

THE DIALECTICS FEMINISM PARADIGM OF THE LEGAL MARRIAGE AS A FORM OF LEGAL PROTECTION IN WOMEN

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Abstrak: Konstitusi sebagai dasar negara memberikan petunjuk bahwa bangsa Indonesia seluruhnya memiliki hak yang sama, lihat pada pasal 27 (1) UUD 1945, termasuk posisi perempuan dan laki-laki. Namun dominasi budaya patriarki memposisikan perempuan sebagai subaltern dari laki-laki. Bagi paradigma Feminisme Legal Theory hukum merupakan produk laki-laki, sehingga menjadi barometer produk hukum adalah laki-laki, seperti penentuan upah dalam UU ketenagakerjaan, UU terkait Lingkungan dan UU tentang perkawinan. Belakangan ada peristiwa menarik yaitu ketika Mahkamah Konstitusi mengabulkan permohonan Judicial Review terkait batas minimal usia perkawinan, dimana di UU perkawinan sebelum revisi ada perbedaan usia anak yang relatif cukup jauh, 16 tahun perempuan dan 19 laki-laki. Setelah adanya Putusan MK No. 22/Puu-Xv/2017, kemudian Pemerintah merevisi UU Nomor 1 Tahun 1974 tentang perkawinan menjadi UU No. 16 Tahun 2019 Tentang Perubahan Atas UU 1 Tahun 1974 ini mengatur batas usia untuk melakukan perkawinan, khususnya usia perempuan minimal 19 tahun bisa melakukan perkawinan, sama dengan laki. Apakah ini menandakan politik hukum Indonesia mengarah pada paradigma teori hukum feminisme atau Feminist Legal Theory (FLT). Sebenarnya masih banyak norma dalam undang undang yang bias gender, termasuk dalam UU No. 16 Tahun 2019. Adapun pendekatan dalam penelitian ini menggunakan statute approach dan conceptual approach.

Kata Kunci: Paradigma Feminisme Hukum; Hukum Perkawinan; Perempuan

Abstract: The constitution as the basis of the state indicates that all Indonesians have the same rights, see Article 27 (1) of the 1945 Constitution, including the position of women and men. However, the domination of patriarchal culture places women as a subaltern of men. For the paradigm of Feminist Legal Theory, the law is a product of men, so that it becomes a barometer that legal products are men, such as determining wages in labor laws, laws related to the environment, and laws on marriage. Recently, there was an interesting incident when the Constitutional Court granted the Judicial Review request related to the minimum age of marriage, wherein the Marriage Law before the revision there was a relatively different minimum age for marriage between the couples, 16 years old for girls and 19 for boys.

After the Constitutional Court Decision No. 22 / Puu-Xv / 2017, then the Government revised Law No. 1 of 1974 on marriage to become Law No. 16 of 2019 concerning Amendments to Law 1 of 1974 regulates the age limit for marriage, especially women who are at least 19 years old can marry, same as men. It may indicate that Indonesian legal politics leads to the paradigm of feminist legal theory or Feminist Legal Theory (FLT). Many legal norms are gender-biased, including in Law no. 16 of 2019. The approach in this study uses a statute approach and a conceptual approach.

Keywords: Legal Feminism Paradigm; Marriage Law; Women

INTRODUCTION

The dialectic paradigm of feminism is a view that demands that the state has to be friendly and even side with women, this is because during this time women have only been subordinate to men and even women are oppressed by the state. From this emerged the understanding that women also have the same rights and roles as men. The dialectic of feminism does not stop at the social realm but also penetrates legal epistemology, which is known as legal feminism theory. This movement realizes that the laws made by the state tend to use a male perspective so that women's interests are often neglected. The gender-biased patriarchal ideology influences legal policy.¹ The patriarchal culture in Indonesia is very strong, this can be seen from the legal policy regarding women's participation in the

political space is only 30%, this is regulated in the Implementation of the General Election of The House of Representatives, Regional Representative Board, and Commission II of Regional House of Representatives.

The imbalance in the composition of Indonesian parliamentarians is also a representation of a patriarchal society, in 2004, the number of parliament members was 550 out of this number, only 61 were women, meaning that only 11.09 percent were women, while in 2009 there was an increase from the number of members of the parliament in the parliament 101 were women, meaning 17.86 percent were women. Seeing the reality which relevant to Corele's perspective, the legal product will have a patriarchal face. In a patriarchal society, men prevent women from entering the public sphere, while they come and go to the private and public

¹ Moch Fakhri, "HUKUM PERKAWINAN DI INDONESIA (Kajian Hukum Berkeadilan Gender Dalam Kerangka Feminis Legal Theory)" 7 (2015).

spaces with the legal provisions which benefit them.²

According to the perspective of Feminist Legal theory, many gender-biased laws place women as subordinate to men, including the law of marriage. Even the law that feminists are fighting for is the law on marriage, which questions some norms that are considered unfriendly to women, and even to girls.

The judges grant a judicial review of the different ages of girls and boys because it is against Article 27 (1) of the 1945 Constitution all citizens are equal in the law, regardless of their position, status, and even gender. The Constitutional Court Decision No. 22 / Puu-Xv / 2017 MK is the starting point for the paradigm of Feminist Legal Theory in Indonesia and even can be used as a reference in the same norm, namely the spirit of feminism. The Constitutional Court decided to grant the petitioner's petition on behalf of Endang Wasrinah, Maryanti, and Rasminah. However, regarding the petition that demands the marriage age limit for women is the same as men, which is 19 years old, the Constitutional

Court has no right to determine the marriage age limit because the authority is on legislators, that is the House of Representatives of RI.

METHOD

This type of research is descriptive analysis, using a statutory approach and a conceptual approach. The statute approach is the rule of law that is the focus of research, while the understanding of the relevant concept, in this case, is an abstract element in a field of study and is universal, its function is to bring up something interesting to be reviewed.³ Concept development in legal research must use a conceptual paradigm as well as a theoretical framework.⁴

RESULTS AND DISCUSSION

1. The Norm of Minimal Age to Marriage in Various Perfectives

The age limits for children in several countries are not same, even in Indonesia there are several different regulations to define the age limit for children. In article 1 verse 26 of Law No.13 of 2003 on labor, "A child is every person who is under 18 (eighteen)

² Ramlan Surbakti and Didik Supriyanto, *Partisipasi Warga Masyarakat Dalam Proses Penyelenggaraan Pemilihan Umum*, 2013, <https://www.neliti.com/publications/45203/partisipasi-warga-masyarakat-dalam-proses-penyelenggaraan-pemilihan-umum>.

³ Johnny Ibrahim, *Teori Metodologi Penelitian Hukum Normatif*, ed. Sutiyono Wahyudi, kedua (Malang: Bayumedia Publishing, 2006).

⁴ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, 1st ed. (Jakarta, 1985). Hal. 10

years old.", According to Article 1 verse 5 of Law no. 21 of 2007 concerning the eradication of the criminal act of trafficking in persons "A child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb. " Law No.44 of 2008 concerning Pornography Article 1 verse 4" A child is someone who is not yet 18 years old "RI Law no. 23 of 2002 concerning Child Protection Article 1 verse 1 "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb."

Whereas in Article 1 verse 5 Law No.39 of 1999 on Human Rights, "A child is every human being under 18 (eighteen) years old and has not married, including a child who is still in the womb if it is in his interest." Similar to the norms that exist in the law regarding the system of juvenile criminal justice, what is called a child is 18 years old, this is contained in article 1 number 3 "Children with conflict in the law, herein after referred as Children, are children who have reached the age of 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of having committed a criminal act.

The meaning of children in Article 1 verse 2 of Law no. 4 of 1979 concerning Child Welfare, is "A child is someone who has not reached the age of 21

(twenty one) years and has never been married." Whereas in the Convention on the Rights of the Child, what is meant by the child is every human being who is under 18 years of age, unless based on what applies to the child it is determined that the adult age is reached earlier. Article 45 of the KUHP "A child who is not yet an adult if someone has not yet 16 years old" Article 330 paragraph (1) KUHPperdata "A person cannot be said to be an adult if the person has not yet 21 years old, unless the person has married before 21 years old.

Aristotle sets 14-21 years, Simanjuntak sets 15-21 years, Hurlock sets 13-21 years, FJ Monte sets 12-18 years, Singgih Gursana sets 12-22 years while Kartini Kartono, sets adolescence from 13-19 year.⁵ In Islam, a child can be said to be an adult when he enters the baligh phase. The indicator is when boys have had "wet dreams" while women have menstruation. Then, this period is called the second performance realm, where humans are required to actualize the agreements that have been agreed upon in the first performance realm, namely the spirit realm. When a person's

⁵ Ahmad Asrori, "Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Muslim," *Al-Adalah* 12, no. 4 (2015): 807-26, <https://doi.org/10.24042/adalah.v12i2.215>.

intellectual level is in peak condition, so that he is able to distinguish right and wrong behavior, good and bad.⁶

According to the Syafiyah and Hanabilah groups, it is determined that a child's adulthood begins at 15 years old, although they can receive signs of a person's maturity marked by the coming of menstruation for girls and dreams for boys. With reason determined taklif and the existence of law. According to the sect of Imam Abu Hanifah, it is stated that the characteristic of maturity comes from 19 years old for men and 17 years old for women. Meanwhile, according to Imam Maliki, it is determined that a person's adult is when he is 18 years old for men and women and finally the Ja'fari sect's opinion that a person is considered to be an adult and could marry if it is 15 years old for men and 9 years for women. From the differences opinion above, the opinion of Imam Abu Hanifah provides the highest age limit compared to other opinions. And this opinion is used as a reference in the marriage legislation in Indonesia.⁷

2. Legal Feminism Paradigm

Paradigm is a way to look something, talking about paradigm will not be separated from philosophy. There are many genre in legal philosophy, including natural law genre, legal positivism schools, sociological jurisprudence schools, historical law schools, legal utilitarianism genre, legal realism genre and even Legal Criticism genre. the genre of legal philosophy has its own paradigm. The genre of natural law with legal paradigm originates from God and ratio. The legal genre of positivism has a legal paradigm which is derived from norms and rulers, while sociological jurisprudence has the paradigm that the laws in the Law bbook are often contrary to the laws that live in society (law in action). In the world of philosophy paradigm is the most important part because the main entity is a major philosophical system, which has a worldview or a fundamental point of view.⁸

There is no final definition of Feminism, the definition of feminism is influenced by the classification and this original movement, because feminism has many kinds movement. It means the theoretical conceptual basis of feminism

⁶ Asrori.

⁷ Akhmad Shodikin, "PANDANGAN HUKUM ISLAM DAN HUKUM NASIONAL TENTANG BATAS USIA PERKAWINAN," *Mahkamah* 9, no. 1 (2015): 114–24.

⁸ Aditya Yuli Sulistyawan, "Feminist Legal Theory Dalam Telaah Paradigma: Suatu Pemetaan Filsafat Hukum," *Masalah-Masalah Hukum* 47, no. 1 (2018): 56, <https://doi.org/10.14710/mmh.47.1.2018.56-62>.

is not from a single theory formulation so that the definition of feminism depends on the socio-cultural reality that is the background of the birth of this understanding.⁹ This movement emerged first in the 19th century, when there was a demand for equal access to the office of pastor and the right to interpret the Gospel, especially for women. Subsequent developments in the 1970s, the religious patriarchy criticism rises various strategies related to feminism and religion.¹⁰ The essence of law in the view of FLT adherents cannot be separated from the influence of patriarchal culture, gender, including religion which is hereditary believed to be the truth about the meaning of the relationship between men and women, in this is a gender construct.¹¹

It is different from what Nasaruddin Umar said, that in religion, especially Islam, it highly respects the principles of gender equality, this can be seen in the verses of the Qur'an as follows; (1) QS. Al Hujurat verse 13 "The attainment of the degree of devotion is not based on certain gender

differences. (2). QS. Al An'am: 165 "Men and women as caliphs on earth". (3). QS. Al A'raf: 172 "Men and women accept the primordial agreement". (4) QS. Al Imran verse 195, QS. Al Nisa 'verse 124, QS. Al Nahl, verse 97, QS. Ghafir verse 40 "Men and women have the potential to achieve achievement".

Furthermore, the paradigm of feminism has developed in several places, namely Liberal Feminism, Marxist Feminism, and Radical Feminism. Apart from this large group, there are still several other currents, such as Psychoanalytic Feminism-gender, Existentialist Feminism, Postmodern Feminism, Multicultural-global Feminism and Ecofeminism. The many genre of feminism negate that each sect is on the different altar paradigm according to the struggles that are carried out by its socio-culture and its background.¹² Marxist Feminist states that there is an inequality between men and women. Socialist Feminist states that socialist principles should be used to provide equal rights between men and women.¹³

Margot Stubbs Liberal philosophy brings legal positivism, meaning that the

⁹ Wafda Vivid Izziyana, "Pendekatan Feminisme Dalam Studi Hukum Islam," *Istawa: Jurnal Pendidikan Islam* 2, no. 1 (2017): 139, <https://doi.org/10.24269/ijpi.v2i1.366>.

¹⁰ Izziyana.

¹¹ Sulistyawan, "Feminist Legal Theory Dalam Telaah Paradigma: Suatu Pemetaan Filsafat Hukum."

¹² Sulistyawan.

¹³ Setiawan, Ouddy, and Pratiwi, "Tsu Kesetaraan Gender Dalam Optik Feminist Jurisprudence Dan Implementasinya Di Indonesia."

characteristics of positivism are keeping a distance from objects, have neutral mechanisms, autonomous out from non-legal elements so that they will not be affected by socio-political problems.¹⁴ According to the positivism perspective, law originates from norms and is formed by the authorities, who are firm and coercive towards the people. Then Positivism is trapped in dogmatism, sacred law is law that is legality or promoted. So that in the next development of legal positivism, there is often a gap between *das sein* and *das sollen*, from this appear other legal paradigms that criticize legal positivism emerge, one of them is critical law studies (CLS).

Milovanovic in Soetandyo there were several stages of the development of the CLS, first, in the 1970s it was the beginning of the criticism onslaught to formalistic law. Second, began to criticize cases followed by new CLS theories and concepts, the famous figure from CLS was Unger from America. The essence of CLS is a skeptical attitude towards legal positivism which idealizes that laws are made by neutral institutions. The people are deceived by legal positivism that the rule of law should not be the rule of men. Apart from that, the legitimacy of legal

positivism is reification and hegemony processes.¹⁵

Feminist Legal Theory (FLT) first developed in 1970, in the same year the United States of America also developed the paradigm of Critical Legal Studies (CLS). The two paradigm concepts constitute are new and revolutionary movement, where the idea echoed was against the hegemony of thought at that time, about critical thinking and against discrimination during this time afflicted women, especially in the legal aspect.¹⁶ The strong influence of CLS experts on feminist thinkers is the deconstruction method. Deconstruction is a method from Jacques Derrida, this deconstruction is used as a method to criticize ideology that leads to a patriarchal paradigm, which positions women as a subaltern of men.¹⁷

Then the awareness to get out of the domination of patriarchal culture is increasingly developing with the existence of this legal theory of feminism, also the Feminist Legal Theory (FLT) was born to break the

¹⁵ Soetandyo Wignjoebroto, *Hukum Paradigma, Metode Dan Dinamika Masalabnya*, ed. Ihdhal Kasim, pertama (Jakarta: Elsam dan Huma, 2002).

¹⁶ Setiawan, Ouddy, and Pratiwi, "Isu Kesetaraan Gender Dalam Optik Feminist Jurisprudence Dan Implementasinya Di Indonesia."

¹⁷ Fakhri, "HUKUM PERKAWINAN DI INDONESIA (Kajian Hukum Berkeadilan Gender Dalam Kerangka Feminis Legal Theory)."

¹⁴ Setiawan, Ouddy, and Pratiwi.

unbalanced legal order because the world is too patriarchal. Feminists believe that history is written from a male perspective. Then it creates a gender bias about human existence and unequal social relations, which results in language, logic and legal structures that reflect male character.¹⁸

Similar to CLS, the Feminist Legal Theory genre, firmly rejects legal autonomy or in the language of positivism, namely objectification and legal neutrality, for the feminist movement a blind law will only lead to unfair laws for gender. According to the Feminist Legal Theory, that laws are made and compiled by men to sharpen a patriarchal culture, and laws are not constructed from the perspective of women. Formalist law is discrediting, this rule is expressed in language and way of thinking masculine which causes women's repeated oppression.¹⁹

3. The Legal Feminism Paradigm in the Marriage Law

The politics of law regarding the minimum limit of marriage has been a polemic since the beginning. Based on Article 7 paragraph (1) of the 1973

Marriage Law Draft, the minimum age for marriage is 21 years for men and 18 years for women.²⁰ Then the State stipulates that marriage regulations are only permitted if the male party has reached 19 years old and the female party has reached 16 years old. If there are deviations under the provisions, the public has the right to apply for dispensation to the court or other interested officials.²¹

Further, Ratno Lukito said that the cause of changing the draft was related to the minimum age for marriage. First, there is no single paradigm regarding adult between Muslims and the state. Second, the legal culture of society in marriage prioritizes fiqh and culture. Third, gender relations and patriarchal culture are still strong in society.²² Then, it is important to regulate the minimum age of marriage to reduce underage marriages, furthermore aiming to unify the law of marriage.²³

Article 7 paragraph 1 In Law No. 1 of 1974, it reads "Marriage is only permitted if the male has reached the age of 19 (nineteen) years and the

¹⁸ Sulistyawan, "Feminist Legal Theory Dalam Telaah Paradigma: Suatu Pemetaan Filsafat Hukum."

¹⁹ Fakhri, "HUKUM PERKAWINAN DI INDONESIA (Kajian Hukum Berkeadilan Gender Dalam Kerangka Feminis Legal Theory)."

²⁰ Ahmad Masful Fuad, "KETENTUAN BATAS MINIMAL USIA KAWIN: SEJARAH, IMPLIKASI PENETAPAN UNDANG-UNDANG PERKAWINAN," *Petita* 1, no. 1 (2016): 32-47.

²¹ Fuad.

²² Fuad.

²³ Fuad.

woman has reached the age of 16 (sixteen) years. Furthermore, in the Regulation of the Minister of Religion No.11 of 2007 concerning the Registration of Marriage Chapter IV Article 8 "If a prospective husband has not reached 19 (nineteen) years old and a prospective wife has not reached 16 (sixteen) years old, he must receive a dispensation from the court. And according to Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law (KHI) Article 98 Paragraph (1) states that "the age limit for children who are able to stand alone is 21 years as long as the child is not physically or mentally disabled or has never been married".

It is clear that the legal age for marriage in Indonesia is 19 (nineteen) years old for men and for women is 16 (sixteen) years old. But it has not enough, at the level of implementation there are still conditions that must be followed by the couples, if the prospective husband and wife are not yet 21 (twenty one) years old then there must be permission from the parents or guardian of marriage, it is in accordance with the Regulation of the Minister of Religion No.11 of 2007 concerning the Registration of Marriage Chapter IV Article 7 "If a couple has not reached the age of 21 (twenty one) years, it must

obtain written permission from both parents.²⁴

4. Minimum Age Limit for Marriage and Child Protection

A marriage is a legal relationship between a man and a woman for a long time. A marriage is also a community affair that unites different relationships, or carries out ceremonies based on tradition.²⁵ Whereas in the religious law, marriage is a sacred act, which is the existence of an engagement between a man and a woman in carrying out their sunnah.²⁶ The ideal age limit for marriage has never been clearly stated in the text of the al-Qur'an and as-Sunnah. Although in the Qur'an and as-Sunnah there is no detail description of the age limit for marriage. However, the ideal age of marriage in the maqasid shari'ah perspective is 25 years for men and 20 years for women.²⁷ Meanwhile, ideal age for women is 21–25 years while for men 25–28 years. At that age, female

²⁴ Shodikin, "PANDANGAN HUKUM ISLAM DAN HUKUM NASIONAL TENTANG BATAS USIA PERKAWINAN."

²⁵ Rina Yulianti, "Dampak Yang Ditimbulkan Akibat Perkawinan Usia Dini," *Pamator Journal* 3, no. 1 (2010): 1–5.

²⁶ Yulianti.

²⁷ Holilur Rohman, "Batas Usia Ideal Pernikahan Perspektif Maqasid Shariah," *Journal of Islamic Studies and Humanities* 1, no. 1 (2017): 67, <https://doi.org/10.21580/jish.11.1374>.

reproduction psychologically well developed and strong.²⁸

It means that marriage between a man and a woman is a necessity in carrying out their nature as a human being, so that legal and correct procedures for marriage law are regulated. laws governing marriage Law No. 1 of 1974. As for the principles of marriage according to Law no. 1 of 1974 are: 1) Voluntary principle 2) Family Participant, 3) Divorce is being complicated 4) Monogamy principle, 5) Maturity of the prospective husband, 6) The rights and position of the wife is equal to the rights and position of the husband.²⁹

Indonesia is one of the ten countries in the world with the highest absolute rate of child marriage and the second highest in ASEAN after Cambodia (Council of Foreign Relations). It means that estimated one in five girls will marry before they reach 18 years old. The Central Statistics Agency (BPS) recorded five provinces with the highest underage marriage rates, there are East Java (28%), West Java (27.2%), South Kalimantan (27%), Jambi (23%), Central Sulawesi (20.8%).³⁰ This data is very

surprising because the problem of underage marriage is not a trivial problem, this will have an impact on the progress of the country in the future.

The main reasons for early marriage are the desire of parents to get additional family members soon, there is no understanding of the bad consequences of marriage too young, the conservative nature that they marry their children so young just because they follow custom.³¹

The impact is being caused by underage marriage, first, child marriage and low educational level, child marriage often causes children not to longer schooling, because now they have new responsibilities, as a wife and prospective mother. Second, domestic problems in early childhood marriages. Gender inequality is a consequence of child marriage. The dominance of partners often makes children vulnerable to Household violence. Fourth, reproductive health. It is important to know that pregnancy at less than 17 years increases the risk of medical complications, both of mother and

²⁸ Yulianti, "Dampak Yang Ditimbulkan Akibat Perkawinan Usia Dini."

²⁹ Yulianti.

³⁰ Inna Noor Inayati, "Perkawinan Anak Di Bawah Umur Dalam Perspektif Hukum, Ham Dan Kesehatan," *Jurnal*

Bidan "Midwife Journal 1, no. 1 (2015): 46–53, www.jurnal.ibijabar.org46.

³¹ Umi Sumbulah Faridatul Jannah, "Pernikahan Dini Dan Implikasinya Terhadap Kehidupan Keluarga Pada Masyarakat Madura (Perspektif Hukum Dan Gender)," *Egalita*, 2012, 83–101, <https://doi.org/10.18860/egalita.v0i0.2113>.

child.³² Fifth, psychosocial complications due to early marriage and pregnancy. Sixth, children born from early marriages. When children who are still growing periode, the process of pregnancy compete nutrition with the fetus they are carrying.³³

As mentioned, Law No. 1 of 1974 concerning marriage does not show clearly the strict limits on the "maturity" of the couples, who are not yet "mature" can also marry if it is desired by the parties concerned, and the court can give permission for them to marry.³⁴

While the principle of Law No. 23 of 2002 concerning Child Protection really think about the issue of maturing the age of marriage. That is principle of non-discrimination; the best principle to the child, the right principle to life, survival and development, and the principle of respect for children's opinions. The children rights must be fulfilled are: a) The right to education, b) The right to think and expression, c) The right to express opinions and have

their opinions heard, d) The right to rest and take advantage of free time, hang out with peers, play, expression, and creation, and e) Right to protection. In relation to the marriage of minors, the five rights of the child are violated.³⁵

Article 2, paragraph 3 and 4 the Law of the Republic Indonesia No. 4 of 1979 concerning Child Welfare, which states: "Children have the right to care and protection, both of pregnancy and after birth. Children have the right to protection of the environment which endanger and hinder their normal growth and development."³⁶

The consideration of the Constitutional Court regarding the difference from minimum age marriage is contrary with 1945 Constitution and the Child Protection Law. The age limit to marriage for women in the Marriage Law at the age of 16 it is against the Child Protection Law in which a person under 18 is still called a child so according to the Marriage Law could violate the rights that should be obtained by children. While Article 31 of the 1945 Constitution mandates the right to have basic education, meaning that at 16 years old, it is the age of education to complete the compulsory 12 years, this discrimination is very

³² Eddy Fadlyana and Shinta Larasaty, "Pernikahan Usia Dini Dan Permasalahannya," *Sari Pediatri* 11, no. 2 (2016): 136, <https://doi.org/10.14238/sp11.2.2009.136-41>.

³³ Fadlyana and Larasaty.

³⁴ Sofia Hardani, "Analisis Tentang Batas Umur Untuk Melangsungkan Perkawinan Menurut Perundang-Undangan Di Indonesia," *An-Nida': Jurnal Pemikiran Islam* 40, no. 2 (2015): 126–39.

³⁵ Hardani.

³⁶ Hardani.

gender-biased where the interests of women's basic education will be hampered. Moreover, the age of 16 is vulnerable to health risks for women and increases opportunities for exploitation and violence in marriage.

CONCLUSION

The legal feminism in the marriage law following the Constitutional Court decision no. 22 / Puu-Xv / 2017 obscures the minimum age of marriage is 19 years old for both women and men. It indicates that the paradigm of the judge's decision is not gender-biased. There is no difference between women and men based on article 27 of the 1945 Constitution. The Constitutional Court's decision should have set a precedent for gender-biased laws. There are norms in the marriage law that are still gender-biased, and they need to be noticed by the flow of legal feminism. It is related to the rules of polygamy, which are very discrediting women.

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