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# The Review of the *Maslahah Mursalah* Related to Early Marriage: Implementation and Orientation

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**Abstract**

Indonesian law regulates the minimum age for marriage, but there are still gaps in its implementation. This issue also relates to social, economic, and health impacts, such as reproductive health risks and limited access to education. This research aims to review the implementation of child marriage policies, policy orientations, and their impact on the understanding and implementation of *maslahah mursalah* values. This study uses normative legal research methods to examine the issue of child marriage based on the normative aspects present in applicable legislation. Data were collected through secondary data collection techniques such as legal documents and legal literature, using content analysis to identify norms and legal rules related to *maslahah mursalah* in child marriage. The results of the research indicate that the implementation of child marriage policies based on *maslahah mursalah* in Indonesia should be holistic, considering social, cultural, religious, and legal aspects. The importance of collaboration between the government, Non-Government Organizations, religious leaders, and the community in designing and implementing this policy is emphasized. To strike the right balance between *maslahah mursalah* and the protection of individual rights, especially those of children, a wise and forward-thinking approach is needed to address the issue of child marriage.

**Keywords:** Early marriage, *Maslahah Mursalah*, Women, Islamic Law, Protection of Child.

***Abstrak***

*Undang-undang di Indonesia mengatur usia minimal pernikahan, tetapi masih terdapat celah dalam implementasinya. Permasalahan ini juga berkaitan dengan dampak sosial, ekonomi, dan kesehatan, seperti risiko kesehatan reproduksi dan akses pendidikan yang terbatas. Penelitian ini bertujuan untuk mengulas implementasi kebijakan perkawinan dini dan orientasi kebijakan serta dampaknya pada pemahaman dan pelaksanaan nilai-nilai maslahah mursalah. Penelitian ini menggunakan metode penelitian hukum normatif untuk mengkaji masalah perkawinan dini berdasarkan pada aspek-aspek normatif yang ada dalam perundang-undangan yang berlaku. Data dikumpulkan melalui teknik pengumpulan data sekunder seperti dokumen hukum dan literatur hukum, dengan menggunakan analisis isi untuk mengidentifikasi norma dan aturan hukum yang terkait dengan maslahah mursalah dalam perkawinan dini. Hasil penelitian menunjukan bahwa implementasi kebijakan perkawinan dini berdasarkan maslahah mursalah di Indonesia harus bersifat holistik, mempertimbangkan aspek sosial, budaya, agama, dan hukum. Pentingnya kolaborasi antara pemerintah, Lembaga Swadaya Masyarakat, tokoh agama, dan masyarakat dalam merancang dan melaksanakan kebijakan ini sangat ditekankan. Dalam rangka mencapai keseimbangan yang tepat antara maslahah mursalah dan perlindungan hak individu, khususnya anak-anak, perlu ada pendekatan yang bijaksana dan berwawasan masa depan dalam mengatasi isu perkawinan dini.*

***Kata kunci:*** *Perkawinan Dini, Maslahah Mursalah, Perempuan, Hukum Islam, Perlindungan.*

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## Introduction

Early marriage, defined as a marriage involving one or both partners who have not reached the age of 18, has become a highly controversial issue and is of serious concern in many countries around the world (Widiadhana & Achmad,

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2023). This phenomenon attracts attention because of the negative impact it can have on children involved in early marriage, especially girls. This research aims to conduct a review of *Maslahah Mursalah* (public benefits that are not explicitly regulated in Islamic law) related to early marriage with a focus on the implementation and orientation of existing policies. Early marriage has been regulated in laws and regulations in various countries. In Indonesia, for example, Law No. 16 of 2019 concerning Child Protection regulates that the minimum age for marriage is 19 years for men and 16 years for women, with parental consent (Ton et al., 2020). However, this regulation still provides a loophole for marriages under this age, especially in areas where the tradition of early marriage is still implemented. This loophole also creates confusion in society about how to deal with cases of early marriage involving children under the age regulated by law.

In other countries, such as Malaysia, for example, early marriage also creates its own problems. Juridically, Malaysia, in the context of its civil law, regulates the minimum age for marriage to be 18 years (Cahyani et al., 2023). However, marriage in Malaysia is specifically regulated by sharia law which allows children under 18 years of age to marry as long as they obtain permission from the Syari'ah Court (Ab Aziz et al., 2022). In practice, these provisions mean that there are still many early marriages in Malaysia.

In the context of Islamic law, early marriage is often permitted with certain conditions. However, implementing and enforcing early marriage in accordance with Islamic values and protecting children's rights is a complex challenge. Therefore, this research will also involve a review of aspects of Islamic law that are relevant to early marriage and how the values of *Maslahah Mursalah* can be integrated into the existing Islamic legal framework. Apart from that, the problem of early marriage is also related to significant social, economic, and health impacts. Women who marry at a very young age often face higher risks related to reproductive health, including high rates of teenage pregnancy. These risks can impact the overall well-being of the child and family. In addition, early marriage can also limit children's, especially girls, access to education and better economic opportunities (Sekarayu & Nurwati, 2021).

The problems related to early marriage in Indonesia have also received attention from foreign parties, one of which is UNICEF. According to data from UNICEF from 2018-2023, there were 1,459,000 cases of early marriage in Indonesia (Maulana, 2023). In fact, in 2022, cases of early marriage in Indonesia will reach 50,747 cases (Kementerian PPPA, 2023). The high number of early marriage cases in Indonesia is caused by at least two main factors, namely cultural and economic factors (Murni, 2020). In terms of cultural factors, people's understanding and habits of early marriage are the highest factors causing early marriage to continue to be carried out in society.

Another problem regarding early marriage in Indonesia is also caused by economic factors where there is a view that by marrying children, the economic aspect will be slightly reduced. This economic factor also has implications for forcing children to enter into early marriage with parties determined or determined by their parents. Problems related to early marriage actually occur due to various complex factors, but two factors, namely economics, and culture, are the most significant in the occurrence of early marriage.

Research related to early marriage in children was carried out by three previous researchers, such as research conducted by : Siti Malaiha Dewi, Rahayu, Kismartini, 2019. The novel aspect, in particular, is the collaborative action orientation to minimize early marriage in society (Siti Malaiha Dewi, Rahayu, Kismartini, 2019). Further research was carried out by (Prastini, 2022), which is seen in its novelty aspect ; it relates to legal and psychological aspects, especially the impact of early marriage on children. Further research was carried out by (Arkisman, 2022), which recently emphasized that there are no specific sanctions against early marriage, especially those forced by parents on children, which has implications for the number of early marriages in society. If research conducted by Siti Malaiha Dewi, Rahayu, and Kismartini, 2019 focuses on the role and collaboration of institutions in tackling early marriage, this research discusses aspects of the impact and implementation of the Marriage Law on the practice of early marriage.

In Prastini's research, 2022, which emphasizes the psychological impact of early marriage, this research discusses aspects of the social impact of early marriage. Regarding research conducted by Arkisman, 2022 which also discusses the Marriage Law, the difference is that Arkisman's research, 2022 focuses on sanctions while this research discusses the implementation of the Marriage Law. Of the three previous studies above, the research that the author conducted is original and has yet to be studied specifically by the three previous researchers.

## Research Problems

Based on the explanation of the background above, the formulation of the problem in this research is: First, "How is the implementation of the early marriage policy based on the *Maslahah Mursalah* aspect in Indonesia?". And secondly, how

does the orientation of early marriage policy influence the understanding and implementation of maslahah murrasa values in the context of early marriage?

## Research Methods

This research uses normative legal research methods. This method will allow researchers to study legal issues in depth based on the normative aspects contained in the applicable legislation. The relevant approach in this research is the legislative approach, which will focus on the analysis of various laws, regulations, and policies related to early marriage. Sources of legal materials to be used may include the constitution, statutory regulations, court decisions, government policy documents, as well as relevant legal literature.

In collecting data, this research uses secondary data collection techniques, namely by collecting information from existing sources such as legal documents, legal literature, and previous research that is relevant to the topic. The appropriate data analysis technique for this research is content analysis. By using content analysis, researchers can identify, categorize, and analyze various norms, principles, and legal rules related to the problem of murlah in early marriage. The results of this analysis can be used to describe how the implementation of *Maslahah Mursalahah* has taken place in the practice of early marriage, as well as to evaluate the extent to which the legal orientation has paid attention to aspects of *Maslahah Mursalahah* in the regulation of early marriage. Thus, this research method will provide a comprehensive understanding of the relationship between early marriage, *Maslahah Mursalahah*, implementation, and legal orientation. Data analysis was carried out qualitatively, where data was grouped or categorized according to the type of legal material and then used as analysis material. In the analysis process, the legal issues in the problem formulation are used as the main reference and then formulated in legal prescriptions as a conclusion.

## Discussion

### The Implementation of Early Marriage Law: An Overview of *Maslahah Mursalahah* in Indonesia

Implementation of policies related to early marriage is important, considering that in the provisions of Islamic law, early marriage is not specifically regulated. The absence of this policy can be understood considering that social, psychological, and contemporary dimensions are the dominant dimensions in determining the sustainability of early marriage in Indonesia. Judging from existing practices in Indonesia, early marriage has a negative impact in the form of the bride and groom not being ready to get married, both from a psychological and mental aspect, which can have social and economic impacts.

The impacts related to physical, mental, social, and economic aspects must also be considered so that early marriage does not become more common in Indonesia. The

impact of early marriage further emphasizes that early marriage must be prevented or, at the very least, special efforts are made so that early marriage is not implemented on a massive scale in society. The implementation of early marriage law based on the *Maslahah Mursalah* aspect in Indonesia is a careful and holistic approach. *Maslahah Mursalah* is a concept in Islamic law that refers to general welfare or public interests, which does not have an explicit reference in the Koran and hadith (Fauzi et al., 2022). Therefore, policy implementation is reflected in various social, cultural, religious, and legal factors that exist in Indonesia. Some of the relevant laws and regulations for this discussion are Law Number 1 of 1974 concerning Marriage, Law Number 35 of 2014 concerning Child Protection, as well as fatwas from the Indonesian Ulema Council (MUI) as a guide in the context of religion.

The early marriage law is based on the concept of *Maslahah Mursalahah*, which means public interest or general welfare (Bunyamin, 2018). The importance of Maslahah Murlahah regarding early marriage is that the aspects of the benefits and potential impacts of early marriage are aspects that must be considered before early marriage is carried out. In this context, Maslahah Murlahah is a parameter based on the negative impacts of early marriage carried out by society.

One aspect of general welfare that is specifically considered is the protection of children's rights. In this context, regulations regarding early marriage must be in line with Law Number 35 of 2014 concerning Child Protection. This law provides a very important mandate, namely the protection of children's rights, including their rights to education, health, and protection from marriages that are not appropriate for their proper age (Lahaling et al., 2022). By following the Child Protection Law, it can be ensured that every policy or step taken to address early marriage will be in line with the broader goal, namely protecting the future and welfare of Indonesian children.

In addition, the implementation of early marriage law aimed at achieving *Maslahah Mursalah*, namely sustainable general welfare, must always pay attention to the social and economic realities currently taking place in society (Yazid et al., 2022). Too many children are getting married at an early age, and this often results in a series of serious economic challenges. In this context, to carry out actions aimed at improving the economic well-being of families, young couples have a better chance of meeting their basic needs without having to struggle with severe poverty (Chusnida & Anggriawan, 2022).

Early marriage law becomes an effective tool for achieving *Maslahah Mursalahah*, namely sustainable general welfare for society. In the context of the Islamic religion, fatwas from the Indonesian Ulema Council (MUI) have an important role in providing religious guidance to Muslims in Indonesia. As an institution that is respected and recognized in the Muslim community in Indonesia, the MUI has the capacity to formulate guidelines regarding the requirements and

procedures for early marriage in accordance with the teachings of the Islamic religion and the principles of *Maslahah Mursalah* (Habibaty, 2017). These guidelines help ensure that early marriages are carried out while taking into account religious values and the principles of *Maslahah Mursalah*, the welfare of the people, and the public interest.

In this way, the MUI can play a role in regulating early marriage in a way that balances fulfilling religious aspects and social interests, thereby providing solid and relevant guidelines for Muslims in Indonesia. In addition, efforts to reduce early marriage involve strong education and socialization. One important step is to increase public awareness about the negative impacts of early marriage. Through comprehensive sexual education programs, teens are given a better understanding of the consequences of early marriage, such as serious health risks, disruption to education, and potential poverty traps (Taufikurrahman et al., 2023). In addition, outreach efforts cover the community level by involving religious and community leaders. They act as a strong link in conveying the message about the importance of delaying marriage until they reach a more mature age. Existing early marriage regulations provide legal protection to children involved in such marriages. Nevertheless, Law Number 1 of 1974 concerning Marriage needs to be evaluated and updated to reflect better the values of child protection and the principle of *Maslahah Mursalah* (Almahisa & Agustian, 2021).

This evaluation should involve a deep understanding of the social and cultural changes that have occurred since the law was first enacted. Apart from that, law enforcement must also be strengthened to prevent early marriages from being carried out illegally or without proper consent. In order to achieve this, a more effective mechanism needs to be established to monitor and supervise marriages involving children. All parties, including government, society, and related institutions, must play an active role in ensuring that children receive appropriate protection in the context of early marriage. That way, we can create a safer environment and support children's development, as well as ensure that their rights are not neglected in an effort to prevent risky early marriages (Almahisa & Agustian, 2021).

Apart from that, the implementation of early marriage law in Indonesia also takes into account the rich cultural diversity in this country. As a country known for its ethnic, religious, and cultural diversity, the approach used is flexible and adapted to the local cultural context (Pusat Pengkajian MPR RI, 2014). To achieve this, collaboration between the government, community leaders, and local religious figures plays a very important role in designing policies that are not only in accordance with existing cultural and religious values but also acceptable to the community. In addition, the involvement of various parties, such as NGOs that focus on children's rights, civil society groups, and various other stakeholders, is emphasized in the process of formulating and implementing early marriage law. This collaboration ensures that the policies produced reflect the diverse perspectives

and interests of Indonesia's diverse society. With an inclusive approach and strong cooperation, this policy can be more effective and sustainable in protecting children's rights and maintaining Indonesia's cultural diversity.

Apart from the aspects already mentioned, a holistic approach to implementing early marriage law based on the *Maslahah Mursalah* aspect always pays careful attention to health aspects. Early marriage often carries serious health risks, especially for girls who are physically and emotionally immature (Uyuni, 2023). Therefore, the government has taken concrete steps to ensure the welfare of children who are married early. One important step is to ensure the availability of reproductive health services that are easily accessible to them. These concrete step includes providing appropriate information about reproductive health, easy access to various types of contraception, and quality maternal and infant health care. In this way, the government safeguards the problem of murlah, which includes the physical and emotional well-being of children involved in early marriage, while also mitigating the health risks often associated with such situations.

Additionally, efforts to combat the social stigma associated with early marriage are essential. This stigma can have a detrimental impact, especially on children who marry early, because they often feel embarrassed or isolated due to social pressure coming from the surrounding community (Campbell et al., 2011). Therefore, outreach and advocacy campaigns are carried out continuously to change people's perceptions about early marriage. The importance of respecting the rights of children involved in such marriages is also emphasized in this effort. By removing social stigma and increasing understanding of the issue, it can help children who marry early to get access to the support they need and ensure that their rights are fully respected.

In order to ensure effective implementation of early marriage law, there needs to be regular monitoring and evaluation of the programs that have been implemented (Anggreni et al., 2022). The government measures the impact of this policy on early marriage rates, children's education levels, family welfare, and other relevant factors. The results of this evaluation are used to improve and adapt existing policies to make them more effective in achieving the goals of child protection and general welfare.

## Early Marriage Law Orientation from The Perspective of *Maslahah Mursalah*: What Should It Be?

Early marriage law is a very important thing in society because it can influence the understanding and implementation of the values of *Maslahah Mursalah* in the context of early marriage. In Indonesia, early marriage is regulated by several laws and regulations, including Law Number 1 of 1974 concerning Marriage and Law Number 16 of 2019 concerning Child Protection. Early marriage is a phenomenon where someone marries at a very young age, which generally has a

negative impact on the welfare and development of individuals, especially girls (Khaerani, 2019). Law Number 16 of 2019 concerning Child Protection prohibits the marriage of children under the age of 19 years for girls and 21 years for boys.

The early marriage law regulated in this law has a significant impact on the understanding and implementation of the values of *Maslahah Mursalah*. The values of *Maslahah Mursalah* are universal values that prioritize the welfare and general interests of society (Sitorus, 2020). In the context of early marriage, policies that regulate marriage age limits aim to protect children from the negative consequences of early marriage, such as health risks, interrupted education, and difficulties in achieving economic independence. With the existence of laws and regulations governing early marriage, it is hoped that society can better understand and respect children's rights and ensure that marriages are based on agreement, maturity, and a good choice for both prospective partners. Apart from that, this policy also supports the creation of a fairer, gender-equitable society and can improve the welfare and development of individuals and society as a whole.

Law Number 1 of 1974 concerning Marriage in Indonesia is the main reference in regulating early marriage. This law has set a minimum age limit for marriage, namely 19 years for men and 16 years for women. However, with special approval from the court, marriage can be performed by a man aged 19 years or a woman aged 16 years (Saputri & Islamy, 2021). This provision reflects an understanding that early marriage can harm children under that age, recognizing that they may not be physically and psychologically ready to face the commitment of marriage. Therefore, special permission from the court is a control given in certain situations to consider other factors that can allow early marriage, such as the problem of murrasa or public interests that must be considered carefully.

This policy shows harmony with the principles of *Maslahah Mursalah*, which has a primary focus on the welfare of society in general. By recognizing that children under a certain age are not yet mature enough physically, mentally, or emotionally to undergo marriage, this policy aims to prevent various risks that can arise as a result of early marriage (Fauzi et al., 2022). These risks include health problems, such as complications during pregnancy with very young children, risks to education because early marriage usually stops their formal education, and psychological risks because children at that age are not ready to face the responsibilities of marriage (Umam, 2022). Therefore, setting a minimum age limit for marriage is a step that is in accordance with the principles of *Maslahah Mursalah*. This principle prioritizes the interests and protection of children as an important part of the welfare of society as a whole (Arkisman, 2022).

Law Number 1 of 1974 concerning Marriage does have an important role in regulating marriage in Indonesia. However, Law Number 16 of 2019 concerning Child Protection also has great relevance in the context of early marriage. This law strictly prohibits the marriage of children under the age of 18 and regulates legal sanctions for violators (Almahisa & Agustian, 2021). This decision reflects the

Indonesian government's commitment to protecting children's rights as one of the most fundamental values of *Maslahah Mursalah*. With this Child Protection Law, it is hoped that the practice of early marriage, which is often detrimental to children, can be minimized, and children will receive better protection in society.

At the implementation level, early marriage policies regulated in legislation have a significant impact on the way authorities, such as courts and related government agencies, handle cases of early marriage (Jamaluddin & Amalia, 2016). They are required to ensure that every marriage involving children under the age stipulated in law is a marriage carried out with a special permit. Apart from that, the authorities must also always seriously consider the interests and welfare of children as the main factors in the decision-making process regarding early marriage. This decision includes a careful evaluation of whether the child is physically, emotionally, and psychologically ready to face the commitment of marriage.

This policy has a significant impact in influencing people's understanding of early marriage. With strict regulations regarding the minimum age for marriage, society is more likely to realize that early marriage is not a desirable practice and can be dangerous for children. This acts as a tool to change social norms that may have previously supported early marriage in society (Judiasih et al., 2020). As a result, society's perception of early marriage has begun to change, becoming more critical and skeptical of the practice.

The understanding of *Maslahah Mursalah* in the context of early marriage is only sometimes universal. Various community groups or individuals often have different views regarding this issue, especially taking into account cultural and religious factors (Mukhlis, 2019). Some people may believe that early marriage is an integral part of their traditions or religious beliefs. They see it as a way to promote adherence to the values and teachings of their religion and even consider it the most appropriate way to protect the honor and morality of individuals in their society (Ansyari et al., 2022). Therefore, in discussing early marriage, it is important to understand this diversity of views and recognize that assessments of it can vary greatly depending on individual cultural and religious backgrounds.

Understanding the values of *Maslahah Mursalah* is very important in the context of early marriage arrangements. *Maslahah Mursalah* is a concept in Islamic law that refers to the public interest or welfare of society, which is not explicitly regulated in the sources of Islamic law but is seen as something positive (Affaruddin & Nadhifah, 2019). Within the legal framework governing early marriage, it is important to consider this perspective wisely. A balanced and prudent approach is to examine individual cases carefully (Dwi Hidayatul Firdaus, Mufidah Ch, 2022). This means that not all early marriages should be prohibited or prohibited automatically. However, they need to be considered based on factors such as age, physical and emotional maturity, as well as the social and economic conditions of the individuals involved. If early marriage is truly considered a problem of murrasa,

then there needs to be a legal mechanism that allows exceptions with certain strict conditions (Sitorus, 2020).

These conditions must be designed to ensure the protection of the rights of children involved in such early marriages. This protection may include close supervision, counseling assistance, and approval from competent authorities (UNICEF, 2018). In this way, we can achieve a balance between respecting the values of *Maslahah Mursalah* and protecting the rights of individuals, especially children, involved in early marriage. In this case, the law can be a tool to create a more just and future-oriented framework for dealing with the issue of early marriage.

In the international context, early marriage law has a significant impact on the understanding and implementation of *Maslahah Mursalah* values. International organizations such as the UN have actively advocated the need to address early marriage as part of efforts to protect children's rights and achieve sustainable development. The UN has adopted various legal instruments and international agreements that support the prohibition of early marriage, such as the Convention on the Rights of the Child, which strictly regulates children's rights, including the right not to experience early marriage (Marphatia et al., 2017). In the Convention on the Rights of the Child, it is emphasized that early marriage is a form of effort to reduce children's rights to grow and develop. This effort confirms that, in the Convention on the Rights of the Child, early marriage, especially forced early marriage, is part of a form of violation of children's rights. Indonesia's membership in the UN also means that this country commits to comply with these international standards. This membership can influence the understanding and implementation of *Maslahah Mursalah* values in the context of early marriage in Indonesia because this country must pay attention to and integrate these international standards into its policies and practices.

## Conclusion

The application of early marriage law based on the aspects of Maslahah Mursalah in Indonesia is a holistic approach, taking into account social, cultural, religious, and legal aspects. This policy prioritizes the general welfare and protection of children's rights, with a focus on education, legal protection, reproductive health, and reducing social stigma. Early marriage law in Indonesia has a significant impact on the understanding and implementation of Maslahah Mursalah values in the context of early marriage. Law No. 1 of 1974 concerning marriage regulates the minimum age limit for marriage, considering that early marriage can endanger children who are not physically or psychologically ready to face marriage. Law Number 16 of 2019 concerning Child Protection prohibits the marriage of children under the age of 18, emphasizing the Indonesian government's commitment to protecting children's rights as a value of Maslahah Mursalah. This policy affects

people's perceptions of early marriage and changes social norms that have previously supported it.

Monitoring and evaluation of early marriage activities must be carried out to ensure the protection and welfare of children, and support from the community through the dissemination of information about the negative impacts of early marriage is needed. The policy of limiting early marriage requires stricter conditions, and its formulation involves religious leaders so that a balance between maslahah mursalah and child protection can be achieved. The limitation of this study is that it focuses on the perspective of public policy; research on similar issues can further explore the parties involved in the practice of early marriage, such as adult men, children, parents, and headmen.

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