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Child Marriage in Indonesia Based on Maqasid al-Shariah and the 2019 Marriage Law

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Abstract:

This study examines the practice of child marriage from the perspective of maqasid sharia. It analyzes it against the provisions of Law No. 16 of 2019, amending Law No. 1 of 1974 on Marriage in Indonesia. The main focus of this study is to review the extent to which the minimum age limit for marriage in the law aligns with the objectives of Islamic law, particularly in the context of *hifz al-nasl* (protecting offspring). In maqasid sharia, marriage is not only seen from the legal aspect of age, but also from the perspective of physical and psychological readiness and moral responsibility that support the realization of a healthy and beneficial family. This study employs a qualitative approach, using a library research method to analyze classical sources in Islamic literature, scholars' opinions, and applicable laws and regulations in Indonesia. The results show that although Islamic law does not explicitly stipulate an age limit, maqasid sharia encourages the protection of children and offspring by emphasizing the importance of readiness (*al-ba'ah*) before marriage. Meanwhile, Law No. 16 of 2019 sets the minimum age for marriage as a preventive measure against the negative impacts of early marriage, which is in line with the spirit of maqasid syari'ah in protecting one's *nasab*. It is hoped that this study can contribute to strengthening the understanding of the harmonization between Islamic law and Indonesian positive law and serve as a basis for formulating legal policies that support child protection and the sustainability of future generations.

Keywords: Child Marriage; Maqasid Syari'ah; Hifz al-Nasl; Law no. 16 of 2019; Islamic Law.

A. INTRODUCTION

Marriage is a sacred institution in Islam that plays a vital role in maintaining honor, fostering a harmonious family, and preserving offspring (*hifz al-nasl*). Islam views marriage not only as a contract between two individuals but also as a highly valued means of worship in shaping a moral and civilized society (Hafshoh, 2024).

However, in practice, the phenomenon of early child marriage remains a significant reality in Indonesia, often justified by the pretext of preventing adultery or

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due to pregnancy outside of marriage. This justification reflects a societal paradigm that positions marriage as an instant solution to moral and social problems without considering the child's physical and psychological readiness. This practice not only raises problems in the social and positive legal context but also challenges the broader goals of Islamic law.

According to data from the Central Statistics Agency (BPS), early child marriage still occurs significantly, especially in rural areas, where cultural and social norms reinforce this practice (Central Statistics Agency, 2022). To address the high rate of child marriage, Indonesia has revised the law through Law No. 16 of 2019, which raised the minimum age for marriage to 19 years for both men and women. This policy was taken as a preventative measure to protect children from the risks of early marriage, which can result in school dropout, domestic violence, and reproductive health risks (Law of the Republic of Indonesia No. 16 of 2019).

However, despite the regulatory changes, the practice of child marriage still occurs with a high prevalence in several regions, indicating a tension between positive legal provisions and the social reality of society.

From the perspective of *the maqāṣid of sharia*, early child marriage is often considered an effort to protect offspring (*ḥifẓ al-naṣl*), especially when pregnancy occurs before a legal marriage bond. This view is based on the understanding that marriage can maintain lineage and prevent children from committing adultery (Al-Syāṭibī, 1997).

However, reality shows that the practice of child marriage actually has negative impacts, such as a high risk of maternal and infant mortality due to physical unpreparedness, psychosocial disorders, and economic instability of families built from early couples (Fadilah, 2021). This shows that the practice of child marriage can potentially hinder the achievement of the *maqāṣid of sharia* in its entirety, because the quality of protection and continuity of offspring is not only assessed by the legality of lineage, but also the quality of life of the offspring born from the marriage.

In line with *the maqāṣid syarī'ah*, Law No. 16 of 2019, which stipulates a minimum age for marriage, can be seen as an effort to protect children and future generations from the negative impacts of early marriage. However, in its implementation, there are still differences in understanding between *the maqāṣid syarī'ah*, which in some circumstances condones early marriage, and positive law, which strictly limits it. Therefore, a comprehensive analysis is needed to identify common ground that can be incorporated into Indonesian policy and practice.

Based on this background, this study aims to explore and analyze the practice of early child marriage from the perspective of *maqāṣid shari'ah*, with a focus on the objective of *ḥifẓ al-naṣl*, and to analyze the provisions of Marriage Law No. 16 of 2019 concerning the minimum age for marriage. This study is expected to make academic contributions by strengthening the understanding of harmonization between Islamic law and Indonesian positive law to protect children and sustain future generations, as well as by providing policy recommendations that support child protection and sustainable human resource development.

B. METHOD

This study uses a library research method, namely research that collects data from relevant literature and documents on the practice of early child marriage, *maqāṣid shari'ah*, and positive legal provisions regarding marriage in Indonesia. Library research focuses on finding theories, principles, arguments, opinions of scholars, and normative data that can be used as a basis for analysis in solving the problems studied (Subagiya, 2023).

According to Zed (2014), library research is a series of library data-collection activities involving reading, recording, and processing literature materials without requiring direct field research. This is reinforced by Abdul Rahman Sholeh's opinion in Evi Kurnia and Halimah Basri (2023), which states that library research uses library facilities, books, journals, documents, and other library sources as the primary data collection sources.

In this study, two approaches were used, namely the normative juridical approach and the comparative approach. The normative juridical approach is used to examine the provisions of positive law on the minimum age for marriage, as regulated in Law No. 16 of 2019, as well as to examine child protection efforts from a national legal perspective (Soekanto, 1990). Meanwhile, the comparative approach is used to compare the views of *maqāṣid shari'ah*, especially the principle of *ḥifẓ al-naṣl*, with the provisions of positive law regarding the age limit for marriage, so that an overview is obtained regarding the similarities and differences between the two in efforts to protect children from the practice of early marriage (Titonius, 2017).

The data sources consist of primary data, namely Law No. 16 of 2019, and classical literature, such as *Al-Muwafaqat fi Usul al-Shari'ah* by al-Syatibi, as well as secondary data in the form of books, journals, and scientific articles related to Islamic law and child protection. Data were collected through literature studies through searching, reading, and recording important points from relevant literature (Muhammad Hasbullah et al., 2023). Data analysis used a deductive approach, concluding that the general theories of *maqāṣid shari'ah* and positive law apply to the practice of child marriage in Indonesia (Waruwu, 2024).

The results of the analysis were used to examine the relationship between the principle of *ḥifẓ al-naṣl* and the provisions on the marriage age limit in positive law, as well as its impact on child protection and the continuation of a healthy and dignified generation.

C. RESULTS AND DISCUSSION

A. Maqasid Syari'ah Views on the Practice of Early Child Marriage in the Context of Hifz al-Nasl

Within the framework of *maqāṣid al-syari'ah*, marriage is not merely seen as a legal agreement between two individuals, but rather as a means to achieve the main objectives of sharia (*al-maqāṣid al-khamsah*), namely preserving religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), property (*ḥifẓ al-māl*), and offspring (*ḥifẓ al-naṣl*). Among these five objectives, *ḥifẓ al-naṣl* has an important position in the context of

marriage, because it concerns the sustainability of humanity and social order that is valid according to sharia and law.

Early child marriage is often a point of debate in classical and contemporary Islamic jurisprudence. Explicitly, Islamic law does not absolutely prohibit early marriage, as long as the principle of readiness (*al-ba'ah*) is met, as explained by Imam Nawawi, that marriage is recommended and even obligatory if a person is sexually ready and is worried about falling into adultery (Imam An-Nawawi, 1996). In the Prophet's hadith, the recommendation to marry is directed at capable young men (*al-ba'ah*), namely, physically, academically, mentally, and financially. This shows that sharia does not only considers age, but also maturity and moral responsibility.

In terms of benefits, Islam determines law not just by its external form, but also by its impact and purpose. Prevention of mafsadah (harm) is the main principle in Islamic law. In this case, early childhood marriage can be permissible in Sharia if it aims to prevent adultery, as is the opinion of scholars such as (Az-zuhalli, 2011). Who said that in emergencies such as unbearable sexual urges, marriage is a solution to maintain honor and lineage? However, this ability is conditional, and must take into account greater benefits. If early marriage is carried out without *al-ba'ah* readiness, it will most likely lead to mafsadah, such as domestic violence, dropping out of school, high-risk pregnancies, early divorce, as well as psychological and economic disorders.

In addition, QS. At-Talāq: 4 is often used as a reference by some classical scholars in allowing marriage at an early age, because it mentions that there is an iddah period for women who have not yet menstruated (Qurthubi, 2009). However, this verse cannot be used as an absolute excuse to justify the practice of child marriage without considering the *maqāṣid al-syarī'ah*. The verse must be understood contextually, namely that the provisions of sharia apply with the principle of caution, protection of children's rights, and protecting offspring from being born in conditions that endanger their health (Ishaq, 2013). Thus, the formal legality in the text must be in line with the spirit of the substance of *maqāṣid*, which prioritizes the welfare and protection of children.

In the context of national law, Law No. 16 of 2019 has set the minimum age for marriage at 19 years for both men and women as a preventative measure against the practice of early child marriage (Aristoni, 2021). This determination represents the state's effort to protect children from the impacts of immature marriage. Substantively, this policy aligns with the *maqāṣid al-syarī'ah* (the principles of Islamic law), particularly in safeguarding the rights of offspring.

Therefore, early childhood marriage in *maqāṣid al-syarī'ah* is not assessed solely on the basis of legal age or permissibility in classical texts; it must also be considered within a broader framework, namely, comprehensive readiness, protection of children's rights, and long-term benefits. Child marriage can only be justified according to Sharia if physical, psychological, and financial readiness is truly fulfilled, and does not cause harm to the offspring that will be born. If not, then this practice is contrary to the principles of *maqāṣid al-syarī'ah*, which actually requires the creation of a dignified, healthy, and responsible family life.

B. Provisions of Law No. 16 of 2019 concerning the Minimum Age Limit for Marriage

Law No. 16 of 2019 sets the minimum age for marriage at 19 years for both men and women (Article 7, paragraph 1) as part of protecting children from the negative impacts of early marriage. This policy is a response to the widespread practice of child marriage, which results in high maternal and infant mortality rates, school dropouts, and vulnerability to domestic violence (Law of the Republic of Indonesia No. 16 of 2019). Establishing a minimum age for marriage, as stipulated in applicable laws and regulations, serves fundamental and strategic goals of protecting children's rights and ensuring a high-quality family life in the future. These goals include:

Protecting children's rights to grow and develop optimally, both physically, mentally, spiritually, and socially. This aligns with the mandate of Law Number 35 of 2014 concerning Child Protection, which emphasizes that every child has the right to receive protection from practices that could endanger their future, including the practice of marriage at an early age (Law Number 35 of 2014 concerning Child Protection, 2014).

Preventing various reproductive health and social risks that can arise from early marriage, such as high pregnancy and childbirth complications in adolescent girls, the risk of maternal and infant mortality, and psychosocial impacts such as mental distress, stress, and even domestic violence. Immature age often means physical and mental unpreparedness for the roles of wife or husband, let alone parenthood.

Ensuring the psychological and emotional readiness of the bride and groom, so they can navigate married life with awareness, responsibility, and the ability to resolve conflicts and build a healthy household. Emotional maturity is crucial for marriage to be not just a formal bond, but a strong, mutually supportive, and harmonious relationship.

Supporting the continuity of children's education before they enter married life is crucial, as education is fundamental to character development, life skills, and economic independence. Marriage before children completes primary or secondary education can hinder access to further education and potentially reinforce the cycle of poverty between generations.

Realizing a quality and competitive family, namely a family that is formed based on readiness, maturity, and a strong foundation of values, so that it can become the smallest unit in a productive, harmonious society, and can produce a healthy, intelligent, and noble generation (Law of the Republic of Indonesia No. 16 of 2019).

However, Law No. 16 of 2019 still provides legal space through the marriage dispensation mechanism as regulated in Article 7, paragraph (2) (Widodo, 2025). This provision states that the court can grant permission to prospective brides and grooms who have not reached the age of 19 to marry, if there are urgent reasons, such as pregnancy outside of marriage, health reasons, or severe social pressure. This dispensation is specific and does not apply broadly; it is granted only in unavoidable circumstances, not as a general shortcut.

This dispensation procedure must be submitted by the parents or guardians of the prospective bride and groom, and is conducted before a Religious Court judge (for

Muslims). During the process, the judge will conduct an examination and consider various factors, including age, health, psychological condition, mental readiness, and the applicant's background. The goal is to ensure that the marriage is based on careful consideration and does not neglect the rights of the child concerned (Al Hasan, 2021) .

With this mechanism, the state continues to demonstrate its commitment to protecting children from the risks of early marriage and takes into account the social realities of society. Therefore, marriage dispensation is an alternative legal measure strictly enforced by the courts, not a free space to legalize underage marriage indiscriminately.

C. Comparison between Maqasid Syari'ah and Law No. 16 of 2019 in the Context of Early Child Marriage

Based on the author's analysis, there are fundamental differences between maqasid syari'ah and UU No. 16 of 2019:

Aspect	Maqasid Sharia	Law No. 16 of 2019
Age Limit	There is no absolute age requirement; the important thing is that readiness (<i>al-ba'ah</i>) is fulfilled.	Sets the minimum age at 19 years for both men and women.
Benchmark of Eligibility	Biological, psychological, and financial readiness (<i>al-ba'ah</i>).	Chronological age as a benchmark for legal protection.
Objective	Safeguarding legitimate offspring and preventing adultery (<i>hifz al-nasl</i>).	Protecting children's rights and preventing the negative impacts of early marriage.
Nature of Law	Flexible and contextual, it can be mandatory if there is potential for adultery.	Legal-formal with room for dispensation through the courts.
Principle	Emphasizing individual interests with the principle of <i>sadd al-dhara'i</i> .	Emphasizing collective well-being with national child protection.

The fundamental similarity between *the maqāṣid al-syarī'ah* and Law No. 16 of 2019 lies in their primary objectives, which both aim to protect and benefit the younger generation. Both strive to ensure that marriages are not conducted haphazardly or merely for legal formalities, but rather take into account the long-term impact on family life, the continuity of generations, and social stability.

Within the framework of *maqāṣid al-syarī'ah*, marriage is positioned as a means to achieve *ḥifẓ al-naṣl* (protection of offspring), which is not enough just to make the marriage contract valid, but also emphasizes the aspect of comprehensive readiness, namely (*al-ba'ah*), which includes physical, emotional, scientific, mental, and financial readiness. *Maqāṣid* believes that child marriage can only be justified if it does not involve *mafsadah* (damage), such as the risk of early divorce, dangerous pregnancy, and loss of the child's educational rights or psychological development.

Meanwhile, Law No. 16 of 2019 normatively sets the minimum age of marriage at 19 for both men and women as a means of legal protection. This age limit is not merely an administrative figure but also a preventive measure to reduce the risks often associated with early marriage. In this regard, the state plays an active role in ensuring that children's rights are protected and that the decision to marry is made maturely and responsibly.

Thus, both *the maqāṣid al-syarī'ah* and the Marriage Law stem from the same spirit and goal: safeguarding public welfare, preventing harm, and ensuring the welfare of future generations. The difference is that *the maqāṣid* employs a flexible, context-sensitive normative-substantive approach, while the law uses a firm, measured, formal juridical approach. However, in essence, both contribute to child protection and the quality of the family institution in society.

The author believes that the marriage age restriction in Law No. 16 of 2019 aligns with the *maqāṣid al-syarī'ah* (protection of offspring), specifically the principle of *ḥifẓ al-naṣl* (protection of offspring), to protect children and establish quality, sustainable families. This law reflects the state's responsibility to create a safe and orderly social order and to ensure that children's basic rights to optimal growth and development are fulfilled before they assume the heavy responsibilities of married life.

However, it is important to remember that marriage is not merely about meeting the formal age limit; it also requires comprehensive readiness on the part of the individuals getting married, including physical, emotional, intellectual, social, and spiritual aspects. From an Islamic perspective, this readiness is known as *al-ba'ah*, which refers to the physical and spiritual ability to navigate married life maturely and responsibly. This means that a person must not only be of legal age but also truly ready to navigate household dynamics, resolve conflicts, and exercise their rights and obligations as a husband or wife with maturity.

Furthermore, the principle of *maqāṣid al-syarī'ah* can serve as a framework of values and legal considerations for decision-making in religious courts, particularly in handling requests for dispensations from child marriage. Judges should not grant permission for early marriage simply for formality or social pressure from family and the surrounding community. Instead, dispensations must be granted selectively and with careful consideration, objectively assessing the well-being and readiness of the prospective bride and groom, including their psychological condition, educational background, and ability to handle household responsibilities. In this way, dispensations do not become a legal loophole, but rather serve as a solution in unavoidable, special circumstances.

Therefore, it can be concluded that state restrictions on the age of marriage are a systemic, preventative measure, part of an effort to protect children from the negative impacts of hasty and unprepared early marriages. Meanwhile, the *maqāṣid al-syarī'ah* serves as a normative guideline that emphasizes the substance and essence of marriage, namely to realize a life of benefit, prevent harm, and care for offspring in a responsible and dignified manner. Synergy between the normative approach in Islam and the state's

positive legal approach will be crucial to building a healthy and civilized family and community order.

D. CONCLUSION

Based on the research results, it can be concluded that, from the perspective of maqāṣid shari'ah, the practice of early child marriage is closely related to the goal of ḥifẓ al-naṣl (protection of offspring), one of the five main objectives of Islamic law. The concept of ḥifẓ al-naṣl does not solely refer to the biological continuity of offspring, but also includes protection of the quality of offspring, clarity of lineage, honor, and the ability to build a stable and harmonious family. Within this framework, Islam emphasizes the importance of readiness (al-ba'ah) as a benchmark for a person's eligibility for marriage, not solely based on chronological age. The intended readiness includes several important aspects: biological or physical readiness to live a sexual and reproductive life; psychological and emotional readiness to face the dynamics of domestic life; and Financial readiness, or the ability to cover the family's living expenses. If all these elements are met, early marriage may be permitted in emergencies, particularly to prevent greater harm, such as adultery, sexual deviation, or the moral decline of the younger generation.

Meanwhile, in the context of positive law in Indonesia, Marriage Law No. 16 of 2019, which amends Law No. 1 of 1974, sets the minimum age for marriage at 19 years for both men and women. This provision is based on considerations of protecting children from the negative impacts of early marriage, such as high maternal and infant mortality rates, school dropout, economic dependency, and the risk of domestic violence. In addition, setting this age limit aims to ensure that children have sufficient time to grow and develop optimally, complete their education, and mature psychologically, socially, and economically before assuming responsibilities as husband or wife.

Despite differences in approach between the substantive, contextual, and flexible maqāṣid shari'ah and the legal-formal, rule-based law, both share the same essential goal: safeguarding human well-being and protecting future generations from harm. In this regard, Islam's emphasis on the principle of al-ba'ah can complement state regulations through a more comprehensive approach to marriage readiness, while the law provides the legal certainty needed in a pluralistic society.

The law also provides for marriage dispensations through religious courts under certain urgent circumstances, taking into account the overall readiness of the prospective bride and groom. However, in practice, implementing these dispensations requires strict monitoring to prevent legal loopholes that undermine child protection. Therefore, efforts are needed to harmonize the maqāṣid shari'ah and national law, particularly in terms of educating the public about the importance of holistic marriage readiness, improving the quality of psychological examinations in the marriage dispensation process, and upholding the principles of ḥifẓ al-naṣl that are just and oriented towards long-term welfare.

Thus, the practice of marriage is not only a legitimate means of forming a family but also a strategic instrument in producing a healthy, intelligent, and dignified generation. Collaboration between Islamic sharia principles and state regulations is a crucial step towards realizing quality families, a civilized society, and a nation with a strong social foundation in accordance with religious values and positive legal provisions.

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