

Implementation of the Age Limitation for Marriage from the Perspective of Indonesian Family and Marriage Law

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Abstract

The fundamental purpose of marriage is to unite couples as a family within a household. However, societal perceptions of marriage have evolved, particularly among the younger generation, resulting in instances of premarital pregnancies and engaging in dating and sexual activities that may contradict their religious beliefs. This increase in promiscuity has led to a surge in requests for marriage dispensation in courts to bypass the marriage age limit set by Indonesian Law Number 16 of 2019 on Marriage. To address this issue, this research employs a qualitative method to analyze data. The study findings reveal the need to amend Article 7, paragraph (1) of Law Number 1 of 1974 to Article 7, paragraph (1) of Law Number 16 of



2019 on Marriage. This amendment proposes raising the marriage age limit to 19 years old for both men and women, with the aim of ensuring the overall well-being and promoting the possibility of leading a respectable life. However, the implementation of the marriage age limit has not been fully effective due to the existence of Supreme Court Regulation No. 5 of 2019, which outlines guidelines for Marriage Dispensation Application Trials. This regulation weakens the age limitation legally, as judges refer to it when considering granting requests for marriage dispensation. In light of these circumstances, it is crucial for law enforcers and all stakeholders to prioritize the prevention of child marriage during the review process for marriage dispensation. This approach seeks to address the root causes of increasing promiscuity and premarital pregnancies, fostering an environment that encourages responsible and mature decision-making regarding marriage. Therefore, this study also emphasized that to ensure the general welfare of individuals and combat the rise in promiscuity and child marriage, amending marriage laws should be complemented with a focused effort on preventing child marriage during the dispensation process.

KEYWORDS

Age Limit, Family Law, Marriage, Child Marriage

Introduction

Marriage holds significant importance as a complementary part of worship, aiming to unite couples within a harmonious and sustainable household. However, in the modern era, the widespread availability and advancements in technology have influenced people's mindsets and behaviors, including their perception of marriage as a legal remedy that can be employed by the spouses and even third parties after the marriage has occurred.¹

¹ Ghansham Anand et al., "Forced Marriage as an Unlawful Act in Indonesia: A Comparative Analysis," *Lambung Mangkurat Law Journal* 7, No. 2 (2022): 159–174.

Changing perspectives on marriage have become evident, with the traditional notion of marriage requiring maturity and mental capability to take responsibility for oneself and a partner. However, this view is eroding due to the influence of information technology, especially among millennials and generation Z, who are constantly seeking their identity. This has given rise to phenomena like promiscuity and casual sex. Several factors contribute to these phenomena, including the widespread use of technology and social media platforms, along with insufficient emphasis on sexual education in society.²

Promiscuity often leads to unplanned pregnancies among young people. In Indonesia, the marriage age limit, stated in Article 7 of Law No. 16 of 2019 (amendment from Law No. 1 of 1974 on Marriage), requires a minimum age of 19 for both men and women. However, in cases of accidental pregnancy to avoid social stigma, families of juveniles decide to marry them off by seeking marriage dispensation from religious courts.³ The increasing number of applications for marriage dispensation at the Religious Court in Magelang City reflects this trend.

The proposal to raise the marriage age limit to 19 years for both men and women aims to ensure that individuals are more responsible and have a better educational background by that age. Completing high school

² Ana Latifatul Muntamah, Dian Latifiani, and Ridwan Arifin. "Pernikahan dini di Indonesia: Faktor dan peran pemerintah (Perspektif penegakan dan perlindungan hukum bagi anak)." *Widya Yuridika: Jurnal Hukum* 2, No. 1 (2019): 1-12; Sri Handayani, Syarifah Nuraini, and Rozana Ika Agustiya. "Faktor-faktor penyebab pernikahan dini di beberapa etnis Indonesia." *Buletin Penelitian Sistem Kesehatan* 24, No. 4 (2021): 265-274; Rima Hardianti, and Nunung Nurwati. "Faktor Penyebab Terjadinya Pernikahan Dini Pada Perempuan." *Focus: Jurnal Pekerjaan Sosial* 3, No. 2 (2020): 111-120; Elisabeth Putri Lahitani Tampubolon, "Permasalahan Perkawinan Dini di Indonesia." *Jurnal Indonesia Sosial Sains* 2, No. 5 (2021): 738-746.

³ Eni Zulaiha, and Ayi Zaenal Mutaqin. "The problems of the marriage age changing in Indonesia in the perspectives of muslim jurists and gender equality." *Hanifiya: Jurnal Studi Agama-Agama* 4, No. 2 (2021): 99-108; Imam Tabroni, Hisam Ahyani, and Dian Permana. "Philosophical Review of Materialism and Idealism Limits of Wedding Age in Indonesia: Study of Article 7 Paragraph (1) of Law 16 of 2019 Jo. Law 1 of 1974 Concerning Marriage." *Muttaqien: Indonesian Journal of Multidisciplinary Islamic Studies* 2, No. 1 (2021): 1-20; Muntaha Luthfi, "Tinjauan Sosiologi Hukum terhadap Undang Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan." *Journal of Law (J-Law)* 1, No. 1 (2022): 60-72.

education is expected to enable them to secure stable jobs, meet their economic needs, and improve their lives. Aligning with the state's goal in the preamble of the 1945 Constitution, this change aims to contribute to people's welfare.

Disseminating and emphasizing the amendment to Article 7 of the Marriage Law is crucial, stressing that 19 years of age is the minimum requirement for marriage. Meeting these criteria, including having a good educational background, decent work, and a responsible mindset, is expected to reduce the likelihood of divorce in marriages. For effective implementation of the marriage age limit, the government must ensure citizens' compliance with the regulations. However, despite the law, divorce claims and marriage dispensation cases continue to remain high, as evident from the cases submitted to the Religious Court.

This research is built upon and connected to previous studies on the topic. Elfirda Ade Putri conducted a research paper in 2021 titled "*Critical Review of Article 7 of Law No. 16 of 2019 Concerning Marriage.*" The findings of this research highlight the negative impact of early marriage on children's rights, as they are forced to assume adult responsibilities prematurely. Factors motivating early marriage in Indonesia include low family economic status, limited education and knowledge, and the prevalent issue of pregnancy out of wedlock.⁴

⁴ Elfirda Ade Putri, "Telaah Kritis Pasal 7 Undang-Undang No.16 Tahun 2019 Tentang Perkawinan," *Jurnal Hukum Sasana* 7, No. 2 (2021). Some of various studies also highlighted that Article 7 of Law No. 16 of 2019 concerning Marriage revealed significant implications and challenges pertaining to the marriage age limit in Indonesia. Article 7 sets the minimum age for marriage at 19 years old for both men and women. While the intention behind this amendment is to ensure responsible and mature decision-making regarding marriage, there are several points of contention that warrant scrutiny. *Firstly*, the increase in the marriage age limit to 19 years aims to address the issue of early and forced marriages, protecting young individuals from entering into a commitment they may not be ready for. However, the effectiveness of this provision depends heavily on its implementation and enforcement, which have shown discrepancies across different regions in Indonesia. In some areas, cultural and traditional practices still influence the prevalence of child marriages, making it essential to harmonize the law's application throughout the nation. *Secondly*, while the amendment attempts to safeguard the welfare of individuals and foster sustainable family structures, it does not fully address the underlying socio-economic factors that contribute to child marriage. Economic hardships, limited access to education, and traditional norms continue to be driving

Another related study by Wijalus Lestari Ton et al. in 2019 titled "*Implementation of the Minimum Age for Marriage Based on Law No. 16 of 2019 Concerning Marriage in the District of Pasangkayu*" delves into the detailed implementation of Law No. 16 of 2019 in Pasangkayu District. The research explores both supporting and inhibiting factors affecting the implementation and reveals that it was not entirely successful.⁵

Similarly, Gede Surya Saputra's research in 2022, titled "*Implementation of Article 7, Paragraph 1 of Law No.16 of 2019 Concerning Marriage Regarding Early Marriage (Singaraja District Court Case Study)*," examines early marriage issues through the lens of Singaraja District Court.⁶ The findings indicate varying perspectives on

forces behind early marriages in certain communities. Consequently, efforts to combat child marriage must be complemented with broader initiatives to alleviate poverty and promote education and gender equality. *Thirdly*, the lack of comprehensive sexual education in schools and communities hinders young people's understanding of relationships, family planning, and reproductive health. This knowledge gap can lead to unintended pregnancies, resulting in marriage dispensation requests as a means to avoid social stigma. Therefore, it is imperative to prioritize comprehensive sexual education programs to empower young individuals to make informed choices about their lives and relationships. Moreover, the existence of Supreme Court Regulation No. 5 of 2019, which outlines guidelines for Marriage Dispensation Application Trials, has weakened the age limitation legally. Judges refer to this regulation when considering granting requests for marriage dispensation, leading to inconsistent applications of the law. This highlights the need for a cohesive and streamlined approach to the dispensation process, emphasizing the importance of preventing child marriage and prioritizing the best interests of the individuals involved. *See also* Rahmad Karyadi, "Hukum Perkawinan Menurut Undang Undang No 16 Tahun 2019 Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Pasal 7 Ayat 1 Tentang Batas Usia Perkawinan." *Jurnal Pusat Studi Pendidikan Rakyat* 2, No. 2 (2022): 9-23; Iwan Romadhan Sitorus, "Usia Perkawinan dalam UU No 16 Tahun 2019 Perspektif Masalah Mursalah." *Nuansa: Jurnal Studi Islam dan Kemasyarakatan* 13, No. 2 (2020): 190-199; Dian Latifiani, "The Darkest Phase for Family: Child Marriage Prevention and Its Complexity in Indonesia." *Journal of Indonesian Legal Studies* 4, No. 2 (2019): 241-258; Andi Hidayat Anugrah Ilahi, "The Evaluation of Early Marriage Law Renewal in Indonesia." *Unnes Law Journal* 7, No. 1 (2021): 129-152; M. Riska Anandya Putri Pratiwi, "Child Marriage under Indonesian Marriage Law: Legal and Social Analysis." *Law Research Review Quarterly* 7, No. 3 (2021): 285-302.

⁵ Wijalus Lestari Ton, Zakariya, and Santoso Teguh, "Implementasi Batas Minimal Usia Perkawinan Berdasarkan UU No 16 Tahun 2019 Tentang Perkawinan di Kecamatan Pasangkayu," *Thesis* (Surabaya: Universitas 17 Agustus 1945 Surabaya, 2020). Also see Nur Putri Hidayah, and Komariah Komariah. "Sosialisasi Undang-undang Nomor 16 Tahun 2019 Sebagai Upaya Penyadaran Pemahaman Hukum Tentang Usia Minimum Pernikahan." *Jurnal Pengabdian Hukum Indonesia (JPHI)* 3, No. 2 (2021): 206-218.

⁶ Gede Surya Saputra, Ketut Sudiatmaka, and I Nengah Suastika, "Implementasi Pasal 7 Ayat 1 Undang-Undang No.16 Tahun 2019 Tentang Perkawinan Mengenai Perkawinan

early marriage, with some viewing it positively and others negatively, depending on the factors and impacts associated with early marriage.⁷

Additionally, Rahmawati et al. conducted a study in 2022 titled "*The Implications of The Determination of Law Number 16 of 2019 on The Request for Marriage Dispensation (Case Study of the Takalar Religious Court)*."⁸ The research explores the application of Law Number 16 of 2019 concerning the age limit for marriage in the Takalar Religious Court and the subsequent requests for marriage dispensation after the law's issuance. The study concludes that the Takalar Religious Court implemented Law Number 16 of 2019 in its proceedings.⁹

By building upon and considering the insights from these previous research works, the current research aims to contribute further knowledge and understanding on the subject matter. Therefore, to answer the main problem, this research employed a juridical study that focuses on the implementation of Article 7 of Law No. 16 of 2019 concerning the Marriage Age Limit, specifically from the perspective of family and marriage law. The primary objective of this research is to analyze the practical application of the marriage age limit as outlined in Article 7 of Law No. 16 of 2019 on

Usia Dini (Studi Kasus Pengadilan Negeri Singaraja)," *Jurnal Komunitas Yustisia* 5, No. 3 (2022): 252-269.

⁷ Gede Surya Saputra, Ketut Sudiatmaka, and I Nengah Suastika.

⁸ Rahmawati Rahmawati, Patimah Patimah, and Musyifikah Ilyas. "Implikasi Penetapan Undang-Undang Nomor 16 Tahun 2019 Terhadap Permintaan Dispensasi Nikah (Studi Kasus Pengadilan Agama Takalar)." *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 3, No. 1 (2021): 29-42; Syamsuddin Pasamai, and Hamza Baharuddin. "The Legal Sure of Marriage Itsbat Towards The Status of Marriage (Study of The Decision of The Takalar Religious Court)." *Gerechtheid Law Journal* 1, No. 2 (2020): 13-27; Nahdiyanti Nahdiyanti, Ahyuni Yunus, and Nurul Qamar. "Implementasi Perubahan Kebijakan Batas Usia Perkawinan Terhadap Perkawinan di Bawah Umur." *Journal of Lex Generalis (JLG)* 2, No. 1 (2021): 150-167. It is also further concerned that child marriage entails a multitude of negative consequences that not only harm individual children and families but also have broader implications for the entire country. Therefore, it is crucial to consistently raise awareness about these adverse effects among all relevant parties, including families and children. Some key negative impacts of child marriage include an escalation in the number of children leaving school due to early marriages, elevated stunting rates, increased infant and maternal mortality rates, a rise in child labor, reduced wages, and the perpetuation of poverty. Addressing these consequences is vital to safeguarding the well-being of children and fostering a thriving society.

⁹ Rahmawati.

Marriage. Additionally, the research aims to explore the role of law enforcers in supervising and ensuring compliance with Article 7 of Law No. 16 of 2019 on Marriage.

Method

This research adopts a normative juridical law research methodology, with data gathered from literature studies and supplemented by interviews to provide secondary data. The data obtained from the library research is meticulously grouped, selected, and analyzed. The researchers utilize a qualitative approach to analyze the research data, focusing on marriage dispensation in Magelang city, Indonesia.¹⁰

The data obtained from both literature studies and interviews are analyzed using a qualitative approach. Unlike quantitative research that focuses on numerical data, qualitative research delves into understanding the underlying meanings, motivations, and experiences of the subjects involved. In this case, the researchers will carefully review the collected data from literature studies and interviews to identify common themes, patterns, and trends related to marriage dispensation in Magelang city. They may categorize the data into different aspects such as legal requirements, reasons for seeking dispensation, court decisions, challenges faced, and potential solutions.

The research specifically centers around marriage dispensation in Magelang city, which means the study will primarily investigate how the process of granting marriage dispensation is implemented in this specific geographical area. The researchers may look into the local court practices, cultural factors, and regional variations that could influence the granting of dispensations.

¹⁰ Kornelius Benuf, and Muhamad Azhar. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan* 7, No. 1 (2020): 20-33; Derita Prapti Rahayu, *Metode Penelitian Hukum*. (Yogyakarta: Thafa Media, 2020); Hari Sutra Disemadi, "Lensa Penelitian Hukum: Esai Deskriptif tentang Metodologi Penelitian Hukum." *Journal of Judicial Review* 24, No. 2 (2022): 289-304.

Result and Discussions

Implementing the Marriage Age Limitation based on Article 7 Law No. 16 of 2019 on Marriage

a. *The Nature of Marriage*

As per Article 1 of Law no. 1 of 1974, marriage is defined as a sacred union, both physical and spiritual, between a man and a woman, uniting them as husband and wife, with the purpose of establishing a blissful and everlasting household, founded on their shared belief in God. It is crucial to acknowledge that marriage extends beyond the personal interests of the two individuals involved; rather, it encompasses the welfare and interests of an entire family and community. In accordance with Indonesian marriage law, marriages are exclusively recognized between individuals of opposite sexes and not between individuals of the same sex. Furthermore, the formation of a contented and enduring family is contingent upon the maturity of both age and mental capacity required to enter into the sacred institution of marriage.

The requirements for determining the maturity of marriage age aligns with the provisions stated in Law No. 1 of 1974, wherein the mental and physical maturity necessary for marriage is typically attained upon reaching 21 years of age. However, despite societal progress in the 21st century, child marriage remains a significant public health and social issue. Marriage holds a vital role in human interaction as it serves as the foundation for forming a family.¹¹ It is a civil relationship that carries legal implications,

¹¹ It is further explained that child marriage remains a significant problem in Indonesia, violating the human rights of young girls and boys. It leads to health risks, as child brides are not physically or emotionally ready for marriage and childbirth. Moreover, it hinders education opportunities, perpetuates gender inequality, and perpetuates the cycle of poverty. Children born to child brides face higher health and developmental risks. Socially and psychologically, child marriage can lead to isolation and distress for young brides and grooms. Despite legal provisions, enforcement remains inadequate in some regions due to cultural and traditional factors. Addressing child marriage requires a comprehensive approach, including raising awareness, strengthening legal

entailing specific rights and obligations for each party involved. Additionally, marriage is viewed as a sacred bond with spiritual significance, thus necessitating adherence to various requirements.

To ensure legal certainty, marriages must be duly registered with the state through the Office of Religious Affairs (*Kantor Urusan Agama*, hereinafter as KUA) or other relevant authorities, thus formalizing the marital relationship in accordance with the law. Article 2 of Law No. 1 of 1974 emphasized that:

- (1) Marriage is valid if it is performed according to the laws of each religion and belief [*Perkawinan adalah sah, apabila dilakukan menurut hukum masing-masing agamanya dan kepercayaannya*]
- (2) Every marriage is recorded according to the prevailing laws and regulations. [*Tiap-tiap perkawinan dicatat menurut peraturan perundang-undangan yang berlaku*].

Marriage, deeply rooted in tradition, has been handed down through generations, evolving with the development of human culture and societal interactions. The rules and customs surrounding marriage are intricately woven into the fabric of social life, influenced by the location of the community and the dynamics of human relationships. During a marriage ceremony, couples exchange vows, which serve as a profound framework for the promises they make to one another: loyalty, support, fidelity, and encouragement.¹² These vows reflect the foundation upon which their union is built. From a family systems perspective, fathers play vital roles within the family unit, where each member relies on the others in an

enforcement, promoting gender equality, and improving access to education and socio-economic opportunities. Only by tackling these issues collectively can Indonesia work towards eradicating child marriage and securing a brighter future for its young population.

¹² Maren H. Lowrey, "Hopefully Enduring: How North Carolina's Divorce Laws Violate the First Amendment." *Child and Family Law Journal* 10, No. 1 (2022): 112.

interconnected manner. The dynamics of this interdependence shape the roles and responsibilities of fathers within the marriage context.

Marriage cultures vary depending on the societal context. In simple, closed societies, marriage customs may be straightforward and limited, reflecting the nature of the community. Conversely, in advanced modern societies, marriage cultures become more refined, elaborate, and open, reflecting a progressive mindset and a receptiveness to new information and ideas.¹³

In a progressive modern community, the adaptation and acceptance of new cultures or habits, including customs and traditions related to marriages, are more easily embraced compared to closed or traditional societies. The openness to change and integration of new customs enriches the evolving tapestry of marriage cultures in diverse societies.

b. *Marriage Age Limit*

The marriage age regulations in Indonesia involve two age limits specified in Law No. 1 of 1974 on Marriage and its subsequent amendment, Law No. 16 of 2019. Article 7 of Law No. 1 of 1974 addresses the age limit for both grooms and brides, as outlined in Chapter II, article 7, paragraph (1), which states: "*Marriage is only permitted if the man has reached the age of 19 and the woman has reached the age of 16.*"

This provision highlights the minimum age requirements for individuals seeking to marry, setting the age limit at 19 years for men and 16 years for women. These statutory provisions aim to regulate marriage practices and ensure that both parties have attained a certain level of maturity before entering into this significant commitment.

Provisions regarding marriage law need to be learned so that people will not only know but also understand their rights and obligations as

¹³ Fransiska Novita Eleanora and Dwi Atmoko, "Aktualisasi Sertifikasi Pranikah dalam Meminimalisir Kekerasan dalam Rumah Tangga," *Jurnal Hukum Sasana* 7, No. 1 (2021): 1-12.

citizens in marriage law.¹⁴ The existing law has sparked speculation and resulted in cases of early marriage, leading to detrimental consequences for family resilience. The purpose of the provisions in this article is to prevent young women from marrying prematurely, considering that they might not be physically and mentally prepared to assume the role of a housewife. Such early marriages contradict the nation's ideal as enshrined in the 1945 Constitution of the Republic of Indonesia, which revolves around manifesting the general welfare of society. General welfare signifies a state of well-being that is accessible and beneficial to the entire population.¹⁵

In discussing welfare, achieving a prosperous standard of living in Indonesia entails leading a decent life. This can be measured by possessing a robust educational background, which aligns with the government's recommendation of completing 12 years of compulsory education. This requirement is established in the Regulation of the Minister of Education and Culture of the Republic of Indonesia No. 10 of 2020, specifically in Article 2, which emphasizes the significance of the Smart Indonesia Program. By adhering to these regulations and promoting access to education, Indonesia aims to foster general welfare and enable its citizens to lead fulfilling lives, free from the pressures and consequences of early marriages.

According to the Minister of Education and Culture Regulation, students who start primary education at the age of six and are entitled to compulsory education for 12 years would typically graduate or complete their education around the age of 18. However, Article 7, paragraph (1) of Law No.1 of 1974 permits women to marry at the age of 16, which means that a female student who marries at 16 might not be able to complete her education up to high school. This can have significant implications for the

¹⁴ Pujiono Pujiono, Arif Hidayat, and Dewi Sulistianingsih, "Understanding and Litera Legis of Marriage Law in the Millennial Era for School Children," *Indonesian Journal of Advocacy and Legal Services* 3, No. 2 (2021): 183-194..

¹⁵ Budi Prasetyo, Edy Sanjaya, and Indira Hastuti. "Marriage Law Perspective Against Underage Marriage." *International Journal of Educational Research and Social Sciences (IJERSC)* 3, No. 1 (2022): 518-524.

individual's future opportunities and general welfare, as education plays a vital role in career prospects and overall well-being.

Considering the link between educational background and general welfare, it becomes crucial to reassess the marriage age limit as stated in the amended Marriage Law. In 2019, Article 7, paragraph (1) of Law No. 1 of 1974 was amended to become Law No. 16 of 2019, which now states: "*Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.*" This amendment aims to address the potential negative consequences of early marriages on educational attainment and, consequently, on the overall welfare of individuals and society.

Furthermore, the amendment to Article 7 (1) of Law 16 of 2019 on Marriage introduces a significant change by permitting marriage only when both males and females have reached the age of 19. This revision is grounded in several considerations, with the primary aim of safeguarding children's rights and reducing instances of domestic violence and divorce. The decision of the Constitutional Court supports this amendment, asserting that any differentiation between men and women should not hinder the fulfillment of basic rights or constitutional rights, including civil and political rights, economic rights, educational rights, and social and cultural rights. Any distinction based on gender that results in discrimination should be avoided. This amendment represents a pivotal step towards promoting gender equality and ensuring the well-being of individuals within the institution of marriage.

The decision to amend the law reflects a concerted effort to prioritize and optimize the protection of children's rights. This new law aligns seamlessly with Article 1 number (1) of Law No. 35 of 2015 on Child Protection, which clearly defines children as individuals under the age of 18, including those still in the womb. This indicates that the law acknowledges and upholds the rights of children until they reach the age of 18.

Furthermore, the amended law is fully consistent with the provisions of Article 47, paragraph (1) of Chapter X on Rights and Obligations of

Parents and Children, as stated in Law No. 1 of 1974, which we discussed earlier. According to this provision, children who are under the age of 18 and have never been married remain under the guardianship of their parents unless otherwise decided by the appropriate authorities. By harmonizing with existing legislation and reinforcing the protection of children's rights, the amended law underscores the commitment to ensure the well-being and security of minors, upholding their rights until they reach adulthood. This cohesive approach strengthens the legal framework for safeguarding the interests and welfare of children in Indonesia.

In the further context, the law clearly establishes that once an individual reaches the age of 18, they are considered an adult rather than a child. This ensures alignment between the laws governing child protection and those pertaining to marriage, eliminating any legal discrepancies. Therefore, adhering to the changed marriage age limit of 19 for both men and women becomes imperative, as it is a well-considered decision based on observations of societal cases and several advantageous factors for individuals marrying at a mature age.¹⁶

One significant advantage of marrying after graduating from high school is that individuals are better prepared to enter the workforce, contributing to the overall economy and the outlook of society. Moreover, statistical studies have explored the association between marital status and partner violence, leading to the development of risk assessment tools to evaluate both an offender's likelihood of reoffending and a victim's risk of repeat victimization.¹⁷ Overall, the adjustment of the marriage age limit serves to enhance the well-being and empowerment of both men and women, promoting stable and mature relationships, and ultimately benefiting society as a whole.

¹⁶ Iman Nurul, "Batas Usia Kawin dalam UU Nomor 16 Tahun 2019 Terhadap Praktek Perkawinan di Bawah Umur di Kabupaten Brebes," *Thesis* (Jakarta: UIN Syarif Hidayatullah Jakarta, 2021).

¹⁷ Elina Einiö, et al. "Partner violence surrounding divorce: A record-linkage study of wives and their husbands." *Journal of Marriage and Family* 85, No. 1 (2023): 33-54.

The government determines the marriage age limit for children because, in addition to having the right to complete education, the child will have sufficient mental development and is ready for marriage. Mental maturity is used to see how husband and wife overcome existing problems and prevent divorce in a marriage.

Implementation of the Marriage Age Limitation from the Perspective of Family and Marriage Law

The current marriage law system in Indonesia falls under Civil Law, with Book 1 of the Civil Code (BW) specifically governing family and marriage matters. Family law encompasses legal relationships that arise from blood ties or inheritance due to marriages. It encompasses all provisions concerning legal relationships related to blood-related kinship and kinship through marriage. This legal framework plays a crucial role in regulating family structures and marriage-related issues in Indonesia.

The permissible marriage age limit is governed by Article 7, paragraph (1) of the Marriage Law, stating that both male and female parties must have reached the age of 19 years old. However, some individuals attempt to bypass this age requirement by seeking dispensation from the local Religious Court, citing Law No. 16 of 2019 on Marriage. Marital dispensation requests are often made by parents on behalf of their underage children, utilizing the provisions specified in Article 7, paragraphs (2) and (3) of Law No. 16 of 2019 on Marriage:

- (2) In the event of a deviation from the age requirement as referred to in paragraph (1), the parents of the man and/or the woman's parents may request a dispensation to the Court with urgent reasons accompanied by sufficient supporting evidence. [*Dalam hal terjadi penyimpangan terhadap ketentuan umur sebagaimana dimaksud pada ayat (1), orang tua pihak pria dan/atau orang tua pihak*

wanita dapat meminta dispensasi kepada Pengadilan dengan alasan sangat mendesak disertai bukti-bukti pendukung yang cukup].

- (3) The court granting dispensation as referred to in paragraph (2) must listen to the opinions of both bride and groom who will enter into marriage. [*Pemberian dispensasi oleh Pengadilan sebagaimana dimaksud pada ayat (2) wajib mendengarkan pendapat kedua belah calon mempelai yang akan melangsungkan perkawinan].*

The change in the marriage age limit to 19 years old, coupled with the provision for marriage dispensation under urgent circumstances, can lead to ambiguities and multiple interpretations of the regulations. Although the state aims to protect children's rights, it does not anticipate frequent urgent incidents that necessitate marriage at an age below 19. Increasing the age limit beyond 16 years for women is expected to positively impact birth rates and reduce the risks of maternal and child mortality.¹⁸

However, the practice of parents applying for marriage dispensation indicates a failure to fulfill their obligations and responsibilities in preventing child marriage. Some parents view incidents of youth promiscuity, such as premarital pregnancies or involvement in undesirable associations, as a source of disgrace. Consequently, they opt to marry off their children, hoping to avoid potential social problems within society. This approach highlights the importance of addressing societal norms and misconceptions surrounding child marriage to safeguard the well-being and rights of children.

Marriage dispensation is sought for various reasons, including instances where individuals become pregnant outside of marriage or when parents fear their child engaging in behavior considered against religious beliefs. Often, the child's decision to marry is prompted by the desire to

¹⁸ Anak Agung Istri Ari Atu Dewi, et al. "The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia." *Sriwijaya Law Review* 6, No. 2 (2022): 268-285.

rectify the situation due to the pregnancy or involvement in promiscuity, contrary to religious values.¹⁹

However, underage marriages are not advisable due to several associated risks, including:

1. Health and medical risks, particularly concerning the reproductive organs, especially for women.
2. Compromised children's rights, particularly concerning access to education.
3. Immaturity in the child's psychological development.
4. The most significant risk that may arise is Domestic Violence (DV), which can have severe consequences on the well-being of the individuals involved.²⁰

¹⁹ M. Khusnul Khuluq, "Problematika Dispensasi Kawin dan Isbat Nikah", *Online Article Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung*, retrieved from <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/problematika-dispensasi-kawin-dan-isbat-nikah-oleh-m-khusnul-khuluq-15-6>. See also Rani Dewi Kurniawati, "Efektifitas Perubahan UU No 16 Tahun 2019 Tentang Perubahan Atas UU No 1 Tahun 1974 Tentang Perkawinan Terhadap Penetapan Dispensasi Kawin (Studi Kasus di Pengadilan Agama Majalengka Kelas IA)." *Journal Presumption of Law* 3, No. 2 (2021): 160-180; Ashabul Fadhli, and Arifki Budia Warman. "'Alasan Khawatir' pada Penetapan Hukum Dispensasi Kawin di Pengadilan Agama Batusangkar." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, No. 2 (2021): 146-158. It is also stated that Marriage dispensation can be requested for various reasons and is often associated with urgent situations or specific factors influencing the decision to marry. Common reasons for seeking marriage dispensation include cases of pregnancy outside of wedlock, family considerations, religious beliefs, emotional and social maturity, love and commitment, and the approval of parents or guardians. While dispensation may be granted in certain circumstances, it is essential to carefully assess the potential risks and long-term implications of marrying at a young age. Factors such as education, health, and emotional readiness must be considered to ensure the well-being and happiness of the individuals involved. See also Mohammad Yasir Fauzi, "Pergeseran Paradigma Pembatasan Usia Perkawinan dan Penerapannya dalam Penyelesaian Perkara Dispensasi Kawin." *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 3, No. 1 (2022): 33-49; Tiara Dewi Prabawati, and Emmilia Rusdiana. "Kajian Yuridis Mengenai Alasan Pengajuan Dispensasi Kawin Dikaitkan dengan Asas-Asas Perlindungan Anak." *Novum: Jurnal Hukum* 6, No. 3 (2019): 1-10; Achmad Bahroni, et al. "Dispensasi Kawin dalam Tinjauan Undang-Undang Nomor 23 Tahun 2002 Juncto Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak." *Transparansi Hukum* 2, No. 2 (2019): 33-63; Sonny Dewi Judiasih, Susilowati Suparto Dajaan, and Bambang Daru Nugroho. "Kontradiksi antara Dispensasi Kawin dengan Upaya Meminimalisir Perkawinan Bawah Umur di Indonesia." *Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan* 3, No. 2 (2020): 203-222.

²⁰ Bram Debbel Ardita, "Problematika Pernikahan Dibawah Umur di Indonesia," *Journal Tata Hukum Negara* 7, No 1 (2021).

Addressing these risks and discouraging underage marriages is essential to ensure the health, rights, and overall well-being of young individuals in society. It requires promoting awareness about the consequences and supporting comprehensive initiatives that protect children from making hasty decisions leading to potentially harmful situations.

The risks associated with underage marriages stand in stark contrast to the fundamental essence of marriage. For those who follow Islam, marriage holds a vital place in completing a part of their religion. Beyond religious significance, marriage is intended to foster harmony within the family, ensuring its enduring nature while supporting increased family resilience and continuity of offspring. It is a bond between a man and a woman, creating the foundation for a lifetime of happiness and shared experiences. Encouraging mature and thoughtful decisions regarding marriage aligns with these principles, promoting the well-being and fulfillment of individuals and families alike.

The Role of Law Enforcement in Supervising the Implementation of Article 7 of Law Number 16 of 2019 on Marriage

Marriage dispensation is requested to enable couples to marry despite being underage. In an effort to improve the marriage law and case evaluation in Indonesia, several amendments to the rules and regulations have been introduced to rectify any legal shortcomings in the societal context.²¹ These changes are specified in Article 7, paragraphs (2) and (3) of Law 16 of 2019 on Marriage, which provide guidelines for granting marriage dispensation under certain circumstances:

²¹ Ilahi, "The Evaluation of Early Marriage Law Renewal in Indonesia".

- (2) In the event of a deviation from the age requirement as referred to in paragraph (1), the parents of the man and/or the woman's parents may request a dispensation from the Court with urgent reasons accompanied by sufficient supporting evidence. [*Dalam hal terjadi penyimpangan terhadap ketentuan umur sebagaimana dimaksud pada ayat (1), orang tua pihak pria dan/atau orang tua pihak wanita dapat meminta dispensasi kepada Pengadilan dengan alasan sangat mendesak disertai bukti-bukti pendukung yang cukup*].
- (3) The court granting dispensation as referred to in paragraph (2) must listen to the opinions of both bride and groom who will enter into marriage. [*Pemberian dispensasi oleh Pengadilan sebagaimana dimaksud pada ayat (2) wajib mendengarkan pendapat kedua belah calon mempelai yang akan melangsungkan perkawinan*].

Judges presiding over marital dispensation cases, both at the Religious Courts and the District Courts, refer to the Supreme Court Regulation of the Republic of Indonesia No. 5 of 2019 on Guidelines for Marriage Dispensation Application Trial (referred to as PERMA 5/2019). In accordance with Law No. 16 of 2019 on Marriage, particularly Article 7, paragraph (2), granting a marriage dispensation request requires the presence of "*very urgent reasons*." Additionally, PERMA 5/2019 introduces the consideration of the "*best interests for children*" as stated in Article 17, further shaping the evaluation process for dispensation requests, that:

The judge in determining the application for marriage dispensation shall consider:

- a. protection and the best interests of children in statutory regulations and unwritten laws in the form of legal values, local wisdom, and a sense of justice that lives in society; and

- a. international conventions and/or agreements related to child protection.

Article 15 of PERMA 5/2019 contains several requirements for a Judge in examining a child being requested for Marriage Dispensation:

In examining a child being requested for a marriage dispensation, the judge may:

- a. Hear the statement of the child without the presence of parents.
- b. Hear the child's statement through a remote audio-visual communication examination at the local court or elsewhere.
- c. Suggest that the Child be accompanied by a Companion.
- d. Ask for recommendations from Psychologists or Doctors/Midwives, Professional Social Workers, Social Welfare Workers, Integrated Service Center for Women and Children Protection (P2TP2A), the Indonesian/Regional Child Protection Commission (KPAI/KPAD); and
- e. Present translators/people who usually communicate with children, if needed.

In point (d), there are administrative requirements in the form of recommendation letters from parties that can provide legal protection for the child's interests. The word "can" in Article 15 PERMA 5/2019 signifies that fulfilling these administrative requirements for submitting a marriage dispensation application to the court is not mandatory, creating a weakness in the law and making it easier for the Judge to grant the request for marriage dispensations. For instance, if parents or the family are unable to supervise the child's social interactions due to busy schedules, they may not be aware of the child's long-standing romance with their partner, leading to concerns about potential violations of religious and social norms. In such cases, the judge can approve the request for marriage dispensation by considering the clause "*best interests of the children*" as outlined in Article

17 PERMA 5/2019. This discrepancy between private law and public law proceedings arises from the perceived urgency of the cases.²² The clause is interpreted to protect the best interests of the two children and prevent them from engaging in actions or relationships that go against religious norms. To address this, family court reform should adapt procedures for the initial stages of the proceedings to enable earlier elicitation of narratives in a more interactive format.²³

In some cases, financial distress and underprivileged circumstances lead parents to opt for child marriage, believing it to be the best solution to improve the family's economy. However, this decision can result in the child dropping out of school. The issue lies in the multiple interpretations of granting a marriage dispensation under Law No. 16 of 2019 on Marriage and PERMA 5/2019. While Article 7, paragraph (3) of Law No. 16 aims to prevent child marriage by considering various aspects like morality, religion, custom, culture, psychological and health factors, and its impact on children, Article 17 letter (a) of PERMA 5/2019 emphasizes protecting the best interests of children based on statutory regulations, unwritten laws, local wisdom, and societal sense of justice. For practitioners working with families, it is essential to take into account individual and family characteristics to maximize the benefits of their efforts on family and child outcomes.²⁴

Therefore, it can be concluded that requests for marriage dispensation always increase yearly, and there is a high chance that the judge will grant the request. The increase happens because there are multiple interpretations of the clause "*best interests of the child.*" These differences

²² Kim Holt, and Callum Thomson. "Autoethnography: a personal reflection on the work of the family bar in the North of England." *Journal of Social Welfare and Family Law* 45, No. 1 (2023): 62-80.

²³ Tatiana Grieshofer, "Reimagining communication and elicitation strategies in private family proceedings." *Journal of Social Welfare and Family Law* 45, No. 1 (2023): 41-61.

²⁴ Jingyi Wang, et al. "Examining parents' susceptibility: Coparenting relationships and parental involvement in low-income families." *Journal of Marriage and Family* 85, No. 2 (2023): 458-476.

in views can be influenced by background, customs, culture, understanding, and level of education. This understanding will be different when law enforcers put forward the spirit of preventing early marriage for the best interests of children in terms of obtaining a proper education and livelihood so that this will reduce the number of early marriages.

The first step that can be taken is to tighten administrative requirements. For example, attaching a copy of a Family Card, Identity Card, and Birth Certificate is not enough. But it is also necessary to secure a certificate from a health worker, including a psychologist explaining that the child is physically, spiritually, and mentally healthy. The recommendation is also to clarify that the child is ready to start a family and have children so as not to cause an increase in maternal and child mortality. Mental readiness of children, both husband, and wife, in terms of cognitive readiness, can already be sufficient to be the responsibility of building a family and being emotionally stable. Another thing that also needs to be attached is a copy of the prospective groom/bride's income as proof that the future couple already has a job to ensure an independent household life after marriage is guaranteed from an economic standpoint.

The category of people who carry out underage marriages is that their level of education is not yet advanced.²⁵ The second step is massive dissemination by all officials or stakeholders, such as religious leaders, community leaders, and educators (teachers) in schools, collaborating with law enforcers and the government. As explained in the explanation of Article 7 paragraph (2) of Law No. 16 of 2019: *Then to ensure the implementation of this provision, the Government conducts outreach and guidance to the community regarding the prevention of early marriage, the dangers of free sex and unregistered marriages for the sake of realizing superior nation generation.*

²⁵ Erica Soler-Hampejsek, et al. "Education, child marriage, and work outcomes among young people in rural Malawi." *Journal of Adolescent Health* 69, No. 6 (2021): S57-S64.

The outreach needs to be done in good faith and earnestly to reduce the increasing divorce rate due to marriage dispensation, the mental immaturity of children to be burdened with household responsibilities, and children's emotional instability in building a household. In this case, it is difficult for the community to get a marriage dispensation as a condition for marriage even though they are not old enough, so many people choose to do unregistered marriages (*nikah siri*).²⁶

Conclusion

This study concluded that amending Article 7 paragraph (1) of Law Number 1 of 1974 to Article 7 paragraph (1) of Law 16 of 2019, setting the marriage age limit at 19 years for both men and women, is crucial to ensure the general welfare and the possibility of leading a respectable life. However, the effective implementation of this marriage age limit faces challenges due to the provisions of marriage dispensation outlined in PERMA 5 of 2019. These legal weaknesses and leniencies may result in judges granting requests for marriage dispensation too easily. To address this, it is essential

²⁶ Rosdalina Bukido et al., "Reception of Marriage Age Limit in Marriage Law in Indonesia," *Samarah* 7, No. 1 (2023): 146–174. It is also emphasized that the problem of *nikah siri*, or unregistered marriages, lies in its lack of legal recognition, leading to various negative consequences. Couples in *nikah siri* marriages may face a lack of legal protection, limited social recognition, and inadequate financial support. Additionally, children born from such marriages may encounter challenges with official documentation and accessing education and social services. Addressing this issue requires legal reforms, public awareness campaigns, and efforts to promote official registration of marriages to ensure couples and their families have the necessary legal rights and protections. *See also* Agus Manurung, and Lusya Sulastris. "Polemik Pencatatan Anak Dari Nikah Siri." *Jurnal Hukum Sasana* 7, No. 2 (2021): 321-332; M. Yusuf, "Dampak Nikah Siri Terhadap Perilaku Keluarga." *At-Taujih: Bimbingan Dan Konseling Islam* 2, No. 2 (2020): 96-108; Dinda Ediningsih Dwi Utami, and Taufik Yahya. "Akibat Hukum Nikah Siri Terhadap Hak Anak dan Isteri Ditinjau dari Kompilasi Hukum Islam." *Zaaken: Journal of Civil and Business Law* 3, No. 2 (2022): 228-245; Anggelia Anggelia, and Ani Purwanti. "Kebijakan Perlindungan Anak Terhadap Eksploitasi Seksual Melalui Nikah Siri dalam Perspektif Hukum Nasional di Indonesia." *Jurnal Jurisprudence* 10, No. 1 (2020): 109-126; Sauqi Noer Firdaus, Fadhil S. J., and Moh Thoriquddin. "Dampak Nikah Siri Terhadap Istri dan Anak Perspektif Maqashid Al-Syari'ah Al-Syathibi (Studi Desa Bangsalsari Kecamatan Bangsalsari Kabupaten Jember)." *Jurnal Al-Ijtima'iyyah* 7, No. 2 (2021): 165-194.

for law enforcers and stakeholders to prioritize the prevention of child marriage by considering various factors like moral, religious, cultural, psychological, and health aspects, and the potential consequences, such as increased divorce rates, domestic violence due to mental immaturity and emotional instability in child marriages, and the safety and well-being of mothers and children, including the health and development of babies resulting from early marriages.

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