



## Setting Age Limits for Marriage: A Comparative Study of Marriage Laws in Muslim Countries (Indonesia and Maldives)

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### Abstract

*The regulation of the age limit for marriage in a country is an important factor in the survival of marriage. The aim of this study is to find a comparison of marriage age limits in Indonesia and the Maldives. In this study the author uses a normative and comparative approach. The age limit in getting married is very important. Because marriage requires psychological maturity. The Quran and the Hadith do not specifically mention the minimum age for marriage. The commonly known requirement is to be well-informed, well-conscious, able to distinguish between good and bad so that it can give consent to marriage, until the time of a person to marry (buluq an-nishah), with the word "rusyd" In Indonesia, the amendment to the Act No. 1 of 1974 on Marriage, became the Law No. 16 of 2019, which sets the minimum marriage age for women equal to the minimum age of marriage for men, which is 19 (nine) years. In Maldives, the Maldivian State, the minimum age for marriage is 18 years with exceptions. However, according to Islamic law, individuals who have reached puberty can marry before the age of 18 with parental permission and registered in the Register of Marriages.*

*Keywords: Family Law, Marriage Age, Indonesia, Maldives*

### 1. Introduction

One of the issues discussed in Islamic teachings is the matter of marriage. The Qur'an emphasizes the existence of a family that is peaceful, loving, and compassionate for every couple that directly navigates the journey of married life. There are many ways to achieve that goal. One of them is the effort to find a good prospective wife and husband. That effort is the key to the teachings of the Prophet Muhammad (peace be upon him) to his followers, which can determine the course of a household's journey. [1]

Marriage, also referred to as "pernikahan," comes from the word nikah (نكاح), which in language means to gather, to enter into each other, and is used to mean sexual intercourse (wathi). Meanwhile, nikah (marriage) in its original sense refers to sexual relations, but in a metaphorical (mathaporic) or legal sense, nikah is a contract (agreement) that legitimizes sexual relations as husband and wife between a man and a woman. [2] To realize a harmonious family enveloped in sakinah, mawaddah, and rahmah, and to give birth to a righteous generation, there are certainly several things that must be considered and taken into account carefully, so that marriage becomes a strong bond. one of them is to determine the minimum age limit for marriage. [3]

According to Islamic jurisprudence, one of the most important factors in preparing for marriage is age. This is because it can be determined whether a person is sufficiently mature in their attitudes and

actions or not. Marriage requires a level of maturity and adulthood from both parties. [1] The importance of age restrictions on marriage for the common good is such that each country has a minimum age limit for marriage. Not only Western countries, but also Muslim countries in the East are doing this. Although there are many pros and cons from Muslim figures stating that the age restrictions on marriage promoted by the West are essentially a "punishment" for "those who wish to preserve the purity of their children through marriage before the age of 15," a "prohibition" against "what Allah has permitted in His book," a "slandorous accusation" against "what was done by the Prophet, his companions, and the tabi'in," as well as a denial of the truth of the axiomatic principles of Sharia in the Qur'an, Sunnah, Ijma', and the practices of the companions that indicate the permissibility of marrying off young girls to avoid undesirable negative outcomes. [4] The age limit for marriage is very important. Because psychological maturity is needed in marriage. A mother's maturity, both physically and mentally, is very important as it will impact the child's development. The age of children in marriage becomes very important to pay attention to. Therefore, maturity in marriage is important to prepare for beforehand before getting married. The age of marriage being too young results in an increase in the number of marriages due to a lack of awareness of the responsibilities involved in running a household. The expected marriage is one that aligns with the purpose of marriage, which is to have offspring and to achieve peace, tranquility, love, and affection. To become a harmonious, happy, and prosperous family. All of

this can be achieved with the principle that marriage is for eternity and not just for a specific period of time. A good family according to Islam highly upholds the pursuit of well-being, including in seeking sustenance from Allah SWT. [5]

The minimum age for marriage in Indonesia was originally stated in Article 7 Paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states, "Marriage is permitted if the man is at least 19 years old and the woman is 16 years old." This minimum age provision is considered to reflect discrimination, particularly against women, and has the potential to violate the constitutional rights of girls, leading to child marriages due to the lower minimum age for women. This provision is seen as legalizing child marriage, especially when it is noted that the definition of adulthood in the applicable positive law in Indonesia is inconsistent across different regulations. For instance, the minimum age for marriage for women clearly contradicts the Child Protection Law, which stipulates that a child is someone who is under 18 years old. [6]

The polemic that continues to occur among society regarding the minimum age limit for marriage for women has finally encouraged a number of community groups to file a judicial review lawsuit to increase the minimum age limit for marriage for women against the background of the right to equality before the law equality before the law so that the provisions of Article 7 Paragraph (1) is conditionally constitutional, namely as long as it is read to 18 years for both women and men, and in the end this decision has become a bright spot and a breath of fresh air as a form of effort to change legal norms to eradicate the practice of underage marriage in Indonesia because of its success. it was decided to make changes to the norms related to the approved age limit and then outlined in the revision of Law Number 1 of 1974 concerning Marriage as contained in Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Law Number 16 of 2019 concerning Marriage) which covers the age limit for entering into marriage for women is equated with the minimum age limit for marriage for men, namely 19 years, then in Article 7 Paragraph (2) it is stated that:

"In the event of a deviation from the age provisions as intended in Paragraph (1), the male parent and/or the female parent may request a dispensation from the court for very urgent reasons accompanied by sufficient supporting evidence." [7] Based on these provisions, it should be known that although the minimum age for marriage has been increased to 19 years, the provisions of Law Number 16 of 2019 concerning Marriage still allow deviations from the

minimum age for marriage, dispensation for marriage is an exception in the case of both or one of the candidates. the bride and groom are underage and are allowed to enter into marriage under specified conditions. [6]

The role of the state is really needed to provide policies in regulating marriage age restrictions. This is closely related to the goodness and benefit of its citizens. Good things done by citizens are good for a country. The welfare of a people is reflected in their household life. There is no exception to the issue of the age limit suitable for marriage. The state has the right to provide restrictions, because without them a bad situation will arise and it will be difficult to regulate the marriage regulations of its citizens. It is so important to limit the age of marriage for the common good, so every country has a minimum age limit for marriage. limiting the age of marriage for the common good, so every country has a limit on the age of marriage. The Maldives is a country with the largest percentage of Muslim population in the world, where 100% of the population is Muslim with a population currently reaching 400,000 people. The history of Islam in the Maldives began in the 12th century when Arab traders, Gujarati Muslims and Mughals interacted with the region. In 1153 AD, Muhammad el-Adil became the first sultan in the Maldives to embrace Islam after previously the kings in the Maldives converted to Buddhism. Islam was first brought to the Maldives by traders from Gujarat and Persia, and then spread massively. After converting to Islam, the King of the Maldives, who was previously a Buddhist, changed his name to Sultan Mohamad al-Adel. Since then, Islam has become an integral part of the lives of the Maldivian people, and currently, the Maldives is a country with 100% of the population being Muslim. [8]

The majority of the Maldives population, like Indonesia, adheres to the Shafi'i school of thought, and the Maldivian legal system and Islamic law are very closely related, even Islamic law is one of the sources of law. Each country has different regulations regarding marriage age restrictions. Based on the description above, the author is interested in researching this issue more deeply with the title "Regulation of Marriage Age Limits: A Comparative Study of Marriage Laws in Muslim Countries (Indonesia and the Maldives)".

## 2. Research Methods

In this research, the author uses a normative juridical research approach and a comparative approach. The normative juridical approach is an approach that uses the legis positivist conception. This concept views law as identical to written norms made and promulgated by authorised institutions or officials. [9] According to Soerjono

Soekanto, normative juridical research is legal research conducted by examining library materials such as basic norms, laws and regulations, uncodified regulations (customary law), jurisprudence, treaties, or other studies related to the problem under study. Comparative approach is an approach that is carried out by comparing legal regulations or court decisions in one country with legal regulations in other countries (one or more countries), but it must be about the same thing. Comparisons are made to obtain similarities and differences between legal regulations. [10]

### 3. Results and Discussions

To form a family, careful preparation is needed, including that the couple getting married must be biologically mature and have the ability to take responsibility. For men, they must be ready to take on the responsibility of being the head of the family, who is of course obliged to provide for family members. As for the woman, she must be ready to become a housewife in charge of controlling the household, giving birth, educating, and caring for the children who will later be born. The maturity factor between the prospective bride and groom is manifested in the form of a legal age limit for marriage. [11]

The issue of the age limit of marriage has always been an interesting discussion and develops along with differences in place and time. This issue also has an important position in the discourse of Islamic legal studies because of its relationship with subsequent provisions of Islamic law. Moreover, the changing times gradually demand a legal reform that can bridge and accommodate the emergence of contemporary issues surrounding marriage. [12]

As for the minimum age for marriage, it is not clearly stated in the Qur'an or hadith, which is the main source of Islamic law. The Qur'an only hints at one of them in Q.S. An-Nisa' verse 6:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعِيفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهِدُوا عَلَيْهِمْ وَكَفَىٰ بِاللَّهِ حَسِيبًا

*“And test the orphans until they are of marriageable age. Then when you think they are of sound mind, give them their property. But do not spend beyond what is reasonable, and do not be hasty before they come of age. If any of the guardians can afford it, then let him refrain from consuming the orphan's property, and if he is poor, then he may eat of it as he sees fit. Then, when you hand over the property to them, you shall have witnesses. And Allah is sufficient as an overseer”.*

Lafadz *balagh al-nikah* in the verse is used as a

basis by fuqaha in determining the minimum age for marriage. Hamka interprets lafadz *balagh al-nikah* as adult. Maturity does not depend on age, but depends on intelligence or maturity of mind. Ar-Razi in Tafsir Al-Kabir states that the signs of maturity are generally the arrival of dreams, determined by a special age and the growth of hair in certain areas, the arrival of menstruation and the occurrence of pregnancy. The madzhab scholars also formulated the criteria for maturity, as can be seen in the table below. [13]

Table 1. Madzhab

No	Madzhab	Criteria
1	Syafi'i	<ul style="list-style-type: none"> <li>❖ Male and female: Age 15 years qamariyah. Has ejaculated semen (at least 9 years old). Hair growth around the genitals.</li> <li>❖ Female: Menstruation. Pregnant. Average age of males and females 15 years</li> </ul>
2	Maliki	<ul style="list-style-type: none"> <li>❖ Male and female: Discharge of semen whether sleeping or awake. Coarse hair growth around the genitals. Hair growth in the armpits. Nose sense of smell becomes sensitive. Changes in vocal cords. 18 years old or 17 years old entering 18 years old.</li> <li>❖ Female: Menstruation. Pregnant. The average age of males and females is 18 years.</li> </ul>
3	Hanafi	<ul style="list-style-type: none"> <li>❖ Male: At least 12 years of age. Ihtilam (emission of semen) due to intercourse or not. Impregnating a woman.</li> <li>❖ Female: Menstruation. Pregnant. At least 9 years old. The average age of males is 18 years and females are 17 years.</li> </ul>
4	Hambali	The same as Syafi'i

The variation is due to differences in the basis of the arguments used, although fundamentally all of them give the view that marriage at a young age is valid. Maturity based on physical signs or age can in fact vary according to the circumstances of time

and place. What has been determined by the scholars is only a very relative standard limit. Therefore, according to the fuqaha, the issue of the age limit of marriage is a matter that can be regulated by humans themselves by taking into account its benefits and goodness in society. The differences between the imams of the madhhab above regarding the age of puberty are strongly influenced by the environment and culture where they live.

### **Regulation on Marriage Age Limitation in Indonesia**

Islamic law never regulates the age limit for a person to enter into a marriage. However, Islam implicitly recommends that the prospective bride and groom who want to get married are ready both physically, psychologically, and mentally. So there is no provision for the age limit for marriage in order to provide space for the wider community to determine it for themselves according to the conditions and situations that occur in society. Because, what is prioritised in Islam is the physical and spiritual maturity of the prospective bride and groom. [14]

The age limit for marriage in Indonesia was previously regulated in the provisions of Article 7 of Law Number 1 Year 1974 concerning Marriage. The provision states that marriage in Indonesia is permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years. Setting a different minimum age limit for marriage between men and women has not only led to discrimination in the context of the implementation of the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution, but has also led to discrimination against the protection and fulfilment of children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution. In this case, when the minimum age of marriage for women is lower than for men, women can legally form a family faster. Then in the Constitutional Court Decision Number 22/PUU-XV/2017.

Article 7 of Law Number 1 Year 1974 on Marriage sets the age limit for marriage in Indonesia. The provision states that people in Indonesia can marry if they are 19 years old and women are 16 years old. Setting a different minimum age limit for marriage between men and women has led to discrimination in the context of the implementation of the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution, as well as in terms of protection and fulfilment of children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution. In this case, when the minimum age of marriage for women lower than

men, women are legally able to start a family sooner.

Furthermore, in the Constitutional Court Decision Number 22/PUU-XV/2017, one of the considerations of the Constitutional Court in the decision states 'However, when the differential treatment between men and women has an impact on or hinders the fulfilment of the basic rights or constitutional rights of citizens, both the Amendment to Law Number 1 of 1974 concerning Marriage, which became Law Number 16 of 2019 which is included in the group of civil and political rights as well as economic, educational, social and cultural rights, which should not be differentiated solely on the basis of sex, then such differentiation is clearly discrimination.' [15]

Therefore, there was an amendment to Law Number 1 Year 1974 concerning Marriage, namely Law Number 16 Year 2019 concerning Amendments to Law Number 1 Year 1974 concerning Marriage. The amendment reaches the age limit for marriage, the improvement of norms reaches by raising the minimum age limit for marriage for women. The minimum age limit for marriage for women is equal to the minimum age limit for marriage for men, namely 19 (nineteen) years. The age limit is considered to be mature in body and soul to be able to enter into marriage in order to realise the purpose of marriage properly without ending in divorce and to get healthy and quality offspring. In addition, an increase in the age limit higher than 16 (sixteen) years for women to marry will result in a lower birth rate and reduce the risk of maternal and child mortality. According to Soerjono Soekanto, whether or not a law is effective is determined by one factor, namely that law is interpreted as the result of work, creation and taste based on human spirit in living relationships. Based on current research, marriage at the age of 16 (sixteen) years for women has various health impacts. In terms of anatomy, the child's body is not ready for the process of conceiving and giving birth, so complications can occur, such as obstetric fistula. As a result, women under the age of 18 (eighteen) years are five times more prone to pregnancy complications and have a higher birth mortality rate than women aged 20 (twenty) years and above. [16]

### **Regulations on the Age Limit for Marriage in the Maldives**

The Maldives is a country located in South Asia, close to Sri Lanka and India, consisting of 1,200 small islands. Buddhism is the first religion widely practiced by the people of the Maldives, before Islam arrived in 1153 AD. As a result, the Maldives has made its population one hundred percent

Muslim, based on the country's Constitution which states that only those who practice Islam can be citizens of the Maldives. The current legal system of the Maldives is a mixed system, combining principles of English common law and Islamic Sharia law. The introduction of English common law principles into the Maldivian legal system occurred in 1988 with the establishment of the Limited Liability Companies Act. This was followed in 1991 and 1996 when the Maldivian Parliament enacted the Contract Act, the Sale of Goods Act, the Companies Act, and the Partnership Act, all based on common law principles. Common law is specifically applied in the field of commercial law. On the other hand, criminal law, family law, and inheritance law are broadly regulated under codified Islamic law. [17]

Most of the laws in the Maldives adopt legislation from Malaysia and other Muslim countries around the world. The formation of laws in the Maldives during the drafting process typically adopts laws that have been used by countries around the world, which are then adjusted to fit the social and cultural characteristics of the Maldives. For example, in the establishment of the Maldivian Family Law Number 4 of 2000, the Maldives adopted the Malaysian Family Law, as it was deemed to have characteristics that align with the social and cultural conditions in the Maldives. Additionally, the majority school of jurisprudence used in the Maldives also shares similarities with Malaysia, namely the Shafi'i school. However, before the enactment of the Maldives Family Law Act No. 4 of 2000, the Maldives had been using the Marriage and Divorce Act No. 3 of 1980, which was limited only to matters of marriage and divorce. As a result, family matters outside of marriage and divorce were not regulated by national law and were handled according to Islamic law, as governed by the Qur'an, sunnah, and fatwas issued by various legal experts. The existence of Family Law No. 4 of 2000 complements the previous laws and falls into the category of legislation that aligns almost entirely with the principles of Sharia. It can be said that this law replaces old practices and focuses on the idea of renewing the principles of Islamic law. [18]

The Maldives has set the marriage age limit at 18 years with exceptions. According to the Maldives Family Law No. 4 of 2000, the minimum age for marriage is 18 years. However, according to Islamic law, individuals who have reached puberty can marry before the age of 18 with parental consent and must be registered in the Register of Marriages. In 2020, the Child Rights Protection Act (CRPA) came into effect. This law was enacted on November 20, 2019, and marks a significant change in the legal protection of children in the Maldives,

such as prohibiting marriage under the age of 18. The Child Rights Commission established a Children's Ombudsman to ensure that children's rights are upheld in the Maldives. Child marriage in the Maldives is driven by gender inequality and the belief that women and girls hold a lower status than men. In the Maldives, child marriage is exacerbated by the level of education. School is not mandatory in the Maldives, which puts some young girls at risk of leaving school early to get married. The average age of marriage for women without education is 16.7 years, while women with further education marry six years later. Furthermore, poverty and financial challenges are pushing some families to marry off their daughters to alleviate the economic burden they are experiencing. The perception of limited job prospects for young women can also be a underlying reason for child marriage. [19]

#### **4. Conclusion**

The age limit for marriage is very important. Because psychological maturity is necessary in marriage. In Islam, the Quran and Hadith do not specifically mention a minimum age limit for marriage. The general requirements that are commonly recognized are that one must have reached maturity, possess sound judgment, be able to distinguish between good and bad in order to give consent for marriage, and have reached the time for marriage (bulugh an-nikah), referred to as "rushd." According to the schools of thought, there is no set age limit for marriage, but only the age of maturity is established. Some scholars from different schools have varying opinions on the age limit for marriage: the Shafi'i and Hanbali schools suggest that the ideal age for marriage is 15 years; Imam Abu Hanifa states that maturity is reached at 19 years for females and 17 years for males; Imam Malik considers the ideal age of maturity to be 18 years for both males and females. In Indonesia, the amendment to Law Number 1 of 1974 concerning Marriage, which became Law Number 16 of 2019 on the Amendment of Law Number 1 of 1974 concerning Marriage, establishes that the minimum age for marriage for women is equal to the minimum age for marriage for men, which is 19 (nineteen) years. In the Maldives, the Maldives government has set the minimum age for marriage at 18 years with exceptions. According to the Maldives Family Law No. 4 of 2000, the minimum age for marriage is 18 years. However, according to Islamic law, individuals who have reached puberty can marry before the age of 18 with parental consent and must be registered in the Register of Marriages. The role of the state is crucial in providing policies to regulate the age limits for marriage. This is closely related to the welfare and well-being of its citizens.

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