



**DIVERSITY IN DETERMINING MATURITY AGE IN INDONESIAN LAW:
MAQĀSID AL-SHARĪAH PERSPECTIVE**

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Abstract: This article explores the emergence of diversity in determining the age of maturity in Indonesian laws, particularly in civil law, penal law, marriage law, and citizenship law. Maturity is a crucial element in determining a legal act. Therefore, the diversity of its determination can lead to overlap and ambiguity in determining the validity of legal action and legal accountability. This raises the question of why there is a difference in the determination of maturity age and its factors. Analysis of this problem of diversity in maturity age is carried out using the *maqāsid al-sharīah* approach, using Jasser Auda's system theory. The study shows that differences in the determination of maturity age in legislation are caused by differences in legal proficiency required, a legal paradigm used as a basis, and differences in the law's scope. In *maqāsid al-sharīah* perspective, maturity age occupies a position as a *wasilah* or a strategy to achieve legal purposes, thus allows for diversity. The more interests are protected, the higher of age is set. The diversity of maturity ages has an interrelated hierarchy without causing any contradictions between laws. The maturity age difference is intended to fulfill legal authority requirements, proficiency to act, and authority to act, with their specifics.

Artikel ini mengeksplorasi keragaman penetapan usia kedewasaan dalam perundang-undangan di Indonesia, khususnya dalam hukum perdata, pidana, perkawinan, dan kewarganegaraan. Kedewasaan merupakan unsur pokok dalam penetapan suatu perbuatan hukum. Terjadinya keragaman penetapannya dapat menimbulkan ambiguitas dan ketidakjelasan dalam penentuan keabsahan tindakan hukum dan pertanggungjawaban hukum. Hal ini menimbulkan pertanyaan mengapa terjadi keragaman dalam penetapan usia kedewasaan dan apa faktor yang melatarbelakanginya. Analisis terhadap masalah keragaman usia kedewasaan ini dilakukan dengan menggunakan pendekatan *maqāsid al-sharīah*, dengan memanfaatkan teori sistemnya Jasser Auda. Hasil penelitian menunjukkan bahwa perbedaan penetapan usia kedewasaan dalam perundang-undangan disebabkan oleh perbedaan kecakapan hukum yang dituntut, paradigma hukum yang dijadikan dasar, dan ruang lingkup hukum. Dalam perpektif *maqāsid al-sharīah*, usia kedewasaan menempati posisi sebagai *wasilah* atau strategi mencapai tujuan hukum, sehingga memungkinkan terjadinya keragaman. Semakin banyak kepentingan yang dilindungi

maka semakin tinggi usia yang ditetapkan. Keragaman usia kedewasaan memiliki interrelasi hirarkhi, sehingga tidak menimbulkan kontradiksi antar undang-undang. Perbedaan usia kedewasaan ditujukan untuk memenuhi persyaratan kewenangan hukum, kecakapan bertindak, dan kewenangan bertindak yang memiliki kekhususan masing-masing..

Keywords: *age of maturity; maqāsid al-sharīah; legal proficiency; legal responsibility.*

INTRODUCTION

Maturity is the ability to take legal actions, formulate a will, and awareness of the legal consequences of one's actions.¹ A person who is considered legally mature has the authority to perform all legal acts, for example, making agreements, getting marriage, and making a testament.² In Indonesian law, a person's legal proficiency is stated with age restrictions. However, there is a lack of uniformity in the provisions for maturity in Indonesian laws. This raises the question of why there is a difference in the determination of maturity age in Indonesian laws and regulations.

The diversity in determining maturity age falls within the scope of different laws. Maturity age in civil law is different from maturity age in criminal law, in-state administrative law, and family law. In civil law, maturity age for a person is when they are 21 years old or already married, so those who have not reached that age must be in guardianship.³ State administrative law stipulates an age limit for adulthood is 17 years, indicated by ownership of an identity card.⁴ In family law, the determination of maturity age has differences as well. The Child Protection Act stipulates that maturity age is when a person is 18 years old.⁵ In the marriage law, a person who is allowed to marry is 19 years old.⁶ This difference in the determination of maturity age results in the emergence of clashes between legal rules, especially in determining legal proficiency requirements and whether a person can be held accountable for the law. This raises the question of how to harmonize the different legal provisions between those laws and regulations.

This diversity of maturity age determination has attracted the attention of many researchers. Dharma highlights the importance of overcoming this diversity by equalizing the age limit for adulthood.⁷ Issuance of Supreme Court Circular

¹ Ade Maman Suherman and J Satrio, *Penjelasan Hukum Tentang Kecakapan Dan Kewenangan Bertindak Berdasar Batasan Umur* (Jakarta: Nasional Legal Reform Program, 2010), 9.

² Abdul Kadir Muhammad, *Hukum Perdata Indonesia* (Bandung: Citra Aditya Bhakti, 2010), 40.

³ Civil law Chapter XV concerning Immaturity and Guardianship in article 330

⁴ Law No. 24/ 2013 concerning amendments to Law Number 23 of 2006 concerning Population Administration in article 63 paragraph (1)

⁵ Law No. 17/2016 concerning amendments to Law Number 23 of 2002 concerning Child Protection in article 1 paragraph (1)

⁶ Article 7 paragraph (1) of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage.

⁷ Agustinus Danan Suka Dharma, 'Keberagaman Pengaturan Batas Usia Dewasa Seseorang Untuk

Letter No. 7/2012 and Circular of the Head of State Land Agency No. 4/ SE/ I/ 2015 is the proper steps to guarantee legal certainty. Suherman found an inconsistency in the law regarding adults, immature, underage, or child in providing a specific age limit.⁸ Gufron⁹ and Kartika¹⁰ examined the diversity of adulthood age and the relationship with marriage law. According to Gufron, adulthood needs to be examined through various perspectives; juridical, philosophical, and sociological.

Meanwhile, Kartika considers that an age limit for children in the law was inconsistent. The maturity age in marriage is needed to prevent child marriage. Lestari also reviewed proficiency to act after enacting Law No. 30/2004 on the notary public position. In her findings, Lestari concluded that there are differences in maturity age in the fields of civil law, marriage law, and notary law.¹¹ Through a comparative study, Nurkholis¹² found a difference in maturity age between Indonesian laws and Islamic law. This paper uses a different approach from previous research, namely *maqāsid al-sharīah*. The focus is on examining the rules of maturity age in legislation to find the reasons for the differences that emerged. Therefore, this article will be different from Dharma's research, which demands uniformity of maturity age and does not partially look at the maturity age provisions carried out by Gufron, Kartika, Lestari, and Nurkholis.

The objective of the study is provisioned on the determination of maturity age in Indonesian legislation. This article mainly makes an inventory diversity of provisions for maturity age found in civil law, criminal law, marriage law, and citizenship law. These differences in normative provisions are analyzed from their philosophical aspects to find answers to why there is a diversity in the determination of maturity age. This analysis is based on the framework of thought that laws and regulations have the same purpose. If differences are found between those provisions of law, it is necessary to look at legislators' reasons made the different rules.

Provisions on maturity or proficiency to act are provisions that aim to guarantee individuals and society's legal certainty. However, the diversity of maturity has resulted in society's ambiguity in determining which rules to choose. The emergence of diversity in the determination of maturity requires a

Melakukan Perbuatan Hukum Dalam Peraturan Perundang-Undangan Di Indonesia', *Jurnal Repertorium*, II.2 (2015).

⁸ Suherman and Satrio.

⁹ M. Gufron, 'Makna Kedewasaan Dalam Perkawinan', *Al-Hukama, The Indonesian Journal of Islamic Family Law*, 6.2 (2016).

¹⁰ Norma Yuni Kartika, Muhajir Darwin, and Sukamdi, 'Keberagaman Batasan Usia Anak Di Indonesia Hubungannya Dengan Perkawinan', *Jurnal Pendidikan Geografi*, 3.4 (2016).

¹¹ Ningrum Puji Lestari, 'Kecakapan Bertindak Dalam Melakukan Perbuatan Hukum Setelah Berlakunya Undang-Undang No.30 Tahun 2004 Tentang Jabatan Notaris' (Universitas Diponegoro Semarang, 2008).

¹² Nurkholis, 'Penetapan Usia Dewasa Cakap Hukum Berdasarkan Undang-Undang Dan Hukum Islam', *Yudisia Jurnal Pemikiran Hukum Dan Hukum Islam*, 8.1 (2017).

philosophical explanation of the purpose of establishing law. Legislators must have a clear legal basis in determining the age of maturity in every enacted law. Therefore, analyzing the philosophical basis of establishing a legal rule is necessary. In this article, the *maqāsid al-sharīah* approach is an analytical tool to explore the objectives behind establishing maturity age in Indonesian legislation. Analysis of this problem is carried out using Jasser Auda's system theory, through six features; cognitive nature of systems, wholeness, openness, interrelated hierarchy, multi-dimensionality, and purposefulness.¹³ These features are used to explain how to understand the rule of law through an innovative approach. To understand the diversity of maturity age, it is needed to differentiate between changing means and fixed principles and ends.¹⁴ Through this system theory, the law's diversity of maturity age is placed as a system with the same purpose, namely ensuring legal certainty. Differences that exist are analyzed in terms of each regulation's importance because each law has a specific purpose. Various dimensions of specific purposes will be explained. As a result, hierarchical interrelationships can be found between one rule and another. Thus, the diversity of maturity must be seen with an integrative approach, not a conflict approach. Therefore, its implementation does not cause ambiguity for law enforcers and society. This analysis is carried out through, first, placing the rules on maturity in various laws as a whole by explaining the knowledge system that shapes it and its openness to change. Second, it explains the hierarchical relationship between statutory regulations and the dimensions surrounding each maturity age determination. Third, it is analyzing the unity of statutory regulations' objectives in determining the age of maturity.

MATURITY IN MULTY PERSPECTIVES

In the Indonesian Dictionary, the word adult is defined in several meanings; (1) to age; pubescent puberty (not children or adolescents anymore); (2) has reached sexual maturity; and (3) mature (concerning thoughts, views, etc.).¹⁵ The term adult represents all mature organisms which commonly refer to humans. Adults are people who are no longer children and have become entirely mature.¹⁶

Maturity is a period of transition from adolescence to a time that demands a sense of responsibility. The development of this adult period starts when someone turns 19 years old to 25 years old. At this time, aspects of religiosity and self-

¹³ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law, A Systems Approach* (London: The International Institute of Islamic Thought, 2008).

¹⁴ Jasser Auda, "How do we realise Maqasid Al-Shariah in the Shariah, accessed February, 24, 2021, <https://www.jasserauda.net/portal/wp-content/uploads/2016/12/4.pdf>

¹⁵ WJS Poerwadarminta, *Kamus Besar Bahasa Indonesia* (Jakarta: Pustaka Firdaus, 1990), 87.

¹⁶ Yudrik Yahya, *Psikologi Perkembangan*, Cetakan ke (Jakarta: Kencana, 2015), 245.

adjustment were related to subjective well-being. That is, someone's diversity in this phase can direct a person to achieve a state of subjective well-being.¹⁷

In customary law, there is no age limit in determining maturity. The transition from children to adults can be seen from the ability to take legal actions. Maturity standard is seen from the ability to calculate and maintain his/her interests. In Javanese local wisdom, maturity is defined as *mental* (have a family), *kuwat gawe* (strong for working), *mencar* (having own home), getting married, and starting to live independently.¹⁸ These conditions are in the age range between 15-18 years.¹⁹

Islamic law stipulates the age of maturity as a legal basis for a person to be subject to an obligation and be given rights. The stages of determining maturity in Islamic law are known as *tamyiz*, *baligh*, and *rusyd*.²⁰ *Tamyiz* period is when a child can distinguish which things are beneficial and harmful to him/her. According to most scholars, the age of *mumayyiz* is seven years and ends until puberty. *Mumayyiz* can be grouped into middle and late childhood, a developmental period between the ages of 6 and 11 years. At this stage, a child already can think logically (*'aql*) and explore the meaning of something.²¹ The ability of *'aql* or reason is what a child takes into account for the first time so that he/she can be called *mumayyiz*. At this age, a child cannot be said to be an adult because mentally or socially, he/she cannot carry out adult responsibilities. At this stage, he/she should be kept under the close direct supervision of an adult.²²

The second stage is *baligh*, or puberty, as a physical transfer point from childhood to adulthood which is signed by the perfection of one's intellect or sexual and bodily transformation.²³ Legal experts argue that *baligh* is associated with enormous changes of person. The signs of maturity are divided into two; physical and non-physical. This circumstance is further divided into specific signs in men and women, both of which have a particular stage in their development.²⁴ The signs for a boy that can be seen are experiencing *ihtilam* (dream of having sex). This stage is also characterized by the growth of hair around the genitals or other secondary sexual characteristics.

¹⁷ Nurul & Suharnan Muzakkiyah, 'Religiusitas, Penyesuaian Diri Dan Subjective Well Being', *Persona, Jurnal Psikologi Indonesia*, 5.01 (2016).

¹⁸ I Made Jaya Winata, 'Batas Umur Dewasa Bagi Warga Masyarakat Hukum Adat Desa Adat Sanur Propinsi Bali Dalam Pembuatan Akta Perjanjian Di Hadapan Notaris', *Tesis*, 2012, 41-45 <<http://eprints.undip.ac.id/52206/>>.

¹⁹ Suherman and Satrio, 10.

²⁰ Dadan Muttaqien, *Cakap Hukum Bidang Perkawinan Dan Perjanjian* (Yogyakarta: Insania Citra Press, 2006), 5.

²¹ Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab*, Cetakan ke (Jakarta: Lentera, 2011), 346.

²² Zakariya Ahmad Al-Barry, *Hukum Anak Anak Dalam Islam*, ed. by Chadijah Nasution (Jakarta: Bulan Bintang, 1977), 113.

²³ Muhammad Hasan Sebyar, 'Perkawinan Ditinjau Dari Moderasi Hukum Yusuf Qaradawy', *Al-Azhar Islamic Law Review*, 2.2 (2020), 113.

²⁴ Muttaqien, 7.

Meanwhile, a girl reaches puberty when she is menstruating, which signifies her ability to continue heredity. *Ihtilam* and menstruation are signs of maturity related to biology.²⁵ For a boy who is already *ihtilam*, he is biologically ready to fertilize. Likewise, when a girl gets her first menstruation, it is a sign that her uterus is ready to be fertilized.

The third stage is *rusyd*, which is a level of attainment of mental and intellectual maturity. This word means perfection of mind and soul, making it capable of behaving and acting as precisely as possible. The word *rusyd* also means intelligent in maintaining the property.²⁶ A person who has reached *rusyd* is a person who has religious merit characterized by intelligence and ingenuity.²⁷ In this stage, he/she has a physical/ biological maturity and a psychological/ mental maturity and vision of life maturely. Maturity in this stage can be measured by the kindness of his/her actions in religion and managing the property.²⁸

Among scholars of mazhab, there are different opinions in conversion from *baligh* to maturity. Shafi'i and Hanbali schools argue that the age of *baligh* for both men and women is 15 years. Maliki School stipulates that *baligh* is 18 years or even 17 years to 18 years.²⁹ The Hanafi school distinguishes between male and female age of adulthood, for boys the age of *baligh* is 18 years, while for girls is 17 years.³⁰ Among Shia schools, men's age of maturity is 15 years, while women's are nine years.³¹

In addition to *baligh*, maturity in Islam also requires fulfillment of legal proficiency (*ahliyyah*), both passive proficiencies (*ahliyyah al-wujub*) and active proficiency (*ahliyyah al-ada*).³² *Ahliyyah al-wujub* is a person's ability to receive rights but is not yet capable of being burdened with obligations. *Ahliyyah al-ada* is a person's ability to be responsible for legal actions. The requirements for achieving this proficiency are *baligh* and clear-headed. Hence he/she can understand legal rules to be obeyed and implemented.³³

²⁵ Nahrowi, 'Penentuan Dewasa Menurut Hukum Islam Dan Berbagai Displin Hukum', *Kordinat*, XV.2 (2016), 262-269.

²⁶ Abu Ja'far Muhammad bin Jarir Ath-Thabari, *Tafsir Ath-Thabari*, Jilid VI (Jakarta: Pustaka Azzam, 2017), 454.

²⁷ Moh Ali Wafa, 'Telaah Kritis Terhadap Perkawinan Usia Muda Menurut Hukum Islam', *Ahkam*, 17.2 (2017), 394.

²⁸ Abdurrahman AL-Jaziri, *Al-Fiqh Alā Al Madzhāhib Al-Arba'ah*, Juz IV (Istambul: Dar al-Dakwah, 1984), 350.

²⁹ Mughniyah, 346.

³⁰ Muksin Nyak Umar and Rini Purnama, 'Persyaratan Perkawinan Menurut Mazhab Hanafi', *Samara Jurnal Hukum Keluarga Dan Hukum Islam*, 2.1 (2018), 42.

³¹ Mughniyah, 348.

³² Wahbah Zuhaili, *Ushu Al-Fiqh Al-Islamy*, Juz I (Beirut: Dar al-Fikr al-Mu'asirah, 2013), 164-165.

³³ Abu Hamid Muhammad bin Muhammad Al-Ghazali, *Al Mustasfa Min 'Ilmi Al-Usul* (Beirut: Dar Kutub al-'Ilmiyah, 2020), 109.

MATURITY IN INDONESIAN LAW

Indonesian law differentiates maturity age based on its scope. The broader the law's scope, the more legal proficiencies are required, the greater the maturity age is set. In civil law, a person's maturity can be divided into two; full maturity and limited maturity. Full maturity is set at the age of 21 years or already get married (article 1330 of the Civil Code), while limited maturity is set at 18 (article 29 of the Civil Code). In Marriage Law No. 16/2019, it is stipulated that 19 years for both men and women get permission to marry (article 7 paragraph 1). However, this provision is supplemented by the need to obtain permission from the parents if both of them have not reached the age of 21 years (article 6 paragraph 2). Compilation of Islamic Law regulates the age of maturity to be 21 years (article 98 verse 1).

In criminal law, the provisions for maturity are set at 18 years (article 1 point 1 of Law No. 7/2016 concerning amendments to Law No. 23/2002 on Child Protection). The provisions of Law reinforce this No. 3/ 1997 on Juvenile Courts (article 1 point 1). Therefore, these two laws set the age limit for maturity to be 18 years old or already get married.

In administrative law, the rules regarding maturity age are different. Article 63 paragraph (1) and (2) Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 on Population Administration. This law states that Indonesian citizens who are 17 years of age or have been getting married must have an Identity Card. The age of 17 also marks maturity in the political field. This is contained in article 7 of Law No. 23/2003 on the General Election of the President and Vice President, article 19 paragraph (1) of Law No. 10/2008 on the General Election of Members of the People's Representative Council, Regional Representative Council and the Region People's Representative Council, and article 68 of Law No. 32/2004 on Regional Government. In-Law No. 13/2003 on Manpower, it is stated that maturity age is 18 years (article 1 number 26). Thus, before reaching that age, companies cannot employ children who are less than 18 years old. The same provisions are also regulated in Law No. 39/1999 on Human Rights (article 1 point 5), Law on the Eradication of the Crime of Trafficking in Persons (article 1 point 5), and Law No. 12/2006 on Citizenship (Article 9 letter a).

From those legislation provisions, it can be concluded that maturity is determined by two things; age and marriage. The minimum age for maturity is 17 years when a person is entitled to have a citizen card (KTP) as a legal subject's identity. However, different provisions are regulated; 18 years about criminal law enforcement and the right to work, and 19 years with marriage implementation. A person's perfect maturity is when he/she reaches the age of 21 years so that

he/she has the authority to act and does not need guardianship over him/herself. However, all maturity ages become unused if a person is getting married. Marriage automatically makes a person become an adult or competent as a legal subject.

MATURITY AGE DIFFERENCES AND ITS IMPLICATION

Two factors cause the diversity in determining maturity age; differences in the legal proficiency required and broad scope of the regulated law. Determination of the lowest age of maturity is in administrative law and political rights of citizens. Both laws and regulations stipulate the age of 17 years as the age limit for maturity. The age determination for 17 years is adjusted to legal proficiency required from the two fields of law. The right to have an identity and political rights are personal rights,³⁴ not directly related to others' rights. Therefore, the required legal proficiency is a minimum requirement. Thus, the age of 17 years is positioned as an opening for maturity and not as an age of maturity itself.

The age of 18 years becomes the limit between children and adults. This rule is strengthened by the issuance of a Supreme Court Circular Letter Number 7 of 2012, which stipulates an age of maturity and legal competence to be 18 years. This letter serves as a guideline for the implementation of duties for all court officers in Indonesia. Besides referring to maturity from a psychological perspective, this provision is also widely applied in various countries in the world. On this basis, in the realm of criminal law, age is the limit of law enforcement procedures as regulated in the Child Protection Law. Those aged 18 years and over are categorized as non-children because they are considered legally capable and responsible for their actions.

In Marriage Law, it is stated that a person's maturity in marriage is at the age of 19 years, not 21 years, as stipulated in the Civil Code. In marriage law, the perpetrator is required to have the ability to formulate a will and the ability to understand the consequences of marriage law. The determination of 19 years is influenced by norms other than legal norms, religious norms, social norms, and cultural norms. The Islamic norms, the religion of most of Indonesia's population, determine the age of maturity when a person reaches *baligh*, 15 years and over. Social norms determine an age of maturity based on a person's economic and social independence.

Meanwhile, cultural norms determine maturity based on the local community's practical feasibility, namely the ability to be independent. Determination of an age limit for marriage is the result of a compromise between these norms. However, the age limit of 19 years does not stand alone but relates to the provisions of

³⁴ Adrianus Bawamenewi, 'Implementasi Hak Politik Warga Negara', *Jurnal Warta*, 61 (2019), 50.

Article 6 paragraphs (1) and (2), namely, permission from parents or guardians is required for those who have not reached the age of 21 years. Permission from parents or guardians to support maturity in marriage. Therefore, this is in line with provisions of maturity in the Civil Code, 21 years. Thus, the age of 21 years or having been married is a measure of a person being declared proficiency to act in law (*handlings-bekwaam*).³⁵

The second factor contributing to the diversity of maturity is a difference in the scope of laws. Each law has its provisions and scopes for regulating a person's behavior. Scope of criminal law includes public law, civil law regulates the relationship between individuals, and administrative law regulates government administration. According to administrative law, a competent person is not necessarily competent in criminal law or civil law. There are differences in maturity categories; political maturity, sexual maturity, and legal maturity.³⁶ Political maturity follows administrative law, sexual maturity follows marriage law rules, while legal maturity follows civil law and criminal law. Maturity shows the existence of legal proficiency and juridically creates legal authority. Thus, if a person is declared as an adult, it means that legally he/she is considered to have the ability as a legal subject.³⁷

Differences in determining the age of maturity in Indonesian legislation will have implications for legal action, both from the side of legality and from the side of legal accountability. In civil law, maturity has implications for the legality of legal action. Those who are not mature yet are considered incompetent, so the agreement they do is invalid (Articles 1320 and 1330 of the Civil Code). The provisions in Law confirm this No. 30/2014 on the Position of Notary, which determines the validity of a person's legal actions when he is an adult and capable (Article 39 paragraph 1). The invalidity of legal action resulting from not fulfilling the legal prowess requirements causing the agreement or engagement to be performed can be requested for cancellation by one of the parties.³⁸ In-Law No.1 / 1974, the illegality of implementing a marriage can cause the parties proposing to cancel the marriage (articles 26 and 27).

The second implication relates to whether a person can be held accountable for his/her actions. Age of maturity is a determining factor whether legal subject actors can be held accountable or not. In criminal law, two types of justice systems are applied; the juvenile justice system and the general court system.

³⁵ Isetyowati Andayani, 'Keberadaan Harta Perkawinan Dalam Problematika Perkawinan', *Jurnal Kajian Masalah Hukum Dan Pembangunan*, 10.4 (2005), 58.

³⁶ Decree of the Minister of Internal Affairs, Directorate General of Agrarian Affairs, Directorate of Land Registration Number Dpt.7 / 539 / 7-77, dated 13-7-1977.

³⁷ Dyah Hapsari Prananingrum, 'Telaah Terhadap Esensi Subyek Hukum: Manusia Dan Badan Hukum', *Refleksi Hukum*, 8.1 (2014), 77.

³⁸ Muttaqien, 86.

Law enforcement procedures in these two systems are different because they are based on the perpetrator's category, whether he/she has reached adulthood or is still a childhood. In the child criminal justice system, the concept of child protection, child welfare, and children's interests are used.³⁹ The law enforcement model used is restorative justice and diversion; settlement of cases by deliberation and carried out outside the court (articles 6-12 of Law No. 11/2012).

Conflicts related to the maturity age limit often occur when a legal incident intersects with several regulations, involves several legal institutions, or because the scope of the legal rule is different. The diversity of maturity age causes confusion and doubts about law enforcement in the field. In the Criminal Procedure Code (KUHAP), a child aged 15 years can testify as a witness in court with all the legal consequences,⁴⁰ but in the Law of Child Criminal Justice System, a child aged 15 years is not considered an adult. Thus, he/she cannot be held accountable.⁴¹ Likewise, a child aged 17 years is entitled to have an identity card, but this does not make it an adult in criminal or civil law. Therefore, the settlement of conflicts between legal rules in determining the age of maturity must be distinguished by the law's scope. Thus, the difference in maturity age does not cause a contradiction in the stipulation of the applicable law.

MAQĀSID AL-SHARĪAH DIVERSITY OF MATURITY AGE

An important question is whether there is a need for uniformity in determining the age of maturity in Indonesian legislation. If necessary, what are the standards used in the uniformity of maturity ages? Will uniformity of maturity age guarantee legal certainty and make law enforcement more effective and efficient? These questions start from the perspective of ideals adapted to legal reality, including the importance of any established legal rules. Therefore, a philosophical point of view is needed to answer why diversity determines the age of maturity, the purpose and benefits, what protection is aimed at from each of these rules, and how to harmonize this diversity to avoid ambiguity in law enforcement. In this context, *maqāsid al-sharīah* is the primary reference and key in legal reform and innovation.⁴²

Maqāsid al-sharīah analysis of the diversity of maturity is taken using Jasser Auda's system approach, through six features; cognitive nature of systems, wholeness, openness, interrelated hierarchy, multidimensionality, and

³⁹ Bambang Purnomo, 'Penegakan Hukum Tindak Pidana Anak Sebagai Pelaku Dalam Sistem Peradilan Pidana Anak: Studi Kasus Di Polres Tegal', *Jurnal Hukum Khoiro Ummah*, 13.1 (2018, 48).

⁴⁰ Article 171 Law No. 8/1981 about Criminal Procedure Code (KUHAP).

⁴¹ Article 1 number 5 Law No. 11/2012.

⁴² Syaiful Bahri, 'The Construction of Indonesian Political Fiqh: Maqasid Al-Shariah Perspective and Ahmad Raisuni's Thoughts', *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial*, 17.1 (2020), 35-52 <<https://doi.org/10.21154/justicia.v17i1.1671>>.

purposefulness.⁴³ The study of *maqāsid al-sharīah* can find the purpose, objective, principle, intent, end in a rule for humanity's interest.⁴⁴ Jasser Auda's concept is considered the most comprehensive in exploring *maqāsid al-sharīah* in the context of legal thought.⁴⁵ Public interest (*maslahah*) as a final goal of law must be expressed for human development.⁴⁶ The analysis is carried out through, *first*, placing the rules on maturity in various laws as a whole by explaining the knowledge system that shapes it and its openness to change. *Second*, explaining the hierarchical relationship between statutory regulations and the dimensions surrounding each maturity age determination. The analysis uses the pattern of division of *maqāsid 'ammah* (general *maqasid*), *maqāsid khassah* (partial *maqasid*) and *maqāsid juziyyah* (specific *maqasid*).⁴⁷ The public interests are general, should be given priority over the individual interests specifically.⁴⁸ *Third*, analyzing the unity of objectives of statutory regulations in determining the age of maturity. The concept used in this analysis is the level of importance in *maqāsid al-sharīah*, *dharuriyah* (necessities), *hajiyyah* (needs), and *tahsiniyyah* (luxuries).⁴⁹ Besides, the scope of benefit achieved using the five components of protection in the *maqāsid al-sharīah* is also questioned, namely *hifz din* (preservation of faith), *hifz nafs* (protection of soul), *hifz 'aql* (protection of mind), *hifz nasl* (protection of descendants), and *hifz mal* (protection of wealth).⁵⁰

Determination of maturity age is an open legal policy rule, something that is open to change.⁵¹ Legislators have the authority to stipulate, change, or reconstruct legal rules related to maturity. Determination of maturity age in *maqāsid al-sharīah* context is categorized as cognitive nature, resulting from legislators' knowledge based on various parties' input. Therefore, the provisions are relative, following the paradigm of science as a process, open to changes, and human knowledge changes. Its openness character impacts the occurrence of differences in maturity age determination between one legal rule and another. This is due to differences in the basis and scope of the established legal rules.

⁴³ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 44-45.

⁴⁴ Jasser Auda, *Maqasid Al-Shariah: A Beginner's Guide* (London: The International Institute of Islamic Thought, 2008), 4.

⁴⁵ Halim Rane, 'The Relevance of a Maqasid Approach for Political Islam Post Arab Revolutions', *Journal of Law and Religion*, 28.2 (2012), 489-520 <<http://www.jstor.org/stable/23645196>>.

⁴⁶ Auda, *Maqasid Al-Shariah: A Beginner's Guide*, 26.

⁴⁷ Nuruddin Ibn Mukhtar Al-Khadimy, *'Ilm Al-Maqasid as-Syar'iyyah* (Riyadh: Syirkah al-'Abiikan lit-ta'lim, 2014), 72-72. 'Asyur, 53, 159.

⁴⁸ Jasser Auda, "Shariah and Politics, Questions for Post-Revolution Phase, accessed February 24, 2021, https://www.jasserauda.net/images/book_covers/Sharia%20and%20Politics.pdf

⁴⁹ Abu Ishaq Ibrahim bin Musa al-Lakhmi al-Gharnati Al-Syatibi, *Al Muwafaqat Fi Ushul As-Syari'ah* (Beirut: Dar al-Kutub al-'Ilmiyah, 2004), 221.

⁵⁰ Ibn 'Asyur added one more protection, namely protection of self-respect (*hifz al-'irdhi*). Muhammad Thahir Ibn 'Asyur, *Maqasid As-Syari'ah Al-Islamiyah* (Tunisia: Dar as-Salam, 2020), 89-91.

⁵¹ Iwan Satriawan and Tanto Lailam, 'Open Legal Policy Dalam Putusan Mahkamah Konstitusi Dan Pembentukan Undang-Undang', *Jurnal Konstitusi*, 16.3 (2019), 564.

As a part of the rule of law, the determination of an age of maturity must guarantee legal certainty. Therefore, the formula must be clear and written.⁵² To formulate at what age a person meets legal proficiency requirements, a comprehensive study (wholeness) and multidimensionality are required. It takes an extensive reading of a rule and puts it as a whole.⁵³ The involvement of various scientific aspects will help in formulating a holistic and appropriate age of maturity. The diversity in determining the age of maturity in Indonesian law must be seen in its inter-relational relationship, the range of legal rules in particular, and the law's general objectives. Therefore, differences in determining the age of maturity should not be seen as contradictory but need to be placed in an interrelated hierarchy, as a system related to one another.

The determination of an age of maturity in Indonesian legislation shows a hierarchy, namely 17, 18, 19, and 21 years. This hierarchy shows the difference of protected interests in the scope of law perspective, between public interests and individual or special interests. In legal language, this hierarchy indicates a distinction between legal authority (*rechtsbevoegdheid*), proficiency to act (*handelingsbekwaamheid*), and authority to act (*handelingsbevoegdheid*).⁵⁴ Legal authority is the authority to have rights and obligations in law. Every human being has this authority from birth (article 2, article 833, and article 955 BW). In Islamic law, this authority is known as *ahliyyah al-wujub*, namely an ability to receive legal rights. The proficiency to act is general authority, which the person owns, in general, to take legal action in general. This proficiency is set in the law at the age of 18 because a person switches his/her status from childhood to adulthood. The authority to act is a confident person's particular authority to carry out specific legal actions. Age of marriage is included in this category, so it has different provisions from other laws that the age of maturity is 19 years. Meanwhile, 21 years of age indicates that they have above three authorities and proficiencies. In the study of Islamic law, legal proficiency has been completed perfectly at the age of 21 years (*ahlyyah ada kamilah*).

The hierarchy of maturity in *maqāsid al-sharīah* perspective can be explained through the concepts of *maqāsid 'ammah*, *maqāsid khassah*, and *maqāsid juz'iyah*. *Maqāsid juz'iyah* is a purpose related to the particular purpose of a rule, such as rules for the age of marriage, age of employment, and so on. *Maqāsid khassah* is a purpose related to the specific purpose of determining the age of maturity, while *maqāsid 'ammah* is the purpose of all statutory regulations. The three types of benefit

⁵² Mario Julyano and Aditya Yuli Sulistyawan, 'Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum', *Jurnal Crepido*, 01.01 (2019), 13-22 <<https://ejournal2.undip.ac.id/index.php/crepido/article/download/6325/3197>>.

⁵³ Rane, 497.

⁵⁴ Suherman and Satrio, 3-4.

must not contradict each other. The benefits to be achieved in determining the age of maturity (*maqāsid juz`iyyah*) must not conflict with the benefits of granting legal authority, proficiency to act, and authority to act (*maqāsid khassah*). Likewise, *maqāsid khassah* must not conflict with the benefit of the law's stipulation, namely realizing social order (*maqāsid 'ammah*). Therefore, the age hierarchy of maturity must have harmony and aim to support the ownership of proficiency to act and authority to act to create a social order in society. Thus, the difference in maturity age determination is not contradictory because it has the same goals, both specific and general goals. Therefore, in its implementation, law enforcers need to look at every case in solving problems related to maturity. Different legal spheres have consequences on the fulfillment of different legal proficiency. Differences in age of maturity in Indonesian legislation must be positioned as an effort by legislators to protect all citizens' legal interests. Every certain age indicates a certain level of proficiency, and every legal action has specific legal consequences. Between age and legal action is closely related. Therefore, to ensure legal certainty is necessary to determine the age of maturity.⁵⁵

Determination of maturity age aims to ensure that legal subjects can be responsible for the consequences of their legal actions that mutually endanger others.⁵⁶ Fulfilling proficiency requirements will benefit the legal subject's actions because he/she has an understanding of legal authority (*rechtsbevoegdheid*) he/she has. Legal subjects in the rule of law are fundamental because it is a part of the idea of law and legal order.⁵⁷ Legal subjects must understand the consequences of each of their actions to avoid actions that may harm themselves and others. The more mature a person is the deeper his/her awareness of traditional values; justice, order, and freedom.⁵⁸ From *maqāsid al-sharīah* point of view, attaining legal values is a primary goal (*ghayah dharuriyyah*) of establishing legal rules. At the same time, maturity is a primary medium for achieving them (*wasilah dharuriyyah*). The purpose of the law is permanent. Thus, the rule of law in any field of the ultimate goal is to uphold traditional values. Meanwhile, media to achieve legal objectives are relative. Therefore, the determination of an age of maturity in the law can change or vary.

Diversity in determining the age of maturity must be seen from what interests to be protected because different interests allow different legal proficiencies to be required. Administrative and political proficiencies are determined at the age

⁵⁵ Suherman and Satrio, 1.

⁵⁶ Nils Jansen, 'The Idea of Legal Responsibility', *Oxford Journal of Legal Studies*, 34.2 (2014), 221-51 <<https://doi.org/10.1093/ojls/gqt031>>.

⁵⁷ Wiesław Lang, 'The Personal Dimension of the Legal System', *Philosophy of Law and Social Philosophy*, 88.4 (2002), 519-30 <<http://www.jstor.org/stable/23679963>>.

⁵⁸ Amran Suadi, *Filsafat Hukum: Refleksi Filsafat Pancasila, Hak Asasi Manusia Dan Etika* (Jakarta: Prenada Media, 2019), 27.

of 17 years. Legal, social and economic proficiencies are determined at the age of 18 years. Household proficiency is determined at the age of 19, and excellent proficiency is determined at 21 years. Administrative proficiency is aimed at protecting the soul and mind. The issuance of identity cards and political rights are fundamental rights that the state must protect. By having a personal identity, citizens have legal certainty about their citizenship status. Thus the right to life is protected. In *maqāsid al-sharīah* context, fundamental rights fulfillment is a primary level of public interest and social welfare.⁵⁹

Legal, social and economic proficiencies aim to ensure the protection of the soul, mind, and wealth. Increasing in age from 17 years to 18 years has the consequence of increasing proficiency. Therefore, legal subjects are given rights as well as obligations that are in proportion to their abilities. Its purpose is to ensure the protection of legal rights, social rights, and economic rights. A person who is 18 years old is legally considered mature so that he/she can perform into an agreement or contract legally. The addition of proficiency also guarantees his/her self-development in the legal domain (to have legal authority), social domain (right to cooperate, right to the association), and economic domain (to have the right to work, to perform agreements).

At the age of 19, the law stipulates an age limit for marriage. Maturity in marriage aims to ensure the protection of the family (*hifz an-nasl*). Therefore, more proficiencies are needed than the previous maturity stage. Marriage not only creates rights for the perpetrator but also imposes several obligations on the parties. Proficiencies are needed, including two things; material and non-material proficiencies. Material proficiency is in the form of financial abilities, while non-material proficiency is physical abilities.⁶⁰ To achieve those proficiencies, biological/physical, psychological, sociological, and economic maturity is needed. Therefore, increasing the age of maturity from 18 years to 19 years aims to ensure family management proficiencies.

Complete maturity in Indonesian legislation is at the age of 21. At this age, parental assistance or permission is no longer needed, particularly in the field of civil law and marriage law. At this age, the legal subject has independence in all his/her actions. The maturity at this stage is intended to protect all interests related to their rights and obligations as legal subjects. Even at this time, he/she must be accountable for all his/her legal actions independently.

⁵⁹ Rane, 497.

⁶⁰ Taufiq Hidayat and Raihanah Azahari, 'The Concept of Istita'ah Al-Ba'ah in Marriage', *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial*, 17.2 (2020), 223–42 <<https://doi.org/10.21154/justicia>>.

CONCLUSION

Through the *maqāsid al-sharīah* approach, the diversity of determining the age of maturity in Indonesian law is not contradictory. By forging all these rules as one system, differences in age at maturity have the same benefit: guaranteeing justice, order, and freedom of law. These three legal values are general primary benefits (*dharury*) because they cover all citizens' interests. The maturity age difference serves as a strategy to achieve those primary interests, an open legal policy. Between the ages of 17, 18, 19, and 21 years have an interrelated hierarchy to form legal harmony to determine the boundaries between legal authority, proficiency to act, and authority to act. Each of these legal boundaries requires fulfillment of different proficiency so that the point of view used must be multi-dimensional. Maturity is a physical maturity and a psychological, social, economic, and cultural maturity. In its stipulation, it is also necessary to consider religious norms, social norms, cultural norms, and legal norms. Thus, determination of maturity age, although diverse, has a unity of purpose and purposefulness.

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