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Fulfillment of Children's Rights in Marriage Age Restriction in The Perspective of Mashood A. Baderin View of Human Rights

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Abstrak:

Indonesian Government has made changes to the minimum age limit for marriage in the Marriage Law to prevent the practice of underage marriage and protect children's rights, which are part of human rights. This research aims to examine the sociological aspects of changes in the age limit for marriage in Indonesia, which basically uses the Universal Human Rights approach as the main instrument in revising the Marriage Law in Indonesia by using the view of human rights put forward by Mashood A. Baderin. This research is a normative juridical research that uses a historical and conceptual approach. The results of this research show that two sociological aspects underlie changes in the minimum age limit for marriage in Indonesia, namely the health and education aspects. Changes in the minimum age limit for marriage are intended to fight for children's rights, especially health and education. According to Mashood A. Baderin, the Al-Qur'an and Hadith have regulated children's rights. Changes in the minimum age limit for a marriage intended to fight for children's rights align with Mashood A. Baderin's views on children's rights in Islamic law.

Keywords: Children's Rights; Human Rights; Marriage Age Restriction

Introduction

Underage marriage has become a national phenomenon in Indonesian society. At least three factors greatly influence the rampant practice of underage marriages in Indonesia. First, the cultural factor, most people still adhere to a culture that views daughters as an investment, so when they experience economic difficulties, marrying off

their daughters is the fastest solution. In addition, local culture also views raising daughters as very heavy, so marriage is considered the best way to release responsibility.[1]

The second is religious interpretation. Some Muslim communities still practice biased interpretations of Islamic teachings, mainly regarding marriage requirements. Al-Qur'an and hadith texts outline the conditions for baligh and rusyd in marriage. Unfortunately, the practice in society interprets the terms of baligh as menstruation. If a girl is menstruating, she is considered eligible for marriage, even though baligh means physical and spiritual maturity. In addition, the conditions for rusyd are required, namely physical, mental and spiritual maturity. Therefore, allowing underage marriages to children based on religious teachings tarnishes religion's sanctity.[2]

The third factor is the development of Indonesian law. The law in force in Indonesia still provides an open space for early marriage because in marriage law number 1 of 1974 and the Compilation of Islamic Law (KHI), the legal age for marriage for girls is 16 years for women and 19 years for men. Whereas Law Number 23 of 2003, amended to Law Number 35 of 2014 Concerning Child Protection, states that a person is said to be a child when he has not yet turned 18. It means that the marriage law in force in Indonesia does not yet support efforts to abolish underage marriages.

In Indonesia, the issue of underage marriage has become a particular problem. 2018 data shows underage marriages are found in all parts of Indonesia. A total of 1,184,100 women aged 20-24 years have been married at 18 years. The highest number is in Java, with 668,900 women.[3] From underage marriage data from the 2018 BPS National Socioeconomic Survey (SUSENAS), it is noted that the number of underage marriage s in Indonesia is relatively high, reaching 1.2 million incidents. Of this number, the proportion of women aged 20-24 years who were married before 18 was 11.21% of the total number of children, meaning that around 1 out of 9 women aged 20-24 years was married when they were children. This number contrasts with men, where 1 in 100 men aged 20-24 are married when they are children.[4]

The high number of underage marriages in Indonesia cannot be separated from the influence of the development of Indonesian law. Setting the minimum age limit for marriage in Law number 1 of 1974 which differs between men and women, has not only resulted in discrimination in the context of exercising the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution, but also has led to discrimination against the protection and fulfillment of children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution. In this case, when the minimum age for marriage for women is lower than for men, legally, women can form a family more quickly and cause discrimination against the age of marriage between men and women.

The minimum age limit for marriage is 16 years for women and 19 years for men, has raised pros and cons among the community. Several community institutions presented their arguments regarding their disagreement with the minimum age limit for marriage.

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[1] Regina Kalosa et al., *Menikah Muda Di Indonesia: Suara, Hukum, Dan Praktik*, ed. Mies Grijns, I (Jakarta: Yayasan Pustaka Obor Indonesia, 2018), 28.
[2] Regina Kalosa et al., *Menikah Muda Di Indonesia: Suara, Hukum, Dan Praktik*, ed. Mies Grijns, 39.
[3] Yosepha Pusparisa, "Jutaan Anak Perempuan Indonesia Lakukan Pernikahan Dini," Databoks, 2020, diakses 10 Desember 2022, https://databoks.katadata.co.id/datapublish/2020/09/11/jutaan-anak-perempuan-indonesia-lakukan-pernikahan-dini.
[4] Kemenpppa.go.id, "KEMENTERIAN PEMBERDAYAAN PEREMPUAN DAN PERLINDUNGAN ANAK," 2020, diakses 10 Desember 2022, https://www.kemenpppa.go.id/index.php/page/read/29/2569/stop-perkawinan-anak-kita-mulai-sekarang.

One of the institution that disagree with the provisions of the marriage age limit in the marriage law is The Legal Aid Institute of the Indonesian Women's Association for Justice (LBH APIK) Jakarta stated that it was necessary to amend the Marriage Law Number 1 of 1974, especially in the rules regarding the age limit for marriage because the Marriage Law is not in accordance with the provisions in the newer Law, namely the Human Rights Law and Child Protection Act. In the provisions of the latest law, the age limit for children is 18 years. This means that Marriage Law can be categorized as legitimizing underage marriages according to the Human Rights Law and the Child Protection Law. In addition, LBH APIK considers that the implementation of the Marriage Law has taken too long, namely around 40 years since the legalization of the Marriage Law in 1974. This is reasonable if many changes have occurred in society, especially concerning the situation of women.[5]

Along with the times, because of the things that have arisen, the provisions for the age of marriage in Indonesia contained in Law Number 1 of 1974 need to be adjusted again to benefit the future of the two brides and groom. On April 27, 2017, there was an attempt to revise the Marriage Law by conducting a Judicial Review to the Constitutional Court. One of the petitions is about changing the age limit for marriage in Indonesia. Finally, in this effort, the Panel of Judges of the Constitutional Court accepted the applicant's request to renew the age limit for marriage in Indonesia.[6] One of the results of the changes contained in Article 7, paragraph (1) indicates that the minimum age for marriage for men and women is 19 years. This confirms the existence of equality and minimum age alignment to carry out marriages for men and women, where this similarity did not exist before and is always different, with an age difference of 3 years.

In essence, the revision of the Marriage Law regarding the minimum age limit for marriage contained in Article 7, paragraph (1) aims to realize equality before the law. In addition, the changes to these provisions are intended to protect and fulfill children's rights which are part of Human Rights. This has become a consequence of Indonesia having officially joined as a member of the United Nations to recognize and carry out the mandate in the Declaration of Human Rights. The concept of human rights offered by the United Nations and in the various agreements that follow show that humans are seen from the perspective of secularism. Religion is not an order that binds society, the state, or international relations. Religion has no competence concerning law because the law must be enforced fairly regardless of religion.[7]

The secular orientation in the concept of human rights at the United Nations raises various responses among Muslims. One of the responses of Muslims to the concept of UN human rights is to completely reject the concept of UN human rights because it is based on their belief that shari'ah is eternal, independent, and the most correct and perfect legal system. They view UN human rights as something contrary to Islam, and the concept

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[5] Sahuri Lasmadi, Kartika Sasi Wahyuningrum, and Hari Sutra Disemadi, "Kebijakan Perbaikan Norma Dalam Menjangkau Batasan Minimal Umur Perkawinan," *Gorontalo Law Review* 3, no. 1 (2020): 1, https://doi.org/10.32662/golrev.v3i1.846.

[6] Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017.

[7] Izzuddin Washil and Ahmad Khoirul Fata, "HAM ISLAM DAN DUHAM PBB: Sebuah Ikhtiar Mencari Titik Temu," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 41, no. 2 (2018): 70, https://doi.org/10.30821/miqot.v41i2.394.

of UN human rights are identified with Christianity. Because of that, according to them, Islam must develop an Islamic version of human rights.[8]

In these two perspectives on human rights, Mashood A. Baderin tries to find common ground for human rights issues contained in international human rights law, which the United Nations declared with human rights principles in Islamic law. In his book entitled " *International Human Rights and Islamic Law* ", Baderin dialogued the two concepts of human rights with the main issue of how far international human rights can be interpreted by Islamic law or vice versa.[9]

Therefore, from the explanation above, the research aims to examine the sociological factors that underlie changes in the age limit for marriage in Indonesia, which uses the Universal Human Rights approach as the main instrument in revising the Marriage Law in Indonesia. Baderin's human rights perspective was essential to become an analytical tool in observing the issues raised..

Research Methods

The type of this research is normative juridical research.[10] The author thinks this type of normative juridical research is suitable for this research because it uses the Academic Text of the Draft Law on Amendments to Law Number 1 of 1974 concerning Marriage. The approach used by the author is the historical approach. In this research, the author examines the background to the emergence of the renewal of Law Number 1 of 1974 concerning Marriage by examining the Academic Text of Draft Law Number 16 of 2019. In addition, the author uses a conceptual approach. In this research, the author uses the view of human rights put forward by Mashood A. Baderin as the analytical tool. Sources of data in this study obtained secondary data consisting of the primary legal material in this research is Academic Paper of Draft Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage and a book by Mashood A. Baderin entitled International Law of Human Rights & Islamic Law, secondary legal materials from of books, scientify works, and others related to the issues raised in accordance with the tittle of the thesis. The data collection method used in this research is the documentation technique. In this study, data processing methods was carried out through several stages, editing, classifying, verifying, analyzing, conclusion.

Harmonization of International Human Rights and Islamic Law According to Mashood A. Baderin

Mashood A. Baderin is a Muslim scholar from Africa who is a law professor at the University of London's SOAS (the School of Oriental And African Studies). His specialization is on human rights and its relation to Islamic law. Baderin has been prolific in writing works on Islamic law and human rights, both by himself and in collaboration with others. International Human Rights And Islamic Law is Baderin's monumental book. The book originates from his Ph.D. dissertation, which he completed at the University of Nottingham in 2001. Besides being a law professor, Baderin is also active in various

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[8] Moh Sholehuddin, "MERAJUT HARMONI ANTARA HAM INTERNASIONAL DENGAN SYARI ' AT ISLAM (Telaah Terhadap Buku International Human Rights And Islamic Law Karya Mashood A Baderin)," *Al-Ahwal* 5, no. 1 (2013): 70.

[9] Mashood A. Baderin, *Hukum Internasional Hak Asasi Manusia & Hukum Islam*, *Komisi Nasional Hak Asasi Manusia*, II (Jakarta: Mitragrafindo Mandiri, 2019), 187.

[10] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017), 78.

international events, especially those related to human rights issues and the Islamic world.[11]

In dialectizing human rights and Islamic law, Mashood A. Baderin introduces a thorough comparative analysis of international human rights law, namely the international covenant on civil and political rights as well as the covenant on economic, social and cultural rights, and Islamic law. According to Mashood A. Baderin, some reasons make it necessary to have a dialogue between human rights and Islamic law to achieve a common understanding. First, many UN member states are Muslim countries that enforce Islamic law, either wholly or partly domestic law. Thus, Islamic law, in various ways, influences the lifestyle of the population of Muslim countries.[12]

Although human rights are popular and widely accepted, there are differences of opinion regarding the conceptual interpretation and scope of human rights. Baderin then cites Weston's opinion that widespread acceptance of human rights principles at the domestic and international levels is not the same as saying that there is general agreement about the nature of those rights or their substantive scope. This gives rise to the universalism and cultural relativism paradox in the international human rights discourse. These conceptual differences then have major consequences for the experience of human rights, so it is important to provide a common understanding of rights and freedoms to realize a comprehensive understanding of human rights. Likewise, dialogue is needed between international human rights law and Islamic law to promote the realization of human rights in the context of applying Islamic law in Muslim countries.

Second, Muslim countries that are members of the United Nations (UN) work together to realize the goals of promoting and protecting international human rights. However, they also express declarations and doubts based on sharia or Islamic law when they ratify international human rights treaties. This doubt is raised by pessimism about the nature of international human rights principles, which cannot emphasize the relevance of Islamic legal principles to the effective implementation of international human rights. Third, a general view in the West is erroneous or inaccurate about Islamic law, which is considered incompatible with international human rights. There is a wrong general perception in the West as if promoting and protecting human rights are ineffective in the Islamic legal system.

Therefore, Baderin believes that continuous dialogue on the principle of equality of the two legal systems will open up vast opportunities to realize a shared understanding of human rights, which will facilitate the achievement of the effectiveness of promoting and protecting human rights. That will open up more significant opportunities for realizing human benefit and welfare. According to Baderin, this dialogue will lead to an important question: how far international human rights can be interpreted by Islamic law or vice versa.

Departing from the main objective of writing Mashood A. Baedrin's book entitled "International Human Rights and Islamic Law", which is to find out the extent to which international human rights can be interpreted in a review of Islamic shari'ah and because of the nature of its presentation which begins with explaining the articles and verses contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and then

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[11] Jeje Abdul Rojak, "Hak Asasi Manusia Dan Hukum Islam: Telaah Terhadap Pemikiran Masyood A. Baderin," *Al-Manahij: Jurnal Kajian Hukum Islam* 5, no. 2 (2011): 81.

[12] Baderin, *Hukum Internasional Hak Asasi Manusia & Hukum Islam,* 189.

followed by Islamic shari'ah comments on the contents of these articles, so Baderin named the approach he used in this book as the term a dialogical approach (dialogical approach).[13] Baderin uses five concepts as a theoretical framework, namely Islamic shari'ah (sources of Islamic law), maqashid al-shariah, fiqh (methods of Islamic law), maslahah (promotion of human welfare and prevention of harm) and about human rights. The five concepts are freshly interpreted by Baderin so that the five concepts are in sync and support each other.[14].

Sociological Basis for Changes in the Age Limit for Marriage in Law Number 16 of 2019

The problem of underage marriage is a challenge for the State in guaranteeing children's rights to survival, growth and development and the right to protection from violence and discrimination as stated in the 1945 Constitution of the Republic of Indonesia, Law Number 35 of 2014 concerning Amendments to Law Number 23 2002 concerning Child Protection, as well as the ratification of the Convention on the Rights of the Child. Besides that, underage marriage can hinder the human growth index, achieving the demographic bonus in 2045 and hinder the Sustainable Development Goals (SDGs), which have become a joint global commitment.[15]

Some of the implications of underage marriage include: children must drop out of school, there is discrimination at the age of marriage for men and women, women who are 16 years old or less than 16 years old are very vulnerable to the risk of health problems when undergoing marriage, and other.[16] For this reason, underage marriage, especially for girls, must be stopped immediately. There must be a policy to save future generations by amending Article 7, paragraph (1) of the Marriage Law. That is why the Public has judicially reviewed the Marriage Law at the Constitutional Court.

Judicial review of Article 7 paragraph (1) of the Marriage Law has been granted by the Constitutional Court through decision Number 22/PUU-XV/2017 because the article is discriminatory and inconsistent with Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia regarding equal rights before the law and the Child Protection Law which states that boys and girls have the same fundamental rights. The Constitutional Court Decision Number 22/PUU-XV/2017 decided that Article 7 paragraph (1) throughout the phrase "16 (sixteen) years" of the Marriage Law is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. There are at least two primary considerations of the Constitutional Court. First, declaring the marriage limit for girls to be 16 years old is unconstitutional, a violation of human rights, and a form of child exploitation. Second, order the legislators within a maximum period of three years to make changes to the Marriage Law, especially concerning the minimum age limit for marriage.[17]

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[13] Sholehuddin, "MERAJUT HARMONI ANTARA HAM INTERNASIONAL DENGAN SYARI ' AT ISLAM (Telaah Terhadap Buku International Human Rights And Islamic Law Karya Mashood A Baderin)," Al-Ahwal, no. 1 (2013), 74.

[14] Baderin, *Hukum Internasional Hak Asasi Manusia & Hukum Islam*, 191.

[15] Asman, "Dinamika Usia Dewasa Dan Relevansinya Terhadap Batas Usia Perkawinan Di Indonesia: Perspektif Yuridis-Normatif," *JIL: Journal of Islamic Law* 2, no. 1 (2021): 87, https://doi.org/10.24260/jil.v2i1.66.

[16] Nur Ali, "Law Reform and Law Making (Kajian Batasan Usia Perkawinan)," *KHULUQIYYA: Jurnal Kajian Hukum Dan Studi Islam* 7, no. 2 (2014): 45.

[17] Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017.

Considering the decision of Constitutional Court Number 22/PUU-XV/2017, comprehensive thoughts and results of studies and research are needed in providing solutions to the age limit for girls' marriage. Through the ministry of law and human rights, the government has conducted studies and research on the issue of the minimum age limit for marriage in Indonesia. The results of the studies and research are then published as academic papers. In the academic text, at least two essential aspects underlie changes in the minimum age limit for marriage in Indonesia: health and education.

Based on the research, the Maternal Mortality Rate in Indonesia is still very high and is a serious problem. One of the contributors is the poor level of reproductive health because there is no readiness for pregnancy and childbirth. From the 2016 BPS data, 26.16% of women gave birth under 20. RSCM data 2014-2016 from the Obstetrics Emergency Room there were 520, there were 78 (15%) before the age of 20 experienced pregnancy with anaemia (OR2.08), Low Birth Weight (OR1.83). The 2012 IDHS survey found that mothers who gave birth were under 20 years of age contributed to the high mortality rate in childbirth. In the 2017 IDHS data, 7% of women aged 15-19 have given birth or are pregnant with their first child. Obstetrics and Gynecology state that the impact of teenage pregnancy includes many aspects, namely: Miscarriage (OR 3.3), Anaemia in pregnancy (OR 2.95), Maternal malnutrition (OR 2.5), High blood pressure (OR 1.82), Eclampsia (OR 3.18), Premature birth (OR 1.77), LBW (OR 1.71), Congenital abnormalities (OR 1.08), CPD (OR 0.89).[18]

In the agreement of the 2018 Indonesian Doctors Association (IDI) Working Meeting in Batam, it was stated that the minimum age for marriage is 18 years, and the minimum age for pregnancy is 20 years. Childbearing age requires physical and hormonal maturity. When viewed from the average span of puberty, girls finish at 18. This figure is calculated from 15 plus 3 years. Whereas for men, it is 20 years old, that is, from the calculation of the age of 16.5 years plus 3.5 years. Women under 20 have a high risk of disease and death when performing their reproductive functions.

The minimum age for marriage is also based on data that pregnancy in girls aged 10-14 has a risk of death five times that of women aged 20-24. Cervical maturity for women is 19-21 years old, so the ideal marriage and pregnancy is 20-35 years. Marriage and pregnancy at this ideal age provide advantages for women in the period of highest fertility, lowest chromosomal abnormalities, the lowest risk of pregnancy complications, and prevention of cervical cancer. Apart from the health side, underage marriage results in a high risk of domestic violence, an increased risk of divorce and very low psychological maturity.

Underage marriage also has an impact on the psychological health of children. Field research conducted by the Center for Population and Policy Studies at Gadjah Mada University (PSKK UGM) shows at least two adverse effects of underage marriage on the child's psychological health. First, the child's mental health can be disturbed when faced with domestic fights triggered by trivial matters because children are immature in thinking and dealing with household fights. Second, the child's psyche will also be

[18] Badan Pembinaan Hukum Nasional, "Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," Bphn.go.id (2019): 55.

disrupted when he has to accept the burden of responsibility in taking care of the household, especially domestic work that is not appropriate for children at their age.[19]

Pregnancy under 19 years of age increases the risk of medical complications for both the mother and the baby she is carrying. Pregnancy at a very young age is closely related to maternal morbidity and mortality. According to the Indonesian Demographic and Health Survey conducted in 2012, the number of births during adolescence (aged 15 to 19 years) is 48/1,000. This figure indicates a high risk of maternal and infant mortality. This means that the practice of underage marriage also contributes to the high Maternal Mortality Rate (MMR) in Indonesia, which continues to increase from previous years, namely 359/100,000 live births in 2012. Children born to mothers younger than 19 years have a 30-40 per cent increased risk of stunting for two years and failure to complete secondary school. Furthermore, the impact of underage marriage on girls will also be experienced by their children, with less opportunity to attain a higher level of education, a greater likelihood of remaining poor, and more vulnerability to domestic violence.

Regarding education, Based on the Minister of Education and Culture Regulation 19 of 2016 concerning the Smart Indonesia Program, a 12-year compulsory education program is called for from elementary to secondary education. With this program, girls should have completed secondary education at 16. This is discriminatory when compared to the age limit for men's marriage. With an age limit of 19, men have the right to complete secondary education.

In Indonesia, dropping out of school due to underage marriage is common. Particularly nearing the National Examination period, the media reported a lot about the number of students who cancelled taking part in the National Examination because their parents had married them off beforehand, as happened in Jember (East Java), Lombok (West Nusa Tenggara), Indramayu (West Java), Jambi, Bali, Lampung, Bengkulu, and Porcupine (West Kalimantan). Delaying the marriage age is one way for children to receive higher education.

Thus, the younger the age at which girls marry, the lower the level of education that can be achieved by the child concerned. Underage marriage often results in children dropping out of school because they have new responsibilities as wives, mothers-to-be, or parents who will play a bigger role in managing the household, being the backbone of the family and having to make a living. The national education system in Indonesia implements 12 years of compulsory education. Girls cannot enjoy their constitutional educational rights if a girl's marriage is carried out at 16 and the conditions are maintained. This condition differs from boys who are 19 years old and can complete 12 years of compulsory education.

Based on the results of studies and research in these academic texts, the purpose of aligning the age limit for marriage is to reducing the risk of death in pregnant women and childbirth and increase opportunities for education. If a woman and a man's marriage is carried out at 19 or over, they can first complete the 12-year compulsory education (graduate high school). The calculation is that if elementary school is required to be 7 (seven) years old, then the age of graduating from high school is 19. By having an

[19] Badan Badan Pembinaan Hukum Nasional, "Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," Bphn.go.id (2019): 59.

adequate education, a person who is married over 19 years of age can compete for a more decent job. This is expected to be a supporting factor in poverty reduction in Indonesia.[20]

Sociological Basis for Changing the Age Limit for Marriage in Law Number 16 of 2019 From the Perspective of Children's Rights Mashood A. Baderin

Concerning the change in the minimum age limit for marriage in Indonesia, this is a step by the Indonesian government in the context of reforming the law and protecting, fulfilling, and respecting the rights of children who have been deprived of in cases of underage marriage in Indonesia. Previously, the Indonesian Marriage Law provided a minimum age limit for marriage of 16 years for women and 19 years for men. However, as time went on, these provisions caused more and more problems, especially the problem of underage marriage which was increasingly prevalent. As a result of this practice of underage marriage , many children's rights are not fulfilled.

In the study and research on the results of the alignment of the academic draft of the law on amendments to law number 1 of 1974 concerning marriage, at least two sociological facts were found that underlie the change in the minimum age limit for marriage in Indonesia, namely from the health aspect, and the education aspect. First, from the health aspect, the government considers that the practice of underage marriage can pose complex health risks, especially for girls under 19 years of age, such as medical complications if pregnancy occurs in underage marriage couples. It can even cause death for the mother and the unborn baby. Not only that, but underage marriage also harms psychological health because children are immature in thinking and dealing with all problems in the household.

From the educational aspect, the government considers that if the minimum age for marriage for women is set at 16 years, discrimination will occur when compared to the marriage age limit for men, with an age limit of 19 years, men have the right to complete secondary education, while women lose this right. So the younger the age of marriage, the lower the level of education the child achieves. The entrenched tradition exacerbates this: women are valued lower than men, so education is not the main thing for women.

These sociological facts do not align with the spirit of Human Rights, which aspires to protect and fulfill human rights, especially in fulfilling children's rights. The government's goal in making changes to the minimum age limit for marriage is to prevent underage marriage and to protect and fulfill children's rights which are part of human rights. Some of the children's rights that the government wants to fight for by changing the minimum age limit for marriage, namely the right to survival, the right to protection from all forms of discrimination, the right to health, and the right to education.

In line with that, the human rights spirit in Islam also highly upholds fundamental human rights. According to Mashood A. Baderin, the teachings of Islamic law oblige to fully respect and fulfill children's rights as part of human rights. Baderin said that Islamic law regulates children's rights. Islamic law also recognizes the need for protection for children because of their fragility. Many Qur'an verses and the Prophet's hadith remind parents and society about their responsibility towards their children. From the context of the Qur'an and hadith, Baderin said that there are at least ten fundamental rights of children, namely: 1) The right to the chastity of heredity; 2) Right to life; 3) Right to

[20] Badan Badan Badan Pembinaan Hukum Nasional, "Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," Bphn.go.id (2019): 60.

legitimacy and reputation; 4) The right to breast milk, shelter, livelihood, and care, including health care and nutrition; 5) Right to separate bed assignments for each child; 6) The right to a secure future; 7) The right to religious guidance and upbringing. 8) The right to education, sports, and self-defense training. 9) The right to fair treatment regardless of gender or other factors; 10) The right to lawful sources of funds in raising them.

Based on the description of the fundamental rights of children presented by Mashood A. Baderin, it can be seen that children's rights are guaranteed in Islamic law, both in the Al-Qur'an and hadith. In connection with aligning the spirit of International Human Rights and Islamic Law in protecting and respecting children's rights, Mashood A. Baderin's views must become a reference in viewing the policy of changing the minimum age limit for marriage.

In health aspect, The stipulation of a marriage age limit of 16 years for women causes the practice of underage marriages. Many health consequences arising from the practice of underage marriages. Starting from physical health and mental can even cause death. Therefore, in the end, the minimum age limit for marriage was changed to 19 years for both men and women. This aims to protect and fulfill the rights of children who are neglected due to underage marriages, especially the right to health and survival. Children's rights have been determined in the Convention on Rights (CRC) when associated with the provisions of International Human Rights Law. One of the provisions in the convention is that children have the right to defend their lives and obtain the best standard of health and care, in line with Mashood A. Baderin's view that one of the fundamental rights of children is the right to life and the right to breast milk, shelter, livelihood, and maintenance, including health care and nutrition.

In educational aspect, The stipulation of a different minimum age for marriage between men and women in the marriage law, in addition to causing discrimination, also deprives girls of their right to education. The marriage law stipulates that the minimum age for marriage for women is 16 years. This creates discrimination when compared to the minimum age for marriage for men. With an age limit of 19 years, men have the right to complete secondary education. Therefore, the government is trying to fulfill children's right to education by changing the minimum age limit for marriage so that every child has the right to complete the compulsory education program, at least up to the high school level.

The convention on the child's rights provides provisions that every child has the right to grow and develop. The right to child growth and development is divided into two major parts: education rights and the right to a standard of living. The meaning is the child's right to obtain education in all its forms and levels and the child's rights relating to an adequate standard of living for physical, mental, spiritual, moral, and social development.

In Mashood A. Baderin's view, the right to education is a fundamental right every child must obtain. Many verses in the Al-Qur'an and Hadith of the Prophet remind parents and society about their responsibilities towards their children, including fulfilling their children's right to education. In essence, education is a child's right, which is his parents' obligation. Children in the future can demand accountability from their parents if parents ignore and do not heed the obligation to educate their children.

Based on this description, it can be understood that in the view of Mashood A. Baderin, there is harmony between International Human Rights and Islamic law regarding recognizing children's rights. Children's rights regulated in International Human Rights

are in line with and in line with children's rights guaranteed in Islamic law, both in the Al-Qur'an and the Hadith of the Prophet. Every child has the right to have their fundamental rights fulfilled, especially the right to life, education, protection from discrimination, and the right to get health care for their survival. Therefore, in this case, the change in the minimum age limit for marriage is intended to fight for children's rights, especially children's fundamental rights such as the right to life, the right to protection from all forms of discrimination, the right to health, the right to education, and the right to for protection from exploitation, in line with Mashood A. Baderin's views on children's rights.

Conclusion

There are two aspects underlying the change in the age limit for marriage, namely health aspect and educational aspect. First, from the health aspect, the government considers that the practice of underage marriage can pose complex health risks, especially for girls under 19 years of age, such as medical complications if pregnancy occurs in underage marriage couples. It can even cause death for the mother and the unborn baby. Second, from the educational aspect, the government considers that if the minimum age for marriage for women is set at 16 years, then discrimination occurs when compared to the age limit for men, with an age limit of 19 years, men have the right to complete secondary education, while women lose that right. According to Baderin, every child has the right to have his fundamental rights fulfilled, especially the right to life, the right to education, the right to protection from discrimination or protection from things that harm him, such as exploitation, and also the right to get health care for the sake of his life. Therefore, in this case, the change in the minimum age limit for marriage is intended to fight for children's rights, especially children's fundamental rights such as the right to life, the right to protection from all forms of discrimination, the right to health, the right to education, and the right to for protection from exploitation, in line with Mashood A. Baderin's views on children's rights.

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