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Gender Equality and Child Marriage Prevention in Indonesia: A Mubadalah and Maqāṣid al-Syarī'ah Analysis of Law No. 16/2019

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ABSTRACT

This study analyzes the theological paradigm shift reflected in Indonesia's Marriage Law No. 16/2019, which raised the minimum legal age of marriage for women from 16 to 19 years, thereby establishing an equal minimum marriage age for both men and women. The study aims to examine the alignment between this legal reform and Islamic jurisprudence by providing a progressive theological justification through the perspectives of Mubadalah (reciprocity) and Maqāṣid al-Syarī'ah. Employing a juridical philosophical approach, this research uses qualitative library research by examining primary sources, particularly Law No. 16/2019, and secondary sources consisting of Islamic jurisprudence literature and relevant scholarly works. Data are analyzed through content analysis to examine the legal and theological arguments underlying the regulation. The findings indicate that the equalization of the minimum marriage age represents a shift from a predominantly textualist understanding of Islamic family law toward a contextual and progressive approach. Through the Mubadalah perspective, the age of 19 can be understood as reflecting the need for equal biological and psychological maturity (rushd) for both spouses, rather than relying solely on the attainment of puberty (baligh). Furthermore, the regulation is consistent with the objectives of Maqāṣid al-Syarī'ah, particularly the protection of life (hifẓ al-nafs) and offspring (hifẓ al-nasl), by seeking to prevent the potential harms associated with child marriage. This study is limited to normative and philosophical analysis and does not empirically assess the effectiveness of law enforcement or its sociological impact on child marriage rates in specific regions. Its originality lies in positioning Mubadalah not merely as an interpretive method but also as a theological principle that can support state-led family law reform. The study demonstrates how progressive Islamic values can provide a normative basis for legal reform while responding to arguments that minimum age restrictions are incompatible with Islamic principles.

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Introduction

The amendment of the minimum marriage age in Indonesia through Law No. 16 of

2019, which increased the minimum age for women from 16 to 19 years and established equality with men, represents a significant development in the evolution of Islamic family law reform in the country. This legislative change goes beyond a numerical adjustment to the legal age of marriage; it reflects a broader transformation in the state's approach to defining marital readiness by incorporating considerations of equality, protection, and social responsibility. The reform indicates a shift toward a more contextual understanding of marriage, where legal maturity is not determined solely by biological factors but also by psychological, social, and ethical dimensions necessary for establishing a stable family institution. By setting the minimum marriage age for both men and women at 19, the state has implicitly recognized that marriage is a partnership requiring equal maturity from both parties (Butt, 2009; Simon, 2009). However, this legal progression faces a significant theological challenge among grassroots communities. The classical fiqh paradigm, which is deeply rooted in Indonesian Muslim society, predominantly relies on the concept of baligh (biological puberty) as the sole criterion for marriage eligibility. This traditional view often disregards the necessity of rushd (intellectual and mental maturity), thereby creating a dichotomy between the progressive state law and the conservative religious understanding held practiced by a significant portion of the population (Beckmann, 2017; Flambonita et al., 2021; Lukito, 2012).

The urgency of this reform is underscored by the alarming empirical reality of child marriage in Indonesia, which poses severe threats to human development. Data from the National Socio-Economic Survey (Susenas) and UNICEF consistently highlight that Indonesia has one of the highest rates[AM1.1] of child marriage in the East Asia and Pacific region(Humiang, 2024). This phenomenon is scientifically proven to correlate with multidimensional harms (mafsadah), including high maternal mortality rates, stunting in offspring, and the perpetuation of intergenerational poverty. From the perspective of Maqāṣid al-Syarī'ah (the higher objectives of Islamic law), these detrimental impacts are clear violations of the principles of preserving life (ḥifẓ al-nafs) and preserving progeny (ḥifẓ al-nasl)(Auda, 2007). Therefore, maintaining the previous minimum age of 16 years is theoretically and practically indefensible, as it contradicts the core objective of Sharia, which is to achieve benefit and prevent harm.

In the global context, the discourse on raising the marriage age has become a focal point of legal reform in various Muslim majority countries. Scholars such as Abdullahi Ahmed An-Na'im and Ziba Mir-Hosseini have argued that modern family law must evolve to accommodate contemporary understandings of human rights and gender justice(An-Na'im, 2007; Brown & Mir-Hosseini, 2000; Mahdavi, 2013; Saint-Blancat, 2020; Sidahmed, 2011; Zemmin, 2024). Similarly, Lynn Welchman notes that reforms in countries like Morocco (with its Mudawwana) and Tunisia have successfully integrated Islamic principles with modern legal standards to protect women's rights(Aziz et al., 2015; Brown & Mir-Hosseini, 2000; Charrad & Esposito, 1982; Hermansen, 2001; Mujrimin & Aziz, 2025; Saint-Blancat, 2020; Welchman, 2007). These international studies generally agree that raising the marriage age is a necessary step to align Islamic family law with international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

Furthermore, from a medical and psychological perspective, extensive literature confirms the necessity of delaying marriage until adulthood. A global study by Quentin Wodon et al. for the World Bank demonstrates that child marriage creates significant economic costs for nations due to lower earnings and population growth(et al Wodon, 2017; Parsons et al., 2015; Windiarti, 2018). In the health sector, research by Anita Raj et al. in the lancet global health emphasizes that girls who marry before 18 are significantly more vulnerable to domestic violence and reproductive health complications compared to

those who marry later(Ihsan et al., 2023; Kuswanto et al., 2024; Mujrimin & Aziz, 2025; Retnowulandari et al., 2024). Psychologically, as noted by Jensen and Arnett, the age of 16 is still within the phase of emerging adulthood[AM2.1][dell2.2], characterized by instability and identity exploration, making it an unsuitable stage for the heavy responsibilities of marital life(Jensen & Arnett, 2012).

However, previous studies have mainly examined Law No. 16/2019 from juridical, child protection, and socio-legal perspectives. Studies by Nurlaela Wati and Kharlie about Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts, for example, discuss the development of Indonesian Islamic family law and legal practice(Kharlie, 2014; Nurlaelawati, 2010). In the other side studies by Habudin, Laili and Bazikh (tidak pakai about) examine methods of Islamic family law reform from other perspective, while studies by Ihsan is analyze marriage dispensation after the amendment (Habudin, 2015; Ihsan et al., 2023; Laili & Bazikh, 2023). These studies provide important insights, but they do not specifically explore how Mubadalah and Maqāṣid al-Syarī'ah can provide a theological framework for understanding the equal marriage age provision in Law No. 16/2019.

This study aims to fill this academic void by introducing Mubadalah as a hermeneutical lens to bridge the gap between the text of the Sharia and the context of modern state law. Initiated by Faqihuddin Abdul Kodir, the Mubadalah perspective offers a revolutionary reading of religious texts by placing men and women as equal subjects (Kodir, 2019). If the law requires men to be 19 to ensure they are capable heads of the family, the principle of reciprocity dictates that women, as equal partners (zawj), must also possess the same level of maturity. This approach moves beyond the defensive apologetic stance of human rights compatibility and instead builds an argument from within the Islamic tradition itself, asserting that equality in age is a mandate of the Qur'anic worldview on justice.

Therefore, the primary objective of this article is to analyze the shift in the marriage age limit in Indonesia through the dual perspectives of Mubadalah and Maqāṣid al-Syarī'ah. This research questions how the Mubadalah approach interprets the concept of maturity in marriage and how it correlates with the realization of Maqāṣid al-Syarī'ah in the form of Law No. 16/2019. By doing so, this study seeks to prove that the increase in the marriage age is not a westernization of Islamic law, as claimed by some conservative groups, but rather a faithful implementation of progressive Islamic values that prioritize the well-being of the family institution.

The theoretical contribution of this research lies in developing the concept of a "progressive fiqh of adulthood," understood as an approach that views marriage readiness through an integration of biological maturity, psychological readiness, social responsibility, and ethical considerations. This concept does not replace classical fiqh but contextualizes the understanding of maturity within contemporary family law reform.

To achieve this, the article will first outline the theoretical framework of Mubadalah and Maqāṣid al-Syarī'ah. Subsequently, it will examine the legal history and the text of Law No. 16/2019. Finally, it will present a critical analysis of how the age of 19 serves as the golden mean (wasatiyyah) that satisfies both the state's interest in child protection and the religious mandate of creating a harmonious family (sakīnah). This synthesis is expected to strengthen the legitimacy of the new law in the eyes of the Muslim public and contribute to the global discourse on Islamic family law reform.

Method

This study employs a qualitative library research method using a juridical-philosophical approach. The research examines primary legal sources, including Law No. 1 of 1974, Law No. 16

of 2019, and Constitutional Court Decision No. 22/PUU-XV/2017, as well as secondary sources consisting of Islamic legal literature, Mubadalah studies, Maqāṣid al-Syarī'ah literature, and relevant academic publications. The data are analyzed through qualitative content analysis to examine how the regulation of marriage age can be interpreted through the perspectives of gender equality, reciprocity, and the objectives of Islamic law.

The data sources in this study are classified into primary and secondary legal materials. (1). Primary Legal Materials: The authoritative documents consist of Law No. 1 of 1974 concerning Marriage, Law No. 16 of 2019 concerning Amendments to the Marriage Law, and the Constitutional Court Decision No. 22/PUU-XV/2017 regarding the marriage age limit; (2). Secondary Legal Materials: These include classical fiqh literature (such as Kitab al-Umm and Fath al-Bari), contemporary books on Mubadalah by Faqihuddin Abdul Kodir, works on Maqāṣid al-Syarī'ah by Jasser Auda and al-Shatibi, as well as reputable academic journals relevant to the discourse on child marriage and gender justice.

Data were collected through documentary study (studi dokumentasi). The researchers inventoried regulations and religious texts, classified them based on thematic relevance (age limit, maturity, and gender equality), and verified the validity of the sources through triangulation of sources to ensure the credibility of the arguments.

The collected data were analyzed using qualitative content analysis enriched by the Mubadalah hermeneutical method. The operational steps of the analysis are as follows: (1). Thematic Identification: Identifying texts (verses/hadiths/laws) that differentiate marriage age based on gender; (2). Contextualization: Examining the socio-historical context (asbab al-nuzul or academic draft) behind the determination of age limits in classical fiqh and the old Law; (3). Reciprocal Reading (Qira'ah Mubadalah): Applying the principle of reciprocity. If the text requires men to be mature (19 years) to ensure family stability, the analysis tests whether this requirement logically and theologically applies to women as equal subjects; (4). Maqasidi Synthesis: Linking the findings with the protection of the five basic needs (al-daruriyyat al-khams), specifically hifẓ al-nafs and hifẓ al-nasl.

Results

The amendment of Law No. 1 of 1974 into Law No. 16 of 2019 concerning Marriage constitutes a fundamental reform in Indonesian Islamic family law. The most significant change lies in Article 7, paragraph (1), which raises the minimum marriage age for women from 16 to 19 years, thereby equalizing it with the marriage age for men. This legislative shift is not merely an administrative adjustment of numbers; rather, it signifies a profound epistemological transformation in understanding the concept of maturity (rushd) and gender relations within the institution of marriage. This section analyzes the shift through three core dimensions: the deconstruction of the biological definition of maturity, the application of the Mubadalah (reciprocity) principle, and the theological legitimation through Maqāṣid al-Syarī'ah.

Deconstructing the Myth of Baligh: From Biological Signs to Socio-Psychological Maturity (Rushd)

For decades, the legitimacy of child marriage in Indonesia and in the Muslim world generally has been anchored in the classical fiqh interpretation of baligh (puberty). The majority of classical jurists (jumhur ulama), including the Syafi'i school which is dominant in Indonesia, historically defined the capacity for marriage based on biological markers: menstruation (haid) for girls and wet dreams (ihtilam) for boys, or reaching the age of 15 if these signs have not appeared(Al-Zuḥaylī, 2010; Az-Zuhaili, 2010). This textualist paradigm influenced the formulation of the old Law No. 1 of 1974, which set the minimum age for women at 16, assuming that biological readiness equates to the capacity to manage a household.

However, this research argues that the equalization of the age to 19 in Law No. 16/2019 represents a shift from fiqh al-biologi (biological jurisprudence) to fiqh al-hadarah (civilizational jurisprudence). The concept of baligh in classical texts is primarily a prerequisite for ritual obligations (taklif ibadah), such as prayer and fasting. However, marriage is not merely a ritual; it is a complex civil contract (aqd) and a strong pledge (mithaqan ghalizan) that entails heavy social, economic, and psychological responsibilities(Fahmi et al., 2023; Janah, 2017; Rani, 2023; Roqy

Haikal & Abd. Kholid, 2024; Sri Sari Bulan, 2021; Zaeni, 2022). Therefore, relying solely on baligh is methodologically flawed when applied to the modern context of marriage.

The new law implicitly adopts the Qur'anic concept of rushd (intellectual maturity) as a prerequisite for marriage, surpassing the mere attainment of baligh. The Qur'an in Surah An-Nisa [4]: 6 distinguishes between reaching the age of marriage (balagh al-nikah) and possessing sound judgment (anastum minhum rushdan) in the context of managing orphans' property. If the Qur'an requires intellectual maturity to manage financial assets, then a fortiori (by greater reason), the management of a family which involves the lives and futures of human beings requires a higher degree of rushd(Afsar, 2007; Nguyen, 2007; Saeed, 2005; Walsh, 2006; Zirker, 2008).

From a psychological perspective, the transition from adolescence toward adulthood involves gradual development of emotional regulation, decision-making capacity, and social responsibility. Therefore, the use of age 19 in Law No. 16/2019 should be understood as a legal threshold that reflects broader considerations of maturity rather than as a single determinant of psychological readiness.

The Principle of Mubadalah in Law No. 16/2019: Equalizing the Age, Equalizing the Responsibility

The most revolutionary aspect of Law No. 16/2019 is the removal of the gender-based age disparity (19 for males vs. 16 for females). From the perspective of Mubadalah, this disparity in the old law was not neutral; it reflected a patriarchal construct that viewed men and women as having unequal roles and capacitie(Brown & Mir-Hosseini, 2000; Hermansen, 2001; Saint-Blancat, 2020).

The old regulation implied a subject-object relationship. By requiring men to be 19, the law assumed men needed time to acquire economic and leadership skills (qawwam). Conversely, by allowing women to marry at 16, the law implicitly reduced women's role to the domestic and reproductive sphere, assuming they did not require the same level of educational or intellectual maturity as men(Izzal Afifir Rahman, 2005; Mualim, 2020; Nasution et al., 2019; Syaidah Nasution et al., 2025). This view perpetuates a hierarchical relationship where the husband is the mature guide and the wife is the immature follower.

The Mubadalah approach, popularized by Faqihuddin Abdul Kodir, challenges this by asserting that men and women are equal subjects before God and the law. Mubadalah interprets religious texts reciprocally: if a verse commands men to treat their spouses well, it reciprocally commands women to do the same; if the law requires men to be mature to build a harmonious family, the same requirement applies to women(Khuzaimah & Nurani, 2022; Kodir, 2019; Muhimmah, 2022; Na'mah et al., 2022).

Law No. 16/2019 adopts this reciprocal logic. The equalization of the age to 19 signifies that the state views women as fully independent legal subjects who possess the same potential and responsibilities as men. In a modern marriage, women are no longer just managed but are active managers of the family, educators of the next generation (al-madrasah al-ula), and often contributors to the family economy. Therefore, the principle of Kafa'ah (compatibility) in marriage should no longer be interpreted merely as equality in social status or lineage, but as equality in maturity.

Applying the Mubadalah hermeneutic to the new law reveals a vision of marriage as a partnership (musyarakah). A partnership requires balance. It is logically inconsistent to expect a balanced partnership between a mature 19-year-old man and a 16-year-old adolescent. Such an age gap often leads to power imbalances, making the younger wife vulnerable to domestic violence and stripping her of bargaining power in household decision-making(Indonesia, 2020). By setting the minimum age at 19 for both, Law No. 16/2019 establishes the structural foundation for a marriage based on mubadalah mutual respect, mutual help, and mutual protection as envisioned in the Qur'anic metaphor of spouses being "garments" for one another (QS. Al-Baqarah: 187).

Maqāṣid al-Syarī'ah as the Theological Legitimacy of State Policy

Despite its progressive nature, the age limit reform faces resistance from conservative groups who argue that restricting marriage age forbids what God has permitted (tahrim al-halal), claiming that the Prophet married Aisha at a young age(Al Asqalani, 2020; Hajar & bin Ali al-Asqalani, 2004). To counter this narrative, this research posits that Law No. 16/2019 finds its strongest theological legitimacy in the framework of Maqāṣid al-Syarī'ah (the higher objectives of Islamic law).

In Islamic legal theory, the ruler (state) has the authority to restrict permissible acts (taqyid al-mubah) if such acts lead to widespread harm (mafsadah). This is based on the legal maxim:

tasarruf al-imam 'ala al-ra'iyyah manutun bi al-maslahah (the policy of the leader regarding his subjects is contingent upon public interest)(Auda, 2007).

The decision to raise the marriage age is a direct application of the principle of Sadd al-Dzari'ah (blocking the means to evil). Empirical data have demonstrated that child marriage serves as a means (dzari'ah) to various forms of destruction.

First, regarding Ḥifẓ al-Nafs (protection of life): Medical evidence shows that pregnancy under the age of 19 significantly increases the risk of maternal mortality due to eclampsia, obstetric fistula, and postpartum hemorrhage. The pelvic bones of a 16-year-old are often not fully developed for safe delivery. By preventing early marriage, the state is actively preserving the lives of young women, which is a primary objective of Sharia(Organization, 2016; WHO, 2018; World Health Organization, 2018).

Second, regarding Ḥifẓ al-Nasl (protection of progeny): Child marriage is a leading contributor to stunting and infant malnutrition in Indonesia. Mothers who are physically and mentally immature are less likely to provide optimal parenting, affecting the quality of the next generation. Raising the marriage age ensures that children are born to mothers who are physically, mentally, and economically prepared, thereby safeguarding the quality of future Muslim generations (dzurriyyatan tayyibatan)(Mujrimin & Aziz, 2025; Qaradâwî, 1996).

Third, regarding Ḥifẓ al-'Aql (protection of intellect): Permitting marriage at 16 often forces girls to drop out of school, ending their compulsory education. This violates the protection of the intellect. Setting the age at 19 aligns with the completion of senior secondary education (12 years of schooling), allowing girls to develop their intellectual potential before entering domestic life (Habudin, 2015; Laili & Bazikh, 2023).

Therefore, the stipulation of 19 years in Law No. 16/2019 is not a violation of Sharia, but rather a contextual implementation of it. It represents a transition from Fiqh al-Nusus (text-based jurisprudence), which focuses on the literal permissibility of the marriage contract, to Fiqh al-Maqasid (objective-based jurisprudence), which focuses on the ultimate goals of the marriage itself: tranquility (sakinah), love (mawaddah), and mercy (rahmah). A marriage that results in death, stunting, or poverty contradicts these divine objectives. Thus, the state's intervention to raise the minimum age is theoretically valid and religiously mandated to realize universal benefit (maslahah ‘ammah).

In conclusion, the convergence of Mubadalah and Maqāṣid al-Syarī’ah in Law No. 16/2019 demonstrates that Indonesian family law is evolving towards a progressive Islamic law. It respects the text but reads it through the lens of humanity and justice. The age of 19 serves as the golden mean (wasatiyyah) a point at which biological readiness meets psychological maturity ensuring that marriage becomes a pillar of civilization rather than a source of social vulnerability.

Conclusion

This study concludes that Law No. 16 of 2019 represents a significant reform in Indonesian family law by establishing an equal minimum marriage age of 19 years for both men and women. Through the Mubadalah perspective, this equalization reflects the recognition of spouses as equal legal subjects who require comparable levels of maturity. Furthermore, the application of Maqāṣid al-Syarī’ah demonstrates that the regulation is consistent with the objectives of Islamic law, particularly the protection of life (hifẓ al-nafs), progeny (hifẓ al-nasl), and intellectual development (hifẓ al-‘aql). Theoretically, this research contributes to the development of a progressive fiqh of adulthood by positioning Mubadalah not only as an interpretive approach but also as a framework for understanding marriage as an equal partnership (musyarakah) based on justice, responsibility, and mutual protection.

Practically, this study provides a theological and philosophical foundation for policymakers, religious court judges, and civil society actors in interpreting and implementing Law No. 16/2019 within the framework of Islamic values and social welfare. However, this research is limited by its normative-philosophical approach, which relies primarily on legal texts and literature without examining empirical realities of law enforcement and community responses. Therefore, future studies should employ socio-legal and empirical approaches to investigate the implementation of marriage age regulations, judicial practices regarding marriage dispensations, and the extent to

which communities comply with the new legal standards across diverse cultural contexts in Indonesia.

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