

# Marriage Law Perspective Against Underage Marriage

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## **Abstract.**

*Underage marriages have been happening in Indonesia for a long time, especially in rural communities that are categorized as not yet advanced in their level of education, economy, or because of the local community's traditions. From the perspective of the Marriage Law, this is contrary to the provisions of Article 7 paragraph (1) of Law Number 16 of 2019 and is contrary to the purpose of marriage is to form an eternal family based on God Almighty. Early marriage in adolescents impacts the physical aspect and psychological impact on the perpetrators. The research method is empirical juridical research. The research specification in this study is descriptive-analytical. The study results show that the existence of underage marriages, this indicates that Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning Implementing Regulations of Law Number 1 of 1974, is less effective. Given the existence of underage marriages, many divorces occur because the marriages are carried out by children who are still underage, so they have not been able to carry out the purpose of marriage fully.*

**Keywords:** Marriage law, underage marriage.

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## **1. INTRODUCTION**

Marriage is a sacred and very important event in family life. In practice, marriage does not only concern the personal problems of the parties carrying out the marriage, but it also involves family, relatives, and even community problems [1]. Because marriage is the first step in forming a small family that is happy and prosperous physically and mentally by what has been mandated by the 1945 Constitution where the State guarantees to every Indonesian citizen to form a family, as Article 28 B paragraph (1) of the 1945 Constitution reads "every People have the right to form families and continue their descendants through legal marriages. The guarantee to be able to form a family is also regulated in Law Number 39 of 1999 concerning Human Rights, as stated in Article 10 paragraph (1) which reads "everyone has the right to form a family and continue their descendants through a legal marriage". The creation of a happy and prosperous family will automatically have an influence on people's lives which in the end will reach the life of the nation [2].

Given that marriage has a very important role in supporting the welfare of the nation [3], then in Indonesia, there is a marriage law which is authentically regulated in Law no. 1 of 1974 concerning Marriage, State Gazette of the Republic of Indonesia of 1974 Number 1. The explanation of the law is contained in the Supplement to the State Gazette of the Republic of Indonesia Number 3019 which in the general explanation section describes several basic problems. Article 1 of the Marriage Law states that:

"Marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One Almighty God".

The purpose of marriage is contained in Law Number 1 of 1974 Article 1, the last sentence says that the purpose of marriage is to form an eternal family based on One Almighty God, as well as in this Law there is a principle that the prospective husband and wife must have mature body and soul to be able to carry out marriage to realize the purpose of marriage properly without ending in divorce [4]. This means that because marriage is closely related to religion, marriage does not only have an outward element but also an inner element which also has an important role in forming a happy family, closely related to descendants, the care and education of children is the duty of parents [5].

The purpose of this very noble marriage, as stated in the Marriage Law, it is appropriate that every member of the community knows, understands, and implements the rules contained therein, one of the rules contains a minimum age limit for marriage, so that underage marriages are it needs to be prevented [6].

In Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 it is stated that "Marriage is only permitted if the male and female parties have reached the age of 19 years". The purpose of the provisions of this article is that women who marry at a young age, both physically and mentally are not ready to live as housewives, so that is not by the purpose of marriage.

If the provisions mentioned above are considered, that the determination of the minimum age limit for marriage is intended to maintain the integrity of the husband and wife relationship and also to prevent the explosion of the number of births by preventing women from getting married at a young age [7]. One of the reasons for the rapid population development in Indonesia is the high birth rate compared to the number of deaths. Seeing these symptoms, the Government realizes that it is necessary to implement a family planning program. "The National Family Planning Program is a direct effort aimed at reducing the birth rate, through the sustainable use of contraceptives"[8].

However, in society, there are still underage women who marry at an early age or maybe married off by their parents when they are young [9]. One of the reasons for this might be because parents want to let go of their responsibilities and shift the responsibility to the child's choice or the parent's choice[10]. As for the consequences of such marriages, the parents or children do not know it, as the basic consequence is that the family cannot fully realize the purpose of marriage, so many ends in divorce[11].

From the description above, it is clear that the implementation of marriage must be considered carefully and as early as possible and obey and follow the norms contained in the applicable regulations, even according to the National Family Planning Program the ideal age for marriage for men is at least 25 years. and for women at least 20 years old. But again, according to the Marriage Law, the age limit for marriage is 19 years for men and women.

## II. METHODS

Methods This research uses a normative juridical method by reviewing literature relevant to the theme being studied. Data collection is done through a literature study to find appropriate secondary legal materials sourced from laws and regulations, literature books, journal articles, news articles from the internet relevant to the topic of writing. The approach used in this research is descriptive prescriptive by providing an overview and analysis of the perspective of the marriage law on underage marriage.

## III. RESULT AND DISCUSSION

### The Concept of Minors

Article 7 paragraph (1) of the Marriage Law states that marriage is only permitted if the male and female parties have reached the age of 19 years.

From the sound of Article 7 paragraph (1) of the Marriage Law above, it can be seen that what is meant by minors for men and women are the same. Men and women are considered minors if they have not reached the age of 19 years.

Determining the age limit for marriage is very important because marriage as an engagement agreement between a man and a woman as husband and wife must be carried out by those who are mature enough both from a biological and psychological perspective. This is very important to realize the purpose of marriage itself, also to prevent marriage at a young age or marriage of children, because marriages carried out at a young age often result in divorce, and the descendants, they produce are not healthy [12].

Article 1 number (1) of Law Number 23 of 2002 concerning Child Protection states that a child is someone who is not yet 18 years old, including children who are still in the womb.

From the sound of Article 1 point (1) of the Child Protection Act above, it can be seen that what is meant by a minor is someone who has not reached the age of 18 years.

That the Unitary State of the Republic of Indonesia guarantees the welfare of each of its citizens, including the protection of children which is a human right. Children are a mandate and gift from One Almighty God, who has inherent dignity and worth as a whole human being. Children are buds, potentials, and the younger generation who succeeds the ideals of the nation's struggle has a strategic role and has special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future.

Protection of children is aimed at guaranteeing and protecting children and their rights so that they can live, grow, develop, and participate optimally by human dignity and respect, and receive protection from violence and discrimination, for the realization of quality Indonesian children with noble character, and prosper.

## Factors Causing Underage Marriage

Underage marriage has long been practiced by people in Indonesia, especially in rural communities who are categorized as not yet advanced in their level of education, economy, or because of the traditions of the local community[13]. Although the age limit for marriage has been determined that men and women must be at least 19 years old, indeed in religious teachings there are instructions for everyone to get married, but that does not mean that it teaches underage marriage or marriage at a young age.

It is a fact that the factors that cause underage marriages are because:

### 1. Family Economic Factors

The factor of the low level of the economy causes people to think that marriage can raise the economic problems they face, where people with economic limitations are vulnerable to accepting underage marriages without knowing the consequences of children undergoing underage marriages.<sup>1</sup>

In household life, the economic factor is having a very important position which can sometimes create a family in a state of disarray, although that is not all. It is seen from the number of those who marry young come from families who are less economically capable, while those who marry are in the opposite position.

In general, families who release their children to marry young because they want or expect that their children's lives are better than the conditions of their parents or original family, both regarding their daily lives and for their future lives. This is due to the reality of everyday life which is felt to be lacking in meeting the needs of life, whether it is the need for food, clothing, or housing needs. Especially when thinking about higher education which requires large costs is beyond the reach of his family and has become natural when parents choose something good for their child,

### 2. Number of Family Factors

Among the reasons for underage marriage is that girls are considered a burden on the family. By marrying off their daughters, the parents' economic burden will be reduced because their daughters have become the responsibility of their husbands.<sup>2</sup>

There is a link between large family size and underage marriage. With several incidents of child marriage, the average of those whose children marry underage has a large number of family members. If this is related to the problem of underage marriage to another family who marries him, then the underage child who is married to a man from another family is treated like his child. This means that handing over their child to someone else or the extended family, will more or less reduce the burden on the family in supporting it. Considering that a

family with many dependent children results in the family's income being divided in such a way that it will be very loaded with the burden of life.

### 3. Educational Factor

From a social perspective, what drives apathy towards underage marriage is the low level of education. People's attitudes and views allow underage marriage, which is an expression of public ignorance of the bad effects experienced by someone who married early, both in terms of health and psychological.

Factors that encourage parents to marry their children under the age or at a young age, because the level of education of parents is very low. Parents do not realize that underage marriages or at a young age are very vulnerable to upholding the purpose of marriage because they are not yet mature so that the marriage will end in a divorce, even in the demographic aspect, women who marry underage or marry at a young age will This causes a very high birth rate so that the program launched by the government on Family Planning will not be successful.

### 4. Local Tradition Factor

In terms of culture and tradition, several regions in Indonesia consider that underage marriage as an ordinary act. Society does not prohibit underage marriage because of the belief that a girl who has been proposed must be accepted, otherwise, it can result in the child not being sold (not getting a mate) for a long time.

Existing customs or traditions state that an adult child (according to local customary standards of 15 years) who has not been married or has not found a mate is a disgrace to parents and their daughters. Where people who hold customs say it is better to get married today even though tomorrow or the day after tomorrow there will be a divorce, they prefer to be a widow or widower than to be an old maid or old man. This situation should be removed immediately or even customs or traditions that require young marriage to be abandoned, considering that the law books explain that customary law that hinders the pace of development needs to be abandoned immediately because it is no longer by the progress of the times.

### 5. Family Relationship

One of the factors in which people marry within their own family is the property ownership factor in the community concerned, whether it is in the form of certain items which are considered as heirlooms or items which according to the customary law concerned have magical values or in the form of land. fields, fields, and so on. The community wants the object/wealth to be controlled only by the family itself.

Regarding this family relationship, when it is associated with the issue of child marriage, it is very relevant. This is because between children who are married,

generally, there is still a family relationship, whether it may be as a child of a nephew or as a child of a cousin and so on because some of them are not related. It should be noted here that in general, children who are still under the age of marriage are treated as their in-laws by their in-laws so that there is a harmonious relationship between the parties. By marrying off their children who are still underage, it can also happen that what was originally a family relationship between two parents, which was initially strained by this incident, becomes harmonious.

### **Legal Perspectives Against Underage Marriage**

Whereas the factors that cause underage marriages, namely family economic factors, a large number of families, education, local traditions, and family relationships, viewed from the perspective of the Marriage Law, clearly contradict the provisions of Article 7 paragraph (1) of the Law. Marriage which regulates the age limit for marriage is 19 years for both men and women. The factors causing the marriage as mentioned above also cannot be used as a reason to request a dispensation from the Court as regulated in Article 7 paragraph (2) of the Marriage Law which states: "In the event of a deviation from paragraph (1), the parents the male and/or female parties may request a dispensation from the Court on the grounds of urgency accompanied by sufficient supporting evidence".

Viewed from the perspective of the Marriage Law, the result of underage marriage is contrary to the purpose of marriage as regulated in Article 1 of Law Number 1 of 1974, namely in the last sentence which says that the purpose of marriage is to form an eternal family based on One Almighty God. Thus, Law Number 1 of 1974 in principle stipulates that the prospective husband and wife must have matured physically and mentally to be able to carry out marriage to realize the purpose of marriage properly without ending in divorce.

The existence of underage marriages indicates that Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning Implementing Regulations of Law Number 1 of 1974 are not effective. Given the existence of underage marriages, many divorces occur because the marriages were carried out by minors, so they have not been able to fully carry out the purpose of marriage as stated in the legislation even though the divorce itself is not desired by the family.

## **IV. CONCLUSION**

From the perspective of the Marriage Law, underage marriage is contrary to the provisions of Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage which regulates the marriage age limit of 19 years for men and women, and also clearly contradicts the provisions as stipulated in Article 1 of Law Number 1 of 1974, namely in the last sentence which says that the purpose of marriage is to form an eternal family based on One Almighty God. Thus, Law Number 1 of 1974 in principle stipulates that the

prospective husband and wife must have matured physically and mentally to be able to carry out marriage to realize the purpose of marriage properly without ending in divorce.

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