



## Legal Politics of Changes to Marriage Laws in Indonesia

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### Abstract

The research aims to analyze changes to articles in Law Number 16 of 2019 concerning Marriage which are the result of revisions to previous provisions, namely Law Number 1 of 1974 concerning Marriage. In this research, the change in the age requirement to 19 years (men and women) is a requirement or permitted for those who wish to enter into marriage. By the government, the provisions for changes are only in the article regulating age, and no other new provisions have been found. This research is a juridical research by analyzing legal politics regarding changes in marriage law using a statutory approach, case approach, conceptual approach, and legal comparative approach. The results of this research are: First, the revision carried out by the government still leaves legal problems, this is based on the decision of the Constitutional Court in several judicial reviews of Law no. 1 of 1974 concerning Marriage. Second, the age limit regulated in Law no. 16 of 2019 concerning Marriage is not yet ideal and synergistic with other statutory provisions. Third, the purpose of the amendment to Law no. 1 of 1974 concerning Marriage is to reduce legal problems in society. On the other hand, the same problems still occurred when the previous provisions were implemented, such as the death rate for girls who married at a young age, the increasing number of requests for marriage dispensations, and the failure to achieve the marriages desired by law. However, changes to the marriage age limit provisions at least attempt to minimize cases of early child marriage in Indonesia.

**Keywords:** Legal Politics, Marriage Law, Marriage Age, Marriage Dispensation

### Abstrak

Penelitian ini bertujuan menganalisis perubahan pasal pada Undang-Undang Nomor 16 Tahun 2019 tentang Perkawinan yang merupakan hasil revisi dari ketentuan sebelumnya yaitu Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Pada penelitian ini, perubahan ketentuan usia menjadi 19 tahun (pria dan wanita) adalah syarat atau hanya diizinkan bagi mereka yang akan melangsungkan perkawinan. Oleh pemerintah, ketentuan perubahan hanya pada pasal yang mengatur tentang usia, dan tidak ditemukan ketentuan baru lainnya. Penelitian ini merupakan penelitian yuridis dengan menganalisis politik hukum terhadap perubahan dalam undang-undang perkawinan menggunakan pendekatan perundang-undangan, pendekatan kasus, pendekatan konseptual, dan pendekatan perbandingan hukum. Adapun hasil penelitian ini adalah: Pertama, revisi yang dilakukan



oleh pemerintah masih menyisakan problematika hukum, hal ini berdasar pada putusan Mahkamah Konstitusi dalam beberapa *judicial review* UU No. 1 Tahun 1974 tentang Perkawinan. Kedua, batasan usia yang diatur dalam UU No. 16 Tahun 2019 tentang Perkawinan belum ideal dan sinergis dengan ketentuan perundang-undangan lainnya. Ketiga, tujuan perubahan atas UU No. 1 Tahun 1974 tentang Perkawinan adalah untuk mengurangi permasalahan hukum ditengah masyarakat. Sebaliknya, masih saja terjadi masalah yang sama pada saat ketentuan sebelumnya diberlakukan, seperti angka kematian bagi anak perempuan yang menikah diusia muda, maraknya permohonan dispensasi nikah, dan tidak tercapainya perkawinan yang diinginkan oleh undang-undang. Namun perubahan atas ketentuan batas usia perkawinan paling tidak berupaya meminimalisir kasus pernikahan anak usia dini di Indonesia.

**Kata Kunci:** Politik Hukum, Hukum Perkawinan, Usia Kawin, Dispensasi Kawin

## Introduction

Five years after the government carried out a phenomenal reform of marriage law in Indonesia, namely Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriage, apparently does not necessarily eliminate marriage practices that are considered problematic. The presence of the revision of the marriage law only increases or increases the number of applications for marriage dispensation in the Religious Courts, meaning that the new provisions do not reduce the number of cases of early child marriage, the practice of forced marriage, and increase legal awareness regarding the individual's obligation to carry out marriage in several districts/provinces in Indonesia. The previous regulation governing the age limit for marriage in Law Number 1 of 1974 was stipulated in Article 7 paragraph (2) stating that "the age limit for marriage is 16 years for women and 19 years for men", the limit regulation in this article has been in progress for approximately 35 (thirty five) years (from 1974 until it was revised in 2019) even though in reality it still raises many problems, such as economic (family food security), social (social conflict), cultural (customs), and human rights violations (Human Rights Violations).

The historicity of changes to marriage law in 2019 is the decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 22/PUU-XV/2017 which considers that differentiating the age of marriage between women and men is contrary to the constitution, but the Constitutional Court does not stipulate a specific age as marriage age limit, because the Constitutional Court is of the view that the issue of marriage age limits is something that cannot be justified. open law policy. The Constitutional Court only limits legislators from immediately setting the maximum age for marriage at 3 (three) years. If within a period of 3 (three) years the legislator has not determined the age of marriage, then the age of marriage is aligned with the age of the child in the statutory regulations.<sup>1</sup>

Prior to the MKRI decision Number 22/PUU-XV/2017, in the same legal issue the MKRI decision Number 30-74/PUU-XII/2014 had already been issued, Judge Maria Farida Indrati on dissenting opinion assessed the phrase "16 years of age" in Article 7 paragraph (1) The Marriage Law has created legal uncertainty and violated children's rights as regulated in

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<sup>1</sup> Constitutional Court of the Republic of Indonesia, "Constitutional Court Decision Number: 22/PUU-XV/2017" (2017).

the 1945 Constitution of the Republic of Indonesia (UUD NRI):<sup>2</sup> Article 1 paragraph (3) that "the Indonesian state is a state of law, Article 28B paragraph (2) that "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination", and Article 28C paragraph (1) that "Every person has the right to develop themselves through fulfilling their basic needs, has the right to obtain education and benefit from science and technology, arts and culture, in order to improve the quality of life and welfare of mankind." On the other hand, it can be concluded that: (a) Child marriage will endanger the survival and growth and development of children, as well as placing children in situations prone to violence and discrimination, (b) Marriage requires physical, psychological, social, economic, intellectual, cultural and spiritual, (c) Child marriage cannot fulfill the marriage requirements regulated in Article 6, namely the free will of the prospective bride and groom, because they are not yet adults.<sup>3</sup> Basically, there are 2 (two) more MKRI decisions related to the judicial review of the material of Law no. 1 of 1974, namely the MKRI decision no. 46/PUU-VIII/2010 and MKRI decision no. 69/PUU-XIII/2015, Constitutional Court Decision Number 46/PUU-VIII/2010 explains that illegitimate children have a civil relationship with their mother and their mother's family as well as their biological father and their father's family, as long as the blood relationship can be proven based on science and technology. and/or other evidence.<sup>4</sup> Then the Constitutional Court Decision Number 69/PUU-XIII/2015 explains that marriage agreements cannot only be made at or before the marriage takes place, but can also be made during the marriage, as a form of the right to freedom of contract.<sup>5</sup>

Regarding the MKRI decision Number 30-74/PUU-XII/2014, on March 5 2014, several observer institutions and activists/activists for the protection of women and children submitted a request for a judicial review of Article 7 paragraphs (1) and (2) of Law no. 1 of 1974 in the MKRI. Some of the reasons for requesting review of the law, the applicant argues that the existence of this regulation has given rise to many practices of early child marriage, especially for girls who are deprived of their rights to grow and develop as children. Therefore, the applicant submitted a review to protect and fulfill children's human rights, as well as provide space for legal certainty and justice for Indonesian people as ordered by the 1945 Constitution of the Republic of Indonesia. The scope of the articles being tested includes Article 7 paragraph (1) and paragraph (2) of the Law -Law Number 1 of 1974 concerning Marriage. Meanwhile, the Constitutional Foundations used include:

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<sup>2</sup> Secretariat General of the People's Consultative Assembly (MPR) of the Republic of Indonesia, "The 1945 Constitution of the Republic of Indonesia (Results of Amendments in 1999-2002)" (2020).

<sup>3</sup> Constitutional Court of the Republic of Indonesia, "Constitutional Court Decision Number: 30-74/PUU-XII/2014." (2014).

<sup>4</sup> Constitutional Court of the Republic of Indonesia, "Constitutional Court Decision Number: 46/PUU-VIII/2010" (2010).

<sup>5</sup> Constitutional Court of the Republic of Indonesia, "Constitutional Court Decision Number: 69/PUU-XIII/2015." (2015).

Article 1, paragraph (3)	Indonesia is a country of law
Article 24, paragraph (1)	Judicial power is an independent power to administer justice to uphold law and justice
Article 28B, paragraph (1)	Everyone has the right to form a family and continue their offspring through legal marriage
Article 28B, paragraph (2)	Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination
Article 28C, paragraph (1)	Every person has the right to develop themselves through fulfilling their basic needs, the right to obtain education and benefit from science and technology, arts and culture, in order to improve the quality of life and welfare of humanity.
Article 28D, paragraph (1)	Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law
Article 28I, paragraph (2)	Every person is free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment

The nature of the MKRI decision is final and has binding legal force from the moment it is read out in a trial at the Constitutional Court, and whatever the contents of the decision must be implemented, not only for the legislators but also applies to all parties involved.<sup>6</sup> Apart from the several MKRI decisions above, several regulations are related or directly related to the provisions in the amendment to the marriage law, especially regarding the age limit for children who will marry, including:

No.	Legislation
1.	Law Number 04 of 1979 concerning Child Welfare
2.	Law Number 12 of 1995 concerning Corrections
3.	Law Number 39 of 1999 concerning Human Rights
4.	Law Number 23 of 2004 concerning the Elimination of Domestic Violence
5.	Law Number 30 of 2004 concerning Notary Positions

<sup>6</sup> I Dewa Gede Palguna, "The Position of Constitutional Court Decisions and Protection of the Constitutional Rights of Believers," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 3 (2021): 495, <https://doi.org/10.24843/jmhu.2021.v10.i03.p06>.

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| 6.    | Law Number 40 of 2004 concerning the Social Security System                                   |
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| 7.    | Law Number 11 of 2012 concerning the Juvenile Criminal Justice System                         |
| <hr/> |   |
| 8.    | Law Number 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection |
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The age limit for marriage is indeed a problem in people's lives, giving rise to a lot of controversy, both juridical and non-juridical. If we summarize early childhood marriages in the juridical and non-juridical aspects, the problems that arise are:

1. The human rights factor, child marriage violates the spirit of protecting human rights,<sup>7</sup> the definition of a child is "a person who is not yet 18 years old", thus the provision is that someone is considered an adult if they are 18 years old.
2. Health factors, the impact of child marriage is that girls' reproductive organs are not yet ready, which contributes to the high mortality rate of mothers giving birth and their children, malnourished babies and stunted children.<sup>8</sup>
3. Economic factors, the compulsion to get married at an early age due to poverty and the solution is to marry off the child so that the responsibility/burden on parents can be minimized,<sup>9</sup> especially if the parents have or are bound by debt. Girls in some poor areas are targeted for sale or marriage to relieve their parents of economic burdens. Another reason is the interest in elevating the status of the family, tribal interests and economic and political power so that their married children can strengthen their lineage and social status.<sup>10</sup> Practices like this in Indonesia are very contrary to the contents of Article 26 paragraph (1) letter c of Law Number 35 of 2014 concerning Child Protection which mandates that "one of the obligations and responsibilities of parents is to prevent marriage at a child's age". wants children to grow well according to their intelligence, and not be burdened by social problems in the household that should not be imposed on children. The world of children and teenagers is a world of learning, having fun and playing.
4. Educational factor, children who are forced to marry before they are old enough will stop or not continue their education.<sup>11</sup> Children's understanding of relationships in marriage, understanding of culture and religion is still minimal, especially women are still relatively weak and vulnerable to experiencing sexual

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<sup>7</sup> Nixon Wulur Yosmar Wungow, Josepus j. Pinori, "Legal Review of Underage Marriage Review of Law no. 16 of 2019," *Lex Administratum*, no. 16 (2022): 1-11, <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/40473>.

<sup>8</sup> Lezi Yovita Sari, Desi Aulia Umami, dan Darmawansyah Darmawansyah, "The Impact of Early Marriage on Women's Reproductive and Mental Health (Case Study in Ilir Talo District, Seluma Regency, Bengkulu Province)," *Jurnal Bidang Ilmu Kesehatan* 10, no. 1 (2020): 54-65, <https://doi.org/10.52643/jbik.v10i1.735>.

<sup>9</sup> Siti Nurul Khaerani, "Economic Factors in Early Marriage in the Sasak Lombok Community," *Qawwam* 13, no. 1 (2019): 1-13, <https://doi.org/10.20414/qawwam.v13i1.1619>.

<sup>10</sup> Saraswati Rika, *Child Protection Law in Indonesia* (Bandung: PT Citra Aditya Bakti, 2015).

<sup>11</sup> Fitri Raya et al., "The Urgency of Education to Suppress Early Marriage," *Jurnal Pengabdian Masyarakat* 15, no. 1 (2022): 51-61.

violence and domestic violence.<sup>12</sup> Domestic violence not only leaves physical consequences such as serious injuries, physical and mental disabilities, but in the most extreme cases it can even result in death. In fact, violence committed by husbands against wives is clearly a criminal act as regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Therefore, underage marriages are very vulnerable to breaking up in the middle or ending in divorce, the impact of early divorce in cases of underage marriages puts them in an unfavorable position.

5. Marriage dispensation factor, one way out for child marriage to take place is to submit a request for marriage dispensation at the religious court for children (boys or girls) who are not yet at the legal age for marriage, this method will certainly perpetuate the practice of child marriage.<sup>13</sup>

Requests for marriage dispensation submitted by the community to the religious court, then the religious court granted the request, many of them were motivated by culture, even though Law Number 16 of 2019 had been implemented, but for cultural reasons this law was ignored. This problem is a problematic one, meaning that if the request for marriage dispensation is not granted by the court, there will be marriages that will not be registered. This problem will of course have its own legal consequences because marriages carried out in a siri (underhand) are not registered at the Religious Affairs Office (KUA) or at the Population and Civil Registry Service (Disdukcapil).<sup>14</sup> Registration of a marriage at an administrative office appointed by the state has a very important element for the validity of the marriage. By registering a marriage, the parties entering into the marriage will receive protection from the state in raising a family and obtain legal certainty for their husband, wife, children and inheritance rights, as well as other rights. Of course, it is different if a marriage is not registered (registered with the KUA/Disdukcapil), this will have implications for legal recognition, inheritance rights, social status, identity rights, children's rights and so on.

The revision of the marriage age limit carried out by the government is an ideal thing to overcome many problems, especially child marriage, but in its implementation it certainly requires hard work from the government and religious leaders in providing a good understanding in society regarding the normative standards of marriage, the community will likely accept if this is the case. These are applied in accordance with the governing provisions, and society must comply with these normative standards.

However, in reality, the large number of cases of early child marriage and requests for marriage dispensation in religious courts, make it clear that change and reform do not

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<sup>12</sup> Yvette Efevbera dan Jacqueline Bhabha, "Defining and deconstructing girl child marriage and applications to global public health," *BMC Public Health* 20, no. 1 (2020): 1-11, <https://doi.org/10.1186/s12889-020-09545-0>.

<sup>13</sup> Muhammad Hasan Sebyar, "Factors Causing Applications for Marriage Dispensation at the Panyabungan Religious Court," *Syari'ah: Journal of Indonesian Comparative of Syari'ah Law* 5, no. 1 (2022): 1-14.

<sup>14</sup> Kharisudin Kharisudin, "Siri Marriage in Perspective of a Compilation of Islamic Law and Indonesian Marriage Laws," *Perspektif* 26, no. 1 (2021): 48-56, <https://doi.org/10.30742/perspektif.v26i1.791>.

always bring positive meaning to society. These implementations, changes and reforms have given rise to various conflicts of interest and responses from the community. Society is divided into several categories, namely: there are people who care about, accept and implement the provisions of the new marriage law, there are also people who reject the implementation and reform of the new marriage law, many of them refuse because of several problems described previously in on.

Researchers basically want to strengthen the government's idea of taking policy by setting age limits for marriage without violating the constitution. This is important because many child marriages are not yet ready to take place and have a negative impact on Indonesian human development, meaning that the government is trying to minimize problems in society. Then, regulatoryly, setting an age limit of 19 years is important to determine the conditions or permission to enter into a marriage by taking into account and considering the provisions of other laws and regulations.

There is quite a bit of research related to marriage age limits, including: *First*, Edy Setyawan et al who studied "Legal Age for Marriage: SDGs and Maslahah Perspectives in Legal Policy Change in Indonesia",<sup>15</sup> Edy tried to identify the impact of legal policy changes on the protection of human rights and gender equality, and analyzing the relationship between aspects that influence legal changes regarding the minimum age limit for marriage in Indonesia using a juridical approach and using the maslahah murlah theory and Philippus M. Hadjon's theory of legal protection. *Second*, Teguh Ansori with the research "Analysis of the Ideal Age of Marriage in the Maqasid Syari'ah Perspective",<sup>16</sup> this research tries to explore why there is a need for an ideal age limit for marriage according to the Maqasid Syariah, as well as how Maqasid Syariah analyzes the provisions on the ideal age limit for marriage in the Maturation of Marriage Age, because This research was conducted in 2019 so it did not analyze changes to new provisions regarding marriage limits (Law No. 19 of 2019). *Third*, Teti Hadiati and Makrum conducted research "Legal Politics of Reformulation of Interfaith Marriages in Indonesia",<sup>17</sup> the problem studied by Tati and Makrum was interfaith marriages which were considered to be in accordance with the philosophical values of marriage law in Indonesia and the debate on the validity of marriage in Indonesia, an interesting point in Teti's research revealed that marriage regulations in Indonesia are constructed from Islamic law which does not prohibit interfaith marriages, nor does it conflict with constitutional law. However, the research carried out by Teti and Makrum is certainly different from the researchers who discussed the legal politics of changing laws that regulate the conditions for a person to obtain a marriage permit. *Fourth*, Rohmad Nurhuda with the research "Beyond Tradition: Evaluation of the Impact of Political Policy on

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<sup>15</sup> Edy Setyawan et al., "Legal Age for Marriage: SDGs and Maslahah Perspectives in Legal Policy Change in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023): 183–97, <https://doi.org/10.24090/mnh.v17i2.9506>.

<sup>16</sup> Teguh Anshori, "Analisis Usia Ideal Perkawinan dalam Perspektif Maqasid Syariah," *Al Syakhsiyyah Journal of Law and Family Studies* 1, no. 1 (2019): 1–16, <https://doi.org/10.21154/syakhsiyyah.v1i1.1827>.

<sup>17</sup> Teti Hadiati, "The Law Politics in the Reformulation of Interfaith Marriage in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 7, no. 1 (2020): 25, <https://doi.org/10.29300/mzn.v7i1.2775>.

Family Law Reform",<sup>18</sup> Rohmad analyzed family law policy with several cases (although in his research no cases in question were found) with a qualitative approach trying to unravel the complexity of the interaction between political policy and reform family law, and its impact on society. Rohmad in his research outlines the dialectic of conflict over changes to family law in Indonesia between conservative groups and groups who want legal reform. Meanwhile, in the research we conducted, we outlined the normative substance (legal dialectics) and the objectives of changing the Marriage Law in Indonesia without paying attention to conflicts within society. *Fifth*, Nasrullah with his research "The Character of Legal Products in Indonesia: A Study of Changes to the Marriage Law from a Political-Law Perspective",<sup>19</sup> examines the character of statutory legal products, namely the character of legal products of Law Number 16 of 2019 concerning Amendments regarding Law Number 1 of 1974 concerning Marriage which seems ahistorical. The conservative character and responsive law become a dialectic in his research, without analyzing the presence of Law no. 16 of 2019 which only regulates age restrictions (conditions for permitting) marriage. In some of the studies above, researchers attempted to criticize the marriage law provisions in force in Indonesia without paying attention to the many provisions governing age limits, and more specifically using the constitution as the basis, then most of the studies by other researchers reviewed them in an implementation manner.

Based on the background of the problem above and to limit the problems that will be discussed in this research, the questions were formulated: why should the law on marriage be revised? Is it to resolve marriage problems in society, or is it just the demands of the Constitutional Court's decision?, and what is the difference between the new (revised) provisions and the old (previous) provisions? Then, to find the answer to this question, as this research is legal research, the researcher uses several approaches, including: case approach, conceptual approach, historical approach, and comparative legal approach. Some of these approaches are described as: *First*, the intended legislative approach is an approach carried out by examining all laws and regulations relating to marriage, especially the age of children who are then considered adults (administratively). *Second*, the case approach, namely examining issues that have permanent legal force, in this research are several decisions of the Constitutional Court and decisions related to marriage dispensations. *Third*, the historical approach is an approach used to find out the historical values that form the background and which influence the values contained in the Marriage Law in Indonesia. *Fourth*, the conceptual approach provides an analytical perspective on problem solving in legal research seen from the aspect of the legal concepts behind it. Because this research is a library research that uses statutory regulatory documents as the main source (primary data) in discussing the problems of implementing marriage age requirements, then the data

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<sup>18</sup> Rohmad Nurhuda, "Melampaui Tradisi: Evaluasi Dampak Kebijakan Politik terhadap Pembaharuan Hukum Keluarga," *El-Dusturi: Jurnal Hukum dan Perundang-undangan* 3, no. 1 (2024): 1-14, <https://doi.org/10.21154/eldusturie.v3i1.8639>.

<sup>19</sup> Nasrullah, Wawan Andriawan, dan Musawar, "The Character of Legal Products in Indonesia: A Study of Changes to the Marriage Law from a Political-Law Perspective," *Samarah* 8, no. 1 (2024): 602-27, <https://doi.org/10.22373/sjhk.v8i1.17302>.



sourced from several documents (library) is analyzed by trying to find and compare one provision with another.

### **The Politics of Marriage Law in Indonesia**

The legal politics of changing the marriage law is interpreted as a legal policy regarding marriage which includes the government's policy that the law regarding marriage has been established and the law regarding marriage should be established to construct a more focused and better life for citizens, namely that marriage is carried out without injuring basic rights, citizen or provide great benefits to a person's life when getting married and living it.

Then, along with changes in era, time and place, it is only natural that marriage law also requires changes and adjustments, both normatively and practically. Because there will be times when marriage laws are agreed upon and used as guidelines for society, but at the same or different times, these legal regulations may be considered no longer relevant or unsuitable to be used as guidelines because they conflict with other conditions,<sup>20</sup> and people choose not to obey them by seeking other legal loopholes so that their interests can be carried out.

The big problem currently facing Indonesian society is how to resolve the problem of child marriage which occurs in several regions of the Republic of Indonesia,<sup>21</sup> meaning that the government is required to prepare ideal and more responsive legal instruments so that later marriages that do not comply with statutory provisions will no longer be found.

It is necessary to understand that the new provisions in Law no. 16 of 2019 which was ratified on 14 October 2019 and promulgated on 15 October 2019, substantive changes only occurred in article 7 or only 1 (one) article underwent revision, Article 7 regulates that:

1. Paragraph (1) marriage is only permitted if the man and woman reach the age of 19 (nineteen) years;
2. Paragraph (2) in the event of a deviation from the age provisions as referred to in paragraph (1), the male parent and/or the female parent may request dispensation from the court for very urgent reasons accompanied by sufficient supporting evidence;
3. Paragraph (3) when the court grants dispensation as intended in paragraph (2), it is mandatory to listen to the opinions of both parties to the prospective bride and groom who will enter into marriage;
4. Paragraph (4) provisions regarding the condition of a person or both parents of the prospective bride and groom as intended in article 6 paragraph (3) and paragraph (4) also apply provisions regarding requests for dispensation as intended in paragraph (2) without prejudice to the provisions as intended in article 6 paragraph (6).

According to Article 7 above, changes occur in the age limit for marriage which is 19 (nineteen) years for men and women, which previously (UU No. 1 of 1974) was 19 (nineteen)

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<sup>20</sup> Ewa Batyra dan Luca Maria Pesando, "Trends in child marriage and new evidence on the selective impact of changes in age-at-marriage laws on early marriage," *SSM - Population Health* 14 (2021): 100811, <https://doi.org/10.1016/j.ssmph.2021.100811>.

<sup>21</sup> Rizky Irfano Aditya dan Lisa Waddington, "The Legal Protection Against Child Marriage in Indonesia," *Bestuur* 9, no. 2 (2021): 126–34, <https://doi.org/10.20961/bestuur.v9i2.55144>.

years for men and 16 (sixteen) years for women. Meanwhile, the provisions for marriage dispensation have been regulated in Law no. 1 of 1974 with the confirmation of changes in parents, men and/or women only request or ask for marriage dispensation from the court, not other officials.

### **Age Limits and Marriage Dispensations in the History of Marriage Law in Indonesia**

The history of marriage in Indonesia can be divided into 5 (five) phases, namely: First, the period when the kings in Indonesia made Islamic law part of royal law. The involvement of ulama in implementing Islamic law and resolving problems or disputes, although the implementation is not yet complete because ulama combine Islamic law with customary law. Customary law is a law that has existed for a long time and was used as the main reference before the advent of Islamic law. Customary justice continues to color the royal justice system by adding Islamic nuances to every element of its law. This flexibility then positions ulama as respected figures.<sup>22</sup> At this time, the dispensation for marriage relies or refers to the opinion of the ulama, and the provisions regarding the age limit for marriage are based on indicators that a person has entered puberty or is considered to have reached puberty (marked by a sign, namely dreams for men and menstruation for women).<sup>23</sup>

Second, the Dutch Colonial Period, which was no different from what was in effect during the royal period, during the Dutch colonial period the applicable marriage law was the Freijer Compendium (1760), namely a legal book containing the rules of marriage law and inheritance law according to Islam.<sup>24</sup> The VOC basically allowed the original institutions formed in society to continue according to previous conditions, because Dutch law could not be implemented in community practice. Then, on the recommendation of the Resident, Tjicebonshe Rechtsboek (Tjicebonshe law book) was written. Meanwhile, for Landraad in Semarang in 1750 a separate law book was created. Meanwhile, for the Makassar region, the VOC approved its own legal book. During the reign of the Dutch East Indies under Daendels (1800-1811) and during the British era under Thomas S. Raffles (1811-1816), Islamic law was the law that applied in society.<sup>25</sup> In 1823, with the Governor General's decision dated 3 June 1823 Number 12, the Palembang City Religious Court was inaugurated, led by a village head and appeals could be submitted to the sultan.<sup>26</sup> The authority of the Palembang Religious Court is in matters of marriage, divorce, division of property, child management if the parents are separated/divorced, matters of inheritance and wills, guardianship, and other matters relevant to religion.

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<sup>22</sup> Ashabul Fadhli, "Dialectics of the Beginning of the Entry of Islamic Law in Indonesia," in *Hukum Islam di Indonesia*, 1 ed. (Malang: Madza Media, 2022), 4.

<sup>23</sup> Abdul Rahman Al-Jaziri, *Kitab al-Fiqh Ala Mazahib al-Arba'ah* (Beirut: Dar al-Kutub al-Ilmiyyah, 2003).

<sup>24</sup> Nurhikmah Hairak H. Biga, "History of Renewal of Islamic Family Law in Indonesia," *Al-Mizan* 13, no. 2 (2017): 185–203.

<sup>25</sup> Ismail Sunny, "The Position of Islamic Law in the Indonesian Constitutional System," in *Prospek Hukum Islam dalam Kerangka pembangunan Hukum Nasional di Indonesia* (Jakarta: PP IKAHA, 1994), 200.

<sup>26</sup> Sumadi Matrais, "Independence of the Religious Courts in the Perspective of the Religious Courts Law," *Jurnal Hukum IUS QUIA IUSTUM* 15, no. 1 (2008): 121–44, <https://doi.org/10.20885/iustum.vol15.iss1.art6>.

The authority of religious justice is stated in Staatsblaad 1835 Number 58 "Uitspraak in Civile Actie Voortspruitende Uit Geschillen Tussen Javanen Onderling", that "if there is a dispute between Javanese and Madurese regarding marriage matters or the division of property and so on which must be decided according to Islamic law, then that making decisions are Islamic religious experts; However, all disputes regarding the distribution of assets or payments that occur must be brought to an ordinary court, a (ordinary) court which will resolve the case by considering the case. decisions of religious experts and that those decisions be implemented.<sup>27</sup>

Furthermore, Van Den Berg's theory of receptio in complexu was opposed by Van Vollenhoven and Snouck Hurgronje with the theory of receptie (acceptance) which states that Islamic law can be applied as long as it does not conflict with customary law.<sup>28</sup> As a realization of this acceptance theory, Regeerings Reglement Stbl. 1855 Number 2 was changed to Indische Staats Regeling in 1925 (Stbl. 1925 No. 416) which later became Stbl. 1929 Number 221. It is stated that Islamic law will only be considered valid as law if it fulfills two conditions, namely: (1) Islamic legal norms must first be accepted by customary law (local community customs); and (2) Even though it has been accepted by customary law, the norms and rules of Islamic law must not conflict with or must not be determined otherwise by the provisions of the Dutch East Indies laws and regulations.<sup>29</sup>

In line with the above, Stbl. 116 of 1937 which limits the authority and duties of religious courts which initially have the right to decide on inheritance cases, and so on, and then only have the authority to judge matters of marriage, divorce and reconciliation. Next came the Draft Law on Registered Marriages or "Ontwerp Ordonnantie op de Ingeschreven Huwelijken" in June 1937 which had legal consequences for native citizens.

In Indische Staats Regeling (ISR), namely Article 163 of the Constitution of the Dutch East Indies which differentiates population groups into three types, including European groups (including Japanese), indigenous groups (Indonesia) and Eastern foreign groups except those who are Christian. Various marriage laws that were in effect at that time before the birth of Law no. 1 of 1974 for various groups of citizens and various regions as follows:

1. For native Indonesians who are Muslim, religious law applies which has been elevated to customary law. In general, for native Indonesians who are Muslim, if they get married, the Kabul agreement between the groom and the bride's guardian applies. This is as regulated in Islamic law. In this context, it is the culture of Indonesian Muslims to this day.
2. For other native Indonesians, customary law applies;
3. For native Indonesians who are Christians, the huwelijks Ordonnantie Christen Indonesia (HOI) S. 1933 number 74 applies. However, this rule has been regulated in Law no. 1974 until now is no longer valid;

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<sup>27</sup> Pristiwiyanto, "STAATSBLAD 1882 Nomor 152 Tonggak Sejarah Berdirinya Pengadilan Agama," *Jurnal Fikroh* 8, no. 1 (2014): 2-5, <https://doi.org/10.3327/jaesj.49.209>.

<sup>28</sup> Muhammad Daud Ali, *Islamic Law: Introduction to Islamic Law and Legal Order in Indonesia* (Jakarta: PT Raja Grafindo Persada, 2004).

<sup>29</sup> Yulkarnain Harahap Abdul Gafur Ansori, *Islamic Law, its Dynamics and Development in Indonesia* (Yogyakarta: Kreasi Total Media, 2008).

4. For Eastern Chinese citizens and Indonesian citizens of Chinese descent, the legal provisions in the Civil Code apply with slight changes to these rules, no longer valid since the publication of Law no. 1 in 1974.
5. For other eastern foreigners and other Indonesian citizens of foreign descent, customary law applies. So for those of Indian, Pakistani, Arab and other descent, their respective customary laws apply which are usually inseparable from the religion and beliefs they adhere to.
6. For Europeans and Indonesian citizens of European descent (Indo) and those equivalent to them, the Civil Code, namely *Burgerlijk Wetboek* (BW), applies. Included in this group are Japanese or other people who adhere to the same family law principles as Dutch family law principles.

Third, the Japanese Colonial Period, namely in 1942 when the Dutch colonialists left Indonesia and were replaced by Japan. Japan's policy towards religious justice is only a continuation of the Dutch legacy. This policy is outlined in the transitional regulations for Article 3 of the Japanese Army Law (Osamu Sairei) dated 7 March 1942 No.1. which only changes the nomenclature at the first level religious court which is called "Sooryoo Hooim" and the High Islamic Court, while the appeal level is called "kaikyoo kootohoin".<sup>30</sup>

Fourth, after the declaration of Indonesian independence in 1945, the Indonesian government established a number of Islamic marriage regulations. Among them is Law Number 22 of 1946 concerning Registration of Marriage, Divorce and Reconciliation. This law was promulgated by the President of the Republic of Indonesia on November 21 1946. Then the marriage law regulated in Law no. 1 of 1974 concerning marriage and the Compilation of Islamic Law (KHI). The KHI was prepared at the initiative of the government of the Republic of Indonesia and is the result of consensus deliberation (*ijma'*) by ulama from various circles through workshops held nationally which then received legality from the President of the Republic of Indonesia.<sup>31</sup> One of the meanings of independence for the Indonesian people is being free from the shackles of Dutch law, even though the transitional regulations state that the previous law is still valid as long as it does not conflict with Pancasila and the 1945 Constitution, and the theory of *receptie* was previously considered to be contrary to Islamic law.<sup>32</sup>

Regarding the marriage age limit in Law no. 1 of 1974 concerning Marriage is regulated in Article 7 paragraph (1) that "marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years. Along with that, the Compilation of Islamic Law (KHI) in article 15 paragraph 1 also determines the age limit in accordance with the provisions of Article 7.

Fifth, post-reformation, not only changes to the marriage age limit as regulated in Law no. 16 of 2019, however, this phase presents many regulations that are related to each other, especially those regulated in the 1945 Constitution regarding the basic rights of

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<sup>30</sup> A. Basit Adnan Zaini A Noeh, *A Brief History of Religious Courts in Indonesia* (Surabaya: Bina Ilmu, 1983).

<sup>31</sup> Cik Hasan Bisri, *Compilation of Islamic Law in the National Legal System* (Jakarta: PT Logos Wacana Ilmu, 1999).

<sup>32</sup> Abdul Gafur Ansori, *Islamic Law, its Dynamics and Development in Indonesia*.

citizens. The age limit for men and women who will marry is 19 (nineteen) years, this is adjusted to the demands of the MKRI decision Number 22/PUU-XV/2017, the human rights law, and the child protection law.

This Marriage Law, in principle, requires that men and women must be psychologically and physically mature to enter into marriage. By being physically and mentally prepared to get married, it is hoped that the marriage will be far from the disaster of divorce so that it will produce good and healthy offspring. The government's aim in implementing this policy is that it is mandatory for both men and women to be at least 19 (nineteen) years old so that both partners are truly physically and psychologically ready when getting married, even though this age is not yet considered ideal.<sup>33</sup> In fact, according to the National Population and Family Planning Agency (BKKBN), the ideal age for marriage for men is 25 (twenty-five) years and for women is 21 (twenty-one) years. Maybe the government and legislature should consider BKKBN's suggestions.

Regarding the age limit for children, the legal instruments that regulate the age of children in Indonesia are different if seen from several existing laws and regulations, including in the Civil Code Book I Article 330 which regulates that people who are not yet adults are "those who are not yet 21 years old. or those who are not yet 21 years old but are married."

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as an instrument of Human Rights, states the age limit for children in Article 1 paragraph 1 as follows: "A child is someone who has not yet reached the age of 18 (eighteen) year. old people, including children who are still in the womb." However, regarding the age limit for marriage, neither Law Number 35 of 2014 nor Law Number 23 of 2002 explicitly states the minimum age limit for marriage, only the principles and objectives of Law Number 23 of 2002 in article 2 are mentioned. The implementation of child protection is based on Pancasila and based on the 1945 Constitution of the Republic of Indonesia as well as the basic principles of the Convention on the Rights of the Child, including:

1. Without discrimination;
2. Best interests of the child;
3. the right to life, survival, and development; and
4. Respect the child's opinion.

Having a minimum age limit for marriage is a form of legal protection for children. The health, welfare and future of children must be protected, this will not happen if marriages of minors still occur frequently. Considering that early marriage is vulnerable to domestic violence, sexual violence and high divorce rates

Based on several references to requests for dispensation from marriage on the grounds that marriage is ideal, it was not found or mentioned that the ideal age for marriage is as set by the BKKBN. According to Law Number 23 of 2002 concerning Child Protection, the category of minors is those aged 18 years, whereas in Law Number 26 of 2000 concerning Human Rights Courts the category of adults aged 18 years is formulated, whereas in Law Number 30 of 2004 concerning the Position of Notary Public states that the requirement for

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<sup>33</sup> Ahlun Nazi Siregar, "Marriage Age Based on Emotional Mentality Between Men and Women," *Egalita* 15, no. 2 (2020): 27–40, <https://doi.org/10.18860/egalita.v15i2.10836>.

adulthood is to be 18 years old (or be/have been married). Therefore, the determination of maturity for men and women who will enter into marriage varies, this is due to differences in legal perspectives on social problems.

Then Marital Age Maturation is "an effort to increase the age at the time of first marriage, so that when marriage reaches PUP it is not just about postponing marriage until a certain age, but also trying to ensure that the first pregnancy occurs at a mature enough age." This means, if someone marrying underage, then the next step is to postpone the birth or first pregnancy until at least adulthood. "Delaying the gestational age and pregnancy of the first child in communication, information and education (KIE) terms is referred to as a recommendation to change the honeymoon into a honey year."<sup>34</sup>

### **Marriage Dispensation for Very Urgent Reasons**

Marriage is a legal event, the legal subject carrying out the event must fulfill the conditions determined by the norms. One of the conditions for humans as legal subjects to be said to be capable of carrying out legal acts is that they are adults. Considering that the law that regulates the age limit for marriage is Article 7 of Law Number 16 of 2019, all levels of society in Indonesia must follow and obey the provisions of the Marriage Law.

The renewal of the marriage age in Law Number 16 of 2019 is a legal policy to protect children's human rights and prevent exploitation of children in the practice of child marriage. Changes to the norms of Article 7 paragraph (1) regarding increasing the age of marriage, where a man and a woman are only allowed to marry when they reach the age of 19, provide great hope for preventing and reducing the number of child marriages in society. However, the next legal norm, namely Article 7 paragraph (2), provides space for underage marriages through requests for marriage dispensation submitted by the child's parents to the court for urgent reasons. The norm of "very urgent reasons" should be understood as a situation that is important, crucial, cannot be endured, and must be addressed immediately by marrying someone.

The very urgent reason is that there are exceptions for men and women aged 19 (nineteen) years. This rule in Article 7 paragraph (2) really needs to be implemented so that the safety of citizens can be guaranteed by the state in certain circumstances through judicial institutions. Dispensation, in legal terminology, is an exception from a norm regarding a certain legal event by allowing a prohibition.<sup>35</sup> Judicial institutions that provide marriage dispensations are needed to prevent (minimize) violations of legal norms, religious norms and customary norms. In certain cases, for example being pregnant out of wedlock, the court judge in this case must provide a recommendation for marriage dispensation because the reason is very urgent. If marriage dispensation is not given, it is feared that it will create big problems in society. In the context of "pregnancy out of wedlock" (Marriage by Accident/ MBA), this not only violates the provisions of marriage law, it also violates child protection laws (other legal norms), the compilation of Islamic law (religious norms), and also norms

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<sup>34</sup> Holilur Rohman, "Ideal Age Limit for Marriage from Maqasid Shariah Perspective," *Journal of Islamic Studies and Humanities* 1, no. 1 (2017): 67–92, <https://doi.org/10.21580/jish.11.1374>.

<sup>35</sup> Sudarsono, *Legal Dictionary* (Jakarta: PT. Rineka Cipta, 1992).

custom. Therefore, the state must be present through its judicial institutions to provide certainty, benefit and legal justice for its citizens.

The age limit for marriage will not be a legal problem if in the end the underage marriage is legalized through a request for marriage dispensation which is granted by the judge (based on Article 7 paragraph 2). The court judge will certainly provide comprehensive consideration in examining the request for marriage dispensation, the judge cannot easily grant the request even though the request is *ex parte* (there is no opposing party). Moreover, judges in judicial institutions are regulated by Supreme Court Regulation no. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation which limits marriage dispensation to only being allowed for certain urgent reasons.

According to Law Number 16 of 2019 and Perma 5 of 2019, judges are given the authority to assess an application for marriage dispensation, although these two regulations do not explain the age limit for children who are granted marriage dispensation and what circumstances can be declared as urgent reasons. However, the judge must hear and consider the information of the child and prospective husband/wife for whom marriage dispensation is requested, as well as the parents/guardians of the child and prospective husband/wife for whom marriage dispensation is requested.<sup>36</sup> Not only that, during the examination at the trial, first, the judge identified that the child submitted in the application knew and agreed to the marriage plan; second, the judge identifies the psychological condition, health and readiness of the child to enter into marriage and build a home life; and third, the judge identifies psychological, physical, sexual or economic coercion against the child and/or family to marry and marry off the child.<sup>37</sup>

As a legal instrument, Article 7 paragraph (2) Law Number 16 of 2019 and Perma No. 5 of 2019, can be used to protect freedom or otherwise limit the freedom of citizens who wish to carry out marriages. Marriage dispensation must be interpreted as an emergency exit that must not be used unless there is no other way (very urgent reasons).

## **Conclusion**

There is no guarantee that if the age limit is changed it will have a significant impact on reducing the number of applications for marriage dispensations in religious courts, and resolving various problems caused by child marriage. The change in age limits made by the government by revising Marriage Law Number 1 of 1974 to become Law Number 16 of 2019 is a requirement of the 2017 MKRI decision in decision Number 22/PUU-XV/2017, but is still considered a progressive and contemporary policy in terms of gender equality, even though this law has not yet resolved the legal problem *vis a vis* other legal provisions, then this marriage law will of course be faced with its implementation in a society that predominantly prioritizes cultural aspects or customs that have long been entrenched and regulate people's lives.

The presence of legal provisions regarding marriage limits should be a guarantee of certainty, benefit and justice for society, at least minimizing the practice of child marriage in Indonesia. Therefore, researchers argue that apart from the government establishing

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<sup>36</sup> Supreme Court of the Republic of Indonesia, "Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications" (2019).

<sup>37</sup> Supreme Court of the Republic of Indonesia.

implementing regulations (derivatives of) Law Number 16 of 2019 concerning marriage in the form of government regulations and/or presidential regulations, the government should massively campaign for the negative impacts of child marriage and build public legal awareness through several ministry/state agency apparatus. Then the government should rethink about changing the article on the age limit for marriage with the clause "only permitted" if they are 19 years old (for men and women) changed to the provision "can only be done", because the words "only permitted" provide space for submitting applications. dispensation to the Religious Courts, this is in accordance with the emergency concept if a marriage by accident situation occurs but closes the scope for forced marriages on children. Currently, forced marriage of children is a violation of several regulations and the culture of Indonesian society in general.

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