

Application Of Marriage Age According To Law Number 16 Of 2019 Concerning Amendments To Law Number 1 Of 1974 Concerning Marriage (Study At The Malang Regency Religious Court)

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Abstract : This study is behind the determination of the age limit for marriage is very important because in addition to wanting biological maturity also psychological maturity. So in the general explanation of the marriage law, it is stated that the bride and groom must mature their body and soul to be able to carry out the marriage so that the marriage runs well without ending in divorce and gets good and healthy offspring. Researchers formulate the problem of how to apply the age of marriage according to Law Number 16 of 2019 concerning marriage in Malang Regency, what factors make the people of Malang Regency marry below the age of marriage, and how the efforts and constraints of the Religious Court overcome the problem of the provision of the age limit for marriage in Malang Regency. This research uses normative and empirical research in the form of a statutory approach, a conceptual approach, and a sociological approach. Research data sourced from primary obtained from field studies and secondary data sourced from primary, secondary, and tertiary legal materials which are then analyzed based on descriptive qualitative analysis. The results and first discussion show that the implementation of the age limit for marriage in Malang Regency can be said to be ineffective when compared to before the amendment of Law Number 19 of 2019. Second, factors that cause underage marriage include economic factors, educational factors, and cultural factors, so it does not rule out the possibility of underage marriage does not bring happiness as the purpose of marriage itself. Third, the efforts of the Malang Regency Religious Court include direct socialization and legal counseling to the community, especially regarding changes in the age limit for marriage which refers to Law Number 16 of 2019 that children who can carry out marriage are at least 19 years old.

Keywords : Change, Age Limit, Marriage

1. Introduction

A. Background

Marriage is a sacred covenant to form a family between a man and a woman.¹ This husband and wife bond based on sacred intentions is expected to grow into a happy and eternal family/home based on the One and Only Godhead. Marriage is very important for human life, even becoming a basic need for every normal human being and is the beginning of the formation of small institutions in

¹ Mardani, Islamic Family Law in Indonesia, First Edition, Prenadamedia Group, Jakarta, 2016, p. 24.

the family. In social life, a common judgment is found that people with families have a more valued position than those who are not married.²

Marriage is a legal act that aims to form a happy and eternal family, because the purpose of marriage is mentioned in Article 1 of the Marriage Law Number 1 of 1974 (hereinafter referred to as the Marriage Law), namely the formation of a happy and eternal family (household) based on the One True Godhead, marriage law presents principles and conditions that must be fulfilled in marriage.

According to Law No. 1 of 1974, the maturity of the age of marriage is measured based on the maturity of body and soul, which is said to have matured body and soul to marry when it is 21 years old. This provision is contained in Chapter II Article 7 paragraph (1) which states that marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years.³

Finally, the House of Representatives of the Republic of Indonesia and the government agreed on changes to Article 7 Paragraph (1) in the Marriage Law related to the provisions for the age limit for marriage for men and women. Thus, the age limit for marriage becomes 19 years. "The results of the Level 1 discussion in the Legislature agreed to amend Article 7 which regulates the age of marriage for men and women. It is agreed that the age limit allowed for marriage between a man and a woman is the same age of 19 years. Said deputy Speaker of the Legislative Body (Baleg) Totok Daryanto when contacted by reporters, Monday (16/9/2019)".⁴

So that with the mandate of the MKRI Decision, it became the basis for reforming and changing the Marriage Law after 45 years of never having changed, and on October 14, 2019 Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter in this paper abbreviated as the Marriage Law Amendment), officially endorsed by President Joko Widodo in Jakarta. This is certainly very crucial for the legal system, especially in the law that regulates marriage. Therefore, this will be evidence of the history of the renewal of Indonesian law regarding the age of marriage in Indonesia which has a huge impact on Indonesian society.

The age limit aims to limit the marriage of minors so that young men and women who will marry have matured their bodies and souls in forming a happy and eternal family or home. Similarly, it is intended to prevent the rampant high birth rate and so that married couples get good and healthy offspring and minimize the occurrence of maternal and child deaths.

Underage marriage has a negative impact and creates new problems. Those who marry underage are prone to divorce. Before marriage, the bride and groom must prepare mentally and mentally including age maturity. From the aspect of health, especially weak reproduction, it is prone to death both in children and mothers. In health, women aged twenty-one (21) years and under their

² Ibid p. 25

³ Armiah, Munakahat Fiqh, Medan, Manhaji, 2018, p. 236.

⁴<https://nasional.kompas.com/read/2020/10/06/13174991/dpr-akan-sahkan-ruu-perkawinan-batas-usia-perkawinan-jadi-19-tahun>, accessed on 06 October 2020 at 11:35 PM

reproductive organs are not ready to experience pregnancy and childbirth. In addition, poverty will arise because economically they are not ready to work. And there is also the exploitation of children who because of marriage end up having to work and take care of children.⁵

Determining the age limit for marriage is very important, because in addition to wanting biological maturity also psychological maturity. So in the general explanation of the Marriage Law, it is stated that the bride and groom must mature their body and soul to be able to carry out the marriage so that the marriage runs well without ending in divorce and gets good and healthy offspring. In addition, Article 7 paragraph (2) of Law No. 16 of 2019 concerning amendments to the Marriage Law No. 1 of 1974 does not explain what is meant by deviation, so in this case the judge must interpret the contents of the article himself in determining the marriage dispensation.

B. Problem Formulation

Based on the background description above, the problem formulation used is as follows :

How is the implementation of the marriage age limit according to Law Number 16 of 2019 concerning marriage in Malang Regency? What are the factors that make the people of Malang district marry under the age of marriage? And How are the obstacles and efforts of religious courts to overcome the problem of the provision of the age limit for marriage in Malang Regency?

C. Research Methods

The type of research used in this study is empirical legal research. Empirical legal research is a study conducted by examining primary data. So that this empirical legal research tries to pay attention, study, and know the application or application of legal rules in practice in the field and how the form of legal protection related to the problems to be studied.⁶

In conducting a study, an approach method is needed as a guideline to study, analyze and understand the problem under study in order to get results that are in accordance with the problem studied. The approaches used in this study, namely: The statutory approach (statue approach) is an approach carried out by examining legal norms, and various laws and regulations related to problems that have been formulated in the problem⁷, The conceptual *approach* is an approach that is carried out by examining the views and opinions of scholars, books of scientific papers that are relevant to the problems discussed, and the sociology approach (*socio legal approach*) is an approach which is used to explain the working of the law in the daily lives of citizens.

⁵ Rahmah Maulidi, Dynamics of Civil Law in Indonesia (Ponorogo: STAIN Ponorogo Press, 2011), p. 80.

⁶ SoeryonoSoekanto and Sri Mamuji, Normative Legal ResearchA Short Review of Raja GrafindoPersada, Jakarta, 2010, p. 14

⁷ Peter Mahmud Marzuki, Legal Research, Cet.12, Kencana, Jakarta, 2016. pp.137-177.

2. DISCUSSION

Application of the Provisions for the Age of Marriage according to Law Number 16 of 2019 concerning Marriage.

A. Background Affecting the Age of Marriage in Indonesia

In the provisions of article 28 B of the Constitution of the Republic of Indonesia Year 1945, it is stated that everyone has the right to form a family and continue offspring through legal marriage and the State guarantees the rights of children to survival, growth and development, and the right to protection from violence and discrimination. Article 7 paragraph (1) of Law Number 1 of 1974 concerning marriage states that marriage can only be permitted if the man reaches the age of 19 years and the woman has reached 16 years, this provision allows marriage at the age of children in women, because in article 1 paragraph (1) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child protection it is defined that the child is an 18-year-old, Including children who are still in the womb.

In the same consideration, it is also stated that setting a different minimum age of marriage between men and women not only causes discrimination in the context of the implementation of the right to form a family as guaranteed in article 28 B paragraph (1) of the 1945 Constitution, but also causes discrimination against the protection of children's rights as guaranteed in article 28 B (2) of the 1945 Constitution, In this case when the minimum age of marriage for women is lower than for men, Therefore, in its ruling, the Constitutional Court ordered the framer of the Law within a period of 3 years to make changes to Law Number 1 of 1974 concerning marriage to reach the age limit for marriage, improvement of norms reached by raising the minimum age of marriage for women to be equated with the minimum age of marriage for men, i.e. 19 (Nineteen) years old.

The data obtained by the author from the Case Information System at the Malang Regency Religious Court in the period 2018 to 2023 is attached as follows:

Tabel 1 : Data source: Malang Regency Religious Court.

No	Year	Number of applications for Marriage dispensation
1	2018	398
2	2019	917
3	2020	1.783
4	2021	1.762
5	2022	1.434
6	2023 (januari-agustus)	618

	Sum	6.912
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In terms of its implementation, Law Number 16 of 2019 concerning marriage in Malang Regency is very minimal due to the lack of socialization from the local government and the central government to the people of Malang Regency, where the number of underage marriages is getting higher from year to year as data obtained by the author from the Malang Regency Religious Court.

Regarding the implementation of the marriage age provision, Law Number 16 of 2019, according to employees of the Office of Religious Affairs (KUA), has been effective by seeing whether the identity of the bride and groom is correct and giving directions to religious leaders to provide socialization regarding the age limit for marriage and maturation of marriage age to the community to avoid underage marriage and avoid unwanted things.

Based on the results of research and the results of field interviews regarding the implementation of the provisions for the age limit for marriage in Malang Regency, as explained from the results of the interview above, the laws and regulations, especially those discussing the provisions for the age limit for marriage, have been socialized to the community in Malang Regency where the Religious Court and KUA collaborated with all Environmental Heads and Community Leaders to notify And the author argues and concludes that the change in the age limit for marriage in Law Number 16 of 2019 concerning marriage does not have a considerable impact on the request for marriage dispensation that occurs in Malang Regency.

B. Judge's Consideration in Determining Marriage Dispensation in Malang Regency

The application for marriage dispensation filed in the requested Religious Court is the desire of the applicant who hopes for legal certainty over the marriage to be carried out. Of course, you must see written evidence or witness evidence or statements from the applicant. According to the statement delivered by Mr. Fahrurrazi S.Ag as a judge at the Malang Regency Religious Court, it can be concluded that the judge's considerations in granting the application for marriage dispensation include:

- 1) Have fulfilled administrative requirements in accordance with the applicable provisions in the District Religious Court in accordance with Supreme Court regulation No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.
- 2) The bride-to-be is ready to get married both mentally and physically.
- 3) In terms of posture, it has shown maturity, has grown up in terms of material or adequate income.
- 4) Because of the insistence of the parents.
- 5) Because the applicant's child was pregnant before the marriage, it must be urgent to hold a marriage.

The judge's consideration as one of the bases for determination whose dictum is declarative whether granting or rejecting a request is also based on the objectives of the law, namely justice, legal certainty, and expediency. Justice that

is desired by society is justice that is in accordance with what is felt and that applies in the country where the community is located.⁸

The provisions regarding the age limit for a person to be able to hold a marriage as stipulated in article 7 paragraph (1) of Law Number 16 of 2019 concerning marriage are intended so that the prospective bride has matured his body soul so that the purpose of marriage can be realized properly and not end in divorce, and obtain healthy offspring.

The author concludes that the judge's consideration in determining the marriage dispensation because the woman is already pregnant was guided by article 53 of the Compilation of Islamic Law which explains that a person who becomes pregnant out of wedlock can be married to the man who impregnated her and without waiting for the birth of her child. The judge also did not know whether the man who was going to marry the woman was also the man who impregnated her, the judge only decided based on the testimony of the applicant, the petitioner's children and also witnesses.

The judge is also based on the evidence contained in the evidence, Consideration is the presentation of evidence that is considered valid according to law to the judge who examines a case in order to provide certainty about the truth of the events presented. The purpose of scientific proof is solely to draw a conclusion, while the purpose of juridical proof is to make a decision that is definitive, that is, a decision that is certain, and does not doubt and has a legal decision.⁹

Factors that make the people of Malang Regency marry under the age of marriage

The high rate of early marriage as described above, shows that the empowerment of law *enforcement* in marriage law is still low, youth or very beautiful childhood should be filled with positive things, especially education. Youth is a time to build emotional, intelligent and physical, it is a condition for living a better life for their future. The phenomenon of child marriage that is currently occurring in Indonesian society seems to require all parties to pay attention to the future of children as a generation that will continue the development of the nation and state. Should it be deprived of the independence of the child only because of socio-cultural and economic factors in the family.

According to Law 16 of 2019 Regarding Marriage, marriage and its purpose are "the inner birth bond between a man and a woman as a husband and wife with the aim of forming a happy and eternal family based on the almighty divinity.

Some of the factors that encourage people in Malang Regency to marry under the age of marriage according to Law Number 16 of 2019 on the amendment of Law Number 1 of 1974 concerning marriage include:

a. Internal Factors

Is a factor that originates from within a person or the individual himself. This factor is usually in the form of attitudes as well as inherent traits in a person.

⁸ Sonny Dewi Judiasih, Susilowati Suparto, Anita Afriana, Deviana Yuanitasari. "Court Dispensation: Study of Court Determinations on Applications for Minor Marriages". Adhaper Journal of Civil Procedure Law Vol. 3 No. 2 July-December 2017. Pg. 200

⁹ Ibid p. 199

1) Education Factors

Education is one of the important factors as a cause of underage marriage. It is evident that the higher a person's education, the more mature the way of thinking of a person who decides to hold a marriage. If the education of children and parents is "low", then automatically they will not understand the principles in Law No. 1 of 1974 concerning Marriage regarding the importance of the "maturity" factor for a person to be able to carry out marriage.

2) Psychological factors

The development of human life is always influenced by the learning process which means improving behavior through exercises, experiences and interactions with the environment.¹⁰ During development, the individual feels a sense of his or her own identity and is ready to enter a meaningful role in society. In order to form this identity, humans, in this case children who are growing teenagers, identify with the people around themselves and adapt to the social environment. There is a difficult transition, from childhood to adulthood, during the identity formation stage a teenager feels a mess of identity. As a result, adolescents feel indecisive and feel that they have to make important decisions but are not yet able to do so. Coupled with the coercion from the community to make these decisions so that there is a fear of rejection in society.¹¹

3) Parental Factors

Parents are worried that the child will cause family disgrace or fear that the child will commit adultery while dating, so they immediately marry their child to his girlfriend. This intention is indeed good, to protect the child from sin.

b. Factor External

External factors are factors that originate from outside an individual. This factor includes the surrounding environment including the closest people.

1) Economic Factors

Most people in Malang Regency who live in rural areas intend to marry their underage children because their parents are no longer able to meet the needs of their children. This situation is generally also felt by children who experience it. Therefore, they engage in underage marriage only because of compulsion and do not want to see both parents suffer in meeting the needs of their families who are always experiencing shortages every day.

2) Environmental Factors

Humans will naturally experience changes both in terms of physical and mental. From the moment a person is born, a relationship is established between the human being and the people around him. He then got in touch with his parents and other family members. After he began to learn to walk, he also got in touch with his neighbors. Then he was able to play outside the fence

¹⁰ Soerjono Soekanto, *Some Notes on Legal Psychology*, Cet.2, Rajawaliipers, Jakarta, 2017, p.16.

¹¹ A. Supratiknya, ed., *Psychodynamic Theories*, cet. 11, Kanisius, Yogyakarta, 1993, p. 89..

of his house, his relationship expanded, and until he was accepted into the neighborhood where members of his community were.¹²

3) Religious Factors

I call this religious understanding, because it is not a doctrine. There is a part of our society that understands that if a child is in a relationship with the opposite sex, there has been a violation of religion. And as parents, it is mandatory to protect and prevent it by immediately marrying off the children.

4) Socio-Cultural Factors

Cultural factors are closely related to the social life of a person in a particular community group. In Indonesia, various tribes are known, especially in Malang Regency with all forms of customs, traditions and various cultures. Traditions and customs that have been engrained and rooted in a community life in Malang Regency play an important role for someone who wants to do an action in order to get a good or bad assessment from the environment or surrounding community.

5) Social Factors

The majority of men and women who marry under the age of 20 will regret their marriage. It's a pity that parents themselves are often neighbors and the media, the factor of minimal knowledge plus excessive curiosity, and also the factor of changing times. A calm family atmosphere and full of outpouring of love from adults around him, will make teenagers able to develop reasonably and achieve happiness.¹³

6) Other Factors

Another factor in question is that in addition to the above factors, there are also other supporting factors as a cause of underage marriage. Examples such as pregnancy before marriage, marriage under the hand, arranged marriage or forced to marry. To avoid this, the role of the family is very important.

Efforts and Constraints of Religious Courts in Overcoming the Problem of Marriage Age Limit Provisions in Malang Regency

Since the enactment of Law No. 16 of 2019 on October 15, 2019, the number of underage marriages in Malang Regency has still increased. This is evidenced by data showing that the number of marriage dispensations from 2019 until now is still increasing.

The Religious Court as part or extension of the Supreme Court in charge of receiving, examining, and adjudicating certain cases, in handling the issue of underage marriage still refers to the processes and procedures of the applicable legislation. Seeing the phenomenon that occurs in society from year to year, more and more teenagers want to marry young and apply for marriage dispensation in the Religious Court. Therefore, the issue of marriage dispensation needs special attention to avoid unwanted things and in the framework of law enforcement.

¹² E. Mustafa A.F., *Islam Fosters Family and Marriage Law in Indonesia*, Cet. 1, Yogyakarta, 1987, p.9.

¹³ Soemiyati, *Islamic Marriage Law and Marriage Law*, (Yogyakarta, Liberty, 2007), p. 5-6

Preventing a planned marriage from taking place is also not an easy matter. Perpetrators of child marriage often apply for dispensation to the Religious Court to legalize their marriage. Although the Marriage Law has set a 19-year-old age limit for women and men to marry, there is still a loophole to legalize child marriage through a dispensation that can be submitted to the Religious Court. This rule is contained in Article 7 of the Marriage Law which states that parents can request dispensation if there is an urgent reason accompanied by sufficient supporting evidence.

The Malang Regency Religious Court itself made efforts to reduce the number of marriage dispensations by collaborating with the Faculty of Psychology, University of Muhammadiyah Malang. Parties who apply for marriage dispensation will be directed to the counseling corner at the Malang Regency Religious Court first to conduct counseling with a psychologist. The child of the applicant for marriage dispensation will be assessed whether the child is mentally ready or not to face marriage with the aim that if he still wants to do early marriage then the child already understands the attitudes or steps that must be taken in the world of marriage.

Not only that, the Malang Regency Religious Court routinely collaborates with the Malang Regency government to conduct legal counseling from one sub-district to another. In the legal counseling, the Malang Regency Religious Court conveyed related to Law number 16 of 2019 concerning changes in the age of marriage, which is at least 19 years. The Malang District Religious Court also conveyed about the impact of early marriage both in terms of physical, psychological and material. Moreover, the Malang Regency Religious Court also continuously works with the Health Office to reduce stunting rates in Malang Regency. Not all applications for marriage dispensation are granted by the Religious Court, there are many factors that are taken into consideration to grant a request for marriage dispensation. This shows that the Malang Regency Religious Court is also trying to reduce the number of marriage dispensations in Malang Regency.

In implementing Article 7 of the Marriage Law as an effort to minimize the occurrence of underage marriages in Malang Regency generally, what has been conveyed by the chairman of the Malang Regency Religious Court apparently still has several obstacles that can hinder the achievement of the objectives of the amendment of Article 7 of the Marriage Law, including the following:

- a. There is still a lack of attention from the government;
- b. There is still a lack of socialization from the government regarding early marriage in the smallest scope in society;
- c. Lack of people or costs in conducting socialization in the community;
- d. Parents still do not understand the new rules regarding the minimum age of marriage;

3. Conclusion

- A. Based on the presentation and discussion related to the implementation of the age limit for marriage in Malang Regency after the enactment of Law Number 16 of 2019, it can be concluded that Law Number 19 of 2019 concerning Marriage can be said to be ineffective when compared to before the law. However, if viewed from the enactment of the law until now, the regulation is also not

effective. This is evidenced by the increase in marriage problems every year such as differences in waiting periods.

- B. The factors that cause underage marriage in Malang Regency are the lack of public awareness to obey the law and supporting factors such as economic, educational, cultural problems and lack of knowledge about the current marriage law. Child marriage is a social and economic issue, complicated by traditions and cultures within communities. Social stigma regarding marriage after puberty, which is considered a disgrace in certain circles, also increases the incidence of child marriage.
- C. The efforts of the Religious Court in overcoming underage marriage include conducting socialization or direct legal counseling to the community, especially regarding changes in the age limit for marriage which refers to Law Number 16 of 2019 that children who can carry out marriage are at least 19 years old. The Malang District Religious Court also cooperates with the District and District Governments in making efforts to reduce the increase in applications for marriage dispensation. In making efforts to minimize the number of applications for marriage dispensation, there are also obstacles such as the lack of attention from the local government, especially in small areas in the community, lack of costs in conducting socialization, and also lack of understanding of parents regarding the new rules regarding the age limit for marriage.

4. Advice

- A. The government in this case should prioritize public understanding of the changes to Law No. 16 of 2019 in lieu of Law No. 1 of 1974 through legal counseling so that the public is aware of the negative consequences arising from the implementation of underage marriage.
- B. The judge in the trial in granting the determination of marriage dispensation to be more selective, reconsidered the factors and consequences for prospective husbands and wives if given marriage dispensation, so that the basis for consideration of granting marriage dispensation except in very emergency circumstances can be narrowed again.
- C. The Religious Council of Malang Regency in this case is more selective in granting requests for marriage dispensation and more seeks legal counseling on marriage, especially to rural communities more deeply, in order to reduce underage marriage in Malang Regency.

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