

Review of Under Age Marriage Law Pregnant Out of Marriage and the Impact

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Abstract

This paper describes the impact of early marriage. By using normative legal research methods, with literature as a data search, as well as descriptive analysis to present the data comprehensively. The results of the study indicate that the legal impact is contrary to the marriage law, so it requires a judicial process in obtaining the permit.

Keywords

marriage; law; impact; pregnant out



I. Introduction

God created humans into two types, namely male and female. In life, humans as social beings cannot live alone. Therefore, humans always need other people, as well as in the context of the relationship between men and women. These two types of humans will need each other to maintain their bloodline. As for morality, the way is to do marriage bonds according to the law. The marriage law, method varies depending on the legal system used. In Indonesia, people who are going to get married must refer to the provisions of their respective religious laws according to what they hold. Marriage is seen from the point of view of Islamic religious law have a crucial position. Islamic marriage law not only regulates the procedure for implementing marriage but also regulates all issues that are closely related to the consequences of the marriage. 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. (Imran, et al. 2019)

The United Nations Committee on the Convention on the Rights of the Child (UNCRC) has urged the Indonesian government to take urgent action to implement stronger protections for girls against all forms of violence, including child marriage. Although Indonesia ratified the UNCRC in 1990, its laws protecting children from marriage are inconsistent. For example, the 2002 Child Protection Law prohibits any child from getting married before 18 years, but the minimum age for marriage (with parental consent) is 16 for girls and 19 for boys by Article 7 of the 1974 Marriage Law. The Marriage Law also provides opportunities for dispensation, allowing parents to marry their children legally at a younger age, even without their expressed consent. Families may also choose to adhere to cultural law (adat) in Indonesia, in which ideas of minimum age of marriage and consent differ widely with the various adat systems and regions across the country. Traditional attitudes about gender and women's role in society can also influence child marriage. One study from 2015 finds that parents and the community may arrange female marriage as a remedy for rape.

Along with the development of society, the purpose of marriage has also changed. Currently, many marriages are carried out to be a tool or means to cover up the disgrace

or disgrace committed by a man and a woman. One of the despicable acts covered by marriage is adultery which in the end makes the woman who commits adultery pregnant. One of the consequences of adultery is the pregnancy of a woman outside the marriage bond. To cover up the disgrace, if this happens, the woman who is pregnant is immediately married, whether it be to the man who made her pregnant or to another man who voluntarily marries the pregnant woman out of wedlock. The term marriage of a pregnant woman is the marriage of a woman who is pregnant with a man while she is not in the status of marriage or during the iddah period because of a legal marriage with a man which resulted in her pregnancy.

In another sense, pregnant marriage is the marriage of a pregnant woman with a man who either impregnates her or with a man who is not the cause of her pregnancy. Pregnant marriage has now become a very common problem in society and is often used as a solution to cover up shame and disgrace. Whereas in Islam itself, marriage is a very sacred thing that is shown to form a happy family. In indigenous communities in some areas, if a woman becomes pregnant before marriage, to cover up the disgrace, the woman's parents will try to carry out a "forced marriage" or "emergency marriage".[1] The definition of emergency marriage is that a person voluntarily marries/marries a woman who is pregnant out of wedlock regardless of who impregnates the woman.

Usually, underage marriages do not give birth to family and household happiness, underaged marriages lead to divorce and other impacts.[2] Besides that, there are other wider impacts, such as the increasing number of maternal deaths during pregnancy or childbirth because they are still young. Children biologically have reproductive organs that are still in the process of reaching maturity, so they are not ready to have sex with the opposite sex, especially if pregnancy occurs and then gives birth. If forced, there will be trauma, extensive tearing in the intimate parts of women, and infections that will endanger their reproductive organs to the point of endangering their lives.

II. Research Method

The research is normative juridical research that is research using library data. The data analysis method from this paper uses qualitative analysis that is later presented descriptively. The data analysis method from this paper uses qualitative analysis which is then presented descriptively.

III. Result and Discussion

According to Marriage Law No. 1 of 1974, Chapter I article 1 marriage is an inner birth bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the Supreme Deity. Furthermore, article 2 paragraph (1) Marriage is valid, if performed according to the law of each religion and belief; (2) Every marriage is recorded by applicable laws and regulations.

According to the Compilation of Islamic Law (KHI) in 1991, Chapter II on the Basics of marriage article 2 that marriage according to Islamic law is marriage, that is, a very strong contract or *mitsaaqan gholiidhan* to obey God's command and perform it is worship; Furthermore, Article 4 states that marriage is legal if performed according to Islamic law under Article 2 paragraph (1) of Law No. 1 of 1974 on Marriage.

In the Law No. 1 of 1974, article 7 paragraph (1) states that marriage is only allowed if the man has reached the age of 19 and the woman has reached the age of 16, proposed

changes in article 7 of 1974 paragraph (1) marriage can and will be done if the man- men and women at least 19 years old, paragraph (2) to perform the marriage of each prospective bride who has not reached the age of 21, must obtain the permission of both parents, following the agreement of the National Population and Family Planning Agency (BKKBN) which has cooperated with an MOU stating that the Age of First Marriage is allowed when the man reaches the age of 25 years and the woman reaches the age of 20 years.

Although it has been regulated by the state regarding the age of marriage, in its implementation in the community there are many underage marriages. Underage marriages are divided into two, namely: (a) Underage marriages, ie marriages performed by adolescents who are still virgins, can still maintain their honor and chastity. (b) Marriages under false age are marriages performed to cover up moral and ethical decay.

The enactment of the state law that governs the issue of marriage is Law Number 1 of 1974 on Marriage. To be able to realize the purpose of marriage, one of the conditions is that the parties who will perform the marriage have matured souls and bodies. Therefore, in Law Number 1 of 1974, a minimum age limit for marriage is specified. Provisions regarding the minimum age limit are contained in Chapter II Article 7 paragraph (1) of Law Number 1 of 1974 which states that Marriage is only allowed if the man has reached the age of 19 and the woman has reached 16 years. From the existence of this age limit, it can be interpreted that Law Number 1 of 1974 does not require the implementation of underage marriage.

If there is a marriage performed by a minor in this case the government has provided a policy in setting a minimum age limit for this marriage of course through a process and various considerations or commonly referred to as dispensation. This is intended so that both parties are completely ready and mature physically, psychically, and mentally to get married, because it reminds the marriage that is done so that it can be built eternally based on the Almighty God until life separates the two and to support the program. population. However, the deviation of the age limit can occur when there is a dispensation given by the court or other officials appointed by both parents of the man and the woman, following the sound of article 7 paragraph (2). In the event of a deviation from paragraph (1) of this article, a dispensation may be requested from the Court or other Officials appointed by both the parents of the man and the woman.

Article 7 paragraph (2) of the Marriage Law encourages a wider range of child marriages, especially by using the phrase deviation without a more rigid explanation of the deviation. Arguments against the provisions of Article 7 paragraph (1) of the Marriage Law have been well explained, therefore it is necessary to tighten the provisions of Article 7 paragraph (2), especially the tightening of the phrase deviation and the removal of other official phrases. In addition, these tightening provisions are held to maintain the health of husband and wife and offspring, and therefore it is considered necessary to explain the age limit for marriage in the Marriage Law. [8] One of the principles or principles of marriage can thus prevent the occurrence of underage marriage.

Currently, the provisions governing the granting of dispensation to marriages that have been in effect since the enactment of the Marriage Law in full are regulated in Minister of Religion Regulation Number 3 of 1975 Obligations of Marriage Registrars and Work Procedures of Religious Courts in Implementing Marriage Legislation for Meanwhile, for the judge's consideration, Article 6 paragraph (2) of Law Number 1 of 1974 has provided a regulation by stating the following: To carry out a marriage, a person who has not reached the age of 21 (twenty-one) years must obtain the permission of both persons. old.

Thus the court will issue a marriage license that has not reached the age of maturity through a legal process that has been determined by the court. In the context of children's rights, it is very clearly stated in Article 26 paragraph (1) point c of Law Number 23 of 2002 concerning Child Protection which states that parents are obliged and responsible to prevent marriage at the age of children, and follow up on changes to the law. - Law number 23 of 2002, namely Law Number 35 of 2014 concerning child protection where the role of parents can also prevent the marriage of minors.

A recent judicial review of the 1974 Marriage Law at the Constitutional Court, instigated by women's and youth organisations, in order to raise the minimum age for marriage, was rejected. During the hearings, all major religious organizations' opinions were presented. The judges seemed to ignore the views of moderate Islam and non-Muslim experts on the negative consequences of child marriage for girls and referred only to the Muslim standard of *akil baligh*, mental and physical maturity, as a measure of marriageability. The only dissenting opinion amongst nine judges, that was referring to human rights and development, came from the sole female judge (and non-Muslim), Maria Farida Indrati.

Although Article 7 (1) of the Marriage Law limits marriage to 16 for girls and 19 for boys, technically anyone can marry below that age if the court gives its consent, as Article 7 (2) allows the parents of underage parties to petition for a dispensation to the court. The Law on Human Rights of 1999³¹ defines children as all unmarried persons under the age of 18, which makes all married children, regardless of their age, fall outside its scope of protection. Consequently, they lose their rights ensured by the Law on Human Rights, such as rights to education, information, to rest and to mix with children of their own age. This problematic definition also clashes with the Child Protection Law of 2002³², which defines a child differently, namely as a person less than 18 years of age, including unborn children.

Article 2 of the Regulation on Marriage Registration issued by the Ministry of Religious Affairs clarifies the role of marriage registrars (PPN, *Pegawai Pencatat Nikah*), as the employees of KUA, the Office of Religious Affairs, who examine the requirements as well as monitor and record Muslim marriage and divorce. In Article 15, the Regulation indicates that in case the requirements to marry are not fulfilled, PPN are forbidden to register such marriages. The Civil Registration Law No.23 of 2006 further sets various penalties for fraud or failure to register a marriage. Nurlaelawati describes the KUA as placed at the intermediary level between 'ulama' (traditional religious authorities) and the religious courts, and finds KUA officials considering themselves more as guardians of the *shari'a* and of the interpretations of the ulama than as state officials. She further emphasizes KUA's insight into marital problems because KUA officials themselves are firmly rooted in local society.

In the quest for legal unification in Indonesia, there have been constant struggles to accommodate diverse ideologies and norms, often resulting in dilemmas, compromises and contradictions. The Marriage Law 1974²⁴ is a good illustration of such compromises. In this section, we first discuss the controversy arising out of the enactment of the Marriage Law, then introduce some state laws on the definition of children and the minimum age for marriage.

When in 1973 the government submitted the draft bill of the Marriage Law to the parliament, one of its intentions was to enhance women's rights in marriage.²⁵ However, some Muslim organizations and the Islamist party PPP (*Partai Persatuan Pembangunan*) strongly opposed the bill, arguing that it was too "modern". They staged walk-outs from parliament sessions, which led the government to conclude that the potential cost of

pushing through its proposal would be too high.²⁶ The government understood that the Law needed to accommodate the diversity in marriage practices and the normative notions underlying them.²⁷ As a result the government changed several articles in the draft, including the article on marriageable age. The initial draft proposed the minimum marriageable age to be 18 for women and 21 for men.²⁸ However, after facing strong opposition from conservative Muslims, the government lowered the age to 16 for girls and 19 for boys.

Along with the development of the age underage marriages are increasingly common and this incident is caused by various factors that arise in society, both in rural and urban communities, although the law has prohibited carrying out underage marriages, dispensation for marriages is still given to children by the government. court institution filed by the child's parents.

Factors that influence marriage at a young age can come from internal, namely factors that come from within the individual. The desire of children who choose to marry of their own volition because they are mentally ready to face married life. This couple got married because of the feeling of mutual love and already feeling compatible. This condition finally decided to get married at a young age without thinking about what problems will be faced in the future. In addition, children marry at a young age because of the child's self-concept. They assume that having married at a young age does not make them feel inferior or insecure either in society or in their association. Only a few of the children limit their relationship after marriage because they already have the responsibility to take care of the household.

Other factors that influence the external side include economic factors, dropping out of school, biological factors, and the occurrence of pregnancy out of wedlock. One of the things that are happening is due to biological factors. One of the reasons for this biological factor is the mass media and the internet. With the easy access to this information, children know things that they shouldn't know at their age. So, there is a relationship outside of marriage that can become pregnant out of wedlock. So, like it or not, parents have to marry off their daughters.

Underage marriages have legal impacts, in addition to psychological impacts, and social impacts. Impact on the Law, the occurrence of violations of the laws that have been stipulated in the Republic of Indonesia, such as Law Number 1 of 1974 concerning Marriage Article 7 paragraph (1) Marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 19. 16 years. Article 6 paragraph (2) To carry out a marriage, a person who has not reached the age of 21 years must obtain permission from both parents. Law Number 23 of 2002 concerning Child Protection Article 26 (1) Parents are obliged and responsible for: nurturing, nurturing, educating, and protecting children, nurturing children according to their abilities, talents, and interests, and; preventing marriage at the age of children.

IV. Conclusion

The state law that regulates the issue of marriage is Law Number 1 of 1974 concerning Marriage. However, to form a marriage in the Marriage Law, the conditions have been set, such as regarding the age limit to be able to marry (material requirements), one of which is the provisions regarding the minimum age limit contained in Article 7 paragraph (1) of Law No. 1 of 1974 which 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. From this age limit, it can be interpreted that Law Number 1 of 1974 does not require the

implementation of underage marriages that have been determined by Law Number 1 of 1974.

Ending child marriage is a critical gender target of the SDGs and the global 2030 agenda. Already, Indonesia has embraced the SDG targets, reflecting commitments to the SDGs in its development planning and budgeting processes ahead of many of its neighboring countries. To achieve the 2030 agenda, however, policymakers must take bold action to place equity concerns and the rights and protection of girls in particular, at the heart of future development efforts. Future research efforts should prioritize rigorous testing of gender-transformative education and economic strengthening interventions, including cost-effectiveness considerations to better understand how interventions and policies can be leveraged to deliver on ending child marriage in Indonesia and globally.

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