

---

## Legal Protection For Children Who Perform Underage Marriages According To Law Number 35 Of 2014 Concerning Child Protection

Citra Nasir<sup>1</sup>, Nursyamsi Ichsan<sup>2</sup>, Heriyanto<sup>3</sup>, Abbas<sup>4</sup>

The Law Science Study Program at the Faculty of Law, Mega Buana University Palopo

Email: citranasir23@gmail.com<sup>1</sup>, nursyamsiichsan@gmail.com<sup>2</sup>

### Abstract

Determining the age limit for marriage is very important because every bride and groom must have biological and psychological maturity. Referring to KPPPA data at the end of last year, in just one day there are 375 children under the age of 18 who carry out marriages and in the Marriage Law there is a dispensation with parental consent. The purpose of this study is to determine the extent of child protection in the Protection Law with normative legal research methods. The results of the study are legal protection for children to prevent underage marriage, including a) Juridical child protection which in the Child Protection Law has applied sanctions for parties involved in underage marriage, either directly or indirectly has violated children's rights, although its implementation cannot be realized optimally if it is not accompanied by awareness from parents and children themselves. Whereas, b) Non-juridical child protection: The reason for child protection to prevent underage marriage is very important because it will result in education, association and environment, health, psychology and especially prevent the increase in divorce rates.

**Keywords:** *Legal Protection, Children, Underage Marriage*

### INTRODUCTION

Indonesia is a plural nation which certainly has regulations that are influenced by many elements such as religion, culture, and written law. To carry out a marriage, one of the conditions is that the parties involved must have reached emotional and physical maturity, as stated in the Marriage Law. But in Islam, a person's criteria for marriage is to have reached puberty, that is, men have experienced wet dreams and women have started menstruating. According to this religion, maturity depends on the conditions and situations in a particular place and society, and cannot be determined only by age. Today, contemporary Islamic family law sets the age limit for marriage.

The provision regarding the minimum age limit in Article 7 paragraph (1) of the Marriage Law, states that "Marriage is only permitted when the male party reaches the age of 19 (nineteen) years and the female party has reached the age of 16 (sixteen) years", meaning that marriage is permitted if the man and the woman have met the predetermined age limit so that it is interpreted that the Marriage Law does not require the implementation of marriage in underage. However, dispensation can be requested from the Court based on Article 7 paragraph (2) of the Marriage Law, namely "In the case of deviation from paragraph (1) of this article, it may request dispensation from the Court or other officials appointed by both the parents of the man and the woman". Of course, before asking for dispensation, you must get permission from both parents of the bride and groom,

because marriage is not only a relationship between prospective spouses, but also relationships between families, which will also be a consideration for parents in arranging the marriage of their children.

The criteria for granting marriage dispensation have been regulated in PERMA Number 5 of 2019. However, it is still bumped with the phrase "requested marriage dispensation for urgent reasons and sufficient evidence" contained in Article 7 paragraph 2 of Law Number 16 of 2019. Although it has a good meaning in providing limitations on the application for dispensation, the absence of a clear explanation of the meaning of this sentence creates multiple interpretations and gives the impression of ambiguity. In the end, it depends on the subjectivity of judges and their legal considerations, because there are no clear rules, causing legal uncertainty. (Mughniatul Ilma, 2019).

According to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, children are defined as individuals who are not yet 18 (eighteen) years old, including those who are still in the womb. Therefore, any marriage performed under the age of 18 is considered a minor, thus violating the child's freedom to lead a adolescent life with the potential for growth, development, and positive outcomes as emphasized by religion (Abdussalam and Adri Desasfuryanto, 2018).

The change in the minimum age of marriage in Indonesia raises high expectations to minimize underage marriage, but the inclusion of the marriage dispensation clause in Article 7 paragraph 2 of Law No. 16 of 2019 gives the impression of a loss of government legal firmness in eradicating underage marriage. Looking at the provisions of the latest marriage law, there is no mention of sanctions or penalties for couples who marry at a young age.

There is no synchronization between the Marriage Law that distinguishes the minimum age of marriage between men and women, namely men 19 (nineteen) years old and women 16 (sixteen) years old. While the Child Protection Law as an instrument of Human Rights does not expressly mention the minimum age for marriage other than affirming the definition of a child as stated in Article 1 point 1 of the Child Protection Law that a child is someone under the age of 18 years. (eighteen) years, including children who are still in the womb, but indirectly set an age limit for both men and women to marry at least 18 (eighteen) years or more.

Setting an age limit before marriage is crucial because every prospective partner must have biological and psychological maturity. This is reflected in the Explanation of the Marriage Law which states that prospective husbands and wives must mature body and soul to be able to carry out marriage in order to realize a good marriage, avoid divorce, and have healthy offspring. The study of child protection is very important as a legal act that has legal causes, therefore there is a need for legal guarantees for child protection activities. Legal certainty needs to be guaranteed for the continuity of child protection activities and to prevent deviations that can cause unwanted negative consequences in the implementation of child protection activities. The issue of child protection is a complex problem and raises various further problems that cannot be solved individually but must be solved collectively, and of course the solution is a shared responsibility.

## **METHOD**

The research method to be used in this study is the normative juridical research method, meaning that this research concerns data processing which essentially involves the systematic organization of written legal materials. This study aims to describe the condition or phenomenon of an object under study comprehensively and systematically (Soerjono

Soekanto, 2006).

Data collection techniques adapted to the research stages mentioned above include conducting a literature review by reviewing national legal instrument documents directly related to the issue of underage marriage and field studies involving interviews with various related parties.

## **RESULT AND DISCUSSION**

Law Number 35 of 2014 concerning Child Protection stipulates that child protection includes all activities to guarantee and maintain children's rights, so that children can live, grow, develop, and participate optimally in accordance with human dignity and dignity, as well as provide protection from violence and discrimination. Child protection can be categorized into two parts as follows:

### **1. Juridical child protection**

The minimum age limit for marriage in Indonesia has been changed as stipulated in Law Number 16 of 2019, which is 19 years for men and women or equivalent. But on the other hand, if it is related to legal norms, the existence of marriage dispensation rules is maintained. The difference lies in the latest revision of the Marriage Law in Article 7 paragraph 2 which states that the application for dispensation must still be made by the male or female parents and can only be requested by the Court. The phrase "other officials" in Law Number 1 of 1974 was omitted because it was considered ambiguous. This lack of clarity is due to the large number of officials authorized to grant dispensations, not only by the Court but also by the Office of Religious Affairs (KUA) and Village Heads (Mughniatul Ilma, 2019).

The marriage dispensation based on Article 1 number 5 of PERMA No. 5 of 2019 is "Granting marriage permission by the Court to prospective husbands/wives who are not yet 19 years old to carry out marriage". Marriage dispensation is the authority given to a person to marry even though he has not reached the age of at least 19 years. Basically, a man and a woman are allowed to marry if they are 19 years of age or older. In certain situations, marriage can continue even if one or both partners have not reached the specified age. (Muhammad Yasin, 2019).

In Law Number 1 of 1974 concerning Marriage, there is no distinction between adults and minors, and only focuses on parental consent for those who are under 21 years old and want to marry. That is, both men and women need parental consent if they are not yet 21 years old. In contrast, the Child Protection Act requires a person over the age of 18 to marry.

Marriage based on mutual consensual even though the age has not reached the age limit in marriage can be carried out and does not violate the law, as long as it has the consent of both parents. However, in the Marriage Law and the Child Protection Law, there are reasons that prevent underage marriage, so that married couples continue to maintain their health and offspring during marriage. That is why it is necessary to set an age limit for prospective husbands and wives who will marry. Underage marriages can still be carried out under Article 7 paragraph (2) of the Marriage Law with Court dispensation for those who have not reached the minimum age limit, but the problem of deviations in article mentioned is not explained in detail.

This can be related to the concept of adulthood in underage marriage according to the Marriage Law and the Child Protection Law, does not require the implementation of underage marriage, but in the Marriage Law can be forced to be carried out due to court dispensation. In this context, marriage dispensation can be set aside as it is only an exception to legalizing underage marriage. The application of the dispensation has no clear reason, as stated in the Child Protection Law.

In the new Marriage Law, Article 7 paragraph (2) confirms that marriage dispensation can be granted for urgent reasons. What does 'urgent reason' mean? The Marriage Law explains that urgent reasons are circumstances where there is no other choice and the marriage must be performed out of necessity. Urgent reasons cannot be just claims. Sufficient supporting evidence must be provided. According to the new Marriage Law, sufficient supporting evidence includes a certificate proving that the age of the bride and groom is still below the provisions of the law and a certificate from a health worker supporting the parents' statement that the marriage is urgent. (Muhammad Yasin, 2019).

The Child Protection Law does not require the implementation of underage marriage, but the current problem is that many underage marriages occur due to economic, educational, cultural (customary) backgrounds, and the consequences of promiscuity. This causes children to have to marry when they are not yet eligible for marriage, although this can be prevented if parents do not neglect to carry out their obligations, as stipulated in Article 26 paragraph (1) point c of the Child Protection Law that parents are obliged and responsible to prevent marriage at the age of children.

The issue of underage marriage is covered by Article 82 of the Child Protection Law which prohibits a person/individual from committing violence, coercion, fraud, lying or inducing children to commit and allow indecent acts.

Child marriage in Indonesia is still high. Indonesia is ranked 2nd in ASEAN and 8th in the world for child marriage cases. It is known that about 22 out of 34 provinces in the country have a child marriage rate that is higher than the national average. This is considered alarming. The reason is, the government has clearly set the minimum marriage limit to 19 years, and tightened the rules for marriage dispensation in Law Number 16 of 2019 concerning Marriage (Kompas, 2021).

The problem is different if underage marriage is carried out because there is coercion from parents for reasons of economic factors, which often occurs in communities, especially in underdeveloped rural areas where poverty and ignorance are still a frightening scourge. From the sociological aspect, the lack of understanding of parents has the most significant role. There are still many parents who value children, especially women as assets, and marriage is considered as a moment to reap profits on these assets. The sociological problem is also inseparable from the economic problems behind it (Rita Pranawati, 2018).

This problem occurs a lot in Indonesia, which we usually see or hear related to young girls who marry older men for economic reasons. Things like this are very heartbreaking, the government often turns a blind eye to cases of underage marriage and only acts if the case is exposed in the wider public by the media as happened in the past where Sheikh Puji's marriage to Lutfiana Ulfa, a girl who was not even 12 years old was exposed by the media and became a controversy in the community (Rita Pranawati, 2018). This proves that the government has not been able to implement the child protection law optimally.

Based on these case examples, in order for child protection to be realized, it is important that parents fight the most, so parents are obliged to protect their children from discrimination, exploitation both economic and sexual, neglect, cruelty, violence,

persecution, injustice and other treatment.

In addition, with underage marriage, the protection of sincere and true parents is reduced. Children should be protected from underage marriage that has an impact on their development, both physically and psychologically (Astrina Primadewi Yuwono, 2008).. Therefore, strategic steps are needed to overcome it, namely by increasing economic capacity and sociological aspects also need to be circumvented, starting from understanding and socialization in the community, especially to parents.

Law Number 35 of 2014 concerning Child Protection has stipulated sanctions for those involved in underage marriage, either directly or indirectly violating children's rights. Indirect parties are those who knowingly or intentionally allow children to be exploited economically or sexually, and criminal penalties are included in such violations. This cannot be fully realized without the child's own consciousness.

## **2. Non-juridical child protection**

Excessive protection of children must be avoided and the impact on the environment and the child himself must be considered, so that the protection efforts carried out do not cause negative consequences. Child protection should be implemented rationally, responsibly, and beneficially, reflecting effective and efficient efforts. Child protection efforts must not result in the death of initiative, creativity, and other factors that lead to dependence on others and uncontrolled behavior, thus eliminating the ability and willingness of children to exercise their rights and fulfill their obligations.

The importance of applying legal protection to children involved in marriage. Protection of children is stated in Law Number 35 of 2014 which amends Law Number 22 of 2003 concerning Child Protection. Article 1 paragraph (2) affirms that child protection includes all efforts to ensure their welfare, growth, development, and participation in society in accordance with human dignity and dignity, and protect them from violence.

The reasons for legal protection to prevent underage marriage are very important because they will result in, among others:

a. In terms of education

The most important impact of underage marriage is in the world of education, as we all know, especially for women, especially when pregnant. For example, someone gets married after graduating from junior high school or high school, then the desire to continue education or continue education to a higher level will not be achieved or realized, because his learning motivation will begin to weaken due to the number of tasks. What they have to do after marriage, for example taking care of children. Thus, early marriage is a factor inhibiting the process of education and learning.

b. In terms of Association and Environment

As a result of association and westernized dating styles often cause pregnancy out of wedlock or often referred to as Unwanted Pregnancy (KTD). This situation encourages parents to immediately marry their children to be legal in the eyes of the law. We encounter many cases like this even in the environment around writers who got married when they were still in junior high school, so supervision of the children below must be a concern for all of us, especially in today's era of globalization where technology is increasingly sophisticated.

c. In terms of Health

Women who marry at a young age, especially under 15, face a variety of risks, even if

they have started menstruating. There are two medical impacts arising from this, namely the impact on the reproductive system and obstetrics. Common reproductive diseases include infections of the reproductive system and cervical cancer, which is caused by the rapid transition of cells from childhood to adulthood, where usually cell growth in children ends at the age of 19 years. Based on several studies conducted by experts, it is known that the average sufferer of reproductive infections and cervical cancer is a woman who is married at a young age or under the age of 19 years.

For maternal risk, pregnant women under the age of 19 years have a risk of death, in addition to pregnancy at the age of 35 years and over. This is because pregnancy at a young age is prone to bleeding, miscarriage, ectopic pregnancy, and premature birth during pregnancy, and the risk of death due to pregnancy poisoning also often occurs in women who give birth at a young age due to pregnancy poisoning caused by high blood pressure or hypertension. Therefore, from a health or medical point of view, early marriage will bring many disadvantages. Therefore, parents must think carefully if they want to marry minors, because this can be categorized as a form of psychological and sexual violence against children which can later cause trauma.

d. In terms of psychology

According to psychologists, from a social point of view, early marriage can reduce family harmony due to unstable emotions, impulsiveness of youth, and immature thinking, causing various negative impacts. Therefore, civil law has stipulated that a person's marriage must be over 19 years old for men and 16 years old for women. Based on the information obtained, more than 50 percent of child marriages are unsuccessful, resulting in divorce. There are also cases where marriages last only a few weeks before separation, this is due to the refusal of the young bride-to-be to fulfill her obligations as a wife and the lack of readiness of both partners who want to marry. For example, there are marriages that take place solely to justify his deeds or for the male side to fulfill certain obligations or because of arranged marriages.

e. Economy

This does not really matter if underage marriage occurs because of arranged marriages, but it will be a problem for those who marry because of association or because of circumstances where they drop out of school, of course, in the future how they meet the needs of the household. In the case of arranged marriages, this will happen if the family does not support them financially.

f. High divorce rate

The last reason is certainly related to divorce which usually occurs because girls do not want to do obligations as wives and lack of readiness from each partner who wants to marry. Problems like this should certainly be a concern for parents so as not to support the tradition of arranged marriages other than health problems because psychologically these children are still not ready, especially when they are in an environment where their peers are still playing and learning they have been burdened with extraordinary responsibilities. For this reason, the Child Protection Law has applied sanctions for parties involved in underage marriage. In addition, association is also very influential because underage marriage occurs because it is to account for their actions or relationships that occur because of associations where the parents of one party or both do not want it.

## CONCLUSION

There is legal protection for children to prevent underage marriage, including a) Juridical child protection: The Child Protection Law has applied sanctions for parties involved in underage marriage, either directly or indirectly violating the rights of children, which are meant by indirect parties such as parties who know or deliberately leave the child in a state of economic and sexual exploitation, and it also contains criminal threats for violations which in their implementation cannot be realized optimally if not accompanied by awareness from the child himself. Whereas, b) Non-juridical child protection: The reason for child protection to prevent underage marriage is very important because it will result in education, association and environment, health, psychology and especially prevent the increase in divorce rates.

## REFERENCE

- Abdussalam and Adri Desasfuryanto (2018). *Victimology*. Jakarta: PTIK.
- Ilma, M. (2020). Dispensation Regulation in Strengthening the Marriage Age Limit for Children After the Birth of Law No. 16 of 2019. *AL-MANHAJ: Journal of Islamic Law and Social Institutions*. 2(2), 133-166. <https://doi.org/10.37680/almanhaj.v2i2.478>
- KOMPAS (2021). Peringkat ke-2 di ASEAN, Begini Situasi Perkawinan Anak di Indonesia. Diakses melalui <https://www.kompas.com/sains/read/2021/05/20/190300123/peringkat-ke-2-di-asean-begini-situasi-perkawinan-anak-di-indonesia>.
- Pranawati, Rita (2018). Pemerintah Lakukan Sosialisasi dan Edukasi Bahaya Perkawinan Dini. Diakses melalui <https://www.voaindonesia.com/a/pemerintah-lakukan-sosialisasi-dan-edukasi-bahaya-perkawinan-dini/4414461.html>
- Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin
- Soekanto, Soerjono. (2006). *Pengantar Penelitian Hukum*. Jakarta: UI-Press
- Undang-undang (UU) Nomor 16 Tahun 2019 tentang Perubahan atas Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan
- Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak
- Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan
- Yasin, Muhammad (2019) Dispensasi Perkawinan Tetap Dimungkinkan, Begini Syaratnya Menurut UU Perkawinan yang Baru. Diakses melalui <https://www.hukumonline.com/berita/a/dispensasi-perkawinan-tetap-dimungkinkan--begini-syaratnya-menurut-uu-perkawinan-yang-baru-lt5db127b0b52f3>
- Yuwono, Astrina Primadewi. (2008). Perlindungan Hukum Bagi Anak Dalam Hal Perkawinan Di Bawah Umur. *Tesis*. Program Magister Kenotariatan. Fakultas Hukum Universitas Indonesia. Depok Desember 2008 Diakses melalui <https://adoc.pub/perlindungan-hukum-bagi-anak-dalam-hal-perkawinan-di-bawah-u.html>