

Legal Aspect Marriage in Under Age Child

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Abstract

This study aims to determine how the occurrence of underage marriage and how the effects of underage marriage. Marriage is an inner and outer bond which binds themselves to become husband and wife. This study discusses the many impacts that occur due to underage marriage even though the Marriage Law has changed. Law of the Republic of Indonesia No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, says "marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years". This age limit is considered to be explained that the body and soul have matured to be able to carry out marriage, and it is hoped that the existence of an age limit higher than 16 (sixteen) years for women to marry will result in a lower birth rate and reduce the risk of maternal and child mortality. and the fulfillment of children's rights so as to optimize children's growth and development including parental assistance and provide children's access to education as high as possible. The occurrence of underage marriages often occurs because children who have committed juvenile delinquency such as having sex outside of marriage to cause pregnancy and due to parental matchmaking. While the effect of underage marriage is the immaturity of the young mother's age from the marriage, it brings risks to the prospective child and because without mature thinking it makes it easy to divorce, where children become psychological victims of parents who divorce.

Keywords

marriage; underage; its effect



I. Introduction

Indonesia has a law that specifically regulates marriage, namely the Marriage Law Number 1 of 1974. This law was issued to prevent various marriage laws. In Law Number 1 of 1974, it is stated that the Basic Marriage Law of Indonesia, is the principle of the National Marriage Law and accommodates the principles of marriage in Indonesia, as well as provides the legal basis for marriage, which becomes the guideline that applies to various groups of people.

Marriage that aims to form a happy and eternal family, it can be interpreted that the marriage must last a lifetime and should not be broken just like that. Then it is stated explicitly that the formation of a happy and eternal family must be based on God Almighty. Marriage contracts from the dimensions of sacredness are special contracts compared to other contracts such as buying and selling, pawning and others. In addition to the marriage contract, it can be done several times without limits, while the marriage contract is only limited to four times, because most men are only permitted by four wives. Because in the concept of shariah a man is only able to take maximum responsibility for four wives.⁴ Marriage contract in Islam is considered as a matter that must be handled with care, because it will have legal implications for various other things caused by marriage, such as nafaqah, inheritance and also the sustainability of happy households. One of the

most important elements of the marriage contract is only a parental guardian (nasab). Only a prospective bride has the right to marry a woman in her guardianship. This is only given by Islam to guardians, because women cannot marry themselves. If a woman marries herself, then her marriage is not legal. But in reality, the marriage guardian who has the right to marry sometimes loses his guardianship due to certain matters, which requires his guardianship to move to another guardian of marriage in the hierarchy that is in the ring further than that. (Imran, et al. 2019)

In Customary Law as stated by Ter Haar, who said: "It can be said that according to customary law, marriage is a matter of relatives, family affairs, community affairs, matters of degree and personal affairs, with each other in very different relationships. "

Indonesia has a law regarding marriage, which is stated in Law no. 1 of 1974, article 7 paragraph (1) states that marriage is permitted if the man has reached the age of 19 and the woman has reached the age of 16 years at first, but the explanation is revised again and undergoes changes in which marriage can be carried out if the party from Men and women aged at least 19 years, continued in paragraph 2, which states that the marriage of each candidate who has not reached the age of 21 years and those who have not reached the age of 21 years, must obtain permission from both parents.

Law of the Republic of Indonesia No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, says "marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years". This age limit is considered to be explained that the body and soul have matured to be able to carry out marriage, and it is hoped that the existence of an age limit higher than 16 (sixteen) years for women to marry will result in a lower birth rate and reduce the risk of maternal and child mortality. and the fulfillment of children's rights so as to optimize children's growth and development including parental assistance and provide children's access to education as high as possible.

There are many impacts that occur because of underage marriage even though the Marriage Law has changed. So, it is very important to research about the Legal Aspects of Child Marriage.

Based on the background that has been developed above, the researchers are interested in further research. The problems in this paper can be formulated in the form of main questions, namely: How does underage marriage occur and how is the effect of underage marriage?

II. Review of Literature

2.1 Theoretical framework

Theory is a series of assumptions, definitions, and propositions to explain a social phenomenon systematically by formulating the relationship between concepts. Soerjono Soekanto argues that the continuity of the development of legal science apart from depending on methodology, research activities and social imagination, is also largely determined by theory.

Research is conducted with the aim of finding answers to problems and explaining specific symptoms or processes that occur during research, but must be tested by confronting facts that are able to show the truth through theories.

The theory in research is used as the basis or reason why a certain independent variable is included in the study, because based on the theory the variable in question can indeed affect the dependent variable or is one of the causes. The function of theory in this research is to provide direction/guidance and explain the observed phenomena. Because this

research is legal research, the theoretical framework is directed towards legal science and directs itself to legal elements.

The theory used in the completion of this research are:

1. Legal Certainty Theory
2. Ethical Theory

The theory of legal certainty is a theory that emphasizes the juridical element. Legal certainty has two meanings, namely, first, there are general rules that make individuals know what actions may or may not be carried out, and second, legal security for individuals from government arbitrariness because with the existence of general rules, individuals can know what may be charged or carried out by the State against individuals. Ethical theory is a theory that explains the law solely to achieve justice, where the law contains ethical beliefs about what is fair and unfair. The main focus of this theory is on the nature of justice and norms to act concretely in certain circumstances.

2.2 Conceptual Framework

Samadi Suryabrata argues that conception is one of the most important parts of theory, because the concept is a link that explains something that previously only existed in the mind or idea. The role of concepts in research is to link the world of theory and observation between abstraction and reality. Samadi Suryabrata also gives a special meaning to what is meant by the concept, which is related to operational definitions.

Concept is defined as a word that expresses a generalized abstraction of specific things which is called an operational definition.

The descriptions of the concepts used in this study are:

1. Marriage is living together between a man and a woman who has certain conditions.
2. Marriage must consider the physical and spiritual maturity of the couple who wants to marry. For this reason, the provisions of the Marriage Law have stipulated that the minimum age limit for a person to be allowed to marry is 19 years.
3. Other risks and impacts of underage marriage will also be on children who will later be born from the relationship of both parents who marry underage. The immaturity of the young mother's age from the marriage brings risks to the prospective child.
4. Underage marriage has an effect on the high risk of divorce.

2.3 Research Hypothesis

A hypothesis is a temporary answer to a problem that is still presumption because it still has to be proven true. One hypothesis can be tested if the hypothesis is formulated correctly. As a hypothesis in this study are:

The occurrence of underage marriages often occurs because children who have committed juvenile delinquency such as having sex outside of marriage to cause pregnancy and due to parental matchmaking. While the effect of underage marriage is the immaturity of the young mother's age from the marriage, it poses a risk to the prospective child and because without mature thinking it makes it easy to do a divorce in which the child becomes a psychological victim of the parents who divorce.

III. Research Method

In this paper, the research method used in completing this discussion is normative juridical where the approach is based on the main legal material by examining theories, concepts, legal principles and legislation related to this research. In this study, to discuss

the problem of writing in accordance with the theory and legal basis used by comparing the results of writing books, legal experts and regulations / laws.

In solving legal issues through a legal research, certain approaches are needed as a basis for developing appropriate arguments. There are various approaches in legal research, namely the statutory approach, the case approach, the historical approach, the comparative approach, and the conceptual approach.

In carrying out research on "Legal Aspects of Underage Marriage", it is necessary to use a conceptual approach, which is a type of approach in legal research that provides an analytical point of view of problem solving in legal research in terms of aspects of the legal concepts behind it or it can even be seen from the values contained in the norming of a regulation in relation to the concepts used.

IV. Result and Discussion

Marriage law is part of Civil Law which regulates the relationship of a husband and wife where there are individual rights owned by husband and wife. Carrying out marriage is natural for humans, where between two people of different sexes, namely a man and a woman, have an attraction to one another to be able to live together to form a happy and eternal family. This joint life is an inner and outer bond between two people of different sexes becoming husband and wife legally, and this is what is called marriage.

The definition of marriage as stated in Law Number 1 of 1974, when detailed, there are 3 (three) elements, namely:

1. Marriage is an inner and outer bond between a man and a woman as husband and wife;
2. The inner and outer bond is intended to form a happy, eternal and prosperous family (household);
3. The inner and outer bond and eternal destiny are based on the One Supreme Godhead.

Marriages that often occur today are underage marriages, which for now are marriages that are considered to have a bad influence on husband-and-wife relationships. Underage marriage has various impacts on individuals who do it from health for children or adolescents to divorce and it is not good for the child himself.

Underage marriages do not give birth to family and household happiness, underage marriages actually lead to divorce and other impacts. Besides that, there are other wider impacts, such as the increasing number of maternal deaths during pregnancy or childbirth because they are still young.

There are many factors that are the reason why Indonesian people do underage marriages. If studied in general, the factors that occur in underage marriages are due to family factors which are classified as poor, but that is not the only factor that causes people to do underage marriages, including educational factors, traditional/customary factors which have been recommended for early marriage and the most often at this time is due to promiscuity factors that result in free sex, social factors can influence someone to carry out underage marriages because they see the times for marrying young.

Below are some of the factors that cause underage marriage to occur.

4.1. Economic Factor

Economic factors are factors that influence why underage marriages are carried out, which is the reason for the economic condition of families who can't afford finally arranged marriages by their parents because when their children get married they can reduce the burden of their daily expenses. The economic limitations of the parents necessitated getting married quickly. Underage marriages occur usually with their parents

in rural areas and the characteristics of their families such as farmers or fishermen whose income is not fixed and also low, resulting in having to marry underage.

4.2. Educational Factor

Factors from education resulted in frequent child marriages, as well as a lack of knowledge about reproductive health so that underage marriages are often carried out. The state of dropping out of school due to not being able to pay for it is ultimately forced to study at home with the development of technology making children able to see things easily plus working for daily life, eventually their orientation will change to wanting to get married quickly. Because for them, women are enough to be good housewives at home.

4.3. Factors of promiscuity

The factor of promiscuity is one of the other factors driving Indonesian society. Underage marriage is the most likely solution for out-of-wedlock pregnancy, according to psychological experts, underage marriages often occur during puberty or adolescence. This happens because of the age of puberty, namely teenagers are vulnerable to sexual activity before marriage. Teenagers with free association can easily happen. Due to weak supervision from parents so that the occurrence of free association and dating is a factor in the occurrence of underage marriages.

While the bad impact of underage marriage is that underage marriage will have an impact on the social environment, where infidelity often occurs which makes household relations not harmonious. If there is a fight and there is domestic violence or sexual violence that occurs, it can also cause an imbalance in the family and lead to divorce. As a result of underage marriage, it is important for women not to continue their education because they have other responsibilities and this happens can decide whether to get an education and reach their maximum potential. Underage marriages, both male and female, will change roles to become a husband and a wife who have obligations that must be carried out. How do men have the obligation to meet the needs of the family so that they have to decide on their education and look for opportunities to work while a wife has the role of being a housewife. Underage marriages result in divorce which can be said to be still high because the reasons why one of the parties wants to talk is that there is a continuous dispute in which emotional stability occurs at a young age.

The existence of the Law of the Republic of Indonesia No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, stating "marriage is only permitted if a man and a woman have reached the age of 19 years", is expected to be the government's effort to reduce the impact of children marrying underage. On the other hand, this regulation has an impact where children drop out of school in terms of education and reduce the risk of mothers getting pregnant at a fairly young age. Because then their maturity of thinking before marriage has been awakened so that it is not easy to carry out underage marriages.

The application of sanctions for perpetrators of underage marriages is regulated in the Child Protection Act. 23 of 2002. On child protection it is stated that all activities are to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection from violence and discrimination. Therefore, underage marriage should be strictly prohibited and may violate the child protection law and marriage law. When there is still an underage marriage, it can be done by asking for a marriage dispensation granted by the Religious Court.

Therefore, the existence of Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage and Child Protection Law no. 23 of 2002, it becomes a rule to try to prevent underage marriages from happening.

V. Conclusion

The conclusion from the research is that the occurrence of underage marriages often occurs because children who have committed juvenile delinquency such as having sex outside of marriage to cause pregnancy and due to parental matchmaking. While the effect of underage marriage is the immaturity of the young mother's age from the marriage, it poses a risk to the prospective child and because without mature thinking it makes it easy to do a divorce in which the child becomes a psychological victim of the parents who divorce. Therefore, the existence of Law no. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage and Child Protection Law no. 23 of 2002, it becomes a rule to try to prevent underage marriages from happening.

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