

# POLITICAL LEGAL IN SETTING THE AGE LIMIT FOR MARRIAGE IN LAW NUMBER 16 OF 2019 AND MARRIAGE DISPENSATION IN PERMA NUMBER 5 OF 2019

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## ABSTRACT

Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage increases the minimum age for marriage for both men and women to 19 years. This is not just equalizing the minimum age for men and women, but there are government legal policies to improve the quality of Indonesian marriages. The age limit for marriage for citizens is in principle intended to ensure that couples who are getting married are expected to have maturity of thought, mental maturity and adequate physical strength. The legal politics of marriage dispensation in Indonesia are related to Marriage Law. Marriage dispensation is regulated in the law because the minimum age limit for marriage has been changed to 19 years for both sexes. Marriage dispensation legal policies are influenced by philosophical and sociological considerations such as justice, benefit, expediency and legal certainty. PERMA Number 5 of 2019 provides guidelines and standards for judges in considering and determining dispensational marriages and paying attention to the best interests of children. However, clearer clarification is needed from the State regarding the emergency situation that allows marriage dispensations and stricter procedures for marriage dispensation to prevent premature marriage.

***Keywords: Legal Politics, Marriage Age Limit, Marriage Dispensation***

## A. INTRODUCTION

Law is the result of the work of political institutions consisting of legislative and executive institutions. When law is made in the form of legislation, it cannot be denied that law is a political product. This political product is the formalization and legalization of competing political wills, either through political compromise or dominant political power in decision making. Legal politics is a framework or approach in compiling and implementing laws that takes into account the situation, conditions, culture and values that exist in society. In this case, legal politics seeks to produce laws that are more in line with society's needs for law. Legal politics plays a role in providing a strong and adequate foundation in the process of formulating and implementing law so that it can achieve the expected goals and provide justice for society effectively and efficiently. However, the regulation and ratification of political will must remain within the boundaries of state law which have been stipulated in the long and medium term plans which have been prepared by the people's representatives in the Assembly or People's Representative Council.

The statement states that Law Number 1 of 1974 concerning Marriage is a political product that was drafted based on the political will of the authorities, and that the process of its creation and implementation was influenced by political factors. Apart from that, this law was later amended through Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. This shows that the legislative process in Indonesia is greatly influenced by political factors, and the laws drafted can change in line with changes in existing political interests. However, changes to the Law can also correct the weaknesses in the previous Law, so as to improve the quality of existing regulations in Indonesia.

An interesting statement that needs to be discussed is that the new Marriage Law still provides loopholes for child marriage by opening up opportunities for marriage dispensations. This can cause problems because it still allows child marriage to occur which can have a

negative impact on children's rights and their welfare. Even though the Indonesian Supreme Court has issued Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications as formal rules for judges in examining and determining or rejecting marriage dispensations, this does not completely guarantee that child marriages can be avoided.

## **B. RESEARCH METHODS**

In this research The type of research used in this research is normative legal research methods or library legal research. namely legal research carried out by examining library materials, namely primary and secondary data. These legal materials are arranged systematically to make it easier to draw conclusions from the problems studied. In approaching this problem using the Normative Juridical approach method. This approach is an approach to applicable legislation. The statutory approach is carried out by examining all laws and regulations that are related to the content of the law being handled. The normative juridical problem approach is an approach used to approach statutory regulations (statue approach), this approach examines statutory regulations related to the problem being studied. Apart from that, a conceptual approach is also used to look at legal concepts related to existing problems.

## **C. DISCUSSION**

Legal politics is the basic policy that determines the direction, form and content of the law that will be formed. These basic policies can be in the form of establishing laws, implementing laws, and enforcing them themselves. State agency policies have the authority to determine the desired policies to respond to problems that occur in society and to achieve the nation's ideals. Legal politics in Law no. 16 of 2019 is divided into subjective and objective dimensions. In the subjective dimension of Law no. 16 of 2019 reflects legal products that are political in nature in Law no. 16 of 2019 is divided into subjective and objective dimensions. democracy by opening up opportunities for the people's potential to play optimally to actively participate in determining state policy. Meanwhile, legal politics in the objective dimension of Law no. 16 of 2019 Article 7 (1) in terms of justice, the regulation on the age limit for marriage is realized by equalizing the minimum age limit for marriage at 19 years for men and women. The value of legal certainty in regulations regarding the minimum age limit for marriage in Indonesia has not been realized because there are no sanctions for violators and there are loopholes in dispensations without clear requirements. obtain dispensation by the Religious Court. Judging from the value of benefits, regulations on the minimum age limit for marriage in Indonesia need to be refined because they do not fully consider the risks of marriage at the minimum age limit set.

The promulgation of Law Number 16 of 2019 concerning Marriage as an amendment to Law Number 1 of 1974 concerning Marriage is the continuation of a long-standing political dialogue. The marriage age limit stipulated in Article 7 paragraph (1) is no longer sixteen years old, but has been changed to nineteen years old for women. This change then equalized the marriage age limit for men and women, namely nineteen years. At this age, children are perceived to be mature enough physically, psychologically and socially to marry and form a household based on the belief in the Almighty God. Meanwhile, Article 7 paragraph (2) explicitly states that marriage dispensation can only be permitted for very urgent reasons accompanied by sufficient supporting evidence. So that the legal material in Article 7 can run optimally and as a follow-up to the policy of that article, the Government showed its seriousness by promulgating Supreme Court Regulation (Perma) Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications on November 21 2019. As if acting swiftly, Perma This was then socialized for the first time on 17 December 2019 involving 36 Religious Courts, each of which appointed a Chief Judge and deputy Chairperson to each Court (MA Public Relations, 2019). This means that the presence of Perma as a basis

and guideline for the Judges cannot be separated from the Government's intervention to respond quickly regarding the birth of Law Number 16 of 2019 concerning Marriage. The ups and downs of issues regarding the minimum age limit for marriage in Indonesia follow issues regarding child protection, gender equality, health, maternal and child reproduction and women's empowerment. State administrators must make the principles of Pancasila the main basis for formulating policies with dimensions of Divinity, Humanity, Unity, Democracy and Social Justice. This means that the state is obliged to guarantee the welfare, including the rights of every person, to protect, promote and prevent discrimination.

The state is committed to guaranteeing a just society without discrimination, this has been confirmed by ratification. The principles of equality and justice as well as the principle of non-discrimination as the basic basis for guaranteeing human rights have been contained in several International Conventions, such as the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Women (CEDAW), and the Convention on Rights. Child. Society has different definitions in the context of marriage, as well as the legal definition of marriage in a country that is adopted and practiced in society, where the law applies (Ahmed, 2006). Law Number 16 of 2019 concerning Marriage was born after reform. Meanwhile, in this reform era, law is a political product, so the character of each legal product will be determined or colored by the balance of power or political configuration that gave birth to it. This is a fact where every legal product is a product of political decisions so that law can be seen as the crystallization of interacting political thoughts among politicians.

This assessment is based on the argument that Law Number 16 of 2019 concerning marriage was born because of society's need for a minimum age limit for marriage, considering that society's life is increasingly dynamic and continues to develop. This law is expected to improve the previous law, namely law no. 1/1974 concerning marriage. So the aim of legal politics as stated by Mahfud MD contains the meaning that legal policy or the official line (policy) regarding the law that will be implemented either by making new laws or by replacing old laws, in order to achieve the State's goals will be achieved. Mahfud MD divides 3 (three) groups of legal politics, namely: first, the official direction regarding the law that will be implemented (legal policy) in order to achieve state goals which include replacing old laws and forming completely new laws; second, the political background and other social subsystems behind the birth of the law, including the official direction regarding the law that will or will not be enforced; third, issues surrounding law enforcement, especially the implementation of the legal politics that have been outlined.

Principles and principles are important elements in forming a policy. In this academic text there are a number of principles that can become the basis for the birth of Law N0.16 of 2019 which revises the Marriage Law. There are several principles or principles which are the basis for the revision of Article 7 of the Marriage Law.

1. Principles of Substantive Equality (Equality and Justice); ensure that men and women have equal standing before the law, both de jure and de facto. This principle also ensures that women and men have equal access to resources, have the same opportunities or opportunities, and enjoy the same benefits from development or policies. In the context of marriage age, determining the same marriage age for men and women must have an impact on:
  - a. equality before the law;
  - b. equal access to basic education;
  - c. equality of opportunity to enjoy the same high level of health; And
  - d. equality of opportunity to enjoy family security
2. The principle of non-discrimination or non-discrimination principle emphasizes the prohibition of differential treatment of someone based on skin color, gender, language, religion, politics, gender or other views. The constitutionality of the right to be free from discrimination is regulated in Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "every person is free from discriminatory treatment

on any basis and has the right to receive protection against such discriminatory treatment". At the legal level, Article 1 paragraph (3) of the Human Rights Law reads: Discrimination is any restriction, harassment or exclusion that is directly or indirectly based on human differentiation on the basis of religion, tribe, race, ethnicity, group, class, social status, economic status, gender, language, political beliefs, which result in the reduction, deviation or elimination, recognition, implementation or use of human rights and basic freedoms in life both individually and collectively in the political, economic, legal, social, cultural, and other aspects of life. In line with the spirit of non-discrimination based on sex, Article 16 paragraph (1) of the Convention on the Rights of Women (CEDAW) states that equality between women and men will be guaranteed in terms of rights and responsibilities in family relationships and all matters relating to marriage. This explains explicitly that this article regulates equal rights between men and women before the law. Article 7 paragraph (1) of the Marriage Law which regulates the age limit for marriage between men who are 19 (nineteen) years old and women who have reached 16 (sixteen) is a form of discrimination and is contrary to the constitution. The age difference between women and men is a form of discrimination that occurs in real terms and is regulated in law, where women do not have the same rights and opportunities as men in terms of fulfilling their basic rights. Therefore, this difference is a form of inequality before the law, thereby harming the position of girls in Indonesia

3. Principle of State Obligation; The state has a positive obligation to actively protect and ensure the fulfillment of fundamental rights and freedoms. In this case, the state is obliged to stop all forms of discrimination against women through making laws and policies as well as administrative efforts and concrete actions to prevent discrimination. In the context of marriage, discrimination and violations of women's rights are often carried out by parents, namely marrying off women who are still children using dispensation mechanisms. The opportunity for violations of women's rights is wide open because the provisions regarding dispensation are very loose and there are no guidelines for judges to determine whether a request for dispensation can be granted or not. Therefore, the responsibility to protect women, apart from increasing the marriage age to be the same as the minimum age for men, is to tighten regulations regarding dispensations.
4. Principle of the Best Interests of the Child; comes from Article 3 paragraph (1) of the United Nations Convention on the Rights of the Child which states that "In all actions concerning children carried out by state or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child must be the main consideration." With this principle, all decisions taken and actions taken must be impartial and in the best interests of the child. The principle of the best interests of children must be taken into consideration in preparing academic texts because the quality of the future nation is a reflection of the current generation. Therefore, each party must make efforts so that children's basic rights can be fulfilled optimally
5. Principles of the Right to Life, Survival and Development; is a principle that guarantees that every child has the right to live, develop and continue his life and the state is obliged to guarantee this and fulfill the child's rights. Children's rights are part of human rights as formulated in Article 52 paragraph (2) of the Human Rights Law which states "children's rights are human rights and it is in their interests that children's rights are recognized and protected by law, even from the time they are in the womb". Protection of children's rights is not only the responsibility of the state, but also all levels of society. Protection for children means that since the child is still in the womb, the child has the right to live, develop and continue his life.
6. Principle of Respect for Children's Opinions; Article 12 paragraph (1) of the Convention on the Rights of the Child states that "Children's opinions, especially when it concerns matters that affect their lives, need to be taken into account in every decision." This



principle provides space for children to be involved in various interests related to their lives. Although it is realized that children are not always considered incapable of making decisions about themselves, children need to be prepared to be able to participate and make decisions about themselves. The state guarantees this by ratifying the Convention on the Rights of the Child and participating countries are expected to uphold the principle of respect for children.

7. Principles of Order and Legal Certainty; means "every material contained in statutory regulations must be able to create order in society through guarantees of certainty". Constitutional Court Decision Number 22/PUU-XV/2017 which ordered legislators to make changes to Article 7 paragraph (1) of the Marriage Law, especially with regard to the minimum age limit for marriage for women, has emphasized the need to establish new limits for minimum age for marriage to fulfill the principles of legal order and certainty.

The problem of child marriage is related to the differences in views on the substance of the rules regarding child marriage, both from the perspective of fiqh or Islamic law and positive law. The difference is that the sources of the two laws are certainly different. Positive law such as marriage law originates from material law, namely factors that help form law or the place where legal material is taken, such as norms, traditions and habits. Then Islamic law comes from the Koran and hadith which are then interpreted by several scholars whose knowledge has been studied in determining a law. In positive law, the age limit is determined by stating a number which means that the age limit is clear. Meanwhile, in Islamic law, as in the Al-Qur'an and Hadith, the characteristics or signals regarding the age limit for marriage are mentioned, through the meaning of puberty or ability, then from the verses of the Al-Qur'an and Hadith various interpretations of the Ulama emerge. Regarding the age limit for marriage, several opinions are in accordance with the conditions of the community where one lives. With provisions that have multiple interpretations, Islamic law can also be updated based on needs that are adapted to the provisions stipulated in Islam. Islam does not prohibit someone from getting married on condition that they have reached puberty and are able to provide a living, both physical and spiritual.

In terms of dispensation, it is defined as a provision that gives someone the opportunity to deviate from a rule due to certain circumstances. Marriage dispensation is defined as a court order for prospective husband and wife who have not reached the marriageable age as regulated by the Marriage Law. With this decree, a person who was previously not allowed to get married is now allowed to get married because they have completed the coming of age procedure. The legal construction of the marriage dispensation is outlined in Law Number 16 of 2019 concerning Marriage, Amendments to Article 7 of Law Number 1 of 1974 concerning Marriage. Article 7 paragraph (2) of the New Marriage Law as the legal umbrella for marriage dispensations stipulates that marriage dispensations can be granted for urgent reasons. Article 7 paragraph (2) states that: "in the event of a deviation from the age provisions as referred to in paragraph (1) above, the male parent and/or the female parent may request dispensation from the Court for urgent reasons accompanied by evidence. -sufficient supporting evidence". Furthermore, in the explanation of the article, it is explained that an urgent reason is a situation where there is no other choice and it is absolutely necessary to carry out the marriage. The reasons for urgency must be proven strongly and sufficiently by the parties by including evidence in the form of a statement from the relevant party which supports the parents' statement that the marriage is indeed very urgent and must be carried out immediately.

Marriage dispensation is a procedure that allows prospective husbands and wives who have not reached the minimum age of 19 years to marry with the rights granted by the court. Although the minimum age for marriage is 19 years, in some cases, certain circumstances may justify deviation from this minimum age requirement. However, this deviation can only be done if one or both parties, or their parents, apply to the court. This application can be submitted to the Religious Court if the prospective husband and wife are Muslim, and to the District Court if they are not Muslim. In granting a marriage dispensation, the court will

consider the interests and welfare of the prospective husband and wife, as well as the interests and welfare of children who may be born from the marriage. Marriage dispensations must not be given haphazardly, but must meet applicable legal and ethical requirements.

Parents must protect their children from early marriage, which is the content of article 26 of Republic of Indonesia Law no. 23 of 2002 concerning Child Protection (1974 Republic of Indonesia Law), this shows the important role of parents in accompanying and preparing their children so that they are truly age and mental ready when they decide to marry. Legal politics is not only determined by what is desired by law makers, practitioners, or theories alone, but is also influenced by legal developments in other countries. Therefore, it is important to note that the study of legal politics is not only concerned with the legal politics of legislation, but also includes the legal politics of products from judicial institutions known as jurisprudence. Legislative products include regulations made by legislative institutions in collaboration with the executive, while legal political products of judicial institutions are judges' decisions. Judges, with the authority they have, can review, analyze and carry out reformulation or reconstruction of the legal problems they resolve.

#### **D. CONCLUSION**

The conclusion of this research is that basically marriage dispensation is a form of legal politics to resolve problems with minors getting married if irregularities occur. However, the presence of a marriage dispensation actually creates a way for early marriage to occur in Indonesia. How could it not be, the marriage age restrictions are not balanced with comprehensive prevention efforts so that people are always looking for ways to find reasons to get their marriage dispensation requests granted by the Religious Courts. A marriage dispensation is like a fruit of the devil, if it is rejected it seems to ignore deviations and the benefit of the child, but if it is granted it seems to ignore the age limit for marriage which aims to minimize the occurrence of early marriage. The increasing number of requests for marriage dispensations to local Religious Courts is concrete evidence that early marriages can be carried out with permission from local Religious Courts. Early marriage occurs due to the involvement of related parties, one of which is parents. In fact, in the Child Protection Law and the Marriage Law, one of the roles of parents is to prevent early marriage. However, it is not uncommon for parents to play an active role in marrying off their children even though they are still children. This is because there are no strict sanctions for parents who marry off their children at an early age or the bride and groom. The absence of strict sanctions is one of the factors in the ineffectiveness of implementing the marriage age limit in significantly suppressing early marriage in Indonesia. The age limit for marriage regulated in Article 7 paragraph (1) of the Marriage Law, in its implementation, creates complex problems in a legal and democratic society. The existence of regulating the age limit for marriage is considered to degrade the fundamental principles of the rule of law because it adds to the disharmony of the regulation of the adult age limit in Indonesia, interferes with private rights, and is ineffective in resolving the problem of early marriage which was the initial aim of its creation. These problems are caused by the implementation and regulation of marriage dispensations which reduce the effectiveness of implementing marriage age limits and the absence of sanctions against perpetrators of early marriage in Indonesia.

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