law in various countries related to the age limit of marriage. The discussion is interesting because it will provide consideration of the ideal age of marriage reviewed from the

positive law of the country, and will know the historical side of the provision of age limits in marriage in comparative law in the country so that it is obtained in its application in the Islamic country it is different but not far from the age recommended in reaching adulthood and maturity of thinking, mental readiness because each country has its limits to measure the maturity of children to get married.

Pernikahan dalam pembaharuan hukum di dunia Islam bukanlah hal yang baru, namun sudah diperdebatkan sejak dahulu kala. penyebab berkembangnya perbedaan tersebut diawali dari bangkitnya kesadaran dari masyarakat dan para ulama bahwa konsep fiqh yang digunakan sudah tidak sesuai dengan perkembangan zaman maka perlu adanya reformasi hukum yang baru sehingga sesuai dengan tuntutan masyarakat Islam terutama dalam perkawinan dalam menentukan batas usia pernikahan yang terjadi pada negara Asia yaitu Maroko, Pakistan, Malaysia dan Indonesia. Adanya perkembangan ilmu terhadap situasi dan kondisi masyarakat yang berkembang pada waktu itu merupakan salah satu faktor yang memicu reformasi hukum keluarga. Metode yang digunakan dalam penulisan ini adalah studi kepustakaan (library reseach), dengan pendekatan analisis hukum. sehingga melibatkan analisis terhadap peraturan hukum dan ketentuan yang berlaku dalam agama Islam. Analisis peraturan yang dilakukan melibatkan perbandingan hukum keluarga di berbagai negara terkait batas usia pernikahan. Pembahasan yang menarik karena akan memberikan pertimbangan usia ideal pernikahan yang ditinjau dari hukum positif dari negara tersebut, serta akan mengetahui sisi historis pemberian batasan dalam usia pernikahan dalam perbandingan hukum dinegara tersebut, sehingga didapatkan dalam pemberlakuanya dalam negara Islam tersebut berbeda-beda akan tetapi tidaklah jauh dari umur yang dianjurkan dalam mencapai usia dewasa dan kematangan berfikir, kesiapan mental karena disetiap negara memiliki batasan tersendiri untuk mengukur kedewasaan anak untuk melangsungkan pernikahan.

Keywords: *Marriage; Age Limit for Marriage; Islamic Law.*

Introduction

The dynamic Islamic law that adapts to the times is a form of stagnation in development to answer the demands of modern Islamic society, as stated by Hasbi Ash-Shiddieqy and quoted by Amir Syarifuddin. It is a struggle carried out by legal experts in formulating Sharia based on the needs of society.¹ These demands have

¹ Amir Syarifuddin, "Pengertian Dan Sumber Hukum Islam," *Jakarta: Bumi Akasara*, 1992.

given birth to various versions, especially from various Islamic countries in the world.²

These differences create a unique pattern where the law experiences developmental stagnation in various countries around the world. This is not separate from the development of contemporary Islamic Family Law. This development is backed by different cultures, socio-political and socio-historical backgrounds. Therefore, it is necessary to compare laws in various countries to understand the background and needs of the community to implement Islamic law easily.³

However, the development of societal needs in social change will bring about changes in the law, but the implementation of new laws on social customs is often slow. Often, the application of law waits for the crystallization stage of law to form new rules from new legal institutions. Therefore, there is a term that law walks haltingly in social development in society. In this issue, the government must play a role in encouraging the building of social change, which means that the law does not stray too far from social society by the times, especially in marriages that limit the age of both husband and wife.⁴

Marriage is a topic in Islam that has long interacted with the state and government. Historically, Islamic countries have regulated marriage as part of their demographic policies, especially after the spread of Islam to various regions and interaction with the legal culture inherited from Greece and Rome. The codification of family law in countries with Muslim populations was also influenced by colonial politics, especially from Europe such as France, Italy, and the Netherlands, which have their own rules about family law. For example, in Indonesia, a country once ruled by the Netherlands, the government permitted Muslims to apply Islamic marriage law sourced from fiqh and recognized as a valid marriage by the colonial government.⁵ The role of the state is very important in setting policies that regulate the age limit for marriage, as this is closely related to welfare and goodness in culture. The good deeds done by citizens are a benefit to a

²Ashadi L. Diab, "Dinamika Pekiran Hukum Islam Di Indonesia Dan Tantangannya," *Al-Adl* 8, no. 2 (2015): 37-56.

³Fathurrahman Azhari, "Dinamika Perubahan Sosial dan Hukum Islam," *Al Tahrir* 16, no. 1 (2016): 197-221.

⁴Nur Ali, "Law Reform and Law Making (Kajian Batasan Usia Perkawinan)," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam* 1, no. 1 (November 2, 2019): 1-22, <https://doi.org/10.56593/khuluqiyya.v1i1.18>.

⁵Mukti Ali, *Fikih Kawin Anak: Membaca Ulang Teks Keagamaan Perkawinan Usia Anak-Anak* (Diterbitkan atas kerjasama Rumah Kitab, Ford Foundation, dan UiO Norwegian ..., 2015).

country. The welfare of a society is reflected in their household life which is arranged according to the sharia that is implemented.⁶

Comparative research on the age limit for marriage is not only conducted once. To determine the originality or authenticity of the research conducted, several previous studies are presented within a single discussion theme by outlining their similarities and differences, thus providing novelty as follows. First, Marriage Age Limit in Selangor State Islamic Family Law 2003: Analysis of Maqasid Shari'a Perspective (2003) The research has similarities in the discussion of the concept of the age limit for marriage, which is analyzed with the Malaysian Law using the Maqasid Syariah analytical tool. The difference in the research lies in the comparative analysis of the legislative systems from various countries - Morocco, Pakistan, Malaysia, and Indonesia - from the perspective of Islamic Fiqh.⁷

Secondly, a Scopus journal by Inneke Agustin, a student at UIN Sunan Kalijaga Yogyakarta, titled "Determination of Marriage Age in Indonesia and (Federal Territory) Malaysia Tracing the Philosophical Background and Methods Used". The research has similarities in the object of discussion regarding the age of marriage by tracing the system from Malaysia and Indonesia, and the difference in the research is more inclined only to these two countries, while this research examines the system and comparison of age limit regulations for marriage.⁸

Thirdly, the Scopus journal by Abdul Gaffar, M. Ali Rusdi, Akbar, students of the State Islamic Institute of Parepare, titled "Maturity of Marriage Age from the Perspective of Prophet Muhammad's Hadith with the Approach of Interconnectivity of Maslahah". This research has similarities in the placement of the research object of the marriage age limit. The difference from this research is that it analyzes the marriage age limit according to the Prophet's hadith and juxtaposes it with the context of *maslahah*, while this research further analyzes the

⁶Wagiyem Wagiyem, "Studi Analisis Tentang Nikah Sirri (Komparasi Antara Fiqh Munakahat Dan Hukum Positif Di Indonesia)," *Al-Maslahah : Jurnal Ilmu Syariah* 13, no. 2 (October 1, 2017): 213–28, <https://doi.org/10.24260/almaslahah.v13i2.925>.

⁷ Badrul Munir and Tengku Ahmad Shafiq, "Batas Usia Perkawinan dalam Undang-Undang Keluarga Islam Negeri Selangor Tahun 2003: Analisis Perspektif Maqasid Al-Syari'ah (Marriage Age Limit in Selangor State Islamic Family Law 2003: Analysis of Maqasid Shari'a Perspective)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 2 (November 20, 2019): 271–94, <https://doi.org/10.22373/sjhk.v3i2.4957>.

⁸ Inneke Wahyu Agustin, "Penetapan Usia Perkawinan di Indonesia dan (Wilayah Persekutuan) Malaysia Menelusuri Latar Belakang Filosofis dan Metode yang Digunakan," *Al-Mazaahib: Jurnal Perbandingan Hukum* 6 (2018).

marriage age limit from various perspectives of Morocco, Pakistan, Malaysia, and Indonesia from the perspective of Islamic Fiqh.⁹

Fourthly, the Scopus journal by I Ketut Sudantra and I Gusti Ngurah Dharma Laksana titled “Behind the Disturbing Prevalence of Child Marriage: State Law Versus Customary Law”. This research has similarities in the discussion object of the marriage age limit. However, there are differences in the analysis results that focus more on the comparison of state law versus customary law, while this research analyzes the comparison of age limits from the countries of Morocco, Pakistan, Malaysia, and Indonesia from the perspective of Islamic Fiqh.¹⁰

The research above shows a renewal and an interesting thing to study, as the focus of the research is to analyze the comparison of the laws from Morocco, Pakistan, Malaysia, and Indonesia from the perspective of Islamic Fiqh. Looking at the statement above, one of the developments in Islamic law is the existence of a marriage age limit in Islamic countries, especially in Morocco, Pakistan, Malaysia, and Indonesia. These countries provide different marriage age limits which will be interesting to compare, thus it will become a learning material and measure the effectiveness of setting the marriage age limit in these countries.

Method

This research is classified as a library research study. The data collection method used involves the collection of Primary Data from the Qur'an, Fiqh Books, and Laws, as well as Secondary Data derived from related Reference Books, Journals, Scientific Works, and Previous Research Results. This data is then analyzed using a comparative analysis method.

Discussion

Marriage Age Limit

Allah swt., has given humans the privilege of reason and desire, which distinguishes them from other creatures. Humans, with their most perfect lives, are blessed with passion and spirit by Allah. To utilize this gift, humans can express their love, attention, and care through marriage. This marriage not only binds two

⁹ Abdul Gaffar, M. Ali Rusdi, and Akbar Akbar, “Kedewasaan Usia Perkawinan Perspektif Hadis Nabi Muhammad Dengan Pendekatan Interkoneksi Masalah,” *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (June 11, 2021): 83–98, <https://doi.org/10.24090/mnh.v15i1.3731>.

¹⁰ I. Ketut Sudantra and I. Gusti Ngurah Dharma Laksana, “Di Balik Prevalensi Perkawinan Usia Anak Yang Menggelisahkan: Hukum Negara Versus Hukum Adat,” *Jurnal IUS Kajian Hukum dan Keadilan* 7, no. 1 (April 19, 2019): 56–72, <https://doi.org/10.29303/ius.v7i1.594>.

individuals but is also a legal bond in Islamic law.¹¹

Marriage as a legal bond in Islam, as mentioned in Article 1 of Law No.1 of 1974 on Marriage, explains that marriage is a bond formed between a man and a woman who occupy the position of husband and wife to form a happy and eternal family according to each's beliefs and is recorded with the applicable law. A similar definition is mentioned in Article 1 of the Compilation of Islamic Law (KHI), marriage as a *mitsaqan ghalizha* bond. Marriage is a sacred bond that combines two individuals, a man and a woman, in a commitment to build a family.¹²

Marriage not only creates a relationship between two individuals but also connects two large families, ensuring the survival of humans through offspring. In a sociological context, marriage or family is considered the smallest unit in the formation of a state. Therefore, marriage is an important part of *muamalah* or transactions in Islamic law.¹³

Regarding marriage law, Wahbah Zuhaili argues that the law of marriage according to fiqh experts is greatly influenced by the situation and condition of the individual concerned.¹⁴ Marriage cannot take place if there are no conditions and pillars. The general requirement in marriage is that the marriage should not contradict the prohibitions in the provisions of the Qur'an. In addition, specific requirements include the presence of a prospective bride and groom, which is an absolute requirement. The prospective bride and groom must be Muslim, rational, mature, and healthy both spiritually and physically. The ideal age to marry is usually 25 years for men and 20 years for women, or at least 18 years, although this is not an absolute provision in the Qur'an or Sunnah. However, this should be considered based on the physical and psychological conditions of the prospective bride and groom. Being mature and rational means being adult and able to be responsible for their actions, especially in terms of marriage, where the husband is the head of the family and the wife is the housewife. So, they should not be under guardianship.¹⁵

¹¹ Asman Asman, "Menjawab Permasalahan Putusnya Ikatan Perkawinan Dalam Islam Telaah Kajian Yuridis Normatif," *Al-Maslahah: Jurnal Ilmu Syariah* 18, no. 2 (December 10, 2022): 218-48, <https://doi.org/10.24260/al-maslahah.v18i2.2067>.

¹² Abdi Samra Chaniago, "Memaknai Mitsaqon Ghalizha Sebagai Kunci Harmoni Keluarga Islam," *Jurnal Landraad* 2, no. 2 (2023): 197-207.

¹³ Nofiardi Nofiardi, "Perkawinan dan Baganyi di Minangkabau: Analisis Sosiologis Kultural dalam Penyelesaian Perselisihan," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 13, no. 1 (July 31, 2018): 49-72, <https://doi.org/10.19105/al-ihkam.v13i1.1613>.

¹⁴ Wahbah Az-Zuhaili, "Fiqih Islam Wa Adillatuhu, Terj," *Abdul Hayyie Al-Kattani, Dkk, Jakarta: Gema Insani*, 2011.

¹⁵ Mohd Idris Ramulyo, "Hukum Perkawinan Islam," *Jakarta: Bumi Aksara*, 1996.

Harmony in a marital relationship can be influenced by several factors, including religion, maturity, and economy. Although the Qur'an does not specifically explain the age limit considered mature and ready to marry, as well as the ideal economic conditions, these two factors remain important.¹⁶ In this context, research focuses more on the factor of maturity, especially related to the marriage age limit. In principle, Islam does not set a specific age limit that is considered ideal for marriage. Likewise, scholars do not discuss in detail the ideal age for marriage. As long as someone has fulfilled the requirements and pillars of marriage, then they can get married. This opinion is generally found in almost all schools of fiqh.¹⁷

Islam does not provide significant restrictions on the age limit for marriage. Islam provides flexibility to humans as a rule to choose according to their abilities and readiness to take responsibility, as stated by Allah SWT in the Qur'an Surah An-Nur: 32. In this verse, many scholars interpret the word "wasalihin" as "those who are fit to marry", that is, those who are mentally and spiritually capable of building a household.¹⁸ This is also in line with the hadith of the Prophet Muhammad, which encourages young people to marry if they have the ability, both to provide for the physical and spiritual needs of their wives and children and to control the emotions that dominate them. If these abilities exist, then it is recommended to marry. However, if not yet capable, it is recommended to fast first.¹⁹

There is a difference of opinion among scholars about determining the age limit of a person who is considered to have reached puberty. According to Syafi'iyah and Hanabilah scholars, they determine the puberty of boys and girls at the age of 15 years. Hanafiyah scholars set the age of puberty for men at 18 years and women at 17 years. Meanwhile, Ilmiyah scholars state that boys reach puberty at the age of 15 and girls at the age of 9.²⁰

¹⁶ Ahmad Sainul, "Konsep Keluarga Harmonis Dalam Islam," *Jurnal ALMAQASID: Jurnal Ilmu Kesyariahan Dan Keperdataan* 4, no. 1 (2018): 86-98.

¹⁷ Ulfi Azizah and Nur Wahid, "Historisitas Dan Tujuan Aturan Umur Minimal Perkawinan Dalam Perundang-Undangan Keluarga Islam Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, December 11, 2019, 163-77, <https://doi.org/10.24090/volksgeist.v2i2.2822>.

¹⁸ Mohammad Nor Ichwan, "Metode Dan Corak Tafsir Al-Misbah Karya Prof. M. Quraish Shihab," 2017, https://www.academia.edu/download/65735118/METODE_DAN_CORAK_TAFSIR_AL_MISBAH.pdf.

¹⁹ A. Zuhdi Muhdlor, "Memahami Hukum Perkawinan," *Bandung: Al-Bayan*, 1994. Hlm 18

²⁰ Jumrah Jamil et al., "Marriage of Pregnant Women Out of Wedlock According to the Shafi'i School and Compilation of Islamic Law," *Formosa Journal of Applied Sciences* 2, no. 11 (2023): 2103-20.

The main purpose of marriage is to create an environment full of love, affection, and tranquility (*sakinah, mawaddah wa rahmah*). This purpose is supported by several other objectives, such as reproduction (to continue the generation), fulfillment of biological needs (sexual), maintaining dignity, and also as a form of worship.²¹

To achieve these goals, one must look at the readiness of the prospective husband and wife from the maturity of their soul and body, such as ejaculation for men and menstruation (menstrual) for women, and at that age there are differences. If there is a disturbance or delay in someone's physical development, so that at an age where individuals usually already produce sperm (for men) or menstruate (for women) but the individual has not yet shown signs of maturity, then the beginning of their puberty is determined based on the common age where individuals usually show signs of maturity. The onset of puberty can vary between different individuals, influenced by environmental, geographical, and other factors.²²

Based on Islamic law, the criteria for reaching adulthood are as follows: First, reaching the age of 15 years. Second, showing physical signs of maturity (*tamyiz, baligh, and rusyd*). Third, having a sound mental condition.²³

Regarding the principle of maturity in marriage, scholars tend not to discuss the age limit for marriage in detail, but rather discuss the law of marrying a child who is still young. According to the Imams of the *Madhhab*, the age limit for marriage is not important when someone wants to get married and has good preparation for carrying out the marriage. However, based on Islamic teachings, both from the *Qur'an* and *As-Sunnah*, Islam strongly encourages Muslims who can carry out marriage. However, if viewed from the condition of the individual who is carrying out and the purpose of the marriage itself, then the law of marriage can change to become obligatory, *sunnat*, forbidden, *makruh*, or *mubah*.²⁴

The concept of maturity becomes a prohibition for underage marriage

²¹ Hotmartua Nasution, "Pembaharuan Hukum Keluarga Islam Tentang Usia Perkawinan Di Indonesia (Studi Atas Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan)" (PhD Thesis, Universitas Islam Negeri Sumatera Utara, 2019), <http://repository.uinsu.ac.id/id/eprint/8089>.

²² Idrus Al-Ghifarry, A. Kumedi Ja'far, and Liky Faizal, "Urgensi Perjanjian Perkawinan Dalam Membentuk Keluarga Sakinah Perspektif Hukum Keluarga Islam," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 3, no. 2 (2021): 180-202.

²³ Dadan Muttaqien, "Cakap Hukum Bidang Perkawinan Dan Perjanjian" (Yogyakarta: Insania Cita Press, 2006).Hlm 26

²⁴ Ibrahim Hosen, *Fiqh Perbandingan Dalam Masalah Nikah, Thalaq, Rudjuk Dan Hukum Kewarisan* (Balai Penerbitan dan Perpustakaan Islam Jajasan Ihja'Ulumddin Indonesia, 1971).Hlm 132

because the physical and mental conditions of women and men do not meet the criteria for maturity as stated in Allah swt's QS.An-Nisa; 6. According to the interpretation of al-Misbah, the word "Russian" in QS. An-Nisa: 6 comes from a root word that means accuracy and straightness. From here comes the word "rusyd" which for humans means the perfection of mind and soul that makes them able to behave and act as accurately as possible. Underage marriage is usually not recommended because they are considered not yet capable of managing wealth (rusyd). In addition, they also do not yet need marriage. There is a concern that they may not be able to fulfill the obligations that must be borne in life as husband and wife, especially in managing household finances.

The appropriate age to marry is the age at which a person has the competence to perform legal actions, which in fiqh science is called "ahliyah". As a legal subject, humans have two types of legal competence (ahliyah). First, "ahliyatul wujub", which is the competence to have rights. Everyone, as long as they are still alive, is considered capable of having rights. Second, "ahliyatul ada", which is the competence to use rights against others, or in other words, the competence to perform legal actions. This competence can be perfect or imperfect, depending on the stage of human life. In addition, this competence is also influenced by individual conditions, such as mental health, memory disorders, insanity, during guardianship, and so on.²⁵

Marriage, as one form of legal obligation, requires more than just the condition of being baligh (of age). Legal obligations (taklif) are based on maturity, which includes being baligh (of age) and aqil (rational). The combination of these two conditions (baligh and rational) is what is referred to as mukallaf.²⁶

Marriage Age limits in the Muslim Marocco, Pakistan, Malaysia, and Indonesia

Changes in Islamic law that have occurred in Muslim countries around the world are based on the touch of legal renewal between Islam and the West that occurred during the colonial and occupation periods. After independence, many have made renewals to the law because it is based on the awareness of the Islamic community about the decline of Muslims from the progress of the West. With the progress of the West, different responses were received from Muslims, some of whom completely rejected Western renewal, thus forming the purification of Islam.

²⁵ Muttaqien, "Cakap Hukum Bidang Perkawinan Dan Perjanjian." p. 19-20

²⁶ Julita Julita, Asmuni Asmuni, and Anggraini Tuti, "Signifikansial-Hukm, Al-Hakim, Al Mahkumfihi, Dan Al Mahkum'alaih," *Jurnal Landraad* 1, no. 1 (2022): 62-76.

According to this group, what made Islam decline was because it left pure law, so to regain the progress of the Islamic community, it must return to pure teachings.²⁷

The renewal of Islamic law in various countries has its own concept, as explained by Tahir Mahmud that in the concept of legal renewal there are those who use the methods of intra-doctrinal reform, extra-doctrinal reform, and regulatory reform. Intra-doctrinal reform is a renewal concept based on the majority of schools of thought that exist in an Islamic community in a country, as happened in Indonesia with the Sunny school (Imam Syafi'i's doctrine). Meanwhile, extra-doctrinal reform is a renewal of Islamic law that comes out of the school of thought, for example, the obligatory will, and regulatory reform is a renewal of Islamic law influenced by Western procedures such as modern legislation and administration.²⁸

Marocco

Morocco is a country located on the African coast with the longest coastline on the Atlantic Ocean. The country has been inhabited since the Neolithic era, at least since 8,000 BC.²⁹ Morocco gained independence in 1956, at which time the population of Morocco was around 33 million people. The majority of the Moroccan population are Berbers influenced by Arab culture and language, so the official languages used are Arabic and Berber. Morocco is also known for its French language, but it is only used in trade unions. The population is predominantly Muslim at 98.7%, with Christians at 1.1% and Jews at 0.2%.³⁰

The system of government used in Morocco is a kingdom model (Kingdom of Morocco) with a constitutional monarchy concept. The national law source of Morocco is determined by Islamic law derived from the Maliki school. The reference book is al-Munawwanah by Imam Maliki.³¹

The development of law in Morocco is a silent witness to the changes and renewal of law. This renewal began in 1957-1958, during which there was a

²⁷ Sri Wahyuni, "Pembaharuan Hukum Keluarga Islam Di Negara-Negara Muslim," *Kosmik Hukum* 11, no. 1 (2011).

²⁸ Syed Tahir Mahmood, "Family Law Reform in the Muslim World," (*No Title*), 1972.

²⁹ Asril, "WARTA SEJARAH: Ekonomi Dan Kebudayaan Negara Maroko," *WARTA SEJARAH* (blog), accessed September 15, 2023, <https://wartasejarah.blogspot.com/2015/01/ekonomi-dan-kebudayaan-negara-maroko.html>.

³⁰ Otto Jan Michiel, "Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present," 2010, <https://library.oapen.org/handle/20.500.12657/32882>.

³¹ Abdullahi An-Na'im, *Islamic Family Law in a Changing World: A Global Resource Book* (Zed Books London, 2002), https://www.academia.edu/download/38895056/naim__sharia_islamic_family_law.pdf.

codification of Islamic law. Before 1957, only Islamic law and Fiqh applied in marriage. In the codification process, in addition to the renewal, there was also the influence of the West, with most of the renewal patterns replaced coming from France. In 1957, the first amendment to Islamic family law was made, and the last amendment was made in 2004.³²

The Islamic law system in Morocco, known as *Mudawwanah al-Ahwal al-Syakhshiyah*, has been recognized since 1958, but after the codification of Islamic law, it is on par with positive law. On February 4, 2004, it was changed to *Mudawwanah al-Ahwal al-Syakhshiyah al-Jiddah fi al-Maghrib* or *Mudawwanah al-Ussrah*.³³

The codification regulation of Morocco in 2004 regarding Islamic family law, the changes are as follows. First, in upholding the dignity of women in the family, in the provision of responsibilities between husband and wife, they have equal rights to lead and build a household. Second, the rights proposed by women during marriage and other rights are protected by law. Third, the minimum age limit for marriage given to men and women is equalized at 18 years, although the minimum age limit for marriage has been set, the government still provides dispensation to young couples aged 16 years whose application procedures are requested by both parents of the male and female. Fourth, a discussion about polygamy. Fifth, it explains the rights received by a wife when filing for divorce in front of a judge. Sixth, it discusses the rights of property that are separated based on an agreement between the two.³⁴

The amendment made by Morocco in Islamic family law is based on gender equality, which does not distinguish between men and women, but they are all the same in the eyes of the law with the codification that initially from the marriage age of 18 years for men and 15 years for women contained in *Mudawwanah al-Ahwal al-Syakhshiyah* due to the demand for gender equality in the codification, the minimum marriage age was changed to 18 years and for those who marry under the age of 18 years are not fined but only dispensation is carried out in court by the guardian parents. Imam Malik set the age of puberty at 17 years for both sexes, while Shafi'i and Hambali set the age at 15 years. Hanafi, on the other hand,

³² Muhammad Maksum, "Kedudukan Syariah Sebagai Sumber Hukum Positif: Kajian Awal Atas Hukum Perkawinan, Ekonomi Islam, Dan Hukum Ketenagakerjaan Di Indonesia Dan Maroko," *Istinbath: Jurnal Hukum Islam IAIN Mataram* 15, no. 2 (2016): 281-95.

³³ Farid Afif Syahputra Rinaldi, "MUDAWWANAH REFORMATION (A Study of the Literature of Religious Courts in Morocco)," *TAQNIN: Jurnal Syariah Dan Hukum* 4, no. 02 (2022), <https://jurnal.uinsu.ac.id/index.php/taqnin/article/view/13944>.

³⁴ Maksum, "Kedudukan Syariah Sebagai Sumber Hukum Positif."

distinguishes the age limit of puberty between men and women, with 18 years for men and 17 years for women. This is the maximum age limit, while the minimum limit is 15 years for men and 9 years for women because men who have ejaculated and women who have menstruated can get pregnant. Morocco seems to follow the age provisions of Shafi'i and Hambali. The age limit of 15 years for women is considered the lowest marriage age limit.³⁵

Pakistan

Pakistan was originally part of India, but due to pressure from the Muslim community to establish their own country, which at that time was under British control, Pakistan declared independence in 1947, establishing the Islamic Republic of Pakistan. However, in 1971, East Pakistan became Bangladesh after a civil war.³⁶ The majority of the Pakistani population is Muslim, with a percentage of 97%, making Pakistan the third largest Muslim country after Indonesia and India, and the majority of Muslims in Pakistan are Sunni. Other religions in Pakistan include Christianity, Hinduism, Buddhism, Jainism, Zoroastrianism, and Ba'hai.³⁷

The new Islamic Family Law was implemented in the country since 1961, with the regulation named the Muslim Family Law Ordinance (MFLO) of 1961. The content of the law contains threats and lesser punishments for those who violate it. In the MFLO 1961, there are also various marriage amendment regulations, including the minimum age limit for marriage or the age allowed to marry in Pakistan. The marriage age limit in Pakistan is regulated separately in Law No.29 of 1929 about the prohibition of child marriage (Child Marriage Restraint Act), the regulation states that the marriage age limit for males is 18 years and for females 16 years, and there is a difference in the mention of children, namely child and minor. In this difference, child marriage is a marriage conducted by one of the couples who have not reached the ideal age to marry, while the term minor is a male or female child who is under the age of 18.³⁸

Pakistan has a strict legal system because one of them holds the Hanafi school of law as a reference in determining Islamic Family Law, stating that

³⁵ Nasiri Nasiri, "Praktik Perkawinan Di Negara Maroko (Praktik Undang-Undang Mudawwanatul Usroh Di Bumi Para Wali)," *Jurnal Keislaman* 1, no. 2 (2018): 163-85.

³⁶ H. M. Mudzhar, "Atho'dan Khoiruddin Nasution," *Hukum Keluarga Di Dunia Islam Modern: Studi Perbandingan Dan Keberlanjutan UU Modern Dari Kitab-Kitab Fikih*, 2003.

³⁷ Sabarudin Ahmad, "Menelisik Ketegasan Hukum Keluarga Islam Di Pakistan," *Jurnal Al-Maslahah* 15, no. 1 (2019), <https://www.academia.edu/download/89074107/pdf.pdf>.

³⁸ Jenny Nuladani, "Kriminalisasi Perkawinan Di Bawah Umur (Studi Komparatif Undang-Undang Hukum Keluarga Di Indonesia Dan Pakistan)," accessed May 19, 2024, <https://repository.uinjkt.ac.id/dspace/handle/123456789/32940>.

underage marriage is strictly prohibited, because in the teachings of the Quran and Sunnah. One of the reasons for the prohibition of early marriage is based on the Qur'an Surah An-Nisaa verse 6, although basically this verse does not explicitly mention the age that becomes a benchmark in conducting marriage but it is related to the recommendation of maturity in marriage. So on that basis, it becomes the reason for the prohibition of early marriage and becomes a reference for setting the marriage age limit. In determining the marriage age limit, it is not far from Imam Hanafi regarding the age of puberty which is indicated at the age of 18 for boys and 17 for girls, the opinion is given a maximum limit while the minimum limit of puberty for Hanafi is 12 years for boys and 9 years for girls.³⁹

As mentioned in the MFLO law, Pakistan prohibits underage marriage and regulates with a limit of 18 years for males and 16 years for females, if there is underage marriage then the threat for the perpetrator will be imprisoned for one month and fined as high as 1000 Rupees or get both punishments, unless both have strong evidence that they did not commit underage marriage. However, in the enforcement of the law, there are still violations that occur, one of the biggest factors in early marriage from the culture and customs in Pakistan exchanging brides between families called Watta-Satta and the custom of girls who are forcibly married to other tribes to reconcile the problems that occur called Vani.⁴⁰

Malaysia

Malaysia is a federal country consisting of 13 states with an area of 330,803 square kilometers, and its government is led by a King or a Sultan. Malaysia is a multi-religious country and Islam is the dominant religion and also the official religion in Malaysia, with Islam accounting for 63.5%, Buddhism 9.1%, Christianity 6.3%, and the rest are considered to hold other religions.

Malaysia is a federation, meaning that each part of Malaysia has different rules in each of its regions so currently, Malaysia does not have standard rules for its country and there are no National Laws in its country. Malaysia recognizes itself as an Islamic country, in the application of Islamic law in Malaysia it is divided into three periods, the first period is the mixing of Islamic law with Malay diversity

³⁹ Arora Salsha Diffa, "Batas Minimal Usia Menikah (Studi Komparasi Indonesia, Yordania Dan Pakistan)" (PhD Thesis, UIN KH Abdurrahman Wahid Pekalongan, 2023), <http://etheses.uingusdur.ac.id/5915/>.

⁴⁰ Nira Sulistiawati and Wawan Afriadi, "Perceraian Pada Negara Muslim: Perbandingan Perundang-Undangan Indonesia Dan Pakistan," *Al-Ahwal Al-Syakhsyiyah: Jurnal Hukum Keluarga Dan Peradilan Islam* 5, no. 1 (2024): 35-52.

(customary law) before the arrival of the British, the second period is during the British colonial era, the third period is after independence and until now.⁴¹

The history of legal development in Malaysia has recorded various regulations regarding the marriage age limit, proven by the existence of a marriage limit known since the Malacca Law, which must be 15 years old, at least reached puberty, but from the development of times and technology, then in the 1980s a series of renewals and explicitly included the marriage limit for husbands and wives so that it was agreed together with the Islamic Family Law Act (Federal Territory). There is a difference in determining the marriage age limit for Islam and Non-Islam in Malaysia for Non-Islam the age limit is 21 years while for Islam is 18 years this is based on what is mentioned in the Islamic Family Law Act (Federal Territory 1984 states "No marriage can be contracted under this act if the man is under eighteen years old or the woman is under sixteen years old unless the sharia law has given its written consent in certain circumstances".⁴²

Based on the above section, if there is a child who marries under the age, they must get permission from the Sharia court, this is done so that the court can ensure the condition of a child in terms of physical, mental, and ability to be responsible for their family, if they have been allowed to marry then the court judge gives a written statement that the child may marry.⁴³

Indonesia

Indonesia is a country with a majority of Muslims, various regulations about Islamic Family Law were developed before independence, but officially and codified after independence. Muslims in Indonesia adhere to the Fiqh of Imam Syafi'i as the formulator of Islamic law, in addition, Indonesia also has provisions in the Marriage Age, especially contained in Chapter II Article 7 paragraph (1) Law Number 1 of 1974 about marriage which contains about the vulnerable age to marry, that is, men are counted since they are 19 years old while women are counted since 16 years old.⁴⁴

⁴¹Inneke Wahyu Agustin, "Penetapan Usia Perkawinan di Indonesia dan (Wilayah Persekutuan) Malaysia Menelusuri Latar Belakang Filosofis dan Metode yang Digunakan." *Al-Mazaahib: Jurnal Perbandingan Hukum* 6 (2018).

⁴² Inneke Wahyu Agustin, "Penetapan Usia Perkawinan di Indonesia... 2008

⁴³ Aulia Nur Agustina, "Studi Komparasi Tentang Batas Usia Perkawinan Antara Sistem Hukum Perkawinan Indonesia Dan Malaysia" (Universitas Islam Indonesia, 2018).

⁴⁴ Fransiska Litanía Ea Tawa Ajo, Indah Maria Maddalena Simamora, and Andryawan Andryawan, "Analisis Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Menjadi Undang-Undang Nomor 16 Tahun 2019 Mengenai Batasan Usia Dalam Perkawinan,"

In addition, there are also regulations about the marriage limit in Article 15 paragraph (1) Compilation of Islamic Law by the consideration of welfare, this is by the purpose of the Marriage Law which if conducting a marriage must be by the body and physique to foster a family and escape from divorce.⁴⁵

Marriage in Indonesia is classified as young marriage globally determined young age is 21 years old, so it is more likely to be demanded to act as an adult in fostering a family, it is stated in the Child Protection Law that someone is said to be a child before the age of 18 years, does not directly mention the marriage limit, but can be interpreted that the limit to become an adult and ready to marry is 18 years old, the statement is the same as Law No. 1 of 1974 about marriage.⁴⁶

The change in view to the age limit set in Law No. 1 of 1974 which has been running for 45 years is increasingly being improved and criticized by child protection parties, that the Law is no longer relevant and must be replaced because it is not by the Child Protection Law on women which states that the adult age of a child is 18 years old, by raising it to 19 years old and equating between men and women makes an improvement in norms and the minimum marriage limit for women. Based on this thinking, on October 14, 2019, Law No.16 of 2019 was enacted to change one article, namely the marriage age in Article 7 which requires men and women to be 19 years old, and if it does not comply with the regulations set then it is mandatory to apply for a marriage dispensation in the Religious Court.⁴⁷

Comparative analysis of Islamic Fiqh

Before we explain from the perspective of fiqh, first show the difference in marriage age from Muslim countries. Here is a table of the marriage age limit in Morocco, Pakistan, Malaysia, and Indonesia:

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⁴⁵ Tia Setiawati, "Pendapat Imam Madzhab Tentang Batasan Usia Perkawinan Dan Relevansinya Kompilasi Hukum Islam Pasal 15 Dan UU No. 16 Tahun 2019" (PhD Thesis, UIN Sunan Gunung Djati Bandung, 2021), <https://digilib.uinsgd.ac.id/45892/>.

⁴⁶ Neng Poppy Nur Fauziah and Aliesa Amanita, "Pelaksanaan Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Terkait Perkawinan Di Bawah Umur Di Kantor Urusan Agama Kecamatan Cipatat, Kabupaten Bandung Barat," *Jurnal Dialektika Hukum* 2, no. 2 (2020): 129-47.

⁴⁷ Muhamad Hasan Sebyar, "Politik Hukum Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *IUS: Jurnal Ilmiah Fakultas Hukum* 9, no. 01 (2022): 47-65.

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No.	Country	Age Limit for Marriage	
		Man	Woman
1.	Marocco	18 Years	18 Years
2.	Pakistan	18 Years	16 Years
3.	Malaysia	18 Years	18 Years
4.	Indonesia	19 Years	19 Years

Islamic law does not regulate the determination of the marriage age limit, with this assumption explaining that humans are given freedom in determining the marriage age limit, only indicating marriage for those who are capable, as in the word of Allah swt., which means “And test the orphans until they reach the age of marriage. Then if you think they are intelligent (good at maintaining wealth), then hand over their wealth to them.” and also mentioned in the Hadith of Prophet Muhammad SAW which means: “O young people, whoever among you can have intercourse, let him marry. Because marriage is more about lowering the gaze and guarding the genitals. Whoever is not able, then let him fast. Because fasting can cut off lust.” (Hadith Narrated by Muslim).

Indonesia has a legal order dominated by Arab customs and is closer to the reference of the Fiqh School of Imam Syafi’i, as stipulated counting from the puberty period at the age of 15 years the minimum limit of puberty for men and women, but in its renewal in terms of physical and readiness to marry by the recommendations of child protection organizations, so for the maximum marriage age stepping on the age of 19 years for both men and women.

Meanwhile, Pakistan is a country that refers to the Fiqh School of Imam Hanafi, this is the same as the country of Turkey even though in that country it has been colored by the term system of government and law such as European and Western law. Meanwhile, Malaysia is almost the same as Indonesia, they use the Shafi’i school more as a reference, but in their government system, there is no codification of the law against the country of Malaysia as mentioned in the Islamic Family Law Act (Federal Territory 1984) that the marriage age limit is 18 years.

Meanwhile, Morocco is a Maliki school country, the country applies the principles of Maliki school law in the establishment of Sharia courts, as stated in the Family Law Act, *Mudawwanah al-Ahwal al-Syakhshiyah* in 1957-1958 and *Mudawwanah al-Usrah* 2004.

Countries with different schools often have differences in the marriage age limit set in their Family Law Acts. However, these differences are usually not too significant or far, only about one or two years. The purpose of the marriage age limit regulation is for the welfare of society. If there is no regulation regarding the

minimum age to marry, both for men and women, then early marriage can become a common phenomenon. As previously explained, the negative impact of early marriage not only affects the nuclear family but also impacts the economic and social development of society at large. Therefore, the function of restricting the marriage age is to prioritize welfare by preventing potential losses.

Conclusion

Various explanations regarding Islamic Family Law in Morocco, Pakistan, Malaysia, and Indonesia are not far from the recommended age to reach adulthood and mature thinking, and mental readiness because each country has its limit to measure the maturity of children to get married. The provision of these limits is primarily a form of concern for children who have to get married before they are physically and mentally ready to build a family. With these limits, it is hoped that it can form a family that is *sakinah* (tranquil), *mawadah* (loving), and *Warohmah* (merciful) and by the purpose of marriage. Islamic law does not regulate the determination of the marriage age limit. This shows freedom in determining the marriage age limit. It is only suggested to marry those who are capable according to the regulations in each country that have considered the physical and spiritual readiness of the prospective bride and groom.

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