



# THE APPLICATION OF UNDERAGE MARRIAGE IN THE ISLAMIC RELIGIOUS COUNCIL PATANI REGION OF SOUTHERN THAILAND



Jalaluddin FA<sup>1</sup>, Mustiah RH<sup>2</sup>, Tasnim Rahman Fitra<sup>3</sup>, MR Ibroheng Salaemaeng<sup>4</sup>

## \*Correspondence :

Email :  
jalaluddin@uinjambi.ac.id

## Authors Affiliation:

<sup>1</sup> Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi, Indonesia

<sup>2</sup> Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi, Indonesia

<sup>3</sup> Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi, Indonesia

<sup>4</sup> Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi, Indonesia

## Article History :

Submission : January 20, 2023

Revised : March 15, 2023

Accepted : June 26, 2023

Published : June 30, 2023

**Keyword :** Underage Marriage, Islamic Religious Council, Family Law.

**Kata Kunci :** Nikah di Bawah Umur, Majelis Agama Islam, Hukum Keluarga.

## Abstract

The aim of this research is to know the application of underage marriage that was carried out in the Islamic Religious Council of the Patani Region of Southern Thailand and to find out the views of Islamic law on the application of underage marriage that were determined by the Islamic Religious Council. Southern Thailand, Patani Region The Islamic Religious Council of the Patani Region has regulated an age limit for couples who will marry. Even though the age limit has been regulated, there are still underage marriages that are carried out. In this study, the researchers used a type of empirical juridical research with a sociological approach. The results of this study indicate that the application of underage marriage must be carried out by complying with the rules regulated by the Islamic Religious Council of the Patani Region and the rules issued by the Islamic Religious Council of Thailand in 2018 AD. The application of underage marriage carried out in the Religious Council Islam Patani Territory is a legal marriage, does not violate Islamic laws, and can be done by fulfilling the pillars and conditions according to Islamic law.

*Tujuan dari penelitian ini adalah untuk mengetahui penerapan perkawinan di bawah umur yang dilaksanakan di Majelis Agama Islam Wilayah Patani Thailand Selatan dan untuk mengetahui pandangan hukum Islam terhadap penerapan perkawinan di bawah umur yang di tetapkan oleh Majelis Agama Islam Wilayah Patani Thailand Selatan. Majelis Agama Islam Wilayah Patani telah mengatur batas usia bagi pasangan yang akan melaksanakan perkawinan. meskipun suda diatur batas usia tersebut tetap saja masih ada pernikahan dibawah umur yang terlaksana. Dalam penelitian ini peneliti menggunakan jenis penelitian yuridis empiris dengan pendekatan sosiologis. Hasil penelitian ini menunjukkan bahwa penerapan perkawinan di bawah umur harus dilaksanakan dengan memenuhi aturan-aturan yang di tetapkan oleh Majelis Agama Islam Wilayah Patani dan aturan yang di keluarkan Majelis Agama Islam Thailand tahun 2018 M. Penerapan perkawinan di bawah umur yang di laksanakan di Majelis Agama Islam Wilayah Patani adalah perkawinan yang sah dan tidak melanggar hukum-hukum Islam dan bisa di lakukan dengan memenuhi rukun dan syarat menurut hukum Islam.*

## INTRODUCTION

Marriage is a *sunnatullah* performed by every human being to have a legal relationship between a man and a woman. The purpose of marriage is husband and wife can get happiness with the potential of Mawaddah and rahmah so that they can carry out their duties as caliphs, which is the implementation of the form of devotion to Allah SWT, thus the functions that must be carried out by each family members.<sup>1</sup>

Another purpose of marriage in Islam is to meet the needs of human physical and spiritual life, form a family, and nurture and continue offspring in living life in this

<sup>1</sup> Ditjen Bimas Islam, *Etika Berkeluarga, Bermasyarakat, Dan Berpolitik* (Jakarta: Pustaka Bimas Islam, 2012).



world. Marriage is also expected to prevent adultery in order to create peace for their souls, families, and communities. Physically, men and women must reach a certain age limit so as to determine the desired direction of marriage. However, another very important factor is maturity in thinking and independence in life (he is already able to support his wife and children). This is what is often forgotten.<sup>2</sup>

In order to realize the main purpose of marriage, which is to break the sakinah family that is protected from domestic problems due to a lack of readiness by both parties, in the Patani region of Southern Thailand, a regulation has been issued on the age limit allowed to perform the marriage. The regulation on the age limit for marriage was issued and set by the Central Board of the Islamic Religious Council of Thailand in 2018, stating that the age limit for marriage is a perfect age of 17 years. As stated in the following regulations Article 10, chapter 6 issued by the Central Board of the Islamic Religious Council of Thailand:

**Table 1.** Government Gazette citation

English Version	Tagalog Version
"that employees of the Islamic Religious Council are allowed to issue marriage certificates according to Islamic law to two brides who are not under the age of 17". <sup>3</sup>	ข้อที่ ๖ คณะกรรมการจะออกใบรับรองการสมรสแก่คู่สมรสได้ ต้องเป็นไปตามบทบัญญัติแห่งศาสนาอิสลาม และคู่สมรสมีอายุไม่ต่ำกว่า ๑๗ ปี

The most interesting thing from this study is that in the Patani Region of southern Thailand, in interviews with several people who are Imams of the Mosque and are responsible for presiding over marriage in their respective villages, they say underage marriages still often occur, although not so much. This kind of marriage occurs among young people who are still in school or who do not continue school. The result is that the implementation of underage marriage often causes problems with the continuity of marriage.<sup>4</sup>

## METHODS

This type of research is empirical juridical research or sociological legal research and can also be called field research, which examines applicable laws and what happens in society.<sup>5</sup> This research uses a sociological juridical approach whose main focus is to identify and conceptualize law as a real and functional social institution in a real – life system.<sup>6</sup>

<sup>2</sup> N A Sustiono, M Marzuki, and S Sidik, "Judge Considerations in Accepting Underage Marriage Applications in Luwuk Religious Court," ... *Pendidikan Dan Studi Islam* 8, no. 1 (2022): 325 – 36, <https://doi.org/10.31943/jurnal>.

<sup>3</sup> Majelis Agama Islam Thailand, "Peraturan – Peraturan Pusat Majelis Agama Islam Thailand, Perkawinan Di Bawaah Umur 17 Th., Tahun 2561 B./2018 M.," n.d.

<sup>4</sup> Interview Wan Sulaiman bin Wan Ismail Dkk, Mosque Administrator in Patani Southern Thailand, February 25 2021.

<sup>5</sup> Bambang Waluyo, *Prosedur Penelitian Suatu Pendekatan Prektek* (Jakarta: Rineka Cipta, 2002).

<sup>6</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986).

## RESULT AND DISCUSSION

### Application Of Underage Marriage In The Islamic Religious Assembly Patani Region Of Southern Thailand

#### MAIP's Authority Over Marriage

The history of the formation of legal rules in southern Thailand, especially the rules of Islamic family law, cannot be separated from the thoughts derived from the books of fiqh, which refer to the ijtiḥad of previous ulama.

In the law on family and inheritance management that has been legalized by the King of Thailand, the Islamic Religious Management Board in Thailand:

**Table 2.** Government Gazette citation

English Version	Tagalog Version
"The constitution of the Islamic Religious Management Board in Thailand in 2540 B.C./1997 A.D., which was confirmed by King Pumipon Adullayadet King of Thailand, the 4th part, the Islamic Religious Council of the Region or Province, article 26, number 10, gives power or authority to each Regional Islamic Religious Council in the State of Thailand to issue marriage certificates and divorce certificates according to Islamic laws."	(พระราชบัญญัติ ีการบริหารองค์กรศาสนาอิสลามพ.ศ. 2540 ภูมิพลอดุลยเดช ป.ร. ให้ไว้ ณ วันที่ 17 ตุลาคม พ.ศ. 2540 B./1997 M. หมวด 4 คณะกรรมการอิสลามประจำจังหวัด ในจังหวัดที่มีคณะกรรมการอิสลามประจำจังหวัดให้คณะกรรมการมีอานา จนหน้าที่ ขอ มาตรา 26 ที่ 10 ออกหนังสือรับรองการสมรสและการหย่าตามบัญญัติ ีแห่งศาสนาอิสลาม). <sup>7</sup>

As a Muslim community, the majority follow the views of Imam Shafi'i that the formation of Islamic law legislation, especially in family law in Southern Thailand, is inseparable from the thoughts of the Shafi'i school, where the books of the Shafi'i school are used as one of the references for making decisions in the jurisprudence of the chairman of the Assembly at MAIP. In the Basic Law of Islam on Family and Heritage of Thailand Year 2011 A.D., it is explained that a MAIP guideline in giving decisions uses books taken as references, one of which is from the Shafi'i school.<sup>8</sup>

Several standard fiqh books have been standardised as the Basis of Islamic Law to serve as guidelines, especially in the Family and Heritage Law of Thailand (Patani, Narathiwat, Yala, and Satun Provinces). These books exist in Arabic and Malay (jawi), including Ghayatul Maksud, Fathul Mu'in, Mughni al – Muhtaj, As – syarh ar – Rabi'ah, Hasyiyah al – bary a'la Sharhu as – Samsury, Hallul Musykilat, Mara'atul at – Tulab, Kasful Lisam, Far'ul Masa – il, Muta'allim, Mathla'il Badrain, Idhahul – Bab, Fataawa qadahi fi Ahkamun Nikah, Futuhul Wahab, Al – Ghararul Bahriyahriyah, Al – Bujarimi A'lal Khatib, Tuhtaj, Nihayatutul Muhtaj, etc.<sup>9</sup>

The explanation shows that MAIP's authority regarding marriage is based on a law passed in 2540 B.C./1997 AD by the King of Thailand. MAI is given the authority to

<sup>7</sup> "Undang Undang Dasar Badan Pengurus Agama Islam Di Negara Thailand," n.d.

<sup>8</sup> "Undang Undang Dasar Badan Pengurus Agama Islam Di Negara Thailand."

<sup>9</sup> Tim Departemen Keadilan ( Ministry of Justice), "Dasar Hukum Islam Berkenaan Dengan Keluarga Dan Warisan NegaraThailand" (Patani Narathiwat, Yala dan Satun, n.d.).

register marriages according to Islamic law, on the basis of which the law is the fiqh books of the Imam Shafi'i School. These books are references contained in the 2011 AD Guidelines on Family and Heritage.

### Application of Marriage in MAIP

The results of an interview with a MAIP employee as the head of the syar'i section, which is said to be valid for the application of marriage in MAIP, are a marriage that meets the rules, pillars, and requirements according to Islamic law that have been set in MAIP. The Pillars and Conditions of Marriage that Apply in MAIP are inseparable from the pillars and conditions contained in the fiqh book of the Shafi'i school. The marriage pillars are five matters, including shighat, two witnesses, guardians, prospective husbands, and prospective wives.<sup>10</sup>

In the Manual of Islamic Law of Family and Inheritance, article 46, marriage is invalid if there is no prospective husband, prospective wife, and guardian for the prospective wife, two witnesses, ijab, and qabul. Furthermore, in the Guidelines of Islamic Law, Family, and Inheritance, it says:

#### a. Prospective Husband and Prospective Wife

- 1) Both prospective husbands and wives are Muslims.
- 2) Men and women know clearly who their candidates are.
- 3) The future husband and future wife are not involved in ihram or hajj activities.
- 4) Not the Mahram one.
- 5) The future wife does not have a husband.
- 6) The prospective wife is not in the Iddah period.
- 7) Do not breastfeed the same mother.
- 8) Both parties at their own pleasure or will;<sup>11</sup>

Article 57 states that the bride's consent is said to be agreed upon if there is a firm and tangible statement verbally, in writing, or in a gesture, including her silence, as long as there is no firm refusal so that the marriage can continue. Conversely, if there is no agreement between the two candidates to be married, both from the male and female parties, the marriage cannot be held.<sup>12</sup>

Marriage guardian for the future wife, According to the Shafii School, marriage guardians for prospective wives are part of the pillars of marriage, so a marriage guardian is required: *Wali Nasab, Wali Hakim, and Wali Muhakkam*. With regard to the marriage guardian, the Prophet (peace be upon him) said:

"From "Aisha (ra); From the Holy Prophet (peace be upon him). He said: No marriage is valid, unless there is a guardian of married and two witnesses who "fair." (HR. Ahmad and Baihaqi).<sup>13</sup>

Wali Nasab is a guardian who is related by blood to the future wife: her father (father), her Grandfather (father of her father), and her brother (sibling). Father's brother, Son to one's biological brother, Son to one's brother, uncle (brother of her father), Father's uncle, Son to one's biological uncle, and Son to one's father If all the above guardians are absent, the guardian is the guardian of the sultan, as the Holy

<sup>10</sup> Syeikh Daud bin Abdullah al-Fathani, *Idhahu Al- Bab Limurid Al- Nikah Bi- Shawab* (Fathani: Halabi, n.d.).

<sup>11</sup> *Pedoman Hukum Islam Tentang Keluarga Dan Warisan* (Bangkok: Mahkamah Pengadilan, 2011).

<sup>12</sup> *Pedoman Hukum Islam Tentang Keluarga Dan Warisan*.

<sup>13</sup> H. Moh Rifa'i, *Fiqh Islam Lengkap* (Semarang: PT. Karya Toha Putra, n.d.).

Prophets said. This means: Sultan (government) becomes a guardian for which there is no guardian."<sup>14</sup> A judge guardian is a person appointed by the government to act as a guardian in a marriage. In Article 77, it is explained that the authority can be handed over to the judge, for in Thailand, as the Head of State is the King, it is the King who hands over power to the MAI board, acting as a guardian judge.<sup>15</sup> While the *wali muhakkam* is a person appointed by both prospective spouses to act as guardians, this condition can occur if the marriage is supposed to be guarded by a guardian judge, but the territory does not have a guardian, so the marriage is taken over by the *wali muhakkam*. The method is that the two prospective husbands and wives invite a person who understands religion to be the guardian in their marriage.

a. Two witnesses

The witness testified that the marriage was true to the wishes of both parties and testified to the *ijab* and *qabul* performed. Information related to this witness is contained in Article 87, which includes:<sup>16</sup>

- 1) Male;
- 2) Islam;
- 3) A minimum of two men;
- 4) *Aqil* and *baligh*
- 5) Independence;
  - 1) Fair; obey or do all the commandments of Allah SWT and renounce all things that are forbidden;
  - 2) Listen and understand the words as spoken when performing the marriage contract, not forgetfulness.
  - 3) The witness is required to be present in person at the time of the validity of the marriage contract, or he sees the bride and groom;
  - 4) It is not obligatory for him to be a guardian.

b. *Ijab* dan *Qabul*

*Ijab* sentence is a statement from the guardian when marrying by saying, "I marry you" or "I marry you to my daughter." *Qabul* sentence is the groom's statement when he accepts marriage by saying, "I accept his marriage" or "I accept your daughter's marriage." There are several conditions of *ijab* and *qabul* that must be obeyed. These conditions are:<sup>17</sup>

- 1) It should be with sentence used specifically for the purpose of marriage;
- 2) Not to be confused with foreign words between *ijab* and *qabul*;
- 3) There is no pause between *ijab* and *qabul*;
- 4) Simultaneously between *ijab* and *qabul*;
- 5) No limitation of marital period;
- 6) Not related to a thing.

According to the 1997 constitution, there are applicable rules relating to marriage and marriage legalization records in the MAIP of the King of Thailand, in which the Thai king authorizes the Patani Regional Islamic Religious Council to issue and register marriages and divorces according to Islamic laws. Because of the authority given in

<sup>14</sup> Azizi Ismail and Mohd. Asri Hasyim, *Al-Fiqh Al-Manhaji, Kitab Fiqih Mazha Syafi'i* (Kuala Lumpur: Pustaka Salam SDN. BHD, 2022).

<sup>15</sup> *Pedoman Hukum Islam Tentang Keluarga Dan Warisan*.

<sup>16</sup> *Pedoman Hukum Islam Tentang Keluarga Dan Warisan*.

<sup>17</sup> Kor Agama Angkatan Tentera Kuala Lumpur, *Pengetahuan Agama Islam*, 5th ed. (Kuala Lumpur: Maziza, 1993).

accordance with the article above, MAIP sets rules as a condition for marriage validity and records the legalization or marriage certificate, including: <sup>18</sup>

- 1) The bride and groom apply for a marriage license to the imam of the mosque in each village; the request is either oral or written.
- 2) The imam of the mosque in their respective villages issues a letter of guarantee or permission to perform marriage to the bride and groom.
- 3) The imam of the mosque, as the head of the marriage, as well as recording the marriage certificate if there is a guardian of the prospective wife, is the *Wali Nasab*.
- 4) The validity of marriage registration if the marriage is a marriage that meets the pillars and conditions set by MAIP
- 5) To record marriages, the bride and groom must have:
  - a) Thai State Recognition Card (if both brides and grooms are Thai citizens).
  - b) The bride and groom must have a certificate of premarital training.
  - c) The bride and groom are 17 years old.
  - d) A letter of guarantee or permission to perform marriage issued by the imam of the respective village mosque.
  - e) For the bride and groom, if there is an age below 17 years, they must meet the requirements or rules issued by the Islamic Religious Council of Thailand in 2018 and the regulations stipulated in MAIP.

Those who have the right to register a marriage certificate are the Imam of the Mosque, his representative, or *Penghulu*, who is appointed by MAIP as the executor of the marriage ceremony.

1) In the legalization of the marriage or marriage certificate, it must be signed by those mentioned in No. 6 (as the registrar and executor of the marriage) and signed by the husband, wife, guardian, and two witnesses.

Based on the above discussion, the application of marriage legalized by MAIP is if the marriage held meets the pillars and requirements according to Islamic law and regulations that have been set by the Patani Regional Islamic Religious Council.

### **Application of Underage Marriage in MAIP**

Discussing the Application of Underage Marriage The researcher conducted an interview with an employee who served as a marriage administrator. In his opinion, the Islamic law does not clearly stipulate the age of marriage, but the problem of marriage is quite clear in the pillars and conditions of marriage. It is said that valid marriage is a marriage that meets the pillars and conditions, as well as underage marriage. It's just that to avoid problems in the household and maintain comfort after marriage, it must be limited to the age of marriage, so that teenagers who have not reached the age limit that has been set, it is necessary to consider before marriage as stated in the regulations on underage marriage issued at the Islamic Religious Council of Thailand in 2018 A.D. and regulations set at the Patani Regional Islamic Religious Council.<sup>19</sup>

In accordance with the rules that have been set, the minimum age allowed to marry is that both prospective brides must be 17 years old or older. So if there is a case of underage marriage, it must meet the following conditions:<sup>20</sup>

<sup>18</sup> Interview Wan Ibrahim bin Wan Ahmad, Employees of the Islamic Religious Council Patani, February 23, 2021.

<sup>19</sup> Interview Abd. Rahman bin H. Muhammad, Employees of the Islamic Religious Council Patani, Penduduk, D. Maikaen W. Patani, Februari 23, 2021.

<sup>20</sup> Interview Abd. Rahman bin H. Muhammad, Februari 23, 2021.



- a. Marriage under the age of 17, must comply with the rules of underage marriage set in MAIP.
- b. The bride and wife are not under force.
- c. In performing marriage under the age of 17 years. The bride and groom must obtain permission from their parents or guardians.
- d. Before performing the marriage, the proponent or party to the marriage considers the beneficial benefits of the marriage according to Islamic law.
- e. The bride and groom must comply with the marriage rules set in MAIP.

As per the regulation issued by the Islamic Religious Council of Thailand in 2561 B.C./2018 A.D., marriage under the age of 17 years is stipulated by the following rules:

- a. Article 6 Employees are allowed to register a marriage certificate for their spouse. The record must comply with legal requirements.
- b. Article 7: If necessary, the employee may marry a spouse under the age of 17 by not issuing a probate and considering the rights of the spouse according to Islamic law.
- c. Article 8: In the case of marrying a person under the age of 17, the couple must have a written document. The permission of the court or judge or the consent letter of the parents must be recorded at the Provincial Islamic Religious Council or Police Station located in the marital area first.
- d. Article 9: The Islamic Religious Council shall appoint a committee of three employees, one of whom has religious knowledge, to consider cases of underage marriage according to Islamic law.
- e. Article 10: To consider marriage according to Islamic law, it is authorized by the committee:
  - 10.1 The committee examines and considers cases of marriages under the age of 17 according to Islamic law and permits marriages if they benefit the bride and groom.
  - 10.2 The committee of women examines and considers applications for women's cases.

From some of the explanations above, it can be concluded that underage marriage can still be carried out as long as it still meets the pillars and requirements of Islamic law while meeting the rules issued by the Islamic Religious Council of Thailand in 2018 AD, even though this rule applies is not directly authorized by the MAIT and MAIP laws.

### Cases of Application of Underage Marriage in MAIP

Based on data obtained by researchers from the Department of Marriage Management at MAIP in 2018 – 2019 AD, there were 12 cases of underage marriage.

**Table 3. Cases and Names of Underage Marriage**

Year	Cases	Names
In 2018 AD	7 cases	Ahmad Shukri bin Zakariya, 29 years old, and Nurma bint Abdullah, 16 years. Zulkifli bin Zaman, 23 years, married Narisah bint Ali, 15 years old; Erfan bin Daud, 14 years, married Samirah bint Abd. Muttalib, 14 years old; and Anwar bin Ghazali, 17 years with Amani bint Cekpa, aged 15 years old, and Shafwan bin Abdullah 18 years with "Aisha bint Muhammad, 15 years old; Shafran bin Nashruddin, 17 years. with Amani bint Ahmad, 16 years old; Zulkifli ibn Shari, 21 years; and "Amira bint Ahmad, 16 years old.

---

In 2019 5 cases Shabri bin Qari, 22 years with Nadiya bint Cheque Umar, 16 AD, years old, and Marwan bin Ibrahim, 17 years old. with Khadija bint Ali, 15 years, and Sufyan bin Ramli, 17 years old. with Nur'aini bint Mawi, 16 years, and Abdullah bin Thaha, 16 years old. with Shamsiah bint Aaron, 15 years old.<sup>21</sup>

---

From these data, it is clear that underage marriages are still often carried out in MAIP Patani, Southern Thailand.

### **Applicable Factors for the Application of Underage Marriage in MAIP**

Promiscuity, which often leads to adultery, is one of the greatest moral destroyers in the long history of human civilization, especially for teenagers who are just beginning to know the opposite sex. The history of the civilization of the Sodomites and Gomorrahs, for example, although they inhabited fertile areas, ended in destruction due to free sex, which was clearly deviant. In the Quran, it is also explained in Sura al – Isra verse 32: "And do not draw near to adultery; adultery is indeed a heinous deed and a bad way." The deviation or incident of *zhalim* that has appeared since the time of *Jahiliyah* again exists today, even though times have changed. Especially promiscuity that encourages young people to commit adultery so that they get pregnant out of wedlock so that it is often one of the factors in marrying at a young age even though it is not the only factor. The results of a researcher interview with an *Ustazd* and at the same time serving as a member of the power of attorney / Member of the Islamic Religious Council of Patani Region, said that underage marriage, although not so much applies but continues to occur across generations and the main factors are promiscuity, family factors, low economic factors and so on. From these factors, two parents or guardians decide to marry their underage children.<sup>22</sup>

### **Islamic Legal Views nn The Application of Underage Marriage Applied By The Patani Islamic Religious Council (MAIP)**

In general, the principles of applying Islamic law include five important objectives: protecting the soul, religion, property, offspring, and reason. Among the five, one of them maintains a lineage (*hifdul al – nasl*). Therefore, Shaykh Ibrahim says in his book *al – Bajuri* that in order to maintain his lineage, he must have conjugal relations, which religiously must be through marriage. Conversely, if religion does not require marriage, then geneology (the *Nasab* path) is increasingly blurred and will be destructive.<sup>23</sup>

In fact, in classical *fiqh* there is no prohibition against underage marriage. This opinion is supported by 4 schools. Even *al – Munzhir's* response allowed underage marriage by *ijmak* if it was *kuf (sekufu)*. In this regard, there are actually many arguments that support marriage at an easy age.

One of them is the evidence about the Prophet marrying Sayyidah Aisyah while Sayyidah Aisyah was still 6 years old.<sup>24</sup>

*"From Aisha (r.a.), that the Prophet Muhammad (PBUH) had married "Aisha (r) while "Aisha was 6 years old and married her to him when "Aisha was 9 years old,*

---

<sup>21</sup> Documentation of the Patani Region Islamic Religious Council Office, Tahun 2018 – 2019 M

<sup>22</sup> Interview Ustaz H. Ismail bin H. Husin, Employees of the Islamic Religious Council Patani, Februari 10, 2021.

<sup>23</sup> Ibrahim, *Al Bajuri* (Semarang: Toha Putra, 2002).

<sup>24</sup> Wahbah Al – Zuhaili, *Al- Fiqh Al- Islam Wa Adillatuh* (Damaskus: Dar al Fikr al Muashir, 2006).



and "Aisha lived with the Prophet (PBUH) for 9 years." (HR Bukhari, hadith no. 4738).<sup>25</sup>

The hadith above explains about the marriage of the Prophet Muhammad SAW with Aisha (r.a) when she was 6 years old and only interfered with Sayyidah Aisyah when she was 9 years old. In his book *al-Uum*, it is explained that the age of puberty of a person as narrated by Ibn Umar and he said, "I submitted myself to the Prophet (peace be upon him) on the occasion of uhud and at that time I was 14 years old, but the Prophet forbade me (to join the war). The hadith above explains that the Prophet Muhammad SAW married Aisha (r.a.) when she was 6 years old and only interfered with Sayyidah Aisyah when she was 9 years old. In his book *al-um*, it is explained that the age of puberty of a person is narrated by Ibn Umar, who said, "I submitted myself to the Prophet (peace be upon him) on the occasion of uhud, and at that time I was 14 years old, but the Prophet forbade me (to join the war).<sup>26</sup>

Furthermore, the arguments that were used to order him to marry a woman included QS. An-Nisa Ayat 6:

*"And test the orphans until they are old enough to marry. Then if in your opinion they have been (rusyd) intelligent (good at maintaining treasures), then hand over to them their treasures. And do not eat the orphans' possessions more than the limits of propriety and (do not) rusy (spend) them before they grow up. Whoever (among the keepers) is able, then let him refrain (from eating the orphan's property) and whoever is poor, then may he eat the treasure according to what is appropriate. Then when you give up property to them, then you should hold witnesses (of the surrender) for them. And God is sufficient as Overseer (of the testimony)."*

In the book of tafsir *al-Misbah*, the understanding of the word *rusyd* for humans is the perfection of reason and soul because both become benchmarks for humans to be able to act and behave as precisely as possible. Adulthood (*rusydan*) as interpreted by *Al-Maraghi*, is when one understands well how to spend wealth and use it. While what is meant by *balighul al-Nikah* is if the age ready for marriage. This is the sense that *al-Maraghi* interprets that the immature person should not be burdened with certain problems.

Scholars of the School agree that menstruation and pregnancy are evidence of puberty for a woman; pregnancy occurs due to fertilisation of the ovum by sperm, while the position of menstruation is the same as sperm for men. Imam Hambali and Shafi'I stated that the age of puberty for boys and girls is 15 years, and Imam Maliki set it at 17 years. Meanwhile, Imam Hambali sets the age of puberty for boys at 18 years and for girls at 17 years. Imam Hanafi's view in terms of puberty age is the maximum limit; even the minimum age is 12 years for boys and 9 years for girls because at that age boys will dream and sperm will come out, secrete semen outside the dream, and impregnate, while girls can menstruate and get pregnant.<sup>27</sup>

Based on the description above that a person's maturity generally begins if puberty (dreams for men and menstruation for women) and *rusydan*, but this cannot be used as a benchmark, *rusydan* and age are sometimes not the same and difficult to determine, someone has a dream sometimes not necessarily *rusydan* for his actions. This

<sup>25</sup> See, Ibnu Qayyim Al-Jauziyah, *Zaadul Ma'ad, Juz 1* (Yogyakarta: Pustaka Azzam, 2000).

<sup>26</sup> Imam Syafi'i, *Ringkasan Kitab Al-Umm*, ed. Imron Rosadi, Amiruddin, and Imam Awaluddin (Jakarta, 2009).

<sup>27</sup> Muh. Jawa Mughniyah, *Fiqh Lima Mazhab* (Jakarta: Lentera, 2003).

is evident in everyday actions, because basically maturity cannot be determined by age and there are also signs.<sup>28</sup>

Regarding the minimum age of marriage, there is also no agreement on the Fuqaha. Someone who has reached puberty does not necessarily show maturity and is ready to be married. Some fuqaha argue that a person's maturity is not a measure of whether or not a person can marry, even Imam Malik, Imam Hanafi, Imam Shafi'i, and Imam Hambali they argue that a father can marry his young child who is still a virgin (not yet puberty), as well as his grandfather if his father is not around. However, Shubrumah and Ibn Hazm argue that a father is not allowed to marry his young daughter unless the child is an adult and has permission from her.<sup>29</sup>

In Islam it is known as *Saddu al-Zari'ah*. *Saddu al-Zari'ah* can be defined as the attempt of the *mujtahids* to impose a ban on a case law that is essentially *mubah*.<sup>30</sup> The prohibition aims to avoid other actions that are more detrimental in the future. This method is more preventive. If Sharia has the aim of maintaining benefit, of course, it also aims to prevent and eliminate damages. Therefore, preventing damage is needed to uphold benefits. Likewise, there are several cases of underage marriages carried out in MAIP Patani, South Thailand. Although underage marriage can be carried out from the perspective of sharia, if we review the impact that will be caused, which is likely to bring greater harm, then underage marriage is still not recommended.

## CONCLUSION

The application of marriage in the Islamic Religious Council of Patani Region of Southern Thailand is said to be valid if the marriage is carried out in accordance with Islamic law, while marriage under the age of 17 years is excluded if there are things necessary, then the marriage must meet the harmony, terms, and rules of underage marriage issued by MAIT in 2018 A.D. and the rules stipulated in MAIP. In fact, the marriage took place with no valid legality letter issued by state law to the bride and groom, even legally valid MAIT and MAIP. In 2018–2019 A.D., there were 12 cases that applied the application of underage marriage due to promiscuity factors, economic factors, and family factors. Underage marriages that apply in MAIP are through consideration of the family and the bride and groom according to Islamic law contained in *maqashid sharia* and *qawa'id fiqhiyyah*, most marriages are carried out in accordance with established rules. The Islamic legal opinion on the application of underage marriage stipulated by the Patani Islamic Religious Council (MAIP) is based on classical *fiqh*, which in Islam does not clearly stipulate the age limit for marriage. It is clear that the application of underage marriage that applies and is applied in MAIP does not violate the rules of Islamic law; the marriage is valid and can be applied by fulfilling the rules of Islamic law regarding marriage that have been established and explained in the books of *fiqh*. However, if the marriage is predicted to bring greater *mudharat*, then the marriage is not recommended

## REFERENCES

- Abd. Rahman bin H. Muhammad, *Interview*, Pegawai Majelis Agama Islam Wilayah Patani, Penduduk, D. Maikaen W. Patani,  
Arifin, Zarul. "Kehujahan Maqasid Al-Syari'ah Dalam Filsafat Hukum Islam." *Al-'Adalah: Jurnal*

<sup>28</sup> Dedi Supriyadi and Mustafa, *Perbandingan Hukum Perkawinan Di Indonesia* (Bandung: al-Fikris, 2009).

<sup>29</sup> Supriyadi and Mustafa.

<sup>30</sup> Zarul Arifin, "Kehujahan Maqasid Al-Syari'ah Dalam Filsafat Hukum Islam," *Al-'Adalah: Jurnal Syariah Dan Hukum Islam* 5, no. 2 (2020): 258–74.

- Syariah Dan Hukum Islam* 5, no. 2 (2020): 258 – 74.
- Ibrahim. *Al Bajuri*. Semarang: Toha Putra, 2002.
- Islam, Ditjen Bimas. *Etika Berkeluarga, Bermasyarakat, Dan Berpolitik*. Jakarta: Pustaka Bima Islam, 2012.
- Ismail, Azizi, and Mohd. Asri Hasyim. *Al- Fiqh Al- Manhaji, Kitab Fiqih Mazha Syafi'i*. Kuala Lumpur: Pustaka Salam SDN. BHD, 2022.
- Jauziyah, Ibnu Qayyim Al – . *Zaadul Ma'ad, Juz 1*. Yogyakarta: Pustaka Azzam, 2000.
- Justice), Tim Departemen Keadilan ( Ministry of. "Dasar Hukum Islam Berkenaan Dengan Keluarga Dan Warisan NegaraThailand." Patani Narathiwat, Yala dan Satun, n.d.
- Kor Agama Angkatan Tentera Kuala Lumpur. *Pengetahuan Agama Islam*. 5th ed. Kuala Lumpur: Maziza, 1993.
- Mughniyah, Muh. Jawa. *Fiqh Lima Mazhab*. Jakarta: Lentera, 2003.
- Pedoman Hukum Islam Tentang Kelaurga Dan Warisan*. Bangkok: Mahkamah Pengadilan, 2011.
- Rifa'i, H. Moh. *Fiqih Islam Lengkap*. Semarang: PT. Karya Toha Putra, n.d.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: UI Press, 1986.
- Supriyadi, Dedi, and Mustafa. *Perbandingan Hukum Perkawian Di Indonesia*. Bandung: al – Fikris, 2009.
- Sustiono, N A, M Marzuki, and S Sidik. "Judge Considerations in Accepting Underage Marriage Applications in Luwuk Religious Court." ... *Pendidikan Dan Studi Islam* 8, no. 1 (2022): 325 – 36. <https://doi.org/10.31943/jurnal>.
- Syafi'i, Imam. *Ringkasan Kitab Al- Umm*. Edited by Imron Rosadi, Amiruddin, and Imam Awaluddin. Jakarta, 2009.
- Syeikh Daud bin abdullah al – Fathani. *Idhahu Al- Bab Limurid Al- Nikah Bi- Shawab*. Fathani: Halabi, n.d.
- Thailand, Majelis Agama Islam. "Peraturan – Peraturan Pusat Majelis Agama Islam Thailand, Perkawinan Di Bawaah Umur 17 Th., Tahun 2561 B./2018 M.," n.d.
- "Undang Undang Dasar Badan Pengurus Agama Islam Di Negara Thailand," n.d.
- Waluyo, Bambang. *Prosedur Penelitian Suatu Pendekatan Prektek*. Jakarta: Rineka Cipta, 2002.
- Wan Sulaiman bin Wan Ismail Dkk, *Interview*, Mosque Administration in the Patani region of southern Thailand.
- Wan Ibrahim bin Wan Ahmad, *Interview*, Employee of the Patani Regional Islamic Religious Council
- Ustaz H. Ismail bin H. Husin, *Interview*, Employee of the Patani Regional Islamic Religious Council
- Zuhaili, Wahbah Al – . *Al- Fiqh Al- Islam Wa Adillatuh*. Damaskus: Dar al Fikr al Muashir, 2006.