

Provisions of Minimum Age of Marriage in Indonesia: Amendments Efforts and Responses

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Abstract: This paper examines the provisions of the minimum age of marriage by considering regulations in various Muslim countries. Besides, this paper also discusses why Indonesia experienced resistance in changing the rules of the minimum age. Using a sociological approach, this paper examines the minimum age limit in various Muslim countries and efforts in renewal the minimum age limit in Indonesia. Data collection is done through literature review, decisions, and related journals. This data is supported by the information from interviews on the judge's attitude and response. The author interviewed 6 judges of the Bantul and Wonosari Religious Courts. This paper confirms that efforts made by several institutions to raise the minimum age of marriage have been made. One of them is the submission of Judicial Review No. 30-74 / PUU-XI / 2014 to the Constitutional Court, which was unfortunately rejected. One of the legal considerations of the Constitutional Court Judge is that the application is considered contrary to the 1945 Constitution. The prevailing customary law and cultural diversity in Indonesia have significant influence in increasing the minimum age, because one community has different views with others on the minimum boundary age of marriage. Besides, the Constitutional Court judges consider that raising the minimum age does not have a significant influence on reducing child marriages and some other adverse effects, but that influence emerges from the internet. The study also argues that these changes are considered not in harmony with all the different interests of society. This was also in line with the response of 6 judges in the Bantul and Wonosari Religious Courts.

Keywords: *minimum age of marriage; amendments efforts in Indonesia*

Introduction

The provisions of the minimum age of marriage in Indonesia are regulated in the Marriage Act No. 1 of 1974. The law stipulates that a man and woman may conduct a marriage if they have fulfilled the conditions, one of which is the age requirement, 19 years for men and 16 years for women.¹ The provisions of the minimum age of marriage that have been applied since 1974 in the development of time attracted various debates in several institutions, some of which were delivered, namely BKKBN, the Women's Coalition and the Board of Management of the Women's Health Foundation. This can be seen from several efforts made by some of these institutions to raise the provisions of minimum age of marriage.

Other provisions regarding age are also regulated in the Child Protection Act, which categorizes 16 years person as a child. The regulation states that someone who is still under the age of 18 is still entitled to protection. Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate, optimally following human dignity and dignity, and get protection from violence and discrimination.² This provision strengthens several institutions above to submit the minimum age for marriage.

Many factors influence efforts to increase the age of marriage. One of them is a health factor. Marriage is often associated with the period of a woman's fertility, which ranges from 18 years to 40 years because normal gestational age is most likely to occur at the age of childbearing age.³ Research conducted by Agus Dwiyanto and Muhadjir Darwin revealed that a significant risk would occur if a woman had sexual intercourse under the age of 18 years, the danger arises because reproductive maturity is not fully mature and is not yet

¹ The Marriage Law No. 1 of 1974 concerning Marriage is regulated in article 7 paragraph 1.

² Constitution No. 35 of 2014 on alteration of Constitution No. 23 of 2002 on Child Protection Article 1 clause 1 and 2.

³ Marmi, *Kesehatan Reproduksi* (Yogyakarta: Pustaka Pelajar, 2014), p. 18.

perfect for accommodating infants who weigh a minimum of 2,500 grams.⁴

Some of the causes of death according to the World Health Organization (WHO) are limited health services, such as late treatment of patients and lack of provision of drugs. Social and economic factors in society also trigger the occurrence of underage marriage. One of the causes is the low education so that it has an impact on social and economic conditions as well.⁵ Some health observers observing about marriages carried out under the age of 21 carried out by women will have an impact on the risk of uterine mouth cancer caused by the unpreparedness of the reproductive organs for sexual intercourse.⁶

Biological readiness is also critical to consider for marriage, as is the case with Maryanti's mother, who is one of the victims of underage marriage. He was forcibly married to a man when he was 14 years old, because his parents had taken the money from the man, so that it could be considered a marriage he did as a debt payment by his parents. The marriage resulted in her miscarriage three times and one time resulting in the baby she conceived died at the age of 4 years. Then after turning 18, he was pregnant with the fifth and survived.⁷

Physical readiness also needs to be considered regarding reproductive maturity especially for women because they will experience several phases, including the sexual period, pregnancy, childbirth, and breastfeeding. Besides that, physical is also related to mentality for mutual respect, mutual respect, cooperation, and carrying out duties between husband and wife. Economic readiness is

⁴ Agus Dwiyanto and Muhadjir Darwin, *Seksualitas, Kesehatan Reproduksi, dan Ketimpangan Gender: Implementasi Kesepakatan Konferensi Kependudukan Kairo Bagi Indonesia* (Jakarta: Pustaka Sinar Harapan, 1996), p. 303.

⁵ Marhumah, *Hak-Hak dalam Keluarga* (Yogyakarta: Pusat Studi Wanita UIN Sunan Kalijaga, 2009), p. 89.

⁶ *Ibid.*, p. 95.

⁷ Zahra Amin, "Catatan Di Balik Pemohon Judicial Review UU Perkawinan Ke Mahkamah Konstitusi" read further <http://www.koalisiperempuan.or.id/2017/12/19/catatan-di-balik-pemohon-judicial-review-uu-perkawinan-ke-mahkamah-konstitusi/> accessed on December 25, 2017.

also essential in entering the gates of marriage because after the marriage between husband and wife need to have their source of support to provide for the family, both together or later with the children.⁸ Also, some people believe in the myth if children are not immediately married then the area or community there will get an outbreak or disaster.⁹

The above aspects are in line with the research conducted by Dewi Candraningrum, Anita Dhewy and Andi Misbahul Pratiwi in Sukabumi. Two cases that describe the experience of women who were married when they were 16 years old. Sari's first case (pseudonym), since she was a child, she only lived with her mother, her father never gave a living and was unknown. Therefore she was married, in the future a problem arose that the salt did not come out when her child was born, resulting in her son drinking bottled milk. The second case was experienced by S, which after getting married 1 year 3 months she was pregnant, when she was 4 weeks old, she felt heartburn until she came out of blood, after being examined by a doctor she had a miscarriage.¹⁰

Maria Farida, who is one of the Constitutional justices, argues that the provisions or regulations on marriage laws in Indonesia are irrelevant if applied today, seeing that child marriage carried out will endanger the continuity of child development and are vulnerable to being victims of discrimination and violence. Marriage requires maturity of thinking, physical readiness, mental and also related to the economy.¹¹

⁸ Nur Rofiah, et al, *Modul Keluarga Sakinah Perspektif Kesetaraan* (Jakarta: Badan Litbang dan Diklat Kementerian Agama RI, 2012), p. 69.

⁹ Iqraa Runi Presentation revealed this in "Discussion of History and Current National Challenges," which was held by the Journal of Women at Gadjah Mada University on October 11, 2018.

¹⁰ Dewi Candraningrum, Anita Dhewy and Andi Misbahul Pratiwi, "Takut akan Zina, Pendidikan Rendah dan Kemiskinan Status Anak Perempuan dalam Pernikahan Anak di Sukabumi Jawa Barat", *Jurnal Perempuan*, Vol. 21 No. 1, February 2016, p. 92.

¹¹ Mahkamah Konstitusi Republik Indonesia, "Usia Minimal 16 Tahun Bagi Perempuan untuk Menikah Tidak Langgar Konstitusi"

The reasons above led the author to further examine the provisions of the minimum age of marriage by looking at the laws and regulations in Indonesia by considering the rules of several Muslim countries and also examining why Indonesia experienced resistance in changing the provisions of the minimum age of marriage.

This paper examines the provisions of the minimum age for marriage by considering regulations in several Muslim countries and efforts to reform the law in Indonesia. The data collection was carried out through a library review, reinforced by interviews with 6 judges in the Bantul Religious Court and the Wonosari Religious Court. In this paper it is also revealed the factors that led to the failure in the renewal of the minimum marriage age by looking at the decisions of the Constitutional Court and several other efforts through Amendments and submission of new draft laws related to the minimum age of marriage.

Provisions on the Minimum Age of Marriage in Muslim Countries

The rules of the minimum age for marriage in Indonesia as the author explained earlier that the age of 16 is the minimum age of a married woman, but actually in the Child Protection Act states that 18 years is the age of a child, so Indonesia is not the only country that regulates boundaries the minimum age of marriage under 18 years. Some other Muslim countries also provide the same provisions with the provisions issued by Indonesia, namely 16 years for women namely Libya, Malaysia, Pakistan, South Yemen. Even Turkey, Jordan, North Yemen regulate the age for marriage under the minimum age of marriage in Indonesia, which is 15 years for women.¹²

Malaysia has a dual legal system, namely applying civil law and Islamic law. Most Malaysians have the same provisions as Indonesia in the same minimum age of marriage, namely 16 years for women,

<http://www.mahkamahkonstitusi.go.id/index.php?page=web.Berita&id=11150#.Wk4HFDR6O00> accessed on September 5, 2018.

¹² Dewi Ariani, "Analisa Terhadap Batasan Minimal Usia Pernikahan dalam UU No. 1 Tahun 1974," *Artikel Jurusan Syari'ah dan Ekonomi Islam STAIN Ponorogo*, p. 4-5.

while for Malaysian males it is lower at 18 years. An underage marriage that has been determined above can also be done by applying to the Sharia Court which is given in writing by the judge.¹³

The provisions of the Sudanese State regarding the minimum age of marriage are regulated in the Law on Marriage Guardianship of Sudan 1960. Sudan imposes the lowest minimum standard of marriage compared to other Muslim countries, namely 10 years, because the ability of someone to marry is seen as an adult or not.¹⁴ In 2005 the effort to increase the age of marriage to 18 years was also carried out in Sudan. But members of the Conservative Committee argue to keep the previous provisions because they refer to the union of the Prophet Muhammad with Ayesha who was then 9 years old. Rumors of Sudanese reform have been heard since 2016 about efforts to raise the age of marriage to 18 years. The Sudanese Foreign Minister promised to execute, and the minimum age of marriage was in negotiations.¹⁵

Egypt is a country that used to have the same minimum marriage age provisions as Indonesia, which is 16 years for women, while men aged 18 years. The age limit is based on Egyptian Family Laws No. 56 of 1923.¹⁶ Then around 1971 he put forward the age of 18 years for women and 21 years for men and in 2000 the rule was enacted. But in 2008 the Egyptian parliament was considering reducing the minimum age of marriage to 14 years.¹⁷

¹³ Valentina Lai, Shareena Mohd Sheriff, et al, "Child Marriage: Its Relationship with Religion, Culture, and Patriarchy," *Sisters in Islam (SIS) Asian-Pacific Resource and Research Centre for Women (ARROW)*, ISBN: 978-983-2622-36-9 2018, p. 15-16.

¹⁴ Achmad Asrori, "Batas Usia Perkawinan Menurut Fukaha dan Penerapannya dalam Undang-Undang Perkawinan Di Dunia Islam", *AL-'ADALAH*, Vol. XII, No. 4, December 2015, p. 818.

¹⁵ CHR Michelsen Institue, "Family Law Reform in Sudan: Competing Claims for Gender Justice Between Sharia and Women's Human Rights," *Jurnal CMI Report* number 5, Desember 2017, p. 17-20.

¹⁶ Andrea Büchler and Christina Schlatter, "Marriage Age in Islamic and Contemporary Muslim Family Laws," *Electronic Journal of Islamic and Middle Eastern Law* (EJIMEL), Vol. 1 (2013), p. 51.

¹⁷*Ibid.*, p. 52-55.

In the Iraq Law of Personal Status, it stipulates that for a minimum age of 18 years a man and a woman, while the minimum age of marriage dispensation is 15 years for men or women. If a person marries at the age of 15 years then submits to the court, then the judgment used by the judge in granting or refusing to see the child of the applicant by looking at the level of physical maturity or psychic.¹⁸ The age provisions set out above are the same as those in Morocco.

Morocco is one of the countries that has experienced legal reform related to the age of marriage, which was initially 18 years for men and 15 years for women and then experienced renewal regulated in law (*Mudammanah al-Ahwal al-Shakhsyah al-Jadidah Fi al-Maghrib* or *Mudammanah al-Ushrah*) which is 18 years for men and women.¹⁹ In the new law it does not impose restrictions on the age of marriage dispensation as previously set.²⁰ Then proceed to Lebanon and Israel.

Lebanon and Israel use the marriage law following the Ottoman Law of Family Right 1917. The rule regulates the minimum age of marriage is 18 years for men and 17 years for women, but in cases of exceptions in courts in both countries granted a dispensation for marriages aged 12 years for men and 9 years for women, it is based on the Hanafi schools which form the basis of the Ottoman Law of Family Right 1917.²¹

Jordan and Syria are countries that have renewed the minimum age of marriage. The legal reference used by the two countries is the Ottoman Law of Family Right 1917. The minimum age of marriage that has been renewed by the two countries is 18 years for men and 17 years for women. Jordan provides a 15-year age limit for marriage dispensation, for those who have marriages under 15 years get a prison sentence. These regulations are contained in The Code of

¹⁸ Asrori, "Batas Usia Perkawinan...,," p. 821.

¹⁹ *Mudammanah al-Ushrah*, Article 19.

²⁰ Aicha el Hajjami, *Reformasi Hukum Keluarga Islam Perjuangan Menegakkan Keadilan Gender di Berbagai Negeri Muslim* (Yogyakarta: LKIS, 2017), p. 125.

²¹ Asrori, "Batas Usia Perkawinan...,," p. 817-818.

Personal Status 1976.²² Syria sets the age limit equal to Jordan, as described above, but Syria is not strict in regulating the age limit.²³

Afghanistan provides strict sanctions against its citizens, which aims to try to abolish the practice of early marriage by giving severe sanctions to someone who is carrying out a wedding under the conditions that have been done. Marriage is prohibited if a man is under the age of 18 and a woman under 16 years old. If this is violated, the sentence is between 6 months and 3 years in prison.²⁴ Prison sentences for those who violate are not just Afghanistan, but the Iranian state also applies this.

Iran regulates the age of marriage, which is 18 years for men and 15 years for women. If there is someone who violates these provisions, a sentence of 6 months to 2 years is imposed on someone who is married under the conditions that have been applied, while a sentence of 2-3 years and must pay a fine of 2000-20,000 riyals for someone who is married under age 13 year. The size of the penalties and fines depends on the case carried out. These provisions are regulated in The Iranian Family Laws; Marriage Laws 1931-1938 (*Qanun al-Izdivaj*).²⁵ Then the highest minimum age for marriage is Tunisia.

Family law reform in Tunisia is part of a large project to build a modern country. The age set in determining the minimum age of marriage is 20 years old for both men and women. Then it also gives a limit to the marriage dispensation limit of 17 years, and it can be

²² Saiful Aziz, *Hukum Keluarga Islam di Yordania*. https://scholar.google.co.id/scholar?hl=id&as_sdt=0%2C5&q=pernikahan+di+yordania+dan+syiria&btnG=

²³ Not severe here means the court (judge) has the authority to hold a marriage permit because it finds a discrepancy in age between men and women, another policy is related if an adult woman marries without her parents' permission then her marriage is legal provided the prospective husband is kufu 'with him. Read Khoiruddin Nasution, *Hukum Perkawinan I: dilengkapi Perbandingan UU Negara Muslim Kontemporer* (Yogyakarta: ACAdemia + TAZZAFA, 2005), p. 207.

²⁴ M. Atho' Mudzhar and Khoiruddin Nasution, *Hukum Keluarga di Dunia Islam Modern* (Jakarta: Ciputat Press, 2003), p. 43.

²⁵ Aziz, *Hukum Keluarga Islam di Yordania*, p. 820-821.

requested by the court.²⁶ Whereas Algeria in the 1984 law regulates the minimum age of marriage for 21 years for men and 18 years for women, then in 2005, the age amendment became equal between men and women, namely 19 years.²⁷

Marriage Regulation In Indonesia and the Efforts to Amend the Minimum Age of Marriage

1. Marriage law and minimum age of marriage

The formation of regulations governing marriage in Indonesia has a long history. The idea of making legislation about marriage began in 1920-1950, in that year began to emerge anxiety about early marriage, coupled with the presence of one of the writings in the newspaper containing the experience of someone who is a victim of first marriage and marriage is a marriage which is based on coercion from parents.²⁸

Raden Soetomo,²⁹ one of the Indonesian national heroes, was moved to write and define early marriage. In his writing, he distinguishes someone who is still considered a child and who is considered an adult. He argued that an adult child is a menstrual child, so if a woman has experienced menstruation she is allowed to marry.³⁰ Besides, he also wrote a book entitled "*Perkawinan dan Perkawinan*

²⁶ Asrori, *Batas Usia Perkawinan ...*, p. 819.

²⁷ Lynn Welcham, *Women and Muslim Family Laws in the Arab States A Comprative Overview Of Textual Development dan Advocacy* (Amsterdam University Press 2007), p. 63.

²⁸ Mutiah Amini, "*Perkawinan dalam Sejarah Kehidupan Keluarga Jawa 1920an-1970an*", *Jurnal Sejarah dan budaya Universitas Negeri Malang*, Vol. 10, No 1, June 2016, p. 56.

²⁹ Dr Soetomo was born in Ngepeh, Loceret, Nganjuk, East Java on July 30th, 1888. He is one of the Indonesian national heroes. He was one of the two students who was fortunate and eligible to be educated in health by the Dutch, because at the time the society in Banyumas were affected by plague in 1847. Starting from that case, he became a doctor, not only that, he also succeeded in established association called "Budi Utomo". Read in <http://www.pesantrenglobal.com/dr-soetomo-pencetus-kebangkitan-nasional/>, accessed on February 17th, 2018.

³⁰ *Ibid.*, p. 57.

Anak.” The book contains a summary of the opinions of social and political figures about the importance of restrictions on marriage to children. In 1947 a marriage law was drafted, the draft also looked at customary law and Islamic law that had been used in the community, but in 1954 the design stopped, and women activists talked widely.³¹

Legal provisions related to the determination of the minimum age for marriage cannot be separated from social, economic, political, cultural and religious elements at the time of the establishment of the Marriage Law. The New Order period could be called a transitional period, because in this period it influenced the structure, cultural patterns and people's perceptions of the future of Indonesia. These influences are a renewal of the old order period because the government system of the old order experienced an acute economic and political crisis.³²

The first factor that underlie the formation of a minimum rule of marriage age is the cultural factor. A rooted culture makes parents marry off their children who are still in elementary school, because at that time there was no provision for a minimum age of marriage.³³ The second is socio-politics factor. In the draft legislation, it cannot be separated from social and political interference, this is reinforced by the government's efforts to issue the marriage law as part of a series of legal developments in Indonesia. Sociologically the relationship between national law and Islamic law has a close relation because it involves an awareness of diversity in society. Thirdly is economic factor. One of the reasons why parents quickly marry off their children is their children will move to become the responsibility of their husbands after getting married. Men who come to apply for

³¹ *Ibid.*, 59.

³² Dedy Sumardi, “Islam dan Politik Indonesia (Perspektif sejarah)” Article that was accessed in e-jurnal published by Ministry of Religion, p. 5. It can be accessed in <https://e-dokumen.kemenag.go.id/files/f7tyZ2FL1339045625.pdf>, accessed on March 10, 2018.

³³ Hilman Hadikusuma, *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama* (Bandung: Mandar Maju, 2007), p. 49.

their daughters will soon be accepted even though the child has not yet graduated and is still in elementary school.³⁴

2. Efforts to amend the minimum age of marriage

The marriage law in 1974 was an effort to respect all religions in Indonesia. This regulation explicitly regulates the age of marriage for 19-year-old men and 16-year-old women.³⁵ Starting from the above rule, which has been applied for approximately 40 years, beginning several arguments stating that the regulation is not relevant to be implemented anymore.

Efforts have been carried out by several institutions to increase the minimum age requirement for marriage in Indonesia are to meet international standards of age limit of marriage. As UNICEF defined those child marriages are marriages performed by someone under the age of 18 years, the limit applies to boys or girls.³⁶ Some of these reform efforts can be seen from two efforts, namely: HMPA (Material Law of the Religious Courts) and Judicial Review No. 30-74 / PUU-XI / 2014. In this paper, there is more discussion about *Judicial Review* because the submission results are already apparent.

a. HMPA (Hukum Material Peradilan Agama/Material Law of the Religious Courts)

Religious Justice Material Law is a law designed by the DPR to replace or strengthen the legal status of Kompilasi Hukum Islam (KHI). Efforts that have been submitted for approximately five years have not yet succeeded.³⁷ The HMPA Bill aims to benefit those related to religious purity, life safety, protecting property and maintaining

³⁴ Aris Devi Puspita Sari, "Kebijakan Pemerintah Orde Baru Tentang Perkawinan Dini di Jawa Timur Tahun 1974-1980 sebagai Usaha Pengendalian Laju Pertumbuhan Penduduk," *AVATARA*, e-Journal Pendidikan Sejarah Universitas Negeri Surabaya, Vol. 2, No. 1, March 2014, p. 179.

³⁵ Amini, "*Perkawinan dalam Sejarah...*," p. 60.

³⁶ Asmarita, "Peran UNICEF dalam Menangani Kasus Pernikahan Anak di bawah Umur di India," *JOM FISIP*, Vol. 2, No. 2, October 2015, p. 6.

³⁷ Mochamad Sodik, "Pembacaan Progresif Terhadap Fikih Keluarga (Kritik Terhadap KHI dan Ruu HTPA)," *Jurnal Asy-Syir'ah*, Vol. 46, No. 1, January-June 2012, p. 110.

descent safety, preservation of human life and so forth.³⁸ The regulation governs polygamy, sirri marriage, the age of marriage and several provisions regulate the sentence in the form of imprisonment as a deterrent effect.

The draft law in HMPA mentions the minimum age of marriage, 21 years for men and 18 years for women. The consideration of setting the age standard is considered to be one of the minimum requirements for a married person, because the level of ability in fulfilling family income is directly proportional to the age of one's maturity.³⁹ Then the criminal provisions set out in the HMPA Bill are related to marriage, that is, every person who commits adultery with a woman who later results in pregnancy must marry her if she refuses to marry her then be sentenced to imprisonment for a maximum of 3 years.⁴⁰

In the judges view, HMPA Bill is one of government's effort to provide legal protection to women and their offspring. Marriage is not only a private matter between one family and another family but also relates to the government to protect the law between individuals.⁴¹ There are seven conditions that must be fulfilled which are revisions of the previous regulations; first, rules are based on lag and think that is fair and not put aside gender so that subordinate roles are lost. Second, the contents of the law should not justify the existence of discrimination against one particular group. Third, the definitions contained in each article must be clear and measurable in each column which will become the legal basis, so that no branching

³⁸ Dwi Ramadhani, "Draft Rancangan Undang-Undang Hukum Materiil Peradilan Agama Bidang Perkawinan Mengenani Pembedanaan Pelaku Perkawinan Yang Tidak dicatatkan dalam Perspektif Ulama Kabupaten Tulungagung," *Bachelor Thesis*, IAIN Tulung Agung. Read <http://repo.iain-tulungagung.ac.id/6779/4/BAB%20I.pdf>, accessed March 25, 2018.

³⁹ Achmad RiFan, "Dinamika Perkembangan Ketentuan Batas Minimal Usia Perkawinan di Indonesia," *Thesis*, Fakultas Syari'ah dan hukum UIN Sunan Kalijaga, 2017, p. 6-7.

⁴⁰ Article 147 RUU HMPA.

⁴¹ Zainul Affan, "Pandangan Hakim Pengadilan Agama Malang Tentang Rancangan Undang-Undang Hukum Materiil Peradilan Agama di Bidang Perkawinan," *Bachelor Thesis*, UIN Malik Ibrahim Malang, 2011, p. 57-59.

interpretation arises. Fourth, the age limit which is the benchmark in the minimum age of marriage must be measured concerning the standard of women's reproductive health and readiness. The five marriage records should be included in the definition, terms, and pillars of marriage. Sixth, the punishment that resulted in the criminalization of women must be tested, as well as the previous regulations. Seventh, laws and regulations should provide prevention, protection, enforcement of things that are right, the existence of justice and the recovery and protection of victims.⁴²

b. Judicial Review No. 30-74/PUU-XI/2014

Institution of health, women and children submits Judicial Review No. 30-74 / PUU-XI / 2014 to the Constitutional Court. The submission was provided by looking at the condition of the community which it felt was irrelevant to use the minimum age of marriage set out in Law No. 1 of 1974 because the rule was considered to have a significant influence on the continuity of the family. Nine witnesses were submitted to strengthen the filing of Judicial Review No. 30-74 / PUU-XI / 2014 concerning raising the minimum age for marriage. This submission focuses more on prospective brides by looking more at reproductive health and maturity. Pregnancy in adolescents has a significant economic and social influence, because these adolescents must drop out of school and have not skills and experience that making them difficult to get a job.⁴³

According to human psychological maturity perspective, the minimum age of marriage person is not yet classified as an adult, and it can deprive them of the right to carry out 12 years of obligation to study. The age of 16 years physically and psychologically still requires various adjustments to him, he is always looking for his identity and the role of what he does in community life.⁴⁴

⁴² Rifan, "Dinamika Perkembangan Ketentuan...", p. 80.

⁴³ Julianto Witjaksono and Kartono Mohmad conveyed this, the two witnesses were doctors. His broader explanation can be seen through a copy of Judicial Review No. 30-74 / PUU-XI / 2014, p. 24-32.

⁴⁴ One of the witnesses in the submission of Judicial Review No. 30-74 / PUU-XI / 2014, namely Saparina Saldi. Further information can be read further in a copy of the decision issued by the Constitutional Court, p. 29-31.

A person's maturity is often measured by menstruation for women, and wet dreams become a benchmark for men to get married. The age of 9-12 years is the phase of a menstrual woman and the period of 14-16 years the male stage of wet dreams. Seeing the facts above, the size of marriage should not be measured by someone starting puberty but at the end of adolescence, namely when the person is not only physically but also socially mature. If someone is married but is not yet socially mature, the impact that will be obtained is that it is vulnerable to trafficking, victims of violence and also failing to fulfill adequate education. Iran is a majority Muslim country, but the country has long raised the minimum age of marriage from the age of 15 to 18 years, it should be an example of Indonesia to raise the minimum age of marriage.⁴⁵

Some religious leaders were asked to give testimony on behalf of all religions in Indonesia, including Hinduism, Buddhism, Christianity, Islam. Hinduism, Buddhism, and Christianity agree to support institutions that seek to raise the minimum age for marriage. Whereas the Islamic religion represented by three Community Organizations is more inclined to continue to support the prevailing laws and regulations. The reason that can be concluded is that Islam does not regulate the minimum age for marriage by many years, but with the size of a person already baligh with marked menstruation for women and semen out for men.⁴⁶

Further information is from Muhammad Quraish Shihab who argued that in Islam it does not regulate the limits of someone being able to marry. According to him, the age limit is something that can change according to human development and needs. The purpose of marriage which is underlined in the Koran and the Hadith is to realize cooperation between couples, deliberation, mutual support for each other. Maturity is not just physical but also spiritual and intellectual are also very necessary in achieving goals in marriage. Law can change according to four things, namely: place, time, situation and actor.⁴⁷

⁴⁵ *Ibid.*, p. 49-57.

⁴⁶ Judicial Review No. 30-74/PUU-XI/2014, p. 167-189.

⁴⁷ *Ibid.*, p. 63-65.

Law Enforcement Attitudes and Responses to Amendment Efforts to The Minimum Age of Marriage

1. Consideration of constitutional justices

Regarding the proposal of Decree No. 30-74 / PUU-XII / 2014 regarding the submission of the age of marriage which was initially been 16 years for women to 18 years is discussed below.

a. Requests are considered to be contrary to the 1945 Constitution

The consideration of the Constitutional Court states that several articles in the 1945 Constitution conflict with the petition submitted, among the pieces that are contrary to the appeal of the applicant, pasal 28A⁴⁸, pasal 28B ayat 1⁴⁹, pasal 28D ayat 1⁵⁰, pasal 28G ayat 1⁵¹, pasal 28I ayat 2⁵² and several articles that can be read further in a copy of Decision No. 30-74 / PUU-XII / 2014.

b. Every Religion has a different policy

Testimony put forward by various religions in Indonesia, represented by each religious leader as contained in the copy of Decision No. 30-74 / PUU-XII / 2014, it can be concluded that each religion has its policy. Marriage Books According to Hinduism, for example, mentions that the proper age for marriage is 18 years old and his father is expected to wait for another 3 years, so that his daughter is married at the age of 21 years.⁵³ While Islam only regulates the ability of someone to get married not from the age, but to see the

⁴⁸ Every person has the right to live and has the right to defend his life and life.

⁴⁹ Everyone has the right to form a family and to continue descent through a legitimate marriage.

⁵⁰ Every person has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law.

⁵¹ Everyone has the right to personal, family, honor, dignity, and property protection under his authority, and has the right to security and protection from the threat of fear of doing or not doing something that is a human right.

⁵² Everyone has the right to discriminatory treatment on any basis and has the right to receive protection against unfair treatment.

⁵³ This testimony can be seen again in a copy of the decision No. 30-74/PUU-XII/2014, p. 162.

signs of balance from everyone. Men are characterized by semen and women marked by menstruation.⁵⁴ So that marriage is interpreted as a need that cannot be prevented by anyone during the marriage carried out following the rules of religion and applicable state law.⁵⁵ And all applicable religions in Indonesia have different rules concerning marriage and the religious law is binding on all of its followers.⁵⁶

c. Customs and different cultural backgrounds

One of the testimonies put forward by the House of Representatives stated that by seeing Indonesia have a variety of different kinds of customs so that in addressing the minimum age of marriage also differed from one tradition to another.⁵⁷ Given that Indonesia consists of various ethnic groups, the enactment of multiple traditions and different cultural values.⁵⁸ Culture is one of the main reasons for parents to marry off their children; usually parents match their young children, and there is a negative public perception of married women over the age of 18.⁵⁹ This is also reinforced by the statement of one of the judges of the Wonosari Religious Court about the customs and culture of parents who are proud of marrying their younger children.⁶⁰

d. Social and environmental life changes

The development of one's maturity can be influenced by several things, including food, environment, association, technology, ease, and openness of information which makes it very easy for anyone to access the internet. The ease of obtaining pornographic content

⁵⁴ Testimonies from MUI, NU and Muhammadiyah, can be seen in the copy No. 30-74/PUU-XII/2014, p. 165-189.

⁵⁵ The Court's opinion in the copy of decision No. 30-74/PUU-XII/2014, p. 225.

⁵⁶ *Ibid.*, p. 228.

⁵⁷ *Ibid.*, p. 147.

⁵⁸ SS which is one of the expert witnesses. Further testimony can be found in a copy of decision No. 30-74/PUU-XII/2014, p. 29.

⁵⁹ *Ibid.*, p. 11.

⁶⁰ Disclosed by Drs. Muh Yasin, S.H., he is one of the judges of the Wonosari Religious Court. The interview was conducted at the Wonosari Religious Courts Office, which was held on April 17, 2018.

results in an urge not to be controlled. Do not rule out the above aspects that arise do not make the age of 18 years as the standard limit for the minimum age of marriage, but can be lower or higher as the ideal age.⁶¹

e. The minimum age rule does not have a significant effect

Increasing the age of marriage, especially women from the period of 16 to 18 years is not the right way to overcome health problems, lack of divorce and minimize social issues. Because many other factors influence the occurrence because of underage marriages. Concretely what happens is not purely due to the aspect of age alone.⁶²

Based on several factors above the Constitutional Court judge concluded that the case No. 30-74 / PUU-XII / 2014 stated that "The Principal Application for Petitioners is Unreasonable according to the Law." Request to increase the minimum age of marriage in "REJECT" by the Constitutional Court.⁶³ Maria Farida was one of the Constitutional Court Judges in case No. 30-74 / PUU-XII / 2014. He revealed that the difficulty of building favorable laws that better protect women is not easy work. Although positive law is the highest law of the state, for people who are still traditional, they use religious law or customary law. So it is not easy to create the same legal rules.⁶⁴

2. Attitudes and Responses of Judges: Cases of Bantul and Wonosari Religious Courts

The author interviewed 6 Judges of the Religious Courts in Bantul and Gunung Kidul, and then they gave their views regarding Judicial Review. In this case, Ms. ESH, for example, assumed that the Judicial Review submitted had not accommodated different communities concerning perspectives, ways of thinking, even different customs and cultures so that to increase the age was not

⁶¹ *Judicial Review* No. 30-74/PUU-XII/2014, p. 229-231.

⁶² *Ibid.*, p. 231.

⁶³ *Ibid.*, p. 223.

⁶⁴ Mariana Amiruddin, "Maria Farida Indrati, UU Perkawinan Perlu diuji Secara Konsitusional," *Jurnal Perempuan*, 73 edition, Jakarta 2012, p. 137.

right.⁶⁵ Another judge, RPA from the Bantul Religious Court, explained the related Judicial Review, as follows:

Adding the age of marriage can increase the marriage dispensation cases, while it has not been raised yet, the case of marriage dispensation has already been a lot. If the addition of age based on health aspect, wasn't it common for ancient women got married with underage, but the reality was fine. Therefore, related to the Judicial Review, I think it needs to raise the age of marriage that has been already arranged in The Marriage Constitution.⁶⁶

The above is in line with the response of Mr. MYA and Ms. NRH that seeing the reality of many cases of marriage dispensation is put forward, then automatically if the minimum age for marriage is increased, there will also be cases of exemption of marriage. Besides, one region with another region has a different perspective regarding the ability of someone to get married. Sulawesi culture, for example, marrying a child at the age of 16 for women is ancient for the culture there.⁶⁷

Judge Latifah's opinion regarding Judicial Review is slightly different from the previous judges.

I realize that the health and social services are very keen to raise the minimum age for marriage by considering the economy, health, social and so on, but keep in mind that at the time the formulation of the 16-year marriage law for women was considered mature even though perfect overall. Looking at the reality in the field at this time, cases of marriage compensation are increasing every year. I think the proposal to increase the minimum age is a good thing to do, but the government should also help reduce the level of early marriage by way of

⁶⁵ Interview with Ms. ESH, he is a judge at the Wonosari Religious Court, an interview conducted at the Wonosari Religious Court Office, which was held on March 29, 2018.

⁶⁶ The interview was conducted at the Bantul Religious Court Office on April 4, 2018, with Mr. RPA, he was a judge of the Bantul Religious Court.

⁶⁷ Interview with Mr. MYA and Mrs. NRH, which was conducted at the Wonosari Religious Court Office, which was held on April 17, 2018.

socialization to schools or the community, for example, to socialize prevention of early marriage.⁶⁸

The description of 6 Judges above shows that majority of the Judges do not agree to change the minimum age limit of marriage, especially for women. This case is caused by the high amount of marriage dispensation submission that has been increasing every year, so that, if the minimum age limit is increased, automatically marriage dispensation submission will increase. Other opinion was proposed by one of the judges who agrees to raise the limit of minimum age marriage. For instance Latifah, she agrees to raise the limit of minimum age marriage however she thinks that before the effort to change the regulation, there are other things to do first, for example, the government socializes to the society about health and other aspects on negative impact caused by underage marriage. That is taught more effective than change the regulation directly, because she is not sure that by increasing the minimum age limit directly will have a big impact in reducing the case of underage marriage. Moreover, the State is not fully support to change the limit of minimum age marriage.

The State appears to be a bit conservative toward the changing of marriage age limit. This case showed in the process of judicial review submission to raise the limit of minimum age marriage which was proposed by the pleader in 2014, the submission was rejected by Constitutional Court because the petition of the pleader was legally groundless. In 2017, the judicial review was re-submitted to test the same article, but it was not to raise the age, it was to ask the minimum age limit between men and women that should be equated. Because the rule of minimum age limit between men and woman is not the same, therefore the pleader submitted judicial review because they felt discrimination toward the women. Constitutional Court granted the petition of the pleader, but the Court did not give the exact age-number directly in the verdict, the Court gave the authority to The House of Representative to determine the appropriate age. This case seems that the State did not completely support the changes of

⁶⁸ Interview with Ms. Latifah Setyawati, S.H., M. Hum., she is a judge of the Bantul Religious Court, the meeting was conducted on April 4, 2018, at the Bantul Religious Court Office.

minimum age for marriage. As long as the minimum age for marriage has not been resolved by The House of Representative, then the regulation used until now still refers to the previous regulation, that is 19 years old for men and 16 years old for women.

The responses from several law enforcers above represent the delivery of law enforcement. What the judges explained was similar to what was found by some researchers who tried to reveal cases that occurred in the field. Pasuruan Regency, for example, shows that three things underlie the rise of early marriage conducted by women aged 16-19 years. The critical role of parents is not just raising and educating, but also determining the age of marriage, pregnancy to delivery. This makes the child does not have the right to refuse the desire of parents to marry him underage, even though physically, psychologically and reproductive maturity is not fully mature.⁶⁹ This is supported by a culture that is still very conservative about understanding reproductive health, pregnancy to childbirth so that parents even marry off their children when they are not fully healthy.⁷⁰

Conclusion

Provisions for the minimum age for marriage in Indonesia are 16 years (female) and 19 years (male). Muslim countries such as Libya, Malaysia, and Pakistan have the same rules regarding the minimum age for marriage for women. Several institutions of women and children in Indonesia seek to raise the minimum age for marriage to 18 years, by applying for Judicial Review and Maternal Justice Law (HMPA). Various religions and cultures bring out different policies between one religion and another in looking at minimum age of marriage. This can be found in the testimonies stated by every religious leader. The Ulema from MUI, NU, and Muhammadiyah, in this case, revealed that Islam does not regulate minimum age of marriage, so some of these organizations disagree with the increase in

⁶⁹ Fitria Sari, *Prosiding PKWG Seminar Series, Kebijakan Kesehatan dan Pelibatan Komunitas Dalam Menurunkan AKI/ AKB Di Indonesia* (Jakarta: Pusat Kajian Wanita dan Gender Universitas Indonesia, 2015), p. 53-54.

⁷⁰ *Ibid.*, p. 55.

the minimum age of marriage for women to 18 years. Different customs and cultures make people's understanding from one another different in understanding the Minimum Age of Marriage.

The factors that support the occurrence of early marriage are the influence of the Internet which is very easy to access the things that cause promiscuity etc. one of the considerations of the Constitutional Court Judge decided to refuse because the factor of the occurrence of child marriage is not merely related to the rules of the Minimum Age of Marriage which are still low, but many factors influence it. This is in line with the statement of several Judges in the Bantul and Wonosari Religious Courts who say that different societies make the minimum age for marriage cannot be equated between one community and another.

Bibliography

- Affan, Zainul, "Pandangan Hakim Pengadilan Agama Malang Tentang Rancangan Undang-Undang Hukum Materiil Peradilan Agama di Bidang Perkawinan," *Bachelor Thesis*, UIN Malik Ibrahim Malang, 2011.
- Amin, Zahra, "Catatan Di Balik Pemohon Judicial Review UU Perkawinan Ke Mahkamah Konstitusi," <http://www.koalisiperempuan.or.id/2017/12/19/catatan-di-balik-pemohon-judicial-review-uu-perkawinan-ke-mahkamah-konstitusi/> accessed on December 25, 2017.
- Amini, Mutiah, "Perkawinan dalam Sejarah Kehidupan Keluarga Jawa 1920an- 1970an", *Jurnal Sejarah dan budaya Universitas Negeri Malang*, Vol. 10, No 1, June 2016.
- Amiruddin, Mariana, "Maria Farida Indrati, UU Perkawinan Perlu diuji Secara Konsitusional," *Jurnal Perempuan*, 73 edition, Jakarta 2012.
- Ariani, Dewi, "Analisa Terhadap Batasan Minimal Usia Pernikahan dalam UU No. 1 Tahun 1974," *Artikel Jurusan Syari'ah dan Ekonomi Islam STAIN Ponorogo*.

- Asmarita, “Peran UNICEF dalam Menangani Kasus Pernikahan Anak di bawah Umur di India,” *JOM FISIP*, Vol. 2, No. 2, October 2015.
- Asrori, Achmad, “Batas Usia Perkawinan Menurut Fukaha dan Penerapannya dalam Undang-Undang Perkawinan Di Dunia Islam,” *AL-‘ADALAH*, Vol. XII, No. 4, December 2015.
- Aziz, Saiful, *Hukum Keluarga Islam di Yordania*. https://scholar.google.co.id/scholar?hl=id&as_sdt=0%2C5&q=pernikahan+di+yordania+dan+syiria&btnG=
- Büchler, Andrea and Schlatter, Christina, “Marriage Age in Islamic and Contemporary Muslim Family Laws,” *Electronic Journal of Islamic and Middle Eastern Law (EJIMEL)*, Vol. 1, 2013.
- Candraningrum, Dewi, et al, “Takut akan Zina, Pendidikan Rendah dan Kemiskinan Status Anak Perempuan dalam Pernikahan Anak di Sukabumi Jawa Barat”, *Jurnal Perempuan*, Vol. 21 No. 1, February 2016.
- CHR Michelsen Institue, “Family Law Reform in Sudan: Competing Claims for Gender Justice Between Sharia and Women’s Human Rights,” *Jurnal CMI Report* number 5, December 2017.
- Constitution No. 35 of 2014 on alteration of Constitution No. 23 of 2002 on Child Protection.
- Dwiyanto, Agus and Darwin, Muhadjir, *Seksualitas, Kesehatan Reproduksi, dan Ketimpangan Gender: Implementasi Kesepakatan Konferensi Kependudukan Kairo Bagi Indonesia*, Jakarta: Pustaka Sinar Harapan, 1996.
- Hadikusuma, Hilman, *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama*, Bandung: Mandar Maju, 2007.
- El-Hajjami, Aicha, *Reformasi Hukum Keluarga Islam Perjuangan Menegakkan Keadilan Gender di Berbagai Negeri Muslim*, Yogyakarta: LKIS, 2017.
- <http://www.pesantrenglobal.com/dr-soetomo-pencetus-kebangkitan-nasional/>, accessed on February 17th, 2018.
- Interview with Drs. Muh Yasin, S.H., April 17, 2018.
- Interview with Mr. MYA, April 17, 2018.
- Interview with Mr. RPA, April 4, 2018.

- Interview with Mrs. NRH, April 17, 2018.
- Interview with Ms. ESH, March 29, 2018.
- Interview with Ms. Latifah Setyawati, S.H., M. Hum., April 4, 2018.
- Judicial Review No. 30-74/PUU-XI/2014.
- Lai, Valentina, Sheriff, Shareena Mohd, et al, "Child Marriage: Its Relationship with Religion, Culture, and Patriarchy," *Sisters in Islam (SIS) Asian-Pacific Resource and Research Centre for Women (ARROW)*, ISBN: 978-983-2622-36-9 201815-16.
- Mahkamah Konstitusi Republik Indonesia, "Usia Minimal 16 Tahun Bagi Perempuan untuk Menikah Tidak Langgar Konstitusi," <http://www.mahkamahkonstitusi.go.id/index.php?page=web.Berita&id=11150#.Wk4HFDR6O00> accessed on September 5, 2018.
- Marhumah, *Hak-Hak dalam Keluarga*, (Yogyakarta: Pusat Studi Wanita UIN Sunan Kalijaga, 2009), p. 89.
- Marmi, *Kesehatan Reproduksi*, Yogyakarta: Pustaka Pelajar, 2014.
- Mudzhar, M. Atho' and Nasution, Khoiruddin, *Hukum Keluarga di Dunia Islam Modern*, Jakarta: Ciputat Press, 2003.
- Nasution, Khoiruddin, *Hukum Perkawinan I: dilengkapi Perbandingan UU Negara Muslim Kontemporer*, Yogyakarta: ACAdemia + TAZZAFA, 2005.
- Ramadhani, Dwi, "Draft Rancangan Undang-Undang Hukum Materiil Peradilan Agama Bidang Perkawinan Mengenai Pidanaan Pelaku Perkawinan Yang Tidak dicatatkan dalam Perspektif Ulama Kabupaten Tulungagung," *Bachelor Thesis*, IAIN Tulung Agung, <http://repo.iain-tulungagung.ac.id/6779/4/BAB%20I.pdf>, accessed March 25, 2018.
- Rif'an, Achmad, "Dinamika Perkembangan Ketentuan Batas Minimal Usia Perkawinan di Indonesia," *Thesis*, Fakultas Syari'ah dan hukum UIN Sunan Kalijaga, 2017.
- Rofiah, Nur, et al, *Modul Keluarga Sakinah Perspektif Kesetaraan*, Jakarta: Badan Litbang dan Diklat Kementerian Agama RI, 2012.
- Sari, Aris Devi Puspita, "Kebijakan Pemerintah Orde Baru Tentang Perkawinan Dini di Jawa Timur Tahun 1974-1980 sebagai Usaha Pengendalian Laju Pertumbuhan Penduduk,"

AVATARA, e-Journal Pendidikan Sejarah Universitas Negeri Surabaya, Vol. 2, No. 1, March 2014.

Sari, Fitria, *Prosiding PKWG Seminar Series, Kebijakan Kesehatan dan Pelibatan Komunitas Dalam Menurunkan AKI/AKB Di Indonesia*, Jakarta: Pusat Kajian Wanita dan Gender Universitas Indonesia, 2015.

Sodik, Mochamad, "Pembacaan Progresif Terhadap Fikih Keluarga (Kritik Terhadap KHI dan Ruu HTPA)," *Jurnal Asy-Syir'ah*, Vol. 46, No. I, January-June 2012.

Sumardi, Dedy, "Islam dan Politik Indonesia (Perspektif sejarah)," <https://e-dokumen.kemenag.go.id/files/f7tyZ2FL1339045625.pdf>, accessed on March 10, 2018.

The Marriage Law No. 1 of 1974.

Welcham, Lynn, *Women and Muslim Family Laws in the Arab States A Comprative Overview Of Textual Development dan Advocacy*, Amsterdam University Press 2007.