

The Age Limitation of Witness in Marriage Reviewing from *Maqashid Al-Syariah*

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Abstract. *Additional information regarding the age limit of witnesses in marriage, which is mandatory to be 19 years old is a polemic and has consequences if a witness is carried out by a person who has not reached the age of 19 years, then the witness is invalid according to the Regulation of the Minister of Religion No. 11 of 2007. As for the formulation of the problem in The writing of this thesis is (1) How is Islamic law reviewing PMA No. 11 of 2007 regarding the age limit of witnesses in marriage (2) How is PMA No. 11 of 2007 concerning the age limit of witnesses in marriage in terms of Maqashid Al-Syariah. To get the answer to the problem formulation above, the library research method is used. The data collection method is document study and descriptive analysis is used. The results of the study show that first, in a review of Islamic law, the age limit for witnesses using the Baligh standard in Article 19 paragraph 2 PMA No. 11 of 2007, is not explicitly regulated in either the Qur'an or Hadith. So the rules applied in PMA No. 11 of 2007 regarding Baligh, aged at least 19 years, according to the author, is a result of ijtihad, namely by using several opinions from the Hambali and Safi'i scholars, by using the definitive age limit , which is the age requirement for marriage witnesses at least 19 years. The law of age has never been found in the classical fiqh literature. So the author concludes that this is the result of contemporary ijtihad, namely PMA No. 11 of 2007.*

Keywords: *Adult; Marriage; Maqasid Syari'ah; Standart; Witness.*

1. Introduction

Islam is a universal religion whose teachings cover all aspects of life¹, both those related to Allah SWT who created the heavens and the earth and their contents, as well as those related to fellow creatures, especially human beings who need each

¹ A., Aspandi. Pernikahan Berwalikan Hakim Analisis Fikih Munakahat Dan Kompilasi Hukum Islam, Ahkam: *Jurnal Hukum Islam*. Vol 5. No 1. 2017. <https://doi.org/10.21274/ahkam.2017.5.1.85-116>

other.²

Marriage at first glance is a mere worldly activity, but in Islam marriage is a worship which is expressly stated as the *sunnah* of the Prophet Muhammad, in the hadith it is stated:

ثلاثة حق على الله عونهم المجاهد في سبيل الله والمكاتب الذي يريد الأداء والنكاح الذي يريد العفاف. (رواه الترمذي عن أبي هريرة)

It means: "Three groups have the right to be helped by Allah: warriors in the way of Allah, mukatib (slaves who buy themselves from their masters) who want to pay off their payments and those who keep themselves away from what is forbidden". (Narrated by Tirmizdi from Abu Hurairah).

In principle, the purpose of marriage is to form a happy and eternal family. This is confirmed in Act No. 1 of 1974 concerning marriage, that 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.³

In carrying out a marriage, of course there are things that are the basis for a valid marriage, namely the pillars of marriage. Pillars in marriage are something that must be fulfilled, because they are the basis for marriage, if one of the pillars is not fulfilled, then it can be ascertained that the marital status is considered invalid, both from the point of view of religion and the state.

The pillars of marriage are things that must be fulfilled in order to be said to be valid, including the prospective husband/wife, guardian, 2 witnesses and consent *qabul*. In this research, the writer wants to discuss about witnesses in marriage.

Witness in marriage is a pillar in the implementation of the marriage contract, so every marriage must be attended by two witnesses (article 24 KHI). To realize the purpose of marriage as intended, certain pillars and conditions are needed. Those who can be appointed as witnesses in the marriage contract are a Muslim man, fair, *aqil-Baligh*, not disturbed by memory and not deaf or deaf (article 25 KHI).

Therefore, starting from the issue of a marriage witness, which is one of the pillars

²Mukhsin, M Karya. Saksi Yang Adil Dalam Akad Nikah Menurut Imam, *Al-Fikra : Jurnal Ilmiah Keislaman*. Vol 18. No 1. 2020. <https://doi.org/10.24014/af.v18i1.7303>

³Syamdan, Addin Daniar, dan Djumadi Purwoatmodjo. Aspek Hukum Perkawinan Siri Dan Akibat Hukumnya. *Notarius*. Vol 12. No 1. 2019. <https://doi.org/10.14710/nts.v12i1.28897>

of marriage, as explained above. The presence of witnesses in the marriage contract is absolutely necessary, if the witness is not present, the legal consequence is that the marriage is invalid. In the Marriage Act No. 1 of 1974 in article 26 paragraph 1 it is stated explicitly: "A marriage which is held in front of an unauthorized marriage registrar, an invalid marriage guardian or which is held without the presence of two witnesses may be requested for cancellation by the parties family in a straight line of descent from husband and wife, prosecutor and husband or wife".

In the Regulation of the Minister of Religion No. 11 of 2007 concerning Marriage Registration, the requirements for marriage witnesses are explained in article 19 paragraphs (1 and 2) as follows:⁴

- The marriage contract must be attended by at least two witnesses
- The marriage witness as referred to in paragraph (1) must meet the following requirements:⁵
 - Man;
 - Muslim;
 - *Baligh*, is at least 19 years old;
 - Reasonable;
 - Independent; and
 - Can be fair.

In this case, these conditions are in line with the legal beliefs held by the majority of Indonesian people. What is controversial is the additional information regarding the requirements for puberty, namely, the word "at least 19 years of age". So the age of puberty according to the provisions of the Regulation of the Minister of Religion No. 11 of 2007 is 19 years, then the witness of the marriage cannot be a witness of the marriage. The right to testify becomes null and void due to the age not reaching 19 years and will move to another marriage witness who is 19 years old.

⁴Minister of Religion Regulation Number 11 of 2007.

⁵ Santoso. Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam Dan Hukum Adat. *Yudisia*. Vol 7. No 2. 2016.

When looking at the provisions of the Compilation of Islamic Law regarding the requirements for marriage witnesses, and *fiqh* books, the opinion of scholars regarding witnesses, where one of the requirements for marriage witnesses is *Baligh*, does not specify a minimum age of puberty. Meanwhile, the provisions of the Regulation of the Minister of Religion No. 11 of 2007 which require the act of being at least 19 years old is a new provision, and the existence of a minimum age requirement for a witness to reach puberty can certainly create new problems.

If it is based on the provisions of the Compilation of Islamic Law regarding the requirements of a witness for marriage, and the book of *fiqh*, the opinion of the scholars regarding the requirements of a witness, where one of the conditions for a witness is *Baligh*, no minimum age is specified. Meanwhile, the provisions of the Minister of Religion Regulation No. 11 of 2007 which require witnesses to be at least 19 years old are new provisions, and the minimum age requirement for the witness to reach puberty for someone who wants to act as a witness can certainly create new problems. With this provision, it can be seen that there are efforts to provide legal certainty regarding the age of puberty. It seems that the Government in this case is trying to prevent marriage witnesses from being carried out by children, who according to the prevailing laws and regulations are not legal to take legal action. This policy is not a benefit, but rather a disadvantage that makes it difficult for the community, especially for the implementers of the Regulation of the Minister of Religion No. 11 of 2007, namely the officers of the Office of Religious Affairs (KUA). The implication is that if the provisions regulated by Religious Regulation No. 11 of 2007 are still applied, then the marriage witness who is not yet 19 years old will still be a witness in the marriage contract.

2. Research Methods

This research used the library research method. The data collection method was document study and descriptive analysis was used. The study show that first, in a review of Islamic law, the age limit for witnesses using the *Baligh* standard in Article 19 paragraph 2 PMA No. 11 of 2007, is not explicitly regulated in either the Qur'an or Hadith. So the rules applied in PMA No. 11 of 2007 regarding *Baligh*, aged at least 19 years, according to the author, is a result of *ijtihad*, namely by using several opinions from the Hambali and Safi'i scholars

3. Results and Discussion

3.1. Understanding Witness in Marriage

The word witness is a translation from Arabic شاهد in the form of isim fa'il, the word is from the form masdar شهادة / شهوة root word شهود - يشهد - شهد which according to language means attending, witnessing (with one's eyes), giving testimony before a judge, admitting, swear, know, bring and make as a witness.⁶

In the Islamic encyclopedia it is stated that a witness is a person who is asked to be present at an event to see, witness, or know, so that one day it is necessary to provide information that confirms that the event actually occurred. According to Imam Shafi'i, a witness is someone who is given the responsibility to witness an event that is known for certain. The witness must be fair (honest), the witness is a person who sees or knows for himself an event or occurrence.⁷

The witness in the marriage contract is the person appointed to be a witness in the implementation of the marriage contract. Witness marriage has been regulated in Article 24, Article 25, and Article 26 of the Compilation of Islamic Law. The witness of the marriage contract is part of the pillars of the marriage contract, so he is required to be present at the time of the marriage contract procession.⁸

The definition of witness in language that some scholars put forward is as follows:

- According to Muhammad Idris Al-Marbawi, witnesses are people who see with their own eyes.
- WJS Poerdarwaminta stated that witness is a noun in Indonesian which means "a person who sees or arranges".

From the above understanding, it can be understood that a witness according to language is a person who is present and participates in witnessing and informing an event that has been seen with his own eyes. The term witness is defined by Muhammad Ibn Ismail Al-Kahlani in the book Subulussalam as follows, which means that a witness is a person who is responsible for the testimony and puts it forward, because he witnessed something that others did not witness.

The author cites several opinions from scholars regarding the understanding of

⁶Atabik, Ahmad, dan Koridatul Mudhiiah. Pernikahan Dan Hikmahnya Perspektif Hukum Islam. *Yudisia*. Vol 5. No 2. 2014.

⁷Maolana, Wildan. Pendapat Ibnu Qudamah Dan Imam Mawardi Tentang Wali Nikah Bagi Anak Temuan (Laqith). *ADLIYA: Jurnal Hukum Dan Kemanusiaan*. Vol 12, No 1. 2019. <https://doi.org/10.15575/adliya.v12i1.4487>

⁸Tim Redaksi Nuansa Aulia, (2020). *Kompilasi Hukum Islam*. Bandung: CV.Nuansa Aulia, p.341.

witnesses:

Muhyiddin Al-Ajuz, stated that the witnesses were:

الإقرار بما هو معلوم....

"..... establishes all that is known"

Salam madkur interprets the testimony as follows:

أشهادة عبارة عن إخبار صدق في مجلس الحكم بلفظ الشهادة لإثبات حق علي الغير

"Testimony is the term for notification of someone who is right before a court by saying testimony to establish the rights of others"

Ibn Hammam stated as follows:

إخبار صدق لإثبات حق بلفظ الشهادة في مجلس القضاء

"True notification to establish a right by giving testimony before a court hearing"

3.2. Legal Basis of Marriage Witness

The legal basis for witnesses is contained in the Qur'an and the Hadith of the Prophet Muhammad, including the word of Allah in Surah Al-Baqarah verse 282 which reads:

وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ

Meaning: "And bear witness with two male witnesses among you"

The verse above provides an explanation that in terms of debts and other related matters between fellow Muslims or outside Islam, two men must be included as witnesses in an event or situation that requires confession in the future. The verse above also provides an explanation that witnesses have a function as an explanation of a legal event that they witness. Therefore, witnesses may not refuse to comply with being summoned or presented to the trial by the judge in order to obtain true information or information.

Surah At-Talaq verse 2 which reads:

إِذَا بَلَغَ آجُلُهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوِي عَدْلٍ مِّنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَلِكُمْ يُوعَظُ بِهِ مَن كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ه وَمَن يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا

It means: So when they are nearing the end of their idah, then either refer (return to) them or release them properly and testify with two just witnesses between you and establish your testimony for the sake of Allah. Thus the teaching is given to those who believe in Allah and the hereafter. Whoever fears Allah, He will open a way out for him.

From the explanation of the verse above, it can be understood that the act of accusing a woman or a man of committing adultery must include evidence by means of bringing in four witnesses that is, by lashing eighty times and furthermore, if in other cases they provide information or testimony, their testimony is also unacceptable and will never be accepted.

Surah An-Nur verse 4 which reads:

وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ

Meaning: And those who accuse good women (of adultery) and they do not bring four witnesses, then lash them (who accuse) eighty lashes, and do not accept their testimony forever. And they are the wicked.

From the above verse it can be understood

Surah Al-Maidah verse 8 which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَا نُ قَوْمٍ عَلَىٰ آلا تَعْدِلُوا إِيَّادِلُّوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

Meaning: O you who believe, be those who always uphold (the truth) for Allah, be witnesses with justice and never, your hatred of a people, encourage you to act unjustly. Be fair, because fair is closer to piety and fear Allah, verily Allah is aware of what you do.

Surah Maidah verse 106 which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ حِينَ الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِّنْكُمْ أَوْ آخَرَانِ مِنْ غَيْرِكُمْ إِنْ أَنْتُمْ صَرَبْتُمْ فِي الْأَرْضِ فَأَصَابَتْكُمْ مُصِيبَةُ الْمَوْتِ تَحْسِبُوهُمَا مِنْ بَعْدِ الصَّلَاةِ فَيُقْسِمُنِ بِاللَّهِ إِنْ ارْتَبْتُمْ لَا

نَشْتَرِي بِهِ تَمَمًا وَلَوْ كَانَ ذَا قُرْبَىٰ وَلَا نَكْتُمُ شَهَادَةَ اللَّهِ إِنَّا إِذًا لَمِنَ الْآثِمِينَ

Meaning: O you who believe, if one of you faces death, while He is about to make a will, then let (the testament) be witnessed by two just people among you, or two people of different religions from you.⁹ *if you are on a journey on earth and you are in danger of death. you hold the two witnesses after praying (to swear), then they both swear in the name of Allah, if you are in doubt: "(By Allah) We will not buy with this oath a small price (for someone's sake), even though He is close relatives, and We do not (also) hide Allah's testimony; indeed We, then, would certainly be among the sinners."*

3.3. Witness Requirements

Regarding the requirements for witnesses in marriage, the *fiqh* experts are very careful and thorough even though there are still differences of opinion between them, because they each have arguments. For more details, the researcher will put forward these requirements according to *fiqh* experts, including:

- According to Sheikh Ibrahim al-Bajuri, that the requirement as a witness in a marriage is that two witnesses have six conditions: first Islam, the second is *Baligh*, the third is intelligent, the fourth is free, the fifth is male and just.
- According to Wahbah Az-Zuhaili, the requirements for witnesses in marriage are clear objectives, the conditions for witnesses are: intelligent, mature, No.ing two men, independent, fair, Islamic, seeing and hearing witnesses talking about people who have a contract.
- According to Abu Zahrah, the conditions for witnesses in marriage are and are indicated by the witness, namely, two men or one man and two women as indicated by the witness that the witness is independent, mature, intelligent, listens to the words of the person in the contract and understands it. . Islam if the prospective husband and wife are Muslim and are not required to see and are fair according to the Hanfiah group.
- Sayyid Sabiq explained that it was implied that the witness was intelligent, was of age, heard the words of the person having the contract and understood the meaning of the marriage contract.

⁹That is: it is permissible to take other people who are not of your religion as witnesses, if there are no Muslims who will be witnesses.

Based on the quote above, the researcher concludes that someone who is mandated to be a witness in a marriage contract must meet the following requirements:

- Islam
- *Baligh*
- sensible
- Independent
- Man
- Hear and understand the meaning of the words of people who have a contract
- Fair
- Imam Taqiyudin stated that there are six conditions for witnesses, namely:
 - Islam
 - *Baligh*
 - Healthy mind
 - Independent
 - Man
 - Fair¹⁰
- According to Sheikh Ibrahim Al-Bajuri, that the requirements as a witness in a marriage are:
 - Islam
 - *Baligh*
 - sensible
 - Independent
 - Man
 - Fair
- According to Imam Hambali, the conditions for a witness are:
 - Two men who have reached puberty
 - Both are Muslim, can talk and hear
 - Both are not from the descendants of the bride and groom
- According to Sayid Sabiq, the requirements for the skasi consist of:
 - sensible
 - *Baligh*
 - Listen to the words of people who have *aqad* and understand the meaning of the marriage contract
- According to Imam Shafi'i, the conditions for a witness consist of:
 - Two witnesses
 - *Baligh*

¹⁰Ahmad Rofiq, (2003). *Hukum Islam Indonesia*. Jakarta: PT.Raja Grafito Persada, p.71-72.

- sensible
- Islam hears
- Fair

The person who is a witness in a marriage must have requirements. Some of these conditions are sane, mature, able to listen to the words of both parties who have *aqad* and understand the words and intentions are marriage consent *qabul*. If the witness is blind then they should be able to hear his voice and know very well that the voice is the voice of a person who has *aqad*. Crazy people cannot be witnesses, because besides witnessing the marriage contract, they also witness the notification that the marriage contract has taken place. If in the future the husband or wife denies, the witness can testify in court. This can only be done by people with common sense.¹¹

- *Baligh*
- Hear and understand the words of consent and *qabul*
- Witness must be Muslim
- Man
- No. of witnesses
- Both witnesses can speak
- Fair
- Independent

3.4. Witness Marriage According to Ulama's View

Witnessing the marriage contract is an obligatory matter and is a condition for the validity of marriage according to the majority of scholars. Witnesses in marriage there are still differences of opinion by scholars, some scholars argue that the marriage contract is still valid without witnesses. Among the scholars who think so are Abdurahman bin Mahdi, Yazid bin Harun, Ibn Mundzir, Dawud and this has been done by Ibn Umar and Ibn Zubair. It was narrated from Hasan bin Ali, that he was married without any witnesses. However, then he announced his marriage. As for the existence of two witnesses in a marriage, it is not stipulated in the hadith, according to Ibn Mundzir.

Meanwhile, Yazid bin Harun said that Allah ordered witnesses in terms of buying and selling only and not in marriage. Meanwhile, Asaburra'yi requires the presence of witnesses in the marriage and does not require buying and selling. If a marriage contract is carried out secretly and the organizers advise that it is not announced,

¹¹M. Ali Hasan, (2000). *Fiiqh Sunnah*, Juz II. Beirut: Al-ma'arif, p.149-150.

then the marriage is still valid, but is considered *makruh*.¹²

The majority of the scholars of Kuffah are of the opinion that marriage is invalid until two witnesses testify together in a contract, while the scholars of Medina, namely Imam Malik bin Anas narrated that if witnesses testify one by one, then it is permissible if they announce the marriage.¹³

Most scholars agree that witnesses are very important in marriage. If witnesses are not present, then the marriage law becomes invalid even though it is announced to the public in other ways. Because the witness is a legal requirement of marriage. Imam Shari'i said witnesses in the marriage contract are the pillars of marriage.¹⁴

For more detail and clarity, the researcher will explain one by one in the following description:

Witnesses should have certain characteristics:

- Should have the capability to bear witness; was mature and wise.
- With their presence, the meaning of the announcement of the marriage should be realized.
- Should be able to respect marriage when attending it.

Regarding the nature of *al-ahliyah* (capacity): what is agreed upon and required in the marriage testimony is *al-ahliyah al-kamilah* (perfect capacity), able to listen to the words of both parties who make the contract and understand it. Witness requirements are as follows:

• **Common sense**

It is not legal for a madman to testify for a marriage ceremony. Because the purpose of the witness did not materialize, namely to announce and establish marriage in the future, when there was denial.

• **Baligh**

¹²Bariah, Oyoh. *Rekonstruksi Pencatatan Perkawinan Dalam Hukum Islam. Solusi*. Vol 1. No 4. 2015.

¹³Syaikh Hasan Ayyub, (2002). *Panduan Keluarga Muslim. Kairo*: Daar-As-salam, p.216.

¹⁴Sulaiman Rasyid, (2013). *Fiqih Islam*. Bandung: Sinar Baru Algesindo, p.383

It is not valid to testify even if a child is *mumayiz (tamyiz)*. Because the presence of small children does not realize the purpose of witnessing, namely announcing and appreciating the wedding ceremony. Their presence does not match the urgency of the wedding itself.

These two conditions have been agreed upon by the *fiqh* experts. These two conditions can be combined under one condition, namely the witness must be a *mukallaf* (subject to legal burden). They (*fiqh* experts) differ on other conditions, according to the purpose of the testimony, whether to announce it as the Hanafi scholars say, or keep the denial of the contract (in the future) as said by the Shafi'iah scholars.

• Count

This condition is agreed upon by the *fiqh* experts. The marriage contract will not be carried out with only one witness, because as contained in the hadith which reads, which means that there is no marriage but with a guardian and two fair witnesses. (Narrated by Daru Qutni and Ibn Hibban)¹⁵

The Hanafi scholars say that whoever orders a man to marry off his young daughter, then he marries her, while the woman's father is present accompanied by one more witness, then the marriage contract is permissible. Because the father can automatically follow the procession of the contract, because it is still in one assembly. Meanwhile, his deputy becomes the envoy who reveals the contract and another person becomes a witness¹⁶. However, if the father is not present, then the marriage contract is invalid, because the assembly of the contract is different. Therefore, in such circumstances it is not possible to include the father in the contract.

• Islam

The main principle agreed upon by the *fiqh* scholars in the requirements for witnesses in marriage is Islam, therefore it is not valid if the person acting as a witness is a non-Muslim person, if the person holding the marriage is both Muslim, because the problem of testimony in marriage is a matter of authority and does not authority over non-Muslims over Muslims.

¹⁵ Ma'sum, H. Endang Ali. Pernikahan Yang Tidak Dicatatkan Dan Problematikanya. *Musāwa Jurnal Studi Gender Dan Islam*. Vol 12. No 2. 2013. <https://doi.org/10.14421/musawa.2013.122.201-213>

¹⁶ Faizah, Siti. Dualisme Hukum Islam Di Indonesia Tentang Nikah Siri. *ISTI'DAL : Jurnal Studi Hukum Islam*, Vol 1, No 1. 2014.

3.5. *Maqashid Al-Syari'ah*

Etymologically, *Maqashid* is a plural or plural form of the word *maqсад* which means something to be addressed or a goal to be achieved. The word *al-Shari'ah* means the place where water flows.¹⁷In terminology, the word *Maqashid al-Syariah* are God's laws intended for humans which contain wisdom and prosperity in life in this world and the hereafter. Meanwhile, in terms of terminology, the word *Maqashid Al-Syariah* is the goals, values, and benefits to be achieved from the guidance of *Syari'ah* both globally and in detail.

The explanation in the book *al-Muwafaqat fi Usul al-Ahkam* by as-Syatiby that, *Maqasid as-Syariah* is a very important thing in human life. In the aim of maintaining three aspects of living life, namely: *daruriyat*, *hajjiyat*, *tahsiniyat*, which also uses *qiyas*, *istihsan*, *al-maslahah al-mursalah*, and *Urf*. As a method for drawing conclusions. Where what is meant by *maslahat* is maintaining the main aspects, namely *hifz ad-din* (maintaining religion), *hifz an-nafs* (maintaining souls), *hifz 'aql* (maintaining thought), *hifz an-Nasl* (maintaining generation), and *hifz mal* (maintain property).¹⁸

3.6. Position of the Regulation of the Minister of Religion No. 11 of 2007 in the Hierarchy of Legislation in Indonesia

In the legal system in Indonesia, in the legal system in Indonesia, the process of forming laws has so far been under the umbrella of several current regulations, which refers to one law, namely Act No. 12 of 2011 concerning the Establishment of Legislation. So the type and order (hierarchy) of laws and regulations has been regulated in Act No. 12 of 2011 which states that.¹⁹

• Types and hierarchy of Legislation – Invitations are as follows:

- The 1945 Constitution of the Republic of Indonesia;
- Decree of the People's Consultative Assembly;
- Laws/Government Regulations in Lieu of Laws;

¹⁷Ahmad al-Raisuni, (1999). *al-Fikru al-Maqosidi Qawaiduhu wa Fawa'idduhu*. Dar al-Baida': Ribat, p. 13.

¹⁸As-Syatibi, (1347 H). *al-Muwafaqat fi Usul al-Ahkam*. Beirut: Dar al-Fikr, p. 4-5.

¹⁹Article 7 of Act No. 12 of 2011 concerning the Formation of Legislation.

- Government regulations;

- Presidential decree;

- Local regulation.

• The legal force of the Prevailing Laws is in accordance with the hierarchy as referred to in paragraph 1.

So in this case, if Article 7 paragraph 1 is understood as if the types of legislation are limitative, there are only 6 (six) namely the 1945 Constitution of the Republic of Indonesia, Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations and Regional Regulations. This means that outside of the six types, they are not categorized as statutory regulations. However, Article 8 paragraph 2 in its explanation states that the types of laws and regulations other than those referred to in Article 7 paragraph 1 include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, Judicial Commission, Bank Indonesia, Ministers, Agencies,

From the provisions of Article 8 paragraph 1, the types and hierarchies of laws and regulations in Article 7 are not limitative, only those contained in Article 7 paragraph 1, even if related to Article 1 paragraph 2 of Act No. 12 of 2011 it is stated that the Laws and Regulations-Invitations are written regulations that contain legally binding norms in general and are formed or determined by state institutions or authorized officials through the procedures stipulated in the Legislative Regulations. Authorized State Institutions/Officials in this case are State Institutions/Officials at both the Central and Regional levels. Each particular State Institution/Official may be given the authority to form laws and regulations either by the Constitution or the Act.

The authority granted or possessed by the institution or official may be in the form of attributive authority or delegative/derivative authority. Attributive authority in the formation of laws and regulations is the original authority granted by the Constitution or the Law to certain institutions or officials, or the inherent authority and granted to an institution or official based on the laws and regulations, while the Delegative/derivative is the authority given by the holder of attributive authority to certain officials or institutions under him, for further statutory regulations made by the holder of attributive authority.

Based on the description above, Article 7 of Act No. 12 of 2011 is not limitative. This

means that, in addition to the 6 (six) types of laws and regulations that are explicitly mentioned in Article 7 paragraph 1, there are other types of legislation which have been factually and implicitly in the formulation of Article 8 paragraph 1 of Act No. 12 of 2011 .

3.7. History of the Birth of PMA No.11 of 2007

Minister of Religion Regulation No. 11 of 2007 was enacted in Jakarta on June 25, 2007 and signed by the Minister of Religion of the Republic of Indonesia at that time, namely Muhammad Maftu Basyuni. With the stipulation of the regulation on that date, the regulation will automatically come into force on that date. The issuance of this Regulation of the Minister of Religion No. 11 of 2007, the provisions regarding the requirements, supervision and registration of marriage/reconciliation, registration of divorce, divorce and lawsuit as referred to in the Decree of the Minister of Religion No. 477 of 2004 does not apply. In order for the public to be aware of this new regulation, the government in this case places this Regulation of the Minister of Religion in the State Gazette of the Republic of Indonesia.

The birth of this regulation is based on several existing laws and regulations. Among them are:

- Act No. 22 of 1946 concerning Registration of Marriage, Divorce and Reconciliation.
- Act No. 32 of 1956 concerning Enactment of the Law of the Republic of Indonesia dated November 21, 1945 No. 22 of 1946 concerning Registration of Marriage, Divorce, Reconciliation in all Regions Outside Java and Madura (State Gazette of the Republic of Indonesia Year 1954 No. 98, Supplement to the State Gazette Republic of Indonesia No. 694)
- Act No. 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 No. 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019)
- Act No. 3 of 2006 concerning Amendments to Act No. 7 of 1989 concerning Religious Courts (State Gazette of the Republic of Indonesia of 2006 No. 22, Supplement to the State Gazette of the Republic of Indonesia No. 4611).
- Act No. 8 of 2005 concerning Stipulation of Government Regulations, Substitute Act No. 3 of 2005 concerning Amendments to Act No. 32 of 2004 concerning

Regional Government into Laws (State Gazette of the Republic of Indonesia No. 4548).

- Government Regulation No. 9 of 1975 concerning the Implementation of Act No. 1 of 1974 concerning the Implementation of Act No. 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1975 No. 12, Supplement to the State Gazette of the Republic of Indonesia No. 3250)
- Presidential Decree No. 11 of 2002 concerning the Syar'iyah Court and the Provincial Syar'iyah Court in the Province of Nanggroe Aceh Darussalam.
- Presidential Decree No. 85 of 2002 concerning Amendments to Presidential Decree No. 49 of 2002 concerning the Position, Functions, Organizational Structure and Work Procedures of Vertical Agencies of the Ministry of Religion.
- Presidential Regulation No. 94 of 2006 concerning the Third Amendment to Presidential Regulation No. 9 of 2005 concerning the Position, Duties, Functions, Organizational Structure and Work Procedures of the State Ministries of the Republic of Indonesia.
- Presidential Regulation No. 7 of 2007 concerning the Sixth Amendment to Presidential Regulation No. 10 of 2005 concerning Organizational Units and Duties of Echelon I of the Ministry of Religion of the Republic of Indonesia.
- Joint Decree of the Minister of Religion and the Minister of Foreign Affairs No. 589 of 1999 and No. 182/OT/X/99/01 of 1999 concerning Guidelines for the Implementation of Marriage of Indonesian Citizens Abroad.
- Decree of the Minister of Religion No. 517 of 2001 concerning Organizational Arrangement of the Sub-District Religious Affairs Office.
- Decree of the Minister of Religion No. 373 of 2002 concerning Organizational Arrangements and Work Procedures for Provincial Offices of the Ministry of Religion and Regency/City Offices of the Ministry of Religion, as amended by Decree of the Minister of Religion No. 480 of 2003.
- Minister of Religion Regulation No. 3 of 2006 concerning Organization and Work Procedure of the Ministry of Religion.

3.8. Construction of the contents of the Regulation of the Minister of Religion No.

11 of 2007 concerning Marriage Registration

- CHAPTER I covers the General Provisions as stated in Article 1.
- CHAPTER II concerning Marriage Registrar Employees which consists of 3 articles. From article 2, article 3 and article 4.
- CHAPTER III concerning Notification of Marriage Intention which contains 1 article, namely Article 5.
- CHAPTER IV concerning Approval and Dispensation for Age of Marriage consists of 3 articles namely, Article 6, Article 7 and Article 8.
- CHAPTER V on Marriage Examination consists of 3 articles, namely Article 9, Article 10, and Article 11.
- CHAPTER VI on Rejection of Marriage Intentions consists of 1 Article, namely Article 12.
- CHAPTER VII concerning Announcement of Marriage Intention consists of 1 Article, namely Article 12.
- CHAPTER VIII concerning Prevention of Marriage consists of Articles 14 and 15.
- CHAPTER IX concerning the Marriage Contract consists of 10 articles, namely Articles 16 to 25.
- CHAPTER X concerning Marriage Registration consists of 2 articles, namely Articles 26 and 27.
- CHAPTER XI concerning Marriage Registration of Indonesian Citizens Abroad in Article 28.
- CHAPTER XII concerning the Recording of Referrals consists of 2 articles, namely from Articles 29 to 30.
- CHAPTER XIII concerning the registration of divorce divorce and lawsuits is located in Article 21.
- CHAPTER XIV concerning Facilities in Article 32.

- CHAPTER XV on Writing Procedures consists of Articles 33 to 34.
- CHAPTER XVI concerning the Issuance of Duplicates is contained in Article 35.
- CHAPTER XVII concerning the Recording of Changes in Status is contained in Article 36 and Article 37.
- CHAPTER XVIII concerning Document Security is contained in Article 38.
- CHAPTER XIX concerning Supervision is contained in Article 39.
- CHAPTER XX concerning Sanctions is contained in Article 40.
- CHAPTER XXI concerning Closing Provisions is contained in Article 41 and Article 42.

3.9. Provisions on the Age Limit for Witness to Marry According to Article 19 Paragraph 2 of the Regulation of the Minister of Religion No. 11 of 2007

The presence of a marriage witness in the marriage contract is an obligation and the marriage contract will not be valid if the marriage witness is not present. So in fact, in this case Act No. 1 of 1974 contained in Article 26 states that: Marriages which are held in front of an unauthorized marriage registrar, marriage guardians who are not valid or which are held without presenting and witnessed by 2 (two) witnesses may requested cancellation by the family in a straight line up from husband or wife, prosecutor and husband or wife. This has the meaning that the marriage must be attended by 2 (two) witnesses, otherwise an annulment may be requested or the marriage will immediately become invalid in the view of state law. Therefore, among the obligations of the implementation of marriage is to announce the marriage in front of the crowd by way of witness. And for a person who wants to be a witness in a marriage contract, he must fulfill several conditions stipulated in the existing law in Indonesia. Then it is also stated in the Compilation of Islamic Law that the conditions for witnesses in the marriage contract are in Article 25. Those who can be appointed as witnesses in the marriage contract are: a Muslim man, fair, *aqil Baligh*, not disturbed by memory and not deaf or deaf. Meanwhile, in the Regulation of the Minister of Religion No. 11 of 2007 concerning Marriage Registration, the requirements for marriage witnesses are explained in Article 19 paragraph 1 and

paragraph 2 as follows²⁰:

- The marriage contract must be attended by at least two witnesses
- Witness marriage as referred to in paragraph (1) must meet the following requirements:
 - Man;
 - Muslim;
 - *Baligh*, is at least 19 years old;
 - Reasonable;
 - independent and
 - Can be fair

The requirements set out in Article 19 paragraph 1 and paragraph 2 of the Regulation of the Minister of Religion No. 11 of 2007 concerning Marriage Registration, the requirements for marriage witnesses described are to be in line with the legal beliefs held by the majority of Indonesian people. What is different and seems controversial is the additional information regarding the requirements for puberty, namely, the word "at least 19 years of age."

The requirement for puberty is at least 19 years old, this is what the researcher considers to conduct research in this thesis because there is controversy, namely the additional statement regarding the requirements for puberty, namely the words "at least 19 years old". So the age of puberty according to the provisions of the Regulation of the Minister of Religion No. 11 of 2007 is 19 years, this has the consequence that a marriage witness who has reached puberty but is not yet 19 years old, then the marriage witness cannot be a marriage witness. The right to testify becomes invalid and shifts to another witness who is 19 years old.

As for the rights and obligations according to positive law, the barometer of a person's maturity has been explained in the Civil Code which reads: minors are

²⁰ Khoiruddin, M. Wali Mujbir Menurut Imam Syafi'i (Tinjauan Maqâshid Al- Syarī'ah). *Al-Fikra: Jurnal Ilmiah Keislaman*. Vol 18. No 2. 2019. <https://doi.org/10.24014/af.v18.i2.8760><https://doi.org/10.24014/af.v18.i2.8760>

those who have not reached the age of twenty-one years, and have not married before (Article 330 Criminal Code). Then it is also explained in Article 47 paragraph 1 of Act No. 1 of 1974 concerning marriage which reads: "Children who have not reached the age of 18 (eighteen) years or have never been married are under the authority of their parents as long as they are not revoked from their power".

The Compilation of Islamic Law in Article 98 paragraph 1 reads: "The age limit for children who are able to stand alone or as adults is 21 years, as long as the child is not physically or mentally disabled or has never married". Furthermore, Article 98 paragraph 2 reads: "The parents represent the child regarding all legal actions inside and outside the Court."

3.10. Review of Islamic Law on PMA No. 11 of 2007 concerning Age Limits for Marriage Witnesses

The issuance of Regulation of the Minister of Religion (PMA) No. 11 of 2007 which was stipulated by the Minister of Religion of the Republic of Indonesia on June 25, 2007 concerning Marriage Registration has attracted the attention of many parties, especially among the implementation of the Marriage Law. This is because: first, the Regulation of the Minister of Religion No. 11 of 2007 annulled the Decree of the Minister of Religion (KMA) No. 447 of 2004 regarding the same matter. In fact, the issuance of the Decree of the Minister of Religion No. 447 of 2004 is an effort to realize a big idea that is far-sighted. The Decree of the Minister of Religion No. 447 of 2004 carries the mandate to realize a concept that has been planned for a very long time in order to achieve such noble and strategic goals, namely the empowerment of KUA in various aspects of its main tasks and functions, so that in the future KUA will not only dwell in the scope of the duties of marriage, divorce, divorce, and reconciliation (NTRC). Second, the Regulation of the Minister of Religion No. 11 of 2007 stipulates several legal provisions for marriage which are quite phenomenal and controversial. Among them is the stipulation of provisions regarding the age requirements for *Baligh*, aged at least 19 years for witnesses of marriage in the implementation of the marriage contract.

A marriage witness is a person who witnessed the marriage contract directly so as not to cause misunderstandings from other people. The problem of witnessing marriages in the Qur'an is not explicitly explained, but witnesses for other issues such as in the case of muamalah or divorce or reconciliation issues are very important.

According to the majority of the old Syafi'iyah fuqoha, the presence of a witness is a condition for a valid marriage contract, so the marriage contract will not be valid if it is not attended by witnesses even though other conditions have been met.

Regulation of the Minister of Religion No. 11 of 2007 concerning the age limit for marriage witnesses accommodates the opinions of scholars so that they have *Ijtihad* that the age limit for witnesses in marriage is 19 years.

3.11. Regulation of the Minister of Religion No. 11 of 2007 concerning the age limit of witnesses in marriage in terms of *Maqashid Al-Syariah*

Etymologically, *Maqashid* is a plural or plural form of the word *maqsd* which means something to be addressed or a goal to be achieved. The word *al-Shari'ah* means the place where water flows.²¹ In terminology, the word *Maqashid al-Syariah* are God's laws intended for humans which contain wisdom and prosperity in life in this world and the hereafter. Meanwhile, in terms of terminology, the word *Maqashid Al-Syariah* is the goals, values, and benefits to be achieved from the guidance of *Syari'ah* both globally and in detail.

The correlation between the application of the age limit of witnesses in marriage and the review of *Maqashid Al-Syariah* is the presence of witnesses in the actual marriage contract so that the purpose of marriage (*Maqashid al-nikah*) is achieved properly. In addition, of course, to anticipate all possibilities that could happen in the future, for example in the case if one husband or wife is involved in a dispute or dispute and the case is submitted to the Religious Court. So of course witnesses who attend the marriage contract can be asked for information related to the examination of the case, besides the witness must be present to witness the marriage contract directly, the witness will also be asked to sign the Marriage Certificate at the time and place of the marriage contract, so that the name, age, religion, occupation and address are listed in the Marriage Certificate.

All *Maqashid al-Syari'ah* in marriage can be achieved of course after the occurrence of a marriage that is legal under Islamic law and state law. To obtain a valid marriage status, of course, all the conditions and pillars must be fulfilled without exception, one of the pillars of marriage is the presence of a witness who is mature and has good skills who witnessed and proved the event of the marriage in the marriage contract assembly as according to Imam Syafi' i.

²¹Ahmad al-Raisuni, Op.cit, p. 13.

Therefore, in order to avoid this, the witness should be a person who has reached puberty, *Baligh* in the sense of the word that is capable of law both in the context of Islam and the context of the state. In Islam and various *fiqh* books it is said that one of the conditions for witnesses in marriage is *Baligh*, but there is no specific description of the agreed age of puberty, but in the context of state or law in Indonesia the age of puberty or what can be imposed by law is the age of 19 years, this No. 19 years is where a person has been charged with the legal burden, meaning that at that age all matters and responsibilities are fully attached to the individual or are able to make their own choices without any intervention.

The explanation in the book *al-Muwafaqat fi Usul al-Ahkam* by as-Syatiby that, *Maqasid as-Syariah* is a very important thing in human life. In the aim of maintaining three aspects of living life, namely: *daruriyat*, *hajjiyat*, *tahsiniyat*, which also uses *qiyas*, *istihsan*, *al-maslahah al-mursalah*, and *Urf*. As a method for drawing conclusions. Where what is meant by *maslahat* is maintaining the main aspects, namely *hifz ad-din* (maintaining religion), *hifz an-nafs* (maintaining souls), *hifz 'aql* (maintaining reason), *hifz an-Nasl* (maintaining offspring), and *hifz mal* (maintaining property).²²

In the review of *Maqashid Syari'ah*, the existence of witnesses who are 19 years old in marriage testimony is aimed at maintaining the benefit and rejecting damage to the marriage carried out, including:

- A witness who is at least 19 years old is the age that is considered capable and can take legal action both in the context of Islam and the context of the state.
- With the witness of a witness who is at least 19 years old, the judge will find it easier to ask for information from the witness if later on there is a dispute or dispute between the couple who has witnessed a wedding event, the judge will find it easier to ask for information on what happened, because the witness is someone who has legally proficient and able to act independently, if the witness is still a child or at least has not reached the age of 19 years, the judge will find it difficult to dig up the information that occurred from the events of marriages that have been carried out.
- Witness who is 19 years old, of course, administratively, the witness has fulfilled the requirements according to state regulations.
- Treasure will be preserved

²²As-Syatibi, *Op.cit*, p. 4-5.

Based on the purpose of *Maqashid al-Syari'ah* in keeping human life more directed and achieving goals, the essence of the formation of the 19 year age limit for witnesses in marriage can be said to be a process in order to protect and maintain themselves and protect assets against anything that might occur after marriage.

4. Conclusion

In a review of Islamic law, the age limit for witnesses using the *Baligh* standard in Article 19 paragraph 2 PMA No. 11 of 2007, is not explicitly regulated in either the Qur'an or Hadith. So the rules applied in PMA No. 11 of 2007 regarding *Baligh*, aged at least 19 years, according to the author, is a result of *ijtihad*, namely by using several opinions from the Hambali and Safi'i scholars, by using the definitive age limit, which is the age requirement for marriage witnesses at least 19 years. The law of age has never been found in the classical *fiqh* literature. So the author concludes that this is the result of contemporary *ijtihad*, namely PMA No. 11 of 2007.

5. References

Journals:

- A., Aspandi. Pernikahan Berwalikan Hakim Analisis Fikih Munakahat Dan Kompilasi Hukum Islam, Ahkam: *Jurnal Hukum Islam*. Vol 5. No 1. 2017. <https://doi.org/10.21274/ahkam.2017.5.1.85-116>
- Atabik, Ahmad, dan Koridatul Mudhiiah. Pernikahan Dan Hikmahnya Perspektif Hukum Islam. *Yudisia* . Vol 5. No 2. 2014.
- Bariah, Oyoh. Rekonstruksi Pencatatan Perkawinan Dalam Hukum Islam. *Solusi*. Vol 1. No 4. 2015.
- Faizah, Siti. Dualisme Hukum Islam Di Indonesia Tentang Nikah Siri. *ISTI'DAL : Jurnal Studi Hukum Islam*, Vol 1, No 1. 2014.
- Ma'sum, H. Endang Ali. Pernikahan Yang Tidak Dicatatkan Dan Problematikanya. *Musāwa Jurnal Studi Gender Dan Islam*. Vol 12. No 2. 2013. <https://doi.org/10.14421/musawa.2013.12.2.201-213>
- Khoiruddin, M. Wali Mujbir Menurut Imam Syafi'i (Tinjauan Maqâshid Al- Syari'ah). *Al-Fikra: Jurnal Ilmiah Keislaman*. Vol 18. No 2. 2019. <https://doi.org/10.24014/af.v18.i2.8760><https://doi.org/10.24014/af.v18.i2.8760>
- Maolana, Wildan. Pendapat Ibnu Qudamah Dan Imam Mawardi Tentang Wali Nikah Bagi Anak Temuan (Laqith). *ADLIYA: Jurnal Hukum Dan Kemanusiaan*. Vol 12,

No 1. 2019. <https://doi.org/10.15575/adliya.v12i1.4487>

Mukhsin, M Karya. Saksi Yang Adil Dalam Akad Nikah Menurut Imam, Al-Fikra :
Jurnal Ilmiah Keislaman. Vol 18. No 1. 2020.
<https://doi.org/10.24014/af.v18i1.7303>

Santoso. Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam
Dan Hukum Adat. *Yudisia*. Vol 7. No 2. 2016.

Syamdan, Addin Daniar, dan Djumadi Purwoatmodjo. Aspek Hukum Perkawinan Siri
Dan Akibat Hukumnya. *Notarius*. Vol 12. No 1. 2019.
<https://doi.org/10.14710/nts.v12i1.28897>

Books:

Ahmad al-Raisuni, (1999). *al-Fikru al-Maqosidi Qawaiduhu wa Fawa'idduhu*. Dar al-Baida': Ribat

Ahmad Rofiq, (2003). *Hukum Islam Indonesia*. Jakarta: PT.Raja Grafindo Persada,

As-Syatibi, (1347 H). *al-Muwafaqat fi Usul al-Ahkam*. Beirut: Dar al-Fikr,

M. Ali Hasan, (2000). *Fiiqh Sunnah*, Juz II. Beirut: Al-ma'arif,

Sulaiman Rasyid, (2013). *Fiqih Islam*. Bandung: Sinar Baru Algesindo,

Syaikh Hasan Ayyub, (2002). *Panduan Keluarga Muslim*. Kairo: Daar-As-salam,

Tim Redaksi Nuansa Aulia, (2020). *Kompilasi Hukum Islam*. Bandung: CV.Nuansa Aulia,

Regulation:

Act No. 1 of 1974 jo. Act No. 16 of 2019 concerning Marriage

Act No. 12 of 2011 concerning the Formation of Legislation.

Inpres No. 1 of 1991 concerning KHI

Minister of Religion Regulation No. 11 of 2007.