

## Legal Protection Perspective of Underage Marriage

Ayu Asmara

Faculty of Law, Universitas Negeri Gorontalo, Indonesia. Correspondence E-mail: [ayuasmara55099@gmail.com](mailto:ayuasmara55099@gmail.com)

### **Abstract:**

*In Indonesia, when it comes to marriage, it is regulated that the legal age limit for marriage is 19 years for men and 16 years for women. The purpose of this study is to determine the perspective of legal protection for underage child marriages. This study uses normative juridical research methods, prioritizing secondary data in the form of primary legal materials originating from laws and regulations related to the studies discussed, and using relevant literature. As for the results in this study, namely from the perspective of the Marriage Law, the result of underage marriage is clearly contrary to the purpose of marriage. With underage marriages, this indicates that Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning Regulations for Implementing Law Number 1 of 1974, are less effective. Given the existence of underage marriages, there are many cases of divorce because these marriages are carried out by children who are still underage, so they have not been able to fully carry out the objectives of the marriage stated in the statutory regulations.*

**Keywords:** *Minors; Marriage; Legal Protection*

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## Introduction

Underage marriage is a problem that still occurs and is still not resolved. Underage marriages always occur in various regions in Indonesia. Likewise, this was carried out by village apparatus and the community. According to the Marriage Law No. 1 of 1974, the notion of marriage or marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a family (Catur Yunianto 2018). The smallest unit capable of delivering a good social order is the household. To create a harmonious family as desired by society, who are happy and eternal based on belief in the one and only God (Saipuddin 2016).

Every living thing has the basic right to continue its offspring through marriage, namely through the culture of carrying out a marriage in Indonesia. There are differences in implementation caused by cultural diversity or the culture of the religion embraced. Every person or couple (man and woman) if they are married then there is a bond of obligations and rights between the two of them and the children born from the marriage.

Marriage according to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) is not only a civil act, but also a religious act, because whether a marriage is valid or not is determined entirely by the law of each religion and belief that it adheres to (Hisbah 2018)

The rise of early marriages or underage marriages is very common in Indonesia, and as a guideline for the community on marriage issues, the government has clearly stated them in Marriage Law No. 1 of 1974 concerning Marriage. The content of the law, it is clear that the age limit for marriage for men and women is appropriate or has entered the age of marriage (Muntamah, Latifiani, and Arifin 2019)

In Indonesia, it is regulated that the legal age limit for marriage is 19 years for men and 16 years for women. However, if the bride and groom are underage, they can apply for a marriage dispensation to the religious court. The absence of standards in the Marriage Law opens up opportunities for the panel of judges to render decisions based on their own initiative, which tend to refer to fiqh texts. So that most requests for dispensation are always granted, so that it becomes a factor causing the rise of early marriages or underage marriages (Arif and Zamzami 2022).

Law No. 1 of 1974 concerning these marriages provides an opportunity for underage marriages to occur, as stated in article 7 paragraph (2) which stipulates that in the event of deviation from article 1 paragraph (1) of Law No. 1 of 1974 may request a dispensation from marriage to the local Religious Court. Marriage dispensation is a dispensation given by the religious court to bridegrooms who are not old enough to enter into marriage for men who have not reached nineteen (19) years and women who have not reached sixteen (16) years. With this regulation, it automatically provides opportunities for people to get married at an early age. The problem now is that people think that underage marriage is permissible. With this regulation, it automatically provides opportunities for people to get married at an early age. The problem now is that people think that underage marriage is permissible. This problem occurs with various backgrounds including, there are people who expect to get married at a very young age and there are those who get married before someone reaches the age that has been regulated in Law no. 1 of 1974 concerning marriage with the consideration that if the marriage is not carried out, it will cause negative things or can be detrimental to both parties or to other people concerned in terms of maintaining the good name of the family and the surrounding environment.

From some of the explanations above, the purpose of this research is to find out the perspective of legal protection for underage child marriage. It is hoped that this research can make a scientific contribution to the field of law in Indonesia and social institutions and is expected to be useful in providing an overview or initial guidelines for legal practitioners as a material for consideration in setting the minimum age limit for marriage according to current conditions, and can also be used as material for study. for further research.

## Method

This study uses normative juridical research methods, prioritizing secondary data in the form of primary legal materials sourced from laws and regulations related to the studies discussed, as well as using library materials relevant to this study. The approach used is statutory (statue approach) and conceptual approach (conceptual approach). The purpose of this research is to find out and analyze the legal protection of underage child marriage

## Discussion

Married life through marriage is one of the pages of life that every human being will go through. That's when the maturity of the husband and wife is highly demanded in order to achieve success in building a household ark (Riyadi 2013)

Marriage in Indonesia has been regulated by the state, in this case the state pays attention and at the same time has the responsibility to control and provide direction regarding marriage which is a social institution in protecting and upholding women's dignity. Therefore, the State and Government make regulations regarding the minimum age limit for someone to carry out marriage (Febriyanti and Aulawi 2021)

Underage marriages can occur because parents have a big involvement. Actions committed by parents in marrying off minors is a legal issue in which there are different arrangements (Nuzulul Amni 2022). The debate about the age limit for children or the age limit at which a person is considered an adult in the context of marriage is related to readiness and maturity not only physically, but also psychologically, economically, socially, mentally, religiously and culturally. This is because marriage at an early age often creates various risks, both biological risks, such as reproductive damage and psychological risks (Mintarsih 2020)

Therefore, it can also be understood when the state specifically regulates everything related to the organization of marriage. In the perspective of Indonesian legislation, the organization of marriages is regulated in Law Number 1 of 1974 Concerning Marriage (hereinafter referred to as the Marriage Law) (Hs, Hafidz, and Zainuddin 2022)

#### a) **Limitation of Children and Adults**

The minimum age limit for marriage is necessary because marriage is a legal event that will change a person's position, rights and obligations. These changes include changes to the rights and obligations of a child to become a husband or wife (Mustofa 2019) This is why in a marriage requires a really mature preparation, both biologically and psychologically. Including economic readiness to be able to live a household life (Ghozali 2010).

Household life judging from the juridical aspect, "child" in the eyes of Indonesian positive law is commonly interpreted as an immature person (*minderjarig/person under age*), or a minor (*minderjarighead/inferiority*) or often also referred to as a child under the supervision of a guardian (*minderjarige ondervoordij*) So, starting from this aspect, it turns out that Indonesia's positive law does not regulate the existence of a unified law that is standard and applies universally to determine the criteria for the age limit for a child.

In psychology, the term youth or adolescence means growing or growing into adulthood, the term youth as it is used today has a broader meaning, including mental, emotional, social and physical maturity. Determining the age limit of youth is used widely to denote a stage of development between childhood and adulthood. Determination of the age of adolescence is difficult to determine, but in general experts use the age between 12 to 21 years. The time span of adolescence is usually divided into three, namely 12-15 years is early adolescence, 15-18 years is middle adolescence, and 18-21 years is late adolescence.

Protection of children's rights has been regulated in the 1945 Constitution in article(Eleanora and Sari 2020) 28 paragraph B, clearly in paragraph 1 it is stated

that people or everyone can or has the right to form a family and continue an offspring through ties or the validity of marriage, while the 2nd paragraph also states that the continuity of life, growth and development and getting protection from discrimination and violence is the right of every child too and children have the right to get it (Eleanora and Sari 2020)

### **b) Causes of Underage Marriage**

Underage marriages are marriages that occur due to several factors including economic factors, lack of education level, mass media factors, social and economic problems, and customary or traditional factors, all of which are complicated or complicated (Rasyid and Siregar 2022)

The marriage of children who marry at a young age emphasizes the interests of the parents more than the interests of the children themselves. Conditions like this make children unable to make their own decisions. This is very ironic because children should be protected. This is a form of child trafficking and can lead to exploitation and economic violence (Hamzah, Mangarengi, and Buana 2020).

Therefore, children born in previous marriages need to get legal protection and certainty to guarantee their rights. They are the next generation of the nation on whom all the hopes of the nation depend in the future. They need to be given education, health and affection in addition to clothing and food needs, so they can develop their personalities to be better (Bakung 2021)

There are several factors that influence the occurrence of an early marriage, including: family economic factors, social and cultural environmental factors, factors of lack of awareness of the importance of education from the family, finally the factor of concern or fear that parents have about their children not having a life partner in the future. Parents play an important role in the occurrence of underage child marriages. This culture places girls under the authority of their parents and parents can act as they please, so it is not uncommon for parents to force their children to marry even though they are still very young. Even sadder is the attitude of parents who tend to abandon their children because basically they have difficulty guiding their own children (Husyaimah 2019). As for matters that influence, so that marriage arises at a young age, among others are :

1. The low level of education, especially for people who live in rural areas.
2. Lack of knowledge and understanding of the meaning and significance of a marriage.
3. Due to increasingly difficult economic pressures resulting in frustration, the only way to escape is to marry.
4. Narrow employment opportunities, while the labor force is increasingly booming.
5. Pregnant during school/before marriage.
6. The will of the parents, in other words, there is an element of arranged marriage.
7. Following the trend that is currently developing, join in enlivening the atmosphere which he thinks is happy.

### **c) Marriage Age Limit According to Indonesian Positive Law**

In article 7 (1) of Law no. 16 of 2019 Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. This provision has just been revised, whereas previously according to the same article of Law no. 1 of 1974 marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 19 (nineteen) years (Hisbah 2018).

Even though the law has confirmed the minimum age limit for marriage, exceptions are made for this. The exception is called the granting of a marriage dispensation for minors. Underage children who get marriage dispensation may carry out marriages even though they are still minors. Minors who receive dispensation from marriage after carrying out marriages are considered adults and are considered capable of carrying out legal actions, or they are no longer under the guardianship of their parents (Mangku and Yuliartini 2020)

Basically, in general, maturity is used as an important principle by the government in establishing marriage laws as positive law that must be obeyed by all citizens. In addition, to revise in determining the age limit for getting married also requires quite a long time, which is around 45 years. This is done with several considerations, one of which is stated in the preamble of Law No. 16 of 2019 namely marriage at a young age has a negative impact on the growth and development of children and will lead to non-fulfillment of children's basic rights such as the right to protection from violence and

discrimination, children's civil rights, health rights, education rights, and children's social rights ("Pembaharuan Hukum Perkawinan Tentang Batas Minimal Usia Pernikahan Dan Konsekuensinya | TERAJU: Jurnal Syariah Dan Hukum" n.d.).

The next affirmation is contained in the previous article, namely article 6 paragraph (1) of Law no. 1 of 1974 "to get married a person who has not reached the age of 21 (twentyone) years must obtain permission from both parents". Although the minimum age limit for entering into a marriage according to the law is 19 years old, this article stipulates that those who have not reached the age of 21 years must obtain permission from both parents.

In Desmita's opinion, those aged 18-21 years are not yet included in the adult category but are still classified as late adolescents. This could be used as a consideration in establishing Article 6 paragraph (1) in this law. Parental consent for those who have not reached the age of 21 is by filling in the N4 that has been prepared by the Office of Religious Affairs (Inayati 2015)

#### **d) Underage Marriage in The Marriage Dispensation Process**

Child marriage through a marriage dispensation process according to the perspective of Law no. 1 of 1974 concerning Marriage, Compilation of Islamic Law and Customary Law needs to establish basic criteria and restrictions on dispensation of marriage by minors. From the perspective of customary law, it is necessary to stipulate customary norms that apply practically to regulate adultery and binding social sanctions for those who commit it. Meanwhile, from the point of view of Islamic State Law, there needs to be more concrete regulations governing early child marriage. This is done to prevent the legalization of underage child marriages through a marriage dispensation in the Religious Courts.

The practice of child marriages through the legalization process through requests for dispensation from marriage at the Religious Courts also raises concerns, one of which is the rise of promiscuity and the high potential for divorce. In the research that the panel of judges said that underage child marriage could be one of the factors causing divorce caused by a lack of harmony in the household, especially in terms of economic readiness (Arif and Zamzami 2022)



### e) Legal Protection Against Underage Marriage

If we look at the positive law in Indonesia, the actual act of marrying a minor is an act that violates the law or can be said to be legally illegal. There are many laws against underage child marriages. In addition to preventing underage child marriage, existing laws also provide protection for children. These laws include:

1. Criminal Code.
2. Law No. 1 of 1974 concerning Marriage.
3. Law No. 23 of 2002 concerning Child Protection

The act of marrying a minor does not just happen, but it is also necessary to conduct research on the driving factors that lead to the occurrence of underage marriages. Parents who deliberately allow and try to gain profit in a marriage of minors can also be categorized as a crime, therefore the author also tries to examine the perspective of criminal law in cases of child marriages.

The imposition of criminal sanctions against parents who are involved in the marriage of underage children is an effort to create legal certainty in Indonesia, apart from that, of course, the arrangements regarding the marriage of underage children must again refer to positive law which has a higher legal status than other laws which indirectly grow and develop in society (Hisbah 2018)

Viewed from the perspective of the Marriage Law, the consequences of underage marriage are clearly contrary to the purpose of marriage as stipulated in Article 1 of Law Number 1 of 1974, namely in the last sentence which says that the purpose of marriage is to form an eternal family based on God Almighty. Thus, Law Number 1 of 1974 in principle stipulates that the prospective husband and wife must be mentally and physically mature to be able to enter into a marriage so that the purpose of the marriage can be realized properly without ending in divorce (Prasetyo 2018). With the existence of underage marriages, this indicates that Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning Regulations for Implementing Law Number 1 of 1974, are less effective (Maloko 2012).

## Conclusion

The age limit for marriage according to the perspective of positive punishment in Indonesia, in this case, is Law no. 1 of 1974 Jo. UU no. 16 of 2019 as a law related to marriage is 19 years old and this applies to both men and women. The minimum age limit for marriage is relevant in the current context and is also in accordance with other relevant laws, one of which is the child protection law which provides a child's age limit of up to 18 years of age.

Viewed from the perspective of the Marriage Law, the consequences of underage marriage are clearly contrary to the purpose of marriage. With the existence of underage marriages, this indicates that Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning Regulations for Implementing Law Number 1 of 1974, are less effective.

## Recommendation

It is necessary for the parties involved to socialize marriage law in an integrated and sustainable manner so that the community members know and understand the regulations regarding marriage, so that the community members will comply with and implement the provisions of marriage so that underage marriages will not occur. transforming traditional society into modern, thus it is necessary to socialize that customs which do not support development need to be abandoned.

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