

## ***Maqasid Sharia* Perspective in Changes the Marriage Age Limits for Women According to Law Number 16 of 2019**

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### **Abstract**

This study analyzes the changes to Law no. 16 of 2019 on Law No. 1 of 1974 concerning the age limit of marriage. There are various responses in society, socio-cultural clashes and even religion cannot be avoided, where this situation is increasingly difficult to achieve the goal of marriage. This raises the question, why is it necessary to rearrange the age limits for marriage, and what background causes it? This study uses the *maqasid sharia* approach with the System theory of Jasser Auda. This type of research is descriptive qualitative using the *maqasid sharia* approach. The object of study is Law no. 19 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. This study uses secondary data from two sources. First, the primary source is taken from the text of the Law and the Decision of the Constitutional Court. Second, secondary sources such as books, journals, reports, magazines, newspapers, and so on. Then the data are interpreted and analyzed descriptively. The results of this study showed that the determination of changes to the law regarding the age limit for marriage can be classified into the interests of *al-dharurriyah* (primary), which are important and must be fulfilled to achieve the goals of sharia, namely safety. The analysis of *maqasid sharia* with six subsystem features explains that protected interests are closely related, which are related to one another, representing age differences in marriage, which is a form of

discrimination. The scope of the provisions on the age limit for marriage is classified as *maqasid 'ammah*, because it covers all the interests of women in Indonesia. Also, as *maqasid khassah*, legal protection from the fulfillment of basic rights and constitutional rights as citizens. The level of *dharuriyah* does not always have the implication of obligatory *syar'i* (causing sin) but only until obligatory *hukm* (must), because the legal provisions are explored by *mujtahids* and are based on the absence of *qat'y* texts on this issue.

**Keywords:** Changes in the age of marriage; *dharuriyah*; system; *maqasid sharia*

## Introduction

After the amendment to Law Number 16 of 2019 on Law Number 1 of 1974 concerning changes to the marriage age limit for women, at least it gave a new face to the marriage law in Indonesia. After decades, the House of Representatives (DPR) has finally approved the minimum age limit for women equal to men, which is 19 years old.<sup>1</sup>

This step taken by the government is appreciated by many people, especially among scholars and health practitioners who have been complaining about the high number of underage marriages. This amendment to the law is seen as a legal progression toward the concern for the rights of children and women. Where to provide legal protection for children from underage marriages, save the mental health of children from household responsibilities that are believed to be not commensurate with the psychological burden received, and protect the reproductive health of women who are medically considered vulnerable to the risk of miscarriage and death as well as various other medical complications. And various other reasons that agreed to propose amendments to Law Article 7 Number 1 of 1974. However, behind the process of the formation of law, no. 16 of 2019 has a lot of confusion and non-uniformity of concepts from the point of view of the law enforcement court, the proposing group, or the community itself. At least, this raises the question, why does Indonesian law need to re-regulate the age limit for marriage for its citizens?

As it is known that law no. 1 of 1974 has been the ideal Marriage Book for at least 45 years. During this period, all provisions concerning legal matters of marriage can carry out the rules that have been the oldest in the law book. However, the marriage rules for 16-year-old girls and 19-year-old boys encourage many early marriage practices or underage marriage in society. The

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<sup>1</sup> Nahdiyanti, Yunus Ahyuni, and Qamal Nurul, "Implementasi Perubahan Kebijakan Batas Usia Perkawinan Terhadap Perkawinan Di Bawah Umur," *Journal of Lex Generalis* Vol. 2, No. 1 (2021): p. 166.

Council of Foreign Relations stated that Indonesia is one of the ten countries globally with the highest absolute number of child marriages and the second-highest in ASEAN after Cambodia. Data from the March 2018 National Socio-Economic Survey also noted that underage marriages had reached 1,220,900 in Indonesia as of today. Most of the risks are borne by young married couples with risks to reproductive health, psychological burden, and economic capacity.<sup>2</sup>

Several concepts explain the age limit for a teenager, where adolescence is intended as a transition period for a child to the adult stage. For example, the World Health Organization (WHO) states that the age limit for adolescents is 12-24 years, according to the Ministry of Health of the Republic of Indonesia between 10-19 years and have not married yet.<sup>3</sup> Meanwhile, according to the National Population and Family Planning Board (BKKBN) the age group is 10-24 years old and not married.<sup>4</sup> While in the book of the law, no. 16 of 2019 explains that women are 19 years old and men are 19 years old, measured by eligibility for marriage. From this, it can be seen that there is no uniformity in the concept of the age limit for a teenager, both in the eyes of Indonesian law, the Ministry of Health, and the Population Agency. Therefore, it can be accepted by common sense that the age limit for marriage as a legal product that arises from society is based on the accompanying cause and effect in its environment, which has legality and progress.

The case for changing the age limit for marriage was filed (judicial review) in 2014. Still, the case was rejected by the Constitutional Court in the Constitutional Court's Decision No. 30-74/PUU-XII/2014 with no legal grounds.<sup>5</sup> In short, the parties who represent the people referred to in the 18+ coalition have requested the Constitutional Court (MK) to conduct a material review of the Marriage Law no. 1 of 1974 against the 1945 Constitution, which in essence is to increase the minimum age for marriage for women from 16 years to 18 years, accompanied by various evidence, data, witnesses and expert statements.<sup>6</sup> From the opinion developed in the media, many applicants were dissatisfied with the decision, especially from the Indonesian Women's Association (KPI). The application for judicial review of the rules regarding the minimum age limit for marriage also occurred in 2017. Dini, Endang Wasrinah,

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<sup>2</sup> Yuspa Hanum and Tikiman, "Dampak Pernikahan Dini Terhadap Kesehatan," *Journal Keluarga Sehat Sejahtera* Vol. 13, No. 26 (2017): p. 36–43.

<sup>3</sup> Sari E, J Santoso, and Saryono, "Pengaruh Pendidikan Kesehatan Tentang Hygiene Saat Menstruasi Terhadap Pengetahuan Dan Keterampilan Remaja Putri Dalam Merawat Perinum Saat Menstruasi," *Artike Journal: Journal of Perpustakaan*, Semarang 2010.

<sup>4</sup> Ministry of Health Republic of Indonesia, "Pusat Data Dan Informasi." *Health Office of Central Java Province Prijfil Kesehatan Provinsi Jawa Tengah Tahun 2014*, Semarang 2015.

<sup>5</sup> Copy of the Constitutional Court's Descisions No. 33-74/PUU-XII/2014, n.d.

<sup>6</sup> Amaya Azmi, "Batas Usia Minimal Perkawinan (Analisis Terhadap Putusan MK No. 20-74/PUU-XII/2014)," *Makalah Ilmiah*, June 2021.

Maryanti, and Rasminah submit another lawsuit (judicial review) to the Constitutional Court (MK) to annul the provision on the marriage age limit because it was Contrary to article 27 paragraph (1) of the 1945 Constitution.<sup>7</sup> In the Decision of the Constitutional Court Number 22/PUU-XV/2017 dated December 13, 2018, the Court ruled that Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage is inconsistent with the principle of non-discrimination and is Contrary to the 1945 Constitution.<sup>8</sup> Furthermore, the Constitutional Court gave the legislator a maximum period of three years to amend the Marriage Law.<sup>9</sup> Where Commission VIII of the DPR at that time was in charge of religious and social affairs and handled the matter. Finally, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 was ratified and enforced on October 14, 2019.<sup>10</sup>

One of the reasons that developed in the community for underage marriages is that religion does not prohibit underage marriage or limit the age of a person to marry. Islam in its texts, namely the Qur'an and Al-Hadith, does not explain clearly, or in detail the age limit for marriage for Muslim men and women. In Islam, underage marriages carried out by their guardians are classified as permissible (permissible) marriages because there are no rules in Islamic law sources that prohibit underage marriages.<sup>11</sup> Likewise, the jurists do not clearly state the age for a Muslim to marry. But it provides sufficient information on the limit of puberty for a man or a woman. Namely, *bi al-address*, for a man who said he had experienced a dream or out of sperm, while women are marked with menstruation. And *bi al-Sin*, according to Hanafi scholars, namely 18 years old male, and a 17-year-old female. As for Maliki, he argues that puberty is marked by the growth of hair on the limbs. Shafi'i, 15 years for men and nine years for women. And Hanbali argues that both of them have the same limit, namely when they are 15 years old.<sup>12</sup> From this review, it can be concluded that the four madhhab imams have different opinions in

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<sup>7</sup> Mughniatul Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 2, No. 2 (2020): p. 133–66.

<sup>8</sup> Copy of the Constitutional Court's Decisions No. 33-74/PUU-XII/2014, n.d.

<sup>9</sup> Kurniawan M.B, "Politik Hukum Mahkamah Konstitusi Tentang Status Anak Diluar Nikah: Penerapan Hukum Progresif Sebagai Perlindungan Hak Asasi Anak," *Journal HAM* Vol. 1, No. 8 (2017): p. 67–78.

<sup>10</sup> Waqiah S. Q, "Diskursus Perlindungan Anak Perempuan Di Bawah Umur Pasca Perubahan Undang-Undang Perkawinan," *An-Nawazil: Jurnal Hukum Dan Syariah Kontemporer* Vol 2, No. 1 (2019): p. 65–69.

<sup>11</sup> Winardi Triyanto, "Dampak Pernikahan Di Bawah Umur Dalam Perspektif Hukum Islam Dan UU Nomor 1 Tahun 1974," *Journal Lex Privatum* Vol. 1, No. 3 (2013): p. 79.

<sup>12</sup> Achmad Asrori, "Batas Usia Perkawinan Menurut Fuqaha Dan Penerapannya Dalam Undang-Undang" Vol. 13, No. 4 (1982): p. 804–26.

determining the age of puberty for a child, especially in determining the age limit for someone to marry.

The law that regulates underage marriage has attracted a lot of attention among researchers. In the study, Tirmidhi (2020) describes the background of the formation of Law no. 16 of 2019 and aspects of maturity as a point of consideration that correlates with the child protection law.<sup>13</sup> In this case, Triyanto (2013) explained that there is no nash al-Qur'an or al-hadith that forbids marrying underage, but the *fuqaha* gives *khbiyar* rights to both when they grow up.<sup>14</sup> As for the concept of maturity, Al-Robin (2021) in his research states that there is a lack of uniformity in the concept of "adult" in Indonesian law, adult age in civil law is different from adulthood in criminal law, state administrative law, and family law. This is experiencing a clash between the rule of law in determining the requirements of a person's legal skills and can be held legally responsible.<sup>15</sup> In another study, Yuspa (2017) also mentions that offspring obtained from a healthy pregnancy when they are between 20-30 years old, under the age of 20 have a risk of getting disease or damage to the female reproductive organs, according to him, underage marriage is an act with consequences of high health risks.<sup>16</sup> A survey conducted by Setyawan (2016) of young married couples in East Java concluded that underage married couples showed stuttering in their roles as husband, wife, and parents in responding to social status changes in social and emotional changes and responsibilities as a new family.<sup>17</sup> Erikson explained that one of the tasks that must be achieved in adolescence is to resolve the identity crisis. The hope is that teenagers have a clear view of themselves. Unfortunately, in the context of married adolescents, the ideal adolescent self-identification process is difficult to achieve. It is because teenagers who get married will be seen as adults and even prospective parents. This view has confusion for the perpetrators of marriage and difficulty in identifying themselves in society.<sup>18</sup> While this article is different from previous research, which uses the *maqasid sharia* approach, Ar-Robin's article has the same approach, but the research focus is very different. The focus of this study is the

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<sup>13</sup> Tarmizi, "Kajian Analisis Undang-Undang No. 16 Tahun 2019" Vol. 1, No. 6 (2019): p. 38–48.

<sup>14</sup> Winardi Triyanto, "Dampak Pernikahan Di Bawah Umur Dalam Perspektif Hukum Islam Dan UU Nomor 1 Tahun 1974," *Journal Lex Privatum* Vol. 1, No. 3 (2013): p. 79.

<sup>15</sup> Ar-Robin and Ali Sodikin, "Diversity in Determining Maturity Age In Indonesia Law: Maqasi Al-Shariah Perspective," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* Vol. 18, No. 1 (2021): p. 59–77.

<sup>16</sup> Yuspa Hanum and Tikiman, "Dampak Pernikahan Dini Terhadap Kesehatan," *Journal Keluarga Sehat Sejahtera* Vol. 13, No. 26 (2017): p. 36–43.

<sup>17</sup> J. Setyawan et al, "Dampak Psikologis Pada Perkawinan Remaja Di Jawa Timur," *Jurnal Penelitian Psikologi* Vol. 7, No. 2 (2016): p. 15–36.

<sup>18</sup> Ibid: p 16-17.

amendment to Law Number 16 of 2019 concerning the age limit for marriage, examined from the perspective of *maqasid sharia*. Therefore, this research is different from Tirmidhi's research, which focuses on "maturity", the child protection law, and medical as well as juridical, sociological, and philosophical aspects as material for consideration in the preparation of Law no. 16 of 2019, where this is also illustrated in research conducted by Trianto, Yuspa, Setyawan, and Erikson.

Some previous researchers studied changes to law no. 16 of 2019 on Law no. 1 of 1974 concerning changes in the age limit for marriage using the *fiqh* or *maslahah mursalah* approach. According to Iwan Romadhan Sitorus (2019),<sup>19</sup> In the research conducted by Iwan, describes aspects of the *mursalah* in the amendments to Law No. 16 of 2019, outlining aspects of the problem in terms of Islamic studies that can be achieved from these regulatory changes. The author also describes the consequences and risks of underage marriage such as research conducted by Tirmidhi, Yuspa, and Setyawan. The results of the study still need to be continued, where there is no bright spot for assessment on important parts, such as the types of benefits that are protected and the scope of changes in the age limit for marriage.

Therefore, this paper aims to find out the reasons behind the regulation of the marriage age limit and find the background that causes it. The problem analysis was dissected using Jasser Auda's system theory, through six features, namely the cognitive nature of the system, wholeness, openness, interrelated hierarchies, multidimensionality, and goals. These features are used to see the rule of law through an innovative approach. To understand the changes in the rules of the age limit for marriage, it is necessary to carry out a philosophical analysis to form a legal rule. The author uses the *maqasid sharia* approach from Jasser Auda due to the suitability of the context of contemporary research problems. The regulation on the age limit for marriage is a progressive legal formulation nowadays, of course, it is not divine, the form of *ijtihad* is more or less derived from the assumptions of *mujtahids* when studying texts. So the formulation of *maqasid sharia* with a holistic Auda System approach allows the author to describe and find answers to the problems in this study. The methodology used in this research is descriptive qualitative using the *maqasid sharia* approach. The object of study is Law no. 16 of 2019 concerning amendments to Law no. 1 of 1974 concerning Marriage. Explicitly discussed age equality as a tool to create legal justice. This study uses secondary data consisting of two sources. First, primary sources are taken from manuscripts; UU no. 16 of 2019, Law no. 1 of 1974, the Constitutional Court's Decision No. 30-74/PUU-XII/2014, and the Constitutional Court Decision Number 22/PUU-XV/2017.

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<sup>19</sup> Iwan Romadhan sitorus, "Usia Perkawinan Dalam UU No. 16 Tahun 2019 Perspektif Maslahah Mursalah," *Journal Nuansa* Vol. 13, No. 2 (2020): p. 192–98.

Second, secondary sources are taken from various kinds of literature, such as journals, books, reports, survey results, magazines, newspapers, and so on which are considered informative. Then the data is interpreted and analyzed descriptively. In this article, *maqasid sharia* is used as an analytical tool to find answers behind changes to the rules for the age limit for marriage. Thus, the change in the age limit for marriage must be seen as a legal progression in a developing society, not a rule that is formed based on conflicts that arise. The analysis is done through; First, it outlines the importance of the age limit for marriage as a *maslahah*. Second, explain what interests are protected from changes in the age limit for marriage. Third, it describes the extent of the change in the age limit for marriage in the community itself.

## Discussion

### Changes in the Age of Marriage in the Perspective of Maqasid Sharia

Before studying further in the perspective of *maqasid sharia*, the author needs to lay out the discussion line first. What is *maqasid sharia*? In a publication written by Syukur Prihantoro about the meaning of *maqasid sharia* according to Jasser Auda, the origin of the word “*maqasid*” (plural: *maqasid*) refers to the meaning of goals, objectives, principles, or things of interest. As for the science of shari'a, *al-maqasid* can show several meanings such as *al-hadf*, *al-gard*, *al-mathlub*, or *al-ghayah* from Islamic law. On the other hand, some Muslim scholars consider *al-maqasid* the same as *al-masalih* (*maslahat-maslahat*) such as Abd al-Malik al-Juwayni. al-Juwayni was one of the first scholars to starting the development of the theory of *al-maqasid*, he used the words *al-maqasid* and *al-masalih al-'ammah* as interchangeable. Later, Abu Hamid al-Gazali, elaborated more continued al-Juwayni's work by classifying *maqasid* and including it into the category of *al-masalih al-mursalah* (free benefit, or *maslahat* which is not mentioned directly in the sacred text).

Najmudin al-Tufi (w: 716 H/ 1316 AD) defines *maslahah* as “what fulfills the purpose of the legislator” where a cause leads to the purpose of *al-syari'*. As for Islamic law, Imam Ibn al-Qayyim said that “shari'a” is the basic building, laid on wisdom and human welfare, in this world and in the hereafter. Shari'a, everything is justice, mercy, wisdom, and goodness. From the various explanations above, at least *maqasid sharia* can be understood as a method of Islamic law to realize justice and benefit that is not mentioned directly in the holy texts (Qur'an and Hadith), nor is a method that delivers madness.

As described earlier, the determination of the age limit in a marriage is nothing but to maintain and provide legal protection to people who want to get married. Due to the absence of the *texts of the Qur'an* and Hadith that regulate

this matter, such a case is *ijtihadiah* while still adhering to shari'ah values.<sup>20</sup> Suhaili stated in the *texts* (al-Qur'an and Hadith) only provide information about *the Nash Signals*, namely *Baligh* and *Rusydun*.<sup>21</sup> Fadhilah and Rahmah mention that the age limit of children in *fiqh* varies.<sup>22</sup> This means that the provisions regarding the age limit for marriage are not explicitly regulated in the shari'a arguments so some consider the provisions for equalizing the minimum age for marriage between men and women to be of great benefit.<sup>23</sup>

This article will describe *maqasid sharia* in determining the age limit for marriage based on the Jaser Auda system approach (*systems theory*). Jaser Auda in his systems approach formulates 6 (six) features as subsystems. The systems approach itself is a holistic approach, where any entity is seen as a unified system consisting of a number of sub-systems. Namely: *cognitive nature of the system* (cognition), *wholeness* (wholeness), *openness* (openness), *interrelated hierarchy* (interrelatedness), *multidimensionality* (involving various dimensions), and *purposefulness* (focused on goals).<sup>24</sup>

The establishment of rules regarding the age limit for marriage is an effort to provide legal certainty to married couples. In the new regulation, Law no. 16 of 2019 stipulates that the age limit between men and women is the same or equal to 19 years. Through the systems approach introduced by Auda, there are six features that form the basis of the legal epistemology of systems philosophy. These features are intended to measure and at the same time answer how *maqasid sharia* is played out in real terms in law-making in the current era.<sup>25</sup> The first feature is *Cognition*; the Act reflects human cognition on the environment which Jaser Auda calls it the *cognitive nature of the system*. Where the age limit for marriage was promulgated in response to the unbalanced and equal rights of women in the eyes of the law, in the decision of the Constitutional

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<sup>20</sup> Dzulfikar Rodafi and Nur Hikmah, "Batas Usia Perawinan Dalam Persepektif Hukum Islam Dan Hukum Positif," *Journa Ilmiah Hukum Keluarga Islam* Vol 2, No. 3 (2020): p. 1–15. <http://riset.unisma.ac.id/index.php/jh/article/view/7371/6003>.

<sup>21</sup> Achmad Suhaili, "Relevansi Batas Usia Perkawinan Dalam Membentuk Keluarga Sakinah," *Journal Al-Bayan* Vol. 1, No. 1 (2018): p. 91–120. <https://riset.unisma.ac.id/index.php/jh/article/view/7371/6003>.

<sup>22</sup> Nur Fadhilah and Khairiyati Rahmah, "Rekonstruksi Batas Usia Perkawinan Anak Dalam Hukum Nasional Indonesia," *Journal De Jure* Vol. 4, No. 1 (2012): p. 49–61. <https://doi.org/10.18860/j-fsh.vai1.2151>.

<sup>23</sup> Iwan Romadhan sitorus, "Usia Perkawinan Dalam UU No. 16 Tahun 2019 Persepektif Masalah Mursalah," *Journal Nuansa* Vol. 13, No. 2 (2020): p. 192–98.

<sup>24</sup> Jaser Auda, *Maqasid Al-Syariah as Philosophy of Islamic Law: A System Approach* (London: The Internasional Institute Of Islamic Thought, 2007), p.45.

<sup>25</sup> Syukur Prihantoro, "Maqasid Al-Syar'iah Dalam Pandangan Jaser Auda (Sebuah Upaya Rekonstruksi Hukum Islam Melalui Pendekatan Sistem)," *Journal At-Tajkir* Vol. 10, No. 1 (2017): p. 34–120.



Court Number 22/PUU-XV/2017 it is stated that Law no. 1 of 1974 is considered inconsistent in applying the principle of non-discrimination for citizens. The Constitutional Court's decision illustrates the principle of *open legal policy* where the benefit of citizens is an obligation that must be protected, which in *maqasid sharia* is classified as *dharuriyah* (primary) interests contained in *al-dharurriyah al-khamsah*. As stated by Amin in his research, that the law must present a sense of justice for every citizen, not limited to a certain dimension in the form of gender.<sup>26</sup> However, this principle is not always in accordance with the principle of equal rights, Ana Suheri explained that proportional equality gives everyone what is their right according to their abilities and achievements.<sup>27</sup>

The second feature is *openness*; openness has meaning as a living system, so it is an open system (*openness*). An open system is a system that always interacts with conditions and the environment outside the system. Because the openness of a system depends on its ability to achieve goals in various conditions and circumstances. So the law that provides an age limit for marriage is nothing but to achieve its goal of forming a happy family both physically and spiritually. This statement is in line with Iwan Ramadhan's explanation, which explains that the law provides an age limit at the age of 19, which is considered to be mature in spirit and body to be able to carry out a marriage in order to realize the purpose of marriage properly without ending in divorce.<sup>28</sup>

As a state of law, the determination of the age limit for marriage must guarantee legal certainty. So that it completely and thoroughly covers all the basic rights of citizens, this is referred to in the third feature of Wholeness or *Wholeness* in Auda's view, it is manifested in a holistic unity. Such a holistic view guarantees the fulfillment of the rights and obligations of both men and women. This view will oppose the principles that are discriminatory, and unbalanced both in the eyes of the law and the community. A comprehensive (holistic) view will cover the *maqasid* of sharia as a whole, providing guarantees and protection for citizens in carrying out their beliefs in God and their social environment. So in this case, the determination of equality at the age limit for marriage is seen as a holistic law, so in this case, Auda tries to bring and expand *maqasid sharia* from the individual dimension to a wider and universal dimension so that it can be accepted. by society in general, then in Islam, this is called *maqasid al-'amma*.

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<sup>26</sup> Subhan Amin, "Kedailan Dalam Perspektif Filsafat Hukum Terhadap Masyarakat," *Journal El-Afkar: Jurnal Peikiran Keislaman Dan Tafsir Hadis* Vol. 8, No. 1 (2019): p. 1. <https://doi.org/10.29300/jpkth.v8i1.1997>.

<sup>27</sup> Ana Suheri, "Wujud Keadilan Dalam Masyarakat Ditinjau Dari Perspektif Hukum Nasional," *Journal Morality: Jurnal Ilmu Hukum* Vol. 4, No. 1 (2018).

<sup>28</sup> Iwan Romadhan sitorus, "Usia Perkawinan Dalam UU No. 16 Tahun 2019 Persepektif Masalah Mursalah," *Journal Nuansa* Vol. 13, No. 2 (2020): p. 192–98.

Reveals that before the change in the age limit for marriage to 19 years for men and women, initially, the rules regarding the age limit for marriage were 19 years for men and 16 years for women. Jordy and Kirana explained in their research that this age limit creates discrimination for women and hinders the fulfillment of women's constitutional rights, namely the right to health, education, and equality before the law.<sup>29</sup> Therefore, to provide legal certainty for women, the age limit for marriage was changed and equalized with men to 19 years. This is also in line with the objectives of *maqasid sharia* as described above.

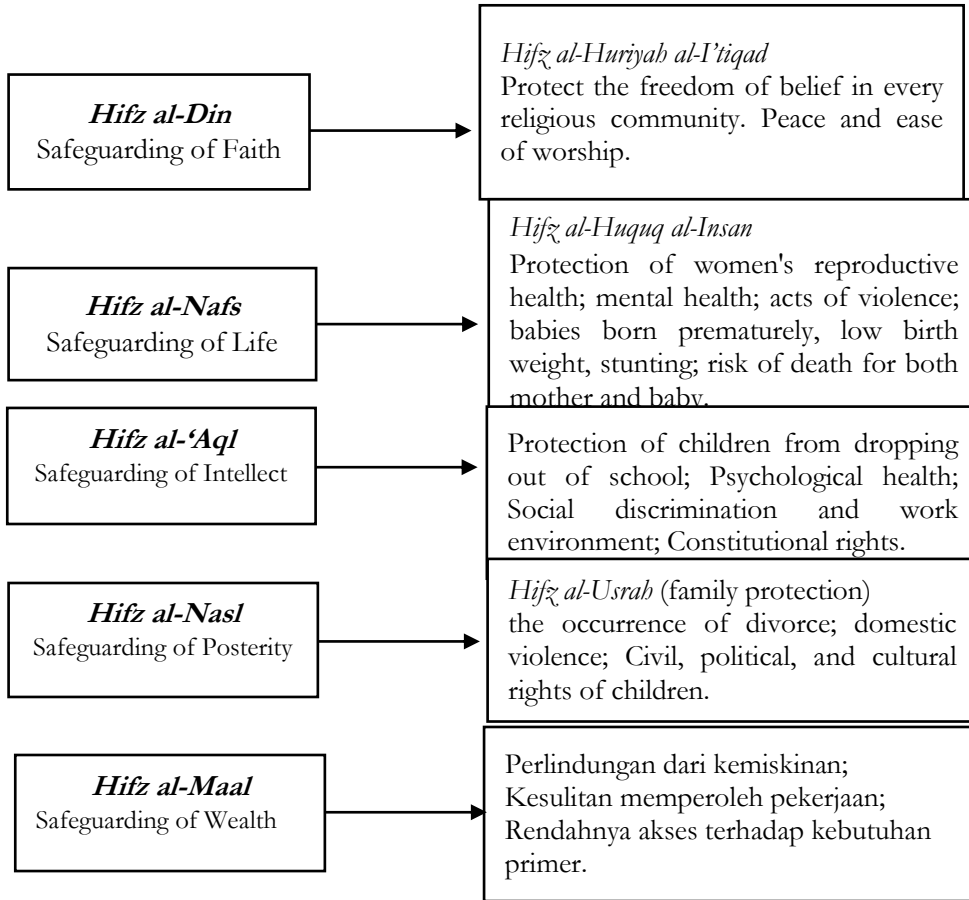
The interests protected in this Law must have an interrelated structure. In the theory of Jasser Auda's system expressed by Prihantoro, a system is formed by the existence of subsystems in it. So the rules that are made must have an interrelated relationship between the legal rules made and humans as legal actors.<sup>30</sup> The interrelated structure Auda as a subsystem of the *Interrelate Hierarchy* is interconnectedness which is included in the fourth feature. According to Jaser Auda, Islamic law can play a positive role in realizing the problems of mankind, and being able to answer various problems that arise. So the scope of *maqasid* as developed in classical Islamic law must be expanded. What was originally only limited to individual problems, its dimensions must be expanded to include a more general area; from the individual territory to the territory of society or mankind with all its levels.<sup>31</sup> Further described below in the image *Interrelate Hierarchy* in Maqasid Syariah against Law no. 16 of 2019.

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<sup>29</sup> Jordy Hery Christian and Kirana Edenela, "Terampasnya Hak-Hak Perempuan Akibat Diskriminasi Batas Usia Perkawinan," *Journal Lex Scientia Law Review* Vol. 3, No. 3 (Mei 2019): p. 1–14.

<sup>30</sup> Syukur Prihantoro, "Maqasid Al-Syar'iah Dalam Pandangan Jaser Auda (Sebuah Upaya Rekonstruksi Hukum Islam Melalui Pendekatan Sistem)," *Journal At-Tafkir* Vol. 10, No. 1 (2017): p. 34–120.

<sup>31</sup> Retna Gumanti, "Maqasid Al-Syariah Menurut Jaser Auda (Pendekatan Sistem Dalam Hukum Islam)," *Jurnal Al-Himayah* Vol. 2, No. 1 (2018): p. 97–118.



Then it was emphasized by Ahmad Ropei's explanation that the change in the age limit for marriage for women is relevant to problems in marriage which are also essentially in line with *maqasid sharia*. There are several aspects that must also be considered first, in carrying out domestic life, marriage must be carried out with maturity which is marked by an adequate age for marriage<sup>32</sup> Second, as a step to reduce divorce due to early marriage. Third, determining the age limit for marriage from the *maqasid sharia* side is in line with the principle of hereditary problems (*hifdz al-nasl*) in marriage, so as not to give birth to weak offspring. Fourth, the change in the age of marriage is an attempt to respond to the sociological and psychological development of the community in living household life.<sup>33</sup> Based on this description, Maqasid Syariah which is directly

<sup>32</sup> Darlin Rizki, "ZIS (Zakat, Infaq And Alms) Funds Management Methods In Improving The Quality Of Mustahiq Life In BAZNAS Karanganyar," *AL-FALAH: Journal of Islamic Economics* Vol. 6, No. 1 (2021): p. 19–40.

<sup>33</sup> Ahmad Ropei, "Maqasid Syariah Dalam Pengaturan Batas Usia Pernikahan Di Indonesia," *Journal Ayy-Syariah* Vol. 23, No. 1 (June 2021): p. 1–20.

related to changes in the age limit of marriage in addition to benefit and justice is the maintenance of offspring (*biḥẓ al-Nasl*). This is in accordance with the message of the Qur'an in Surah An-Nisa' verse 9, to fear (to Allah) those who leave weak descendants behind those who themselves are worried about them. Children are born orphans and orphans, physically and mentally weak, and live in poverty; therefore this verse instructs parents and guardians to fear Allah SWT by carrying out His commands, namely eliminating all causes that can cause offspring to be born in a weak state.

The fifth feature is involving various dimensions or *Multi Dimensionality*. The formation of a rule in society requires an accompanying dimension. The dimensions may come from the external or internal environment of an individual, group, or society. Likewise, the regulation that regulates the age of 19 years as a condition for marriage is allowed. Auda calls this concept *Multi Dimensionality*, ie a system is not a single thing, but, consists of several parts that are interrelated with one another. Dimensional becomes important to assess the condition of the case holistically, which may be able to provide an objective side in a more ideal legal framework. Restrictions on the age of marriage are covered by various dimensions such as health, psychological, economic, and religious. So that from its promulgation until it is enforced, it can be accepted at various levels of society. Especially the interests that are *dharurry* (primary) which involve many human needs in order to protect the public interest (*maqasid al-'amma*), in the form of special interests (*maqasid al-khassah*), and partial interests (*maqasid al-juz'iyah*).

Every system has an output. Where the output is the goal generated by the system and its devices. This statement is supported by an explanation from Riawan Tjandra that the law consists of dimensions such as ethics, Human Rights (HAM), protection, justice, and legal certainty.<sup>34</sup> The sixth feature is focused on the goal (*Purposefulness*). A rule is made to realize certain goals that are the orientation of both individuals and groups in it. Therefore, Auda includes *Purposefulness* as the sixth feature in the system tools built by it. In Islam, this is referred to as *al-ghayah*. Law Number 1 of 2019 in article 1 explains that marriage is “marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty”.<sup>35</sup> From this information, it can be seen that the purpose (*purpose*) of marriage is to create a happy and eternal family or household. Happiness here can be understood as happiness both physically and mentally and is eternal, not temporary. In terms of the Compilation of Islamic Law (HKI), the purpose (*purpose*) of marriage is stated in Article 3 of the IPR

<sup>34</sup> Riawan Tjandra, “Dimensi Etika Hukum Dan Ham Dalam Perlindungan Lingkungan Hidup Dan Tata Ruang,” *Journal Seminar Nasional Scan*, 2014, p. 1–14.

<sup>35</sup> Salinan UU Nomor 1 Tahun 1974 Tentang Perkawinan, n.d.

which aims to realize a household life that is *sakinah* (calm and peaceful), *mawaddah* (full of love), and *rahmah* (love).<sup>36</sup> Both have *poses* that intersect with each other, namely creating a happy family that is *sakinah*, *mawaddah*, and *rahmah*.

This goal in contemporary society is increasingly difficult to achieve. Underage marriage is an indicator in this article that causes the non-fulfillment of shari'ah goals (*maqasid sharia*) in a marriage, the inability of children has implications for the difficulty of achieving the goals of marriage. In consideration of Law no. 16 of 2019, explains da in point (b) "that marriage at the age of a child has a negative impact on children's growth and development and will lead to the non-fulfillment of children's basic rights such as the right to protection from violence and discrimination, children's civil rights, health rights, education rights, and the social rights of children". In Jasser Auda's description of the *pose*, Auda mentions that the effectiveness of a system is measured based on the level of achievement of its objectives, then the effectiveness of marriage law is measured based on the level of achievement of the goals of the marriage. Therefore, all the causes that prevent the marriage from achieving its goals must be changed and replaced<sup>37</sup> or even eliminated. This is in line with the *fiqh* rules of *dar'u al-mafâsid ball min jalbi al-mashâlih*, meaning that eliminating the harm takes precedence over taking a benefit. Therefore, based on efforts to realize the purpose of marriage, all forms of harm arising from underage marriages that hinder the achievement of the goals of the *sakinah*, *mawaddah*, and *rahmah* families are more important to be eliminated than the desire to marry itself. Galuh, Khusni, Ni'am, and Azizah also stated that changing the age limit for marriage cannot be separated from the use of arguments and rules, all of which support the *change*. Efforts to eliminate harm.<sup>38</sup>

### **Maqasid Sharia Levels in Changing the Age Limit for Marriage**

As it is known that syara' does not directly regulate the age limit for marriage for both male and female Muslims.<sup>39</sup> Therefore, there is room for *ijtihad* to achieve the goals and objectives of the shari'ah by mobilizing all abilities to find wisdom that contains *mashallah*.<sup>40</sup> Looking at the current

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<sup>36</sup> Abdurrahman, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Akademika Pressindo, 1992).

<sup>37</sup> Galuh Retno Setyo Wrdani and dkk, "Perubahan Pasal 7 Ayat (1) Undang-Undang Pernikahan No. 1 Tahun 1974 Terkait Peningkatan Batasan Usia Pernikahan Dalam Tinjauan Ushul Fiqh," *Journal Egalita: Jurnal Kesetaraan Dan Keadilan Gender* Vol. 15, No. 2 (2020).

<sup>38</sup> Galuh Retno Setyo Wrdani dan dkk, "Perubahan Pasal 7 Ayat (1) Undang-Undang Pernikahan No. 1 Tahun 1974 Terkait Peningkatan Batasan Usia Pernikahan Dalam Tinjauan Ushul Fiqh," *Journal Egalita: Jurnal Kesetaraan dan Keadilan Gender* Vol. 15, No. 2 (2020).

<sup>39</sup> Winardi Triyanto, "Dampak Pernikahan Di Bawah Umur Dalam Perspektif Hukum Islam Dan UU Nomor 1 Tahun 1974," *Journal Lex Privatum* Vol. 1, No. 3 (2013): p. 79.

modern era, the issue of children is increasingly crucial with the issuance of various laws on the protection of children and women.

*Maqasid sharia* as a method in Islamic law provides general benefits and interests that are not limited and not bound. In other words, *maqasid sharia* is a method for formulating a problem that can be decided freely but is still based on the basic concept of shari'ah. Because shari'ah itself is a value system that benefits society in general and prevents various harms (damages). Regarding the level of *maqasid sharia*, it can be divided into three levels, namely: the *dharuriyat* level, the *hajiyyat* level, and the *tahsiniyat* level. *Dharuriyat* needs are the level of needs that must be met or called primary needs. According to as-Syatibi (2012) there are five things that fall into this category, namely maintaining religion, soul, mind, lineage, and property and honor.<sup>41</sup> *Hajiyyat's* needs are secondary needs, which if they are not fulfilled they will not threaten his safety, but will experience difficulties. And the need for *tahsiniyat* is the level of need which if not fulfilled does not threaten the existence of any of the five points above and does not cause difficulties. This level of need is in the form of complementary needs.<sup>42</sup> Regarding the age limit for marriage for a long period of time, various polemics concerning children and women have encroached. Islam as a belief system based on expediency must pay close attention to the rights of children and women. Described in the Qur'an surah:

أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۗ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰكُمْ ۗ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

"O mankind, We have created you from a male and a female, and made you into races and tribes, so that you may identify one another. Surely the noblest of you, in Allah's sight, is the one who is most pious of you. Surely Allah is All-Knowing, All-Aware"<sup>43</sup>

This verse gives a sign that the creation of man came from a man and a woman. As stated by Muhammad Asad in *The Message of the Qur'an*, human beings are created from a father and mother. That is, there is a similarity in this biological origin indicating the existence of fellow human beings, both male and female. The reflection of the verse emphasizes that there is no priority between one another, both male to female or female to male. Both are equal and equal as creatures created by Allah SWT whose creation is mutually glorified. Therefore, any *mafsadat* or damage should be avoided and eliminated.

<sup>40</sup> Frina Oktalita and Darlin Rizki, "Analysis of MUI Fatwa Number 17 of 2020 Regarding Kaifiat Prayer Guidelines for Health Workers Who Wear Personal Protection Equipment (PPE) When Treating and Handling Covid-19 Patients," *Al-Istinbath: Jurnal Hukum Islam* 6, No. 2 (2021): p. 247–70.

<sup>41</sup> As-Syatibi, *Al-Muafaqat* (Jakarta: Husada Bengkulu, 2012).

<sup>42</sup> Ahmad Suganda, "Urgensi Dan Tingkatan Maqashid Syari'ah Dalam Kemaslahatan Masyarakat," *Jurnal At-Tadbir: Media Hukum Dan Pendidikan* 30, No. 1 (2020): 1–16.

<sup>43</sup> Departemen agama Republik Indonesia, *Al-Quran Dan Terjemahannya* (Bandung: Jumatul Ali, 2005).

The determination of the age limit for marriage seeks to provide life protection for women. As previously explained, the two laws on marriage were formed in response to the rights of women as citizens.<sup>44</sup> Hadi explained the high act of "*forced marriage*" by parents to minors,<sup>45</sup> Umar also explained that the divorce rate is high for women who marry underage,<sup>46</sup> and polygamy<sup>47</sup> is the reason put forward by the Indonesian Women's Association to issue laws that regulate and protect women's rights.<sup>48</sup> This is where Law no. 1 of 1974 where in article 7 paragraph 1 the age limit for marriage is 19 years for men and 16 years for women. In the next period of development, the issue regarding the age limit for marriage was transformed in a new form. Various facts regarding the risks of reproductive health and premature birth,<sup>49</sup> low education levels or dropouts for children,<sup>50</sup> psychological burden as a new family,<sup>51</sup> and various other risks that have the potential to be experienced by underage married couples. These risks can be seen as basic and even fundamental to the survival of a woman. The disconnection of basic rights as children, namely education, the generation grows up with intellectual and mental retardation, finally creating new poor families in their social environment. Therefore, the stipulation of the law regarding the age limit for marriage can be classified into the interests of *al-dharurriyah* (primary) which are important and must be fulfilled in order to achieve the objectives of sharia, namely safety.<sup>52</sup> *al-Maslahah al-Dharurriyah* can

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<sup>44</sup> Ahmad Rifai, "Sejarah Undang-Undang Perkawinan Atas Pendapat Hingga Pertentangan Dan Masyarakat Dan Dewan Perwakilan Rakyat Tahun 1973-1974," *Journal Of Indonesian History* Vol. 4, No. 1 (2015): p. 7.

<sup>45</sup> Samsul Hadi, "Putusan Mk No. 22/PUU-XV/2017 Tentang Permohonan Judicial Review Pasal 7 Ayat (1) UU No. 1 Tahun 1974 Tentang Perkawinan Dalam Perspektif Masalah," *Journal Al-Ahwal: Jurnal Hukum Keluarga Islam* Vol. 11, No. 2 (2020): p. 72.

<sup>46</sup> Zulkarnain Umar, "Perkawinan Usia Muda Dan Pengaruhnya Terhadap Tingkat Perceraian Di Wilayah Hukum Pengadilan Agama Kota Pekanbaru Ditinjau Dari Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan," *Journal Kodifikasi* Vol. 4, No. 1 (2022): p. 1–21.

<sup>47</sup> Fatimah Zuhrah, "Problematika Hukum Poligami Di Indonesia (Analisis Terhadap UU No. 1 Tahun 1974 Dan KHI)," *Journal Al-Ushab: Jurnal Al Ahwal As Syakhsiyah* Vol. 5, No. 1 (2017): p. 27–41.

<sup>48</sup> Ahmad Rifai, "Sejarah Undang-Undang Perkawinan Atas Pendapat Hingga Pertentangan Dan Masyarakat Dan Dewan Perwakilan Rakyat Tahun 1973-1974," *Journal Of Indonesian History* Vol. 4, No. 1 (2015): p.7.

<sup>49</sup> Yuspa Hanum and Tikiman, "Dampak Pernikahan Dini Terhadap Kesehatan," *Journal Keluarga Sehat Sejahtera* Vol. 13, No. 26 (2017): p. 36–43.

<sup>50</sup> Badan Pusat Statistik, "Pencegahan Perkawinan Anak (Percepatan Yang Tidak Bisa Ditunda)," Jakarta 2020, p. 14.

<sup>51</sup> J. Setyawan et al, "Dampak Psikologis Pada Perkawinan Remaja Di Jawa Timur," *Jurnal Penelitian Psikologi* Vol. 7, No. 2 (2016): p. 15–36.

<sup>52</sup> Muhammad Abu Zahrah, *Ushul Al-Fiqh*, Cet. 9 (Jakarta: Pustaka Firdaus, 2005). p. 425.

be interpreted as essential interests in life, such as maintaining religion, preserving the soul, preserving reason, lineage, and property.<sup>53</sup>

This statement is in accordance with the term *al-dharuriyah al-khamsah* as the author described in the Auda System theory in the *Interrelate Hierarchy* feature in the previous discussion. The issue of changing the age limit for marriage for women covers the basic needs of women, so it cannot be categorized in the *hajiyat* level, let alone *tahsiniyat*. This issue has significantly affected the basic rights of women as described in the five objectives of *maqasid sharia*. Keeping religion (*hifz din*), changing the age of marriage is a form of protection from various forms of actions that will damage the values of faith and the noble values of Islam. Protecting the soul (*hifz nafs*), changing the age of marriage to provide legal certainty, with the aim of protecting women's rights from discrimination and protecting women's reproductive health. Furthermore, maintaining reason (*hifz aql*), in this case the interpretation of changing the age of marriage is to protect children from dropping out of school and being isolated in social life. Maintaining offspring (*hifz nasl*), that changes in the age of marriage to improve the quality of the family and alleviate the weakness of generations. Lastly, safeguarding property (*hifz mal*) that changes in the age of marriage can protect against difficulties in finding work.

### **Scope of *Maqasid Sharia* of Changes in Marriage Age Limits**

The next question that arises, is how wide the scope of changes to the age limit for marriage is? And what are the implications for society? These two questions need to be studied based on their respective approaches, analyzed from a hierarchical perspective in *maqasid sharia* and philosophical studies. These questions will provide a measure of the achievement of the objectives of the amendment to the Law on the age limit for marriage.

Jasser Auda provides a level or hierarchy as an extension of the reach of *maqasid*, namely: *maqasid al-'ammah* (general *maqasid*), *maqasid al-khassah* (specific *maqasid*), and *maqasid al-juz'iyah* (partial *maqasid*). The new rules set an age limit of 19 years between men and women, targeting general and special interests. According to Auda, in order for Islamic law to be able to play a positive role in realizing the problems of mankind, and to be able to answer the challenges of the present era, the scope and dimensions as stated in classical Islamic law must be expanded. The stipulation of the previous rules regarding marriage contained certain interests, especially for women. Where this is also in line with *maqasid* in the context of classical Islamic law. In Indonesian law on marriage, the law contains all the rules and operations to form a new family, along with the

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<sup>53</sup> Musda Asmara and Reti Andira, "Urgensi Talak Di Depan Sidang Pengadilan Perspektif Masalah Mursalah," *Al-Istinbath: Jurnal Hukum Islam* 3, No. 2 (2018): p. 207–26.



conditions for the fulfillment of marriage. The regulation prioritizes individual interests and problems within the family sphere.

In its development, there was a very significant shift in interests, in the *Child Marriage Report 2020* by the Central Statistics Agency it was stated that there were many underage marriages. In the evidence submitted in the petitioner's petition to the Constitutional Court (MK Number 74 PUU-XII 2014) explained that the 5 provinces with the highest number of underage marriages were East Java (39.4%), West Java (36%), South Kalimantan (35.5%), Jambi (30.6%) and Central Java (27.84%). (Exhibits P-1 and P-23) From this information, it can be seen that the *judicial review* made by the applicant in the decision conveys that there has been a very real shift in interests, even in a universal scope. The lawsuit explains that the rules of Law no. 1 of 1974 provide more legal certainty that only binds certain individuals or groups, on the contrary currently experiencing a shift in legal certainty in a wider public scope. So the amendment to Law No. 16 of 2019 on Law no. 1 of 1974 concerning marriage is the *maqasid al-'ammah* which provides legal certainty to women on a broader scale of the rights to life that must be obtained.

Changes in the age limit for marriage also have a special purpose (*maqasid al-kebassab*). Auda explained that *maqasid al-kebassab* (specific *maqasid*) is *maqasid* related to *maslahah* in certain issues. In article 7 paragraph 1, the new provisions for equal marriage age of 19 years for men and women provide legal protection from the fulfillment of basic rights and constitutional rights as citizens. The Constitutional Court in the general explanation of Law no. 16 of 2019 explains that the age gap that has an impact on civil and political, economic, educational, social, and cultural rights constitutes discrimination, wherein these rights the State has guaranteed in Article 28B paragraph (1) of the 1945 Constitution. Therefore, the scope of *maqasid sharia* in changing the age limit for marriage in the form of *maqasid al-'amma* (general *maqasid*) covers the lives of women in Indonesia and *maqasid al-kebassab* (specific *maqasid*) in the form of protection of women's basic rights and constitutional rights.

## Conclusion

This article argues that the new rules regarding the equality of marriage age between men and women can be explained in *maqasid sharia* through the Jasser Auda system approach. This systems approach has relevance and suitability in the context of Indonesian law, which is growing and developing. Indonesian law is the foundation of justice for every citizen, by which both men and women are equal before the law, the principle of eliminating all forms of age discrimination as reflected in previous regulations. So the new rule that equalizes the age is a form of legal certainty for couples who want to get married. The *maqasid sharia* argument against this issue belongs to the *al-dharurriyah* level, which is important and urgent. In the system approach through

its features, the new rules contain elements of justice and the wider benefit, not limited to the family. Growing up in a wider space by protecting women's rights in general (*maqasid 'amma*) and constitutional rights and women's basic rights (*maqasid al-kebassab*). The level of *dharuriyah* does not always have the implication of *syar'i* obligation (if it is violated it causes sin), but only until obligatory *bukmi* which is a necessity to do and there are sanctions for violators determined by the state legal authority. Mandatory laws that have sin implications for violators must be based on *qat'y* texts, because sin is *syar'i*. The mandatory law that is produced through this study of *maqasid sharia* does not automatically have the implication of sin, because the determination of the law is carried out by the *Mujtahids* and is based on the absence of *qat'y* texts on the issues outlined in this new regulation.

Two implications emerge in this article. First, the equalization of the marriage age limit of 19 years has direct implications for the demands of the Marriage Dispensation for those who want to get married but do not meet the age limit set by the government. Second, it indirectly has implications for efforts to fulfill citizens' rights based on the principle of equality, not the principle of proportionality in legally established relationships. For further researchers, this research can be developed within the same analytical knife, namely *maqasid sharia* by analyzing the partial interest (*maqasid al-juz'iyah*) contained in changes in the age limit of marriage.

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