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The Impact of The Minimum Age Limit Regulation for Continuing Child Marriage After the Birth of Law Number 16 Of 2019 on The Child's Future

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Abstract

Regulations will always be present as a compass so that humans as social creatures do not run away from the right path. This study shows from a direct perspective from society's perspective the impact of the Minimum Age Regulations for Entering into Child Marriages After the Birth of Law Number 16 of 2019 on the future of children which is studied by looking at how much the implementation of this law is in line with the current rules and habits of society. By using a descriptive research method, the author aims to be able to obtain results from research carried out using a Sociological Juridical approach, namely assessing the work of law in society because the functioning of law in society can be seen from the level of legal effectiveness. From the results of research on the impact of regulations on the minimum age limit for entering into a child marriage after the birth of Law Number 16 of 2019 on the future of children, it is clear that the law or a rule must always be updated so that it cannot be broken by developments in society's behavior as a legal subject

Keywords: Impact, Marriage, Legal Subjects

Abstrak

Peraturan akan selalu hadir sebagai kompas penunjuk arah agar manusia sebagai makhluk sosial tidak lari dari jalur yang benar. Kajian ini memperlihatkan dari sudut pandang langsung dari kaca mata masyarakat tentang Dampak Peraturan Batas Minimal Usia Melaksanakan Perkawinan Anak Pasca Lahirnya Undang undang Nomor 16 Tahun 2019 terhadap masa depan Anak yang dikaji dengan melihat seberapa besar Implementasi Undang undang ini berjalan dengan aturan dan kebiasaan Masyarakat sekarang ini. Dengan menggunakan metode penelitian Deskriptif, penulis memiliki tujuan agar mampu mendapatkan hasil dari penelitian yang dilangsungkan dengan pendekatan Yuridis Sosiologis yaitu menilai kerja hukum didalam Masyarakat karena berfungsinya hukum di masyarakat dapat dilihat dari tingkat efektifitas hukumnya. Dari hasil penelitian terhadap Dampak Peraturan Batas Minimal

Usia Melangsungkan Perkawinan Anak Pasca Lahirnya Undang undang Nomor 16 Tahun 2019 terhadap masa depan Anak bahwa hukum atau suatu aturan haruslah selalu update agar tidak dapat dipatahkan oleh perkembangan tingkah laku Masyarakat sebagai subjek hukum.

Kata Kunci: Dampak, Perkawinan, Subjek Hukum

Introduction

Since birth into the world, humans are social actors, that is, they grow and reproduce together with other humans. This kind of thing has real meaning at the large circle level and the macro level of coexistence begins with making a bond to form a tree that has bonds and is called Bath (family). The *Bath* itself was initially formed by several men and women. A cohabitation that occurs between a man and a woman who meets the requirements for marriage is called a marriage.¹ The minimum age for marriage is stipulated in Law Number 1 of 1974 in Article 7 paragraph (1), which states "the age limit for marriage is permitted, namely 16 years for women and 19 years for men". Things like the things mentioned have been going on for 35 years and contain social and economic inequalities that arise in their application both in people living in cities and those living in villages. So many problems will occur if the marriage is carried out by a young bride and groom.

In Indonesia, underage marriage is very common even though regulations have set a minimum age limit for marriage for each citizen. However, after the Law on Marriage, namely, Law No. 1 of 1974, was changed to Law No. 16 of 2019, there were several changes regarding the minimum age for carrying out a marriage that is legally valid in the State, but many Indonesians still don't pay attention to it. these regulations have been updated.

To save the status of the younger generation, religious courts can provide exemptions from marriage for children who have not reached the age specified in Law Number 16 of 2019 and who carry out their original marriage under the specified age are already married and have entered the brink of error in order to save their status. child and family name. However, the minimum age for marriage regulated in the Marriage Law is considered to be contrary to the Child Rights Protection Law.²

Several previous studies have pushed the boundaries of marriage age. Supri Y Hasibuan's research in 2019 focused on reviewing how to reform the law regarding setting the minimum marriage age. Problems identified in the study What are the triggers for underage marriage and what is the impact of early marriage? The results of this research are that there are no provisions governing underage marriage. The

¹ A Shodikin, "Pandangan Hukum Islam Dan Hukum Nasional Tentang Batas Usia Perkawinan", *Jurnal Mahkamah* 9 (1), 2015, p. 115.

² Supri Yadin Hasibuan, "Pembaharuan Hukum Perkawinan Tentang Batas Minimal Usia Pernikahan dan Konsekuensinya", *Jurnal Syariah dan Hukum* 1(2), 2019 p. 79-87.

only regulation regarding the minimum age for marriage is 19 years. However, this does not apply because of the marriage dispensation.³

A scientific study by Rini Heryanti entitled "Implementation of Changes to the Marriage Age Limit Policy". This scientific study focuses on examining the extent to which Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974, especially the application of paragraph 1 in Article 7 concerning the minimum age limit for entering into a marriage, is a requirement for registering a marriage. The conclusion of this research is that the revision of Marriage Law Number 1 of 1974 to become Law No. 16 of 2019 is a further breakthrough in gender equality.

The difference between this article and other articles is what the researcher focuses on. In this article, the researcher tries to deepen the actual impact of regulations on the minimum age limit for entering into legal relations after the enactment of Law Number 16 of 2019 on the sociology of children.

The analysis technique used in this research is descriptive. This technique examines the consequences of social issues, procedures, attitudes, views, current processes, and phenomena as they apply to society and things. Careful measurement of phenomena in society. Researchers develop ideas, and gather facts, but do not test hypotheses.⁴ The approach used as a solver is the Sociological Juridical approach with a study of how law works in society. The functioning of regulations in society can be seen from the level of legal effectiveness.⁵

Definition of Marriage

Marriage or nikah jurisprudence in Arabic is described by two words, namely Nikah and Zawaj. These two words are used in everyday Arabic language and are also found in religious writings and in the hadith of the Prophet. The law states that marriage is the result of an agreement or legal relationship between the parties involved and is attended by two people. Marriage according to Islam can be a sacred, firm, permanent, and legally measurable agreement between a person and a woman in a family that is eternal, polite, full of affection, safe, peaceful, happy, and lasting.⁶

So Article 2 (KHI) states that the definition of marriage according to law is a bond which can be in the form of a very strong contract or a *mitsaaqan ghaliizhan* to obey God's commands, and this is often an act of worship. If these facilities are compared with those stated in the first article of Marriage Law No. No. 1 of 1974 (Marriage Law) and this letter, there is a fundamental difference between the meaning of marriage according to the law and not according to the marriage law. Because: What is meant by marriage in the Marriage Law is: "bond of birth". The

³ Heryanti rini, "Implementasi Perubahan Kebijakan Batas Usia Perkawinan" *Jurnal Ius Constituendum*, vol.6, 2021, p. 128-140.

⁴ Ani Purwati, *Metode Penelitian Hukum Teori Dan Praktek*, CV. Jakad Media Publishing, Surabaya 2020, p. 19-21.

⁵ *Ibid.*, p. 20.

⁶ Jamaluddin dan Amalia Nanda, "*Buku Ajar Hukum Perkawinan*", Unimal Press, Lhokseumawe: 2016, p. 18.

heart between a man and a woman is a man and a woman with the aim of creating a happy family (Bayt) and supporting God Almighty forever.⁷

Meanwhile, the definition of marriage according to marriage law has four (4) elements, namely:

- a. Inner ties and outer ties, meaning. In a marriage, it is not just a physical bond that is realized in the form of the agreement of the bride's guardian with 2 groom witnesses accompanied by the handing over of the dowry, but an inner bond that is realized in the form of a sincere agreement between the two bride and groom, meaning that there is no element of coercion on the part of one party to another also plays a very strong role in supporting the marriage bond in building a prosperous, happy and eternal family.
- b. It is monogamous, that is, only between one man and one woman, which means that according to the Marriage Law, marriage only occurs between a husband and a woman as a couple to form a family with substitute sex and sexual relations so that Article 1 of the Marriage Law adheres to the principle of husband and wife relationship.
- c. The formation of a sustainable and happy family, namely: Marriage aims to obtain peace, pleasure, comfort, and inner and outer peace forever in married life. In the sense that this bond aims to form a family that achieves peace and tranquility until the end of life.
- d. Supporting the Almighty God, meaning that marriage must be supported by religious principles, and marriage cannot be separated from faith. In the sense that the validity of a marriage is measured by the provisions regulated by non-secular law.⁸

Sources of Marriage Law in Indonesia

a. Al-Qur'an

The verses of the Qur'an regarding marriage are:

- 1) Marriage is a condition of the nature of life and its aim is, among other things, to produce offspring to fulfill the life stated in the QS. Al-Dzariyat: 9, QS. Yasin: 36, QS. Al-Hujurat: 13, QS. Al Nahl: 72.
- 2) Marriage is a bond that aims to create peace and tranquility in life and increase the feeling of love between a man and a woman as well as creating a wider family, even in human life in general. This is reflected in QS. For Rum: 21, QS. An-nur: 32

b. Marriage Law Number 1 of 1974

The introduction of the Marriage Law on 2 January 1997, which applies to all Indonesian citizens, largely met the demands of the Indonesian people. This demand has been repeated since the first Indonesian women's congress in 1928, where it was hoped that it would increase the dignity of women in

⁷ *Ibid*, p.18.

⁸ *Ibid.*, p. 19.

marriage. At that time, the issues of forced marriage, polygamy, and arbitrary divorce became the focus of the women's movement. In the 1950s, the Indonesian government began to regulate the field of marriage law by forming the Marriage, Divorce, and Reconciliation (NTR) Legal Research Committee.⁹

c. Marriage Law Number 16 of 2019

Marriage Law No. 16 of 2019, which changed from Law No. 1974 stated that the minimum age for marriage for women was no longer 16 years, but 19 years. It's the same with men.¹⁰

Underage Marriage According to Law No. 16 of 2019 Concerning Amendments to Law No. 1 of 1974 Concerning Marriage

Underage marriage often referred to as early marriage is a marriage carried out before the person being married reaches the age that is considered physically and mentally mature for marriage. Physical and mental maturity refers to health, biological, mental, and spiritual aspects. In Indonesia, marriage is regulated by Marriage Law No. 1 of 1974, as amended by Law Number 16 of 2019 concerning Amendments to the Marriage Law of 1974. Apart from that, there are also provisions regarding marriage that are regulated in the Compendium of Islamic Law. With various tribes, customs, and cultures, Indonesia also has its own rules regarding marriage. It is clear in Law No. 16 of 2019 that underage marriage is a marriage between a man and a woman who is not yet 19 years old.¹¹

In this case, the minimum marriage age for women is the same as the minimum marriage age for men, namely 19 (nineteen years). The regulation in question is regulating physical and spiritual maturity to legitimize marriage so that the goals of marriage can be achieved well do not end in divorce and produce healthy and quality offspring. It is also hoped that the addition of regulations for married women over the age of 16 (sixteen) years can reduce birth rates, reduce the risk of maternal death, and fulfill children's rights to increase children's growth and development, as well as help parents and provide high opportunities in accordance with regulations. In Law number 23 of 2002, and Law number 35 of 2014 concerning Child Protection.

The Impact of Regulations on the Minimum Age Limit for Entering into a Child Marriage After Birth, Law Number 16 of 2019 on the Future of Children.

Nowadays, the marriage of minors very often occurs in the age range of 14-18 years, where at this time children according to Law No. 16 of 2019 are not yet allowed to marry because this regulation in Law No. 16 of 2019 is an amendment to the Law No. 1 of 1974, an article was amended, namely article 7 paragraph 1 so that

⁹ Jamaluddin dan Amalia Nanda, *"Buku Ajar Hukum Perkawinan"*, Unimal Press, 2016, Lhokseumawe, p. 34-35.

¹⁰ *Ibid.*

¹¹ Haris umar S, Rahim Faqih, *Buku Ajar "Hukum Perkawinan di Indonesia"*. Gama media, Yogyakarta 2017, p. 49.

it reads "Marriage is permitted if a man and woman have reached the age of 19 years".¹² With this update in article 7 paragraph (1), it is hoped that it can become a pillar of introduction to success at the age of 25 because at the age of 25-34 is the most effective time in pursuing success, but it requires preparation and a long journey from the age of 12-34. 22 years in the world of education.

In Indonesia itself, it was reported by the Central Statistics Agency that the proportion of women aged 20-24 years who were married or living together before the age of 15 in 2016 was 0.54% of the total female population who were married in Indonesia, 0.48% in 2017 and 0.56% in 2018, namely before the amendment to Law No.1 of 1974 in article 7 paragraph 1, but after it was updated in paragraph 1 of article 7 and named Law No.16 of 2019 it was recorded that The proportion of women aged 20-24 years who are married or living together before the age of 15 in 2020 is only around 0.5% of the total married female population in Indonesia.¹³ Therefore, there are several factors that determine success, namely: family environment, education, social status, and others

The positive impacts of updating the minimum age limit for marriage as stated in Law No. 16 of 2019 include:

a. Related to Law No. 35 of 2014 concerning Child Protection

The existence of the law regarding the minimum limit for child marriage has many positive impacts from a normative aspect because there is mutual support between the regulations and the law, not the other way around contradicting each other. The positive impact that can be gained is the fulfillment of children's rights in the child protection law, which is defined as a "child" who is not yet 18 years old.¹⁴ As for children's rights, namely that children must receive protection from educational units, must receive protection from acts of physical, and psychological violence, sexual crimes, and other crimes and every child has the right to be cared for by their own parents. This is stated in articles 1, 6, 9, 12, and 14 of the child protection law.¹⁵

b. The realization of mandatory twelve years of education for children

The existence of the law regarding the minimum marriage limit for children has many positive impacts from various social aspects, one of which is the world of education. Law No. 16 of 2019 concerning the age limit for child marriage is in line with the government's plan to require 12 years of study, the aim of the compulsory program. 12 years of study are: to create the best and widest educational opportunities for children aged 16-18 years old High School (SMA), Vocational High School

¹² Salinan Lembaran Negara Republik Indonesia, Undang undang No.16 tahun 2019.

¹³ Badan Pusat Statistik, Data Proporsi perempuan umur 20-24 tahun yang berstatus kawin sebelum umur 15 Tahun. https://www.bps.go.id/indikator/indikator/view_data/0000/data/1358/sdgs_5/1. 23 Okt 2022 23:15 WIB.

¹⁴ Salinan lembaran Negara Indonesia Undang-undang No.35 Tahun 2014.

¹⁵ Fachri S Muhammad, Perlindungan Hukum Terhadap Anak Dalam Perspektif Hak Asasi Manusia, *Jurnal Cendekia Hukum*: Vol.4, No.1 September 2018, p. 141-152.

(SMK), Madrasah Aliyah (MA) or other equivalent forms of course, there are as many as possible educational opportunities by providing easier education for future students.¹⁶ So that they can reduce the number of school dropouts, which is the target of the program and of course every profession undertaken by the community depends on a complete level of education so that it is able to shape the mentality, way of thinking and various school experiences that are useful in social life so that they get a decent profession.

c. Implementation of article 28 C concerning Human Rights in the 1945 Law

The updating of the law regarding the minimum marriage limit for children, has many positive impacts from various social aspects, one of which is the world of education, Law No. 16 of 2019 concerning the age limit for child marriage implicitly embodies the implementation of Article 28 C paragraph 1 of Human Rights. which is regulated in the 1945 Law as follows:

"Everyone has the right to develop themselves by fulfilling their basic needs, has the right to receive education and benefit from science and technology, arts and culture, in order to improve the quality of life and for the welfare of humanity." And it is stated in paragraph 2, namely "Every person has the right to advance himself in fighting for his rights collectively to develop his society, nation and state".¹⁷

From these two articles, it is implied that we are given the choice to earn an ordinary life or achieve an extraordinary life. The existence of an update to one of the articles in the Marriage Law can act as a cover for children who wish to enter into an early marriage, not continuing the level of struggle in seeking knowledge in order to achieve success, meaning that children or parents who force their children to enter into an early marriage means they have violated Article 28 C paragraph (1), (2) towards his child because of sheer selfishness. This is also one of the determinants in this day and age whether children are said to have a decent future or not

The Urgency of Changing the Law on the Minimum Age for Marriage

With the renewal of the marriage law, it is hoped that it will be able to reduce the large number of early marriages in Indonesia and be able to be a good way for the future of children, but in reality, everything that the government aspires to does not run smoothly and there are still pros and cons among people. activist. The expected phenomenological analysis includes:

¹⁶ Kusuma wardani W, Implementasi Program Wajib Belajar 12 Tahun Di Provinsi Dki Jakarta (Studi Kota Administrasi Jakarta Timur). *Journal of Politics*. 2015, p. 1-26.

¹⁷ T Haryanto, J.Suhardjana Dkk, Pengaturan Tentang Hak Asasi Manusia Berdasarkan Undang -Undang Dasar 1945 Sebelum Dan Setelah Amandemen, *Jurnal Dinamika Hukum*, Vol.8 No.2 Mei 2008, p. 137-143.

- a. The decreasing number of early marriages in Indonesia.
- b. Decreasing divorce rate at young age.
- c. Creation of a household that is in accordance with what is stated in the Marriage Law.
- d. Reducing the death rate of women who are pregnant at a young age.
- e. Reduced number of abandoned children due to Broken Homes.

Conclusion

Changing the minimum age allowed for marriage for the next generation is a step towards realizing a bright future for children, especially girls. Reinforcing boundaries means maintaining for good in society, the existence of a law that regulates minimum marriage limits helps to reconcile the various existing regulations, besides that it can also make an extraordinary contribution to Indonesia because Indonesia itself needs a superior and extraordinary generation in order to realize its ideals. -the ideals of the nation. A great nation is a nation that is responsible for the future of its successors because a successful nation can be seen from the quality of its teenagers who are in the age range of 16-22 years.

Law no. 16 of 2019 is the answer to the concerns of parents who currently always dream of their children living a decent life and having an extraordinary future, but that doesn't mean this law doesn't have weaknesses, of course every regulation will have flaws are formed due to conflicts. from the community, such as in cases of pre-pregnancy, which creates a weakness in the law in the form of allowing applications to the Religious Courts to be able to carry out underage marriages with certain conditions.

References

- A Shodikin, "Pandangan Hukum Islam Dan Hukum Nasional Tentang Batas Usia Perkawinan", *Jurnal Mahkamah* 9 (1), 2015.
- Ani Purwati, *Metode Penelitian Hukum Teori Dan Praktek*, CV. Jakad Media Publishing, Surabaya 2020.
- Badan Pusat Statistik, Data Proporsi perempuan umur 20-24 tahun yang berstatus kawin sebelum umur 15 Tahun. <https://bit.ly/3NoJg2X>. 23 Okt 2022 23:15 WIB.
- Fachri S Muhammad, Perlindungan Hukum Terhadap Anak Dalam Perspektif Hak Asasi Manusia, *Jurnal Cendekia Hukum: Vol.4, No.1* September 2018.
- Haris umar S, Rahim Faqih, Buku Ajar "Hukum Perkawinan di Indonesia". Gama media, Yogyakarta 2017.
- Heryanti rini, "Implementasi Perubahan Kebijakan Batas Usia Perkawinan" *Jurnal Ius Constituendum*, vol.6, 2021.
- Jamaluddin dan Amalia Nanda, "*Buku Ajar Hukum Perkawinan*", Unimal Press, Lhokseumawe: 2016.
- Kusuma wardani W, Implementasi Program Wajib Belajar 12 Tahun Di Provinsi Dki Jakarta (Studi Kota Administrasi Jakarta Timur). *Journal of Politic*. 2015.
- Salinan lembaran Negara Indonesia Undang-undang No.35 Tahun 2014.

Salinan Lembaran Negara Republik Indonesia, Undang undang No.16 tahun 2019.
Supri Yadin Hasibuan, “Pembaharuan Hukum Perkawinan Tentang Batas Minimal Usia Pernikahan dan Konsekuensinya”, *Jurnal Syariah dan Hukum* 1(2), 2019
T Haryanto, J.Suhardjana Dkk, Pengaturan Tentang Hak Asasi Manusia Berdasarkan Undang -Undang Dasar 1945 Sebelum Dan Setelah Amandemen, *Jurnal Dinamika Hukum*, Vol.8 No.2 Mei 2008.