

Rereading the Age of Marriage: Conflicts and Points of Meeting of Fiqh, KHI, and Customs

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Abstract

This article discusses the differences and common points of the concept of marriage age in three legal systems in Indonesia, namely Islamic jurisprudence, the Compilation of Islamic Law (KHI), and customary law. All three have different epistemological bases and approaches, so they often cause inconsistencies in social practice. Classical jurisprudence establishes maturity based on the signs of puberty and without numerical age limits, while contemporary jurisprudence emphasizes the need to establish a minimum age through the maqāṣid al-syarī'ah approach for the protection of children. KHI and the Marriage Law carry a legal-formal approach with an age limit of 19 years as a standard of physical, psychological, and social readiness. The customary law assesses maturity based on social readiness, economic ability, and community norms, so that it is not always in line with the country's age limit. These paradigm differences trigger normative conflicts in the practice of marriage registration, marriage dispensation, and legal protection for women and children. Through a normative-sociolegal qualitative approach, this study offers a harmonized model based on dialogue between religious values, state regulations, and local wisdom with an orientation to benefit, child protection, and socio-cultural balance.

Penelitian ini bertujuan Artikel ini membahas perbedaan dan kesamaan konsep usia perkawinan dalam tiga sistem hukum di Indonesia, yaitu yurisprudensi Islam, Kompilasi Hukum Islam (KHI), dan hukum adat. Ketiganya memiliki dasar dan pendekatan epistemologis yang berbeda, sehingga sering menyebabkan inkonsistensi dalam praktik sosial. Yurisprudensi klasik menetapkan kedewasaan berdasarkan tanda-tanda pubertas dan tanpa batasan usia numerik, sedangkan yurisprudensi kontemporer menekankan perlunya menetapkan usia minimum melalui pendekatan maqāṣid al-syarī'ah untuk perlindungan anak-anak. KHI dan UU Perkawinan mengusung pendekatan legal-formal dengan batas usia 19 tahun sebagai standar kesiapan fisik, psikologis, dan sosial. Hukum adat menilai kedewasaan berdasarkan kesiapan sosial, kemampuan ekonomi, dan norma masyarakat, sehingga tidak selalu sejalan dengan batas usia negara. Perbedaan paradigma ini memicu konflik normatif dalam praktik pencatatan perkawinan, dispensasi perkawinan, dan perlindungan hukum bagi perempuan dan anak. Melalui pendekatan kualitatif normatif-sociolegal, penelitian ini menawarkan model yang harmonis berdasarkan dialog antara nilai-nilai agama,

peraturan negara, dan kearifan lokal dengan orientasi keuntungan, perlindungan anak, dan keseimbangan sosial budaya.

Keywords: *Marital Age; Fiqh, a Compilation of Islamic Law*



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A. INTRODUCTION

The debate on the age limit for marriage in Indonesia is a multidimensional issue involving aspects of religion, positive law, and local traditions. The regulation of the age of marriage is not only related to legal-formal matters, but also related to the protection of children's rights, gender equality, and reproductive health. In recent decades, the increasing cases of early marriage have raised serious concerns about the quality of life of the younger generation, especially women who are vulnerable to domestic violence, school dropouts, and reproductive health complications.¹ The government then revised the minimum age limit for marriage through Law No. 16 of 2019 in response to demands for child protection and gender equality. However, this change does not automatically remove the practice of underage marriage because people still refer to classical fiqh or customs that do not set a chronological age limit. Thus, this phenomenon requires a comprehensive re-reading.

Legal pluralism is one of the characteristics of the Indonesian legal system. In the context of marriage, there are three main sources of law that work simultaneously: Islamic jurisprudence, state law (Marriage Law and KHI), and customary law. These three sources of law have different epistemological characteristics, resulting in rules of marriage age that are not always synchronized.² Classical jurisprudence establishes maturity based on the signs of puberty, not numerical age. On the contrary, positive law sets a definite minimum limit for the sake of legal certainty and child protection. Meanwhile, customary law emphasizes more aspects of social maturity, economic readiness, and community norms. This asynchrony creates a wide interpretation space for the community so that the practice of early marriage still occurs. This difference raises the question of how the three legal systems can be harmonized without eliminating the cultural and religious values that live in society.

The increasing cases of child marriage in various regions shows that formal age limits set by the state are not always effective. The BPS report shows that the rate of child marriage is still significant even though regulations have been tightened.³ Many people hold to the opinion of fiqh that a person who has reached puberty is allowed to marry, so they feel that they do not violate religious laws even though they do not meet the age limit according to the state. In addition, the existence of a marriage

¹ UNICEF. *Child Marriage: Latest Global Trends*. 2020.

² Hooker, M.B. *Islamic Legal Pluralism in Indonesia*. 2018.

³ BPS Indonesia. *Child Marriage* 2020.

dispensation mechanism in the Religious Court is often used to legalize practices that are actually contrary to the purpose of child protection. This shows that religious norms, customary norms, and state norms often meet in an unharmonious relationship. Therefore, an in-depth analysis is needed to understand how differences in the concept of marriage age affect social practices at the grassroots level.

Islamic jurisprudence as a normative reference for the majority of Muslims in Indonesia has a strong influence on social practices. In the classical fiqh tradition, the age of marriage is more determined by biological maturity (puberty) and mental prowess (*rusyd*).⁴ This understanding is very contextual with medieval societies which had low life expectancy rates and a social structure that differed from today's. When the fiqh is applied in a modern context without reconstruction, tensions arise with the principles of child protection and gender equality. Contemporary scholars then emphasized the approach of *maqasid sharia* as the basis for raising the marriage age so as not to contradict the purpose of benefit. However, not all societies accept this new approach, so the interpretive gap between traditionalists and modernists is increasingly felt in the issue of marriage age.

Meanwhile, the KHI and the Marriage Law are trying to create legal certainty through the determination of the age limit of 19 years for men and women. This provision was born in response to the increasing health and social risks due to early marriage.⁵ The state also has an interest in ensuring that married couples are mature enough physically, psychologically, and economically. However, the implementation of this rule faces great challenges because it collides with long-rooted interpretations of fiqh and customs. Although the marriage dispensation was tightened, the practice was still often granted by judges for certain social reasons. This tension shows that national law is not yet fully able to regulate the behavior patterns of a very heterogeneous and religious society.

In the realm of customs, the age of marriage is determined based on local values that differ from one region to another. Some indigenous communities judge a person as an adult when he is able to work, meet economic needs, or participate in certain maturity ceremonies.⁶ Custom does not always use chronological age as the basis, so the practice of young marriage can be socially accepted. However, customs also have strict social supervision mechanisms so that early marriage is not always problematic. The problem arises when these customary norms intersect with the requirement that every marriage must be recorded and meet the state-determined age limit. This is where there is a normative conflict between state law and customary law that requires a harmonized approach.

The phenomenon of overlapping marriage age rules causes people to be in a dilemmatic position. Obeying state rules can be considered ignoring traditional fiqh interpretations, while following fiqh can make them face legal rules that require record-keeping. Similarly, following customary norms can have implications for the refusal to

⁴ Kamali, M.H. *Shariah Law: Principles, Context, and Modern Applications*. 2019.

⁵ Supreme Court of the Republic of Indonesia. *Marriage Dispensation Guidelines*. 2020.

⁶ Nurhadi, M. *Customs and Marriage Law in the archipelago*. 2017.

register marriages by the Office of Religious Affairs. This condition creates legal pluralism that does not always run harmoniously, and even gives rise to prolonged normative conflicts.⁷ The conflict is not only theoretical, but has a real impact on the legal status of children, inheritance rights, divorce, and women's protection. This is an urgency for the need for a new study that is able to reconstruct the relationship between fiqh, customs, and national law.

Research on the comparison of marriage ages between fiqh, KHI, and customary has been conducted, but the majority is fragmentary and has not linked the three within the framework of systematic legal harmonization. Previous studies have focused on the health aspects or social impact of child marriage, but have not comprehensively answered how the difference in the concept of marriage age itself is the root of normative conflicts in social practice.⁸ Therefore, this study seeks to present a more integrative analysis, namely by mapping the basic epistemological differences between the three legal systems and formulating a realistic harmonization approach. Thus, this research is expected to make a theoretical and practical contribution to the development of marriage law in Indonesia.

In an academic context, studying the age of marriage through a cross-disciplinary approach is important because this issue involves many factors: theology, sociology, anthropology, law, and health. The interaction between these aspects affects how people interpret maturity and readiness to marry.⁹ An interdisciplinary approach allows researchers to see that age limits are not only legal problems but also cultural problems and problems of religious interpretation. Thus, legal harmonization cannot be achieved through a normative juridical approach alone, but must involve the reconstruction of religious and cultural understanding. This perspective is the basis for research to explore the common point between fiqh, customs, and KHI.

Based on this description, this research departs from the realization that the harmonization of marriage law in Indonesia requires a more sensitive approach to the plurality of norms that live in society. This study aims to identify in depth how differences in the concept of marriage age in fiqh, KHI, and customary affect social practices, as well as how forms of normative conflicts arise. In addition, the research will formulate a harmonized approach that does not conflict with the principles of child protection and gender equality.¹⁰ Thus, this research is expected to be an important contribution to the discourse on the relationship between religion, customs, and the state in the formation of family law in Indonesia.

B. Methods

This research uses qualitative research methods with normative, juridical and socio-legal approaches. A type of library research that examines fiqh texts, laws and regulations, customary law literature, and empirical research results related to marriage practices in the community. The research approach uses a normative (statute

⁷ Bowen, J. *Islam, Law, and Equality in Indonesia*. 2015.

⁸ Sumarni, N. "Child Marriage in the Perspective of Contemporary Islamic Law." *JH&I*, 2021

⁹ Lukito, R. *Legal Pluralism in Indonesia: Bridging Adat, Islamic Law, and State Law*. 2016.

¹⁰ Syamsuddin, A. "Maqasid Syariah in the Determination of the Age of Marriage." *Al-Ahkam*, 2019.

approach): to analyze the age provisions in the Marriage Law and KHI, historical and comparative approaches; to examine the development of the concept of age in jurisprudence, and anthropological/socio-legal approaches; to understand customary practices and social dynamics related to marriage age.

C. Results and Discussion

1. The Concept of Marriage Age In Three Legal Dimensions

a. The Concept of Marital Age in Islamic Fiqh (Classical and Contemporary Perspectives)

In classical jurisprudence, the age of marriage is not determined numerically as per the positive law, but is based on the biological signs of puberty and the level of mental prowess or *rusyd*.¹¹ Puberty is considered a phase when a person has reached physical readiness to have a marital relationship, while *rushd* is understood as the ability to manage assets and make mature decisions. The scholars of the four schools generally agree that a person can be married if he has reached puberty, although the exact age limit is not mentioned. In the medieval social context, this approach was considered reasonable because the structure of society, life expectancy, and social needs differed from those of the modern era. However, when applied in contemporary society, this concept often raises debate because it does not consider aspects of reproductive health, education, and the protection of children's rights. Thus, a reanalysis is needed to understand the relevance of the classical fiqh approach to the current context.

The Hanafi school, for example, sets the age of puberty at between 12 and 15 years for men and 9 to 15 years for women if there are no biological signs.¹² Meanwhile, the Shafi'i and Hanbali schools view the age of puberty for women starting at the age of 9 years and boys at 12 years, with a maximum limit of 15 years. This view shows that the age of marriage can be very low when measured using classical fiqh standards. The Maliki school has a slightly different view by emphasizing the aspect of intellectual maturity (*rusyd*) as an additional requirement before marriage. These differences between schools become a very wide space for *ijtihad* and open up the possibility of variations in practices in society. In Indonesia, some people still refer to the dominant opinion of the Shafi'i school, so the practice of child marriage is often considered religiously legal. This is contrary to the principle of child protection affirmed by modern national law.

In addition to puberty, the concept of *rusyd* functions as an indicator of mental maturity. In fiqh, *rusyd* is usually associated with the ability to manage assets, especially in the context of guardians in the management of *waqf* or child guardianship.¹³ However, it is rarely discussed in depth in the context of psychological readiness to foster a household. When applied to the issue of marriage age, *rusyd* can actually be an entrance to raise the standard of marriage age through the *maqasid sharia* approach, because the household requires emotional and social skills that are more complex than just physical abilities. Contemporary scholars then developed the idea that the *rushd*

¹¹ Kamali, Mohammad Hashim. *Shariah Law*. 2019.

¹² Auda, Jasser. *Maqasid al-Shariah as Philosophy of Islamic Law*. 2015.

¹³ Sumarni, N. "Puberty and Rusyd in the Perspective of Fiqh." *JH&I*, 2021.

should include family readiness, not just economic prowess. Thus, the recontextualization of the concept of *rusyd* is one of the modern interpretation efforts that adapt to the needs of today's society without abandoning the basic principles of *fiqh*.

Contemporary scholars such as Yusuf al-Qaradawi, Kamali, and Auda emphasized that the determination of the age limit for marriage needs to take into account the *maqasid* of sharia, especially the protection of the soul, intellect, and offspring.¹⁴ They argue that although classical jurisprudence does not set a chronological age, the modern social context demands regulation for the sake of profit. In modern society, the health risks for women who marry early, domestic violence, and drop out of education are much higher than in the past. Therefore, the determination of the minimum age by the state is not a form of conflict with sharia, but is the application of *siyasah syar'iyah* (*maslahah*-based policy). This approach is also in line with the sharia goal to maintain the quality of generation. Thus, contemporary jurisprudence seeks to maintain the relevance of Islamic teachings to the development of the times and the need for child protection.

The debate between classical jurisprudence and contemporary jurisprudence is one of the roots of normative conflicts in the Indonesian context. Some people hold fast to the classical view that puberty is sufficient as a condition for marriage, while others accept the importance of setting a minimum age based on modern benefits. This tension is reflected in the practice of serial marriages that are carried out on the basis of "religious legitimacy", even though they violate the age limit of the KHI. This difference of views has broad socio-legal implications, including the legal status of children and the protection of women. Therefore, understanding *fiqh* in the modern context is important so that there is no clash between religious norms and state norms. An integrative approach that combines sharia *maqasid* and positive legal needs can be a bridge for harmonization.

b. Marital Age in the Compilation of Islamic Law (KHI) and Law

Law No. 1 of 1974 originally set the minimum age of marriage as 19 years for men and 16 years for women.¹⁵ The provision was born at a time when the main attention was more focused on legal certainty and the administrative arrangement of marriage. Although the 1974 Law was considered progressive at the time, the development of thinking about the rights of children and women shows that the age limit is inadequate. Many studies prove that women under the age of 18 are not fully ready biologically or psychologically to get married. This prompted the government to revise it through Law No. 16 of 2019, which equalized the age limit for men and women to 19 years old. The determination of this figure is based on health and education studies as well as considerations of child protection. Thus, this change in regulation marks a shift in the paradigm of marriage law in Indonesia.

¹⁴ al-Qaradawi, Yusuf. *Fiqh al-Maqasid*. 2018.

¹⁵ Supreme Court of the Republic of Indonesia. *Perma No. 5/2019*.

Law No. 16 of 2019 sets the age limit of 19 years as a standard of physical and psychological readiness for prospective brides.¹⁶ This revision is not just a change in numbers, but reflects the transformation of national family law towards child protection. However, implementation in the field is not always as expected. Many people who are used to the view of classical fiqh still view biological age as the standard of sufficiency for marriage. This change also demands the active role of the Religious Court in reinterpreting the marriage dispensation so that it does not become a legal loophole that can be easily exploited. With this new regulation, the state hopes to be able to reduce the rate of child marriage and improve the quality of families. However, its effectiveness still depends heavily on harmonization with local religious and customary norms.

The marriage dispensation mechanism is one of the critical points in the implementation of Law No. 16 of 2019. Dispensation is granted by the Religious Court in urgent circumstances by considering the interests of the prospective bride.¹⁷ But in practice, dispensation is often granted on the basis of social pressure, pregnancy, or customary reasons. The Supreme Court has issued Perma No. 5 of 2019 to tighten the granting of dispensation, including requiring judges to listen to psychologists' testimony and ensure that there is no coercion. However, the dispensation rate is still high in many regions. This indicates that regulatory changes have not been fully followed by changes in culture and people's mindsets. In addition, the existence of dispensation provides the perception that age rules can be negotiated, so that law enforcement efforts are less than optimal. This is one of the reasons why the rate of early marriage is still high.

KHI itself does not explicitly set the minimum age for marriage, but follows the provisions of the Marriage Law.¹⁸ Therefore, the change of the law to 19 years automatically affects the practice of marriage registration. KHI emphasizes the importance of registration as an administrative requirement that determines the legal status of marriage. Thus, even though it is religiously considered legal, underage marriages will not be recorded by the state without dispensation. This creates dualism: religiously valid but not administratively valid. In the context of family law, this uncertainty of status risks causing legal problems such as inheritance rights, divorce, and child recognition. The position of KHI in following the law shows that the cumulative Islamic law in Indonesia is dynamic and adapts to the development of national law in order to create legal certainty.

Overall, the regulations in the Law and KHI show that the state tends to prioritize child protection through the establishment of a minimum age. However, these formal regulations often do not run effectively because people still refer to fiqh or customs. This difference of viewpoint shows that marriage law is not only a juridical issue, but also concerns cultural values and religious beliefs. Therefore, understanding KHI and the Law is not enough just to read the norms, but it is necessary to see how

¹⁶ Law No. 16 of 2019.

¹⁷ Ministry of PPA. *Profile of Indonesian Child Marriage*. 2021.

¹⁸ KHI (Compilation of Islamic Law). Latest edition 2018.

the community interprets and practices them. In this context, harmonization is very important so that the rule of law does not become just a text without coercion. KHI as a product of Islamic law of the state has a central position in bridging religious norms, customs, and positive laws.

c. The Concept of Marital Age in Customary Law

Customary law in Indonesia is very diverse and reflects the socio-cultural characteristics of each region. In the context of marriage age, customs do not always set numerical boundaries, but rather emphasize the concept of social maturity or maturity of roles in the community.¹⁹ In some areas such as West Nusa Tenggara, South Sulawesi, and parts of Java, the age of adulthood is determined through certain customary ceremonies or through a person's economic ability. Marriage is considered customarily valid if it meets customary norms and ordinances, regardless of chronological age. This approach is rooted in the structure of agrarian and communal societies that view marriage as part of the social life cycle, not just a legal contract. However, in the modern era, this approach is often at odds with national laws that demand certain record-keeping and age limits. This difference is a big challenge in legal harmonization.

In some indigenous communities, such as the Sasak tribe in Lombok, the practice of merrik or elopes is still ongoing and often involves young couples.²⁰ The tradition considers that readiness to marry is judged by aspects of social courage and community acceptance, not biological age. A similar thing is found in the Bugis-Makassar custom which emphasizes economic ability as the main requirement. Meanwhile, indigenous communities in Papua place more emphasis on family readiness and inter-clan relationships. These differences show that the concept of maturity according to customs is very contextual. Although customary has the function of maintaining community stability, customary practices sometimes normalize early marriage. When it comes to dealing with the formal rules of the state, there is often tension between traditional values and modern legal norms.

The position of customary law is recognized in the constitution and laws and regulations as long as it does not conflict with national law.²¹ This creates a hierarchical relationship between the customs and the state. In practice, if customary rules allow for marriage at a young age, while the law requires a minimum age limit, then state rules must still take precedence. However, formal recognition of the custom makes the community still feel that they have moral legitimacy to carry out marriage according to the local culture. As a result, there is a space for compromise that is often realized through the dispensation of marriage. This dispensation indirectly allows customary values to continue to run even though it is contrary to the goal of child protection. This is where the dilemma between respect for culture and the obligation to protect children often arises.

¹⁹ Nurhadi, M. *Nusantara Customs and Marriage*. 2017.

²⁰ Bowen, J. *Islam, Adat, and Social Change in Indonesia*. 2015.

²¹ Lukito, Ratno. *Legal Pluralism in Indonesia*. 2016.

Rapid social changes also affect customary practices. Modernization, education, and urbanization have encouraged some indigenous communities to change their views on the age of marriage.²² Some indigenous villages in Bali, for example, have begun to adopt higher age limits due to health and economic considerations. However, the adaptation process is not uniform throughout Indonesia. In remote areas, customary is still the main source of law and is more obeyed than state law. This condition complicates harmonization efforts because the state cannot force cultural change instantly. A more sensitive and participatory socio-cultural approach is needed so that harmonization is not perceived as a threat to local identity.

Overall, customary law plays an important role in shaping the practice of marriage in society, but faces major challenges in adjustment to national law. The basic epistemological differences between customs, religions, and countries lead to complicated legal pluralism. Therefore, the harmonization approach must consider the strength of local values and the role of indigenous leaders. Otherwise, the minimum age rule will only be a formal regulation without coercion at the grassroots level. Thus, understanding customary law is an important step to formulate more effective and sustainable policies in an effort to suppress early marriage. A collaborative approach between countries and indigenous communities is key to creating a synchronization of norms.

2. Perspectives Of Islamic Jurisprudence, Khi, And Customary Law On The Age Of Marriage

a. Islamic Fiqh Perspective on Marriage Age

In classical Islamic jurisprudence, the age of marriage is not determined numerically, but through biological and psychological signs that mark puberty and *rusyd* (maturity in thinking and acting). Classical scholars such as Al-Mawardi and Ibn Qudamah state that puberty is characterized by wet dreams for men and menstruation for women.²³ However, age indicators have become flexible due to social, cultural, and geographical considerations. In medieval Arabia, puberty occurred earlier, causing the provisions of *fiqh* to become very contextual. Thus, classical jurisprudence views the age of marriage as part of the benefits, not as a rigid provision. Scholars agree that the ability to shoulder family responsibilities is much more important than a certain age number, so the aspect of individual maturity is the main consideration in Islamic marriage law.

Contemporary jurisprudence provides a new interpretation of the age of marriage, especially through the approach of *maqāṣid al-syarī'ah*. Modern scholars such as Yusuf al-Qaradawi and Ahmad Raysuni emphasize that the protection of the soul (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), and offspring (*ḥifẓ al-nasl*) should be the basis for determining the ideal age of marriage.²⁴ This approach then resulted in the idea that the state could set a minimum age limit for marriage to avoid the negative impact of

²² Sari, N. "Transformation of Customary Law in Marriage." *Indonesian Journal of Anthropology*, 2020.

²³ Al-Mawardi. (2019). *Al-Abkam As-Sulthaniyyah: The Context of Modern Constitutional Fiqh*. Cairo: Dar Al-Fikr.

²⁴ Al-Qaradawi, Y. (2018). *Fiqh al-Ma'aliyat al-Hadithab*. Beirut: Dar al-Syuruq.

child marriage. Thus, fiqh does not contradict the age limit set by the state, as long as it aims to realize the public benefit. In parallel, many contemporary fatwas accept the marriage age limit as a form of *sadd adz-dzari'ah* (preventing damage) as well as *jalb al-mashalih* (bringing benefits).

Modern jurisprudence also adopts developmental psychology and reproductive health data in formulating a suitable marriage age. It is currently known that women under the age of 18 have a high risk of pregnancy complications as well as emotional instability that can affect domestic relationships.²⁵ For this reason, a number of fatwa institutions in the Muslim world, including the Muhammadiyah Tarjih Council, have approved the age limit for marriage in accordance with the provisions of national law as long as it does not conflict with sharia principles. In this perspective, fiqh is not just a normative rule, but a social ethics that supports family welfare through postponing the age of marriage until reaching biological and psychological maturity.

In addition, Islamic jurisprudence emphasizes the principle of *ridha* and *ikhtiyar* in the marriage contract. Although the wali has authority in classical jurisprudence, contemporary jurisprudence asserts that women must give their full consent to marry. Without emotional maturity, such consent can become a mere formality. Therefore, the age limit is considered a legal protection to ensure that the bride-to-be is indeed able to make a conscious decision. Thus, the existence of age regulation as a minimum standard is not a religious restriction, but a strengthening of the principles of individual freedom and dignity as the goal of modern sharia.²⁶

From all these arguments, it can be concluded that Islamic jurisprudence is very adaptive in responding to social dynamics. Classical provisions based on biological signs remain respected as part of the scientific tradition, but the development of contemporary jurisprudence has made room for state authorities to set the age of marriage. The emphasis on child protection, reproductive health, and family welfare makes fiqh a flexible legal framework. Thus, the perspective of modern jurisprudence shows that the determination of the minimum age of marriage is not only legal formal, but also a social need that is in line with Islamic moral values.

b. Perspective of the Compilation of Islamic Law (KHI) on the Age of Marriage

The Compilation of Islamic Law (KHI) is present as a positive legal guideline for Muslims in Indonesia and is in harmony with the principles of fiqh. In Article 15 paragraph (1), the KHI sets the minimum age of marriage, which is 19 years for men and 16 years for women. This provision originally followed the Marriage Act 1974. However, the amendment to the Marriage Law in 2019 which sets a minimum age of 19 years for men and women has implications for the harmonization of KHI. Although the KHI has not been revised, the implementation of the law in religious courts automatically follows the latest age limit. Thus, KHI is understood as a law that develops following changes in national laws and regulations.

KHI adopts a moderate *fiqhiyah* approach, in line with the principle of benefit. By setting a minimum age for marriage, KHI seeks to provide protection for children

²⁵ WHO. (2021). *Adolescent Reproductive Health Report*. Geneva: WHO.

²⁶ Rasyid, A. (2020). Fiqh Reform in the Modern Era. *Journal of Sharia and Law*, 5(1), 33–48.

and women. This provision explicitly affirms the importance of maturity in making marriage decisions. In addition, KHI contains rules for marriage dispensation that must be submitted to the Religious Court. Dispensation can only be granted when there are urgent reasons, such as out-of-wedlock pregnancies, urgent social circumstances, or moral factors that need to be considered. This mechanism shows that KHI recognizes social flexibility, but still prioritizes minimum age limits as norms that should not be ignored.

Age regulation in KHI also pays attention to alignment with the development of reproductive health. Based on medical studies, people under the age of 19 have a higher risk of pregnancy complications.²⁷ Thus, the minimum age determination also serves as a preventive effort. KHI, as a fiqh-based product of national law, also includes sociological, medical, and psychological aspects as considerations in the formulation of rules. This shows that KHI is not only dogmatic-religious, but also responsive to scientific developments and the need for child protection in the modern context.

In practice, the religious court positions the KHI as the main guideline in deciding marriage cases. Judges' rulings in various regions show a tendency to tighten the granting of marriage dispensations in order to protect the rights of children and women.²⁸ This is in line with the national spirit to reduce the rate of early marriage which can have an impact on high school dropout rates, structural poverty, and domestic violence. Thus, KHI plays a strategic function in maintaining a balance between religious norms and the goal of social protection in Islamic family law.

Overall, KHI's perspective on the age of marriage shows the synergy between fiqh and the state. The minimum age requirement is an instrument of social protection designed not only to uphold religious values, but also to ensure the welfare of the family. Although the KHI has not undergone a formal revision, legal practice follows the development of more protective national regulations. Thus, KHI becomes an adaptive, moderate, and relevant juridical foundation in answering marriage problems in modern Indonesia.

c. Customary Law Perspective on Marital Age

Customary law in Indonesia has a wide diversity, so the age of marriage differs from one indigenous community to another. In general, customary law does not regulate the age limit numerically, but uses indicators of social maturity. Maturity in customary practice is usually assessed based on physical ability to work, involvement in community activities, and readiness to carry out social roles. For example, in indigenous peoples in South Sulawesi, a girl is considered an adult if she is able to manage the household and attend traditional events.²⁹ Meanwhile, in Balinese society, the concepts of *force majeure* and *masima* are a marker of a person's maturity to get

²⁷ Ministry of Health of the Republic of Indonesia. (2021). *Adolescent Reproductive Health Profile in Indonesia*. Jakarta: Ministry of Health.

²⁸ Rahmawati, N. (2020). Application of Marriage Dispensation in Religious Courts. *Journal of Religious Justice*, 8(2), 211–230.

²⁹ Said, A. (2019). Maturity in the Perspective of Bugis Customs. *Indonesian Journal of Anthropology*, 40(2), 87–104.

married. This shows that customs place more emphasis on social readiness than formal age limits.

In other indigenous communities, the age of marriage is closely related to the concept of family honor. Some indigenous peoples view that marrying children at a certain age can protect family honor from the influence of promiscuity. However, modernization has led to a shift in views. Many indigenous communities have begun to accept the minimum age of marriage as stipulated in national laws, both for the protection of children and to avoid legal conflicts.³⁰ Thus, customary law continues to adapt in the face of the challenges of state law and changes in social values.

The presence of state law that sets the minimum age of marriage makes customary law unable to stand alone. In the principle of *lex loci*, custom is recognized as law as long as it does not conflict with national law. Therefore, customary practices related to the age of marriage must be subject to state provisions. Courts also often reject customary marriages performed under the minimum age, even though local customs allow it. This shows that customary law is within the framework of the unification of family law in Indonesia, so its values must adapt to the development of national law.³¹

However, customary law still has a big role in shaping people's views regarding maturity and readiness to marry. Many indigenous communities still prioritize family deliberation in determining the time of child marriage. Economic and moral readiness are important considerations. In some cases, customs are stricter than state law in assessing a person's readiness to get married. For example, in the Sasak community, a man who is not economically able is considered unfit to marry even though he has reached adulthood. Thus, custom provides an additional moral standard for positive law.

From all the analysis, it can be concluded that the perspective of customary law on the age of marriage is cultural and social, not numerical. However, when faced with national laws and global developments regarding child protection, customs began to adapt. This adaptation does not eliminate indigenous identity, but it enriches the understanding of maturity and responsibility in marriage. Thus, customary law serves as a complement to state law and *fiqh*, providing a more contextual moral and social framework for local communities.

3. Comparative Analysis Of Islamic Jurisprudence, Khi, And Customary Law on The Age of Marriage

a. Common Points and Basic Differences between the Three

A comparative analysis between Islamic jurisprudence, KHI, and customary law shows that the three have a common point on the aspect of the need for maturity before entering marriage. *Fiqh* emphasizes maturity through the concepts of puberty and *rucyd*, while KHI emphasizes the minimum age limit as an instrument of legal

³⁰ Widyastuti, R. (2020). Modernization of Customary Law in Marriage. *Journal of Culture of the Archipelago*, 6(1), 45–60.

³¹ Nurhayati, F. (2021). Harmonization of State and Customary Law in Marriage. *Journal of Law and Society*, 12(3), 155–170.

certainty. Customary law, on the other hand, prioritizes the concept of social maturity which is determined through a person's customary role and readiness. Although the approach of the three is different, the basic orientation is the same, which is to create a stable and harmonious family order. This shows that each legal system seeks to adapt to its own social context while still prioritizing the value of protecting individuals. In the framework of Indonesian law, the harmonization of the three is very important in order to create an understanding that this difference in approach is not a contradiction, but a contribution of plural law.

In terms of formal structure, Islamic jurisprudence is normative-theological, KHI is normative-juridical, while customary law is normative-cultural. Fiqh is sourced from sacred texts interpreted by scholars, KHI is sourced from the policy of codification of national Islamic family law, while customs grow from the living practices of the local community.³² All three present different but complementary legal epistemologies in social practice. These epistemological differences influenced the way they set the age of marriage. Fiqh uses a flexible approach through the sign of puberty, KHI uses a formal legal approach with a certain age limit, while customary emphasizes social readiness. These basic differences are an important foundation in understanding how the three legal systems can dialogue and interact in the reality of Indonesian law.

Another common point emerged in the aspect of protection of children and women. Modern jurisprudence, KHI as state law, and customary practices that have undergone modernization both recognize that early marriage can pose physical, psychological, and social risks. Medical data shows that pregnancy at the age of under 19 increases the risk of complications.³³ Customary people have also begun to adopt this view because social dynamics require more comprehensive protection for children. This suggests that although the approach to ageing is different, its basic conclusions and orientations can meet within the goals of social protection. Thus, harmony between these three legal systems is actually not only possible, but has occurred through cultural and legal adaptation.

However, differences still arise, especially in the aspects of legitimacy and legal authority. Fiqh recognizes the authority of the guardian in determining the suitability of the age of marriage, while the KHI gives authority to the state through the courts to determine whether a person is fit to marry before the age limit.³⁴ Customary often places extended families and traditional leaders as the main decision-makers. These differences in legal actors affect the dynamics of case settlement, especially when marriages are carried out underage. When there is a conflict between customary decisions and formal age limits, state law takes precedence, while modern jurisprudence tends to follow state decisions for the sake of profit. This configuration

³² Rahmawati, N. (2020). Application of Marriage Dispensation in Religious Courts. *Journal of Religious Justice*, 8(2), 11–230.

³³ Ministry of Health of the Republic of Indonesia. (2021). *Adolescent Reproductive Health Profile in Indonesia*. Jakarta: Ministry of Health.

³⁴ Zainuddin, M. (2019). Legal Pluralism in the Indonesian Marriage System. *National Journal of Law*, 8(2), 201–220.

shows the importance of synchronization of legal actors within the framework of Indonesian legal pluralism.

Thus, comparative analysis shows that *fiqh*, KHI, and customs have different but complementary philosophical foundations. All three are equally oriented towards the protection and well-being of the family, although they use non-identical indicators of maturity. These differences are not obstacles, but the distinctive wealth of Indonesian law that is rooted in pluralism. This legal pluralism is what encourages the development of progressive legal thinking that does not only rely on one source of law, but pays attention to the cultural, religious, and developmental contexts of the times. This is an important basis for formulating a stronger legal harmonization mechanism.

b. Conceptual and Practical Problems in Determining the Age of Marriage

The biggest problem in determining the age of marriage is the insynchronization between classical *fiqh* norms, formal provisions of KHI, and customary law practices. Classical jurisprudence does not provide a numerical age limit, KHI provides a formal limit of 19 years, while customs do not recognize age limits and assess social maturity more. This inconsistency poses conceptual problems when underage marriages occur based on custom, but collide with state law. For example, there are cases in some areas where families marry children based on customary readiness, but state registries refuse to do so. Tensions like this show that legal pluralism requires a stronger harmonization mechanism to avoid vacuums or clashes of norms.

On a practical level, another challenge arises in the implementation of the marriage dispensation. Although the KHI and the law have tightened the rules, some courts still grant dispensations on the basis of economic, social, or pregnancy reasons. This situation poses a dilemma, as dispensation can be a loophole that allows early marriage to continue. In addition, differences in judges' interpretations also cause inconsistencies in decisions between regions. In one area, dispensation is very strict, but in another it is relatively easy to grant. This inequality creates the problem of legal uncertainty and shows that the socialization and training of judges still need to be strengthened so that child protection policies are more consistent.

Another problem arises in the relationship between customary law and state law. Indigenous peoples who still practice early marriage often conflict with state officials when they want to register marriages. In some cases, the couple has been customarily legal, but cannot obtain state administrative recognition because they have not met the age limit. As a result, the legal status of marriage, inheritance rights, and children's birth certificates become problematic. This situation shows that the public's understanding of state rules is still low, or that state laws are not accommodating to customary realities gradually. These two things are practical problems that need to be solved.

In addition, religious problems arise when some people understand the age of puberty in *fiqh* as an absolute basis that prevents the acceptance of the formal age limit of the state. When classical jurisprudence is used as an excuse to marry a child after

puberty, then the rules of the state are considered to be contrary to religion. In fact, contemporary jurisprudence has provided a wider space for interpretation. This disharmony of understanding is the source of conceptual conflict between public views and government policies. Modern legal counseling and fiqh education are important so that the public understands that the age limit of the state is not contrary to religion, but is a form of protection.

Overall, the problem in determining the age of marriage is a combination of conceptual, implementive, and socio-cultural issues. Indonesian legal pluralism enriches the framework of understanding but at the same time poses challenges in the harmonization of norms. Therefore, a cross-law approach involving religious authorities, state institutions, and customary leaders is needed so that policies on the age of marriage are not only normative, but also socially acceptable. The tension between religious, customary, and state laws must be resolved through a legal dialogue that is sustainable and responsive to the conditions of society.

c. Legal Harmonization as a Solution to Differences

Legal harmonization is needed to overcome the insynchronization between fiqh, KHI, and customs. This harmonization does not mean standardizing all legal principles, but creating a mechanism for dialogue between legal systems. In the context of marriage, harmonization can be carried out through the approach of *maqāṣid al-syarī'ah* which places welfare as the core of Islamic law.³⁵ With this principle, the age limit set by the state can be considered in line with the purpose of sharia, which is to protect the intellect, soul, and posterity. This approach has been accepted by various modern Muslim countries. Thus, harmonization between fiqh and state law can be built through an adaptive reinterpretation of fiqh values.

In the context of KHI, harmonization can be carried out through the revision of articles that have not been adjusted to the amendments to the 2019 Marriage Law. Although judicial practice follows the law, textual harmonization is still needed so as not to cause confusion in implementation. The revision of KHI also needs to consider the development of modern reproductive health science and social studies so that KHI remains normatively and empirically relevant. These efforts can engage scholars, legal academics, and policymakers to create a more comprehensive synchronization between Islamic law and national social needs.

Harmonization of customary law can be done through an inclusive cultural approach. Indigenous peoples need to be given space to gradually adapt their traditional values to state rules. The government needs to provide transitional policies that are not repressive, but dialogical, so that indigenous peoples do not feel that they have lost their cultural identity. In some communities, the strengthening of indigenous leaders as agents of change has succeeded in encouraging people to accept the minimum age of marriage without breaking traditional traditions in extremes. This kind of strategy is very effective because traditional leaders have strong moral authority.

³⁵ Yusuf, M. (2022). Integration of *Maqāṣid al-Syarī'ah* in National Law. *Journal of Islamic Legislation*, 14(1), 77–95.

Harmonization efforts must also involve a more operational legal settlement mechanism. For example, the government can create specific guidelines on customary marriage that are in line with national age limits.³⁶ The guidelines may include customary consultation processes before applying for marriage to the state, or family empowerment mechanisms that consider the moral and economic readiness of the bride-to-be. Thus, customs are still valued as a value system, but they do not contradict state law. This kind of harmonization is important to prevent conflicts between village officials, traditional leaders, and marriage registry institutions.

Overall, legal harmonization is not an attempt to force uniformity, but creates an integration of values between religions, customs, and the state. The three legal systems need to be understood as a source of social legitimacy that can enrich people's understanding of maturity and child protection. When harmonization is carried out through constructive dialogue, differences are no longer an obstacle, but rather a potential to create a more humane, progressive, and contextual national family law. Thus, legal harmonization is a strategic solution in uniting religious practices, customary traditions, and national rules that are oriented towards the common good.

D. Conclusion

Based on a study on the comparison of marriage ages in Islamic Fiqh, the Compilation of Islamic Law (KHI), and Customary Law in Indonesia, it shows that differences in perspectives arise due to differences in the basic epistemological context, social context, and the purpose of community protection. Classical Islamic jurisprudence is oriented towards the signs of puberty and the ability to bear moral burdens, so it does not set a specific numerical age. KHI as a product of national law with a *maqāṣid asy-syarī'ah* approach sets an age limit of 19 years for men and women for the sake of child protection, gender equality, and legal certainty. Meanwhile, customary law is flexible and follows local values that emphasize social balance, family responsibility, and a person's social-emotional readiness. This difference in views does not show normative contradictions, but rather a variation in legal approaches in adjusting to the needs of society. The overall perspective shows that the age of marriage is not only a biological issue, but also related to psychological, social, economic, and protection aspects of the younger generation. Therefore, the harmonization of the three legal systems is important to create a fair, humane, and benefit-oriented marriage practice. Synchronization efforts can be carried out through legal education, strengthening the value of child protection, women's empowerment, and cultural dialogue that respects local wisdom without ignoring the principles of justice and equality.

³⁶ Rasyid, A. (2020). Fiqh Reform in the Modern Era. *Journal of Sharia and Law*, 5(1), 33–48.

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