



The Legal Politics of Regulation Number 1 of 1974 and Regulation Number 16 of 2019 About Marriage Relate to the Age Requirement for Marriage

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<http://dx.doi.org/10.47814/ijssrr.v6i4.1189>

Abstract

Practically living together begins with marriage to form a family. The government should set a minimum age for marriage in order to achieve legal certainty. Chapter 7 verses (1) the marriage law states that "marriage is permitted only when the male side reaches the age of 19 (nineteen) and the female reaches the age of 16 (sixteen)." In the administration of the age of marriage continues to be a problem because it is thought to curb the fulfillment of the constitutional rights of citizens, especially those of children. For the sake of recognition, protection and the fulfillment of children's basic rights, the purpose of such incidents is for children's rights. The writing method used in this paper is *normatif yuridis*, the writing specs in this paper are analytical descriptive. As for the data obtained through the study of the document relating to the regulations of the law, the constitutional court ruling and the journal/scientific article. The laws of the establishment of marriage laws are based on a philosophical, civic and sociological basis, and upon principles in the establishment of the best legislation and principles of interest for a child. On his way to the political law on the marriage act, there are twice yudicial review and there are many differences between the first and second review, and the judge granted the application on the second yudicial review. The politics of the law enforcement of the marriage act need to be enforced by regard for law factors, law enforcement factors, means or facilities, community and cultural factors.

Keywords: *Political Law; Enforcement and Enforcement; Marriage Law*

Introduction

Indonesia is a legal state, by and large it can mean that the rule of law or *rechstaat* or rule of law is so well-regulated that all the power of its instruments is based on law. Legislation is a tangible form of political product, called a political product because it is shaped by people who have authority to form the bill of the house of congress and the President who is a member of the political party. In the substance of a law, the official authorized by the bill nri in 1945 to be able to form a rule of legislation was one who

should be able to include that in a law there must be important points relating to a juridical, philosophical and sociological basis for the following effect:

1. Country Objectives

The real aim of the state is the ideal of the state's idiosyncrasies or systems of existing legal instruments, as the Indonesian state's aim is to be found in the opening of the 1945 constitution of Indonesia: "protect all Indonesians and all Indonesia's blood, and promote public welfare, reflect national life and share in enforcing a world order based on freedom, Lasting peace and social justice."¹

2. Legal Purpose

Gustav Radbruch suggested that the law should reflect the three basic values of justice (philosophical), certainty (juridical) and sociological (sociological). In a growing society not only appeals to justice (ideals) and its interests are served by the law (sociological), but people still need rules that ensure certainty in their relationships with each other.²

3. Included Human Rights (As Embodied in the 1945 Constitution)

When linked with the subject of this writing, one of the constitutional rights of the citizen right to have a family held in article 28b (1) states: "each one has the right to form an offspring and to continue through a lawful marriage."³ Specifically, the rules regarding marriage are governed under the 1974 no. 1 year marriage act, the birth of the marriage act means that there has been a uniformity of the marriage arrangement for all classes of people in Indonesia.⁴

Human nature from the time of its birth to the world is that of a social being with the inherent characteristics of living together. It may mean that living together in a macro way begins with marriage to form a family.

Wirjono Prodjodikoro said that marriage is the cohabitation of a man and a woman who have met certain requirements,⁵ Which is closely linked to religion or spirituality.

Thus, in order to obtain a marriage and in order to achieve a legal certainty, the government must set a minimum age for marriage, the 1974 no. 1 year of marriage has regulated the minimum age of marriage found in chapter 7 verses (1) that states: "marriage is only permitted if the male side reaches 19 (nineteen) and the female reaches 16 (sixteen)." The legal basis has given the law that a "child" of 16 years can be married, and in this context more specifically a "daughter" of 16 years. That the presence "a quo" implies that the state still condones child marriage, especially daughters.

Child marriage can have negative effects, such as growing school dropouts, a number of psychological issues such as anxiety, depression, and even a suicidal desire. At a young age of marriage, children do not have status and power in society because they are still confined to control themselves/not know their true identity. Another is the increased risk of contracting infectious infections such as HIV,⁶ A

¹ Alinea keempat UUD NRI Tahun 1945.

² M. Muslih. (Juni 2013). "Negara Hukum Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum). *Legalitas*, Vol. IV, (NO. 1). Hlm. 143.

³ Pasal 28B ayat (1) UUD NRI Tahun 1945.

⁴ Naskah Akademik RUU Perkawinan. https://bphn.go.id/data/documents/na_ruu_perkawinan_.pdf.

⁵ Tengku Erwinsyahbana. "Sistem Hukum Perkawinan Pada Negara Hukum Berdasarkan Pancasila". *Jurnal Ilmu Hukum*, Vol. 3, (No. 1). Hlm. 4.

⁶ Yayasan Kesehatan Perempuan. "Akibat yang Terjadi Dari Pernikahan Dini". <https://ykp.or.id/akibat-yang-terjadi-dari-pernikahan-dini/>.

girl's reproductive apparatus has not yet been ready to contribute to the high maternal mortality rate and her offspring, malnourished infants and stunting children.⁷

In the application of marriage laws, the minimum age of marriage continues to be a problem because it is thought to have created legal uncertainty, gave birth to ambiguous, ambiguous, multitaffy interpretations, and restricted the fulfilment of the constitutional rights of citizens, especially of the rights of education, health rights, and the right to growth and development that has been guaranteed and protected by the law nri in 1945.

On the above issues, there are those who file the review to the council of the constitution and have already performed twice the yudicial review in order to support recognition, protection and the fulfillment of the rights of children, especially Indonesian girls, and provide a fair legal certainty for both male and female citizens as mandated by the bill nri in 1945. That makes it an important thing for the yudicial review to be able to solve concrete issues that are occurring in society, since law is a system of rules.⁸ Such rules are as closely associated with society as one of the famous andagium says: "no society is without law and no law is without society."⁹ Laws were enforced by, and enforced by society.¹⁰

Thus, on the basis of legislation asa political product, it must be thoroughly known about the legal politics of the marriage act and legal trips as concrete, the difference in the bill of marriage and the issue for a fascinating study because it relates to the constitutional rights of the Indonesian citizen, especially to the rights of the child, which are further discussed in the discussion chapter. With this foundation so that the author is interested in raising the title paper, "1974's law politics no. 1 and the 16-year 2019 bill on marriage to the age of marriage."

Formulation of the Problem

- 1) How is the politics of 1974's statute 1 1 and the 16th-century 2019 law on marriage?
- 2) What is the political law enforcement act number 1 of 1974?
- 3) What is the political law enforcement act number. 1 in 1974?

Research Methods

The writing method used in this paper is normatized yuridis, a legal study conducted by examining library or secondary data asa basis for research by searching the rules and literature relating to the issues discussed.¹¹ The writing specs in this paper are analytical descriptive. As for data obtained through the study of documents relating to constitutional regulations, constitutional court rulings and scientific articles that have special relevance to the issues in this paper.

⁷ B. Rini Heryanti. (April 2021). "Implementasi Perubahan Kebijakan Batas Usia Perkawinan". Jurnal Ius Constituendum, Vol. 6, (NO. 2) hlm. 122.

⁸ Emeritus., Lili Rasjidi., Ida Bagus Wyasa Putra. (2012). Hukum Sebagai Suatu Sistem. PT. Fikahati Aneska. Hlm. 146.

⁹ Emeritus., Lili Rasjidi., Ida Bagus Wyasa Putra. loc.cit

¹⁰ Siti Merida Hutagalung. (November 2011). "Penegakan Hukum Di Indonesia: Apakah Indonesia Negara Hukum?. Sociae Polities. hlm. 122.

¹¹ Soerjono Soekanto & Sri Mamudja. 2001, Penelitian Hukum Normatif (Suatu Tinjauan Singkat). Rajawali Pers, Jakarta, Hal 13-14.

Discussion

A. Politics of the Establishment of the Marriage Act on the Terms of Marriage Age

Early history has been the home to the marriage bill, and with many problems in the family, especially those of wives who feel deprived and oppressed, it has made many female organizations that speak out for equality between men and equality. The first organization to be pioneered, the wife of the conscious, first founded in 1930, was led by the soeo of the female activist in jong Java.¹² This is where the struggle for equality and anti-polygamy began. They are attempting to propose to the government to quickly write a bill on marriage. Female organizations struggle incessantly to get governments to quickly make rules about marriage in Indonesia. Various ways are carried out by congenial organizations, even until the street action is carried out by them.¹³

1974's law number 1, 2019, on the change to the 1974 no. 1 bill on marriage is a tangible product of politics (establishment, administration and enforcement), satjipto rahardjo said that, of course, legal politics is the preferred activity and way of achieving a particular social and legal purpose in society.

The first law politics, that is, the creation of a law, must include the following:

1. A philosophical, Sociological, Juridical Base

The philosophical foundation of the marriage act is that the constitution opened in 1945. Specifically, Indonesia's foreign exchange goals as embodied in the 1945 constitution of the four national bill nri were devoted more to the "promotion of public welfare." Because of this, the state pays particular attention to the institution of marriage as a gateway to a happy, prosperous family.

That in marriage, both men and women have the right and duty as husband and wife to perform their respective roles in establishing a family of eternal happiness and prosperity on the basis of justice, equality, and legal certainty.¹⁴ Based on this, countries should be present to ensure that there is justice, equity, and legal certainty within the institution of marriage so that its purpose can be achieved.

The sociological foundation of the marriage act is that in the social life of the community, there is a close attraction between male and female, the sexual need and the desire to continue the offspring through legal marriage, so there is a rule asa guide in forming a family.

But along the way the marriage act must change, for the old marriage act is not yet capable of creating equality and certainty of the law, child marriage directly affects the loss of children's rights to education and growth, exposure to violence and exploitation, and reproductive and psychotic health disorders. The marriage law in chapter 7 of verse (1) the marriage law contributes to opportunities for marital practices. The state therefore needs to be present to ensure that there is justice, equity, and legal certainty within the institution of marriage so that its purpose can be achieved.¹⁵

The juridical foundation of the marriage act is chapter 28b of the 1945 bill nri that states: "everyone has the right to form a family and to carry on the offspring through a valid marriage." As for human rights, the right to mate was included in the human rights section featured in the 1945 chapter x bill nri. In the exercise of the right to marry, it certainly requires a commonality of the rights and

¹² Khiyaroh. (Juni 2020). "Alasan dan Tujuan Lahirnya Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan." Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan, Vol. 6, (No.1). Hlm. 3.

¹³ *Ibid.*

¹⁴ Naskah Akademik Rancangan Undang-Undang Perkawinan.

¹⁵ *Ibid.*

obligations of the marriage institution by considering article 27 of the verse (1) the 1945 bill nri says: "all citizens together with their position in law and in unity and duty to uphold that law and government with nothing to be perceived."¹⁶

2. Principles of Legislation Forming

When carefully studied, the process of forming the marriage law is based on the forming principles of the regulatory rule, namely, the principle of clarity of purpose means the marriage act must use clear, easy - to - understand legal language without causing any interpretation. Both marriage laws using principles can be implemented means the marriage act must consider the effectiveness of the bill in the community, both philosophical, sociological and jurisdictional.

Beyond the application of principles of legislation, within marriage laws it also contains principles of the load of regulatory rules: first, the principle of equality in law and government, meaning that marriage laws must not contain discrepancy based on background, religion, race, race, gender, or social status. Both principles of order and certainty of law, meaning the marriage law must be able to bring order through judicial certainty. The three principles of balance and harmony, meaning that marriage bill material should reflect balance, harmony, and harmony between individual, civic, and national and national and national interests. In the academic text of the draft for a change in marriage law is explained that the substance of the marriage act relating to a minimum age for marriage requires that in the context of marriage age, the same identification of marriage between men and women should impact, the equality of law, the equality of access to basic education, An equal chance to enjoy the same high degree of health, an equal chance to enjoy the resilience of families.¹⁷ Both non-discrimination principles, based on the previous marriage act, chapter 7 verse (1) the marriage law that regulates the age limit between 19 (nineteen) and women already up to 16 (sixteen) is a form of discrimination and contrary to the constitution. The age difference between women and men is asa visible and regulated form of discrimination, where women do not have the same rights and opportunities as men in terms of fulfilling their basic rights. Therefore, such divergences are a form of inequality before the law and are damaging to girls' positions in Indonesia.

B. Politics of Legal Enforcement of Marriage Laws on the Condition of Marriage Age

On his way, the 1974 no. 1 marriage law is perfectly marked, with a chapter so sensitive, to implement, chapter 7 verses (1) that states: "marriage is only permitted if the male side reaches 19 (nineteen) and the female reaches 16 (sixteen)." Article a quo causes many of a girl's constitutional rights to be deprived. Pro-cons from all points of view have sprung up, the islamic religious viewpoint, human rights legislation, child protection laws, marriage laws to the UN convention on the rights of children.¹⁸ Generally, such comments are of negative value, since premature marriages may cause a significant rise in maternal mortality (aki). Premature marriages are also associated positively with an increase in unwanted pregnancies, abortions, trafficking in human beings, the number of neglected children, the rise in divorce and unemployment,¹⁹ As well as growing population.

¹⁶ Pasal 27 ayat (1) UUD NRI Tahun 1945.

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¹⁸ Sofia Hardani. (Juli – Agustus 2015). "Analisis Tentang Batas Umur Untuk Melaksanakan Perkawinan Menurut Perundang-Undangan di Indonesia." Vol. 40, (No. 2) Hlm. 132.

¹⁹ *Ibid.*

Thus on the basis of public unrest, article 7 paragraph (1) the 1974 no. 1 bill on marriage has been carried out the yudicial review in the constitutional court twice and there is a considerable difference in the content of both rulings. As for the difference between those two rulings, that is, as follows:²⁰

1) Verdict Number 30 -74/PUU-XII/2014

Touchstone	Chapters 28a, chapters 28b verses (1), chapters 28c verses (1), chapter 28d verses (1), chapter 28d verses (1), chapter 28h verses (1), chapter 28h verses (1), chapter 28h verses (1), chapter 28i verses (1), chapter 28i verses (1) and chapter 28i verses (2) in 1945.
The applicant's	The applicant presents the reason for testing article 7 verse (1) the marriage law before the constitutional court of justice, with the following underlying reasons: <ol style="list-style-type: none"> 1. The number of teenage children and their fertility. 2. Child marriage and its effects 3. The effects of child marriage and maternal health and baby. 4. The effects of child marriage and harmony in families and enlightenment. 5. The effects of a child marriage on a young family psychologist. 6. There are children's rights violated as a result of a child's marriage
Petitum	<ol style="list-style-type: none"> 1. Grant the requisition for the whole. 2. Stating that the content of article 7 verse (1) the 1974 rule number 1 throughout the period is pronounced 16 years must be conditional and conflicted with the constitution of the nri in 1945 as long as it was not covered for 18 years. 3. Stating that the content of article 7 verse (1) the 1974 rule number 1 throughout the phrase 16 years must be maximized conditional, and has no binding legal force so long as it is not maximized for 18 years. 4. Converting its cargo material to article 7 paragraph (1) 1974's no. 1 bill (1) to say: "marriage is permitted only if the male side reaches the age of 19 and the female reaches the age of 18. 5. Authorizing these decisions in the ri state news as appropriate legislation dictates
Expert	There are nine experts presented at the trial testing article 7 verse (1) the law on marriage.

Inclusions	The court reached the following conclusion: <ol style="list-style-type: none"> 1. The court authorizes the appeal of a quo. 2. Applicants have legal standing to petition a quo. 3. The point of petitioning was not legally valid.
Amar verdict	Judging, Claims to deny the petitioners' requests for a whole

²⁰ Putusan Mahkamah Konstitusi Nomor 30-74/PUU-XII/2014 dan Nomor 22/PUU-XV/2017.

2) Verdict Number 22/PUU-XV/2017

Touchstone	Article 27 (1) the constitution of the republic of Indonesia in 1945.
The applicant's	<p>The applicant presents the reason for testing article 7 verse (1) the marriage law before the constitutional court of justice, with the following underlying reasons:</p> <ol style="list-style-type: none"> 1. Under article 7 verse (1) throughout the phrase "16 (sixteen) years" the marriage law has violated the principle of "all citizens together with its place in the law," and thus contradicts chapter 27 (1) chapter 1945. 2. A quo makes a distinction between legal standing and discrimination against girls in health rights. 3. A quo makes a distinction between legal standing and discrimination against girls in the right of education 4. A quo provides a distinction between legal standing and discrimination against girls at the risk of child exploitation 5. A quo requests and comparative equality the minimum age limit of marriage in men and women in various countries 6. The application of a quo and the constitutional court's stance regarding the open legal policy
Petitum	<ol style="list-style-type: none"> 1. Accept and grant all application for testing of the laws presented by petitioners on the whole. 2. States a provision of article 7 verse (1) the constitution of the republic of Indonesia of 1945 throughout the phrase 16 years of age is in conflict with the constitution of the republic of Indonesia in 1945 and has no binding legal force as long as the age of 19 is not read.
Expert	No expert was present at the trial testing article 7 verse (1) the marriage act.
Inclusions	<p>The court reached the following conclusion:</p> <ol style="list-style-type: none"> 1. The court authorizes the appeal of a quo. 2. Applicants have a legal position to appeal a quo. 3. The application of the petitioners was in partial accord with the law
Amar Verdict	<p>Judging,</p> <ol style="list-style-type: none"> 1. Granting supplications to some 2. Stating chapter 7 verse (1) along with the age of 16 - year - old 1974 statute number 1 on marriage runs contrary to the constitution of the republic of Indonesia in 1945 and has no binding legal force. 3. Stating the clause of article 7 verse (1) 1974's no. 1 bill on marriage remains in force until the appropriate changes are made according to the terms set in this verdict 4. Instructs law makers for a maximum length of 3 (three) years to change the 1974 no. 1 bill on marriage, especially regarding the minimum age limit for women. 5. Directs these decisions in the appropriate news of the republic of Indonesia; 6. Rejecting the requests of petitioners for beyond and beyond

The chart above is a historic marriage rite of passage from the first rejected verdict to a retesting of a different year and a different touchstone.

At first the minimum age of marriage for women was 16 (sixteen) years and now 19 (nine) years. A new rule on this matter is already included in the 1974 act no. 16, 2019, for a change to act no. 1. The age limit of 19 (nineteen) years is judged to be psychological, physical and spiritual adults. When a couple enter into a marriage at an adult age, they will be able to reduce the problems that arise at the time of marriage. So the divorce rate can decrease as minors become less frequent. Someone over 19 already has more responsibility and obligation to be married. For girls, as young as 19, they are able to carry out the responsibility of being a wife, a sexual partner, and a mother, as well as the roles that adults should have. This change of marriage law to the no. 16 year 2019 law, is expected to bring enormous changes to the implementation of marriage especially upon the limitations of marriage and minimize the social, economic negative effects that occurred with the old marriage act.

C. Politics of Law Enforcement of Marriage Laws Relating to the Terms of Marriage Age

Marriage laws as a product of politics require law enforcement against new registrations of persons, in order not to deprive them of their constitutional rights. Law enforcement is, in effect, a process to realize legal purpose and ideas come true.²¹

Soerjono Soekanto stated that law enforcement is closely associated with the following five factors:

1. The Legal Factor

It is explained that in the law there must be some principles in order for the law to work effectively in law enforcement, among others as follows:

- a. Laws did not prevail;
- b. Legislation made by a superior ruler held a higher rank;
- c. Special legislation sets aside public laws;
- d. Later legislation passed through earlier legislation;
- e. Legislation is a means of prosperity.²²

2. The Law Enforcement Factor

The most important element in the application of the law is law enforcement itself, therefore improvements in the law-enforcement sector are inextensible in terms of moral improvement, quality and quantity, professionalism, work methods and so on.²³

Law enforcement is a model in society, which should have certain abilities. In keeping with people's aspirations, being able to communicate and gain understanding from the target class, while being able to bring or act in an acceptable role by society, role models must also be able to choose the right time and environment in introducing new norms or laws, and providing a good example.²⁴

²¹ Esmi Warasih, *Pranata Hukum Sebuah Telaah Sosiologis*, Suryandaru Utama, Semarang, 2005, hlm. 83.

²² Soejono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, PT RajaGrafindo Persada, Jakarta. hlm. 11.

²³ Irman Syahriar, *Telaah Teoritis Atas Kepastian Hukum dan Kemerdekaan Pers di Indonesia*, LaksBang PRESindo, Yogyakarta, hlm. 41.

²⁴ *Ibid*, hlm. 34.

a. Facility or facilities factor

Facilities or facilities become important in law enforcement, without any particular means or facilities it is unlikely that law enforcement will continue smoothly. Such tools or facilities include well-educated and skilled human power, good organization, adequate equipment, and adequate finances.²⁵

b. Society factor

Law enforcement comes from society and aims to achieve peace in society therefore viewed from a certain standpoint, it can influence law enforcement.²⁶

c. Cultural factors

Culture (system) of law basically includes values that underlie the law, a value that is an abstract conception of what is considered good (as it is held) and what is viewed as bad (thus avoided).²⁷

Each factor will influence the process of law enforcement in a society. Failure of just one factor will affect law enforcement. So conceptually, the essence and meaning of law enforcement lie in attributing the relationships of values described within the solid rules, enabling the breaking and acting as a series of final stage values, to create, preserve and maintain the peace of association of life.²⁸

Conclusion

The laws of the establishment of marriage laws are based on a philosophical, civic and sociological basis, and upon principles in the establishment of the best legislation and principles of interest for a child. On his way to the political law on the marriage act, there are twice yudicial review and there are many differences between the first and second review, and the judge granted the application on the second yudicial review.

The politics of the law enforcement of the marriage act need to be enforced by regard for law factors, law enforcement factors, means or facilities, community and cultural factors.

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- Soejono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, PT RajaGrafindo Persada, Jakarta.

²⁵ *Ibid*, hlm. 37.

²⁶ *Ibid*, hlm. 45.

²⁷ *Ibid*, hlm. 59.

²⁸ Soejono Soekanto, *Penegakan Hukum Dan Kesadaran Hukum*, Makalah pada Seminar Hukum Nasional ke IV, Jakarta, 1979 dikutip dari Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, PT RajaGrafindo Persada, Jakarta, hlm. 5.

- Esmi Warasih, *Pranata Hukum Sebuah Telaah Sosiologis*, Suryandaru Utama, Semarang, 2005.
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