

RECONSTRUCTION OF MARRIAGE AGE LIMIT ACCORDING TO LAW NUMBER 16 YEAR 2019 ABOUT MARRIAGE

**A. Kumedi Ja'far, UIN Raden Intan Lampung
Moh. Mukri, UIN Raden Intan Lampung
Is Susanto, UIN Raden Intan Lampung**

ABSTRACT

The limit of minimum marriage is a limit where someone is already considered mature and is able to be responsible, so that he is allowed to get married. The problem of this is how the limit of minimum marriage is based on positive law in Indonesia. The formulation of problem in this study is how model of minimum marriage age limit renewal in Law Number 16 Year 2019 is. This research aims to explain renewal model of marriage age limit and its contribution towards family law. The use of this research is to give treasury of Islam scientific, especially in law field about limit of minimum marriage age according to positive law in Indonesia.

This research is a qualitative model, and the nature of this study is library research by using philosophical, psychological and sociological approach by finding use point which is likely to achieve as ultimate goal; it is taking the use and refusing possible disadvantage happened.

Based on normative law, there are two signs of bâligh; they are 1) bi al-alâmât; man indicated with dream, woman indicated with haidh.2) bi al-sin; according to Hanafi, an 18 years old man and a 17 years old woman. While Maliki claimed bi al-hsin is indicated with growth of hair on parts of body. Syafi'I said it is a 15 years old man and a 9 years old woman. Hanbali uttered it is a 15 years old man and woman. The difference of marriage age is caused since al-Qur'an or al-Hadits does not determine the marriage age explicitly. In Positive Law of Indonesia, marriage age limit firstly was 19 for man and 16 for woman, but that regulation had been renewed with Law Number 6 Year 2019 that became 19 for man and woman.

Key Words: Marriage Age Limit, Reconstruction

INTRODUCTION

Marriage is sharia goal which is brought by Muhammad (PBUH); it is a man's particular in worldly and eschatological life. By a first glance observation on body of fiqh lesson, it can be seen there are four lines of its structuring; they are a). Rub' al-ibâdât which organizes relationship of man as a creature with his creator b). Rub' al-muâmalât which organizes man in his traffic of social intercourse with others to fulfill his daily need c). Rub' al-munâkahât organizes relationship man with family and d). Rub' al-jinâyât organizes conciliator with a social intercourse order which guarantees the tranquility (Hermanto, 2016; Ali Yafie, 1982).

Someone who thinks hard for force of Islam in creating and wanting to have a family will fully clear concern and get it tirelessly towards various important duties and family goals based on Islam (Ansyhari, 2010), to manage relationship of husband and wife and family members (Khallâf: tt., Nasution, 2010), and bless each other (Thalib, 1993; Summa, 2004). They are glory of offsprings, guard against evil, work together in facing difficulty of life, entertain soul and calm together, do all right of family, inheritance transfer (al-Subki, 2010; Kuzari, 1995; Maqsud, 2007; Syahrani, 2010).

In creating a harmonious family framed with *sakinah, mawaddah warahmah* (Basri, 2004), externally the next *shalih* and *shalihah* generation surely there are few things to notice and consider thoroughly to make marriage become *mitsâqan ghalîdhan*. One of them is by determining marriage age limit (Cloud, 2002; Ayyub, 2011). The problem of this case is that the measurement of normative law about marriage age limit is 19 for woman and 15 for man, while its application in Indonesia through Law Number 1 Year 1974 about marriage claimed that 19 for man and 16 for woman. It was regarded as discrimination and then it was changed by Law Number 16 Year 2019 which stated 19 for man and woman. It left question whether this change has been considered just and beneficial.”

RESEARCH METHODOLOGY

This research is a qualitative model, and the nature of this study is library research by using philosophical, psychological and sociological approach by finding use point which is likely to achieve as ultimate goal; it is taking the use and refusing possible disadvantage happened for justice and preventing discrimination.

DISCUSSION

Minimum Marriage Age Limit

Marriage comes from Indonesian Language which its origin word is getting married meaning making family with opposite sex, having sexual intercourse (Aninymous, 1994). Whereas wedding according to *al-jam'u* and *al-dhamu* language means gather (al-Mufarraj, 2003; Abidin, 1999). Then wedding (*jawâj*) can be interpreted with *aqdu al-tajwîj* which means marriage contract. Based on Rahmat Hakim, wedding is from Arabic *nikâhun* which is *masdar* or means coming from a verb (*fi'il mâdhi*) *nakahan*, its synonym is *tazawwaja* and in Indonesian Language it means marriage (Hakim, 2000; Daly, 2005; Asegaf, 2005; Nasution, 2013).

According to Islam Law, wedding or marriage is: “a bond of the inner self and the outer world between a man and a woman to live together in a household and to have offspring which is conducted based on Islam sharia law stipulations” (Hamid, 1987).

In Chapter I Article 1 Law Number 1 Year 1974 stated : Marriage is a bond of the inner self and the outer world between a man and a woman as husband and wife with goal to make a family (household) which is happy and eternal based on the one and only God (UU, 1974).

Verses about marriage in *al-Qur'an* are about 23, but no any single verse clarifies marriage age limit. If it is studied further, there are two verses in *al-Qur'an* related with eligibility of someone to get married; they are letter of *al-Nûr* verse 32, which sounds: “Marry those among you who are single, or the virtuous ones among yourselves, male or female: if they are in poverty, Allah will give them means out of His grace: for Allah encompasseth all, and he knoweth all things (QS. *al-Nûr*: 32).

In *Tafsîr Ibnu Katsîr's* exegesis, it is explained that this verse is an order to get married as some Islam scholars' opinion which requires getting married for those who are able to do it (Katsir, 2004; al-Muhaqqiqîn, 2013). *Al-Marâghy* interprets *washâlihîn* as quoted by Mustofa, men or women who are able to get married and carry out rights of husband and wife, like having a healthy body, having wealth, etc. *Quraysh Shihab* interprets that verse “*washâlihîn*”; it is someone who has is able mentally and spiritually to make a household. It does not mean he is pious since function of marriage needs preparation not only wealth but also mental and spiritual both for bride and groom (Mustofa, 2009).

Commandment of Allah Swt., Letter *al-Nûr* verse 59, means: “But when the children among you come of age, let them (also) ask for permission, as do those senior to them (in age): Thus does Allah make clear His Signs to you: for Allah is full of knowledge and wisdom (QS. *al-Nûr*: 59).

Letter Al-Nisâ' verse 6, means: "Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them; but consume it not wastefully, nor in haste against their growing up. If the guardian is well-off, Let him claim no remuneration, but if he is poor, let him have for himself what is just and reasonable. When ye release their property to them, take witnesses in their presence: But all-sufficient is Allah in taking account (QS. al-Nisâ': 6)

According to exegesis of al-Ahkâm verse that a child can be said baligh if boy has dreamed, as Islam scholars agree that a child who has dreamed and ejaculated sperm (Ubes, 2014), then he is bâligh, while the characteristic of woman who is bâligh is pregnant or period as explained in Al-Misbâh's exegesis. The meaning of root of a word, rushdan, is precision and sincerity of way. From here, word of rusyd appears which for human it is mind and soul perfection that makes him able to stand at attention and act as precise as possible (al-Shâbûny, 1999).

Al-Maraghi's exegesis as quoted by Mustofa that adult, "rushdan", is someone who understands well about way of using wealth by spending it, while bâligh al-nikâh is age that is ready to get married. This means al-Maraghi interprets that immature man should not be burdened by certain problems. According to Rasyid Ridha, sentence "baligh al-nikâh" shows that age of someone to get married is until having a dream, at this age can give birth a child and give offspring so that his heart is moved to get married. He is also imposed religion law, like worship and mingle together with applying hudûd. Therefore rusyd is someone's properness in effort (tasarruf) and having kindness brought in (Mustofa, 2009). Smart in effort and using wealth, though he is still green and stupid in religion (PBNU, 2010).

As explained in Thabaqat al-Syafi'iyyah, prohibition of using that wealth is revoked from an adult and smart man, although he is dumb in religion (Abu Bakar: tt.). It is also explained in Tafsir al-Munir; it interprets "fain anastum minhun rusyd" if then ye find sound judgment in them (QS. Al-Nisa', 6), it means he is good at managing wealth without waste and not weak from others' deceit (Nawawi: 1314 H).

Based on exegesis of verse above, it shows that maturity can be showed and determined by dream and rusyd, but rusyd and age are sometimes hardly determined. Someone who has dreamed sometimes he is not rusyd in his act or said in Scientific Dictionary it is maturity (truth) has been real (Partanto dan al-Barry, 1994). Explained in al-Fiqh 'Alâ Madzâhib al-Arba'ah Book, bâligh limit of a child is usually signed by year, yet it is occasionally signed by dream for boy and period for girl (Ardani, 1992; Nurrudin, 2004; al-Baijuri, 2003). According to Hanafi, baligh sign for a boy is marked with dream and sperm, while a girl is indicated with period, but if there is no sign for both so he or she is signed by year. It is 18 for man and 17 for woman.

Based on Imam Malik, bâligh is signed with sperm in condition of daydreaming or sleeping, or signed with grow of hair on parts of body. According to Imam Syafi'I, limit of bâligh is 15 for man and 9 for woman. According to Hanbali, for man it is signed with dream or age of 15, while woman is signed with period (al-Jazîrî, 2003).

This case can be done in a daily life. Therefore maturity fundamentally can be determined with age and signs as hadîts narrated by Aisyah which sounds:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ عَنِ النَّائِمِ حَتَّى اسْتَيْقَظَ وَعَنِ الصَّغِيرِ يُكْرَرُ وَعَنِ الْمَجْنُونِ حَتَّى يَعْقِلَ أَوْ يُفِيقَ (رواه أحمد والأربعة إلا الترمذی).

Meaning: "From Aisyah ra. From Nabi Saw., said: lifted qalam (responsibility) from three things; one who sleeps until gawking up, from young kid until dream, from crazy man until heal, and conscious". (HR. Ahmad and Emat Imam Except Timidzi). (al-Syan'any: tt., Muslim: 2004)

Based on hadits above, the main characteristic of *bâligh* is sign with dream for boy, and period for girl. This hadits does not signal about limit of *bâligh*, it only explains about *bâligh* signs (*alâmat al-bâligh*).

Explicitly *fukaha'* disagrees about minimum marriage age, yet he sees that *baligh* for someone has not showed maturity yet, with reason from some *madzhab* as follow.

Determination of *baligh* or that mature, according to most *fuqaha'* is not a considered problem for someone to get married or not, yet Imam Malik, Imam Hanafi, Imam Syafi'i, dan Imam Hanbali calims that a father may marry off his young virgin daughter (not *bâligh* yet), also a grandmother may do this if that girl has no more father.. Only Ibnu Hazm and Subrumah state that a father may not marry off his young daughter except she is already mature and gets permission from him (Al-Jaziry, 2003).

Historically marriage limit has been exemplified by wedding of Prophet (PBUH) with Aisyah who was 9 and 15 as hadits which was narrated by Imam Musli sounded:

عَنْ عَائِشَةَ قَالَتْ: تَزَوَّجَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهِيَ بِنْتُ سِتِّ وَبَنَى بِهَا بِنْتُ تِسْعِ وَمَاتَ وَعَنْهَا وَهِيَ بِنْتُ ثَمَانَ عَشْرَةَ (رواه مسلم).

Meaning: "Prophet Muhammad (PBUH) got married with her (Aisyah) at age of 6, and he moved her at age of 9 and she passed away at age of 18". (HR. Muslim). (Muslim: 2004)

While limit of 15 as narrated by Ibnu Umar which quoted by Ahmad Rafiq sounded:

عَرَضْتُ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَوْمَ أَحَدٍ وَأَنَا ابْنُ أَرْبَعِ عَشْرَةَ سَنَةً فَلَمْ يَجْزِبِي وَعَرَضْتُ عَلَيْهِ يَوْمَ الْحَنْدَقِ وَأَنَا ابْنُ عَشْرَةَ سَنَةً فَأَجَازَنِي).

Meaning: "I had asked Prophet Muhammad (PBUH) to be in Uhud war, at that time I was 14, He didn't allow me. And I asked it again to Prophet Muhammad (PBUH) in Khandaq war, at that time I was 15, and he let me in (join the war)" (Rofiq, 1998).

Scrutinizing normative base can be seen from sociological view about limit of *baligh* age or marriage age limit in perspective of *fukaha'*. It can be concluded that foundation of minimum limit is 15, although Rasulullah married Aisyah at age of 9, this happened at that era especially in Madinah 9 was considered mature. This was expressed by Ahmad Rofiq as follow:

It can be taken an understanding that age limit of 15 as early maturity phase for a boy. Usually at that age a boy has ejaculated sperm through his dream. While a girl, 9, for place like Madinah has been regarded as having maturity. This was based on experience of Aisyah who was married by Rasulullah, according to that hadits, in Book of Kasyifah al-Saja explained: "mature signs (*baligh*) of someone are three; they are perfectly 15, and period for woman at age of 9". This can also be related to order of Prophet Muhammad (PBUH), for Moslems to educate their children to do prayer at age of 7, and hit them at age of 10 if they are failed to do it (Rofiq, 1998).

A consensus of bride and groom who are not 19 yet for man, or 16 for woman, can be based on hadits of *nash* above. Although they are permitted, they must enclose permission from official officer. This shows that a concept of Islam law renewal is diligence. Besides, understanding of *nash*, mainly was conducted by Prophet Muhammad (PBUH), when he got married with Aisyah. It should be realized with striving of situation and condition at that time comparing to present which is obviously different.

Therefore it can be understood that minimum marriage age limit to have wedding is 15 based on story of Ibnu Umar and 9 based on Prophet Muhammad (PBUH)'s marriage with Aisyah. For this foundation, *fukaha'* applied age limit differently as follow:

Scholars of Madhab agreed that period and pregnant are proof of a woman, pregnancy happens due to ovule implantation with sperm, while period is same as ejaculating sperm for man. Imamiyah, Maliki, Syafi'i and Hanbali said: grow of hair on armfit was proof of someone's balighnya. Whereas Hanafi refused it, since hair on armfit is not different with other hair on other parts of body. Syafi'i and Hanbali uttered: baligh age of a boy and a girl is 15, while Maliki decided it as 17. Hanafi determined baligh age for children is 18 for a boy, while 17 for a girl. (Ibnu Qatadah, al-Mughni, Jilid IV) (Hatta, 2016).

Hanafi's opinion in *bâligh* age is maximum limit while the minimum age is 12 a boy and 9 for a girl. Since at that age a boy can dream and ejaculate sperm, impregnate or ejaculate sperm (out of dream), while a girl can dream ejaculating sperm, be pregnant, or period. (al-Mughniyyah, 2004; Ghazali, 2003).

Imammiah decided *bâligh* age for man is 15 and 9 for woman, based on hadiths Ibnu Sinan as follow:

إِذَا بَلَغَتِ الْجَارِيَةُ تِسْعَ سِنِينَ دَفَعَ إِلَيْهَا مَالَهَا وَجَارَ أَمْرَهَا وَأُفِيْمَتْ الْحُدُودَ الثَّامَةَ لَهَا وَعَلَيْهَا.

When a girl is 9, then her wealth should be given to her, her matter is perm Apabila anak permitted, and criminal law can be applied fully for her right and self (Ghazali, 2003).

If it is seen from psychological side, there is a difference of opinion in psychologists in giving teenager phase limit.

Foreign terms that show teenager phase are *Priberteit*, *Adolescentia* and *Youth*. In Indonesian Language it is often called *Pubertas* or *remaja*. Etymology or root of this term word is:

- a. *Puberty* (English) or *puberteit* (Dutch) comes from Latin language: *pubertas*.
- b. *Adolescentia* is from Latin word *adulescentia*, *adolescere*=*adultus*=becoming mature or in development of being mature. (Panuju & Umami, 1999).

Age of kid which is already mature is called *baligh phase*, at this age a kid has had a full consciousness of himself, so that he is burdened with responsibility, especially religion and social responsibility. According to Ikhwan al-Shafa, this period is called the second show world, where human is sued to actualize agreements which have been made at the first show world, it is world of spirits. According to al-Ghazali as 'aqil phase, where someone's intellectual level in peak condition, so that he is able to differentiate right or wrong act, good and bad (Mujib dan Mudzakir, 2002; Asrori, 2015).

Based on psychology development can be seen from two aspects; they are physic and mental. From physic aspect, teenager phase is signed with maturity of sexual organs and body condition generally. It means the form grows perfectly and sexual organ has perfect function as well.

If it is seen from age, psychologists determined someone who is in teenager age differently. Based on Kartini Kartono, she decided teenager age is since 13 to 19. Aristoteles decided 14-21. Simanjuntak decided 15-21. Hurlock decided 13-21. F. J. Monte decided 12-18. Singgih Gursana decided 12-22.

Browsing some opinions expressed before, then it can be understood that teenager age is between age range of \pm 12-21 for woman and \pm 13-22 for man (Tafsir, 2002).

Someone's development of religion life grows with total development of soul functions. It grows through observation, mind, feeling, willingness, memory and desire. That development slowly or fast depends on how far education factor can be equipped and functioned as well as possible. Teenager's religion life is a continuation process from accepted education influence on childhood which also contains special psychological implications on teenager and it is called *puber* and *adolescen*, which needs care and special observation (Arifin, 1998).

Teenager moment is a progressive moment step; in a parsed division teenager moment covers: *Juvenilitas (adolescantium)*, *pubertas* and *nubilitas*. Going with development of physic and mental, then religion on teenager involves that development. It means experience of

teenagers towards religion and religious act is seen and related to that development (Jalaluddin, 1998).

Even though in modern development, this minimum age marriage limit is varied in each country. However broadly, *bâligh* age to get married is around 15 to 21. (Supriyadi & Mustofa, 2009).

Analysis

From explanation above, we can comprehend that marriage age limit based on normative law or Islam law is signed with baligh. There are two signs of baligh; they are 1) *bi al-alamat*, for example with period sign, 2) *bi al-siin*, with age of 9 for girl based on hadits Aisyah and 15 for boy based on hadits as permitted by Prophet Muhammad (PBUH) to join war. In meaning, this age is an age limit where girl and boy can think perfectly both logically, psychologically and reproductively.

Based on positive law in Indonesia, marriage age limit in Indonesia is according to article, 19 for man and 16 for woman. However, age of marriage law has been 43 years long so that contextually that law can change as explained in a principle about law change which is related to Ibnu Qayyim al-Jauziyyah sounded:

تَغْيِيرُ الْأَحْكَامِ وَاجْتِلَافُهَا بِتَغْيِيرِ الْأَمْكَانَةِ وَالْأَزْمَنَةِ وَالْأَحْوَالِ وَالنِّيَّاتِ وَالْعَوَائِدِ

Meaning: "Change and difference of law are caused by difference of place, condition, motivation and culture" (Qayyim: tt.).

That principle was not only expressed by Ibnu Qoyyim but also by other scholars as principle below:

(لَا يُنْكَرُ تَغْيِيرُ الْأَحْكَامِ بِتَغْيِيرِ الْأَزْمَانِ)

Meaning: "It cannot be denied that law change is caused by time change". (Qayyim: tt.).

Operationally change of law according to principle of *usul fiqh* is based on availability of *'illat* law. *'illat* is a nature of a thing which its law is decided by *nash (al-aslu)*, maintained law on it. Where there is *'illat*, there is law and vice versa, there is no cause of *'illat*, there is no law. That principle of *usul fiqh* is:

الْحُكْمُ يَدُورُ مَعَ عِلَّتِهِ وَجُودًا وَعَدَمًا

Meaning: "That law turnson its *'illat*, either there is law or no law" (Al-Nadawi, 1994).

Yet *'illat* is not the only reference of law. The principle that said the law reference is use, as this principle below:

الْحُكْمُ يَتَّبِعُ الْمَصْلَمَةَ الرَّاجِحَةَ

Meaning: "Law follows stronger use" (Aminudin, 2018).

الحكم يدور مع مصالح العباد فحيثما وجدت المصلحة فثما حكم الله.

Meaning: "Law turns with use of human, so wherever it is found use there is Allah's law" (I-Suyuti, tt., Holilur, 2017).

This principle shows that law can change suited to that need of law and value of use. Furthermore in age marriage limit, Decision of Supreme Court about age marriage limit for man and woman is 19. As explained in Law number 6 Year 2019, this thing is done since age limit of 19 for man and 16 for woman is no longer relevant with use this era. So that reconstruction of articles explaining age marriage limit as law renewal in marriage side is conducted.

In Law number 7 verse 1 Year 1974 it said age of 19 for man and 16 for woman was considered discrimination so it was equitable. Then this thing got serious conception by government and resulted age of 19 for man and woman.

CONCLUSION

According to explanation above, *bâligh* or minimum marriage age in fukaha's perspective can be concluded that there are two signs of *bâligh*. They are *bi al-alâmaât* for man signed with dream or ejaculating sperm, and *bi al-sin* for woman signe with period. Based on Hanafi stated it is 18 for man and 17 for woman. Maliki claimed it is indicated with grow of hair on parts of body. Syafi'i uttered 15 for man and 9 for woman. Hanbali argued 15 both for man and woman. Difference of this marriage age happened is caused either al-Qur'an or al-Hadits does not determine marriage age explicitly. Whereas according to positive law in Indonesia firstly marriage age was 19 for man and 16 for woman. Then it is renewed by Decision of Supreme Court that declares marriage age is 19 for man and woman.

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