

Age of Consent in Islam: Between Legal Principles, Controversies, and Social Adaptations

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Abstract

The Age of Consent is a key element in determining the legal and social aspects that regulate the minimum age at which individuals are legally allowed to engage in sexual activities. In some predominantly Muslim countries, there may not be a specifically defined age of consent for sexual activities outside of marriage; instead, the emphasis is on sexual relations within the context of marriage. Traditional factors and religious beliefs often play a significant role in shaping the legal framework governing intimate relationships. This research provides insights into the variations in the age of consent laws and their relationship with marriage in several Muslim-majority countries. The legal principles found in the Quran and Hadith provide a foundational framework that reflects the relevance of Islam for all people in various temporal and geographical contexts, with the principle of preventing harm as a primary basis. Protecting children and vulnerable individuals should always remain a top priority. The issues of age of consent and child marriage are ongoing and require careful consideration, with a focus on the well-being of children and the interests of individuals

Keywords: Age of Consent, Child Marriage, Comparative Legal Studies, Muslim.

A. INTRODUCTION

The concept of Age of Consent is a crucial legal and social determinant that establishes the minimum age at which an individual can legitimately engage in sexual activities.¹ While many countries worldwide have defined and uniform age of consent laws, situations arise where this concept takes different forms. Specifically, in some countries with a majority Muslim population, there may be no specified age of consent for sexual activities outside of marriage. Instead, these countries emphasize

¹ Sutherland, K. (2002). From Jailbird To Jailbait: Age Of Consent Laws And The Construction Of Teenage Sexualities. Wm. & Mary J. Women & L., 9, 313.

sexual relations within the context of marriage.² In such societies, traditions and religious beliefs often play a paramount role in shaping the legal framework governing intimate relationships. As a result, the age of consent can vary significantly, with some countries not explicitly specifying a particular age but rather requiring marriage as the context in which sexual activity is permissible.³

The age of marriage has also become one of the themes of family law reform in various Muslim countries. There are variations in numbers and attitudes from various countries.⁴ Several studies have discussed the opinions of Ulema regarding the minimum age for marriage and its application in marriage law in several Islamic countries. In the jurisprudence books, the jurists differ in their opinions regarding the age limit for a person to be considered mature. According to Hanafiyah, boys are considered mature when they are 18 years old and girls are 17 years old. The Syafi'iyah sets a limit of 15 years for men and 9 years for women. Hanbali, both boys and girls 15 years old. Meanwhile, Mâlikiyah mark maturity by the growth of hair in several places/parts of the body. Differences in opinion regarding the concept of puberty result in differences in the marriage age limits applied in a country.⁵

Consideration of age of consent establishment includes one of its primary implications: child protection. Setting an adequate age of consent can prevent children from exploitation and child marriages, which could jeopardize their rights. Especially in the context of marriage, determining the appropriate age of consent can protect women from forced or early marriages that may harm their well-being. On the other hand, setting an age of consent that is too high can also limit individual rights to make

² Büchler, A., & Schlatter, C. (2013). Marriage Age In Islamic And Contemporary Muslim Family Laws. A Comparative Survey. *Electronic Journal of Islamic and Middle Eastern Law (EJIMEL)*, 1(2), 37-74.

³ Azizah, N. (2018). The Analysis of Minimum Marriage Age Determination in Indonesia and Other Islamic Countries. *Jurnal Ilmiah Al-Syir'ah*, 16(2), 148-16

⁴ Muhammad Jihadul Hayat, *Historisitas Dan Tujuan Aturan Usiaminimal Perkawinandalam Perundang-Undangan Keluarga Muslimindonesia Dan Negara Muslim*, *Journal Equitable*, Vol. 3 No. 1 Tahun 2018, 49-63

⁵ Agus Hermanto, *Penerapan Batas Usia Pernikahan Di Dunia Islam: Review Literature*, *Jurnal At-Tahdzib*, Vol. 9 No. 2 (2021)

autonomous decisions, including in the matter of marriage.⁶ This can trigger debates about the extent to which the government should intervene in individual decisions.

The most significant implications often relate to marriage and sexual relationships outside of marriage. A proper age of consent can promote healthy and lawful relationships, while setting it too low may endanger individuals, especially women⁷. The best approach is to find a suitable balance between protecting individual rights, particularly those of children and women, while respecting individual freedom and autonomy. Establishing an age of consent that considers aspects of well-being and justice is crucial.

This research aims to provide insights into the variations in age of consent laws and their relationship with marriage in several majority Muslim countries. By exploring these detailed dimensions in legal regulations, one can understand the diverse approaches taken by different countries in balancing individual protection, preservation of cultural values, and interpretation of religious principles. This comparative analysis can offer valuable insights into the legal and cultural dynamics shaping the age of consent in majority Muslim countries and its implications for individual rights and well-being.

B. RESEARCH METHOD

In this research, the qualitative method serves as the primary foundation, with an emphasis on literature review as the core approach. We conducted a comprehensive analysis of Islamic legal literature derived from different countries. The main focus of this study is the comparison of the age of consent laws among four countries: Indonesia, Turkey, Afghanistan, and Tunisia. We selected these countries as comparative samples to gain in-depth insights into the dynamics of age of consent laws within diverse cultural and legal frameworks. The data sources utilized encompass official legal documents such as laws, legal codes, and

⁶ Ni'ami, M. F. (2022). Study of the NU Congress's Decision on Hanging Marriages in Perspective of Child Protection Regulations. *Al Ahkam*, 18(1), 1–10. <https://doi.org/10.37035/ajh.v18i1.5619>

⁷ Berg, J. W., Appelbaum, P. S., Lidz, C. W., & Parker, L. S. (2001). *Informed Consent: Legal Theory And Clinical Practice*. Oxford University Press.

Islamic legal compilations. Additionally, we detailed information from academic journals and articles related to Islamic law to obtain a profound academic perspective. The data were analyzed using the interactive analysis technique developed by Miles and Huberman. Analytical activities involved data condensation, data display, and the drawing/verification of conclusions.⁸

C. RESULT AND DISCUSSION

Age of Consent in Sayyidah 'Aisyah's Marriage: Pro and Contra

There is no explicit information in the Qur'an and Sunnah regarding age limits for marriage. Both sources emphasize that individuals entering into marriage must be eligible and mature, capable of managing and leading a household responsibly. It is through this maturity that marital partners can fulfill their rights and responsibilities reciprocally. The most commonly cited evidence justifying early-age marriages is a hadith narrated by Hisham bin Urwah, reporting from his father, stating that Prophet Muhammad married 'Aisyah at a young age. The hadith reads:

حَدِيثُهُ تُوفِّيَتْ : قَالَ أَبِيهِ عَنْ هِشَامِ عَنْ أُسَامَةَ أَبُو حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَبْدِ حَدَّثَنِي
أَوْ سَنَيْنَ فَلَبِثَ سِنِينَ ثَلَاثٍ الْمَدِينَةَ إِلَى وَسَلَّمَ عَلَيْهِ اللَّهُ صَلَّى النَّبِيُّ مَخْرَجَ قَبْلَ
سِنِينَ تِسْعَ بِنْتٌ وَهِيَ بِهَا بَنَى ثُمَّ سِنِينَ سِتِّ بِنْتٌ وَهِيَ عَائِشَةُ وَنَكَحَ ذَلِكَ مِنْ قَرِيْبًا

"Narrated to us (al-Bukhari) by 'Ubaid ibn Isma'il, who heard from Abu Usamah, from Hisham, from his father (named 'Urwah), who said, 'Khadijah passed away three years before the Prophet's migration to Madinah. The Prophet remained widowed for two years or nearly two years before the migration. After that, 'Aisyah was married (to the Prophet) at the age of six and lived together (with the Prophet) when she was nine years old.'" (Sahih Bukhari)⁹

While this hadith is recorded in Sahih Bukhari and several similar hadiths are found in Sahih Muslim, Sunan Ibn Majah, Sunan Abu Dawud,

⁸ Matthe B. Miles, A. Michael Huberman, *Qualitative Data Analysis, A Methods Sourcebook*, (United State: Sage Publications, Inc, 2014).

⁹ Imam Abi Abdillah Muhammad bin Ismail Ibnu Ibrahim Bin Maghirah Bin Bardazibah Al-Bukhari Al-Ju'fi, *Saihih Al-Bukhari*, (Beirut-Lebanon: Darul Kitab al-'Ilmiyah, 1992), Juz 4, Kitab Manaqib Anshar, Marriage Chapter, Hadis No. 3896, 252

Musnad Shafi'i, Sunan Darimi, Musnad Imam Ahmad, Sunan Baihaqi, and others,¹⁰ debates¹¹ arise due to historical, linguistic, and even textual and chain of transmission discrepancies.¹² Yet, some studies affirm the validity of this evidence based on the continuity of its narration.¹³

One scholar who rejects the status of the hadith narrated by Aisyah herself is Jasser Auda. To contest the hadith about the Prophet's marriage to Aisyah at the age of six and their intimate relationship when Aisyah was nine, Jasser utilizes the concept of criticizing the content of hadiths. According to Jasser, criticism of the chain alone is insufficient; a hadith can only be considered authentic after evaluating its content or text. Jasser explains that content criticism should be based on three criteria: conformity with general principles in the Quran, consistency with other sayings of the Prophet, and the broader historical context of Islam.

¹⁰ Wahyuni Shifatur Rahmah, "Mengkritisi Hadis-Hadis Tentang Usia Pernikahan Aisyah", *Musawa*, Vol.8 No.4, 2019, 163-183

¹¹ The debate between those affirming the authenticity of the hadith and those questioning the reliability of the hadith is related to the status and validity of the hadith, not the contemporary practice of early-age marriage. This debate purely revolves around the status of the hadith.

¹² The narrations concerning Aisha's age at the time of marriage appear to be solely traced back to the accounts of Hisham bin Urwah. Hisham bin Urwah, who was the teacher of Imam Malik and resided in Madinah until the age of 71, later moved to Iraq. Interestingly, none of the residents of Madinah narrated this hadith. It was only during his stay in Iraq, at the age of 71, that Hisham bin Urwah eventually recounted this information. It is worth noting that his memory had significantly declined during his old age, as indicated by Mizan Al-I'tidal, which mentions a noticeable decline in Hisham's memory during his later years. See Shihab Al-Din Ibn Hajar Al-Asqalani, *Tahdhib Al-Tahdhib*, (n.p.: Dar Ihya Al-Turath Al-Islami, n.d.), 50. According to Ibn Kathir, Asma (the eldest daughter of Abu Bakr) had a 10-year age difference with Aisha. Asma passed away in the year 73 H at the age of 100. Therefore, during the early years of the Prophet's migration to Madinah, Asma would have been around 27 or 28 years old. Thus, when the Prophet migrated in the year Aisha got married, Aisha should have been 17 or 18 years old. See Ibn Kathir, *Al-Bidayah Wa Al-Nihayah*, Vol.8, (Al-Jizah: Dar Al-Fikr Al-Arabi, 1933), 372.

¹³ Abdul Ghofur Anshori, *Perkawinan Islam Perspektif Fikih Dan Hukum Positif*, (Yogyakarta: UII Press, 2011), 40. See Suryati, "Pernikahan Dini Dalam Perspektif Hadits (Studi Hadits Pernikahan 'Aisyah r.a dengan Rasulullah SAW)" (Skripsi--- Universitas Islam Negeri Raden Intan, Lampung, 2017), 88. Muhammad Makmum Abha, *Benarkah 'Aisyah Menikah di Usia 9 Tahun?*, (t.th: Medpress Digital, tt), 109. Muhamad Rofiq, *Hadits tentang Usia Nikah Aisyah: Kritik Jonathan Brown terhadap Jasser Auda*, 2019. Accessed February 2, 2023 via <https://ibtimes.id/hadits-tentang-usia-nikah-aisyah-kritik-jonathan-brown-terhadap-konsep-jasser-auda/>

Jasser emphasizes the importance of historical knowledge in evaluating the validity of a hadith, even stating that "our understanding of history is more important than the chain of the hadith itself."¹⁴

Jasser points out that interpretations of the hadith about Aisyah's age at marriage often focus solely on the chain without considering the presence of Quranic verses that, according to Jasser, contradict this hadith. One such verse is Surah An-Nisa verse 6, stating that orphans should be tested until they reach a marriageable age. Jasser argues that it is inconceivable for a Prophet, who serves as an example and guide for the community, to violate this verse. Moreover, he contends that six years of age is insufficient for psychological and physiological maturity, especially in the context of Arabian society at that time. Jasser also criticizes the hadith for conflicting with other sayings. For example, there is a hadith stating that Aisyah witnessed her father's migration to Abyssinia, which occurred in the fourth year of the prophethood. This implies that Aisyah was already a teenager when the Prophet married her, around the second year after the migration or approximately 19 years old according to Jasser's estimation. This hadith also suggests that Aisyah was born before Prophet Muhammad was appointed as a Prophet.

From a chain perspective, Jasser asserts that the hadith about the Prophet's marriage to Aisyah at the age of six faces issues. One of the hadith narrators, Hisham bin Urwah, is criticized for his questionable reputation. Hisham is said to have suffered from amnesia and became a corrupt individual after getting close to the rulers. Some hadith critics also label him as a *mudallis*, a narrator who tends to hide defects in hadiths. Jasser regrets that Imam Bukhari still included hadiths narrated by Hisham, perhaps considering him the son of Urwah bin Zubair, renowned as Aisyah's own student. Jasser argues that the hadith about Aisyah's age at marriage is either inauthentic or fabricated. According to Jasser, the Umayyad dynasty might have created this hadith to legitimize the practice of enslaving children carried out by their rulers. Jasser laments that Imam Bukhari accepted this hadith, possibly due to the

¹⁴ Royan Utsany, Afrizal TW, Khamim Khamim, "Women's Rights and Gender Equality: An Analysis of Jasser Auda's Thoughts and His Contribution to Renewal of Islamic Family Law in Indonesia," *Journal of Islamic Law (JIL)*, Vol. 3, No. 1, 2022. <https://doi.org/10.24260/jil.v3i1.530>. See Auda, Jasser. *Al-Mar'ah wa al-Masjid fi Do'i Nuṣūṣ Syari'ah wa Maqāṣiduhā*. (Kudus: Dār al-Maqāsid, 2016)

perceived status of Hisham as the son of a prominent figure.¹⁵

Although age is not the primary measure of someone's maturity,¹⁶ it can be a concrete indicator to identify a person's maturity, enabling them to navigate married life with tranquility, love, and affection. Improved patterns of marital relationships and the optimization of religious processes are likely to occur when individuals are considered mature enough for the responsibilities of a marital union.

Age of Consent in Several Muslim Countries Worldwide

The age of consent for sexual relationships is not explicitly defined in classical Islamic law, as is the case in many Muslim and non-Muslim countries today. The appropriate age for sexual relations was traditionally determined in pre-modern societies either by individual families or local customs, often linked to signs of physical puberty.¹⁷ There is no consensus in Islamic law regarding the age of consent for marriage or sexual relationships. The Hanafi jurist Zayn al-Din ibn Nujaym wrote:

"Scholars differ on when one can engage in sexual relations with a young girl. It is said that one should not have desire for her until she reaches puberty, it is said that one can fantasize about her when she reaches the age of nine, and it is said that one can have sexual relations with her if her body is large enough to handle sexual intercourse; otherwise, one should not."¹⁸

Islamic laws related to human interactions (as opposed to human-

¹⁵ Muhamad Rofiq, "Hadits tentang Usia Nikah Aisyah: Kritik Jonathan Brown terhadap Jasser Auda." Accessed October 12, 2021 via <https://ibtimes.id/hadits-tentang-usia-nikah-aisyah-kritik-jonathanbrown-terhadap-konsep-jasser-auda/>

¹⁶ Theoretically, the religious maturity of an individual is not solely dependent on their age restrictions, as it is closely tied to one's personality. Generally, an adult is indeed closely associated with having a mature religious attitude, while a child may not possess the religious maturity of an adult. However, this may not necessarily hold true psychologically. It is not uncommon for individuals who have reached adulthood to exhibit a personality resembling that of a child, indicating a lack of religious maturity. Conversely, it is also not uncommon for a child, based on age alone, to display a mature level of religiosity similar to that of an adult.

¹⁷ Paula S Fass, *Encyclopedia of Children and Childhood: In History and Society*, (New York: Macmillan Reference USA, 2004), 45. Available from Gale eBooks.

¹⁸ Zayn Al-Dīn Ibn Ibrāhīm Ibn Nujaym, *Al-Baḥr Al-Rā'iq: Sharḥ Kanz Al-Daqā'iq*, (Bayrūt: Dār al-Kitāb al-Islāmī, 1970), Juz 3,128.

divine interactions) tend to be regulated more by social customs than explicit divine revelation.¹⁹ Juridical and moral reasoning based on general principles often play a determining role in assessing whether social customs are right or wrong, appropriate or inappropriate. This flexible legal framework stems from the famous statement of the Prophet's companion Abdullah Ibn Mas'ud: "Whatever the Muslims regard as good is good to Allah, and whatever they regard as evil is evil to Allah."²⁰ In other words, Muslim societies have been delegated some authority to regulate their own social customs. For this reason, it is a valid opinion in Islamic law to establish a specified age of consent or to base it on natural signs such as puberty or physical development. Currently, the majority of Muslim countries have chosen to set the age of consent between fourteen and eighteen, although Bahrain is an outlier with a minimum age of twenty-one.²¹

Regardless of one's opinion on the age of consent, all classical jurists fundamentally state that illegality without valid reason can cause harm to others.²² The Prophet said, "Do not harm or reciprocate harm."²³

¹⁹ Taqī Al-Dīn Ibn Taymīyah, *Majmū' al-Fatāwā*, (Al-Madīnah Al-Munawwarah: Majma' Al-Malik Fahd Li At-Ṭibā'at Al-Muṣḥaf Al-Sharīf, 1995), Juz 29, 17. Ibn Taymīyah poses a question, stating, "As long as social customs are not explicitly prohibited, how can they be considered forbidden? ... The fundamental principle regarding customs is permission, so nothing is forbidden except that which is explicitly prohibited."

²⁰ The complete narration of Athar Abdullah bin Mas'ud, may Allah be pleased with him, can be translated as follows:

إِنَّ اللَّهَ عَزَّ وَجَلَّ نَظَرَ فِي قُلُوبِ الْعِبَادِ بَعْدَ قَلْبِ مُحَمَّدٍ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَوَجَدَ قُلُوبَ أَصْحَابِهِ خَيْرَ قُلُوبِ الْعِبَادِ، فَجَعَلَهُمْ وَرَرَاءَهُ، يُقَاتِلُونَ عَلَى دِينِهِ، فَمَا رَأَى الْمُسْلِمُونَ حَسَنًا، فَهُوَ عِنْدَ اللَّهِ حَسَنٌ، وَمَا رَأَى الْمُسْلِمُونَ سَيِّئًا فَهُوَ عِنْدَ اللَّهِ سَيِّئٌ

"Indeed, Allah, the Mighty and Majestic, looked into the hearts of His servants after the heart of Muhammad (peace be upon him), and He found that the hearts of his companions were the best hearts among His servants. Therefore, He appointed them as his ministers, fighting for His religion. So, whatever the Muslims consider as good is considered good by Allah, and whatever the Muslims consider as bad is considered bad by Allah." Aḥmad Ibn Ḥanbal, *Musnad Al-Imām Aḥmad Ibn Ḥanbal*, (Bayrūt: Mu'assasat Al-Risālah, 2001), Juz 6 No. 3600, 84

²¹ "Age Of Consent by Country 2021," World Population Review. Accessed June 14, 2021 via <https://worldpopulationreview.com/country-rankings/age-of-consent-by-country>

²² Jalāl Al-Dīn Al-Suyūṭī, *Al-Ashbāh Wa Al-Nazā'ir Fī Qawā'id Wa Furū' Fiqh Al-Shāfi'iyah*, (Bayrūt: Dar Al-Kutub Al-'Ilmiyah, 1990), Juz 1, 7-8.

Legal scholars explicitly apply this principle to sexual relationships. Yahya ibn Sharaf al-Nawawi, representing the Shafi'i school, stated this as a necessary condition when discussing the rights of wives to life and maintenance: "If it is possible to have relations with her without harming her, he may do so. If it is not possible for him to have relations with her except by harming her, he is not permitted to have relations with her."²⁴ No valid interpretation of Islamic law, in any school of thought, allows for the sexual or any other form of abuse of children. The Prophet said, "He is not one of us who does not show compassion to our children."²⁵

Islam is intended to be relevant to all people in every time and place. Legal principles in the provisions of the Quran and Hadith that permit the application of social customs have been circumscribed by the necessity to prevent harm (الم فاسد درء). This allows for some flexibility in determining appropriate boundaries for sexual relationships in Muslim societies. However, it is not a coherent argument in Islamic law to claim that Prophet Muhammad's marriage to his youngest wife, Aisha, at the age of nine is permissible and good to do because the differences in social conditions between then and now are vastly different. There are other considerations in divine law that cannot be ignored. The issue of child marriage, causing many harms, is essential to be addressed within the legal parameters of each respective region.

Islam allows a man and a woman to marry as long as they have reached puberty or adulthood. This practice is also widespread in Islamic countries worldwide. In Article 70 and 71 of the Civil Law of Afghanistan 1977, it is stipulated that the competency to marry is when they have reached the age of 18 for men and 16 for women (Article 70). The marriage of underage girls under the age mentioned in Article 70 of this

²³ Ibn Mājah, Sunan Ibn Mājah, (Bayrūt: Dār Iḥyā' Al-Turāth Al-'Arabī, 1975), Juz 2 No. 2340, 784

²⁴ Yaḥyá Ibn Sharaf Al-Nawawī and Taqī Al-Dīn Subkī, Al-Majmū' Sharḥ Al-Muhadhab, (Bayrūt: Dār Al-Fikr, 1991), No. 409, 16

²⁵ The complete narration of the Hadīṣ:

يَرْحَمُ لِمَنْ مَنَّا لَيْسَ ﷺ اللهُ سَوَّلَ قَالَ: قَالَ □ جَدُّهُ عَنْ أَبِي يَهُنَّ عَنْ شُعْبَةَ بْنِ عَمْرٍو حَدِيثٌ
 إِلا تَرْمِذِي وَقَالَ وَال تَرْمِذِي، دَاوُدَ أَبِي وَرَوَاهُ صَدِيقُ حَدِيثِ ك. ب. يَرْذَاؤُ شَرَفٌ وَيَعْرِفُ صَدِيقُ يَرْذَاؤُ،
 صَدِيقُ حَسَنٌ حَدِيثٌ

Muḥammad Ibn Īsá Al-Tirmidhī, Sunan Al-Tirmidhī, (Bayrūt: Dār Al-Ġarb Al-Islāmī, 1998), Juz 3 No. 1921, 386

Law can only be concluded by their authorized father or competent court. Marriage contracts for girls under 15 years old are not allowed at all.²⁶

The Revolutionary Council of Afghanistan issued Decision No. 7/1978 regarding child marriage, stating that marriages of girls under 16 years old and boys under 18 years old are prohibited, and violators can be sentenced to imprisonment ranging from 6 months to 3 years.²⁷ Thus, even though Islam does not specify the age of adulthood for marriage, family law in Afghanistan has undergone reforms in line with the development of the times and sociological conditions of the local community. In this case, the minimum age for women to marry has changed from a minimum of 17 years to 16 years. It is clear that the measure of physical maturity is highly relative and varies from one country to another, even based on different eras.²⁸

Civil Law No. 4721 on family law in Turkey states that a man or woman may not marry unless they are eighteen years old. However, a judge may allow a man or woman who is seventeen years old to marry under exceptional circumstances or for very important reasons. If possible, the parents or guardians of the person concerned will be heard (Article 124). Those who are mentally incapable may not marry (Article 125). Minors may not marry without the permission of their legal guardian (Article 126). Those who are legally incompetent may not marry without the permission of their legal guardian (Article 127). A judge may allow a minor or legally incompetent person to marry after filing a petition with the court, and if the legal guardian does not grant permission without valid reasons (Article 128).²⁹

If it is known that the application was not made as it should have

²⁶ The Civil Law of the Republic of Afghanistan (Civil Code) - Official Gazette No. 353" was published on January 5, 1977 (15th of Dey 1355 A.P.). An English translation was provided by the Division of Regulations and Law Afghanistan (AROLP) / USAID in 2006. The document can be accessed as of August 18, 2022, through <https://resourceequity.org/record/717-afghanistan-civil-law/>

²⁷ Carol Riphenburg, "Post-Taliban Afghanistan: Changed Outlook for Women?". *Asian Survey*, Vol. 44 No. 3, 401–422.

²⁸ Dewi Farida, Studi Hukum Keluarga Islam di Afghanistan, *Minhaj: Jurnal Ilmu Syariah*, Vol. 3, No. 2, 2022, 106-119

²⁹ The Turkish Civil Code, Law No. 4721, was enacted on November 22, 2001, and it specifically addresses Family Law in Book 2. The document can be accessed as of August 18, 2022, through <https://rm.coe.int/turkish-civil-code-family-law-book/1680a3bcd4>

been or one of the parties does not meet the marriage requirements or there is a valid obstacle to marriage, the marriage application must be rejected, and the parties must be immediately informed of this in writing (Article 137). According to Article 22 of Law No. 4722, dated 3/12/2001, regarding the Enforcement and Implementation of the Turkish Civil Code, when new regulations are made, the applicable legal provisions and regulations that do not conflict with the Turkish Civil Code will apply.³⁰

The Tunisian government amended the Personal Status Code No. 2007-32 to raise the minimum marriage age for both girls and boys to 18 years.³¹ The Code du Statut Personnel of 2012, Article 5 and 6 state that, although underage marriages below this age may be allowed, subject to the consent of their mothers and guardians and especially the judge's approval. Legally, a judge is only allowed to permit early marriage in cases of "serious reasons," and it must be in the "interest" of the couple.³² Underage marriages are invalid according to Article 21 of the law, although there is no punishment for those who facilitate or intentionally conduct such marriages.³³ Thus, those under the stipulated age must obtain permission from the court (Article 5). Permission cannot be granted if there is no strong reason and clear desire from each party. Underage marriage depends on the guardian's permission. If the guardian refuses to grant permission, even though the parties have a strong desire to marry, the case can be decided by the court. This is a step forward compared to the classical fiqh provisions of the various madhabs.³⁴

Table 1. Age limits for marriage in several countries in the Islamic world

³⁰ Act No. 4722, dated December 3, 2001, pertains to the Enforcement of the Turkish Civil Code. It came into effect on December 3, 2001, and was published in the Official Gazette on December 8, 2001, under No. 24607, pages 145-148. Accessed through https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=61758&p_lang=en

³¹ Act No. 2007-32 of May 2007 equalizes the minimum age for marriage for both boys and girls.

³² The legal age of marriage in Tunisia, accessed on August 18, 2022, through <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/tunisia/>. Refer to Article 5 (Amended by decree-law No. 64-1 of February 20, 1964, ratified by law No. 64-1 of April 21, 1964, and by law No. 2007-32 of May 14, 2007).

³³ Article 6 of the Code du Statut Personnel, 2012, amendment from Code du Statut Personnel No. 64 - 1 of April 21, 1964.

³⁴ Mochammad Agus Rachmatulloh, Studi Hukum Keluarga Islam di Tunisia, *Jurnal Al-Syakhsyiah*, Vol. 2, No. 2 (2020), 307-326

Country	Age of Marriage Limit	Deviation from Age of Marriage Limit	Violation Sanctions
Afghanistan	18 years for males and 16 years for females. ³⁵	Marriage of underage girls can only be requested by their authorized father or the competent court. ³⁶	Imprisonment penalties from 6 months to 3 years. ³⁷
Tunisia	18 years for males and females. ³⁸	Judges are only allowed to approve early marriages in cases of "serious reasons" and this must be "for the benefit of the couple". ³⁹	Child marriages are invalid and can be annulled. Couples whose marriage is declared annulled and who continue or resume living together can be punished with imprisonment for six months. ⁴⁰
Turki	18 years for males and females ⁴¹	Court permission is required in cases of extraordinary circumstances or for very important reasons ⁴²	If a marriage application is not made properly or one party does not meet the requirements for marriage or there is a valid impediment, the marriage application must be rejected, and the parties must be immediately notified of it in writing. ⁴³
Indonesia	19 years for males	The parents of the male and/or female party can	Marriages can be annulled. ⁴⁶

³⁵ The Civil Law of the Republic of Afghanistan (Civil Code), 1977, Article 70

³⁶ The Civil Law of the Republic of Afghanistan (Civil Code), 1977, Article 71 (1)

³⁷ Carol Riphenburg, "Post-Taliban Afghanistan: Changed Outlook for Women?". Asian Survey, Vol. 44 No. 3, 401–422.

³⁸ Tunisia Personal Status Code Law of 2012, Article 5

³⁹ Ibid

⁴⁰ Tunisia Personal Status Code Law of 2012, Article 21

⁴¹ Turkey Civil Code, Law No. 4721 on Family Law, Article 124

⁴² Ibid

⁴³ Turkey Civil Code, Law No. 4721 on Family Law, Article 137

Country	Age of Marriage Limit	Deviation from Age of Marriage Limit	Violation Sanctions
	and females. ⁴⁴	request dispensation from the court with compelling reasons accompanied by sufficient supporting evidence. ⁴⁵	

Source: Processed by the author: 2022

From the perspective of the similarities in Islamic civil law applicable in Indonesia, Turkey, Afghanistan, and Tunisia, the principles are fundamentally the same.⁴⁷ The underlying spirit is to fulfill the rights of children and eliminate child marriages. Regarding early-age marriages, both the Compilation of Islamic Law and Law No. 6 of 2019 (Indonesia), Turkish Code Civil Law No. 4721 (Turkey), Tunisian Code of Personal Status and Supplementary Law 1956-1981, Personal Law and Supplementary Law 1956-1981 (Tunisia), Civil Law of the Republic of Afghanistan (Civil Code)-Official Gazette No. 353 (Afghanistan) all emphasize age restrictions on marriage. This similarity arises because they share the same legal sources, derived from the Quran and hadith, subsequently codified into law.⁴⁸

In terms of differences, the variations are mainly related to the minimum age set. Afghanistan's Family Law is more progressive by explicitly prohibiting marriages below the stipulated age, with legal sanctions, including imprisonment for violators. Tunisia's law restricts marriage for prospective spouses under the age of 18. Indonesia, through

⁴⁶ Law Number 1 of 1974 Concerning Marriage, Article 22. See Compilation of Islamic Law Article 71 (D). See Abdurahman, *Kompilasi Hukum Islam Di Indonesia*, CV Akademika Pressindo, Jakarta, 2010

⁴⁴ Law of The Republic of Indonesia Number 16 of 2019 Concerning Amendments to Law Number 1 of 1974 Concerning Marriage, Article 1

⁴⁵ Ibid.

⁴⁷ Nispul Khoiri, *Poligami dalam Hukum Kekeluargaan Islam: Indonesia, Turki, Tunisia, Afghanistan*, *Jurnal An-Nadwah*, Vol. XVIII No. 1, 2013, 114-136

⁴⁸ Regulations in Islamic law can be uncodified, found in the books of fiqh (jurisprudence of Islamic law) following specific madhabs (schools of thought), or they can be more advanced and take the form of codified law, written in legislation within specific fields determined by the state.

Law No. 6 of 2019, has the highest marriage age limit among the three countries, set at a minimum of 19 years for prospective spouses. Despite the non-uniformity in the marriage age limits across these countries, all legal regulations in these nations concur that the age limit can be bypassed through a court application for marriage dispensation.

In conclusion, the regulation of the age of consent in Muslim countries varies due to the flexible nature of Islamic law, which often defers to social customs and principles of general morality. The majority of Muslim nations have set the age of consent between fourteen and eighteen, although there are exceptions. It is crucial to balance the preservation of individual rights, particularly those of children and women, with respecting individual freedoms and autonomy. Research in this area provides valuable insights into the legal and cultural dynamics shaping the age of consent in Muslim-majority countries and its implications for individual rights and well-being.

D. CONCLUSION

The age of consent in Islam is a complex issue that varies across different countries, shaped by the interplay of culture, religion, and laws governing sexual activities and marriage. The legal principles in the Quran and Hadith provide a foundational framework reflecting Islam's relevance for diverse communities in various temporal and spatial contexts. These principles signify a desire to prevent harm (الام فإسد درء) and allow flexibility in determining the age of consent within the context of marriage. However, it is crucial to understand that arguments asserting the acceptability or advisability of child marriages, such as the marriage of Prophet Muhammad to Aisha at the age of nine, lack strong legal coherence due to the social differences between past and present. This is a controversial and intricate issue with various considerations to take into account. One emerging consideration is the potential harm (*mafsadab*) that may arise from child marriages. Consequently, some countries have undergone legal reforms to address this issue and set higher minimum age limits for marriage. Ultimately, although Islam permits marriage for mature men and women, countries impose different age restrictions on marriage. Some, like Afghanistan and Turkey, have set specific minimum age for marriage, while others require special permissions in certain

situations. This reflects efforts to balance cultural values, legal norms, and individual protection. It exemplifies how Islamic legal provisions can adapt to the developments of time and social conditions, in tandem with changes in family laws. In all cases, the protection of children and vulnerable individuals remains a primary concern. The age of consent and child marriage is an evolving issue that requires careful attention, focusing on the well-being of children and the interests of individuals.

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