



Legal Effectiveness of Marriage Age Restrictions in Indonesia

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ABSTRACT

The Marriage Law in Indonesia deals with the base age for marriage in article 7 of Law No. 1 of 1974, for men 19 years and women 16 years, which was overhauled through Law No. 16 of 2019 by raising quite far for women to 19 years, as a work to decrease the speed of youth marriage which is still exceptionally high in Indonesia. The motivation behind this paper is to take a gander at the viability of the marriage age limitation regulation and find the right answer for kid marriage that happens in Indonesia. The outcomes got those the base age limitations for marriage have not been compelling sufficient in diminishing the act of child marriage. The applications for marriage dispensation over the most recent two years in strict courts all through Indonesia that showed a high expansion in applications contrasted with the years prior to the change of article 7 of the marriage regulation. In addition, albeit the marriage regulation exists as a crisis response, there actually should be a base age limit in the application for the marriage agreement, with the goal that the age of the candidate underneath the cutoff can be dismissed.

Keywords: Age Restriction; Child Marriage; Marriage Dispensation

1. Introduction

The issue of youngster marriage is connected with the period of child wedded, in view of UNICEF in 2018 (UNICEF, BPS, Bappenas, 2020) expressed that 1 out of 9 ladies matured 20-24 years who are hitched, have their wedding when they are under 18 years of age. The aftereffects of the concentrate likewise show that Indonesia is yet positioned second just to Cambodia among Southeast Asian nations whose child marriage rates are still very high. A sum of 13,880 marriage regulation cases were acknowledged by strict courts, which is a 20-overlap increment from the 631 cases got in 2005(AIP J2 (Australia Indonesia Partnership for Justice 2), 2019)

Quoted from Elga Andina (Andina, 2021) child marriage can have serious and lasting negative effects. Among the impacts are babies born with a risk of death, stunting and low birth weight. Another problem that is also experienced by married couples who are still children in the vulnerable practice of domestic violence (Domestic Violence) is because they still have not been properly established emotional management. Underage marriage is one of the triggering factors for the high MMR (Maternal Mortality Rate) and IMR (Infant Mortality Rate) caused by being too young in pregnant women (Inayati, 2015). Referring to UNICEF, a woman who became pregnant before the age of 18 was physically and mentally unprepared to give birth to a baby.

Marriage Law No.1 of 1974 in article 7 specifies that the base age for marriage is 16 years for young ladies and 19 years for young men. This assurance is as per the motivation behind marriage expressed in article 1, "Marriage is the bond brought into the world between a man and a Woman as a couple determined to shape a cheerful and timeless family (family) in view of the One True Godhead". This objective will positively be challenging to accomplish if the wedded couple is as yet a youngster and has not developed intellectually and genuinely.

Essentially, with the foundation of a base age limit for marriage, it has been seen that the state's endeavors in shielding its residents from the act of youngster marriage are yet far and wide in a few locales in the archipelago. In view of different examinations led essentially among youngster onlookers, the base age limitation in article 7 of Law No. 1 of 1974 is viewed as immaterial. The Constitutional Court of the Republic of Indonesia gave Decision No.22/PUU-XV/2017 concerning the Testing of Law No. 1 of 1974 concerning Marriage against the

1945 Constitution. The Constitutional Court made sense of that the guideline of the base period of marriage that contrasts among people not just purposes segregation in that frame of mind of executing the option to shape a family as ensured in Article 28B passage (1) of the 1945 Constitution however has likewise caused victimization the security and satisfaction of youngsters' privileges as ensured in Article 28B section (2) of the 1945 Constitution (Effendy, 2019)

Changes in the standards of Law No. 1 of 1974, as far as marriage age, for ladies are compared with the base age limit for men, which is 19 years. The cutoff is expected on the grounds that at that age it is considered to have developed sufficient soul and body both young men and young ladies who will do union with accomplish the ideal objectives. The expansion in the base age for marriage is supposed to diminish youngster marriage in Indonesia really.

The investigation of the viability of the age limitation regulation is critical to see the degree to which the progressions to the article altogether affect endeavors to diminish youngster marriage in Indonesia, on the grounds that as a matter of fact, child marriage in Indonesia happens. It is important to concentrate on what variables impact the event of youngster marriage and elements connected with the legitimate viability of article 7 of the Marriage Law. In view of the prior, the creator is keen on investigating through a logical paper entitled "Legal Effectiveness of the Marriage Age Restriction in Indonesia".

2. Method

This research uses an empirical juridical approach that is focused on examining the effectiveness of laws related to marriage age restrictions in marriage laws in Indonesia. Data collection techniques by reading, studying, and analyzing laws after that relate to the results of research on marriage age restrictions. The data analysis used is a qualitative method so that a general and comprehensive picture of the actual situation is obtained

3. Result and Discussion

Marriage is a natural connection between a man and a lady, which in Islam is alluded to as *mitsaaqon gholiidhan* to submit to Allah's orders as well as a type of love. Marriage is pointed toward understanding a homegrown life that is *sakinah, mawaddah and rahmah*. The actual marriage is viewed as substantial on the off chance that it is performed by strict and state regulation. Regulation Number 1 of 1974 on Marriage manages residents in marriage matters. Something specified in the law is with respect to the base age limit for residents who will do marriage. Age limits are not explicitly set in the Qur'an or hadith. The regularly realized prerequisites in view of the propose are *baligh*, reasonable, and ready to oppress the great and the awful so they can be requested their assent for marriage. Not just Islamic regulation, standard regulation likewise doesn't give an age arrangement to performing marriage, typically an individual's development in standard regulation is estimated by actual changes.

Accordingly, in the marriage regulation, the base age limit for not entirely settled. The arrangement in regard to the base age limit is contained in Chapter II Article 7 passage (1) of Law No. 1 of 1974 concerning Marriage which expresses that "Marriage is only permitted if the male party is 19 years old and the female party has reached the age of 16 years." According to Zulfiani (Zulfiani, 2017) with this age limit, it very well may be deciphered that Law Number 1 of 1974 doesn't need the execution of underage marriage or child marriage.

In the Compilation of Islamic Law (KHI) which was endorsed through Presidential Instruction No. 1 of 1991, article 15 passage (1) of the KHI expresses that "to assist the family and family marriage must be done by imminent ladies who have arrived at the age specified in article 7 of Law No. 1 of 1974, in particular the imminent spouse something like 19 years of age and the forthcoming wife somewhere around 16 years of age."

On October 14, 2019, the President of the Republic of Indonesia passed Law Number 16 of 2019 concerning revisions to Law Number 1 of 1974 concerning Marriage which just holds back 1 extraordinary article that changes the arrangements of the past article 7 to the accompanying:

- a) Marriage is possibly allowed assuming the man and lady have arrived at the age of 19 (nineteen) years.
- b) In the occasion of a deviation from the age arrangements as alluded to in section (1), the guardians of the male/female party as well as the guardians of the female party might demand regulation to the Court on exceptionally pressing grounds joined by adequate supporting proof.

- c) The giving of agreement by the Court as alluded to in section (2) will get the thoughts of both imminent ladies who will hold the marriage.
- d) Provisions in regard to the state of one or the two guardians of the planned lady and man of the hour as alluded to in Article 6 passages (3) and (4) additionally apply arrangements seeing the solicitation for agreement as alluded to in section (2) without bias to the arrangements alluded to in Article 6 section (6).

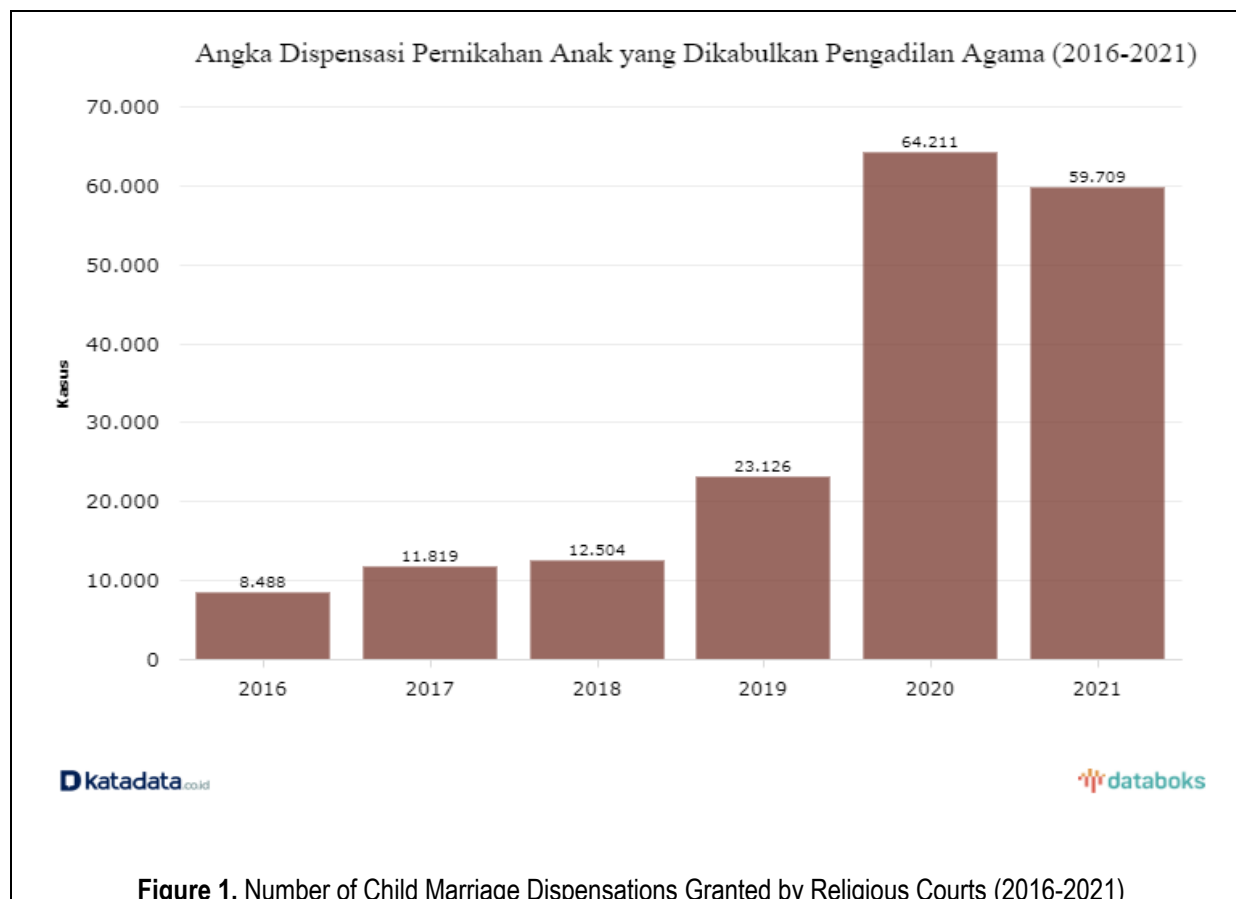
This change is in accordance with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Article 1 expresses that "A youngster is an individual who isn't yet 18 (eighteen) years of age, including a child who is still in the belly." So that on the off chance that there is a marriage an under the done by a resident age of 18 years, it is remembered for the class of child marriage.

3.1 Marriage Dispensation

The law has specified that the base age limit for marriage is 19 years, as in article 7 passage (1) of Law No. 16 of 2019. Still in a similar article, the law gives an open door against deviations of such age arrangements. Article 7 passage (2): "in case of a deviation from the age arrangements alluded to in section (1), the guardians of the male/female party as well as the guardians of the female party might demand regulation to the Court on extremely pressing grounds joined by adequate supporting proof".

Dispensation according to the Great Dictionary of Indonesian (Bahasa, 2016) i.e., the avoidance of the common guideline for unique conditions, exclusion from a commitment or restriction. A marriage regulation is the conceding of waivers for an individual who wishes to enter a marriage yet has not arrived at the base age prerequisite expressed in the law.

Following the adjustment of the base period of marriage, there was a flood in applications for marriage regulation in the Religious Courts.



Source: <https://databoks.katadata.co.id/>

Considering the table above, which is information from the Religious Justice Agency, in 2021 the marriage regulation conceded by the Religious Court has diminished contrasted with 2020. Nonetheless, the quantity of youngster relationships stays high. The table shows that from one year to another there has been an expansion in applications for marriage dispensation, and 2020 is the most elevated increment demonstrating that child marriage is still broadly drilled.

The high application for marital dispensation is due to several reasons. Citing the results of research by the Australia Indonesia Partnership for Justice 2(AIP J2 (Australia Indonesia Partnership for Justice 2), 2019), these reasons are: a) Pregnant young ladies (31%); b) The child has had sex (16%); c) Risk of being in sex (4%); d) The two child love one another (25%); e) Children are in danger of disregarding strict qualities; f) Children are in danger of abusing social qualities.

Muntamah (Muntamah, 2019), frames the elements behind the act of child marriage in Indonesia:

- a. Economics. Parents with economic limitations then have many children tend to marry off their children sooner with the assumption that after marriage the child will be economically secured and ease the burden on parents.
- b. Low education. People who have higher education tend to keep their children from marrying at a young age, because in addition to marriage is something sacred, it must also have mature readiness. It is different with people whose level of education is low, considering that only in this way will their children be met with the needs of their lives.
- c. Own desires. This is a variable that is hard to stay away from. At a young age, emotions are still unstable, because they think they have loved each other, they do not think further about the impact and problems that will be faced in marriage.
- d. Promiscuity. The absence of direction and oversight from guardians and the curiosity of children in adolescence to try new things, many lead to the occurrence of pregnancies outside of marriage.
- e. Culture and customs. Culture and customs are many times the reason of child marriage, besides that there is a stigma that grows in society and parents' concerns for girls who must be married immediately when they are in their teens almost adults.

3.2 Legal Effectiveness of Marriage Age Restrictions in Indonesia

The law can function if it meets at least four factors, namely, the rules/regulations themselves; law enforcement; means or facilities; public awareness including the culture that exists in the community. In terms of whether regulations that mention the minimum age of marriage restrictions have been effective in terminating child marriage in Indonesia, it can be analyzed using these factors.

a. Legal Rules

For the law to work, each law and order should meet three sorts of components of the standard, on the grounds that: (a) on the off chance that law and order just applies juridically, there is plausible that the standard is a dead rule; (b) on the off chance that it just applies humanistic ally in the feeling of force, the standard turns into a standard of pressure; (c) on the off chance that it just applies logically, almost certainly, the standard is just a hopeful regulation(Zainuddin, 2009).

Why youngster marriage happens a ton in Indonesia even though there are now arrangements that direct it in the marriage regulation can be portrayed as follows. As per the Marriage Law, the grown-up limit is the age of 21 years, as should be visible in Article 6 section (2): "To complete a marriage an individual who has not arrived at the age of 21 (21) years should have the consent of the two guardians." Furthermore, article 7 passage (1) possibly permits if the couple who will wed is no less than 19 years of age. Then, at that point, in subsection (2) of the guidelines, it gives an open door to the people who don't meet the age necessity in that frame of mind to in any case have the option to go into a marriage by mentioning regulation to the court if it incorporates supporting proof.

With the opportunity in article 7 paragraph (2) it is as if the enforcement of the law contained in paragraph (1) can be ignored. This is what then happens a lot in the community, by adhering to subsection (2), then, at that point, the application for marriage regulation is filed and the marriage of the child becomes legal. This indicates

the rules were made in the absence of a strong desire to be enforced and were only the law to which they aspired.

b. Law Enforcement

Judges in court are law enforcers in the granting of marriage dispensations. Guidelines for Judges in this matter are contained in the Supreme Court of the Republic of Indonesia (PERMA) Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation. PERMA Number 5 of 2019 contains 7 chapters and 21 articles. In general, in this PERMA, 3 main themes can be grouped, namely about the principles, administration, and technical examination of marriage dispensation application cases. Prior to the publication of PERMA, religious court judges were guided by more universal principles, such as justice, expediency, and legal certainty. The existence of PERMA does not mean ignoring the principles commonly used, on the contrary, it strengthens and clarifies every step taken by the Judge (Kadarisman & Hamidah, 2021).

In PERMA Article 15 letter d, that in examining a child requested for marriage dispensation, the Judge may: "Request recommendations from Psychologists or Doctors/Midwives, professional social workers, social welfare workers, Women and Children Integrated Service Centers (P2TP2A), Indonesian/Regional Child Protection Commission (KPAI/KPAD)". Suggestions from specialists or related establishments are expressed as a Letter of Recommendation and turned into the subject of thought by the adjudicator in choosing the application for marriage dispensation.

According to Cate Sumner (Sumner, 2020), it will be essential to screen whether corrections to the Marriage Law, joined with the prerequisites of the Supreme Court's new Practical Guidelines, will achieve changes in how marriage dispensation applications are taken care of in court.

Considering the consequences of a meeting with the Judge of the Sukabumi Religious Court, information was obtained that while examining the application for marriage dispensation, the Judges still used the judge's consideration only without seeking recommendations from the parties mentioned in article 15 letter d of the PERMA above. In this case, law enforcement has not fully implemented the guidelines provided. In addition, the ease of obtaining a marriage dispensation also at least indicates the effectiveness of law enforcement which is still not optimal.

c. Public Legal Awareness

One of the factors that can indicate that a regulation is effective is the public's awareness to comply with the legislation. The marriage age limit in the law has not been fully adhered to by society. Not a few of the members of society prefer to adhere to religious norms, for example Islamic law and customary law (Ramadhita, 2014).

For certain individuals, there are the people who make strict reasons for the wedding of their underage youngsters because they are now in the class of *baligh*. Hussein Muhammad (Muhammad, 2007), considers that underage marriage cannot be justified because it can cause various riots.

Cultural factors also influence this legal awareness. In child marriage, cultural factors contribute a lot. Marrying children at an immature age is one of the prides, because for some people, a person who is married late will get a bad stigma, such as the term weathered bachelor or also an old virgin.

The elevated degree of interest for marriage agreement shows that this legitimate attention to youngster marriage has not been conformed to by certain guardians. As a matter of fact, while alluding to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, article 26 passage (1):

Guardians are committed and liable for:

1. Nurture, support, instruct, and safeguard the Child.
2. Cultivate Children as indicated by their capacities, gifts, and interests.
3. Prevent the event of marriage at the age of the Child; and
4. Providing karate schooling and instillation of moral qualities in youngsters.

Up to this point, since the base age limitations are directed in the Marriage Law No. 1 of 1974 which was corrected through Law No. 16 of 2019, one might say that the guideline has not been compelling in limiting child marriage. According to the author, for this law to be more effective in overcoming the problem of child marriage, it

is important to do exhaustive socialization with the goal that the general population grasps the significance of this regulation. Socialization and schooling should be completed with the backing of different gatherings connected with the issue of child marriage. Moreover, albeit the marriage regulation exists as a crisis response, there actually should be a base age limit in the capacity to apply for a marriage regulation. For instance, if as far as possible is 19 years of age, as far as possible for marriage allotment is 17 years, so the age of the candidate underneath the breaking point can be dismissed.

4. Conclusion

In view of information gathered from the Ministry of National Development Planning/BAPPENAS, the Supreme Court, the Ministry of Women's Empowerment and Child Protection (PPPA), BPS and the Ministry of Religious Affairs, after the amendment of the Marriage Law in 2019, the quantity of allotment cases relationships recorded with strict courts and general courts expanded fundamentally to almost 65,000 in 2020. Marriage dispensation cases recorded over the most recent five years are 95% conceded by the Religious Court.

It tends to be reasoned that the base period of marriage in the Indonesian Marriage Law, seen in terms of legal effectiveness, has not been said to be effective because there are so many things that need to be addressed related to the regulation itself, its policing, well as the legitimate attention to the local area. The ineffectiveness of the guideline. It should be visible from the high application for marriage allotment to the Court, showing the high pace of child marriage.

References

- AIP J2 (Australia Indonesia Partnership for Justice 2). (2019). Analisis Putusan Dispensasi kawin di Indonesia. *AIP J2 (Australia Indonesia Partnership for Justice 2)*. Retrieved from <https://aipj.or.id/pages/publication/analisis-putusan-dispensasi-kawin-di-indonesia>
- Andina, E. (2021). Meningkatnya Angka Perkawinan Anak Saat Pandemi Covid-19. *Info Singkat*, 13(4). Retrieved from <http://sdip.dpr.go.id/search/detail/category/info Singkat/id/1162>
- Bahasa, B. P. (2016). *Kamus Besar Bahasa Indonesia* (5th ed.). Jakarta: Kementerian Pendidikan dan Kebudayaan Republik Indonesia.
- Effendy, D. (2019). *Problematika dan Solusi Pelaksanaan Undang-Undang No. 16 Tahun 2019 Tentang Perkawinan*. Retrieved from <https://www.pta-pontianak.go.id/berita/artikel/862-problematika-dan-solusi-pelaksanaan-undang-undang-no-16-tahun-2019-tentang-perkawinan>
- Inayati, I. N. (2015). Perkawinan Anak di Bawah Umur dalam Perspektif Hukum, HAM dan Kesehatan. *Jurnal Bidan "Midwife Journal"*, 1(1), 46–53.
- Kadarisman, A., & Hamidah, T. (2021). Pembatasan Usia Perkawinan dalam Sudut Pandang Maqashid Syari'ah Al Syathibi. *Cendekia: Jurnal Studi Keislaman*, 7(1), 115–138. Retrieved from <https://www.neliti.com/publications/389291/pembatasan-usia-perkawinan-dalam-sudut-pandang-maqashid-syariah-al-syathibi>
- Muhammad, H. (2007). *Fiqh Perempuan Refleksi Kiai atas Wacana Agama dan Gender* (3rd ed.; A. Q. Faqihuddin, ed.). Yogyakarta: LKiS.
- Muntamah. (2019). Pernikahan Dini di Indonesia; Faktor dan Peran Pemerintah (Perspektif Penegakan dan Perlindungan Hukum Bagi Anak). *Jurnal Hukum*, 2(1).
- Ramadhita. (2014). Diskresi Hakim: Pola Penyelesaian Kasus Dispensasi Perkawinan. *De Jure, Jurnal Syariah dan Hukum*, 6(1), 59–71. Retrieved from <http://ejournal.uin-malang.ac.id/index.php/syariah/article/view/3192>
- Summer, C. (2020). *Policy Paper 19: Mengakhiri Pernikahan Anak di Indonesia: Peran Pengadilan*. Melbourne: Centre for Indonesian Law, Islam and Society.
- UNICEF, BPS, Bappenas, P. U. (2020). *Pencegahan Perkawinan Anak; Percepatan yang Tidak Bisa Ditunda*.
- Zainuddin, A. (2009). *Metode Penelitian Hukum* (1st ed.; L. Wulandari, ed.). Jakarta: Sinar Grafika.
- Zulfiani. (2017). Kajian Hukum Terhadap Perkawinan Anak di Bawah Umur Menurut Undang-Undang Nomor 1 Tahun 1974. *Jurnal Hukum Samudra Keadilan*, 12(2), 211–222. Retrieved from <https://ejurnalunsam.id/index.php/jhsk/article/view/136>