

# Intersecting Laws: Analyzing the Tension Between Islamic Law and Positive Law on Child Marriage in Indonesia

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## Abstract:

*This study aims to analyze the differences in perspectives between Islamic law and Indonesian positive law regarding the minimum age for child marriage and the social and legal implications of early marriage. This research uses a descriptive qualitative method with a literature study approach, collecting data from books, articles, journals, and relevant regulations. The findings reveal a significant difference between Islamic law, which offers flexibility in the marriage age limit, and Indonesian positive law, which sets stricter regulations on the minimum marriage age. The study also uncovers debates among scholars about the legitimacy of early marriage and the social and psychological impacts it causes. The contribution of this study lies in providing a deeper understanding of the interaction between religious norms and state law, as well as highlighting the importance of adjusting legal policies to social developments and human rights. This research also offers a new perspective on the discussion of early marriage in the context of modern society.*

**Keywords:** Early Marriage, Islamic Law, Positive Law, Marriage Age Limit, Children's Rights.

## Abstrak

Penelitian ini bertujuan untuk menganalisis perbedaan pandangan antara hukum Islam dan hukum positif Indonesia terkait batas usia pernikahan anak serta implikasi sosial dan hukum dari pernikahan dini. Metode yang digunakan dalam penelitian ini adalah penelitian kualitatif deskriptif dengan pendekatan studi literatur, yang mengumpulkan data dari buku, artikel, jurnal, dan peraturan perundang-undangan terkait. Hasil penelitian menunjukkan adanya perbedaan pandangan yang signifikan antara hukum Islam, yang memberikan fleksibilitas dalam batas usia pernikahan, dan hukum positif Indonesia yang lebih ketat dalam menetapkan batas usia minimal untuk pernikahan. Penelitian ini juga mengungkapkan adanya perdebatan di kalangan ulama mengenai kesahihan pernikahan dini, serta dampak sosial dan psikologis yang ditimbulkan. Kontribusi penelitian ini adalah dalam memberikan pemahaman lebih dalam mengenai interaksi antara norma agama dan hukum negara, serta menyoroti pentingnya penyesuaian kebijakan hukum dengan perkembangan sosial dan hak asasi manusia. Penelitian ini juga memberikan perspektif baru dalam pembahasan pernikahan dini dalam konteks masyarakat modern.

**Kata Kunci:** Pernikahan Dini, Hukum Islam, Hukum Positif, Batas Usia Pernikahan, Hak Anak.

## INTRODUCTION

Early marriage remains a critical social issue in Indonesia, with significant implications for the development of children and the broader society. According to BAPPENAS, 34.5% of Indonesian children marry early, and international studies confirm that 33.5% of children aged 13-18 years marry by the age of 15-16 (Ramadhita, 2014). This phenomenon is alarming as early

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marriage inhibits the physical, emotional, and psychological growth of children. Children who marry at a young age are forced to transition into adulthood prematurely, denying them the opportunity to fully enjoy their childhood and education. Early marriage, therefore, deprives children of their rights, placing them at higher risk for health issues, poverty, and social inequality (Aditya & Waddington, 2021). Various factors contribute to this issue, such as low family income, inadequate education, premarital pregnancies, and strong cultural or religious pressures. In many communities, marriage is seen as a solution to protect children from perceived moral risks, especially as they enter adolescence. This cultural pressure is often coupled with religious views that emphasize marriage as a safeguard against sinful behavior. The social and religious expectations, particularly in rural areas, drive parents to marry off their children early, fearing that they will engage in immoral activities if left unmarried (Amberi, 2023). This creates an urgent need for policy reform, especially regarding the legal age of marriage, in order to protect children's rights and well-being.

Previous studies have extensively explored the legal, social, and religious aspects of early marriage in Indonesia. Nuh (2009) examined the views of Islamic scholars on the age limit for marriage, revealing differing interpretations of Islamic law regarding this matter. Buchler (2013) analyzed the historical development of marriage age limits within Islamic societies. Anisah (2002) and Fakhudin et al. (2022) focused on judicial considerations in granting marriage dispensations for minors, highlighting the influence of Islamic law in such legal decisions. Anshory (2006) investigated marriage dispensations in Malang, providing insights into the judicial reasoning behind the approval of underage marriages. Despite these contributions, a gap remains in understanding the relationship between legal frameworks, Islamic family law, and the urgency of raising the minimum marriage age to protect children. This study aims to fill this gap by exploring the need for legal reforms and their potential to address the social, religious, and economic drivers of early marriage in Indonesia.

The primary goal of this study is to examine the current legal and social landscape of early marriage in Indonesia, with a focus on the implications of the existing marriage age laws. This research aims to assess the alignment of Indonesia's legal frameworks with international child protection standards, specifically concerning the age of marriage. By doing so, the study seeks to provide actionable recommendations for policy reforms that prioritize the protection of children's rights, particularly in regard to raising the minimum marriage age.

This research argues that raising the legal age of marriage in Indonesia is crucial for safeguarding children's rights and preventing the adverse impacts associated with early marriage. The study contends that current laws and cultural practices perpetuate the problem of child marriage, and that substantial legal reforms are necessary to align Indonesian family law with international standards for child protection. By addressing the root causes of early marriage, including socio-economic pressures and religious interpretations, this research aims to contribute to the ongoing debate on how best to protect vulnerable children from the harmful effects of early marriage.

### METHOD

The object of this research is focused on the legal, social, and religious dimensions of early marriage in Indonesia, with particular emphasis on the age limit for marriage. The case being examined is the issue of underage marriage and the implications of the current legal age restrictions, as regulated in Law No. 1 of 1974 concerning Marriage, in comparison with the age definitions outlined in Law No. 35 of 2014 concerning Child Protection. The research also delves into the perspectives of Islamic scholars and legal practitioners on the subject of child marriage, particularly focusing on their views about the minimum marriage age in Islamic family law (Fithri et al., 2022).

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This study employs a qualitative research approach, utilizing library research as the primary method of data collection (Pahlevi et al., 2022). The data used in this research is secondary data, primarily sourced from academic articles, books, legal documents, and previous studies that discuss early marriage, Islamic family law, child protection, and the marriage age limits in Indonesia (Richards, 2022). The secondary data also includes case studies, judicial rulings, and scholarly opinions regarding the age limit for marriage. The aim is to provide a comprehensive analysis of the discourse surrounding child marriage and the legal frameworks governing it.

The research follows several stages in its methodology. First, the relevant literature is reviewed to gather insights into the socio-legal aspects of early marriage. This includes reviewing legal texts, case law, religious interpretations, and academic discussions on the subject. The literature review forms the foundation for understanding the current state of child marriage and the age limit for marriage in Indonesia. Second, the study examines the views of Islamic scholars and legal experts on the issue, particularly using their perspectives to critique the existing laws and explore possible reforms. Data is gathered through literature studies, including religious texts, fatwas, and legal commentary.

Data analysis in this research is performed through a qualitative approach, with an emphasis on content analysis and thematic analysis (Miles & Huberman, 2013). The data is processed by categorizing key themes such as legal interpretations, Islamic perspectives, and social factors that contribute to early marriage. The research also employs the *maqashid al-Syariah* (objectives of Islamic law) approach to analyze how the age limit for marriage aligns with the broader objectives of Islamic law in promoting welfare and protection for children. Through this process, the study aims to identify the gaps in current legal frameworks and argue for the importance of revising the marriage age limit to protect children's rights effectively.

## RESULTS AND DISCUSSION

### Child Age Limit in Positive Law in Indonesia

Various laws in Indonesia set different age limits for children, depending on the subject matter being addressed. This discrepancy is closely related to the legal framework that aims to protect individuals who are not yet capable of making fully informed decisions and understanding the consequences of their actions (Suherman, 2010). The regulation of the minimum age of marriage, in particular, has sparked debates on the protection of children's rights and the state's responsibility to safeguard its citizens. Below is a comparison of the age limit for children in several laws and regulations that govern various aspects of child protection in Indonesia.

### Early Marriage in the View of Islamic Law

Marriage is considered one of the *sunnah* (recommended practices) of the Prophet Muhammad in Islam. Etymologically, the Arabic word for marriage "نكح" means to gather, unite, or combine. In legal terms, marriage is defined as a contract that legitimizes sexual relations (Muhammad, n.d.). Scholars generally agree that marriage is a highly recommended practice in Islam, although some scholars, such as *az-Zahiri*, view it as obligatory. The *Maliki* school of thought considers marriage as a recommended practice for some individuals and obligatory for others, depending on individual circumstances (Muhammad, 2003).

Regarding the age limit for marriage, Islam does not set a specific, universally agreed-upon age. Various scholars have differing views on the appropriate age for marriage. For

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example, Imam As-Syafi'i argued that men reach maturity at 15 years and women at 9 years, while Abu Hanifah suggested that the legal age of adulthood for men is 18 and for women, it is 17. On the other hand, some scholars like Abu Yusuf and Muhammad bin Hasan considered 15 years to be a clear sign of maturity for both genders. Interpretations of the Quranic verse in Surah An-Nisa [4]: 6, which mentions the conditions for inheritance and marriage, also vary, with some scholars associating maturity with a physical sign such as a wet dream or menstruation (Mukti et al., 2015).

The issue of early marriage in Islam remains controversial and is debated from various angles, including religious education, state policy, and media perspectives. The discourse is polarized between those who permit early marriage based on Islamic traditions and those who oppose it, citing concerns about health, education, and child protection. For instance, the 32nd Nahdlatul Ulama Congress in Makassar permitted underage marriage based on the Hadith of Aisha's marriage to the Prophet Muhammad, although others, such as the Muhammadiyah Tarjih Committee, reject this argument, stating that the hadith must be critically evaluated (Mukti et al., 2015).

Supporters of early marriage often justify it using theological arguments based on the Qur'an, Hadith, and Ijma' (consensus). For example, Surah at-Talaq [65]: 4 discusses the issue of *iddah* (the waiting period after divorce) for women who are not yet menstruating, which some interpret as evidence that marriage can occur at a young age. Additionally, the hadith about Aisha's marriage to the Prophet Muhammad at a young age is often cited as a precedent for permitting early marriages. Supporters also argue that early marriage can reduce immoral behavior, prevent sexual deviance, and protect young girls from social stigmas. Moreover, they suggest that early marriage can benefit society by increasing the population and strengthening social bonds (Rahmadini & Sudaryo, 2021).

On the other hand, opponents of early marriage, especially within the contemporary context, argue that it can lead to harm, both physically and mentally, for young girls. They refer to the fatwa by Sheikh Yusuf al-Qardhawi, which advocates for restricting certain permissible acts (*taqyid al-mubah*) for the welfare of society (Qardhawi, 1997). From a health perspective, early marriage increases the risks of reproductive health complications, including maternal mortality, and leads to psychological and emotional distress. Religious scholars, such as Ibn Syubramah and Abu Bakr al-A'sham, also argue that early marriage is prohibited, emphasizing that the Prophet's marriage to Aisha was a unique case that does not serve as a general justification for early marriage in contemporary society (Al-Asqalany, 1996).

Psychologically, experts argue that the ideal age for marriage is between 19 and 25 years, as this is when individuals tend to develop greater emotional and cognitive maturity, which is crucial for building a stable and healthy marital relationship (Mapreane, 1982). Legal scholars, such as Amir Syarifuddin, emphasize that the marriageable age should reflect an individual's readiness to take on the responsibilities of family life, including providing for the household. In this sense, the age limit for marriage is an essential safeguard to ensure that individuals are capable of fulfilling these responsibilities without causing harm to themselves or others (Amir, 2007).

Thus, while Islamic law provides flexibility in the interpretation of the appropriate age for marriage, contemporary scholars and health experts overwhelmingly advocate for setting a higher minimum age for marriage to protect the well-being of children and promote social justice. Early marriage, although rooted in historical religious practices, poses significant challenges to modern societal standards, especially in terms of health, education, and human rights. Therefore, there is a pressing need to revise legal frameworks, including Islamic family law, to reflect these contemporary concerns.

### Critical Perspectives on Early Marriage in Islamic and Secular Legal Frameworks

The issue of early marriage continues to evoke strong debates within both Islamic and secular contexts, particularly when examining its social, health, and psychological consequences. While some scholars and religious leaders argue that early marriage is permissible under certain circumstances, many contemporary studies and legal frameworks advocate for raising the minimum marriage age, highlighting the long-term negative impacts it can have on young individuals, particularly girls (Nahdliyah & Mahdiyah, 2025).

From an Islamic perspective, the permissibility of early marriage is often supported by historical precedents, notably the marriage of the Prophet Muhammad to Aisha, which has been used to justify similar practices in modern times. However, scholars within Islam are divided on this issue. On one hand, scholars from the Hanafi, Maliki, and Shafi'i schools of thought provide varying interpretations regarding the age of maturity for marriage, with some pointing to the age of 9 or 15 years as markers for girls and boys, respectively. These opinions are often backed by hadiths and historical contexts where marriage at a young age was common and accepted (Mukti et al., 2015). However, these interpretations are challenged by a growing number of Islamic scholars who argue that the context of early marriage in 7th-century Arabia cannot be applied to modern society. They emphasize the importance of maturity, both physical and emotional, in ensuring that marriage fulfills its intended purposes – preserving the family unit and maintaining the well-being of all involved.

On the other hand, modern interpretations, particularly those influenced by contemporary human rights frameworks, reject early marriage altogether. Critics argue that early marriage, particularly for girls, exposes them to a multitude of risks, both immediate and long-term (Ratnaningsih et al., 2022). From a health perspective, early marriages are often linked to high rates of maternal and infant mortality, as young girls are not biologically ready for childbirth, which can lead to complications such as obstructed labor, fistulas, and preterm births. In addition, the psychological consequences of early marriage, such as emotional distress, depression, and a lack of educational opportunities, are significant factors that call for legal reform. Research consistently shows that girls who marry early are more likely to experience poverty, social isolation, and reduced life chances, especially when it comes to pursuing education or career opportunities (Mapreane, 1982).

Furthermore, early marriage often exacerbates gender inequality. Sociologists argue that by marrying off young girls, societies perpetuate a cycle of dependence and subjugation, wherein women are denied the agency to make informed decisions about their own lives (Husein, 2007). This dynamic reinforces traditional gender roles that confine women to domestic spheres, preventing them from accessing education, employment, and decision-making roles. The feminist critique of early marriage, particularly in conservative societies, points to the need for legal protections that prioritize women's autonomy and the right to delay marriage until they are fully prepared for the responsibilities that come with it.

The secular legal frameworks, in contrast to traditional religious interpretations, often seek to establish a clear age limit for marriage, arguing that such laws are essential for protecting children's rights. In Indonesia, the Marriage Law No. 1/1974 has set the minimum marriage age at 19 for both men and women, though the law still contains provisions for exceptions under certain circumstances. International bodies such as the United Nations and the World Health Organization advocate for setting the minimum legal age for marriage at 18, based on evidence showing that delaying marriage contributes to better health outcomes, higher educational attainment, and more equitable gender dynamics in society (Mukti et al., 2015). The push for international human rights standards and the implementation of these

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standards into domestic laws is viewed as a necessary step to ensure that children, particularly girls, are not subjected to early marriage, which is increasingly seen as a form of child exploitation and violation of human rights.

Thus, the critical perspectives on early marriage challenge both traditional religious practices and modern legal frameworks, questioning whether marriage, particularly at a young age, can truly meet the needs of individuals in today's world (Sari et al., 2023). There is a growing consensus among scholars, health experts, and human rights advocates that raising the minimum age for marriage is not only necessary but urgent to protect young people's health, well-being, and future prospects. While acknowledging the historical and religious contexts that allowed for early marriages, it is essential to consider how these practices must evolve to align with modern values of justice, equality, and personal autonomy. The need for reform within both Islamic family law and secular legal systems is undeniable, with the ultimate goal being to create a society that values and protects the rights of every individual, particularly the most vulnerable.

### Discussion: Early Marriage and Its Implications in Islamic and Secular Legal Systems

The findings of this research highlight a significant divergence between Islamic perspectives on early marriage and the positions adopted by secular legal frameworks, with particular emphasis on Indonesia. The discourse surrounding early marriage reflects deeper social, cultural, and legal values concerning gender roles, children's rights, and the nature of marriage itself (Aditya & Waddington, 2021). The contrasting views within Islamic jurisprudence, ranging from permissive interpretations grounded in historical precedents to more contemporary views advocating for the delay of marriage, are mirrored by the secular push for legal reforms aimed at setting a universal minimum age for marriage. The juxtaposition of these perspectives reveals the tension between traditional beliefs and modern values surrounding children's welfare and rights.

The results of this study reflect a significant conflict between the religious and legal systems regarding the age at which marriage should occur. This phenomenon is not just limited to Indonesia but is also part of a global debate on child marriage. The research underscores a larger issue of how societies and legal systems balance tradition with modern human rights standards. From a sociological perspective, the findings can be understood through the lens of Emile Durkheim's (2014) theory of social solidarity and the role of norms in maintaining societal cohesion. Durkheim argued that societies maintain stability by adhering to established norms, and in this context, traditional norms around marriage still heavily influence communities. However, the findings also suggest that, like any other social institution, marriage is evolving, and the call for legal reforms reflects a shift toward individual rights, particularly the rights of young women. This aligns with Max Weber's (2002) theory of rationalization, where legal structures evolve to reflect more systematic, bureaucratic considerations, including the protection of individual autonomy (Crone, 2019).

The implications of this study are twofold. First, it highlights the need for a reevaluation of child marriage in both religious and legal contexts. While Islamic law has traditionally provided room for early marriages based on historical precedent, there is a pressing need to reassess this practice in light of contemporary challenges, including the psychological, health, and socio-economic consequences faced by young brides. Second, the secular legal systems, which have moved towards regulating and restricting child marriages, suggest a growing acknowledgment of children's rights to protection from harm and to pursue education and personal development before entering marriage. The results of this study could serve as a catalyst for further legal reforms in countries like Indonesia, where the minimum marriage age remains a contentious issue.

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The results reflect an ongoing tension between tradition and modernity. In the Islamic tradition, marriage has historically been viewed not only as a social contract but also as a religious duty, often tied to cultural norms that place a premium on early marriage. However, as societies evolve and the understanding of children's rights deepens, the negative consequences of early marriage – particularly for young girls – are increasingly recognized. In contrast, secular legal frameworks, guided by international human rights standards, advocate for legal reforms that aim to protect minors from potential exploitation and harm. This shift is influenced by the growing body of research that links early marriage to poor health outcomes, economic disadvantage, and reduced life opportunities (Agustina, 2022). The findings highlight that while traditional interpretations of religious texts remain influential, the growing evidence base around the harmful effects of early marriage is gradually shifting legal and societal attitudes.

In response to the findings, it is evident that both Islamic and secular institutions need to engage in more comprehensive discussions about the implications of early marriage. Several actions have already been initiated in Indonesia, where the government has raised the minimum marriage age from 16 to 19 for women, reflecting a recognition of the need to protect young girls from early marriages (Rahiem, 2021). However, there is still resistance in some parts of society, where cultural and religious practices continue to endorse earlier marriages. For instance, religious leaders within certain factions of Islam continue to assert the permissibility of early marriage, citing historical practices and religious texts. In light of this, the next steps should include further collaboration between religious scholars, legal experts, and human rights advocates to create a balanced approach that honors cultural traditions while ensuring the protection of young people's rights. Furthermore, there is a need for more robust public education campaigns about the risks of early marriage, as well as the promotion of alternative pathways for girls, such as education and career development, to delay marriage and foster personal empowerment.

The findings of this study also urge further action from governmental and non-governmental organizations to support reforms that protect children from early marriages, particularly in rural areas where such practices are more prevalent. Continued advocacy and legal reforms are critical in achieving a balance between tradition and the safeguarding of young people's well-being, ultimately ensuring that marriage is a choice made by individuals who are fully prepared for its responsibilities.

### CONCLUSION

This study found a significant tension between Islamic law and Indonesian positive law regarding the age limit for child marriage. The findings provide a new perspective on how both legal systems respond to the phenomenon of early marriage, where Islamic law, with its flexibility based on traditional interpretation, intersects with positive law, which prioritizes the protection of children's rights. The study also reveals differences of opinion among scholars and religious institutions regarding the legitimacy and appropriateness of early marriage. These differences are not only rooted in religious texts but are also influenced by social, cultural, and health contexts. This diversity of perspectives indicates that early marriage is not only a legal issue but also a social and moral issue that requires a multidisciplinary approach to resolve.

Furthermore, the study highlights that although support for early marriage still exists in certain segments of society, more people are recognizing the negative impacts of early marriage, both physically, psychologically, and socially. Therefore, this research makes an

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important contribution by illustrating the paradigm shift from acceptance of early marriage to more organized rejection in society. This adds new understanding of how early marriage is considered in the context of modern societal development that places more emphasis on children's and women's rights.

The contribution of this research lies in its approach, which integrates Islamic law views with positive law and social theories to gain a deeper understanding of early marriage. The concepts developed in this study offer a more comprehensive understanding of the interaction between religious norms, state law, and social welfare, and how these three elements influence marriage policies. Another key contribution is the use of Emile Durkheim's theory of social solidarity and Max Weber's theory of rationalization to explain how social change influences legal policies and how society responds to early marriage. This study also offers a new perspective on the importance of aligning traditional norms with human rights values when addressing contemporary social issues.

Although this study provides important insights, it has limitations, including the sample size being confined to literature review-based data collection and the lack of direct interviews with individuals or parties involved in early marriage practices. Future research could explore this issue more deeply with a broader qualitative approach, such as interviews or field observations, to understand the perspectives of individuals involved in early marriages or those affected by this policy. Furthermore, future studies could expand the geographical scope to include more diverse regions, particularly areas with high rates of early marriage, to analyze the socio-economic factors influencing the decision to marry at a young age.

For future research directions, it is crucial to explore the impact of implementing new policies that limit the age of marriage on the rates of early marriage in Indonesia and other countries with similar contexts. Additionally, further studies on the role of education, advocacy, and public awareness campaigns in reducing early marriage should be conducted to evaluate the effectiveness of existing social and legal interventions.

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