

## LEGAL PROTECTION OF UNDERAGE WOMEN IN EARLY MARRIAGE

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### ABSTRACT

Early marriage is defined as a marriage of a boy and a girl under nineteen years of age. The marriage is done by the immature couple who do not understand the purpose in marriage. The rise of cases of early marriage in Indonesia is due to the actions of some parents. The methodology used in this research is the normative method is based on legal norms, legal rules, legal theories, and legal opinions. The marriage committed by minors, they arrange the early marriage of their children because of some factors and it usually happens to the girls. One of the causes of this matter to a girl is economic factor. It occurs because the condition of underprivileged family of the girl that makes the parents decide to marry her with a rich man. The effect of early marriage particularly on girls is on their reproductive health. The underage girls who have immature of reproductive system are not ready for having sex and getting pregnant. In addition, the government has not yet given strict sanctions for children who have had marriages and it causes the improvement of cases of children having marriages. To decrease these cases and provide a protection for children, the government has renewed the regulation of the minimum age limit for marriage both for men and women is over nineteen years old.

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## 1. INTRODUCTION

Children are a gift from God Almighty, in which there is dignity and worth as a whole human being. Children are also the hope of the nation in the future which must be recognized and protected according to the 1945 Constitution Article 28D Paragraph (1) which reads "Every person has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law." In accordance with applicable laws and regulations, the government has given rights to children that have been obtained **since the** child was born. The rights of the child have been regulated based on Law Number 39 of 1999 concerning

Human Rights Article 52 paragraph (1) concerning the child's right to protection by parents to protect the child. Legal protection for children can be interpreted as an effort to protect the law against various freedoms and children's human rights, as well as interests regarding child welfare. (Ahmad, 2011) According to Law Number 4 of 1979 concerning Child Welfare, legal protection for children includes child welfare in the physical, spiritual and social fields. This law provides opportunities for children to grow and develop as wide as possible in a natural, physical, spiritual and social field. In the book *Legal Aspects of Child Protection*, Barda Nawawi Arief defines child protection as an effort to protect the law against various fundamental rights and freedoms of children and various interests related to child welfare. (Barda Nawawi Arief, 2018)

The rise of cases that are currently happening in Indonesia and being controversial is underage marriage or what is often known as early marriage. Early marriage is a marriage that is carried out at a very young age. According to Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection "A child is said to be a child if he has not reached the age of 18, including children who are in the womb." Article 330 of the Civil Code also provides an explanation regarding the age limit which reads "Those who are immature are those who have not reached the age of twenty-one (21) years and have not been married before", and there is much diversity in children's understanding of this minimum age limit.

The rise of underage marriages is certainly a factor that influences the occurrence of underage marriages. Among them are the low knowledge of parents, children and society which will affect their mindset in understanding the true meaning of the purpose of the marriage, economic and environmental factors also affect the implementation of underage marriages. Incidents of pregnancy out of wedlock which are the effects of promiscuity among adolescents and the lack of parental supervision can be a trigger for early marriage, moreover the dispensation issued by the government has violated Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection. The arrangements regarding dispensation regulated in Article 7 (2) of the Marriage Law state that: "In the case of deviations in paragraph (1) of this article, you can ask for dispensation from the Court or other officials requested by both parents of the man or the woman." However, the dispensation given has raised **pros and cons among the public**, because it seems as if it allows underage marriages which are very contrary to the rights of children listed in the Child Protection Act. Even though there are arrangements regarding the dispensation, we as a society must look at and rethink the impact of underage marriages.

The government has made rules regarding the age for marriage, namely the age of 19 for men and women according to Law no. 16 of 2019 concerning Marriage to reduce this impact. For someone whose age has not reached the minimum age of marriage is prohibited from carrying out marriage. Even so, the regulations made by the government are relatively new, so there are still many people who do not know about the age limit for someone who can get married, and still there are people who get married at a young age. The government is expected to be able to provide counseling on laws related to underage marriages and explain what impacts or risks can occur when carrying out underage marriages. Thus, people will think twice about carrying out underage marriages. (Statistik, 2016)

Efforts to prevent underage marriages will be maximized if not only the role of the government is needed in overcoming these legal problems, but also the role of the community, especially the role of the family which is very influential in reducing underage marriages, which must be made aware of its thoughts not to be able to marry off their children at an early age. and understand existing laws and regulations so that these legal problems can be reduced to a minimum in the community.

## **2. METHODS**

Normative legal research methods, which focus on legal norms. Normative legal research can be carried out by means of a literature study which is secondary data in the form of legal materials, either specific or general in nature. In this case normative legal research examines positive legal norms in the form of laws and regulations relating to legal protection of underage women in early marriage. Analysis of data obtained from research based on legal rules, legal opinion or theory, in order to answer research problems which the author entitled Legal Protection of Underage Women in Early Marriage. (Sudarto, 2014) Legal documents that have binding power for legal subjects. Primary legal material can be in the form of legal regulations which include: (Hermawan, 2019)

1. The 1945 Constitution Article 28B paragraph (2) regarding the child's right to protection from violence and discrimination; Article 28D paragraph (1) regarding every person has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law.
2. The Criminal Code
3. Law Number 39 of 1999 concerning Human Rights Article 52 paragraph (1) regarding the child's right to protection by parents
4. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection Article 15 concerning the right of children to

obtain protection; Article 26 regarding the obligations and responsibilities of parents towards children

5. Law Number 23 of 2002 concerning Child Protection
6. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage
7. Law Number 4 of 1979 concerning Child Welfare Article 2 paragraph (1) to (4) concerning children's rights; Article 9 regarding the responsibility of parents for the welfare of children.
8. Decree of the President of the Republic of Indonesia Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child.
9. Government Regulation no. 9 of 1975 concerning Implementation of Law No. 1 of 1974 concerning Marriage

### **3. FINDINGS AND DISCUSSION**

According to Law Number 1 of 1974, the notion of marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in One Almighty God.

The age limit permitted in a marriage according to the Marriage Law is regulated in Article 7 paragraph (1), namely, if the man has reached the age of 19 (nineteen) years, and the woman has reached the age of 16 (sixteen) years. If there is a deviation from Article 7 paragraph (1), you can ask for dispensation from the court or other officials appointed by both the male and female parents (article 7 paragraph 2)(Mulyadi, 2016)

Marriage in Islam is a contract or binding agreement between a man and a woman to justify sexual relations between the two parties voluntarily and the willingness of both parties is a happy family life filled with love and peace (sakinah) in various ways. blessed by Allah SWT. Marriage is a relationship (contract) between a man and a woman with the intention that each can enjoy the other (istimtaa') and to form a sakinah family and build a clean society.(Nuruddin & Tarigan, 2019)

To fulfill the demands of human nature, to relate between men and women in marriage bonds to form a peaceful family (sakinah), love (mawaddah) and full of grace, so that they can give birth to pious and quality offspring towards the realization of a happy household

Benefits of Marriage According to Islam

1. Carrying out marriage is one of the worships for Muslims.
2. Can be preserved from immoral acts.
3. A happy, peaceful, peaceful and eternal household can be formed with love between husband and wife.
4. Legitimate, clear and clean bloodlines can be obtained, for the sake of survival

in the family and society.

The association of life between a person or group can be carried out on a regular, honorable and lawful basis, in accordance with the position of humans as creatures of honor among other creatures of God

#### A. Definition of Early Marriage

Early marriage is a marriage in which one or both partners are under the age of one or are attending high school. So, a marriage is called early marriage, if both or one of the partners is under 18 years old (still in his teens).

Since the promulgation of the State Law which regulates matters of marriage – namely Law Number 1 of 1974 concerning Marriage – in order to realize the purpose of marriage, one of the conditions is that the parties who will carry out the marriage are mature physically and mentally. Therefore, in Law Number 1 of 1974.(Mulyadi, 2016)

he minimum age limit for marriage is determined. Provisions regarding the minimum age limit are contained in Chapter II Article 7 paragraph (1) of Law Number 1 of 1974 which states that "Marriage is only permitted if the man has reached the age of 19 and the woman has reached the age of 16." From the existence of this age limit it can be interpreted that Law Number 1 of 1974 does not require the implementation of underage marriages.

If there are marriages carried out by minors, in this case the government has provided a policy in setting a minimum age for marriage, of course, through a process and various considerations or what is commonly referred to as dispensation. This is intended so that both parties are truly ready and mature physically, psychologically and mentally to enter into marriage.

Deviations from the age limit can occur when there is a dispensation granted by the court or other officials appointed by both parents from the male or female side. In accordance with the wording of Article 7 paragraph (2). In the event of deviation from paragraph (1) of this article, you may request dispensation from the court or other officials appointed by both the male and female parents.(Iva, 2016)

#### 1. Factors Causing Early Marriage

There are two factors that cause early marriage among adolescents, namely causes from the child and from outside the child.

##### a. Cause of the Son.

##### 1) Educational Factors.

- The role of children's education has a very big role. If a child drops out of school at the age of compulsory schooling, then fills the time by working. At this time the child feels quite independent, so he feels able to support himself.

- The same is true if the child who dropped out of school is unemployed. In the void of time without work, they end up doing unproductive things. One of them is having a relationship with the opposite sex, which if out of control leads to pregnancy outside of marriage.

2) Factors have made a biological relationship.

- In several cases, marriage was proposed because the children had a biological relationship like husband and wife. Under these conditions, the girls' parents tend to marry off their children immediately, because according to the girls' parents, because they are no longer virgins, this is a disgrace.

- Without putting aside the feelings and worries of parents, this is a solution that is likely to mislead children in the future. It's like a child who has made a big mistake, instead of correcting the mistake, parents actually bring the child to a condition that is prone to problems. Because it is very big in the future the marriage of these children will be filled with conflict.

3) Pregnant before marriage

- If the condition of the girl is already pregnant, the parents tend to marry off the children. There were even a number of cases, although basically the girl's parents did not agree with her future daughter-in-law, but because of the condition of the girl's pregnancy, the parents were forced to marry off the girl.

- There were even cases where the girl basically did not love her future husband, but because she was already pregnant, she was forced to apply for a dispensation from marriage.

- All of this is of course a very dilemmatic matter. Good for girls, parents and even trial judges. Because with conditions like this, it is clear that the marriage that will be carried out is no longer like a marriage as mandated by law and even religion. Because it was imagined in front of the eyes, later the color of this girl's marriage would be in the future. Marriages that are carried out based on love alone are likely to falter in the future, especially if the marriage is based on compulsion.

b. Cause from outside the Son

1) Religious Understanding Factor.

- There are some in our society who understand that if a child has a relationship with the opposite sex, there has been a violation of religion. And as parents are obliged to protect and prevent it by immediately marrying off these children.

- There was one case, where the child's parents stated that if the child had a relationship with the opposite sex it was one thing: "adultery". Therefore, parents must prevent this by getting married immediately. When the panel of judges questioned the girl who was not yet 16 years old, basically the child did not mind if she waited until she was 16 years old, which was only a few months away. But the parents are still adamant that the marriage must be carried out immediately. That the actions of children who like each other with boys is "adultery". And as parents, they are very afraid of the punishment of letting their children continue to commit adultery

c. economic factor

We still encounter many cases where parents are in debt that they can no longer afford. And if the parents who are in debt have a daughter, then the girl will be handed over as "means of payment" to the debtor. And after the child is married, then the debts that are wrapped around the child's parents are paid off

d. Customary and cultural factors.

In several parts of Indonesia, there are still some understandings about arranged marriages. Where his daughter since childhood has been betrothed by her parents. And will soon be married shortly after the child has a period of menstruation. In fact, girls generally start menstruating at the age of 12 years. So it is certain that the child will be married off at the age of 12, far below the minimum age for marriage mandated by law.

## 2. Impact of Early Marriage

The risk of early marriage is closely related to several aspects, as follows:

a. In terms of health

- From a health point of view, young couples can contribute to high maternal and infant mortality rates and to low maternal and child health status.
- According to health science, the age of the child with a small risk in giving birth is between the ages of 20-35 years, meaning that giving birth at the age of less than 20 years and more than 35 years carries a high risk. Pregnant women aged 20 years and under often experience prematurity (born prematurely) with a high probability of congenital, physical and mental defects, blindness and deafness.

b. Physical aspect

Young couples are not yet able to be burdened with a job that requires physical skills, to generate income for them, and provide for their family. The economic factor is one of the factors that plays a role in realizing the welfare and happiness of the household. The younger generation should

not speculate on what will be said later, especially for men, a sense of dependence on parents must be avoided.

c. In terms of mental / soul

A young couple is not ready to be morally responsible for everything that is their responsibility. They often experience mental turmoil, because they still have an unstable mental attitude and are emotionally immature.

d. Education Aspect

Maturity of marriage age has something to do with efforts to obtain a higher level of education and perfect preparation in sailing the ark of life.

e. In terms of population

f. From a population point of view, young marriages have a high fertility rate, so they do not support development in the welfare sector.

g. In terms of household continuity

Marriage at a young age is a marriage that is still vulnerable and unstable, has a low level of independence and causes many divorces

#### 4. CONCLUSION

The functions and roles of the family are very meaningful for children. families can reduce the number of young marriages and the negative impacts of young marriages. Through adequate parenting and parental supervision to their children in terms of educating and providing general and religious knowledge to children, providing life experiences to their children can be a lesson for children for future life, especially in household life. The government's role in tackling these legal issues, especially in terms of providing counseling related to the consequences of young marriage, especially in rural areas and increasing the general standard of legal marriage in accordance with applicable regulations. Besides that, there must also be firmness from the government in imposing sanctions on children who enter into underage marriages. Thus, cases of underage marriages in the territory of Indonesia can be prevented and handled properly.

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