

# The Ideal Age of Marriage as an Effort to Establish an Ideal Family

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**Abstract :** Marriage is intended to meet the needs of instincts and the instruction of religion. Hence, in order to carry out this worship, mental readiness is required. Yet, in Islam, there are no provisions on the ideal age of marriage. This study aims to analyse the ideal age of marriage in Indonesia based on the provisions of the Law and to identify the deviation of the provisions of marriage age. As results, it was revealed that the law sets the legal age of marriage at 19 years old as regulated in Article 7 paragraph (1) of Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning Marriage. Meanwhile, if there is a violation that deviates from the provisions stated in this Law, the guardian's parents can submit an application on marriage dispensation (*diskah*) to the local court in order to be able to hold a marriage. This new provision has an implication for the effort to build a harmonious and ideal family as there is no discrimination on age limit between women and men which is also a form of gender equality.

**Keywords:** Ideal Family, Marriage age, Ideality.

## Idealitas Usia Pernikahan sebagai upaya Membangun Keluarga yang Ideal

**Abstrak :** Perkawinan terbentuk melalui rasa untuk memenuhi kebutuhan nalurinya, dan juga untuk memenuhi petunjuk agamanya, maka dalam rangka untuk menjalankan ibadah tersebut diperlukan kesiapan mental baik jiwa dan raganya, akan tetapi dalam islam tidak terdapat ketentuan yang mensyaratkan idealnya usia menikah. Tujuan penelitian ini yaitu menganalisis bagaimana idealitas usia melaksanakan pernikahan di Indonesia sesuai dengan ketentuan Undang-Undang dan bagaimana menganalisis implementasi terhadap Penyimpangan ketentuan usia nikah. Penelitian yuridis normatif, dengan spesifikasi mengkaji implementasi kaidah-kaidah dan juga norma-norma yang terdapat dalam hukum positif, yang bersifat deskriptif. Hasil penelitian ditemukan bahwa undang-undang mensyaratkan kedua mempelai harus berumur 19 tahun sesuai dengan ketentuan pasal 7 (1) Undang-undang Nomor 1 Tahun 1974 jo Undang-undang Nomor 16 Tahun 2019 tentang perkawinan. Dan apabila terdapat pelanggaran yang menyimpang terhadap ketentuan yang ada pada pasal tersebut maka orang tua wali dapat mengajukan permohonan dispensasi nikah (*diskah*) kepada pengadilan setempat agar dapat melangsungkan pernikahan, dengan adanya ketentuan baru ini berimplikasi pada upaya membangun keluarga yang harmonis dan ideal bagi masyarakat karena tidak ada diskriminasi batas usia antara perempuan dan usia laki-laki serta hal ini merupakan bentuk kesamaan gender.

**Kata Kunci:** Keluarga, Usia Pernikahan, Idealitas.

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## INTRODUCTION

In Islam, marriage is intended to create a family filled with love and affection or *sakinah*, *mawaddah*, and *warahmah* family. Besides, marriage is a '*mitsaqon qhalidzan*' which binds a husband and a wife in a household frame which is a '*hudan*' or guidance to the path blessed by Allah SWT. Hence, marriage aims to meet the needs of instincts and the instruction of religion.<sup>1</sup> Marriage

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<sup>1</sup> Abdul Rahman Ghozali, 2015, Jakarta, Fiqih Munakahat, Prenadamedia Group. p. 22.

is a message delivered by the Prophet Muhammad to be carried out by his people. Therefore, holding a marriage was a form of the people's obedience to him. Marriage requires one's readiness. In this case, before a person decides to hold an "akdun nikah", the person who will carry out akad must have physical and mental readiness<sup>2</sup>. To maintain human dignity, Allah SWT enacts the law accordingly. Here, *ijab* and *qabul* is a symbol of love. Meanwhile, the witnesses attended the marriage aims to witness that the relationship has been established and is strongly bound, "mitsaqon qhalidzan"<sup>3</sup>.

Mental and physical readiness is a prerequisite that must be prioritized. Mental health provides readiness for the women to run her duties as a housewife. Medically, there are many risks faced by a woman who gets pregnant at a young age as this condition will ultimately affect the baby's life.<sup>4</sup> Basically, there are things that can cause premature and postmature babies, namely "the mother's age, the mother's nutritional intake, the mother's uterus condition, and the possibility of abnormalities and development problems in fetus."<sup>5</sup> According to Andi Sjamsu Alam<sup>6</sup>, every man and woman who is bound by a marital relationship has a goal to build an ideal family by creating a harmonious relationship marked by a sense of happiness, a lack of tension and anxiety, and an acceptance of each other's physical and mental conditions.<sup>7</sup> In general, the parameters of a happy family can be characterized by the calm in facing problems in the family. As people have their own perspective on happiness in a household, the maturity of thinking and the emotional control are needed to reduce disputes in the family.

According to Andi Sjamsu Alam<sup>8</sup>, "In Islamic law, the 'ideal' age of a marriage is the same as the age of the Prophet Muhammad when he got married, namely at the age of 25 years."

In a number of articles contained in the marriage law, as mentioned by Mr. Martiman Prodjohamidjojo,<sup>9</sup> the purpose of marriage is to establish a happy and lasting family. If the purpose of marriage is to establish a happy and lasting family,<sup>10</sup> then can a person at his young age face various family problems? Of course, this question is responded differently as psychology views this issue differently both from Islamic law and health studies. In relation to early adulthood, Hurlock

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<sup>2</sup> Lihat Penjelasan Umum huruf d Undang-Undang Nomor 1 tahun 1974 .

<sup>3</sup> M. Andri, 2015, *Akibat Hukum Perkawinan Sirri di tinjau dari Hukum Islam dan Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan*, *Justicia Journal Vol 4. 1 tahun 2015. p. 18.*

<sup>4</sup> Medically, pregnancy lasts for approximately 9 months; 37-40 weeks. The process of pregnancy depends on many factors. For the birth of a baby before the specified time is often called as a premature birth. Premature birth is a condition where the baby is born before the normal period, can be 7-8 months. Meanwhile, there is also postmature birth where the baby is not yet born after more than 9 months, retrieved from <http://hamil.co.id/kehamilan/bahaya-hamil-di-usia-muda>, on January 20, 2020.

<sup>5</sup> <http://hamil.co.id/kehamilan/bahaya-hamil-di-usia-muda>, accessed on January 20, 2020.

<sup>6</sup> Andi Sjamsu Alam, *Usia Perkawinan Dalam Perspektif Filsafat Hukum Dan Kontribusinya Bagi Pengembangan Hukum Perkawinan Indonesia*[http://www.pta-edan.go.id/attachments/\\_/1184\\_ring.pdf](http://www.pta-edan.go.id/attachments/_/1184_ring.pdf), accessed on January 20, 2020.

<sup>7</sup> Benny Krestian Heriawanto. (2019). *Interfaith Marriages Based on Positive Law in Indonesia and Private International Law Principles*. *UNIFIKASI : Jurnal Ilmu Hukum*. 6(1), 94-100.

<sup>8</sup> *Ibid* Andi sjamsu Alam

<sup>9</sup> Mr Martiman Prodjohamidjojo, *Hukum Perkawinan*, Jakarta, Diindonesia, Indonesia Legal Center Publishing, 2011, p. 2.

<sup>10</sup> According to Imam al Ghazali, the purposes of marriage, are obtaining and sustaining offspring, fulfilling human rights, fulfilling religious instructions, saving oneself from crime and damage, fostering seriousness to take responsibility and accept rights, and building a household based on love and affection. Meanwhile, according to Article 1 of Law No. 1 of 1974 concerning Marriage, the purpose of marriage is establishing a happy and lasting family (household) founded on belief in God Almighty. Further, according to the Compilation of Islamic Law, the purpose of marriage is to establish a *sakinah*, *mawaddah* and *rahmah* family. Retrieved from <http://www.suduthukum.com/2015/09/tujuan-perkawinan-menurut-islam-uu-no-1.html> on January 20, 2020.

(1996), an expert in psychology, states:<sup>11</sup> *“Early adulthood begins at the age of 18 years to about 40 years when there are physical and psychological changes that accompany the reduce of reproductive ability.”*

In psychology, adulthood has three levels, namely early adulthood (age 18-40), middle adulthood (age 40-60), and late adulthood (age 60-died). Psychologists' views are very realistic as they see people from the perspective of behavior and attitude; these views are certainly different from doctors' views. According to Dwi Windawi<sup>12</sup>

*“Some pregnant women at age less than 20 years experienced problems with pregnancy and childbirth, such as hypertension, premature birth and vacuum delivery which had an impact on early osteoporosis. Besides, the physical changes that occur after pregnancy and childbirth are much faster than they should so that they will be prone to early menopause”.*

By considering these conditions, immediate action is needed as an effort to prevent pregnancy at a young age. According to Tin Afifah,<sup>13</sup>

*“Although the Marriage Law sets the minimum age of marriage at 16 years for girls, but the data shows that early marriage (<16 years) often occurs. This indicates that there are many violations that deviate from the provisions stated in this Law due to various social, economic, cultural and religious reasons.”*

Various problems faced by women in a marriage life and pregnancy at young age make young mothers feel frustrated. Hence, some experts submit a judicial review about the ideal age of marriage for a woman.

*“According to the Head of the Central BKKBN, Surya Chandra Surapaty,<sup>14</sup> the problem of early marriage is still quite worrying. Based on the 2015 National Socio-Economic Survey (Susenas), one of four girls at the age of 20-24 years got married before 18 years. In absolute terms, it is quite large, around 340.000 cases every year. This early marriage is one of the highest in the East Asia and Pacific region based on UNICEF data in 2014.”*

However, in Islamic law, there is no provision that clearly regulates the ideal age of marriage. As confirmed by the Indonesian Ulema Council (MUI) that:

*Every religious law, including Islamic law, does not provide any ideal age of marriage. Islamic law only regulates ‘baligh’ (adulthood) with a few signs. First, girls who are 9 years or older and have experienced ‘haidh’ (menstruation). Second, boys or girls who have been 9 years or more and have experienced ‘wet’ dreams. Third, boys or girls who have reached 15 years without menstruation and ‘wet’ dreams.<sup>15</sup>*

It means that there are no clear provisions in Islamic law regulating the ideal age of marriage. Meanwhile, many parties want to revise Article 7 paragraph (1) of Law No. 1 of 1974 concerning Marriage as this Article is considered to create inequality and injustice in age requirement of marriage between men and women; it is considered as a form of discrimination against women in the form of age to be ready to get married. Hence, the debate about the ideal age of marriage is an interesting topic to study as it is related to human feelings and instincts as a human being. The

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<sup>11</sup> Hurlock, E.B., *Psikologi Perkembangan, Suatu Pendekatan Sepanjang Rentang kehidupan*, Jakarta; Erlangga. 1994.

<sup>12</sup> [http://elib.unikom.ac.id/files/disk1/651/jbptunikompp-gdl-dwiwindawi-32525-10-unikom\\_d-i.pdf](http://elib.unikom.ac.id/files/disk1/651/jbptunikompp-gdl-dwiwindawi-32525-10-unikom_d-i.pdf), accessed on January 20, 2020.

<sup>13</sup> Tin Afifah, Pusat Teknologi Intervensi Kesehatan Masyarakat, Badan Litbang Kesehatan, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1018.2887&rep=rep1&type=pdf>, accessed on January 20, 2020.

<sup>14</sup> <https://nasional.sindonews.com/read/1228544/15/perkawinan-usia-dini-masih-tinggi-1502244235>, accessed on January 20, 2020.

<sup>15</sup> <http://www.hukumonline.com/berita/baca/lt547d77764e036/tokoh-agama-beda-pandangan-tentang-batas-usia-nikah>, accessed on January 20, 2020.

problems discussed in this study are then formulated into the following questions; 1) What is the ideal age of marriage in Indonesia based on the provisions of the Law? and 2) How does the deviation of the provisions of marriage age occur?

## RESEARCH METHODS

This study applied a normative juridical research method as it focuses on analyzing the implementation of rules and norms contained in the provisions of positive law.<sup>16</sup> Normative juridical research methods are usually qualitative.<sup>17</sup> The main purpose of this study was to analyze the ideal age of marriage as an effort to build an ideal family. Legal research has unique characteristics as it is normative, practical in nature, and descriptive.<sup>18</sup> Descriptive study is a study in which its analysis uses words in describing the legal principles, the legal methods and the legal doctrines (*communis opinio doctorum*).<sup>19</sup>

## RESULTS AND DISCUSSION

### 1. The ideal age of marriage in Indonesia based on the provisions of the Law

Based on the data, there are a lot of practices on data manipulation where girls under the age of 16 years are deliberately manipulated to the age of 16 years or older for the benefit of marriage administration. The manipulation of data aims to be able to get a girl married and get a marriage certificate. Besides, the practice of underhand marriage also often occurs when a girl is not possible to get her legality. Hence, there are around two million Indonesian girls under the age of 15 years who have had husband and have been 'dropout' from school. This number is estimated to increase to three million by 2030.<sup>20</sup> However, there are changes in data related to child marriages in Indonesia. The percentage of child marriages in Indonesia in 2015 was 23%, but this percentage was decreasing to 22% in 2017. This situation needs to be responded positively. Hence, efforts to prevent child marriages are needed to be strengthened in order to achieve lower percentages. In 2015, child marriages in rural areas were almost 1/3 higher than in urban areas (27.11% and 17.09%, respectively). In 2017, the prevalence of child marriages in rural areas decreased slowly, while in urban areas, the percentage was increasing.<sup>21</sup>

In Islam, 'adulthood' ranges in age between 9 and 15 years. Thus, if the Law sets the ideal age of marriage at 16 years, as regulated in Law No. 1 of 1974, it is in line with the concept of adulthood in Islam. Yet, there are many different views in this regard. As stated in QS. 4:6,<sup>22</sup> before handing over assets to orphans, if they have grown up and are able to use the assets, they need to be given a test first. It is done in order to know whether or not he is able to manage and use his assets properly, as understood by the Syafii School. Meanwhile, the Hanafi School requires guardians to hand over their assets to an adult on a condition that he is smart and capable, and at the age of 25, even if he is not smart. In this case, guardians are not allowed to take or eat orphan's assets

<sup>16</sup> Johnny Ibrahim, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia Publishing, p.. 295.

<sup>17</sup> E Saefullah Wiradipradja, *Penuntun Praktis metode penelitian dan Penulisan Karya Ilmiah Hukum*, (Bandung; Keni Media, 2015), p. 25.

<sup>18</sup> Philipus M. Hadjon dan Tatiek Sri Djatmiati, *Argumentasi Hukum*, Gadjah Mada University Press, Yogyakarta, 2005, p. 1

<sup>19</sup> [Miftakul huda](http://www.miftakulhuda.com/2010/01/communis-opinio-doctorum.html) , <http://www.miftakulhuda.com/2010/01/communis-opinio-doctorum.html>, accessed on January 3, 2020.

<sup>20</sup> *Naskah Akademik Rancangan Undang-Undang tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*, Jakarta, Koalisi Perempuan Indonesia Untuk keadilan dan Demokrasi PKH, Gender, Masyarakat, FH UGM, ICJR Kalyanamitra ECPAT Indonesia, 2019, p. 27. accessed on February 7, 2020.

<sup>21</sup> *Ibid. ...Naskah akademik*. p. 27

<sup>22</sup> Departemen Agama RI, *Al-Qur'an dan Terjemahannya*, (Surabaya: Surya Cipta Aksara, 1993), 115-116.

excessively. If the guardians are considered rich enough, they should refrain from taking or eating orphan's assets.<sup>23</sup> Yet, if the guardians are the people in need, then they may take or eat orphan's assets reasonably. If the orphan has been considered 'adult' or has reached the age of 25, handing over the assets shall be carried out in the presence of two witnesses to avoid disputes in the future. God always watches and supervises what humans do. There is nothing hidden from Him both on earth and in the sky.<sup>24</sup> In his interpretation, Imam Ibn Kathir argues that adulthood/*baliq* is marked by a 'wet' dream.<sup>25</sup> Meanwhile, R. Soetojo Prawirohamidjojo in his book states that "a marriage will encourage people to do activities to make a living as they have a sense of responsibility."<sup>26</sup> Further, he also cited what Goete said "*Het huwelijk is het begin en hoogtepunt van alle beschaving*" (marriage is the beginning which is also the culmination of all civilization).<sup>27</sup> Hence, marriage is one of the legal actions that can be carried out by *mukallaf* who fulfills the requirements.<sup>28</sup>

According to R. Soesilo,<sup>29</sup> in Diana Kusumasari, December 27, 2011 in her book 'the Code of Criminal Law (KUHP)', 'immature' refers to those who are not yet 21 years old and not married. Hence, if a person has married and divorced before the age of 21 years, he is still considered 'mature'. R. Soesilo confirms that the provisions contained in the Code of Criminal Law are in line with Article 47 paragraph (1) of Law No. 1 of 1974 in which it is stated that children who have not passed the age of eighteen or have never got married is under the authority of their parents. Therefore, it is clear that Article 47 paragraph (1) of Law No. 1 of 1974 indicates that children are under the protection and the authority of fathers and mothers as their parents. If a girl at the age of 18 years has passed her high school education, thus she is allowed to get married. High school education is considered enough for a girl to step into the level of marriage. Conversely, a boy's readiness to get married is not just a matter of education (graduating from high school), but the boy must also have economic ability that can be indicated by his work.<sup>30</sup> At the age of 21 years, a man seeks to improve his personal abilities, both in education and employment, as well as his personal identity.<sup>31</sup>

According to I Ketut Oka Setiawan, the age limit of 16 years for women and 19 years for men is intended to protect the health of husband, wife and their offspring. If the provision of the age limit is violated, then cancellation can be requested in the Court.<sup>32</sup> Meanwhile, in the provisions contained in Article 9 paragraph (1) of the Compilation of Islamic Law, it is stated that a child who is twenty-one years old, has physical and spiritual health, and has never married can have her marriage. Further, medically, women who are very vulnerable experiencing pregnancy problems are those who got married at a young age. As confirmed by Eka Novi Astuti (Kompasiana, August 22, 2017) that:

*"Girls who get married at an early age ( $\leq 15$  years) are at risk, even though they have had menstruation. There are at least two medical effects caused by early marriage, one of them is*

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<sup>23</sup> <https://quran.kemenag.go.id/>, accessed on February 25, 2020

<sup>24</sup> Ibid.

<sup>25</sup> Ibn Katsir, *Tafsir Ibn Katsir, (Mesir: Dar al-Kutub, t.t)*, 453. In Teguh Anshori, 2019, *Analisis Usia Ideal Perkawinan Dalam Perspektif Maqasid Syari'ah*, Al-Syakhsyiyah: Journal of Law & Family Studies, Vol. 1 No. 1, 2019.

<sup>26</sup> R Soetojo Prawirohamidjojo, 2006, Surabaya, Airlangga University Pers, *Plurarisme dalam perundang-undangan perkawinan di indonesia*, p. 29

<sup>27</sup> Ibid, R Soetojo Prawirohamidjojo

<sup>28</sup> Rosnidar Sembiring, *Hukum keluarga harta-harta benda dalam perkawinan*, 2016 cet 1, jakarta, Rajagrafindo Persada, p. 43.

<sup>29</sup> <http://www.hukumonline.com/klinik/detail/lt4eec5db1d36b7/perbedaan-batasan-usia-cakap-hukum-dalam-peraturan-perundang-undangan>, accessed on January 22, 2020.

<sup>30</sup> Nizar Abdussalam, *Batas Minimal Usia Kawin Perspektif Hakim Pengadilan Agama dan Dosen Psikologi UIN Malang*, <http://ejournal.uin-malang.ac.id/index.php/jurisdictie/article/download/4101/5560> , accessed on January 22, 2020.

<sup>31</sup> Ibid, Nizar Abdussalam

<sup>32</sup> I Ketut Oka Setiawan, *Hukum perorangan dan kebendaan*, 2016, Jakarta, Sinar Grafika, p. 47



*dynecological diseases, including infections of the uterus and cervical cancer. Dynecological diseases occur due to the transition of children cells into adult cells which is too fast. In general, the growth of children cells ends at the age of 19 years.*"<sup>33</sup>

One of the factors causing maternal death found by the Public Health Office is pregnancy at a young age. Hence, the government should be wiser in making a legal argument before ratifying it.

*Thus, according to Eka Novi Astuti, "medically, early marriage can bring many losses. Early marriage can even be categorized as a form of psychological and sexual violence for children who can then experience trauma."*<sup>34</sup>

A study found that determining the ideal age of marriage based on the concept of *maqassid syar'iah* can give a positive value.<sup>35</sup> The ideal age of marriage has various positive impacts, such as increasing family welfare, guarantying education rights, as well as developing knowledge in terms of the urgency of the ideal age of marriage so that they will then get their children married at the ideal age.<sup>36</sup> The concept of *maqassid syar'iah* believes that the ideal age of marriage is 20 years for women and 25 years for men. This provision can be applied in order to establish a good and ideal family. With the application of this concept, it is expected that a relationship between men and women can be well intertwined; sexual relations that give birth to offspring<sup>37</sup> so that they will be able to establish a *sakinah, mawaddah, and warahmah* family. A marriage that is carried out at a relatively young age, where the bride's and groom's condition is psychologically and socially immature, will cause unfavorable psychological and social symptoms.<sup>38</sup> Hence, the application of the concept of *maqassid syar'iyah* will be able to establish a harmonious family filled with love and affection so that disputes in the family can be reduced. As regulated in Article 7 paragraph (1) of Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning Marriage, the law sets the legal age of marriage at 19 years for both women and men. This is done to avoid negative impacts on the ideal age of marriage contained in the old Marriage Law. Thus, by setting the ideal age of marriage at the age of 19 years for both women and men, there is no more discrimination in terms of the ideal age of marriage for women and men.

## 2. The deviation of the provisions of marriage age

The development of technology in the Industrial Revolution 4.0 becomes a reality that must be faced and responded wisely by adhering to the principles of expediency and policy in its implementation. Yet, the development of technology also has a negative impact on children; one of them is the easy access of pornography. The easy access of pornography can lead to an inappropriate relationship between girls and boys causing anxiety for parents in case of pregnancy out of wedlock in girls who are not old enough. The changes of children's behavior are the impacts of peer relationships.

As stated previously, Article 7 paragraph (1) of Law No. 1 of 1974 sets the legal age of marriage at 16 years for women and 19 years for men. Hence, there are many cases of pregnancy out

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<sup>33</sup> [http://www.kompasiana.com/ekanovias/melihat-dampak-negative-dan-positive-pernikahan-dini\\_552025208133115c719de36c](http://www.kompasiana.com/ekanovias/melihat-dampak-negative-dan-positive-pernikahan-dini_552025208133115c719de36c), accessed on January 22, 2020

<sup>34</sup> *Ibid*, Eka Novi Astuti

<sup>35</sup> Teguh Anshori, 2019, *Analisis Usia Ideal Perkawinan Dalam Perspektif Maqasid Syari'ah*, *Al-Syakhshiyyah: Journal of Law & Family Studies*, Vol. 1 No. 1, 2019.

<sup>36</sup> *Ibid*

<sup>37</sup> Ela Sartika dkk, *Keluarga Sakinah Dalam Tafsir Al-qur'an (Studi Komparatif Penafsiran Al-Qurtubi dalam Tafsir Jami' Li Ahkam Al-Qur'an dan Wahbah Zuhaili dalam Tafsir Al-Munir)*, Al-Bayan: Jurnal Studi Al-Qur'an dan Tafsir 2, 2 (Desember 2017): 103-131

<sup>38</sup> Muhammad Kunardi, HM Mawardi Muzamil, *Implikasi Dispensasi Perkawinan Terhadap Eksistensi Rumah Tangga Di Pengadilan Agama Semarang*, *Jurnal Pembaharuan Hukum* Volume I No. 2 Mei – Agustus 2014, 209-218

of wedlock. However, after receiving protests on this provision, then the Decision of the Constitutional Court<sup>39</sup> No. 22/PU-XV/2017 is issued. This decision states that it is not permitted to discriminate between a man and a woman as it is a form of discrimination. Early marriage has negative impacts on the growth and development of children and can lead to the ignorance of children's basic rights, such as the right to be protected from violence and discrimination, the civil right of children, the right of health, the right of education, and the social right of children. The difference at the legal age of marriage between men and women raises jealousy. Many people consider that the different minimum age of marriage between men and women raises discrimination related to the right to build a family as stated in the Law. Besides, it also discriminates the fulfillment of children's rights. Hence, many people did not agree with this provision so that they submitted an application for judicial review to the MK as they wanted a change in Article 7 of (1) of the Marriage Law.

According to Moch Isnaeni,<sup>40</sup> *"the Marriage Law sets the minimum age of marriage so that people who want to marry above the specified minimum age are not prohibited"*

Further, Moch Isnaeni<sup>41</sup> states that "the concern of some people arises due to the minimum age of marriage can be used by some people as a legal favor to get their children married, especially for girls in which the minimum age of marriage is considered extremely inappropriate medically and educationally."

Amendment to Law No. 1 of 1974, especially Article 7 paragraph (1), is done as a response to the protests done by the community. Article 7 paragraph (1) of Law No. 16 of 2019 concerning Marriage states that marriage is only permitted if men and women have reached the age of 19 (nineteen) years. Thus, it is a form of gender equality to avoid discrimination in terms of the ideal age of marriage. In her study, Sri Rahayu<sup>42</sup> states that there are at least three dominant factors causing early marriages in an area, namely 1) a pregnancy out of wedlock, 2) poverty, and 3) a desire to get married. Marriage that is carried out at a young age can affect one's health as well as his psychological and economic conditions. These conditions contradict with the goal of marriage which is to establish a happy and prosperous family. Thus, early marriages bring more harm than good.

Based on the authors' point of view, the Marriage Law, especially Article 7 paragraph (1), has been appropriate because the most important thing is to provide understanding for parents and community concerning children association. If an early marriage needs to be held due to the deviation of the provisions of Article 7 paragraph (1) of Law No. 1 of 1974 jo Law No. 16 of 2019 article 7 (1), the guardian's parents can submit an application on marriage dispensation (*diskah*) to the local court by completing supporting evidence in order to be able to hold a marriage (Article 7 paragraph (2) of Law No. 16 of 2019).

The increasing of the ideal age of marriages is in line with the increasing number of applications on marriage dispensation to court, why? because in the application of the provisions of Article 7 paragraph (1) of Law No. 1 of 1974, there have been many applications for marriage dispensation. Now, when the ideal age of marriage has been increased to 19 years (see Article 7 paragraph (1) of Law No. 16 of 2019), the number of applications for marriage dispensation is higher. Thus, the problem is not at the legal age of marriage set in the Law, but it is at each individual in addressing the legal age of marriage and maintaining relationships between people. The existence

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<sup>39</sup> <https://nasional.okezone.com/read/2019/09/13/337/2104228/batas-usia-perkawinan-di-indonesia-disetujui-jadi-19-tahun>

<sup>40</sup> Moch. Isnaeni, *Hukum Perkawinan Di Indonesia*, 2016, Surabaya, Revka Petra Media, p. 108

<sup>41</sup> *Ibid*, Moch Isnaeni p. 108

<sup>42</sup> Sri Rahayu, 2018, *Praktik Pernikahan Di Bawah Umur Dan Implikasinya Terhadap Kehidupan Rumah Tangga (Studi Kasus Di Kecamatan Ngadirejo Kabupaten Temanggung Tahun 2012 – 2016)*, Yogyakarta, Thesis, 2018. accessed on February 7, 2020.

of marriage dispensation has a very detrimental effect on a woman as there will be a stigma in the community about a pregnancy out of wedlock.<sup>43</sup> The community considers people who get pregnant out of wedlock as people who violate the religious law. They can even be called as “*fasik*” (broken) people and the parents will be considered to be failed to educate their children in this millennial era or the industrial revolution 4.0 era.

## CONCLUSION

Based on the results of the analysis, it can be concluded that the ideal age of marriage set by the law is at the age of 19 years for both women and men as regulated in Article 7 paragraph (1) of Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning Marriage. Meanwhile, if there is a violation that deviates from the provisions stated in this Law, the guardian's parents can submit an application on marriage dispensation (*diskah*) to the local court in order to be able to hold a marriage. However, the increasing of the ideal age of marriages is vulnerable to the increasing number of applications on marriage dispensation to court. This new provision has an implication for the effort to build a harmonious and ideal family as there is no discrimination on age limit between women and men which is also a form of gender equality.

## SUGGESTION

It is expected that the government can be more active in socializing the ideal age of marriage in an effort to establish a harmonious household. In addition, in an effort to minimize the number of early marriages, the government needs to be more active in; 1) socializing the impacts of getting pregnant at a young age on the psychological and health condition of a woman; 2) holding education programs to the community so that the parents' insight and knowledge are increased; and 3) improving the economic sector of the community as poverty is one of the factors causing early marriages.

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<sup>43</sup> Muhammad Kunardi, HM Mawardi Muzamil, *Implikasi.....Op.cit, pp. 109-118*



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