

## Formal Acceptance of Marriage Age Exception in The KUA Kluet Timur

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### Abstract

Early marriage is a controversial issue in East Kluet, South Aceh, making it a topic for all social groups. This article examines how the Office of Religious Affairs grants early marriage requests and how the Copying Regulations of Islamic Law affect early childhood marriage. How does Islamic law review early marriage? Discussing this thesis via field research. Primary and secondary data sources According to research, the Office of Religious Affairs makes early marriage simple by granting a letter of dispensation for the former requirements for religious courts for Muslims and district courts for non-Muslims. Second, for the benefit of the family and household, marriage can only be performed by the prospective bride and groom who have reached the age specified in Article 7 of Law Number 1 of 1974, namely the prospective husband. at least 19 and the potential wife at least 16. Third, in Islamic law, the imam of the school of law (conventional fiqh) allows marriage at an early age.

**Keywords:** Early Marriage, Islamic Law, Compilation of Islamic Law

### Abstrak

*Pernikahan dini menjadi isu kontroversial di Kluet Timur, Aceh Selatan, sehingga menjadi perbincangan semua kalangan. Artikel ini mengkaji bagaimana Kantor Urusan Agama mengabulkan permohonan pernikahan usia dini dan bagaimana Undang-Undang Peniruan Hukum Islam mempengaruhi pernikahan anak usia dini. Bagaimana hukum Islam meninjau pernikahan dini? Membahas tesis ini melalui penelitian lapangan. Sumber data primer dan sekunder Menurut penelitian, Kantor Urusan Agama mempermudah pernikahan dini dengan memberikan surat dispensasi untuk persyaratan bekas Pengadilan Agama bagi umat Islam dan Pengadilan Negeri bagi non-Muslim. Kedua, untuk kepentingan keluarga dan rumah tangga, perkawinan hanya dapat dilakukan oleh calon mempelai yang telah mencapai umur yang ditentukan dalam Pasal 7 Undang-Undang Nomor 1 Tahun 1974, yaitu calon suami. minimal 19 tahun dan calon istri minimal 16 tahun. Ketiga, dalam hukum Islam, imam mazhab (fikih konvensional) membolehkan pernikahan di usia dini.*



## INTRODUCTION

The term "marriage" (*nikah*) in the language means *al-Dhammu* (combining), while the meaning of "marriage" according to *syara'* is the contract between husband and wife that legalizes the relationship between them (Ghazali 2003). Marriage itself is a *sunnatullah*, a natural law in the world. Marriage is not only performs by humans, but also by animals and even plants, as natural science scholars suggest that most things are composed of two counterparts. For instance, the water we drink consists of oxygen and hydrogen, electricity has its positive and negative charges, and similarly, the concept of marriage embodies this duality (Syarifuddin 2006). Allah says in the Qur'an Surah al-Dzariyat, verse 49 "And we created pairs of all things so perhaps you would be mindful (the greatness of Allah).

In the state of Indonesia itself, it has been regulated by the Law of the Republic of Indonesia. According to Law No. 16 of 2019, marriage is only permitted when both the man and woman have reached the age of 19. According to Article 1, Paragraph 1 of Law No. 35 of 2014, it is stated that a child is defined as an individual who has not reached the age of 18 (eighteen) years, including unborn children. However, if someone has not reached the legal age, they must obtain permission from both parents. And even prior to that, for prospective spouses whose age is still below 21 years old, they must obtain a dispensation from the court (Mardani 2013). According to the Acting Director General of Legislation and Regulations, Mualimin Abdi, the Marriage Law, which sets an age limit for marriage, adheres to the principle that prospective spouses must be emotionally and physically mature to enter into marriage. The purpose is to prevent underage marriages and ensure that the goal of marriage, which is to have healthy and well-adjusted offspring, can be achieved.

In the Compilation of Islamic Law, marriage is considered a strong covenant or *mistsāqan qhalīẓhan* to obey the command of Allah, and fulfilling it is regarded as an act of worship. Marriage aims to establish a harmonious, loving, and respectful household, a marriage is considered valid when conducted in accordance with Islamic law as stated in Article 2, paragraph 1 of Law No.1 of 1974 (Aulia 2008). This is related to the concept that the Compilation of Islamic Law does not specify a specific age for marriage; instead, the maturity of the prospective spouse is implemented through the concept of *baligh* in Islam itself. The concept of *baligh*, as mentioned in the *fiqh* literature, refers to the point at which an individual becomes subject to certain Sharia laws. Once a person is deemed *baligh*, they are considered *mukallaf*, or legally responsible. However, it is important to note that not all *baligh* individuals are considered *mukallaf*, as there are certain exceptions such as individuals with mental disabilities who cannot be held accountable under Sharia law. From that case, the term "*akil baligh*" emerged, referring to individuals who have reached the age of maturity and possess sound judgment to distinguish between right and wrong, good and bad. Similarly, when it comes to individuals who are about to get married, both men and women must have reached the age of maturity. During that time, individuals were considered capable of distinguishing between what is good and what is bad. In order to establish a

family that is not only focused on worldly matters but also the afterlife, it is important to consider certain aspects when entering into marriage. The requirements for marriage have been mentioned in the law regarding the conditions of consent. These conditions include competency, as well as various types of marriage. Both parties involved in the contract must be individuals who possess the necessary competence to enter into a marriage contract. The person conducting the marriage must be of sound mind and have reached the age of maturity. It is not valid for a mentally ill person or an underage child who has not reached the age of maturity to enter into a marriage contract (Az-Zuhaili 2011).

In essence, Islamic law does not provide absolute regulations regarding the age limit for marriage. The absence of specific provisions in Islamic teachings regarding the minimum and maximum age to enter into marriage is assumed to grant flexibility for individuals to determine it. However, the Qur'an suggests that individuals who are about to enter into marriage should be ready and capable. As stated in the Holy Quran, specifically in Surah An-Nur, verse 32, which states "Marry off the 'free' singles among you, as well as the righteous of your bondmen and bondwomen. If they are poor, Allah will enrich them out of His bounty. For Allah is All-Bountiful, All-Knowing. The meaning of the above verse invites the recommendation of marriage and assists unmarried men and unmarried women, including eligible slave servants who have reached the appropriate age, in getting married. It is important to provide assistance in facilitating their marriage (Bahreisy, n.d.). According to a narrated hadith,

كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَأْمُرُ بِالْبَاءَةِ , وَيَنْهَى عَنِ التَّبْتُلِ هُمًّا شَدِيدًا , وَيَقُولُ : تَزَوَّجُوا الْوُدُودَ الْوُلُودَ إِنِّي مُكَاتِّبٌ بِكُمْ  
الْأَنْبِيَاءَ يَوْمَ الْقِيَامَةِ

The Prophet Muhammad (peace be upon him) commanded us to marry and strongly discouraged us from remaining single. The esteemed individual stated, "Marry women who are fertile and compassionate, for with your numerous offspring, I will proudly stand before the Prophets on the Day of Judgment." (Narrated by Ahmad, The hadith is saheeh, according to Ibn Hibban).

However, according to experts, the majority of Islamic law allows for early marriage and it has become a common practice among the companions and even some scholars have justified it based on their interpretation of verse 4 of Surah Ath-Thalaq. According to the opinion of Abu Abdullah bin Hamid, a father and recipient of his testament, it is permissible to marry a young boy and a mentally ill boy, regardless of whether the young boy is of sound mind or mentally ill. Among the scholars who hold this opinion are Hasan, Az-Zuhari, Qatadah, Malik, Ats-Tsauri, Al Auza'i, Ahmad, Ishaq, Shafi'i, and the scholars of the Hanafi madhhab. This opinion is based on the historical account that Ibn Umar married off his young daughter, and both of them sought the arbitration of Zaid, who granted permission (Hadith narrated by Al Atsram with his sanad). Opinions of Hambali madhhab scholars allow a father to marry an intellectually challenged minor who has not reached the age of maturity. The rationale behind this is that the child is not yet of legal age, thus granting the father the right to marry them, just as a mentally sound individual has the right

to marry off their child when they become mentally incapacitated. In contrast to other than the father, they are not entitled to marry mentally capable individuals. In the event that a father marries off a young child or a mentally disabled individual, he may perform the marriage contract (*ijab kabul*) and he is not permitted to allow both parties (the young child and the mentally disabled person) to perform the marriage contract, as neither of them are deemed capable of making such decisions. If the child is 12 years old and is *mumayyiz* (able to distinguish between good and bad), according to *qiyas* (analogy), it is deemed permissible within the Hambali madhhab for an individual to provide *ijab kabul*, thereby enabling them to personally execute it. This practice is similar to the case of buying and selling transactions (Ayyub 2002). Therefore, the researcher here was attempted to delve into the prevalent issue of early marriage in Kluet Timur. While this issue may occur in various locations, not limited to Kluet Timur, the researcher aims to identify the underlying causes of early marriage within the local community, particularly in Kluet Timur. The following case highlights several important aspects.

In the first case, a student residing in Desa Sapik, Kluet Timur District, who is currently in the 3<sup>rd</sup> grade at State Junior High School 1 Kluet Timur, got married at a young age. A teenager, approximately 15 years old, was married due to engaging in premarital sexual relations resulting in pregnancy. Consequently, the individual was compelled to enter into matrimony by both parents. This couple was married at the Office of Religious Affairs of Kluet Timur District, and the marriage process was carried out in the same manner as usual. The second case is not much different from the previous case. A student residing in the village of Tanah Munggu, East Kluet District, was married at the age of 15. The nuptials took place at the Office of Religious Affairs in East Kluet District. Due to being discovered pregnant out of wedlock, she was married off as a means to prevent any potential embarrassment to her family. In the third case, a student from the village of Tanah Munggu in the East Kluet District, who is currently in the 3<sup>rd</sup> grade of junior high school, Due to being apprehended by a young villager engaged in a marital relationship, she was married. At the time of her marriage, she was 15 years old (interview with the East Kluet Religious Affairs Office). This research pertains to the implementation of laws prior to the enactment of Law No. 16 of 2019 concerning Marriage and Law No. 12 of 2022 concerning Sexual Violence Offenses. This is expected to bring forth a reality where the urgency of implementing both new laws becomes relevant.

In the preparation of this writing, a qualitative approach with the methods of data collection through interviews and document analysis was employed. The choice of research method is crucial in order to achieve the objectives effectively and systematically. This method was chosen due to the nature of the research object, which is characterized by its absurdity, thus requiring data excavation from various parties involved, including the bride and groom, parents, community figures, and the marriage registration office itself as the executor of the marriage. In a concrete manner, the method used influences the quality of a writing, whereby every data obtained is utilized

to support the intended writing and can be systematically elaborated so that every issue can be addressed according to expectations. This study is a field research, which is an activity of collecting data conducted in the field towards the research object using descriptive methods (Arfa and Marpaung 2018). In collecting data related to this research, the following provisions were implemented:

The research location, which serves as the subject of investigation in this study, was conducted at the office of the Head of the Department of Religious Affairs in the Kluet Timur Subdistrict of South Aceh. The selection of this research location is based on the author's observation of prevalent issues within the community of East Kluet, namely early marriage. The primary data source (Gunawan 2015) is data obtained from the Office of Religious Affairs (KUA) or employees of the Office of Religious Affairs and the community addressing early marriage, both from documents and the author's interview results. Meanwhile, the source of secondary data in the author's research is obtained through library studies, which aim to gather data and information by utilizing various materials available in the library. It is expected that data on marriage dispensation can be obtained from the Sharia Court (*Mahkamah Syari'yyah*) as the institution authorized to provide legal recognition for underage marriages. However, research examines the aspect of how underage marriages can occur in the East Kluet Office of Religious Affairs. The data collected from interviews, observations, and documentation (Suryana 2010) is then described, processed, and analyzed with the aim of producing classified data for research purposes and drawing conclusions related to the author's issue. Through descriptive methods, the author can ascertain the role of employees at the Office of Religious Affairs in addressing this issue of early marriage, subsequently seeking answers to this problem.

## **DISCUSSION**

### **Legal Basis of Marriage Age**

Referring to Article 6 Paragraph (1) of Law No. 1 of 1974 concerning Marriage, it is stated that to solemnize a marriage, an individual who has yet to reach the age of 21 must obtain the consent of both parents. Initially, Article 7 of the law above stipulated that the minimum age for males to enter into marriage is 19 years old. Meanwhile, the minimum age limit for females is 16 years old. However, the provision was amended through Law No. 16 of 2019. The minimum age limit for marriage for citizens is essentially intended to ensure that individuals who are about to marry have sufficient mental, emotional, and physical maturity. The possibility of a marital breakdown leading to divorce can be avoided, as the couple possesses a higher level of awareness and understanding regarding the purpose of marriage, emphasizing both external and internal happiness. The Marriage Law, which prohibits the practice of underage marriage, aims to ensure the well-being of married couples and their offspring. The age limit, as mentioned above, is still not fully implemented at present. In response to the

widespread issue of child marriage, the Indonesian Government has implemented reforms regarding underage marriages, which are considered a violation of:

1. The Marriage Law No.1 of 1974 in Indonesia stipulates that in Article 7, paragraph 1, marriage is only allowed if the man has reached the age of 19 and the woman has reached the age of 16. Furthermore, according to Article 6, paragraph 2, individuals who have not yet reached the age of 21 require permission from both parents to enter into marriage.
2. The Indonesian Law No. 23 of 2002 on the protection of children. In Article 26, paragraph 1, parents have the duty and responsibility to (a) nurture, care for, educate, and protect their children, (b) foster the growth and development of their children in accordance with their abilities, talents, and interests, and (c) prevent child marriages.
3. The Indonesian Law No. 21 of 2007 on the Procurement of Goods and Services The purpose of this Legislative Mandate is to protect children so that they continue to obtain their rights to live, grow, and develop, as well as to be protected from acts of violence, exploitation, and discrimination. It is truly regrettable when parents violate this law. Therefore, a comprehensive understanding of the aforementioned law must be undertaken to safeguard children from wrongful acts committed by adults and parents.

With the new law, as follows:

- a. The Indonesian Law No. 16 of 2019 on Marriage
- b. The Indonesian Law No. 12 of 2022 on Sexual Violence Offenses

The prevalence of early marriage is expected to decrease as it has become a concerning trend in various countries, including Indonesia. However, this article is an implementation of an early law before 2019. Clearly, the age limit for marriage is also stipulated in the Minister of Religious Affairs Regulation No. 11 of 2007 concerning marriage registration, Chapter IV, Article 8, which states that "if a prospective husband has not reached the age of 19 (nineteen) and a prospective wife has not reached the age of 16 (sixteen), they must obtain a dispensation from the court." In the Law and Ministerial regulations, it is evident that the minimum age for marriage for males is 19 years old, while for females it is 16 years old. However, in its implementation, there are still other requirements; such as if the prospective husband and wife are still in need of being 21 years old, permission from parents or marriage guardians is required. This is in accordance with Ministerial Regulation No. 11 of 2007 regarding marriage registration, Chapter IV, Article 7, which states that "if a prospective bride or groom has not reached the age of 21 (twenty-one) years, they must obtain written permission from both parents." This permission is mandatory as the said age is considered to still require parental or guardian guidance and supervision.

The question that arises is why there are age restrictions in marriage? Contrary to Islamic Law and Customary Law, there is no minimum age limit for marriage. The

Marriage Law, which sets an age limit for marriage, adheres to the principle that prospective spouses have reached emotional and physical maturity to enter into marriage. This is intended to prevent underage marriages (child marriages) and ensure the goal of having healthy and well-rounded offspring is achieved. One of the reasons why there are age restrictions in marriage is to prevent early marriages, which are considered inappropriate. As we know, at a young age, emotional maturity is still lacking and tends to be volatile, leading to conflicts that may result in divorce if mistakes are made by the couple. Hence, the importance of boundaries in marriage cannot be overstated, as they serve to prevent divorces resulting from emotional instability. Age limits in marriage restrict unions between couples who may not have reached the appropriate age but are eager to wed. Marriage in accordance with the laws of Indonesia, as stipulated by the country's legislation, is encouraged for both men and women. This is to ensure that when getting married, emotions are already quite stable and can be controlled.

### Scholars' Opinions on Early Age

The Hanafi madhhab establishes the physical criteria for reaching *baligh*, which includes a male experiencing wet dreams or ejaculation, regardless of whether it is due to sexual intercourse with a spouse or not, and having the potential to impregnate. As for women, the physical signs of reaching *baligh* include experiencing menstruation and the potential for pregnancy. *Baligh*, a term in Islamic law, signifies an individual's attainment of adulthood, which linguistically connotes arrival, arrival, and culmination. In an exemplary usage within a sentence, "I have already arrived at that place." The term "*baligh*" in *syara'* refers to the attainment of adulthood by an individual, signifying that legal responsibilities have been imposed upon them through five signs. Three signs occur in both males and females, while the remaining two signs specifically occur in females (Az-Zuhaili 2011).

Firstly, the release of semen occurs through nocturnal emissions (wet dreams) as well as during wakefulness and through various other means. This is a sign that the scholars unanimously agree on it. The emission of semen occurs in both boys and girls, and this sign is the most concrete evidence, as it is explicitly mentioned in the Qur'an, specifically in Surah An-Nur (24:59). Therefore, the *Fukaha* agree on this issue.

وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ

“And when your children reach the age of *baligh*, let them seek permission ‘to come in’, as their seniors do.”

Secondly, age. There exists a divergence of viewpoints among the *fuqaha* about the determination of the age of *baligh*, wherein the age of *baligh* is categorized into four distinct groups for both males and females:

1. Al-Awza'i, Al-Shafi'i, Abu Yusuf, and Muhammad opine that the age of *baligh* for both males and females is 15 years old.

2. Dawud and Imam Malik argue against setting a specific age for *baligh*
3. The Maliki scholars argue that the age of 17 or 18 is the age of maturity.
4. Abu Hanifah opines that the age of *baligh* for boys can be 17 or 18 years old under any circumstances. The individual holds such an opinion due to the absence of any definitive historical record (through divine revelation) that establishes a specific age for reaching *baligh*.

Thirdly, it is the growth of thick hair around the genital area in both males and females. Meanwhile, two physiological signs of maturity specifically for females are menstruation and pregnancy. The concept of *baligh* in Islamic law refers to a specific stage in a person's life when they become accountable for fulfilling their religious obligations (*taklifi*) and may face penalties for neglecting these duties. Meanwhile, in the event of a violation, if previously the parents or guardians were responsible for bearing the consequences, once the individual reaches the age of maturity and is in good health, they will bear the consequences themselves. This is due to the fact that the individual has reached the age of maturity and is in good health, regardless of the legal guardianship of their parents or the appointed guardian. Therefore, all actions or statements made by the individual or the appointed guardian are their responsibility.

A person, regardless of their gender, is considered to have reached *baligh* when they experience nocturnal emissions, commonly known as wet dreams. This physical sign explicitly indicates that wet dreams mark the onset of physical changes. The four fiqh madhhab agree that wet dreams are one of the most concrete indicators to declare that a male and female have reached the age of puberty (*baligh*). Specifically, for females, attaining *baligh* is recognized when they experience menstruation. There are seven physiological signs of *baligh* (Hawwas, n.d.). Among the seven signs mentioned, five are applicable to both males and females, while the remaining two are specifically for females. There are five signs of *baligh* that apply to both males and female:

1. Ejaculation occurs during both sleep and wakefulness.
2. Hair growth in the genital area.
3. Hair growth in the armpits.
4. Increased sensitivity of the sense of smell.
5. Changes in vocal cords, while two specific physiological signs of *baligh* for females are menstruation and pregnancy.

According to the Al-Shafi'i and Hanbali madhhab, the physical signs of reaching *baligh* for both males and females are the emission of semen and the growth of pubic hair. However, specific indicators for females include menstruation and the potential for pregnancy. There are divergent opinions among fiqh scholars regarding the age of *baligh* in cases where individuals do not experience nocturnal emissions. It is generally agreed upon that a person is considered to have reached *baligh* when they experience



nocturnal emissions, regardless of their gender. Regarding the determination of *baligh* based on age and the growth of pubic hair, fiqh scholars also hold differing opinions on the matter. The difference is caused by the evidence from the Qur'an and Hadith, which only explain the age of *baligh* in relation to wet dreams, thus leading to a consensus among scholars regarding its determination. When it comes to individuals who do not experience nocturnal emissions despite reaching the age of 15 or developing pubic hair, are they considered to have reached *baligh*? There are differing opinions among fiqh scholars. Abu Hanifah's viewpoint on the matter suggests that an individual is not considered to have reached the age of maturity, known as *baligh*, until they have attained the age of 18 for males and 17 for females. Meanwhile, Imam Al-Shafi'i and two disciples of Abu Hanifa, namely Abu Yusuf and Muhammad, hold the opinion that once a boy and girl reach the age of 15, they are considered to have reached the age of maturity.

Meanwhile, Abu Hanifah has established the final age limit for reaching *baligh* at 18 years for males and 17 years for females. This is in accordance with the opinion narrated from Ibn Abbas, while the majority of the Imams of the madhhab and two companions of Abu Hanifah, namely Abu Yusuf and Muhammad, consider the age of 15 as the maximum age of reaching *baligh*, for both males and females. In the matter of the age of *baligh*, Abu Hanifah stated that we are aware that the age of ten does not reach the age of *baligh*, just as we acknowledge that by the age of twenty, all children have reached the age of *baligh*. The exact age limits for these two categories are not definitively known, while the age in between is subject to individual interpretation (*ijtihad*) as its boundaries are not legally binding and there is no consensus among scholars regarding it. The diversity of opinions among scholars and legislation regarding the age limit for children indicates the presence of wisdom, particularly the importance of considering the maturity of a child when assigning responsibilities and burdens to them. Divergent views among Fuqaha regarding the age of *baligh* becomes a source of mercy when each opinion is placed and applied in the appropriate context. In the context of taklif (religious obligations), for example, the opinion stating a period of 15 years is utilized. In the context of marriage and child protection, opinions suggesting the age of 18 or 19 can be considered. Similarly, in the context of the transfer of property belonging to orphaned children, the upper limit of *baligh* attainment can be implemented, which stands at 20 years of age (Kamaruddin 2013).

### **Provisions on Early Marriage in the Compilation of Islamic Law Regulations**

The Compilation of Islamic Law outlines the age limits for marriage, setting the minimum age for prospective husbands at 19 years and for prospective wives at 16 years. The requirements have not yet been perfect, as they must meet the minimum age limit. The compilation of Islamic law also adheres to the principle of legality, which follows the provisions contained in Law No. 1 of 1974 concerning marriage. Article 6,

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paragraph 1 of Law No. 1 of 1974 emphasizes that prospective husbands who are under the age of 21 must obtain permission from their parents or guardians, as long as the parents or guardians are still alive and able to express their consent. Meanwhile, in paragraphs (3, 4, 5), it is explained as follows:

1. Article 6, paragraph 3 states that in the instance that one of the parents has passed away or is unable to express their wishes, the permission referred to in paragraph 2 of this article may be obtained from the surviving parent or from the parent who is able to express their preferences.
2. Article 6, paragraph 4 states that in the instance that both parents have passed away or are unable to express their wishes, permission shall be obtained from a guardian, caregiver, or a family member who has a direct blood relationship in the ascending line as long as they are alive and able to express their preferences.
3. Article 6, paragraph 5 states that in the instance of a disagreement among the individuals mentioned in paragraphs 2, 3, and 4 of this article, or if one or more of them do not express their opinion, the Court in the jurisdiction where the person intending to enter into marriage resides may grant permission after hearing the aforementioned individuals mentioned in paragraphs 2, 3, and 4 of this article.

The provisions stipulated in Law No. 1 of 1974 on Marriage are aimed at ensuring the successful achievement of the institution of marriage.

Article 15, Paragraph 1 and Paragraph 2 that sound,

1. In order to ensure the well-being of families and households, marriage can only be entered into by prospective spouses who have reached the age as stipulated in Article 7 of Law No. 1 of 1974. This means that the prospective husband must be at least 19 years old, while the prospective wife must be at least 16 years old.
2. For prospective spouses who have not yet reached the age of 21, they must obtain permission as regulated in Article 6 paragraphs 2, 3, 4, and 5 of Law No. 1 of 1974 (Ghazali 2003).

Regarding the regulations on marriage age, it is understood that prospective husbands must be at least 19 years old. Prospective husbands who are 21 years of age or older do not require permission from their parents or guardians. While prospective husbands between the ages of 19 and 21 are permitted to enter into marriage, they must obtain parental consent. In addition to meeting the minimum age requirements, Article 39 of the Compilation of Islamic Law (KHI) also stipulates that prospective husbands must not have any blood relations, close relatives, or hierarchical relationships. Furthermore, there are additional provisions in Article 44 of the KHI that require prospective husbands to adhere to the Islamic faith.

In the Compilation of Islamic Law (KHI), there is no provision stating that the prospective husband must be male. The absence of a provision regarding the gender of

the prospective husband does not imply that the drafters of the Compilation of Islamic Law lack commitment to Islam or fail to give sufficient attention to this matter of marriage. Although this provision does not exist, it appears that the KHI *urf sahih* in the Islamic society of Indonesia generally dictates that prospective spouses are male. Meanwhile, prospective wives must be at least 16 years old (Article 15 of KHI). Prospective wives must be of the Islamic faith, not currently married to another man, and not in the waiting period (*iddah*) with another man (Article 40 of the KHI). In the KHI, there are no provisions stating that a prospective spouse must be female. Just like in the case of prospective husbands, although this provision does not exist, the KHI recognizes that prospective wives are typically women in Indonesian society. A marriage is considered valid if it meets the requirements stipulated by the legislation. There are two types of marriage requirements, including material and formal requirements.

First, there are material requirements that must be considered in conducting a marriage, which involve parties related to the marriage or individuals whose personal matters are involved. There are several material requirements: (1) marriages must be based on the consent of both parties; (2) permission from both parents must be obtained if each candidate is under the age of 21; (3) prospective husband must be 19 years old and prospective wife must be 16 years old, unless a dispensation is granted by the court or the designated registrar; (4) both parties must not be married, unless their religion allows polygamy; and (5) or a woman who is getting married for the second time or more, the Law states that a waiting period or *iddah* must be observed. Second, the formal requirements consist of procedures that must be fulfilled both before and during the marriage, including marriage report, marriage announcement, marriage impediments, and marriage solemnization (Yasin 2008). It can be inferred that the provisions contained in the Compilation of Islamic Law serve as specific guidelines in the requirements for marriage of couples who marry at an early age.

### **Considerations of the Office of Religious Affairs in Granting Requests for Early Marriage**

In the context of early marriage in the Kluet Timur Subdistrict, the Head of the Office of Religious Affairs of the Kluet Timur Subdistrict stated that, generally, from 2016 to 2018, three cases were found where marriages were clearly conducted below the legal age. This marriage occurred as a result of an out-of-wedlock pregnancy and was discovered by a young villager engaged in marital relations. Saleh Daud has stated that the occurrence of early marriage is due to promiscuity and a lack of education among children, resulting in their inability to distinguish between what is good and what is bad for themselves.

Furthermore, he stated: that according to the understanding of the head of the Office of Religious Affairs in East Kluet, underage marriage does not constitute a major

sin. However, most young men and women who enter into underage marriages do not do so in a proper manner. Numerous cases have been found in the field, according to our findings. Most individuals who marry at a young age do so due to being caught in compromising situations, such as engaging in premarital cohabitation and becoming pregnant out of wedlock. Thus, throughout our investigation, there were no restrictions found regarding the solemnization of marriage for the underage couple. This is indeed the best path for both individuals. However, to qualify for someone to get married, they must meet the required age criteria for marriage, with men being required to be at least 19 years old and women being required to be at least 16 years old. If questions arise from the public, what if one or both of the prospective spouses are below the legal age for marriage according to the Marriage Law and still wish to proceed with the marriage? From the Office of Religious Affairs in East Klue, we are pleased to provide facilitation for the implementation of such matters. Therefore, both male and female parents can request a letter of dispensation regarding the old provisions for Islamic religious courts and State Courts for non-Muslims. The application for dispensation is in accordance with the region of the applicant's residence. For instance, the residents of Klue Timur Subdistrict in South Aceh Regency, applicants are seeking dispensation from the South Aceh Religious Court for those who are Muslims and from the District Court for those who are non-Muslims.

Furthermore, similar statements were also conveyed by Tengku Baihaqi, who stated that early marriage is considered valid as long as the requirements and conditions of marriage are fulfilled. However, it is deemed forbidden if it leads to harm. Nevertheless, it is advisable for marriages to be conducted after addressing the requirements stated in Law No. 1 of 1974 concerning marriage, in order to achieve the intended purpose of marriage. It should be noted that within the realm of fiqh, explicit limits regarding the minimum and maximum age for marriage are not explicitly specified. According to Tengku Asrin, the Imam of Gampung Sapik, it is equally important for both prospective partners to embrace Islam in the context of marriage. According to him: An ideal married couple is one who has reached maturity, is capable of fulfilling all religious obligations, and is obliged to abstain from what is prohibited. However, some young men and women who are about to get married fall into the category of being far from their religion, such as not praying, fasting, or engaging in other negative behaviors that we observe in society. Performing one's duties as a servant alone is not enough, let alone fulfilling responsibilities within a household. Marriage, being a profound act of devotion, extends far beyond mere frivolity. Consequently, it becomes arduous for both partners to find happiness within their household if they stray from the teachings of their faith. In this case, it can be stated that young men and women who do not adhere to religious obligations such as performing the five daily prayers, and indulge in revelry, may find that their marriages do not last long when they

establish a household. This is due to their lack of responsibility in maintaining a marital relationship or household.

Based on the aforementioned statement, it can be understood that Tengku Asrin Imam Gampung Sapik, from the Kluet Timur District, believes that it is permissible for young men and women to marry at an early age. However, it is generally stated that ideally, marriage should be conducted at the age as stipulated in Law No. 1 of 1974 concerning marriage. In order to achieve the desired goal of marriage to the best of one's ability, it does not necessarily guarantee that a mature age for marriage will ensure a happy family. However, when one reaches adulthood, the likelihood of conflicts within the household can be controlled, thus maintaining a harmonious relationship between husband and wife and avoiding divorce. Muzakir Addin, the village head of Gampung Sapik, stated the same. In order to successfully achieve the goal of marriage, it is advisable for those who wish to marry to meet the requirements set forth by the Marriage Law. Due to frequent occurrences of divorce, caused by a lack of readiness or maturity in a relationship from one of the prospective spouses, the views of the Compilation of Islamic Law regarding early marriage in the Kluet Timur District will be further discussed in the following subtopic, along with the relevant laws that govern early marriage.

### **Regulation of the Compilation of Islamic Law on Early Childhood Marriage**

The provision for determining whether someone is of legal age to enter into marriage or not can be found in two Islamic sources, namely the Qur'an and the Sunnah, as well as in positive law such as the Republic of Indonesia Law No. 1 of 1974 concerning marriage and the Presidential Instruction of the Republic of Indonesia No. 1 of 1991 concerning the Compilation of Islamic Law in Indonesia, as well as the results of *ijtihad* and the consensus of Islamic scholars and leaders in Indonesia. According to Law No. 1 of 1974, Chapter II on marriage requirements, Article 7, paragraph 1 states that "marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years." However, if they have not reached the age of 21 (twenty-one) years, they still cannot marry without permission from both parents. This is stipulated in Article 6 paragraph 2, "To marry someone who has not reached the age of 21 (twenty-one) years, permission must be obtained from both parents."

In the Compilation of Islamic Law in Indonesia, Chapter IV on the pillars and conditions of marriage, Article 15, paragraph 1 states that "for the well-being of the family and household, marriage may only be entered into by prospective spouses who have reached the age specified in Article 7 of Law No. 1 of 1974, that is the prospective husband must be at least 19 (nineteen) years old and the prospective wife must be at least 16 (sixteen) years old." The consideration is to fulfill the welfare of living together

in order to avoid weak families and troubled families or households. At the same time, the spirit of positive law is a *sakinah* family or harmonious household (Harmonis 2015). In regard to the age for marriage Compilation In recent years, there has been a growing trend towards the creation of compilations across various industries Islamic Law sets a minimum age of 19 for males and 16 for females. In addition to meeting the minimum age requirement, the Compilation must also meet certain criteria. Islamic Law also adheres to the provisions outlined in Law No. 1 of 1974, Article 6, Paragraph 1, which stipulates that prospective husband who are under the age of 21 must obtain permission from their parents or guardians as long as the parents or guardians are still alive and able to express their consent. In addition to meeting the minimum age requirements, KHI also stipulates in Article 39 that prospective husbands must not have any blood relations, immediate family relations, or hierarchical relations. In addition, there are additional provisions in the Compilation of Islamic Law (KHI) Article 44, stating that prospective husbands must be of the Islamic faith, and the same applies to prospective wives who must also be of the Islamic faith. A wife is not currently bound by marriage to another man and is not in the waiting period with another man (Article 40 of the KHI).

### **A Legal Review of Islamic Law in Responding to the Implementation of Early Marriage in the District of Kluet Timur**

In general, it can be said that Imams of madhhab (conventional fiqh) allow for early marriage, which involves the union of young boys and girls. In the past, it was common for scholars to permit a father, acting as a guardian, to marry off his underage son or daughter without seeking the child's consent beforehand. This permission was often explicitly stated, as in the phrase "marriage between a young boy and a young girl is permissible." According to the opinion of Ibn Al-Human, as quoted by Amir Syarifuddin in his book *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and Marriage Legislation* (Syarifuddin 2006). Ibnu Al-Mundzir posits the permissibility of early marriage as a consensus (*ijma*) where there is compatibility (*sekufu*) between the parties involved. The majority of scholars have cited various evidences to support their claims, one of which includes the narration about the marriage between Prophet Muhammad (peace be upon him) and Aisha when she was six years old (Wahbah 1997). Islam does not explicitly specify a minimum age for marriage, but Islamic law states that an individual is only obligated to perform certain actions or legal acts once they have reached the age of maturity (*mukalaf*).

When interpreting this verse, Hamka stated that *bulugh al-nikah* is understood as reaching maturity. Maturity is not dependent on age but on intelligence or mental maturity. In the household, there exists a child who is not yet of age but displays remarkable intelligence. Similarly, there is an individual of advanced age, yet their cognitive development has not fully matured (Hamka 1983). There is no concrete

consensus among various madhhab regarding the minimum age limit stated in numerical terms for the concept of *baligh* as its minimum threshold. A consensus among scholars of madhhab of thought affirms that menstruation and pregnancy serve as evidence of a woman's attainment of *baligh*. In addition, one of the objectives of marriage according to Islamic law is to establish a peaceful, harmonious, and lasting household. However, this cannot be achieved if the parties entering into marriage are not yet of legal age and emotionally mature.

In addition to the majority of fiqh scholars who permit early marriage, there are also those who argue that the marriage of young girls is invalid or prohibited. According to scholars, the early marriage between Aisha bint Abu Bakr and Prophet Muhammad, in which he was significantly older, cannot be considered as a general precedent. Similarly, it is the case with the Prophet who had ten wives. Including his non-Arab wife (Ajam), Jariyah from Egypt named Mariah (Baswedan), cannot be considered as a general example due to its specific nature. Almost all of the Prophet's wives were widows except for Aisha, and they all had a historical background intertwined with the early struggles of Islam (Kusuma 2007). In line with the views of Ibn Shubrumah, he has put forth several reasons, one of which is the narration of the hadith by Abu Hurairah as recorded by Muslim. "From Abu Hurairah, it is narrated that the Messenger of Allah (peace be upon him) said that a widow should not be married off without consultation, and a young unmarried woman should not be married without seeking her permission. The companions then inquired, "O Messenger of Allah, how does a girl seek permission? He responded with silence as a sign of her seeking permission" (Narrated by Mutafaq'alah).

This hadith obliges the guardian, including the father, to seek permission from his daughter before the solemnization of her marriage. Due to the validity of the marriage contract depending on permission, while the permission of parents or an underage girl is not considered, it is obligatory for the guardian to wait until his daughter reaches adulthood to obtain her permission. Meanwhile, according to Ibnu Syubrumah himself, as stated by At-Thahawi, the evidence that we must present is as follows: The primary objective of marriage is to produce offspring and safeguard oneself from sinful acts. The acquisition and preservation of offspring are naturally achieved through the act of sexual intercourse, with the primary intention being directed towards females who have reached a suitable age for such engagement. Furthermore, Ibnu Syubrumah and Al-Batti argue, as quoted by Peunoh Dally in his book entitled "Islamic Marriage Law: A Comparative Study among Ahlul Sunnah and Islamic Countries," that it is not valid to marry underage children. The marriage contract conducted by a guardian on behalf of a minor child is considered null and void. The author asserts that the wisdom of marriage law in Islam reinforces the views of Ibnu Syubrumah, as there is no benefit for young children in such marriages (early-age marriages), and it may even bring about significant harm.

Considerations of the Office of Religious Affairs in granting requests for early marriage reviewed according to the Compilation of Islamic Law. Marriage, also known as matrimony, is a legal act that is mandated by the teachings of the Prophet Muhammad (peace be upon him). As explained in the Compilation of Islamic Law, marriage is a strong covenant to obey and fulfill the commandments of Allah, making it an act of worship. Marriage aims to realize a harmonious, affectionate, and compassionate household. The implementation is carried out based on the guidance that has been explained in Islam. When this guidance is implemented successfully, marriage achieves the desired end goal of happiness. In addition, if the teachings prescribed in Islam are fulfilled effectively, each couple can understand the rights and obligations that must be fulfilled and discharged. Therefore, marriage should be based on the readiness of each party, both the prospective husband and the prospective wife. The readiness can also be seen from various aspects, one of which is the readiness of psychological maturity or maturity, and the readiness of responsibility in a household.

The Compilation of Islamic Law itself has outlined the age limits for marriage, setting the minimum age for prospective husbands at 19 years and for prospective wives at 16 years. The requirements have not yet been perfect, as they must meet the minimum age limit. The Compilation of Islamic Law also adheres to the principle of legality, which follows the provisions in Law No. 1 of 1974 concerning marriage. Article 6, paragraph 1 of Law No. 1 of 1974 emphasizes that prospective husbands who are under the age of 21 must obtain permission from their parents or guardians, as long as the parents or guardians are still alive and able to express their consent. Meanwhile, in Islam, age limits as mentioned above are not standardized. There are no explicit provisions found in the sources that regulate the issue of marriage recommendations. The terms found only in the Qur'an and hadith regarding early marriage are *balghu Al-nikah* (sufficient age for marriage), *Wa Al-Salihin* (those who are eligible for marriage), and *Al-Ba'ah* (capable). These three terms provide an indication that there is no specific evidence for the legality of early marriage. In Islam, it is known that the majority of *Fuqaha* agree that marriages conducted by individuals who are considered to be of a young age (specifically reaching the age of 19 for males and 16 for females) are still considered valid, provided that the essential and valid conditions are met accordingly. These conditions include the presence of two individuals who intend to marry, along with their respective requirements, a guardian (*wali*), two just witnesses, and the acceptance of the marriage proposal (*ijab kabul*). When all these elements are fulfilled, marriage is considered valid, even if someone is classified as being of a young age (Mubarok 2002).

Regarding the considerations of the Office of Religious Affairs in granting requests for early marriage, as mentioned above, it is interesting to note the provisions of Article 15, paragraphs 1 and 2, which state that the age limit for marriage is determined in Article 7 of Law no. 1 of 1974, namely that the prospective husband



must be at least 19 years old and the prospective wife must be at least 16 years old. However, in paragraph 2, it is stated that for prospective spouses who have not reached the age of 21, they must obtain permission as regulated in Article 6 paragraphs 2, 3, 4, and 5 of Law No. 1 of 1974. According to the author, early marriage occurring among the community in the Kluet Timur District of South Aceh Regency is deemed inappropriate due to its potential detrimental effects, including compromised quality of the family to be established, health factors, emotional maturity in managing the couple's emotions, and the need for independent income, which subsequently impacts their future lives.

## CONCLUSION

The Office of Religious Affairs provides convenience for those who want to carry out early-age marriages, with the condition of requesting a dispensation letter for the long-standing provisions of religious courts for Muslims and state courts for non-Muslims. In Article 15, Paragraph 1 of the Marriage Law Chapter IV, it is stated that for the well-being of the family and household, marriage can only be conducted by prospective spouses who have reached the age specified in Article 7 of Law No. 1 of 1974. According to this law, the prospective husband must be at least 19 years old, while the prospective wife must be at least 16 years old. However, in Islamic Law, it is generally stated that the imams of madhhab (conventional fiqh) allow for early marriage. In the past, scholars commonly permitted a father, acting as a compelling guardian, to marry off his underage son or daughter without seeking the child's consent beforehand. The aforementioned condition has undoubtedly changed with the enactment of Law No. 16 of 2019 concerning Marriage, which has established age limits for marriage and procedures for those who violate them. Furthermore, Law No. 12 of 2022 on Sexual Violence Offenses has regulated the consequences of engaging in sexual relations with minors. With the introduction of this new law, it is expected that the improvements described in the previous law will manifest themselves and bring positive changes to the lives of the community in the future.

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