

JURIDICAL REVIEW OF CHILD MARRIAGE BASED ON LAW NUMBER 16 OF 2019 AMENDMENTS TO LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE

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Abstract: The purpose of this study is to determine the provisions for child marriage, the causes of child marriage, juridical analysis of child marriage regulated in Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage. This type of research is a normative law, with a descriptive nature of research. The research methods used are literature research and qualitative research. The type of data used is Secondary Data. The validity of marriage meets the requirements of marriage, reaches the condition of marriage, namely the age limit in accordance with the provisions of Article 7 paragraph (1) of Law Number 16 of 2019 and is required that every marriage be recorded by state officials. Then a juridical analysis of the juridical analysis of from Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage, by socializing the marriage law to children to prevent child marriage and explaining the consequences of underage marriage.

Keywords: *Juridical Review, Marriage, Minors*

Introduction

Marriage is a physically and emotionally binding relationship between a man and a woman as a married couple, with the aim of forming a harmonious and lasting family, based on belief in God Almighty. In forming a happy family, both partners also need to provide mutual support and complement each other, so that they can grow together in their personalities and achieve mutual prosperity. (Kansil & Kansil, 2006)

Indonesia is a country of law, therefore, every marriage must be in accordance with the provisions of the applicable law. A valid marriage is when it is performed in accordance with the teachings of the individual's religion or belief and is recorded by an institution that has authority in accordance with applicable law.

Indonesia as a country based on Pancasila, where the first precept is the One and Only Godhead, marriage has a very close relationship with religion or spirituality, so it not only has a physical or material, but also emotional or spiritual which has an important role. Forming a happy family and maintaining close relations with offspring, which is also the purpose of marriage, involving parental responsibility in maintenance and education, in accordance with existing rights and obligations. (Judiasih, 2018)

As for the consequences of underage marriage, namely requiring children to stop their education so that they cannot work properly, there is discriminatory treatment of the age of marriage between men and women, and high health risks for women who are 16 years old or less, who can experience health problems during marriage and other things. (Hukum & RI, 2017)

Underage marriage occurs when a man and woman marry while both are below the minimum stipulated in the marriage law. The bride and groom are not ready either physically or

emotionally, and do not have the necessary mental maturity and material readiness.(Syahrul Mustofa, 2019)

It is necessary to determine the age limit to carry out marriage, namely to create family happiness and harmony in the household. The age restriction in marriage based on Marriage Law Number 16 of 2019 concerning Marriage is changed so that the household formed can achieve the purpose of marriage.(Hanafi, 2008)

Law Number 16 of 2019 states that "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years". Meanwhile, in Law Number 1 of 1974 Article 7 paragraph (1) it is stated that "Marriage is only permitted if the male party has reached the age of 19 (nineteen) years and the female party has reached the age of 16 (sixteen) years".

The case of girls being married tends to have a negative impact both in terms of socio-economic, mental/psychological, physical, especially for women's reproductive health. But it also hurts the spirit of justice and domestic harmony. Adolescence is very important for them, because it is a time when they can prepare themselves to enter adulthood. The practice of underage marriage often negatively impacts the health, education, economy, and security of girls and their children. In addition, this practice also has a detrimental impact on society.(Noor et al., 2018)

With the amendment of Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning marriage, it is regulated in Article 7 paragraphs (1) and (2), namely: "(1) Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. (2) In the event of a deviation from the age provisions as referred to in paragraph (1), the male and/or female parents may seek dispensation from the Court on urgent grounds accompanied by sufficient supporting evidence".

If the bride and groom want to marry below the minimum age of marriage, they must apply for dispensation to the Religious Court. The court grants marriage permission, known as marriage dispensation, to prospective husbands or wives who have not reached the age of 19 (nine years) to marry. The principle and purpose of the enactment of Supreme Court Regulation Number 5 of 2019 is to protect the rights of children and prevent underage marriage.

Marriage dispensation is a form of leniency in the marriage process for prospective husbands or wives who are underage and are not yet eligible for marriage in accordance with applicable law. With the provision of marriage dispensation as a means of legal protection for children, every child has the right to survival, growth, and development, and the right to be protected from violence and discrimination, as mandated in the 1945 Constitution of the Republic of Indonesia.

Marriage Law Number 16 of 2019 as a guideline for marriage law in Indonesia, namely that prospective husbands and wives must be mentally and physically mature. Child marriage must be prevented in order to achieve quality Indonesian children, noble character and prosperity. However, by considering the laws that live in society, marriage dispensation is an alternative solution in its implementation. Requires very strict control. The interests of children must take precedence over the interests of parents and extended family. Marriage dispensation must prioritize the best interests of children both in terms of fulfilling children's rights and in terms of fulfilling children's welfare.(Hamid, 2023)

The purpose of this juridical review, to determine the provisions of the age limit for marriage according to applicable law, to form a happy and eternal family so that the marriage runs well without ending in divorce and gets good and healthy offspring, the determination of marriage dispensation and the protection of children's rights.

Literature Review

Regarding the age provisions in marriage according to Law Number 1 of 1974 in Article 7 paragraph (1), namely, "Marriage is only permitted if the male party has reached the age of 19 (nineteen) years and the female party has reached the age of 16 years". Meanwhile, in the Regulation of Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage. Article 7 paragraph (1) states, "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.

A very positive response was given by the Government of Indonesia to the changes in Law Number 16 of 2019 concerning Marriage, which considers increasing the age limit for marriage as the right step. This aims to ensure that both husband and wife have reached the age of 19 years, so that they are fully prepared mentally, physically, and emotionally in undergoing the marriage bond.

The advancement of thinking in adulthood today, especially in the context of the minimum age limit for women, is expected to arise significant obstacles in living a married life. For men, it is set at 19 (nineteen) years old, meaning that it has passed the age of adulthood, which is 18 (eighteen) years, but for women 16 (sixteen) years old is below the adult limit size.(Moch, 2016) The marriage age limit of 16 (sixteen) years for women places it in the category of children, which has the potential to have a negative impact, especially on girls.

The difference in the minimum age for marriage between a man and a woman is, in certain situations, problematic. Equalizing those limits or setting them above the adult age standard may be a more appropriate move.(Manan, 2013) Maturation of the age of marriage aims to increase the age at marriage, so that both partners can be fully prepared mentally, physically, and emotionally when entering the marriage bond.

Regarding the age limit of children, the law regulating the age of children in Indonesia varies when viewed from several existing laws and regulations, including:

1. BW Article 330 of the Civil Code reveals that those who are considered immature are those who have not reached the age of 21 years and are not married. If the marriage is dissolved before they reach the age of 21, then they are no longer considered as immature.
2. Law Number 4 of 1979 concerning Child Welfare in Article 1 paragraph (2) states that "a so-called child is someone who has not reached the age of 21 (twenty-one) years and has never married".
3. Law Number 12 of 1995 concerning Corrections In Article 1 number 8 of this Law, it is stated that, Correctional Students are:
 - a) Criminal Juvenile means a child who, based on a court decision, has a criminal sentence in a juvenile prison for a maximum of 18 (eighteen) years.
 - b) A State Child means a child who, by decision of the court, is handed over to the government for treatment and placement in a Juvenile Correctional Institution, with a maximum time limit until reaching the age of 18 years. Based on the above arrangements, there is a Law that determines the age of majority is 18 (eighteen) years and there is also a Law that determines the age of majority is 21 (twenty-one) years. This limit can be a reference to determine the age limit for marriage so that it is harmonious in accordance with the decision of the Constitutional Court.(Hukum & RI, 2017)

The minimum age of marriage is necessary because marriage is a legal event that will change the position, rights and obligations of a person. These changes include changes in the rights and obligations of a child to husband or wife. The minimum age of marriage aims to protect all rights and obligations arising from marriage and to achieve a happy and eternal family based on the One True Godhead.

Method

This research is descriptive analytical, namely research that only describes the state of the object or event without an intention to draw generally accepted conclusions. The collected data will be analyzed carefully using qualitative analysis or described in sentences. Qualitative analysis is an analysis based on the paradigm of dynamic relationships between theories, concepts and data which is a fixed feedback or modification of theories and concepts based on the data collected. The object of research in the juridical review of underage marriage is based on Law Number 1 of 1974 concerning Amendments to Law Number 16 of 2016 concerning Marriage.

The type of research in is the Normative Legal Approach, the Normative Legal Approach is a legal research method in which research on legal rules in Legislation, Jurisprudence, Government Regulations and Doctrine is carried out qualitatively. The author conducted a juridical review research on underage marriage based on Law Number 1 of 1974 Amendments to Law Number 16 of 2016 concerning Marriage. This research method involves collecting data from various related literature, articles, and journals.

This data collection is used library research methods to obtain an overview or information about similar research and related to the problem under study. Research is carried out by reading books, laws, or literature related to the formulation of the problem.

The source of data in this study was obtained through secondary data. Secondary data is data obtained from literature materials as a source of data read, reviewed and cited as needed according to research needs. Secondary data is obtained through:

- a. Primary legal materials are laws and regulations, in this study used namely the Civil Code, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 4 of 1979 concerning Child Welfare and the Compilation of Islamic Law.
- b. Secondary legal materials are books, journals, and legal articles about marriage.
- c. Tertiary legal materials refer to reference sources used to provide explanations of primary legal materials and secondary legal materials. It consists of Indonesian dictionaries, encyclopedias, internet sources, and other sources.

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Result and Discussion

Marriage law in Indonesia requires the minimum age of marriage to be 19 (nineteen) years old. In fact, marriage is a private matter that should not need interference from the government, arguing that in order to avoid uncontrolled population growth and for social stability, the government also has the right to make regulations related to this matter. Society's assessment of underage marriage often depends a lot on the maturity of the individual himself.

Getting married at a young age by society is given a positive assessment. Some societies that think negatively about early marriage usually cannot show evidence that underage marriage tends to be negative. Many of them are just prejudices society generally treats underage marriage according to the maturity of each individual.

So, the general public opinion about underage marriage, that is, people who do not agree with underage marriage, assume that immature age and a way of thinking that is still like a child,

can result in no solution to the conflict that occurs. In addition, the low level of education is also another reason for disagreements over underage marriage.

Often, religious courts consider between two disadvantages, namely the harm incurred as a result of marriage at the age of children and the loss that may occur if the application for marriage dispensation is rejected. The legal considerations (tasbib al-ahkam/legal reasoning) raised by the Panel of Judges in determining the case of the application for marriage dispensation are formulated based on legal facts proven at trial. The legal facts have so far been obtained based on statements from parents, the bride and groom, and witnesses presented before the court. (Akbar, 2019)

The Constitutional Court in considering the decision explained that child marriage is a violation of children's rights that must be protected and can cause harm. Children's rights are an inseparable component of Human Rights (HAM) which must be guaranteed and protected by parents, families, communities, states, governments, and local governments. If child marriage continues, given the rate of spread of child marriage that has occurred throughout Indonesia, Indonesia could potentially face a child marriage crisis. Of course, this will hinder the achievement of state ideals included in the 1945 Constitution of the Republic of Indonesia. (Septarini & Salami, 2019)

Law Number 16 of 2019 contains very broad content, namely regulating marital issues, divorce, the position of children, rights and obligations between parents and children, and also regulating guardianship issues and regulating the issue of proving the origin of children.

Law Number 16 of 2019 follows the principle that prospective husbands and prospective wives must be mature mentally and physically to carry out marriage. This is so that marriage can be well established and does not lead to divorce, as well as to get healthy and quality offspring. Therefore, in Article 7 paragraph (1) of Law Number 16 of 2019, the age limit for marriage for men and women has been determined, which is 19 (nineteen) years for men and women.

In family life and social relations, the rights and position of the wife are balanced with the rights and position of the husband, and everything in the family is decided through mutual deliberation between husband and wife. This is because psychologically mature mothers have greater control over their emotions and behavior compared to younger mothers. Juveniles are not yet mature adults. Not having a mature ability to resolve the conflicts they face and not having a mature idea of a good future have a significant impact on a child's psychosocial development.

In the Marriage Act, the purpose of marriage is to form a happy, lasting, and prosperous family. Therefore, the law adheres to a principle that complicates divorce proceedings. The realization of the goal of a happy marriage and being able to carry out the basic functions of the family well. Sociologically, Djudju Sudjana mentions six kinds of family functions:

1. Biological function, marriage is carried out in order to obtain new offspring that are legal both according to religion and according to the laws of the country.
2. Educative function, the family is a place of education for all family members in mental, spiritual, moral, intellectual, and professional aspects.
3. Religious function, the family is a means of instilling religious values through understanding and behaving in daily life.
4. Protective function, the family becomes a safe place from interference both internal and external, and counteracts all negative influences that try to enter it. Fungsi sosialisasi, dalam tumbuh kembangnya anak-anak keluarga berperan penting mengenalkan segala macam pengetahuan serta upaya dalam mempersiapkan anak-anaknya menjadi anggota masyarakat yang baik.

5. Economic functions, among the various tasks in the family one of which is earning a living, business coaching, budget planning, and how to make good use of sources of income, distributing them proportionally. (Mufidah, 2008)

To ensure legal certainty, everything related to marriage that occurs in accordance with the applicable legal rules Law Number 16 of 2019 concerning Marriage, which is carried out according to law, the marriage is declared valid according to law.

The definition of child protection in Article 1 point 2 of Law Number 35 of 2014 concerning Child Protection, "Child Protection is defined as all activities to guarantee and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with human dignity and dignity and get protection from violence and discrimination". (R Wiyono, 2022)

Basically, children must be protected because children have a high dependence on all child protection providers, namely parents, families, communities, governments and the state. Each has a different role and function and overall, each other is interrelated in the sense of protection as its umbrella.

Legal protection is all conscious efforts of every individual, government, and private institution to protect, regulate, and realize the welfare of life in accordance with existing human rights. In general, legal protection does not distinguish between men and women. Because, legal protection creates recognition and protection of human rights of individuals and social beings in a unified nation, maintaining the spirit of kinship for common welfare.

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Legal protection and children's rights are an important part of protecting Indonesian children. To carry out the protection of their rights in an orderly, orderly, and responsible manner, legal regulations are needed in accordance with the values of Pancasila and the principles of the 1945 Constitution, in line with the development of Indonesian society.¹

Then the regulations regarding children's rights in national law, one of which is contained in Article 3 of Law Number 23 of 2002 concerning Child Protection which reads: "Child protection aims to ensure the fulfillment of children's rights in order to live, grow, develop, and participate optimally in accordance with human dignity and dignity, and get protection from violence and discrimination for the realization of Indonesian children who are qualified, have noble morals and are prosperous".

It is inseparable from all that is responsible for ensuring the implementation of the rights that have been attached to children, one of which, namely the state, government, society, and parents are obliged to be responsible for:

- 1) Nurturing, nurturing, educating, and protecting children.
- 2) Grow children according to their abilities, talents, and interests.
- 3) Prevent marriage at the age of children.²

¹ Wagiati Sutedjo, *Hukum Pidana Anak*, PT. Refika Aditama, Bandung, 2010, hlm 67.

² Mardani, *Hukum Keluarga Islam Di Indonesia*, Kecana, Jakarta, 2017, hlm 148.

Conclusion

As for what the author can take from this study is:

1. The provisions for marriage of minors The regulation stipulated in Article 7 paragraph (2) of the Marriage Law, namely by requesting marriage dispensation through the court. Dispensation of underage marriage is a grant of leeway to prospective brides who have not reached the age limit for marriage, in accordance with Article 7 paragraph (1) of Law Number 16 of 2019. The age limit stipulates that 19-year-old men and women are not allowed or allowed to marry. However, in certain situations, such marriages may be permissible or permissible for certain reasons.
The validity of a marriage must fulfill the conditions of marriage according to the Marriage Law, the Compilation of Islamic Law and the Civil Code.
2. The factors causing child marriage are divided into two, namely internal and external factors. Internal factors in the marriage of minors, due to educational factors, have carried out biological and religious relations. External factors of child marriage, due to economic factors, MBA and customary and cultural factors.
3. Juridical analysis of child marriage is invalid. Because this violates the marriage law. Because, the affirmation of the validity of marriage reaches the minimum age limit for the bride and groom. Regulated in Article 7 paragraph (1) the minimum age of marriage, namely men and women may marry at the age of 19 years and over. This is because it is contrary to the Marriage Law. If there is a deviation from the age requirement, dispensation is given with evidence and has a reason for great urgency. Applying for dispensation based on Law Number 16 of 2019 concerning Marriage is a step to provide legal protection to children. The aim is to ensure that the marriage is officially registered and does not harm the rights of children, as well as provide protection from violence and discrimination.

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