

## Study of the NU Congress's Decision on Hanging Marriages in Perspective of Child Protection Regulations

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### Abstrak

Tulisan ini mengupas keputusan Mukhtamar NU Ke-32 Tentang Kawin Gantung yang mana terjadi pro kontra terhadap hasil putusannya. Beberapa warga nahdiyyin juga menolak hasil putusan ini dengan alasan beragam, terutama perkawinan dengan model ini sudah tidak relevan lagi dengan keadaan zaman. Putusan hasil muktamar tidak bisa dipandang sebelah mata karena menjadi rujukan dan pedoman dalam praktek keseharian masyarakat masyarakat. Titik fokus tulisan ini adalah menganalisis konstruksi keputusan Mukhtamar NU Ke-32 Tentang Kawin Gantung yang kemudian dianalisis kembali dengan menggunakan peraturan perlindungan anak. Tulisan ini merupakan penelitian library research dengan menggunakan teknik analisis deskriptif. Hasil tulisan ini menunjukkan bahwasanya dalam konstruksi istinbat hukum yang dipakai masih ilhaqul masail bi nazha'iriba yang masih mengarusutamakan teks dalam kitab-kitab klasik. Selain itu juga dalam tinjauan perlindungan anak keputusan Mukhtamar NU Ke-32 Tentang Kawin Gantung tidak relevan dengan keadaan saat ini dan bertentangan dengan hak-hak anak.

**Kata Kunci:** Putusan Mukhtamar, Kawin Gantung, Perlindungan Anak

### Abstract

This paper examines the 32nd NU Congress decision on Hanging Marriage, where there are both pros and cons to the decision's outcome. Some nahdiyyin residents also rejected the decision's outcomes for a variety of reasons, including the fact that marriages based on this model were no longer relevant to the times. Congress's decision should not be underestimated because it serves as a reference and guide in the community's daily practice. The purpose of this paper is to examine the construction of the 32nd NU Congress decision on Hanging Marriage, which is then re-examined using child protection regulations. This paper is a library research paper that employs descriptive analysis techniques. The findings of this study show that the law used in the construction of istinbat is still ilhaqul masail bi nazha'iriba, which still dominates texts in classical books. Furthermore, in the context of the review of child protection, the decision of the 32nd NU Congress regarding Hanging Marriage is irrelevant to the current situation and violates children's rights.

**Keywords:** Conference Decision, Hanging Marriage, Child Protection

### A. INTRODUCTION

Nahdlatul Ulama (hereinafter abbreviated as NU) is a community organization that has a large role and influence in Indonesia. Among the routine agendas in the NU, an organization is a congress, which in this event discusses various problems that are currently happening to the community. As the highest forum, the NU Congress has succeeded in formulating various programs, agendas, and also establishing laws regarding fiqh issues through the legal institution *bahtsul masail*.<sup>1</sup> It was recorded from the 1st congress in 1926 until the 33rd congress in 2015 in Jombang that the institution *bahtsul masail* has determined 540 cases related to the fiqh *ibadat*, fiqh *muamalah*, fiqh *siyasah*, fiqh *munakah*, and etc.<sup>2</sup>

The decision that *bahtsul masail* should not be underestimated, because the decision also has a significant influence, especially in the cultural area. The decisions that have been determined by the

<sup>1</sup> The *Bahtsul masail* institution is an institution that has the authority to answer various religious problems faced by the surrounding community. In ART NU, this institution has the task of discussing thematic issues (*maudhiyyah*) or actual issues (*waqiyyah*) that require legal certainty. Ahmad Munjin Nasih, "Bahtsul Masail dan Problematikanya di Kalangan Masyarakat Muslim Tradisional", *Jurnal al-Qanun*, Vol. 12, No. 1, (Juni, 2009), p. 106-129.

<sup>2</sup> Tim Lembaga Ta'lif Wan Nasyr, *Abkamul Fuqoha: Solusi Problematika Aktual Hukum Islam, Keputusan Mukhtamar, Munas, dan Konbes NU (1926-2015 M)*, (Surabaya: Khalista), p. Xxvii.

masyāyikhs are used as guidelines in the daily practice of the community even though the decision is a non-binding matter.<sup>3</sup>

On March 25, 2010, the Commission for the 32nd Bahul Masil Diniyah Waqi'iyah NU Congress in Makassar discussed the law of hanging marriages, that had occurred in several regions of Indonesia. The problem can be described as a marriage between such a boy who is 10 years old and still in elementary school and a girl who is also 10 years old. This marriage is performed to bind (hang) later adulthood after puberty from becoming matched with other people.<sup>4</sup>

The model for implementing the contract in marriage is that *ijab* and *qabul* are represented by adult men. After completing the contract, then there are also those directly with *ijab* and *qabul* spoken by the little groom accompanied by a small bride. Both are prohibited from gathering until they reach adulthood. Then after they are both adults and have the readiness to marry, they are remarried (*tajdidun nikah*) by registering with the KUA (Office of Religious Affairs).<sup>5</sup>

The decision of the 32nd NU Congress decided that hanging marriages are still valid as long as they meet the requirements and pillars of marriage. Another decision also stated that hanging marriages have not yet fully had legal consequences like marriages in general, except for inheritance and the provision of a living according to some scholars. . Meanwhile, other decisions involving sexual intercourse should be postponed until it is strong enough to engage in intercourse.<sup>6</sup>

However, the decision was met with disapproval by the Indonesian people. Like the opinions of several Ponorogo scholars who expressed their opposition to hanging marriages in the modern era.<sup>7</sup> The argument is that marrying in this way can interfere with the psychological development of children, is contrary to the KHI and the Indonesian Marriage Law, deceives children, and deprives children of their independence from childhood.<sup>8</sup>

Previous research has found that the factor in the occurrence of hanging marriages for children is due to a hereditary tradition passed down from ancestors that must be passed on to children and their descendants. Another factor is the social factor of the community who have a close kinship and a high spirit of togetherness, so that they match their children at a very young age.<sup>9</sup>

Seeing this case, it seems that the author needs to do further research on the decision of the 32nd NU Congress regarding Hanging Marriage from the Perspective of Child Protection Regulations. This is because there is a contrast between the decision of the 32nd NU Congress regarding hanging marriage when examined using the Child Protection Regulation which contains the rights of a child as well as the obligations and responsibilities of parents to prevent child marriage from occurring.<sup>10</sup>

Several literature studies have been collected by the author to determine the location of the novelty from previous research. The literature review includes; First, research from Ahmad Husaini which discusses the views of the Ponorogo Ulama on the Decision of the 32nd NU Congress on

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<sup>3</sup> Muhammad Awwaluddin Ar Rasyid, "Istinbāṭ Hukum Oleh Lajnah Bahtsul Masa'il Nahdlatul Ulama (LBM-NU) Dan Pengaruhnya Terhadap Hukum Islam Di Indonesia (Studi Di PWNU Sulawesi Selatan)", *Skripsi* UIN Alauddin Makassar, (2017), p. 1-77

<sup>4</sup> Pengurus Besar Nahdlatul Ulama, *Keputusan Muktamar XXXII Nahdlatul Ulama*, (Jakarta: Sekretariat Jendral PBNU, 2010), p. 206.

<sup>5</sup> *ibid*, p. 206.

<sup>6</sup> Tim Lembaga Ta'lif Wan Nasyr, *Abkamul Fuqoha; Solusi Problematika Aktual Hukum Islam, Keputusan Muktamar, Munas, dan Konbes NU (1926-2015 M)*, p. 736

<sup>7</sup> Ahmad Husaini, "Pandangan Ulama Ponorogo Terhadap Putusan Muktamar NU Ke-32 Tentang Kawin Gantung", *Skripsi* STAIN Ponorogo (2015), p. 61

<sup>8</sup> *Ibid*, p. 55-58.

<sup>9</sup> Maurika Chairani Agza, "Praktik Kawin Gantung Di Desa Cipaeh Serdang Kecamatan Gunung Kaler Kabupaten Tangerang", *Skripsi* UIN Syarif Hidayatullah Jakarta (2018), p. 52

<sup>10</sup> Pasal 26 ayat (1) Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

Hanging Marriage.<sup>11</sup> Second, research from Muh. Sovil Mubarok discussed the comparison of the decisions of the 32nd NU congress regarding the minimum age for marriage with Indonesian laws and regulations and the *istinbath* the law used in the congress.<sup>12</sup> Third, Maurika Chairani Agza's research which discusses the causes of hanging marriages and the process of implementing hanging marriages in Cipaeh Serdang Village, Gunung Kaler District, Tangerang Regency.<sup>13</sup> Fourth, research by Alizar Usman and Ermaliza which focuses on the hanging marriage tradition in the life of the South Kluet community which is viewed from the perspective of Islamic law.<sup>14</sup> Meanwhile, this article focuses on the construction of the 32nd NU Congressional Decision on Hanging Marriage and the analysis of the 32nd NU Conference Decision on Hanging Marriage from the perspective of Child Protection Regulations.

## B. RESEARCH METHOD

The method used in this article is library research, namely by explaining the data obtained from various literature that is related to the theme under study, such as books and articles on marriage. The approach of this research is then normative because it examines the 32nd NU Congress decision on hanging marriage. This article employs descriptive analysis, describing the construction of the 32nd NU Congress decision on Hanging Marriage and then analyzing it using child protection regulations in the form of the Convention on the Rights of the Child and Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection.

## C. RESULT AND DISCUSSION

### 1. The Decision of the 32nd Congress Regarding Hanging Marriage

The definition of hanging marriage in the Big Indonesian Dictionary (KBBI) is a legal marriage that has not been formalized, it's just that husband and wife are not allowed to live together.<sup>15</sup> according to another definition is a marriage that has not been formalized by the guardian and also does not live in the same house. In practice, this type of marriage is still at a very early age, which is then arranged by the parents and married off.<sup>16</sup>

Whereas In the 32nd NU Congress, the definition of hanging marriage is the marriage of young children who are not registered with the KUA, but after the *ijab* and *qabul* The two brides are prohibited from gathering until they reach adulthood according to custom. When they are adults, they are remarried and registered with the KUA.<sup>17</sup>

On the issue of hanging marriage raised in the congress The 32nd NU contains four topics that will be studied and decided, namely: 1). Problems regarding the law of hanging marriages, 2). Problems regarding the age limit for marriage between men and women, 3). The legal consequences of carrying out hanging marriages include the obligation for the wife to obey her husband, the obligation to live, the lawful intercourse, or the right of inheritance.

<sup>11</sup> Ahmad Husaini, "Pandangan Ulama Ponorogo Terhadap Putusan Mukhtamar NU Ke-32 Tentang Kawin Gantung", *Skripsi STAIN Ponorogo*, (2015), p. 1-67

<sup>12</sup> Muh. Sovil Mubarok, "Analisis Keputusan Mukhtamar NU Ke-32 Tentang Batas Minimal Usia Menikah", *Skripsi IAIN Walisongo Semarang* (2012), p. 1-57

<sup>13</sup> Maurika Chairani Agza, "Praktik Kawin Gantung Di Desa Cipaeh Serdang Kecamatan Gunung Kaler Kabupaten Tangerang", *Skripsi UIN Syarif Hidayatullah Jakarta* (2018), pp1-56

<sup>14</sup> Alizar Usman, dan Ermaliza, "Potrek Tradisi Nikah Gantung Di Tinjau Dari Perspektif Hukum Islam", *Jurnal al-Mursalab*, Vol. 3, No. 1, (Januari-Juni, 2017), p. 59-66.

<sup>15</sup> KBBI Daring, *Kawin Gantung*, <https://kbbi.kemdikbud.go.id/entri/kawin%20gantung>, accessed on October 21, 2021

<sup>16</sup> Maurika Chairani Agza, "Praktik Kawin Gantung Di Desa Cipaeh Serdang Kecamatan Gunung Kaler Kabupaten Tangerang", p. 41

<sup>17</sup> Pengurus Besar Najdlatul Ulama, *Keputusan Mukhtamar XXXII Nahdlatul Ulama*, p. 206.

The results of the discussion are, that 1). Hanging marriages are legal if there is *maslahah*, the *qabul* consent is carried out by the mujbir guardian, and also fulfills the requirements of marriage, 2). There is no age limit for marriage in Islam but marriage should be done after the age of puberty, 3). Hanging marriages still have no legal consequences except in the provision of inheritance and maintenance according to some scholars. Meanwhile, intercourse waits until it is strong enough to have intercourse.

## 2. The Legal Construction Of Hanging Marriage

National Conference of Alim Ulama (MUNAS) 1992 in Lampung decided that in this activity *bahsul masail* will use three methods of *istinbat* laws that are systematically compiled by covering methods *qauli*, *ilhaqi* and *manhaji*.<sup>18</sup> These three methods are general provisions that will later become a reference in how to make legal decisions in the commission *bahtsul masail* at the NU Congress and MUNAS..

The *qauli* method is an *istinbat* method the law whose stipulation directly refers to the fiqh books of the madhhab priests. This method is a method that is often used in the NU environment, this can be proven by the many decisions that are made that include the opinion of a madhhab priest with direct attention to the *ibarat mu'tabarab* book text.<sup>19</sup>

As for the procedure for selecting *qaul*, when there are several qauls on the same issue, the selection of the opinion of the ulema which is considered the most authentic will be carried out. The selection of one of the opinions is done by: 1). Take a stronger opinion and also *maslahah*. 2). As much as possible carry out the provisions of the first congress regarding differences in *qoul* resolved by *takhyir* (choose) in an orderly manner, namely: a). The opinion agreed upon by two syekh namely Imam al-Nawawi and Imam Rafi'i, b). Then the opinion held by Imam al-Nawawi only, c). Opinions held by Imam al-Rafi'i only, d). Then the opinion supported by the majority of the scholars, e) The opinions of the smartest scholars, f). Then the opinion of the most trusted scholars (*wara*).<sup>20</sup>

Then the *Ilhaqi* method<sup>21</sup> is equating the law on a problem that has not been answered by the book that is used as a reference with a similar problem that has been answered by a *mu'tabar* book. The procedure for using this method is by taking into account the following provisions: 1). A problem for which there is no legal provision in the book of *mu'tabar* (*Mulhaq bib*), 2). A problem that already has legal provisions (*Mulhaq alaih*). 3). The similarity factor between *mulhaq bib* and *mulhaq alaih* (*Wajib al-ilhaq*).<sup>22</sup>

The use of the *manhaji* method is officially regulated in the results of the 1992 National Conference in Lampung. If there is no opinion in the madzhab book and it is impossible to do *ilhaqi*, then *istinbat jamā'i* with the manhaji procedure by the experts. Meanwhile, the operational method is carried out with *istinbat jamā'i* by practicing *qawā'id al-fiqhiyyah* and *qawā'id al-ushuliyah* by experts. This approach is a way of solving legal problems based on the way of thinking and also the rules of law that have been initiated by the priests of the madhhab.<sup>23</sup>

The construction that was built in deciding the hanging marriage at the 32nd Congress refers to *istinbat* method which was agreed upon MUNAS (National Conference of Alim Ulama) 1992 in Lampung. Departing from the qouly method which looks for the issue of hanging marriages in the

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<sup>18</sup> Tim Lembaga Ta'lif Wan Nasyr, *Abkamul Fuqoha; Solusi Problematika Aktual Hukum Islam, Keputusan Muktamar, Munas, dan Konbes NU (1926-2015 M)*, p. 470

<sup>19</sup> Ahmad Zahro, *Tradisi Intelektual NU: Lajnah Bahtsul Masail 1926-1999*, Yogyakarta: LKiS, 2004, p. 108

<sup>20</sup> Agus Mahfudin, "Metodologi Istinbath Hukum Lembaga Bahtsul Masail Nahdlatul Ulama", *Jurnal Hukum Keluarga Islam*, Vol. 6, No. 1, April, 2021, p. 6-7

<sup>21</sup> This method is almost similar to qiyas which equates the law of something that has not yet been determined with something that has been stipulated in the texts of the Qur'an and Hadith. This method was chosen by Nahdlatul Ulama over qiyas, because among Nahdlatul Ulama, qiyas has greater consequences than ilhaqi. See: M. Imdadun Rahmat, *Kritik Nalar Fikih NU: Transformasi Paradigma Babsul Masail*, Jakarta: LAKPESDAM, 2002, p. 121

<sup>22</sup> Agus Mahfudin, "Metodologi Istinbath Hukum Lembaga Bahtsul Masail Nahdlatul Ulama", p. 9

<sup>23</sup> *ibid*, p. 9

*mu'tabarab* books, but it is not found explicitly on this issue. Finally using the method *ilbaqi* by equating cases that have similarities in *mu'tabar* books.

The point of similarity sought is contained in the term hanging marriage which is interpreted as marriage at the age of very early and then arranged by his parents. In this case, what becomes "*Mulhaq bib*" is a hanging marriage for which there is no decision in the book of *mu'tabarab*. Then the problem that has a law in the book of *mu'tabarab* is marriage at an early age and also the right of *ijbar* for parents to children (*Mulhaq alaih*). Then what becomes *Wajh al-ilbaq* or the similarity factor is the age of marriage contained in early marriage and also hanging marriage and the existence of *ijbar* in marriage.

Legal construction begins with finding *qoul* Imam Nawawi related to marrying at an early age and also the *ijbar* of parents to their children. *Qoul* Imam Nawawi was chosen because he is an expert in the field of *fiqh* and also an expert in the field of *hadith*. Imam Nawawi also always connected his *fiqh* with the basics of the *hadith* of the Prophet.<sup>24</sup> The *qoul* quoted to decide this issue is an *ibarat* which shows the permissibility of marrying a little girl with *ijbar* in the *al-Minhaj Sharh Shahih Muslim*.

(باب جواز تزويج الب بكر الصغيرة) فيه حديث عائشة رضي الله عنها قالت ( تزوجني رسول الله صلى الله عليه و سلم لست سنين و بنى بي وأنا بنت تسع سنين ) وفي رواية تزوجها وهي بنت سبع سنين هذا صريح في جواز تزويج الب الصغيرة بغير اذنها لانه لا اذن لها والجد كالب عندنا. أما غير الب والجد من الولياء فل يجوز أن يزوجه عند الشافعي والثوري ومالك وبن أبي ليلى وأحمد وأبي ثور وأبي عبيد. وأعلم أن الشافعي وأصحابه قالوا يستحب أن لا يزوج الب والجد البكر حتى تبلغ ويستأذنها لفل يوقعها في أسر الزوج وهي كارهة وهذا الذي قالوه لا يخالف حديث عائشة لان مرادهم أنه لا يزوجه قبل البلوغ اذا لم تكن مصلحة ظاهرة يخاف فوتها بالتأخير كحديث عائشة فيستحب تحصيل ذلك الزوج لن الب مأمور بمصلحة ولده فل يفوتها والله أعلم.<sup>25</sup>

"Chapter allowed Abu Baker. ra to marry a little girl". In that hadith there is a hadith of Aisyah ra, she said: "Rasulullah saw. married me when I was 6 years old and had sex with me when I was 9 years old. In another narration: "Rasulullah saw. married Aisha when she was 7 years old. This hadith is very clear in explaining the permissibility of a father marrying his young daughter without consent. And grandfather is the same as father, according to the scholars of the Shafi'yyah school. As for the guardians other than father and grandfather, then they are not allowed to marry off their little girls according to the opinion of Shafi'i, al-Tsauri, Malik, Ibn Abi Laila, Ahmad, Abu Thaur, and Abu 'Ubaid. And know that al-Shafi'i and his companions are of the opinion that it is sunnah for fathers and grandfathers not to marry until they reach puberty. And the sunnah also asks his consent not to include it in the power of the husband, while he hates it. Their opinion does not contradict the hadith of Aisha. Because what they want is that father and grandfather should not marry her before the age of puberty when there is no real benefit which they fear will be lost because of delaying the marriage. Therefore, it is sunnah to get a husband, because a father is ordered to seek the benefit of his child, then he must not let that benefit disappear."

After finding the opinion of Imam al-Nawawi contained in the *al-Minhaj Sharh Sahih Muslim*, then next look for similarities in the problems of the editors of the four schools of thought (*ibarah polar al-ma'hib al-arba'ab*). This kind of search is to avoid the dominance of the Shafi'i school and to quote the opinion of the Imam of the Madhhab. The *aqwal* of scholars that is the reference is the book of *al-Fiqh al-Islam Wa Adillatub* by Dr. Wahbah al-Zuhaili.

In the book *al-Fiqh al-Islam Wa Adillatub* what you are looking for is *aqwal* the Imams of the Schools relating to the subject of the *ijbar* rights of parents and the *ijbar* requirements that have been agreed upon by the Imams of the Schools. The reason for writing the book is because the discussion emphasizes the method of comparative jurisprudence of the schools of jurisprudence (*al-muqarana al-Ma'hib*), specifically the four *mazhab ablu sunnah wal jama'ab*.

<sup>24</sup> Husein Muhammad, *Islam Tradisional Yang Terus Terus Bergerak*, Yogyakarta: IrCisod, 2019, p. 89

<sup>25</sup> Muhyiddin Al-Nawawi, *al-Minhaj Syarh Shahih Muslim*, Juz 9(Beirut: Darul Ihya' al-Turtas al-'Arabi, 1970), p. 206

Another reason is that the book *al-Fiqh al-Islām Wa Adillatuh* contains the legal *tarjih* carried out by Dr. Wahbah al-Zuhailiyon the issues discussed based on sources of Islamic law, both in the form of *naqli* and *aqli*. The book that is used as a reference for determining the law is as follows;

الصغر: أما الصغر فقال الجمهور منهم أئمة المذاهب الربعة بل ادعى ابن المنذر الجماع على جواز تزويج الصغيرة من كفاء

زواج النبي بعائشة وهي صغيرة فإنها قالت: «تزوجني النبي وأنا ابنة ستِ وبنى بي وأنا ابنة تسع» (1) وقد زوجها أبوها أبو بكر رضي الله عنهما. وزوج النبي صلى الله عليه وسلم أيضاً ابنة عمه حمزة من ابن أبي سلمة وهما صغيران.<sup>26</sup>

“Small child. As for small children, the majority of scholars, including imams from 4 schools of thought, even Ibn Mundzir considered it an ijma’ that it is permissible to marry off their children to a devout husband’. The Prophet’s Marriage. with Aisyah was carried out when she was a child. Indeed, Aisha said: The Messenger of Allah. married me when I was 6 years old, and fucked me at 9 years old. Abu Bakr married Aisha and the Prophet also married off his uncle’s daughter (Hamzah) from his son Abi Salamah and both of them are still small.”

وكذلك اشترط الشافعية في تزويج الصغير وجود المصلحة وفي تزويج الب الصغيرة أو الكبيرة بغير إذنها شروطاً سبعة هي: (الول) ألا يكون بينه وبينها عداوة ظاهرة (الثاني) أن يزوجه من كفاء (الثالث) أن يزوجه بمهر مثلها (الرابع) أن يكون من نقد البلد (الخامس) ألا يكون الزوج معسراً بالمهر (السادس) ألا يزوجه بمن تتضرر بمعاشرته كأعمى وشيخ هرم (السابع) ألا يكون قد وجب عليها الحج فإن الزوج قد يمنعها لكون الحج على التراخي ولها غرض في تعجيل براءتها.<sup>27</sup>

“And so also in marrying a little girl, the Syafi’iyyah scholars require that there is a benefit. Permissibility of a father to marry his daughter who is still small or who has grown without his consent there are 7 kinds of conditions, namely: 1). There is no real enmity between father and daughter, 2). Marrying a man who is sekufu’, 3). Married with a mitsil dowry, 4). Dowry in the form of state currency, 5). Husbands are not people who can’t afford to pay the dowry, 6). Don’t marry someone who can make trouble like blind people and senile grandfathers, 7). The daughter is not yet obliged to perform Hajj, because sometimes her husband will prevent the pilgrimage. Because the obligation of Hajj is loose (*tarakhi*), while the woman wants to carry out her Hajj obligations”.

From the explanation above, the final decision that was answered was that the hanging marriage law was valid because of the opinion of scholars who allowed marriage at an early age based on the hadith of the Prophet marrying Aisyah. And also the permissibility of a father marrying his daughter in an effective manner as long as the conditions are met.

Looking at the description that has been presented the author, that the construction of the 32nd NU congress decision regarding hanging marriages departed from the absence of *aqwal* scholars who explained about hanging marriages in *mu’tabarab* books. It’s just that the method used is to equate the law of problems that have no answers in the book with similar problems that are answered in the book. The method used *istinbat al-bukmi* about hanging marriages in line with the problem-solving procedure at the commission even *bahsul masail* which was decided at the 1992 Lampung National Conference.

The harmony in the problem-solving procedure can be seen in the construction of the hanging marriage decision as follows: 1). If the answer is in the *ibarat* of the book and there is only one qaul, then use the qaul that has been explained in the *ibarat* of the book. However, in the case of hanging marriages, there is no *ibarat* that explains it. 2). If the book that is used as a reference there is more than one qaul, it will be done *taqir jamā’i* to choose one qaul, 3). On problems for which there is no one qaul who gives an answer, the procedure will be carried out *prosedur ilbaqul masail bi naẓha’iriba* as was done in deciding the law of hanging marriages.

<sup>26</sup> Wahbah al-Zuhaili, *al-Fiqh al-Islām Wa Adillatuh*, Juz 9, (Beirut: Darul Fikr, t.th), p. 171

<sup>27</sup> Wahbah al-Zuhaili, *al-Fiqh al-Islām Wa Adillatuh*, Juz 9, p. 174

### 3. Marriage Decision Hanging In Perspectives of Child Protection Regulations

The purpose of regulations regarding child protection is to ensure the fulfillment of children's rights. This is intended so that children can live, grow, develop, participate optimally under human dignity. Another goal is for a child to get protection from violence and discrimination. Family and society are the most important institutions in realizing quality, prosperous, and safe children.<sup>28</sup>

Legal material on children's rights in Convention on the Right of the Child can be grouped into four categories of rights, namely:<sup>29</sup>

1. *Survival rights* are children's rights which include the rights of life, namely to survive. Then also the rights to the highest standard of health and medical care attainable, namely obtaining high health and proper care.
2. *Development rights*. This right includes all forms of education, both formal and non-formal. This group also includes the right to achieve an adequate standard of living and ensure the mental, psychological, spiritual, social, and moral development of a child.
3. *Participation rights*. This right includes the right to express an opinion in all matters affecting that child (the rights of a child to express her/his views in all matters affecting that child).
4. *protection rights*, which are children's rights including protection from acts of violence, discriminatory attitudes, and also protection from neglect for children who do not have families or who have fled.

Protection of children has been regulated in the 1945 Constitution in Article 28 paragraph B. To be precise, it is stated in the first paragraph that everyone has the right to form a family and continue the lineage through a bond or legal marriage.<sup>30</sup> While the second verse also states that the continuity of life, development, growth and development get Protection from discrimination as well as violence is the right of every individual.<sup>31</sup>

Normatively, guarantees and protection for every child have been contained in Law Number 35 of 2014 which is a revision of Law Number 23 of 2002 on Child Protection. Even in products of Islamic legal thought such as fiqh and fatwas, a child must also receive protection and guarantees for his rights.

However, the decision of the 32nd NU Congress in 2010 regarding Hanging Marriages looks a contrast when juxtaposed with child protection. This is because the decision uses *wajh al-ilbaq* (similarity factor) namely the age of marriage contained in marriages with the issue of hanging marriages, as well as the existence of *ijbar* in these marriages which indeed in contemporary times raises debate.

The issue regarding the age of marriage of a child has been disclosed by Law Number 35 of 2014 Article 26 paragraph C which explains the obligation of parents to prevent marriage at the age of 18 years. The purpose of this prevention is as an effort to protect and guarantee the existence of children's rights. It is feared that underage marriage will become shackles for children's rights and stop children's hopes and dreams from developing, growing, achieving, and especially for a decent life.

Moreover, the decision of the 32nd NU Congress regarding the issue of hanging marriages provides an opportunity for underage marriages to occur because they do not explain the age limit for marriage which has been stated in Article 7 of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974, namely the age of 19 years. In his decision, he only stated the permissibility of marrying after the age of puberty.<sup>32</sup>

<sup>28</sup> Abdul Rahman Kanang, "Perspektif Perlindungan Anak Di Indonesia", *Jurnal al-Risalah*, Vol. 18, No. 1, 2018, p. 10

<sup>29</sup> *Ibid*, p. 5-7

<sup>30</sup> Pasal 28 B ayat (1) Undang Undang Dasar Negara Republik Indonesia Tahun 1945

<sup>31</sup> *Ibid*.,

<sup>32</sup> In setting the minimum age limit for marriage, several scholars have different opinions. Like the Hanafi scholars who argue that a boy is considered mature when semen has come out and a woman has menstruated. The probability of reaching puberty

This will trigger the rise of parents marrying off their children at an early age. Though this kind of marriage contains many risks and the possibility of bad both from the psychological side. The psychological impact of early marriage is that the couple is not ready to face changing roles and household problems, so it often creates mental stress for couples who marry young. On the one hand, they are still unstable, so they are sometimes annoyed, restless, restless for no apparent reason.<sup>33</sup> Acts like this certainly violate the development rights of a child, namely the right to achieve a decent standard of living and guarantee the mental, psychological, spiritual, social and moral development of a child as stated in the Convention on the Right of the Child. and Law No. 35 of 2014 article 26 paragraph c.

Likewise about *ijbar* in a marriage that is made *wajh al-ilbaq* on the decision of the congress 32nd NU. In its legal construction, the right of *ijbar* which refers to the *qoul* of the Syafi'iyah scholars in *al-Fiqh al-Islam Wa Adillatub* irrelevant to the content of the Convention on the Right of the Child about *participation rights* namely the rights of children which include the right to express opinions. *Qoul* referred to the congress 32nd NU does not contain the appointment of the basic agreement between the two parties between the prospective wife and prospective husband.

The agreement of the two parties is considered very respectful of the opinions of both parties. Article 16 of the Declaration of Human Rights states that marriage is only carried out with the free consent of the bride and groom. This means that in the current context regarding *ijbar* it is not possible to implement it, especially in hanging marriages which in practice marry off early childhood.<sup>34</sup>

Indonesia's marriage law also does not seem to project the existence of *ijbar* rights. Because Law Number 1 of 1974 is more oriented towards marriage based on the approval of the two prospective brides.<sup>35</sup> So that when the two prospective brides disagree or disagree with the marriage, the marriage contract cannot be carried out and parents cannot force it. Whereas in Law Number 7 of 1984 categorizing marriages that are not at the will of the prospective bride and groom is a form of discrimination that must be ended.

#### D. CONCLUSION

The construction of the decision of the 32nd NU Congress regarding Hanging Marriage started from the *qouly* method which looked for the issue of hanging marriages contained in the *mu'tabarab* books, but nothing was found explicitly on this issue. Finally using the method *ilbaqi* by equating cases that have similarities in *mu'tabar* books. As for *wajh al-ilbaq*, namely the age of marriage contained in a marriage with the issue of hanging marriage, as well as the existence of *ijbar* in the marriage. While *Wajh al-ilbaq* used *istinbat* the law is contrary to the Convention on the Right of the Child and Law Number 35 of 2014 which contains survival rights, *protection rights*, *development rights*, and *participation rights*. Until the verdict 32nd, NU congress on Hanging Marriage is irrelevant to the current situation and contradicts the right to protect children.

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is 18 years for boys and 17 years for girls. Then the Shafi'i school revealed that puberty for men is approximately 15 years and for women 9 years. Meanwhile, the Maliki school of law marks the puberty of a person by the absolute discharge of semen for men and menstruation for women, or the growth of hair on the genitals. The Hambali school explains that the age limit for puberty is 15 years, both male and female. See Sri Rahmawati, "Batas Usia Minimal Pernikahan (Studi Komparatif Hukum Islam dan Hukum Positif)", *Jurnal Syakhsia*, Vol. 2, No. 1, Januari-Juni, 2020, pp. 85-110

<sup>33</sup> Lina Dina Maudina, "Dampak Pernikahan Dini Bagi Perempuan", *Jurnal Harkat*, Vol. 15, No. 2, 2019, p. 93

<sup>34</sup> Husnul Haq, "Reformulasi Hak Ijbar Fiqhi Dalam Tantangan Isu Gender Kontemporer", *Jurnal Palastren*, Vol. 8, No. 1, Juni, 2015, p. 217

<sup>35</sup> Pasal 6 Undang-Undang Nomor 1 Tahun 1974 Tentang Perikahan

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