



Critical Analysis of the Implementation, Societal Conditions, and Issues Surrounding the Enforcement of Law No. 16 of 2019 Amending Law No. 1 of 1974 on Marriage in Indonesia

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Abstract:

There are various problems that occur in the practice of implementing marriage related to the substance of the applicable Law, the lack of public understanding of the applicable regulations, causing problems to still occur, such as early marriage related to the age limit for marriage which is considered to still cause problems for one of the parties. Discrimination against women and the unfulfilled rights and obligations of each party after carrying out marriage, various studies related to the Marriage Law are carried out in order to improve the rules and public understanding of the regulations applied. This research method uses a qualitative descriptive explanation which describes the studies carried out and how the rules of the Law are applied and the problems that occur in society. The implementation of marriage carried out between women and men each has rights and obligations that must be fulfilled and implemented, but the age difference causes various problems in society, especially for women who have a lower age limit than men, causing discrimination against women and other problems such as health, economic, and social factors that are still not considered balanced, therefore it is necessary to conduct various studies regarding the Law related to marriage so that problems and practices in society are appropriate and evenly distributed.

Keywords: Marriage Law; Gender Discrimination; Child Marriage; Legal Reform

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Introduction



Indonesia is a country founded on the rule of law. Its legal order is comprehensively regulated at the national level based on Pancasila and the 1945 Constitution of the Republic of Indonesia. For example, marriage regulations, as provided by Law No. 1 of 1974 concerning Marriage (the Marriage Law), have been standardized and enforced for all Indonesian citizens. According to the Marriage Law, marriage is not merely a civil contract between a man and a woman; it is a spiritual bond that aims to establish a prosperous and sustainable household and family in accordance with religious principles. In essence, marriage is intended to bring mutual benefits and ensure lifelong support between partners. (Septiyani 2022)

In implementing the Marriage Law, several issues remain despite its comprehensive provisions. Many people still lack a clear understanding of the law, partly due to rapid societal changes. The issue of child marriage, in particular, has raised concerns among community observers, government officials, and health sector professionals. In addition to these social concerns, the legal age for marriage, as stated in Article 7, paragraph 1 of the Marriage Law, remains problematic because it sets different age limits for men and women, which is seen as discriminatory.

Child marriage further leads to problems such as school dropout, inadequate development, and unpreparedness for the responsibilities of married life. The gender disparity in the legal age for marriage also reinforces discrimination against women.

According to Handayani's research (2014), several factors contribute to the high incidence of early or underage marriage. The first factor is the lower education level among adolescent girls, making them twice as likely to marry early compared to those with higher education and knowledge. The second factor is the environment in which adolescent girls live; those in negative environments are twice as vulnerable to early marriage compared to those in more positive settings, as the environment during adolescence significantly influences personal development and relationship choices. The third factor is educational attainment: girls who do not graduate from junior high school are 5.4 times more likely to marry early than those who complete junior high school or pursue further education. The fourth factor is economic status. Adolescent girls from economically disadvantaged families or families with



unemployed parents are 7.4 times more likely to marry early compared to those from families with stable incomes. Economic hardship is the dominant factor leading to early marriage. Parents who are unemployed may encourage their teenage daughters to marry early, either due to the girls' own wishes or family pressure, based on the mistaken belief that marriage will reduce the financial burden on the household. This situation is concerning because some families are primarily motivated by the desire to lessen their financial responsibilities, even though the girls may not be mature enough to handle married life, potentially leading to various future problems. (Handayani 2014)

In the 1945 NRI Law, Law Number 35 of 2014, which amends Law Number 23 of 2002 concerning child protection, several measures have been introduced to safeguard children from violence and discrimination. This law acknowledges the State's challenge to consistently protect its citizens by guaranteeing the rights of children to live, grow, and develop according to their age. To protect the next generation, immediate policies are needed to stop the practice of child marriage, which is still carried out by some communities, especially among girls.

The proposed amendment to Article 7, paragraph (1) of the Marriage Law has been legally reviewed by the Constitutional Court. The Court rejected the proposal in decision No. 33-74/PUU-XII/2014, which originated from two requests for judicial review submitted by the community to test the Marriage Law. However, the Constitutional Court granted the judicial review of Article 7, paragraph (1) of the Marriage Law in decision Number 22/PUU-XV/2017 because the age difference between teenage girls and boys led to discrimination against women. This disparity was found to be inconsistent with the Child Protection Law and the 1945 Constitution. (Sandi 2021)

The aim is to equalize the marriage age to ensure equality before the law and proper child protection so that both male and female children receive the same legal safeguards. Discrimination may arise from differences in race, religion, skin color, gender, language, political views, or other social conditions. When rights and obligations are not equally implemented, discrimination occurs, depriving individuals

of their rightful protections. The Constitutional Court's decision calls for a solution based on thorough and comprehensive research regarding the appropriate age limits for marriage for women and men. Such a solution should establish balanced rights and obligations so that both parties are mature and accountable, thereby ensuring further legal certainty in the amendment of the Marriage Law. (Hadi 2018)

Method

This research follows the tradition of empirical legal studies, beginning with a literature review and the examination of secondary data derived from tertiary legal materials (Atikah 2022). The primary legal materials analyzed include the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 1974, Law No. 16 of 2019 (amending Law No. 1 of 1974 concerning Marriage and its implementation), discussions on the applicability of civil law in legal texts, regulations regarding the protection of human rights in legislation, regulations on child protection, measures to prevent child marriage, and Constitutional Court decisions.

Explanations derived from primary legal materials are considered secondary legal materials. Tertiary legal materials, which serve as supporting sources, include legal dictionaries, encyclopedias, and other reference works from outside the legal field that help ensure the research is accurate and precise.

The data collected in this study were analyzed qualitatively using a descriptive method. This method and analytical approach were chosen to highlight the importance of the changes made to the Marriage Law and to demonstrate how to address the issues surrounding the current marriage age limit in society.

Theoretical Study

1. Rights of Girls and Boys

Children's rights are an integral part of human rights in Indonesia, and therefore must be protected and fulfilled by various groups. These include parents and families, local communities, and the Indonesian state and government from local administrations to the central government. The protection of children's rights is carried out in the interests of the welfare of the Indonesian people, as stated in Article 1, point 1 of the Child Protection

Law. Children's rights are categorized into five clusters: civil rights and freedoms; family environment and alternative care; basic health and welfare; education, leisure, and cultural activities; and, finally, special protection.

2. Marriage Agreement Theory

One of the considerations following marriage is the management of assets acquired thereafter. These assets may come from individual inheritances as well as jointly acquired property. Such assets can be legally regulated prior to marriage through an agreement between the two parties. The contents of this agreement are flexible as long as they do not violate applicable regulations, and are commonly referred to as prenuptial agreements. (Laksmi Brata, Desak,. Sari Adnyani, Ni Ketut,. Sudiatmaka 2018)

An agreement made before the marriage and implemented needs to contain legal rules that have been established by law regarding the principles and how to implement them regarding the property between married couples during the marriage is called a marriage agreement. The agreement must be made before the marriage, and once it has been ratified, the agreement cannot be returned or withdrawn, because it is a rule that has been determined and needs to be implemented by those who make and agree to the marriage agreement. The agreement must be written in a notarial deed before the marriage takes place. The party who will carry out or carry out the marriage has wide freedom in terms of making the contents of the agreement and the form of the agreement in accordance with other forms of agreement, there are no restrictions on how the agreement must be made and arranged as long as the agreement does not contain any prohibitions and does not violate public order or morality as well as an agreement between both parties must be implemented because it is a marriage agreement, which means it is implemented and made between the man and woman who will later carry out the marriage

Study of principles/principles related to the preparation of applicable norms



1. Principle of Freedom of Contract

Couples who wish to create an agreement prior to marriage may do so with complete freedom and flexibility. A prenuptial agreement is considered necessary, as it ensures that both parties share the same rights and obligations after marriage and are regarded as equals. Family matters should be jointly decided by both husband and wife as they carry out their household responsibilities. Any agreement made before marriage must be based on the mutual consent of both parties and must be documented in writing, then ratified by the Marriage Registration Officer. This agreement should clearly address the management and ownership of assets acquired during the marriage, whether they are individually owned or jointly held, thereby protecting the interests of all parties involved.

2. Substantive Principle of Equality (Equality and Justice) for Women and Men

The legal provisions governing the age of marriage must set identical age limits for both women and men. This equality is crucial for ensuring equal legal standing, equal access to basic education, and equal opportunities in health care, and overall equal prospects for family stability. Gender balance in marriage law, particularly within the framework of Islamic law, reinforces the dignity of women by safeguarding their rights and protecting them from discrimination, exploitation, and oppression. The Al-Qur'an, for instance, emphasizes liberation from acts of oppression and discrimination, including those based on sexual, ethnic, or cultural differences, as well as prejudices related to skin color or other superficial attributes. (Ali, M., dan Hanafi 2022)

3. Principles that are appropriate and important for children and their future

All actions carried out towards children by social welfare institutions in the country and the legislature of the Republic of Indonesia are to prioritize the interests of children and make primary considerations in child protection at that time. Everything that is done must be profitable and provide good lessons for their children, because the reflection of the future or future generations is a form of education for the present so it must be a special concern for all groups.

Study of implementation practices in society, existing conditions in society, and problems faced in society

The Marriage Law specifies the age limits for entering into marriage in Article 7, paragraph (1). According to this provision, a man may marry once he has reached the age of 19, while a woman may marry once she has reached the age of 16. The explanation provided in Article 7, paragraph (1) asserts that these different age limits are based on the distinct physical health considerations for men and women, as well as the need to protect the well-being of future offspring. However, this differentiation in age requirements has raised concerns that it constitutes discrimination against women by perpetuating unequal treatment in marriage. (Roziyah 2022)

Under the CEDAW Convention, Article 16, paragraphs (1) (a) and (1) (b), states that measures must be taken to eliminate discrimination against women. This is particularly relevant to marriage and family relationships, ensuring that both women and men have equal rights to choose their partners freely and without coercion. It also emphasizes that marriage should be entered into only after both parties have given their full consent. Consequently, marriage is recognized as a fundamental human right, and the process of entering into marriage must respect this right by ensuring equality between the two individuals involved.

In the 2017 Constitutional Court decision (No. 222/PUU-XV/2017), it was noted that the unequal age limits for marriage between men and women conflict with the 1945 Constitution. The Court found that this age disparity constitutes discrimination, as it undermines the principle that every citizen is entitled to equal treatment under the law. This discrepancy also creates tension between the Marriage Law and child protection laws, particularly when Article 7, paragraph (2) of the Marriage Law allows for judicial facilitation of marriages, often to address economic hardships. Such provisions can have serious consequences, given that they legalize marriages that may not be in the best interests of health, economic stability, or overall child protection. (Rahmah, Sambas, and Haspada 2024)

According to child protection legislation, a child is defined as anyone under 18 years of age. Since the Marriage Law permits women to marry at 16, a conflict arises regarding the protection of children's rights. The Constitutional Court has discussed the negative effects of child marriage, noting that mothers who marry at too young an age are at higher risk for adverse health outcomes, and that early marriage can



compromise a parent's ability to provide adequate care and education for their children.(Heryanti 2021)

Statistical data supports these concerns. For instance, research indicates that the maternal mortality rate in Indonesia is partly due to inadequate reproductive health and the immaturity of young mothers. In 2016, data from BPS revealed that 26.16% of women giving birth were under the age of 20. Moreover, hospital data from RSCM (2014-2016) showed that 15% of pregnant women under 20 experienced complications such as anemia and low birth weight. Further surveys (SDKI 2012 and 2017) confirm that births among women under 20 contribute significantly to maternal and child health issues.

In response to these findings, the Indonesian Doctors Association (IDI) held a meeting in 2018 and agreed that the minimum age for marriage should be 18, and that the minimum age for pregnancy should be 20. These recommendations are based on the need for physical and hormonal maturity: for women, the recommended age is calculated as 15 plus 3 years, while for men, it is 16.5 plus 3.5 years. Early pregnancy, particularly before the age of 19, can harm both the mother's health and the unborn child's development. According to UNICEF, girls aged 10-14 face up to five times the risk of death during childbirth compared to those aged 20-24, and the risk remains elevated for girls aged 15-19.

The negative consequences of early marriage extend beyond physical health. Children born to mothers under 19 are more likely to experience stunted growth, have lower educational attainment, and remain in poverty. Early marriage also exposes children to an increased risk of exploitation and domestic violence.

Religious perspectives on marriage age vary considerably. In Islam, there is no fixed legal age for marriage; instead, maturity and the attainment of puberty are emphasized as prerequisites for marriage, as noted in Article 16 of the Compilation of Islamic Law. In Islamic teachings, marriage is a sacred institution and is regarded as a divine command that should be entered into with full awareness and consent. Some scholars have interpreted the Qur'an as prioritizing peace of mind (*sakinah*) and mutual love (*mawaddah wa rahmah*) in marriage, while others cite various verses that call for justice, knowledge, and the avoidance of harm. Additionally,



hadiths underscore the importance of preventing harm and assisting others, as well as encouraging marriage for those who are capable, while advising those who are not to exercise self-restraint. (Fauziah and Amanita 2020)

Classical scholars, such as Ibn Syubrumah, Abu Bakr al-Asham, and Uthman al-Batti, generally held that child marriage is impermissible. Similarly, the Shafi'i scholar Imaduddin Ali bin Muhammad Thabari noted in his work *Ahkaam al-Qur'aan* that there is no clear scriptural support for permitting child marriage, and he agreed with the view that such marriages should not be allowed. According to these scholars, a key requirement for marriage is reaching puberty—marked by signs such as wet dreams for boys and menstruation for girls—indicating physical maturity. Contemporary scholars, however, interpret these texts contextually, taking into account modern health, psychological, and cultural considerations.

Furthermore, additional religious perspectives, such as those found in Hindu teachings, suggest that if a girl is of suitable age but cannot find a husband of appropriate qualities, she should continue living with her parents for at least three years until a proper match is found. Hindu scriptures, as cited in the *Manava Dharmasastra*, indicate that parents may only consider marriage for their children after they have reached a certain age, typically around 18 to 21 years. Similarly, in Christianity, marriage is considered a sacred and enduring institution that requires full maturity and a responsible attitude from both partners. (Cantonia and Majid 2021)

Cultural factors also play a role in the persistence of early marriage. Longstanding traditions and beliefs in some communities may pressure families to arrange marriages at an early age, partly due to fears that delaying marriage could jeopardize the chances of finding a suitable partner. In some areas, local officials may even be compelled to facilitate these early marriages.

In summary, the current age limits set by the Marriage Law—allowing women to marry at 16 and men at 19 have raised significant concerns regarding discrimination, health risks, and the protection of children's rights. Both legal interpretations and empirical data suggest that these age disparities are problematic. The decision by the Constitutional Court and recommendations from health

professionals highlight the urgent need to reconsider these provisions to ensure equality, protect the well-being of young people, and uphold the rights enshrined in both national and international law. (Noni Arni 2009)

Study of the Implications of Implementing the New System which will be regulated in Law on Aspects of Life in Society

1. Related to the Age Limit for Marriage

If there are regulations regarding age restrictions for marriage, several impacts will occur, namely: the risk of death for pregnant women can decrease, and the increase in pursuing higher education than before. In the new system, the age for men to marry is 19 years, which means they have completed 12 years of compulsory education, including having completed high school at the age of 19 (nineteen). Because with sufficient education, it is hoped that it can reduce several factors that cause substance problems to be resolved because they already have a form of responsibility according to their age, such as reducing the poverty factor because they already have good sense to be able to compete in the world of work and get a decent job, according to the psychology of children who marry at an older age. 19 year olds have a greater sense of responsibility and better knowledge and understanding and understand how their obligations must be carried out.

2. Relating to agreements before marriage, namely legalized marriage agreements.

It is hoped that the existence of more detailed arrangements regarding marriage agreements will give rise to a positive side for several parties, such as third parties, the validity of marriage agreements made before the marriage or during the marriage by the husband or wife, and still valid for third parties as long as they are still valid. Related or third parties are still involved.

Discussion

Evaluation and Analysis of Related and Impactful Legislation

1. There are several evaluations and analyzes of Legislative Regulations related to the statutory regulations that regulate the age limit for adulthood in terms

of what aspects, there are several, namely:

- a. BW Article 30 of the Civil Law which states that a person whose age has not reached 21 (twenty one) years and has not yet been married is not considered an adult, and if the previous marriage is dissolved but before the child is 21 (twenty one) years old then the child are not considered immature or are no longer considered children.
- b. Child Welfare is regulated in Law Number 4 of 1979 Article 1 point 2 and states the definition of a person's child whose age has not reached 20 years and is not yet married.
- c. The Law discussing Human Rights number 39 of 1999 article 1 contains an explanation that states that a child is every person under 18 (eighteen) years of age and has not yet married or entered into a marriage, as well as unborn or unborn children if this is the case. For the benefit of.
- d. Protection for children which functions to protect the rights and obligations of children of their age in Law No. 23 of 2002 discusses Protection of Children.
- e. In the Employment Law No. 13 of 2003, it is stated that children who are not yet 18 years old in article 1 paragraph 26.(Simanjorang 2022)

2. Related to the Marriage Agreement

Marriage agreements other than article 29 of the Marriage Law are regulated in CHAPTER VII Burgerlijk Wetboek (BW). The marriage agreement entered into must be recorded before the marriage takes place, and a notarial deed must be made, and if there is no notarial deed, this is invalid (Article 147 BW), and takes effect at the time the marriage takes place. There are conditions in the marriage agreement that may be carried out by minors as long as they are capable of giving consent to the marriage agreement as long as the child is accompanied and there must be guidance from the person whose consent rights are needed to carry out the marriage. This applies if the marriage must use the agreement.(Rahmah, Sambas, and Haspada

2024)

3. Compilation of Islamic Law

Through Presidential Instruction Number 1 of 1991, Article 45 - 52, concerning the Compilation of Islamic Law (KHI), explains the marriage agreement for Indonesian Muslims. *lik talak* and other agreements that must be considered not to conflict with Islamic Law. According to Article 47 KHI: a marriage agreement can be made and declared before the marriage takes place, the bride and groom can make a written agreement which will later be ratified by the Marriage Registrar's Officer regarding the marriage agreement, one of which is the position of assets in the marriage. The authority of a notary in carrying out his duties and position as a person who can make authentic deeds is stated, namely the marriage agreement deed which has the rules contained in Article 15 of Law Number 2 of 2014, amendments to Law Number 30 of 2004.

Philosophical Foundations, Sociological Foundations, and Juridical Foundations

1. Philosophical basis

The philosophical basis is the consideration that these regulations are seen from various current and previous views of human life, such as the picture explained based on the view of life that is seen and implemented, as well as awareness of existing laws and ideals which include mysticism and the philosophy or history of the Indonesian nation. (Falah, M. N., Imaduddin, A., & Ilmiyah 2020) The Indonesian people agreed to include the goals of their state in the Preamble to the 1945 Constitution of the Republic of Indonesia. It is stated in the fourth paragraph of the Constitution of the Republic of Indonesia to protect the entire nation and the entire nation of Indonesia and all of Indonesia's blood, promote general welfare, make the life of the nation intelligent, and participate in implementing world order based on freedom and peace. Immortality, and social justice. For this reason, the state pays special attention to the institution of marriage as a gateway to the formation of an eternally happy and prosperous family. One of the state's efforts to create eternally happy and prosperous families is to make the institution of marriage an institution that is bound physically and mentally between a man and a



woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Godhead. Almighty. That in marriage, both men and women have the rights and obligations as husband and wife to carry out their respective roles in forming an eternally happy and prosperous family based on justice, equality and legal certainty. Based on this, the state needs to be present to ensure that there is justice, equality and legal certainty in the administration of marriage institutions so that the goals of marriage can be achieved. (Nahdiyanti, Yunus, and Qamar 2021)

2. Sociological basis

There needs to be socialization carried out for efforts related to law that are growing and possibly developing in society, basically everything that is done in society will have developments and changes, and there is socialization to the community to equalize legal perspectives and policies that are implemented so that the design of a rule can be applied in society. Because a regulation will be meaningless if it is not accepted by society. Therefore, the sociological aspect needs to be moved so that everything can be carried out as expected and planned. (Sofia Hardani 2015)

Likewise, with regard to Marriage Laws which are very common and implemented in society, there needs to be conformity so that it can always be something that is accepted in society, not detrimental and beneficial. As various things such as legal, social and cultural developments in society develop, there will definitely be truth and perfection in the Marriage Law. This improvement can be seen from the inconsistency and uncertainty regarding several things that are expected from the formation of the Marriage Law. Judging from the differences in marriage age limits for men and women, uncertainty and the absence of maximum protection and legal certainty that is fair and appropriate for the status of children who have been born and what rights these children can have, including for children who are born. (Mahmudah, Iftitah, and Alfariis 2022)

3. Juridical basis

The marriage bond is described in various ways as a strong bond (mitsaqan ghalizhan) which has the aim of forming a happy family and continues to be carried out well as expected. Nothing other than for the welfare of the bride and groom concerned. The marriage age which tends to be lower and earlier tends to



experience various events that are not or even undesirable for the purpose of marriage itself. Due to immaturity and immaturity, the couple is not yet mature physically and mentally. Because according to data from religious courts in Central Java, it shows that divorce cases are caused by marriage at a young age. (Ahmad rofiq 1995)

The juridical basis itself is that there are considerations when forming regulations to overcome legal problems by considering previously existing regulations for the sake of society's sense of justice and guaranteeing legal certainty. (Nahdiyanti, Yunus, and Qamar 2021)

Juridically, changes to the marriage age were made because they were not relevant to societal conditions and laws and regulations relating to child protection, therefore in Law No. 16 of 2019 marriage is permitted if the man and woman have reached the age of 19 (nineteen) years and as stated in existing legal certainty.

Conclusion

There are several issues that must be addressed regarding the implementation of marriage, including the minimum age for marriage, the rights of children born out of wedlock, and the legalization of marriage agreements. The Constitutional Court has addressed these concerns through several decisions: Decision No. 46/PUU-VIII/2010 regarding Article 43, paragraph (1) of the Marriage Law; Decision No. 69/PUU-XIII/2015, which refined Article 29, paragraphs (1), (3), and (4) of the Marriage Law; and Decision No. 22/PUU-XV/2017, which improved Article 7, paragraph (1). These Constitutional Court decisions have established that the marriage law, as currently implemented, is a constitutional object that requires ongoing refinement.

Marriage is based on mutual agreement between the parties involved a man and a woman since each partner has rights and obligations that must be fully and correctly upheld without causing harm to one another. Marriage is intended to create a prosperous, sustainable, and enduring family, grounded in legally established and valid principles. Therefore, the state must ensure legal certainty in the implementation of marriage in order to achieve the intended goals of marital union.



In light of the three Constitutional Court decisions mentioned above, it is essential for lawmakers to perfect Law No. 1 of 1974 concerning Marriage.

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