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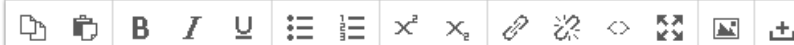
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Abstract *

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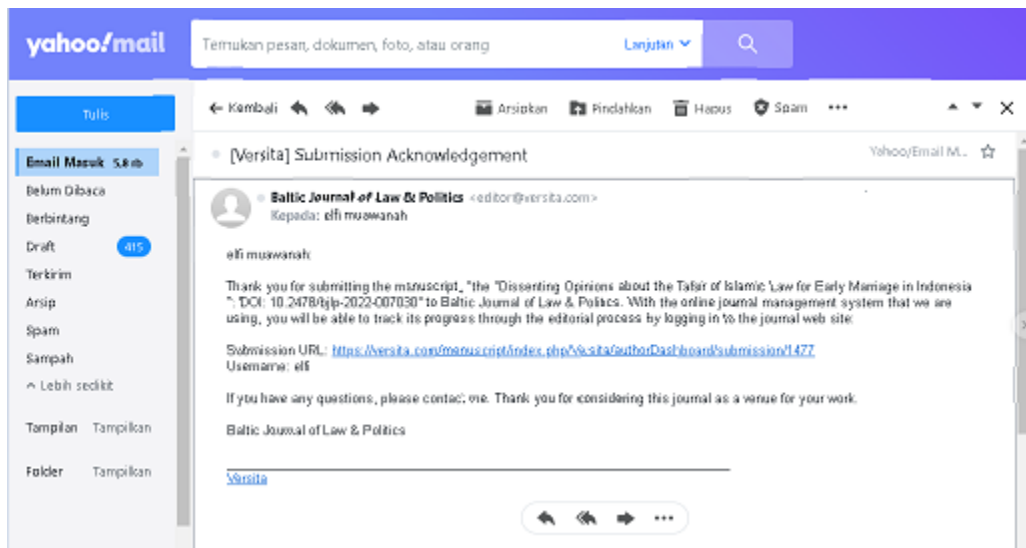
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Kind regards,

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Dissenting Opinion on the Tafsir of Islamic Law on Early Marriage in Indonesia

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Abstract

There have been differences of interpretation among scholars regarding changes to the marriage law regarding the prohibition of early marriage (before the age of 19). Some view that this provision is under religious guidance and others consider that religion does not prohibit it. This happens because of differences in interpretation among scholars regarding the provisions of *baligh*, the ability to marry, the purpose of marriage, and the practice of the Prophet's marriage. This study aims to answer three things: (a) how do scholars interpret early marriage; (b) What is the basis used by the scholars regarding early marriage; and (c) what solutions are offered by the scholars to the occurrence of early marriage. The method used is qualitative which relies on field data, involving several informants, which is then analyzed through two stages: Huberman analysis and interpretation. This study concludes that the different interpretations of scholars regarding early marriage can shift the provisions of the law regarding the minimum age for marriage, and can even provide legitimacy for its religious, cultural, and legal legitimacy. Therefore, solutions are needed through youth education, da'wah, processing cases of violations due to early marriage, and sanctions for violations of existing regulations.

Keywords: early marriage, minimum age limit in the law, and different interpretations.

1. INTRODUCTION

There has been a difference of interpretation among scholars regarding the prohibition of early marriage, namely the marriage of a person, both formal and informal, before the age of 18 years (Gastón et al., 2019). Differences in interpretation among scholars regarding the minimum age for marriage for women from 16 years to 19 years (RI, 2019). This can be seen in the rejection of The Constitutional Court (MA) to increase the age limit for marriage, which was supported by the Indonesian Ulema Council (MUI) which considered that the age of 16 was old enough, and under Islamic law that there was no minimum limit for marriage. Even according to

the MUI, *baligh* in Islam is 9 years, marked by menstruation for women, and 9 years for men, and marked by wet dreams (*ihtilam*), or children who are 15 years old. Therefore, for MUI, the age of 16 is considered *baligh* (Princess, 2015). At this time (after raising the marriage age limit for women from 16 to 19, there has been a several-fold increase in early marriage, as shown in table 1.

So far, studies on early marriage tend to look at three things. First, the factors that cause early marriage as the results of the reset Handayani (2014), Arimurti (2017), Windiarti (2018), Muntamah, et al., (2019), and Corno et al., (2020). Second, the negative impact of early marriage as a study conducted by Ahmed et al., (2013), Ahmed et al., (2014), Akhiruddin. (2016), Arimurti (2017), Muhith, et al., (2018), Maudina (2019), and. Third, early marriage in several countries and legal logic, the occurrence of early marriage, as the results of research by Hoko Horii (2021), Rumble(2018), and Mcdougal(2018). The three trends above show that early marriage is seen as a single problem, whereas early marriage involves many aspects that tend not to be considered carefully in existing studies.

Table 1. Marriage dispensation requests in several courts in Indonesia

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

Early marriage always involves the issue of prohibition, the meaning/interpretation of the prohibition can determine the attitude taken by each community group. So far, the existing studies regarding this matter tend to speak from a legal aspect, as Ariany .'s research shows(2017) concludes that the majority of Maliki scholars understand that the limit for marriage is menstruation for women and the age of 17 or 18 years for men. Meanwhile, according to Abu Hanifah the age of marriage ranges from 17 years for women and 19 or 18 years for men. However, for Syafii, according to Asrori(2015), The age limit for marriage is 15 years for men and 9 years for women. For Hanbali, both boys and girls are 15 years old.

This difference of opinion regarding the concept of *baligh* has resulted in some scholars considering the prohibition of early marriage as something that is in line with Islamic teachings, while others see it as something that is not under Islamic teachings. This research complements the shortcomings of previous studies that did not pay attention to the diversity of dimensions of problems related to early marriage.

1.1. Research Questions

In particular, this paper shows that the "difference" in interpreting the prohibition of early marriage is the central dimension shown by the ulema with the formulation of the research question as follows.

Q1. What are the interpretations of the scholars regarding early marriage?

Q2. What is the basis used by scholars regarding early marriage?

Q3. What solutions are offered by the scholars to the occurrence of early marriage?

The answers to these three questions make it possible to understand the rationale used as the basis for acceptance and rejection of the prohibition of early marriage that early marriage which has been legitimized by religious doctrine and marriage dispensation which is considered a solution to family problems and protects children is not proven.

2. REVIEW OF LITERATURE

2.1. Early Marriage

Several definitions of early marriage emphasize under 19 or 18 years of age. Early marriage (child) is defined by international organizations as a marriage or informal union in which one or both parties are under 18 years of age (Girls Not Brides 2018a). UNICEF also stated that the minimum age for marriage is above 18 years (UNICEF 2005; Equality Now 2014: 51; Evenhuis and Bakar 2014: 44). International human rights conventions set the same standard for legal age at marriage in states. Indonesia is one of the countries that have ratified the convention. With a long way to go, Indonesia has raised the minimum age for marriage for women from 16 to 19 years with the enactment of RI Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage, article 7 (1) (RI, 2019). A marriage that does not comply with these rules (under 19 years) means early marriage.

~~Marriage at an early age is difficult to achieve the goal of marriage in the Qur'an. There are at least six goals: (1) Worship (Hadith), (2) Gaining energy and love (Al-Rum: 21), (3) fulfilling biological needs~~ (al-Mu'minin/23:5-7), (4) continuing the lineage (al-Nahl/16:72), (5) to protect each other (al-Baqarah/2:187), and (6) make it a family educational institution (al-Tahrim/66:6) (Naqiyah, 2012). These goals are not easily achieved by a partner or one of the partners who are still young. Even some research results show that, among others, in Northwest Tanzania where marriage is seen as a tool to obtain a certain social status, thus ignoring existing regulations and the potential for low welfare (Schaffnit et al., 2019). This is corroborated by the results of research in Sub-Saharan Africa which shows a correlation between early marriage and poverty (Otoo-Oyortey & Pobi, 2003), poor health, and rising child mortality (Groot et al., 2018). In turn, the perception of adolescent children in Kosovo has a negative impact not only on health and society but also on further studies in college (Duraku et al., 2020). Thus, it appears that the goal of marriage is difficult to achieve in early marriage.

2.2. Changes in the Age Limit in the Marriage Law

There is a change (increase) in the minimum age of marriage for women in the marriage law in Indonesia. In Law No. 1 1974 concerning marriage, the minimum age for women to marry is 16 years. Then, in Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage, article 7 (1) states that "(1) marriage is only permitted if a man and a woman reach the age of 19 (nineteen years)" (2019). However, in paragraph 2 it is stated (2) In the event of a deviation from the age provisions as referred to in paragraph (1), the parents of the male and/or female parents may request a dispensation from the Court because it is very urgent, accompanied by evidencesufficient (RI, 201). Thus, even though in the latest 2019 Law, the marriage age limit was increased from 16 to 19 for women, the Law provides an opportunity for parents of both parties to apply for a marriage dispensation below the minimum age of 19 (child age). This is in line with the research findings of Arthur et al., (2018) that based on parental consent and customary and/or ~~religious laws create loopholes that lower the legal minimum age for marriage to under the age of 18~~ in many countries around the world). In addition, Arthur et

al., (2018) found that there are still discriminatory legal provisions on marriage to the detriment of women.

In Indonesian positive law 1974 concerning marriage, the minimum age for women to marry is 16 years. This is the same as the laws in Egypt, Libya, Malaysia, Pakistan, and South Yemen. Meanwhile, the minimum age for men to marry is 19, which is the same as in Tunisia (Asrori, 2015). Because the age under 18 is considered a child, several communities such as activists from the Child Rights Monitoring Foundation, the Indonesian Women's Coalition, and some individuals concerned with women's rights have demanded to the Constitutional Court to raise the minimum age of marriage from 16 to 18 years. Also, The Indonesian Women's Intellectuals Congress (KUPI) held on 23-27 April 2017 in Cirebon recommended increasing the minimum age for marriage through a judicial review of the Marriage Law, with several arguments: health, contrary to several regulations such as human rights, children's rights, elimination of all forms of discrimination against women and the Convention on the Rights of the Child (Sudirman Nasir, 2017), and Child Protection Act. Thus, a person who is married under the age of 18 is considered a child marriage (a minor), and this is against the Child Protection Act.

2.3. Differences in Tafsir

There are various opinions among commentators regarding the minimum age for marriage. First, some commentators such as al-Tabari (Al-Tabari, 2000), al-Suyuthi (Suyuthi, Al-, nd), and Ibn Kathir (Ibn Kathir, 1999) state that the minimum age limit (*baligh*) is 15 years. This was supported by the majority of the ulema as stated by al-Zuhaili (Al-Zuhaili, 1985). Second, al-Alusi (al-Husaini Alusi, Al-, 1415), and Abu Hanifah as quoted by al-Zuhaili (Al-Zuhaili, 1985) that it is 17 or 18 years old. Third, Ibn Hayyan quoted al-Nakha'iy who stated that it is 25 years old (Ibn Hayyan, 1420). The various views of the commentators can come from different bases or different interpretations of the word *baligh*.

There are at least two grounds used by the commentators or fuqaha regarding the limits for marriage, namely the Qur'an and Hadith. First: the verses of the Qur'an used are: a. about *balighan* (related to skills/ability to manage a property, namely when old enough to get married (QS al-Nisa/4:6). b. Al-Qur'an verses about the purpose of marriage to achieve *sakinah, mawaddah, and rahmah* (QS al-Qur'an. -Ruum/30:21)" Second, the hadith: a. about the marriage of the Prophet with Ayesha, the Prophet married me when I was 6 years old. And he gathered with me when I was 9 years old (Al-Bukhari, 1422, vols. V, 56) and (Hujjaj, nd, vols. II, 1039, no. 1422), and (Chaudhry et al., 2012). b. Hadith of the Prophet about the recommendation of marriage to people who can marry (Al-Bukhari, 1422, vols. VII, 3, no. 5065), (Hujjaj, nd, vols. 2, 1018, no. 1400). The interpretation of the various foundations (theorems) above is a factor in differences of opinion among scholars.

3. METHODS

3.1. Design

This study applied a normative legal research design (Vranken, 2011; Watkins, et. al, 2013). Normative research also called doctrinal or non-empirical research is a type of research wherein the subject material for the research is found in existing material such as books, articles, statutes, judgments, etc. This research is carried out on a legal proposition by way of analyzing the existing statutory provisions and case laws. It is a process to find a legal rule, legal principles, and doctrines of the law to address the legal issues at hand. Results of the study of law are the

argument, theory, or the new concept as a prescription in solving the problems faced problems (Vranken, 2011). Normative legal research in the study is based on the understanding that law is prescriptive and applied, jurisprudence is always related to what should be or what it should be, methods and procedures of research in natural sciences and social sciences cannot be applied in ~~Legal studies. Normative legal theory is concerned with the ends and justifications for the law as a whole and particular~~ legal rules (Watkins, et. al, 2013). To analyze the data, content-based analysis by Wildemuth & Zhang (2009) and interactive qualitative data analysis from Miles, et. al. (2014) are applied.

3.2. Informants

There are 9 people were selected as informants in this study representing an outstanding Islamic organization in Banyumas. Each informant was a senior Islamic scholar with expertise in Islamic Law. The informants were involved from several parties consisting of Banyumas scholars from NU, Muhammadiyah, and Al-Irsyad backgrounds. The three organizations were chosen because they are organizations that have a large following in Banyumas. Each of these organizations is represented by structures, scholars, and figures. Each is involved to examine how the ulema has significance in interpretation.

3.3. Data Collection

The research process lasted two months, starting with a desk review and interviews. Before the field research was conducted, various secondary materials, including online news and written materials from previous studies, were collected to map the differences that occur in the text. Interviews were conducted partially at the place of each informant after obtaining prior approval. Others were conducted through interviews using WhatsApp.

3.3.1 Interview

The interview was conducted with 9 informants in different places three were in their offices and 6 of them are in their homes. The researcher came to meet each informant upon the approval of the informant. Approximately, each interview took 30-45 minutes. The focus of the interview was the exploration of the basis of the Qur'an verses that define the foundation literal basis of marriage underage. Additionally, the informants also describe the jurisdiction of the hadith that supports the Quran verses. Of the 9 informants, 8 clearly explain the Qur'an verses as the legal basis of law, but one has no opinion. Of 8 informants, 4 have a dissenting opinion on the tafsir of the Qur'an. ~~During the process of the interview, the researcher made fieldnotes and recorded the interview dialogues.~~ To this end, the researcher received help from a research assistant to record virtually and verbally. At the end of the interview, the research assistant transcribed verbatim each result of the record. After the transcript has been finished, the researcher found that some statements or facts need reconfirmation to check their accuracy. The researcher then called the informant through conference phone and WA.

3.3.2. Document Analysis

The documents to be analyzed in this study include marriage law text, the Quran verses that regulated marriage underage, and jurisprudence of court regarding marriage underage. Each document is analyzed in its literal message that indicates the legal decision on the marriage. The researcher identified four concerns regarding the decision, they are the objective of marriage, the

legal basis of the Qur'an, the legal basis of normative law, and the legal basis of sociology of law.

3.4. Data Analysis

Data of this study were analyzed in terms of content analysis by adapting Zhang & Wildermuth (2016; 2009; Hsieh & Shannon, 2005) and interactive model analysis from Miles and Huberman (200). The content analysis started from (1) converting numeric and text data into narrative data, (2) determining themes and units of analysis that are relevant to the research questions, (3) determining the coding system and applied to all data, revisions are made if themes are not matched, and (4) selecting final themes and unit of analysis after verified (Zhang & Wildermuth, 2016; 2009; Hsieh & Shannon, 2005). Additionally, general analysis adapting Miles, et. al., (2014) served three steps of analysis: data reduction, data display, and data verification and conclusion drawing. Data reduction covers simplification, categorization, classification, and sorting of the big data into small data that are in the area of research questions. Data display is carried out in the form of a summary and synopsis based on the themes of field findings. Data verification for the conclusion is analyzing interpretively starting from the restatement of the data found, followed by a description to find patterns or trends from the data, and ending with interpretation to reveal the meaning of the data that has been collected.

4. RESULTS

RQ 1. Differences in the scholars' interpretations of early marriage

To answer research question 1, the results of the interview are thematized in three areas. First, the Marriage Law stipulates ~~the minimum age for marriage is 19 years following religious guidelines. Second, the age limit provision~~ does not conflict with the Shari'a. Third, the minimum age limit of 19 years has been perceived in agreement in fiqh. Age is not a standard for minimum marriage threshold, but rather on physical and psychological readiness.

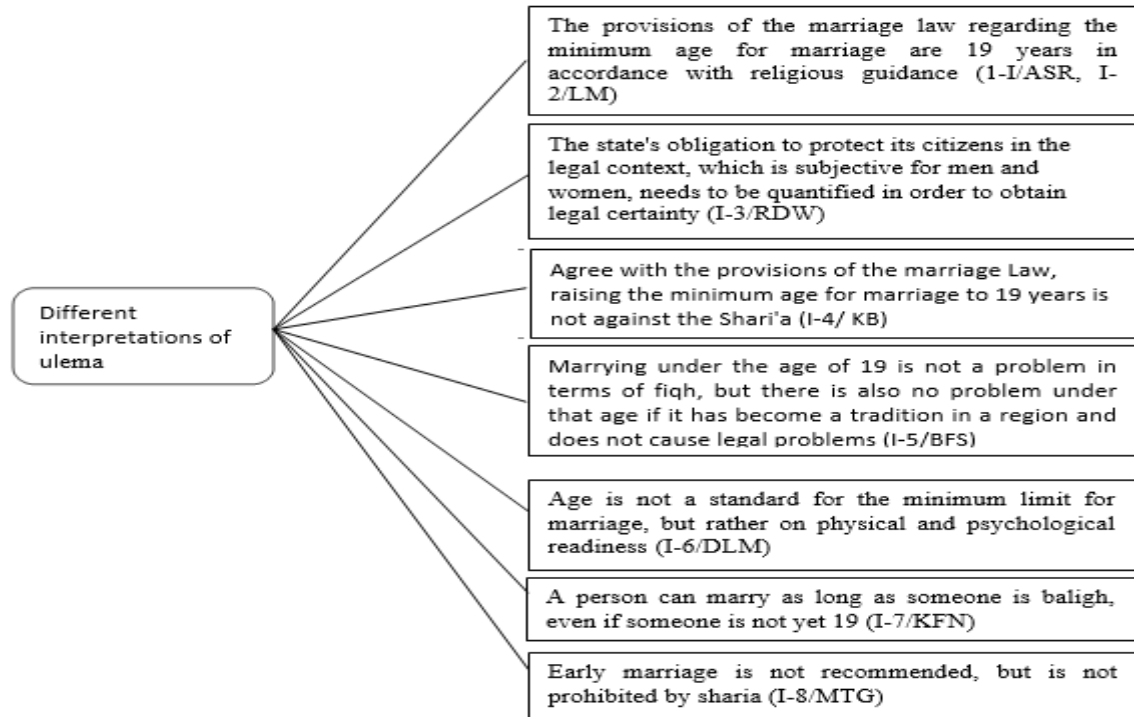


Figure 1. Differences in scholars' interpretations of early marriage

There are different views among scholars regarding early marriage in Indonesia. First, the provisions of the Marriage Law concerning the minimum age for marriage are 19 years under religious guidance. The first informant defines:

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

The same thing was conveyed by 1-2/LM, namely

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

Correspondingly, 1-3/Rdw reinforces that

- (3) "There is no certainty about age in the text of the Qur'an or Hadith. Historically, the Prophet did this with Ayesha, but indirectly as husband and wife, giving the message that Ayesha was not ready to reproduce. The minimum age requirement in marriage needs to

be understood as readiness to carry out reproductive activities. Furthermore, based on the interpretation of several traditions of the Prophet, there are two indicators, namely puberty. 'Akill is intellectual maturity. Baligh is biological menstruation for women and wet dreams for men. However, besides that, the scope of the law is to have the ability to distinguish good and bad which is called *tamyiz*. Biologically, menstruation and wet dreams are subjective measures, so they need to be scientifically confirmed. For subjective legal purposes, it needs to be quantified to obtain certainty. If the State reaches a certain age decision, (19 years), of course, it has gone through a reset, which is then promulgated. This provision is the state's obligation to protect its citizens, in addition to legal purposes, namely subjective quantification (such as menstruation for women and wet dreams for men) to obtain legal certainty" (1.3/Rdw).

Furthermore, I-4/KB said that

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

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

- (5) "There is no problem with the minimum age limit of 19 years for marriage. Likewise with minors, if it has become a tradition in an area and does not cause legal problems, there is no problem in fiqh (1.5/Bfs). Age is not a standard for minimum marriage threshold, but rather on physical and psychological readiness (1.6/Dlm). It is permissible to marry as long as you are of age, even though you are not yet 19 (1.7/Kfn), Early marriage is not recommended, but it is not prohibited by law' (1.8/Mtg)

To strengthen the different interpretations of scholars regarding early marriage based on interviews with the following informants.

Informant I-1/ASR stated that

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

Informant I-2/LM stated that

- (7) "It is said that the Prophet married Aisyah when she was only 7 years old, only later with the Prophet after the age of 9 years. So, say there is no specific age requirement about when someone gets married. However, in several verses and *hadiths* it can be used as a basis that married people must be ready, appropriate, and able so that the *litaskunuilaiha*

can function. After that, Allah made love and compassion. The provisions of the new law stipulate that the minimum age for both male and female is 19 years so that people get married, what is needed is to obtain good offspring.”

Informant I-3/RDW stated that

- (8) “There is no certainty about age in the text of the Qur'an or Hadith. Historically the Prophet did it with Ayesha. But also, not directly associating like husband and wife. This gives a message that the Prophet is fully aware that he is not ready to reproduce, so it needs to be understood backward, that this fact gives a message, not to be used as an indication if that is the case, because the Prophet did not have a biological relationship. By using the ~~maqashid sharia approach or dilalah al-isyarat~~, an indirect understanding, it can also use an approach from the side of something that should be avoided, namely related to reproductive health, impact testing will do something that has not yet been returned to the standard. For example, if a person is considered an adult when he reaches a certain age, the age limit requirement on that aspect is considered to be carrying out production activities, which is not positive. Next, for example, based on the interpretation of the hadith of the prophet, there are two indicators of 'akil back if 'akil is intellectual maturity. Biologically, women menstruate, men biologically, wet dreams, so they are considered *baligh*. But the scope of the law can distinguish between good and bad which is called *tamyiz*. Biologically, menstruation and wet dreams are subjective measures, so they need to be scientifically confirmed. For subjective legal purposes, it needs to be quantified to obtain certainty. If the State decides on a certain age, (19 years), it has gone through a reset, which is then promulgated.

Informant I-4/KB stated that

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

Informant I-5/BFS stated that

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

Informant I-6/DLM stated that

- (11) “The age limit is not explicitly stated in the Qur'an and Hadith. The Prophet married Ayesha when she was 6 years old. When the wife's role is to take care of her children, age is not absolute. When *taklif* for women is menstruation, it is very volatile. When referring to the letter al-rum/30:21 that the purpose of marriage is to realize the Sakinah family, *mawaddahwarahmah*, *not only the age required but regarding its maturity or ability to lead a noble marriage*. Taking care of the husband's property, and children, being a good life partner, and making a *sakinahmawaddahwarahmah* household require their ability. Age is not the standard. Physical and psychological readiness is very necessary. Preparing people like this is not easy, it takes an education process.”

Informant I-7/KFN stated,

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

Informant I-8/MTG stated that

- (13) "Early marriage is not recommended, but not prohibited by *syara'*, based on the argument. The purpose of marriage is to live a more peaceful, more focused, and continue offspring. Marriage requires mental, physical, scientific, material, and psychological maturity so that they can manage their emotions when having a family and relate socially with the community.

From the data above, there are differences of opinion. First, the provisions of the Marriage Law concerning the minimum age for marriage are 19 years by religious guidelines (1.1/ASR) and 1-2/LM). This provision is the state's obligation to protect its citizens, in addition to legal purposes, namely subjective quantification (such as menstruation for women and wet dreams for men) to obtain legal certainty (1.3/RDW). Second, the age limit provision does not conflict with the Shari'a (1.4/KB). Third, there is no problem with the minimum age limit of 19 years, as well as minors, if it has become a tradition in an area and does not cause legal problems, there is no problem in fiqh (1.5/BFS). Age is not a standard for minimum marriage threshold, but rather on physical and psychological readiness (1.6/DLM).

RQ 2. The basis of marriage used by scholars

The Basis of Marriage used by the Ulama

The basis (*dalil*) used by scholars regarding early marriage is varied. Among them are "a. The verse of the Qur'an about ~~the ability to marry is analogous to the ability to take care of the property~~ "And test the orphans until they are old enough to marry. Then if in your opinion they are intelligent (good at maintaining wealth), hand over to them their wealth" (Q.S. al-Nisa' 4:6) (I-1/Asr); b. Hadith regarding the recommendation to marry for those who can afford it, namely "O youths, whoever marries among you should marry ..." (Sahih Muslim/2/1019, no 1400); The ability here needs to be understood with the ability to carry out the obligations caused by the marriage contract (I.1/Asr). This hadith is also used as a basis by I.2/LM, and Hn; c. the verse of the Qur'an regarding the command to marry unmarried people, namely, "And marry those who are alone among you and those who are worthy (to marry) from your male slaves and your slaves. your female companion. If they are poor Allah will enable them with His gifts. And Allah is Extensive (His gift) and All-Knowing (Q.S. 24:32). This was stated by I.2/LM, I.3/Rdw., and I.4/KB. These are some of the grounds used by the scholars; and D. Verses about the purpose of marriage to achieve *sakinah*, *mawaddah*, and mercy. (Q.S. 30:21 and 24:32). This was stated by I-2/LM, I.3/Rdw, and I.6/Dlm.

In addition, several arguments are used as the basis for marriage at an early age. The arguments are a. Al-Qur'an (Qur'an 65: 4), "That Allah SWT made women who have not menstruated, married, divorced and iddah.

- (14) "And women who are not menstruating again (menopause) among your women if you are in doubt (about the period of iddah) then their iddah is three months, and so (also) women who do not menstruate. And women who are pregnant, their iddah is until they give birth to their wombs. And whoever fears Allah, Allah will make it easy for him in his affairs."

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

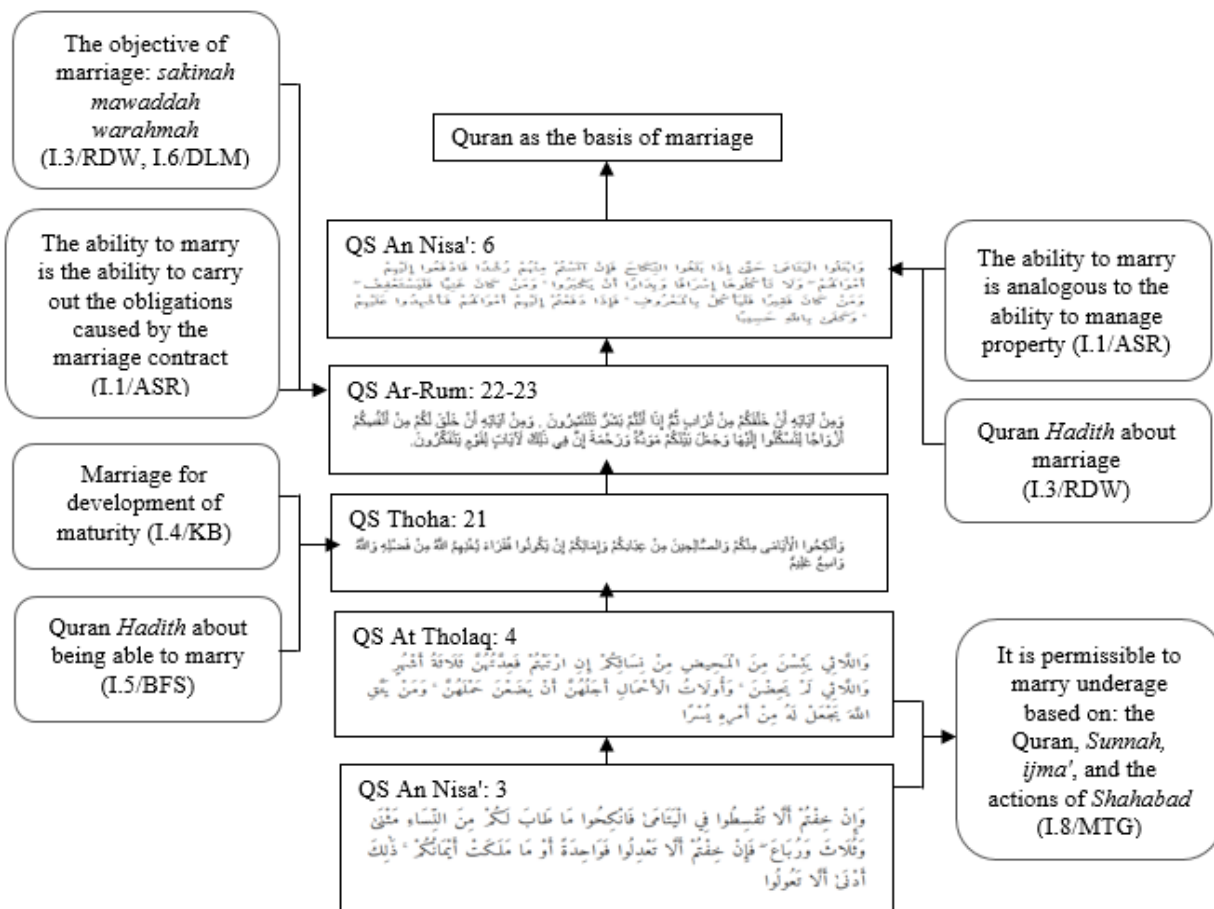
- (15) "And if you fear that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry (other) women that you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) only one, or the slaves you have. That is closer to not doing wrong."

~~Aisyah RA interpreted the verse as I.8/Mtg when asked by 'Urwah bin Zubair about the meaning of 'Orphan'~~, an orphan is someone who has not yet reached puberty, and the hadith of Aisyah allows marrying an orphan in explaining the verse, this shows that marrying a woman who is not yet mature allowed; c. Al-Sunnah (Narrated by Bukhari Muslim). From Aisyah RA said: "The Messenger of Allah married me at the age of 6 years and had sexual relations with me at the age of 9 years". This hadith indicates that it is permissible to marry a minor; d. Ijma ', It was agreed by *ahlul 'ilm*, Ibn Mandzur, Ibn Battal, Ibn Qadamah, Nawawi, Ibn Hamam, Al Mahdi, Ibn Hajar, Ibn Hirrah, Ibn Rusyd, and others that it is permissible to marry underage on the condition that the one who marries is the father; e. The actions of friends, Abu Bakr, Umar Ibn Khattab, Ali bin Abi Talib, Zubair, Ibn Mas'ud, Qadamah allowed fathers to marry off their small children. Abu Bakr married his daughter Aisha to the Messenger of Allah and Ali ibn Abi Talib married his daughter Umi Kulsum to Umar ibn Khaththab. Based on the arguments of the Qur'an, Al-Sunnah, and Ijma' (2-8/Mtg) mentioned above, child marriage is legal.

The objective of marriage is to achieve prosperous living: *sakinah, mawaddah, warahmah*.

The basis of marriage used by scholars, in this case, is used by informants are as follows.

Figure 2. Quran as the basis of marriage used by scholars



From Figure 2 above, it appears that the scholars in interpreting early marriage use several grounds. The foundation is the ability to marry analogous to the ability to take care of the property (QS 4:6), the recommendation to marry for those who can afford it (hadith), the purpose of marriage (QS 30:31), the Sunnah of the Prophet who married Aisyah (Hadith), the behavior of friends, and ijma'. These foundations are interpreted in various ways: first, the ability to marry is analogous to the ability to cultivate property, the ability to carry out the obligations caused by the marriage contract, the purpose of marriage: *sakinah, mawaddah, and rahmah*. Second, the Prophet's marriage to Ayesha was understood on the one hand as the basis for allowing marriage at an early age, but on the other hand, it was implicitly understood otherwise because the Prophet at that time did not directly have sex with her.

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

(16) QS 4/Annisa-6

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

2. The ability to marry is the obligation caused by the marriage contract

(17) QS 30/A-Rum-22

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

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

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

(19) QS 20/At Taha-21

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

3. Marriage is for the development of maturity

(20) QS 65/At Thalaq-4

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

4. It is permissible to marry underage based on the Quran, sunnah, ijma, and actions of sahabat

(21) QS 4/Annisa-3

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

RQ 3. Solutions to early marriage

~~The scholars conveyed several solutions to the problem of early marriage. Informant 1/Asr said that the solution is:~~

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

Furthermore, according to informant 2/LM, the solution is

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

In addition, solutions to minimize early marriage are through: “strengthening the dissemination and transformation of knowledge so that children fear Allah and are not wrongful; strengthening students with general knowledge so that they have high competence to achieve glory; *amarma'rufnahimunkar* in the community because of the evils and negativity that exist (I.4/KB). If there is a problem, the law must appear or be filed (I.5/Bfs); It needs a process, namely Education (I.6/Dlm and I.7/Kfn). Meanwhile, those who are already married at an early age need counseling and assistance from the government, educational institutions, and religious institutions. Meanwhile, those who are not married need to socialize about *fiqhakhwalusysyahshiyah* in SMA or KUA, they need to work together with religious instructors to provide marriage briefing. People are not allowed to get married before attending the briefing of prospective brides 3 or 2 times. If it is facilitated by the government it is better (I.8/Mtg).

From the description above, it appears that some ~~of the solutions offered by the ulama are~~ broadly in the form of education about marriage provision to teenagers through formal and informal education, da'wah by religious leaders, counseling, and assistance for those who are married, and processing cases of violations. due to early marriage to the realm of law.

The solution to early marriage in table 1 is based on informant interviews as follows. It appears that there are several solutions to the problem of early marriage. First, education or marriage training for teenagers through the curriculum in formal schools, especially at the high school level; second, da'wah by religious figures; KUA cooperates with extension workers, spreading religious knowledge, increasing general knowledge, and enjoining *ma'rufnahimunkar*; third, process cases of violations due to early marriage to the legal realm; fourth, counseling and mentoring for those who are married.

Tabel 2. The solution to early marriage

Solutions for early marriage	Code
1. Socialization of Law No. 16 2019, because not many people know except academics and practitioners in court.	Socialization of Law No. 16 of 2019,
2. Education, because the marriage contract is different from others because it has severe, broad, and long consequences	Comprehensive education about marriage
3. From a legal normative perspective, there is a need for sanctions. One of the weaknesses of the law is that there is no sanction escort.	Sanctions for those who violate
4. The existence of dispensation to accommodate accidental people, opens up opportunities for early marriages (3.I/ASR)	
1. We need education for prosperous families in the form of subjects about <i>sakinah</i> families in high school, at least inserted in the Budi Pekerti lesson.	Prosperous family education through the curriculum. Formal education in prosperous families (high school level), through religious instructors. Pre-marital
2. Socialization of prosperous families through religious instructors, involving BP4 for both pre-marital and post-wedding activities. Develop	

BP4 to the village or sub-district level in sub-districts and districts.	and post-marital education through BP4, PPK, Health Center, and ulema
3. Effectiveness of premarital education is needed, involving PKK sub-districts, local health centers, and there are ulema (3.2/LM).	
4. Educate the public, and youth about the portrait of Islam and awareness and reproductive health and religion as subject matter at the high school level, in addition to <i>da'wah</i> by religious leaders (3.3/RDW).	
1. The spread and transformation of religious knowledge, so religion should be strengthened not marginalized so that it is fearful of Allah and not tyrannical	Spread of religious knowledge Improve general knowledge <i>Amar ma'rufnahimunkar</i>
2. Strengthen it with general knowledge, and high competence so that it becomes glory.	
3. Play the role of <i>Amar ma'rufnahimunkar</i> in the community because of the negative evils that exist (3.4/KB)	
If there is a problem, the law must appear or be prosecuted (3.5/BFS)	Cases of violations due to early marriage are processed in the realm of law Education
Need a process, education (3.6/DLM)	Education
Education (3.7/KFN)	Education
1. For those who are already married at an early age, counseling, and assistance from the government, educational institutions, and religious institutions are needed	For those who are married, they need counseling and assistance For those who do not need marriage training through the curriculum in formal schools, KUA in collaboration with extension workers
2. Those who are not married, socialization about <i>fiqhakhwalusysyahshiyah</i> in SMA or KUA needs to work together with religious instructors to provide marriage briefing. Org may not get married before attending the briefing of prospective brides 3 or 2 times. If it is facilitated by the government it is better (3.8/MTG)	

Informant I.1/ASR stated that

- (23) "The need for socialization of Law No. 16 2019, because not many people know except academics and practitioners in court. Education, because the marriage contract is different from the others because it has severe, broad, and long consequences. From a legal normative perspective, sanctions are needed. One of the weaknesses of the law is that there is no sanction escort. ~~The existence of dispensation to accommodate accidental people opens up opportunities for early marriages~~"

Informant I.2/LM stated that

- (24) "we need education for prosperous families in the form of subjects about *sakinah* families in high school, at least inserted in the Budi Pekerti lesson. Prosperous family socialization through religious counselors, involving BP4 for both pre-marital and post-marriage. Develop BP4 to the village or sub-district level in sub-districts and districts. It needs effectiveness of premarital education, involving PKK sub-districts, health centers, and there are scholars"

Informant I.3/RDW stated that

- (25) "Educating, the community, youth about the portrait of Islam and awareness and reproductive health and religion as subject matter at the high school level, in addition to *da'wah* by religious leaders"

Informant I.4/KB stated that

- (26) “The spread and transformation of religious knowledge should be strengthened, not marginalized so that it is fearful of Allah and not tyrannical, Strengthen it with general knowledge, high competence so that it becomes noble, Play the role of *Amar ma'rufnahimunkar* in the middle society because of the negative evils that exist”

Informant I.5/BFS stated that “if there is a problem, the law must appear or take a case”

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

Informant I.7/KFN stated that “the need for education”

Informant I.8/MTG stated that

- (27) “Those who are already married at an early age need counseling and assistance from the government, educational institutions, and religious institutions. Those who are not married need to socialize about *fiqhakhwalusyasyahshiyah* in SMA or KUA, they need to work together with religious instructors to provide marriage briefing. Org may not get married before attending the briefing of prospective brides 3 or 2 times. If it is facilitated by the government, it will be better.”

~~From the data above, it appears that there are several solutions to the problem of early marriage.~~ First, education or marriage training for teenagers through the curriculum in formal schools, especially at the high school level; second, da'wah by religious figures; KUA cooperates with extension workers, spreading religious knowledge, increasing general knowledge, and enjoining *ma'rufnahimunkar*; third, process cases of violations due to early marriage to the legal realm; fourth, counseling and mentoring for those who are married.

5. DISCUSSION

Research analyzing the relationship between early marriage and the scholars' interpretations has found that the differences in the scholars' interpretations of early marriage which are thought to be a solution to family problems and child protection have no justification. The results of the study as shown in table 1 (regarding the different interpretations of scholars regarding early marriage) show that the different interpretations of the revision of the marriage law regarding the minimum age for marriage can strengthen the tradition of early marriage with religious legitimacy. This can be seen in the views of some informants who think that there is no age stipulation for marriage in religion. What exists is the age limit for puberty, namely menstruation for girls and wet dreams for boys. This is under the views of some commentators who understand the concept of *baligh* (limit 'adult') to marry at the age of 15 years, such as al-Thabari(2000), al-Suyuthi(nd), and Ibn Kathir(1999) supported by the majority of the scholars (Al-Zuhaili, 1985).

In addition to religious legitimacy, early marriage is also strengthened by cultural legitimacy as stated by some informants that there is no problem with early marriage if it has become a tradition somewhere, this is following the conclusions of Arthur et al., (2018)that parental consent, customs and/or religious law provide an opening for a person to marry at an early age. In addition, this study found that the provisions of the Act that provide the opportunity to apply for dispensation for marriage under the age of 19 to the parents of both parties are potential to be abused so that it can indirectly legitimize early marriage legally. Thus, the

existence of these different interpretations can indirectly hinder the decline in child marriage with religious, cultural, and even legal legitimacy.

~~The results of this study also provide an understanding that the differences in the foundations~~ and interpretations used by the scholars regarding early marriage as in table 2, can be used as a basis for continuing early marriage in the community. In some religious courts, the average increase was more than 5 times in 2019 and 2020 (as can be read in the introduction to this paper). This condition can ignore its negative consequences, which include worsening health and increasing child mortality (Groot et al., 2018), poverty (Otoo-Oyortey & Pobi, 2003; Schaffnit et al., 2019), and narrowing the opportunities for further study in college (Duraku et al., 2020) thus hindering the increase in the human development index. In the end, marriages carried out at an early age will be difficult to achieve the goals of *Sakinah, mawaddah, warahmah* marriages (Naqiyah, 2012).

This study offers a solution that needs to be done to reduce the occurrence of early marriage (as contained in table 3). The solutions are in the form of a. public education (especially among teenagers) through subjects that are integrated into the high school curriculum. This is in line with the findings of Glynn et al., (2018) that early education can reduce teen marriage and improve women's learning. However, this needs to be accompanied by social change with a gender equality lens so that it can overcome early marriage (Raj et al., 2019). b. da'wah content from religious figures who support the prohibition of early marriage by using a variety of media, so that it can be accessed easily, including by women. This as stated by Susilo et al., (2021) can be a solution to overcome cultural norms that contribute to the occurrence of early marriage. c. Dissemination of regulations from extension workers from the Office of Religious Affairs (KUA); This is in line with the findings of Mehra et al., (2018) that multi-component community-based interventions have the potential to reduce age marriage. In addition, d. needs counseling and assistance from the Advisory Board for the Development and Preservation of Marriage (BP4) for those who have married at an early age; e. processing cases of violations due to early age; and f. sanctions in legal norms are needed for violations of regulations related to early age.

Studies on interpretation and early marriage have shown various understandings. However, the existing studies do not analyze the implications of the different interpretations of scholars on early marriage. This study shows the contribution of the different interpretations of the ulema to early marriage in the form of religious, cultural, and legal legitimacy.

6. CONCLUSION

It turns out that the difference in the scholars' interpretations of early marriage can shift the provisions of the marriage law which raises the marriage age from 16 years for women to 19 years. This has reproduced the legality of early marriage both religiously and state law on the one hand and structured the relationship of religious norms plus the rule of state law to unequal international rules on the other, interpretation of scholars with early marriage. If previously the study only used an objective perspective, this research contributes a subjective perspective so that the problem can be understood more comprehensively which allows for formulating more appropriate actions and policies. This study is limited to analyzing only 8 ulemas, so it does not have the authority to generalize. At the same time, the qualitative approach used has limitations to see how far and deeper to solve the problem is needed so that it cannot be used to understand a symptom adequately. In line with that, further research is needed that accommodates common cases.

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Dissenting Opinion on the Tafsir of Islamic Law on Early Marriage in Indonesia

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Abstract

~~There have been differences of interpretation among scholars regarding changes to the marriage law regarding the prohibition of early marriage (before the age of 19). Some view that this provision is under religious guidance and others consider that religion does not prohibit it. This happens because of differences in interpretation among scholars regarding the provisions of *baligh*, the ability to marry, the purpose of marriage, and the practice of the Prophet's marriage. This study aims to answer three things: (a) how do scholars interpret early marriage; (b) What is the basis used by the scholars regarding early marriage; and (c) what solutions are offered by the scholars to the occurrence of early marriage. The method used is qualitative which relies on field data, involving several informants, which is then analyzed through two stages: Huberman analysis and interpretation. This study concludes that the different interpretations of scholars regarding early marriage can shift the provisions of the law regarding the minimum age for marriage, and can even provide legitimacy for its religious, cultural, and legal legitimacy. Therefore, solutions are needed through youth education, da'wah, processing cases of violations due to early marriage, and sanctions for violations of existing regulations.~~

Keywords: early marriage, minimum age limit in the law, and different interpretations.

1. INTRODUCTION

There has been a difference of interpretation among scholars regarding the prohibition of early marriage, namely the marriage of a person, both formal and informal, before the age of 18 years (Gastón et al., 2019). Differences in interpretation among scholars regarding the minimum age for marriage for women from 16 years to 19 years (RI, 2019). This can be seen in the rejection of The Constitutional Court (MA) to increase the age limit for marriage, which was supported by the Indonesian Ulema Council (MUI) which considered that the age of 16 was old enough, and under Islamic law that there was no minimum limit for marriage. Even according to

~~the MUI, *baligh* in Islam is 9 years, marked by menstruation for women, and 9 years for men, and marked by wet dreams (*ihtilam*), or children who are 15 years old. Therefore, for MUI, the age of 16 is considered *baligh* (Princess, 2015). At this time (after raising the marriage age limit for women from 16 to 19, there has been a several-fold increase in early marriage, as shown in table 1.~~

So far, studies on early marriage tend to look at three things. First, the factors that cause early marriage as the results of the reset Handayani (2014), Arimurti (2017), Windiarti (2018), Muntamah, et al., (2019), and Corno et al., (2020). Second, the negative impact of early marriage as a study conducted by Ahmed et al., (2013), Ahmed et al., (2014), Akhiruddin. (2016), Arimurti (2017), Muhith, et al., (2018), Maudina (2019), and. Third, early marriage in several countries and legal logic, the occurrence of early marriage, as the results of research by Hoko Horii (2021), Rumble(2018), and Mcdougal(2018). The three trends above show that early marriage is seen as a single problem, whereas early marriage involves many aspects that tend not to be considered carefully in existing studies.

Table 1. Marriage dispensation requests in several courts in Indonesia

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

Early marriage always involves the issue of prohibition, the meaning/interpretation of the prohibition can determine the attitude taken by each community group. So far, the existing studies regarding this matter tend to speak from a legal aspect, as Ariany .'s research shows(2017) concludes that the majority of Maliki scholars understand that the limit for marriage is menstruation for women and the age of 17 or 18 years for men. Meanwhile, according to Abu Hanifahthe age of marriage ranges from 17 years for women and 19 or 18 years for men. However, for Syafii, according to Asrori(2015), The age limit for marriage is 15 years for men and 9 years for women. For Hanbali, both boys and girls are 15 years old.

[This difference of opinion regarding the concept of *baligh* has resulted in some scholars considering the prohibition of early marriage as something that is in line with Islamic teachings, while others](#) see it as something that is not under Islamic teachings. This research complements the shortcomings of previous studies that did not pay attention to the diversity of dimensions of problems related to early marriage.

1.1. Research Questions

In particular, this paper shows that the "difference" in interpreting the prohibition of early marriage is the central dimension shown by the ulema with the formulation of the research question as follows.

Q1. What are the interpretations of the scholars regarding early marriage?

Q2. What is the basis used by scholars regarding early marriage?

Q3. What solutions are offered by the scholars to the occurrence of early marriage?

The answers to these three questions make it possible to understand the rationale used as the basis for acceptance and rejection of the prohibition of early marriage that early marriage which has been legitimized by religious doctrine and marriage dispensation which is considered a solution to family problems and protects children is not proven.

2. REVIEW OF LITERATURE

2.1. Early Marriage

~~Several definitions of early marriage emphasize under 19 or 18 years of age. Early marriage (child) is defined by international organizations as a marriage or informal union in which one or both~~ parties are under 18 years of age (Girls Not Brides 2018a). UNICEF also stated that the minimum age for marriage is above 18 years (UNICEF 2005; Equality Now 2014: 51; Evenhuis and Bakar 2014: 44). International human rights conventions set the same standard for legal age at marriage in states. Indonesia is one of the countries that have ratified the convention. With a long way to go, Indonesia has raised the minimum age for marriage for women from 16 to 19 years with the enactment of RI Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage, article 7 (1) (RI, 2019). A marriage that does not comply with these rules (under 19 years) means early marriage.

~~Marriage at an early age is difficult to achieve the goal of marriage in the Qur'an. There are at least six goals: (1) Worship (Hadith), (2) Gaining energy and love (Al-Rum: 21), (3) fulfilling biological needs~~ (al-Mu'minin/23:5-7), (4) continuing the lineage (al-Nahl/16:72), (5) to protect each other (al-Baqarah/2:187), and (6) make it a family educational institution (al-Tahrim/66:6) (Naqiyah, 2012). These goals are not easily achieved by a partner or one of the partners who are still young. Even some research results show that, among others, in Northwest Tanzania where marriage is seen as a tool to obtain a certain social status, thus ignoring existing regulations and the potential for low welfare (Schaffnit et al., 2019). This is corroborated by the results of research in Sub-Saharan Africa which shows a correlation between early marriage and poverty (Otoo-Oyortey & Pobi, 2003), poor health, and rising child mortality (Groot et al., 2018). In turn, the perception of adolescent children in Kosovo has a negative impact not only on health and society but also on further studies in college (Duraku et al., 2020). Thus, it appears that the goal of marriage is difficult to achieve in early marriage.

2.2. Changes in the Age Limit in the Marriage Law

There is a change (increase) in the minimum age of marriage for women in the marriage law in Indonesia. In Law No. 1 1974 concerning marriage, the minimum age for women to marry is 16 years. Then, in Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage, article 7 (1) states that "(1) marriage is only permitted if a man and a woman reach the age of 19 (nineteen years)" (2019). However, in paragraph 2 it is stated (2) In the event of a deviation from the age provisions as referred to in paragraph (1), the parents of the male and/or female parents may request a dispensation from the Court because it is very urgent, accompanied by evidence sufficient (RI, 2019). Thus, even though in the latest 2019 Law, the marriage age limit was increased from 16 to 19 for women, the Law provides an opportunity for parents of both parties to apply for a marriage dispensation below the minimum age of 19 (child age). This is in line with the research findings of Arthur et al., (2018) that based on parental consent and customary and/or ~~religious laws create loopholes that lower the legal minimum age for marriage to under the age of 18~~ in many countries around the world). In addition, Arthur et

al., (2018) found that there are still discriminatory legal provisions on marriage to the detriment of women.

~~In Indonesian positive law 1974 concerning marriage, the minimum age for women to marry is 16 years. This is the same as the laws in Egypt, Libya, Malaysia, Pakistan, and South Yemen. Meanwhile, the minimum age for men to marry is 19, which is the same as in Tunisia (Asrori, 2015).~~ Because the age under 18 is considered a child, several communities such as activists from the Child Rights Monitoring Foundation, the Indonesian Women's Coalition, and some individuals concerned with women's rights have demanded to the Constitutional Court to raise the minimum age of marriage from 16 to 18 year. Also, The Indonesian Women's Intellectuals Congress (KUPI) held on 23-27 April 2017 in Cirebon recommended increasing the minimum age for marriage through a judicial review of the Marriage Law, with several arguments: health, contrary to several regulations such as human rights, children's rights, elimination of all forms of discrimination against women and the Convention on the Rights of the Child (Sudirman Nasir, 2017), and Child Protection Act. Thus, a person who is married under the age of 18 is considered a child marriage (a minor), and this is against the Child Protection Act.

2.3. Differences in Tafsir

There are various opinions among commentators regarding the minimum age for marriage. First, some commentators such as al-Tabari (Al-Tabari, 2000), al-Suyuthi (Suyuthi, Al-, nd), and Ibn Kathir (Ibn Kathir, 1999) state that the minimum age limit (*baligh*) is 15 years. This was supported by the majority of the ulema as stated by al-Zuhaili (Al-Zuhaili, 1985). Second, al-Alusi (al-Husaini Alusi, Al-, 1415), and Abu Hanifah as quoted by al-Zuhaili (Al-Zuhaili, 1985) that it is 17 or 18 years old. Third, Ibn Hayyan quoted al-Nakha'iy who stated that it is 25 years old (Ibn Hayyan, 1420). The various views of the commentators can come from different bases or different interpretations of the word *baligh*.

There are at least two grounds used by the commentators or fuqaha regarding the limits for marriage, namely the Qur'an and Hadith. First: the verses of the Qur'an used are: a. about *balighan* (related to skills/ability to manage a property, namely when old enough to get married (QS al-Nisa/4:6). b. Al-Qur'an verses about the purpose of marriage to achieve *sakinah, mawaddah, and rahmah* (QS al-Qur'an. -Ruum/30:21)" Second, the hadith: a. about the marriage of the Prophet with Ayesha, the Prophet married me when I was 6 years old. And he gathered with me when I was 9 years old (Al-Bukhari, 1422, vols. V, 56) and (Hujjaj, nd, vols. II, 1039, no. 1422), and (Chaudhry et al., 2012). b. Hadith of the Prophet about the recommendation of marriage to people who can marry (Al-Bukhari, 1422, vols. VII, 3, no. 5065), (Hujjaj, nd, vols. 2, 1018, no. 1400). ~~The interpretation of the various foundations (theorems) above is a factor in differences of opinion among scholars.~~

3. METHODS

3.1. Design

This study applied a normative legal research design (Vranken, 2011; Watkins, et. al, 2013). Normative research also called doctrinal or non-empirical research is a type of research wherein the subject material for the research is found in existing material such as books, articles, statutes, judgments, etc. This research is carried out on a legal proposition by way of analyzing the existing statutory provisions and case laws. It is a process to find a legal rule, legal principles, and doctrines of the law to address the legal issues at hand. Results of the study of law are the

argument, theory, or the new concept as a prescription in solving the problems faced problems (Vranken, 2011). Normative legal research in the study is based on the understanding that law is prescriptive and applied, jurisprudence is always related to what should be or what it should be, methods and procedures of research in natural sciences and social sciences cannot be applied in ~~Legal studies. Normative legal theory is concerned with the ends and justifications for the law as a whole and particular~~ legal rules (Watkins, et. al, 2013). To analyze the data, content-based analysis by Wildemuth & Zhang (2009) and interactive qualitative data analysis from Miles, et. al. (2014) are applied.

3.2. Informants

There are 9 people were selected as informants in this study representing an outstanding Islamic organization in Banyumas. Each informant was a senior Islamic scholar with expertise in Islamic Law. The informants were involved from several parties consisting of Banyumas scholars from NU, Muhammadiyah, and Al-Irsyad backgrounds. The three organizations were chosen because they are organizations that have a large following in Banyumas. Each of these organizations is represented by structures, scholars, and figures. Each is involved to examine how the ulema has significance in interpretation.

3.3. Data Collection

The research process lasted two months, starting with a desk review and interviews. Before the field research was conducted, various secondary materials, including online news and written materials from previous studies, were collected to map the differences that occur in the text. Interviews were conducted partially at the place of each informant after obtaining prior approval. Others were conducted through interviews using WhatsApp.

3.3.1 Interview

The interview was conducted with 9 informants in different places three were in their offices and 6 of them are in their homes. The researcher came to meet each informant upon the approval of the informant. Approximately, each interview took 30-45 minutes. The focus of the interview was the exploration of the basis of the Qur'an verses that define the foundation literal basis of marriage underage. Additionally, the informants also describe the jurisdiction of the hadith that supports the Quran verses. Of the 9 informants, 8 clearly explain the Qur'an verses as the legal basis of law, but one has no opinion. Of 8 informants, 4 have a dissenting opinion on the tafsir of the Qur'an. ~~During the process of the interview, the researcher made fieldnotes and recorded the interview dialogues.~~ To this end, the researcher received help from a research assistant to record virtually and verbally. At the end of the interview, the research assistant transcribed verbatim each result of the record. After the transcript has been finished, the researcher found that some statements or facts need reconfirmation to check their accuracy. The researcher then called the informant through conference phone and WA.

3.3.2. Document Analysis

The documents to be analyzed in this study include marriage law text, the Quran verses that regulated marriage underage, and jurisprudence of court regarding marriage underage. Each document is analyzed in its literal message that indicates the legal decision on the marriage. ~~The researcher identified four concerns regarding the decision, they are the objective of marriage, the~~

legal basis of the Qur'an, the legal basis of normative law, and the legal basis of sociology of law.

3.4. Data Analysis

Data of this study were analyzed in terms of content analysis by adapting Zhang & Wildermuth (2016; 2009; Hsieh & Shannon, 2005) and interactive model analysis from Miles and Huberman (200). The content analysis started from (1) converting numeric and text data into narrative data, (2) determining themes and units of analysis that are relevant to the research questions, (3) determining the coding system and applied to all data, revisions are made if themes are not matched, and (4) selecting final themes and unit of analysis after verified (Zhang & Wildermuth, 2016; 2009; Hsieh & Shannon, 2005). Additionally, general analysis adapting Miles, et. al., (2014) served three steps of analysis: data reduction, data display, and data verification and conclusion drawing. Data reduction covers simplification, categorization, classification, and sorting of the big data into small data that are in the area of research questions. Data display is carried out in the form of a summary and synopsis based on the themes of field findings. Data verification for the conclusion is analyzing interpretively starting from the restatement of the data found, followed by a description to find patterns or trends from the data, and ending with interpretation to reveal the meaning of the data that has been collected.

4. RESULTS

RQ 1. Differences in the scholars' interpretations of early marriage

To answer research question 1, the results of the interview are thematized in three areas. First, the Marriage Law ~~stipulates the minimum age for marriage is 19 years following religious guidelines. Second, the age limit provision does not conflict with the Shari'a. Third, the minimum age limit of 19 years has been perceived in agreement in fiqh. Age is not a standard for minimum marriage threshold,~~ but rather on physical and psychological readiness.

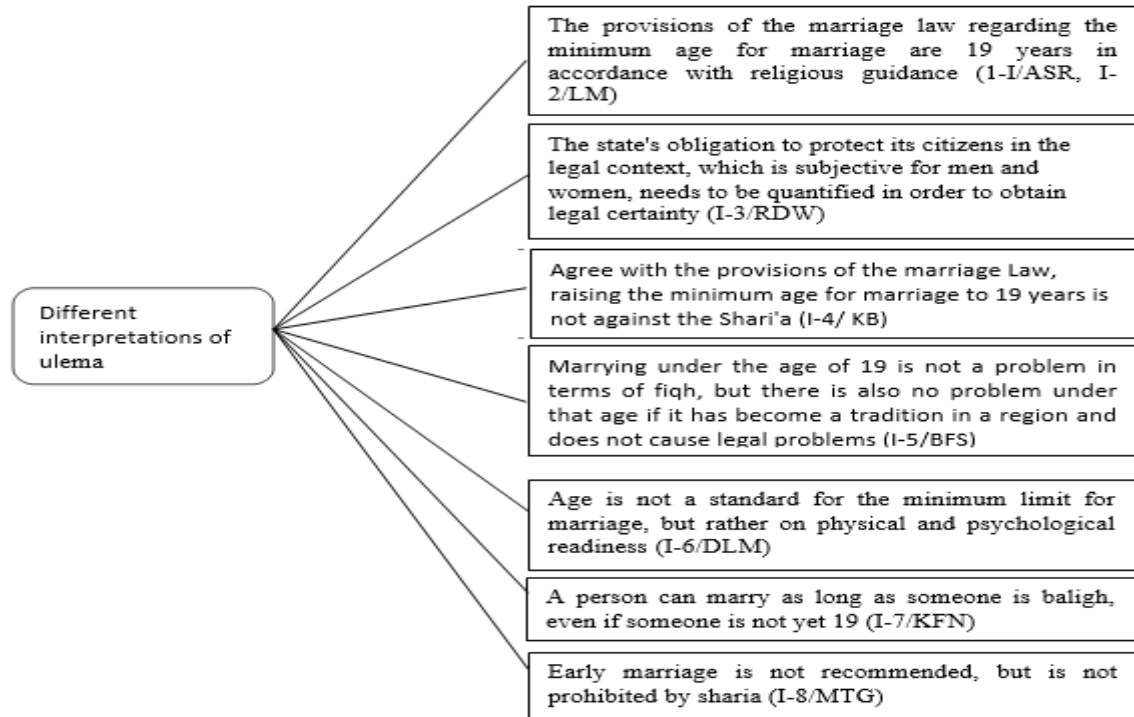


Figure 1. Differences in scholars' interpretations of early marriage

There are different views among scholars regarding early marriage in Indonesia. First, the provisions of the Marriage Law concerning the minimum age for marriage are 19 years under religious guidance. The first informant defines:

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

The same thing was conveyed by I-2/LM, namely

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

Correspondingly, I-3/Rdw reinforces that

- (3) "There is no certainty about age in the text of the Qur'an or Hadith. Historically, the Prophet did this with Ayesha, but indirectly as husband and wife, giving the message that Ayesha was not ready to reproduce. The minimum age requirement in marriage needs to

be understood as readiness to carry out reproductive activities. Furthermore, based on the interpretation of several traditions of the Prophet, there are two indicators, namely puberty. 'Akill is intellectual maturity. Baligh is biologically menstruation for women and wet dreams for men. However, besides that, the scope of the law is to have the ability to distinguish good and bad which is called *tamyiz*. Biologically, menstruation and wet dreams are subjective measures, so they need to be scientifically confirmed. For subjective legal purposes, it needs to be quantified to obtain certainty. If the State reaches a certain age decision, (19 years), of course, it has gone through a reset, which is then promulgated. This provision is the state's obligation to protect its citizens, in addition to legal purposes, namely subjective quantification (such as menstruation for women and wet dreams for men) to obtain legal certainty" (1.3/Rdw).

Furthermore, I-4/KB said that

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

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

- (5) "There is no problem with the minimum age limit of 19 years for marriage. Likewise with minors, if it has become a tradition in an area and does not cause legal problems, there is no problem in fiqh (1.5/Bfs). Age is not a standard for minimum marriage threshold, but rather on physical and psychological readiness (1.6/Dlm). It is permissible to marry as long as you are of age, even though you are not yet 19 (1.7/Kfn), Early marriage is not recommended, but it is not prohibited by law' (1.8/Mtg)

To strengthen the different interpretations of scholars regarding early marriage based on interviews with the following informants.

Informant I-1/ASR stated that

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

Informant I-2/LM stated that

- (7) "It is said that the Prophet married Aisyah when she was only 7 years old, only later with the Prophet after the age of 9 years. So, say there is no specific age requirement about when someone gets married. However, in several verses and *hadiths* it can be used as a basis that married people must be ready, appropriate, and able so that the *litaskunuilaiha*

can function. After that, Allah made love and compassion. The provisions of the new law stipulate that the minimum age for both male and female is 19 years so that people get married, what is needed is to obtain good offspring.”

Informant I-3/RDW stated that

- (8) “There is no certainty about age in the text of the Qur'an or Hadith. Historically the Prophet did it with Ayesha. But also, not directly associating like husband and wife. This gives a message that the Prophet is fully aware that he is not ready to reproduce, so it needs to be understood backward, that this fact gives a message, not to be used as an indication if that is the case, because the Prophet did not have a biological relationship. By using the *maqashid sharia* approach or *dilalah al-isyarah*, an indirect understanding, it can also use an approach from the side of something that should be avoided, namely related to reproductive health, impact testing will do something that has not yet been returned to the standard. For example, if a person is considered an adult when he reaches a certain age, the age limit requirement on that aspect is considered to be carrying out production activities, which is not positive. Next, for example, based on the interpretation of the hadith of the prophet, there are two indicators of 'akil back if 'akil is intellectual maturity. Biologically, women menstruate, men biologically, wet dreams, so they are considered *baligh*. But the scope of the law can distinguish between good and bad which is called *tamyiz*. Biologically, menstruation and wet dreams are subjective measures, so they need to be scientifically confirmed. For subjective legal purposes, it needs to be quantified to obtain certainty. If the State decides on a certain age, (19 years), it has gone through a reset, which is then promulgated.

Informant I-4/KB stated that

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

Informant I-5/BFS stated that

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

Informant I-6/DLM stated that

- (11) “The age limit is not explicitly stated in the Qur'an and Hadith. The Prophet married Ayesha when she was 6 years old. When the wife's role is to take care of her children, age is not absolute. When *taklif* for women is menstruation, it is very volatile. When referring to the letter al-rum/30:21 that the purpose of marriage is to realize the Sakinah family, *mawaddahwarahmah*, not only the age required but regarding its maturity or ability to lead a noble marriage. Taking care of the husband's property, and children, being a good life partner, and making a *sakinahmawaddahwarahmah* household require their ability. Age is not the standard. Physical and psychological readiness is very necessary. Preparing people like this is not easy, it takes an education process.”

~~Informant I-7/KFN stated,~~

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

~~Informant I-8/MTG stated that~~

~~(13) "Early marriage is not recommended, but not prohibited by *syara'*, based on the argument. The purpose of marriage is to live a more peaceful, more focused, and continue offspring. Marriage requires mental, physical, scientific, material, and psychological maturity so that they can manage their emotions when having a family and relate socially with the community.~~

From the data above, there are differences of opinion. First, the provisions of the Marriage Law concerning the minimum age for marriage are 19 years by religious guidelines (1.1/ASR) and 1-2/LM). This provision is the state's obligation to protect its citizens, in addition to legal purposes, namely subjective quantification (such as menstruation for women and wet dreams for men) to obtain legal certainty (1.3/RDW). Second, the age limit provision does not conflict with the Shari'a (1.4/KB). Third, there is no problem with the minimum age limit of 19 years, as well as minors, if it has become a tradition in an area and does not cause legal problems, there is no problem in fiqh (1.5/BFS). Age is not a standard for minimum marriage threshold, but rather on physical and psychological readiness (1.6/DLM).

RQ 2. The basis of marriage used by scholars

The Basis of Marriage used by the Ulama

~~The basis (*dalil*) used by scholars regarding early marriage is varied. Among them are "a. The verse of the Qur'an about the ability to marry is analogous to the ability to take care of the property "And test the orphans until they are old enough to marry. Then if in your opinion they are intelligent (good at maintaining wealth), hand over to them their wealth" (Q.S. al-Nisa '4:6) (I-1/Asr); b. Hadith regarding the recommendation to marry for those who can afford it, namely "O youths, whoever marries among you should marry ..." (Sahih Muslim/2/1019, no 1400); The ability here needs to be understood with the ability to carry out the obligations caused by the marriage contract (I.1/Asr). This hadith is also used as a basis by I.2/LM, and Hn; c. the verse of the Qur'an regarding the command to marry unmarried people, namely, "And marry those who are alone among you and those who are worthy (to marry) from your male slaves and your slaves. your female companion. If they are poor Allah will enable them with His gifts. And Allah is Extensive (His gift) and All-Knowing (Q.S. 24:32). This was stated by I.2/LM, I.3/Rdw., and I.4/KB. These are some of the grounds used by the scholars; and D. Verses about the purpose of marriage to achieve *sakinah*, *mawaddah*, and mercy. (Q.S. 30:21 and 24:32). This was stated by I-2/LM, I.3/Rdw, and I.6/Dlm.~~

In addition, several arguments are used as the basis for marriage at an early age. The arguments are a. Al-Qur'an (Qur'an 65: 4), "That Allah SWT made women who have not menstruated, married, divorced and iddah.

- (14) "And women who are not menstruating again (menopause) among your women if you are in doubt (about the period of iddah) then their iddah is three months, and so (also) women who do not menstruate. And women who are pregnant, their iddah is until they give birth to their wombs. And whoever fears Allah, Allah will make it easy for him in his affairs."

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

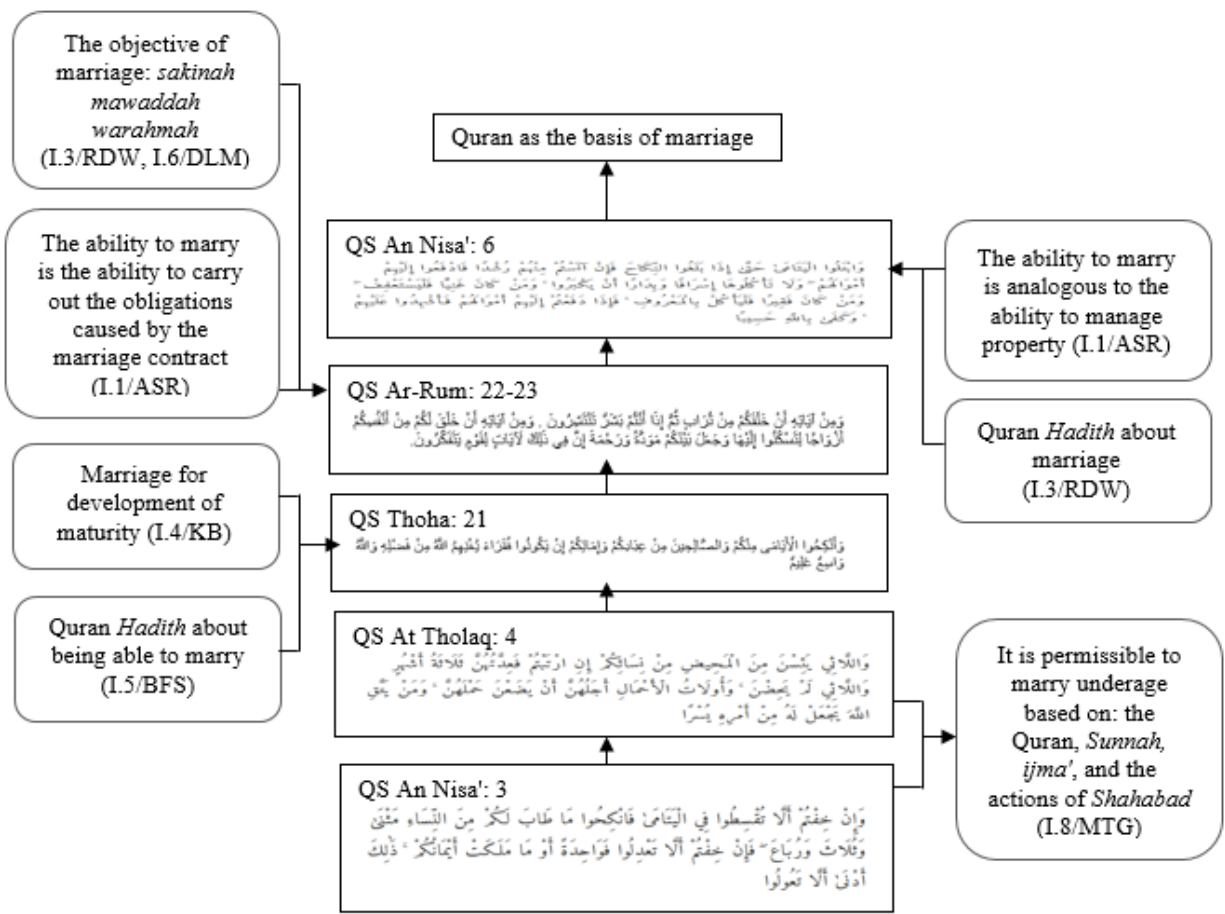
- (15) "And if you fear that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry (other) women that you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) only one, or the slaves you have. That is closer to not doing wrong."

~~Aisyah RA interpreted the verse as I.8/Mtg when asked by 'Urwah bin Zubair about the meaning of 'Orphan'~~, an orphan is someone who has not yet reached puberty, and the hadith of Aisyah allows marrying an orphan in explaining the verse, this shows that marrying a woman who is not yet mature allowed; c. Al-Sunnah (Narrated by Bukhari Muslim). From Aisyah RA said: "The Messenger of Allah married me at the age of 6 years and had sexual relations with me at the age of 9 years". This hadith indicates that it is permissible to marry a minor; d. Ijma ', It was agreed by *ahlul 'ilm*, Ibn Mandzur, Ibn Battal, Ibn Qadamah, Nawawi, Ibn Hamam, Al Mahdi, Ibn Hajar, Ibn Hirrah, Ibn Rusyd, and others that it is permissible to marry underage on the condition that the one who marries is the father; e. The actions of friends, Abu Bakr, Umar Ibn Khattab, Ali bin Abi Talib, Zubair, Ibn Mas'ud, Qadamah allowed fathers to marry off their small children. Abu Bakr married his daughter Aisha to the Messenger of Allah and Ali ibn Abi Talib married his daughter Umi Kulsum to Umar ibn Khaththab. Based on the arguments of the Qur'an, Al-Sunnah, and Ijma' (2-8/Mtg) mentioned above, child marriage is legal.

The objective of marriage is to achieve prosperous living: *sakinah, mawaddah, warahmah*.

The basis of marriage used by scholars, in this case, is used by informants are as follows.

Figure 2. Quran as the basis of marriage used by scholars



From Figure 2 above, it appears that the scholars in interpreting early marriage use several grounds. The foundation is the ability to marry analogous to the ability to take care of the property (QS 4:6), the recommendation to marry for those who can afford it (hadith), the purpose of marriage (QS 30:31), the Sunnah of the Prophet who married Aisyah (Hadith), the behavior of friends, and ijma'. These foundations are interpreted in various ways: first, the ability to marry is analogous to the ability to cultivate property, the ability to carry out the obligations caused by the marriage contract, the purpose of marriage: *sakinah, mawaddah, and rahmah*. Second, the Prophet's marriage to Ayesha was understood on the one hand as the basis for allowing marriage at an early age, but on the other hand, it was implicitly understood otherwise because the Prophet at that time did not directly have sex with her.

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

(16) QS 4/Annisa-6

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

2. The ability to marry is the obligation caused by the marriage contract

(17) QS 30/A-Rum-22

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

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

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

(19) QS 20/At Taha-21

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

3. Marriage is for the development of maturity

(20) QS 65/At Thalaq-4

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

4. It is permissible to marry underage based on the Quran, sunnah, ijma, and actions of sahabat

(21) QS 4/Annisa-3

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

RQ 3. Solutions to early marriage

~~The scholars conveyed several solutions to the problem of early marriage. Informant 1/Asr said that the solution is:~~

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

Furthermore, according to informant 2/LM, the solution is

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

In addition, solutions to minimize early marriage are through: “strengthening the dissemination and transformation of knowledge so that children fear Allah and are not wrongful; strengthening students with general knowledge so that they have high competence to achieve glory; *amarma'rufnahimunkar* in the community because of the evils and negativity that exist (I.4/KB). If there is a problem, the law must appear or be filed (I.5/Bfs); It needs a process, namely Education (I.6/Dlm and I.7/Kfn). Meanwhile, those who are already married at an early age need counseling and assistance from the government, educational institutions, and religious institutions. Meanwhile, those who are not married need to socialize about *fiqhakhwalusysyahshiyah* in SMA or KUA, they need to work together with religious instructors to provide marriage briefing. People are not allowed to get married before attending the briefing of prospective brides 3 or 2 times. If it is facilitated by the government it is better (I.8/Mtg).

~~From the description above, it appears that some of the solutions offered by the ulama are broadly in the form of education about marriage provision to teenagers through formal and informal education, da'wah by religious leaders, counseling, and assistance for those who are married, and processing cases of violations due to early marriage to the realm of law.~~

The solution to early marriage in table 1 is based on informant interviews as follows. It appears that there are several solutions to the problem of early marriage. First, education or marriage training for teenagers through the curriculum in formal schools, especially at the high school level; second, da'wah by religious figures; KUA cooperates with extension workers, spreading religious knowledge, increasing general knowledge, and enjoining *ma'rufnahimunkar*; third, process cases of violations due to early marriage to the legal realm; fourth, counseling and mentoring for those who are married.

Tabel 2. The solution to early marriage

Solutions for early marriage	Code
1. Socialization of Law No. 16 2019, because not many people know except academics and practitioners in court.	Socialization of Law No. 16 of 2019,
2. Education, because the marriage contract is different from others because it has severe, broad, and long consequences	Comprehensive education about marriage
3. From a legal normative perspective, there is a need for sanctions. One of the weaknesses of the law is that there is no sanction escort.	Sanctions for those who violate
4. The existence of dispensation to accommodate accidental people, opens up opportunities for early marriages (3.I/ASR)	
1. We need education for prosperous families in the form of subjects about <i>sakinah</i> families in high school, at least inserted in the Budi Pekerti lesson.	Prosperous family education through the curriculum. Formal education in prosperous families (high school level), through
2. Socialization of prosperous families through religious instructors, involving BP4 for both pre-marital and post-wedding activities. Develop	religious instructors. Pre-marital

BP4 to the village or sub-district level in sub-districts and districts.	and post-marital education through BP4, PPK, Health Center, and ulema
3. Effectiveness of premarital education is needed, involving PKK sub-districts, local health centers, and there are ulema (3.2/LM).	
4. Educate the public, and youth about the portrait of Islam and awareness and reproductive health and religion as subject matter at the high school level, in addition to <i>da'wah</i> by religious leaders (3.3/RDW).	
1. The spread and transformation of religious knowledge, so religion should be strengthened not marginalized so that it is fearful of Allah and not tyrannical	Spread of religious knowledge Improve general knowledge <i>Amar ma'rufnahimunkar</i>
2. Strengthen it with general knowledge, and high competence so that it becomes glory.	
3. Play the role of <i>Amar ma'rufnahimunkar</i> in the community because of the negative evils that exist (3.4/KB)	
If there is a problem, the law must appear or be prosecuted (3.5/BFS)	Cases of violations due to early marriage are processed in the realm of law Education
Need a process, education (3.6/DLM)	Education
Education (3.7/KFN)	Education
1. For those who are already married at an early age, counseling, and assistance from the government, educational institutions, and religious institutions are needed	For those who are married, they need counseling and assistance For those who do not need marriage training through the curriculum in formal schools, KUA in collaboration with extension workers
2. Those who are not married, socialization about <i>fiqhakhwalusysyahshiyah</i> in SMA or KUA needs to work together with religious instructors to provide marriage briefing. Org may not get married before attending the briefing of prospective brides 3 or 2 times. If it is facilitated by the government it is better (3.8/MTG)	

Informant I.1/ASR stated that

- (23) "The need for socialization of Law No. 16 2019, because not many people know except academics and practitioners in court. Education, because the marriage contract is different from the others because it has severe, broad, and long consequences. From a legal normative perspective, sanctions are needed. One of the weaknesses of the law is that there is no sanction escort. ~~The existence of dispensation to accommodate accidental people opens up opportunities for early marriages~~"

Informant I.2/LM stated that

- (24) "we need education for prosperous families in the form of subjects about *sakinah* families in high school, at least inserted in the Budi Pekerti lesson. Prosperous family socialization through religious counselors, involving BP4 for both pre-marital and post-marriage. Develop BP4 to the village or sub-district level in sub-districts and districts. It needs effectiveness of premarital education, involving PKK sub-districts, health centers, and there are scholars"

Informant I.3/RDW stated that

- (25) "Educating, the community, youth about the portrait of Islam and awareness and reproductive health and religion as subject matter at the high school level, in addition to *da'wah* by religious leaders"

Informant I.4/KB stated that

- (26) “The spread and transformation of religious knowledge should be strengthened, not marginalized so that it is fearful of Allah and not tyrannical, Strengthen it with general knowledge, high competence so that it becomes noble, Play the role of *Amar ma'rufnahimunkar* in the middle society because of the negative evils that exist”

Informant I.5/BFS stated that “if there is a problem, the law must appear or take a case”

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

Informant I.7/KFN stated that “the need for education”

Informant I.8/MTG stated that

- (27) “Those who are already married at an early age need counseling and assistance from the government, educational institutions, and religious institutions. Those who are not married need to socialize about *fiqhakhwalusyasyahshiyah* in SMA or KUA, they need to work together with religious instructors to provide marriage briefing. Org may not get married before attending the briefing of prospective brides 3 or 2 times. If it is facilitated by the government, it will be better.”

~~From the data above, it appears that there are several solutions to the problem of early marriage. First, education or marriage training for teenagers through the curriculum in formal schools, especially at the high school level; second, da'wah by religious figures; KUA cooperates with extension workers, spreading religious knowledge, increasing general knowledge, and enjoining *ma'rufnahimunkar*; third, process cases of violations due to early marriage to the legal realm; fourth, counseling and mentoring for those who are married.~~

5. DISCUSSION

Research analyzing the relationship between early marriage and the scholars' interpretations has found that the differences in the scholars' interpretations of early marriage which are thought to be a solution to family problems and child protection have no justification. The results of the study as shown in table 1 (regarding the different interpretations of scholars regarding early marriage) show that the different interpretations of the revision of the marriage law regarding the minimum age for marriage can strengthen the tradition of early marriage with religious legitimacy. This can be seen in the views of some informants who think that there is no age stipulation for marriage in religion. What exists is the age limit for puberty, namely menstruation for girls and wet dreams for boys. This is under the views of some commentators who understand the concept of *baligh* (limit 'adult') to marry at the age of 15 years, such as al-Thabari(2000), al-Suyuthi(nd), and Ibn Kathir(1999) supported by the majority of the scholars (Al-Zuhaili, 1985).

In addition to religious legitimacy, early marriage is also strengthened by cultural legitimacy as stated by some informants that there is no problem with early marriage if it has become a tradition somewhere, this is following the conclusions of Arthur et al., (2018) that parental consent, customs and/or religious law provide an opening for a person to marry at an early age. In addition, this study found that the provisions of the Act that provide the opportunity to apply for dispensation for marriage under the age of 19 to the parents of both parties are potential to be abused so that it can indirectly legitimize early marriage legally. Thus, the

existence of these different interpretations can indirectly hinder the decline in child marriage with religious, cultural, and even legal legitimacy.

~~The results of this study also provide an understanding that the differences in the foundations and interpretations used by the scholars regarding early marriage as in table 2, can be used as a basis for continuing early marriage in the community. In some religious courts, the average increase was more than 5 times in 2019 and 2020 (as can be read in the introduction to this paper).~~ This condition can ignore its negative consequences, which include worsening health and increasing child mortality (Groot et al., 2018), poverty (Otoo-Oyortey & Pobi, 2003; Schaffnit et al., 2019), and narrowing the opportunities for further study in college (Duraku et al., 2020) thus hindering the increase in the human development index. In the end, marriages carried out at an early age will be difficult to achieve the goals of *Sakinah, mawaddah, warahmah* marriages (Naqiyah, 2012).

This study offers a solution that needs to be done to reduce the occurrence of early marriage (as contained in table 3). The solutions are in the form of a. public education (especially among teenagers) through subjects that are integrated into the high school curriculum. This is in line with the findings of Glynn et al., (2018) that early education can reduce teen marriage and improve women's learning. However, this needs to be accompanied by social change with a gender equality lens so that it can overcome early marriage (Raj et al., 2019). b. da'wah content from religious figures who support the prohibition of early marriage by using a variety of media, so that it can be accessed easily, including by women. This as stated by Susilo et al., (2021) can be a solution to overcome cultural norms that contribute to the occurrence of early marriage. c. Dissemination of regulations from extension workers from the Office of Religious Affairs (KUA); This is in line with the findings of Mehra et al., (2018) that multi-component community-based interventions have the potential to reduce age marriage. In addition, d. needs counseling and assistance from the Advisory Board for the Development and Preservation of Marriage (BP4) for those who have married at an early age; e. processing cases of violations due to early age; and f. sanctions in legal norms are needed for violations of regulations related to early age.

Studies on interpretation and early marriage have shown various understandings. However, the existing studies do not analyze the implications of the different interpretations of scholars on early marriage. This study shows the contribution of the different interpretations of the ulema to early marriage in the form of religious, cultural, and legal legitimacy.

6. CONCLUSION

It turns out that the difference in the scholars' interpretations of early marriage can shift the provisions of the marriage law which raises the marriage age from 16 years for women to 19 years. This has reproduced the legality of early marriage both religiously and state law on the one hand and structured the relationship of religious norms plus the rule of state law to unequal international rules on the other, interpretation of scholars with early marriage. If previously the study only used an objective perspective, this research contributes a subjective perspective so that the problem can be understood more comprehensively which allows for formulating more appropriate actions and policies. This study is limited to analyzing only 8 ulemas, so it does not have the authority to generalize. At the same time, the qualitative approach used has limitations to see how far and deeper to solve the problem is needed so that it cannot be used to understand a symptom adequately. In line with that, further research is needed that accommodates common cases.

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Dissenting Opinion on the Tafsir of Islamic Law on Early Marriage in Indonesia

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Abstract

There have been differences of interpretation among scholars regarding changes to the marriage law regarding the prohibition of early marriage (before the age of 19). Some view that this provision is under religious guidance and others consider that religion does not prohibit it. This happens because of differences in interpretation among scholars regarding the provisions of *baligh*, the ability to marry, the purpose of marriage, and the practice of the Prophet's marriage. This study aims to answer three things: (a) how do scholars interpret early marriage; (b) What is the basis used by the scholars regarding early marriage; and (c) what solutions are offered by the scholars to the occurrence of early marriage. The method used is qualitative which relies on field data, involving several informants, which is then analyzed through two stages: Huberman analysis and interpretation. This study concludes that the different interpretations of scholars regarding early marriage can shift the provisions of the law regarding the minimum age for marriage, and can even provide legitimacy for its religious, cultural, and legal legitimacy. Therefore, solutions are needed through youth education, da'wah, processing cases of violations due to early marriage, and sanctions for violations of existing regulations.

Keywords: early marriage, minimum age limit in the law, and different interpretations.

1. INTRODUCTION

There has been a difference of interpretation among scholars regarding the prohibition of early marriage, namely the marriage of a person, both formal and informal, before the age of 18 years (Gastón et al., 2019). Differences in interpretation among scholars regarding the minimum age for marriage for women from 16 years to 19 years (RI, 2019). This can be seen in the rejection of The Constitutional Court (MA) to increase the age limit for marriage, which was supported by the Indonesian Ulema Council (MUI) which considered that the age of 16 was old enough, and under Islamic law that there was no minimum limit for marriage. Even according to the MUI, *baligh* in Islam is 9 years, marked by menstruation for women, and 9 years for men,

and marked by wet dreams (*ihtilam*), or children who are 15 years old. Therefore, for MUI, the age of 16 is considered *baligh*(Princess, 2015). At this time (after raising the marriage age limit for women from 16 to 19, there has been a several-fold increase in early marriage, as shown in table 1.

So far, studies on early marriage tend to look at three things. First, the factors that cause early marriage as the results of the reset Handayani (2014), Arimurti (2017), Windiarti (2018), Muntamah, et al., (2019), and Corno et al., (2020). Second, the negative impact of early marriage as a study conducted by Ahmed et al., (2013), Ahmed et al., (2014), Akhiruddin. (2016), Arimurti (2017), Muhith, et al., (2018), Maudina (2019), and. Third, early marriage in several countries and legal logic, the occurrence of early marriage, as the results of research by Hoko Horii (2021), Rumble(2018), and Mcdougal(2018). The three trends above show that early marriage is seen as a single problem, whereas early marriage involves many aspects that tend not to be considered carefully in existing studies.

Table 1. Marriage dispensation requests in several courts in Indonesia

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

Early marriage always involves the issue of prohibition, the meaning/interpretation of the prohibition can determine the attitude taken by each community group. So far, the existing studies regarding this matter tend to speak from a legal aspect, as Ariany .'s research shows(2017) concludes that the majority of Maliki scholars understand that the limit for marriage is menstruation for women and the age of 17 or 18 years for men. Meanwhile, according to Abu Hanifahthe age of marriage ranges from 17 years for women and 19 or 18 years for men. However, for Syafii, according to Asrori(2015), The age limit for marriage is 15 years for men and 9 years for women. For Hanbali, both boys and girls are 15 years old.

This difference of opinion regarding the concept of *baligh* has resulted in some scholars considering the prohibition of early marriage as something that is in line with Islamic teachings, while others see it as something that is not under Islamic teachings. This research complements the shortcomings of previous studies that did not pay attention to the diversity of dimensions of problems related to early marriage.

1.1. Research Questions

In particular, this paper shows that the "difference" in interpreting the prohibition of early marriage is the central dimension shown by the ulema with the formulation of the research question as follows.

Q1. What are the interpretations of the scholars regarding early marriage?

Q2. What is the basis used by scholars regarding early marriage?

Q3. What solutions are offered by the scholars to the occurrence of early marriage?

The answers to these three questions make it possible to understand the rationale used as the basis for acceptance and rejection of the prohibition of early marriage that early marriage which has been legitimized by religious doctrine and marriage dispensation which is considered a solution to family problems and protects children is not proven.

2. REVIEW OF LITERATURE

2.1. Early Marriage

Several definitions of early marriage emphasize under 19 or 18 years of age. Early marriage (child) is defined by international organizations as a marriage or informal union in which one or both parties are under 18 years of age (Girls Not Brides 2018a). UNICEF also stated that the minimum age for marriage is above 18 years (UNICEF 2005; Equality Now 2014: 51; Evenhuis and Bakar 2014: 44). International human rights conventions set the same standard for legal age at marriage in states. Indonesia is one of the countries that have ratified the convention. With a long way to go, Indonesia has raised the minimum age for marriage for women from 16 to 19 years with the enactment of RI Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage, article 7 (1) (RI, 2019). A marriage that does not comply with these rules (under 19 years) means early marriage.

Marriage at an early age is difficult to achieve the goal of marriage in the Qur'an. There are at least six goals: (1) Worship (Hadith), (2) Gaining energy and love (Al-Rum: 21), (3) fulfilling biological needs (al-Mu'minin/23:5-7), (4) continuing the lineage (al-Nahl/16:72), (5) to protect each other (al-Baqarah/2:187), and (6) make it a family educational institution (al-Tahrim/66:6) (Naqiyah, 2012). These goals are not easily achieved by a partner or one of the partners who are still young. Even some research results show that, among others, in Northwest Tanzania where marriage is seen as a tool to obtain a certain social status, thus ignoring existing regulations and the potential for low welfare (Schaffnit et al., 2019). This is corroborated by the results of research in Sub-Saharan Africa which shows a correlation between early marriage and poverty (Otoo-Oyortey & Pobi, 2003), poor health, and rising child mortality (Groot et al., 2018). In turn, the perception of adolescent children in Kosovo has a negative impact not only on health and society but also on further studies in college (Duraku et al., 2020). Thus, it appears that the goal of marriage is difficult to achieve in early marriage.

2.2. Changes in the Age Limit in the Marriage Law

There is a change (increase) in the minimum age of marriage for women in the marriage law in Indonesia. In Law No. 1 1974 concerning marriage, the minimum age for women to marry is 16 years. Then, in Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage, article 7 (1) states that "(1) marriage is only permitted if a man and a woman reach the age of 19 (nineteen years)" (2019). However, in paragraph 2 it is stated (2) In the event of a deviation from the age provisions as referred to in paragraph (1), the parents of the male and/or female parents may request a dispensation from the Court because it is very urgent, accompanied by evidencesufficient (RI, 201). Thus, even though in the latest 2019 Law, the marriage age limit was increased from 16 to 19 for women, the Law provides an opportunity for parents of both parties to apply for a marriage dispensation below the minimum age of 19 (child age). This is in line with the research findings of Arthur et al., (2018) that based on parental consent and customary and/or religious laws create loopholes that lower the legal minimum age for marriage to under the age of 18 in many countries around the world). In addition, Arthur et

al., (2018) found that there are still discriminatory legal provisions on marriage to the detriment of women.

In Indonesian positive law 1974 concerning marriage, the minimum age for women to marry is 16 years. This is the same as the laws in Egypt, Libya, Malaysia, Pakistan, and South Yemen. Meanwhile, the minimum age for men to marry is 19, which is the same as in Tunisia (Asrori, 2015). Because the age under 18 is considered a child, several communities such as activists from the Child Rights Monitoring Foundation, the Indonesian Women's Coalition, and some individuals concerned with women's rights have demanded to the Constitutional Court to raise the minimum age of marriage from 16 to 18 year. Also, The Indonesian Women's Intellectuals Congress (KUPI) held on 23-27 April 2017 in Cirebon recommended increasing the minimum age for marriage through a judicial review of the Marriage Law, with several arguments: health, contrary to several regulations such as human rights, children's rights, elimination of all forms of discrimination against women and the Convention on the Rights of the Child (Sudirman Nasir, 2017), and Child Protection Act. Thus, a person who is married under the age of 18 is considered a child marriage (a minor), and this is against the Child Protection Act.

2.3. Differences in Tafsir

There are various opinions among commentators regarding the minimum age for marriage. First, some commentators such as al-Tabari (Al-Tabari, 2000), al-Suyuthi (Suyuthi, Al-, nd), and Ibn Kathir (Ibn Kathir, 1999) state that the minimum age limit (*baligh*) is 15 years. This was supported by the majority of the ulema as stated by al-Zuhaili (Al-Zuhaili, 1985). Second, al-Alusi (al-Husaini Alusi, Al-, 1415), and Abu Hanifah as quoted by al-Zuhaili (Al-Zuhaili, 1985) that it is 17 or 18 years old. Third, Ibn Hayyan quoted al-Nakha'iy who stated that it is 25 years old (Ibn Hayyan, 1420). The various views of the commentators can come from different bases or different interpretations of the word *baligh*.

There are at least two grounds used by the commentators or fuqaha regarding the limits for marriage, namely the Qur'an and Hadith. First: the verses of the Qur'an used are: a. about *balighan* (related to skills/ability to manage a property, namely when old enough to get married (QS al-Nisa/4:6). b. Al-Qur'an verses about the purpose of marriage to achieve *sakinah, mawaddah, and rahmah* (QS al-Qur'an. -Ruum/30:21)" Second, the hadith: a. about the marriage of the Prophet with Ayesha, the Prophet married me when I was 6 years old. And he gathered with me when I was 9 years old (Al-Bukhari, 1422, vols. V, 56) and (Hujjaj, nd, vols. II, 1039, no. 1422), and (Chaudhry et al., 2012). b. Hadith of the Prophet about the recommendation of marriage to people who can marry (Al-Bukhari, 1422, vols. VII, 3, no. 5065), (Hujjaj, nd, vols. 2, 1018, no. 1400). The interpretation of the various foundations (theorems) above is a factor in differences of opinion among scholars.

3. METHODS

3.1. Design

This study applied a normative legal research design (Vranken, 2011; Watkins, et. al, 2013). Normative research also called doctrinal or non-empirical research is a type of research wherein the subject material for the research is found in existing material such as books, articles, statutes, judgments, etc. This research is carried out on a legal proposition by way of analyzing the existing statutory provisions and case laws. It is a process to find a legal rule, legal principles, and doctrines of the law to address the legal issues at hand. Results of the study of law are the

argument, theory, or the new concept as a prescription in solving the problems faced problems (Vranken, 2011). Normative legal research in the study is based on the understanding that law is prescriptive and applied, jurisprudence is always related to what should be or what it should be, methods and procedures of research in natural sciences and social sciences cannot be applied in Legal studies. Normative legal theory is concerned with the ends and justifications for the law as a whole and particular legal rules (Watkins, et. al, 2013). To analyze the data, content-based analysis by Wildemuth& Zhang (2009) and interactive qualitative data analysis from Miles, et. al. (2014) are applied.

3.2. Informants

There are 9 people were selected as informants in this study representing an outstanding Islamic organization in Banyumas. Each informant was a senior Islamic scholar with expertise in Islamic Law. The informants were involved from several parties consisting of Banyumas scholars from NU, Muhammadiyah, and Al-Irsyad backgrounds. The three organizations were chosen because they are organizations that have a large following in Banyumas. Each of these organizations is represented by structures, scholars, and figures. Each is involved to examine how the ulema has significance in interpretation.

3.3. Data Collection

The research process lasted two months, starting with a desk review and interviews. Before the field research was conducted, various secondary materials, including online news and written materials from previous studies, were collected to map the differences that occur in the text. Interviews were conducted partially at the place of each informant after obtaining prior approval. Others were conducted through interviews using WhatsApp.

3.3.1 Interview

The interview was conducted with 9 informants in different places three were in their offices and 6 of them are in their homes. The researcher came to meet each informant upon the approval of the informant. Approximately, each interview took 30-45 minutes. The focus of the interview was the exploration of the basis of the Qur'an verses that define the foundation literal basis of marriage underage. Additionally, the informants also describe the jurisdiction of the hadith that supports the Quran verses. Of the 9 informants, 8 clearly explain the Qur'an verses as the legal basis of law, but one has no opinion. Of 8 informants, 4 have a dissenting opinion on the tafsir of the Qur'an. During the process of the interview, the researcher made fieldnotes and recorded the interview dialogues. To this end, the researcher received help from a research assistant to record virtually and verbally. At the end of the interview, the research assistant transcribed verbatim each result of the record. After the transcript has been finished, the researcher found that some statements or facts need reconfirmation to check their accuracy. The researcher then called the informant through conference phone and WA.

3.3.2. Document Analysis

The documents to be analyzed in this study include marriage law text, the Quran verses that regulated marriage underage, and jurisprudence of court regarding marriage underage. Each document is analyzed in its literal message that indicates the legal decision on the marriage. The researcher identified four concerns regarding the decision, they are the objective of marriage, the

legal basis of the Qur'an, the legal basis of normative law, and the legal basis of sociology of law.

3.4. Data Analysis

Data of this study were analyzed in terms of content analysis by adapting Zhang & Wildermuth (2016; 2009; Hsieh & Shannon, 2005) and interactive model analysis from Miles and Huberman (200). The content analysis started from (1) converting numeric and text data into narrative data, (2) determining themes and units of analysis that are relevant to the research questions, (3) determining the coding system and applied to all data, revisions are made if themes are not matched, and (4) selecting final themes and unit of analysis after verified (Zhang & Wildermuth, 2016; 2009; Hsieh & Shannon, 2005). Additionally, general analysis adapting Miles, et. al., (2014) served three steps of analysis: data reduction, data display, and data verification and conclusion drawing. Data reduction covers simplification, categorization, classification, and sorting of the big data into small data that are in the area of research questions. Data display is carried out in the form of a summary and synopsis based on the themes of field findings. Data verification for the conclusion is analyzing interpretively starting from the restatement of the data found, followed by a description to find patterns or trends from the data, and ending with interpretation to reveal the meaning of the data that has been collected.

4. RESULTS

RQ 1. Differences in the scholars' interpretations of early marriage

To answer research question 1, the results of the interview are thematized in three areas. First, the Marriage Law stipulates the minimum age for marriage is 19 years following religious guidelines. Second, the age limit provision does not conflict with the Shari'a. Third, the minimum age limit of 19 years has been perceived in agreement in fiqh. Age is not a standard for minimum marriage threshold, but rather on physical and psychological readiness.

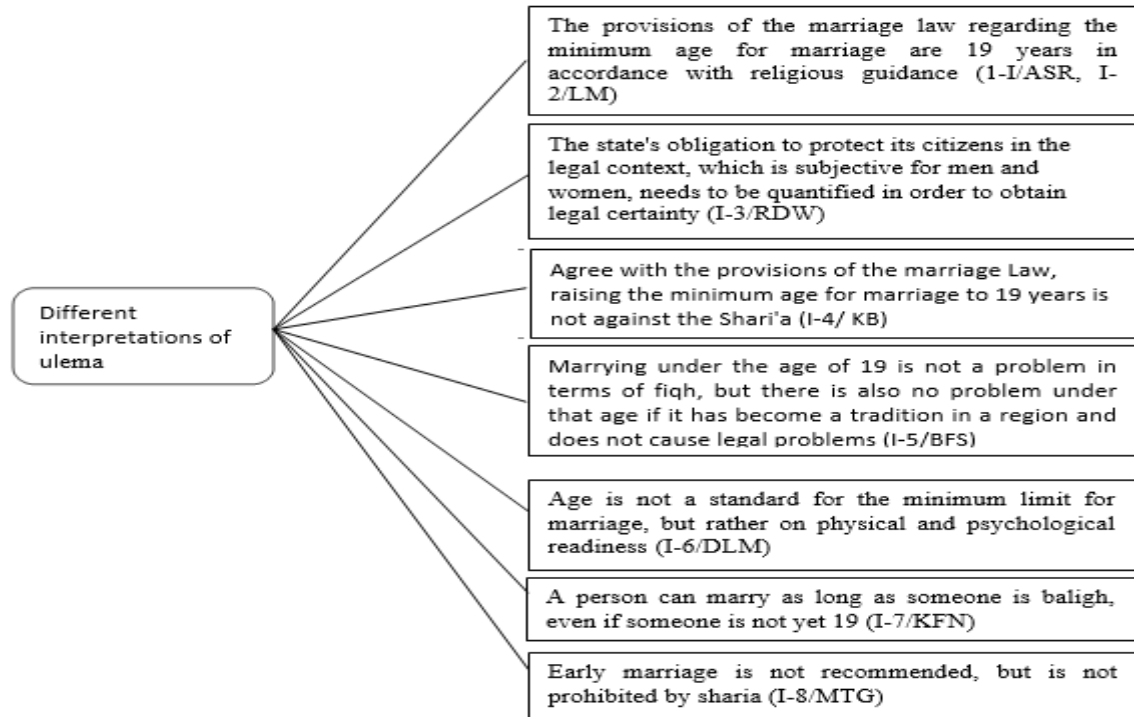


Figure 1. Differences in scholars' interpretations of early marriage

There are different views among scholars regarding early marriage in Indonesia. First, the provisions of the Marriage Law concerning the minimum age for marriage are 19 years under religious guidance. The first informant defines:

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

The same thing was conveyed by 1-2/LM, namely

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

Correspondingly, 1-3/Rdw reinforces that

- (3) "There is no certainty about age in the text of the Qur'an or Hadith. Historically, the Prophet did this with Ayesha, but indirectly as husband and wife, giving the message that Ayesha was not ready to reproduce. The minimum age requirement in marriage needs to

be understood as readiness to carry out reproductive activities. Furthermore, based on the interpretation of several traditions of the Prophet, there are two indicators, namely puberty. 'Akill is intellectual maturity. Baligh is biologically menstruation for women and wet dreams for men. However, besides that, the scope of the law is to have the ability to distinguish good and bad which is called *tamyiz*. Biologically, menstruation and wet dreams are subjective measures, so they need to be scientifically confirmed. For subjective legal purposes, it needs to be quantified to obtain certainty. If the State reaches a certain age decision, (19 years), of course, it has gone through a reset, which is then promulgated. This provision is the state's obligation to protect its citizens, in addition to legal purposes, namely subjective quantification (such as menstruation for women and wet dreams for men) to obtain legal certainty" (1.3/Rdw).

Furthermore, I-4/KB said that

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

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

- (5) "There is no problem with the minimum age limit of 19 years for marriage. Likewise with minors, if it has become a tradition in an area and does not cause legal problems, there is no problem in fiqh (1.5/Bfs). Age is not a standard for minimum marriage threshold, but rather on physical and psychological readiness (1.6/Dlm). It is permissible to marry as long as you are of age, even though you are not yet 19 (1.7/Kfn), Early marriage is not recommended, but it is not prohibited by law' (1.8/Mtg)

To strengthen the different interpretations of scholars regarding early marriage based on interviews with the following informants.

Informant I-1/ASR stated that

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

Informant I-2/LM stated that

- (7) "It is said that the Prophet married Aisyah when she was only 7 years old, only later with the Prophet after the age of 9 years. So, say there is no specific age requirement about when someone gets married. However, in several verses and *hadiths* it can be used as a basis that married people must be ready, appropriate, and able so that the *litaskunuilaiha*

can function. After that, Allah made love and compassion. The provisions of the new law stipulate that the minimum age for both male and female is 19 years so that people get married, what is needed is to obtain good offspring.”

Informant I-3/RDW stated that

- (8) “There is no certainty about age in the text of the Qur'an or Hadith. Historically the Prophet did it with Ayesha. But also, not directly associating like husband and wife. This gives a message that the Prophet is fully aware that he is not ready to reproduce, so it needs to be understood backward, that this fact gives a message, not to be used as an indication if that is the case, because the Prophet did not have a biological relationship. By using the *maqashid* sharia approach or *dilalah al-isyarah*, an indirect understanding, it can also use an approach from the side of something that should be avoided, namely related to reproductive health, impact testing will do something that has not yet been returned to the standard. For example, if a person is considered an adult when he reaches a certain age, the age limit requirement on that aspect is considered to be carrying out production activities, which is not positive. Next, for example, based on the interpretation of the hadith of the prophet, there are two indicators of 'akil back if 'akil is intellectual maturity. Biologically, women menstruate, men biologically, wet dreams, so they are considered *baligh*. But the scope of the law can distinguish between good and bad which is called *tamyiz*. Biologically, menstruation and wet dreams are subjective measures, so they need to be scientifically confirmed. For subjective legal purposes, it needs to be quantified to obtain certainty. If the State decides on a certain age, (19 years), it has gone through a reset, which is then promulgated.

Informant I-4/KB stated that

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

Informant I-5/BFS stated that

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

Informant I-6/DLM stated that

- (11) “The age limit is not explicitly stated in the Qur'an and Hadith. The Prophet married Ayesha when she was 6 years old. When the wife's role is to take care of her children, age is not absolute. When *taklif* for women is menstruation, it is very volatile. When referring to the letter al-rum/30:21 that the purpose of marriage is to realize the Sakinah family, *mawaddahwarahmah*, *not only the age required but regarding its maturity or ability to lead a noble marriage*. Taking care of the husband's property, and children, being a good life partner, and making a *sakinahmawaddahwarahmah* household require their ability. Age is not the standard. Physical and psychological readiness is very necessary. Preparing people like this is not easy, it takes an education process.”

Informant I-7KFN stated,

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

Informant I-8/MTG stated that

- (13) "Early marriage is not recommended, but not prohibited by *syara'*, based on the argument. The purpose of marriage is to live a more peaceful, more focused, and continue offspring. Marriage requires mental, physical, scientific, material, and psychological maturity so that they can manage their emotions when having a family and relate socially with the community.

From the data above, there are differences of opinion. First, the provisions of the Marriage Law concerning the minimum age for marriage are 19 years by religious guidelines (1.1/ASR) and 1-2/LM). This provision is the state's obligation to protect its citizens, in addition to legal purposes, namely subjective quantification (such as menstruation for women and wet dreams for men) to obtain legal certainty (1.3/RDW). Second, the age limit provision does not conflict with the Shari'a (1.4/KB). Third, there is no problem with the minimum age limit of 19 years, as well as minors, if it has become a tradition in an area and does not cause legal problems, there is no problem in fiqh (1.5/BFS). Age is not a standard for minimum marriage threshold, but rather on physical and psychological readiness (1.6/DLM).

RQ 2. The basis of marriage used by scholars

The Basis of Marriage used by the Ulama

The basis (*dalil*) used by scholars regarding early marriage is varied. Among them are "a. The verse of the Qur'an about the ability to marry is analogous to the ability to take care of the property "And test the orphans until they are old enough to marry. Then if in your opinion they are intelligent (good at maintaining wealth), hand over to them their wealth" (Q.S. al-Nisa '4:6) (I-1/Asr); b. Hadith regarding the recommendation to marry for those who can afford it, namely "O youths, whoever marries among you should marry ..." (Sahih Muslim/2/1019, no 1400); The ability here needs to be understood with the ability to carry out the obligations caused by the marriage contract (I.1/Asr). This hadith is also used as a basis by I.2/LM, and Hn; c. the verse of the Qur'an regarding the command to marry unmarried people, namely, "And marry those who are alone among you and those who are worthy (to marry) from your male slaves and your slaves. your female companion. If they are poor Allah will enable them with His gifts. And Allah is Extensive (His gift) and All-Knowing (Q.S. 24:32). This was stated by I.2/LM, I.3/Rdw., and I.4/KB. These are some of the grounds used by the scholars; and D. Verses about the purpose of marriage to achieve *sakinah*, *mawaddah*, and mercy. (Q.S. 30:21 and 24:32). This was stated by I-2/LM, I.3/Rdw, and I.6/Dlm.

In addition, several arguments are used as the basis for marriage at an early age. The arguments are a. Al-Qur'an (Qur'an 65: 4), "That Allah SWT made women who have not menstruated, married, divorced and iddah.

- (14) "And women who are not menstruating again (menopause) among your women if you are in doubt (about the period of iddah) then their iddah is three months, and so (also) women who do not menstruate. And women who are pregnant, their iddah is until they give birth to their wombs. And whoever fears Allah, Allah will make it easy for him in his affairs."

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

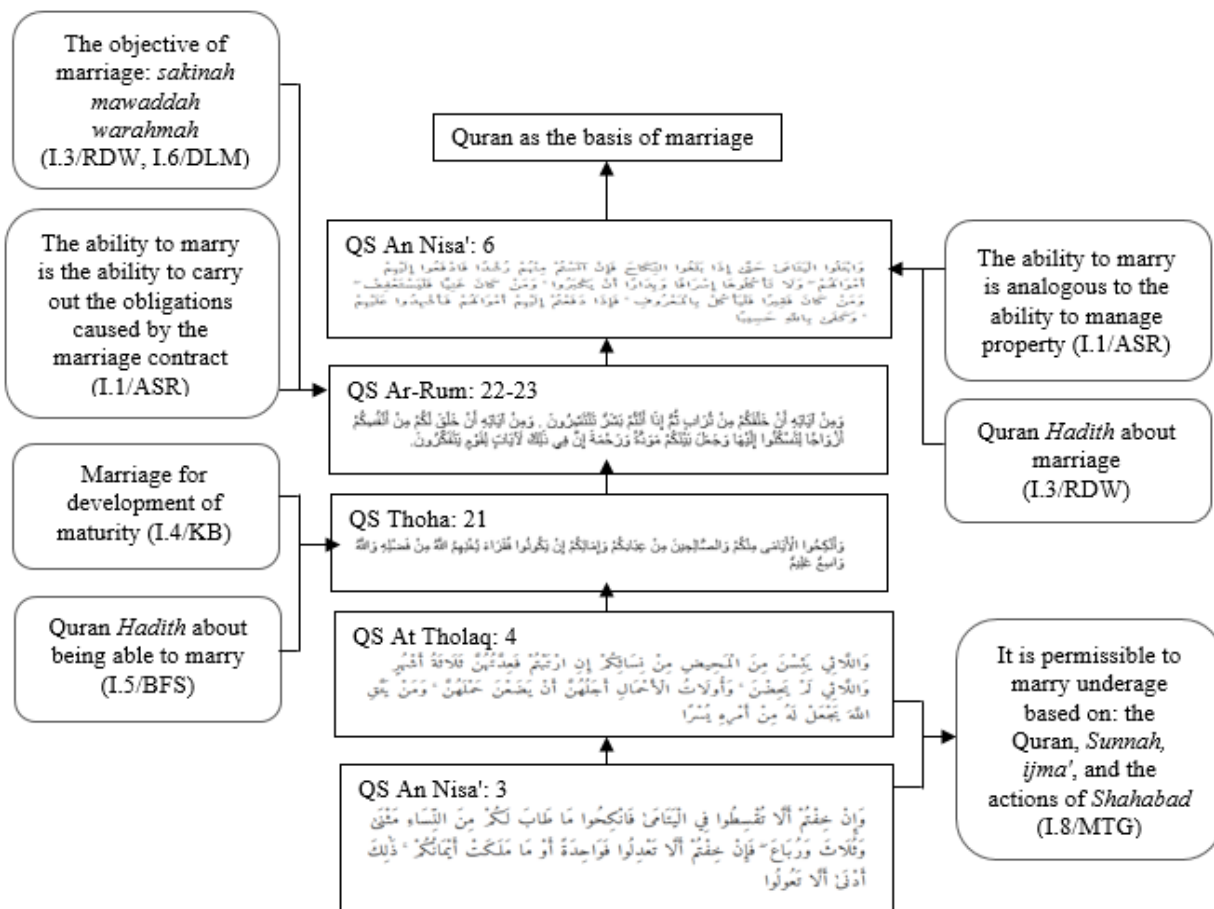
- (15) "And if you fear that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry (other) women that you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) only one, or the slaves you have. That is closer to not doing wrong."

Aisyah RA interpreted the verse as I.8/Mtg when asked by 'Urwah bin Zubair about the meaning of 'Orphan', an orphan is someone who has not yet reached puberty, and the hadith of Aisyah allows marrying an orphan in explaining the verse, this shows that marrying a woman who is not yet mature allowed; c. Al-Sunnah (Narrated by Bukhari Muslim). From Aisyah RA said: "The Messenger of Allah married me at the age of 6 years and had sexual relations with me at the age of 9 years". This hadith indicates that it is permissible to marry a minor; d. Ijma ', It was agreed by *ahlul 'ilm*, Ibn Mandzur, Ibn Battal, Ibn Qadamah, Nawawi, Ibn Hamam, Al Mahdi, Ibn Hajar, Ibn Hirrah, Ibn Rusyd, and others that it is permissible to marry underage on the condition that the one who marries is the father; e. The actions of friends, Abu Bakr, Umar Ibn Khattab, Ali bin Abi Talib, Zubair, Ibn Mas'ud, Qadamah allowed fathers to marry off their small children. Abu Bakr married his daughter Aisha to the Messenger of Allah and Ali ibn Abi Talib married his daughter Umi Kulsum to Umar ibn Khaththab. Based on the arguments of the Qur'an, Al-Sunnah, and Ijma' (2-8/Mtg) mentioned above, child marriage is legal.

The objective of marriage is to achieve prosperous living: *sakinah, mawaddah, warahmah*.

The basis of marriage used by scholars, in this case, is used by informants are as follows.

Figure 2. Quran as the basis of marriage used by scholars



From Figure 2 above, it appears that the scholars in interpreting early marriage use several grounds. The foundation is the ability to marry analogous to the ability to take care of the property (QS 4:6), the recommendation to marry for those who can afford it (hadith), the purpose of marriage (QS 30:31), the Sunnah of the Prophet who married Aisyah (Hadith), the behavior of friends, and ijma'. These foundations are interpreted in various ways: first, the ability to marry is analogous to the ability to cultivate property, the ability to carry out the obligations caused by the marriage contract, the purpose of marriage: *sakinah, mawaddah, and rahmah*. Second, the Prophet's marriage to Ayesha was understood on the one hand as the basis for allowing marriage at an early age, but on the other hand, it was implicitly understood otherwise because the Prophet at that time did not directly have sex with her.

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

(16) QS 4/Annisa-6

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

2. The ability to marry is the obligation caused by the marriage contract

(17) QS 30/A-Rum-22

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

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

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

(19) QS 20/At Taha-21

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

3. Marriage is for the development of maturity

(20) QS 65/At Thalaq-4

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

4. It is permissible to marry underage based on the Quran, sunnah, ijma, and actions of sahabat

(21) QS 4/Annisa-3

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

RQ 3. Solutions to early marriage

The scholars conveyed several solutions to the problem of early marriage. Informant 1/Asr said that the solution is:

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

Furthermore, according to informant 2/LM, the solution is

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

In addition, solutions to minimize early marriage are through: “strengthening the dissemination and transformation of knowledge so that children fear Allah and are not wrongful; strengthening students with general knowledge so that they have high competence to achieve glory; *amarma'rufnahimunkar* in the community because of the evils and negativity that exist (I.4/KB). If there is a problem, the law must appear or be filed (I.5/Bfs); It needs a process, namely Education (I.6/Dlm and I.7/Kfn). Meanwhile, those who are already married at an early age need counseling and assistance from the government, educational institutions, and religious institutions. Meanwhile, those who are not married need to socialize about *fiqhakhwalusysyahshiyah* in SMA or KUA, they need to work together with religious instructors to provide marriage briefing. People are not allowed to get married before attending the briefing of prospective brides 3 or 2 times. If it is facilitated by the government it is better (I.8/Mtg).

From the description above, it appears that some of the solutions offered by the ulema are broadly in the form of education about marriage provision to teenagers through formal and informal education, da'wah by religious leaders, counseling, and assistance for those who are married, and processing cases of violations. due to early marriage to the realm of law.

The solution to early marriage in table 1 is based on informant interviews as follows. It appears that there are several solutions to the problem of early marriage. First, education or marriage training for teenagers through the curriculum in formal schools, especially at the high school level; second, da'wah by religious figures; KUA cooperates with extension workers, spreading religious knowledge, increasing general knowledge, and enjoining *ma'rufnahimunkar*; third, process cases of violations due to early marriage to the legal realm; fourth, counseling and mentoring for those who are married.

Tabel 2. The solution to early marriage

Solutions for early marriage	Code
1. Socialization of Law No. 16 2019, because not many people know except academics and practitioners in court.	Socialization of Law No. 16 of 2019,
2. Education, because the marriage contract is different from others because it has severe, broad, and long consequences	Comprehensive education about marriage
3. From a legal normative perspective, there is a need for sanctions. One of the weaknesses of the law is that there is no sanction escort.	Sanctions for those who violate
4. The existence of dispensation to accommodate accidental people, opens up opportunities for early marriages (3.I/ASR)	
1. We need education for prosperous families in the form of subjects about <i>sakinah</i> families in high school, at least inserted in the Budi Pekerti lesson.	Prosperous family education through the curriculum. Formal education in prosperous families (high school level), through religious instructors. Pre-marital
2. Socialization of prosperous families through religious instructors, involving BP4 for both pre-marital and post-wedding activities. Develop	

BP4 to the village or sub-district level in sub-districts and districts.	and post-marital education through BP4, PPK, Health Center, and ulema
3. Effectiveness of premarital education is needed, involving PKK sub-districts, local health centers, and there are ulema (3.2/LM).	
4. Educate the public, and youth about the portrait of Islam and awareness and reproductive health and religion as subject matter at the high school level, in addition to <i>da'wah</i> by religious leaders (3.3/RDW).	
1. The spread and transformation of religious knowledge, so religion should be strengthened not marginalized so that it is fearful of Allah and not tyrannical	Spread of religious knowledge Improve general knowledge <i>Amar ma'rufnahimunkar</i>
2. Strengthen it with general knowledge, and high competence so that it becomes glory.	
3. Play the role of <i>Amar ma'rufnahimunkar</i> in the community because of the negative evils that exist (3.4/KB)	
If there is a problem, the law must appear or be prosecuted (3.5/BFS)	Cases of violations due to early marriage are processed in the realm of law Education
Need a process, education (3.6/DLM)	Education
Education (3.7/KFN)	Education
1. For those who are already married at an early age, counseling, and assistance from the government, educational institutions, and religious institutions are needed	For those who are married, they need counseling and assistance For those who do not need marriage training through the curriculum in formal schools, KUA in collaboration with extension workers
2. Those who are not married, socialization about <i>fiqhakhwalusysyahshiyah</i> in SMA or KUA needs to work together with religious instructors to provide marriage briefing. Org may not get married before attending the briefing of prospective brides 3 or 2 times. If it is facilitated by the government it is better (3.8/MTG)	

Informant I.1/ASR stated that

- (23) "The need for socialization of Law No. 16 2019, because not many people know except academics and practitioners in court. Education, because the marriage contract is different from the others because it has severe, broad, and long consequences. From a legal normative perspective, sanctions are needed. One of the weaknesses of the law is that there is no sanction escort. The existence of dispensation to accommodate accidental people opens up opportunities for early marriages"

Informant I.2/LM stated that

- (24) "we need education for prosperous families in the form of subjects about *sakinah* families in high school, at least inserted in the Budi Pekerti lesson. Prosperous family socialization through religious counselors, involving BP4 for both pre-marital and post-marriage. Develop BP4 to the village or sub-district level in sub-districts and districts. It needs effectiveness of premarital education, involving PKK sub-districts, health centers, and there are scholars"

Informant I.3/RDW stated that

- (25) "Educating, the community, youth about the portrait of Islam and awareness and reproductive health and religion as subject matter at the high school level, in addition to *da'wah* by religious leaders"

Informant I.4/KB stated that

- (26) “The spread and transformation of religious knowledge should be strengthened, not marginalized so that it is fearful of Allah and not tyrannical, Strengthen it with general knowledge, high competence so that it becomes noble, Play the role of *Amar ma'rufnahimunkar* in the middle society because of the negative evils that exist”

Informant I.5/BFS stated that “if there is a problem, the law must appear or take a case”

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

Informant I.7/KFN stated that “the need for education”

Informant I.8/MTG stated that

- (27) “Those who are already married at an early age need counseling and assistance from the government, educational institutions, and religious institutions. Those who are not married need to socialize about *fiqhakhwalusyasyahshiyah* in SMA or KUA, they need to work together with religious instructors to provide marriage briefing. Org may not get married before attending the briefing of prospective brides 3 or 2 times. If it is facilitated by the government, it will be better.”

From the data above, it appears that there are several solutions to the problem of early marriage. First, education or marriage training for teenagers through the curriculum in formal schools, especially at the high school level; second, da'wah by religious figures; KUA cooperates with extension workers, spreading religious knowledge, increasing general knowledge, and enjoining *ma'rufnahimunkar*; third, process cases of violations due to early marriage to the legal realm; fourth, counseling and mentoring for those who are married.

5. DISCUSSION

Research analyzing the relationship between early marriage and the scholars' interpretations has found that the differences in the scholars' interpretations of early marriage which are thought to be a solution to family problems and child protection have no justification. The results of the study as shown in table 1 (regarding the different interpretations of scholars regarding early marriage) show that the different interpretations of the revision of the marriage law regarding the minimum age for marriage can strengthen the tradition of early marriage with religious legitimacy. This can be seen in the views of some informants who think that there is no age stipulation for marriage in religion. What exists is the age limit for puberty, namely menstruation for girls and wet dreams for boys. This is under the views of some commentators who understand the concept of *baligh* (limit 'adult') to marry at the age of 15 years, such as al-Thabari(2000), al-Suyuthi(nd), and Ibn Kathir(1999) supported by the majority of the scholars (Al-Zuhaili, 1985).

In addition to religious legitimacy, early marriage is also strengthened by cultural legitimacy as stated by some informants that there is no problem with early marriage if it has become a tradition somewhere, this is following the conclusions of Arthur et al., (2018) that parental consent, customs and/or religious law provide an opening for a person to marry at an early age. In addition, this study found that the provisions of the Act that provide the opportunity to apply for dispensation for marriage under the age of 19 to the parents of both parties are potential to be abused so that it can indirectly legitimize early marriage legally. Thus, the

existence of these different interpretations can indirectly hinder the decline in child marriage with religious, cultural, and even legal legitimacy.

The results of this study also provide an understanding that the differences in the foundations and interpretations used by the scholars regarding early marriage as in table 2, can be used as a basis for continuing early marriage in the community. In some religious courts, the average increase was more than 5 times in 2019 and 2020 (as can be read in the introduction to this paper). This condition can ignore its negative consequences, which include worsening health and increasing child mortality (Groot et al., 2018), poverty (Otoo-Oyortey & Pobi, 2003; Schaffnit et al., 2019), and narrowing the opportunities for further study in college (Duraku et al., 2020) thus hindering the increase in the human development index. In the end, marriages carried out at an early age will be difficult to achieve the goals of *Sakinah, mawaddah, warahmah* marriages (Naqiyah, 2012).

This study offers a solution that needs to be done to reduce the occurrence of early marriage (as contained in table 3). The solutions are in the form of a. public education (especially among teenagers) through subjects that are integrated into the high school curriculum. This is in line with the findings of Glynn et al., (2018) that early education can reduce teen marriage and improve women's learning. However, this needs to be accompanied by social change with a gender equality lens so that it can overcome early marriage (Raj et al., 2019). b. da'wah content from religious figures who support the prohibition of early marriage by using a variety of media, so that it can be accessed easily, including by women. This as stated by Susilo et al., (2021) can be a solution to overcome cultural norms that contribute to the occurrence of early marriage. c. Dissemination of regulations from extension workers from the Office of Religious Affairs (KUA); This is in line with the findings of Mehra et al., (2018) that multi-component community-based interventions have the potential to reduce age marriage. In addition, d. needs counseling and assistance from the Advisory Board for the Development and Preservation of Marriage (BP4) for those who have married at an early age; e. processing cases of violations due to early age; and f. sanctions in legal norms are needed for violations of regulations related to early age.

Studies on interpretation and early marriage have shown various understandings. However, the existing studies do not analyze the implications of the different interpretations of scholars on early marriage. This study shows the contribution of the different interpretations of the ulema to early marriage in the form of religious, cultural, and legal legitimacy.

6. CONCLUSION

It turns out that the difference in the scholars' interpretations of early marriage can shift the provisions of the marriage law which raises the marriage age from 16 years for women to 19 years. This has reproduced the legality of early marriage both religiously and state law on the one hand and structured the relationship of religious norms plus the rule of state law to unequal international rules on the other, interpretation of scholars with early marriage. If previously the study only used an objective perspective, this research contributes a subjective perspective so that the problem can be understood more comprehensively which allows for formulating more appropriate actions and policies. This study is limited to analyzing only 8 ulemas, so it does not have the authority to generalize. At the same time, the qualitative approach used has limitations to see how far and deeper to solve the problem is needed so that it cannot be used to understand a symptom adequately. In line with that, further research is needed that accommodates common cases.

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

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Abstract

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

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

Keywords

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

Introduction

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

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

Table 1. Marriage dispensation requests in several Indonesian courts

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

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

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

1.1. Research Questions

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

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

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

2. Literature Review

2.1. Early Marriage

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

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

2.2. Changes in the Legal Age Limit for Marriage

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

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

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

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

2.3. Differences in Tafsir

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

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

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

3. Methods

3.1. Design

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

3.2. Informants

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

3.3. Data Collection

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

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

3.3.1 Interviews

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

3.3.2. Document Analysis

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

3.4. Data Analysis

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

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

Results

RQ 1 Differences in scholars' interpretations about early marriage

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

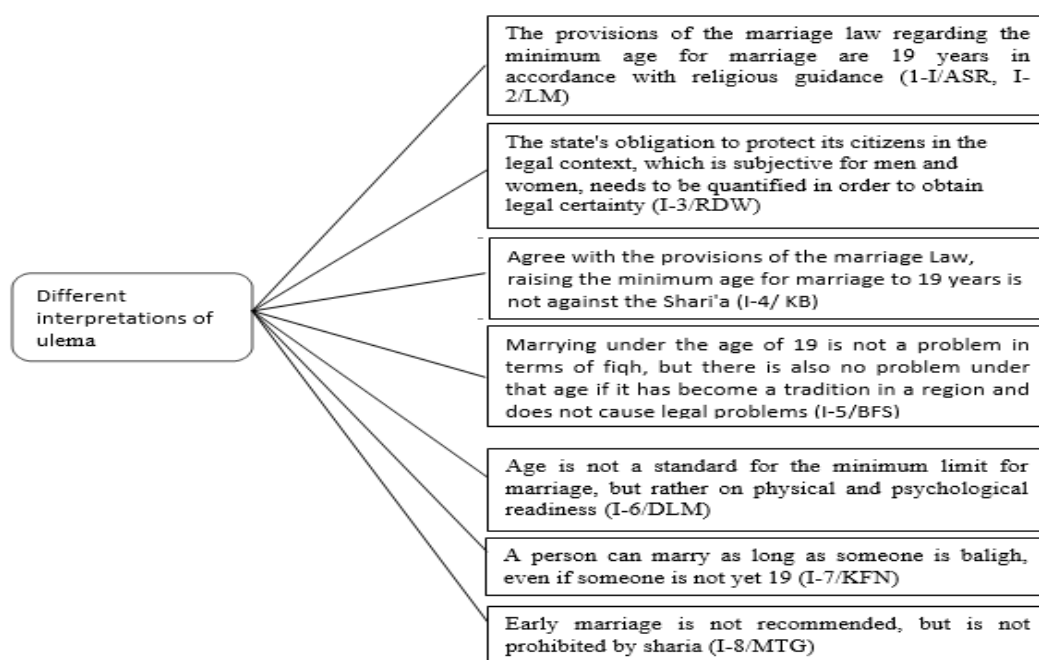


Figure 1. Differences in scholars' interpretations about early marriage

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

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

Something similar was conveyed by 1-2/LM

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

Furthermore, 1-3/Rdw reinforced this view

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

In addition, I-4/KB said

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

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

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

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

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

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

Informant I-2/LM stated

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

Informant I-3/RDW stated

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

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

Informant I-4/KB stated

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

Informant I-5/BFS mentioned:

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

Informant I-6/DLM stated

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

Informant I-7KFN said:

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

Informant I-8/MTG stated

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

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

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

RQ 2. The basis of marriage used by scholars

The bases of marriage used by the Ulama

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

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

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

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

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

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

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

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

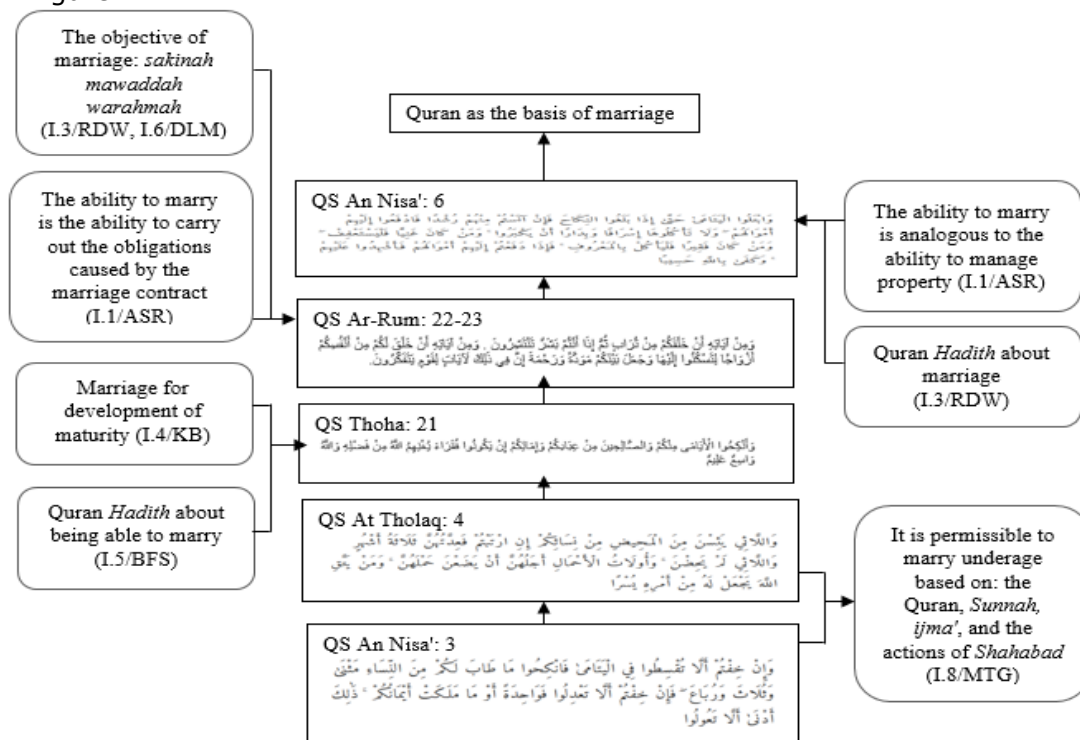


Figure 2. The bases in scripture used by scholars to define marriage

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

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

(16) QS 4/Annisa-6

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

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

(17) QS 30/A-Rum-22

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

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

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

(19) QS 20/At Taha-21

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

3. Marriage for the development of maturity.

(20) QS 65/At Tolaq-4

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

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

(21) QS 4/Annisa-3

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

RQ 3. Solutions to early marriage

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

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

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

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

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

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

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

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

Table 2. Solutions for early marriage

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

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

Informant I.1/ASR stated

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

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

Informant I.2/LM stated

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

Informant I.3/RDW stated

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

Informant I.4/KB stated

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

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

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

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

Informant I.8/MTG stated:

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

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

5. Discussion

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

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

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

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

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

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

6. CONCLUSION

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

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