

THE IDEAL CONCEPT OF MARRIAGE AGE LIMIT IN LEGAL REFORM IN INDONESIA

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Abstract

Marriage Law no. 1 of 1974, there are still problems and pros and cons among the community. In the author's study, there are 9 legal problems, including the problem of setting the age limit for marriage. Article 6 paragraph (1) provides a minimum age limit for marriage, after 21 years of age. However, the Marriage Law and its amendments to Law no. 16 of 2019, Article 7 allows men and women aged 19 years to marry, even providing space for those under 19 years of age, by applying for a dispensation in court. This provision provides a great opportunity for child marriage to occur, from various aspects, biological, psychological and sociological, very vulnerable and full of risks to the continuity of the family. In addition, these provisions are not legally in sync with other laws and regulations, Law no. 23 of 2002 states that children are those who have not reached the age of 18 years. This factor is the cause of the high rate of underage marriage in Indonesia. The method used in this research is normative (doctrinal) legal research, using legal, conceptual, comparative, case approaches and statutory regulations. The research results confirm that the regulation of marriage age limits was initially a national agreement expressed in the form of statutory regulations. This agreement currently requires legal updates in accordance with legal and constitutional developments in Indonesia. The ideal concept in the upcoming marriage law reform (*ius constituendum*) is to increase the age to 21 years, as a biological, psychological and sociological category of adult age, although currently the age limit of 19 years is still possible to implement. Deviations from the marriage age limit still require dispensation permission from the Court, however there is a minimum age limit of 18 years which is the main requirement in applying for a marriage dispensation.

Keywords: Law, Marriage, Restrictions, Age.

INTRODUCTION

Indonesia is a country of law, a country based on law (*rechtsstaat*), not based on mere power (*machtsstaat*).¹This means that every national and state administration must be based on the 1945 Constitution which is then elaborated in other legislation.²Relevant to Hans Kelsen's theory, the grading of legal norms (*Stufentheorie*).³The highest legal norm (fundamental norm) is Pancasila. The teachings of Pancasila indicate that the human rights of every citizen must not be disturbed or obstructed by anyone, even the state, one of which is implementing the teachings of their religion and beliefs. Then the 1945 Constitution, Article 28B emphasizes that "every person has the right to form a family and continue their offspring through legal marriage and the state guarantees children's rights to survival, growth and development and the right to protection from violence and discrimination".⁴

The birth of Law Number 1 of 1974, jo Law No. 16 of 2019, effective October 1 1975.⁵Even though it was implemented 48 years ago, various problems still remain.⁶These include the issue of age limits for marriage,⁷There are juridical problems: First, Law Number 1 of 1974, states that the ideal marriage age is if a man and woman have reached the age of 21 (twenty one) years.⁸This age limit can be considered as the age of adulthood (*baligh*)⁹ to enter marriage.

The same thing with the Compilation of Islamic Law (KHI)¹⁰Article 98 paragraph (1): the age limit for children who are able to stand alone or be adults is 21 years. Criminal Code Article 330 states that "minor adults are those who have not reached the age of 21 and have not previously been married."¹¹

According to Islamic law, the condition for marriage is reaching adulthood (baligh), marked by biological changes, for men having wet dreams, and for women marked by menstruation.¹²Customary law does not recognize a person's maturity age limit, maturity is only incidental, namely whether a person should be considered competent or incompetent, able or unable to carry out legal actions.¹³Second, the Marriage Law provides opportunities for child marriage, because it offers an alternative.

If you do not meet the minimum age limit of 19 years, you can apply for a dispensation to the court.¹⁴Third, there is no legal certainty in resolving cases of underage marriage. The issuance of the Republic of Indonesia Supreme Court Regulation, Number 5 of 2019, is an opportunity to legalize child marriage in Indonesia.

Sociological aspect, marriage is very closely related to population problems. By limiting the marriage age, it is hoped that the birth rate can be reduced to a minimum.¹⁵Also related to family welfare issues.

This policy is implemented in order to regulate community behavior.¹⁶UNICEF reported in 2018 that it was estimated that 1,220,900 girls aged 20-24 years were married before the age of 18, placing Indonesia in the 10th country with the highest absolute rate of child marriage in the world.¹⁷

Law Number 12 of 2011 explains that the formation of statutory regulations is in definite, standard and standard ways and methods that are binding on all institutions authorized to form statutory regulations.¹⁸The content of the law is still far from the objectives of the law, namely: Justice, certainty and usefulness of the law.¹⁹The existence of the Marriage Law and its implementing regulations requires legal reform, to avoid conflict, ambiguity and legal vacuum, where sanctions are not specified, especially for violations.

Logemen, says that legal rules are binding if they show a necessary relationship (compelling relationship) between a condition and its consequences.²⁰According to Hans Kelsen, he emphasized: "Sanctions are given by the legal order with the aim of causing certain actions that are deemed desired by the legislator."²¹This is the reason the author conducted a study of the issue of marriage age limits in Indonesia.

RESEARCH METHODS

The research method uses Normative legal research (doctrine law), which is "a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced."²²By using a statutory regulatory approach, philosophical approach, analytical approach, comparison and cases.

RESULTS AND DISCUSSION

1. Concept of marriage law reform in Indonesia

Renewal is defined as a process of testing various formulations of legal provisions and implementing a number of changes to achieve efficiency, justice and also the opportunity to obtain justice according to applicable law.²³ Legal reform also considers the process of creating (law making process or policy formulation) legal substances/rules.²⁴ Soetandyo Wigjosoebroto put forward two meanings (meanings) in legal reform, namely as legal reform and law reform.²⁵ So "law reform" and "legal reform" are closely related to "sustainable society/development", "sustainable intellectual activity", "sustainable intellectual philosophy", "sustainable intellectual conceptions/basic ideas".²⁶ The study of this problem is certainly a "generational" study.

The legal system in the Islamic world today, according to Anderson, is broadly divided into three. First, systems that still recognize sharia as basic law, such as Saudi Arabia; Second, a system that abandons sharia and replaces it with secular law, such as Türkiye. Third, a system that compromises the two systems above. Indonesia is included in this third model.²⁷ The reform of Islamic law in Muslim countries occurred because of the touch between Islam and the West, namely during the colonial era. After independence, they carried out legal reforms, motivated by awareness of the backwardness of Muslim communities from Western progress.²⁸

The goals of reforming marriage law differ from one country to another, which are generally grouped into three groups. First, the country aims to unify family law.²⁹ Second, to elevate the status of women; Third, to respond to developments and demands of the times because traditional fiqh concepts are considered inadequate to answer them.³⁰ The birth of the Marriage Law is seen as the result of a process of perfecting the conception of marriage law in the past and the desire to create a national marriage law that is in accordance with current and future legal needs.³¹ Therefore, the law is always updated to respond to global changes. UU no. 1 of 1974 for the first time there was an update after 49 years, namely the birth of Law no. 16 of 2019, especially Article 7, regulates the minimum age limit for marriage.

According to Khoiruddin Nasution, efforts to reform marriage law are still continuing. First, the draft prepared by the Ministry of Religion team is a revision of the Compilation of Islamic Law; Second, the draft prepared by the Gender Mainstreaming team, Counter Legal Draft (CLD KHI).³² And a draft law on Islamic family law material which will be the basis for implementing case resolution in the Religious Courts.

The minimum age requirement of 19 years for prospective husband and wife should be reviewed, because this age limit is too young, "early adulthood" for marriage. This is in line with the opinion of Indonesian Islamic thinkers who do not agree with age standardization, because adults are good for marriage.³³ According to Hasbi ash-Shiddieqy, the so-called adult age is 21 years. Meanwhile Moh. Idris Ramulyo, that the ideal age for marriage is 25 years for men and 18 years for women.³⁴ In terms of health, Dadang Hawari explained that a good age to get married and be able to do family planning according to health is 20-25 years for women and 25-30 years for men.

For this reason, it requires high enthusiasm and courage from law makers so that in the future they can update the minimum age limit for men and women to marry from 19 years to 21 years, as the age of adulthood that is perceived by all groups. This is important because children's rights are part of human rights which must be guaranteed, protected and fulfilled by parents, families, society, government and the state.³⁵

The conceptual framework above is based on the nation's philosophical foundation, Pancasila and the Preamble to the 1945 NRI Constitution. The next philosophical framework is the 1945 NRI Constitution, which relates to "the child's right to recognition, guarantees of fair legal protection and certainty and equal treatment." before the law."³⁶

Marriage is a life value that concerns the honor of family and kinship in social and state life, so the process of carrying out marriage must fulfill the requirements determined by law, in order to avoid unwanted deviations and violations that can bring down the honor and dignity of the family and kinship. .³⁷ According to Article 1 paragraph (2) of Law Number 4 of 1961, the definition of adult is having reached the age of 21 or is or has been married. Legal updates are very possible, because there has been no synchronization so that the provisions regarding the age limit are still an open legal policy.³⁸

Marriage seen from a social aspect has an important meaning, namely: 1) that people who marry have a more respected position than those who are not married.; 2) there are regulations regulating polygamy limited to four people, provided that the men are able to act fairly.³⁹ According to Julianto Witjaksono, women under the age of 20 have a high risk of disease and death when carrying out their reproductive functions.⁴⁰ Kartono Mohamad, that teenage pregnancy is the biggest contributor to maternal and child mortality, as well as the cycle of poor health and poverty.⁴¹ Apart from the death of mothers and children, the negative effects of early marriage are medically important, according to Nugroho Kampono, before the age of 20, cells are still in the process of being perfected and the possibility of getting cancer is even greater.⁴²

2. THE IDEAL CONCEPT OF MARRIAGE AGE LIMITS IN LEGAL REFORM

a. Ideal age limit for marriage

It is worth appreciating the amendment to Article 7 paragraph (1) of Law Number 1 of 1974 jo. Law Number 16 of 2019, which stipulates that the minimum age for marriage is 19 years without distinction, whereas previously the age of prospective grooms was 19 years and women's age was 16 years.

The change in the minimum age limit is based on the decision of the Constitutional Court, Number 22/PUU-XV/2017, but has not been followed by an update to Government Regulation Number 9 of 1975 and the Compilation of Islamic Law (KHI), so it can give rise to a conflict of norms, even though there is the principle of Lex superior Derogat legi Inferior, but confusing for people who don't know, because legally it is still valid before there are new changes.

It's worth paying attention to Comparison of the implementation of Singapore law, even though it is not a Muslim-majority country, but seen from the benefit (maqasyid sharia), limiting the marriage age to 21 years has a positive impact on family welfare. In India since 2021, in the legal reform process, it has entered the discussion stage in the legislative body, awaiting ratification, one of the articles is to regulate the proposed "minimum age limit for marriage" to be 21 years for both men and women.⁴³ Previously, the marriage age for men was set at 18 years and women's age was 17 years.

According to penwrote on the basis of the results of studies and various research results that the age limit of 19 years in Article 7 paragraph (2) of the Marriage Law is not yet the ideal age limit for getting married when viewed from various aspects, it is closely related to the interests and sustainability of the child's own future. , and in an effort to create a prosperous family and a civilized and progressive state of Indonesia in the future. To create a prosperous family, it is directly related to the biological, psychological, psychological, economic and educational maturity of the candidate who will carry out the marriage.

Mukhtar Kusumaatmaja said that in order for a country to achieve the goals of the philosophy of state life, it must be supported and supported by quality human resources who have a patriotic spirit, are strong, brave, intelligent and responsible.⁴⁴ State legal politics through Law Number 52 of 2009, mandates the need to control quantity, improve quality and mobilize population mobility so that it can become a strong resource for national development and resilience.⁴⁵ The Family Planning Program develops the Marriage Age Maturation (PUP) program to increase the age of first marriage, reaching a minimum age of 21 years for women and 25 years for men.⁴⁶ According to Hasto Wardoyo, the marriage age stipulated in the Revised Marriage Law is not the ideal age from a biological perspective, because women under the age of 19 have a high risk of developing cervical cancer or cervical cancer.⁴⁷ Supported by the results of research by the Center for Women's Studies (PSW) UIN Syarif Hidayatullah Jakarta, the results of its research are that the average ideal age for women to get married is around 19 years and for men is 23.4 years. According to BPS, the average marriage age for urban residents is 21.1 years, with the lowest age in Jambi Province at around 19.5 years and the highest in the NTT and Medan areas, respectively 23.1 and 23.2 years. .⁴⁸ From these data, several things can be seen that can be mentioned: First, the state's efforts to improve the conditions of society through efforts to increase the marriage age. Second, there is a difference between the marriage age of urban and rural communities.⁴⁹ A study published in the Journal of Social and Personal Relationships in 2012 said that 25 years is the ideal age limit for marriage. Meanwhile, the American Census Bureau, in 2013, reported that the ideal age for marriage is 27 years old for women and 29 years old for men. In general, from the results of the study above, it can be concluded that the ideal age for marriage is around 28-32 years.⁵⁰

Based on qualitative data, there is actually a trend of increasing age at marriage above the average specified in Article 7 of the Marriage Law. Of course, there are many factors and indicators that can be used as reasons for what is happening in society today, although this research is not explained in detail, among the reasons that can be stated in general is the increase in public literacy regarding the roles and responsibilities of husband and wife in a family to

realize life. Prosperous family. However, it must be seriously realized that the issue of legal regulation is not only seen in terms of its legitimacy and is not only seen as an expression of the values of justice. That is why another way of thinking emerged (non-analytical school of thought) which no longer sees law as an autonomous institution in society, but as an institution that works for and within society.⁵¹

Efforts to reform marriage law by rationing the ideal minimum age for marriage to 21 years is a necessity that must be carried out by regulators (legislative and executive), in order to build the legal ideals of the Marriage Law in the future (Ius Constituendum). Because in fact, if you are paid, Law no. 1 of 1974 contains the principle of maturity in terms of age, as in Article 6 paragraph (1), namely the marriage requirement is 21 years old for both men and women. And this is the true meaning in line with the main principle of benefit (hizbun nafsi) which is to avoid actions that bring more harm. The prospective bride and groom understand what will be carried out as a form of obligation and responsibility after the marriage contract, which brings family (household) relationships into a harmonious atmosphere (sakinah mawaddah and warahmah). Marriage not only aims to legalize the biological relationship (sex) between a man and a woman, but marriage is a form of sacred agreement (misaqun galizon) which is bound for a long time, (eternal) and one of the aims is to produce offspring.⁵²

b. Deviation from the Marriage Age Limit

Article 7 paragraph (2) of the Marriage Law allows someone to marry at a lower age limited to 19 years, by submitting a request for Dispensation to the Court for very urgent reasons accompanied by sufficient supporting evidence.⁵³ The law does not specify what "urgent" reason is meant, this is left to the judge's consideration as to whether he or she deems it appropriate to grant a dispensation.⁵⁴

Rules regarding this dispensation are sometimes necessary due to emergencies that deviate from normal situations and conditions. In reality, this dispensation is still a disgraceful act, however, legally it cannot be blamed, because the fulfillment of valid grounds justifies canceling the crime against the perpetrator.⁵⁵ According to Soerjono Soekanto, the dispensation is a deviation from the standards and basic regulations.⁵⁶ Forms of legal deviation can be grouped into two types, namely:

1. Justifying reasons (rechtvaar digingsgronden), namely reasons that eliminate the unlawful nature of an action, so that the action is justified;
2. Forgiving reasons (schuldopheffingsgronden), namely reasons that eliminate the defendant's guilt. The actions committed by the defendant were unlawful, but he was not punished.⁵⁷

By increasing the age limit for marriage to a minimum of 21 years, this will become the minimum age standard for applying for dispensation to the court, as one of the main requirements in applying for dispensation, namely a minimum age of 18 years for prospective male and female brides, in addition to being accompanied by sufficient supporting evidence requirements. So it will be far from child marriage, as is perceived in various laws and

regulations regarding the age limit for children of 18 years. The question that arises is, are dispensation cases increasing? If this continues to happen due to other factors that cannot be avoided by men and women, the percentage level is relatively small, in line with the growing awareness and level of knowledge in society.

The ideal concept of a marriage age limit is a progressive idea in responding to the anxiety of all parties regarding the dangers of marriagechild. Thinking progressively means having the courage to leave the mainstream of legal absolutist thinking, then placing the law in all human issues. Working based on a legally determined mindset is indeed necessary. However, this is not something that absolutely must be done when faced with a problem that uses modern legal logic, which will harm the position of humanity and truth. Working based on a progressive legal mindset or paradigm will see that the main factor in the law is humans, while in a positivistic legal paradigm it believes in the truth of the law over humans. Humans can be marginalized as long as the law remains upright. On the other hand, the progressive legal paradigm thinks that it is law that can be marginalized to support the process of existential humanity, truth and justice. The main agenda of progressive law is to place humans as the main center of discussions about law. For progressive law, the law is for humans and not vice versa, and the law does not exist for itself, but for something broader, namely for human dignity, happiness, welfare and human glory.⁵⁸

Acceptance of human factors, will bring progressive law to the attention of behavioral factors (*behavior; experience*) man. In the positivistic legal paradigm, the position of humans is for law and legal logic, so that humans can be forced to be included in the law. On the other hand, in a progressive legal paradigm, the law is placed for humans. If human factors, including truth and justice, become a point of legal discussion, then ethical and morality factors will naturally be dragged into it. Ethical and moral factors are very necessary in building a progressive legal concept, because ethics and morals will talk about right and wrong or good and bad, which are directly inherent in humans.⁵⁹If human ethics or morals have faded, then law enforcement will not be achieved, so building a society for human prosperity and happiness will not be realized. Building the foundation of this mental awareness is by improving morals, moral development or developing the character of the community so that it becomes a moral society with high morals, so that a peaceful and prosperous society, a just and prosperous society can be built."

c. Concept of handling marriage dispensation

Marriage dispensation problemsit is clearly stated, but does not state the reasons that the judge considers in granting dispensation permission. In general, it only explains that the man's parents and/or the woman's parents can ask the Court for dispensation for "very urgent reasons" accompanied by sufficient "supporting evidence." This provision is still general, because it is not yet clear about the categories of very urgent reasons and the form of supporting evidence that meets the requirements for providing legal consideration by the court.

Republic of Indonesia Supreme Court, has determined that the judge's decision must consider all aspects of a juridical, philosophical and sociological nature, so that the justice to be achieved, realized and accounted for in the judge's decision is oriented towards legal justice,

moral justice and community justice (social justice).⁶⁰ Consideration of the juridical aspect is the first and main aspect based on the applicable laws. Judges as law applicators must understand the law by looking for laws related to the case at hand. Judges must assess whether the law is useful, or provides legal certainty if enforced. Regarding the philosophical aspect, it is an aspect that is based on truth and justice, while the sociological aspect considers the cultural values that live in society.⁶¹

So far, the fulfillment of the rights of women and children has not gone well, there has been a lot of neglect of their rights. This incident was caused by a weak equality perspective in legal handling of cases such as domestic violence (KDRT), marriagechildren, and divorce. Administrative mechanisms and legal considerations have also not fully directed efforts to protect the rights of women and children.⁶² The concept in handling marriage dispensation cases by court judges should pay attention to various aspects, the juridical, biological and sociological substance of the prospective bride and groom. This aspect concerns very broad issues, so paying attention to the limitations has become a requirement in giving legal considerations before making a verdict of "granting" or "rejecting" each request for a dispensation case.

According to Bagir Manan, general legal formulations never cover every legal event with certainty, whose role is to connect or connect concrete legal events with abstract legal provisions.⁶³ Judges, in carrying out their duties, are not just trumpeters of the law, but always try to make legal discoveries, by interpreting a statutory provision by connecting events, legal facts that occurred at trial, so as to obtain confidence in the defendant's actions or the argument of one of the parties in the case is proven correct based on the evidence regulated in procedural law (Article 183 in conjunction with Article 184 paragraph (1) of the Criminal Procedure Code, and Article 163 in conjunction with Article 164 HIR).⁶⁴

Thus, the judge who handles the petition, truly referring to Article 20 point (a) is "a judge who already has a decree from the Chief of the Supreme Court as a juvenile judge, has undergone training and/or technical guidance or is certified in the Juvenile Criminal Justice System or has experience in adjudicating petitions. Marriage Dispensation".⁶⁵

d. Concept of Legal Sanctions for Violating the Marriage Age Limit

Implementation of statutory regulations will not be effective if it is not accompanied by law enforcement. Legal enforcement of a statutory regulation can take various forms, one of which is stated in the sanctions provisions, which can be in the form of criminal sanctions, civil sanctions, or administrative sanctions.⁶⁶ This sanction provision is an option, meaning that it is not necessary to apply all three, but you can choose which one is most effective and which is most appropriate in relation to the scope of the substance of the regulation.

Sanctions are a reaction (punishment) to force someone to follow the rules or to comply with the provisions of the law.⁶⁷ According to JCT Simongkir, et. al, sanctions in Dutch Sanctie, which means threat of punishment, are a coercive tool to comply with rules, laws, for example sanctions for violating laws.⁶⁸ According to Lawrence M. Friedman, sanctions are ways of establishing norms or regulations.⁶⁹ Sanctions are described as: "de sanctie wordt gedefinieerd

als: regels die voorschrijven welke gevolgen aan de niet naleving de overtreding van de normen verbonden worden".⁷⁰Sanctions are an important part of legislation. It is intended that all provisions that have been formulated can be implemented in an orderly manner and are not violated.⁷¹This is in accordance with one of the principles that must be fulfilled in the formation of statutory regulations, namely the principle of efficiency and usability. This means that every legal regulation is made because it is really needed and useful in regulating the life of society, nation and state.⁷²

Consistent and integrated law enforcement will also bring benefits to society, namely the emergence of a deterrent effect, so that it can prevent someone who wants to violate the law..⁷³In fact, positive law cannot create balance for society, there needs to be fundamental and total changes to the existing legal system, the elements of the legal system in question are legal substance and legal beliefs.⁷⁴The purpose of implementing sanctions provisions in statutory regulations: First, as an effort to enforce the provisions of statutory regulations, Second, to provide punishment for anyone who violates a statutory norm; Third, it deters someone from violating the law again. Fourth, prevent other parties from violating the law.⁷⁵

Government Regulation no. 9 of 1975 has established criminal sanctions related to violations of certain articles in the Marriage Law. Criminal provisions are contained in Article 45 paragraph (1) unless otherwise specified in the applicable laws and regulations, then: a. Anyone who violates the provisions stipulated in Article 3, 10 paragraph (3), 40 of this Government Regulation is punished with a fine of up to Rp. 7,500,- (seven thousand five hundred rupiah); b. Registrar employees who violate the provisions stipulated in Articles 6, 7, 8, 9, 10 paragraphs (1), 11, 13, 44 of this Government Regulation are punished with imprisonment for a maximum of 3 (three) months or a fine of up to Rp. 7,500,- (seven thousand five hundred rupiah).⁷⁶

Violation of the stipulated marriage age limit is a form of legal violation, namely deviation from the law without any valid basis.⁷⁷According to W. Wirjono P. an unlawful act is an act that violates another person's legal rights, or which is contrary to the legal obligations of the person who made it, or is contrary to morality.⁷⁸Marriage of minors can legally be categorized as an act of morality. Crimes in the field of morality are crimes related to sexual matters. In the Criminal Code (KUHP)⁷⁹regulated in Chapter XIV Book II with the title "Crimes Against Morality", consisting of:

1. crime of adultery (Article 284);
2. crime of rape for sexual intercourse (Article 285);
3. the crime of having sexual intercourse with a woman outside of marriage who is not yet 15 years old (Article 287); And
4. the crime of having sexual intercourse with a married woman who is not yet married and causing injuries (Article 288);

Moral crimes do not appear suddenly, but through a process of abuse that is initially considered normal, but then leads to crime. Sex harassment is an abuse of a woman's relationship with a man that harms one party because they are harassed, lowered his dignity. Various sensitive

issues affect the lives of women, including crimes of sexual violence and sexual harassment.⁸⁰ The concept of sanctions for violations of the marriage age limit, within the framework of marriage law reform in Indonesia, can be constructed in two forms of imposing sanctions, First; a. Administrative sanctions are a type of legal sanction, which are established as a basis for ensuring respect for general provisions that have been regulated in laws and regulations that are generally binding. The implementation of administrative sanctions for legal subjects cannot be separated from general and concrete policies with the aim of creating order, providing legal certainty and guaranteeing the protection of the rights of every person from disturbances that have been violated.⁸¹ Second, criminal sanctions. Punishments imposed by criminal law lead to deprivation of liberty (detention), property (confiscation), dignity and even a person's soul (death penalty). Therefore, the application of criminal law must be based on clear criminal procedural law.⁸² According to Sudarto, criminal sanctions are punishment imposed by the state on someone who violates the provisions of the law, deliberately so that it is felt as a punishment.⁸³ HL Packer stated that the aim of treatment is to improve the person concerned, while punishment is based on the following aims: a) To prevent the occurrence of crimes or undesirable or wrongful acts (the prevention of crime or undesired conduct of offending conduct); b) To impose adequate suffering or retribution on the offender (the deserved infliction of suffering on evildoers/retribution for perceived wrong doing).⁸⁴

The inclusion of sanctions material in the reform of marriage law as a form of just law enforcement and benefits for the life of the nation and state, in addition to being a form of harmonization of the material content in the KHUP⁸⁵ as regulated in Articles 401 – 405 concerning acts of concealment of marriage events, and Articles 411 – 423, concerning acts of adultery and sexual immorality.⁸⁶ This can also be categorized as an act of Domestic Violence (KDRT), in Article 1 of the Domestic Violence Law: "Every act against someone, especially women, which results in physical, sexual, psychological misery or suffering and/or neglect. household, including threats to commit acts of coercion or unlawful deprivation of liberty within the household."⁸⁷

The parties who can be responsible for enforcing marriage law in an effort to protect and prevent child marriage, of course, are seen from their role in the occurrence of an act that is against the law, namely: 1) government; 2) parents and/or family; 3) children and 4) community and stakeholders.

According to Thomas A Wartowski, in order for the implementation of sanctions to be effective, the law itself must have support from the community/ the people, and to obtain popular support, the legal rules must be in accordance with the values and legal culture of the people at large, so that they are in accordance with the provisions of society.⁸⁸ The high prevalence of child marriage and the negative impacts it causes are enough reasons to reduce the number of child marriages in Indonesia. According to Mardi Candra, there are three solutions that decision makers can consider. First, apply criminal sanctions to parties involved in illegal child marriages. Second, enforce strict rules that are complemented by imposing fines when granting marriage dispensation permits. Third, carry out massive outreach to all Indonesian citizens about the impact of child marriage.⁸⁹

In comparison that in Pakistan, if a person under 18 years of age enters into a marriage contract with a minor, then the child's parents or guardians who force their child to marry, or because of their negligence, can be threatened with imprisonment for a maximum of one (1) month and/or a fine of a maximum of one thousand (1000) Rupees, with the exception that the woman was not sentenced to prison.

If the marriage still takes place, even though the Court has warned the guardian not to carry out the marriage, the parents or guardians are threatened with a maximum prison sentence of three (3) months and/or a fine of one thousand (1000) Rupees, either on the court's own initiative or on a complaint from public.⁹⁰

CONCLUSION

The ideal concept of limiting the age of marriage in future marriage law reforms (*ius constituendum*), it is increased to a minimum age of 21 years, as a category of biological, psychological and sociological adulthood, as regulated in Article 6 of the Marriage Law, Government Regulation no. 9 of 1975 and Compilation of Islamic Law. Deviations from the marriage age limit still require dispensation from the Court.

However, it is very necessary to standardize the marriage dispensation, by determining a minimum age limit of 18 years for prospective male and female brides as the main requirement for applying for a marriage dispensation. Apart from that, the concept of sanctions is regulated for parties who practice underage marriages, sanctions for guardians, witnesses and adult grooms who marry underage girls, and Marriage Registrar Officers and other involved parties. .

Foot Notes

- 1) Eduardus Marius Bo, *Theory of the Rule of Law and Popular Sovereignty*, (Malang: Setara Press, 2019), p. 277.
- 2) Encik Muhammad Fauzan, *Basics of Legislation in Indonesia*, (Malang: Setara Press, 2020), p. 4.
- 3) Hans Kelsen, *General Theory of Law and state*, (New York: Russell and Russel, 1945-1973), p. 127.
- 4) The 1945 Constitution of the Republic of Indonesia.
- 5) Kaharudin, *Philosophical Values of Marriage According to Islamic Marriage and Republic of Indonesia Law Number 1 of 1974 concerning Marriage*, (Jakarta: Mitra Wacana Media, 2015), p. 29.
- 6) Aristoni and Junaidi Abdullah, "4 Decades of Marriage Law in Indonesia: Examining Legal Problems in Marriage in the Modernization Era", *Judisia Journal*, Vol. 7, no. 1, June 2016, p. 76-77.
- 7) Constitutional Court Decision No. 22/PUU-XV/2017 concerning judicial review of the age limit between men and women aged 19 years.
- 8) Law Number 1 of 1974 concerning Marriage Article 6 paragraph (2): To enter into a marriage, a person who has not reached the age of 21 (twenty one) years must obtain permission from both parents.
- 9) Signs of puberty, Fiqh scholars explain that the size of a person's puberty can be known in two ways, first, by looking at indications that show that a person has reached puberty, namely wet dreams for men, and menstruation for women. See Ahmad Imam Mawardi, *NU Thoughts on the Marriage Age Maturation Program in East Java*, (Surabaya: Pustaka Raja, 2018).

- 10) The Compilation of Islamic Law (KHI), is a form of legal reform effort regarding marriage, inheritance and endowments. Applicable in accordance with Presidential Instruction No. 1 of 1991, dated 10 June 1991, which was then followed by the issuance of Decree of the Minister of Religion of the Republic of Indonesia no. 154 of 1991 concerning Implementation of Presidential Instruction No. 1 of 1991
- 11) Civil Code (Burglijk Wetboek), translated: Subekti, (Jakarta: Pradnya Paramita), p. 98.
- 12) Zaeni Ashhadie, Sahrudin, Lalu Hadi Adha, Israfil, Family Law According to Positive and Indonesian Law, (Depok: Rajagrafindo Persada, 2020), p. 13.
- 13) Ibid. p. 17.
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