

THE ANALYSIS OF THE MARRIAGE AGE ACCORDING TO THE MARRIAGE LAW OF THE REPUBLIC OF INDONESIA NO. 16 OF 2019

Akhmad Zaki Yamani

STAI Darul Ulum Kandangan Kalimantan Selatan, Indonesia

zyamani1981@gmail.com

ABSTRACT

This study aims to describe the age of marriage in Act No. 16 of 2019 on the Amendment of the Marriage Law No. 1 of 1974. In this study the author uses a normative jurisprudence approach, which is a study based on library research in order to obtain secondary data in the field of law. The method is used to dig the foundations, norms, theories and legal opinions relevant to research issues through inventory and study of primary, secondary, and tertiary law materials. Law No. 1 of 1974 dominated many elements of religion/belief and reality living in society. On the other hand, this Act No. 1 of 1974 seeks to reinforce the principles contained in the Pancasila and the Basic Law of the Republic of Indonesia of 1945. From the point of view of this Act, the change in the age of marriage in Act No. 16 of 2019 is a reform of the marriage law. This reform of the age of marriage does not preclude the provisions of article 2, paragraphs (1) and (2) which stipulate that marriage shall be legally performed according to the law of religion, also must be recorded by the authority.

Keyword: *Age of Marriage, Legal Perspective, Indonesia.*

Introduction

One of the policy directions of legal development in Law No. 17 of 2007 on the National Long-term Development Plan 2005-2025 is the development of the substance of the law, which contains norms, foundations, principles, and rules, both written and unwritten, including court decisions. Marriage Act No. 1 of 1974 has been amended under Law No. 16 of 2019. In such a change, the rule of age for marriage is when a man and a woman have reached the age of 19 (nine) years.

Every living creature has the right to continue its offspring through marriage, that is, through culture in the implementation of a marriage made in Indonesia. There are differences in implementation due to cultural or cultural diversity of the religion embraced.

Marriage is one of the most important events in human life. The marriage between a man and a woman has an inherent effect on both the family and the wealth that is acquired between them both before and forever. Marriage is a sacred covenant forming a family between a man and a woman. The element of the covenant here is to show the arbitrary aspect of a marriage and its appearance to the public. The marriage is a covenant, because the way of marriage has been prescribed before, namely, by

the law of the marriage and by the righteousness and by certain conditions. (Sayuti Talib, 1974). Marriage is an inherent bond between a man and a woman as a husband and wife with the aim of forming a happy and eternal family based on the One God.

The marriage formula above is the formula of the Act No. 1 of 1974 on Marriage referred to in article 1. The formula of such marriage essentially contains the same core and purpose as the formulae of marriage proposed by experts and scholars. (Mufidah Ulfah, 2008).

In this study the problem that is discussed is the age of marriage according to the Marriage Act No. 16 Year 2019. For that the formula was formulated as follows: 1) How does the provisions of the marriage age according to Marriage Law No. 16, Year 2019?. 2) What if the age for marriage has not been met when marriage is very urgent.

Research Method

This research uses normative law research. It uses this method to dig underpinnings, norms, theories and legal opinions relevant to research problems through inventory and study of primary, secondary, and tertiary law materials.

Result and Discussion

The marriage bond is a fundamental element in the formation of a harmonious and loving family, so in the execution of such a marriage, the legal norms that regulate it are necessary. The application of the law in the implementation of marriage is especially necessary in order to regulate the rights, obligations, and responsibilities of each family member, in the form of a happy and peaceful household.

Scholten explains that marriage is a legal relationship between a man and a woman to live together forever recognized by the State (Soetojo Prawirohamidjojo, et al., 2000). According to Subekti, as quoted in the book Soetojo Pravirohamidjjo, marriage was a legitimate relationship of a man with a woman for a long period of time. (Soetojo Prawirohamidjojo, et al., 2000).

If a man or a woman is married, then there is a bond between them and the children born therefrom. Marriage according to Act No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, is not only a civil act, but also a religious act, because the lawfulness or non-legality of a marriage depends entirely on the law of the respective religions and beliefs. (Abdurrahman, 1978).

The system of marriage in Indonesia belongs to the various varieties of one with the other because in Indonesia recognize the existence of different religions and beliefs, the system of which is different. This is possible in the State of the Republic of Indonesia based on Pancasila which firmly recognizes the existence of the principle of religious freedom. (Subekti, 2002). Married couples usually want to have children from their marriages, but there are couples who live together without the desire to get children.

This is done by a married couple who are older and can be known as the term In Extremis. If there is a legal consequence in a marriage, then society needs a rule about this marriage: that is, about the conditions for the registration, execution, continuation and termination of this marital life in a law, in this case the Marriage Act.

In the Indonesian legal system, the provisions concerning marriage are regulated in the Law No. 1 of 1974 on Marriage and the Act No. 16 of 2019. Every marriage entered into shall be subject to the provisions of the Marriage Act and the Rules of Implementation thereof. With the birth of this Marriage Act, there has been in Indonesia a unified law governing marriage, that is, a single law for all Indonesian citizens in case they enter into marriage. Because marriage is not only a personal affair, a family, or a community in an environment, but also a matter of national interest.

In article 1 of Act No. 1 of 1974, marriage is defined as an inherent bond of birth between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Divinity. A birth bond is a visible bond. It reveals the existence of a legal relationship of a man with a woman living together as a wife and husband, the inward bond is an invisible relationship. Born and inner bonds are the foundation in building a lasting and happy household.

The purpose of marriage is, among other things, to form a happy and lasting family based on the One Divinity as stated in Article 1 of the Act No. 1 of 1974 on Marriage. Then there is no doubt as to what is to be achieved in the marriage.

Prior to the birth of Act No. 1 of 1974, on the terms, customs and legality of a marriage for Indonesians were generally based on the respective religious and customary laws. According to the customary law, marriage is a bond between a man and a woman to form a household that is carried out in a customary and religious manner, involving the family of both brothers and sisters. (Soerjono Wignjodipoe, 1988).

Differences in the manner of marriage as the influence of marital arrangements, carrying consequences on the way of life of family, kinship and property of a person in social life (Hilman Hadikusuma). In addition to this, it was known at that time what is called "mixed marriage," which is the marriage of mixed groups, mixed marriages between places, and interreligious marriage. (Sudargo Gautama, 1973). Nowadays what mixed marriage means is only for international marriage.

After the entry into force of Act No. 1 of 1974, there was a unification of the law in marriage in Indonesia, where marriage has a very close relationship with religion/spirituality. The law on marriage has been applied equally to all citizens of the State, therefore, every citizen must obey the law in force, including Act No. 1 of 1974, which is the basis for creating legal certainty, both from the point of view of family law, property, and the legal consequences of a marriage. (K. Wantjik Saleh, 1982).

A family is a happy family if there is no clash or quarrel in the family, so that the family goes well without clashes or quarelling. (Cholil Mansyur, 1994). The purpose of marriage is not only to form a happy family, but also to be eternal. In marriage it must be instilled that the marriage lasts forever and forever unless it is separated by death.

In social life, marriage and family are very important institutions. Through marriage and family is a very important institution. Through the marriage can bring about various consequences, therefore it is established procedures to avoid the possibility of harmful negative. Among the procedures and rules established for the Muslim community in Indonesia is that marriages must be officially recorded and published.

Official recordings are usually carried out by the Wedding Registrar (PPN) or the Office of Religious Affairs as an official government agency, while formal publication is usually done in the form of a reception ceremony. But the truth is, not all Islamic communities in Indonesia follow the procedures or rules that apply. In some of the Islamic communities in Indonesia, the term and practice of marriage is unrecorded and unpublished.

As explained, the government has made amendments to the Marriage Act No. 1 of 1974. In such a change, the rule of age for marriage is when a man and a woman have reached the age of 19 (nine) years. And if there is a deviation, then under paragraph (2) of article 7 there may be an deviation from the age requirement as referred to in paragraph (1), the parents of the male and/or the parent of the female may apply for dispensation to the Court on very urgent grounds accompanied by sufficient supporting evidence. (a) the appointment of the husband or the wife of the wife or the husband of the daughter or the daughter of the father or the mother of the child; (b) the assignment of a wife or a wife to the marriage; (c) the granting of a discharge by the court as referred to in paragraph (ii) shall be subject to the opinion of both parties to the proposed marriage, (iii) the provision concerning the circumstances of one or both parents of the married couple, (iv) the provisions relating to the request for discharging of the wedding, (v) the subsequent provision shall be applicable to the latter (v); (6).

Why the age of marriage was changed to 19 years for both men and women, the reasons put forward by the Act No. 16 of 2019 are as state guarantees of the right of citizens to form a family and continue offspring through legal marriage, guaranteed of the child's right to survival, growth, and development as well as the right to protection from violence and discrimination as enshrined in the Constitutional Law of the Republic of Indonesia of 1945. The other reasons are that marriage at child age has a negative impact on the upbringing of children and will result in the failure to fulfil the child's fundamental rights such as the rights to protection against violence, discrimination, civil rights of children, health rights, education rights, and children's social rights. Meanwhile, under the Marriage Act No. 1 of 1974, the legal age for

marriage is 19 years for men and 16 years for women as stipulated in article 7 of this Act.

The considerations submitted by this law refer more to sociological considerations, not to jurisprudential considerations. Rodulf Stammmer said that the spirit of law is the construction of the mind that is the necessity to direct the law to the ideals desired by society. (Zainuddin, 2011). In the Civil Code, the age under Article 29 is 18 years for men and 15 years for women. In the Employment Act No. 13 of 2003, children are under the age of 18. According to article 2, paragraph 1, of the Law No. 1 of 1974, "A marriage is valid when it is made according to the law of the respective religions and beliefs". It describes the principle of marriage of the Indonesian nation based on Pancasila, which can be seen from the explanation of article 2, subsection 1, of Act No. 1, of 1974 that a marriage performed according to each religion is the primary principle for a valid marriage.

Conclusion

The change in the age of marriage in the Nomo 1 Act of 1974, 19 years for men and 16 years for women to 19 years of age respectively in the Law No. 16 of 2019 constitutes a substantive change in legal norms in marriage age, and this can be said as a form of response to the Act No. 17 of 2007 on the National Long-term Development Plan 2005-2025.

References

- Abdurrahman, 1978, *Masalah-masalah Hukum Perkawinan Di Indonesia*, (Bandung, Penerbit Alumni)
- Hilman Hadikusuma, 2007, *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama*, (Bandung: CV. Mandur Maju).
- K. Wantjik Saleh, 1982, *Hukum Perkawinan Indonesia*, (Jakarta: Ghalia Indonesia).
- Peraturan Pemerintah Nomor 9 Tahun 1975 Tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Inpres Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam
- Sayuti Talib, 1974, *Hukum Kekeluargaan Indonesia*, (Jakarta: Universitas Indonesia).
- Soerjono Wignjodipoere, 1988, *Asas-asas Hukum Adat*, (Jakarta : Gunung Agung,
- Soetojo Prawirohamidjojo dkk, 2000, *Hukum Orang dan Keluarga*, (Bandung: Alumni).
- Subekti, 2002, *Hukum Keluarga dan Hukum Waris*, (Penerbit PT. Intermedia).
- Sudargo Gautama, 1973, *Segi-segi Hukum Peraturan Perkawinan campuran*, (Bandung: Penerbit Alumni).
- Undang-Undang Nomor 1 tahun 1974 tentang perkawinan (LN 1974 Nomor 1, TLN 3019).
- Zainuddin, 2011, *Filsafat Hukum*, Cet. 5, Jakarta: Sinar Grafika.