

## **Problematics of the Age Limit for Marriage in Indonesia**

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**Abstract:** This research is to examine after the enactment of Law Number 16 of 2019 (UUP), which increased the age of marriage to 19 years, had an impact on increasing DK applications. Spirit of law to prevent marriage at the age of the child often get in trouble with the occurrence pregnancy at the age of the child which requires soon marriage. The problem in this research is how is the marriage law in Indonesia and how problematics of the age limit for marriage in Indonesia. The research method used is normative juridical research method, with descriptive research type. The research approach uses a statute approach, which examines matters relating to legal principles, views and doctrine, as well as statute regulations. The data used are primary data obtained by means of interviews and secondary data obtained through literature studies such as literature books and scientific papers related to research problems which are analyzed qualitatively. The results of this study are that the age limit for marriage in Indonesia can be held and legalized and recorded by the state if it fulfills the provisions of UUP in Article 7 paragraph (1) UUP contains provisions for the age limit for someone who will enter into a marriage, namely "Marriage is only permitted if the man and woman have reached the age of 19 years old, and DK based on UUP can be submitted to the court with reason very urgent there is no other choice and very urgent soon marriage. Request submission DK must be accompanied supporting evidence sufficient like letter of statement reproduction health future bride and groom from health worker; and judge's interpretation on the condition of pregnancy is an emergency for which there is no other choice so have yo do it soon marriage with consideration best interests of children an see the benefits.

**Keywords:** Problematics; Age Limit for Marriage.

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### **1. Introduction**

Marriage is a sunatullah that applies in general and is an important thing for human beings created by Allah SWT whose goal is to continue offspring, ask for the gift of children, form a family, and lead a life together. Marriage based on religious norms will form a household in family ties. The family is the smallest unit of a nation, the family that is aspired to in marriage ties is a family that is sakinah, mawaddah, and warohmah.

The definition of marriage as explained in Article 1 of Law Number 1 of 1974 is "a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in One God Almighty".

Marriage according to Article 2 of the Compilation of Islamic Law (KHI), "Marriage according to Islamic law is a marriage, namely a very strong contract or mittsaqanghalidzan to obey Allah SWT commands and carry it out is worship". In that article, marriage in Islam comes from the word nakaha which means marriage. Marriage according to the original meaning can also mean aqad with which it becomes lawful sexual intercourse between a man and a woman. [1]

As an important matter for the creation of Allah SWT, marriage is an event that takes place after going through both rational and emotional considerations. Apart from being thought of and accepted by common sense, all marriage preparations consist of the mental preparation of the prospective partner himself, namely knowing and understanding the partner and understanding the meaning of marriage. In the marriage preparation stage, fostering romantic and harmonious social relations is important and needs to be lived.

The purpose of marriage in Article 1 of Law Number 1 of 1974, "is to form a happy and eternal family (household) based on Belief in One Almighty God". The purpose of marriage to form a happy family is not measured by the amount of wealth, the number of children who will be the next heir, but includes two sides, namely the outer side must appear harmony in the household and the inner side must respect and respect each other both between partners and family members. While an eternal family is a complete family that must be

maintained until death picks up each partner. Family unity can also be seen in the harmony of family life.

Responsible attitude is closely related to the level of maturity in the development of human life. In the perspective of legal science, the level of maturity is interpreted as a parameter that can state that a person is legally competent or capable of performing legal actions. The applicable Marriage Law in Indonesia shows parameters maturity is when a person is deemed capable of marrying on the grounds that marriage is a place for someone who has the ability to assume responsibility. [2]

The marriage itself can take place and be legalized and registered by the state if it fulfills the provisions of Law Number 16 of 2019 (UUP) concerning Amendments to Law Number 1 of 1974 concerning Marriage. In Article 7 paragraph (1) the UUP contains provisions for the age limit for someone who will get married, namely "Marriage is only permitted if a man and a woman have reached the age of 19 years". The age limit for marriage in the amendment to the UUP stipulates that originally the marriage age for men was 19 years and for women 16 years, it was revised to be 19 years for men and women.

The aim of increasing the age limit for marriage is intended to prevent marriage at a young age. This is explained in the second paragraph of the general explanation of the UUP, namely increasing the age of marriage for women with the aim of anticipating child marriage. In addition to anticipating marriage at a young age, increasing the age of marriage for women also aims to reduce the divorce rate, get healthy and quality offspring, reduce the risk of maternal and child mortality, and to fulfill children's rights in the form of the right to good growth and development, to receive assistance from parents, as well as access to education as high as possible.

Marriages in which one or both potential partners have not met the age limit specified by the UUP, are regulated in Article 7 paragraph (2) which states "In the event of a deviation from the age requirement as referred to in paragraph (1) the parents of the man and/or parents of the woman can ask the court for dispensation with very urgent reasons accompanied by sufficient supporting evidence.

Along with the development of the times, of course society will also indirectly develop as well so that the law is certainly required to adjust to changes by making updates. In accordance with the adage *ubisocietasibiis* "where there is a community there is law" becomes an illustration that indeed every society will have its own laws. Then each of these communities will be orderly with the presence of norms.

In line with the development of people's lives which are increasingly complex, indirectly the law is certainly required to adjust to changes by carrying out reforms. In accordance with the adage *ubisocietasibiis* which means where there is a community there is law so that in society there will be norms that will regulate the behavior of the community. The development of community life resulted in the emergence of a problem that occurred in society, the loss of moral and moral values in life led to juvenile delinquency who committed adultery and even to the point where pregnancy occurred at the age of children outside of marriage, this has become a phenomenon in society. As a result, parents have to get married at a young age without considering the child's future to cover up disgrace. On the other hand, the increase in the age limit for marriage in the UUP has led to an increase in the number of applications for marriage dispensation (DK), so that parents must first ask permission from the court to enter into marriage for prospective grooms and/or prospective brides who are not yet of age 19 years old. Based on the description above, the author intends to examine the impact of increasing the age limit for marriage in an article entitled "**Problematics of the Age Limit for Marriage in Indonesia**".

## **2. Research Methods**

The research method used is a normative juridical research method, with a descriptive research type. This study uses a statute approach, namely examining matters relating to legal principles, views, and legal doctrines, and statutory regulations related to the "problematics of the age limit for marriage in Indonesia". The data used are primary and secondary data which are analyzed qualitatively.

## **3. Results and Discussion**

### **1) Marriage Law in Indonesia**

Marriage can be carried out by the groom and the bride who are adults to be able to account for all their actions. Prospective grooms and brides-to-be must have more mature preparation than immature brides. Therefore, marriages carried out by immature couples will find it difficult to think and act independently to be responsible. Apart from being thought of and accepted by human common sense, all marriage preparations are mental preparations of the groom and the bride herself. The existence of this mental preparation starts from the simplest thing, namely by knowing and understanding in depth about the nature of each prospective bride and deeply understanding the meaning of a marriage. At the stage of marriage preparation, you must first foster romantic and harmonious social relations because this is an important thing and needs to be lived.

Family is the smallest part consisting of father, mother and children, while what is meant by an Islamic family is a family formed on the basis of a valid marriage according to Islamic law. Every human being,

especially a Muslim who enters married life, in addition to following the Sunnah of the Prophet, is also inseparable from his aim to get offspring and happiness full of love and affection according to what is prescribed in Islamic marriage, namely forming a family that is *sakinah*, *mawaddah* and *warohmah*. [3]

Basically, the determination of the age limit for marriage aims for the benefit and good mainly for the bride and groom, that in order to ensure the achievement of this goal, the principle of limiting the age of marriage is stipulated as stated in the General Elucidation of Law No. 1 of 1974 concerning Marriage No. 4 (d) that the principle the main issue in the policy of limiting the age of marriage is about the mental and physical maturity of the bride and groom, which is intended so that each marriage can be a good marriage and produce healthy offspring, and it's not just a matter of age. [4]

The permissible age requirement for marriage according to Article 7 paragraph (1) Law Number 1 of 1974 concerning Marriage is that the age of marriage for men is 19 years and for women 16 years. Article 7 paragraph (1) of Law Number 1 of 1974 has been amended by Law Number 16 of 2019 (UUP) concerning Marriage which raises the age limit for prospective brides to 19 years old. The increase in the marriage age limit to 19 years for men and women is intended so that child marriage does not occur which is adjusted to Law Number 23 of 2002 concerning Child Protection which states that the age of a child is someone who has not reached the age of 18 years, including children who still in the womb. Raising the marriage age limit for prospective brides aims to reduce the number of divorces caused by the lack of age maturity and mental readiness, prepare for reproduction in order to obtain healthy and quality offspring and reduce the risk of death for mothers and children. In addition, increasing the age limit also aims to fulfill children's rights in the form of the right to grow and develop properly, to receive assistance from parents, as well as the opportunity to get a higher education.

The existence of a marriage age limit in the UUP is a way for the state to protect its citizens who have not been able to express opinions properly and correctly and have not realized the consequences of their actions. Politically, this policy ensures that the pace of human resource development goes as expected both in quality and quantity in order to meet future needs. [5]

What is meant by being old enough to get married is the desire to form a household and be ready to become a husband to become the head of the family. This cannot run perfectly, if you have not been able to manage assets. A person can be held responsible for his actions and has the freedom to determine his life when he is old enough or mature. *Baligh* means that when children reach a certain age it becomes clear to them all the problems they will face. The child's mind can consider what is good and what is bad for the future. First, the age of the girl is 9 years or more and has experienced menstruation (*menstruation*). Second, the age of the boy or girl is 9 years or more and has had a wet dream. And third, the age of a man or woman who has reached 15 years of age without menstruation and wet dreams.

The age limit for marriage is *ijtihadiah* which makes the point of the role of the *ulama* in renewing *fiqh* thinking so that it is in accordance with the times and place. According to Ibn Hazm's view, the marriage of a daughter has a guardian, namely the father and may, but small boys may not. The basis is *zhahir* *hadith* when *Aisyah* and the Prophet Muhammad were married. As a result, in the realm of *fiqh* there are no strict rules governing the age limit for marriage. So that in the perspective of *fiqh*, age cannot be measured, the most important thing is to be able both physically and spiritually. [6]

According to the Maliki school of thought, the difference between the schools of thought of the scholars in determining the age limit for marriage is that puberty is marked by the absolute emission of semen in a state of delusion or sleeping, and is marked by the growth of some hair on the limbs, and the age of puberty is 17 years. Imam Syafi'i that the *baligh* limit is 15 years for men and 9 years for women and Imam Hambali argues that for men aged 15 years or marked by wet dreams and for women it is marked by menstruation, while Imam Hanafi stipulates the age limit for 18 years old boy and 17 years old girl.

In the theological context, it explains that marriage is a *sunnah*, as the Prophet Adam a.s. given a place by Allah SWT in heaven and created by Eve to accompany, become a life partner and eliminate feelings of loneliness, and perfect her nature to produce offspring. As an adult human action, marriage is an event that takes place after going through rational and emotional or mental considerations. With rational and emotional considerations, adult human marriages will have mature preparations for a more stable, happy and lasting relationship when the partners love and respect each other. Love must be manifested in the behavior of everyday life. An example of the simplest form of love is being grateful for everything, saying thank you for the attention and affection that has been given and expressing an apology to your partner for the mistakes that have been made.

The history of philosophy is not always straight, sometimes it goes back and forth with the goal of finding the real truth, while the history of science is always moving forward. In the history of human science, philosophy and science have always gone hand in hand and are interrelated. Philosophy and science have a point of contact in the search for truth. Science is in charge of describing and philosophy is in charge of interpreting the

phenomena of the universe, truth is in all thought, while the truth in science is in experience. [7]

Knowledge about marriage if it is not given to the bride and groom before the marriage takes place, it will be difficult for the marriage to go well. The task of the science of marriage is to answer the problems surrounding marriage so that humans get to the truth about it. The function of legal philosophy is to find out the effectiveness of the enactment of positive law in Indonesia through rules, doctrines and institutions so that it benefits society. In a critical evaluation of legal philosophy, an ideal conceptual formula was found regarding the legal age limit for marriage according to the UUP, namely 19 years for women and men.

Philosophy of marriage law can be seen from the aspects of ontology, epistemology, and axiology. Legal ontology is research on the nature of law and the relationship between law and morals. The object of ontology is something that exists and is not bound to one particular embodiment, ontology discusses what exists universally, namely trying to find the core that investigates the real world and how things really are. The ontology aspect of marriage aims to understand the nature of the relationship between humans and the values of a marriage that has been implemented between husband and wife. The basic nature of the ontology of marriage underlies the meaning of life in marriage which originates from the noble values of the nation, namely the first precepts of Pancasila which are contained in the preamble to the 1945 constitution. in marriage, namely needs relating to the individual, social, and God Almighty. [8]

Legal epistemology is research into the question of how far knowledge of the nature of law is possible. Epistemological objects include how the process of obtaining knowledge, the aspects that are considered in order to obtain correct knowledge, the criteria and the truth itself. In other words, epistemology questions how something comes about, how do we know it, how do we differentiate it from others, so with regard to the situation and conditions of space and time regarding something. The epistemological aspect of marriage is a philosophical effort to understand the nature of truth and knowledge that can be achieved by the human mind in a marriage so that it can be properly maintained as a means for humans to carry out their household life in the world.

Legal axiology is the determination of the contents of values such as justice, decency, equality, and freedom. The object of axiology seeks to know the essence of good and bad from a moral and ethical point of view and benefits. Marriage axiology is intended to see good and bad from the point of view of morality, ethics, and benefits. Marriage from an axiological aspect is one of the basic values of life to talk about this aspect. This cannot be implemented from the dimensions of religion, ethics, and aesthetics that already exist in a marriage.

## **2) Problematics of the Age Limit for Marriage in Indonesia**

A legal marriage is a marriage that is carried out in front of a civil registration office official. Marriages performed according to the ordinances of a religion are not valid. This provision is different from Law Number 1 of 1974, as the iusconstitutum has formulated legal norms regarding valid marriages imperatively in Article 2 paragraph (1) and paragraph (2) which reads:

1. Marriage is legal if it is carried out according to the laws of each religion and belief;
2. Every marriage is registered according to the applicable laws and regulations.

The provisions of Article 2 paragraph (1) of Law Number 1 of 1974, that this Law depends on the validity of a marriage on the respective religious laws and beliefs, this means that the conditions for the marriage itself must also be based on the conditions conditions of marriage as regulated according to religious law and belief. [9]

Marriage in Indonesia is legally legal as long as it is carried out according to the provisions of the religion or belief adhered to and does not conflict with the applicable laws and regulations. One of the requirements for a marriage to take place and be registered by the state is that the age limit specified by law is sufficient. The permissible age requirement for marriage according to Article 7 paragraph (1) of Law Number 1 of 1974 which raises the age limit for prospective brides to 19 years. The increase in the age limit for marriage to 19 years old for men and women is intended to prevent child marriage from occurring.

One of the main factors for the increase in DK applications is because the prospective bride is pregnant outside of marriage and must immediately get married even though she has not reached the age limit set by the UUP. Raising the marriage age limit for prospective brides aims to reduce the number of divorces caused by the lack of age maturity and mental readiness, prepare for reproduction in order to obtain healthy and quality offspring and reduce the risk of death for mothers and children. In addition, increasing the age limit also aims to fulfill children's rights in the form of the right to grow and develop properly, to receive assistance from parents, as well as the opportunity to get a higher education.

Based on the provisions of Article 7 paragraph (2) UUP, if there is a deviation from the marriage age requirement in Article 7 paragraph (1), the marriage must obtain a dispensation from the court. Parents or guardians of prospective grooms and/or women who have not yet reached the age of marriage submit DK

applications to courts, the Religious Courts for those who are Muslim and the District Courts for those who have other religions. In other words, marriages where the prospective groom and/or woman have not met the specified age limit can only take place after the parents of the prospective groom and/or woman obtain DK permission from the court.

DK applications are submitted by parents of prospective grooms and/or brides who have not reached the age limit for marriage on the grounds that it is very urgent that the marriage be carried out immediately accompanied by sufficient supporting evidence. The very urgent reason for Article 7 paragraph (2) UUP is that there is no other choice and it is very forced to have a marriage. To strengthen the reason for the urgency, sufficient supporting evidence is needed, such as a statement proving that the age of the bride and groom is still below the statutory provisions and a statement from a health worker supporting the parents' statement that the marriage is very urgent to take place.

Article 7 paragraph (3) of the UUP stipulates that in granting DK permission, the court must listen to the opinions of both parties of the bride and groom who will carry out the marriage. This is so that the court can assess whether both parties are ready and fulfill the requirements set forth in Article 7 paragraph (2).

DK can be interpreted as granting permission to marry by the court to a prospective husband or wife who is not yet 19 years old to enter into a marriage. Dispensation in child marriages is the granting of concessions to perform marriages to prospective brides who have not reached the age limit in accordance with statutory provisions for certain reasons. These provisions provide conditions for dispensation, namely if there are reasons and sufficient evidence presented at trial by interested parties. According to Muji Hendra, the reason for urgency is a situation in which the relationship between the prospective bride and groom cannot be postponed any longer by reason of not having a minimum marriageable age, given the negative impact that is greater for both of them. [10]

Submission of DK applications after the enactment of the UUP experienced a significant increase. Especially one year after the law was enacted. This is because before the marriage age limit is increased. With the exception that child marriage is permitted by the UUP, judges sometimes experience a dilemma. On the one hand, judges as law enforcers must support the spirit of the law to prevent child marriage, but on the other hand judges also consider the negative impacts if the DK application submitted by the applicant is rejected.

The legitimacy to grant the DK request is to use Article 7 paragraph (2) of Law Number 1 of 1974, although it can be seen that it uses the *maslahah al-mursalah* method to immediately grant a marriage permit, because to stop damage and bring many benefits, efforts. In fact, without the *maslahah al-mursalah* process, a decision can be made immediately by looking at concrete facts, because there is already a law that clearly regulates it. [11]

The judge in giving a determination to grant the DK application must be based on a legal basis, because the judge's decision will become legal certainty and has binding power as a basis for determining the steps to be taken next by the Petitioners who filed the DK application. In order for the DK application to be granted by the judge, of course the reasons put forward must be in accordance with the facts and be rational. Given these reasons, the judge will consider whether the DK application will be granted or not.

The factor that became the basis for the judge in granting the DK request was that he was physically and mentally prepared to form a family and was based on evidence and witnesses as well as the arguments for the request. On the other hand, the factors that form the basis for judges to reject DK applications are usually premature requests and considered incapacitated but submitted prematurely. The judge must consider the negative impact caused by the unpreparedness of the prospective bride and groom, either physically or reproductive health or mentally who are not ready. Lack of mental readiness in marriage at a young age has the potential for divorce. Because at that age children are still irresponsible and not strong enough to build a household. This is the judge's consideration not to accept DK request.

However, in reality on the ground, very often the above appears together with the reason for the application for DK which is no less preoccupied with the judge's consideration, namely that the prospective bride and groom have been too intimate and have even had a relationship like husband and wife. This condition causes the parents of the prospective bride to be worried and want to get married to their son and daughter immediately and even more so if the prospective bride is already pregnant. The judge must consider the negative impacts if the DK application is rejected. For example, the family of the bride and groom will feel ashamed in society because they have a child who is pregnant and gave birth outside of marriage. In addition, it will be difficult for the child to be born later to know who the father is.

The two negative impacts of accepting or rejecting the DK application above require the judge to make *ijtihad* or earnest effort in making judgments. The judge must give fair consideration in granting the DK's request so that it does not generate opinion in the community that the DK is a solution for carrying out child marriages and the judge's decision does not seem to differ from the age limit set by the UUP.

Imam Ghazali argued that benefit is a picture of achieving benefits or avoiding harm. What Imam

Ghazali meant by benefit in the sense of syara' is maintaining religion, soul, mind, lineage and property. Thus what is meant by harm is something that damages one of the five things. Basically, every human being is not allowed to cause harm, either heavy or light, to himself or to other people. In principle, any harm must be eliminated, but in eliminating this harm, it should not cause other harm, either mild or more serious. However, if the harm cannot be eliminated except by causing another harm, then you must choose a harm that is relatively lighter than what will happen. [12]

### 3. Conclusion

The permissible age requirement for marriage according to Article 7 paragraph (1) Law Number 1 of 1974 concerning Marriage is that the age of marriage for men is 19 years and for women 16 years. Article 7 paragraph (1) of Law Number 1 of 1974 has been amended by Law Number 16 of 2019 (UUP) concerning Marriage which raises the age limit for prospective brides to 19 years old. Knowledge about marriage if it is not given to the bride and groom before the marriage takes place, it will be difficult for the marriage to go well. The task of the science of marriage is to answer the problems surrounding marriage so that humans get to the truth about it. The function of legal philosophy is to find out the effectiveness of the enactment of positive law in Indonesia through rules, doctrines and institutions so that it benefits society. In a critical evaluation of legal philosophy, an ideal conceptual formula was found regarding the legal age limit for marriage according to the UUP, namely 19 years for women and men. DK is a leeway for prospective brides who have not reached the age limit for urgent reasons. What is meant by a very urgent reason for the marriage to be carried out immediately is a situation where there is no other choice and it is very urgent that the marriage must be carried out. The condition of being pregnant in the DK application can be categorized as an emergency so there is no other choice but to have a marriage. The judge's interpretation of the pregnant condition as the reason for granting DK's request is to categorize the pregnant condition as an emergency condition and must immediately carry out the marriage with consideration of the best interests of the child and benefit.

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