

# RECONSIDERING THE MARRIAGE AGES IN INDONESIA

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**Abstrak: *Meninjau Ulang Batas Usia Perkawinan di Indonesia.*** Dalam UU Perkawinan No 1/1974 pemerintah telah menetapkan batasan umur bagi calon suami sekurang-kurangnya 19 tahun dan calon isteri sekurang-kurangnya 16 tahun. Namun pernikahan dini atau pernikahan di bawah umur masih kerap terjadi di Indonesia dengan *Sunnah fi'liyyah* Rasulullah yang menikahi 'Âisyah sebagai dalih yang digunakan para pelakunya. Diperlukan semangat dan keberanian dari para pembuat kebijakan untuk merevisi aturan tentang batas minimal usia perkawinan serta peninjauan kembali tentang aturan umur pengantin tersebut, termasuk melakukan kajian ulang terhadap Sunah di atas. Hal tersebut menjadi penting karena hak anak adalah bagian dari hak asasi manusia yang wajib dijamin, dilindungi, dan dipenuhi oleh orang tua, keluarga, masyarakat dan pemerintah.

**Kata Kunci:** umur perkawinan, pernikahan dini

**Abstract: *Reconsidering the Age of Marriage in Indonesia.*** The Government has made the rule about age of marriage, namely the male must be at least 19 years old and the female must be at least 16 years old. Nevertheless, early marriages or under-age mariages are still common in Indonesia since people refer to the prophet's *Sunnah fi'liyyah* who was married to 'Âisyah. Passion and courage from policy makers to revise the rule of minimum marriage age are required to revise that rule and reviewing the Sunnah is also imperative. It is important because the right of children is a part of human rights that must be guaranteed, protected, and filled by parents, family, society and government.

**Keywords:** marriage ages, early marriage

## Introduction

Marriage is a relationship between a man and a woman who have to pay attention to internal and external elements. One of the emphasized internal elements in each marriage practice is the physical and mental maturity from any one of bride to face the future household. Based on it, in Indonesia, to indicate that maturity, the law requires a minimum age limit to perform marriage for every bride<sup>1</sup>.

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<sup>1</sup> See Article 6 paragraph (2), Article 7 paragraph (1) and (2) Law Number 1/1974 on Marriage, and Article 15 paragraph (1) and (2) Kompilasi Hukum Islam

Basically it is not too complicated to implement the rule of law mentioned, but when it is fused to theological things, more over by presenting Syari'ah arguments, it seems urgently to re-research it by presenting a wiser understanding. The main argument is based on 'Âisyah ra. In this case, no one is not familiar with 'Âisyah Ra, one of Abû Bakr al-Shiddîq Ra's daughter became one of the wives of the Prophet Muḥammad Saw, and the only virgin status. However, her marriage to the Prophet, who was 'Âisyah was only 6 (six) years immortalized in the book of al-Bukhârî, a proposition to impose the

authority of the Prophet Muḥammad Saw, and even it nicknamed him as “fedopilia”. A very *mu'tabar* hadits mentioned:

حدثنا علي بن مسهر عن هشام عن أبيه عن عائشة رضي الله عنها قالت: تزوجني النبي صلى الله عليه وسلم وأنا بنت ست سنين... (رواه البخاري)<sup>2</sup>

*Presented to us by 'Alî bin Mashar from Hishâm from his father from 'Aisyah said: Prophet married me when I was six years old...*” (Narrated by al-Bukhârî).

The direct impact of the *hadits* above is the spread of under aged marriage practice which then collide to other country's rules, as child protection issues and others. As a recent instance is Aceng Fikri marriage (Garut Regent 2012) with Fany Oktora which still considered as under aged marriage. If it is left at all times, it will have implications to the poor image of Islamic law because it seems to be not to respond to social facts. Whereas, Islam presents *shâlihun likulli zamân wa makân*, acceptably whenever and wherever. Therefore, in this section I would like to inspect the age limit bridal problems through a variety of disciplines.

### Reading Arguments (*Dalîl*) Through History Frame

It is so interesting, talking about under aged marriage which is commonly mentioned as early marriage. Because, in the classic *fikih*, such marriage practices is justified and allowed. For example, Imâm al-Syâfi'î, in the book of *al-umm*, he firmly categorized the marriage practice into three parts, building on the age of the female bride; (1) widow wedding, (2) mature girl marriage, and (3) child marriage. And Imâm al-Syâfi'î obligated the trustee function totally for child marriage (*al-shaghîrah*). It means, the trustees have

full right to vote and determine the marriage of their children without having to get an answer from them (*ijbâr* right), but it must be no loss for them<sup>3</sup>. It was based on a *hadits* from the Prophet Muḥammad who told about his marriage with 'Āisyah which directly carried out by Abû Bakr as her father without the knowledge of 'Āisyah.

عَنْ هِشَامٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ تَزَوَّجَنِي النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا بِنْتُ سِتِّ سِنِينَ، فَقَدِمْنَا الْمَدِينَةَ فَتَزَلْنَا فِي بَنِي الْحَارِثِ بْنِ خَزْرَجٍ، فَوَعِكَتْ فَتَمَرَّقَ شَعْرِي فَوْقَ جُمَيْمَةٍ، فَأَتَنِي أُمِّي أُمُّ رُومَانَ وَإِنِّي لَفِي أَرْجُوحَةٍ وَمَعِيَ صَوَاحِبٌ لِي، فَصَرَخْتُ بِي فَأَتَيْتُهَا لَا أَدْرِي مَا تُرِيدُ بِي فَأَخَذَتْ بِيَدِي حَتَّى أَوْفَقْتَنِي عَلَى بَابِ الدَّارِ، وَإِنِّي لَأَنْهَجُ، حَتَّى سَكَنَ بَعْضُ نَفْسِي، ثُمَّ أَخَذَتْ شَيْئًا مِنْ مَاءٍ فَمَسَحَتْ بِهِ وَجْهِي وَرَأْسِي ثُمَّ أَدْخَلَتْنِي الدَّارَ فَإِذَا نِسْوَةٌ مِنَ الْأَنْصَارِ فِي الْبَيْتِ فَقُلْنَ عَلَى الْخَيْرِ وَالْبَرَكَةِ، وَعَلَى خَيْرِ طَائِرٍ. فَأَسْلَمْتَنِي إِلَيْهِنَّ فَأَصْلَحْنَ مِنْ شَأْنِي، فَلَمْ يَرْعَنِي إِلَّا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ضُحًى، فَأَسْلَمْتَنِي إِلَيْهِ، وَأَنَا يَوْمَئِذٍ بِنْتُ تِسْعِ سِنِينَ (رواه البخاري)<sup>4</sup>

*From Hisyâm ibn Urwa from 'Aisyah said: The Prophet married me when I was six years old. We went to Madînah and stayed at Banî Hâris bin Khazraj. Then I got the fever heat and makes my hair is falling out a lot. Then my mother, Um Rûmân, came when I was playing around with some of my friends. He called me, and I to her call, while I do not know what will. She took my hand to get to the door of a house. I was confused and my heart pounding. After feeling a bit quiet, my*

<sup>3</sup> See Muḥammad bin Idrîs al-Syâfi'î, *al-Umm*, (n.pl.: n.p., n.d.), Vol. 5, pp. 11-16.

<sup>4</sup> Imâm al-Bukhârî, *al-Jâmi' al-Shahîh al-Mukhtashar*, p. 1414.

<sup>2</sup> Imâm al-Bukhârî, *al-Jâmi' al-Shahîh al-Mukhtashar*, Vol. 3, (Bayrût: Dâr Ibnu Katsîr, 1987), p. 1414

*mom took a bit of water, and then wipe the face and head with the water, then my mom took me into the house. Apparently in the house had been waiting for some Anshâr women. They welcomed me and said: Congratulations, may you be blessed and great fortune. Then my mom turns me over to them. They then tidied up and dressed myself. No one surprised me besides the arrival of the Prophet. My mother gives me away to him directly, whereas when I was just nine years old. (Narrated by al-Bukhârî).*

Regarding to the hadiths above, there are two conflicting *mu'tabar* thoughts, the first thought is they who received such as understanding of scholar *jumhûr*. And another one is who rejected as Ibn Syubrumah, Asghar, Hasbi and others. For those who accepted, they made reference to the truth of *hadiths* delivered by Imâm al-Bukhârî to be accepted, because his book is the best work among another *hadiths* books, and the standard of selection is too hard (*tasyaddud*), because the search is not only of what he heard but also went straight to the sources of the hadiths that was issued. Imâm al-Nawâwî commented about the primacy of the book *Shahîh al-Bukhârî*, he said:

أول مصنف في الصحيح المجرد، صحيح البخاري، ثم مسلم، وهما أصح الكتب بعد القرآن، والبخاري أصحهما وأكثرهما فوائد، وقيل مسلم

أصح، والصواب الأول<sup>5</sup>

*The first most authentic book is Shahîh al-Bukhârî and then Shahîh Muslim, both are the most authentic book after the Qur'ân, and Shahîh al-Bukhârî is the most authentic of the two and the most useful. Some say Shahîh Muslim, the most authentic, but the truth is the first.*"

Moreover, in consensus side (*ijmâ'*),

<sup>5</sup> Imâm al-Nawâwî, *al-Taqrîb wa al-Taîsîr li Ma'rîfati Sunan al-Basîr al-Nadzîr fî Ushûl al-Hadîth*, Vol. 1, (n.pl.: n.p., n.d.), p. 1

Imâm al-Nawâwî ever explained in his *Syarh Shahîh Muslim*, that it has been there the consensus of Muslims about the permissibility of marrying under-aged girls, and if they have been old (*legal age*) then there is no *khiyar* for *fasakh* to her, and it based on Imâm Mâlik, Imâm al-Syâfi'î, and all of Hijaz *fuqahâ'*. While Iraq *Fuqahâ'* said that she might done *khiyâr* if she got *balighah*<sup>6</sup>. Thereby, it can be understood that the marriage performed by children under the age is justified by *syara'* according to the obviously (*sharîh*) text of hadiths above.

And they who rejected under-aged marriage like a phrase of Ibn Syubrumah that assumed the marriage of Prophet Muḥammad Saw with 'Âisyah Ra. as the special character of the prophet Saw and it cannot simply be followed by his people. The phrase was quoted by Ibn Hazm:

قال ابن شبرمة: لا يجوز إنكاح الأب ابنته الصغيرة إلا حتى تبلغ وتأذن ورأى أمر عائشة رضي الله عنها خصوصاً للنبي صلى الله عليه وآله وسلم كالموهوبة ونكاح أكثر من أربع<sup>7</sup>

*Ibn Syubrumah said: A father cannot marry his young daughter until she baligh and asked for approval. Ibn Syubrumah view 'Âisyah Ra marriage problem as special marriage to the Prophet Saw, such as the ability to marry a woman without a dowry, also ability to marry more than four wives.*

The phrase above has a relationship (*munâsabah*) with another *hadiths* which states that the Prophet Muḥammad marriage to 'Âisyah ra surely because Allâh's instruction by *washîlah* of Jibrîl As:

<sup>6</sup> See Imâm al-Nawâwî, *al-Minhâj Syarh Shahîh Muslim bin al-Hajjâj*, Vol. 9, (Bayrût: Dâr Ihyâ' al-Turâts al-Arabî, 1392 H), p. 206. The original text is:

وأجمع المسلمون على جواز تزويجه بنته البكر الصغيرة لهذا الحديث، وإذا بلغت فلا خيار لها في فسخه عند مالك والشافعي وسائر فقهاء الحجاز، وقال أهل العراق: لها الخيار إذا بلغت.

<sup>7</sup> Ibn Hazm, *al-Muhalla bi al-Atsâr*, (n.pl.: n.p., n.d.), Vol. 18, p. 53

عن ابن أبي مليكة عن عائشة قالت: جاء بي جبريل عليه السلام إلى رسول الله صلى الله عليه وسلم في خرقة حرير فقال: هذه زوجتك في الدنيا والآخرة<sup>8</sup>

*From ibn abî Malikah, from 'Āisyah said; Jibrîl AS came to the Prophet Saw to explain about me through a piece of silk, and say: this is your wife in this world and the hereafter."* (Narrated by Ibn Hibban)

Through the explanation of the hadiths then it concluded that the marriage which was performed by the Prophet Muḥammad was not his will, but on Allāh command. And because it is a command, then as His messenger he should carry out such orders, though he would seem strange in front of the community later. For that, the emphasis on the specificity of the Prophet Muḥammad to be put forward in order to not simply be a new legitimacy in practice under aged marriage.

In addition to the approach above, there is also conducting a review of the *naqd* approach (criticism) of the sanad hadiths that presents Hisyām name. Where according to them, Hishām was a very problematic man, because after his old age, he migrated from Madīnah to Iraq. Therefore, Imām Mālik said that Hishām's expression after the move was rejected. The reason is because after he became old, he became a person who has decreased conspicuously in thinking and memorization<sup>9</sup>. As for the hadiths above, it did not appear when Hishām was in Madīnah, so that Imām Mālik and the people of Madīnah did not know of any hadiths above, but it appeared in Iraq and was informed on the people of Iraq.

There are also some used in historical approach of their wedding, where the result

became contradictive between the realities of history with the text of hadiths. Such as in the term of the proposal, al-Thabârî said that the Prophet Saw married 'Āisyah RA at the age of 7 (seven) year sold and began to live together in age of 9 (nine) years old. While, it was not synchronous and reliable with his own expression when he explained about four children of Abû Bakar including 'Āisyah Ra who was born in the era of ignorance or before the arrival of Islam<sup>10</sup>. The proof is, if 'Āisyah Ra was proposed by Prophet Muḥammad Saw in the year 620 AC (she was 7 years old) and she married the year 623/624 AC (she was 9 years old), this indicated that she was born in 613 AC, So based on the writing of al-Thabârî, 'Āisyah Ra should have been born in the 613 AC, 3 years after the time of ignorance overed (post-610 AC). If she was born in the era of ignorance, she should been at least 14 years old when she married.

Other evidences are the different calculation of age between Asma' Ra (the oldest daughter of Abû Bakr) with her. In this regard, Imām ibn Katsîr stated that their age difference is 10 (ten) years old, and Asma' Ra died in 73 H when she was 100 years old<sup>11</sup>. Thus, when it was being hijrah to Madīnah (in 622 AC), the age of Asma' Ra was about 27 or 28 years old. Therefore, the result of counting to 'Āisyah Ra age when she was married at the time which had distance 10 years to Asma' Ra was around 17 or 18 years old when she was married to the Prophet Muḥammad Saw. Even if it was viewed from the age distance between Fâthimah Ra with 'Āisyah Ra, it was found that Fâthimah As was born when the Ka'bah was rebuilt, exactly when the Prophet Saw was 35 years old, whereas Fâthimah As 5 years older than 'Āisyah Ra. Fâthimah Ra was born when the Prophet

<sup>8</sup> Muḥammad bin Hibban, *Shahih ibn Hibban bi Tartib ibn Bilbân*, Vol. 16, (Bayrût: Mu'assasah al-Risâlah, 1993), p. 6

<sup>9</sup> Husein al-Zahabi, *Mizân al-'Itdâl*, Vol. 3, (Pakistan: al-Maktabah al-Athriyyah), p. 301.

<sup>10</sup> Imām al-Thabârî, *Târikh al-Umam wa al-Mamlûk*, Vol. 4, (Bayrût: Dâr al-Fikr, 1979), p. 50.

<sup>11</sup> See Imām Ibn Katsîr, *al-Bidâyah wa al-Nihâyah*, Vol. 8, (Bayrût: Dâr al-Fikr, 1933), pp. 371-372.

was 30 years old. If the Prophet married 'Āisyah Ra a year after the Hijrah (when the Prophet Saw was 53 years old), it indicated that 'Āisyah Ra was 17-18 years old when she married him<sup>12</sup>. Through this scientific calculation then they assumed that the hadiths above cannot be accepted and unreasonable and certainly cannot be used as a religious argument.

Based on two contradictory understanding above, I have a distinctive approach to the way *al-jam'u waal-taufiq*. One side Muslims should not give the status of "weak" on the research of Imām al-Bukhārī when he poured hadiths above in his book, also should not take for granted, because Islam is glorified sense as a critical tool in religion. Therefore, socio-cultural historical approach became very important for the sake of doing contextualization argument.

As for the children under aged marriage or earlier is the reality of culture growth in pre-modern happened in part of the world and there is no relationship at all with religion, including Islam. Even the female babies also cannot be separated from the practice. In general, the background of such marriage practice is caused by the existence of a relationship that had been built:

- a. The existence of kinship, which requires it to always connect the lineage, and the prohibition of blood mixing with that may caused lost of their glory. Such relationship was still being conducted in the *ahl al-bait* culture of Prophet Muḥammad Saw.
- b. The existences of friendly relations that have been built are both among the elderly, so it is no longer seen on the circumstances of the child but the presence of the parents alone.
- c. Business relationships are also very dominant in early marriage. Because so many parents are bound to debt with

rich people or those who always want to be looked perfectly in the presence of their leader, so they had to will their children become business commodity..

Through three relationships above, Prophet Muḥammad Saw marriage is purely for the second interest, the long friendship that has been built; this is based on the principle of religious. Abū Bakr Ra was the first people believed on Islam from the class of men, even he was the only one who accompanied the Prophet Saw when they was being traveling *hijrah* to Madīnah. And the level of devotion Abū Bakr Ra to the Prophet Muḥammad Saw beat all and sundry, until he was nicknamed *ash-shiddiq* the person who always justify whatever comes from the Prophet Saw, including when a lot of people did not believe when the Prophet Saw told the story of *Isrā'* and *Mi'rāj* which had been only done in a single night.

The thought and practice above in the world today has changed caused by open minded from the world's citizens about their rights as human beings. The thought construction about gender equality, human rights, was prioritized as evidence of modernity. That is, if everyone is educated and has an critical minded understanding, it will be no more the under aged marriage practiced in the future. Many parents must wish to have their children succeed in world and hereafter. Therefore by the explanation above, it is so urgent to rethink within Islam about the early marriage through contextualization *nash* (text) with modernity.

The marriage of Allāh Messenger with 'Āisyah Ra (if it is true) should only be used as sheets of history that ever happened. It is a hadiths that only acceptable its existence but cannot be used as a justification of legal legitimacy under the age of marriage in society (*maqbul-ghair māmūl*). Because when it was viewed from the primary elements (*al-kulliyāt al-khamsah*) in the *maqāshid al-Syarī'ah*, keeping the offspring (*hifzh al-nasl*)

<sup>12</sup> Syihāb al-Dīn Ibn Hajar al-Asqalānī, *al-Ishābah fī Tamyiz al-Shahābah*, Vol. 4, (Riyadh: Maktabah al-Riyadh al-Haditsa, 1978), p. 377.

is an important thing in a religion. Because by nature, marriage is formed by the natural elements of human life itself which includes needs and biological function, producing children, the need for love and brotherhood, nurture the children become members of a perfect society (*volwaardig*)<sup>13</sup>. Apart from that, under aged marriage indirectly inhibits the mindset growth of people even closes them to be qualified human (*hifz al-'aql*), it is because they have been forced to mature quickly (usually woke mindset with a case like this just a kitchen, bed and wells) and eliminate the instinctive nature as a child and then created a new family buildings are almost not much different from the previous situation. Thus, if the marriage is performed by under aged children, the functions of biological descent continue to conduct business will be able to be done? It must not be. For that, indirectly Islam itself has essentially banned the practice of early marriage if we want to study it more deeply. And prophet marriage is the special character of Prophet Muhammad Saw that cannot be followed without ceremony by other people.

### Reading from Indonesia

Regarding this discussion, I will begin on various factors of the occurrence of under aged marriage in Indonesia, which is also as an explanation of the background of early marriage on the previous page. In this case there are two main factors that exist in them and then force them to do under aged marriage. The first factor is from a child's self (internal causes), and the second comes from beyond their control (external causes).

According to my opinion the internal factors is the mindset weakness of the child caused by the low of education. When a child is broken school, it is usually the main goal after that is to collect money as

much as possible for supporting himself and other closed people. When such a mindset was shaped, then there are two effects that will occur;

- a. As a result of the low of education caused by broken school, it will make the low knowledge to reproduction organ, maintaining family honor becomes less, so finally children will be easily fooled by people who are not immoral, and then violation of religious will happen and so will social norms in the form of adultery or rape. As a result of it, then they perforce to perform early marriage, better than they have to flirt with ashamed.
- b. Usually the children with broken school would prefer to get married to anyone who can provide the economic needs of both herself and her family. Even the family norms were ruled out, no matter whether her husband is married or a single person. With thinking like this, the domesticity usually will not run long, because when material impingement was lost, the affection in domesticity will be lost too and the divorce will be threaten.

While the second is external factor. It usually occurs caused of;

- a. The coercion of parents caused of fearing of violating religious and social norms. It usually happens because the parents feel scared when they observed their children so active having communication with the opposite sex, either directly contact the courtship or through electronic communication by phone, or sending massage. Because they may observed bad indication to them, so they thought that marriage soon became appropriate solution even though they were not marriageable.
- b. Local cultural factors. On this subject, there are several areas in Indonesia that still head toward practicing early

<sup>13</sup> Titik Triwulan and Trianto, *Poligami Perspektif Perikatan Nikah*, (Jakarta: Prestasi Pustaka, 2007), p. 2.

marriage<sup>14</sup>. Usually when the parents looked at the perfect lineage (on their view) in certain families, such as the presence of a prominent family in their area viewed from the standpoint of the treasure or religion, or because of good relationships that have been built by two families, or also because of the respect high regard for teachers, preachers or scholars, so that they would be so easy to directly conduct or make a proposal for the marriage of their children, even if the child is still in a state of under-age. All of these were done nothing other than to keep the lineage or also to fix the offspring to be better in their view.

- c. The last is because of the powerless family economic factors. About it, usually people who were in powerless economy will be easy to seek his fortune through the way indebted to the rich or loan sharks. As the consequences, when the debt cannot be paid, and the payment deadline has arrived, then the children usually become an instant choice by marrying them directly to that person.

Based on some factors above, it is too proper if then in Indonesia law of Marriage Number 1/1974 presents that stresses the importance of age in marriage. It can be looked at the contents of article 6 paragraph (2) and 7 (1-3):

Article 6 paragraph (2);

To establish a marriage that has not reached the age of 21 (twenty one) years old of age must obtain permission from both parents.

Article 7 paragraph (1);

Marriage is only allowed when the man

reaches the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years old.

Article 7 paragraph (2);

In case of irregularities in paragraph (1) of this Article may request a dispensation to the Court or other officer required by both parents of man and woman,

Article 7 paragraph (3);

The provisions concerning the state of one or both parents are Article 6 paragraph (3) and (4) of this Law, applies also in the case of the exemption request paragraph (2) of this Article, without prejudice to that referred to in Article 6 paragraph (6).<sup>15</sup>

As in the Presidential Instruction Number 1/1991 on the Compilation of Islamic Law (KHI) stated:

Article 15 paragraph (1);

For the benefit of families and households, marriage should only be carried out prospective brides who have attained the age specified in Article 7 of Law Number 1/1974 the husband candidates at least 19 years old and prospective wives at least 16 years old.

Article 15 paragraph (2);

For the bride who has not attained the age of 21 years must have licenses as provided for in Article 6 paragraph (2), (3), (4) and (5) of Law Number 1/1974.

Through the articles above, the KHI Article 15 paragraph (1) is the only article that explains the purpose of the importance of age problem in the marriage, namely for forming the benefit of family and household. According to me, the age case above is a problem. Because if the age factor is functioned as to create family benefit, so

<sup>14</sup> As an example is the rural communities in the Pulau Madura, where the girls had been betrothed since early by her parents, they married after the first menstruation, and in general, girls start menstruation at 12 years old. See Article A. Ghani, "Perkawinan di Bawah Tangan", at *Mimbar Hukum*, Number 23/VI/1995, p. 5.

<sup>15</sup> Article 6 paragraph (6) said ; The rule of that paragraph (1) until paragraph (5) of this article, this rule used in all day law in every religions and the believable of this persons is not certain other.

16 years old as a limit age for the female bride should be reconsidered.

Hasbi ash-Shiddieqy is one of the Indonesian Islamic thinkers who do not agree to the age-standardized by the government. Because based on their opinion the mature person is the exact to marry. And he explained that the meaning of mature age is 21 years old.<sup>16</sup> Moh. Idris Ramulyo explained that the ideal age to marry is 18 years old for women and 25 years for men, and the standardization is not purely on criterion of age, but on the situation and condition of physic and psychology of the prospective bride.<sup>17</sup>

Even when it is viewed from psychology and health side, the standardization of age above is a problem. Dadang Hawari explained that a good age to get married and be able to perform the family planning (KB) according to health is 20-25 years old for women and 25-30 years old for men, for three reasons. First, it is true that children Aqeel baligh characterized by ejaculation (wet dreams) for men and menstruation (menarche, the first menstrual period) for women, but it does not mean that it indicates ready to mate. Such a biologic change is just a process of sign of the maturation of the reproduction organs begin to function, but it is not ready yet for reproduction (pregnancy and child birth). Second, from psychological consideration, teenagers are still far from maturity (mature and steady), and the mental condition is still unstable and therefore they are not ready to be wife especially parent. Third, from the independence side, the adolescence most of it life aspects still depends on the parents and not concern to aspects of affection.<sup>18</sup>

<sup>16</sup> Hasbi ash-Shiddieqy, *Pengantar Hukum Islam*, (Jakarta: Bulan Bintang, 1975), p. 241.

<sup>17</sup> Moh. Idris Romulyo, *Hukum Perkawinan Islam: Studi Analisis Undang-Undang No. 1 Tahun 1974 dan Kompilasi Hukum Islam*, (Jakarta: Bumi Aksara, 2002), p. 51.

<sup>18</sup> See Dadang Hawari, *Alquran Ilmu Kedokteran Jiwa dan Kesehatan*, (Jakarta: Dana Bhakti Prima Yasa, 1996), pp. 251-252

Through various narratives above and according to me, for such a reformation era, the age standard by the government above is so contrary to two Great Spirit of creating of human resources in Indonesia by the Indonesian government. They are:

- a. The existence of Law. 23/2002 on Child Protection.

Article 1 paragraph (1);

Child is someone who is not yet 18 (eighteen) years of age, including children who are still in the womb.

Article 1 paragraph (2);

Child protection are all activities to ensure and protect the rights of children and their right to live, grow, develop, and participate optimally in accordance with the dignity of humanity, and get protection from violence and discrimination.

Article 1 paragraph (12);

Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by the parents, families, communities, governments, and state.

Article 1, paragraph (15);

Special protection is given to child protection in emergency situations, children in conflict with law, children from minority groups and isolated, children who are economically and or sexual, trafficked children, child victims of drug abuse, alcohol, psychotropic, and other addictive substances (drugs), child abduction, sale, trafficking, child victims of abuse both physically and or mentally disabled children, and child victims of abuse and neglect.

Article 26, paragraph (1) point (c);

Parents are obliged and responsible to: prevent the marriage at the age of the children.

- b. Rules on Compulsory Education 12 Years in Indonesia.

Regarding this rule, the government

is going to implement the policies related to the effort of improving the quality of education in Indonesia through Universal Secondary Education (USE), that known as “stub 12-year compulsory education.” Universal Secondary Education has taken 12 years to net the productive age in Indonesia. Minister Nuh told that there were the demographic bonuses for Indonesia in 2010 to 2035. It means that during all these years there are associations of potential learners and productive age.<sup>19</sup>

Through the two approaches above, it is clear that the minimum age standard for a bride should be based on the Law of the protection of children where the age of the children are under the age of 18 years old, and of post-compulsory learning for 12 (twelve) years old or after graduating Senior High School (SMA /MA/SMK), which is about 18 or 19 years old. Based on my opinion, that sort of thing is caused of the children in this age are more advanced in thought and insightful. And the main factor of it is opened information even electronic media and Internet around them. And else, the kids now are too aggressive to get counseling in their schools about sex education, free sex danger, information about HIV/AIDS and so on, as to their early knowledge.

However, the weakness at the present is when a child already has knowledge and insight about sex, while their knowledge is not matched by the knowledge of the parents, on eventually, parent command can negate the will of the child. Parents still force their daughter to marry with a man of their choice, and beside the age problem above, there is another important thing of the implementation of these rules, it is the permissibility of the children to refuse the parent order and they may ask

for protection to the Commission on Child Protection (KPA).

Embedded religious orthodoxy since long time ago is that the rejection of the child is the real iniquity. But according to me, the command to marry on reasons above is the real immorality and very obliged to be defied. However, the courtesy must be a priority, so asking for protection to the National Commission for Child Protection (KPA) is a suit way that matched to Islamic ethical values. So that, the most fundamental and urgent at present is the cultural construction to change the people mindset about the values of the child and the marriage from exploitative actions that may harm the children, as preparation for younger generation to have better life in the future.

### Closing Remarks

Based on the explanations above, we can conclude that, Indonesia that has had a long experience of political change and globalization that has created extensive information disclosure, now it is able to get up and create good and qualified human resources. The way is by prioritizing the rights of children to develop well and not snatching their happiness for short-term interests such as forcing them to perform under aged marriage. So, it needs high spirit and courage from the policy makers to be able to change the rule of female bride age limit from 16 years to 18 years. The case becomes important because children's rights are part of human rights that have to be guaranteed, protected, and fulfilled by the parents, families, societies, governments, and countries.

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<sup>19</sup> See Susi Wulandari “Wajib Belajar 12 Tahun”, at <http://www.haluankepri.com>, downloaded at 7<sup>th</sup> of February, 2013.

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