

The Marriage Age Limit According to Indonesian Law No. 16, 2019 as Effort to Child Protection

Sri Murni¹

1. Universitas 17 August 1945 Semarang Indonesia
E-mail : murni@gmail.com

ABSTRACT--*In marriage, women will experience a severe psychological process, namely pregnancy and childbirth that requires sacrifice. Marriage Law Nu. 1 of 1974 established a marriage age limit of 16 years for women and 19 years for men. However, in the period of 6 years from 2011 the divorce rate of minors always increased from year to year. In 2016 the divorce rate of minors reached 11,126 cases. This shows that so far many underage marriages / early marriages end in divorce. Because child marriage in practice has more negative effects than positive effects. In practice, in general many factors that contribute to the causes of underage marriages are religious factors, cultural factors (adat), social factors and legal factors. Underage marriages will have a negative impact on child growth and development and will lead to non-fulfillment of basic rights of children such as protection rights from violence and discrimination, children's civil rights, health rights, education rights and children's social rights. Article 28B of the 1945 Constitution states that every person has the right to form a family and continues descendants through a legal marriage and the state guarantees the child's right to survive, growth and development and is titled to protection from violence and discrimination. Consideration of increasing the marriage age limit for women, refers to MK ruling Nu. 22 / PUU-XV / 2017. The point is that differentiating marital age limits based on gender reasons is "discrimination". Consideration of the age limit of 19 years for men and women referred to: a). Has matured body and soul to carry out marriage in order to realize the purpose of marriage properly and marriage does not end in divorce and get healthy and quality offspring. b) Will lead to lower birth rates. c). Reducing the risk of maternal and child mortality. d) Fulfillment of children's rights so as to optimize children's growth and development. e) Give children access to the highest education possible. For this reason, the government, through Marriage Law No. 16 of 2019, has changed the marriage age limit of 19 years for women and men. However, if a marriage is forced to take place before the age of 19 years, then it must submit a dispensation in accordance with Supreme Court Regulation No.5 of 2019. Judges in the determination of marriage dispensation applications, should consider the best protection and interests for children and a sense of justice that lives in the community and conventions / international agreements relating to child protection. So that marriage dispensation is an exception in the case of marriage for both / one prospective bride who is underage.*

Keyword: marriage age limit - child protection

I. INTRODUCTION

Children are the mandate and the gift of God Almighty that we must always guard because inherent dignity, dignity, and human rights must be upheld. Declaration of Right of children are part of human rights involved in 1945 Constitution that related with declaration of Human Rights from United Nations on the Rights of a son. In Article 1, paragraph (1) Act on the Protection of Children Nu. 23 of 2002 as Amended by Act Nu. 35 of 2014, what is meant by a child is someone who is not yet 18 years old, including children who are still in the womb. Child protection aims to ensure the fulfillment of children's rights to live, grow, develop, and participate optimally in accordance with human dignity and get protection from violence and discrimination, for the realization of quality, noble, and prosperous Indonesian children. .

In the life of the nation and state, children are the future of the nation and the generation of the nation's ideals. Therefore, every child has the right to survival, growth and development, participation , freedom and the right to protection from non- violence and discrimination. To guarantee the children's rights, regulations are made as a legal basis for the implementation of the obligations and responsibilities for the protection of children.

The definition of child protection is all activities undertaken to protect children so that they can carry out their rights and obligations, and develop themselves as best they can. In article 1 paragraph (2) of the Child Protection Act, what is meant by child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity, and receive protection from violence and discrimination. Child protection is an embodiment of justice in a society. Thus, child protection must be cultivated in a variety of life in the community, nation and state. Implementation of the protection of children is the duty and responsibility of humanity, because the protection of children is guaranteed in various legal grounds such as: Declaration of the Rights of Children, the 1945 Constitution, Law on Human Rights, Law on Child Protection, Law on Child Welfare and so on. Thus includes the right of children not to marry at the age of children. So

that parents are also obliged to prevent marriages at the age of children.

For a developing country, like Indonesia, it is absolutely necessary that a national marriage law contains principles and provides a legal basis for marriage which has been a guideline and has been applied to various categorical community in society. As a nation based on Pancasila, where the first precepts are the Godhead, marriage has a very close relationship with religion/spirituality so that marriage (heavenly activities) has a very important role. Form a harmony of happy family meeting relationship with offspring, roommates is the purpose of marriage.

Aristotle, a Greek philosopher, argued that humans are "Zoon politicians", always looking for other humans to live together then organize to form societies. It is natural that two different people (men and women) are attracted to one another. In order for them to live together they must go through marriage after fulfilling the conditions stipulated in the Marriage Law Nu. 1 of 1974 concerning Marriage . Whereas in paragraph 6 paragraph (2) of Law No. 1 of 1974, it is determined about the age limit of marriage, that is "to hold a marriage of a person who has not reached the age of 21 (twenty one) years must obtain permission from both parents". As for Article 7 paragraph (1) of the Marriage Law: Marriage is only permitted if men have reached 19 (nineteen) years and the woman has reached 16 (sixteen) years for women. And in paragraph (2), " In the case of deviations from paragraph (1) of this article, a marriage dispensation can be requested from the court or other official appointed by both male and female parents. What is meant by the marriage age limit is an age limit for marriage or marriage for men and women. [2] The marriage dispensation is the granting of a marriage permit by the court to a prospective husband / wife who is not yet 19 years old to carry out the marriage. Marriage is the emotional and physical bond between a man and a woman as husband and wife with purpose of forming a family (household) who are happy and eternal based on God . [3]

Marriage is a legitimate bond to foster a prosperous, happy home and family, where husband and wife bear the mandate and great responsibility. The wife will experience a pregnancy and childbirth that asks for sacrifice. Considering the heavy duty of the wife , the Marriage Law requires a minimum age of marriage, namely 16 years for women and 19 years for men. However, the reality in many societies happens to be underage marriages (married at the age of 14 years) for various reasons such as family economic reasons, culture, unwanted pregnancy and so on. The definition of underage marriage is a marriage or a contract that can guarantee a man and a woman have mutual relations and can have marital relations, and the marriage is carried out by someone (future husband/future wife) determined by law. which is in effect in Indonesia which has been established by the government. [4]

Over the past nine years , the dynamics of child marriage has fluctuated. However, until 2017 the percentage

has risen sharply to reach 25.7 percent .[5] This is a very worrying condition. This is a serious problem because it has caused controversy in the community, not only in Indonesia but has become an international issue. Fenomenon underage marriages occur a lot in Indonesia, including in Central Java. For example, based on records in the office of MORA province of Central Java, in Central Java in 2016 the case of child marriage number 3. 186, 2017 a 3176, 2018, number 3275 and in 2019 became 3865 numbers. Of these most were married in the minors for pregnant out of wedlock. [6]

Child marriage in Indonesia influenced by many factors, like econmic/poverty, customs, religious, education, and culture. Underage marriage for the Indonesian in practice, could not be separated from the socio- economic, cultural and religious reasons that develop in society. Underage marriage is a combination of social, cultural and economic factors. Under marriage is a practice of discrimination, especially against girls and is a violation of human rights in general that should be prohibited from practicing anywhere in the world. But in practice, underage marriages occur in several regions of the world. In some parts of the world, there is often the practice of discrimination against the existence of women due to religious and cultural influences. Women are always treated as the minority and sometimes as second-class citizens who can only seen but not to listen to his voice.[7]

Indonesia is one of the countries with the highest percentage of young marriages in the world, ranked 37th in the world, while at the ASEAN level , the second highest after Cambodia. The Religious Courts in 2014 recorded 11,774 Indonesian children for early marriage. The main cause is pregnancy out of wedlock. The trend of early marriage continues to rise, so does the divorce rate. According to research conducted by the *Rifka Annisa Research and Training Center*, it was found that those who engaged in early marriage are vulnerable to divorce. One of the main factors that caused underage marriage is the unpreparedness of the bride and groom who are still minors in entering the domestic life, in addition, violence in Households (domestic violence) is also often a reason. [8]

Therefore, in order for the purpose of marriage to form a happy and everlasting family (household) to be realized/not divorced and to prevent underage marages, the government increased the minimum marriage age limit for women from 16 years to 19 years through the Marriage law. Nu. 16 of 2019 concerning Amendments to Marriage Law Nu. 1 of 1974 concerning Marriage. Thus, for marriage to be held, both women and men must be the same age, that is, at least (19th). Increasing the age limit is meant , women are considered to have matured body and soul to be able to carry out marriage in order to realize the purpose of marriage properly without ending in divorce and get healthy and quality offspring. It is also hoped that an increase in the age limit higher than 16 (sixteen) years for women to marry will result in lower birth rates and reduce the risk of maternal and child mortality. It can also be the fulfillment of

children's rights so as to optimize the growth and development of children, including assisting parents and give children access to education as high as possible. But if the bride speckle age 19 years old and the marriage had to be done, it must apply for a dispensation to marry in accordance with Regulation of the Supreme Court of the Republic of Indonesia Nu. 5 years and 2019 On Request Judging Guidelines dispensation marriage.

Based on the description above, there are two problems that will be Discussed: first, the factors are that cause the occurrence of underage marriage? And second, how does the government protect children in general and child protection in marriage in particular?

II. RESEARCH METHODS

The type of this research is legal/normative studies. The approach method used is a Juridical Approach, Legislation. The type of data used is secondary data or library data in the form of an analysis of books, literature, and scientific works . The analytical method used is descriptive qualitative.

III. DISCUSSION

Marriage is a spiritual 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 Godhead or divinity. Marriage is not for temporary needs but for a lifetime because marriage contains noble values. With the existence of inner and outer bonds between men and women that are built on sacred values because it is based on the Godhead which is the first precept of Pancasila. The point is that marriage is not enough just to be physically and mentally bonded, but that both of them must be, physically and physically bonded to form the foundation in forming a happy and eternal family.[9] To be able to hold a marriage , the bride and groom must meet the conditions specified/regulated in Marriage Law No. 1 of 1974.

In Article 6 of the Marriage Law, the conditions for marriage are stated:

1. The marriage must be based on the press between the two brides .
2. To get married a person who has not reached the age of 21 (twenty one) years must obtain permission from both parents.
3. In the event that one of the two parents has edited or is unable to state his will, then the permission referred to in paragraph (2) of this article is sufficiently obtained from parents who are still alive or from parents who are able to declare their will.
4. In the event that both parents have edited or are unable to express their will, permission is obtained from guardians, carers or families who have blood relations in a straight line up as long as they are still

living and in a state of being able to declare their will.

5. In the event that there is a difference of opinion between the people referred to in paragraphs (2), (3), and (4) of this article, or one or more of them does not express their opinion, then the Court in the jurisdiction of the person who will take place marriage at the request of the person can give permission after first hearing the said people in paragraphs (2), (3), and (4) of this article.
6. The stipulation in paragraph (1) is the same as paragraph (5) of this article as long as the law of each religion and the belief of the person concerned does not determine otherwise.

Whereas in article 7 of Law P erkawinan determined as follows:

1. Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (e nameen) years.
2. In the case of deviations from paragraph (1) of this article may request dispensation from the Court or other official appointed by both male and female parents.
3. Provisions regarding the conditions of one or both parents mentioned in Article 6 paragraphs (3) and (4) of this Law, also apply in the case of the request for dispensation paragraph (2) of this article without prejudice to what is meant in Article 6 paragraph (6).[10]

However, the Eruption Law also regulates the prohibition of marriage, which is regulated in articles 8, 9, 10.

Special provisions are requirements mating governed by Article 7, paragraph 1 since published Act Nu. 16 of 2019 concerning Amendment to Marriage Law Nu. 1 of 1974 concerning Marriage, (enacted on October 14, 2019), has been amended so that it reads "Marriage is only permitted if men and women have reached the age of 19 (nineteen) years".[11] Thus the provisions regarding the minimum age for marriage no longer discriminate between men and women, which are both 19 (nineteen) years old.

However, in certain circumstances, such as the bride is a minor or is still in the minors, the Court may grant a dispensation to marry according to the rules applicable legislation namely Supreme Court Regulation Nu. 5 of 2019 concerning Guidelines for Passing Applications for Marriage Dispensation. [12] Marriage on the child's age and adversely affected development of the child and will lead to non-fulfillment of children's rights such as the right to protection from violence and discrimination, civil rights of children, the right to health, right to education, and social rights of children.

Issuance of Marriage Law Nu. 16 year 2019 on the amendment of Marriage Law Nu. 1 year 1974 on Marriage, the implementation of the Court's acquittal of the Constitutional Republic of Indonesia Nu . 22 / PUU-XV / 2017 Decision of the Constitutional Court issued a lawsuit

related to the test material to the Article 7, paragraph 1 of the Act No. 1 of 1974 concerning Marriage, in terms of the minimum age of marriage. Government by Marriage Law Nu. 16 of 2019 raised the minimum age of marriage for women from 16 years to 19 years with consideration:

- a. Eliminating discrimination on the age of marriage between men and women, which is equal to 19 years
- b. The age limit of 19 years is considered to have matured body and soul to be able to carry out marriage and get healthy and quality offspring. In addition, it is hoped that his marriage will last and not end in divorce.
- c. Pressing the birth rate/low birth rate.
- d. Reducing the risk of death for mother and child.
- e. Fulfillment of children's rights, thus optimizing children's development and development, including parental assistance.
- f. Give children access to the highest education possible.

Basically, underage marriages will have many negative impacts on children's growth and development and will not fulfill the basic rights of children such as the right to protection from violence and discrimination, children's civil rights, health rights, educational rights and social rights of children. But on the contrary there are very few positive effects of underage marriages, which include:

- a. Clarify the fate of children who need a father figure.
- b. Get good recognition from the environment.
- c. Guarded from the views or moral values of the community.
- d. Guarding from uncontrolled actions.
- e. Clarify marital status

Because the request for dispensation prosecuting clearly mating has not been regulated and detailed in the legislation, the Supreme Court published PERMA No. 5 of 2019 is for the smooth running of justice in handling requests for marriage dispensation. The issuance of Marriage Law No. 16 Year 2019 and PERMA No. 5 of 2019 is essentially a form of protection for children and to prevent and minimize/suppress underage marriages/early marriages as is prevalent especially in our country, Indonesia and to support the success of national family planning programs. Children as national assets must receive protection, even children who are still in the womb. Children protection is guaranteed in various legal grounds, including :

1. Declaration on the Rights of the Child by the United Nations on 20 Nu. 1958.
2. 1945 Constitution of Republic of Indonesia
3. Act Nu . 4 of 1979 concerning Child Welfare
4. Act Nu . 39 of 1999 concerning human rights
5. Law Nu . 23 of 2002 on Protection for Children, Amended by Law No . 35 of 2014
6. Law No. 21 of 2007 concerning Eradication of Trafficking in Persons.

1 . Reasons That Caused Underage Marriage

Marriage conditions are regulated in the Marriage Law. Including the minimum limit of age of marriage, with the issuance of Marriage Law Nu.. 16, 2019, the provisions of bounds skimpy an age of marriage for women has increased from 16 years to 19 years. Thus, for men and women alike 19 years old, there is no discrimination anymore. Because the regulation of the minimum age of marriage between men and women is different, it not only gives rise to discrimination in the context of exercising the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution of Republic of Indonesia, but also has led to discrimination against the protection and fulfillment of children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution of Republic of Indonesia. In this case, when the minimum age of marriage for women is lower than for men, then legally women can be faster to form a family.

Fenomena underage Marriages occur a lot and this Becomes a serious problem, Because It raises controversy in the community, both in Indonesia and Become an international issue. Underage marriages in Indonesia, not only occur due to unwanted pregnancy in adolescents, but also because of several factors that influence. The law prohibits marriage below the age where it is based on the consideration that children under the mentally not stable and to make an agreement in the form of marriage , it is required that a person must meet the legal capacity based on someone in adulthood.

The rise of underage marriages, has been conveyed above many causes or vary greatly due to economic factors/poverty, lack of education, customs /culture, religious factors, pregnancy outside marriage (*married by accident*) .

Because factor of economic /poverty , in many families who live in the grip of poverty, marry off reviews their daughters are still small is a strategy that is very important for survival of life (the financial perspective). This means less burden to be given food, clothing, and education. Globally, coercion of child marriage is more prevalent in poor countries, backward country and regions. When living in a difficult situation, like poverty, parents are only faced with a few options regarding their daughter, to marry them off. In Indonesia, one example for this condition is a marriage between Puji Cahyono Widiyanto or known as Sheikh Puji (43 years), a journalist and caretaker of an Islamic boarding school with Lutviana Ulfah (12 years).

Factors of low/limited education, drop out of school or not at all have a positive correlation with child marriage or underage marriage. Conversely, going to school and receiving a high level of education will protect girls from early marriage. In many countries, included Indonesia, sending girls to school is not a priority compared to sending boys to school. When the most important role a woman carries is to be a good wife and mother, to send them to school and prepare them for work, is not a strategic choice.

In fact, when poor families want to send their daughters to school, they find it difficult to find quality schools around their homes and find it difficult to pay for school fees. It is usually safer and economic to send boys to school than girls. This corners poor families to choose the last option, which is to marry off their daughter. Poverty is main variabel when caused underage marriage.

While religious and traditional factors, in many areas, parents often experience pressure to get marry their daughters as quick as possible to avoid becoming sexually active women before they get married. Women who are "stamped" like that will bring down the dignity of families and residents around them or their circumstances. Because in many societies, marriage often determines the social status of women. Also parents worry if they do not marry off reviews their daughter in line with social expectations, they will not be able to marry off reviews their daughter at all. Underage marriage is also an effort to unify two families, clans or tribes.

Customary law does not set a certain age limit for people to carry out marriages so that customary law allows marriages of children which are carried out when the child is a child.[13] This can occur because in customary law, marriage is not only the union of the bride and groom, but also a union of two relatives. The existence of underage marriages or child marriages is not a problem in customary law because both husband and wife will continue to be guided by their families, which in this case has become two families, so customary law does not prohibit child marriages.

The implementation of underage marriages has resulted in various responses from the community. There are pro or agree and contra or unagree to the implementation. People who are pro to underage marriages, claim that such marriages are influenced by religious customs and customs. Whereas the contra people consider that the implementation of underage marriages is something that is contrary to the 1945 Constitution of Republic of Indonesia..

For those who are forced to marry underage due to pregnancy out of wedlock, this is done solely for the sake of protecting the family's disgrace and so that the child conceived later has legal status after birth. So that the child will not be structured by the surrounding environment and be born with the status of a legitimate child.

2. Government Protection Against Children in commonly and protection of children in matters of marriage in particular related with PERMA RI Nu. 5 years 2019

As stated above, children are the assets of the nation and the nation's next generation, the child must get protection. For the implementation of child protection to run properly, there must be a legal basis for child protection. What is meant by child protection is all forms of activities to guarentee and protect children and their right so that they can live, grow, develop and participate optimally in accordance with human dignity, and get protection from

violence and discrimination, article 1 paragagraph (2) invitation of child protection.

Government protection for children (in general) is based Juridical on :

1. Convention (often translated by international treaties)

Among the juridical bases of protection Constitutinal Convention on the Rights of Children are a Son (CRC/*Convention on the Rights of the Child*). CRC has been ratified on 20 Nu. Award of 1989 and is an international instrument in the implementation of child protection. Indonesia has ratified this by Presidential Decree Nu. 36 of 1990. Thus, Indonesia has been bound to fulfill and implemented the rights of children listed in the Convention on the Rights of the Child. By ratifying, legal liability to Indonesia as a participating country to implement the rights of the child by absorbing it into national law, such as in Law of Protection of Children and so on.

The Convention on the Rights of the Child consists of 54 articles which, based on its legal material, govern the rights of the child and the mechanism for the implementation of children's rights by the participating countries which ratified the Convention on the Rights of the Child. Legal material on children's rights in the Convention on the Rights of the Child can be clasify into four categories of children's rights, namely: [14]

a. The right to survival (*survival rights*), namely the rights of children to preserve and maintain life (*the rights of life*) and the right to obtain the highest standards of health and the best care (*the rights on the standards of health and medical standards*) care attainable).

b. The right to protection (*protection rights*), namely the rights of children which includes the right to protection from discrimination, protection from child exploitation, acts of violence and neglect for children who do not have families for refugee children.

c.The right to growth and development (*development rights*) items, namely the rights of children the which includes all forms of education (*formal and non formal*) and the right to achieve an adequate standard of living for the physical, mental, spiritual, moral and social development .

d.The right to participate (*participation rights*), namely the child's right to express opinions in all matters that affect the child (*the rights of a child to express her/his views in all matters affecting that child*) .

2. Laws and Regulations .

There are various laws and regulations governing child protection , namely:

a. The 1945 Constitution of Republic of Indonesia and its Amendments.

Constitutionally child protection is contained in Article 28B paragraph (2) of the 1945 Constitution of Republic Indonesia, which emphasizes that, "Every child has the right to survival, growth and development and is titled to protection from violence and discrimination".

b. Act Nu. 23 of 2002 concerning Child Protection, as amended by Act Nu. 35 of 2014.

In consideration of this law in letter (e) it is explained that in order to realize the protection and welfare of children, it is necessary to have institutional support and legislation that can guarantee its implementation. From the sound of the preamble, this law clearly aims to provide maximum child protection.

c. Law Nu. 1 of 1974 concerning Marriage.

The Marriage Law in some articles regulates children, such as marriage for men is 19 (nineteen) years and for women is 16 (sixteen) years. However, in practice, this provision has been violated by customary marriages or beliefs. As a result, this age problem is often ignored. Marriage problems in certain areas are also rarely recorded according to applicable regulations. This of course will be a separate obstacle regarding the status of children. Facing this reality, justice institutions including the Supreme Court often make contradictory decisions. In a marriage ruling that is only carried out according to custom, trust, without being registered in accordance with applicable regulations, is said to be non-existent. However, in another decision is said to be valid and existing, for example, the decision of the Supreme Court Nu. 373k / Pdt / 1994, September 30, 1996, declared the marriage which was held according to Chinese traditional practices, although not noted right is legitimate. This means that marriages that are only carried out according to religious procedures are legal.[15]

d. Law No. 3 of 1997 concerning Juvenile Court.

This law is a representation to protect the rights of children who violate the law. In its consideration in letter (b) it is stated that in order to carry out coaching and provide protection for children, support is needed both concerning institutional and legal instruments which are more stable and adequate. Therefore the provisions regarding the administration of justice for children need to be carried out specifically.

e. Act Number 39 1999 about Human Rights.

Law No. 39 of 1999 concerning Human Rights expressly states providing absolute protection to children. This affirmation can be seen from Article 52 to Article 66. Wherein in Article 52 paragraph (1) it is stated, namely: "Every child has the right to protection by parents, family, community, and country". Then, in paragraph (2) it is emphasized: "Children's rights are human rights and in the interests of children's rights are recognized and protected by law even from the womb".

f. Law Nu. 4 of 1979 concerning Child Welfare.

Law Nu. 4 of 1979 concerning Child Welfare is not merely a juridical basis for providing protection for children. However, more than that, it also regulates the provision of comfort and welfare to children.

g. PERMA RI Nu. 5 of 2019 concerning Guidelines for Passing Applications for Marriage Dispensation.

This mating also dispensation provide protection to children in particular relating to marriage, because The judge here has the authority to examine, grant or reject request for dispensation to marry.

Protection of Children in underage marriage through domestic dispensation (Special protection, that is related to marriage).

Protection of children in general as mentioned above, both through the Convention on the Rights of the Child (CRC) and through legislation. The Issuance of Marriage Law Nu. 16 of 2019, specifically relating to the increase in the minimum age of marriage for women from 16 years to 19 years, is also the effort to protect. Marriage can only be carried out by those who have met the age requirements. However, in certain circumstances the Court can provide a marriage dispensation in accordance with statutory regulations. Therefore, the government, in this case the Supreme Court set up more things that are necessary for the smooth administration of justice by setting PERMA No. 5 of 2019 concerning Guidelines for Passing Judicial Requests for Mating. This marriage dispensation is also a form of protection for minors in underage marriages. Dispensations are exceptions to general rules for special circumstances, such as exemption from an obligation or prohibition. [16] In PERMA RI Nu. 5 of 2019, Article 1 paragraph (5) referred to as marriage dispensation is the granting of a marriage permit by the court to a prospective husband/wife who is not yet 19 years of age to get married. [17]

Granting permits for underage dispensations is often referred to as marriage dispensation, which competently becomes the authority of the Religious Courts (for Muslims) and the District Courts (for Non Muslims). Implementation of the dispensation of marriage is a form of the legislation in force in Indonesia, the which is based on Article 7 (1) and (2) of Law Nu. 1 of 1974 on Marriage, as amended by Law Nu. 16 in 2019 on the amendment of the Act Nu. 1 of 1974, which confirms as follows: paragraph (1) Marriage is only permitted if men and women have reached the age of 19 (nineteen) years. Paragraph (2) In case of deviation of paragraph (1) of this article may request an exemption to the courts or other official designated by both parents the man or the woman.

Marriage dispensation is a policy given by the Court, in the form of a legal product determination for prospective brides who are not old enough to get married, which is not 19 years old, both for men and women. Dispensations are filed by the parties who will carry out the marriage to the court. Then further processed according to the rules of the applicable legislation, namely as set out in PERMA RI No. 5 of 2019.

Article 5 paragraph (1) The administrative requirements for submitting an application for a marriage dispensation are:

- a. Application letter;
- b. Photocopy of Identity Card of both parents / guardians;
- c. Photocopy of Identity Card or Child Identity Card and / or birth certificate of the child;
- d. Photocopy of Family Card;

- e. Photocopy of Identity Card or Identity Card of child and / or birth certificate of prospective husband / wife;
- f. Photocopy of the child's last diploma and / or certificate of still attending school from the child's school.

Article 5 paragraph (2), If the conditions as referred to in paragraph (1) letters b through letter f cannot be fulfilled, other documents may be used that explain the identity and educational status of the child and the identity of parents / guardians.

While the submission of a marriage dispensation application is regulated in 6, 7.8 and 9. The examination of cases is regulated in articles 10 through 17.

Article 6 regulates who has the right to apply for dispensation.

- (1) The party entitled to apply for a marriage dispensation is a parent.
- (2) In the case of parents who are divorced, the request for marriage dispensation is still submitted by the parents, or by one parent who has parental authority over the child based on a court decision.
- (3) In the event that one of the parents has been edited or is not known to exist, the request for a marriage dispensation is submitted by one of the parents.
- (4) In the event that both parents have edited or have their authority revoked or whereabouts are unknown, a marriage dispensation request is submitted by the guardian.
- (5) In the event that the parent / guardian is absent, it is filed by the attorney based on the power of attorney from the parent / guardian in accordance with the legislation.

Whereas Article 9 states:

- (1) An application for a marriage dispensation is submitted to the competent court.
- (2) The Registrar shall examine the administrative requirements for submitting a marriage dispensation application as referred to in article 5, article 6, article 7 and article 8.
- (3) In the event that the request for a marriage dispensation does not meet the requirements referred to in paragraph (2), the clerk returns the application for a marriage dispensation to the applicant to complete.
- (4) If the marriage dispensation application meets the requirements as referred to in paragraph (2), the marriage dispensation request is listed in the register, after paying the case fee in advance.
- (5) Applicants who are not able to apply for a dispensation to marry free (*without cost*).

Regarding the case review, it is regulated from article 10 to article 17.

Article 11 stipulates that judges in a trial use language and methods that are easily understood by children and in examining children, judges and clerks may not use the attributes of the trial. The judge in the trial must provide

advice to the applicant, child, prospective husband/wife and parents/guardian of the prospective husband/wife (article 12 paragraph (1). Where the advice given by the judge is to ensure the parties understand the risks of marriage, related to:

- a. Maybe the cessation of children's education,
- b. Continuity of children in taking 12 years of compulsory education ,
- c. Not yet ready for reproductive organs ,
- d. Economic, social and psychological impacts on children and
- e. Potential disputes and domestic violence.

The judge's advice is considered in the determination, and if the judge does not provide the advice as referred to in paragraph (1) and paragraph (2), it will result in the decision being null and void.

Then in article 14, the judge must identify:

- a. The child submitted in the application knows and approves the marriage plan;
- b. Psychological conditions, health and readiness of children to get married and build domestic life;
- c. Psychic, physical, sexual or economic coercion of children and/families to marry or marry children.

In the examination, the judge considers the best interests of the child by:

- a. Study carefully and carefully the petition of the applicant;
- b. Check the applicant's legal position;
- c. Explore the background and reasons for child marriage;
- d. Exploring information related to the presence or absence of marriage obstacles;
- e. Explores information related to children's understanding and consent to be married;
- f. Noting the age difference between the child and the prospective husband / wife;
- g. Hear the statement of the applicant, child, candidate husband/wife and parents/guardian of the prospective husband / wife;
- h. Considering psychological, sociological , cultural, educational, health, economic conditions of children and parents, based on recommendations from psychologists, doctors / midwives/professional social workers, social welfare workers, Integrated Service Centers for Protection of Women and Children (P2TP2A) or the Commission for Child Protection Indonesia/Region (KPAI/KPAD);
- i. Consider the presence or absence of elements of psychological, physical, sexual and/or economic coercion ; and
- j. Ensuring the commitment of parents to take responsibility in relation to economic, social, health and children's education.

Finally, the judge in determining the marriage dispensation petition considers:

- a. Protection and the best interests of children in legislation and unwritten laws in the form of legal values, local wisdom, and a sense of justice that lives in the community; and
- b. International conventions and/or agreements relating to child protection.

Therefore ideally, the judge who hears the request for a marriage dispensation is a judge who already has a Decree of the Chief Justice (article 20) as:

- a. Juvenile judge;
- b. Participate in training and/or technical guidance on women dealing with the law;
- c. Certified Child Criminal Justice System;
- d. Experienced in judging requests for marriage dispensation.

However, if there are no judges who meet the above criteria, then each judge can adjudicate a marriage dispensation request.

The role of the court through marriage dispensation is very significant in providing child protection. This is because The court has the authority to allow a child to get married or not permits a child to get married, of course with a mature legal considerations, the which can not be separated from consideration sociological, historical and philosophical. The authority of the dispensation of marriage as the legal marriages of minors in Indonesia, other than getting appreciation from the public, but not a few of the parties who accuse the role of the court with the negative accusation because of the doubts granting permission for minors to marry would bring benefits, it is much which argues will cause harm and contribute to the decline of the nation.

Marriage dispensation for minors, is a study of the age limit for someone to get married, or the ideal age to enter the world of marriage. The age of marriage has a logical consequence of the purpose of marriage is the prospective spouses are required to have physical and spiritual maturity to enter the world of marriage. The age of marriage will affect many things about a person and also affect the household or family that will be fostered.

Many of the pro and contra of marriage dispensation, of course, affect law enforcement, especially for judges who examine and decide the case. Because another factor that influences judges in giving decisions is the community. Public pressure will inevitably influence judges in giving decisions. Especially with the rampant public perception that ultimately the court cannot resolve a case according to what the community wants.

When Examined further, phenomena underage marriage is not a new one in Indonesia. Even in ancient times, marriages over the age of "maturity" would set a bad precedent in the eyes of society. Women who don't get married soon will get a lopsided response or commonly called a *virgin kaseb*. Basically there is no unchanging society. Both communities are still underdeveloped and modern society, sooner or later will undergo a change.

The minimum age for marriage is determined by law. Government policy in setting minimum marriage limits is certainly through a process and various considerations. This is so that both parties are really ready and mature in terms of physical, psychological and mental. Likewise, from the perspective of medicine, early marriage or underage marriage has a negative impact on both the mother and the child being born. Furthermore, according to psychologists, in terms of social aspects, underage marriages can reduce family harmony. So, seen from various aspects, underage marriages do have many negative impacts. This is one of the reasons for government through Law No. 16 in 2019 raised the minimum age of marriage for women from 16 years to 19 (nineteen) years, which also aims to protect children.

According to the author, to minimize the doors of marriage and dispensation granting marriage licenses, the executive in this regard, to the Ministry of Religion should ideally make regulations to reduce and tighten the terms of the licensing of marriage. Likewise, the marriage registration of a young man is done when he has shown evidence that he has a job as a source of income. Through competent institutions to provide an appeal, and dissemination of the Marriage Law.

IV. CONCLUSION

1. The high number of underage marriage in Indonesia is caused by various factors, among others, namely: social economy, culture, customs / traditions, education, religion.
2. Protection of children in Indonesia is based on various juridical foundations, namely:
 - a. Convention on the Rights of the Child (CRC), (1) affirmation of children's rights; (2) child protection by the state; (3) the participation of various governments, communities and private parties in ensuring respect for children's rights.
 - b. The 1945 Constitution of Republic of Indonesia, especially article 28B paragraph (2).
 - c. Act No. 4 of 1979 concerns Child Welfare (protection, comfort and welfare to children).
 - d. Act No. 39 of 1999 concerning Human Rights, (from article 52 to article 66).
 - e. Act No. Child Protection about 23, 2002, as amended by Act No. 35 of 2014, (contained in the consideration of the letter (e)).
 - f. Act No. 3 of 1997 concerning Juvenile Court, (contained in the consideration letter (b)).
 - g. Act No. 1 year 1974 on Marriage, (article 7), as Amended by Act No. 16 of 2019 concerning changes to Law No. 1 of 1974.

However, the provisions of article 7 can be distorted by the bride and groom by submitting a dispensation request to the court, for urgent reasons. The point is that due to circumstances there is no other choice and is very forced to have a marriage.

[17] PERMA RI No. 5 tahun 2019, tentang Pedoman Mengadili Permohonan Dispensasi Kawin, Pasal 1 ayat (5).

V. SUGGESTIONS.

1. Implemented plea and socialize simultaneously through the competent institutions of the Act marriage in particular an increase in the minimum age of marriage for women stipulated in Marriage Law No. 16 of 2019 concerning amendments to Marriage Law No. 1 of 1974 concerning Marriage. So that the occurrence of underage marriages can be prevented, suppressed and minimized so that these children can get their rights well, so that they become the next generation of quality people and don't engage in underage marriages .
2. Protection of children is the responsibility of all parties: state, community, family, private sector. The conditions for dispensation permits should be tightened and the right to give dispensations must be carefully considered for the protection and interests of children.

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