

# SYNCHRONIZE THE DIFFERENT LAW RULES STUDY OF LAW NUMBER 16 YEAR 2019 AND LAW NUMBER 35 YEAR 2014

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# SYNCHRONIZE THE DIFFERENT LAW RULES STUDY OF LAW NUMBER 16 YEAR 2019 AND LAW NUMBER 35 YEAR 2014

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## ABSTRACT

*The asynchronous is occurring toward the rules of adult for marriage according to law. In several laws which are applicable in Indonesia, the definition of a child and the definition of an adult according to the law are different.*

*This article aims to analyze the distinction legal rules regarding to adult age limits in marriage. The laws which regulate the age limit of adult are the Civil Laws, Law number 16 year 2019 on amendment Law no. 1 year 1974 on Marriage, Law no. 35 year 2014 on amendment of Law no. 23 year 2002 on The Child Protection, The Compilation of Islamic Law (KHI), Law no. 18 year 2004 on Position of Notary Public, Law no. 39 year 1999 on Human Rights (HAM), Law no. 11 year 2012 on Criminal Justice System of Children, Law no. 13 year 2003 on Employment. The method used in this study is a qualitative method with a juridical approach. The definitions of children listed in the Act have various definitions.*

*The Marriage Law allows the implementation of marriages at the age of 19 for men and women. According to the Civil Laws, adults are 21 years old. It is important to synchronize different rules regarding the definition of children. All laws that regulate the definition of children (child category) must be similar to other legal rules so that it will not cause multiple interpretations of the law.*

**Keywords:** Adult Age Limit, Legal Studies, Implementation of The Law.

## INTRODUCTION

Gavin Jones, Hsiu-hua Shen say the factors generally cited as contributing to the rising incidence of international marriage in the region: the increased mobility of population, particularly with respect to tourism, business travel, short-term employment and international study; and marriage market issues in a number of countries of the region, leading to deliberate and targeted search for spouses in other countries. It also reviews the types of international marriages in the region, including the national, ethnic and social characteristics of spouses in such marriages. Finally, it discusses the issues and problems covered and not (or inadequately) covered in the literature of international marriage in East and Southeast Asia in relation to the questions of rights and of the boundaries and sovereignty of the state (Jones & Shen, 2008).

According to Xavier Nugraha, he said that it is necessary to determine the age restriction in marriage which aims to make women's lives specifically protected in terms of health. In addition it can protect the psychological influence on women because when women are still said to have not reached the age set by the law, the psychological condition of women is not optimal (Nugraha et al., 2019).

The age limit for adults according to the law in Indonesia is regulated in several rules. Article 330 of Civil Law states that adult must be 21 years old. Article 47 (1) Law No. 16 year 2019, adult is 18 years old. Law No. 35 year 2014 on amendment to Law No. 23 year 2002 on Child Protection, the category of adult is 18 years old. According to The Compilation of Islamic Law (KHI), adult is 21 years old. Law No. 30 year 2004 on Notary Position, adult is 18 years old. Law No. 39 year 1999 on Human Rights (HAM), adult is 18 years old. Law No. 11 year 2012 on Criminal Justice System of Children, adult is 18 years old. And Law No. 13 year 2003 on Employment states that the adult age is 18 years old (Laws, 2004; Laws, 1999; Laws, 2012; Laws, 2003).

### Adult's Age Limit According to the Rule of Law Indonesia

According to Sofia the concept of the age limit for marriage under The Law No. 16 year 2019 asserted that man and woman are said to have grown up if they are 19 years old so they can get married. However, the law can also has exception, for example if the parents of married couples applying for marriage dispensation in court. Thus, it can be concluded that there is no firmness in this regulation (Hardani, 2015).

As stated by Suhaili that the pros and cons of marriage age is a problem for the community to get married. Young marriage becomes something that is vulnerable because it is considered the readiness mentally, physically and psychologically. Although the age of marriage has fulfilled the marriage age limit based on the law. Fulfillment of marriage age according to the Koran, Hadith and Law cannot yet be considered an adult. Because marriages that are aspired to are Sakinah families and indeed require mental, physical, as well as psychological maturity, not merely adults according to the law (Suhaili, 2018).

In the opinion of Wafa that marriage at a young age is a debate among scholars. There are difference of notions related to the age of marriage. Masalahah is a principal thing for marriage, because the measurement of maturity is not only seen in terms of age (Wafa, 2017). Likewise Christian constitutional rights are deprived due to discrimination on the age of marriage. Because the age distinction between women and men are not similar in the Marriage Law and the Child Protection Law which ultimately has implications for adult age limits (Christian & Edenela, 2019).

According to Asrori that someone can be said to be *haligh* if someone understands well how to manage wealth by spending it. People who are not yet mature may not be burdened with certain problems. Hanafi said that the man's maturity from the discharge of semen and women have menstruated. Even if there is none, it is measured by the age of 18 years old male and 17 years old female. According to Syafii, adults for men are 15 years and 9 years for women. From those opinions above of jurisprudence regarding the age limit of marriage, several countries also make their opinions as a basis in marriage (Asrori, 2015).

In the opinion of Ahmad, there needs to be a disparity in marriage age because of the benefits (mental, spiritual, financial and fiscal aspects) as well as the conditions that occur in society. This disparity can provide readiness in household relations where there is a balance between husband and wife (Hilmy, 2019).

The rule of law in Indonesia determines the minimum age for legal actions. The rules vary so that it opens a gap for the community in its application. Law No. 1 year 1974 on Marriage specifies that the age limit for marriage for men is 19 years and for women aged 19 years (Laws, 1974). Determination of the age of 19 years for women to be allowed to marry

means seen as an adult provision for a woman. The provisions in the Marriage Law regarding the age requirement of 19 years for women are actually not in accordance with Law No. 35 year 2014 on amendment<sup>14</sup> to Law No. 23 year 2002 on Child Protection. Article 1 paragraph (1) of the Law states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Adult according to this law is 18 years (Laws, 2002).

According to Hilman, marriage is not only a civil union, but also a customary bond and at the same time a kinship (Hadikusuma, 2007).

Fadhilah stated that in the Koran and Hadith not specifically mention the minimum age for marriage. General requirements that are commonly known are already halqih, common sense, able to distinguish good from bad with the result that they can provide good and bad so that they can give consent for marriage. The Government of the Republic of Indonesia as the organizer of the State has an obligation to regulate the state and society based on the Pancasila and the Constitution of the Republic of Indonesia year 1945. Considering the law governing marriage is listed in Law No. 1 of 1974 and the Compilation of Islamic Law (KHI), then the provisions in this law must be obeyed by all groups of people in Indonesia (Fadhilah & Rahmah, 2012). According to Dharma, in carrying out legal Acts, age is a formal requirement that must be fulfilled by someone in order to implement these legal acts. Meanwhile, the conditions that require a person to do this legal Act are confusing to the community. Due to differences in the determination of adulthood (Dharma, 2015).

### Implementation of Marriage in Indonesia

One of the roles of the Muslim family is to provide financial and emotional support for dependent members (aged, sick, single adults, especially women, children and disabled) in this security family, individuals are able to proceed through life. One of the roles of the family is to instill in members loyalty to the group and the society. It is within the family system that Muslims develop religious Training, develop moral character, establish close social relationships, and sustain loyalty both to family and society (Onedera, 1975). Within Islam, the family is viewed as the Foundation of society: as such, Three are prescribed rules, roles, expectations, and duties incumbent on family members (Mawdudi, 1980).

Since the law on regulating marriage is Law No.1 year 1974 on Marriage, the stipulation in this law must be obeyed by all classes of people in Indonesia. One of the principles adopted by this law is that a prospective husband and wife must have been mature on their body and soul to be able to carry out a marriage in order to realize a good marriage without ending in divorce and obtain good and healthy offspring. For this reason, marriage between prospective husband and wife who are underage must be prevented.

According to Rifiani, a marriage is a social phenomenon in the community. Because it always attracts young man's desire to explore further about what and how about early marriage (Rifiani, 2011). Whereas, Child marriage (before age 18) is a risk factor for intimate partner violence (IPV) against women. Bangladesh has the highest prevalence of IPV and very early child marriage (before age 15). In main-effects models, marrying at 18 or later protected against physical IPV, and more prevalent very early child marriage (Youbnt et al., 2016).

The adjustment of marriage from every religion in Indonesia requires the same purpose of creating a happy family. The existence of a happy family is in line with the mandate of the Marriage Law, which is to create a joyful and eternal marriage based on the One and only God.

Ghufron say marriage will not benefit if it is done when the bride and groom are not mature yet. Therefore, it is implemented a policy to provide an age limit in marriage. Almost in every area of life maturity will be used as a benchmark for responsibility for actions that can be accounted for perfectly. Also marriage can make it possible to maintain the dignity of one's own self (Ghufron, 2016).

That by getting married people will get happiness, both materially and spiritually. The contentment to be achieved is not only temporary but also an eternal happiness, therefore the expected marriage is also an everlasting marriage, which can end in death.

As a result of the exploration involved in the preparation of the basic materials, it should be possible to plan a more unified and meaningful study the next time one is undertaken. For instance, it has become apparent that the analysis of socio-economic differentials in age at marriage and in the gap between the ages of spouses can probably be made much sharper by studying data for persons quite recently married and by controlling the results more closely on age (Glick & Landau, 1950).

Actualizing the purpose of marriage as mandated in the Marriage Law requires careful preparation from each party both outwardly and inwardly. One thing that is regulated concretely in the Marriage Law is the minimum age requirement for a candidate to be able to get married.

Rahmawati asserted that the purpose of limiting the age of marriage is to provide benefits to the bride and groom, as well as for all members of big families and communities. In rural communities, underage marriages occur mainly in the middle to lower economic group which is more a social form in the division of roles and responsibilities of women's families to husbands (Rahmawati & Widhiyanti, 2018). Marriage is something that is common to everyone. It can be called as a personal rights of every individual who wants to carry it out. In addition, God has planted nature on every living creature, especially humans to proliferate (Sudirman, 2016). Nurudin analyzed that the marriage age regulation has a fairly close relationship with population problems. With age restrictions there is an impression that the Law on marriage intends to hold back the rate of marriage which has an effect on the rate of population growth (Nurudin & Tarigan, 2004).

Meanwhile, according to Supriadi, it cannot be denied that it turns out that a young age limit for a woman to marry, caused a higher birth rate and also results in quite high maternal mortality (Supriadi, 2001).

The terms of the marriage are set out in Article 6 of the Marriage Law as follows:

1. The marriage must be based on the consent of both bride and groom.
2. To perform the marriage of a person under the age of 21 must obtain the consent of both parents,
3. In the case that one bride or groom's parents has passed away or is in a state of inability to express his will, then the consent of paragraph (2) of this article is only obtained from the parent who still alive or from the parent who is able to express his will.
4. (4) If both parents had passed away or in a state of inability to express their will, the consent is obtained from the guardian which nurture or family who has a direct lineage of blood during their lifetime and in the event that they express their will,
5. In the event of disagreement between persons, the person referred to in paragraphs (2), (3) and (4) of this article, or one or more persons among them do not express their opinion, then the court of law of the person who is going to marry at the request of the person may grant permission after first hearing the person in paragraphs (2), (3), (4) of this article.
6. The provisions of paragraphs (1) to paragraph (5) of this article shall prevail throughout the respective laws of their religion and such trust shall not constitute otherwise.

Parents have the obligation and responsibility to prevent marriages at the age of children. The principles adopted in the Marriage Law and the Child Protection Act, although the two laws specify different ages in the determination of maturity, do not wish for underage marriages. According to Inayati, parents are the first ones who responsible for the realization of children's welfare, spiritually, physically, and socially. In the application of these two laws, we can analyze the principles of law *lex posterior derogate legi priori* dan *lex specialis derogate lege generali* (Inayati, 2015).

Whereas from the sociological aspect according to Sumbulah that the phenomenon of early marriage is related to socio-cultural factors in patriarchal societies that are gender biased. Where placing women in a low position and is only considered a male sex complement. Sexually, early marriage can also have implications for the existence of deviant sexual behavior that is behavior that likes to have sex with children (pedophilia) (Sumbulah & Jannah, 2012).

Based on Purnawati's opinion, the practice of marriage at a young or underage age is still mostly found in some communities. So that some of the Laws that have been made do not apply in a certain area even though the Law has existed since long ago (Purnawati, 2015). Likewise, according to Dewi, Indonesia is a country with a high percentage in ASEAN in getting married at an early age, 4.8% at the age of 10-14 years, 41.9% at the age of 15-19 years. This evidence shows the high percentage of marriage age (Dewi, 2015).

Parents are obliged and have full responsibility to prevent underage marriages due to several medical problems that can endanger children who are underage marriages, which is marked by the results of UNICEF Research in 2014, found that 720 million women were married when they were children, where one in three of them married before the age of 15 years. Girls who marry young face adverse effects on their health as a result of early childbirth, an increased risk of domestic violence, malnutrition, and sexual and reproductive health disorders. They experience poor conditions for all social and economic indicators compared to girls who delay marriage, including lower levels of education and higher levels of poverty. Following is a presentation table of women who married before they were 16 years old and women who were married before they were 20-24 years old who were married before they were 15 years old.

The requirement of marriage according to the Marriage Law are:

1. Marriage is only permitted if the male has reached the age of 19 and the woman has reached the age of 19.
2. In the event of a deviation from paragraph (1) of this article may request dispensation from the court or official others appointed by both male and female parents.
3. Provisions regarding the condition of one or both parents in Article 6 paragraph (3) and (4) of this Law apply where the dispensation request paragraph (2) this article without prejudice to what is meant in article 6 paragraph (6).

The rules regarding age to get married as mandated in article 7 paragraph 1 of the Marriage Law are often violated by the community. This is because they engage in promiscuity that causing pregnancy. When a woman becomes pregnant due to the association, the family asks the men take responsibility even if they are underage.

Education is a key in determining at what age women marry, having as would be expected a positive effect on age at first marriage and depressing spousal age gap. According to Fadlyana, it was suggested that the 2005 analysis of the inter-census population survey (SUPAS) from the National Population and Family Planning Board (BKKBN) found that marriage rates in urban areas were lower than in rural areas. For the 15-19 year age group the difference is quite high at 5.28% in urban areas and 11.88% in rural areas. This shows that young women in rural

areas do marriage at a young age. Rahmita argued that in terms of age at marriage and education level, both subjects who were married at the age of 16-20 years (adolescents) and subjects who were married at more than 20 years (early adulthood) almost all experienced control violence (Rahmita, 2019).

The age limit in getting married is necessary or can be said to be very important. This is because marriage requires psychological maturity. Age of marriage that is too young can result in increased cases of divorce because of the lack of awareness to be responsible in married life for husband and wife.

According to Yulianti, marriages at a young age have a bad influence on their children, usually children with low intelligence. Low intelligence is caused because the mother has not provided mental stimulation to their children. Therefore, readiness to become a mother influences the children's growth (Yulianti, 2010). Meanwhile Hidayat stated that one of the problems that will be faced from early marriage is how to educate children with appropriate and correct parenting. Parents who prioritize children's interests are very rarely found (Hidayat, 2013).

Most societies have adopted child marriage which is in accordance with the provisions of Article 7 of the Marriage Law. The marriage of the child was done by asking for dispensation from the Court. On the other hand marriages are also performed according to the religious terms of each party. Inayati asserted that the guardianship system also contribute to the development of a minority marriage related to the pillar that the bride needs to fulfill. The existence of this provision provides the opportunity for girls to be forced into marriage through the institution of marriage dispensation. This contradict to the law protection of child which is defined as protection of the various freedoms and rights of the child and various interests in the welfare of the child (Inayati, 2015).

The provisions of the Compilation of Islamic Law further strengthen the provisions of the Marriage Law. The public needs to understand the stipulation of the age limit of marriage by the need for an evaluation of it, so that the law can be accommodated in the real lives of the people, especially Muslims.

Looking at article 2 paragraph (1) of this Marriage Law opens the door for the public to practice the underage marriage. Because the age limit of adulthood is not clearly set in Islam. They argue that if the terms and conditions of the marriage are met, their marriage is lawful and that the law allows for that. Thus article 2 paragraph 1 of the Marriage Law can be used as the basis of the law of Islamic marriage law in Indonesia as special rules as well as the general rules set forth in the Marriage Law, for Indonesian citizens of Islam.

According to Mohammad, the ideal marriage for women is 21-25 years while men are 22-28 years. Because at that age the female reproductive organ is psychologically well developed and strong and ready to give birth to offspring physically begins to mature. Having a marriage without preparedness and careful consideration from one side can indicate a non-affirmative attitude towards the meaning of marriage and even further can constitute harassment of the sacredness of a marriage (Mohammad, 2005).

Fadhilah argued that although the Marriage Law had been enacted which was then followed by the issuance of the 1991 Indonesian Presidential Decree on the dissemination of KHI, there were still many marriages that had weak law enforcement. One violation is child marriage. While marriage is a legal event. As a legal event, the legal subjects who carry out the event must meet the requirements. One of the requirements for humans to carry out legal subjects

is that they must be adults. So, maturity is a measure of whether or not someone can take legal action (Fadhilah & Rahmah, 2012).

An example that occurred in Indonesia was a marriage that took place between Sheikh Puji where he married a 12-year-old girl who basically according to law the woman had not been permitted to get married (BOG, 2008). Not only that, in Tapin South Kalimantan similar things also happened, the marriage was cancelled after they had been husband and wife for one day (Aziz, 2018), in Sinjai in South Sulawesi something similar happened (Dalimunthe, 2018), then also in Bantaeng Village even the two couples married just because they were afraid of sleeping alone (Damanik, 2018).

The same thing happened to both partners in Polewali Mandar Regency, West Sulawesi, the two couples who according to the law were not ready to get married were married because they often went out together at dawn time (Wijaya, 2017). In fact, there are also children who are still 15 years old doing marriage, this happens in Baturaja, South Sumatra.

Underage marriage that occur in society are contrary to article 1 of the Law. 35 of 2014 on child protection. Implemented marriages are classified as child marriages because their age at marriage is less than 18 years. Marriage performed in accordance with article 7 paragraph (1) of the Law. 1 of 1974 is against the child protection law because the minimum requirements described in article 7 (16-year-old for women, 19-year-olds for men) it is belong to the category of the of children on behalf of women (Bukido, 2018).

Events that involving underage marriages have various reasons. Even so the rules set by the government in the presence of these laws do not see that because of the obvious reasons for restrictions on the age of marriage. To be able to do the marriage, both men and women submit an application to the court to allow the marriage.

Rohman said that in various regions in Indonesia, parents feel ashamed if their daughter is not married at the age of 20 years. Parents do not fully understand that to get married and have children a woman should have physical and mental readiness (Rohman, 2016). Whereas Abdussalam said that the low age of the couple at marriage had an impact on family disharmony and could even lead to divorce (Abdussalam, 2015).

According to Nurhajati that the United Nations Development Economic and Social Affairs (UNDESA) data for Indonesia is the 37th country with the highest number of early marriages in the world. For the ASEAN level, Indonesia ranks second after Cambodia. An important thing that needs to be considered in preparing for marriage is what is the right age for a man or woman to get married. The government has revised the minimum age requirement for marriage by issuing Law Number 16 Year 2019 concerning Amendment to Law No. 1 year 1974 concerning marriage. It is intended that both parties are really mature and ready to get married (Nurhajati & Wardyningrum, 2012).

Looking at the views of the Grijns and Horii. Although the government set development goals that include ending child marriage and complying with human rights standard, it is facing considerable resistance. The state legal system and law in practice to understand this resistance, finding that:

1. Law-making in family law involves conflict between progressive and conservative ideas;
2. Consequently there is friction within current family law and laws regarding human rights;
3. Judges use their discretion to achieve compromises between state laws and local norms;
4. State law is creatively interpreted and applied at village level (Grijns & Horii, 2018).

## CONCLUSIONS

Harmonization of the law needs to be done towards the age limit according to the law. It is necessary to harmonize the adult definition according to the law. The community needs a clear and equal legal protection. So that, the rule of law can be implemented very well and effectively in Indonesia. Age 18 years is the minimum standard of children entering the adult category as stated in other legal regulations. Revisions to the marriage law and maturity of the marriage age are proposed as part of efforts to prevent underage marriages.

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