

# Marriage Age Limit In Hanafi Mazhab And Its Relevance With Law No. 16 Years 2019

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## ABSTRACT

The priests of the madhhab did not mention the age limit for marriage, but only set the age of puberty. Whereas in the compilation of Islamic law and the Act there is a provision which states that the age limit for marriage is Law No. 1 of 1974 for women at least 16 years, for men 19 years, then revised by Law No. 16 of 2019 that men and women must be at least 19 years old. Thus the author wants to find the relevance of the provisions on the age limit for marriage contained in the law and the opinions of the Hanafi school. This is postulated in a hadith narrated by Imam Bukhari from Sayyidah Aisyah ra. In this study, we want to examine how the comparison of underage marriage between the Hanafi school and Law no. 16 of 2019. This type of research is library research with a juridical-normative approach. The results of this study conclude that underage marriage is not allowed in Law no. 16 of 2019 because it raises many negative elements from positive things. While in the Hanafi school there is no prohibition against underage marriage as long as it does not cause negative effects.

**Keyword:** Age limit for marriage; Hanafi School; Islamic Law;

## A. INTRODUCTION

One of the phenomena that has long occurred in society is underage marriage. Not only in Indonesia, this phenomenon also occurs in other countries. Indonesia itself as noted by the BKKBN based on UNDESA data (2011) that this country ranks second in ASEAN after Cambodia. Provinces with the highest percentage of early marriages under 15 years of age are South Kalimantan at 9 percent, West Java at 7.5 percent, Central Kalimantan and East Kalimantan at 7

percent and Banten at 6.5 percent. The motives and backgrounds vary, ranging from economic factors to religious understanding factors (Kompas, 2021 January: 10).

In the Qur'an, the theme of marriage is widely discussed, but there is not a single verse that explicitly explains the age limit for marriage. However, if examined further, there are two verses relating to a person's eligibility for marriage, namely:

*First:* QS: An-Nur: 32:

*“And marry such of you as are solitary and the pious of your slaves and maid-servants. If they be poor, Allah will enrich them of His bounty. Allah is of ample means, Aware.”* (Q.s. al-Nûr [24]: 32).

In Tafsir Ibn Katsir it is explained that this verse is an order to get married as the opinion of some scholars requires marriage for those who can afford it (Ibn Katsir, 2004: 269). Al-Marâghy interprets as quoted by Mustofa, the sentence *washâlihîn*, men or women who are able to marry and exercise the rights of husband and wife, such as being in good health, having property and others. Quraish Shihab interprets the verse as “*washâlihîn*”, that is, someone who is mentally and spiritually capable of building a household, does not mean that he is religious, because the function of marriage requires not only material preparation, but also mental and spiritual preparation, both for male candidates. as well as female candidates (Mustofa: 22).

*Second: QS: An-Nur: 59:*

*“And when the children among you come to puberty then let them ask leave even as those before them used to ask it. Thus Allah maketh clear His revelations for you. Allah is Knower, Wise.”* (Q.s. al-Nûr [24]: 59).

In Tafsir Ayat al-Ahkâm that a child is said to be mature when a man has

dreamed, as agreed by the scholars that a child who has dreamed then he *junub* (removes semen) (Ubes Nur Islam, 2014: 37-38) then he has matured, while the characteristics of women when they are pregnant or menstruating then that is the limit of *baligh* (Muhammad Ali Shabuni, 1999: 153). Described in Tafsir Al-Misbâh, the meaning of the basic word *rushdan* is the accuracy and straightness of the road. Thus, the word *rushd* for humans is the perfection of mind and soul which makes them able to behave and act as precisely as possible.

The textual message in it indicates that such a marriage is a legal act. But morally and the main goals in marriage, many judge it will allow the birth of various harms. This kind of legal consideration refers to the value of *maslahah* (positive impact) and *mafsadat* (negative impact) caused in a marriage. The most obvious positive impact is that the child is protected from free sex or sex outside of marriage so that *hifz al-nasl* can be maintained in him. However, the potential for negative impacts is also not light, because early marriage is considered to lead to the neglect of several other *maqashids*, such as the risk of study failure and lack of readiness to live a household life so that it can have implications for relationship fractures and even divorce. Early marriage is also considered to be at

risk for the birth of a premature child which causes defects in the baby, even more fatal with the death of the mother and child concerned.

In line with the Qur'an which does not mention the age limit for marriage, fiqh even allows underage marriage. According to Hanafi fiqh, this can be clearly understood from the story of Aisyah Ra. who was married when she was a child, such as the following hadith:

عن عائشة، «أن النبي صلى الله عليه وسلم تزوجها وهي بنت ست سنين، وبني بها وهي بنت تسع سنين» قال هشام: «أنها كانت عنده تسع سنين

Meaning: From Aisha RA, that the Prophet SAW married her while she was six years old, and lived with her at the age of 9 years. (HR Bukhari)

This incident is a proof of the permissibility of child marriage at an early age. Muhammad ibn Ahmad al-Sarkhas mentions in the book *al-Mabsūth*:

ففي الحديث دليل على جواز نكاح الصغير والصغيرة بتزويج الآباء

Meaning: "The hadith shows the legality of the marriage carried out by the father to the little boy and girl."

Imam Sarkhasi's opinion, which is a representation of the Hanafi School, explicitly supports marriages carried out by small children. Thus, in the Hanafi School there is no prohibition of marriage for minors.

Not only in the Hanafi school, furthermore the permissibility of child marriage has become the consensus of the scholars between schools so that it gives birth to *ijma'*. In the book *Tuhfat al-Muhtaj fī Syarh al-Minhāj* by Ahmad ibn Hajar al-Haitamī, scholars agree (*ijma'*) on the permissibility of a father to marry off his young daughter without permission. He stated this as follows:

وأجمعوا عليه في الصغيرة ويشترط لصحة ذلك كفاءة الزوج ويساره بمهر المثل على المعتمد

Meaning: "The scholars agree on the permissibility of a father to marry off his young daughter without his permission. Required for the validity of the contract is the equivalence of the husband with his child and being able to pay the dowry of *mitsl* based on a strong opinion."

Imam Syafi'i is of the opinion that regarding an immature girl who is about 15 (fifteen) years old or has not yet experienced menstruation, a father may marry her without harming the child. As

for the basis of the permissibility of a father to marry his young child in this context is the action of Ab Bakr in marrying his daughter Aisyah RA with the Prophet Muhammad. At that time 'Aisyah RA was six years old. In addition, it is also supported by the reason that all the affairs of small children are the responsibility of the father. The brief descriptions above indicate that the syara' does not determine the age limit for a person to marry.

In contrast to the study of fiqh, in Indonesia there are several laws that require adult age in marriage. In formal juridical terms, the age limit for marriage in Indonesia is regulated in Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. In the law, article 1 states that marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years.

This marriage requirement is regulated so that the marriage has legal certainty as well as a means of endeavoring to realize the noble goals of marriage. The law allows marriage if the man has reached the age of 19 (nineteen) years. If these requirements cannot be met, it does not mean that a person cannot get married at all, there are legal engineering that can be done through marriage dispensation efforts. This dispensation of marriage from the court opens up

opportunities for underage marriages to occur. This is also stated in article 7 paragraph 2 which reads:

"In the event that there is a deviation from the age provisions as referred to in paragraph (1), the parents of the male and/or female parents may request a dispensation from the Court on the grounds that it is very urgent, accompanied by sufficient supporting evidence."

The use of the term underage marriage (children) is understood *contrario (mukhālafah)* to the provisions on the age limit for marriage. The Fatwa Commission of the Indonesian Ulema Council (MUI) asserts that the age of marriage is the age or age of a person who is considered physically and mentally ready to carry out a marriage or marriage.

Underage marriage according to the Indonesian Ulema Council (MUI) is a marriage carried out in accordance with the terms and pillars, but one of the bride and groom or sometimes both the bride and groom are not yet mature and psychologically not ready to carry out domestic responsibilities.

The marriage law states that marriage is only permitted if the man has reached the age of 19 years, but there are also provisions for marriage based on the approval of the two prospective brides (Article 7 paragraph 2 of Law 16/2019).

This is a gap for the parties to enter into marriage by first applying for a marriage dispensation.

The marriage law allows marriage (Article 7), if the man has reached the age of 19 years. Article 15 paragraph (1) of the Compilation of Islamic Law (KHI) adds to the consideration of the benefit of the family and household in every marriage. The benefit of this family and household. Marriage law regulated in the Civil Code uses an age limit of 15 years for women and 18 years for men. With the birth of the marriage law, the provisions on the age of marriage in the Civil Code are no longer valid. The provisions on the limitation of children, in the law of engagement or material transactions are stated by using the term minor (Article 330 of the Criminal Code), namely those who have not reached the age of 21 years, and have not married before.

The marriage law does not explicitly prohibit underage marriage. The age limit for marriage requirements has been regulated, but at the practical level its application is flexible. This means that under certain circumstances, if it is a case of extreme urgency or an emergency, the two prospective brides must be married immediately.

In Article 1 paragraph (1) of Law Number 23 of 2002 concerning Child Protection it is stated that a child is

someone who is under 18 (eighteen) years old, including children who are still in the womb. This law also does not explicitly mention the minimum age for children to get married. According to Law Number 4 of 1979 concerning Child Welfare, it is stated that a child is someone who has not reached the age of 21 years and has never been married. The age limit of 21 years is determined based on considerations of child welfare efforts, in which a child's social, personal and mental maturity is reached at that age.

Based on the description above, it is clear that there are very basic differences in the provisions regarding the age limit for marriage between the marriage law, child protection law and child welfare law. This proves that there is no synchronization of regulations regarding the age limit for marriage for a child that applies in Indonesia. Synchronization of regulations must reflect the best interests of children by looking at various aspects. This is in accordance with the direction and policies of Indonesia's national legal development, including arranging a comprehensive and coherent national legal system by recognizing religious and customary laws and updating colonial heritage legislation.

So because of that, the author wants to explore in depth about the age limit for marriage in the Hanafi School and

its relevance to the Law. No. 16 years 2019.

## **B. THEORETICAL FOUNDATION**

### **1. Age**

Age in the Big Indonesian Dictionary (KBBI) is age. To marry in language is to marry; Marry. Marriage itself according to Kamil Muhammad 'Uwaidah means union. Also interpreted as a contract or relationship. In addition, there are also those who interpret it as a mixture. Al-Shan'anī explains that *al-nikāh* according to language is merging and intermingling and mixing. There are also people who say "marriage" is a *majaz* word from a general expression for the name of the cause of the cause. There are also those who say that "marriage" is the essence of both. That is what is meant by those who say that the word "marriage" is *musytarak* for both meanings.

In Article 1 Chapter I of Law no. 1 of 1974 stated; "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty."

So it can be concluded that the age of marriage is the ideal age to bond physically and mentally between a man and a woman as husband and wife with good intentions.

### **2. Hanafi Fiqh**

Fiqh according to language is a deep understanding. Meanwhile, according to the term is the science that explains the *syar'iyah 'amaliyah* laws which are taken from *tafshīl* (detailed) arguments. As for Hanafi, it is a form of penance that is used for people who follow the opinion of Imam Abu Hanifa in *syar'iyah amaliyah*. Abu Hanifah himself's full name is Nu'man bin Thabit bin Zautha bin Maah, comes from Persian descent. Abu Hanifa was born in the city of Kufa, Iraq, in 80 Hijriyah (699 AD) and died in Kufa in 150 Hijriyah (767 AD). Historians say that he came from the Arabs, namely from Bani Yahya bin Asad, and some say that he came from the descendants of Ibn Rushd Al-Ansari.

### **3. Law No. 16 Years 2019**

As for Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage in this study is representative of the regulations or laws in force in Indonesia which cancel the previous law, namely Law no. 1 of 1974 concerning Marriage.

## **C. RESEARCH METHODOLOGY**

In this study, the author uses a qualitative research type with a normative approach, and this research is descriptive in nature, namely research that aims to describe what is currently in effect.

## D. RESULTS AND DISCUSSION

### 1. The age limit for marriage in the Hanafi school

In Hanafi fiqh, the discussion about the age limit for marriage is discussed specifically. Marriage of children, both male and female, is not prohibited in Islamic family law. They may marry, but the marriage must be carried out by the father (Sarakhsi, 1993: 212). Because small children under no circumstances are allowed to do anything independently. There are many arguments that state the permissibility of child marriage, including the hadith:

عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ  
تَزَوَّجَ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - وَهِيَ صَغِيرَةٌ  
بِنتُ سِتَّةِ سِنِينَ وَبَنَى بِهَا وَهِيَ بِنْتُ تِسْعِ سِنِينَ،  
وَكَانَتْ عِنْدَهُ تِسْعٌ

It means:

*“From the Messenger of Allah, that he married Aisyah Ra, even though Aisyah RA at that time was still small; was six years old, and built a household with him when he was nine years old, and lived with the Messenger of Allah for nine years (before the Prophet died).”*

However, Muhammad ibn Ahmad al-Sarkhas in al-Mabsūth explains that some scholars are of the opinion that small

children should not be married before reaching the age of puberty. Among the scholars who hold such an opinion are Ibn Shubrumah and Abu Bakr al-'Asham Rahimahumullah. Ibn Shubrumah and Abu Bakr al-'Asham used the following verse as the basis for their opinion.

وَابْتَلُوا الْيَتَامَى حَتَّى إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ  
مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا  
إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ  
وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ  
إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ وَكَفَى بِاللَّهِ حَسِيبًا

It means:

*“Prove orphans till they reach the marriageable age; then, if ye find them of sound judgment, deliver over unto them their fortune; and devour it not by squandering and in haste lest they should grow up Whoso (of the guardians) is rich, let him abstain generously (from taking of the property of orphans); and whoso is poor let him take thereof in reason (for his guardianship). And when ye deliver up their fortune unto orphans, have (the transaction) witnessed in their presence. Allah sufficeth as a Reckoner.”*

This can be understood from the following expression of al-Sarkhasi:



وبلغنا «عن رسول الله - صلى الله عليه وسلم -  
أنه تزوج عائشة - رضي الله عنها - وهي صغيرة  
بنت ستة سنين وبني بها وهي بنت تسع سنين،  
وكانت عنده تسعا» ففي الحديث دليل على  
جواز نكاح الصغير والصغيرة بتزويج الآباء بخلاف  
ما يقوله ابن شبرمة وأبو بكر الأصم - رحمهم الله  
تعالى - أنه لا يزوج الصغير والصغيرة حتى يبلغا

It means:

*"It has come to us that the Messenger of Allah (SAW) married Ayesha RA when she was six years old, and started a household with her at the age of 9, and Ayesha (RA) lived with Rasulullah SAW for 9 years. This hadith is a proof of the permissibility of children's marriage, both male and female, by being married off by their father. This is different from what was said by Ibn Shubrumah and Abu Bakr al-Asham which stated that it is not permissible for children to marry so that they become mature."*

If it is true that the marriage of a child who has not yet reached puberty can be carried out by his father or guardian, then there is no benefit in the word of Allah above (in the sentence "until they are old enough to marry". After all, the appointment of a guardian for someone is

to take care of things that are needed). by the child concerned, while their marriage when they were young did not have any benefit for them so that it was not appropriate to apply guardianship to the case.

Moreover, children do not need marriage, because the main purpose of a marriage by character is to convey sexual needs, and the *syar'i* benefit is to produce offspring. Children do not need or have not thought about both benefits. So by itself there is no basis for the guardian to marry them.

Child marriage is also difficult to justify because it is associated with time. This means that all laws relating to marriage only apply to them after puberty. Yet when they reach puberty, no one has the right to oblige them. This means that the marriage carried out by the guardian has no legal implications for these children as adults. That is the reason put forward by those who do not agree that small children may be married off by their guardians.

Of course, the opinions of Abu Bakr and Ibn Shubrumah above are very contrary to the opinions of the majority of scholars, so it is not surprising that the scholars who allow child marriages strongly oppose the above opinion, because they adhere to the verse at-Thalaq verse 4:



وَاللَّائِي يَسْنَنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ  
 ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَاللَّائِي لَمْ يَحْضَنْ  
 وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ  
 يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا

It means:

*“And for such of your women as despair of menstruation, if ye doubt, their period (of waiting) shall be three months, along with those who have it not. And for those with child, their period shall be till they bring forth their burden. And whosoever keepeth his duty to Allah, He maketh his course easy for him.” (At-Talaq [65]:4)*

In the verse above, Allah explains about the *iddah* of small children. While the *iddah* itself appears after the marriage. From this it can be understood that child marriage exists and is naturally permissible in the *syara'*. Meanwhile, the purpose of *hattā izā balaghū al-nikāh* in the letter an-Nisa verse four above is so that dreams come.

In addition to the above verse, the marriage hadith of Aisyah ra. with the Messenger of Allah. clarify (*nash*) the permissibility of child marriage, and besides that there are still many *atsars* that state the permissibility of child marriage. As Qudamah ibn Madhghūn married the

daughter of Zubair ra. when the child is just born. Ibn Umar and Urwah ibn Zubair also married a small daughter. Someone once gave his young daughter to Abdullah ibn al-Hasan, and Ali Ra allowed this to happen.

Commenting on the opinion that prohibits the marriage of minors, Muhammad ibn Ahmad al-Sarkhas in *al-mabsūth* mentions that Abu Bakr was deaf, did not hear the hadith and so many *atsars* affirmed the permissibility of child marriage. Even though there are many wisdoms contained in the permissibility of this marriage, because in principle marriage does contain many *maslahah* for men and women. The purpose of a marriage will not be or difficult to achieve if it is not with an equal person, if you wait for that person to mature, it could be that the equality between them is lost. That's why a guardian once in a while must marry off a child who was under his guardianship when he was young because he saw the right equality with the woman he wanted to marry.

Al-Hanafiyyah argues, after the little girls grow up, they have no right to choose to continue the marriage or cancel it, meaning that *takhyīr* does not apply to them. This is like the following expression of Muhammad ibn Ahmad al-Sarkhasī:

ثُمَّ فِي الْحَدِيثِ بَيَانٌ أَنَّ الْأَبَّ إِذَا زَوَّجَ ابْنَتَهُ لَا يَنْبُتُ لَهَا الْخِيَارُ إِذَا بَلَغَتْ «فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُخَيِّرْهَا، وَلَوْ كَانَ الْخِيَارُ ثَابِتًا لَهُمَا لَخَيَّرَهَا كَمَا خَيْرَ عِنْدَ نُزُولِ آيَةِ التَّخْيِيرِ حَتَّى قَالَ لِعَائِشَةَ: إِنِّي أَعْرِضُ عَلَيْكَ أَمْرًا فَلَا تُحَدِّثِي فِيهِ شَيْئًا حَتَّى تَسْتَشِيرِي أَبَوَيْكَ، ثُمَّ تَلَا عَلَيْهَا قَوْلَهُ تَعَالَى {فَتَعَالَيْنِ أُمَمِعْكَنَّ وَأُسرَحْكَنَّ سَرَاحًا جَمِيلًا} [الأحزاب: 28]، فَقَالَتْ أَفِي هَذَا أَسْتَشِيرُ أَبَوَيَّ أَنَا أختَارُ اللَّهُ تَعَالَى وَرَسُولَهُ» وَلَمَّا لَمْ يُخَيِّرْهَا هُنَا دَلٌّ أَنَّهُ لَا خِيَارَ لِلصَّغِيرَةِ إِذَا بَلَغَتْ

It means:

“Then what is mentioned in the hadith is an indication that when a father marries his daughter, there is no choice for the child to khiyar (the right to choose to continue or not) when he is baligh. Rasulullah saw did not give a choice to Aisyah RA. If khiyar was something that Aisyah had the right to own, the Messenger of Allah would have given her a choice (to continue the marriage or not). But in reality the Messenger of Allah did not give that choice, just as he gave Aisyah a choice when the verse of *al-takhyir* was revealed, so that the Messenger of Allah said to Aisha, "Indeed I have brought to

you an order, so do not talk to me before you consult with your parents." Then the Messenger of Allah read verse 28 of surah al-Ahzab. Aisha said to the Messenger of Allah, "Do I have to consult with my parents for this matter? I chose Allah and His Messenger." When the Prophet did not give Ayesha a choice on this matter (marriage), it shows that there is no choice for a little girl when she grows up.”

With marriage at a very young age, Aisyah ra. instead of getting misfortune, on the contrary he gets luck. For nine years he lived with the Messenger of Allah, Aisha ra. received a lot of Islamic knowledge so that almost a third of religious knowledge he mastered.

One of the Hanafi scholars, Ibrahim stated that a father and other guardians may marry off children under his guardianship who are still small, both male and female. Ibrahim's words above become the benchmark and support for most other Hanafi scholars in deciding whether a guardian other than the father can marry off the children under his guardianship before they reach puberty.

Unlike the Hanafis, al-Shafi'iyyah does not allow other than the father and grandfather to marry off small children under his guardianship before they become adults. Al-Malikiyah did not even allow other than fathers to marry off children

under their minor guardianship. Only father is allowed to do that.

From the explanation above, it is clear that there are no differences of opinion among the Hanafi scholars on the issue of child marriage except for two people. This further proves that in principle child marriage is not something forbidden in Islam, in the four schools of law fiqh they agree on its permissibility. This is as expressed by Wahbah al-Zuhaili the following:

وأجاز الشافعية للولي من أب أو جد تزويج صغير  
مميز ولو أكثر من واحدة إن رآه الولي مصلحة؛  
لأن تزويجه بالمصلحة؛ وقد تقتضي ذلك. وأجاز  
الحنابلة أيضاً للأب خاصة تزويج ابنه الصغير أو  
المجنون ولو كان كبيراً، روى الأثر: «أن ابن عمر  
زوج ابنه وهو صغير، فاختموا إلى زيد فأجازاه  
جميعاً» وللأب أن يزوج الصغير بأكثر من واحدة  
إن رأى فيه مصلحة. وأجاز المالكية للأب  
والوصي والحاكم تزويج المجنون والصغير لمصلحة  
كالخوف من الزنا أو الضرر، أو ممن تحفظ له  
ماله، والصدّاق على الأب.

It means:

“Al-Syafi'iyah allows a guardian,

both father and grandfather to marry a child who is mumayyiz (has passed the age of seven years) even though he has more than one wife, if indeed he sees the benefit of the marriage, because the marriage performed by the guardian must be based on by benefit. So if there is benefit, there is no obstacle for the guardian to marry them. al-Hanabilah also allows guardians to marry off their children who are still small, and crazy. Even if the crazy ones are no longer children. Al-Atsram narrated that Ibn Umar married his young son in marriage, so many people complained to Zaid, then he allowed everything. Al-Hanabilah also believes that it is permissible for a guardian to marry his young son to more than one wife if he sees that there is good in him. Al-Malikiyah also has a similar opinion in child marriage. Fathers, wills and judges may marry crazy people and children on the basis of benefit. As feared will commit adultery and other harm, or people who guard their property. However, the dowry in this marriage is charged to the guardian (not to be taken from the children's property).”

The above description shows that apart from Abu Bakr and Shubrumah, there are no scholars who deny the permissibility of child marriage. If there is a difference between the mazhab scholars then it is only in technical matters. While

the basic law remains the same, that is, it is permissible.

## **2. The age limit for marriage in Law no. 16 Years 2019**

Marriage according to Law No. 16 of 2019 is not permitted if a man and a woman do not reach the age of 19 (Nineteen) years. This assertiveness is evidenced by Article 7 paragraph 1 which states:

### **Article 7**

- (1) Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.
- (2) In the event that there is a deviation from the age provisions as referred to in paragraph (1), the parents of the male and/or female parents may request a dispensation from the Court on the grounds that it is very urgent, accompanied by sufficient supporting evidence.
- (3) The provision of dispensation by the Court as referred to in paragraph (2) is obliged to listen to the opinions of the two prospective brides who will carry out the marriage.
- (4) The provisions regarding the condition of one or both parents of the prospective bride and groom as referred to in Article 6 paragraph (3) and paragraph (4) shall also apply to the provisions regarding the request for dispensation as referred to in

paragraph (2) without prejudice to the provisions as referred to in Article 6 paragraph (6) (Law: 16:2019).

Looking at the article above, it is clear that marriage under the age of 19 is not justified, even though religion does not question it. This interpretation is evidenced by Article 27 of the KHI in point (d) which states "Marriage that violates the marriage age limit as stipulated in Article 7 of Law Number 1 of 1974".

## **3. The Relevance of Marriage Age According to Hanafi Fiqh with Law no. 16 Years 2019**

The problem of the age limit for marriage when viewed from a legal perspective, there is a significant difference between Hanafi Fiqh and Law no. 16 of 2019. Hanafi fiqh clearly states that there is no age limit for marriage, meaning that even small children can get married by being married off by their guardians. While in Law no. 16 of 2019 clearly does not allow marriage under the age of 19 (nineteen) years. This statement cannot be interpreted or taken to other matters or in fiqh terms it is called *haml*, because what is stated in the article is very clear, what in fiqh is known as texts so that no *ta'wil* or *takhsis* applies.

The sentence "Marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years"

clearly states that there is no permit from the government to marry under the age of nineteen. The sentence "permitted" cannot be interpreted as a marriage is valid but there is no permission from the government. But in essence, the State does not legalize marriages that are not permitted, as affirmed by Article 27 of the KHI. Meanwhile, Article 1 of Law No.1 of 1974 which reads "Marriage is legal if it is carried out according to the law of each religion and belief," only applies on certain conditions other than the age limit.

Therefore, if Muslims practice marriage under the age of nineteen, it is religiously legal because there is no age limit for entering into a marriage contract. Even newborn children can be married off by their parents, especially under nineteen years old, including the age of eighteen and so on, which religion considers very worthy. However, according to Law no. 16 of 2019 cannot be ratified.

It is clear that there is a contradiction between religion, especially Hanafi fiqh and Law no. 16 of 2019 regarding the age of the prospective bride and groom, but if viewed from several sides, especially looking at the process of the birth of the law itself as described in Chapter II, there are several reasons that can be used as the basis for Law no. 16 of 2019 in deciding the law, namely *Al-*

*Mashlahat al-Mursalah and Maqasith Syariah.*

## E. Conclusion

1. Marriage referred to in syara' is a contract consisting of the pillars and conditions. In Hanafi fiqh, children, both male and female, can legally carry out marriages by being married off by their guardians. The child concerned does not have the right to choose to continue or break the marriage bond when he is an adult/baligh. The proof is that Aisyah RA was not given a choice by the Messenger of Allah when they were married. In Hanafi Fiqh only Abu Bakr and Syubrumah are found who do not agree with the permissibility of marrying children. According to them, children are not legally married or married by their guardians based on the Qur'an Surah An-Nisa verse 6 which reads:

حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ

Meaning: "until they are old enough to marry."

2. There is a prominent contradiction between Hanafi fiqh and Law No. 16 of 2019 in the case of limiting the age of marriage. Law No. 16 of

2019 does not allow the marriage of a person under the age of 19. Even though it is not an absolute law, because in article 7 paragraph 2 there is still an opportunity for each bride or her parents to apply for dispensation to the court if they really want an underage marriage to occur, but still it is against Hanafî fiqh because they absolutely allow it. If there is even a slight relationship, it is the opinion of Abu Bakr al-Asham and Ibn Shubrumah who rejected the permissibility of child marriage before puberty.

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