

STUDY OF MARRIAGE AGE LIMIT ACCORDING TO INDONESIAN MARRIAGE LAW

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Abstract

Indonesia is a country that is blessed with being a pluralistic nation, consisting of several tribes, religions, and cultures. For this reason, the recognition of customary law is also recognized as long as it still exists, and the implementation of marriages is also according to customary law, which is in accordance with the customary law of each region. The research method uses normative research. The findings showed that the age of the prospective groom was 19 years and that of the prospective bride was 16 years. After the amendment, there are no differences. These age limits for marriage are a measure of the maturity of persons who want to marry, carried out by people who have not reached the age of marriage.

Keywords: Marriage Age Limit, Marriage Law, Plural Countries.

Abstrak

Indonesia merupakan negara yang diberkahi dengan bangsa yang majemuk, terdiri dari beberapa suku, agama, dan budaya. Oleh karena itu pengakuan hukum adat juga diakui selama masih ada, dan pelaksanaan perkawinan juga menurut hukum adat, yaitu sesuai dengan hukum adat masing-masing daerah. Metode penelitian menggunakan penelitian normatif. Temuannya, usia calon pengantin pria 19 tahun dan calon pengantin wanita 16 tahun. Setelah amandemen, tidak ada perbedaan. Batasan usia menikah ini merupakan ukuran kedewasaan seseorang yang hendak menikah, yang dilakukan oleh orang yang belum mencapai usia menikah.

Kata Kunci: Batas Usia Kawin, Hukum Perkawinan, Negara Majemuk.

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INTRODUCTION

Man was created by God Almighty as an imperfect figure, so it requires association with others, because true humans always live in groups in a group called society.¹ Destiny of Group life and in a group called the community, in living their social life, as a creature of creation, social interaction in Group life humans need it as a fulfillment of the needs of body and soul.

Living in a society that begins with the smallest environment, namely the family, where to start as a family, a device is needed to legalize the relationship, then an institution of marriage is needed. Marriage is an institution that is directly related to human nature to maintain life and maintain its kind. Through marriage, people can meet their basic needs and other needs better and can develop a culture to improve their comfort. Even the development of increasingly modern technology, humans still need and maintain their kind by breeding naturally through marriage. As an institution, a new marriage can fulfill its function if it is carried out in a system of rules, by upholding human dignity and dignity.²

There is no society without law, and vice versa there is no law without society, so that the needs are formed where the laws that exist in society are made by society itself, and are intended for them as well as members of society itself. Marriage is the first step that can accommodate human thought as a social creature that lives breed to create a family, which will blend in a society, for it takes a legal device to regulate it.

In accordance with the mandate of the 1945 Constitution of the Second Amendment, Article 28b Paragraph (1) “everyone has the right to form a family and continue offspring through the institution of legal marriage”. Indonesia which consists of various ethnic groups and religions are also concerned about the institution of marriage, which ultimately makes the institution of marriage apply diverse. coupled with that, legal pluralism against marriage thrived after the enactment of the marriage law when the Dutch colonized Indonesia. As a result, at the same time, when the Dutch came to power there were various kinds of marriage laws, the diversity of the application of this marriage law was determined based on the division of the population in the Dutch East Indies on the basis of Article 131 Jo. 163 Indische Staatsregeling. Each group uses a different set of rules.³ Beberapa hukum yang mengatur tentang perkawinan, yang pernah berlaku dan masih berlaku di Indonesia, diantaranya Kitab Undang-undang Hukum Perata, Hukum Adat, Hukum Islam, Huwelijke Ordonantie Christem Indonesiers (HOCl), HGR.

Indonesia is known as a pluralistic country because Indonesian people come from various tribes, religions, races, and cultures. In the case of marriage, both the validity and the procedure for marriage, also depend on each religion and belief believed. After the enactment of the marriage law, then all the provisions governing marriage in force before, can no longer be a reference in terms of marriage arrangements, but Indonesia is a country with a plurality of ethnic groups, then in addition to written regulations, then unwritten regulations in this case customary law also applies, as long as the reality still exists.

Law exists in society through many gatryanya, some in the form of legislation, jurisprudence, customs, doctrine, or treaties. One of the principles in marriage is the marriage age limit. Some

¹ Isnaeni, *Hukum Perkawinan Indonesia* (Bandung: Rafika Aditama, 2016).

² Komang Witana and dkk, “Perkawinan Campuran Antara Warga Negara Indonesiadengan Warga Negara Asing Di Desa Kalibukbuk Kabupaten Buleleng,” *Kertha Widya Jurnal Hukum* 1, no. 1 (2013): 51.

³ Isnaeni, *Hukum Perkawinan Indonesia*.

regulations are aimed at the provisions governing the marriage age limit. what is the age limit for marriage according to Indonesian law.

METHOD

This study uses normative juridical research only focus on tertulia study that is using secondary data, such as using legislation, Court decisions, legal theory, legal principles, legal principles, and can. Form of scientific work of scholars.

RESULT AND DISCUSSION

Indonesia as a pluralistic country both in terms of religion recognized by the state, as well as diverse tribes, while in a decree on marriage, namely the Marriage Act, states the validity of a marriage must be according to their respective religions and beliefs. The Indonesian state at the beginning of independence had tried to replace all colonial laws with national laws. However, what is desired has not been achieved because of differences in views in the development of law, namely should use national law and discard all colonial law or keep using some colonial law, in addition there are also views to use customary law.⁴

Prior to the enactment of Law No.1 1974. About marriage (abbreviated as marriage law) in Indonesia, various marriage laws apply to various groups of citizens and various regions. For the Indigenous groups live by their original legal order, namely customary law, as well as the indigenous groups who embrace Islam, then if the marriage must be in accordance with the teachings of their religion which is based on the Quran and Hadith.

The enactment of the Marriage Law is a unification of the Marriage Law in Indonesia, and a regulation that breathes the character and personality of the Indonesian nation, that this marriage law is a variety of aspirations of groups, religions, and national interests. sacred nature possessed by The Marriage Act, because each religion is embraced and recognized by the Indonesian nation⁵ set directly about the ins and outs of marriage. Religions recognized by the Indonesian nation coexist with the typical identity of the Indonesian nation, namely the condition of nationality, ethnicity and race are pluralistic. The continuation of the marriage must be in accordance with the religion and beliefs of each candidate who will carry out the marriage.

every citizen who will perform a marriage, will carry out procedures and procedures taught by religion, or customs that live in society.⁶ in line with Article 2 Paragraph (1) of the Marriage Law No. 16 year. 2019 as an amendment to the Marriage Law No. 1 of 1974, states that " marriage is valid if it is carried out according to the laws of each religion and belief." Like the formation of a household through marriage, it aims to create a happy and eternal family. Realizing the condition of a happy and eternal family, it is necessary the readiness of the perpetrators of the prospective husband and wife who will carry out the marriage, whether the prospective husband and wife already have the ability to Prime

⁴ Ibid.

⁵ *Penetapan Presiden Nomor 1/PNPS Tahun 1965 Tentang Pencegahan Penyalahgunaan Dan/Atau Penodaan Agama* (Indonesia, n.d.).

⁶ Isnaeni, *Hukum Perkawinan Indonesia*.

birth and body, prime ability to be responsible as a husband and wife, which is necessary to form a family.⁷

Restrictions on the age of marriage is necessary for a reason that marriage will cause a legal consequence abgi parties to the marriage, the legal consequences are related to the status of the changed husband and wife as well as to the property pasanagn, changes in the status of a husband and wife would have an impact on daily life, especially in doing legal.⁸

The readiness of the soul and body for the prospective husband and wife is one of the principles of marriage, namely the principle of maturity of the soul and body, and the size of the maturity of the soul and body of each marriage law regulations vary. As the law of marriage in Indonesia, as a pluralistic country that has a variety of ethnic groups, Indigenous people are still recognized for their existence, and have their own rules related to the procedure and implementation of marriage. The criteria for maturity of soul and body to enter into marriage differ according to written positive law and unwritten law, namely customary law.

For prospective spouses who will marry and are Muslims , the hatrus is subject to the compilation of Islamic law (KHI) Article 15 Paragraph 1 states that “marriage should only be carried out by prospective brides who have reached the age” stipulated in Article 7 of law 1/1974 (as amended by law 16/2019). If the prospective spouse has not reached the age of 21, he must obtain permission in accordance with Article 6 of law 1/1974.

Basically, Islam does not specify exactly at what age a person can get married. But surely someone who is going to get married is already puberty and is able to carry out his marriage. Currently, the average puberty age of boys and girls is 15 years old.⁹ As the Quran does not mention the ideal age for marriage, it only states that marriage is sunnatullah. The word of God is among them:

1. "And marry those who are alone among you, and those who are worthy of your male and female servants. If they are poor, God will enrich them with his grace. God is all-encompassing and all-knowing." (QS. An-Nuur (24): 32).
2. "And all things we have made pairs that you may remember Allah." (QS. (51): 49).
3. "Blessed is he who has created pairs of all, both from what the Earth produces and from themselves and from what they do not know." (Surah Yaa Siin (36): 36).
4. God has created for you spouses of your own kind, then from them he has created offspring for you, and he has provided you with a good provision." (QS. An Nahl (16): 72).
5. And of his signs is that he has created for you Wives of your own, that you may be at ease with them, and he has placed love and mercy among you. Verily in that are signs for a people who reflect." (QS. Ar. Ruum (30): 21).

The Hadith also does not mention the exact age at which a person should ideally marry. The Prophet saw. for example, his marriage to Khadijah Radhiyallahu ‘anha, who was not young at that

⁷ Ibid.

⁸ Rizki Amalia, Tiara Sosialita, and Kadek Anda Gangga Puteri, “Perkembangan Hukum Keperdataan Indonesia,” in *Persembahan HUT Ke 80 Tahun Prof.Dr. Mochammad Isnaeni,SH,MH* (Malang: Setara Press, 2022).

⁹ Perqara, “Ketahui Hukum Pernikahan Dini Menurut UU Dan Hukum Islam,” October 22, 2023.

time, was 40 years old, while the Prophet was still 25 years old. Meanwhile, marrying Aisha Radhiyallahu 'anha who was six years or seven years old and the Prophet (peace and blessings of Allaah be upon him). the Prophet (peace and blessings of Allaah be upon him) began to have sex with her when she was nine years old and he was fifty-three years old.

The Imams of the mazhab are also as discussed above in accordance with the main sources of Islamic law, namely the Quran and Hadith. They only agree on the categories that can be used as a benchmark to carry out marriage more to the level of faith, obedience and devotion to Allah SWT. Thus a person who is married will feel peace and will not choose the wrong mate. Here are the categories:

1. Believing and fearing God

This first category is at the top position of the most worthy of priority and is considered as a provision to undergo a household in the future. Because basically the foundation of religion is the most appropriate and good initial capital to get blessings in living life in the world and in the hereafter. Faith in God is a powerful force in this life and in the hereafter. As Allah says "and those who believe, men and women, are protectors of one another. They enjoin what is right, forbid what is wrong, establish prayer, pay the poor-rate, and obey Allah and his Messenger. God will have mercy on them. The God is all-mighty, All-Wise." (Qs. And Tawbah (9: 71). Similarly, in Qs. An-Nisa (4): 1) which means "O people, fear your Lord who made you one soul, then he made from it its mate, then he multiplied men and women a lot."

2. Self-Improvement (Introspection)

Those who believe in him and fear him will be saved from the wrath of God. God has promised in his word. An-Nuur verse 26 that a good person will get a good partner. "Unkind Women are for unkind men, and unkind men are for Unkind Women, and good women are for Good Men, and good men are for good women. They are pure from what they are accused of. For them is forgiveness and a glorious reward." (QS. An-Nur (24): 26).

3. It is versatile and can be

This is for men and for women. There is no such thing as too much wealth, my friend. The most important thing is enough because for the issue of sustenance, Allah is very fair in adjusting to the needs of his servants, not according to the level of his desires. Wealth is nothing but a store of wealth. He said: "marry those who are single among you, and those who are worthy of your servants, male and female. If they are poor, God will provide for them. And Allah is all-encompassing, all-knowing." (An-Nuur (24): 32)

4. His only purpose was to worship and avoid adultery

Marriage is indeed a Sunnah that has been exemplified by the Prophet. and he once said that for anyone who does not follow the Sunnah means that it cannot be said to be his Ummah. Furthermore, the intention in the heart of marriage is one way to practice worship and of course it will be as one way to avoid zina (from starting zina eyes to other zina – zina). The Prohibition of fornication in the Qur'an: "do not approach fornication, for it is an abomination and an evil way." (Al-Isra (17): 32). "It is he who

created you from a single person, then from him he created his wife, that she might be at ease with him.” (Al-A'raf (7): 189).

The Indonesian Ulema Council (MUI) has issued a fatwa on early marriage. According to MUI, in Islamic jurisprudence literature there is no explicit provision regarding the age limit for marriage. Be it minimal or maximum restrictions. However, there is wisdom in marriage is required to create a *sakinah* family and in order to obtain offspring. One of the recommended acts which Islam has emphasized upon is cutting of nails in whatever manner or way it may be. Then the ability to keep the offspring is also influenced by the age of the bride who has perfect wits and is ready to carry out the reproductive process.

According to Islamic law, the age of eligibility for marriage is the age of proficiency in doing and receiving rights (*ahliyatul ada' wa al-wujub*). Islam does not set an age limit but regulates the age of puberty to be ready to accept the imposition of Islamic law. MUI considers all the views of scholars on early marriage law. There are some differences of opinion about the permissibility of this marriage. *Jumhur ulama Fiqh*, according to MUI, actually do not care about early marriage. Only Ibn Hazm chose the law of early marriage for men and women. Early marriage in young women by their parents or guardians is allowed. While early marriage for boys is not allowed.

A different opinion was expressed by Ibn Shubrumah and Abu Bakr al-Asham. According to them, early marriage is legally prohibited. The opinion contained in Fath al-Bari mentions the permissibility of early marriage refers to the marriage of the Prophet and Aisha, then it is a specificity. The practice of marriage is only reserved for the Prophet. and not for his people.

The kiai through the Nu Congress forum in the Hajj dormitory, Sudiang, Makassar, on March 22-27, 2010, raised the issue of marriage, namely the minimum age limit for marriage, hanging marriage, *tajdidun* marriage, and about *TA'liq talak*. The 32nd Nu Congress Forum in Makassar decided that according to the number of scholars there is no age limit for marriage in Islam. However, the kiai in the forum suggested that marriage should be done after the age of puberty (which is old enough with the assumption of benefits).

وَكَذَلِكَ اشْتَرَطَ الشَّافِعِيُّ فِي تَزْوِيجِ الصَّغِيرِ وَجُودَ الْمَصْلَحَةِ

It means “similarly, in marrying a little girl scholars Syafi'iyah require there is benefit”.¹⁰

Based on these considerations, MUI decided that early marriage is basically valid as long as the conditions and pillars of marriage have been fulfilled. But the law will be haram if the marriage actually gives rise to *madharat*. Then, the maturity of age is one indicator for the achievement of marriage goals. The purpose of marriage is the benefit of married life and society as well as a guarantee for pregnancy. So, MUI decided for the benefit, the provisions of marriage are returned to the provisions of age standardization when referring to Law No. 1 of 1974 on marriage, which now has changes, namely law no. 16 of 2019. This change in the Marriage Law is the result of a decision by the Constitutional Court. The decision of the Constitutional Court (MK) cancels the enforcement of the minimum age limit of 16 years for women to marry as stated in Article 7 Paragraph (1) of Law No. 1 of 1974 on marriage (Marriage Law). This is confirmed by the Constitutional Court in decision Number 22/PUU-XV / 2017

¹⁰ Syekh Wahbah Az-Zuhaili, *Al-Fiqhul Islami Wa Adillatuh* (Beirut: Darul Fikr, n.d.).

filed by three women who married underage. In the decision, the court granted for part of the applicant's application.

Chief Justice Anwar Usman who read the verdict stated Article 7 Paragraph (1) along the phrase "age 16 (sixteen) years" Law No. 1 of 1974 on marriage is contrary to the Constitution of the Republic of Indonesia in 1945 and has no binding legal force. In addition, the court stated that the provisions of Article 7 Paragraph (1) of Law No. 1 of 1974 on marriage are still valid until changes are made in accordance with the grace period as determined in the decision.

"Instruct the formulator of the law for a maximum period of 3 (three) years to make changes to Law No. 1 of 1974 on marriage, especially with regard to the minimum age of marriage for women," explained Anwar in the verdict hearing held on Thursday.

The existence of customary law itself is highly guaranteed or recognized in the Constitution of the Indonesian state in this case the 1945 Constitution (UUD 1945). As said by Constitutional Court Judge Muhamad Akil Mochtar asserted, indigenous peoples in Indonesia have received guarantees from the Constitution (UUD) 1945. The guarantee is contained in Article 18b to maintain and preserve existing customs. In customary law in general in Indonesia, marriage is not only meant as a "civil engagement", but also a "customary engagement" and at the same time a "neighborly kinship engagement". According to the Quran a Muslim is one who has absolutely surrendered to Allah and his commands and believes in pure Tawhid (the oneness of God) that isn't tainted with any shirk and this is why the Almighty has introduced prophet Abraham as a true.

Marriage according to customary law is not only a very important event for those who are still alive, but marriage is also a very meaningful event that is fully paid attention to and followed by the spirits of the ancestors of both parties. In marriage must also meet the rules of existing customary law, such as setting about the forms of marriage, ways of proposing, marriage ceremonies, and the breakup of marriage in Indonesia. The rules of customary law in this marriage vary in each region. This is due to the nature of society, customs, religion, and beliefs of each community are also different.¹¹ Customary law does not regulate absolutely the age limit of a person's marriage, that is, there is no provision on the minimum and maximum age limits for marriage. In certain regions, customary law does not prohibit marriages performed under age, but there are also some regions that prohibit the existence of underage marriages because they are considered inappropriate for marriage.¹²

Customs or traditions that exist basically suggest that an adult child (according to local custom size 15 years) who has not been married or have not found a mate is a disgrace to parents and their daughters. Where people who hold customs say it is better to marry today even though tomorrow or the day after tomorrow there will be a divorce, they prefer to be widows or widowers than to be old virgins or old men.¹³ In the customary law system which is the original law of the Indonesian nation derived from the culture of the people of Indonesia which states about the laws and regulations that apply to

¹¹ Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia* (Bandung: Mandar Maju, 2003).

¹² Wardah Salsabilla Choirunnisa Khusna and Erlina Nailal, "Analisis Perkawinan Di Bawah Umur Menurut Hukum Adat, Dan Hukum Perkawinan Indonesia," *Al-Hakam Islamic Law & Contemporary* 3, no. 1 (2022).

¹³ Made Adriawan Restu Ningrat, "Perkawinan Anak Dibawah Umur Ditinjau Dari Sudut Pandang Hukum Adat," *Lex Privatum* 1, no. 8 (2018).

each region, the rules that apply to customary law communities in general, namely matrilineal, patrilineal or parental.

CONCLUSION

The marriage age limit in Indonesian marriage law, if viewed in terms of written positive law, the marriage age limit must follow Law No. 16 year. 2019 as an amendment to the Marriage Law No.1 of 1974 on marriage, in Article 7 Paragraph (1) marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. B ahwa Indonesia as a pluralistic country, has several religions recognized by the state , and some tribes Bangas, for it is based on the Constitution recognition of customary rights , the validity of a marriage should not ignore the existence of customary law, where the indigenous people of each territory of customary law is different to the age limit of marriage.

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