

The Benefits Of Mursalah The Legal Political Basis For Changing The Marriage Age Limit In The Latest Marriage Regulations

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Abstract. *The purpose of this study is to find out, review and analyze how the minimum marriage age provisions in Law Number 16 of 2019 concerning Masalah Mursalah perspective as the legal political basis for changing the law, what are the considerations for changing the marriage age rules in Law Number 16 of 2019 concerning Marriage and what are the legal and social implications for marriage in Indonesia. This study uses a normative legal approach method, namely an approach that refers to legal norms contained in laws and regulations relating to masalah mursalah in the provisions of the marriage age limit. To find the problem in this study, the author uses descriptive analysis research specifications, namely describing the legal objectives regarding the minimum marriage age provisions in laws and regulations from the perspective of masalah mursalah. The results of the description are then analyzed using qualitative data analysis techniques using legal theories, expert opinions and existing regulations in the legislation. The results of the study show that: (1). The minimum marriage age limit contained in Article 7 Paragraph (1) of Law No. 16 of 2019 is in accordance with the concept of masalah murlah as the basis for legal politics. Amendments to Law No. 1 of 1974 concerning Marriage that a person, both men and women, may marry when they reach the age of 19 years, this decision has taken into account equality and justice in the eyes of the law, where in the convention women guarantee the same rights to enter the marriage stage, with the equality of marriage age between men and women, the State has carried out its duties as a state of law by equalizing the position of men and women in the eyes of the law. (2). Legal considerations regarding the minimum age of marriage are more focused on factors of child protection, health and education. The government has taken into account the fulfillment of children's rights, reproductive age and equality in fulfilling children's education and social needs. The latest Marriage Law mandates that if the age is under 19 years,*

permission must be obtained from the Religious Court (Article 7 paragraph (2) of the Marriage Law).

Keywords: *Legal Politics; Legislation; Marriage Age; Maslahah Mursalah.*

1. Introduction

The issues of stunting and divorce have consistently drawn public attention, particularly in relation to early or child marriage. Consequently, the government revised Article 7 of the Marriage Law Number 1 of 1974, transforming it into Law Number 16 of 2019.¹ Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God.² Marriage is also a faithful agreement, and they are equally responsible in carrying out their duties as husband and wife for the safety and happiness of the household.³ The purpose of marriage itself is to establish a happy, long-term household and to produce children through a marriage that is legal according to religion and applicable laws and regulations. To achieve this ideal marriage, mental and physical maturity is essential for both the man and the woman so that both can take full responsibility for the marriage.⁴

Islam essentially never forbids marriage under the age of 19. However, the Prophet's hadiths require that each bride and groom be physically, mentally, spiritually, emotionally, and financially capable of building a household. Marriage requires not only material preparation but also physical and spiritual readiness for both men and women.⁵

The government established the minimum age for marriage by issuing Law Number 16 of 2019 as an amendment to Law Number 1 of 1974 concerning marriage (hereinafter referred to as Law 16/2019). Law Number 16 of 2019 was enacted as a form of implementation of the Constitutional Court decision Number 22/PUU-XV/2017 which ordered changes to the minimum age for marriage stipulated in Article 7 of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as Law 1/1974). In the previous provisions, the minimum age for marriage stipulated in Article 7 of Law 1/1974 was 16 years for women and 19 years for men. The Constitutional Court through Decision Number 22/PUU-XV/2017 stated that the difference in the age limit for marriage is contrary to the principle of equality before the law, which is the main characteristic of a democratic state based on the rule of law, as regulated in Article 27 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia).⁶

The revision of Law Number 1 of 1974 of course has basic considerations used in the preparation of the draft of Law Number 16 of 2019, namely:

¹Shinta Andriani & Tasya Himatul Fitria "Empowering the younger generation and healthy lifestyles in preventing stunting." Kartasura, Tahta Media Publisher, Kartasura, 2024. p. 58

²Law Number 1 of 1974 concerning Marriage.

- a. That the state guarantees the rights of citizens to form a family and continue their lineage through legal marriage, guarantees the rights of children to survival, growth and development and the right to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia;
- b. That marriage at a young age has a negative impact on the growth and development of children and will result in the failure to fulfill children's basic rights, such as the right to protection from violence and discrimination, children's civil rights, health rights, education rights and children's social rights;

2. Research Methods

The approach method used in this research is normative juridical, namely legal research conducted by examining library materials (secondary data) which includes research on legal principles, legal systematics, the level of synchronization of statutory regulations, comparative law or legal history.⁷

3. Results and Discussion

3.1. Philosophical, Sociological and Legal Basis for Changes to the Marriage Age Limit in Law Number 16 of 2019.

1. Philosophical Basis

Marriage is not just a relationship between a man and a woman, but also a relationship between two extended families, a relationship with the social environment, and a relationship between oneself and God Almighty. In Law Number 16 of 2019, the government explicitly regulates marriage provisions, one of which is the minimum age limit for marriage. The determination of the marriage age limit was not done suddenly, but by revising the previous law, namely Law Number 1 of 1974, which stated the minimum age limit for marriage was 19 years

³Ferdiansyah Yanuar Prakosa¹, Siti Umm Adillah, Legal Review of the Causes of Divorce and Efforts to Prevent It, Proceedings of the 4th Unissula Student Scientific Conference (Kimu), Sultan Agung Islamic University of Semarang, Semarang, October 28, 2020, p. 790

⁴https://jdih.komisiyudisial.go.id/upload/produk_hukum/UUD1945_Second_Amendment. Accessed December 11, 2025.

⁵Dedi Supriadi and Mustofa, "Comparative Marriage Law in the Islamic World" Pustaka Al-Fikris, Bandung, 2009, p. 23.

⁶Xavier Nugraha, Risdiana Izzaty, and Annida Aqilla Putri, 'Reconstruction of the Minimum Age Limit for Marriage as a Form of Legal Protection for Women (Analysis of Constitutional Court Decision No. 22/Puu-XV/2017)' 2019, Lex Scientia. 2023, p. 12

⁷Soerjono Soekanto and Sri Mamuji, Normative Legal Research, A Brief Review, Raja Grafindo, Jakarta, 1995, p. 15.

for men and 16 years for women. This change in age limit is based on several ideal considerations:

1. Preservation of Offspring and Protection of Children

Based on the purpose of marriage to form a happy and eternal family based on the One Almighty God, biological and psychological maturity is required. This philosophy is in line with the concept of Maqashid Al-Shariah in protecting offspring (hifz an-nasl) and the soul (Hifz an-nafs). The fatwa of the Ulama' regarding the minimum age for marriage confirms that early marriage is permitted by law as long as it meets the pillars and requirements of marriage, but is forbidden if it can cause harm.⁸

2. Marriages between minors are basically more likely to end in divorce, because both parties have an immature mindset.
3. This age restriction aims to create a good, lasting marriage and maintain reproductive health.⁹
4. The determination of the marriage age requirement of 16 years for women and 19 years for men contains elements of discrimination and gender bias because this depicts different treatment.

2. Sociological Foundation

Sociological basis is a consideration or reason that describes that regulations are formed to fulfill the needs of society in various aspects, and relate to empirical facts regarding the development of problems and the needs of society and the state.¹⁰

The sociological basis for Law Number 16 of 2019 is the urgent societal need to reduce the number of early marriages and protect children's rights. Child marriage has negative impacts on health, psychological, social, and economic aspects, and it also fails to fulfill children's basic rights, namely protection, education, and growth and development.¹¹

⁸Decision of the Third Indonesian Fatwa Commission's Ulema Council.

⁹Salmah Fa'atin, Review of the Minimum Age Limit for Marriage in Law No. 1/1974 with Multiple Perspectives, YUDISIA: Journal of Legal Thought and Islamic Law, Vol.6, No.2 (December 2025), Pages 434-60.

¹⁰Sudikno Mertokusumo, Understanding Law: An Introduction, Liberty, Yogyakarta, 2016, p. 136.

¹¹"Ministry of Law and Human Rights, Results of the Harmonization of the Academic Draft of the Draft Law on Amendments to Law Number 1 of 1974 on Marriage" (National Legal Development Agency, 2019), p. 78.

3. Legal Basis

The legal basis is a consideration that describes a regulation that is formed to be able to overcome legal problems that occur by considering existing regulations, regulations that are changed or regulations that will be revoked to guarantee legal certainty and social justice.¹²

There are several legal bases for the revision of Law Number 1 of 1974 to Law Number 16 of 2019:

- a. Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia: Guarantees equality before the law for citizens (equality before the law).
- b. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia explains that every person has the right to form a family and continue their lineage through a legal marriage and every child has the right to survival, growth and development as well as the right to protection from violence and discrimination.¹³
- c. Constitutional Court Decision Number 22/PUU-XV/2017
- d. Harmonization of Legislation

Namely, aligning the definition of "child" with the Child Protection Law, which stipulates that a person is categorized as a child up to the age of 18. By setting a minimum limit of 19 years, the state ensures that the legal subject is no longer categorized as a child when married. Law Number 35 of 2014, Article 1 paragraph (1) concerning amendments to Law Number 23 of 2002 concerning child protection, explains that a child is someone who is not yet 18 years old, including children who are still in the womb.¹⁴ And Article 26 paragraph 1 letter (c) explicitly explains that parents are obliged and responsible for preventing marriage at a young age.¹⁵

Based on data from the 2019 National Socio-Economic Survey (SUSENAS) conducted by the Central Statistics Agency, around 18.47% of Indonesian women aged 20 to 24 were married before the age of 19. If extrapolated with population

¹²Sri Wahyuni Laila, The Urgency of Philosophical, Sociological, and Legal Foundations in the Formation of Democratic Laws in Indonesia, *Jurnal Education And Development* 10, no. 1 (January 2022), p. 549.

¹³"Second Amendment to the Constitution of the Republic of Indonesia, Chapter XA Human Rights Article 28B"

¹⁴"Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Article 1 paragraph (1)"

¹⁵1 Ibid., Article 26 paragraph 1 letter (c)"

figures from intercensal surveys, this data shows that around 2 million young women in Indonesia aged 20 to 24 are married but not yet 19 years old, and 1.2 million of them are married but not yet 18 years old.¹⁶

If we look at the negative impacts of marriage at a young age, it can cause several serious problems, including:

a. Increases the Risk of Stunting in Children

The rise in stunting is a direct result of the rise in child marriage. Parents' lack of knowledge about managing household responsibilities due to interrupted education is certainly a contributing factor to stunted child growth. Stunting can hinder intellectual development, weaken immunity and metabolic function, and increase susceptibility to various diseases. This not only negatively impacts stunted children but also their future.

b. There has been an increase in the Infant Mortality Rate (IMR)

Babies born to mothers under 20 years of age face a greater risk of death within the first twenty-eight days, with a 1.5% higher risk than those born to mothers aged 20 to 30.

c. Domestic Violence and Divorce

Early marriage can also be a cause of domestic violence (KDRT) and even divorce, which worsens household problems.¹⁷

Regarding divorce, according to the Marriage Law, the ex-husband still has obligations to fulfill. Even though a divorce has occurred, this does not mean that their obligations as father and mother to their minor children have ended. A husband who divorces his wife is obliged to pay child support, which includes expenses for the care and education of his children, in accordance with the husband's status. This obligation to provide child support must continue until the children reach puberty and have their own income. Both the ex-husband and ex-wife are jointly responsible for all costs of caring for and educating their children.¹⁸

¹⁶Statistics Indonesia, "SUSENAS Results on Marriage March 2019," nd, <https://www.girlsnotbrides.org/where-does-it-happen/>, accessed January 12, 2026.

¹⁷Indonesia Judicial Research Society et al., *Pocket Book of Guidelines for Adjudicating Marriage Dispensation Cases*, Supreme Court of the Republic of Indonesia, Jakarta, 2020, p. 27.

¹⁸Siti Ummu Adillah, *Legal Review of Divorce Requirements and Legal Consequences of Divorce Decisions for Civil Servants*, UNISSULA STUDENT SCIENTIFIC CONFERENCE (KIMU) 2 Sultan Agung Islamic University Semarang, Semarang, October 18, 2019, Page 739

Legal reform is a real action in realizing the goal of good social life through changing, adding or replacing provisions so that the related law becomes better, fairer, more useful and has more legal certainty.¹⁹

d. Maternal Mortality Rate (MMR)

Women are twice as likely to die during childbirth between the ages of 15 and 19 as those aged 20 and 25. Research shows that young pregnant women experience several complications, including bleeding, miscarriage, and prolonged or difficult labor. These conditions can lead to maternal death. From a health perspective, early marriage is detrimental to a woman's reproductive system because the younger the woman marries, the longer the reproductive period. Meanwhile, a 2013 basic health research survey found that reproductive health problems stem from early marriage. Research also indicates that early sexual activity is a contributing factor to cervical cancer, as young women have an immature cervix. Cervical cancer is the most dangerous cancer for women after breast cancer. This cancer affects the lower part of the uterus, which protrudes from the top of the vaginal canal.²⁰

3.2. The Benefits of Mursalahas a legal political basis for changing the marriage age limit in Law Number 16 of 2019

There are differing perspectives on the age limit between regulations. According to the Child Protection Act, 18 years of age is considered the age of majority.²¹The Population Administration Law requires every citizen aged 17 years to have a Resident Identity Card.²²The Marriage Law stipulates that the minimum age for marriage is 19 years for both men and women.²³According to the Civil Code Article 330, a person is declared competent to carry out legal acts if he or she has reached 21 years of age.²⁴ In Islamic law, the age of competence to carry out legal acts is called the age of puberty (adult). There are several opinions about the age of puberty (adulthood) according to the 4 madzhab imams:

1. Imam Syafi'i and Imam Hambali: 15 years for both men and women.

¹⁹Teguh Prasetyo, *Legal Reform from the Perspective of the Theory of Dignified Justice*, Nusa Media, Bandung, 2020, Page 11.

²⁰Khoiruddin Nasution, *Introduction to Islamic Studies*, Accademia + Tazzafa, Yogyakarta, 2009, p. 79

²¹Child Protection Law Number 23 of 2002

²²Population Administration Law Number 24 of 2013 (Amendment to Law Number 23 of 2006) Articles 63 and 64

²³Marriage Law Number 16 of 2019 (Amendment to Law Number 1 of 1974)

²⁴Civil Code

(if you have never ejaculated or have never menstruated).

2. Imam Hanafi: 18 years for boys and 17 years for girls.

(if you have never ejaculated or have never menstruated).

3. Imam Maliki: 17 to 18 years for boys and girls.

(if you have never ejaculated or have never menstruated).²⁵

If seen from the perspective of Usul Fiqh, the ability to carry out the law is called *al-ahliyah*, there are two abilities or appropriateness (*al-ahliyah*):

- a. *Ahliyah al-Wujub*, namely the suitability to receive rights and be burdened with obligations.
- b. *Ahliyah al-Ada'*, namely the obligation to carry out the law.

Ahliyah al-Ada' divided into 3 groups:

1. *Ahliyah al-Ada'Naqisah*, namely someone who already has the skills but is still weak or not perfect, for example underage marriage or child marriage.
2. *Ahliyah al-Ada'Kamilah*, namely someone who already has perfect skills.
3. *'Adimul Ahliyah*, that is, not capable at all, like a child who is still small and has not yet reached puberty.

Each regulation has its own philosophical basis and legal considerations in determining the minimum age limit. For example, the Population Administration Law requires 17-year-olds to have an ID card because they are considered competent to carry out administrative actions. The Civil Code considers 21 years old to be competent to carry out legal acts. Islamic law imposes the obligation to implement sharia (*taklif*) with the consideration of being mature, sane, and *baligh*. Marriage Law Number 16 of 2019 in determining the minimum age limit for marriage also has considerations.

As written in the considerations of Law Number 16 of 2019, there are the following considerations:

²⁵Abu Umar Yusuf bin Abdullah bin Abdul Barr, *Al-Istidzkar Juz1*, Dar al-Kutub al-Ilmiyyah, Bairut, 2000. Pg.244

1. That the state guarantees the rights of citizens to form a family and continue their lineage through legal marriage, guarantees the rights of children to survival, growth and development and the right to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia;
2. That marriage at a young age has a negative impact on the growth and development of children and will result in the failure to fulfill children's basic rights, such as the right to protection from violence and discrimination, children's civil rights, health rights, education rights and children's social rights;

These considerations constitute legal policy or policies that serve as a reference for the government to create, which include the values of benefit and prevent harm or destruction, which is the spirit of the concept of Maslahah Mursalah. Maslahah Mursalah is one of the legal istinbath that does not have specific or detailed evidence but is in accordance with Maqashid Syariah, which includes the goal of preserving religion, life, descendants, and property, as well as prioritizing the value of benefit and rejecting harm.²⁶

Judging from the importance and quality of Maslahah, experts in ushul fiqh divide maslahah into 3 levels, namely:

1. *The Benefits of Good*

Essential Benefits is the welfare related to the basic or principal needs (primary needs) of humans in this world and in the hereafter in order to maintain the existence of the upholding of the objectives of sharia, namely maintaining religion, maintaining the soul, maintaining reason, maintaining offspring and maintaining property. This welfare is very important for human life, if it is not fulfilled it will cause destruction, disaster and damage to personal and social life.²⁷

- a. Maintaining religion, Allah SWT commands Muslims to uphold and carry out prayer, zakat, fasting, and pilgrimage.
- b. To preserve the soul, Allah SWT enforces the law of Qishos and prohibits murder or suicide.

²⁶M. Hasbi Umar, Contemporary Fiqh Reasoning, 1st Edition, Gaung Persada Press, Jakarta, 2007, p. 112

²⁷Abdul Azis Dahlan, Encyclopedia of Islamic Law (1st Edition), Ikhtiar Baru Van Hoeve, Jakarta, 1984, p. 1109

- c. Maintaining the mind, Allah SWT forbids drinking alcohol, alcoholic drinks, drugs and the like.
- d. Maintaining wealth, Allah enforces the law of buying and selling and prohibits stealing, corruption and all forms that cause harm to others.
- e. Taking care of offspring, Allah prescribes marriage and prohibits adultery

2. *Al- Maslahah*Hajj

These are benefits for which human needs are not at the level of dharuri (necessary needs). These benefits do not directly fulfill basic needs but indirectly lead to that. Examples of mashlahah hajiyyah include pursuing religious knowledge to uphold one's faith, eating for survival, sharpening the mind to perfect one's intellect, and trading to acquire wealth.

3. *The best benefit*

Maslahah is a human need that does not reach the level of dharuri (necessary) or the level of hajj (pilgrimage), but it must be met in order to bring perfection and beauty to human life. Maslahah in the form of tahsiniyah (necessary) is also related to the five basic human needs.²⁸

This change in the marriage age regulation is included in the dharuri maslahat, because it contains the maqashid sharia, especially maintaining offspring (hifz al-nasl) and maintaining the soul (hifz al-Aqli) if we look at the main substance of the considerations that form its philosophical and sociological basis, namely underage marriage and discrimination (gender bias).

Whether underage marriage or age discrimination or gender bias, all of them harm women or have negative impacts. This means that this problem contains great madhorot. According to Wahbah Zuhaili, all the negative impacts of underage marriage are categorized as real and widespread mafsadah (damage) (haqiqiyah and kulliyah). Wahbah Zuhaili emphasized that maslahah murrasa can be the basis for legal determination if the benefit sought is real, not just mere conjecture (maslahah haqiqiyah), is of general interest to the wider community (maslahah 'ammah), and does not conflict with the main objectives of Islamic sharia (maqashid sharia).²⁹

The change in the minimum age for marriage, originally 16 for women and 19 for men, to 19 for both men and women, can be understood as an effort to realize

²⁸Amir Syarifuddin, *Usul fiqh* volume 2, Prenada Media, Jakarta, 1999, p. 350.

²⁹Wahbah Zuhaili, *Al-Wajiz Fi Ushul Fiqh*, Darul Rohmah Al-Islamiyyah, Surabaya, 2005, Pg. 70-75.

greater welfare (jalb al-maslahah) and prevent harm (dar' al-mafsadah). In this context, the change in the marriage age is not only intended to respond to formal legal aspects, but also to address complex social problems, such as the high rate of child marriage, increasing domestic violence, and the low quality of women's reproductive health.

Therefore, this policy contains the goal of general welfare (maslahah 'ammah), namely the protection of the younger generation as a vulnerable group, and the creation of a more just, civilized, and prosperous social order. Based on this, the government and regulators strive to establish policies that benefit society. According to the principle of Usul Fiqh: (dar`u al mafasid wa jlb al-mashalih).³⁰

The prohibition of underage marriage is based more on considerations of benefit, because the benefits of underage marriage are less than the risks or harms it poses. As previously explained, underage marriage has significant negative impacts, both sociologically and psychologically. Biologically, the impact is that the child's reproductive organs are still in the process of maturing, so they are not ready for sexual intercourse with the opposite sex, especially if they become pregnant and give birth. If forced, it will actually cause trauma, extensive tearing, and infection that will harm the reproductive organs and even endanger the child's life, this is in accordance with the maqashid sharia hifz al-nafsi.

Considering the impact of age discrimination, which deprives girls of the opportunity to pursue higher education, it creates a weak generation. Yet, God warns humanity not to leave behind a generation that is weak in all aspects.

Allah says in surah an-Nisa verse 9:

وَلْيَخْشَ الَّذِينَ لَوْ تَرْكُوهَا مِنْ خَلْفِهِمْ God willing وَلْيَقُولُوا قَوْلًا سَدِيدًا

"And let those who fear Allah leave behind them weak children, whom they fear for their (welfare). Therefore, let them fear Allah and let them speak the right words."³¹

Thus, it can be understood that the prohibition on underage marriage is based on considerations of benefit and is in line with the concept of Islamic law, so the provisions regarding the age of marriage as well as the prohibition on underage marriage carried out by the government through Marriage Law Number 16 of 2019 are the state's efforts to realize the benefit for citizens in accordance with the mandate of the 1945 Constitution, Article 28 B paragraph (2) which explains that

³⁰Abu Ishaq al-Syatibi, *Al-Muwafaqat fi Ushul al-Syari'ah*, Volume II, Dar alKutub al-Alamiyah, Bairut, 1997, Pg. 4

³¹The Quran and its translation, Ministry of Religion

everyone has the right to form a family and continue their lineage through a legal marriage and every child has the right to survival, growth and development as well as the right to protection from violence and discrimination.

4. Conclusion

Legal reform is inevitable, reflecting changing situations, conditions, time, and place. Such changes align with Imam Shafi'i's opinion, which states that laws can change due to changes in the legal principles applied to specific events in implementing the maqashid sharia. There is no definitive age limit for marriage in Islamic law, as there is no specific text in the Quran or Hadith. This creates a legal vacuum, and therefore, it is appropriate to reform the law regarding the age limit for marriage. In determining the age limit for marriage, Islam does not stipulate a maturity requirement for both prospective bride and groom. The absence of this limit is considered a form of grace from Allah SWT, because maturity for marriage is a matter of *ijtihad* (Islamic jurisprudence) at what age a person is suitable to marry. This means that we are given the opportunity by Allah to conduct *ijtihad* to determine the law.

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