

## The Concept of *Baligh* Perspective of Fiqh and Positive Law

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### Abstract

This paper aims to elaborate the concept of *baligh* from the perspective of *fiqh* and Positive Law in Indonesia as the *fuqaha's* opinion about baligh and adult in Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, Law No. 24 of 2013 concerning Population Administration and Law No. 35 of 2014 concerning Child Protection. The research method used is a literature study by tracking, comparing and analyzing doctrinal normative law through a qualitative approach in content analysis about baligh and adulthood. The results of the research revealed that baligh in *fiqh* with the *rusyd* benchmark when referring to the signs of puberty, namely *ihtilam* (wet dreams for men), menstruation (for women), hair growth around the pubic and age ranges from 15 to 19 years. Whereas, in the Indonesian Positive Law, adults are classified based on interests, namely adults for marriage age limit of 19 years for men and women, adults to have population administration (KTP), driver's license and have political rights at the age of 17 years. To determine the limit of children, notary position and citizenship age 18 years while income tax, free from guardianship and recognized as labor at the age of 21 years. The determination of the limits of puberty and adulthood is included in the category of *mashlahab 'ammah*, namely the general benefit that concerns the interests of many people.

**Keywords:** *Baligh*; *fiqh*, positive law

## Introduction

Baligh means until or clear, the standard of maturity in *fiqh* is known only by the words Baligh. As for customary law, there is no age limit for marriage or maturity. Usually a person's maturity is measured by the signs of waking up, if a girl has her period (menstruation), the breasts are protruding; it means she is an adult. For men, the size is seen from changes in voice, body posture and has already issued semen or already has a sexual desire.<sup>1</sup>

The signs of puberty are: 1) *ihtilam*; the discharge of semen from the genitals of a male or female while awake or asleep. 2) *Menstruation*: menstrual bleeding for women. 3) *Hair*; growth of coarse hair around the pubic area. 4) *Age*; not less than fifteen years.<sup>2</sup> All legal actions of *mukallaf* must be accounted for. *Mukallaf* legal accountability is not only finished in the world, but he will also be responsible for all his actions until the hereafter, namely before Allah.<sup>3</sup> A human being has not been subject to *taklif* (legal imposition) before he is capable of taking legal action, *Ushul Fiqh* scholars stated that the basis of legal imposition is reason and understanding. This means that a person can only be burdened by law if he is reasonable and can understand well the *taklif* addressed to him. Thus people who do not or have no sense, such as crazy people and small children are not burdened with *taklif* law. Because they do not or have no sense, so they are considered unable to understand the *taklif* of the *syara*. Included in this are people who are sleeping, drunk people and forgetful people. People who are sleeping, drunk and people forget are not subject to *taklif* because they are unconscious.<sup>4</sup>

*Ushul Fiqh* scholars argue that the basis of legal accountability is reason (*`aql*, *mumayyiz*), old enough (*baligh*) and understanding. As the concept of *mukallaf* formulated by Wahbah al-Zuhaili.<sup>5</sup> So there are three elements of *mukallaf* which cannot be separated from each other. The element of *baligh* (adult) becomes a limitation on humans in general as a *mukallaf*. *Baligh* is a human physical and psychological condition that marks the achievement of one's ability to carry out *taklif* fully. al-Shaykh Muhammad Nawawi said that *taklif* is determined by *baligh*. Physical and psychological conditions can be

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<sup>1</sup> Hilman Hadikusuman, *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat Dan Hukum Agama*, Bandung, Mandar Maju, 1990, 1990.

<sup>2</sup> M. Abdul dkk Mujieab, , *Kamus Istilah Fiqh*, Jakarta : Pustaka Firdaus, Cet. Ke 4 2010, n.d.

<sup>3</sup> Ali Imron, *Kontribusi Hukum Islam Terhadap Pembangunan Hukum Nasional ( Studi Konsepsi Taklif Dan Mas'uliyat Dalam Legislati Hukum)*, Semarang, Disertasi Universitas Diponegoro, 2008.

<sup>4</sup> Ed) Dahlan, Abdul Aziz, *Ensiklopedi Hukum Islam*, Jakarta, Ichiar Baru Van Hoeve, 1997.

<sup>5</sup> Wahbah Al-Zuhaili, *Al-Fiqh al-Islam Wa Adillatub, Damsyiq, Dar al-Fiker, Jilid.1*, n.d.

determined through certain standards or measures. According to Imam al-Shafi'i, puberty (adult) is marked by the age of fifteen years (the *qomariah year* with the number of days and dates), or having dreamed of intercourse, or menstruation occurs for women. These signs can be a standard for someone to become baligh, the status of baligh is seen as marking someone who is physically and psychologically capable of carrying out Syar'iyah in full.<sup>6</sup> this is in line with the research described by Ihdatul Nur Musyarafa<sup>7</sup>.

Burgerlijk Wetboek (BW) which remained on April 29, 1847 by the Dutch, is still used in Indonesia to this day as the Civil Code provides the meaning of the word adult, derived from the notion of immature as in Article 330 of the BW which states: "minors are those who have not reached the age of 21 (twenty one) years and have not married before. From the literature search by experts and researchers, it can be found that the stages of age limit with a psychological approach, which are then linked to the age limit of legal skills, starting from early adulthood, middle adulthood to late adulthood, but in general the age limit of a child is considered capable and responsible. answer at the age of 18. Meanwhile, the Positive Law in Indonesia stipulates that the age of adulthood varies according to their interests.

Based on this, this paper will describe the concept of baligh from the perspective of fiqh and Positive Law. There are several articles that discuss the concept of puberty and adulthood, such as Pitrotussaadah<sup>8</sup> with the title Minimum Age Limit for Marriage According to Positive Legal Perspectives in Indonesia and Islamic Law. 1 of 1974 Jo. UU no. 16 of 2019 as a law related to marriage is 19 years and this applies to both men and women. The age limit for marriage according to the perspective of Islamic law does not have a provision that provides a minimum age limit, but in Islamic law it is only affirmed for those who have reached the age of puberty, with general signs, among others, the perfect age of 15 (fifteen) years for men, Ihtilam for men and menstruation for women is at least 9 (nine) years old. Furthermore, Achmad Kadarisman<sup>9</sup> Restrictions on the Age of Marriage in the Viewpoint of Maqashid Syari'ah al-Syathibi, concluded that every man or woman who has not yet reached the age of 19 is prohibited from marrying. If you still want to do it, you must get the approval of the Court in the form of a stipulation. In the process of making decisions by judges in court, these judges must comply with the procedures

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<sup>6</sup> Muhammad ibn Idris Al-Syafi'i, , *Al-Umm I, Beirut, Dar al-Fikri, 1990, 1990.*

<sup>7</sup> Nur Ihdatul Musyarafa and Subehan Khalik, "Batas Usia Pernikahan Dalam Islam; Analisis Ulama Mazhab Terhadap Batas Usia Nikah," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab dan Hukum*, January 1, 2022, <https://doi.org/10.24252/shautuna.v1i3.15465>.

<sup>8</sup> Pitrotussaadah, "Batas Usia Minimal Perkawinan Menurut Perspektif Hukum Positif Di Indonesia Dan Hukum Islam," *Jurnal Muttaqien*, 1, Vol. 1., no. No. 1 (July 2020): 74–84.

<sup>9</sup> Achmad Kadarisman and Tutik Hamidah, "Pembatasan Usia Perkawinan Dalam Sudut Pandang Maqashid Syari'ah Al Syathibi," n.d., 24.

established by the state. There are 5 rules in *maqashid al Sharia* initiated by Imam al Syatibi, namely *hifdz al diin*, *hifdz al nafs*, *hifdz al aql*, *hifdz al nasl*, and *hifdz al maal*. The ten principles and the five rules are all in the *dhorury corridor* that must be maintained, fulfilled, and maintained for its sustainability.

Meanwhile, Ahmad Sainul's<sup>10</sup> writings on the Concept of Legal Subject Maturity, concludes that the legal subject's maturity limit in Islamic law is only 15 years old or *ihtilam* for men and menstruation for women can no longer be applied to legal actions that have a more general relationship and impact. and larger, such as marriage, covenant etc. Meanwhile, there is no legal certainty regarding legal competence in Positive Law, namely at the age of 18 years, 21 years, or after marriage, resulting in confusion in determining a person's competence in the eyes of the law. Likewise Ruzaipah<sup>11</sup> Determining the Age of Maturity in the Legal System in Indonesia, the discussion emphasizes the age of maturity based on Circular Letter Number 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court as a Guide to the Implementation of Duties for the Court. In the Circular Letter of the Supreme Court, it has been explained that the stipulation that the limit of maturity is capable of acting in law is a person who has reached the age of 18 years or has been married.

The difference in this study from previous studies is the comparison of the concept of puberty and adulthood in the perspective of *fiqh* and positive law in Indonesia in several reviews, while the tendency of previous researchers to only look at the age limit used for marriage is permitted or not or the adult concept limit is used for skills. Law in one aspect. While this study examines the correlation between puberty and adulthood in several aspects and uses such as marriage, political rights to vote and be elected, employment and legal skills in court.

The research method used in this research is library research with a qualitative approach. Like doctrinal legal research that is normative, the data source of this research is secondary data source with primary legal materials in the form of texts of verses and hadith (*nash*) as well as Positive Law in force in Indonesia and secondary legal materials in the form of *fiqh* rules and tertiary legal materials in the form of encyclopedias, dictionaries and more. The data collection method is in the form of documentation studies using analytical techniques in the form of comparative content analysis.

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<sup>10</sup> Ahmad Sainul, "Konsep Kedewasaan Subyek Hukum," *Jurnal el-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan dan Pranata Sosial* 5, no. 2 (April 26, 2020): 257–69, <https://doi.org/10.24952/el-qonuniy.v5i2.2153>.

<sup>11</sup> Ruzaipah, "Penetapan Usia Kedewasaan Dalam Sistem Hukum Di Indonesia," *Jurnal Misaqan Ghalizan*, 1, Volume I (June 1, 2021): 1–20.

There are two important things that are expected from this paper; first, presenting the concept of puberty and adulthood in various texts and laws; second, answering the doubts of some Muslims and Indonesian citizens about the consistency of Positive Law and the importance of having an age limit according to its importance as a public problem.

## Discussion

The discourse on the age limit for puberty in the Qur'an is not explained in the form of numbers, but is associated with a legal event, namely marriage, although this verse specifically talks about the handing over of property to orphans by people who are their guardians. As the word of Allah SWT in the Qur'an Surah An-Nisa 'verse 6 ":

وَابْتَلُوا الَّتِي تَمَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبُرُوا وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ وَكَفَىٰ بِاللَّهِ حَسِيبًا

*"And test the orphans until they are old enough to marry. then if according to your opinion they have been intelligent (good at preserving wealth), then hand over their wealth to them. and do not eat the wealth of orphans beyond what is appropriate and (do not) rush (to spend) before they grow up. Whoever (among the caretakers) is able, then he should refrain (from eating the orphan's property) and whoever is poor, then he may eat the property according to what is appropriate. then when you hand over property to them, then you should have witnesses (about the handover) for them. and Allah is sufficient as a Watcher (over that testimony). (QS. An-Nisa: 6)<sup>12</sup>*

Based on the above verse, the basis for the debate that raises differences in understanding is the word حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ (until they are old enough to marry) with an indication of that age when intelligence has emerged through the expression مِنْهُمْ رُشْدًا (they have been smart). When you have entered the age of baligh, it means someone has been charged with religious laws, both worship and muamalah and hudud. Therefore, the meaning of رُشْدًا is the appropriateness of a person to do *tasarruf* that brings good and stys away from evil. This is proof of the perfection of his mind.<sup>13</sup> The word بَلَغُوا النِّكَاحَ in this verse is interpreted by different scholars. This difference is due to the review or point of view of each. First, it is interpreted as intelligence because the review is focused on the

<sup>12</sup> Departemen Agama Republik Indonesia, *Al-Quran Dan Terjemahnya* (Bandung: Diponegoro, t.th).

<sup>13</sup> Muhammad Rasyid Ridha, *Tafsir Al-Manar, Mesir, Al-Manar, 2000 M/1460 H, Juz I, n.d.*

mental aspect, which is seen in a person's attitude and behavior. Second, it is interpreted as being old enough and dreaming, the focus of the review is on the outward physical and at the same time has converted.<sup>14</sup> *Balagh an-nikah* which is interpreted as an adult, so far its understanding is only in the context of the time limit for giving the property of orphans who were previously controlled by the guardian, even though these words can be stated to determine the appropriate time limit for marriage<sup>15</sup>.

A human being has not been subject to taklif (legal imposition) before he is capable of taking legal action, the ushul fiqh scholars argue that the basis for legal imposition is reason and understanding. This means that a person can only be burdened by law if he is reasonable and can understand well the taklif addressed to him. Thus people who do not or have no sense, such as crazy people and small children are not burdened with taklif law. Because they do not or have no sense, so they are considered unable to understand the taklif of the syara. Included in this are people who are sleeping, drunk people and forgetful people. People who are sleeping, drunk and people forget are not subject to taklif because they are unconscious. As the following words of the Prophet SAW :

حَدَّثَنَا ابْنُ السَّرْحِ أَخْبَرَنَا ابْنُ وَهْبٍ أَخْبَرَنِي جَرِيرُ بْنُ حَازِمٍ عَنْ سُلَيْمَانَ بْنِ مِهْرَانَ عَنْ أَبِي طَلِبَانَ عَنْ ابْنِ عَبَّاسٍ قَالَ مَرَّ عَلِيٌّ عَلَيَّ بِنِ أَبِي طَالِبٍ رَضِيَ اللَّهُ عَنْهُ بِمَعْنَى عُثْمَانَ. قَالَ أَوْ مَا تَذَكَّرُ أَنَّ رَسُولَ اللَّهِ -صلى الله عليه وسلم- قَالَ « رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنِ الْمَجْنُونِ الْمَغْلُوبِ عَلَى عَقْلِهِ حَتَّى يُفَبِّقَ وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ » (روه ابو دود)<sup>16</sup>

*Has told us Ibn Syarbi who informed Ibn Wahab and informed me Jarir Ibn Jazim from Sulaiman Ibn Mibran from Abi Thaiban from Ibn Abbas, said Murra to Ali Ibn Abi Talib RA who is similar to Uthman, Said or what was said Verily the Messenger of Prophet SAW said : A person's responsibility is lifted from the three things of a madman until he is sane, a sleeper until he wakes up and a child until he dreams of releasing semen (ibtillam). (HR. Abu Daud)*

As for the reason for the difference of opinion, due to differences in the interpretation of the word "*rusyd*"; Mujahid said *rusyd* was reason, Qatadah said *rusyd* was orderliness both in terms of his mind and religion, Ibn Abbas said *rusyd* was orderly in terms of wealth. Furthermore, Ibn Jarir said that among

<sup>14</sup> Zaki Fuad Chalil, *Chalil, Zaki Fuad, "Tinjauan Batas Minimal Usia Kawin; Studi Perbandingan Antara Kitab-Kitab Fikih Dan Undang-Undang Perkawinan Di Negara-Negara Muslim," Badilag, Mimbar Hukum*, vol. VII, no. 2, 2006.

<sup>15</sup> Amir Syarifuddin, "Pembaharuan Pemikiran Dalam Hukum Islam, Padang, Angkasa Raya, 1990," 1990.

<sup>16</sup> Abu Daud, *Sunan Abu Daud*, Juz.13 (Beirut: Dar Al-Fikr, n.d.).

these opinions the best is reason and orderliness in managing assets, because there has been consensus of scholars, that if a person is already in such a state, he has no right (the judge/guardian) to restrain him from using his wealth and he can take what is his right even though he is a person who is disobedient in his religion.<sup>17</sup> Ibnu Katsir is of the opinion that when he gets married he is "old enough or intelligent". As for what is meant by balig is the presence of a dream that is dreaming in his sleep that causes water to come out gushing, with that water the occurrence of children. So a person gets married not based on puberty alone, but on age or intelligence (*rasyid*).<sup>18</sup>

Rasyid Ridha said that *bulugh al-nikah* means the arrival of a person to the age of marriage, that is, to dream. The meaning of *rasyid* is the appropriateness of a person to do *tasarruf* that brings good and stays away from evil. This is proof of the perfection of his mind.<sup>19</sup> *Narrated by Umar ibn Hafshi ibn Khyasin narrated by his father, narrated by A'mas, said; narrated by Umar from Abdirrahman ibn Yazid said; I entered with al-Qomah and Aswad to Abdillab so he said; Abdullab was always with the Prophet Saw - the youth did not get anything, so the Messenger of Allah said to us: O youth, who has the ability to prepare for marriage, then marry. Indeed, marriage will block the view (of what is prohibited by religion) and maintain the genitals. And whoever is unable let him fast. Because fasting is a fortress for him.*

The hadith cues above the imposition of taklif law that show a person's maturity include two things, first the maturity of the mind, namely "crazy people until they are healthy and people sleep until they wake up", so crazy people and sleeping people both don't function their minds. The second is seen from physical maturity, namely "children reach ihtilam (dreams and releases semen)", someone who has dreamed and issued semen means that physically his maturity is complete, which is marked by his sexual organs functioning perfectly.<sup>20</sup> Ihtilam which is one of the physical characteristics of a person who has reached puberty - when associated with the basis of taklif - as the author has previously stated. So Wahbah al-Zuhaili explained that *mukallaf* is a person (party) who has reached puberty (mature) and is intelligent with his mind, he is able to know the function and what it does, and with that knowledge he does taklif-taklif al-Syar'iyah. So there are three elements of *mukallaf* which cannot be separated from each other. The elements in question are humans, the attainment of maturity (*baligh*) and reason.

It can be understood that the physical and psychological condition of a person who is baligh according to Imam al-Shafi'i<sup>21</sup> in the book "al-umm" that

<sup>17</sup> Muammal dkk Hamidy, *Terjemaban Tafsir Ayat Abkam Ash-Shabuni*, Surabaya, PT. Bina Ilmu, 2003, Cet. Ke.4, vol. 7 (Surabay, 2003).

<sup>18</sup> Katsir, *Ibnu, Tafsir Ibnu Katsier, Mesir, Dar al-Kutub, t.Th, Juz IV*, n.d.

<sup>19</sup> Ridha, *Tafsir Al-Manar, Mesir, Al-Manar, 2000 M/ 1460 H, Juz I*.

<sup>20</sup> Al-Zuhaili, *Al-Fiqh al-Islam Wa Adillatub, Damsyiq, Dar al-Fiker, Jilid.1*.

<sup>21</sup> Al-Syafi'i, , *Al-Umm I, Beirut, Dar al-Fikeri, 1990*.

puberty is marked by an even age of fifteen years (*qomariah year* with the number of days and days). date), or have dreamed of intercourse, or menstruation occurs for women. These signs can be a standard for someone to become baligh, the status of baligh is seen as marking someone who is physically and psychologically capable of carrying out *al-syar'iyah* in full. The Prophet said: "From Muaz r.a. That the Prophet sallallaahu 'alaihi wa sallam sent him to Yemen and ordered him to take from everyone who has ihtilam one dinar" (HR. An-Nasa'i).

This hadith, which has a *sanad* from Mu'az, emphasizes and gives one example of the imposition of taklif law on people who are *mukallaf*, namely the payment of zakat. The Messenger of Allah ordered Muaz when he was sent to Yaman to collect zakat of one dinar from people who had ihtilam or wet dreams. The hadith of the Prophet Muhammad from 'Athiyyah, he said: "We were presented to the Prophet on the day of Quraidhah (the event of the betrayal of the Banu Quraidhah), where people who had grown pubic hair were killed, while those who had not grown were left. I am a person who has not grown so I am left behind."<sup>22</sup>

In the hadith above, there are scholars who argue that the growth of pubic hair is only a sign of puberty for unbelievers and there are those who equate that the growth of pubic hair also applies to Muslims. In this case it is Malikiyyah who distinguishes between the things of Allah and the rights of the children of Adam. If it is said that the Shari'ah has forbidden killing children in war, then this is a provision that comes from Allah that must be fulfilled by humans (Muslims). It cannot be said that carrying out the commandment is a fulfillment of the rights of the children of Adam, not the fulfillment of God's rights.

Ibn al-Qayyim rahimahullah did not distinguish the growth of pubic hair as a sign of puberty for a disbeliever or a Muslim, as he said the following: "And in this case there is an explanation that the growth of pubic hair is a sign of a person's maturity, for the children of the Muslims and those who infidels; and also shows that it is permissible to look at the nakedness of others when necessary to find out whether or not someone is mature and for others.

Hadith of Rasulullah SAW from Ibn 'Umar *radliyallaahu 'anhuma*, he said which means:

"The Messenger of Allah -peace and prayer of Allah be upon him- appointed me to participate in the battle of Uhud, when I was fourteen years old. But he didn't let me. And then he appointed me again in the battle of Khandaq, when I was fifteen years old. He also allowed me." Naafi' said: "I came to 'Umar bin 'Abdil-'Aziz who at that time served as caliph, then I told him about the hadith. Then he said: 'Really this is the boundary between

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<sup>22</sup> Muhammad ibn 'Isa ibn Saurah Al-Tirmizi, *Sunan At-Tirmidzi*, Beirut, Dar al-Firk, 1980, 1980.



*small and large'. So 'Umar assigned his employees to make it mandatory for people who were fifteen years old to fight, while those who were younger they were assigned to take care of the families of those who participated in the war.*

In this hadith it does not show for certain that the age of fifteen is the age limit for puberty. Because it still contains the possibility that the prohibition of the Prophet SAW was not due to the puberty factor, but because Ibn 'Umar was still young, it was feared that the Prophet had not been able to fight. Why 'Umar bin 'Abdil-'Aziz ijtihaad only signifies that age as a big and small limit to join the war. Ibnul-Qayyim *rahimahullah* also explained, he said: *"For the time of ibtilaam there is no age limit, even children who are twelve years old can ibtilaam. There are also those who reach fifteen years, sixteen years, and so on but have not reached ibtilaam."* Then he continued: *"Dawud (Adh-Dhabiriy) and his companions said: 'There is no certain limit for the age of puberty. The correct limit is only ibtilam'. This is a strong opinion."*

In interpreting some of the hadiths that the author has stated above, the scholars differ on this matter. Among these opinions are: the *Shafi'iyah* school of Hanabilah, the opinion chosen by Ibn Wahb from the Maliki school, Abu Yusuf and Muhammad bin Al-Hasan from the Hanafiyyah, as well as a history from Abu Hanifa which is fifteen years for men and women. *The Malikiyah Madhhab*, there are several opinions. Some say eighteen years for boys and girls, nineteen years, seventeen years, and sixteen years. *Ibn Hazm* argues nineteen years. From some of the opinions of these scholars when traced, can actually be grouped into four opinions: (a) The Shafi'i and Hanabilah scholars determined that adulthood begins at the age of fifteen, although they can accept maturity with signs of menstruation for women and dreams for boys. However, these signs are not the same for everyone, so maturity is determined by age standards; (b) Abu Hanifah believes that maturity comes from the age of nineteen for boys and seventeen years for girls; (c) Imam Malik stipulates that the adult age is eighteen years for both men and women; (d) Ja'fari school is of the opinion that a person is considered an adult and can marry if he is fifteen years old for a man and nine years for a woman.<sup>23</sup>

The following history is used as a study material to determine the age of puberty from the hadith that tells the age of 'Aisyah when she married the Prophet Muhammad as follows which means:

*"From Hisham ibn Urwah from his father from 'Aisha, it has been said; Rasulullah SAW married her ('Aisha) when she was six years old, and he took her with her when 'Aisha was nine years old, and he died when 'Aisha was eighteen years old. (HR. Buhari Muslim).*

A critical study highlights the age of 'Aisyah RA when she married the Prophet SAW, pioneered by Muhammad Ali and then continued by other

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<sup>23</sup> Muhammad Jawad Mughniyah, *Fikih Lima Mazhab, Alib Babasa Masykur AB, Jakarta, Lentera, 1999, Cet. IV* (Jakarta, 1999).

scholars of the Indian Subcontinent, such as Abu Tahir 'Irfani, Ghulam Nabi Muslim Sahib, and Habibur Rahman Shidiqi Kandhalvi. The critical study of the hadith states that most of the narrations relating to this that are printed in the hadiths are all narrated only by Hisham ibn 'Urwah, who recorded on the authority of his father, of which at least two or three people should have recorded similar hadiths as well. It is strange that no one in Medina, where Hisham ibn 'Urwah lived, until the age of seventy-one had just told this story, despite the fact that many students in Medina including the famous Malik ibn Anas, did not tell this.

Another reason for the refusal is related to several narrations and historical events as follows: (a) Hadith which states that: "Ibn 'Umar stated that the Messenger of Allah did not allow himself to participate in the battle of Uhud, at that time Ibn 'Umar was 14 years old. But during the Khandaq war, when he was 15 years old, the Prophet allowed Ibn 'Umar to join the war . that" (as the text of the hadith that the author quoted earlier). Based on the hadith above, children under 15 years old will be sent home and not allowed to join the war because they are not yet adults. 'Aisha's participation in the battles of Badr (622 AD) and Uhud (623 AD/624 AD) clearly indicates that she was not 9 years old at that time, but was at least 15 years old at the time of the Battle of Badr and 16 years old at the time of the Uhud war; (b) In the year 623 AD/624 AD, it is said by historians that the Prophet SAW was married to 'Aisyah who was 16 years old, and had proposed to the Prophet SAW in 620 AD when 'Aisha was 13 years old, and in 622 AD. where 'Aisyah when she was 15 years old was allowed the Prophet SAW to help in the battle of Badr; (c) According to Tabari (died 922 AH) as well as according to Hisham ibn 'Urwah, Ibn Hanbal and Ibn Sa'ad, Ayesha was betrothed at the age of 7 years and began to marry at the age of 9 years. But, in another part, Al-Tabari says: "All of Abu Bakr's children (4 people) were born during the period of ignorance from his two wives". If Aisyah was proposed to 620 AD (Aisyah was 7 years old) and married in 623/624 AD (age 9 years), this indicates that Aisyah was born in 613 AD. So based on Al-Tabari's writing, Ayesha should have been born in 613 AD, which is 3 years after The period of Jahiliyah was over (610 AD). (Al-Tabari , 1979) Ayesha should be at least 14 years old when she married . But in essence Tabari experienced a contradiction in his narration; (d) If Ayesha's age is related to Fatimah's age, according to Ibn Hajar, "Fatima was born when the Ka'bah was rebuilt, when the Prophet was 35 years old, Fatimah was 5 years older than Ayesha". (al-Asqalani , 1978) If Ibn Hajar's statement is true, it means that Ayesha was born when the Prophet was 40 years old. If Ayesha married the Prophet when the Prophet was 52 years old, then Ayesha's age when married was 12 years; (e) If Aisyah's age is calculated from Asma's age, Abda'l-Rahman ibn Abi Zanna'd says: "Asma is 10 years older than Aisyah. According to Ibn Kathir: "Asma is 10 years older than her sister [Aisha]". (Katsir, 1993) According to Ibn Hajar Al-Asqalani: "Asthma lived to 100 years and died in 73

or 74 H.". According to Ibn Kathir: "Asma saw the murder of her son in 73 H, and 5 days later Asma died. According to other accounts, he died 10 or 20 days later, or a few days more than 20 days, or 100 days later. The strongest history is 100 days later. When Asma Died, he was 100 years old." It was also added that according to most historians, Asma, Aisyah's eldest brother was 10 years apart. If Asma died at the age of 100, she was in the year 73 H, Asma should have been 27 or 28 years old when she migrated (622 AD). If Asma was 27 or 28 years old when she moved (when Aisyah got married), Aisyah should be 17 or 18 years old. So, Aisyah, was 17 or 18 years old when she moved in the year Aisyah was married.

From several critical arguments about the age of 'Aisyah when she married the Prophet, the results vary. However, it can be understood that 'Aisyah was not married to Rasulullah SAW at the age of 6 years, but it is estimated that 'Aisyah's age ranged from 15 to 18 years.

Based on the previous description, baligh cannot be concretely limited in the form of age equally to everyone, but will apply to person according to a person's development, meaning that the age limit described by fiqh scholars as mentioned above is only a span of time, for the following reasons : (a) The verse of the Koran does not explicitly provide an age limit, but only gives a hint about two things; namely baligh with an indication of *rusyda* (intelligence) as in Surah an-Nisa verse 6 and baligh with an indication of *bulm* (wet dream) in surah an-Nur verse 56. So the scope of the meaning of *rusyda* with intelligence in religion and intelligence in maintaining property; (b) It is not certain that someone who has *reached puberty* with the standard when he has *bulm* (wet dream) for men and his first menstruation for women will immediately appear intellectual intelligence in religion and intelligence in managing wealth; (c) If it is related to the history of Ibn Umar that the age of 15 years was allowed by the Messenger of Allah to fight, it also allowed someone at that age to have not fulfilled intelligence in religion and wealth, coupled with the argument of Umar bin Abd Aziz when reported by Nafi' he commented "age five Twelve determines big and small" meaning that it still leads to one condition, namely physical and energy, not reason; (d) Ibn Qayyim's explanation says that there is no limit to the age of twelve ihtilam and even fifteen years, describing the relative appearance of physical characteristics experienced by a person. Likewise with the growth of pubic hair as one of the signs of puberty which is held by Imam Shafi'i while being rejected by Imam Hanafi who believes that there is no difference between pubic hair and other body hair, it is also very partial and individual.

### **Consistency of Laws in Indonesia in Setting Adults**

The Positive Law in Indonesia in determining adulthood is obtained from an *a-contrario* interpretation which departs from the meaning of the word immature in Article 330 BW which states: "Minors are those who have not

reached the age of 21 (twenty one) years and not earlier. have married."<sup>24</sup> Ade Maman Suharman and J Satrio in their book "Abilities and Authorities to Act Legally" say the stages of age limiting with a psychological approach, which are then linked to the age limit for legal skills, starting from early adulthood, middle adulthood to late adulthood, but in general the age limit for a child is considered capable and responsible at the age of 18 years. To express adulthood, there are several terms that often appear and are used in laws and regulations, including the words "immaturity", "not yet mature", "not old enough" and "child". The term adult or minor is used in several regulations under the law, while the law does not find the term adult or immature at all.

Adult talk According to J.Satrio always associated with the ability to take civil legal action through the age element, but from the provisions in the BW, including article 307 in conjunction with article 308, article 383 BW as well as article 47 and article 50 of Law No.1 of 1974 Regarding Marriage, Article 1330 and Article 1446 BW, one can conclude that in principle those who can take legal action legally with perfect legal consequences are those who are adults. So the determination of adulthood is not only limited by age. However, there are other factors, such as marital status, which can affect a person's skills. The term adult is difficult to distinguish from the notion of baligh – as described earlier – so that the criteria for a person's maturity are also associated with their baligh condition. R. Subekti in his book "Covenant Law" emphasizes more on the elements that make a person considered legally competent, namely every person who is an adult or has reached puberty and has sound mind. ( Subekti, 1987) Through the definition of an adult as understood from Article 330 BW, it stipulates that the age limit for a person is declared an adult, moving from the specified age, a person is declared immature, namely under 21 (twenty one) years, then it means that if he has reached the age of 21 (twenty one). ) years or above 21 (twenty one years) he is an adult. So adults are associated with the law someone has been able to act legally.

Nasruddin<sup>25</sup> Marriage Age Limit According to Law Number 16 of 2019 and Article 330 of the Civil Code. Determination of the Adult Age Limit in Marriage According to Law Number 16 of 2019 and Article 330 of the Civil Code is that the determination of the age limit for marriage in Law Number 1 of 1974 concerning Marriage as has been amended by Law Number -Law Number 16 of 2019 concerning Marriage is contained in Article 7 Paragraph (1) which states that marriage is only permitted if a man and woman have reached the age of 19 (Nineteen), Article 330 of the Civil Code has regulated the adult age limit for a person. The article clearly states that a person who is considered an adult and

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<sup>24</sup> R. Subekti, *Hukum Perjanjian*, Jakarta, Intermasa, 1987, *Cet.XI*, vol. 9 (Jakarta, 1987).

<sup>25</sup> Nasruddin, "Batas Usia Perkawinan Menurut UU Nomor 16 Tahun 2019 Dan KUH Perdata Pasal 330," *Al-Hukkam; Jurnal of Islamic Family Law*, 2, 1, no. 2 (2021): h. 192-206.

capable of taking legal actions must first be 21 years old or not yet 21 years old but have already married.

Consistency of Adult Age In Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 that is a requirement that must be met by the prospective bride and groom, the intended maturity is manifested in the form of a minimum age standard that must be met by the prospective groom -Men and prospective brides as contained in Article 1 paragraph (1) The provisions of Article 7 are amended to read as follows: Article 7 (1) Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. Article 7 paragraph (2) In the event that there is a deviation from the age provision as referred to in paragraph (1), the male parent and/or female parent may request a dispensation from the Court on the grounds that it is very urgent, accompanied by sufficient supporting evidence. Article 7 paragraph (3) The dispensation by the Court as referred to in paragraph (2) is obliged to listen to the opinions of the two prospective brides who will carry out the marriage.

The importance of age determination is inseparable from the sacred purpose of marriage as stated in Article 1 paragraph 1 of the Marriage Law which states that marriage is an inner and outer bond between a man and a woman as husband and wife to form an eternally happy family (household) based on God Almighty. From this article it is implied that the purpose of marriage is very noble, namely to form an eternal and happy family. The outer and inner ties are meant that marriage is not enough to only have an "outward bound" or an "inner bond" but must be both, the outer bond is a bond that looks formal, while the inner bond is an abstract bond that is informal, the love and affection of both parties.<sup>26</sup>

Article 6 paragraph (1); marriage can take place if there is the approval of the prospective bride, the provisions of this article do not reduce the authority of the biological father as *a mujbir guardian* (a guardian who can force his daughter who is still a virgin), but so that there is harmony between both parties, because the daughter who will live in a household is the daughter . Article 6 paragraph (2) Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years. In the explanation of article 7 paragraph (1); To maintain the health of husband and wife and offspring, it is necessary to set age limits for marriage. This age limit provision, which is stated in the Compilation of Islamic Law Article 15 paragraph (1), is based on considerations of the benefit of the family and the marriage household. This is in line with the principle laid down by the Marriage Law, that the prospective husband and wife must have matured in mind and body to be able to carry out a marriage, so that they can realize the purpose of marriage properly without

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<sup>26</sup> Abd Qohar et al., "Mut'ah Marriage Law in Perspective of Sayyid Husain Al-Thaba'thabai and Their Relevance with Family Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (May 30, 2022): 225, <https://doi.org/10.29240/jhi.v7i1.3714>.

ending in divorce and obtaining good and healthy offspring.<sup>27</sup> Law Number 1 of 1974 has taken steps to break the law compared to article 29 of the BW which states "A boy who has not yet reached the age of eighteen years, like a girl who has not reached the age of fifteen years, cannot allowed to bind himself in marriage." Article 4 paragraph (1) "a boy who has not reached the age of 18 years and a girl who has not reached the age of 15 years is not allowed to marry." It means that the standard set by BW article 29 is 15 years for women and 18 years for men.

Article 7 paragraph (2) n the event that there is 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 supporting evidence.<sup>28</sup> Because in article 29 BW states that "the president has the power to abolish this prohibition by granting dispensation". Meanwhile, in Article 7 paragraph (2) of the Marriage Law, the delegation of the provisions of Article 29 BW is the court. The age of 18 (eighteen) years in chapter X concerning rights and obligations between parents and children is as follows: Article 45 Both parents are obliged to maintain and educate their children as well as possible. The obligations of parents as referred to in paragraph (1) article This applies until the child marries or can stand alone, which obligations continue even though the marriage between the two parents is broken.

Article 45 paragraph (2) explains the obligation of parents to maintain and educate based on the condition of being married or independent. This article shows the limit of the death of parents' obligations towards their children. So "married or can stand alone" is an indication that a child has grown up. The word "can stand alone" is limited to the age above 18 years, because children under the age of 18 years are under the authority of their parents. Guardianship is appointed against them, or people who take care of them, as regulated in Article 50 paragraphs (1) and (2), namely: either due to death or due to other causes, then a guardian (person who takes care of them) is appointed whose authority covers the personal affairs of the child as well as the property owned by the child until the child is independent or reaches the age of 18 years. So from the above description based on Article 6 paragraphs (1) and (2), Article 7 paragraphs (1) and (2), Articles 45,46, 47, 48 and Article 50 of the Marriage Law, it can be concluded that the Marriage Law adheres to at the age of 21 years. This is in accordance with the provisions in Article 330 BW which states that , "The minors are those who have not reached the age of twenty-one years and have not married before." 1 of 1974 experienced consistency, namely they both said that they were 21 years old, but the number of permission to get married had increased. Consistency of adult age in Law Number 23 of 2002 concerning Child Protection 2002 as amended by Law

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<sup>27</sup> Sudarsono, *Hukum Perkawinan Nasional*, Jakarta, Rineka Cipta, 2005, Cet. III (Jakarta, 2005).

<sup>28</sup> "UU Nomor 16 Tahun 2019.Pdf," n.d.

Number 35 of 2014, a person who is an adult is when he is a child. This understanding is taken from the interpretation of the reverse logic of the notion of crossing children's boundaries, however, it is not explicitly stated as an adult. Article 1 paragraph (1) explains that: " A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb".<sup>29</sup>

Based on Law Number 24 of 2013<sup>30</sup> amending the provisions of article 63 of Law Number 23 of 2006 that "Indonesian Citizens and Foreigners who have Permanent Stay Permits who are 17 (seventeen) years old or have been married or have been married are required to have a permanent residence permit. e-KTP" then refers to chapter I general provisions, article. 1 point (2) Residents are Indonesian Citizens and Foreigners residing in Indonesia. (3). Indonesian citizens are people of the original Indonesian nation and people of other nations who are ratified by law as Indonesian citizens. (4). Foreigner is a person who is not an Indonesian citizen. 2 of 2018 as amended by Law Number 2 of 2011 concerning Political Parties in article 14 states that it is permissible to become a member of a political party who is 17 years old or already married or has been married. Law No. 7 of 2017<sup>31</sup> concerning General Elections Article 1 point (34) Voters are Indonesian citizens who are 17 (seventeen) years old or more, are married, or have been married, in this law it is clear that the right to vote owned by citizens also uses the standard age of 17 years or has been married or has been married.

In Law Number 22 of 2009 concerning Traffic in Article 81 paragraphs (1) and (2) states: paragraph (1) states " To obtain a driving license as referred to in article 77, everyone must meet the age, administrative, health and pass the exam". Article 81 paragraph (2) "The minimum age requirement as referred to in paragraph (1) is determined as follows; 17 years old for Driving License A, Driving License C and Driving License D". From the description above, the interpretation with reverse logic about the adult age in the population associated with one of the identities of the population in the Population Administration system which requires Indonesian citizens to have an Identity Card (KTP), then stipulated by Law No. 23 of 2006 is 17 Years or have been married or have been married. Consistency of Adult Age in Law Number 13 of 2003 concerning Employment, Law Number 30 of 2004 concerning Notary Positions, Law of the Republic of Indonesia Number 12 of 2006 concerning Citizenship, Law of the Republic of Indonesia Number 36 of 2008 concerning the Fourth Amendment to the Law Number 7 of 1983 concerning Income Tax. Law Number 13 of 2003 concerning Manpower in article 1 number 26 reads "child is every person under the age of eighteen years". So the *a-contario interpretation* causes the

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<sup>29</sup> "UU. RI Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan UU. RI Nomor 23 Tahun 2002 Tentang Perlindungan Anak," no. 23 (2006): 2002.

<sup>30</sup> "UU Nomor 24 Tahun 2013.Pdf," n.d.

<sup>31</sup> "UU\_Nomor\_7\_Tahun\_2017\_-\_Batang\_Tubuh\_-\_Hal\_1-150.Pdf," n.d.

application of the principle of "*lex specialist derogat lex generalis*" capable or capable according to the law by meaning that the competent or mature age is 18 years.

In Law Number 30 of 2004 concerning the Position of a Notary, it is stated that the requirements to become a appeared and witness include that the age of 18 years is considered by the legislators to have been burdened with legal responsibility, children who are 18 years of age are considered competent in making wills, as in article 897 BW.

Article 39 paragraph (1) reads: "The appeared must meet the following requirements: a. At least 18 (eighteen) years old or married b. Capable of doing legal actions".

In the event that a notary or PPAT is allowed to accept a client who is 18 years old, it has been regulated in the Letter of the Ministry of Home Affairs, Director General of Agrarian Affairs No. Dpt.7/539/7-77, dated July 13, 1977. The letter is addressed to all Governors and Heads of Provinces all Regents or Mayors of Regional Heads in Indonesia. In the letter it is stated. "Regarding adulthood, a distinction can be made in: Political maturity is for example the age limit of 17 years to be able to participate in elections, Sexual maturity, for example, is the age limit of 18 years to be able to enter into marriage according to the new Marriage Law. Legal maturity is a certain age limit according to the law that can be considered capable of acting in law".

From the description above, it can be understood that the notary's ability to accept his client is not from the adult side at the age of 18 but has been considered legally capable starting someone aged at least 18 years . 12 of 2006 concerning Citizenship, Article 4 aq reads "Indonesian citizen is a child born outside a legal marriage to a foreign mother who is recognized by an Indonesian citizen father as his child and the recognition is carried out before the child is 18 (eighteen) years old. or not married.

Law of the Republic of Indonesia Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax, in Law of the Republic of Indonesia Number 7 of 1983 concerning Income Tax Article 8 paragraph (2) reads: "The income of a minor who is not from work or income from work that is related to the business of other family members, combined with the income of their parents". 4) Minor children are children who are not yet 18 (eighteen) years old and have never been married. This means that changes from the tax law do not bring changes to the standard age for income tax payers, so the age of 18 (eighteen) ) years or have been married.

Why is it important to have a legal age limit for marriage? as mentioned in the Compilation of Islamic Law Article 15 paragraph (1) based on considerations of the benefit of the family and the marriage household. This is in line with the principle laid down by the Marriage Law, that the prospective



husband and wife must have matured in mind and body, so that the purpose of marriage can be realized properly without ending in divorce and getting good and healthy offspring. Then according to Bambang Daru Nugroho<sup>32</sup> For this reason, marriages between prospective husbands and wives who are still under age must be prevented.

From the psychological aspect that couples who do not have a mature age will be a factor in the fragility of the family so that it is easy for divorce to occur. Divorce then has an impact that horizontally causes social problems such as abandoned children and young widows. As for the sociological aspect, adolescence can be interpreted as a period of integration of a person with adult society. Integration in society (adult) has many effective aspects, more or less related to puberty. This includes marked intellectual changes, intellectual transformations that are characteristic of the adolescent's way of thinking, which allows him to achieve integration in adult social relationships, which in fact is a common feature of the developmental period.

Marriage is not done on the sincerity of each partner, then what happens is a problem that never ends. Early marriage has many risks for married couples who do it. Both in terms of economy, education, health, and social. the essence of a sacred marriage to form a family that loves and cares for each other is not fully realized. Instead, the marriage became a disgrace to each family. Islam does allow marriage if you already have the ability or are worried that you can't hold back the desire to commit adultery. However, this cannot be completely justified. Psychological considerations certainly need to be considered. Teenagers who are still full of emotional turmoil and search for identity are certainly not ready to carry out their full responsibilities as the head of the household and housewife.<sup>33</sup>

Law Number 35 of 2014 concerning Child Protection which at least includes, first; children's right to education. The case of early marriage shows that the child does not continue his education, second, the child's right to think and express, third, the child's right to express his opinion and be heard, fourth, the child's right to express his opinion and be heard, fourth, the child's right to rest and use free time, hanging out with peers playing, expressing and being creative and fifth, the right of children to get protection.

### **Comparison of *Baligh* in *Fiqh* with Adults in Indonesian Positive Law**

To define and compare the two terms used in *fiqh* and Positive Law, the author departs from the definitions that have been put forward by looking at the

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<sup>32</sup> Bambang Daru Nugroho, *Hukum Perdata Di Indonesia Integrasi Hukum Di Eropa Kontinental Ke Dalam Sistem Hukum Adat Dan Nasional* (Bandung: PT. Rafika Aditama, 2017).

<sup>33</sup> Melinda Rahmawati and Heni Ani Nuraeni, "Peran Dispensasi Kawin dalam Peningkatan Angka Pernikahan Dini di Wilayah Kotamadya Jakarta Barat," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 (May 25, 2021): 1, <https://doi.org/10.29240/jhi.v6i1.1578>.

elements that must be met in these two terms. Baligh is a measure used in *fiqh* to determine up to a certain age limit which becomes clear to him all affairs and can be burdened with taklif law with the criteria of having the *first bulm* (removing semen through a dream) for men and the first menstruation for women and having *rusyd* intelligent mind to take care of property and carry out the demands of Allah (religion). While the author's definition of adulthood is to move from what is stated in the BW article 330 concerning minors by using the age of 21 (twenty one) years or having been married or has been married. Adults here are related to competence (*bekwaam*) or legal action skills (*rechbekwaamheid*). Because there is an explicit definition of the word adult in the Positive Law, adult is spoken of in the law when talking about matters relating to civil matters such as property rights; receive a will, an engagement to enter into a marriage and guardianship for persons who are not legally competent.

Although the terms *baligh* accords to *fiqh* and adult according to the Positive Law have the same side of determining the criteria. The similarity side is that puberty and adulthood lead to physical and psychological characteristics and conditions, *fiqh* is more personal because the arrival of *bulm* (wet dreams) and menstruation is not the same for everyone, as well as *rusyd* (intelligent) is also relative so based on the Koran and hadith have not yet reached a firm conclusion – only a conjecture of understanding – possibly 18 (eighteen) years of age. While the Positive Law – as explained in Article 330 BW – has stipulated a certain age, namely adult is 21 (twenty one) years old or has been married or has been married, special rules for those who are married are enforced in Article 307, Article 308, Article 320 -322, article 327, article 328 BW. However, the scope of baligh is not in matters of engagement and material matters, which only states that they want to declare baligh as the age of a person who is fit to marry and manage property, but baligh serves to determine whether a person as *mahkum 'alaibi* (legal subject) can meet the requirements of the mukallaf by; The first is to understand the *syar'i kitab*, (sharia provisions) through the taklif indicator, namely baligh. Second, whether someone is considered an *expertyah'ada* (perfect legal competence) to burden the *takhlifiyah law*. Baligh determines the affairs of a person related to "The Khaliq" Allah SWT as the hadith of the Prophet SAW:

ابْنُ السَّرْحِ اِبْنُ اَزْمِ لَيْمَانَ اِنْ اَنْ اِبْنَ اِسِّ اَلْ كَى لِى لِىْ اَبِي الْبِ اَللّٰهُ عُمْمَانَ. اَلْ اَلِ اللّٰهُ -صلى الله  
 ليه لم- اَلْ « اَلْقَلَمُ عَن لَانَةِ الْمَجْنُونِ الْمَغْلُوبِ لى لِى النَّائِمِ الصَّيِّ

"It has been told to us Ibn Syarbi who reported to Ibn Wahab and reported to me Jarir Ibn Jazim from Sulaiman Ibn Mihran from Abi Thaiban from Ibn Abbas, said Murra to Ali Ibn Abi Talib RA which is similar to Uthman, Says or is spoken by the Messenger of Allah said: "A person is responsible for three things: a madman until his mind

*is healthy, a person sleeping until he wakes up and a child until he dreams of releasing semen (ihtilam). (Narrated by Abu Dawud)*

In the discussion of baligh, according to the author, there are similarities in the interpretation of legal skills which are associated with the condition of a person's mind which according to the provisions of article 307, article 308, article 320-322, article 327, article 328 BW which states that people who are not yet mature above 18 years and under 21 years are under the guardianship of their parents or guardians, then in the context of *expertyah al-wujub*, namely the ability to accept the rights to which they are entitled, but not yet capable of being burdened with all obligations. Although in the *expertyah al-wujub* concept, age is not clearly stated as in the BW.

This relates to the consistency of age determination between puberty according to fiqh and adulthood according to Positive Law. So according to the author, the age limit in fiqh starts from the indication of puberty based on the signs of puberty that the author has stated above, such as; ihtilam, the growth of pubic hair and reaching a certain age. Ihtilam according to Al-Haafidh Ibn Hajar al-Asqalani: *"The scholars have agreed / ijma' that ihtilam for men and women obliges with it (for the enactment of) worship, hudud, and all legal cases"*.

The consensus of the scholars referred to by Ibn Hajar al-Asqalani, ihtilam is the benchmark for a man and a woman to be proficient in legal *expertyah al-'ada* in worship, hudud and all legal matters. The growth of pubic hair as expressed by Ibn al-Qayyim *rahimahullah*: *"And in this case there is an explanation that the growth of pubic hair is a sign of a person's puberty, for the children of the Muslims and the disbelievers; and also shows that it is permissible to look at the nakedness of others when necessary to find out whether or not someone is mature and for others."*

The growth of pubic hair is a sign of puberty, valid for Muslims and non-Muslims; the ability to see the genitals of others when needed is certainly related to certain laws or purposes that require clarity from one of these signs, as well as for others. As also understood by Syafi'i, this can be a sign of puberty even though it gets objections from Hanafi who do not accept the growth of hair as a sign of puberty because it is no different from the growth of hair on other parts of the body. As well as reaching a certain age as the hadith understanding of Ibn Umar relates his age to take part in jihad to fight with the Prophet in the Khaibar war when he was fourteen years old, he was rejected and accepted by the Prophet during the Khandak war when he was fifteen years old as Imam Shafi'i also determined that he was even five years old. qamariah, while the Imam is of the opinion that he is eighteen years old and Hanafi nineteen years old. Apart from the three signs of puberty above, there is a strong reason for the criticism of the hadith by the experts - about the age of 'Aisha when she married the Prophet Muhammad when she was six years old and the Prophet had sex with her, she was nine years old as given by Urwah bin Hisham -

estimated to be around the age of fifteen. Years to eighteen years. Means the state of *bulm*, physical characteristics with the growth of pubic hair is closely related to the reality that will appear in the range of fifteen to nineteen years.

As for the Positive Law that the author put forward as a reference for seeking consistency in adult age, from the Republic of Indonesia Law Number 1 of 1974 concerning Marriage, Law Number 24 of 2013 concerning Child Protection and Law Number 24 of 2013 concerning Population Administration which the author made the main basis of comparison between adults and puberty, coupled with Law Number 13 of 2003 concerning Manpower, Law Number 30 of 2004 concerning Notary Positions, Law of the Republic of Indonesia Number 12 of 2006 concerning Citizenship, Law of the Republic of Indonesia Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax. Although the articles written in the Positive Law above clearly state the age limit, it turns out that there are three age categories : 17 (seventeen) years of age in the Population Administration Law, - the Law on Political Parties; may be a member of a political party and the Election Law; have the right to vote during the general election, and can have a driver's license according to the traffic law . Age 18 (eighteen) years in the child protection law, notary position law, citizenship law and income tax law . Age 21 (twenty one) years in the Marriage Law and the Manpower Act.

Baligh in terms of understanding, that baligh is the standard that a person can be legal skills and mental maturity with *taklifiyah law* which places a person in the category of *mahkum 'alaihi* (legal subject) with the status of *expert al'ada* (fully capable of acting legally). The legal implications of the actions of someone who has reached puberty are not only related to the ability to receive rights and fulfill obligations in civil matters regulated by the ruler ( *amir* ) but also relate to the obligation to fulfill Allah's commands which results in a person getting sin and reward. Adult is a term used by Positive Law – first listed in Article 330 of the BW – understood from an *a-contrario* interpretation taken from the notion of underage age and the age of children. The legal implications of the actions of adults according to the Positive Law only relate to civil matters, such as engagements, agreements, grants, wills and inheritance. Determining baligh according to *fiqh* and adults in the Positive Law uses different stages of methods, although the substance is that baligh and adults are based on physical abilities and the functioning of the mind – children, people who are empowered and insane people who are not legally capable – but determining the version of *fiqh* through certain stages and signs listed in the Qur'an and Sunnah. The stages of the method referred to in *fiqh* to determine puberty are determined in three ways; *The first is ihtilam* or *bulm* (wet dreams) for men and the first menstruation for women, the *second is* the growth of pubic hair and the *third is* with a certain age. While adults in the Positive Law only use age determination methods such as seventeen years, eighteen years, and twenty-one years. With no intention of

denying the basis of consideration by the legislators as in the Marriage Law, this age limit provision is included, in the Compilation of Islamic Law Article 15 paragraph (1) based on considerations of the benefit of the family and the marriage household. This is in line with the principle laid down by the Marriage Law that the prospective husband and wife must have matured in mind and body to be able to carry out a marriage, so that they can realize the purpose of marriage properly without ending in divorce and obtaining good and healthy offspring. In the child protection law, when the National Commission for Child Protection provides input to Commission VII DPR, it uses a *protection approach* in limiting the age and understanding of children, until it determines the age of the child is a child under the age of eighteen years and a child in the womb.

The difference in the legal implications of the notion of baligh and adult from a purely civil aspect according to Positive Law and *taklif* and civil aspects according to fiqh, then these two terms are not appropriate to be compromised with one meaning, namely baligh is adult and adult is baligh. Because the review and final goals to be achieved by the law of puberty and adulthood are different, it remains in place that the term baligh in Islamic law and adult is in the state Positive Law. their efforts in understanding the texts of the Koran and Hadith, so that understanding the words *balagh al-nikah*, *rusyd* and *bulm*, directs the age limit for puberty from fifteen to nineteen years. Moving on from that, the age standard cannot be determined collectively, but baligh is a person who is closely related to a person's condition.

Inconsistency in the use of age in Positive Law, such as; Age 17 (seventeen) years in the Population Administration Law, - Law on Political Parties; may be a member of a political party and the Election Law; have the right to vote during general elections, and can have a driver's license according to the traffic law. Age 18 (eighteen) years in the child protection law, notary position law, citizenship law and income tax law. Age 21 (twenty one) years in the Marriage Law and the Manpower Act. In the author's opinion, there is a need for uniformity, because the age difference which is legitimized by Positive Law makes legal practitioners and justice seekers use double or ambivalent standards, so that judges' decisions will vary according to the judge's tendencies. After dissecting some of the laws above, the author's tendency to be of an adult age is eighteen years, on the grounds that BW is a product of Dutch law that is no longer relevant to the times, on the other hand BW is seen as inconsistent in setting age when an adult is 21 years old, for guardianship. 18 years, to marry 15 years for men and 18 years for women, the line of thought of the Indonesian legislative body by embracing BW article 330 which can be waived by article 307, article 308, article 320-322, article 327, article 328 BW when enter into agreements, engagements and grants. As adopted by the marriage law in articles 6, 7, 46, 47, 48 and 50.

Interest in the limits of puberty and adulthood is very much needed by humans, both as a status that has been *mukallaf* and as a legal subject who has been deemed legally competent according to the Positive Law. According to the author, these needs fall into the category of " *mashlahab* ". According to al-Ghazali as quoted by Nasrun Haroen, *Mashlahab* takes advantage and rejects harm in order to maintain the goals of syara'. *Mashlahab* departs from the expression of the Prophet in his hadith: لَا لِإِسْلَامٍ (must not harm and may not harm other people. When viewed from a biological perspective, age determination is included in *mashlahab 'ammah*, namely the public benefit that concerns the interests of many people.

## Conclusion

Baligh means up to or clear, ie children who have reached a certain age which becomes clear to him all the affairs / problems faced. His mind has been able to consider or clearly what is good and what is bad. The signs of *baliqh* are: *Ihtilam, Menstruation, Hair, and Age. Buluhg al-nikah* in this verse is interpreted by different scholars. Each point of view, First, it is interpreted as intelligence because the review is focused on the mental aspect, which is seen in a person's attitude and behavior. Second, interpreted as being old enough and dreaming, the focus of the review is on the outward physical and at the same time has converted. Apart from the three signs of puberty above, it becomes a strong reason for the results of hadith criticism by experts Regarding the age of 'Aisyah when she married the Prophet Muhammad at the age of six years and the Prophet had sex with the Prophet at the age of nine years, as given by Urwah bin Hisham, it is estimated that the age ranges from fifteen to eighteen years. It means that the state of *bulm*, physical characteristics with the growth of pubic hair is closely related to social reality ranging from fifteen to nineteen years. Meanwhile, the adult age in RI Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 and Law No. -Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 which the author uses as the basis for the main comparison between adults and puberty, is added by Law - Law Number 13 of 2003 concerning Manpower, Law Number 30 of 2004 concerning Notary Positions, Law of the Republic of Indonesia Number 12 of 2006 concerning Citizenship, Law of the Republic of Indonesia Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 regarding Income Tax. Although the articles written in the Positive Law above clearly state the age limit, it turns out that there are three age categories: 17 (seventeen) years of age in the Population Administration Law, - the Law on Political Parties; may be a member of a political party and the Election Law; have the right to vote during general elections, and can have a driver's license according to the traffic law. Age 18

(eighteen) years in the child protection law, notary position law, citizenship law and income tax law. Age 21 (twenty one) years in the Marriage Law and the Manpower Act. The determination of the limits of puberty and adulthood is included in the " *mashlahah* " category. *Mashlahah 'ammah* is the public benefit that concerns the interests of many people.

## References

- Al-Syafi'i, Muhammad ibn Idris. , *Al-Umm I, Beirut, Dar al-Fikri, 1990, 1990.*
- Al-Tirmizi, Muhammad ibn 'Isa ibn Saurah. *Sunan At-Tirmidzi, Beirut, Dar al-Firk, 1980, 1980.*
- Al-Zuhaili, Wahbah. *Al-Fiqh al-Islam Wa Adillatuh, Damsyiq, Dar al-Fikr, Jilid.1, n.d.*
- Chalil, Zaki Fuad. *Chalil, Zaki Fuad, "Tinjauan Batas Minimal Usia Kawin; Studi Perbandingan Antara Kitab-Kitab Fikih Dan Undang-Undang Perkawinan Di Negara-Negara Muslim," Badilag, Mimbar Hukum. Vol. VII, no. 2, 2006.*
- Dahlan, Abdul Aziz, Ed). *Ensiklopedi Hukum Islam, Jakarta, Ichtar Baru Van Hoeve, 1997.*
- Daru Nugroho, Bambang. *Hukum Perdata Di Indonesia Integrasi Hukum Di Eropa Kontinental Ke Dalam Sistem Hukum Adat Dan Nasional. Bandung: PT. Rafika Aditama, 2017.*
- Daud, Abu. *Sunan Abu Daud. Juz.13. Beirut: Dar Al-Fikr, n.d.*
- Hadikusuman, Hilman. *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat Dan Hukum Agama, Bandung, Mandar Maju, 1990, 1990.*
- Hamidy, Muammal dkk. *Terjemahan Tafsir Ayat Abkam Ash-Shabuni, Surabaya, PT. Bina Ilmu, 2003, Cet. Ke.4. Vol. 7. Surabaya, 2003.*
- Imron, Ali. *Kontribusi Hukum Islam Terhadap Pembangunan Hukum Nasional ( Studi Konsepsi Taklif Dan Mas'uliyat Dalam Legislasi Hukum), Semarang, Disertasi Universitas Diponegoro, 2008.*
- Kadarisman, Achmad, and Tutik Hamidah. "Pembatasan Usia Perkawinan Dalam Sudut Pandang Maqashid Syari'ah Al Syathibi," n.d., 24.
- Katsir. *Katsir, Ibnu, Tafsir Ibnu Katsier, Mesir, Dar al-Kutub, t.Th, Juz IV, n.d.*
- Mughniyah, Muhammad Jawad. *Fikih Lima Mazhab, Alib Bahasa Masykur AB, Jakarta, Lentera, 1999, Cet. IV. Jakarta, 1999.*
- Mujieb, M.Abdul dkk. , *Kamus Istilah Fiqh, Jakarta : Pustaka Firdaus, Cet.Ke 4 2010, n.d.*

- Musyarrafa, Nur Ihdatul, and Subehan Khalik. "Batas Usia Pernikahan Dalam Islam; Analisis Ulama Mazhab Terhadap Batas Usia Nikah." *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab dan Hukum*, January 1, 1970. <https://doi.org/10.24252/shautuna.v1i3.15465>.
- Nasruddin. "Batas Usia Perkawinan Menurut UU Nomor 16 Tahun 2019 Dan KUH Perdata Pasal 330." *Al-Hukkam; Jurnal of Islamic Family Law*, 2, 1, no. 2 (2021): h. 192-206.
- Pitrotussaadah. "Batas Usia Minimal Perkawinan Menurut Perspektif Hukum Positif Di Indonesia Dan Hukum Islam." *Jurnal Muttaqien*, 1, Vol. 1., no. No. 1 (July 2020): 74–84.
- Qohar, Abd, Muhammad Zaki, Liky Faizal, and Hilmi Yusron Rofi'i. "Mut'ah Marriage Law in Perspective of Sayyid Husain Al-Thaba'thabei and Their Relevance with Family Law in Indonesia." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (May 30, 2022): 225. <https://doi.org/10.29240/jhi.v7i1.3714>.
- Rahmawati, Melinda, and Heni Ani Nuraeni. "Peran Dispensasi Kawin dalam Peningkatan Angka Pernikahan Dini di Wilayah Kotamadya Jakarta Barat." *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 (May 25, 2021): 1. <https://doi.org/10.29240/jhi.v6i1.1578>.
- Republik Indonesia, Departemen Agama. *Al-Quran Dan Terjemahnya*. Bandung: Diponegoro, t.th.
- Ridha, Muhammad Rasyid. *Tafsir Al-Manar, Mesir, Al-Manar, 2000 M/1460 H, Juz I*, n.d.
- Ruzaipah. "Penetapan Usia Kedewasaan Dalam Sistem Hukum Di Indonesia." *Jurnal Misaqan Ghalizhan*, 1, Volume I (June 1, 2021): 1–20.
- Sainul, Ahmad. "Konsep Kedewasaan Subyek Hukum." *Jurnal el-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan dan Pranata Sosial* 5, no. 2 (April 26, 2020): 257–69. <https://doi.org/10.24952/el-qonuniy.v5i2.2153>.
- Subekti, R. *Hukum Perjanjian, Jakarta, Intermasa, 1987, Cet. XI*. Vol. 9. Jakarta, 1987.
- Sudarsono. *Hukum Perkawinan Nasional, Jakarta, Rineka Cipta, 2005, Cet. III*. Jakarta, 2005.
- Syarifuddin, Amir. "Pembaharuan Pemikiran Dalam Hukum Islam, Padang, Angkasa Raya, 1990," 1990.
- "UU Nomor 16 Tahun 2019.Pdf," n.d.
- "UU Nomor 24 Tahun 2013.Pdf," n.d.



“UU. RI Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan UU. RI Nomor 23 Tahun 2002 Tentang Perlindungan Anak,” no. 23 (2006): 2002.

“UU\_Nomor\_7\_Tahun\_2017\_-\_Batang\_Tubuh\_-\_Hal.\_1-150.Pdf,” n.d.

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