

Marriage Dispensation in Modern Muslim Societies: A Study of Family Law in Indonesia and Morocco

Devie Rachmat Ali Hasan Rifaie

Lancang Kuning University

Email : devie@unilak.ac.id

Akbarizan

Magister of State Islamic University Sultan Syarif Kasim Riau

akbarizan@uin-suska.ac.id

ARTICLE INFO :

Keywords :

Family Law;
Marital Dispensation;
Underage Marriage;
Indonesia;
Morocco;

Article History :

Received :2024-05-01

Revised : 2024-07-07

Accepted :2024-09-02

Online :2024-09-22

ABSTRACT

Islamic law in Indonesia and Morocco is based on different schools of thought, with Indonesia predominantly following the Shafi'i School, whereas Morocco adheres to the Maliki School. The differences in the schools of thought adopted by these two countries have implications for age limits for marriage, as stipulated in their respective family laws. However, the disparity is not significant, with only approximately one or two years of difference. Morocco, in determining the minimum age for marriage, closely aligns with Indonesia by referencing the Shafi'i and Hanbali schools. Morocco also requires permission from a guardian if both prospective spouses are under 18 years of age. This is somewhat similar to the practice in Indonesia, where marriages involving individuals below the legal age require a marriage dispensation granted by the court, obtained upon the request of the parents/guardians of underage individuals, supported by compelling reasons and sufficient evidence.

INTRODUCTION

Marriage is one of the most fundamental social institutions of human life. In Islam, marriage is regarded as one of the highest acts of worship, binding two individuals in a sacred bond expected to last a lifetime. Marriage is one of the issues in Islam that has long been correlated or related to the state and governance. Historically, Islamic countries have regulated marriage as part of their population policies, especially as Islam has spread to other regions and interacted with legal cultures inherited from the Greeks and Romans. (Fatma, 2019)

Marriage regulation is part of the aspiration to uphold the law, which aims to create a peaceful, harmonious, and just way of life. (Alam, 2011) The nobility of the ideals of law is manifested in an understanding that affirms marriage as a natural disposition of human beings. According to Madjid (Madjid, 1992) denial of regulations on marriage is tantamount to denying the laws of the universe created by God, the Almighty Creator. However, in the complex reality of society, there are situations in which prospective couples cannot meet the marriage requirements stipulated by law, particularly Islamic law. One of the issues that often arises is the minimum age required for marriage.

Marriage law holds a very important position in Islam because it regulates the procedures of family life, which is the core of society, and is in accordance with the provisions contained in the Qur'an and the Sunnah. (Strong, 2010) In marriage law, there is a section that regulates the minimum age for marriage. Restriction on the age of marriage is an important aspect of Islamic family law. This is related to the fundamental principles of family law that govern marriage, divorce, and family rights. The age limit for marriage is very important, as psychological maturity is required for marriage. The physical and mental maturity of the mother is crucial because it affects the child's development. Thus, the age of the children in marriage becomes a critical point to consider. Therefore, marriage maturity should be prepared before marrying.



This is an open access article under the [CC BY-NC-SA](#) license.

Corresponding Author : Devie Rachmat

The role of the state is essential in formulating policies concerning age restrictions for marriage as this is closely related to the well-being and interests of its citizens. The well-being fostered by citizens is also beneficial to the state as a whole. The welfare of a society is often reflected in family life, and this includes the issue of the appropriate minimum age for marriage. The government has the right to set limitations, as without them, negative situations could arise, and it would be difficult for its citizens to regulate marriage laws. Because the restriction of marriage age is very important for the common good, every country has its own minimum marriageable age. This is not only practiced in Western countries, but also in Eastern Muslim countries. Marriage dispensation is an exception to the usual marriage regulations, granting special permission to couples that do not meet the conventional requirements of Islamic marriage. However, the practices and criteria for granting marriage dispensation can vary among Muslim countries, depending on prevailing social, cultural, and legal factors.

The phenomenon that occurred in the 20th century during the development and evolution of family law in various Muslim countries was the renewal and reform of family law.. (Nasution, 2003) In an effort to realize marriage in all its aspects and consequences, this renewal covers issues such as the legal age of marriage, marriage registration, the consent of prospective spouses, divorce through the courts, and other legal actions as part of the attempt to establish marriage with all its facets and outcomes. These new elements in family law represent a shift from the application of traditional/conventional (classical) law to modern law, as reflected in the legislation of Muslim countries. Each Muslim country has its own unique method of reforming family law regulations: some use the traditional concept of making the principles of the madhhab imams the general rule, while others apply contemporary/modern concepts, such as those implemented through codification, compilation, legislation, or judicial decisions, a trend that began in Turkey in 1917. The Islamic world, however, cannot avoid legal changes due to sociological factors, namely, the need for change within Muslim countries. Meanwhile, the effectiveness of legal bureaucracy in the administration of the nation-state has become one of the main reasons, as seen from the perspective of governance by creating Islamic procedural law; Muslim countries are effectively compelled to change or revise substantive legal regulations and supplement current state administrative practices. (Wahib, 2014)

This research focuses on comparing the practices of granting marriage dispensations between Indonesia and Morocco. The choice to compare these two countries is based on their unique and complex legal and cultural frameworks. With its diverse ethnicities, religions, and cultures, Indonesia offers a rich illustration of the dynamics involved in granting marriage dispensations. However, Morocco, a country with a strong legacy of Islamic law, demonstrates how religious values can influence the dispensation process. The author is interested in exploring this issue further through the study titled “Practices and Criteria for Granting Marriage Dispensations in Modern Muslim Societies: A Study of Family Law in Indonesia and Morocco.” The main research question focuses on how the granting of marriage dispensations in marriages compares Indonesia and Morocco.

LITERATURE REVIEW

A. Definition of Marriage

There are several differing opinions on the definition of marriage. However, these differences are not meant to show any real conflicts between various viewpoints. According to Syafi'iyah scholars, marriage is a contract made using the terms *nikah* or *zawj*, which implies the meaning of *wati* (intimate relations). In other words, through marriage, a person is entitled to companionship or derives pleasure from their partner. (Aminudin, 1999) A contract is not valid without using specific phrases such as in the contract of *khitbah*, *salam*, or marriage. In its true sense, marriage is a contract, while figuratively, it refers to intercourse. (Nawawi, 2002) Meanwhile, the definition of marriage according to terminology is the act of entering into a contract or agreement to bind oneself between a man and a woman in order to legitimize a sexual relationship between them, as the foundation of mutual affection, willingness, or consent to a family life encompassed by love and tranquility, in a way that is approved by Allah SWT. As explained by Al-din al-Malibari, the definition of marriage according to terminology is a contract that allows intimate relations with the terms *nikah* or *tazwij*.

Marriage, also known as wedlock, is a universal law of Allah that applies to all of his creations—humans, animals, and plants alike. It is the way Allah SWT has chosen as a means for His creations to reproduce

and preserve their existence. (Sahrani, 2013) Linguistically, marriage means mixing; it can also mean gathering and uniting. In religious terminology, marriage refers to a contract between a man and a woman's guardian through which sexual relations become lawful. According to Law Number 1 of 1974 Article 1 concerning Marriage, marriage is a physical and spiritual bond between a man and a woman with the purpose of forming a happy and everlasting family (household) based on faith in the Almighty God. Marriage, according to Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, is a marriage contract, namely a very strong agreement or *miisâqan ghalîẓan* to obey Allah's commands, and its implementation is considered an act of worship. In Islamic Law, marriage is viewed as a contract or agreement to permit sexual relations between a man and a woman for the purpose of achieving family happiness, enveloped in tranquility and affection, in a manner approved by Allah.

The purpose of marriage is to create a household life that is *sakinah* (peaceful), *mawaddah* (full of love), or *rahmah* (filled with mercy). Thus, marriage can be understood in both a narrow and a broad sense. In a narrow sense, marriage legitimizes the sexual relations between a man and a woman. In a broader sense, marriage is a contract or bond between a man and woman to form a happy family or household characterized by *sakinah*, *mawaddah*, and *rahmah*.

B. Principles of Marriage

In general, the Marriage Law contains several principles or foundations regarding marriage. These are set out in the Marriage Law as follows: (Usman, 2006)

1. Principle of Permanent Marriage

Forming a lasting and happy family is the goal of marriage. By upholding permanence, a happy family can be created within a household.

2. Principle of Marriage Based on Each Religion

Marriage is considered valid if it is carried out in accordance with the religious laws or beliefs of the parties involved. Both prospective brides and grooms, whether male or female, ideally share the same faith unless their religion allows them otherwise.

3. Principle of Registered Marriage

Marriage must be carried out according to prevailing legal regulations and must be registered according to statutory provisions so that the marriage will have legal force.

4. Principle of Monogamous Marriage

Monogamous marriage means that, at the same time, a man may have only one wife, and a woman may have only one husband. In other words, married couples are not allowed to marry others while still being bound by their current marriages.

5. Principle of Maturity

Physical and mental maturity is highly recommended for both male and female prospective spouses, as it will impact their married life and help them achieve the purpose of marriage. Maturity is needed not only to resolve household issues but also to make appropriate decisions according to the situation.

6. Principle of Prohibiting Polyandry

Article 3, paragraph (1) prohibits the practice of polyandry, stating that a woman may only have one husband at the same time.

7. Principle of Voluntariness

Mutual consent from both parties is essential to marriage. As marriage is one of the basic human rights, it requires the willingness of both parties to love and complement each other without any element of coercion from any side.

8. Principle of Balanced Rights and Status of Husband and Wife

In marriage, the rights and obligations of the husband and wife are proportionally balanced. The husband acts as the head of the household, while the wife manages it. Therefore, decisions should be made jointly.

9. Principle of Restricting Divorce



For those who wish to divorce after marriage, both parties must have strong reasons for doing so and must be able to explain them before the court. Divorce requests will not be granted immediately as there are further steps before divorce. The judge provides time for reconciliation, and if this fails, the process proceeds to the next hearing.

C. Age Limit for Marriage

Regarding marriage law, Wahbah Zuhaili states that the legal status of marriage, according to scholars of Islamic jurisprudence, greatly depends on an individual's situation and circumstances. (Hosen, 1971) Marriage cannot be performed if several existing requirements are not satisfied. For a marriage to be valid according to Islamic law, it must fulfill certain pillars and conditions. Among these: first, the general condition is that the marriage must not violate prohibitions outlined in the provisions of the Qur'an. Second, the specific condition is the presence of a prospective groom and bride, both of which are absolute requirements. These prospective spouses must be Muslim, of sound mind, have reached maturity (aqil baligh), and be physically and mentally healthy. The ideal age for marriage is 25 years for men and 20 years for women, or at the very least 18 years old, although this opinion is not definitively stated in the Qur'an or Sunnah. However, this must be considered in light of the situation as well as the physical and psychological conditions of prospective spouses. The intent of "baligh" and "of sound mind" is that they are mature and capable of being held accountable for their actions, especially regarding the consequences of marriage, with the husband as head of the family and the wife as the mother of the household. Therefore, they must not be under guardianship (curateles). (Romulyo, 1999)

The harmony of a household between husband and wife can be influenced by several factors besides religion, namely, maturity and economic factors. Although these two factors are not clearly explained in the Qur'an—such as what age is considered mature and ready for marriage or the specifics regarding economic status—the researcher in this issue focuses more on discussing the maturity factor in relation to the minimum age for marriage. In principle, Islam does not set a definite limit on what is considered an appropriate or ideal age for marriage. Likewise, scholars have not discussed the ideal age for marriage in detail. As long as the requirements and pillars of marriage are fulfilled, anyone may be married. This perspective is found in almost all schools of Islamic jurisprudence. (Ali, 2015) In the Qur'an, there is a verse which states, "And test the orphans until they reach the age of marriage. Then if you judge that they are mature (capable of managing their wealth)..." QS, An-Nisa [6]. In Tafsir Ayat al-Ahkam (al-Shabuny, 1999), that a child is considered to have reached puberty when a boy has experienced a dream, as scholars have agreed that if a child has a wet dream and thus experiences ritual impurity (emission of semen), then he has reached puberty, while the signs for a girl are when she becomes pregnant or has her period (Zuhaili, 1989). That is the definition of puberty. The threshold of puberty for a child is usually determined by age, but sometimes it is indicated by certain signs, such as experiencing a dream (wet dream) for boys and menstruation for girls, as explained in the book al-Fiqh 'Ala Madzahib al-Arba'ah. According to the Hanafi School, the sign of puberty for boys is a dream and the emission of semen, while menstruation is observed in girls. However, if neither sign appears, age is used as the indicator: 18 years for boys and 17 years for girls. According to Imam Malik, puberty is marked absolutely by the emission of semen, whether during a daydream or sleep, and this usually occurs at the age of 17 for both boys and girls. According to Imam Shafi'i, the threshold of puberty is 15 years for boys and 9 years for girls. Finally, according to the Hanbali School, for boys, it is indicated by a dream or the age of 15, while for girls, it is indicated by menstruation. (alJaziri, 2003) The scholars of the schools of thought do not agree on the minimum age for marriage, but they do agree that reaching puberty is one of the indicators of a person's maturity.

D. Marriage Law in Morocco

Morocco or Maghreb (al-Mamlakah al-Magribiyah), is an Islamic kingdom located in North Africa; its capital city is Rabat, with a total area of approximately 458,730 km² and a population of 34,721,000 (2006). To the east, it borders Algeria, to the southeast, Western Sahara, to the west, the Atlantic Ocean, and to the north, Gibraltar. Arabic is the official language and is enriched by several other languages, such as Berber (Caucasian), French, and Spanish (countries that once invaded). The majority of the population adhered to Islam (98.7%), Christianity (1.1%), and a small Jewish minority.



Private law based on Islamic Sharia is still highly upheld by the Muslim community in Morocco. The Islamic law applied follows the style and legal system of the Maliki school of thought. The legal system in Morocco is divided into two types: the Sharia Court and the Civil Court (general judiciary), canon law, and French Civil Law. In certain respects, the application of customary law can create conflict with Islamic law. This is recognized by Moroccan Islamic law experts who disapprove of the inclusion of French laws and local customs in Morocco's private law. The codification and enactment of private law in Morocco occurred after the country gained independence (1958). The application of family law in Morocco, which is based on Sharia, is significantly influenced by the family law used in Tunisia. The family law in Morocco was established on February 3, 2004, and is known as *mudawwanah al-ahwal al shakhsyah al jadidah fi al maghrib* or *Mudawwanah al-Usrah*. This law comprises 400 articles, which is 100 more than that enacted in 1957. In 2004, Morocco created history by enacting a Family Law that accommodated equality between men and women. This law was a revision of the Family Law, which had been in force for half a century. This had a significant impact on the change in the minimum age of marriage in Morocco. In the previous law, the minimum marriage age was set to 18 years for grooms and 15 years for brides. With the amendments in 2004, the minimum marriage age was set at 18 years for both men and women, as demanded by the principle of equality between the rights of men and women in the country.

Marriage laws in Morocco are not much different from those of other Islamic countries, including Indonesia. Regulations related to marriage are also almost the same as in Indonesia, possibly because the Compilation of Islamic Law (KHI) in Indonesia was modeled after the *Mudawwanat al-Usrah* of Morocco, or perhaps because both the Moroccan and Indonesian communities adhere to *Ahlussunnah wa Al-Jamaah* (ASWAJA); in Morocco, the Maliki school serves as the reference, and in Indonesia, the Shafi'i school, both of which fall under the *Ahlussunnah wa Al-Jamaah* framework, as do the Hanafi and Hanbali schools. Therefore, in terms of Islamic marriage, there are no significant differences between Moroccans and Indonesian society. However, in Morocco, *kawin urfi* (informal marriages known as *kawin siri* in Indonesia) is not permitted. Apart from the fact that *kawin urfi* is considered disgraceful, this type of marriage is explicitly prohibited under the Moroccan marriage law.

METHOD

According to this method, the type of research in this study is normative juridical research, prioritizing secondary data in the form of primary legal materials sourced from legislation related to the topic under discussion as well as using literature materials relevant to this study. (Marzuki, 2013)

The approach used is the statutory approach, which involves analyzing the laws and regulations applicable in Indonesian Family Law and Moroccan Family Law, as well as the conceptual approach. The purpose of this study is to identify and analyze the practice of marriage dispensation applications and to compare them between Indonesian Family Law and Moroccan Family Law.

RESULTS AND DISCUSSION

1. Marriage Dispensation Based on Family Law in Indonesia

According to the Indonesian Dictionary, marriage dispensation is permission for exemption from an obligation or prohibition. In other words, dispensation is a relaxation of something that is not permitted to be done or carried out. Marriage dispensation refers to a leniency regarding certain limitations (such as age restrictions) in forming a union between a man and a woman as husband and wife, with the goal of establishing a happy and everlasting family (household) based on the belief in the Almighty God. In principle, a marriage dispensation is a request for leniency so that a boy under the age of 19 or a girl under the age of 16 can be married, which may apply to either one or both of them according to Law No. 1 of 1974 on Marriage. Meanwhile, in Islam, there are no specific age limits for marriage; rather, Islam indicates only certain signs. "Baligh" refers to children who have reached a certain age at which they are clearly able to handle the matters or problems they face. Their minds can discern or clarify what is good and bad. The sign of maturity (baligh) in girls is menstruation, while in boys, it is when they have ejaculated.

Marriage dispensation is a leniency or exemption granted by the Religious Court to prospective brides and grooms who are not old enough to marry, namely, boys who have not reached the age of 19 and girls who

have not reached the age of 16. From the perspective of the Law, Law Number 1 of 1974 concerning marriage is a regulation that governs the laws on marriage in Indonesia, including the objectives of marriage, the requirements for marriage, and other matters relating to marriage. The following is an explanation of Law Number 1 of 1974 concerning marriage.

Article 6

1. Marital status must be based on the consent of both prospective spouses.
2. To get married, anyone who has not reached the age of 21 (twenty-one) must obtain permission from both parents.
3. In the event that one of the parents has passed away or is unable to express their wishes, the consent referred to in paragraph (2) of this article is sufficient if obtained from the surviving parent or from the parent who is able to express their wishes.
4. In the event that both parents have passed away or are unable to express their wishes, permission shall be obtained from a guardian, caregiver, or family member who is related by a direct bloodline in the ascending line, as long as they are still alive and able to express their wishes..
5. In the event of a disagreement between the individuals referred to in paragraphs (2), (3), and (4) of this article, or if one or more of them do not express an opinion, the court within the jurisdiction of the residence of the person intending to marry, upon the request of that person, may grant permission after first hearing the individuals mentioned in paragraphs (2), (3), and (4).
6. The provisions of paragraphs (1) through (5) of this article apply as long as the laws of each religion and belief of the individuals concerned do not stipulate otherwise.

After the enactment of Marriage Law No. 16/2019, which replaced Marriage Law No. 1/1974, this change resulted from the Constitutional Court of the Republic of Indonesia No. 22/PUU-XV/2017. Essentially, the Court partially granted a petition against the old Marriage Law No. 1/1974 and annulled the provision in Article 7 (1) of that law, which had set the minimum age for marriage at 16 years for women. The Constitutional Court argued that the age of 16 conflicts with the principle of equality for all Indonesian citizens as stated in the 1945 Constitution of the Republic of Indonesia. The Court also highlighted that the difference in marriage age creates inequality or discrimination. Therefore, the Constitutional Court agreed to set the minimum marriage age for women at 19 years old. As a result, the legal age for marriage for both women and men is now the same.(Maimunah, 2020) The amendment of the Marriage Law was prompted by the view of the Constitutional Court, which identified Indonesia as being in a state of emergency regarding underage marriage. According to UNICEF research data from 2016, Indonesia ranks seventh in the world for the highest number of child marriages and second in the ASEAN region after Cambodia.

Juridically, the regulations regarding the minimum age for marriage are stipulated in Article 7 paragraph 1, which states that marriage can only be conducted if both the man and woman have reached the age of 19 years. Furthermore, it is explained that if there is a violation of this regulation, the relevant parties—in this case, the parents (of the man or woman)—may submit a request for dispensation to the court by presenting supporting evidence showing that the reason for requesting such dispensation is urgent. The dispensation rule based on the previous explanation is permitted on the condition that there is a very urgent reason. However, the explanation of what constitutes an urgent reason is not explicitly stated in the following paragraph.

Several provisions stipulated in Law No. 1 of 1974 concerning marriage (State Gazette of the Republic of Indonesia Year 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019), and its amendments are as follows: Article 7 1) Marriage is only permitted if the man and woman have reached the age of 19 (nineteen years). 2) In the event of deviation from the age requirement as referred to in paragraph (1), the parents of the man and/or the parents of the woman may request dispensation from the court on very urgent grounds, accompanied by sufficient supporting evidence. 3) The granting of dispensation by the court as referred to in paragraph (2) must hear the views of both prospective brides and grooms who are to be married. 4)

The provisions regarding the status of one or both parents of the prospective bride or groom as referred to in Article 6 paragraphs (3) and (4) shall also apply to requests for dispensation, as referred to in paragraph (2), without prejudice to the provisions as referred to in Article 6 paragraph (6).

Meanwhile, in Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation, Article 2 stipulates that judges deciding on marriage dispensation requests should adhere to the following principles: a) the best interests of the child, b) the right to life and the child's growth and development, c) respect for the child's opinion, d) respect for human dignity and worth, e) non-discrimination, f) gender equality, g) equality before the law, h) justice, i) usefulness, and j) legal certainty. Then, Article 3 explains that the purpose of requesting a marriage dispensation is to increase the role of parents in efforts to prevent child marriage and to identify whether there is any coercion underlying the application for marriage dispensation.

The guidelines for adjudicating marriage dispensation applications are as follows:

- a. applies the principles referred to in Article 2.
- b. ensure the implementation of a judicial system that protects children's rights;
- c. increase parental responsibility in order to prevent child marriage;
- d. identify whether or not there is coercion behind the submission of a marriage dispensation application; and
- e. realize the standardization of the process of adjudicating marriage dispensation applications in court.
- f. The administrative requirements for submitting a marriage dispensation application based on Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Article 2 are:
- g. application letter;
- h. photocopy of both parents'/guardians' identity cards;
- i. photocopy of family card;
- j. photocopy of the child's identity card or child identification card and/or the child's birth certificate;
- k. photocopy of the identity card or identification card of the prospective husband/wife and/or the birth certificate of the prospective husband/wife; and
- l. photocopy of the child's latest educational diploma and/or a certificate of active enrollment from the child's school.

Marriage dispensation refers to permission or exemption granted by religious or legal authorities to perform a marriage in certain situations that may involve specific restrictions or requirements. Such a dispensation may be granted if there are valid and reasonable grounds to override the conditions or requirements that normally apply to marriage. Marriage dispensation can cover special circumstances such as marriage between close relatives, which is usually avoided, or exceptions to the minimum age for marriage in particular situations. It is important to consider all the aspects above and adhere to relevant ethical, religious, and legal principles when granting a marriage dispensation.

In analyzing marriage dispensations, it is essential to consider moral and ethical factors. Dispensations should not conflict with the moral principles of Islam that underlie marriage and human relationships. The granting of a marriage dispensation typically occurs in specific situations where there may be potential legal obstacles, and it is deemed necessary to prevent more serious problems. For instance, a dispensation may be granted in cases where a man and woman have a very close relationship so that permission is given to prevent adultery and/or pregnancy outside of marriage. Marriage dispensation involves various considerations from both religious and social perspectives, including: honor and social benefit, social context and policies, alignment with shari'a principles, protection of individual rights, consistency with religious values, and gender justice perspectives.

B. Marriage Dispensation in Morocco

Provisions related to family law in Morocco are referred to as Mudawwanah al-Ahwal al-Syakhshiyah (The Code of Personal Status 1958). (Mahmood, 1972) After the reforms on February 3, 2004, it was changed to Mudawwanah al-Ahwal al-Syakhshiyah al-Jiddah fi al-Maghrib or Mudawwanah al-Usrah. Before 2004, Mudawwanah underwent minor and less fundamental revisions, specifically in 1993. Some of the amendments to the provisions of the 1958 Mudawwanah still did not depart much from the Maliki school of fiqh, which is embraced, adhered to, and dominant in Morocco. Some of the aforementioned improvements included that a marriage could only take place if the woman unequivocally signed a government-issued form, the right of *ijbar wali* was abolished because it was often misused, an adult woman (aged 20) whose father had passed away could contract her own marriage without the involvement of another guardian, divorce and polygamy became increasingly difficult by requiring a judge's or court's permission, the rights of women divorced by their husbands became increasingly clear and explicit, and a mother could become the guardian of her child if she were to divorce her husband. (Buskens, 2003)

With the enactment of the 2004 Mudawwanah, several significant shifts and changes have been recorded in the field of family law. Some of the changes that were successfully implemented include:

- 1) Family is a shared responsibility between men and women. This rule revises the previous regulation which stated that men are the sole providers for the family;
- 2) Women do not need a guardian's permission to get married, so women are legally protected by law to choose their own prospective husband;
- 3) Batas usia minimum pernikahan bagi laki-laki dan perempuan adalah sama-sama 18 tahun merivisi aturan sebelumdi mana perempuan 15 tahun, sedangkan laki-laki 17 tahun;
- 4) Polygamy has very strict requirements, revising previous regulations that made polygamy easier.

The amendments to the Marriage Law enacted by Morocco in 2004 are as follows. First, upholding the dignity and status of women within the family, whereby both husband and wife share equal responsibility in maintaining the household. Second, women's rights to undertake legal actions according to their own will during marriage are protected by law. Third, the minimum age for marriage for both men and women is set as equal, namely at least 18 years old. However, an exemption to the minimum marriage age may be granted by a judge to prospective husbands and wives who are sixteen years old. Such court permission must be requested by both parents or guardians (Articles 19–22 of the Moroccan Family Law). Fourth, restrictions on polygamy. Fifth, women's right to file for divorce and the entitlements they must receive. Sixth, the separation of assets between husband and wife can be implemented based on mutual agreement. (Maksum, 2016)

This amendment to the Family Law accommodates gender equality, stating that there is no difference between men and women. This is particularly evident, as previously in the Mudawwanah al-Ahwal al-Syakhshiyah, the legal age for marriage was set at 18 years for men and 15 years for women. (AnNa'im, 2002) However, with the reforms in 2004, the minimum marriage age was set at 18 years for both male and female candidates, in line with demands for equality between the rights of men and women in the country. As stated in the Mudawwanah al-Usrah, there are no penalties for those who marry underage. According to the Maliki school of thought, the age of maturity is 17, which is different from the minimum marriage age of 18 years as stipulated in Morocco's 2004 Family Law, although the difference is not very significant. The minimum marriage age in Morocco was raised to 18 years with the aim of ending child marriage and forced marriage. However, in practice, there remains a loophole by which individuals can obtain marriage permits through the courts (marriage dispensation) for children under the age of 18. If a person under the legal age wishes to marry, it is allowed on the condition that there is permission from their parents or guardian and they request a dispensation from the court. The judge must issue a written permit if allowing the marriage of someone under 18 years old.

CONCLUSION

Islamic law in Indonesia and Morocco is based on different schools of thought, where Indonesia predominantly follows the Shafi'i school, while Morocco relies on the Maliki school. The difference in schools of thought used as the foundation in each country affects the differences in the legal minimum marriage age as stipulated by each country's Family Law. However, this difference is not very significant or wide—only about one or two years. In setting the minimum marriage age, Morocco is nearly the same as Indonesia, which also refers to the Shafi'i and Hanbali schools. Morocco also requires permission from a guardian if either of the prospective spouses is under 18 years old. This is quite similar to Indonesia's practice of granting marriage dispensation, which requires that boys and girls underage may only marry if there is a marriage dispensation from the court, granted upon the request of the parents or guardians of the underage boy or girl for urgent reasons accompanied by sufficient supporting evidence.

REFERENCES

- Alam, S. (2011). *Usia Perkawinan Dalam Perspektif Filsafat Hukum Dan Kontribusinya Bagi Pengembangan Hukum Perkawinan Indonesia. Disertasi*. Yogyakarta.
- Madjid, N. (1992). *Islam doktrin dan peradaban : sebuah telaah kritis tentang masalah keimanan, kemanusiaan, dan kemodernan*. Jakarta: Yayasan Wakaf Paramadani,.
- Strong, A. H. (2010). *Hukum Perkawinan Islam Di Indonesia*. Aceh: Penah.
- Aminudin, S. D. (1999). *Fiqh Munakahat I*. Bandung : CV Pustaka Setia.
- Nawawi. (2002). *Nihayah al-zayn*. Lebanon: Darul Kutub Al-Ilmiyah.
- Sahrani, T. d. (2013). *Fikih Munakahat*. Jakarta: Rajawali Pres.
- Nasution, A. M. (2003). *Hukum Keluarga Dunia Islam Modern,.* Jakarta: Ciputat Press.
- Wahib, A. B. (2014). Reformasi hukum keluarga di dunia Muslim, *. Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan*, 14(1).
- Fatma, Y. (2019, Desember). Batasan Usia Perkawinan Dalam Hukum Keluarga Islam (Perbandingan Antar Negara Muslim: Turki, Pakistan, Maroko dan Indonesia). *Jurnal Ilmiah Syari'ah*, 18(2), 1.
- Usman, R. (2006). *Aspek-Aspek Hukum Perorangan dan Kekeluargaan di Indonesia,.* Jakarta: Sinar Grafika.
- Marzuki, P. M. (2013). *Metode Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Maimunah. (2020, Desember). Dispensasi Nikah Anak Perempuan : Suatu Fenomena Masyarakat Modern dalam Konteks Agama dan Negara. *Jurnal Hukum Perdata Islam Vol. 21, no. No. 2 (Desember 2020)*, 21(2).
- Buskens, L. (2003). Recent debates on family law reform in Morocco: Islamic law as politics in an emerging public sphere. *Islamic law and society*, 10(1).