



## The Consequences of Sex Recession in Indonesian Marriage Law Perspective

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### **Abstract:**

*This article aims to find out and describe the legal consequences of the sex recession in Indonesia from the perspective of marriage law. The research method used in this study is the normative research method with a literature study approach. The results of this study indicate that marriage recession is a phenomenon and is a necessity in marriage law in Indonesia. When referring to the legal basis of marriage and in the compilation of Islamic law, there is no prohibition on delaying marriage based on the reasons for one's self-development. However, this will impact the legal condition of marriage in Indonesia in the future. Referring to the marriage law and the compilation of Islamic law, the term postponement of marriage is not explicitly mentioned. It is more about preventing marriage. In the Marriage Law, the Prevention of Marriage is regulated in III, which consists of Article 13 to Article 21. Meanwhile, in the compilation of Islamic law, marriage prevention is regulated in Chapter X, divided from Article 60 to Article 69.*

**Keywords:** Legal Consequences; Sex Recession; Marriage Law

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## Introduction

Marriage becomes one of the spaces to form social interaction between couples and families and the surrounding environment. This is based on the existence of social interaction that will be formed and born by itself when a marriage is formed between two human beings. Social interaction can not be separated from the position of humans as social beings who always live together/in groups to maintain their lives because social interaction will establish mutually beneficial cooperation between one another. (Dzikri 2023)



The social environment that gives birth to the interaction between every human being makes it a socialist being. The socialist being in question is a human being who not only puts forward his interests but also puts forward Common Interests by sincerely not insisting on putting forward his interests forever. In this way, humans always need help from other humans and cannot live alone. Therefore, maintaining each person's life is carried out by carrying out the marriage he legally generates by religion and the state.

Marriage has far-reaching consequences in the legal relationship between husband and wife, containing religious and moral values. With this marriage, a bond will arise that contains rights and obligations, such as the obligation to live in the same place, be faithful to each other, provide for their needs, have inheritance rights, and so on. (Musahwi, Anika, and Pitriyani 2022)

As an essential matter in the survival of every person, the state provides unique arrangements for marriage, both in the Constitution and in other derivative regulations. As a written constitution in Indonesia, the Constitution of the Republic of Indonesia 1945 (UUD NRI 1945) makes marriage a right for every citizen. The formulation of the norm can be seen from Article 28B paragraph (1) of the 1945 Constitution, which states that: "everyone has the right to form a family and continue offspring through legal marriage."

Further technical arrangements then with the re-arrangement of marriage in Law No. 1 of 1974 on marriage (in the future referred to as the Marriage Act) as the principal legal product of the substance that regulates all matters of marriage in Indonesia. Normality is in the written Constitution, and this law indicates a constitutional right for citizens with guarantees from the state to enter into marriage following laws and regulations so that citizens can carry out their marital life and build family relationships.

In practice, in addition to building a harmonious relationship with the couple, the purpose of marriage is to obtain children as descendants who will be the next generation of the family. Therefore, the child as part of the family resulting from marriage becomes meaningful. (Khalid 2019)



Children are one of the groups of people whose rights have been regulated and guaranteed in various existing laws and regulations. Children are set, and the nation's next generation has been laid the hope to continue the ideals of the family, nation, and state. Therefore, it is unsurprising that the government pays attention to all citizens, especially children. In fact, in the 1945 Constitution, it has been stipulated that the state is fully responsible for children's survival.

Every child will be the next generation who must get protection from the state regarding his rights and dignity as a human being. Children have potential and are expected to bring this nation in a better direction. Therefore, protecting children is very important as an investment in human resources (HR) in the future. In addition, children are considered a vulnerable group to various treatments that can cause the child to feel bad.

However, the latest problem in terms of marriage occurs in Indonesia, where there is a threat and even the phenomenon of marriage recession that interferes with the regeneration of the problem with the disruption of the population due to the lack of marriage to be held. Marriage recession, also called sex recession, is happening not only in Indonesia but has occurred in several countries, ranging from Japan Korea to the United States.

The marriage recession is based on the sex recession in the younger generation. The term sex recession occurs because teenagers, adults, and young people in the United States have less sex than previous generations. This has resulted in the U.S. teen pregnancy rate plummeting to one-third of what the government should have targeted.

A declining birth rate usually characterizes a sex recession. This is because people are reluctant to get married and choose not to have children. The head of the National Population and Family Planning Agency (BKKBN), Hasto Wardoyo, stated that the marriage recession is a phenomenon. According to the head of BKKBN, the potential for a sex recession in Indonesia does exist if you look at the trend of marriage in several big cities today. It is further explained that the age of a person's marriage is increasing or, in this case, getting married at an age no longer young for



various reasons such as career or education. If they are already married, not a few also postpone or choose not to have children—especially couples in big cities.

The views expressed by the head of BKKB align with the results of research conducted by the Faculty of Social and Political Sciences, Sebelas Maret University, titled 'Family Crisis in the Development of Women's Autonomy.' From the study, 28 percent did not have a crisis, or meant women who still chose to get married and have children. Furthermore, 52 percent are moderate, meaning that women's marriage-related priorities are not in the first point. In comparison, 19 percent are categorized as a crisis because they choose not to marry.

The above research results show that marriage recession is a phenomenon and a necessity in marriage law in Indonesia. When referring to the legal basis of marriage and in the compilation of Islamic law, there is no prohibition on delaying marriage based on the reasons for one's self-development. However, this will impact the legal condition of marriage in Indonesia in the future. (Azzahwa and Arlinza 2023)

Referring to the marriage law and the compilation of Islamic law, the term postponement of marriage is not explicitly mentioned. It is more about preventing marriage. In the Marriage Law, the Prevention of Marriage is regulated in III, which consists of Article 13 to Article 21. In the compilation of Islamic law, marriage prevention is regulated in Chapter X, divided from Article 60 to Article 69.

#### Article 13 of the Marriage Act

Marriage can be prevented if there are people who do not meet the conditions for marriage

#### Article 60 Compilation Of Islamic Law

Prevention of marriage aims to avoid a marriage that is prohibited by Islamic law and legislation.

Prevention of marriage can be done if the prospective husband or prospective wife who will perform the marriage does not meet the requirements for marriage according to Islamic law and legislation.

Of the two formulations of the article above, the Prevention of marriage is indeed based more on when the couple who married did not meet the requirements set by the legislation and religious law of the prospective couple who will carry out the marriage. Meanwhile, the marital recession referred to by the author is more likely to lead to a delay in marriage by any individual who has entered a phase or mature age for marriage. Therefore, it can be asserted that a legal vacuum regulates the postponement of marriage, which can cause a marriage recession in marriage regulation in Indonesia. (Rizqon 2022)

### Method

Referring to the problem to be studied, this study was conducted using normative research methods by conducting a literature study supported by data. This study uses the approach of legislation and the approach of the case. (Z. Ali 2021). This type of research was chosen because this study will reflect a study that seeks to explore theories that have developed in the field of science related to a problem, looking for methods, as well as research techniques both in collecting data or analyzing research that has been used by previous researchers, obtaining a broader orientation in the problem of recession sex. Research. (Benuf and Azhar 2020)

### Discussion

#### Legal consequences of sex recession in Indonesia in the perspective of Marriage Law

The various factors that drive the current sex recession are things that directly prove that the sex recession is not only limited to a global threat but has indeed occurred and not only become a threat. Various countries in the world, including Indonesia, which are vulnerable to sexual recession, actually have various impacts, ranging from economic impacts, social impacts, legal impacts, and other impacts arising from the reluctance to marry.

Based on this, this section will describe the impact or legal consequences of the sex recession in Indonesia from the perspective of marriage law. Therefore, the effect referred to in this section focuses on legal consequences only and not consequences from other perspectives. At least the sex recession that occurs will impact several things.



## 1. Reduced Implementation of Marriage

Marriage or marriage is an activity that has the equality of legality from the perspective of religious and state law. The law of the land and the law of religion support each other. This can be seen from the formulation of Article 29, paragraph (2) of the 1945 Indonesian constitution, which states that: "the state guarantees the independence of each resident to embrace their respective religions and to worship according to their religion and beliefs."

The constitutional guarantee indicates that the state, in this case, the state's law, recognizes the existence of religious law to be carried out by each citizen who professes a particular religion. This section also includes space to run the wedding as part of worship in a highly recommended religion. (Pakpahan, Hasiholan, and Salman 2021)

Furthermore, the symmetrical relationship between religious law and state law from the perspective of government implementation is also explained in detail in Article 2 of the Marriage Law. The formulation of Article 2 is as follows:

- 1) Marriage is valid if it is done according to the laws of each religion and belief.
- 2) Each marriage is recorded according to the prevailing laws and regulations

The two formulations of the paragraph in Article 2 clearly show a relationship between state law and religious law in the implementation of government. In the first verse, marriage is carried out following religious law, while the second verse explains how the state law records marriages that are carried out according to religious law. In this context, the state law that has accommodated and recognized the implementation of marriage based on religious law stipulates various matters related to the implementation of marriage, ranging from the place, cost, requirements, and various things that are explained more clearly in the state law.

The implementation of marriage can be held in two places, namely at the Marriage Hall/office or outside the marriage hall, such as the bride's House, mosque, or building. One of the most important things is that marriage should be registered and recorded in the KUA for legal protection. (Abidin 2021) At least some prerequisites and conditions must be met by every couple of prospective brides who will hold a wedding. The prerequisites and conditions are as follows:

a. Prerequisites

- 1) Ask permission from the parents of the bride and groom.
- 2) You must ensure nothing can cancel the marriage contract according to the rules of jurisprudence munakahat and positive law in force.
- 3) Catin must know and study everything related to the family, such as the rights and obligations of husband and wife, management in the family, and so on.
- 4) Most importantly, the bride and groom must know various things related to reproductive health, for example, given tetanus toxoid immunization for the bride

b. Terms

- 1) Copy of ID card and Family Card (KK) for (Catin) each 1 (one) sheet.
- 2) Statement letter has never been married (still a girl/boy) on the seal/stamp worth a minimum of Rp.6000, - (six thousand rupiah) known RT, RW, and local village chief.
- 3) Certificate for marriage from the village model N1, N2, N4, both prospective husband and prospective wife.
- 4) Pas photo Catin size 2×3 each 5 (five) sheets for members of the TNI/Polri dressed official.



- 5) Those with the status of a widower/widow must attach a divorce certificate from the Religious Court. If the widower/widow dies, there must be a death certificate and a Model N6 letter from the local village.
- 6) Catin must have a permit/dispensation from the Religious Court for groom-to-be, less than 19 years old, and female Catin, less than 16 years old. For male groom-to-be, who will be polygamous, there must be a permit/dispensation from the Religious Court. There is another note: bride-to-be who is less than 21 years old must attach a parent's license (model N5). This applies to Male/Female Catin.
- 7) For Catin, who will hold a wedding to or from another district, it must ask for a marriage recommendation letter from the local KUA.
- 8) For members of the TNI / POLRI and civilian TNI/POLRI, there must be permission to marry from the superior officer / Commander.
- 9) Both Catin register themselves to the intended KUA at least 10 (ten) working days from marriage. If less than 10 (10) days of working hours, attach a marriage dispensation letter from the Sub-District, City, or district according to the place of residence "bride-to-be/ CATIN."
- 10) In addition to the requirements in points 1 to 9, descendants of Indonesian citizens must attach a copy of their birth certificate and citizenship status (K1).
- 11) A certificate of incapacity from the head of the village for those who are unable to afford it.

Furthermore, every person who is going to get married, on the day and hours of work, informs his will to the employee of the Marriage Registrar (VAT), who represents the region where the marriage contract will be held at least ten days before the marriage contract is held. Notification of the will of marriage, containing the name of the Catin, day and date of execution of the



marriage contract, data on dowry and place of execution of the marriage contract ceremony, and the guardian (parent) who will marry.

In its implementation on the day of the contract to be held, consent qobul, before the implementation of consent qobul, as is usually, the marriage ceremony can be preceded by the reading of the sermon marriage, reading istighfar, and two sentences Shahada. Implementation of consent Qobul is implemented by The Guardian of his marriage to the prospective groom. However, if it is because of something that can hinder (disability or accident, etc.), the guardian of the marriage/prospective groom can delegate to others appointed by him.

The signing of the marriage certificate by the bride and groom, witnessed by the marriage guardian, two witnesses, and VAT who attended the marriage ceremony. A husband is ready to recite Ta'lik Talak and sign the Pledge of Ta'lik Talak, after which the delivery of the dowry/dowry. After that, the VAT submits the marriage book/Marriage Certificate quotation accompanied by marriage advice and ends with a closing prayer.

With the marriage, the provisions of the religious law and the state law that go hand in hand in the procession of marriage have been fulfilled. However, if, in practice, citizens are reluctant to carry out marriage or do not want to form a household guaranteed in religious law and state law, the problem then creates a new problem, namely the reduction in the number of legally recognized marriages.(Agustina et al. 2021)

In general, when reluctant, it will commit immorality, which is rejected by religious law and unjustified. However, concerning the issues discussed in this study, the reluctance to enter into marriage is also directly reluctant to carry out the fulfillment of sexual desires naturally and inwardly. This condition then causes what is called a sex recession.

The existence of sex recession is not the perspective of increasing the number of immorality or free sex among the community but also causes a decrease in the number of marriages that occur in Indonesia because the

younger generation is reluctant to build marriages or even have offspring due to various factors that researchers in the previous section have described.

There are various benefits in the implementation of marriage and undergoing household. The benefits of this marriage will not be found when there is a sex recession that causes a lack of marriage at the productive age. From the perspective of Islamic marriage law, a marriage/marriage at the same time not only has the desire to perform religious orders (Shari'a) but also has the desire to meet biological needs that, by nature, must be channeled by a human being.

Real marriage is not just a means of channeling the needs of sex, but more than that, marriage also promises peace of life for humans where every human being can build a paradise. This is the wisdom of marriage in Islam. In addition to obtaining peace, peace can also maintain offspring (*hifdzu al-nasa*). Islam requires marriage to form family mansions as a means to achieve happiness in life.

In this context, marriage is closely related to religion, as has been explained by researchers in Chapter II. What is more, marriage that is seated as something that is worth worship, which will undoubtedly get a reward, will be minimal in number with the sex recession, which is a contemporary threat and challenge today, especially with a culture of society that experiences easy changes in conditions and situations.

A marriage that has been guaranteed in the religious law of each citizen at the same time has also been regulated in positive law in Indonesia, and it is also increasingly becoming a discourse when the state has provided its legal legality. However, it is not balanced with the practice of marriage, which citizens do not carry out. The discourse in question by the author is the lack of marriage rates due to the threats and challenges of the sex recession that occurred.

## 2. Education and Work as a Form of Women's Self-Control



Indonesia has been prosperous in achieving gender equality over the past decade, although not wholly freeing women from the shackles of patriarchy. It can be seen from the increasing literacy rate, school enrollment rate, and workspace involvement for women. Even in education, Indonesian women have been able to rival men with their success in completing higher education. The results of a report from the Central Statistics Agency (BPS) in 2021 show a significant percentage of education data between women and men, where women aged 15 years and over who have a college certificate are more than men. About 10.06% of women have finished college, overtaking the position of men, who are only 9.28%.

- Men who are only 9.28%. (Wardah, Hastuti, and Krisnatuti 2019)

The opening of access to education for women has brought the social and economic status that can give her power over her life. Women's orientation towards education often makes them forget about marriage and dare to decide to do Waithood. On the other hand, women's high level of education opens their mindset to be ambitious to become workers and join the professional field. According to Wulandar, continuing a career is one of the reasons for women to delay marriage. This is because women can pursue a career without the burden and responsibility of marriage. The percentage of women's involvement in the work sector can be seen from the BPS report on the Creative Economy Workforce (Bekraf), which states that women have consistently become significant players in the creative industry from 2011 to 2016. The percentage of women in the sector was 53.86%, and in other industries, it amounted to 37.16%. Even in 2016, women working in the creative economy sector amounted to 9.4 million people.

Santrock also argues the importance of work and education for a woman, more specifically, to find her identity (Santrock 2012). The results of Mahfuzhatillah's research also stated that their higher education level influences the high number of opportunities for women in the world of work. In addition, women who delay marriage and prefer to pursue a career are women's efforts to prepare their socio-economic readiness before entering

marriage. Working and achieving education have long been a struggle for women to actualize and express themselves. Through these two rights, women try to find their meaning and identity and achieve progress with confidence and happiness.

In Indonesia, women's struggle has existed since the Kartini era, with the emergence of special schools for women as a struggle for emancipation and opening the horizons of the nation's thinking. At that time, Kartini believed that her desire to advance like European women could only be achieved through education. In this case, Foucault also argues regarding the importance of the world of work and education for a woman, specifically to find her identity. Mahfuzhatillah's research also states that their higher education level influences the high number of opportunities for women in the world of work. In addition, women who delay marriage and prefer to pursue a career are women's efforts to prepare their socio-economic readiness before entering marriage. Working and achieving education have long been a struggle for women to actualize and express themselves. Through these two rights, women try to find their meaning and identity and achieve progress with confidence and happiness (Mahfuzhatillah 2018).

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### 3. Women in Circles of Gender Violence in Marriage

Hurlock said that one of the main reasons adult women delay marriage is the disappointment they have experienced in a marriage relationship. This is due to being born and raised in a family that is not harmonious or a social environment that only shows the wrong side of marriage. This mental readiness factor is often the reason why women decide to do Waithood or delay marriage, not yet reaching mental maturity. This mental health issue is also closely related to the problem of gender-based violence that often occurs in the family. The violence in question includes verbal violence, physical violence, and violations of essential women's things.

According to feminist theory, the institution of marriage is often a nesting ground for cases of violence against women. In the global case, for example, nearly 41,000 girls are forced into marriage every day, or 82% of girls are married before they are 18 years old. Moreover, they are more likely to experience domestic violence, with many even reporting that their first sexual experience was forced. In Indonesia itself, cases of violence against women are a social problem that has never been resolved. In 2021 alone, the National Commission on Women noted that there were around 8,234 cases of violence against women, and 79% (6,480 cases) of them came from domestic violence (KDRT). Gender-based violence is considered to be a global health problem and a human rights violation that is a significant feature in the humanitarian crisis. The production of women's knowledge of marriage has so far been primarily based on personal experiences from those closest to them. Furthermore, often, their views result in a discrepancy between expectations and reality (Muhajarah 2016).

Unhealthy premarital relationships (dating) also sometimes influence women's readiness for marriage. The problems of infidelity, violence, and broken relationships cause fear and trauma for women to enter into a marriage relationship. In addition, the rampant cases of divorce and violence (domestic violence) further encourage women's concerns about getting married. Based on BPS findings in 2021 regarding divorce in Indonesia, violence (domestic violence) is one of the leading causes of divorce (3,271

cases), while the issue of disputes and quarrels is the first cause, with 176,683 cases. Based on these conditions, Yustika explained that domestic violence is a manifestation of the absence of a safe space for women in the domestic sphere. This is because women are always placed in a position of subordination and inferiority due to unhealthy gender relations. The movement to delay marriage or Waithood by women can be said to be the result of the many cases of violence (domestic violence) and divorce above. Conditions that always position women as victims of violence show the dark side of marriage, resulting in a crisis of confidence in the institution of marriage, especially for women who do Waithood.

#### **4. Children Do Not Get A Share Of The Inheritance As Heirs**

The existence of a marriage formed by a married couple and then legalized by religion and the state is one of them in order to get the next generation or called Children. As described by researchers in the previous chapter, children have a significant position in the family, continuing the lineage and maintaining and improving family conditions.

Every person who brings wealth before marriage or even property obtained during marriage (Gono-gini property) when having offspring/children, of course, is used in raising children to be given to children as a form of inheritance when their parents have died.

In this context, inheritance law, which closely intersects with marriage law, is known. Where the settlement of rights and obligations as a result of the death of a person is governed by inheritance law. In essence, inheritance is the transfer of ownership from a deceased person to his heirs still alive, whether the ownership of movable, immovable property or property following Shari'ah.

Inheritance law in Indonesia is still very pluralistic (diverse). In the Unitary States of the Republic of Indonesia territory, various inheritance law systems apply, namely customary inheritance law, Islamic inheritance law, and Western inheritance law listed in the Burgerlijk Wetboek (BW). The diversity of this law is increasingly visible because the customary inheritance

law in force is, in fact, not single but also includes various forms of society and the family system of Indonesian society.

Inheritance law in Indonesia is still diverse in color, and each population group is subject to its laws. This results in differences in the meaning and significance of inheritance law. However, when talking about inheritance law, the center of attention cannot be separated from 3 (three) main elements, namely: the existence of inheritance (wealth) of the heir called inheritance; the existence of the heir, namely the person who controls or owns the inheritance and transfers or forwards it; and the existence of the heir, the person who receives the transfer (forwarding) or the division of property.

Distribute the inheritance to the heirs, not necessarily given by the testator. There are at least three groups of heirs, namely:

1) *Dzulfaraidh (ashabul furudh/dzawil furudh)*

This group is the heirs who receive a definite share (already determined part). For example, the father has received 1/3 of the part if the testator has children or 1/6 if the testator has children. That is, the share of the heirs of *ashabul furudh/dzulfaraidh* is issued first in the calculation of the division of inheritance. After the part of the heirs of *dhulfaraidh* is issued, the rest is distributed to the heirs who receive the remaining part ('*ashabah*'), such as the heir's children if the heir's children consist of men and women.

2) *Dzulqabarat (ashabah)*

This group is the heirs who get an indefinite share. They will receive the remaining inheritance after the heirs of *Dhulzaraidh* are expelled. When viewed in terms of his relationship with the heir, the heir *dzulqarabat* is a person who has a family relationship with the heir through the male and female lines. The family line relationship is also known as bilateral bloodline.



3) *Dzul-arham (dzawil arham)*

This group is a distant relative who only appears as heirs if the heirs of *dhulfaraidh* and *dhulqarabat* heirs are absent. From the group's division, the child entered into the category of heirs *Ashabul furudh/dzulfaraidh as a result of the marriage*. This division of inheritance to children has also been mentioned in the compilation of Islamic law, where it is stated that the daughter of only one person gets half of the inheritance if two or more people get two-thirds of the share. When the daughter is with the son, the man shares two-to-one with the child girls.

Based on the above description, it is through the results of a marriage between spouses and then obtaining children as a result of the generation of their offspring that the child is entitled to an inheritance given by his parents. This will continue for generations until the child returns to get offspring back. In this context, the marriage law regulates the division of inheritance given to children, and the marriage law recognizes the position of children as a result of the marriage. However, when referring to the issues studied in this study, the share to the child in the form of inheritance will not be obtained. Let alone giving inheritance to children, the existence of sex recession will even decrease the number of generations or children born from marriage.

The existence of a sex recession that occurs has other legal effects, namely, property owned by a person obtained through hard work will not change hands to his heirs because they do not enter into marriage. Moreover, the acquired property will not be able to be given as an inheritance to his child because the person concerned does not wish to have children or enter into a marriage recognized by religious law, in this case, the marriage law and state law. (S. Ali 2018)



Concerning the problems studied by the researcher, the focus of inheritance in question is to inherit from the perspective of Islamic marriage law. Implementing inheritance law in the Islamic legal system is worship muamalah, which means worship related to fellow human beings that are carried out solely to obtain the pleasure of Allah. In the teachings of Islam, man, when expecting the pleasure of Allah in worship, must follow the provisions and guidelines in the Qur'an and Hadith of the Prophet.

### Conclusion

As a result of the law of sex recession in Indonesia, the perspective of marriage law is causing a reduction in the number of marriages that occur in Indonesia because the younger generation is reluctant to build a marriage or even have offspring, and the absence of inheritance distribution to children as heirs because someone does not carry out marital activities that will give birth to children as the next generation in their family.

### Recommendation

As a result of the law of sex recession in Indonesia, the perspective of marriage law is causing a reduction in the number of marriages that occur in Indonesia because the younger generation is reluctant to build a marriage or even have offspring, and the absence of inheritance distribution to children as heirs because someone does not carry out marital activities that will give birth to children as the next generation in their family.

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