



Analysis of Legal Theory of Marriage Age Limit: A Study of Human Rights Equality

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Abstract. It can be argued that the desire to live peacefully with one's partner through marriage is a fundamental human right. In Indonesia, marriage is legally regulated by a number of laws and regulations, one of which relates to the age limit for entering into such a marriage. In this context, a constitutional court review has been initiated to address the discrepancy in marriage age limits between men and women. The review requests that the age limit for marriage be equalised at 19 years old. The Court has granted the application, thus establishing a new legal precedent. This research employs a normative legal research methodology, employing a conceptual approach to literature study and deductive analysis. The objective is to analyse the decision in light of existing legal theories. The results of the analysis of existing legal theories indicate that the decision reflects justice and legal certainty based on the principle of human equality before the law as a manifestation of human rights.

Keywords: *Marriage, Age Limit, Human Rights*

1 Introduction

Humans are social creatures, as individuals. This principle renders humans incapable of living independently. Humans, in all their abilities, both physiological and psychological, require the presence of other individuals in order to fulfill their needs. The interdependence of one human being on another represents a form of positive reciprocal relationship. The relationship between humans is a fundamental aspect of social life. Such social interactions give rise to a plethora of issues and perspectives. Humans, with all their psychological dynamics, form a social order in society with various social and cultural backgrounds. Furthermore, as social beings who are unable to live independently, humans also progress through stages of their life development. Humans progress through a series of stages during their lifespan, from birth to the end of their lives. Each phase of life has an impact and influence that can be interpreted as a life lesson. One phase of life that is considered significant by a considerable number of people is the early adult phase. The early adult phase is regarded as a pivotal period, situated between the tumultuous years of adolescence and the phase of maturity that is considered to be a hallmark of human development.

One of the most significant aspects of human development during the early adult phase is the emergence of romantic attraction to the opposite sex. The manifestation of attraction to the opposite sex in early adulthood is evidenced by a greater degree of seriousness than observed in adolescence. In adolescence, individuals may manifest attraction to the opposite sex by establishing a couple relationship. However, in early adulthood, individuals are more oriented towards marital ties, where the relationship is

not only limited to lovers but also encompasses the legal aspects of a husband-and-wife relationship. It is important to recognise that this marital bond is not something to be trifled with. In addition to requiring the parties (husband and wife) to resolve any issues or problems in a mature manner, the legal mechanism that discusses the matter of marriage also demands that the parties demonstrate full maturity. Indonesia, as a state of law, has established a set of legal regulations regarding marriage. As previously stated, the purpose of marriage is to form a family. Furthermore, the institution of marriage itself has its roots in religious law. Religion initially establishes that marriage is a religious institution. A valid marriage is defined as one that adheres to the stipulated administrative and procedural provisions, as well as the tenets of the individual's religious beliefs. Furthermore, Indonesian law also stipulates that "The State guarantees the freedom of each resident to embrace his or her own religion and to worship according to his or her religion and belief".

The institution of marriage will only be beneficial once both partners are prepared to play a constructive role in achieving the objectives of marriage. It can be argued that humans were not created in the same manner as other creatures, which are free to live according to their instincts and to relate to one another without the constraints of rules. However, in order to preserve human honour and dignity, Allah, the Almighty, made demands that are in accordance with human dignity. This form of marriage provides a secure environment for the expression of the sexual instinct in a manner that ensures the optimal nurturing of offspring and the maintenance of self-respect. It is a means of safeguarding the individual from being treated as a mere resource, as is the case with grass that can be consumed by any livestock at will.[1] In Islamic tradition, marriage is regarded as a sacred agreement or bond, imbued with meaning as a sacred worship of Allah, and as a means of carrying out the sunnah of the Prophet. It is understood to be a sacred union, entered into on the basis of sincerity, responsibility, and in accordance with the legal provisions that must be implemented. Furthermore, Law Number 1 of 1974 concerning Marriage elucidates that marriage is a physical and mental bond between a man and a woman as husband and wife, with the objective of establishing a harmonious and enduring family unit founded upon the Almighty God.[2] It is a well-established fact that humans will not reproduce without marriage. It can be reasonably assumed that marriage will result in the birth of offspring. Marriage is a physical and mental bond between a man and a woman that forms a lasting and happy family. The institution of marriage is undertaken with the intention of establishing a legal family unit with the objective of achieving a happy life in this world and the hereafter, in accordance with the pleasure of Allah SWT. Furthermore, the purpose of marriage is not merely to fulfill biological needs; it is also to obey the commands of Allah and His Messenger. This obedience is worthy of worship, as it enables the construction of a prosperous family that benefits the individuals involved in the marriage, as well as their children and relatives. It can be argued that marriage serves to benefit society and the nation as a whole.[2]

Marriage has the aim of building a family or household that is eternal and happy based on the first principle of Pancasila, namely Belief in One God. Based on this, Law Number 1 Year 1974 places conditions on the permissibility of a person to marry. In addition, the conditions of marriage are necessary for legal certainty, considering that this marriage has broad consequences, namely it will have consequences for the parties

concerned, the families of the parties, the community, and the state. Marriage is a legal act that has legal consequences. If the marriage of the parties concerned is considered valid according to the law, then the consequences of the marriage will also be considered valid according to the law.[3] One of the legal requirements in marriage, according to Law Number 1 Year 1974 concerning Marriage, is related to the age limit for marriage. This age limit is the minimum benchmark for a person to be considered mature and capable of carrying out a marriage. Previously, the age limit for marriage in Law Number 1 Year 1974 was determined in Article 7 paragraph (2), which states "the age limit for marriage is 16 years for women and 19 years for men". One of the impacts is the unpreparedness of girls' reproductive organs, which contributes to the high mortality rate of mothers who give birth and their children, malnourished babies and stunted children.[4] The difference, where men have an age limit of 19 years, while women have a lower age limit of 3 years or a minimum age of 16 years, as explained above, in addition to having potential problems with the physical marriage of women, is also seen as unequal or not equal before the law. The disparity in the age limit is deemed to contravene the Constitution of the Republic of Indonesia, Article 27, paragraph (1), which stipulates that "*All citizens shall be equal before the law and government and shall uphold the law and government with no exception*". This principle is a manifestation of the principle of equality before the law. Moreover, Article 28D, paragraph (1) of the Constitution of the Republic of Indonesia stipulates that "*All individuals are entitled to recognition, guarantees, protection and certainty of a just law and equal treatment before the law*".

It is anticipated that all extant legislation will afford protection and legal certainty to all citizens. The concept of legal certainty is of significant importance, as it provides citizens with a sense of peace and security in their understanding and implementation of the law. As elucidated by Lon Fuller, legal certainty must be realised by law in accordance with eight principles, which are cumulative and inseparable from one another. The concept of legal certainty serves to guarantee that all individuals are treated equitably under the law. Gustav Radbruch posited that legal certainty and legal justice are inextricably linked, as both are fundamental aspects of the law. He posits that legal certainty must be maintained for the order and security of a country. In order to achieve the value of justice and happiness, positive law must be obeyed and based on the theory of legal certainty.[5] One of the eight principles described in the concept of legal certainty, as elucidated by Lon Fuller, is that there should be no contradiction between one law and another. As previously stated, the discrepancy is regarded as an illustration of a conflict between two pieces of legislation. This prompts the author to engage with the existing legal theory approach in order to further elucidate the matter. In the Indonesian legal system, two distinct mechanisms exist for the enactment of laws: legislative review and judicial review. The legislative review mechanism involves the discussion of proposed legislation within Parliament, in collaboration with the Government, with the objective of enacting laws. In contrast, the judicial review mechanism serves to assess the constitutionality of laws that have been passed through the legislative review process, with the constitution serving as the "test basis" for the law in question. The judicial review mechanism may be initiated by citizens who have legal standing or by those who believe that they have suffered a constitutional loss as a result of the enactment of laws by the Government and Parliament through the previous legislative review.

With regard to the age limit for marriage, which has been elucidated by Law No. 1/1974 on Marriage, an application for judicial review of the aforementioned law has been submitted. The plaintiffs argue that they have suffered a constitutional loss due to the discrepancy in the age limit for marriage. For this reason, the author believes that it is necessary to discuss the issue of the age limit of marriage and analyse it with legal theory in order to dissect the decision. This paper looks at how Law Number 1 Year 1974 affects the age limit for marriage. The author wants to find out what the petitioners say about the law and the Constitution. Then, the author will look at what the Constitutional Court has said about the petition. Moreover, the author aims to see the substance of the Decision in light of existing legal theories. The author seeks to gain a more comprehensive understanding of the issue of the marriage age limit and its potential impact on legal regulations in Indonesia following the decision.

2 Method

It is essential to employ appropriate methods when undertaking research. This is because research activities require the implementation of stages that can subsequently perform the research function, which is necessary to ascertain the truth. The field of legal research is typically divided into two distinct methodological approaches: empirical research and normative research. The methodology employed in this study is that of normative legal research. Normative legal research is conducted through an approach that examines legal materials, including theories, concepts, legal principles, and laws and regulations that are pertinent or pertinent to the research in question. In this instance, The author uses two different approaches: a legal and a conceptual one, examining all pertinent laws, regulations, and other related concepts and ideas.

3 Result and Discussion

3.1 Judicial Review of the Marriage Law with the Constitution regarding the Age Limit for Marriage

The age limit for marriage as a requirement for individuals to marry has been tested. Through the Application, the Applicants filed a Test of Law Number 1 of 1974 concerning Marriage against the 1945 Constitution of the Republic of Indonesia concerning the Age Limit for Marriage which was submitted on April 20, 2017 by the Applicants and their attorneys to the Court. The Applicants explained that the scope of the article being tested was Article 7 paragraph (1) of the Marriage Law which states that "Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years" with the constitutional basis used being Article 27 paragraph (1) of the Indonesia Constitution which states "All citizens have equal standing before the law and government and are required to uphold the law and government without exception". The reasons for the application used by the Applicants in this case are as follows:

1. Article 7, paragraph (1) of the Marriage Law violates the principle of equal rights. This is because it allows unequal treatment under the law and discrimination against men in the age of marriage. This has caused real and potential constitutional losses to the Applicants and women in general. Children's rights are not achieved due to marriage under the age of 18. These rights include the right to health, the right to education, the right to grow and develop, the right to play, and other rights.;
2. The a quo provision creates a difference in legal status and discrimination against girls in health rights. Girls under 16 are at risk of getting sick when they get married. Boys are allowed to marry at 19 or older. This means that girls' legal status is different from boys'. This then creates discrimination in protection, where only boys are considered for their health risks;
3. The a quo provision creates a difference in legal status and discrimination against girls in the right to education. The difference in the age limit for marriage for women and men has resulted in a difference in the legal status between men and women in obtaining the right to education. Article 7 paragraph (1) of the Marriage Law constitutes state discrimination in differentiating the rights of women and men to get the right to education, where men receive greater opportunities and rights;
4. The a quo provision gives rise to differences in legal status and discrimination against girls at risk of child exploitation. The existence of the provisions of Article 7 paragraph (1) of the Marriage Law, which regulate the age limit for marriage for girls who are still children (16 years), this has led to boys and girls being treated differently. This has the effect of preventing constitutional rights, especially for girls, from being fulfilled;
5. The petitioners explain that most countries have equalised the minimum age for men and women in carrying out marriage after the existence of the child protection convention. Equality of the minimum age for marriage is possible. Women are still children at 16, while men are adults at 19;
6. The a quo application and the Constitutional Court's stance on the Open Legal Policy. The age limit for marriage in Article 7, paragraph (1) of the Marriage Law is open to interpretation. Setting the age of 16 for women has been harmful to women's constitutional rights. This has created injustice and differences in the eyes of the law against women. The Court has used this in deciding cases and should ensure the Applicants' constitutional rights are fulfilled.

In their petition, the applicants requested that the Constitutional Court accept and grant all requests for judicial review of the law submitted by the applicants in their entirety and to declare the provisions of Article 7, paragraph (1) of Law Number 1 of 1974 concerning Marriage, insofar as they are contrary to the 1945 Constitution of the Republic of Indonesia, to be void. The phrase "age 16 years" is conflict with Constitution, insofar as it is not read as "age 19 years". Alternatively, if the Constitutional Court is of a different opinion, it requests that the fairest decision be made (*ex aequo et bono*).

3.2 Legal Considerations of Constitutional Court's Decision on the Age Limit for Marriage

In relation to the cases, the Constitutional Court, as a constitutional judicial institution in Indonesia, offers legal considerations on the arguments presented by the applicant in his application and the legal facts established in a series of trials. The legal considerations provided by the Constitutional Court are as follows:

Firstly, with regard to the Court's authority, it should be noted that the Applicants are requesting a constitutional review of the law, in this case Article 7 paragraph (1) of Law No. 1 of 1974 concerning Marriage, against Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In such circumstances, the Constitutional Court is duly authorised to adjudicate the said request. Secondly, in relation to the legal standing of the applicants, an examination of the applicants' qualifications and the entirety of their legal standing description reveals that they have a legitimate interest in the outcome of this case. The applicants have clearly explained their constitutional rights, which they allege have been infringed by the enactment of the norms of the Marriage Law in question. The loss in question is said to arise from a causal relationship between the norms in question and the loss experienced by the applicants. If the petition is granted, it is argued that the loss in question will not occur. Therefore, the Constitutional Court is of the opinion that the applicants have the legal standing to file the petition. Thirdly, in relation to the primary argument presented in the application, namely that the disparity in age between men and women represents a tangible manifestation of the failure to achieve equality before the law. The legal age of marriage for women is below the age limit for children as defined in the Convention on Children's Rights. This convention states that if a girl is married before age 18, she will lose her rights as a child. The problem in question also demonstrates inequality between men and women, particularly in relation to mental and physical conditions. Furthermore, the differentiation of the provisions on the age of marriage between men and women, which is solely based on gender, constitutes a form of real discrimination.

Women who marry young are more likely to have problems with their reproductive health. These problems are linked to pregnancy. Women who have babies at 15 to 19 are twice as likely to die as women who have babies at 20 or older. This is different from the situation of men, where the age limit for marriage is higher than the age limit for children. Women who marry at an early age often lose their education. The different age limits for marriage for women and men result in different legal statuses for the right to education. Marriage at a young age for a woman also affects the family's economic situation. At that time, the girl can't say no to her family. Article 6, paragraph (1) of the Marriage Law says that "Marriage is based on the consent of both prospective brides and grooms." Women should be able to say yes or no to their marriage. The age limit for marriage between men and women also means girls can be married to older men, who are more likely to abuse them. In some countries, the minimum age for marriage is the same for men and women. The age limit for marriage is not clearly defined in law. It is therefore up to the Government and the People's Representative Council to decide. The 16-year age limit for marriage violates women's constitutional rights. This has made women unequal under the law. The Constitutional Court should protect the petitioners' rights.

The Court Ruling on Marriage Age Limit

The provisions of Article 7, paragraph (1) of Law Number 1 of 1974 concerning Marriage remain in effect until changes are made within three years. The legislators must change the law regarding the minimum age for women. The decision was read out in the Constitutional Court on 13 December 2018.

Analysis of the Constitutional Court Decision on the Marriage Age Limit with Legal Theory

The age limit for marriage is important when getting married. Being too young when you get married can affect your household. The most vulnerable thing to neglect is the age limit for marriage. Previously, Law Number 1 of 1974 concerning Marriage stated in Article 7, paragraph (1) that: "A man can marry at 19, while a woman can marry at 16." This is against the law. One of the principles of marriage is that the bride and groom should be mature. This is why there is a limit on the age of marriage. The Constitutional Court decided that the age limit should be the same for both and then made a new law about marriage.

The judge is not just a legal expert. They can also make the law. The judge must not only apply the law, but also uphold justice. Judges must uphold the law and justice, not just win cases that focus on economic values. This can distort morals, ethical values, the law, and the logic of rationality based on legal reasoning. A judge can make all their own decisions without being influenced by others. A judge who is free to decide cases without bias. Judges should be free to apply the law to real-life situations. They should also be able to interpret the law correctly to help them make fair decisions.[15] The Constitutional Court also helps to make sure that the constitution is followed in Indonesia. The Constitutional Court protects the constitution and interprets it. The constitution is the highest law. It rules the state according to the principles of democracy. It protects human rights, making them constitutional rights for citizens.

The judge decided that the article was useful for legal purposes, especially for women. The usefulness is linked to Jeremy Bentham's utilitarian theory. The idea of "the greatest happiness of the greatest number" means that the law is made to make people happy. The term is better understood as a guarantee of individual happiness by the state to eliminate suffering for society through legal instruments. The legal instrument is based on "happiness" and "suffering". Jeremy Bentham explained the concept of happiness determined by the majority in his time. At first glance, it seems like giving great happiness to society is a good idea. But the author thinks this explanation is still not quite right because Jeremy Bentham said that the greatest happiness of the greatest number is one of the things that matter in his utilitarianism theory.[16]

The utilitarian view is an ethical understanding that says actions that are good are useful, provide benefits, and are profitable. Actions that are not good cause suffering and loss.[16] The utilitarian perspective says that happiness is impartial because everyone wants it. Happiness is a moral touchstone that is "impartial promotion of well-being." Bentham said that happiness is the greatest good because it is felt by everyone and is impartial. Bentham's Utilitarianism Theory criticises legal positivism, which is more rigid and only limited to 'the governed' and 'the governing'. Bentham's opinion

gave rise to the theory of legal Utilitarianism. Bentham said that the law should make people feel happy and just. This is a psychological view.[17]

The legal age of consent for marriage is set to protect the rights and wellbeing of both the bride and groom. It ensures they are mature enough to make a good marriage and have healthy children. The minimum age for marriage is one way to protect women in Indonesia. A minimum age limit for marriage protects the health and welfare of Indonesian women.[18] As women's productivity and education improve, the minimum age for marriage is being questioned. One reason why the minimum age limit for marriage is no longer relevant is because the right to education has changed. When Marriage Law was passed, there was no law requiring the government to guarantee children's education. Today, 12 years of compulsory education has been introduced, in accordance with Article 2 letter a of the Regulation of the Minister of Education and Culture No. 19 of 2016 concerning the Smart Indonesia Program.[18] If women can't marry until they're 16, they can't go to school for three years. Meanwhile, men can get married at 19, so they can get 12 years of education. This means that women and men are treated differently. Men can get a full education, but women cannot. This is against the law, as set out in Article 27, paragraph (1) of the Constitution of the Republic of Indonesia.[18]

Child protection is a shared responsibility. Most people see being a parent as important. Some parents cannot create an adequate family environment for their children. It is not unusual for parents to need help. If a child is threatened in their family, as happened in the past, when parents had a lot of power over their children. The state must protect children by making sure they get their rights. This means setting a minimum age for marriage at 18 or 19. The Constitutional Court Decision provides legal certainty. Legal certainty helps to guarantee and protect people. With the same age limit for marriage, this shows that men and women are equal under the law. Lon Fuller says that there must be certainty between regulations and their implementation in practice.[19]

Marriage is not only about biology. It is about love and affection, which make us feel peaceful in our families and communities. To achieve this, couples must be ready before getting married. Marriages in Indonesia often involve different types and ages. Many people in Indonesia still believe that marriage is for adults, so many underage marriages occur. Many divorces and deaths occur because the mother is too young and cannot take care of the child. Marriages with minors are common in Indonesian communities, both urban and rural. Some people think underage marriage is normal.[20]

The Child Protection Law says that if you're under 18 and getting married, it's child marriage. Children are the future of the nation. Their rights must be protected. The Ministry of Women's Empowerment and Child Protection (2019) says that 30.1% of Indonesia's population are children. Underage marriage affects education, health, the economy, domestic violence, parenting and more. A 2018 survey found that girls who marry before 18 are four times less likely to finish high school than those who marry at 18 or older. 44.9% of women who marry before 18 only complete junior high school. Women who marry early are more likely to have high-risk pregnancies, die during childbirth, have preeclampsia, have poor contractions, have premature babies, and

more. The economic impact on women who marry before 18 is almost twice as much as working in agriculture compared to those who marry over 18.[21] The Islamic legal treasury has seen changes in how it defines maturity. Scholars disagree about what maturity means. First, maturity is determined by biological signs, such as wet dreams for men and menstruation for women. If you have these signs, you are considered mature. Second, using age to determine maturity. However, Jamil (2021) said that in Islam, the age limit for marriage is not stated directly, but through the criteria of maturity. The fuqaha say there are two signs of maturity: maturity with signs and maturity with age limits. Men are considered mature if they have wet dreams or ejaculate, while women are marked by menstruation. And maturity based on age limits. The imams of the madzhab have different views on the age limit of puberty. According to the Imams Syafi'i and Hambali, boys and girls reach puberty at 15 years old. The Imam Maliki says boys and girls are ready for puberty at 17. The Imam Hanafi says boys are 18 and girls 17.[22]

The latest Marriage Law limits marriage to those over a certain age. This is expected to keep women fertile. Women are the most important when it comes to reproductive health, but men's health is also important. Married women will have children. Underage marriage causes problems. It has been agreed that managing population and development problems should focus on reproductive health, rather than controlling population and reducing fertility. This new perspective affects women's rights and roles in family planning. Changes in approach also occur in handling maternal and child health, adolescent reproductive health, STIs, HIV/AIDS, and elderly reproductive health. These are discussed in the context of reproductive health and rights. This new approach should help to stabilise population growth.[23] Marriage requires maturity to maintain harmony in the household. Not just anyone can get married. There are rules about when the marriage takes place. The man and woman must be of a certain age. This is set out in the latest Marriage Law. It is also recognised by law and religion. A person who is old enough to marry is ready for it. They can take care of their children and their family financially. Underage marriage can cause divorce. This happens because the people who marry young usually don't have the money or the mental capacity to run a household. This leads to arguments and makes it hard for young couples to deal with problems. Not every married couple wants a divorce.[24]

4 Conclusions

Marriage is a bond between a man and a woman as husband and wife. It forms a happy and eternal family based on God. Marriage is a human need to meet biological, psychological and social needs. Marriage allows men and women to have sex with each other. Marriage is a private matter in Indonesia. It is legal. Marriage is also a legal act with legal consequences. Marriage is also a bond that creates a family, which is regulated by law. The Marriage Law also sets the age limit for marriage. The 1974 Marriage Law says that men can marry at 19 and women at 16. The difference in the age limit for marriage is against the 1945 Constitution of the Republic of Indonesia, which is the constitution of Indonesia. The petitioners have asked the Constitutional

Court to review the law against the constitution. The Petitioners say that the difference in the age limit for marriage is unfair to women because it stops them from getting certain rights. The Constitutional Court agreed with the petitioners and made the age limit for marriage the same for men and women, at 19 years old. The Constitutional Court uses the principle of equality before the law and also looks at child protection. The Constitutional Court's decision was followed by Law Number 16 of 2019, which changed the age limit for marriage. The Constitutional Court has played an active role in making laws. The Constitutional Court also uses the idea that the law should be useful to the community. The approach to equality before the law shows judges maintain legal certainty guaranteed by the constitution.

Equalising the age limit for marriage will benefit everyone. A minimum age of 19 ensures that men and women can keep their constitutional rights to education, health, and other rights. Marriages at a mature age help to prevent divorce due to immaturity. This decision will help people understand the importance of being ready for marriage. If couples are ready for marriage, they won't have problems like the risk of death during childbirth or conflicts that can lead to divorce because they're still children. This means that marriage, which is a bond that creates families, can be a good thing for society and the country. We can also develop better people with good families.

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