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# Limitations on the Age of Marriage and Its Legal Implications Perspective of Legal Expediency

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## ABSTRACT

The purpose of this study is to investigate the urgent reasons for changing the age limit for marriage law and to analyze the legal implications that emerged from the marriageable age limit in case of legal benefits. This research type uses normative juridical research. The source of data in this study is by examining primary data and enforcement of rules in practice, and how the form of legal safeguard is related to the problem to be studied. The outcomes of this study indicate that the revision of the marriage law has not fully succeeded in preventing the act of underage marriage, because although the law has been revised, the act of underage marriage continues due to a gap in the law itself with the dispensation of marriage. If this phenomenon is related to the theory developed by Jeremy Bentham, one could say that one of the law's three goals, namely legal expediency, has not been achieved by the change of the marriage age limit.

**Keywords:** *Limitation, The Age Of Marriage, Legal Implication, Legal Expediency*

## 1. INTRODUCTION

After 48 years, the marriage law has finally been refreshed with the passing of law No. 16 of 2019 on marriage. An increase in the marriage age is one of the main aspects of the amended law, from 16 years (female) and 19 years (male) to both being equal at 19 years old. The raising in the age of marriage gives hope for reducing or even disappearing, underage marriage customs. However, although the law has been revised, underage marriage practices still occur, and even more. This is proven by a surge in instances requesting marriage dispensations in religious courts, for example, in the Pemalang Religious Court which reported a significant increase in child marriage, where in 2020 there were 699 applications, whereas in 2019 there were only 168 applications, and in 2018 only 84 applications. After 48 years with the passing of law No. 16 of 2019, covering marriage, the law on marriage was finally updated. One of the key points of the revised law is the raising of the marriageable age, from 16 years old (female) and 19 years old (male) to both 19 years old. The renewal of the age restriction for marriage gives hope to reducing, or even disappearing, underage marriage practices. However, although the law has been revised, the practice of underage marriages keeps occurring, even more and more. This is proven due to an upsurge in requests for marriage dispensation in religious courts, for example, Pemalang Religious Court, which

reported a significant increase in child marriage, where in 2020 there were 699 applications, whereas in 2019 there were only 168 applications, and in 2018 only 84 applications.

The increase in requests for dispensation from marriage is the impact of the lack of strict regulations regarding the prohibition of child marriage. Because despite the age restriction for marriage having been renewed, the rule still provides room for marriage under 19 years of age with the provision of a marriage dispensation. So this provision will only be a loophole for some people to "outsmart" the marriage law. When this phenomenon is associated with the theory developed by Jeremy Bentham (1748-1831), which states that in law (policy), to judge the good and bad of law, it must be measured by the good and bad consequences resulting from the application of the law.[1] In line with Jeremy Bentham's views, Miles stated that the barometer of justice should be based on its usefulness. An action should be aimed at achieving happiness, and an action is considered wrong if it causes ugliness. [2] in light of the opinions of the two figures above, it may be concluded that the adjustment of the marriage age restriction has failed to achieve legal expediency, which is one of the three-goal of law

Several previous research has researched about the revision of marital law. Among them are Abdul Hamid Septi Indrawati, Hifdul Oral Amal, Rahmad

Karyadi, and Amelia Khairunisa. according to the author's opinion, no research examined specifically the revised marriage law's legal consequences in the Perspective of legal expediency. From this description, the writer makes an analysis how the marriageable age limit and the legal implications of the revision of the marital law perspective of legal expediency. because actually the regulation was made to provide benefits in society. So the existence of the law can provide answers regarding problems in marriage in Indonesia.

## 2. RESEARCH METHOD

Normative legal research is used in this research. The study's source of information is research that was done by looking at primary data and paying attention, studying, and knowing the application or application of legal rules in practice in the field and how the type of legal defense is related to the problem to be studied. Sources of data obtained from literature such as laws, government regulations, research journals, and other records relevant to this research. Then analyzed using the descriptive analysis method which describes and analyzes the problems that exist in this study then conclusions or legal prescriptions are drawn from the analysis's conclusions.

## 3. RESULTS AND DISCUSSION

Basically, humans have the nature of zoon politics which means that between one human and another human being in their lives need each other. This is due to social interaction. And one of the human needs is to do marriage. Every couple who enters into marriage has the same goal, namely to build a peaceful home in accordance with the only true God. Therefore, each country has its own regulations regarding marriage. In Indonesia, a man and woman become husband and wife and develop a physical and emotional tie with the intention of creating a joyful, everlasting family (home) based on God Almighty.[3] Bonds allow association and give birth to rights and obligations between the two parties who are not mahrams. [4] with the purpose of marriage is for domestic life to obtain happiness and eternal as the purpose of marriage stated in Article 1 Paragraph 1 of Law No. 16 of 2019, reducing the divorce rate and producing healthy offspring, so in carrying out marriages, mental and physical maturity is needed to be ready to carry out the rights and

obligations as a husband and wife. When preparing for marriage, age plays a vital influence in evaluating if a person can be deemed mature and responsible for all attitudes and behaviors. Maturity is an absolute thing in marriage, [5] Because marriage is legally binding, it has to be performed by persons who are biologically and psychologically mature enough. Therefore, it is necessary to regulate the minimum age for marriage in order to realize the purpose of marriage.

Regulations addressing the marriage age restriction are significant in Indonesia since there are still numerous underage weddings or early marriages in society. Imagine, the percentage of underage marriages has increased every year. According to data issued by the Central Statistics Agency (BPS) via [sindonews.com](http://sindonews.com), the rate of early marriages in the country increased to 15.66% in 2018 from 14.18% the previous year. The growth in the rate of early marriage is a separate item for the state to consider in its efforts to analyze the Human Development Index, or HDI, BPS data given by [Tempo.co](http://Tempo.co) also says that one in every four Indonesian girls got married before the age of 18. This information was gathered over a five-year period, from 2018 to 2015.

According to UNICEF study results from 2016 and research data from the Center for Gender and Sexuality Studies at the University of Indonesia from 2015, it was stated that Indonesia is a country that has the seventh highest rate of early marriage among countries and is ranked second in ASEAN after Cambodia. Of the 7.3 million girls in Indonesia, about 2 million were married before the age of 15 and stopped going to school. And it is estimated that this number will increase in 2030 to 3 million people.[6] This is something that still needs attention. In Indonesia, it is not uncommon to find children aged 15 and older who are married. Meanwhile, if referring to the data from the Ministry of Women's Empowerment and Child Protection (PPPA), it was recorded that out of 79.6 million children in Indonesia, about 11.2% have married before the age of 18, while based on basic health research data (Riskesdas) by the Ministry of Health of the Republic of Indonesia states that of the number of women aged 10 to 54 years old, 2.6% married for the first time before the age of 15, and 23.9% married between the ages of 15 and 19. This indicates that around 26% of women have entered into underage marriages, where the functions of the reproductive organs have not yet developed optimally.[7]

However, from a medical standpoint, early marriage greatly impacts maternal physical and mental health and the unborn child.[8] According to UNICEF, women who give birth between the ages of fifteen and nineteen have double the risk of death compared to women who give birth in their twenties. One of the areas in Indonesia that still has a high maternal and child mortality rate is Central Java, with 4,481 (four thousand four hundred and eighty-one) cases.[9] In addition, in preparing for marriage, it is not only physical readiness or a healthy body that needs attention. Another thing that must be prepared by prospective husband and wife is to have a good mentality and psyche so that They are aware of their authority and responsibilities as a married couple in a household. At 19 years old, it is said that she has started to mature because the psychological, mental, and psychological condition of a woman is stable. Unlike the case with children under the age of 19 who are not yet adults in the household, this can cause a loss of harmony in the household and lead to divorce.

Meanwhile, Marriage is extremely vital dimension of life, because of the union of an individual as a married couple with the goal of creating a happy and everlasting family founded on the Almighty God. So significant is the regulation of marriage that it is not only in religions around the world that marriage is regulated. even the traditions or customs of the community as well as state institutions are not left behind in regulating marriage and are valid among the people. The Indonesian Marriage Law emphasizes that each prospective bride and groom must be physically and psychologically (spiritually) ready, or physically and spiritually prepared so that in the future the marriage's goal will be realized.

The Indonesian Marriage Law itself embraces the principle that a person who is about to marry must be mentally and physically mature, not under duress or without coercion, and has reached the marriage age limit, namely 19 years old for both males and females. This is a requirement in Marital Law No. 16 of 2019. this rule is the result of a revision of Law No. 1 of 1974. Determination of the marriage age limit is given by law in addition to the realization of an eternal and happy marriage, this is also implemented so that people do not underestimate marriage. the Regulation on the marriage age limit mentioned above, it implies that the marriage law does not allow underage marriages.[10] So marriage

under the age limit of 19 years must be prevented by all parties involved, especially the family.[11]

Based on the plenary session of the DPR on Monday 16 September 2019, which was one of the focuses of The amendment of Marriage Law No. 1/1974 is restricted to Article 7, which addresses the marriage age limit, and Article 65, which addresses marriage dispensation applications. This modification is based on Constitutional Court Decision Number 22/PUU-XV/2017, which stresses measures to abolish child marriage and gender discrimination in marriage. Because if you refer to Article Seven, point (1) of Law Number 1 the year 1974, it can be interpreted that in the marriage implementation, there is a disparity between the minimum age limit of married between men and women, which is men having a limit of 19 years and women having a limit of 16 years. meaning that By law, can start marriage sooner. Even though the impact when viewed from a health perspective is very large the risks for women such as bleeding during childbirth, anemia, malnutrition, complications during childbirth, the risk of maternal death, and other threats will be experienced more by women in early marriages. In addition, in marriage, what is needed is not just biological maturity, but also psychological and social maturity, in living a household life one will be faced with various kinds of problems and to deal with that requires mature emotions and thoughts. at the age of 16 years, mentally a person is still considered immature in emotional management and tends to be unstable, So in the marriage age limit regulation, there should be no difference between men and women.[12] it was on this basis that the Constitutional Court granted the revision of the marriageable age rule, Specifically for women, in accordance with child protection ideals, principles, and principles.[13]

Apart from that, there is another urgency for revising the age of marriage in law no. 1 of 1974, was actually born as an effort to synchronize the marriage law with other laws. because from the legal perspective itself, the determination of the Adult category in the National Regulations system is different. For example, according to Law No. 11/2012 on Juvenile Justice System, and Law No. 23 of 2002 on child protection, According to Article 330 of the Civil Code, a person is considered an adult at the age of 21 or married. as well as Presidential Decree No. 36 of 1999 as a result of The Convention on the Rights of the Child (CRC) has been ratified.

which defines children as those under the age of 18. Until now, there is no unification of law in Indonesia. So that the diversity of laws regarding child age limits creates ambiguity in determining when a person is considered mature and capable and which limits should be used from the rule every time he commits a legal action. This problem really needs attention and legal certainty. So that the actions taken can be legal before the law. This is due to the fact that the capacity factor is always necessary when performing legal actions.[14]

On September 16, 2019, the House of Representatives enacted the Draft Law (RUU) revising the Marriage Law and raising the legal maturity limitation for marriage for men and women to 19 years. Yohana Yembise the Minister of Women's Empowerment and Child Protection (PPPA) who read the President's final opinion said that the decision to revise the Marital Law is eagerly awaited by all Indonesian citizens. This is a form of effort to prevent children from practicing early marriage which is very detrimental to children, families, and the country. As well as the ratification of this Draft Law is also proof that Indonesia is able to respond to the challenges of the times, one of which is the issue of child protection.[16]

The issue of early marriage has become a major concern. Especially when viewed from the aspect of protecting children's rights. The rights of the child are a subset of human rights that must be fulfilled and ensured protection by the family, society, and of course the state. The consequences of early marriage are not only in terms of physical and psychological health but can also hinder the fulfillment of children's rights, especially for women. If it is related to the children's rights mentioned in article 1 point 2 of Law No. 23 Year 2003. Namely, the right to grow, develop and participate, in early marriage causes narrow opportunities for women to pursue higher education. Because someone who marries early will be compelled to enter the adult phase more quickly so that their tasks and focus also change from before so that it is not uncommon for us to find people who marry early choosing to drop out of school and focus on their household.

After the enactment of Marriage Law No. 16 of 2019, particularly Article 7 paragraph 1 which states, "A marriage is allowed only if the man and woman are above the age of 19 years." "Means that raising the minimum age for marriage will eliminate the

child marriage practice. Because in addition to the minimum age for marriage provisions, there are additional provisions regarding marriage dispensation, namely the obligation to listen to the opinions of both parties who are forced to violate the age limit provisions. and must include a sufficient supporting proof. What's more, there are new rules contained in Supreme Court Regulation Number 5 the Year 2019, which particularly laid down standards for deciding marriage dispensation cases with the aim that marriage dispensation would be granted with greater rigor. The new regulation should lower the number of underage marriages in Indonesia. However, what happened was that the revision of the marital law did not completely eradicate the marriage customs that violated state law violated state law as a whole. in a number of courts in Indonesia, the impact of the increase in the age of marriage has significantly increased the acceptance of applications for marriage dispensation. There were 24,864 applications recorded in 2019, and There was a considerable increase of 64,000 marriage dispensation cases after 2020.[12]

This happens because there is still a loophole that allows someone to get married even though they are under the age stipulated by law. by requesting a Marriage Dispensation from the local Religious Court. The minimum age for marriage is regulated by Law No. 16/2019, but the law also regulates marriage dispensation, which is stipulated in Article 7 paragraph 2 of the law, which states, "In the event of a derogation from the age provision for marriage as referred to in paragraph (1), the parents of the male party, and or the parents of the female party may apply to the court for dispensation with urgent reasons accompanied by sufficient supporting proof." [16]

Based on Law No. 16 of 2019 what is meant by the dispensation is a deviation from the marriage age limit set out in the law, which is 19 years old. Accordingly, when a man or woman wants to get married but has not attained the age prescribed by law, a court or other official appointed by the court or other official may be given a dispensation with certain conditions that must be met.[17] In terms of the interpretation of the reasons for requesting a marriage dispensation, it is not clearly stated in Law No. 16 of 2019 so the issue of whether or not a marriage dispensation application is accepted depends on the court or authorized official, in this case, the judge appointed to handle the application,

by looking at the circumstances of each applicant. For example, the condition of the bride is pregnant, then with consideration for the benefit of the child to be born, the bride must be married off soon to provide clarity on the legal status of the child. In different cases, especially the Muslim community views marriage under the age of 19 as valid, especially when viewed from a religious perspective. And if it is their custom to marry minors, then the marriage dispensation will be their way of "circumventing" the marriage law. They will be applying for marriage dispensation on religious grounds, and this will force the judge to have the same thoughts, so it is unlikely the marriage dispensation application will be rejected.[18]

It should be admitted that in their daily lives, Indonesian people are more familiar with and closer to Islamic law than the marriage law regulations. This closeness is very possible, especially since Islamic law has been rooted in people's lives for a long time. Based on the findings of Ahmad Tholabi Kharlie in the Lebak Banten area, it is known that 76.7% of people know more about Islamic law, 14% of them know customary law and the remaining 9.2% know western law. This study included 395 respondents and the data was taken randomly or random sampling.[19] In another study from The Asia Foundation on six provinces in Indonesia with the urban, rural, and urban art categories, it can be concluded that Indonesian people have a very strong attachment to religious figures, this is indicated by the percentage of public trust in religious figures reaching 94%. . [19]

From an analysis conducted by more than 12 university partners and Civil Society Organizations (CSOs), and an analysis of decisions made by a reader technology named Harol ([www.harol.id](http://www.harol.id)) which is the result of a collaboration with Australia Indonesia Partnership For Justice 2 (AIPJ2) with an Indonesian company that specializes in the use of Artificial technology starting from 2018 to 2019. Several important points have been found that can be considered by the Indonesian government when developing a national strategy to end child marriage, first, more than 95 percent of child marriages occur without every marriage dispensation submission as required in the marriage law. Of the 13,880 marriage dispensation cases received by the religious courts, 65 percent were submitted by the boys' parents, and 35 percent were submitted by the girls' parents. Meanwhile, based on UNICEF estimates, in 2018

there were 190,533 girls in Indonesia between the ages of 20 and 24 who married under the 16-year-old. This data indicates that as many as 4,858. cases of the dispensation of marriage (35 Percent of 13,880) brought to the court by her parents of daughters who wish to apply for dispensation of marriage. This figure only represents less than 3 percent of the total number of Indonesian girls who are married under the age of 16 in the 2018 period. Second, from the applications submitted, around 99 percent of the marriage dispensations submitted to the court were granted by the judges. And thirdly, 7 out of 10 applications for marriage dispensation are filed on the grounds that the two children love each other so that the parents' fear of their children if left unchecked will be at risk of violating social norms of religion.[12]

The information above indicates that child marriage issues have not been complemented by effective prevention. In addition, the results also showed that the percentage of child marriages that were accompanied by a marriage dispensation from courts was less than 3 percent of the total number of child marriages in Indonesia. So it can be concluded that more than 95 percent of child marriages in Indonesia are illegal or the common people call it underhand marriage (Siri marriage).[12]

The essence of registering marriages, in addition to creating legal order, is also a preventive effort in people's lives. Conversely, if there is no clear arrangement regarding marriage and it is not recorded. Then it will be used by certain parties who carry out marriages only for their own interests and harm other pigs, especially wives, and children. As for the consequences that can arise from unregistered marriages. Among them, first, there is no supporting basis that the husband and wife are legally married. As a result, from a juridical perspective, marriage has no legal force, so it cannot be recognized by the state. And regarding rights such as marital status, assets gono and gini, inheritance, and others arising from marriage, the state cannot protect them. Because to prove the existence of the wife's or husband's rights, it is necessary to first prove the legality of the marriage, namely through the registration of marriages by a Registrar, as stipulated in Article 6 PP Number 9 of 1975.[20]

Second, the opportunity to terminate a marriage relationship for one of the partners can be done freely without any legal impact, and the bad impact that

often occurs in such cases is on women and of course their children. The impacts include neglect of children and wives, contract marriages, illegal polygamy practices, and the phenomenon of mistresses.

The 3rd, unregistered marriages have an impact on violating one of Islam's legal purposes, namely protecting the soul (offspring). If a marriage is not registered and one of the parties, for example, a man, has had several marriages, he is worried that the offspring from the first marriage, the second, and so on, will later marry without his knowledge, it turns out that their fathers are the same.

And the four offspring from unrecorded marriages will have difficulty in making birth certificates. Because one of the requirements for obtaining a birth certificate is the marriage certificate of both parents. So in the next case, a child without a birth certificate will experience difficulties in several arrangements in the future. Such as school registration, family allowances, and others.[21]

Regarding unregistered marriages, there is an alternative to legalizing the marriage, namely by submitting a marriage application (determination/validation of marriage). Based on the provisions in Article 7 of the Islamic Law Compilation. And it is not uncommon for people to carry out illegal marriages or early marriages, based on interests and needs, and it is not uncommon to smuggle laws with legal remedies with marriage certificates at court institutions

Law No. 16/2019 regarding marriage fulfills the legal certainty aspect for the community, namely as the aim of the arrangement is to carry out an orderly administration of marriage to provide guarantees of protection for certain rights arising from the marriage. However, if we look at it from the aspect of the usefulness of the law, referring to the view of Jeremy Bentham who argued that a law can only be recognized as law if it provides the greatest possible benefit to as many people as possible. So the implementation of the law must provide benefits for the order of life in society. Not even creating a new problem. Regarding the marriage law, when viewed from the phenomena that occurred after the change, it actually has an impact on the increasing marriage dispensation case and underhand marriage practices. Accordingly, from the social facts that occur, it can be said that the reform of the marriage law has not fully guaranteed the achievement of legal

expediency. from the aspect of legal expediency. because marriage law revision should be able to reduce child marriage practices in Indonesia as the purpose of revising law no. 1 year 1974 ago.

#### 4. CONCLUSION

With the enactment of Law No. 16 / 2019 on marriage, specifically in Article 7 point 1 reads "Marriage is only allowed when the male and female parties have attained the age of 19 years." As well as with the existence of new rules contained in Supreme Court Rule No.5 /2019, specifically regulating procedures for judging marriage dispensation cases. so the provision of marriage dispensation is more stringent. The new regulation should minimize the probability of underage marriage in Indonesia. However, what happened was that the revision of the marriage law did not abolish marriage practices that violated state law as a whole. However, what has happened to a number of courts in Indonesia, the impact of increasing the marriage age has significantly increased the acceptance of applications for marriage dispensation and another impact resulting from marriage age limit revision is the increasing number of unregistered marriages. So that from the social facts that occur, it can be said that the revised marriage law has not fully guaranteed the achievement of objectives from the aspect of legal expediency.

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