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## Early Marriage Law (Perspective of Islamic Law and Juridic/State Law)

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The term early marriage has different meanings and times depending on religious or state ABSTRACT views. The term early marriage is a contemporary term. "Early" is associated with time, that is, very much at the beginning of a certain time. The age limit of a child is said to be an adult is different. This journal discusses early marriage law, Islamic legal perspectives and juridical/state law. The purpose of this study is to find out what the law of early marriage is, what are the reasons for early marriage and how the impact of early marriage. This research is qualitative research with phenomenological type. Data collection is carried out by means of interviews, with the help of question guides. There are three types of questions asked, namely, what is the law of early marriage, what is the reason for early marriage, how does early marriage impact. Questions were asked to three types of responded, namely KUA officers, witnesses with experience marrying cases of early marriage and perpetrators or those who engaged in early marriage. Interviews were conducted using messages in WA and fieldwork. Interview data was collected, then analyzed descriptively. Based on the results of observations and interviews that the author found related to the law of early marriage is that in Islamic law the marriage is legal, it's just that their marriage is not recognized by State / Juridical law. The reason for the occurrence of early marriage that often occurs is mostly due to promiscuity factors that result in pregnancy out of wedlock, so it is forced to be married at a very young age.

### **KEYWORDS** *Early marriage; Wedding; Islamic Law*

## **INTRODUCTION**

Discussing marriage is actually not new to be discussed in the realm of lectures, especially for students majoring in Islamic Family Law. This problem is also often the main topic in various courses. Regarding marriage, the writer immediately remembered the title of the song "Early Marriage" composed by Melly Goeslaw. The term "early marriage" is a term that is often heard in the community, considering that ancient parents often married young at a fairly young age.

Early marriage is a marriage contract that takes place at an age below the conformity of applicable rules. Provisions regarding the minimum age that can be allowed for marriage also vary between the legal system, legislation, and Islamic law. Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage states that marriage is only permitted when a man and woman have reached the age of 19 years. Meanwhile, according to the Compilation of Islamic Law, it still uses the age standard of 16 years for a woman who can be allowed to marry. (Rahajaan, 2021)

Quoted from the "Indonesian Journal of Social Science" in reality, early marriage will have an impact on the perpetrators both negative impacts, and this will affect the personal and social lives of those who do it. So that also this does not rule out the possibility of early marriage does not bring family happiness, as the purpose of marriage itself, but will actually bring glory and maybe even misery for those who live it. However, in early marriage can also cause some benefits. Marrying early is more helpful in subduing the gaze and easier to keep the genitals furthest away than adultery. (Tampubolon, 2021) Data from the Central Statistics Agency (BPS) shows that 19.24% of young people who first married were aged 16-18 years. The case of child marriage in Indonesia is already very worrying. From data from the Religious Court on applications for child marriage dispensation, in 2021 there were 65,000 cases and in 2022 there were 55,000 applications. The indicator of applying for marriage at the age of children (early marriage) is caused by the application factor for women to be pregnant first and the encouragement factor from parents who want their children to get married soon because they already have close friends/girlfriends.

From some of the notions of early marriage above, also considering the negative and positive impacts of early marriage and statistical data that show if in Indonesia itself it turns out to have many cases related to early marriage, the author is interested in discussing how religious and State perspectives regarding the law of early marriage. To explore the study of early marriage, the author will discuss further in the paper entitled "Early Marriage Law (Perspectives of Islamic Law and Juridical / State Law).

### **METHOD**

This research is qualitative research with phenomenological type. Data collection is carried out by means of interviews, with the help of question guides.

There are three types of questions asked, namely:

1. What is the law of early marriage.

2. What is the reason for the occurrence of early marriage,

3. How early marriage impacts.

Questions were asked to three types of responders, namely 1) KUA officers, 2) Witnesses with experience marrying cases of early marriage and 3) Perpetrators or those who engaged in early marriage.

Interviews were conducted using messages in WA and fieldwork.

Interview data was collected, then analyzed descriptively.

### DISCUSSION

## A. Early Marriage

According to Wikipedia, early marriage is a custom by which minors, before puberty, are married off to another older person or to another minor. In accordance with Law of the Republic of Indonesia Number 23 of 2022, a child is defined as someone who is not yet 18 years old, including those who are still in the womb. Children automatically do not have the ability to give consent, so child marriage is considered to violate the rules of marriage that require conscious consent from both parties.

According to the term Shari'a, marriage means a contract between a man and a female guardian due to which the relationship becomes halal. The definition of marriage according to sharia 'put forward bv Mohammad Asmawi is, doing agad (agreement) between prospective husband and wife so that it is lawful to do "Association" as husband and wife follow religious norms, social values and ethics. Agad in a marriage is the pronunciation of ijab on the part of the female guardian or her representative and the pronunciation of gabul on the part of the prospective husband can be represented. (Lestari, 2011)

According to the term early marriage is a contemporary term. "Early" is associated with time, that is, very much at the beginning of a certain time. Islamic law, a child is said to be an adult (puberty) is when he has wet dreams for boys, and has menstruated for girls. According to the Indonesian Criminal Code law, the age limit for minors is not yet reaching the age of 21 years or has not yet married, as well as Law Number 1 of 1974 which is also a certain age limit. In this case, explicitly religion and the State have disputes in the meaning of early marriage. The term early marriage by State is limited by age. While in the lens of religion, early marriage is a marriage carried out by people who have not yet reached puberty. (Almahisa, 2021)(Ridwan, 2015)

From the explanation above, the author draws the conclusion that early marriage is a marriage that is carried out at the beginning of a certain time. The term early marriage also has different meanings and times depending on religious or state views.

## **B.** Factors Causing Early Marriage

There are many factors that cause people to marry off their children under the age, including:

1. Economic Factors

Where parents who are no longer able to support their children, then they decide to marry their children to people who are considered more capable. This also causes women's education level to be low because they prefer to marry rather than continue their education, even if they want to go to school, their parents do not have enough money to send them to school. (Khaerani, 2019) (Latifah, 2019)

2. Education Factors

Low education greatly affects the mindset of a society, both from the education of parents and the children themselves. The level of education affects the level of maturity of a person's personality. With education they will better filter and accept a good change, and respond to the environment that can affect their thinking skills. (Muntamah, 2019)

3. Self-desire factor

This factor is very difficult to avoid, because men and women tell each other that they love each other even regardless of their age, also regardless of what problems will be faced and whether they are able to solve a problem. (Handayani, 2021)

4. Promiscuity factors

Lack of guidance and attention from parents, children will find ways so that they can feel happy, namely by associating with people who are not seen first (free). This is very often the case is getting pregnant first outside the bonds of marriage. So because of this, inevitably parents will give permission to their underage children to marry.

5. Customs factors

According to customs, marriage often occurs because since childhood the child has been betrothed by both parents. That the marriage of children to immediately realize the bond of family relations between the relatives of the bridegroom and relatives of the bride that they have long wanted together. In addition, there are concerns of parents about their daughters who have reached adolescence, so parents immediately find a mate for their children. Parents who live in rural areas generally want to quickly marry off their daughters for fear that they will become spinsters.

## C. Impact of Early Marriage

Early marriage cases are often caused by cases of pregnancy out of wedlock. Pregnant at a very young age will greatly impact women's reproductive health. Generally, the age under 19 years is still not ready to conceive, pelvic bones that are too small are at risk of bad during labor, fetal location abnormalities, pangoule abnormalities, strength abnormalities during straining etc. Babies born are most likely born prematurely, even physical defects. Not only does it affect women and their babies, men who marry early have also indirectly abandoned their rights to still study and schools are suddenly responsible for making a living, which in turn will also have an impact on economic instability. (D, 2021)

Early marriage has an impact on the education of children in the family. The mindset of both couples who marry at an early age, is one of the causes of children's lack of love from parents. Inexperienced and uneducated parents will not be able to provide a good education for their children. (Ikhsanudin, 2018)

From a medical point of view, early marriage has a negative impact on both the mother and the child born. According to sociologists, from a social perspective, early marriage can reduce family harmonization. This is caused by unstable emotions, youthful blood turmoil and immature ways of thinking. Seeing early marriage from various aspects does have many negative impacts. (Octaviani, 2020)

# D. Early Marriage Law Reviewed from Islamic Law

Early marriage is essentially a marriage as well, which in Islamic law is a high respect and reward for the self-esteem given by Allah specifically for humans among other creatures. In the Fiqh review, the original law of marriage is sunnah (mandub) according to the word of Allah Almighty in Q.S. An-Nur:32

And marry the days of you and the righteous of your servants and your mothers to be poor, may God enrich them from His bounty, and God is broad in knowledge

It means: "And marry those who are alone among you, and those who are worthy (marry) of your sahaya's male servants and your sahaya's female servants. If they are poor, God will enable them by His gift. And Allah is vast (His gift) again All-Knowing." (QS. An Nuur: 32)

In the opinion of the Classical and Contemporary Mufasirin, marriage is a commandment and compulsory for those who have the ability. In addition, God also gave a promise that marriage would bring a blessing to the sustenance of the family to be abundant. This is also in line with the opinion of the Baidowi interpretation that marriage is a recommendation and worship that must be carried out by Muslims when they have the ability. Hamka in tafsir alazhar clarifies the meaning of marriage as a path of mulyaan and blessing of property, on the basis that marriage is a social regulation of Islamic society in order to provide a sense of inner and outer security that can be accounted for. (Hartanti, 2021)

As for getting married early, that is, marrying in adolescence or young, not old age. The law according to Shara is sunnah.

The Prophet Muhammad (peace be upon him) said: "O young men, whoever is able, should marry, for marrying will be more subdued and will take care of the genitals more. If you are not able, you should fast, for it will be a shield for you." (HR. Bukhari and Muslim). (Ramdhan, 2020)

The hadith contains a call to marriage for "young men" (asy shabab), not adults (ar rijal) or parents (asy shuyukh). It's just that the call is not accompanied by an indication (qarinah) towards the obligatory law, so the call is an impermissible call (thalab ghairu jazim), aka mandub (sunnah). The definition of youth in question is a person who has reached puberty but has not reached adulthood (sinn al rujuulah). While what is meant by maturity (ar reference) is "kamal ash shifat al mumayyizah li ar rajul" that is, the perfection of special qualities / specific to a man. (Hasanah, 2014)

One thing that needs to be underlined from the hadith above is the command to marry for young men on the condition that if they are able, they mean ready to marry. Readiness to marry in the review of Islamic law includes 3 things, namely:

- a. Readiness of science, namely the readiness to understand the laws of jurisprudence that have to do with marriage problems. This first condition is based on the principle that Fardu 'ain is the law for a Muslim to know the law of the daily deeds he does or will do.
- b. The readiness of property or material, which is meant by property here there are two kinds, namely property as dowry and property as a husband's livelihood for the wife as the fulfillment of basic needs (al-hajat al-asasiyyah) for the wife in the form of clothing, food, and shelter which must be given in decent levels (bil ma'ruf).
- c. Physical readiness or health, especially for men, which is able to carry out their duties as husbands (not impotent). Caliph Umar bin Khatab once gave a one-year suspension to a man (husband) who was impotent for

treatment. This shows that the physical readiness of this one needs serious attention. (Rifani, 2011)

In general, marriage between a man and a woman is intended as an effort to maintain selfhonor (hifz al ird) so that they do not fall into forbidden acts, maintain the continuity of healthy human life/offspring (hifz an nasl), establish a loving home life between husband and wife, and help each other for mutual benefit. According to Imam al Ghazali, the purposes of marriage include:

a) Obtaining and progeny.

b) Fulfilling man's desires, channeling his martyrdom and shedding his affection.

c) Fulfilling the call of religion, preserving oneself from evil and corruption.

d) Cultivate the sincerity to be responsible for carrying out obligations and receiving rights, as well as earnestly to acquire eternal wealth.

e) Build households to form a peaceful society on the basis of love and affection.

Based on this, the law of early marriage is still a pro-con among scholars, some allow some to prohibit it.

1. Early Married Ability

Early marriage is legally permissible (mubah) shari'i and legal, an adult man marries a small woman (not yet menstruating). The postulates of his ability are the Qur'an and As Sunah. Word of God in Q.S An Nisa: 4 (Rifiani, 2011)

And the women believed them bee, and if they asked you for something of it, eat it here.

It means: "And give dowry to the woman (whom you marry) as a willing gift. Then, if they give you a portion of it gladly, then accept it and enjoy it gladly (Q.S An-Nisa:4)."

In Tafsîr Ibn Katsîr Surat an-Nisa:4 it is explained that this verse is a command to marry as some scholars think it is mandatory for marriage for those who can afford it. Al-Marâghy interprets as quoted by Mustofa, the phrase washâlihîn, men or women who are able to marry and exercise conjugal rights, such as being ablebodied, owning property and others. Quraish Shihab interprets the verse as "washâlihîn", i.e. a person who is mentally and spiritually able to build a household, does not mean a devout religious one, because the function of marriage requires preparation not only material, but also mental and spiritual preparation, both for male and female candidates. However, if you look at the thoughts of classical scholars (salaf) such as Maliki, Shafi'l, Hambali and Hanafi, they do not require mumayyis or maturity for the bride and groom. For them, puberty and puberty are enough. This policy is not without reason but the fact that there is indeed no verse of the Quran that clearly regulates the age limit for marriage. (Umah, 2020)

About the age limit and intellectual ability to see to distinguish between a right and vanity in various issues, scholars differ in opinion. First, al-Qurtubi in tafsir al-Qurtubi first the person who gets the will first provides learning or education to the orphan to gain knowledge and expertise and the ability to manage his life with the breadth of his knowledge.

With education and maturity, the way of thinking is expected to be able to spend the wealth he has. According to him, maturity is also not limited to intellectual intelligence alone, but also maturity in terms of age. Al-Qurtubi took the opinion of Imam Hanbal that he was 15 years old and mature, because he was already puberty, even though he was not yet 17 dreaming. While the scholars of Medina refer to Abu Haneefah's opinion that the age of puberty which is 19 years is for a man while for a girl aged 17 years.

Wahbah az-Zuhaili in tafsir munir explains in line with the opinion of al-qurtubi namely the importance of "rusdun" or the intelligence of a child to show one of the characteristics of maturity. Because with this intelligence, they can manage wealth, maintain and use it in the right way. However, with regard to age, Wahbah azZuhaili followed the opinion of Imam Shafii about the age limit of puberty at 15 vears. Wahbah az-Zuhaili also took the opinion of Abu Haneefa who gave a fairly loose age tolerance of 25 years before the orphan's wealth could be given. But there is an addition about there is no requirement of "Rusydun" on him. This means that whether he already has the ability or not related to intelligence in using wealth does not matter. While Qurays Shihab in Tafsir Misbah further strengthens the opinion of Imam Abu Haneefa about the age of 25 years as the maximum age to give property rights to orphans. According to him, this age remains normal has affected his mindset, maturity and also changes in his psychology. Based on this opinion, it seems that both classical and contemporary commentators do not agree on the ideal age for marriage. The opinion of Imam Shafii and Imam Hanbali which refers to the process of wet dreams or menstruation as a basis for the

requirement of the person to obtain provisions to carry out the sharia of Allah such as performing prayers, fasting and other services. Marriage is part of worship, so the minimum limit for a person to marry is when they already have signs of puberty, namely menstruation and wet dreams. If referring to this opinion, the author argues that both can be the truth of the argument to make a minimum limit for marriage. But what needs to be noted is that a child who later becomes a girl experiencing maturity is also greatly affected by diet, descent and ethnicity. Children born in Middle Eastern countries have bigger body growth and faster puberty, while children in Southeast Asian regions such as Indonesia experience a slowdown in puberty age and also their mindset. If this is the case, then girls in Indonesia aged 15-19 years can also not be mature enough to do legal things and solve domestic life problems. The age of 19 years means the average age of just completing high school (SLTA). So, the age to reach maturity after they have received higher education is after the age of 19 years. From this it can be understood, why there is a possibility that the age of 25 years is the minimum limit by Abu Haneefah, one of the reasons is the age at which they are psychologically mature even though intellectually immature. (Hartanti S., 2021)

## 2. Prohibition of Early Marriage

The above view of the number of scholars who allow early marriage is refuted by At-Thahawy and Ibn Hazm, who hold that this question has not vet become ijma'. The basis is the opinion of Ibn Shubramah who said that the marriage contract with a girl who has not reached puberty (before the age of puberty) is invalid.-According to him, the essential value of marriage is to fulfill biological mission and perpetuate offspring. While these two things are not fulfilled in children who have not yet reached puberty. Ibn Shubramah tried to break free from the confines of the text. He approached the issue historically, sociologically, and culturally. So in responding to the marriage of the Prophet Muhammad SAW with Aisha RA, Ibn Shubramah viewed it as a special right (previllege) for the Prophet Muhammad SAW that could not be imitated by his people exactly the same as his ability to have wives-more than 4 women.

Some Muslim countries differ in setting a minimum age of marriage. This difference in age limit determination cannot be separated from environmental, geographical and cultural influences on each country. Although each

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country has different marriage age standards, the point is that the principle of maturity and maturity is very much considered. Thus, the validity of marriage is not solely due to the fulfillment of the pillars but develops in the fulfillment of the conditions of marriage.

The Indonesian Ulema Council (MUI) gave a fatwa that the age of eligibility for marriage is the age of ability to do and receive rights (ahliyatul ada' and ahliyyatul wujub). Ahliyyatul Ada' is the nature of a person's legal acting skills that have been considered perfect to account for all his actions, both positive and negative. Ahliyyatul Wujub is the nature of a person's ability to accept the rights to which he is entitled and is not yet capable of being burdened with all obligations. (Bastomi, 2016)

Underage marriage is not recommended considering that they are considered not yet to have the ability to manage property (rushd). In addition, they also do not need marriage yet. They are feared to be unable to fulfill the obligations that must be carried in life as husband and wife, especially in managing household finances.

From the above explanation the author can draw a conclusion, the law of origin of marriage is sunnah. However, judging from the positive and negative sides of early marriage that is rife, the law can turn into mandatory, or haram. If early marriage is intended to avoid committing adultery, then the law becomes mandatory. However, if early marriage is solely due to parental coercion between the bride and groom there is no sense of pleasure, then marriage is not allowed.

Early marriage in Islam is also not a necessity, considering the Qur'anic postulates that the author has described above, then marriage is a choice. Can be synchronized or wait for the desired time. (Julijanto, 2015)

## E. Early marriage law in terms of state/juridical law

Juridically, underage marriage is an invalid marriage because it is contrary to the provisions of laws and regulations, related to the minimum age limit that may be allowed for men and women who want to marry, which is stipulated in article 7 paragraph 1 of Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage. The contradiction occurs when it is found that in the Compilation of Islamic Law (KHI) Article 15 paragraph 1, it is said that for the benefit of the family and household, marriage can only be carried out by prospective brides who have reached the age stipulated in article 7 of Law No. 1 of 1974, namely the prospective husband is at least 16 years old. Furthermore, in the second paragraph, it is stated that prospective brides who have not reached the age of 21 years must obtain permission as stipulated in article 6 paragraph (2). (3), (4), and (5) Law No.1 of 1974.

The prevention of underage marriage is regulated in the provisions of Article 7 paragraph (1) of the Marriage Law, in which it is intended that underage marriage does not guarantee happiness, so it is not uncommon to find a marriage that ends in divorce. This happens because in addition to the lack of maturity of thinking of both parties, it is also usually caused by the absence of prior consent from the prospective husband and wife. Such a problem is clearly incompatible with the purpose of marriage according to Article 1 of the Marriage Law which stipulates: "That marriage is an inner birth bond between a man and a woman as husband and wife for the purpose of forming a happy, eternal family (household) based on the One True Godhead". Furthermore, underage marriage can also be forced to take place because the Marriage Law still provides the possibility of deviation, namely in Article 7 paragraph (2) of the Marriage Law with a dispensation from the Court for those who have not reached the minimum age limit. The deviation referred to in the article is not explained in the article nor in the Explanation to the Marriage Law, because by not mentioning an important reason, everyone easily gets the dispensation. The marriage dispensation is intended so that both parties are really ready and mature from the physical, psychological and mental sides to carry out marriage, because considering the marriage carried out so that it can be built based on the one and only god. (Sixtrianti, 2015) (Mai, 2019)

Regulatory leeway is given by the government to couples who will carry out the marriage process. This allowance is given to brides who are not old enough in one of the brides but want to carry out the marriage (Law RI 1974). Parents should

Protecting their children from early marriage is the content of article 26 of Law R.I No. 23 of 2002 concerning Child Protection (Law RI 1974) this shows the important role of parents in accompanying and preparing their children so that they are truly prepared in age and mentally when deciding to settle down.

The marriage law in Indonesia explains the change in the provisions of the minimum age

at which a person is allowed to marry which previously the age limit for men was 19 years and women 16 years changed to the age of the two prospective brides each had to reach 19 years, at this age both the bride and groom were considered capable of carrying out marriage with all its consequences (Law RI 1974). The marriage also considers the benefit of the family and the house with the attainment of age based on article 7 of Law No. 1 of 1974. This has been explained in the compilation of Islamic law article 15. From the explanation mentioned above, if the marriage is carried out, it means that it has ignored several laws that have been established related to child protection policies (article 26 paragraph 1) and also Law No. 21 of 2007 concerning the eradication of trafficking in persons. Children are kept by law to be free from violence, laws are also made to keep children from exploitation. By law children will be protected from discrimination. Children can grow and 15 develop in life with the protection of their right to life is the content of the mandate of the law. (Almahisa Y. S., 2020)

From the explanation above, the author draws conclusions, according to State / juridical law, early marriage is considered invalid. Given the minimum age limit that can be allowed for men and women who want to marry, which is stipulated in article 7 paragraph 1 of Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning marriage. However, underage marriage may still be carried out with the dispensation of marriage. The dispensation aims to ensure that both parties are really ready and mature both physically, psychologically and mentally to take place the marriage.

## F. Data Analysis Related to Early Marriage

The following are the results of the data analysis that the author has done:

1. Early Marriage Law According to the Perspective of Islamic Law and State/Juridical Law

Based on the results of observations and interviews that the author found in Lenggang Village related to the law of early marriage is that legally Islamic marriage is legal, it's just that their marriage is not recognized by State / Juridical law. Their marriage was not recorded in KUA because the community did not bother to take care of administration or everything else.

According to the State/juridical law itself, early marriage is considered invalid because it is not in accordance with applicable laws, inversely according to Islamic law, early marriage is considered valid because there is no age limit specified in the Qur'an. If we look back at the hadith of the Prophet of Allah, the order to marry was when he felt capable both in terms of science and economics, it's just that the facts on the ground are inversely proportional. Many marry early but the knowledge has not mastered and the economy is still asking of parents, in the sense that they still cannot work.

## 2.Reasons for early marriage

The reason for the occurrence of early marriage that often occurs is mostly due to promiscuity factors that result in pregnancy out of wedlock, so it is forced to be married at a very young age. In addition, parental factors also have a big influence on children's desire to marry early, children who feel no longer comfortable under the same roof with parents choose to leave the house for the reason of wanting to get married. The factor of lack of education that results in promiscuity so that children try to do things that are not yet time and are forced to marry. In addition, parental factors are also very important, how parenting parents in educating children's daily lives.

## 3. Impact of early marriage

According to the author's research, early marriage that occurs in Lenggang Village has more negative impacts. Children who are underage are more inclined to be unprepared for marriage both physically and mentally. Immature thinking so that thinking that getting married is the right place to escape, when in reality getting married is not the only solution or way out of the problem.

Early marriage is okay, it's just that with mental unpreparedness or other things will have a very bad impact on early marriage. It is more important that the marriage must be carefully prepared and considered so as not to cause regrets or other negative things

## CONCLUSION

From the results of the data and facts in the field and the results of the interview, the author concludes, in Islam it does not mention the ideal age of marriage and there is no prohibition against early marriage, that means the law of early marriage according to the Islamic perspective is valid. But if examined more deeply according to his interpretation, the marriage order addressed by suras An-Nur:32 and An-Nisa:4 is addressed to young men who are ready either materially, physically or mentally. Which means that between Islamic law and State law are aligned in regulating early marriage.

The reason for the occurrence of early marriage that often occurs is mostly due to promiscuity factors that result in pregnancy out of wedlock, so it is forced to be married at a very young age. In addition, parental factors are also very important, how parenting parents in educating children's daily lives.

Regarding the results of data and facts in the field and the results of the interview, the author provides advice if the government and is expected to educate parents that early marriage is not the only solution to the problems that occur. It is appropriate as a government to protect its people, explaining to them to do marriage is not about how fast, but how appropriate.

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