



## **Dissenting Opinions about the Tafsir of Islamic Law for Early Marriage in Indonesia**

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### **Abstract**

There have been different interpretations among scholars about changes to the marriage law regarding the prohibition of early marriage (i.e., before the age of 19). Some

believe that this provision is in accordance with religious guidance, while others believe that religion does not prohibit early marriage. This is due to differences in the interpretations among scholars about the provisions of baligh, the ability to marry, the purpose of marriage, and the practice of the Prophet's marriage. This study therefore aims to answer three questions: (a) How do scholars interpret early marriage? (b) What is the basis used by scholars for early marriage? (c) What solutions do scholars offer for the occurrence of early marriage? This study used a qualitative method that relied on field data from several informants, with this being then analyzed through two stages, namely Huberman analysis and interpretation. This study concludes that the different interpretations of scholars about early marriage can influence the legal provisions for the minimum age for marriage and can even provide religious, cultural, and legal legitimacy. Solutions therefore need to focus on youth education, da'wah, prosecuting violations of early marriage rules, and imposing appropriate sanctions.

### **Keywords**

early marriage, minimum age limit in law, varying interpretations.

### **Introduction**

There have been various interpretations among scholars about the prohibition of early marriage, namely the marriage of a person, both formal and informal, before adulthood (Gastón et al., 2019). The interpretations among scholars for the minimum age for women to get married range from 16 to 19 years (RI, 2019). This is reflected in the Constitutional Court's (MA) rejection of increasing the minimum age for marriage, something that was supported by the Indonesian Ulema Council (MUI), which considered 16 to be sufficient given that in Islamic law, there is no minimum age for marriage. According to the MUI, baligh in Islam can be as little as 9 years, as marked by the onset of menstruation in women and nocturnal emissions (ihtilam) in men, but it can also be considered as 15 years old. For the MUI, the age of 16 can therefore be considered baligh (Princess, 2015). At this time, after raising the minimum marriage for women from 16 to 19, there has been a several-fold increase in early marriages, as shown in Table 1.

Thus far, studies into early marriage have tended to look at three things: First, the factors that cause early marriage have been studied by Handayani (2014), Arimurti (2017), Windiarti (2018), Muntamah et al., (2019), and Corno et al., (2020). Second, the negative impact of early marriage has been researched by Ahmed et al., (2013, 2014), Akhiruddin, (2016), Arimurti (2017), Muhith et al. (2018), and Maudina (2019). Third, early marriages in several countries and the legal logic for them has been studied by Horii (2021), Rumble (2018), and Mcdougal (2018). The above three research streams demonstrate how early marriage is seen as a single problem, whereas in reality it involves many aspects that previous studies have tended to not consider carefully.

Table 1. Marriage dispensation requests in several Indonesian courts

COURT	Number of request January– July		Increase by (times)	Reference
	2019	2020		
Nganjuk Religious Court, East Java	45	274	6.1	(PA Nganjuk, 2020)
Rembang Religious Court, Central Java	23	155	6.7	(PA Rembang, 2020)
Siak Sri Indrapura Court, West Sumatra	12	51	4.3	(PA Siak, 2020)
Maros Court, South Sulawesi	17	105	6.2	(PA Maos, 2020)
Average			5.8	

Early marriage always involves the issue of prohibition, and the interpretation behind such prohibitions can determine the attitudes adopted by community groups. Thus far, studies have tended to consider this phenomenon from a legal aspect, such as Ariany’s (2017) research, which concluded that most Maliki scholars understand the minimum age for marriage to be the beginning of menstruation for women and 17 or 18 years for men. According to Hanifah, however, the minimum age for marriage is 17 years for women and 18 or 19 years for men, while for Syafii, according to Asrori (2015), the minimum age is 15 years for men and 9 years for women. For Hanbali, both boys and girls need to be at least 15 years old.

Such different opinions for the concept of baligh has resulted in some scholars considering the prohibition of early marriage as something that is in line with Islamic teachings, while others see it as something that is not in accordance with Islamic teachings. This research complements the shortcomings of previous studies that failed to pay attention to the multifaceted nature of the problems related to early marriage.

### 1.1. Research Questions

This study is concerned with the “differences” when the ulema interpret whether the prohibition of early marriage is appropriate, so the following research questions were formulated:

- Q1. What are the interpretations of scholars about early marriage?
- Q2. What is the basis used by scholars for early marriage?
- Q3. What solutions do scholars suggest to address early marriage?

Answering these three questions will make it possible to understand the rationale used as the basis for accepting or rejecting early marriage, which can be legitimized through religious doctrine and dispensations for special cases.

## 2. Literature Review

### 2.1. Early Marriage

Several definitions for early marriage emphasize it as occurring before 19 or 18 years of age. Early (child) marriage is typically defined by international organizations as a marriage or informal union in which one or both parties are under 18 years of age (Girls Not Brides, 2018a). Likewise, UNICEF has stated that the minimum age for marriage is 18 years (UNICEF, 2005; Equality Now, 2014; Evenhuis & Bakar 2014). The International Human Rights Conventions also use the same legal standard for marriageable age, and Indonesia is one of the countries that have ratified these conventions. Although it still has a long way to go, Indonesia has raised the minimum age for marriage for women from 16 to 19 years with the enactment of RI Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage, Article 7 (1) (RI, 2019). Any marriage that does not comply with this rule (i.e., being at least 19 years) is an early marriage.

When marriage occurs at an early age, it is difficult to achieve the goals of marriage as stated in the Quran. There are at least six such goals, namely (1) worship (Hadith), (2) gaining energy and love (Al-Rum: 21), (3) fulfilling biological needs (al-Mu'minin/23:5-7), (4) continuing the lineage (al-Nahl/16:72), (5) protecting each other (al-Baqarah/2:187), and (6) building a family educational institution (al-Tahrim/66:6) (Naqiyah, 2012). These goals are not easily achievable when one or both of the partners are still young. Some research even shows that, among other places, in Northwest Tanzania, marriage is seen as a tool for raising one's social status, increasing the chances that existing regulations are ignored and creating the potential for poor welfare outcomes (Schaffnit et al., 2019). This is corroborated by research for Sub-Saharan Africa, which has shown a correlation between early marriage and poverty (Otoo-Oyortey & Pobi, 2003), poor health, and increased child mortality (Groot et al., 2018). In turn, the perceptions of adolescent children in Kosovo have been found to have a negative impact not only on health and social interactions but also on further studies at college (Duraku et al., 2020). Thus, it seems clear that realizing the goals of marriage is challenging in an early marriage.

### 2.2. Changes in the Legal Age Limit for Marriage

There was an increase in the minimum age for women to marry in Indonesia with Law No. 1 of 1974 concerning marriage, with it becoming 16 years. Later, in Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage, Article 7 (1) states: "(1) marriage is only permitted if a man and a woman reach the age of 19 (nineteen years)" (2019). However, in paragraph 2, it states that "(2) In the event of a deviation from the age provisions as referred to in paragraph (1), the parents of the male and/or female parents may request a dispensation from the Court on the grounds that it is very urgent, accompanied by sufficient evidence" (RI, 2019).

Thus, even though the latest 2019 law increased the minimum marriage age from 16 to 19 for women, the law provides the opportunity for the parents of both parties to apply for a dispensation to marry below the minimum age of 19 (i.e., child age). This is in line with the research of Arthur et al. (2018), which found that many countries around the world have loopholes based on parental consent and customary and/or religious laws that create opportunities to bypass the legal minimum age for marriage. In addition, Arthur et al. (2018) found that there were still discriminatory legal provisions for marriage that work to the detriment of women.

With Indonesia's 1974 law, the minimum age for women to marry was 16 years, which is the same as in Egypt, Libya, Malaysia, Pakistan, and South Yemen. At the same time, the minimum age for men to marry was 19, which was the same as Tunisia (Asrori, 2015). However, anyone aged under 18 is considered a child, so several organizations—such as the Child Rights Monitoring Foundation, the Indonesian Women's Coalition, and others concerned with women's rights—have demanded that the Constitutional Court raise the minimum age for marriage from 16 to 18.

The Indonesian Women's Intellectuals Congress (KUPI) held on 23–27 April 2017 in Cirebon recommended increasing the minimum age for marriage through a judicial review of the Marriage Law, with several arguments being put forward for this: i) health, ii) conflict with several regulations including the human rights conventions, children's rights, the elimination of all forms of discrimination against women, the Convention on the Rights of the Child (Sudirman Nasir, 2017), and the Child Protection Act. Thus, any person who is married under the age of 18 is considered a child bride or groom, and this goes contrary to the Child Protection Act.

### **2.3. Differences in Tafsir**

There are various opinions among commentators about what the minimum age for marriage should be. First, some commentators—such as al-Tabari (Al-Tabari, 2000), al-Suyuthi (Suyuthi, Al-, nd), and Ibn Kathir (Ibn Kathir, 1999)—state that the minimum age (baligh) is 15 years. This view is supported by the majority of the ulema, such as al-Zuhaili (Al-Zuhaili, 1985). Second, al-Alusi (al-Husaini Alusi, Al-, 1415) and Abu Hanifah, as quoted by al-Zuhaili (Al-Zuhaili, 1985), state that it is 17 or 18 years old. Third, Ibn Hayyan quoted al-Nakhaiy as stating that it is 25 years old (Ibn Hayyan, 1420). The diverse views of the commentators derive from different bases or different interpretations for the word baligh.

At least two sources are used by commentators (fuqaha) to define limits for marriage, namely the Quran and Hadith. First, some verses of the Quran talk about adulthood relating to having the skills and ability to manage property and thus being old enough to get married (QS al-Nisa/4:6). The Quran also talks about the purpose of marriage being to achieve *sakinah* (tranquility), *mawaddah* (love), and *rahmah* (compassion) (QS al-Qur'an-Ruum/30:21). Second, the Hadith talks about

the marriage of the Prophet to Ayesha: "...the Prophet married me when I was 6 years old. And he gathered with me when I was 9 years old" (Al-Bukhari, 1422, vols. V, 56; Hujjaj, nd, vols. II, 1039, no. 1422; Chaudhry et al., 2012). The Hadith of the Prophet also mentions the recommendation of marriage to people who are able to marry (Al-Bukhari, 1422, vols. VII, 3, no. 5065; Hujjaj, nd, vols. 2, 1018, no. 1400). The interpretation of the various above foundations has been a factor behind the differences of opinion among scholars.

### **3. Methods**

#### **3.1. Design**

This study applied a normative legal research design (Vranken, 2011; Watkins et al, 2013). Normative research is also referred to as doctrinal or non-empirical research, and it is a type of research where the subject material for the research is sourced from existing material, such as books, articles, statutes, judgements, and so on. This research was carried out based on a legal proposition by analyzing the existing statutory provisions and case laws to identify legal rules, principles, and doctrines to address the legal issue at hand. The results of such a study of law come in the form of arguments, theories, or new concepts to address the problems faced (Vranken, 2011). Normative legal research in this study is based on the understanding that law is prescriptive and applied, and jurisprudence always relates to what should be, so the methods and procedures for research in the natural and social sciences cannot be applied in legal studies. Normative legal theory is concerned with the ends and justifications for the law as a whole and particular legal rules (Watkins et al, 2013). To analyze the data, this study applied the content-based analysis of Wildemuth and Zhang (2009) and the interactive qualitative data analysis of Miles et al. (2014).

#### **3.2. Informants**

Nine people were selected as informants for this study, with each representing an outstanding Islamic organization in Banyumas. Each informant was a senior Islamic scholar with expertise in Islamic Law. The informants included Banyumas scholars from NU, Muhammadiyah, and Al-Irsyad backgrounds. These three organizations were chosen because they have a large following in Banyumas, and each participant was invited to demonstrate how the ulema can significantly contribute to interpretation.

#### **3.3. Data Collection**

The research process lasted two months, starting with a desk review and interviews. Before the field research was conducted, various secondary materials, including online news and written materials from previous studies, were collected to map the differences that occur at the text level. Interviews with informants were

then conducted initially at a physical location after obtaining prior approval, while subsequent interviews were conducted online using WhatsApp.

### **3.3.1 Interviews**

Interviews were conducted with the nine informants in different places: three in the participants' offices and six at their homes. The researcher met each informant upon gaining that person's approval. Each interview took approximately 30–45 minutes. The focus of the interviews was how the Quran could be used as a basis for defining marriageable age. Furthermore, the informants also described the role of the Hadith in supporting the Quranic verses. Of the nine informants, eight clearly explained how the Quranic verses served as the legal basis for law, but one had no opinion. Of those eight informants, four had dissenting opinions about tafsir in the Quran. During the interview process, the researcher took field notes and recorded the interview dialogues. To achieve this, the researcher received help from a research assistant. After each interview, the research assistant transcribed verbatim the recording. Once the transcript was available, the researcher found that some statements or facts needed reconfirmation to check their accuracy, so the researcher contacted the relevant informant through conference call and WhatsApp.

### **3.3.2. Document Analysis**

The documents for analysis in this study included marriage law text, Quranic verses related to marriageable age, and court jurisprudence related to underage marriage. Each document was analyzed for its literal meaning for a legal decision on marriage. The researcher identified four concerns regarding the decision: the objective of marriage, legal basis provided by the Quran, the legal basis in normative law, and legal basis from the sociology of law.

### **3.4. Data Analysis**

The data for this study were analyzed through content analysis based on the work of Zhang and Wildemuth (2016, 2009; Hsieh & Shannon, 2005) and the interactive model analysis of Miles and Huberman (200). The content analysis started by (1) converting numeric and textual data into narrative data; (2) determining themes and units of analysis that were relevant to the research questions; (3) determining the coding system and applying it to all data, with revisions being made if themes were not matched; and (4) selecting final themes and units of analysis after verification (Zhang & Wildemuth, 2016, 2009; Hsieh & Shannon, 2005). In addition, a general analysis adapted from the work of Miles et al. (2014) involved three steps of analysis: data reduction, data display, and data verification and conclusion drawing. Data reduction involved simplifying, categorizing, classifying, and sorting the entire data to yield a smaller set of data that was relevant to research questions. Data display then provided a summary

and synopsis based on the themes in the field findings. Data verification and conclusion drawing started by analyzing interpretively, beginning by restating the data found, describing it to find patterns or trends in the data, and finally interpreting it to uncover the meaning of the collected data.

## Results

### RQ 1 Differences in scholars' interpretations about early marriage

To answer the first research question, the results of the interviews were thematized into three areas. First, the current law stipulates the minimum age for marriage as 19 years. Second, this age limit provision does not conflict with sharia law. Third, the minimum age limit of 19 years has been perceived as being in agreement with fiqh. The suitable age is often not a standardized age for a minimum marriage threshold but rather based on physical and psychological readiness.

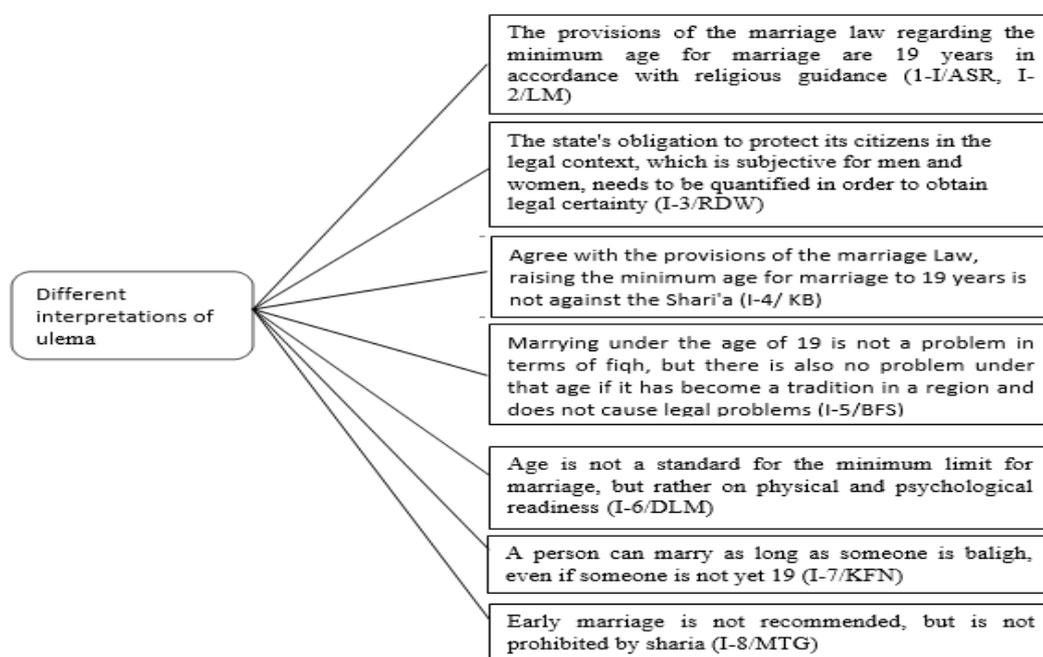


Figure 1. Differences in scholars' interpretations about early marriage

There are different views among scholars about early marriage in Indonesia. However, the current marriage law sets a minimum age for marriage of 19 years. The first informant stated this:

(1) Neither in the Quran nor in the Hadith is there a stipulation of age when it comes to marriage. There are provisions for *istitha'ah* [ability] and *al-ba'ah* [married]. What is meant by these two words is the ability to carry out the rights and obligations implied by the marriage contract, which includes physical (i.e., material, biological, and living) and non-physical abilities, which are for men to be husbands and fathers and for women to be wives "who serve their husbands" (not to be understood in sexual terms) and a mother to take care of children (I-1/Asr).

### **Something similar was conveyed by 1-2/LM**

(2) There is no specific age requirement for when it is time for someone to get married. However, in several verses and Hadiths, there are guidelines that can be used as a basis for thinking that people who are getting married must be ready, worthy, and able, so that the purpose of marriage as *litaskunu ilaiha* (achieving tranquility) and *mawaddah* (love and mercy) is achieved. The new law states a minimum of 19 years for people to get married in order to have good outcomes.

### **Furthermore, 1-3/Rdw reinforced this view**

(3) There is no certainty about age in the text of the Quran or Hadith. Historically, the Prophet did this with Ayesha, but indirectly as husband and wife, giving the message that Ayesha was not ready to reproduce. The minimum age requirement in marriage needs to be understood as readiness to carry out reproductive activities. Furthermore, based on the interpretation of several traditions of the Prophet, there are two indicators related to puberty: 'Akill is intellectual maturity, while *naligh* is biological, meaning menstruation for women and wet dreams for men. However, beyond the scope of the law is to have the ability to distinguish good and bad, which is called *tamyiz*. Biologically, menstruation and wet dreams are subjective measures, so they need to be scientifically confirmed. For subjective legal purposes, it needs to be quantified so as to obtain certainty. If the state reaches a certain decision about age, 19 years for example, it of course goes through a reset, which is then promulgated. This provision fulfils the state's obligation to protect its citizens in addition to serving a legal purpose by replacing subjective quantification, such as menstruation for women and wet dreams for men, in order to obtain legal certainty (1.3/Rdw).

### **In addition, I-4/KB said**

(4) The age limit provision does not conflict with sharia. In Islam, there is no age limit, but in the government's view, early marriage has many disadvantages, so the government may regulate it as long as it does not conflict with sharia. Making rules to avoid so much negativity from 16 to 19 years for women I agree with, and it is true that the maturity of these children who want to get married increases.

Second, although some informants thought that there was no problem with the minimum age limit for marriage, they also did not reject the occurrence of early marriage because it also did not conflict with religious provisions. This was conveyed by several informants:

(5) There is no problem with the minimum age limit of 19 years for marriage. Likewise with minors, if it has become a tradition in an area and does not cause problems, there is no problem in *fiqh* (1.5/Bfs). Age is not a standard for a minimum marriage threshold but rather the physical and psychological readiness

(1.6/Dlm). It is permissible to marry as long as you are of age, even though you may not yet be 19 (1.7/Kfn). Early marriage is not recommended, but it is not prohibited by sharia (1.8/Mtg).

To strengthen the different interpretations of scholars about early marriage based on interviews with the following informants, informant I-1/ASR stated:

(6)Both in the Quran and Hadith, there is no age requirement for marriage. There are provisions for *istitha'ah* (ability) and *al-ba'ah* (married). What is meant by these two words is the ability to carry out the rights and obligations implied by the marriage contract, which can include physical (i.e., material, biological, and living) and non-physical, which is for men to become husbands and fathers and for women to be wives "serving their husbands" (not to be understood in sexual terms) and a mother to take care of children.

#### **Informant I-2/LM stated**

(7)It is said that the Prophet become betrothed to Aisha when she was only seven years old and later married at the age of 9 years. So, say there is no specific age requirement about when someone gets married. However, several verses and hadiths can be used as a basis for concluding that married people must be ready, appropriate, and able, so the *litaskunu ilaiha* can function. After that, Allah made love and compassion. The provisions of the new law stipulate that the minimum age for both males and females is 19 years, so that when people get married, they have what is needed to have good offspring.

#### **Informant I-3/RDW stated**

(8)There is no certainty about age in the text of the Quran or Hadith. Historically, the Prophet did it with Ayesha, but they also did not directly associate like husband and wife. This implies that the Prophet was actually fully aware that she was not ready to reproduce, so it needs to be understood backwards. This fact actually gives the message that it cannot be used as an indication, because the Prophet did not have a biological relationship. By using the *maqashid sharia* approach, or *dilalah al-isyyarah*, to get an indirect understanding, it can be approached from the side of something that should be avoided, namely related to reproductive health, so impact testing will do something that has yet to be returned to the standard. For example, if a person is considered an adult when he reaches a certain age, the age limit requirement on that aspect is considered sufficient to carry out reproduction activities, which is not always positive. Next, if, for example, based on an interpretation of the Hadith of the Prophet, there are two indicators of *akil* [intellectual maturity]. Biologically, women menstruate and men have wet dreams, so they are considered *baligh*. But the scope of the law also has the ability to distinguish between good and bad, which is called *tamyiz*. Biologically, menstruation and wet dreams are subjective measures, so they need to be

scientifically confirmed. For subjective legal purposes, it needs to be quantified so as to obtain certainty. If the state reaches a decision on a certain age, (e.g., 19 years), it goes through a reset, which is then promulgated.

**Informant I-4/KB stated**

(9) In Islam there is no age limit, but in the government's view, there are many disadvantages. The government may regulate as long as it does not conflict with sharia. Making rules to avoid so much negativity from the previous age of 16 to 19 years for women I agree with, and it is true that the maturity of these children who want to be married increases.

**Informant I-5/BFS mentioned:**

(10) There is no problem in terms of fiqh for marriage for those who are able, not in terms of age but ability (physical, mental, and financial). Getting married depends on each tradition, as well as the biological condition of each prospective party, and it does not cause problems in itself.

**Informant I-6/DLM stated**

(11) The age limit is not explicitly stated in the Quran and Hadith. The Prophet married Ayesha when she was six years old. When the wife's role is to take care of her children, age is not absolute. When taklif for women is menstruation, it is very volatile. When referring to the letter al-rum/30:21, the purpose of marriage is to realize the Sakinah family, mawaddah wa rahmah, and this reflects not only the age required but the maturity and ability to lead a noble marriage. Taking care of a husband's property and children, being a good life partner, and making a sakinah mawaddah wa rahmah household requires its own ability. Age is not the standard. Physical and psychological readiness is very necessary. Preparing people like this is not easy, and it takes an education process.

**Informant I-7KFN said:**

(12) You can get married as long as you are of age, even though you may not yet be 19. At the age of 30, an idiot who is not yet mature is not allowed to marry, and early marriage is the result not the cause. The causes of early marriage are a lack of sex education, excessive pornography and promiscuity, a lack of guidance about faith and religious values, and a lack of attention and affection from parents and family.

**Informant I-8/MTG stated**

(13) Early marriage is not recommended, but it is not prohibited by sharia based on the arguments. The purpose of marriage is to live a more peaceful, more focused life and produce offspring. Marriage requires mental, physical, scientific,

material, and psychological maturity, so that partners can manage their emotions when having a family and relate socially with the community.

From the excerpts above, there are clearly differences of opinion. First, the provision in law for the minimum marital age is 19 years, and this is in accordance with religious guidelines (1.1/ASR and 1-2/LM). This reflects the state's obligation to protect its citizens, and it also serves a legal purpose by overriding subjective quantification (such as menstruation for women and nocturnal discharges for men) and enabling legal certainty (1.3/RDW). Second, the minimum age provision does not conflict with sharia (1.4/KB). Third, while there is no problem with the minimum age limit of 19 years, there is also no problem with minors getting married if the practice has become a tradition in an area and does not cause any problems, so it is okay in fiqh (1.5/BFS), because the minimum standard for marriage is not based on age but rather on physical and psychological readiness (1.6/DLM).

## **RQ 2. The basis of marriage used by scholars**

### **The bases of marriage used by the Ulama**

The bases (dalil) used by scholars to define early marriage varies. First, among these are the verses of the Quran that suggest that the ability to marry is analogous to being able to take care of property: "And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgement, release their property to them..." (see Q.S. al-Nisa '4:6) (I-1/Asr). Second, the Hadith contains a recommendation of marriage for those who can afford it: "O young men, those among you who can support a wife should marry..." (see Sahih Muslim/2/1019, no 1400). Ability in this context needs to be understood as being able to carry out the obligations of the marriage contract (I.1/Asr). The Hadith is also used as a basis by I.2/LM and Hn. Third, another verse of the Quran contains a command to marry for unmarried people: "Marry those of you that are single, (whether men or women), and those of your male and female slaves that are righteous. If they are poor, Allah will enrich them out of His Bounty. Allah is Immensely Resourceful, All-Knowing." (Q.S. 24:32). This was cited by I.2/LM, I.3/Rdw., and I.4/KB. Fourth, there are some verses about the purpose of marriage for achieving sakinah, mawaddah, and mercy (Q.S. 30:21 and 24:32). These were cited by I-2/LM, I.3/Rdw, and I.6/Dlm.

In addition, several arguments are used as the basis for marriage at an early age, such as the verse Q.S. 65:4:

(14)And those who no longer expect menstruation among your women—if you doubt, then their period is three months, and [also for] those who have not menstruated. And for those who are pregnant, their term is until they give birth. And whoever fears Allah—He will make for him of his matter ease.

The verse describes the iddah of divorce. Talak is not possible if there is no marriage, and iddah talak is not possible if the wife is not yet in a relationship (I.8/Mtg). The following verse talks about marrying an orphan (Q.S. 4:3)

(15)And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice].

Aisha RA interpreted the verse in same way as I.8/Mtg when asked by 'Urwah bin Zubair about what an "orphan" is, such that it is someone who has not yet reached puberty, but the Hadith of Aisha allows marrying an orphan when explaining the verse, showing that marrying a female who is an orphan, and therefore not yet sexually mature, is allowed (Al-Sunnah, narrated by Bukhari Muslim). Aisha RA said: "The Messenger of Allah married me at the age of 6 years and had sexual relations with me at the age of 9 years." This indicates that it was permissible to marry a minor. In addition, it was agreed upon by Ahlul 'ilm, Ibn Mandzur, Ibn Battal, Ibn Qadamah, Nawawi, Ibn Hamam, Al Mahdi, Ibn Hajar, Ibn Hirrah, Ibn Rusd, and others that it was permissible to marry underage on the condition that the one who marries is the father. Next, the actions of friends Abu Bakr, Umar Ibn Khattab, Ali bin Abi Talib, Zubair, and Ibn Mas'ud, Qadamah allowed fathers to marry off their young children. For example, Abu Bakr married off his daughter Aisha to the Messenger of Allah, while Ali ibn Abi Talib married off his daughter Umi Kulsum to Umar ibn Khatthab. Based on the arguments in the Quran, Al-Sunnah, and Ijma' (2-8/Mtg) mentioned above, it would appear child marriage is legal under sharia.

The objective of marriage is to achieve a prosperous life through *sakinah*, *mawaddah*, and *warahmah*.

The bases of the arguments used by scholars in this case are summarized in Figure 2.

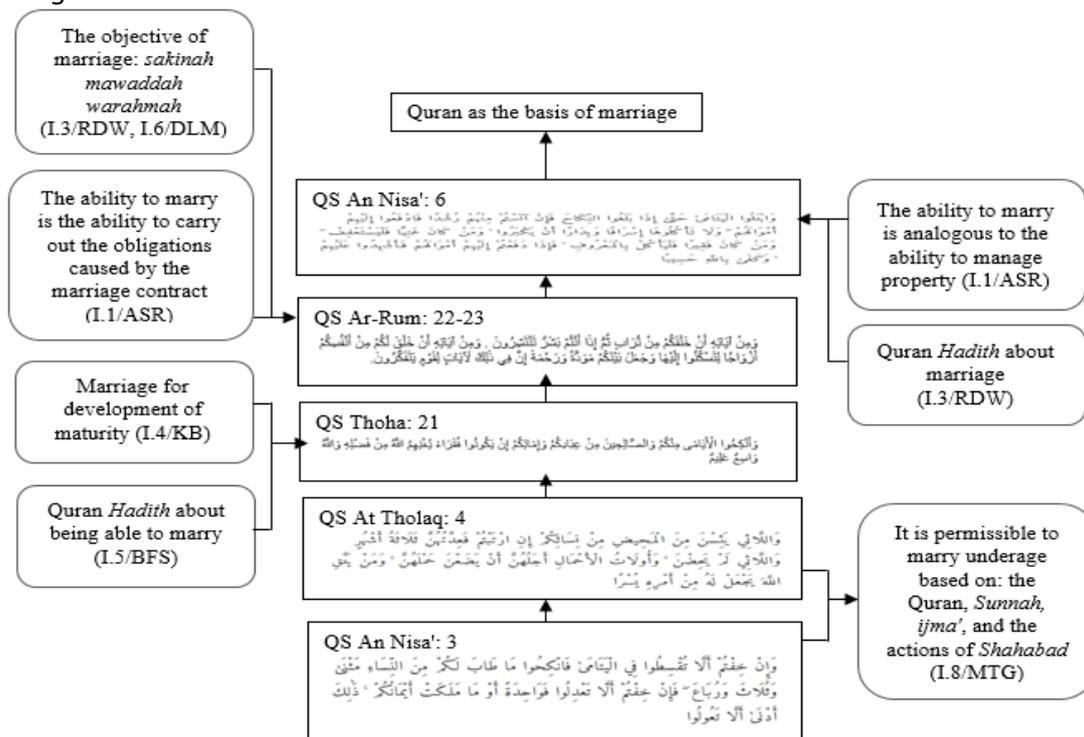


Figure 2. The bases in scripture used by scholars to define marriage

From Figure 2 above, it appears that scholars base their interpretations of early marriage on several grounds. One foundation make the ability to marry analogous to being able to take care of property (QS 4:6), another recommends marriage for those who can afford it (Hadith), while one talks about purpose of marriage (QS 30:31). There is also the Sunnah of the Prophet, who married Aisha at a young age (Hadith), the behavior of His friends, and ijma'. These foundations are interpreted in various ways, however: First, the ability to marry is made analogous to being able to cultivate property and fulfil the obligations of the marriage contract in terms of the purposes of marriage (sakinah, mawaddah, and rahmah). Second, the Prophet's marriage to Aisha is understood on the one hand as a basis for allowing marriage at an early age, but on the other hand, it is implicitly understood otherwise because the Prophet did not immediately engage in intercourse with her.

### **1. The ability to marry is analogous to the ability to manage property.**

#### **(16) QS 4/Annisa-6**

Put the orphans to the test until they reach the age of marriage; then if you find in them sound judgment, release to them their property and do not consume it extravagantly and hastily, lest they grow up (take their property back) and if (the guardian) is rich, let him be honest (let him abstain altogether), but if he (the guardian) is poor, let him eat reasonably based on the customs. Then when you release their property to them, take witness in their presence; and Allah is All-Sufficient as Reckoner. (6)

2. The ability to marry means being able to fulfil the obligations of the marriage contract.

#### **(17) QS 30/A-Rum-22**

And it from His Signs that He had created the heavens and the earth and your tongues and colors are different. Most surely there are Signs (proofs) in this for the scholars. (22)

#### **(18) QS 30/Ar-Rum-23:**

And it is from His Signs that you sleep at night and seek His Virtue by day. Most surely there are Signs (proofs) in this for people who hear. (23)

#### **(19) QS 20/At Taha-21**

(Allah) said: "Take hold of it and do not fear! We will restore it to its former state." (21)

### **3. Marriage for the development of maturity.**

#### **(20) QS 65/At Tolaq-4**

And if you become suspicious of your women who have despaired of menstruation, then their prescribed time is three months, and of those too who have not. The waiting time for the loaded (pregnant) women is until they lay down their burden (give birth). And whoever becomes the owner of piety towards Allah, (Allah) makes easy for him his affair. (4)

4. It is permissible to marry underage females based on the Quran, Sunnah, ijmah, and the actions of friends.

#### **(21) QS 4/Annisa-3**

And if you fear that you shall not be able to deal justly with the orphans, then marry two, three, four (other permissible) women that you like; but if you fear that you will not do justice (between them), then be pleased with (concubines) that you have with you. That is more appropriate for you not to part from justice. (3)

### **RQ 3. Solutions to early marriage**

The scholars conveyed several solutions to the problem of early marriage. Informant 1/Asr spoke about a solution as follows:

(22) Promote Law No. 16 of 2019, because not many people know except academics and practitioners in court. Educate, because marriage is a marriage contract that is different from others—it has heavy, broad, and long-lasting consequences. From a legal normative point of view, there is a need for sanctions. One of the weaknesses of the law is that there is no accompanying sanction, and the existence of a dispensation to accommodate pregnant people before marriage opens up opportunities for early marriage.

**Furthermore, according to informant 2/LM, the solution is as follows**

Successful family education is needed in the form of subjects about the *sakinah* family in high school, at least inserted in the Budi Pekerti lesson. Promote the idea of prosperous families through religious counselors, including BP4 for both pre-marital and post-wedding activities. Develop BP4 for the village or sub-district level in sub-districts and districts, and it needs effective pre-marital education by involving PKK sub-districts, health centers, and the ulama. Educate the public and the youth about the portrait of Islam and promote awareness about reproductive health and religion as a subject matter at the high school level, in addition to through the *da'wah* of religious leaders (I.3/Rdw).

In addition, solutions to minimize early marriage can work through: "strengthening the dissemination and transformation of knowledge, so children fear

Allah and are not wrongful; strengthening students with general knowledge so that they have high level of competence to achieve glory. Amar ma'ruf nahi munkar (enjoining good and forbidding wrong) in the community because of the evils and negativity that exist" (I.4/KB). In addition, "If there is a problem, the law must step in or work" (I.5/Bfs), and "It needs a process, namely education" (I.6/DIm and I.7/Kfn). Meanwhile, "those who are already married at an early age need counseling and assistance from the government, educational institutions, and religious institutions. And those who are not married need to learn about fiqh akhlusy syahshiyah in SMA or KUA, and they need to work together with religious instructors to receive marriage briefings. People should not be allowed to get married before prospective brides are briefed two or three times. If this is facilitated by the government, all the better" (I.8/Mtg).

From the description above, it appears that the solutions offered by the ulema broadly take the form of educating teenagers about marriage through formal and informal education, performing da'wah by religious leaders, providing counseling and assistance for those who already married early, and prosecuting violations due to early marriage falling under the realm of law.

The solutions to early marriage presented in Table 1 are based on the interviews with the informants as follows. It appears that there are several solutions to the problem of early marriage. First, marriage education or training should be provided to teenagers in the curriculum for formal schooling, especially at the high school level. Second, the da'wah of religious figures, such as the KUA cooperating with extension workers, could spread religious knowledge, increase general knowledge, and enjoin good and forbid evil. Third, violations could be processed in the legal realm. Fourth, counseling and mentoring could be offered to those who have already married at an early age.

Table 2. Solutions for early marriage

<b>Solution</b>	<b>Code</b>
1. Promote awareness of Law No. 16 of 2019, because not many people know about it other than academics and legal practitioners. 2. Provide education about marriage, because the marriage contract is different from others and has severe, broad, and long-lasting consequences. 3. From a legal normative perspective, there is a need for sanctions. A weakness of the current law is the lack of appropriate sanctions. 4. The possibility of gaining a dispensation to accommodate accidental pregnancies opens up opportunities for early marriages (3.I/ASR).	1. Promote Law No. 16 of 2019. 2. Provide comprehensive education about marriage. 3. Impose sanctions on those who violate the law.

Solution	Code
<p>1. We need education about achieving a prosperous family in the form of subjects about tranquil families in high school, at least in the Budi Pekerti lessons.2. Promote prosperous families through religious instruction, involving BP4 for both pre-marital and post-wedding activities. Develop BP4 for the village or sub-district level in sub-districts and districts.3. Effective premarital education is needed that involves PKK sub-districts, local health centers, and ulema (3.2/LM).4. Educate the public and youths about the portrait of Islam and promote awareness about reproductive health and religion as a subject matter at the high school level and through the da'wah of religious leaders (3.3/RDW).</p>	<p>Prosperous family education through the curriculum and religious instructions, including pre-marital and post-marital education through BP4, PPK, health centers, and ulema.</p>
<p>1. Spread and transform religious knowledge, so religion is strengthened not marginalized, and people are fearful of Allah without being tyrannical.2. Strengthen general knowledge and competence, so youths can achieve their true glory.3. Promote amar ma'ruf nahi munkar in the community to combat the negative evils that exist (3.4/KB)</p>	<p>Spread religious knowledge                      Improve general knowledge                      Amar ma'ruf nahi munkar</p>
<p>If there is a violation, the law must be seen prosecute it (3.5/BFS).</p>	<p>Violations of the early marriage law are legally processed.</p>
<p>Need a process of education (3.6/DLM).</p>	<p>Education</p>
<p>Education (3.7/KFN)</p>	<p>Education</p>
<p>1. For those who already married at an early age, counseling and assistance should be given by the government, educational institutions, and religious institutions.2. Those who are not married should be taught about fiqh akhlusy syahshiyah in SMA, or the KUA needs to work with religious instructors to provide marriage briefings. A marriage should not take place before the prospective bride is briefed at least two or three times. If this is facilitated by the government, all the better (3.8/MTG).</p>	<p>Counseling and assistance for those already married                      Marriage training through the curriculum in formal schools and the KUA in collaboration with religious instructors</p>

**Informant I.1/ASR stated**

(23)The need is to promote Law No. 16 of 2019, because not many people know of it other than academics and legal practitioners. Education should also be given, because the marriage contract is different from the others, with it having

severe, broad, and long-lasting consequences. From a legal normative perspective, sanctions are needed. One of the weaknesses of the law is that there is no accompanying sanction. The existence of a dispensation to accommodate accidental pregnancies also opens up opportunities for early marriage.

**Informant I.2/LM stated**

(24) We need education in high school for successful families in the form of subjects about peaceful families, at least inserted in the Budi Pekerti lessons. This should be promoted through religious counselors, involving BP4 for both premarital and post-marriage. Develop BP4 for the village or sub-district level in sub-districts and districts. It also needs effective premarital education involving PKK sub-districts, health centers, and Islamic scholars.

**Informant I.3/RDW stated**

(25) Educating the community and the youth about the portrait of Islam and raising awareness about reproductive health and religion should be a subject matter at the high school level and the da'wah of religious leaders.

**Informant I.4/KB stated**

(26) The spread and transformation of religious knowledge should be strengthened, not marginalized, so that people will be fearful of Allah and not tyrannical. Strengthen this with general knowledge and competence, so that it becomes noble. Play the role of Amar ma'ruf nahi munkar in society because of the negative evils that exist.

Informant I.5/BFS stated: "If there is a problem, the law must appear to take action."

Informant I.6/DLM stated. "A process is needed, namely education."

Informant I.7/KFN stated a "need for education."

Informant I.8/MTG stated:

(27) Those who are already married at an early age need counseling and assistance from the government, educational institutions, and religious institutions. Those who are not married need to learn about fiqh akhlusy syahsiyyah in SMA or KUA, or they need to work together with religious instructors to provide marriage briefings. A marriage should not go ahead before the prospective bride attends two or three briefings. If this is facilitated by the government, all the better.

From the above data, there appear to be several potential solutions to the problem of early marriage. First, education or marriage training for teenagers could be provided through the formal school curriculum, especially at the high school level. Second, the da'wah of religious figures and the KUA cooperating with religious instructors could spread religious knowledge, improve general knowledge, and promote good and discourage bad. Third, cases of early marriage violations could be prosecuted in the legal realm. Fourth, counseling and mentoring could be provided to those who have already married at an early age.

## 5. Discussion

This research analyzed the relationship between early marriage and the scholars' interpretations and found that the different scholarly interpretations about early marriage, which are thought to be a solution for family problems and child protection, have no justification. The results of the study shown in Table 1 (i.e., the different interpretations of scholars about early marriage) showed that the different interpretations about the minimum age for marriage could strengthen the tradition of early marriage through religious legitimacy. This is evidenced in the views of some informants who think that there is no age stipulation for marriage in Islamic scripture. What exists instead is the notion of puberty, namely the beginning of menstruation for girls and nocturnal discharges for boys. This agrees with the views of some commentators who understand the concept of *baligh* (adulthood) as enabling people to marry at the age of 15 years, such as al-Thabari (2000), al-Suyuthi (nd), and Ibn Kathir (1999) with the support of the majority of scholars (Al-Zuhaili, 1985).

In addition to religious legitimacy, early marriage is also supported by cultural traditions. Some of the informants stated that there is no problem with early marriage when it has become a tradition somewhere, and this agrees with the conclusions of Arthur et al. (2018), who found that parental consent, customs, and/or religious law provide an opening for someone to marry at an early age. In addition, this study found that the legal provision for the parents of both parties to apply for dispensation to marry under the age of 19 can potentially be abused to legitimize an early marriage. Thus, the existence of these varying interpretations provides religious, cultural, and even legal legitimacy, potentially hindering any reduction in child marriages.

The results of this study also provide an understanding about how the differences in the foundations and interpretations used by scholars to define early marriage, as shown in Table 2, could be used as a basis for perpetuating early marriage in the community. In some religious courts, the average increase in applications for dispensations grew more than fivefold between 2019 and 2020 (as mentioned in the introduction to this paper). This has negative consequences for child health and mortality (Groot et al., 2018), poverty (Otoo-Oyortey & Pobi, 2003; Schaffnit et al., 2019), and reduced opportunities for further study at college (Duraku et al., 2020), thus hindering human development. In addition, a couple married at an early age will find it difficult to achieve the goals of *sakinah*, *mawaddah*, and *wa rahmah* (Naqiyah, 2012).

This study offers solutions for reducing the occurrence of early marriage, as shown in Table 3. These include (a) public education, especially among teenagers, such as through subjects integrated into the high school curriculum. This is in line with the findings of Glynn et al. (2018), who found that early education can reduce teen marriages and improve women's learning. However, this needs to be accompanied by social change through a gender equality lens if early marriages

are to be reduced (Raj et al., 2019). Next, (b) the da'wah content of religious figures could discourage early marriages through various media, so it can be accessed easily by everyone, including women. This was also mentioned by Susilo et al. (2021) as a way to overcome the cultural norms that support the occurrence of early marriage. Furthermore (c), the regulations could be disseminated by religious instructors from the Office of Religious Affairs (KUA), which would be in line with the findings of Mehra et al. (2018) in that multi-component community-based interventions have the potential to reduce early age marriages. In addition, (d) counseling and assistance should be provided by the Advisory Board for the Development and Preservation of Marriage (BP4) for those who have already married at an early age. Finally, (e) cases of early age marriage should be prosecuted and (f) appropriate sanctions applied according to legal norms.

Studies of interpretations for early marriage have revealed various understandings, but these existing studies did not analyze the implications of these varying interpretations for early marriage. This study, in contrast, has shown that the different interpretations from the ulema for early marriage have supported it with religious, cultural, and legal legitimacy.

## **6. CONCLUSION**

It turns out that the varying scholarly interpretations about early marriage can be used to support the recent change in the marriage law, which raised the minimum marriage age for women from 16 years to 19 years. However, they have also supported the legitimacy of early marriage, both religiously and legally, while also creating discrepancies between the religious norms, state law, and international treaties. While previous studies only adopted an objective perspective, this research contributes a subjective perspective, so that the problem can be understood more comprehensively, which in turn allows for more appropriate actions and policies to be formulated. This study was limited to analyzing the opinions of only nine scholars, however, so it is not feasible to generalize the findings. In addition, the adopted qualitative approach has limitations in terms of how far and deep it can look to solve the problem at hand, so it cannot be used to understand the phenomenon completely. Thus, further research is needed to accommodate common cases.

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