

URGENCY OF RESTRICTING MARRIAGE AGE AND THE IMPLEMENTATION OF MARRIAGE DISPENSATION IN INDONESIA

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Abstract

Marriage is the right of every individual and the responsibility of the state to guarantee and protect this right, including in terms of the minimum age for marriage. Indonesia, as a country with diverse ethnicities, cultures, and religions, faces various challenges in establishing fair and uniform marriage laws. Since the pre-independence period until now, marriage law has undergone various changes and reforms. A significant change occurred in 2019 with the revision of Law Number 1 of 1974 concerning Marriage which sets the minimum age for marriage for men and women at 19 years. However, the provisions regarding marriage dispensation still allow for underage marriage with court approval and/or underage marriage outside the court. This article explores the urgency of setting a marriage age limit and the legal implications of the marriage dispensation provisions, as well as examining the effectiveness of the law in reducing early marriage in Indonesia. Based on empirical data, despite changes in regulations, early marriage is still a serious problem that requires further attention and more consistent law enforcement.

Keywords: *Marriage Law, Early Marriage, Effectiveness of Law*



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A. INTRODUCTION

At this time, religious moderation in Indonesia has become a hot topic that is worth discussing. The problems that have been happening lately have led to the problem of intolerance and violence that has almost penetrated all aspects of life, both in religious, social, cultural, economic and political aspects.

Indonesia as a country is rich in ethnic-cultural, religious and political diversity.¹freeing its people to carry out their religious teachings in accordance with their respective beliefs and beliefs.²The government, through its organs, is tasked with creating various kinds of laws and regulations.³as a guideline for acting, behaving and being a family, the aim is to avoid differences in perception that could threaten the dignity and honor of the family.⁴Legal guidelines for marriage in Indonesia in its historical journey have existed since before independence. If classified, they can be grouped into three groups; first; before independence, namely in 1946, 1946, 1973, and 1974 until now.⁵Marriage regulations existed before independence until 1946, which was a very heartbreaking time for the nation, for around 350 years Indonesia was under Dutch rule.⁶so that the administration of state and social life follows the rules made by the Dutch, one of which is the marriage law that applies to the Indonesian Christian community, namely the Christian Marriage Ordinance (HOCl) and is contained in the 1933 staatsblad No. 73, the civil code (BW) used for Europeans and Chinese descendants, and regulations on mixed marriages are regulated in the 1898 staatsblad No. 158.⁷

Until the end of the Dutch colonial period, the government failed to formulate a marriage law that applied to the entire community. Marriage law for Muslims was limited to material law taken from fiqh books written by previous scholars. Marriage law that applied after the Dutch colonial period can be classified as follows: 1) For native Indonesians who are Muslim, religious law that has been accepted by customary law applies. For other Indonesians who are religious other than Islam, customary law applies. 2) Native Indonesians who are Christian are subject to the *Huwelijks Ordonantie Christen Indoneia* (HOCl) in *Staatsblad* 1933 No. 74. 3) Foreign Easterners, Europeans and Indonesians of Chinese descent are subject to the *Burgerlijk Wetboek* civil law.⁸With the historical events in question, the laws applied in marriage were still very diverse and there was no written law that could cover the entire community, causing the application of the law to be easily manipulated. One year after independence, namely in 1946, many marriage problems in Islamic society emerged, this was caused by the absence of a codification of marriage law that specifically regulated

¹Khiyaroh, Reasons and Objectives of the Birth of Law Number 1 of 1974 Concerning Marriage, *Al-Qadha: Journal of Islamic Law and Legislation* Volume 7 No 1, June 2020, page 1.

²Article 29 paragraph 2 of the 1945 Constitution "The State guarantees the freedom of every resident to embrace their own religion and to worship according to their religion and beliefs"

³Op cit, HUKAMA Journal.

⁴Op cit,

⁵Ahmad Rifai, "History of Marriage Laws Based on Opinions and Opposition from the Community and the House of Representatives in 1973-1974," *Indonesian History*, (2015), p. 2.

⁶ Kompas.com - 08/28/2018, "Is it true that Indonesia was colonized by the Dutch for 350 years?" <https://nasional.kompas.com/read/2018/08/28/15540211/besar-indonesia-dijajah-belanda-sebuah-350-tahun.>, accessed October 23, 2024, 4:33 PM.

⁷Ibid, Kompas.com - 08/28/2018.

⁸Wirjono Prodjodikoro, *Marriage Law in Indonesia*, (Jakarta: Sumur Bandung, 1981), p. 15

Islamic society. This complexity then gave birth to the formation of Law Number 22 of 1946 concerning the registration of marriage, divorce and reconciliation which was enforced in Java and Madura and even then only regulated procedural law.⁹Meanwhile, the legal material that will be used as a reference in resolving Islamic community cases still comes from fiqh books.

The journey of the nation in facing the legal phenomenon of Islamic society until now continues to experience renewal in accordance with the conditions and situations of the community era. Renewal began since Law Number 22 of 1949, then became Law Number 1 of 1974 concerning Marriage, Government Regulation (PP) Number 9 of 1975 as the implementation of the Law, Regulation of the Minister of Religion and the Minister of Home Affairs which contains the implementation of the Marriage Law.¹⁰Then in September 2019, Law Number 1 of 1974 concerning Marriage was revised again as a follow-up to the Constitutional Court Decision Number 22/PUU-XV/2017 which regulates efforts to prevent underage marriage.¹¹The provisions on the age limit for marriage as a condition for marriage are regulated in Article 7 Paragraph (1) of the Marriage Law, which previously set the minimum age limit for marriage for women at 16 years and for men at 19 years and then changed to be equal, namely for men at 19 years and for women at 19 years. In Law Number 1 of 1974 concerning Marriage, several reasons for discrimination and various problems in child marriage are mentioned which differentiate the age of marriage between men at 19 years and women at 16 years.¹²

The determination of the age limit for marriage then gave rise to a polemic regarding the minimum age limit for marriage for women, which finally prompted a number of community groups to file a Judicial Review lawsuit to increase the minimum age limit for marriage for women, based on the background of equal rights in the eyes of the law (Equality Before the Law) so that the provisions in Article 7 Paragraph (1) become conditionally constitutional, namely as long as it is read as 18 years of age for both women and men.¹³and in the end the decision has become a bright spot and a breath of fresh air towards changing legal norms that

⁹Wasman and Wardah Nuroniya, *Islamic Marriage Law in Indonesia*, (Yogyakarta: Teras, 2000), p. 7.

¹⁰Khoiruddin Nasution, *Status of Women in Southeast Asia: A Study of Contemporary Muslim Marriage Legislation in Indonesia and Malaysia*, (Jakarta: INIS, 2002), p. 4.

¹¹One of the considerations is "However, when the difference in treatment between men and women has an impact on or hinders the fulfillment of basic rights or constitutional rights of citizens, both those included in the group of civil and political rights as well as economic, educational, social and cultural rights, which should not be differentiated solely on the basis of gender, then such differentiation clearly constitutes discrimination."

¹²Sri Murni & Sri Purwaningsih, "Implementation of Marriage Age Limit as an Effort to Protect Children", *Jurish-Untag, Journal*, Vol. 1, No. 2, July 2022, p. 134.

¹³Constitutional Court Decision Number 22/PUU-XV/2017 in the Journal written by, Sonny Dewi Judiasih, Susilowati S. Dajaan, Bambang Daru Nugroho "Acta Diurnal: Journal of Notary Law, Faculty of Law, UNPAD, Volume 3, Number 2, June 2020 Article published June 29, 2020 Publication Page:<http://jurnal.fh.unpad.ac.id/index.php/acta/issue/archive>. Page 205

are more beneficial to society. The success of the Judicial Review then gave rise to a revision of Law Number 1 of 1974 concerning Marriage as stated in Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The revision of the Law resulted in an explanation that the age limit for marriage for women is the same as the minimum age limit for marriage for men, which is both 19 years old. Furthermore, Article 7 Paragraph (2) emphasizes that if there is a deviation from the provisions of the law with the desire to marry a child under the age of 19, then the person concerned must go through a marriage dispensation process at the Religious Court.¹⁴

The emphasis in Article 7 paragraph (2) which is an exception to the permission to carry out underage marriages is to file a marriage dispensation lawsuit with the Religious Court by proving very urgent reasons, but if this cannot be proven then the court cannot grant it, and the marriage cannot take place, because it is considered to violate the provisions.¹⁵In order to strengthen the revision of the Marriage Law, especially in Article 7 paragraph (2), the Supreme Court of the Republic of Indonesia issued technical regulations contained in PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation as a guideline for Religious Courts when receiving applications for marriage dispensation. The spirit of issuing this PERMA is to: (1) Implement the principles as referred to in Article 2;¹⁶(2) Ensure the implementation of a justice system that protects children's rights; (3) Increase parental responsibility in preventing child marriage; (4) Identify whether or not there is coercion behind the submission of a marriage dispensation application; and finally (5) Realize the standardization of the process of adjudicating marriage dispensation applications in court.

Provisions regarding the age limit for marriage and marriage dispensation in Law Number 1 of 1974 concerning Marriage as stated in Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage and the implementation of marriage dispensation if it conflicts with the age limit that has been set. According to the author's observations, this provision still leaves problems and requires an in-depth study regarding the urgency of determining the age limit for marriage and the

¹⁴Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, Article 7 Paragraph (1), "Parents of the man and/or parents of the woman may request dispensation from the court for urgent reasons accompanied by sufficient supporting evidence."

¹⁵Sonny Dewi Judiasih (et.al), "Court Dispensation: Review of Court Decisions on Applications for Underage Marriage", in ADHAPER Civil Procedure Law Journal, Vol 3, No 2, 2017. Page 194.

¹⁶PERMA Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation Article 2; a. best interests of the child; b. the right to life and development of the child; c. respect for the child's opinion; d. respect for human dignity and honor; e. non-discrimination; f. gender equality; g. equality before the law; h. justice; i. benefit; and j. legal certainty.

implementation of marriage dispensation, because these two issues have nothing to do with efforts to reduce the number of early marriages.

Marriage Age Limit and Marriage Dispensation

When viewed from the definition aspect, Urgency comes from English, namely "urgent". Urgent itself means urgent interests or something that is urgent and must be fulfilled immediately.¹⁷Likewise, according to the Big Indonesian Dictionary (KBBI), urgency is a pressing necessity or something very important. The author uses the word urgency in this writing as a test tool for the two words contained in Law Number 1 of 1974 concerning Marriage as contained in Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage which regulates the age limit for marriage and marriage dispensation.

The change that underlies the determination of the age limit for marriage is the Constitutional Court Decision Number 22/PUU-XV/2017 based on the results of the material test on Article 7 Paragraph (1) of Law Number 1 of 1974 concerning Marriage, the formulation of which reads "Marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 (sixteen) years."¹⁸Regarding the provisions in the 1945 Constitution, namely Article 27 Paragraph (1), the material of which reads "All citizens have the same status before the law and government without exception."¹⁹The provisions in Article 7 Paragraph (1) which contain provisions regarding the age difference between men and women show that equality of status under the law between men and women as regulated in Article 27 Paragraph (1) of the 1945 Constitution and the Marriage Law itself has not been achieved.

The age distinction between men and women referred to in Article 7 Paragraph (1) is considered to be based solely on gender. Women who are 16 years old are considered to have not yet reached psychological maturity and from a health aspect are considered to have not yet reached psychological maturity and perfection in the development of reproductive organs. On the other hand, the purpose of marriage is to form a happy and eternal family, where husband and wife need to help and complement each other, so that each party can develop their personality, help achieve spiritual and material well-being and both partners can help and complement each other with equality and maturity of body and soul to carry out the marriage.²⁰

The determination of the age of marriage at 16 years for girls, below the age threshold of 18 years based on the Convention on the Rights of the Child and also in Law Number 35 of 2014 concerning Amendments to Law Number 23 of

¹⁷<https://plus.kapanlagi.com/mengenal-arti-urgensi-sikap-dan-contohsituasi-dalam-kehidupan-sehari-hari-c2cf3b.html>, accessed 10/23/2024, 8:20 PM.

¹⁸Article 7 Paragraph (1) of Law Number 1 of 1974 concerning Marriage

¹⁹Article 27 Paragraph (1) of the 1945 Constitution.

²⁰Constitutional Court Decision Number 22/PUU-XV/2017.

2002 concerning Child Protection, results in differences in legal status including the state's obligation to protect, fulfill, and respect children's rights in accordance with the mandate of the 1945 Constitution.²¹This difference in legal status results in a girl who marries under the age of 18, then automatically her status is no longer considered a child, thus the child's rights that should be attached to her are lost. With the existence of inequality in legal status and discrimination in the provisions of the marriage age for men at 19 years and women 18 years in the provisions of Article 7 Paragraph (1) of the Marriage Law, this results in constitutional losses for women, because the fulfillment of children's rights is not achieved due to marriage under the age of 18, while these children's rights are very fundamental and guaranteed by the 1945 Constitution which include the right to health, the right to education, the right to grow and develop, the right to play, and other rights.²²

Although the 1974 Marriage Law has been issued and enforced in Indonesia, this does not mean that the debate on the minimum age limit for marriage that is considered ideal in Indonesia has been resolved and has completely answered the social phenomenon of society. Criticisms of the provisions on the minimum age limit for marriage are still rife, both from traditionalists, reformists, child protection, human rights activists and gender. This situation is further exacerbated by the fact of the negative impact of early marriage in society which has also led to the peak of criticism of the established age limit for marriage.²³In general, there are 3 (three) reasons that trigger the emergence of pros and cons regarding the determination of the minimum age limit for marriage, as stated by Ratno Lukito. First, traditional gender relations are still attached to society. Second, the belief in the truth of the understanding between culture and fiqh that is difficult to separate from society. Third, theoretical studies on the age of marriage are not yet in harmony between the state and Muslims.²⁴

With the enactment of Law Number 16 of 2019 concerning Amendments to the Marriage Law, Article 7 paragraph (1) states that "Marriage is only permitted if the man and woman have reached the age of 19 years. The change in the wording of this Article raises expectations that there will be a decrease in the number of early marriages that previously occurred massively in society. However, Article 7 paragraph (2) states that if there is a deviation from the age provisions, the parents of the man and woman are permitted to apply for a marriage dispensation to the Court, for urgent reasons and accompanied by supporting evidence. This provision seems to have once again broken the great

²¹Ibid

²²Ibid

²³Syahrul Musthofa, *Early Marriage Prevention Law: A New Way to Protect Children*, (Bogor: Guepedia, 2015) p. 36.

²⁴Ratno Lukito, *Sacred Law and Secular Law: A Study of Conflict and Resolution in the Indonesian Legal System*, (Jakarta: Pustaka Alvabet, 2008), p. 269.

expectations for the changes in Article 7 paragraph (1), that the implementation of this marriage dispensation has actually become very ambiguous with the mandate of equalizing the age of 19 years, on the other hand minors can legally marry with a dispensation from a judge, while the facts on the ground show that the ambiguity in Article 7 of the Marriage Law leaves a more serious problem that has an impact on the accumulation of dispensation applications submitted by parents of their minor children who want to get married and even the number is greater than before the changes to the provisions. The question then is where is the urgency of implementing the marriage age limit which is intended to reduce the number of early marriages with the implementation of the marriage dispensation? These two questions are certainly a paradox with the situation that occurs in society, where when the application is rejected by the court because it does not have the element of urgency required by law, on the other hand the strong will of the parties who want to get married cannot be contained, which then ultimately carries out their marriages secretly. In the author's opinion, the implementation of the age limit for marriage should stand alone and must be absolute (tightly locked) and must be a guideline that cannot be interpreted anymore, because if the closed space is opened on the grounds of the existence of alternative marriage dispensations, then the urgency of determining the age limit will be refuted.

Disharmony in Determining Age Limit for Marriage and Marriage Dispensation

In the theory of legal effectiveness, the implementation of the law can be said to be successful if it is able to achieve the objectives underlying the formation and implementation of legal objectives. Likewise, the determination of the age limit for marriage can be said to be successful if it is able to minimize and even suppress the number of early marriages in Indonesia significantly. However, if we look at the facts and empirical data, the hope of implementing the age limit for marriage to be able to minimize early marriages is still far from what is expected. Amid the issue of reducing the national marriage rate by 7.5% in 2023, it turns out that Indonesia is still faced with a myriad of child marriage problems. Until now, hundreds of thousands of children under the age of 18 have been married for various reasons. Based on BPS data for the past decade, the number of underage marriages continues to occur. Every year, child marriages in Indonesia occur around 10.5%. The province with the highest child marriage rate last year was West Nusa Tenggara at 17.32 percent, followed by South Sumatra at 11.41%, and West Kalimantan at 11.29%. It is no wonder that child marriage in Indonesia is among the highest globally. Based on Unicef data 2023, Indonesia is ranked 4th in the world with an estimated number of girls married reaching 25.53 million. This figure also makes Indonesia the country in the ASEAN region with

the largest number of child marriage cases.²⁵ On average, child marriage cases still reached 8.64% nationally throughout the 2020-2023 period. In fact, after the enactment of the amendment to the Marriage Law in 2019, the number of child marriage dispensations skyrocketed to 173% in 2020. Marriage dispensations in 2019 by the Religious Court were 23,145 cases, then increased to 63,382 cases the following year. The high dispensation continues until 2022.

On the other hand, the implementation of age restrictions for marriage, if we read some legal literature on the standards of maturity of a person in determining a person's capacity to determine the capacity to carry out legal acts from legal subjects in order to be able to carry out legal acts, thus the implementation of age restrictions for marriage has the potential to cause disharmony with other provisions of the law, because legal acts carried out by people who are not yet adults have their own legal implications.²⁶ Disharmony of Article 7 paragraph (1) of Law Number 16 of 2019 concerning Marriage with other adult age limit regulations and the contents of the Marriage Law itself. For example, the adult age limit regulated in positive law in Indonesia is very diverse, such as:

1. Article 330 of the Civil Code, namely 21 (twenty one) years;²⁷
2. Article 45 of the Criminal Code, namely 16 (sixteen) years;²⁸
3. Article 39 paragraph (1) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary, namely 18 (eighteen) years;²⁹
4. Article 1 number 26 of Law No. 13 of 2003 concerning Manpower, namely 18 (eighteen) years;³⁰
5. Article 6 paragraph (1) of Law No. 12 of 2006 concerning Citizenship, namely 18 (eighteen) years;³¹

²⁵ <https://www.kompas.id/baca/riset/2024/03/08/tinggi-angka-perkawinan-usia-anak-di-indonesia>, accessed 23 October 2024.

²⁶ Auliah Ambarwati and Fandy Kusuma Faizal, "Mythology in the Customary Marriage of the Javanese and Sundanese Tribes," *Amsir Litigation Journal* 9, Number 2 (2022): pp. 158-162

²⁷ Civil Code, Article 330 "A person who is an adult is someone who is 21 years old or has been married." Meanwhile, regarding the ability to marry, Article 29 of the Civil Code regulates that the age of marriage for men is 18 years old and for women 15 years old;

²⁸ Article 45 of the Criminal Code: In the case of criminal prosecution of a minor for committing an act before the age of sixteen, the judge may determine: to order that the guilty person be returned to his/her parents, guardian or caretaker, without any punishment; or to order that the guilty person be handed over to the government without any punishment, if the act constitutes a crime or one of the violations based on articles 489, 490, 492, 496, 497, 503 - 505, 514, 517 - 519, 526, 531, 532, 536, and 540 and less than two years have passed since being found guilty of committing a crime or one of the violations mentioned above, and the verdict has become final; or to impose a punishment on the guilty person.

²⁹ Law of the Republic of Indonesia Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning the Position of Notary, Article 39 (1) "The person appearing must meet the following requirements: a. at least 18 (eighteen) years of age or married; and (2) The person appearing must be known to the Notary or introduced to him by 2 (two) identifying witnesses who are at least 18 (eighteen) years of age or married and capable of performing legal acts or introduced by 2 (two) other persons appearing;

³⁰ Law Number 13 of 2003 concerning Manpower, Article 1 number 26; "Children's any person under the age of 18 (eighteen) years".

6. Article 1 number 34 of Law No. 7 of 2017 concerning General Elections, namely 17 (seventeen) years;³²
7. Article 98 paragraph (1) of Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, namely 21 (twenty one) years;³³
8. Article 1 number 1 of Law No. 3 of 1997 concerning Juvenile Courts, namely 18 (eighteen) years;³⁴
9. Article 47 paragraph (1) of Law No. 1 of 1974 concerning Marriage, namely 18 (eighteen) years;
10. Article 1 number 5 of Law No. 39 of 1999 concerning Human Rights, namely 18 (eighteen) years;³⁵
11. Article 1 number 1 of Law No. 23 of 2002 concerning Child Protection, namely 18 (eighteen) years;³⁶
12. Article 1 number 5 of Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, namely 18 (eighteen) years;³⁷
13. Article 1 paragraph (4) of Law No. 40 of 2008 concerning Pornography, namely 18 (eighteen) years;³⁸And
14. Article 1 number 3 of Law No. 11 of 2012 concerning the Juvenile Justice System, namely 18 (eighteen) years;³⁹
15. Circular of the Supreme Court No. 7 of 2012 concerning the Formulation of Laws as a Result of the Plenary Meeting of the Court Chamber as a Guideline for Carrying Out Court Duties, namely 18 (eighteen) years for the civil chamber and casuistry for the criminal chamber.⁴⁰

If we observe some of the laws above, it can be concluded that the laws and regulations in Indonesia that regulate the age limit of adulthood are different

³¹Article 6 paragraph (1) of Law No. 12 of 2006 concerning Citizenship "In the case of the Republic of Indonesia Citizenship status of a child as referred to in Article 4 letters c, d, h, I, and Article 5 resulting in the child having dual citizenship, after reaching the age of 18 (eighteen) years or being married the child must declare that he/she has chosen one of his/her citizenships."

³²Law No. 7 of 2017 concerning General Elections, Article 1 number 34, Voters "Voters are Indonesian citizens who are 17 (seventeen) years of age or older, married, or have been married."

³³Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, Article 98, Paragraph 1, "The age limit for a child who is able to stand alone or is an adult is 21 years, as long as the child is not physically or mentally disabled or has never been married."

³⁴Law on Juvenile Courts, Article 1, "A child is a person who in the case of a juvenile delinquency has reached the age of 8 (eight) years but has not reached the age of 18 (eighteen) years and has never been married."

³⁵Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, Number 5, "A child is every human being who is under 18 (eighteen) years of age and is not yet married, including a child who is still in the womb if this is in his/her interest."

³⁶Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, Article 1, "A child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb."

³⁷Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, Article 1 number 5; "*A child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb.*"

³⁸Law No. 44 of 2008 concerning Pornography, Article 1 paragraph (4), "A child is a person who is not yet 18 (eighteen) years old."

³⁹Law No. 11 of 2012, Article 1 Paragraph 3 which is in Conflict with the Law, hereinafter referred to as "A child is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime".

⁴⁰ADULT "is capable of acting within the law, namely a person who has reached the age of 18 years or is married"

from each other, namely 16 years, 17 years, 18 years, and 21 years are considered to have reached adulthood. The diversity of these rules results in disharmony in their application, so that society will experience confusion in determining which age limit of adulthood should be used as a reference. Meanwhile, the age limit of adulthood is an important thing in determining a person's legal capacity to carry out legal actions, including marriage. In the context of marriage law, the rules on the age limit of adulthood are also very diverse. For example, Article 47 paragraph (1) of Law Number 1 of 1974 concerning Marriage stipulates that the age limit of adulthood is 18 years. Meanwhile, the age limit for marriage in Article 7 paragraph (1) of Law Number 16 of 2019 concerning Marriage is 19 years. Then, in the provisions of Article 6 paragraph (2) of Law Number 1 of 1974 concerning Marriage, it is stipulated that a person who is going to get married but is not yet 21 years old must obtain permission from both parents.

The problem of determining the age limit for marriage, in the author's opinion, will continue to give rise to debate and interpretation. If approached using a systematic interpretation, the rules above increasingly show ambiguity, especially in terms of their application. This ambiguity is increasingly apparent when connected with the aspect of the ability to carry out legal acts and determining the level of competence in law. From these two aspects, it is difficult to determine at what age a person is considered competent to carry out legal acts in the form of marriage, if the adult limit for a person is determined to be 18 years old, then why is the age limit for marriage actually regulated again to 19 years old. Isn't it true that when a person has been declared an adult, then the person in question has been directly declared competent to carry out legal acts, whereas when a person has reached the age limit for marriage but is not yet 21, then the person must obtain permission from both of his/her parents. On the other hand, when a person has reached the age of 21, then the person in question is not required to obtain permission from both of his/her parents to carry out a marriage.

Thus, if someone who has met the age limit for marriage but is not yet 21 years old is considered not yet capable of independently carrying out legal acts of marriage even though they are adults. In fact, the age limit for adulthood in the Indonesian legal system is not always determined by age, but is also determined by marriage. Someone who has married even though they have not reached the age limit for adulthood is still considered an adult and can carry out legal acts. The rule regarding the age of 21 above is indirectly bound by the age limit for adulthood regulated in Article 98 paragraph (1) of the Compilation of Islamic Law and Article 330 of the Civil Code. Because marriage is part of civil law.⁴¹ Basically, the age limit for marriage in Indonesia has not been consistent and

⁴¹Devie Rachmat, "Synchronization of Interpretation of Marriage Law of Three Legal Systems from the Perspective of Civil Code, Marriage Law and Compilation of Islamic Law," *Jurnal Hukum Republica* 17, No. 2 (2018): pp. 292-308

precise in determining the age limit for adulthood. On the one hand, Article 6 paragraph (2) states that to marry a person who has not reached the age of 21 must obtain permission from both parents, on the other hand, Article 7 paragraph (1) states that marriage is only permitted if the man has reached the age of 19 years, and the woman has reached the age of 16 years. The difference is, if less than 21 years, parental permission is required, and if less than 19 years, court permission is required. In full, Article 6 discusses the age limit for marriage of 21 years and requires permission from parents or guardians,⁴² On the other hand, the determination of the age limit for marriage in Article 7 paragraph (1) of Law Number 16 of 2019 concerning Marriage, when linked to Indonesia's status as a country based on law, places an obligation on the government to implement the principles of a country based on law comprehensively, including the protection and fulfillment of Human Rights (HAM).⁴³

Marriage Age Limit and Marriage Dispensation Contradict Privacy

According to Aristotle, rights are categorized into 2 (two) parts, first, namely public rights (such as the right to welfare, the right to access health, the right to education, and so on) and second, private rights (such as the right to determine a life partner, the right to believe in and practice the teachings of a particular religion, the right to exercise the right to vote, the right to love someone, and so on).⁴⁴ Meanwhile, in the social contract theory put forward by Thomas Hobbes, it states that public rights must be granted and fulfilled by the state.⁴⁵ The relationship between this theory and the age limit for marriage is that the implementation of age restrictions for marriage and the application of marriage dispensations is a form of intervention against the private rights (the right to believe in and practice certain religious teachings and the right to marry) of Indonesian citizens, even though the constitution basically guarantees that everyone is free to embrace religion and worship according to their religion.⁴⁶ and have the right to believe in their respective beliefs.⁴⁷ Even the state has guaranteed the freedom of Indonesian citizens to embrace their respective religions and worship according to their respective religions and beliefs. In other words, the right to practice religion and beliefs is a constitutional right of Indonesian citizens. Each religion certainly has different rules, including regarding marriage. The correlation between religion and/or beliefs and marriage can be seen in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage which

⁴² Ridwan, Muhammad Saleh. "Underage (Early) Marriage." *Al-Qadau Journal: Islamic Family Law and Justice*, Vol. 2, No. 1 (2015), pp. 15-30.

⁴³ Republic of Indonesia, 1945 Constitution of the Republic of Indonesia (Secretariat General of the MPR RI, 2002).

⁴⁴ Sri Rahayu Wilujeng, *Human Rights: A Review of Historical and Legal Aspects*, Diponegoro University.

⁴⁵ Adhitya Sandy Wicaksono, *Comparison of the Social Contract of John Locke and Thomas Hobbes*, in, *Law & Justice Bulletin*, Volume 6 Number 2 (2022), p. 91.

⁴⁶ Article 28E paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

⁴⁷ Article 28E paragraph (2) of the 1945 Constitution of the Republic of Indonesia

states that "Marriage is valid if it is carried out according to the laws of each religion and belief". This means that the requirements for carrying out a marriage must be based on the standards of each religion and belief.⁴⁸

In the constitution, every person has the right to guarantee and has the right to form a family to continue their offspring through legal marriage.⁴⁹If the continuation of marriage is seen as part of worship, then the state should give its citizens the freedom to carry out marriage worship according to their knowledge and understanding according to their religion and beliefs. Although the age limit for marriage has a noble goal to minimize early marriage, it must be understood that religious rights are non-derogable rights (rights that cannot be limited) for any reason.⁵⁰The right to religion itself is binding on the right to marry, so that both are inherent. The fundamental rules of marriage should be returned to religious rules which are the basic standard for determining whether a marriage is valid or not, not based on rules made by the state. Therefore, the age limit for marriage has actually intervened in a person's fundamental private rights. For example, when a citizen who is 18 (eighteen) years old wants to get married for reasons of carrying out religious orders such as wanting to avoid adultery and the like, but is hindered by the age limit for marriage of 19 (nineteen) years.

Meanwhile, the provisions for marriage dispensation as regulated in Article 7 paragraph (2) of Law Number 16 of 2019 concerning Marriage also do not regulate in detail the concrete interpretation of the phrase "deviation" which is the reason for requesting marriage dispensation.⁵¹The next question is whether the reason for "avoiding adultery" in the application for marriage dispensation is included in the "deviation" as referred to in Article 7 paragraph (2) of Law Number 16 of 2019 concerning Marriage. Meanwhile, each judge has a different interpretation of this rule. This means that there is a potential reason for the application for marriage dispensation to be rejected by the Religious Court.⁵²Although conceptually the limitation of the age of marriage provides many benefits in marriage, in practice the legal policy also has negative implications for the life of society. Broadly speaking, there are 2 (two) aspects that

⁴⁸ Matnuh, Harpani. "Underhanded marriage and its legal consequences according to national marriage law." *Journal of Civic Education* Vol. 6, No. 11 (2016).

⁴⁹Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia

⁵⁰Dwi Hadya Jayani, "The Epidemic of Early Marriage in the Midst of the Pandemic and Its Negative Impacts," *Katadata.go.id*, 2021,

⁵¹ Hasim H, Sukri IF, Pikhulan RM, Mutmainnah I. Elimination of Marriage Age Limit Rules in the Indonesian Legal System. *Sultan Journal: State Administrative Law Research*. 2022 Apr 22;1(1), pp. 44-51.

⁵² Judiasih, Sonny Dewi, Susilowati Suparto Dajaan, and Bambang Daru Nugroho. "The Contradiction between Marriage Dispensation and Efforts to Minimize Underage Marriage in Indonesia." *Acta Diurnal Journal of Notary Law Science* Vol. 3, No. 2 (2020), pp. 203-222.

are most affected by the implementation of the age limit regulation for marriage, namely the theological aspect and the socio-cultural aspect.⁵³

The legal problems that occur over the determination of the age limit for marriage and marriage dispensation and the problem of early marriage in Indonesia are multidimensional, so they require multidimensional efforts as well. However, in terms of the age limit for marriage, in the author's opinion there are reasons that hinder the effectiveness of the implementation of the age limit for marriage, namely the Implementation of Marriage Dispensation Weakens the Implementation of the Age Limit for Marriage which is basically a form of legal political product to resolve problems for minors to marry if there is a deviation. However, the presence of marriage dispensation has actually become a way and opened up wider space for early marriage in Indonesia. How could it not be, the limitation of the age of marriage is not balanced with comprehensive prevention efforts so that people always look for ways to find reasons so that their application for marriage dispensation is granted by the Religious Court and/or carry out the practice of underhand marriage, by relying on the isbath of marriage later as the legality of their marriage. Marriage dispensation is like a double-edged sword, if it is rejected it seems to ignore deviations and the welfare of children, but if it is granted it seems to ignore the age limit for marriage which aims to minimize the occurrence of early marriage.

CONCLUSION

The implementation of the minimum age for marriage in Indonesia still faces major challenges in achieving its goal, namely reducing the number of early marriages. Although the revision of the Marriage Law in 2019 has set a minimum age of 19 years for men and women, the implementation of marriage dispensations actually opens up opportunities for underage marriages to continue and weakens the effectiveness of regulations on determining the age limit for marriage. The high number of dispensations shows that people still tend to look for legal loopholes to marry off minors, while law enforcement has not been consistent in limiting this practice. In addition, there is disharmony in various laws and regulations related to the age limit for adulthood, which triggers confusion in its application and reduces the effectiveness of marriage law. Social and cultural complexity also affects the success of the implementation of this regulation, because traditional and religious norms still view early marriage as normal. Efforts to reduce the soaring number of early marriages require comprehensive steps that focus not only on regulatory changes, but also on social change and increasing public awareness. Without absolute restrictions and stricter

⁵³ Ramadhan MS, Saputra MG, Khadafi MN. Elimination of Age Limit for Marriage in Indonesia from a Human Rights Perspective. *Viva Themis: Journal of Law and Humanities*. 2024 Jan 30; 7 (1), pp. 32-47.

law enforcement, the minimum age regulation for marriage will not be able to achieve the expected goals.

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