



MARRYING TRADITIONS AND MATURITAS: EXAMINING LAW NO. 16/2019 IN THE CONTEXT OF ISLAMIC LAW AND INDONESIAN SOCIAL DYNAMICS

Sa'adah¹, Zainal Muttaqin², Rusdiyah Faruk³

^{1,2,3}Universitas Islam Negeri Antasari Banjarmasin

e-mail: amisaadah.one@gmail.com¹, zainalmuttaqin@uin-antasari.ac.id²,
rusdiyah.faruk@gmail.com³

Abstract

Child marriage remains a persistent social challenge in Indonesia. Law Number 16 of 2019, amending the 1974 Marriage Law, emerged from complex social and legal dynamics. This paper investigates the interplay between these dynamics and Islamic legal principles. It examines the high prevalence of child marriage and divorce, alongside existing legal frameworks and their alignment with global norms like human rights, equality, and child protection. By analyzing these factors, the paper sheds light on the motivations behind Law No. 16/2019. The law serves not only as a control mechanism but also potentially as a tool for social reconstruction, aiming to foster a more progressive Indonesian society that prioritizes the maturitas (maturity) of individuals entering marriage.

Keyword: *Child marriage, Social Reconstruction, Social Control*

Abstrak

Perkawinan anak merupakan masalah lama yang hingga saat ini belum berhasil diatasi oleh pemerintah. Lahirnya Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, tentu tidak bisa dilepaskan dari dinamika sosial dan hukum yang terjadi sebelum pengundangan Undang-Undang tersebut. tingginya angka perkawinan anak dan perceraian serta ketidaksesuaian antara perundang-undangan dan peraturan, termasuk norma-norma global yang disepakati, yaitu hak asasi manusia, kesetaraan, dan perlindungan anak, menjadi pendorong lahirnya undang-undang sebagai bentuk upaya pemerintah untuk melakukan upaya pengendalian dan bahkan rekonstruksi sosial untuk melahirkan perubahan sosial baru menuju masyarakat Indonesia yang progresif.

INTRODUCTION

The birth of marriage regulations in Indonesia cannot be separated from the social, political, and legal settings that developed in Indonesian society. In this context, there are at least three interests involved in the struggle for marriage law in Indonesia, namely the interests of

religion, the state, and women.¹ The existence of these interests is an integral part of the social dynamics behind the birth of marriage regulation.

Before the current Marriage Law, in Indonesia, there has been a product of laws that regulate marriage, and divorce. During the colonial period, for example, several legal products were born that regulate the marriage of the Indonesian people by following the interests and politics of colonial law. At this time the theory of *receptio in complexu* was born which became the basis of legal products regarding marriage at that time, and then followed by the birth of the *receptie theory* as a theory opposed to existing theories and became the basis for legal products that were in following with the direction of the Dutch colonial policy towards the people. Indonesian Islam at that time.²

The Dutch colonial policy that can be understood very far from the values that live in the Indonesian Muslim community is the birth of what is called the Draft Registered Marriage Ordinance in June 1937 which gave birth to much opposition from the Indonesian Muslim community at that time. Three important points become the object of opposition, namely first, a man is not allowed to marry more than one wife. Second, a marital relationship cannot be broken except for three reasons; the death of one of the spouses, the departure of one of the spouses for more than two years, and the news about it is not known while the other spouse remarries with another person with the permission of the court, and there is a divorce decision from the court, and third,³ The opposition to this design shows that there is still a strong ingrained in Indonesian Muslim society the centric fiqh norms that have been adhered to for centuries, despite accusations of colonialism's attempts to secularize Indonesian Muslims in the aspect of marriage.

In summary, social dynamics continue to color the birth of legal products regarding post-colonial marriage, for example, the birth of Law Number 22 of 1946. In this law it is regulated that divorce and reconciliation can only be carried out with the permission of the religious court, even giving fines and imprisonment if marriages are not registered.⁴ The birth of the law can be said to be an extraordinary breakthrough, at a time when Indonesia was newly independent and the feminist movements that were developing at that time had not yet been consolidated, even though awareness of the existence of equal rights and more protective women's interests had been echoed

¹ Nafi' Mubarak, 'The History of Islamic Marriage Law in Indonesia', *Al-Hukama': The Indonesian Journal of Islamic Family Law*, vol. 02, no. 02 (2012), p. 140.

² There are several legal products that were born on the basis of these two theories that describe the direction of the Dutch colonial legal political policy towards the interests of Indonesian Muslims. For a description of this, see *ibid.*, pp. 141–6.

³ *Ibid.*, p. 146.

⁴ See Zezen Zaenal Mutaqin, 'Culture, Islamic feminism, and the quest for legal reform in Indonesia', *Asian Journal of Women's Studies*, vol. 24, no. 4 (2018), p. 430.

since Kartini's era. However, what needs to be underlined in this period is that the consolidation and full awareness of the women's equality fighters became the motor of the social movement to demand reform of the marriage regulations that apply in Indonesia.

Zezen Zaenal Mutaqin in his writings describes how the roles of women's individuals and organizations are engaged in the social, political, and legal spheres to fight for this so that several regulatory products are accommodative and aspirational to the dynamics of women's struggle at that time.⁵

The social, political, and legal dynamics that are very intense in the community related to regulations regarding marriage are when the Marriage Law will be enacted which will later become Law Number 1 of 1974. Socially, the birth of this Law is a continuation of social aspirations. In the past they wanted the Indonesian people to have written regulations in the field of marriage that could summarize all existing marriage laws in the community, both in the form of customary law and religious law.⁶ The issuance of this Law is also inseparable from the fact that the social diversity of the Indonesian people consists of various ethnic groups and religions which are then united with the concept of a unitary state based on Pancasila. Therefore, the making of laws must pay attention to the fact of pluralism, not based on the fact that the majority, both ethnicity, and religion.⁷

Thus, this Law was born as an effort to produce a regulation that is codified and unified in marriage law that applies to all Indonesian people, considering that previously there were variations in the application of marriage law which of course would give birth to various legal applications. This effort will give birth to a convenience for the community and legal practitioners to apply marriage law. This codification and unification became a benchmark in regulating and resolving marital problems for all Indonesian people.⁸

If you look back at the previous period, the enactment of Law Number 1 of 1974 cannot be separated from the long problem since the colonial era regarding the equality of rights between men and women in marriage. Likewise, the widespread practice of polygamy carried out by the community, not only departs from tradition but is also based on a patrilineality interpretation of

⁵ In his writing, he mentioned the names of individuals and organizations who played an active role in encouraging the birth of regulatory products that were accommodating and aspirational to the demands of women at that time, including Aisyiah and Muslimat NU, which are two women's organizations affiliated to two major Muslim organizations in Indonesia. See *ibid.*, pp. 427–32.

⁶ See Nety Hermawaty, 'Respons to Marriage Law in Indonesia', *Al-Mizan*, vol. 11, no. 1 (2015), p. 34.

⁷ See Ahmad Rifai, Ibnu Sodik, and Abdul Muntholib, 'History of the Marriage Law on Opinions to Disagreements from the Society and the House of Representatives 1973-1974', *Journal of Indonesian History*, vol. 4, no. 1 (2015), p. 2.

⁸ Khiyaroh, 'The Reason and Purpose of the Birth of Law Number 1 of 1974 concerning Marriage', *Al-Qadha*, vol. 7, no. 1 (2020), pp. 11–2.

Islamic law. Therefore, this Law absorbed the aspirations of the feminists who struggled at that time to complicate the practice so that it led to the principle of open monogamous marriage.⁹ This principle, of course, does not satisfy all feminist parties who want the principle of closed monogamy, but at least this can be seen from the perspective of the middle ground chosen by the government between demands and aspirations with the reality that is firmly rooted in society.

Apart from all that the author has described above, this shows that every regulation or law-making, especially those related to marriage law in Indonesia, is certainly motivated by a social dynamic that happens in people's lives. In this context, Von Savigni, the pioneer of the school of legal history once stated that a law is not made, but grows and develops in people's lives.¹⁰ From this perspective, it can also be said that a legal product is born and develops to the demands of the development of its society.

The birth of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, according to the author, was also motivated by the social and legal dynamics that developed at that time, as were previous legal products. In this case, there is a long period time between 1974 and 2019 which is around 45 years and in it, there are social and legal dynamics that encourage the government to issue new laws in place of existing laws that have been in force for a long time in Indonesia. Thus, the birth of Law Number 16 of 2019 was not only driven by the decision of the Constitutional Court which ordered the government to make changes to Law Number 1 of 1974 concerning Marriage,

Understanding the existence of these social and legal facts is very important to see that a rule is made without ignoring the dynamics that occur in people's lives. Laws are not made in space. Laws are not made based on the will of lawmakers alone, but must also depart from the aspirations or will of the people.

A. RESEARCH METHODS

Studies of the Marriage Law have been carried out by many writers and researchers with various studies and approaches. However, about to with concerning the study of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning marriage, there have not been so many studies carried out. As far as the search that has been carried out, there are at least two studies that have been carried out, for example, Hormartua Nasution who wrote a thesis with the title Renewal of Islamic Family Law on Marriage Age in Indonesia (Study on Law Number 16 of 2019 concerning Amendments to Law Number 1 of 2019). 1974 concerning Marriage. From

⁹ *Ibid.*, p. 12.

¹⁰ Nafi' Mubarak, 'History of Islamic Marriage Law in Indonesia', p. 141.

the aspect of the approach, the researchers used a historical law approach. With this approach, The research describes the history of marriage law regulation in Indonesia from the colonial period to the period before the birth of Law Number 16 of 2019 which shows the dynamics of regulatory changes with their historical background. However, related to the background of Law Number 16 of 2019, the research that has been carried out only describes the existence of a judicial review to the Constitutional Court twice about demands for legal changes, without explaining how the social and legal dynamics that occurred in society before the enactment of the Law. the new. This is different from the approach used in this study, namely the interdisciplinary, socio-legal approach.

Furthermore, the research conducted by Syukron Septiawan was in the form of a thesis entitled Changes to the Marriage Age Limit for Women in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 from the *Maslahah* Perspective. With the benefit approach, it was found that the change in the age limit for marriage was caused by three factors, namely the first philosophical factor in the form of the state's commitment to eliminate discriminatory behavior. The two sociological factors are the high number of marriage dispensations, and the third juridical factor is a change in the age limit for marriage. Meanwhile, in the perspective of *mashlahah*, it is an effort to realize the ideals of the Indonesian nation; strengthen Indonesia's economic growth, and reduce poverty; as well as towards a child-friendly Indonesia. From the aspect of the approach taken. This paper uses a normative juridical approach. The article that regulates the limitation of the age of marriage as contained in Law Number 16 of 2019 is reviewed with these two approaches. In addition, the benefit perspective is also used to see whether the regulation brings beneficial values to the Indonesian people. From this aspect, this second paper can be said to carry a philosophical normative approach. Therefore, the results obtained from this paper are normative and philosophical descriptions of the existence of a marriage age limit contained in Law Number 16 of 2019. This is different from research conducted by researchers, where the approach taken is not limited to normative and just philosophical, but it is interdisciplinary by revealing the facts of the social dynamics behind the change. This is the part of the substance that is not revealed in this second article.

This type of research is socio-legal with an interdisciplinary approach that is descriptive and qualitative. The data in this study are articles and paragraphs on laws that have not changed and have changed as well as about the social and legal dynamics that drive these changes. While the data sources in this study include laws related to marriage as primary data sources as well as literature, and documents which are secondary and tertiary data sources. This research is a literature study (library research), and therefore the data obtained comes from literature, journals,

documents, and other reading materials that are reviewed and then described in research reports that have gone through the editing process.

C. RESULT AND DISCUSSION

1. Changed Articles and Paragraphs from Law Number 1 of 1974 as contained in Law Number 16 of 2019

The birth of Law Number 16 of 2019 became a new chapter of marriage regulation after approximately 45 years of Indonesian people basing their marriage on Law Number 1 of 1974, where in that period time many dynamics required changes in marriage law in Indonesia.

Substantially there are changes in two rules, namely the article that regulates the minimum age limit for marriage and the requirements for submitting a marriage dispensation. In Article 7 Paragraph 1 of Law Number 1 of 1974, it is stated that marriage is only permitted if the man has reached the age of 18 (eighteen) years and the woman has reached the age of 16 (sixteen) years. The provision for this minimum age limit in Law Number 16 of 2019 has changed to 19 years, both for men and women. Likewise in Article 7 Paragraph 2 which regulates the existence of deviations from what is specified in Paragraph 1, it is stated that it is possible to apply for a marriage dispensation to the court or other official appointed by both the parents of the male and female parties. This verse is also amended by stating that the application for a marriage dispensation can be made by a male or female parent, or also both male and female parents accompanied by reasons that are quite urgent and supported by sufficient evidence. Even the application was based on the consent of the two children, boys, and girls who were asked for dispensation.

As with the formulation of laws or other regulations, it will usually be preceded by an academic study of the regulations to be made. In the context of the amendment to Law Number 1 of 1974, the academic studies did not only involve academics who were concerned with gender issues, in this case, the Center for Legal Studies, Gender, Society, Faculty of Law UGM, but also women and child protection activists who were members of the Faculty of Law. in an association called the Indonesian Women's Coalition for Justice and Democracy, ICJR Kalyanamitra, and Ecpat Indonesia.

Apart from that, the academic study proposes changes by mentioning the scope of the regulation, namely first, the minimum marriage age is set at the age of 19 for both men and women. Second, Some regulations tighten the granting of dispensation for marriage under the age of 19,

and thirdly, it emphasizes the need for continuous supervision and prevention related to the practice of child marriage.¹¹

2. The Social Dynamics Behind the Changes

The issue of the minimum age limit for marriage is a problem that has never been resolved, amid rampant and many cases of early marriage that occur in the community, even after the birth of Law Number 1 of 1974. The last report in 2020 which was issued by BPS in collaboration with UNICEF, the Ministry of National Development Planning/Bappenas, and PUSKAPA (Center for Research and Advocacy for the Protection and Quality of Life of Children at the University of Indonesia) states that 1 in 9 children in Indonesia gets married under the age of 18 years amounting to 1,220,900 people, thus placing Indonesia as the 10th largest country in child marriage. In the last 10 years or so, there has been a decrease in the number of child marriages, but the percentage is relatively small, namely 3,¹²

Child marriage as a social phenomenon, however, raises pros and cons in society, which ultimately encourages the birth of regulations governing it. The increase in the marriage age rate as regulated in Law Number 16 of 2019, also cannot be separated from the social dynamics that occur in society, especially related to the age limit that has been regulated in the previous Law, namely Law Number 1 of 1974. According to the author, several things prompted the birth of Law Number 16 of 2019 when viewed from the aspect of social dynamics, namely as follows:

The First, is the high rate of divorce from early marriage. Research data that has been carried out shows that one of the triggers for the high divorce rate in society is early marriage or marriage below the marriage age limit. For example, data was obtained from the Stabat Religious Court of Langkat Regency, North Sumatra in 2017 from 1,557 divorce cases, there were 382 cases of divorce from early marriage. In 2018 out of 1,860 divorce cases, there were about 469 cases that divorced from early marriage.¹³ Even based on data from the latest research conducted by Mies Grijns and Hoko Horii in West Java as quoted by Ani Yumarni and Endeh Suhartini stated that

¹¹ To be able to see how the team that drafted the academic manuscript for amendments to the Marriage Law could see in the Drafting Team for the Indonesian Women's Coalition for Justice and Democracy, Center for Legal Studies, gender, community-Faculty of Law UGM, ICJR Kalyanamitra, Ecpat Indonesia, Academic Papers on the Amendment Bill -Law No. 1 of 1974 concerning Marriage (2019), pp. 33–4, <http://icjr.or.id/wp-content/uploads/2019/07/NA-RUU-Perubahan-UU-Perkawinan-Koalisi-Masyarakat-Sipil-11072019.pdf>, accessed 17 Sep 2024AD.

¹² The complete report on these statistical data can be seen in the BPS Compilation Team, Unicef and the UI Puskapa, Prevention of Child Marriage that cannot be postponed, Publications (Jakarta: BPS and the Ministry of National Development Planning/Bappenas, 2020), p. xi.

¹³ See Fauza Afgara, 'Divorce Due to Early Marriage (Stabat Religious Court Study)', Thesis (Medan: Faculty of Law, University of North Sumatra, 2020), p. 11.

50% of early marriages (children) lead to divorce.¹⁴This shows that marriage is a social problem that occurs in the life of our society. Many factors trigger the high number of marriages as revealed by the BPS Team, Unicef, and Pusaka UI which include education factors, economic factors, residence factors, and religious and cultural factors.¹⁵In addition to these factors, the results of recent studies mention other factors that are the cause of this high number of marriages, such as the internet technology factor that provides easy access to communication, it turns out that if used inappropriately it can provide convenience in accessing negative content (pornography and pornography). porno-action), as well as factors of promiscuity among children and adolescents. This last factor contributes to the high number of early marriages in urban areas as reported by the National Population and Family Planning Agency (BKKBN) quoted by the Women's Journal in 2013. Based on data in 2012,¹⁶

Based on the data and facts that happen in social life, the proposal for a change in the age limit for marriage continues to be discussed and often gives rise to pro and contra opinions. Constitutionally, the amendment is carried out by submitting a judicial review. In 2015, as reported by VOA Indonesia, the Constitutional Court rejected the application on the grounds of “open legal policy” or an open legal policy from the legislators.¹⁷What is interesting is that the reasons for the panel of judges of the Constitutional Court are not based on juridical aspects, but are more likely to be moral reasons. This is as stated by the Coordinator of the Public Policy Reform Working Group of the Indonesian Women's Coalition Indry Oktaviani as quoted by VOA Indonesia.¹⁸Another interesting thing is how the voices of Islamic organizations with the submission of this judicial review seem to be in harmony with these moral reasons.

Surmiati Ali in her writings mentions several opinions of leaders of Islamic organizations regarding the rejection of the age change. For example, H. Hamidan who at that time in 2014 became one of the central committees of MUI and was asked as a party to give an opinion that there is a large age gap with a woman's age of puberty in Islam has great potential to increase the

¹⁴ See Ani Yumarni and Endeh Suhartini, 'Underage Marriage and the Potential for Divorce (A Study on the Authority of the KUA for the City of Bogor)', *Journal of Law Ius Quia Iustum*, vol. 26, no. 1 (2019), p. 207, <https://journal.uui.ac.id/IUSTUM/article/view/9839>, accessed 11 Sep 2021.

¹⁵ See Prevention of Undelayed Accelerated Child Marriage, pp. 43–6.

¹⁶ Hasan Ramadhan, 'Increasing the Rate of Early Marriage in Urban Areas', *Journal of Women for Enlightenment and Equality* (2013), <https://www.jurnalperempuan.org/meningkatnya-angka-pernikahan-dini-di-perkotaan.html>, accessed 12 Sep 2021 .

¹⁷ This judicial review was submitted by three women as victims of child marriage, namely Endang Wasrinah, Rasminah and Maryati. In fact, this proposal was not only made by three individuals, but was also supported by women's and child protection activists. See Eva Mazrieva, 'Why is it difficult to revise the Age Limit in the 1974 Marriage Law?', *VOAIndonesia.com* (Jakarta, Aug 3 2018), <https://www.voaindonesia.com/a/why-difficult-revisi-limit-age-in-uu-marriage-1974-/4285424.html>, accessed 14 Sep 2021.

¹⁸ *Ibid.*

abortion rate for Muslim women. Therefore, the minimum limit of 16 years is sufficient to anticipate the negative excesses that may arise, and the regulation is also considered not to be contrary to the constitution. In line with that KH Ahmad Ishomuddin, Rais Syuriah PBNU argues that the minimum age limit for women is 16 years to prevent women from falling into promiscuity and adultery that may occur among Muslim youth. Therefore, increasing the age limit for marriage can be interpreted as a form of delaying marriage, even though marriage is a solution to not falling into adultery. Moreover, according to him, the formulation of the limits that have been regulated has been agreed upon by legislators and scholars. For this reason, the application and reasons for increasing the age limit for marriage are irrelevant.¹⁹

On the other hand, many scholars and activists call for the need to increase the minimum age for marriage. KH Aqil Siradj, for example, as one of the PBNU chairmen at the time, thought believed that the age limit of 16 years for women was too young to marry and that the minimum age limit should be increased to 18 years. In line with that, Quraish Shihab also argues that the meaning of *aqil baligh* is not only defined physically but must be seen from the aspect of mental readiness. Therefore, PBNU and BKKBN are trying to encourage a change in the age of marriage contained in Article 7 of Law no. 1 of 1974. Efforts for change were also voiced loudly by women and children activists.²⁰

The strong flow of discourse and opinions that want a change in the minimum age limit for marriage contributed to encouraging the birth of a new Constitutional Court decision when the second judicial review was submitted, precisely in 2018 by granting a change in the age of marriage and ordering the government to make changes, especially Article 7 which regulates regarding the age of marriage for a maximum of 3 years since it was decided, and this prompted the government to issue Law Number 16 of 2019 as an amendment to Law Number 1 of 1974 concerning marriage.

Second, the difference in the minimum age for marriage is a discriminatory attitude. One of the issues in question from the existence of a marriage age limit as regulated in Article 7 of Law Number 1 of 1974 concerning marriage is the difference in age provisions between men and women. In general, the voices of feminists who fight for women's rights regarding the age limit for marriage are about the need to increase the age of marriage above 16 years. The arguments presented are about the urgency of protecting children's rights and the health rights of girls and the possible impacts of child marriage. However, these voices never raise the equality of the age

¹⁹ See Surmiati Ali, 'Young Marriage in Indonesia in the Perspective of the State and Religion and Their Problems', Indonesian Legislation Journal, vol. 12, no. 2 (2015), p. 28.

²⁰ Further description of it can be read in *ibid.*, pp. 22–5.

limit for marriage between men and women. In this context, the struggle of feminists before the issuance of Law Number 16 of 2019 focused on efforts to increase the marriage age for women to a minimum limit of 18 years. Suppose,²¹

Even the National Family Planning Coordinating Board (BKKBN) recommends that the minimum age for marriage is 21 years for women and 24 years for men, because with these limits a person is physically, mentally, and physically mature enough to get married. Meanwhile, those under this age are worried about someone's unpreparedness for marriage, both in terms of physical, mental, and reproductive health.²²The uniformity of the minimum age limit for marriage for boys and girls as regulated in Law Number 16 of 2019 can be traced from the decision of the Constitutional Court that prompted the birth of the Law and stated that the difference in the minimum age for marriage is a discriminatory and contradictory attitude. with the principles of human rights and gender equality.

This view is a response to the arguments put forward by the applicant for judicial review,²³at the same time there is an awareness of the constitutional judges that the regulation that distinguishes the minimum age for marriage for men and women, regardless of age is determined to be contrary to basic human values or human rights, which since reform in Indonesia has become the main agenda to be enforced.

Then where did the 19 years for men and women become the minimum age limit for marriage, as far as researchers searched for several references and information, the age determination was obtained from the Academic Paper of the Draft Law on Amendment to Law no. 1 of 1974 concerning Marriage, especially in Chapter V which contains the Goals, Directions of Regulation, and the Scope of the Content of the Law. The document describes the juridical and non-juridical reasons why the age of 19 is the right age to determine the minimum age for marriage. Among the non-juridical reasons mentioned is that this age is no longer included in the category of children so that children's rights can be protected, especially their right to get an education,

²¹ See Dewi Candraningrum, 'Child Marriage: The Status of Girls?', *Jurnal Perempuan*, vol. 21, no. 1 (2016), pp. iii–iv.

²² Putu Yasmin, 'Ideal Age for Marriage According to BKKBN, Marriage Law and Islam', *news.detik.com* (Jakarta, October 2019), <https://news.detik.com/berita/d-4750650/umur-ideal-to-marry-according-to-bkkbn-uu-marriage-and-islam>, accessed 17 Sep 2021.

²³ The description of the response of the Panel of Constitutional Justices regarding age discrimination can be read in the Info Judicial Review of the Decision of the Constitutional Court Number 22/PUU-XV/2017 Regarding the Review of Law Number 1 of 1974 concerning Marriage to the 1945 Constitution of the Republic of Indonesia (Badan Expertise). DPR RI Center for Monitoring the Implementation of Laws, 2018), <https://berkas.dpr.go.id/puspanlaku/info-judicial-review/info-judicial-review-public-17.pdf>, accessed 17 Sep 2021.

because if there is a 12-year compulsory education,²⁴What needs to be noted from this also is that this Academic Paper was prepared by stakeholders who are concerned about the protection of women and children, so of course, the determination of age cannot be separated from considerations of the paradigm of protecting children and women.²⁵

The change in the minimum age limit to 19 years shows the government's efforts to carry out social reconstruction, in which the social and cultural life and knowledge of the Indonesian people are more advanced than before. Issues of reproductive health, gender equality, child protection, and human rights are global issues and struggles that cannot be ignored by either the Indonesian people or the government. Moreover, coupled that facts and data show that the issue of child marriage remains at a high rate, with high socio-economic and legal issues related to the marriage. In this context, regulatory changes made by the government are not necessarily able to suppress and eliminate the practice of marriage and its impact. because comprehensively the issue of marriage practice is also related to variables outside the law, such as economics, and education. However, at least the existence of the new regulation shows that the government is committed to efforts for reconstruction and social change that is better and relevant to the development of social life, culture, and knowledge of the community.

Changes in the rules regarding the minimum age limit for marriage cannot be separated from the demands for changes that are desired by the community. This means that the change is not necessarily desired by the government as a legislator, but is driven by the aspirations of elements of society that are born from the dynamics of changes that occur happens to people's lives. The knowledge of some people who have advanced will encourage awareness that the existing regulations are no longer relevant to current developments. The pre-determined age limit turns out to be in conflict with developing global values, especially the values of gender equality, child protection, human rights, maternal and child health, and others.

From a sociological perspective, this shows that there are dynamics of conflict that occur happens to people's lives, especially regarding the relevance of increasing the minimum age limit for marriage between parties who still adhere to fiqh and morality traditions and those who want renewal for reasons such as stated above. researchers mentioned earlier. In this context, the government is also in a difficult position, between realizing changes or staying within the existing age limit. The government's desire to increase the minimum age for marriage already exists,

²⁴ See the Academic Paper of the Draft Law on Amendment to Law No. 1 of 1974 concerning Marriage, pp. 30–4.

²⁵ It can be read at the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia, Minister Yohana Urges to Accelerate Setting the Minimum Age for Marriage (Jakarta, 2019), <https://www.kemenpppa.go.id/index.php/page/read/29/2139> /minister-yohana-push-speed-up-limit-age-minimum-married, accessed 17 Sep 2019.

especially when viewed from the recommendations of institutions related to family welfare (BKKBN) with a proposal to increase the minimum age for marriage to 21 years. and substantively in line with other elements of society who want reform. However, the fact that the strong tradition is still held by some people in the context of the age of marriage is also a side that the government cannot ignore. Therefore, the Constitutional Court's decision ordering lawmakers to make changes is a very strong juridical reason for carrying out social reconstruction through the legal function of limiting the minimum age of marriage.

The conflict referred to in the above context is understood in the form of two different perceptions related to the minimum age limit for marriage. The discourse that developed at that time was about the need to increase the age limit for marriage while maintaining the existing marriage age limit (status quo), with their respective arguments. This conflict of perception has been coloring throughout since the issuance of Law Number 1 of 1974 until before the issuance of Law Number 16 of 2019. However, this conflict adds to the differences between elements of society who remain committed to the practice of underage marriage and the reasons that accompany it.²⁶ Thus, certain interests are desired by those who continue to carry out the practice of child marriage, as well as elements that maintain the existing age limit and those who want changes.

If we refer to the facts and data after the determination of the age limit for marriage, both in Law no. 1 of 1974 or in Law No. 16 of 2019, the reconstruction efforts or social engineering of these regulations can be said to be not going well. According to the researcher, there are several obstacles as to why this has not been achieved properly, including: first, there is still a strong current of tradition in society that adheres to centric thinking. Second, the discourse of equality and gender is still not fully accepted by the community. Third, the opportunity to apply for a marriage dispensation in regulations is not implemented by law enforcers in the spirit of suppressing the number of early marriages.

Jurisprudence norms that become traditions or habits of the community in the perspective of the legal theory are called the living law or the law that lives in society. For adherents of this legal theory, the law is a norm that grows and develops in society and is used as a guideline that regulates their daily behavior, whether it comes from customs, religion, beliefs, and so on. In the context of the age of marriage, there is no age limit except based on the *baligh* criteria that what is regulated in *fiqh* which is accepted by its adherents to then grow and develop into laws that are

²⁶ See Mohammad Syawaludin, 'Understanding Conflict in Sociological Perspective Through Functional Conflict Approach', *Tamaddun: Journal of Islamic Culture and Literature*, vol. 14, no. 1 (2014), p. 3.

obeyed to be implemented by the community so that these rules become norms and laws that live in society. Indonesian Muslims.

Related to that, the minimum age limit as an effort by the government to carry out a social reconstruction, several thoughts of researchers need to be conveyed, namely first that the determination of the minimum age limit of either 16:18 years or 19:19 years must be seen as an effort to create order. and absolute legal reform to be carried out by taking into account the development of community life in a comprehensive manner is something that the government must or absolutely must do within the framework of the development of the Indonesian people and nation in general. Therefore, the dichotomy between religious law and secular law is no longer an object of extended discussion, because in the context of religion, especially Islam, government policies that regulate the affairs of its people, especially more specifically about limiting the minimum age of marriage-oriented to the benefit of the Indonesian people themselves. Second, the regulation that regulates the minimum age limit for marriage must indeed be understood as a means to carry out development or renewal efforts in a better direction.

The issue of acceptance of gender and equality issues also contributes to the slowness of Indonesian people to accept the minimum age limit for marriage that has been set by the government so that it has an impact on the still high number of child marriages and their consequences that occur in people's lives. The strong patriarchal culture and girls who are often considered as assets so that they do not have the right to control themselves have contributed to the low public acceptance of this issue. Awareness of this has always been fought for by some elements of Indonesian society, because the existence of inequality between men and women is factually much detrimental to Indonesian women, especially in the context of child marriage.

The existence of an age difference in Law Number 1 of 1974 as contained in Article 7 shows that the age formulation set at that time was not aspirational to the issue of equality, even though at that time, the issue could not be said to be non-existent. The current struggle for equality is getting stronger along with the strength of the issue becoming a global struggle in the context of Human Rights, especially regarding the struggle to eliminate acts of discrimination against women set by the United Nations and ratified by many countries including Indonesia, so that the struggle for it has begun to enter into the world. aspects of Indonesian people's lives, even become the development agenda of the Indonesian government in the future, although there are still many Indonesian people who cannot accept this equality,

Awareness of the need for equality between men and women is one aspect that encourages changes in regulations regarding the age of marriage. This shows that the criteria for mental readiness, physical, and reproductive health are seen equally for both men and women so

that they are seen as equal to be ready for marriage. This also shows the seriousness of some elements of society and the government to suppress the practice of child marriage which is rife in the community. However, according to the researcher, there needs to be a continuous and in-line collaboration between the government and elements of the community who fight for this equality, especially in remote villages to continue to socialize and campaign for equality between men and women,

The issue of the existence of a marriage dispensation in the law is also one of the factors that can hinder public acceptance of the minimum age limit for marriage. What it means is that the article that regulates marriage dispensation provides space for the perpetrators of this marriage practice to legalize their marriage, so that the regulation on the age limit for marriage is not understood to be absolute or absolute. In this context, it must be acknowledged that the existence of a marriage dispensation, whether contained in Law Number 1 of 1974 or Law Number 16 of 2019 is an aspirational effort by the government toward moral issues that occur in society. The current flow of globalization has more or less an impact on the social order of teenagers and young people which results in the reduction of social moral values, both those originating from religious norms and norms of decency and decency. From this point of view, it can be understood that the regulation of marriage dispensation is an emergency solution when child marriage is unavoidable. But on the other hand, the implementation of this regulation since the birth of Law Number 1 of 1974 has not been able to play a role in suppressing the high number of child marriages in Indonesia, especially child marriages proposed through a marriage dispensation. In addition to the traditional problems faced, the ease of judges in granting marriage dispensation for abstract and non-strict reasons is also another problem.

Departing from the factual conditions of tradition and social development in the community and also wide-open legal interpretations in the provision of marriage dispensations, then the birth of Law Number 16 of 2019 which not only contains changes to the minimum age limit for marriage but also changes the conditions for granting marriage dispensations. . On the one hand, this shows the awareness of the government and also elements of the community who are concerned with this issue that the article that regulates marriage dispensation in the previous law is not effective as a filter to reduce the number of child marriages. It is precisely at the level of implementation that it becomes the door to the legalization of child marriage. On the other hand, this new regulation still opens wide opportunities in the implementation of the ease of obtaining a marriage dispensation. The phrase “very urgent reasons and sufficient evidence” is not given an adequate explanation of what is meant by the phrase. However, it seems that the law refers to the

issue of morality whose judgment is left entirely to the judges to decide whether the reasons for applying for a marriage dispensation they face are in the mandate of the law or not.

3. The Legal Dynamics Behind the Changes

If we refer to the Convention on the Rights of the Child (CRC),²⁷ the age limit for children is 18 years. This is as contained in the Article which reads "Children are all persons under the age of 18 years unless otherwise stipulated by the law of a country. All children have all the rights outlined in this Convention."²⁸ If it is traced article by article in the convention, then there are at least four principles it contains, namely first, the principle of non-discrimination. Second, is the principle of the best interests of the child. Third, the principle of the right to life and its continuity, and fourth, the principle of respect for the opinion of the child.²⁹

Indonesia is one of the countries that have ratified this convention, then all regulations related to children's issues must be in the criteria for the age of children that have been set internationally. However, the regulations that apply in Indonesia are not all in the convention, one of which is Marriage Law Number 1 of 1974. The Convention on the Rights of the Child is not the only international regulation that has been ratified by Indonesia. There are two other conventions related to children's issues that have been ratified by Indonesia, namely The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Universal Declaration of Human Rights (UDHR).³⁰ With the ratification of CEDAW as a convention to eliminate all forms of discriminatory attitudes toward women, then in the context of the age of marriage, Indonesia must make regulatory adjustments that are not discriminatory, because boys and girls in CEDAW principles have the same rights in every aspect of the law, health, education, and others.³¹

There are at least three problems that arise with the differences in determining the age limit of children, especially those related to marriage, namely first, the Conflict of Child Protection and the Obligations of Parents in the Marriage Law. Law No. 1 of 1974 concerning marriage itself, if traced, it will be seen that there are contradictions in the context of limiting the age of marriage

²⁷ The Convention on the Rights of the Child is a binding agreement both legally and politically against every country that regulates children's rights. Indonesia, which is one of the countries in the world that has ratified the Convention on the Rights of the Child with the issuance of Presidential Decree No. 36/1990, has made Indonesia bound to implement the regulations stipulated in the Convention. See Silvia Fatmah Nurushobah, 'Convention on the Rights of the Child and its Implementation in Indonesia', *Biyan: Scientific Journal of Social Work Policy and Services*, vol. 1, no. 2 (2019), p. 120.

²⁸ Unicef, *Convention on the Rights of the Child: Children's Version* (Unicef.org, 2018), <https://www.unicef.org/indonesia/id/konvensi-hak-anak-versi-anak-anak>, accessed 18 Sep 2021.

²⁹ Article by article descriptions contained in the CRC with the four principles can be read in *ibid*.

³⁰ See Jordy Herry Christian and Kirana Edenela, 'The Deprivation of Women's Rights Due to Discrimination on the Age at Marriage', *Lex Scientia Law Review*, vol. 3, no. 1 (2019), p. 2.

³¹ See *ibid.*, pp. 5–6.

with efforts to provide child protection and parental obligations. The law seeks to realize child protection by obliging every parent to take care of and educate them properly, but substantively there are contradictions between the articles themselves holistically.

Article 45 Paragraph 1 reads "Both parents are obliged to maintain and educate their children as well as possible". Paragraph 2 "The obligations of parents as referred to in paragraph (1) of this Article are valid until the child marries or can stand alone, which obligations continue even though the marriage between the two parents breaks up". The obligations of parents as referred to in Paragraph (1) of this Article are valid until the child marries or can stand alone, which obligations continue even though the marriage between the two parents is broken. This article does not explicitly mention the initial limit of the age of maturity for a child, but only mentions the limit on whether a child is married or can stand alone.

Furthermore, Article 46 states the obligation of a child to help his parents when he is an adult. Article 47 also states that a child who has not reached the age limit of 18 years or has not married, then the child is in the power of his parents.

From this series of Articles 45 to 47, it is illustrated that there is a contradiction between these Articles with the determination of the minimum age of marriage for women at the age of 16 years. Because from what can be understood Law Number 1 of 1974 requires that the age limit of 18 years is the age that connects childhood with adulthood. This means that marrying a girl under the age of 18 who is the parent's responsibility for care is not an act that can be justified in the context of her care, because it can be regarded as a form of transferring responsibility from parents to their child's husband.³²

Second, there is disharmony between the Marriage Law and the Child Protection Law. The existence of Law Number 1 of 1974 which regulates the minimum age for marriage is also not in line with other regulations governing the protection of children, namely Law Number 23 of 2002. Child protection is interpreted as every effort to be able to provide a condition in which a child can grow physically, mentally, socially, health and can carry out their rights and obligations properly as a child.³³ This means that a child gets protection to develop himself and in obtaining his rights. Children's rights can be categorized into four types, namely the right to survival, the right to protection, the right to grow and develop, and the right to participate.³⁴

³² *Academic Paper of the Draft Law on Amendment to Law No. 1 of 1974 concerning Marriage*, pp. 23–4.

³³ See Dian Ety Mayasari and Andreas L. Atjengbharata, 'Setting the Age Limit for Marriage in View of the Child Protection Act', *DiH: Jurnal Ilmu Hukum*, vol. 16, no. 2 (2020), p. 243.

³⁴ See Reza Fahlevi, 'Legal Aspects of Child Protection in the Perspective of National Law', *Lex Journalica*, vol. 12, no. 3 (2015), pp. 180–1.

Law Number 23 of 2002 concerning Child Protection in Article 1 Paragraph 1 clearly states that what is meant by a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. From these age criteria, it is clear that there are different criteria for the age of children who differ between Law Number 1 of 1974 and Law Number 23 of 2002. The number 18 years has not changed in the revision of the Child Protection Law, namely Law Number 35 of 2014 concerning changes to the Child Protection Act. Law Number 23 of 2002 concerning Child Protection.

The criteria for the age limit of 18 years does not allow for the possibility of marriage under that age, because if it occurs, it is categorized as child marriage and the child's rights are not protected. Therefore, in Article 26 Paragraph 1 of Law Number 23 of 2002 it is stated that parents are obliged and responsible for:

- (1). Nurturing, nurturing, educating, and protecting children
- (2). Develop children according to their abilities, talents, and interests,
- (3). Preventing child marriages.

Thus, there is a discrepancy between the laws regarding this limit, and if the age limit stipulated by Law no. 1 of 1974 is still in effect, efforts to provide child protection as contained in the Child Protection Act have not been achieved.

Third, it is against the purpose of the Marriage Law. If we look into the purpose of marriage as contained in Law Number 1 of 1974, then there is a discrepancy with the minimum age limit for marriage stipulated in the Act. Article 1 states that the purpose of marriage is to form a happy and eternal home life based on the One Godhead. The purpose of marriage which is outlined is then clarified by the existence of Articles 6 and 7. In Article 6 Paragraph (1) it is stated that there are requirements, namely based on the agreement of both parties. Article 7 Paragraph (1) mentions the age limit for marriage which is then explained in his explanation that the regulation regarding the age restriction is intended to maintain the health of husband and wife and their offspring.³⁵

From the description above, two things that underlie the formulation of the purpose of marriage related to the limitation of the minimum age of marriage, namely the first recognition of the human rights of everyone to marry without coercion and to maintain the health of husband and wife and their offspring. These two things then become the benchmark for whether marriage under the age of 18, namely 16 years for women and 19 years for men, can fulfill this goal.³⁶

³⁵ *Academic Paper of the Draft Law on Amendment to Law No. 1 of 1974 concerning Marriage*, pp. 23–4.

³⁶ *Ibid.*

Whereas in many cases early marriages occur, due to coercion by their parents to marry. This coercion can occur not only because of the family's economic burden, but can also be caused by an arranged marriage by their parents which can occur because of the burden of the parents so that they feel proud to marry off their daughter to a rich person, or for other reasons.³⁷ Thus, the implementation of child marriage cannot be separated from the element of coercion from parents to their children, and this is of course not in line with Article 6 Paragraph 1 of Law Number 1 of 1974 which has been mentioned above.

From the aspect of protecting the health of parents and children, data from a study conducted in 2015 showed that with child marriage, there is a 30% greater risk of causing maternal and child mortality. The marriage has the potential to cause death. Because the health and reproductive conditions of children at a young age are still not well developed. From 2011 to 2015, there are around 14.2 million children in the world who are threatened with life and fatal health from the practice of underage marriage. Therefore, globally children aged 10-14 years have a risk of death five times greater than a woman who married between the ages of 20-24 years.³⁸

The description above provides an overview of the disharmony between the laws and regulations in force in the country. Apart from this disharmony in determining the category of children based on age in regulations in Indonesia, especially between the Child Protection Law and Law Number 1 of 1974, the government as a regulator is based on various aspects of consideration in determining the age limit of childhood and adulthood. However, the formulation of the age limit already contained in Law Number 1 of 1974 cannot be said to be inappropriate at that time, because the issues regarding the protection and human rights of children were not strong enough and had not become a global issue. However, along with the development of people's lives, demands for changes in these regulations cannot be avoided. and regulations related to children's issues have adopted issues regarding the protection and human rights of children, while Law Number 1 of 1974 has not changed so that it creates disharmony in regulations and gives the impression of government ambiguity in this matter. On that basis, the Constitutional Court's order to the government to change the age limit for marriage contained in Law Number 1 of 1974 has taken into account the demands and changes in the community so that at least the birth of Law Number 16 of 2019 as an amendment to Law Number 1 of 1974 relating to the age limit for

³⁷ See Pramana et al., 'Factors Affecting Early Marriage in Adolescent Girls', *Journal of Human Asylum Nursing*, vol. 3, no. 1 (2018), p. 9.

³⁸ See the description of the research data in Herti Windya Puspasari and Indah Pawitaningtyas, 'Maternal and Child Health Problems in Early Marriage in Several Indonesian Ethnicities; Impact and Prevention', *Health Systems Research Bulletin*, vol. 23, no. 4 (2020), p. 276.

marriage can be seen as harmonization and synchronization between laws so that it is no longer seen as a contradictory thing,

Legal harmonization is necessary to do for the creation of a good legal rule, because with the harmonization of laws and regulations, overlapping and overlapping between regulations will not occur. In the case of the age limit for marriage, it can be seen that disharmony occurs in the legal substance which causes the age limit for children contained in Law Number 1 of 1974 to be inconsistent with other statutory products. This disharmony of legal substance, of course, cannot be separated from discrepancies in its legal structure (legal structure) and legal culture (legal culture), because all of them have a close relationship in giving birth to a good legal product.

The issuance of Law Number 16 of 2019 which stipulates the age limit for marriage at the age of 19 for both men and women shows that the direction towards harmonization and synchronization of legal substance (legal substance) has been pursued by the government. It's just a matter of how the legal culture of the community must be reconstructed so that legal awareness of the importance of the minimum age limit for marriage has strong roots and a strong position in society which in the end the application of the law on this matter can be implemented effectively. Efforts to reconstruct this legal culture, of course, require a long time, and therefore efforts to socialize the law should not only be imposed on the government,

In addition, from a legal perspective, Law Number 16 of 2019 which changes the rules regarding the application for a marriage dispensation shows that the process is not as easy as it has been before, because there is the phrase "with very urgent reasons accompanied by sufficient supporting evidence". This implies that deviations in the age of marriage can still be carried out for reasons that are emergency and accompanied by valid evidence. When compared with what is stated in Law Number 1 of 1974, the application based on "very urgent" and "sufficient supporting evidence" is not found in the Law.

The legal interpretation that can be put forward in the context of "very urgent" is that the marriage dispensation is the only solution that can be taken to avoid the possibility of harm that arises, and is accompanied by convincing evidence in the case of filing the marriage dispensation, such as documents does explain the conditions for applying for the dispensation. Thus, this new law requires that the application of a marriage dispensation is not something that is against the law as long as it is done to avoid any harm that may arise from the limitation of the age of marriage to 19 years.

In practice, the reason for this disadvantage is often used as a judge's consideration to provide marriage dispensation for couples who marry below the minimum age limit. However, the legal reasoning of the judges is not only based on what is written and understood from the written

rules but is also based on the social, economic, and juridical facts they face. Therefore, in the end, the interpretation of “very urgent” and “sufficient supporting evidence” will return to the considerations faced by the judges themselves in the field. This is also what in the opinion of the researcher, is why the government does not fully accommodate the input of the drafting team of the academic text of Law No. 16 of 2019 which recommends the conditions stipulated in government regulations.

Apart from what has been mentioned above, this Law in the context of its legal function contains efforts for social control and social reconstruction at the same time. The function of social control can be seen from the understanding that the marriage dispensation formulated in the new law tries to control the dispensation application submitted by the community to marry off their children because it must be accompanied by conditions that are more difficult than before, so the reasons that are not included in the category of very urgent, the judge should have refused to grant the request. Likewise, in the perspective of social reconstruction, this marriage dispensation regulation tries to make social changes from the culture of marrying children by including conditions that are relatively stricter than before.

D. CONCLUSION

Based on what the authors have described above, it can be concluded that from the aspect of social dynamics the strong discourse of gender equality, human rights, and protection of children prompted the submission of a judicial review to the Constitutional Court twice which at the end issued a warning to the government to amend the law. Invite. This is supported by the fact that the number of child marriages remains high with all its problems. From the aspect of legal dynamics, Law Number 1 of 1974 concerning Marriage, especially that which regulates the age limit for marriage is no longer relevant to the struggle for equality, human rights, and child protection which has been ratified by the Indonesian government. In addition, there is also disharmony with other laws and regulations that also regulate the age of children.

Amendment of Law Number 1 of 1974 concerning Marriage to Law Number 16 of 2019 is a manifestation of the government to control the practice of child marriage and make efforts for better social change in the dynamics of community life itself which changes according to advances in knowledge and others.

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