

REGULATION OF MARRIAGE DISPENSATION AGAINST MARRIAGE OF CHILDREN UNDER THE AGE OF POST DECISION OF THE CONSTITUTIONAL COURT NUMBER 22/ PUU-XV / 2017

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Abstrak : Perkawinan hanya diperbolehkan jika pria dan wanita telah mencapai usia 19 tahun. Jika terdapat penyimpangan dari persyaratan usia pernikahan, maka pernikahan baru dapat dilakukan setelah mendapat dispensasi dari Pengadilan Agama. Dengan adanya peluang perkawinan di bawah umur diatur dalam Undang-Undang Nomor 16 Tahun 2019, perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Hal ini bertentangan dengan UU Perlindungan Anak, yakni Pasal 26 ayat (1) huruf c UU Nomor 35 Tahun 2014, amandemen UU Nomor 23 Tahun 2002, yaitu bahwa orang tua berkewajiban dan bertanggung jawab untuk mencegah perkawinan pada usia anak. Namun pada kenyataannya di lapangan, orang tua mendukung perkawinan sejak usia dini. Permasalahan yang penulis angkat dalam tesis ini adalah: Bagaimana pengaturan hukum dispensasi perkawinan di Indonesia pasca putusan Mahkamah Konstitusi Nomor 22 / PUU-XV / 2017, Apa saja faktor penyebab penerapan dispensasi perkawinan kepada perkawinan anak dibawah umur dan bagaimana sinkronisasi pengaturan umur perkawinan anak antara UU Perkawinan dan UU Perlindungan Anak. Penulis melakukan penelitian dengan menggunakan metode penelitian yuridis normatif, sedangkan sifat penelitiannya adalah deskriptif. Data yang digunakan adalah data sekunder dengan bahan hukum primer, sekunder, dan hukum sebagai alat pengumpulan data dengan menggunakan studi pustaka. Berdasarkan hasil penelitian dapat disimpulkan bahwa: pengaturan usia perkawinan setelah putusan Mahkamah Konstitusi Nomor 22 / PUU-XV / 2017 adalah lahirnya Undang-Undang Nomor 16 Tahun 2019 yang menyebutkan bahwa batas usia minimal menikah , baik pria maupun wanita, adalah 19 tahun. Faktor-faktor penyebab permohonan dispensasi antara lain adalah kehamilan seorang perempuan, pendidikan, pergaulan bebas, faktor agama dan kebiasaan sosial budaya. Sinkronisasi yang digunakan adalah sinkronisasi horizontal, bahwa UU Perkawinan dan UU Perlindungan Anak jelas bertentangan dengan adanya pengecualian untuk mengajukan dispensasi perkawinan.

Kata kunci: Dispensasi pernikahan; pernikahan anak di bawah umur.

Abstract : Marriage is only permitted if the man and woman have reached the age of 19. If there is a deviation from the age requirement of the marriage, then the new marriage can take place after receiving a dispensation from the Religious Court. With the opportunity for underage marriage provided by Law Number 16 of 2019, amendments to Law Number 1 of 1974 Concerning Marriage. This is

contrary to the Child Protection Law, namely Article 26 Paragraph (1) letter c of Law Number 35 of 2014, amendments to Law Number 23 of 2002, namely that parents are obliged and responsible to prevent marriage at the age of children. However, in reality, in the field, the parents support marriage at an early age. The problems that the author raises in this thesis are: How are the legal arrangements for dispensation of marriage in Indonesia after the decision of the Constitutional Court Number 22 / PUU-XV / 2017, What are the factors causing the application for dispensation of marriage to child marriage under age and how is the synchronization of age regulation child marriage between the Marriage Law and the Child Protection Law. The author conducted research using Normative juridical research methods, while the nature of the research was descriptive. The data used are secondary data with primary, secondary and thesier legal materials as data collection tools using literature study. Based on the results of the research, it can be concluded that: setting the age of marriage after the Constitutional Court decision Number 22 / PUU-XV / 2017 is the birth of Law Number 16 of 2019 which states that the minimum age limit for marriage, both male and female, is 19 years. The factors causing the request for dispensation include the pregnancy of a woman, education, promiscuity, religious factors and social and cultural habits. The synchronization used is horizontal synchronization, that the Marriage Law and the Child Protection Law are clearly contrary to the existence of an exception to apply for dispensation of marriage.

Keywords: Dispensation of marriage; marriage of minors.

INTRODUCTION

Forming an eternal and happy household is a wish and dream for everyone, to form a prosperous and happy family, it is necessary to have a marriage between a man and a woman. Marriage will legalize the relationship between a man and a woman.¹ A prosperous family is a family that is formed based on a legal marriage, is able to meet the needs of a proper spiritual and material life, is devoted to God Almighty, has a harmonious relationship with the ideal number of children to realize physical and mental well-being.² Marriage is a legal bond

to foster a prosperous household and family in which both husband and wife carry out their respective mandates and responsibilities.³

In a marriage there is a physical and mental bond between a man and a woman as husband and wife, hereby it is clear that those who are bound in the marriage as husband and wife are a woman and a man.⁴ Therefore, same sex marriages are not allowed in Indonesia. The marriage law adheres to the principle that the prospective husband and wife have matured in body and soul to be able to carry out the marriage so

¹ Ahmad Azhari Basyir, *Hukum Perkawinan Islam* (Yogyakarta: UII Press, 1999), 1.

² Rosnidar Sembiring, *Hukum Keluarga Harta-Harta Benda Dalam Perkawinan* (Jakarta: Raja Grafindo Persada, 2011), 83.

³Ibid, hlm. 115.

⁴ Bimo Walingo, *Bimbingan dan Konseling Perkawinan*, Fakultas Psikologi Universitas Gajah Mada, Yogyakarta, 1984 ,10.

that they can realize the goal of marriage well without ending in divorce and get good and healthy offspring. So that it must be prevented from marriages between prospective husband and wife who are still minors.⁵

Marriage must be based on the consent of the two prospective brides, a bride and groom who must be married before reaching the age of 21 must obtain permission from both parents. According to Article 7 paragraph 1 of Law Number 16 of 2019, amendments to Law Number 1 of 1974 concerning marriage, it is only permitted if the man and woman have reached the age of 19 (nineteen) years. Then the age for marriage for men and women must be the same, namely 19 years. If there is a deviation from the age requirement of the marriage, then the new marriage can take place after receiving a dispensation from the Religious Court. With the opportunity for underage marriage provided by Law Number 16 of 2019, amendments to Law Number 1 of 1974 Concerning Marriage, there are still many applicants for dispensation of marriage who are less than 18 years old. This is contrary to the Child Protection Law, namely Article 26 Paragraph (1) letter c of Law Number 35 of 2014, amendments to Law Number 23 of 2002, namely that parents are obliged and

responsible to prevent marriage at the age of children. However, in reality, in the field, the parents support marriage at an early age. What is said by children in the Child Protection Law is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb. That marriage at the age of children has a negative impact on children's growth and development and will result in the fulfillment of children's basic rights such as the right to protection from violence, children's civil rights, health rights, education rights, and children's social rights.

The theory used in this research is the theory of legal certainty, which is a matter of certainty, provisions or provisions. In essence, law must be certain and fair, certain as a code of conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty can law carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically.⁶

According to Kelsen, law is a system of norms, norms are statements that emphasize the "should" or *das sollen* aspects, by including several rules about what to do. Norms are deliberative products and human action. Laws containing general rules serve as guidelines for individuals behaving in society, both in relationships with fellow

⁵ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, cet. 3, (Jakarta: Kencana Prenanda Medya Group, 2009), 26.

⁶ Dominikus Rato, *Filsafat Hukum Mencari: Memahami dan Memahami Hukum* (Yogyakarta: Laksbang Pressindo, 2010), 59

individuals and in relation to society. These rules become a limitation for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules creates legal certainty.⁷

The theory that is used next is the benefit theory which is one of the objectives of law which is widely discussed by legal philosophers who are known as adherents of utilitarianism. Utilitarianism is a school that puts benefit as the main goal of law.⁸ Benefit that is meant by this flow is defined as happiness (happiness). So that the good and bad of the law depends on whether the law gives happiness to humans or not. According to the pioneer of this school, happiness should be felt by every individual, but if that happiness is not possible, efforts should be made to ensure that happiness is enjoyed by as many individuals in the community (nation) as possible (*the greatest happiness for the greatest number of the people*).⁹

Based on the search conducted regarding research related to the regulation of dispensation of marriage on child marriage of minors after the Decision of the Constitutional Court Number 22 / PUU-XV / 2017, the problems and fields of study are different, namely: (1.) Master of Law Science, Andalas University, with the title

"Determination of Marriage Dispensation at the Padang Panjang Religious Court" the conclusions of the study are: (a.) There are 4 (four) factors for the request for dispensation of marriage at the Padang Panjang Religious Court that is, the parents' concern about the association of their child, the applicant's child who is already having sex with his / her boyfriend, the applicant's child or the applicant's child girlfriend who is already pregnant and the child's desire to get married immediately. Of these 4 factors, parental concerns are the dominant factor in applications for dispensation of marriage at the Padang Panjang Religious Court. (B.) Procedures for applications for dispensation of marriage are submitted by parents in accordance with the provisions of Article 7 paragraph (2) of Law Number 1 Year 1974 to Religious Courts for Muslims or State Courts located in the area where the applicant resides. The mechanism for filing a request for a marriage dispensation case begins with submitting a case application to the Padang Panjang Religious Court by paying a down payment of the court fee. Prior to the trial process, the application for marriage dispensation must first go through the trial preparation process starting from the appointment of the Panel of Judges, the appointment of a substitute clerk, the

⁷Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2008), 158

⁸ Darji Darmadiharjo dan shidarta, *pokok-pokok filsafat hukumapa dan bagaimana filsafat hukum di indonesia*, (Jakarta: Gramedia, 2006), 112

⁹ Ibid.

determination of the trial day and the calling of the parties who apply for the dispensation of marriage. The trial process begins with the process of examining the identity of the applicant up to reading the decision or decision. (c.) The judge's consideration in deciding the case for the request for dispensation of marriage which is the reference is Article 7 paragraph (2) of Law Number 1 of 1974 based on the statements of the applicant, the applicant's children, the prospective wife / prospective husband of the applicant's children supported by evidence. and the legal basis for judges in granting dispensation to marriage is the argument of fiqh, namely rejecting evil (badness) is more prioritized than achieving benefit (goodness).

(2.) Thesis on behalf of Nurohman, State Islamic University of Sunan Ampel Surabaya, with the title "Juridical Analysis of the minimum age limit for marriage (Constitutional Court Decision Study Number 22 / PUU-XV / 2017)" the conclusions of the research are: (a.) In Decision of the Constitutional Court Judges Number 22 / PUU-XV / 2017, based on the consideration that the applicants have legal standing to submit the petition. According to the Panel of Judges, when the difference in the minimum age for marriage between men and women results in an impact on the fulfillment of basic or constitutional rights, then this difference is clearly discriminatory.

(b.) According to Juridical Analysis, based on Law Number 1 of 1974, Complications of Islamic Law (KHI), and Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the consideration of the Panel of Judges is irrelevant, because the applicant's marriage done before reaching the age of 16, based on the wishes of the parents and the economic condition of the family. The difference in the minimum age of marriage between men and women is not included in the discriminative category, because it contains biological benefits and legal substance.

Based on the background description of the problem that has been raised above, the authors formulate several problems that the research will carry out as follows: (1.) How is the legal arrangement for marriage dispensation in Indonesia after the decision of the Constitutional Court Number 22 / PUU-XV / 2017? (2.) What are the factors causing the application for dispensation of marriage to the marriage of minors? (3.) How are the arrangements for the marriage age of children between the Marriage Law and the Child Protection Law in sync?

Based on the formulation of the problems that arise above, the objectives of this research are: (1.) To find out how the legal arrangements for marriage dispensation in Indonesia after the decision of the Constitutional Court Number 22 / PUU-XV / 2017. (2.) To determine the

factors causing the application for dispensation of marriage to the marriage of minors. (3.) To analyze how the synchronization of the regulation of the age at marriage for children between the Marriage Law.

METHOD

The approach method to be used is a normative juridical approach that emphasizes legal material. Normative juridical research is research that refers to the legal norms contained in statutory regulations and court decisions / decisions.¹⁰ The nature of the research used in this research is descriptive research. Descriptive research is research that describes thoroughly, systematically and logically, the object of research in this case is the determination of marriage dispensation, as well as explaining the facts that occur in the field in terms of applicable laws and regulations. In this study, the data used are secondary data, namely data obtained from document studies, literature studies. The secondary data sources that the authors use are as follows: the main source is primary legal materials, namely primary legal materials, namely binding legal materials issued by the government in the form of statutory regulations related to research.

And materials Secondary legal materials are legal materials that explain primary legal materials. The secondary legal material in this study is in the form of legal books that discuss marriage, marriage dispensation and minors. As well as tertiary legal materials, namely materials that provide instructions and explanations for primary and secondary legal materials such as dictionaries, encyclopedias, and so on.¹¹

In conducting this research, the authors collected data by conducting literature studies, namely conducting research on documents which are primary legal materials, then conducting research on secondary legal materials and tertiary legal materials. In connection with the problems in this research, data collection will be carried out through document study or library materials and studying the provisions of laws and regulations. Data processing is the activity of tidying up the data collected so that it is ready for analysis. The data obtained is secondary data, then data processing is carried out. Data processing is carried out by the author, namely by: a.) Editing (Data Checking) Editing is the process of re-checking the records, files and information that has been collected by examining, examining, and correcting the data obtained so that it becomes a true data

¹⁰ Zainudin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2011), 105

¹¹ . Maria SW. Sumardjono, *Metode Penelitian Ilmu Hukum* (Yogyakarta: Universitas Gajah Mada, 2005), 14

collection. true can be used as an accurate reference in drawing conclusions later. b.) Coding (Data Encoding) Coding is data that has been edited, then giving data or code to each data with the aim of making it easier to analyze according to the problem formulation. c.) Data Analysis Data analysis is the author's activity to assess the data presented and conclusions can be drawn. All data obtained from the library will be compiled and analyzed qualitatively. Qualitative analysis is an analysis that does not use numbers but rather a description of sentences that are described and arranged systematically. Data analysis is carried out by collecting all the necessary materials which then relate them to existing problems.¹²

RESULTS AND DISCUSSION

1. Arrangement of Marriage Dispensation in Indonesia After the Decision of the Constitutional Court Number 22 / PUU-XV / 2017

a. Description of the Decision of the Constitutional Court Number 22 / PUU-XV / 2017 concerning the Age Limit for Marriage.

According to the Decision of the Constitutional Court Number: 22 / PUU-XV / 2017, the applicants

submitted their petition on April 20, 2017. Petitioner I is an individual Indonesian citizen, a woman, married at the age of 14. Married by her parents to a 37-year-old widower with one child residing in Pabean Udik Village, Indramayu Regency who works as an ice depot business owner. When the applicant is married, he is still a child with a second grade of junior high school education, is forced to quit school and cannot refuse when he is going to be married, the reason the applicant is married is because of the family's economic situation. As a result of this marriage the applicant could no longer complete the 12 year compulsory education.¹³

Petitioner II is an individual Indonesian citizen, works as a housewife, has not graduated from elementary school (SD). Married by her father at the age of 14 to a man who at that time was 33 years old. Married because the applicant's family is in difficult economic conditions. The applicant's father married the pemhon, because he had debt and credit affairs with the prospective husband. The applicant did not marry on his own accord, was forced to agree because he was forced by his father. Petitioner III is

¹² Burhan Ashofa, *Metode Penelitian* (Jakarta: PT. Rineka Cipta, 2004), 20

¹³ Salinan Putusan Mahkamah Konsititusi Nomor: 22/PUU-XV/2017 Tentang Batas Usia Minimal Perkawinan., 5-10

an individual Indonesian citizen, who has been married by the parents of the applicant to a 25 year old man at the age of 13. Married after graduating from elementary school in grade 6, marriage is carried out at the request of the parents because of the economic situation.¹⁴

The subject matter of the article being tested is the provision of Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage, "Marriage is only permitted if the male has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years." . Against the constitutional basis used is the provision of Article 27 paragraph (1) of the 1945 Constitution "All citizens have the same position in law and government and are obliged to uphold the law and government without exception". The applicants filed a petition for review on the grounds that the provisions of Article 7 paragraph (1) as long as the phrase "16 (sixteen) years" of the Marriage Law have violated the principle of "All citizens have the same position in the law", thus contradicting Article 27 paragraph (1) UUD 1945. This provision creates differences in legal standing and is discriminated against girls in terms of health rights, education rights, and the risk of child exploitation.

b. Reasons for the Petitioner to Submit Judicial Review of Article 7 paragraph (1) of the Marriage Law Against the 1945 Constitution.

Application for review of article 7 paragraph (1) of Law Number 1 of 1974 concerning marriage is to obtain recognition, protection and fulfillment of children's rights. As well as to provide fair legal certainty for both male and female citizens as promised in the 1945 Constitution. The reasons for the request for judicial review of Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage as following:

- a) The difference in the minimum age limit between men and women in the provisions of Article 7 (paragraph 1) is a tangible manifestation of the failure to achieve equality in legal standing which is protected by Article 27 paragraph (1) of the 1945 Constitution. The age of marriage for men and women in Article 7 paragraph (1) has resulted in losses especially for women.
- b) The differentiation of age provisions for men and women in article 7 paragraph (1) of Law Number 1 of 1974 is based solely on the reason of gender, this is a very real form of discrimination.

¹⁴ Ibid.

- c) The stipulation of the age limit for marriage in the elucidation of article 7 paragraph 1 is based solely on the health aspect, but in fact the development of the medical world of women who are married at the age of 16 is very vulnerable to experiencing health problems, especially in reproductive organs, namely when experiencing pregnancy.
- d) The provisions of Article 7 paragraph (1) of Law Number 1 of 1974 create a distinction of position and discrimination against girls in their right to education.
- e) The provisions of Article 7 paragraph (1) of Law Number 1 of 1974 create a differentiation of position and discrimination against girls at the risk of child exploitation.

With the granting of a Judicial review of Article 7 paragraph 1 of Law Number 1 of 1974 concerning Marriage, the Constitutional Court accepted the petitioner's petition which gave birth to the decision of the Constitutional Court Number 22 / PUU-XV / 2017 on this decision, which was born of Law Number 16 of 2019, amendments to the Law Number 1 of 1974 Concerning Marriage. With the amendment of the Marriage Law, the dispensation arrangement for marriage in Indonesia is different from the previous dispensation arrangement. According to

Law Number 16 of 2019 concerning Marriage, there are several things that have been changed, namely the provisions of Article 7 amended as follows :

- a) Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.
- b) In the event of deviation from the age requirement as referred to in paragraph (1), the parents of the male and / or the parents of the female party can request dispensation to the court on very urgent grounds accompanied by sufficient supporting evidence.
- c) The provision of dispensation by the Court as referred to in paragraph (2) is obliged to listen to the opinions of the two prospective brides who are about to get married.
- d) The provisions regarding the condition of a person or both parents of the prospective bride as referred to in Article 6 paragraph (3) and paragraph (4) shall also apply to the provisions regarding requests for dispensation as referred to in paragraph (2) without prejudice to the provisions referred to in Article 6 paragraph (6).

c. Regulation of Marriage Dispensation in Indonesia in terms of Legal Certainty Theory

According to Utrecht, legal certainty contains two definitions, first, the

existence of general rules that make individuals know what actions are allowed or not to be done, and secondly in the form of legal security for individuals from government abuse because with these general rules individuals can know what the state may impose or do on individuals.¹⁵

This doctrine of legal certainty comes from juridical-dogmatic teachings which are based on a positivist school of thought, which tends to see law as something autonomous, independent, because for adherents of this thought law is only a collection of rules. For adherents of this school, the objective of the law is nothing more than just guaranteeing the realization of legal certainty. Legal certainty is manifested by law with its nature that only makes general legal rules. The general nature of legal rules proves that law does not aim at realizing justice and benefit, but solely for certainty.¹⁶

The idea of a rule of law demands that the administration of state and government affairs be based on law and guarantees the basic rights of the people. The principle of legality is the basis for the legitimacy of government action and guarantees the protection of people's

rights. According to Indroharto, the application of the legality principle will support the enforcement of legal certainty.¹⁷

After the passing of Law Number 16 of 2019 concerning Marriage, it is because of this that there is a legal certainty regarding the minimum marriage limit for a man and a woman. According to Article 7 paragraph 1 of Law Number 16 of 2019, amendments to Law Number 1 of 1974 concerning marriage states that marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. Then the age for marriage for men and women must be the same, namely 19 years. After the legal certainty is seen from Utrecht's point of view, the Indonesian people already know the minimum age limit for marriage.

2. Factors Causing the Application for Dispensation of Marriage Against Child Marriage

Factors that can encourage marriage at a young age are the weak economy and cultural factors are the dominant factors. If a child dropping out of school is among the economically weak family, generally due to cost (economic) factors

¹⁵ Rinduan Syahrani, *Rangkuman Inti Sari Ilmu Hukum* (Bandung: Citra Aditya Bakti, 1999), 23

¹⁶ Ahmad Ali, *Menguak Takbir Hukum, Suatu Kajian Filosofis dan sosiologis* (Jakarta: Toko Gunung Agung, 2002), 82-83.

¹⁷ *Ibid*, 94

and the soul of a child who has dropped out of school, the drive to quickly marry will be stronger.¹⁸ Along with the development of the age of underage marriages increasingly prevalent because of various factors appearing in the community both in rural and urban communities, although the law has prohibited the carrying out of underage marriages, but dispensation against such marriages is still given to children by the institution court filed by the child's parents. The factor of the occurrence of underage marriage is caused by two factors, namely:¹⁹

1) Internal factors (desire from yourself)

Factors that affect marriage at young age can come from internal, namely factors that come from within the individual. The desire of children who choose to marry on their own will because they are mentally ready to face married life. This couple got married because of the feeling of mutual love and already felt a good fit. This condition finally makes the decision to get married at a young age without thinking about what problems will be faced in the future.

Children who marry at a young age because of the child's self-concept. They think that having married at a young age does not make them feel confident in themselves both in society and in their associations. Only a few of the children who limit their social interactions after marriage because they already have the responsibility to take care of the household.

2) External factors

Based on the results of observations in the community, it also reveals that external factors also cause children to marry at a young age:²⁰

- a. Economic factors, the lack of economy causes parents to marry off their children at a young age, instead of sending their children to a higher level. Parents who have many children will tend to experience more financial difficulties when compared to those who have few children. These young marriages often occur in people living in villages. Usually children come from underprivileged families.
- b. factors of pregnancy outside of marriage, namely many children who get pregnant outside of wedlock and because of the free cultural association

¹⁸Abdi Koro, *Perlindungan Anak di Bawah Umur Dalam Perkawinan Usia Muda dan Perkawinan Siri*, (Bandung: Alumni Bandung, 2012), 111

¹⁹Zulfiani, *Kajian Hukum Terhadap Perkawinan Anak di Bawah Umur Menurut Undang-undang*

Nomor 1 Tahun 1974,' *Jurnal Keadilan Samudera Keadilan* volume 26, no. 12 desember (2017): 7-9.

²⁰ Ibid

they get through internet features that make them want to try it. The influence of the internet which often contains pornographic sites or displays pornography. factor of pregnancy outside of marriage which is commonly referred to as unwanted pregnancy. An unwanted pregnancy is a condition in which the couple does not want the birth process of a pregnancy. And this occurs as a result of promiscuity known as starting from free sex.

- c. Dropout factors are caused by the low level of community education. Most dropouts are caused by the poor economy of the family as well as the influence of the environment and the desire of the child not to go to school. In fact, they say it is better to work which can make money than school which is not necessarily successful and instead costs parents money.

3. Synchronization of Regulations for Child Marriage Ages between the Marriage Law and the Child Protection Law

According to the Big Indonesian Dictionary, synchronous is at the same time, simultaneously, in line, parallel,

appropriate, in harmony. So the notion of synchronization is about synchronizing, synchronizing.²¹ And according to Soerjono Soekanto, synchronization is an attempt to reveal the reality to what extent a statutory regulation regulating certain areas of life is compatible or does not conflict with one another.²² Synchronization of laws and regulations can be done in two ways, namely :²³

- a. Vertical Synchronization is the synchronization of laws and regulations with other laws and regulations in a different hierarchy. Vertical Synchronization is carried out by observing whether a statutory regulation in effect in a certain field does not conflict with one another. Besides having to pay attention to the hierarchy of the laws and regulations mentioned above, in vertical synchronization, the chronology of the year and number of stipulated regulations must also be considered. relevant legislation. Vertical synchronization aims to see whether laws and regulations that apply to a particular field of life do not conflict with one another when viewed from a

²¹ Kamus Besar Bahasa Indonesia, Edisi Ketiga, Cetakan Ketiga (Jakarta: Departemen Pendidikan Nasional Balai Pustaka, 2005), 946

²² Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta : Rajawali Press, 2003) :74

²³ <https://sultra.bpk.go.id> accessed 5 November 2020, 19:40

vertical or hierarchical point of view of existing laws and regulations.

- b. Horizontal Synchronization is the synchronization of laws and regulations with other laws and regulations in the same hierarchy. Horizontal synchronization is carried out by looking at various laws and regulations that are equal and regulating the same or related fields. Horizontal synchronization must also be carried out chronologically, that is, in accordance with the time sequence of the stipulation of the relevant laws and regulations. Horizontal synchronization aims to reveal the reality to what extent certain laws are horizontally compatible, namely having harmony between laws which are equal in respect to the the same one.

The synchronization carried out in this study, namely horizontal synchronization, is the synchronization of statutory regulations with other statutory regulations in the same hierarchy. Horizontal synchronization is carried out by looking at various laws and regulations that are equal and regulating the same or related fields. Regulations regarding the age limit for marriage in Indonesia are regulated by Law Number 1 of 1974 amendments

to Law Number 16 of 2019 concerning marriage and Law Number 35 of 2014 amendments to Law Number 23 of 2002 concerning Child Protection. Horizontal synchronization must also be carried out chronologically, that is, in accordance with the time sequence of the stipulation of the relevant laws and regulations. Horizontal synchronization aims to reveal the reality to what extent certain laws are horizontally compatible, namely having harmony between laws which are equal in relation to the field. the same one.

Amendments to laws that only regulate age limits are actually born in the framework of synchronization with other laws. As we know, according to Article 1 of Law Number 35 of 2014, amendments to Law Number 23 of 2002 concerning Child Protection, what is called a child is someone who is not yet 18 years old, including those who are still in the womb. Meanwhile, according to Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974, marriage is only permitted if the man and woman are 19 years old. So the age for marriage for men and

women must be the same, namely 19 years.

The problem according to Article 7 paragraph (2) in the event of deviation from the age requirement as referred to in paragraph (1), the parents of the male and female parties can request dispensation from the Religious Court for very urgent reasons accompanied by supporting evidence sufficient. With this opportunity for dispensation of marriage, many people who get married at the age of less than 18 are clearly contrary to Law Number 35 of 2014, amendments to Law Number 23 of 2003 because those under 18 are still categorized as children. The marriage law also provides legalization for the marriage of minors

- a. Results of Synchronization Implementation and in View of Benefit Theory From the horizontal synchronization carried out where after the implementation of regulations governing the age limit for children to marry, analysis of the substance of the related articles, evaluation of the implementation of synchronization by synchronizing the substance of the laws and regulations, the result is that there is an unsynchronized number of provisions regarding age limits. at

least children between the two laws and regulations. the unsynchronized forms are as follows:

- 1) According to the marriage law, if a husband or wife has not reached the age of 19, their parents can apply for dispensation to the court where they live. Meanwhile, according to the child protection law, what is said to be a child is if a person has not reached the age of 18 years and the child is still in the womb. In practice, it is currently found that, especially women aged less than 18 years have submitted dispensation to the Court on the grounds that a woman is already pregnant. With this dispensation, the marriage law and the child protection law are clearly contradictory.
- 2) According to Article 26 paragraph (1) letter c of Law Number 35 of 2014, amendments to Law Number 23 of 2002, parents are obliged and responsible to prevent marriage at the age of children. Meanwhile, according to the marriage law, the application for dispensation is submitted by one of the parents of the prospective bride. This means that the Parents' Marriage Law provides support for their children to marry at the age of the children.

If we look at the theory of benefit, the purpose of law is to provide benefits to as many people as possible. Benefit here is defined as happiness (happines), so that the assessment of whether a law is good or bad or fair or not depends on whether the law gives happiness to humans or not. Thus it means that every preparation of legal products (laws and regulations) should always pay attention to the purpose of law, namely to provide as much happiness as possible for the community.

In accordance with the times, new problems arise, people are now starting to forget about legal norms and religious norms so that marriage due to pregnancy outside of marriage is very common among people who do not understand religion as a whole, but Islam also does not necessarily punish haram on Marriage that is caused by pregnancy outside of marriage, but Islam sees it from another point of view, namely seeing through the glasses *masalah mursalah* which means taking advantage of an event. The benefits of the dispensation of marriage that occur are in fact only to protect the status of the child, it does not mean to justify the cause but purely only to help the child who was born without

sin to also not bear the sins and burdens committed by the father and mother.

In accordance with the description above, the authors conclude that the Marriage Law and Child Protection Law, if examined according to the Benefit Theory, the author believes that there is no contradiction between the two laws because the purpose of the Law is to provide benefits to wide community. With the dispensation of marriage with the urgent reason that a woman is already pregnant, parents must take advantage of this incident, namely marrying off their children immediately instead of getting a sin.

CONCLUSION

Based on the explanation that has been described, the conclusions that the writer may conclude are as follows:

1. The legal arrangements for dispensation of marriage in Indonesia after the decision of the Constitutional Court Number 22 / PUU-XV / 2017 were the birth of Law Number 16 of 2019, amending Law Number 1 of 1974 concerning Marriage. With the provisions of Article 7 amended as follows , Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years, In the event

of deviation from the age requirement as referred to in paragraph (1), the parents of the male and / or the parents of the female party can request dispensation from the court for very urgent reasons accompanied by sufficient supporting evidence.

2. The factors causing the application for dispensation of marriage to the marriage of minors.

Economic factors, the lack of economy causes parents to marry off their children at a young age, instead of sending their children to a higher level. Parents who have many children will tend to experience more financial difficulties when compared to those who have few children. These young marriages often occur in people living in villages. Usually children come from underprivileged families.

factors of pregnancy outside of marriage, namely many children who get pregnant outside of wedlock and because of the free cultural association they get through internet features that make them want to try it. The influence of the internet which often contains pornographic sites or displays pornography.

Dropout factors are caused by the low level of community education. Most dropouts are caused by the poor economy of the family as well as the influence of the environment and the desire of the child not to go to school. In fact, they say it is better to work which can make money than school which is not necessarily successful and instead costs parents money

3. Synchronization of the regulation of the age at which children marry between the Marriage Law and the Child Protection Law is the synchronization carried out in this research, namely horizontal synchronization is the synchronization of statutory regulations with other laws in the same hierarchy. Horizontal synchronization is carried out by looking at various laws and regulations that are equal and regulating the same or related fields.

From the horizontal synchronization carried out where after observing the investmentization of regulations governing the age limit for children to marry, the analysis of the substance of the related articles, the evaluation of the implementation of synchronization by synchronizing

the substance of the laws and regulations, the results show that there are some unsynchronized provisions regarding the minimum age limit for children. between the two laws and regulations

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