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Balancing Justice and Tradition: An Islamic Legal Perspective on Constitutional Court Rulings Regarding Marriage Age

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Abstract

This study analyzes the Constitutional Court Decision Number 22 / PUU-XV / 2017 related to the age limit of Marriage from the perspective of Islamic law. The change in the marriage age limit in this law was passed based on the decision of the Constitutional Court of the Republic of Indonesia (MK) Number 22 PUU-XV/2017, which was born due to the controversy over the previous marriage law. This is a literature research by re-

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analyzing the policy content of the Constitutional Court of the Republic of Indonesia Number 22/PUU/XV/2017 decision. The analysis examines the legal basis, the applicant's legal standing, and the decision's relevance to Islamic law principles. The results showed that the Constitutional Court's decision was based on valid legal standing and rational arguments. This decision is in line with the value of Islamic law in paying attention to *maslahah* (benefit). Still, there are differences in certain methodological aspects, especially in the *maslahah mursalah* approach. The findings also reveal that the change in the marriage age aims to reduce discrimination against women and protect their health, education, and socio-economic rights. From the perspective of Islamic law, the minimum age of Marriage is *ijtihadiyah* and can be adjusted to the context of the times, as the principle of *maqashid al-shari'ah* is oriented towards the welfare of the people. This research recommends further harmonizing Islamic and national law to create fairer and more applicable rules.

Keywords

Age of Marriage; Constitutional Court; Discrimination; Islamic Law; Maslahah

Abstrak

Penelitian ini menganalisis Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 terkait batas usia perkawinan dalam perspektif hukum Islam. Perubahan batas usia perkawinan dalam Undang-Undang ini sejatinya disahkan atas dasar putusan Mahkamah Konstitusi Republik Indonesia (MK) Nomor 22 PUU-XV/2017 yang lahir akibat kontroversi Undang-Undang Perkawinan sebelumnya. Penelitian ini merupakan penelitian kepustakaan (library research) dengan melakukan analisis ulang terhadap muatan kebijakan dari putusan Mahkamah Konstitusi Republik Indonesia Nomor 22/PUU/XV/2017. Analisis dilakukan dengan menelaah dasar hukum, kedudukan hukum pemohon, dan relevansi putusan dengan prinsip-prinsip hukum Islam. Hasil penelitian menunjukkan bahwa putusan Mahkamah Konstitusi didasarkan pada kedudukan hukum yang sah dan argumentasi yang rasional. Putusan ini sejalan dengan nilai hukum Islam dalam memperhatikan *maslahah* (kemaslahatan), namun terdapat perbedaan pada aspek

metodologis tertentu, terutama pada pendekatan *maslahah mursalah*. Temuan penelitian ini juga mengungkapkan bahwa perubahan usia pernikahan bertujuan untuk mengurangi diskriminasi terhadap perempuan dan melindungi hak-hak kesehatan, pendidikan, dan sosial ekonomi mereka. Dalam perspektif hukum Islam, batas usia minimal perkawinan bersifat *ijtihadiyah* dan dapat disesuaikan dengan konteks perkembangan zaman, sebagaimana prinsip *maqashid al-syari'ah* yang berorientasi pada kemaslahatan umat. Penelitian ini merekomendasikan adanya harmonisasi lebih lanjut antara hukum Islam.

Kata Kunci
Usia Perkawinan; Mahkamah Konstitusi; Diskriminasi; Hukum Islam; Maslahah

Introduction

The controversy over changes to the marriage age limit in Indonesia some time ago has received resistance from various parties. However, many parties support these changes by attempting legal resistance through a judicial review of the Marriage Law to the Constitutional Court of the Republic of Indonesia (Siahaan 2021). This effort was carried out by the Indonesian Women's Association for Justice (LBH APIK) Legal Aid Institute, which stated that there is a need to revise the age of Marriage in the UUP, which seems to legalize early Marriage because it is not line with the human rights that have been fought for by humanitarian observers (Minister of PPPA 2020). In addition, Musdah Mulia, as an academic figure and Islamic scholar, also argues using comparative analysis by looking at Muslim Arab countries that have updated regulating the age of Marriage to fight for better human rights (Hashim and Aziz 2023).

They assume that the determination of the age of Marriage in the UUP is no longer able to accommodate a humanist and democratic view of Islam and is at odds with the laws that have developed in Indonesia and at the international level. This argument is also supported by the opinion that there are significant weaknesses related to several articles which contradict basic principles in Islam, such as equality (*al-musawah*), brotherhood (*al-ikha'*), justice (*al-'adl*), benefit,

enforcement of human rights, pluralism (*al-'addudiyah*), and gender justice (Gender Mainstreaming Team 2004).

In addition, Mochtar Kusumaatmadja commented on the development of law in the current era of modernization and globalization. Mochtar stated that law as a tool becomes law as an instrument to build society. He noted that the law is a tool to maintain order in society. Given its function, the nature of law is conservative, meaning that law is to retain and maintain what has been achieved (Kusumaatmadja 2002). Such a function is needed in every society, including a developing society, because results must be kept, protected, and secured.

However, in a developing society, which means a rapidly changing society, it is not enough for the law to have such a function. It must also be able to assist the process of societal change. The old-fashioned view of the law emphasizes the function of maintaining order in a static sense, and the conservative nature of the law assumes that the law cannot play a meaningful role in the reform process. Likewise, the marriage law should be amended based on current developments (Kusumaatmadja 2002).

The judicial review or testing of the 1974 Marriage Law Article 7, paragraph 1 and paragraph 2 was carried out by three women victims of child marriage, namely Endang Warsinah, Rasminah, and Maryati. Their efforts have been persistent since 2014. Unfortunately, in 2015, the effort reached a dead end. The Constitutional Court rejected the lawsuit on the pretext of "open legal policy" or open legal policy in forming laws. They filed a judicial review on two paragraphs in the law. First, paragraph 1 of article 7 states that "marriage is only permitted if the man reaches the age of 19 years and the woman reaches the age of 16 years. Second, paragraph 2 of the same article states that "in the event of a deviation from paragraph 1 of this article, a request for dispensation may be made to the court or another official appointed by the parents of the man or woman" (Sihombing 2015).

Although the case was rejected, it did not mean that their lawsuit was dismissed. They filed another lawsuit on April 20, 2017. A month later, on May 24, a hearing was held, followed by a revision of the application file on June 9 by the three petitioners following the input of the Constitutional Court judges. However, there has been no

answer to the results of the hearing from the Constitutional Court. Finally, on December 18, the three applicants, accompanied by their legal counsel, again submitted the application file.

After going through a long process of efforts, the lawsuit was finally accepted. The Constitutional Court (MK) partially granted the judicial review of Law 1/1974 on Marriage regarding the age limit for Marriage. In the consideration of the decision, it was stated that the difference in marriage age limits between men and women could lead to discrimination. Article 7, paragraph 1 of the 1974 Marriage Law stipulates that the minimum age of Marriage for men is 19 years and for women is 16 years. The Constitutional Court considers this contrary to the 1945 Constitution and the Child Protection Law. The Child Protection Law states that children are those under 18 years of age. Thus, the age limit set in the Marriage Law is still categorized as a child. Still, in the Judge's consideration, child marriage is considered very threatening and has a negative impact, especially on health aspects (Aditya and Waddington 2021).

In addition, the opportunities for exploitation and the threat of violence are also higher for children. The regulation also creates differences in treatment between men and women (Nashrullah 2018). Because of this, the Constitutional Court then asked the Legislative Council to reformulate this matter for three years. Therefore, the dynamics of filing a judicial review and the Constitutional Court's decision on the marriage age limit are interesting to examine from different points of view.

Several studies have examined the Constitutional Court's decision on marriage age limits from various reviews, such as a review of the fulfillment of women's and children's rights (Sitorus and Tamsil 2020; Amania 2019), *mashlahah* (Wiwin 2023) and Islamic law (Aristoni 2021). However, this study will again parse the Constitutional Court's decision in analyzing the policy content of the Constitutional Court's decision Number 22/PUU/XV/2017 in the long view of Islamic law.

Methods

Using a juridical-normative approach, this library research examines legal aspects theoretically and textually based on relevant legal sources. Primary data consists of official documents in the form of the decision of the Constitutional Court of the Republic of Indonesia Number 22/PUU/XV/2017, while secondary data includes legal

literature, scientific journals, and other relevant documents. Data collection techniques are conducted through document studies by examining the contents of the decision, legal basis, and literature that supports the analysis. Data analysis used a descriptive-qualitative method focused on understanding the legal context, the applicant's legal position, and the decision's relevance to Islamic law principles. The analysis results are systematically organized to highlight the relationship between the policy in the decision and the Islamic legal framework to provide in-depth understanding and academic recommendations based on legal principles.

Result and Discussion

The Hierarchical Position of the Constitutional Court Decision

Initially, there was no Constitutional Court in the legal world. The idea of a Constitutional Court in the world can be said to be relatively new. However, among new democracies, especially in countries that experienced the process of changing the political system from authoritarian to democratic in the last quarter of the 20th century, the idea of forming a Constitutional Court became very popular (Siahaan 2012). Therefore, after Indonesia entered the reform and democratic era as it is today, the idea of establishing a Constitutional Court became very widely accepted (Huda 2010).

The history of its establishment in Indonesia begins with the adoption the idea of a Constitutional Court in a constitutional amendment carried out by the People's Consultative Assembly (MPR) in 2001. This is as formulated in the provisions of Article 24 paragraph (2), Article 24C, and Article 7B of the 1945 Constitution as a result of the Third Amendment passed on November 9, 2001. Establishing the Constitutional Court is one of the modern legal and state-thinking developments that emerged in the 20th century. The idea and plan to establish this institution was raised in the BPUPKI session on July 15, 1945. At that time, a heated debate occurred between M. Yamin and Soepomo about the need for the Supreme Court to be given the authority to materially examine laws deemed contrary to the Constitution and the Customary Law of the Sharia Court (Marzuki 2001).

The establishment of a constitutional court in the reform era began to be proposed during the second session of the Ad Hoc Committee I of the MPR RI Working Committee (PAH I BP MPR), namely after all members of the MPR RI Working Committee conducted comparative studies in 21 countries regarding the Constitution in March-April 2000. This idea had not yet emerged at the time of the first Amendment to the 1945 Constitution, and not even a single faction in the People's Consultative Assembly (MPR) had proposed it. However, at the Annual Session of the MPR in August 2000, the draft formulation of a constitutional court was still in the form of several alternatives and had not been finalized.

Along with the changes to the 1945 Constitution as the Constitution of the Republic of Indonesia, the dynamics of Indonesian state administration are growing. Theoretically, a constitution can be changed to improve it. Constitutional reform is seen as a need and agenda that must be done fundamentally. This is because several weaknesses are contained in the 1945 Constitution. These weaknesses have made this country undemocratic while using the 1945 Constitution. Mahfud MD mentions the weaknesses, among others, the 1945 Constitution builds a political system that is Executive heavy by giving a substantial portion of the President's power without an adequate checks and balance mechanism, the 1945 Constitution gives too much attribution and delegation of authority to the President and many other reasons (MD 2001).

In its development, the basic concept of the establishment of constitutional courts in various countries is closely related to the development of modern constitutional principles and theories adopted by multiple countries that adhere to the principles of constitutionalism, the principle of the rule of law, the principle of checks and balances, the principle of democracy and guarantees of human rights protection, the principle of a free and impartial judiciary and the political experience of each country. A constitutional court is needed to uphold these principles.

As for the definition, it is an institution with an independent judicial power to uphold law and justice as stipulated in Article 24 paragraph (1) of the 1945 Constitution. The Constitutional Court is a high state institution in the Indonesian constitutional system that holds judicial power and the Supreme Court.

The word Court means a body where the law decides on a case or offense (Court). According to Titik Triwulan Tutik, the term Constitution is quoted from Samidjo's explanation in his book State Science that the Constitution has two meanings in its development. In a broad sense, the Constitution means the entirety of the essential provisions or fundamental law (*droitconstitutionelle*), whether written or unwritten or a mixture of both. In a narrow (limited) sense, the Constitution means the basic charter or fundamental law (*loi constitutionelle*), a complete document on the state's basic rules. From these two definitions, it can be explained that the Constitutional Court is a judicial body where the law decides on a case or violation of fundamental law or the Constitution (Tutik 2016).

Islamic Legal Reasoning in Contemporary Policy Dynamics

In every aspect of human life, some rules must be obeyed. When in society, the laws of society must be upheld. The same applies to Islam, a religion that has rules. And the rules that we must first understand are the rules of Allah. The basis of the concept of Islamic law cannot be separated from the fundamental sources of law in Islam itself (Hilal 2013). So, the basis of the idea refers to matters related to the content of the source literature on Islamic teachings.

The first thing that is like this is the Qur'an. The first source of Islamic law is the Quran, a Muslim holy book revealed to the last Prophet, the Prophet Muhammad SAW through the Angel Gabriel (Harisuddin 2018). The Quran contains commands, prohibitions, recommendations, Islamic stories, provisions, wisdom, etc. The Quran explains in detail how humans should live their lives to create a noble society. Therefore, the verses of the Quran are the primary basis for establishing a *shari'a* (Rosyada 1993).

Second, hadith. The second source of Islamic law is Al-Hadist, which is everything based on the Prophet Muhammad SAW, either in words, behavior, or silence of the Prophet SAW. Al-Hadith contains rules that detail all the rules that are still global in the Qur'an. The word hadith, which experiences an expansion of meaning so that it is synonymized with Sunnah, can mean all the words (words), actions, decrees and agreements of the Prophet Muhammad used as provisions

or Islamic law (Thahhan 1979). This Sunnah is the basis for the later formulation of Islamic law (Harisuddin 2018).

Third, *Ijma'* is the agreement of all mujtahid scholars at one time after the time of the Prophet on a matter of religion. And ijma' that can be accounted for is what happened in the days of the companions, *tabi`in* (after the companions), and *tabi'it tabi`in* (after the *tabi`in*) (Mujtaba 2012). Because after their time, the scholars have scattered, and there are many of them, and there are more and more disputes, it cannot be ascertained that all scholars have agreed (S. Sudirman, Gunawan, and Salenda 2019).

Fourth, i. The fourth source of Islamic law after the Quran, Al-Hadith, and *Ijma'* is *Qiyas*. Qiyas means explaining something for which there is no evidence in the Qur'an or hadith by comparing something similar to something to be known. This means that if a *Nash* has indicated the law regarding a case in Islam and has been known through one of the methods to find out the legal issues, then there is another case similar to the case with a *Nash* in a matter as well. The law of the case is equated with the law of the case that has a *Nash* (Mujtaba 2012).

These four sources are the fundamental sources of determining Islamic law. The process of determining the law is then called the *Istinbath* law. In this regard, most scholars' references are Qiyas and *Istihsan*. Related to *Qiyas*, as stated above, *Qiyas* is explaining the law of something that has no *nash*, either in the Qur'an or Hadith, by comparing it with something that has been determined based on the *nash* (Khalaf 1972). Four elements are part of this method. The four are first, *Al-asl*. What is meant is the source of law, which consists of texts that explain the law. Most scholars mention that the source of law used as the basis of Qiyas must be a *nash*, either the Qur'an, Hadith, or consensus, and it is not permissible to *Qiyas* something with a law that Qiyas determines.

Second, *Al-Far'u*. This is something for which there is no provision in the text, meaning that the case is not known with certainty. Al-Shafi'i, in this case, said that *far'u* is a case in which the law is not explicitly mentioned and is *Qiyas* to the original law. Third, Al-*Hukm* or *Hukm Al-asl*. This is the law that *Qiyas* uses to extend the law from the asl to the *far'u*. According to al-Shafi'i, the law here is stipulated by Allah and His Messenger, either explicitly or *ma'nawi*. This means that the ruling must be based on the Qur'an and Hadith,

must be able to be digested by the intellect about its purpose, and the verdict is not a matter of *rukhshah* and extraordinary.

Fourth, the *'Illat*. This is a similar reason between the asl and *far'u*. The *shar'iyah's* 'illat is an appropriate, clear, and definite characteristic used as a basis for legal development, while wisdom is the purpose of Shara' to attract *maslahah* and reject *mafsadah* (Abu-Zahrah 1973). As for *istihsan*, there are many definitions regarding this matter, and some say that *istihsan* is leaving the qiyas method to seek something more in line with reality. Some say it is also what the mujtahid considers suitable for his intellect (Maulana and Rozak 2021).

All the definitions related to this can be seen in Taqiy's explanation in his work. Some of the definitions are essentially three. They are first what the mujtahid considers suitable for his intellect. First, *istihsan* means choosing the stronger of two contradictory or different arguments (*ikhtilaf*). It may be a conflict between two *lafzhi* propositions: propositions taken from the Qur'an and Sunnah. Or it may be a conflict between two *ghair lafzhi* propositions, such as *qiyas jaliy* and *qiyas khafiy*. Or a conflict between a *lafzhi* and *ghair lafzhih* argument (Taqiy 1979).

Secondly, *istihsan* means taking something deemed suitable by *'urf* or reason, such as recording marriages at the Religious Affairs department office. *Istihsan,* in this sense, must be done with great care. Because what is considered reasonable by *'urf* or reason may be very subjective, it is likely to follow socio-psychological biases. We do not have enough time to discuss this. Thirdly, *istihsan* means abandoning specific arguments to bring about *maslahah* or to enforce the law based on the five *maslahah* considerations: preserving religion, soul, mind, offspring, and property. This last type of *istihsan* is also called *istishan* or *al-mashalih al-mursalah* (Rakhmat 2001).

Some of the methods used are an effort to achieve the purpose of the rules that have been compiled. The purpose in question is commonly known as *maqashid al-shari'ah*. *Maqashid al-shari'ah* is the purpose of Allah and His Messenger in formulating Islamic laws. This goal can be traced in the verses of the Qur'an and the Sunnah of the Apostle as a logical reason for developing a law that is oriented towards the benefit of humankind (Zein 2009). Related to this, experts mention several orientations of Islamic law. Abu Zahrah explained

that *maqashid al-shari'ah* is *al-Muhafazhah* ala al-Diin (preserving religion), *al-Muhafazhah ala an-Nafs* (preserving the soul), al-Muhafadzah ala al-Aql (preserving the intellect), *al-Muhafadzah ala an-Nasl* (preserving offspring), *al-Muhafadzah ala al-Mal* (preserving wealth) (Zahrah 1994).

Law, Justice, and the Constitution: Review of Constitutional Court Decision 22/PUU/XV/2017

Two things are essential to study when analyzing the Constitutional Court's decision: legal standing analysis and analysis of the disputed a quo. First, legal standing analysis. To understand this decision comprehensively, several aspects should be discussed. Starting from elements of the status of the complainants in law, the *a quo*, which is the object of the petition, to several perspectives on the petition made by the applicant in this decision.

To begin the discussion before discussing the contents of the decision, it is more appropriate for the author to discuss the reporter's position in the formal legal rules. On this side, what is meant is the legal standing of these pioneers. Siaahan argues that legal standing is a condition in which a person or party is said to fulfill the requirements. Thus, he is considered to have the right to apply for settlement of a dispute or dispute or case before the Constitutional Court. Conversely, if it does not meet the requirements, it is considered *niet ontvankelijk verklaard* (Siahaan 2012). This means that the petition cannot be accepted by law.

Based on the explanation above, the writing in question is related to *personae standi* in *judicion* or the legal position to file a lawsuit or application before the Court (standing to sue) of a reporter. So, the first question in this decision is who the complainant is and their position in the law.

To understand this, the researcher first looks at the favorable rules in this country. On the author's side, it is based on the regulations of Article 51 paragraph (1) of Law No. 8 of 2011 concerning Amendments to Law 24 of 2003 concerning the Constitutional Court. This rule explains how the conditions for the acceptance of a reporter by the Constitutional Court. Based on this rule, the Constitutional Court should accept the three complainants. The reason is, of course, because Applicant 1 (Endang Warsimah), Applicant II (Maryanti), and

Applicant II (Rasminah) are Indonesian citizens who are certainly formally legal citizens who have constitutional rights. They, as applicants are certainly citizens who have suffered constitutional losses.

As for constitutional loss, it is also formally regulated. The Constitutional Court decides five conditions in this regard. The decision is in Constitutional Court Decision Number 006/PP-III/2005. Based on this rule, in the author's opinion, the three pioneers with the story presented before the Judge are considered citizens who have suffered a constitutional loss. One indication is that in the report, the applicant based his constitutional rights on the 45th Amendment, namely equality in law. In addition, the three of them can also be considered to have a causal *verband* relationship between the loss and the quo that exists in the formal rules (in this case, the 1974 Marriage Law).

As explained in the decision, the three complainants suffered several miscarriages due to early Marriage. The miscarriages were due to the age of Marriage being under 19 years old. In addition, the three of them are also citizens whose rights cannot be protected by the Constitution. In terms of enjoying their future, especially their right to education, the Constitution cannot formally protect them.

This seems to align with what was reported in the Constitutional Court decisions studied. In decision point B.1 regarding individual applicants, it was explained that the three applicants were disadvantaged economically, educationally, and health-wise because of their status in the Marriage Law. This was based on the available evidence and stories from the applicants. So, based on all the explanations, it can be stated that the applicant has met the formal legal standing requirements.

Secondly, the author describes the quo at issue from the applicant's various dialectical perspectives for the following discussion. The reasons for the applicant's reconstruction of the a quo are indeed, in this case, the antithesis of the a quo, which is the thesis of this Constitutional Court decision. This discussion will discuss the dialectical reconstruction of the disputed a quo.

Based on the author's analysis of the Constitutional Court's decision, several legal dialectics are, first, legal contradictions with the

Constitution. The contradiction in question is the provision of Article 7 item 1 in the sentence "16 years" in the Marriage Law, which is considered to intersect with the Constitution Article 7 item 1. In the Constitution, it is stated that "all citizens are equal before the law."

This kind of contradiction is a legal contradiction *a quo*. The applicant said that the Marriage Law should not violate the basic *a quo* in its rules. Suppose it contradicts the Constitution as the highest fundamental law; a legal reconstruction must be held on the regulation. In addition, what is most striking in the context of this contradiction is the violation of principles that have been explained in the Constitution. Article 27 of the Constitution explains a legal principle called equality before the law (EBL). This principle is the principle of providing justice without distinguishing all humans before the law. The applicant quotes ordinary people and the government from Albert Van Decey's construction. The author suspects that the explanation cited by the applicant is as follows:

> *[It] means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of broad discretionary authority on the part of the government It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts [and], lastly, that, in short, the principles of private law have with us been by the action of the courts and Parliament so extended as to determine the position of the Crown and its servants; thus the Constitution is the result of the ordinary law of the land* (Dicey 1982).

EBL's assertion in the context of the contradictions on the applicant's side of this issue also stated the conception of the state or legal language in *rechtsstaat*. The *Rechtsstaat* is the fruit of thought to oppose absolutism, which is revolutionary and rests on the continental legal system called civil law (Reimann 1989). The state with such a system has the principle of harmony and justice, mainly based on civil society justice. This is explained in Article 1, paragraph (2), and paragraph (3) of the 1945 Constitution, stating that the State of Indonesia is a state of law and sovereignty is in the hands of the people.

The contradiction in the *a quo* declared unfair is related to the minimum age ratio between men and women. The Marriage Law

explains that the minimum marriage age for women is 16 years, while for men it is 19 years (Faiz, Ali and Taufiq 2023). This inequality in the minimum age is then considered a discriminatory rule of law because it does not use the EBL principle.

The assumption of discrimination related to this rule is also based on the construction of discrimination terminology in formal regulations in Indonesia. Some rules state that discrimination can also be interpreted as human distinction before the law based on race, gender, etc. This is as in Article 1, paragraph (3) of Law Number 39 of 1999 concerning Human Rights.

Some of these fundamental laws on Marriage are not only considered discriminatory because they contradict legal principles, but they also appear to be inherently contradictory. For example, the law states that "For this purpose, marriage between prospective spouses who are underage must be prevented." This means that Marriage can only be achieved if there are sufficient children. This means that Marriage can only be achieved if there is equality in the condition of maturity of body and soul to enter into Marriage. Of course, if the minimum age is 16 years old, the age of women is not said to be ripe. Not ready to share work (Rohmadi et al. 2024). So, in the Marriage Law, there are inconsistencies in the rules regarding this issue.

This lower age of Marriage for women is also considered unfounded. This means that it cannot be proven scientifically. Thus, the regulation is weak if the scientific basis is not met. It is only based on ethical myths that develop. So this means that the rule regarding the minimum age of women who are less is only based on the reason for gender differences. Of course, this is a form of discrimination. This is as described in Law Number 39 of 1999 concerning Human Rights.

One of them, as mentioned by the researcher, is the results of research conducted by Plan International, which focuses on protecting children's rights. The study revealed that "the experience of children in Marriage in Java (Indramayu, Grobogan, and Rembang) and NTB (Dompu), where the majority of the population is Muslim, is primarily shaped by the enactment of both favorable laws (Law No. 1 of 1974 on Marriage and Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law).

Stakeholders, in this case, KUA and religious court officials, *Modin*, as well as sub-district and village heads, play a significant role in shaping the general view of the minimum age of Marriage following the Marriage Law. This is reinforced by the survey results, which show that the minimum age of Marriage of 16 years for girls is the reference for most local communities when determining the age of Marriage. So, based on this research, if there is an effort to reconstruct the rules that have been the government's guidelines, there will also be a direction for the formation of better public awareness.

Second, the A quo causes discrimination against girls in health rights. On the dialectical side, the law on the minimum age of women is explained as three years lower than the minimum age of men. In this discussion, it is found that the applicant in this Constitutional Court decision sees discrimination in the health aspect.

It is considered discrimination because it is also based on some formal rules. Article 28B, paragraph 2 of the Constitution states that every child has the right to grow and live. The Child Protection Law article 24 of the Convention on the Rights of the Child also clarifies the rules related to this. In addition to the regulations in this Constitution, the editorial explanation in the Marriage Law itself also appears to regulate this. As a derivative of the Constitution, the Marriage Law has an orientation following what the Constitution mandates. The Marriage Law has an editorial, "To maintain the health of husband and wife and offspring, it is necessary to set an age limit for marriage."

The implications of the wording, as mentioned, of course, should be appropriately implemented. To maintain women's health, their reproductive health must be considered. In Marriage, the health that needs to be considered is a problem related to the reproductive process to continue the offspring of the bride and groom (Amania 2019). This is one of the orientations of Marriage, namely continuing offspring.

This minimum age of 16 is not in line with the marriage orientation. It should consider matters concerning the reproductive health process. According to the applicant, as explained in the decision of the Constitutional Court, there is not a single scientific study whose results prove that the reproductive process at the age of 16 is healthy. Even expert witnesses from several health experts who were presented in the first session of the reconstruction of the marriage law, none of

them said that the age of 16 is a healthy condition for women to carry out the process of reproduction.

The formal rules in the Marriage Law and Constitutional Court Decision 74/PUU-XII/2014 are weak. It is in this context that the petitioners, who are victims of reproductive miscarriage, recounted that at an early age, they all experienced miscarriages (Zuhriah, Syahriana, and Ali, 2024). This was then also reinforced by the explanation of Expert witness Julianto Witjaksono, at the previous hearing, who said that mothers giving birth under the age of 19 were three to seven times more likely to die than those above 19 years.

On this side, the author also found several scientific papers that confirmed this. Among them, Felly DKK. says that the age of Marriage under the age of maturity (20 years and over) can have a high potential for miscarriage. This is also found in Ika Mardianti's research. He said that the younger the age of a person, the greater the potential for abortion (miscarriage). The Constitutional Court's decision explained that the applicant had pocketed several pieces of scientific evidence from WHO, UNICEF, and other medical findings. In essence, there are several negative things if the minimum age of women is still below the age of mature reproduction. As for some scientific evidence, these include the following:

1. There is a risk of competition between the unborn child and the mother for nutrients, especially oxygen. For the child, this poses a risk of death. The risk for the mother is eclampsia, hemorrhage, and death.
2. The risk of pre-eclampsia is hypertension or high blood pressure in pregnancy.
3. Potential for obstetric fistula, which causes very long psychosocial problems due to leakage between the bladder and the uterus. So that fistula sufferers will not be able to control urination.
4. Risk of failure to breastfeed, which will lead to the risk of various diseases in the mother, such as breast cancer, ovarian cancer, uterine cancer, and at least four other degenerative diseases, such as diabetes mellitus (diabetes), hypertension, coronary heart disease, and osteoporosis.

5. The risk of post-saline birth canal damage in the form of holes forming in the vagina, as well as possible reversal of the uterus, and postpartum depression, which can increase by 25 to 50% of pregnancies.
6. 60% of mothers younger than 19 years old are also more likely to have a baby that dies before the baby is 1 year old. If the baby survives the first year, it is 28% more likely to die before reaching 5 years of age.

Based on the above, reconstructed discrimination will occur if the *a quo* is still legalized. According to the applicant, women will continue to be victims of this unfair rule. On this dialectical side, the applicant's idea looks pretty comprehensive. Third, the *a quo* is a rule that discriminates against girls in education. In this aspect, the dialectic notion is based on the fact that women will not have the opportunity to continue their education once married. She will be trapped in the busyness of caring for the household and mothering her children.

This can be interpreted as cutting off the opportunity for their right to education. Formal rules say that everyone has the right to obtain knowledge as mandated in the Constitution. Precisely, the explanation in article 28C. The mandate in this rule will be hit by the regulations in the Marriage Law as a quo, which is actually based on the Constitution. To prove the existence of inequality, one caused by the applicable a quo, the applicant attached scientific evidence in his *petitum*. The applicant chose to take data from the National Statistics Agency. The data is as follows:

Table 1. Applicant's Scientific Data on the education level of married daughters

Year	Education Level			
	Not graduated from elementary school.	Elementary School Equivalent	Junior High School Equivalent	Senior High School Equivalent
2013	11,97 %	42,76 %	38,60 %	6,67 %
2015	9,87 %	40,06 %	41,18 %	8,88 %

Based on this data, it can be concluded that the average level of education for girls is only at the elementary to junior high school level. In 2015, only 8.88% of Indonesian girls could complete high school, while 91.12% of girls who married before 18 could not. Women who marry under 18 years old correlate with the highest education they have completed. Women who marry before the age of 18 tend to have a lower level of education than those who marry after the age of 18.

In addition, primarily based on the author's search, the Minister of PPPA explained that around 94.72% of girls drop out of school due to early Marriage. From this data, the government should have made a breakthrough by reducing the number of women married early (Ahya Robby and Siti Fauziah 2021). This reinforces the applicant's scientific data taken from Supriyadi Widodo's research. The data states that child marriage often causes children to stop going to school because they have new responsibilities either as wives or future mothers or parents who will be expected to play a more significant role in taking care of the household or being the backbone of the family and having to earn a living (Eddyono 2016).

In this case, the state must carry out its obligation to protect girls. As stipulated in the Constitution, in addition to having a responsibility to fulfill (to fulfill) and respect (to respect) the rights of children, the state also must protect (to protect). This is as stated by Oppenheim. He explained that although all people must submit to state power, people still have the right to protection. The state should also be responsible for protecting it (Oppenheim 1967). One way is by reconstructing the law that can encourage them (girls) to avoid these problems.

Fourth, the *a quo* is considered to lead to child exploitation. This is related to the ability of children who are mentally incapable of taking their attitude consciously. Children are still psychologically vulnerable individuals. This is stated in Law Number 39 of 1999, article 5, paragraph 3. This regulation explains what is meant by vulnerable groups of people, among others, the elderly, children, the poor, pregnant women, and people with disabilities. In this regulation, children are included in the vulnerable age.

Talking about the age of children can undoubtedly refer to the Child Protection Constitution, which regulates the age of children

under 18. When synergized with the human rights rules above, it means that children under 18 are a vulnerable age for a person. That is why the regulations of Law Number 23 of 2002 state that parents protect children. So parents must prevent Marriage at an early age (Idris, Khusaini, and Al-Mansyuri, 2024).

Based on the above explanation, the Constitutional Court judges fully accepted the petitioners' demands. The authority of the Court refers to several things, as explained above. Therefore, the petitioners were allowed to file the petition. Thus, the Constitutional Court ordered the legislators to implement Article 7 of the Marriage Law, which regulates the minimum age of Marriage. The point is that the minimum age of Marriage for women should be set by considering good aspects, ranging from health to socio-economic factors.

Balancing Justice: An Analysis of Constitutional Court Decision No. 22/PUU/XV/2017 in the Framework of Islamic Law

The Constitutional Court's decision can certainly be examined from the perspective of its formulation. This Constitutional Court rule considers that MK NUMBER 22 PUU-XV/2017 was formed because it considers the legal provisions regarding the minimum age of Marriage to be a matter of benefit. So, it must be adjusted to cultural developments or universally following matters concerning human development. On this side, there is a similarity between the formulation of the Constitutional Court and the reasoning of the formulation of Islamic law. In this case, Islamic law does not base its rules on the Qur'an and *nash*. As previously explained, Islamic law appears to be different from the marriage age rules set by the ulama. This means that Islamic law also thinks the same, that the minimum age of Marriage is a matter of *ijtihadiyah*.

Ijtihadiyah, meaning *istinbath* law, is decided according to the context in which the law will be compiled and implemented. Ijtihadiyah positions the rules to follow the times and human conditions (Ahmad Bunyan Wahib, t.t.). The law that is born cannot be separated from the anthropological-sociological problems of society. It is on this side that a similarity is found. The Constitutional Court's decision assumes that the age of marriage drinking is an open legal policy issue.

Meanwhile, Islamic Law considers the issue of marriage age to be an *ijtihadiyah* issue. Both open legal policy and *ijtihadiyah* are assumptions about the law that must be decided based on social reality. *Ijtihadiyah* is oriented so that Islamic law can answer developing social problems. Likewise, open legal policy. So, the assumptions of both are the same regarding the age of Marriage for both men and women, as stated by Masri Singarimbun. As previously explained, he once explained that the quantitative growth of Indonesia's population can be controlled by controlling the age of Marriage (Singarimbun, 1996).

The two rules are indeed based on different guidelines. Islamic law is based on the *nash*. The Constitutional Court's decision is based on the National Law Reform Consortium's Interpreting Constitutional Democracy - Definition, Rationality and Status of Indonesian Constitutional Democracy after the Amendment of the 1945 Constitution. However, the substance of both is the same, namely underlying the relevant legal rules so that they follow the realities Indonesian citizens face. Ahmad Rofiq, as explained earlier, said that the Ijitihad in question is done through the *mashlahah mursalah* method. This method is all the considerations, and deep thoughts of Indonesian scholars intended to answer the challenges and needs of Indonesian society. According to him, one of the conditions is that it must remain in line with the objectives of Islamic law for the sake of public benefit (Rofiq 2013).

Apart from this, Islamic law and Constitutional Court Decision NUMBER 22 PUU-XV/2017 also seem to have similarities in terms of orientation. In the author's opinion, both are redactionally the same in terms of their purpose: to form a good family. In Islamic law in terms of complications of Indonesian Islamic law, it is explained that the purpose of Marriage in a separate article is separated from the definition of Marriage, namely in article 3, which reads: "Marriage aims to create a household that is *sakinah*, *mawaddah*, and *rahmah*." The meaning of *sakinah*, *mawaddah,* and *rahmah* is undoubtedly the realization of a prosperous and prosperous family.

Of course, in the case above, it will not be called *sakinah*, *mawaddah,* and *rahmah* if there is discrimination in the household. This means that what Islamic law expects is a marriage without discrimination. It

would not be called *sakinah*, *mawaddah,* and *rahmah*. If there is coercion in Marriage and a wife is neglected by her husband. Of course, this is also what Islamic law says is not included in the orientation of Marriage. In addition to some of the applicant's reasons, it is also evident from the background of the applicant himself. The Constitutional Court's decision was born because of the strong status of the applicant as a victim of discrimination. As noted, three applicants are victims of the problem of early Marriage.

The three applicants are evidence of people who cannot form a *sakinah*, *mawaddah,* and *rahmah* family. The three families could not achieve prosperity because they were married off early. Both economically and socially, they have failed to achieve prosperity. The thing that became the causal failure was that the Marriage was not done based on their willingness. Instead, they were forced to marry early because of economic factors. Her third Marriage was done because of her family's economic factors. As a result, they failed in reproduction, and some even received violent treatment. According to the applicant, this was done because the age of the bride and groom at the time of Marriage was immature. With this concrete evidence from the applicant, the decision of the Constitutional Court judges compiled a judicial review whose contents ordered the reconstruction of the minimum age of Marriage in the 1974 Marriage Law. Of course, the orientation aligns with what is in Islamic law. Namely, in the future, marriage orientation will create a sakinah, mawaddah, and rahmah family, which can be achieved.

Based on the explanation, it can be seen that two conclusions have been obtained. First, there are similar assumptions about the nature of law related to *ijtihadiyah* and open legal policy. Second, there are similarities in the basic orientation. However, there are many differences between Islamic legal reasoning and Islamic law. The law explains that the age of Marriage must be based on what has been regulated in the agreed Marriage Law. This means that the Marriage Law as a quo in KHI is the basis for its determination.

Meanwhile, in the Constitutional Court Decision Number 22 PUU-XV/2017, the Marriage Law becomes the disputed a quo. Some of the explanations in the *a quo* are considered discriminatory because they open the door to discrimination against women. In this position, it is undoubtedly a matter of fundamental distinction. Islamic law positions the a quo as the basis for its determination while the

Constitutional Court Decision does not. Even the a quo is positioned as a legal target that must be reconstructed.

In this aspect, the discussion then proceeds to the differences in principles used in sociological law. In Islamic law, the decision refers to the orientation of Marriage itself, namely what is referred to as *kafa'ah*. In the conception of *kafa'ah* in Islamic Law, there are three conditions for women who are prohibited from being married (Sidqi and Rasidin, 2023).

According to the author, the determination of the age of Marriage in Islamic law seems to be an age based on the maximum age of *adrassul bulugh,* as explained that the exact age of puberty for women is 16 years. The maximum *adrassul bulugh* is 15 years. However, what is still ambiguous is that if it is based on the age at which *adrassul bulugh* is obtained, men should also be the same as the age determined for women. This is as explained by Rahmat Sudirman. He explained that the maximum age is 15 for men and women. So, at 16, it can be ascertained that they have *alamatul bulugh*. Thus, according to the author, it is not consistent in determining the biological benefit. If indeed what is used is the basis of health *maslahah* (R. Sudirman 1999).

The author also observes a contrast in the type of *maslahah* in the construction of the two legal objects under study. In the author's opinion, the kinds of *maslahah* are also different. According to Al-Buti, in terms of its strength, the concept of *maslahah* is divided into three (Ramaḍān 1982). Based on the data and explanations above, it is finally clear that the difference in the aspect of the principle of justice is very different between Islamic law and the Constitutional Court's decision. KHI considers justice not quantitatively equal, as it is in most Muslim countries (Ali and Puspita, 2023). Meanwhile, the Constitutional Court's decision believes that justice must be quantitatively equal to that of countries that use a democratic system.

So, based on all the explanations above, several aspects make KHI different from the Constitutional Court Decision NUMBER 22 PUU-XV/2017. These aspects differ regarding the legal basis, the determination of marriage prohibition, the construction of the *maslahah*, and the principle of legal justice. Some of these things are fundamental differences.

Conclusion

The results showed that the Constitutional Court's decision was based on valid legal standing and rational arguments. This decision is in line with the value of Islamic law in paying attention to *maslahah* (benefit). Still, there are differences in certain methodological aspects, especially in the *maslahah mursalah* approach. The findings also reveal that the change in the marriage age aims to reduce discrimination against women and protect their health, education, and socio-economic rights. From the point of view of Islamic law, the minimum age of Marriage is *ijtihadiyah* and can be adjusted to the context of the times, as the principle of *maqashid al-shari'ah* is oriented towards the welfare of the people. This research recommends further harmonizing Islamic and national law to create fairer and more applicable rules.

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