



Regulation of Maturity under the Marriage Law in Indonesia in the Perspective of Legal Certainty

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Abstract

A person's capacity to act in law or to perform legal acts is determined by whether or not the person has reached legal adulthood. The aim is that the ability to work with a majority is unrelated, so the law's limit of "age of adulthood" has a significant role. A person's maturity is a benchmark in determining whether a person can or cannot be said to be capable of acting to perform a legal act. This research examines the legal certainty of the concept of maturity in the Marriage Law in Indonesia—this normative legal research with a philosophical, statutory, and conceptual approach. The technique of analyzing legal materials is survey, question, read, recite /recall, and review with deductive thinking. The study results show that the value of legal certainty regarding the minimum age limit for marriage will only implement partially (open to inconsistencies) because it is still possible to deviate from this limit by allowing marriage dispensation for prospective brides under age specified by law. If dispensation is to granting for specific reasons, there needs to be a follow-up to ensure the emotional maturity of the parties concerned. In addition, Indonesian marriage law only regulates maturity through age limits, so it is necessary to handle the concept of maturity from another perspective to ensure legal certainty.

Keywords: *Regulation of Maturity; Marriage Law; Legal Certainty*

Introduction

According to Article 1 Law Number 16 of 2019 Concerning Marriage 2019, marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on Belief in One Almighty God. Marriage is a sacred and important event in family life. Marriage involves personal matters and relates to family, relatives, and society (Prasetyo et al., 2022). People who enter marriage are responsible for their rights and obligations (Badi, 2014). The goal

of marriage is to create a happy and long-lasting family. As a result, husband and wife must assist and complement each other to develop a personality capable of assisting and achieving spiritual and material well-being (Latifiani, 2019). The issue related to child marriage is interesting, considering that Article 28 letter (B) of the 1945 Constitution states that (1) everyone has the right to form a family and continue offspring through legal marriage. (2) every child has the right to survival, growth, development, and protection from violence and discrimination. As a state of law, Indonesia must, of course, base everything on the law, as mandated by Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (from now on referred to as the 1945 Constitution) states, "Indonesia is a state of law." Based on the mandate, Indonesia adheres to the notion of a state of law or *rechstaat* not *machtstaat*, based on sheer power (Tolang & Dibaba, 2022).

Indonesian laws and regulations clearly state that the minimum age of Marriage is 19 years for both men and women. Grammatically, according to the authors, the norms of the Marriage Law, especially Article 7 paragraph (1), have a single prescription, namely definitively determining the minimum age limit for a person to be allowed to marry.

Another form of the irrelevance of the minimum age limit for Marriage relates to the capacity of a person to perform legal acts. There are differences in the provisions stated in Article 330 of the Civil Code (KUHPperdata) and Article 47 paragraph (1) of Law Number 1, the Year 1974, concerning Marriage. In that case, this could eliminate the unlawful nature of an act for a justifying reason. The provisions in Article 330 of the Civil Code (KUHPperdata) state that: "A person shall be deemed to be an adult if he or she has reached the age of 21 (twenty-one) years or has (had) a marriage." This article requires that a person declared capable of performing legal acts must first be 21 or have entered marriage before age 21.

That differs from the provisions in Law Number 1, the Year 1974 on Marriage. Article 47, paragraph (1) of the Marriage Law states as follows: "Children who have not reached the age of 18 (eighteen) years or have never entered into marriage are under the authority of their parents as long as they not deprived of their authority". According to the Marriage Law, a person is declared competent to enter into marriage when they reach the age of 18 (eighteen) years or older. A person who has not reached the age of 18 (eighteen) years is still under the authority of their parents.

Article 6 paragraph (2) of Law Number 1 of 1974 concerning Marriage states that to enter into Marriage, a person who has yet to reach the age of 21 (twenty-one) years must obtain the permission of both parents. While article 47 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that children who have not to be reached the age of 18 (eighteen) years or have never entered into marriage are under the authority of their parents as long as they do not deprive of their jurisdiction. It is because underage marriage is commonplace in Indonesia. Various problems can arise from underage marriages. Among them are social problems and legal issues for children in fostering household relationships (Hasoloan & Rozzaqi, 2022). These two articles create juridical problems. Because Article 6 paragraph (2) of Law Number 1 of 1974 concerning Marriage states that if you have not reached the age of 21 (twenty-one) years, you must have the permission of both parents even though the age of 19 (nineteen) years is already allowed to enter into marriage.

A person's ability to act in law or perform legal acts is determined by whether or not the person is considered an adult according to the law. In direction, the capacity to act links to the age of majority, so the provision of the "age of majority" limit in law has a significant role (Suherman & Satrio, 2010). A person's maturity is a benchmark in determining whether a person can or cannot be said to be capable of acting to perform a legal act.

Therefore, a person who will perform legal acts must reach the minimum age limit that is determined. Explicitly, the Marriage Law does not state that the age of 19 (nineteen) years is the age of adulthood. However, someone who has reached the minimum age limit can marry. A person who has reached the minimum age limit does consider to have responsibility for his rights and obligations, even though age does not necessarily guarantee that person will have maturity.

However, in practice, there is still the frequent provision of relief given by religious courts to prospective brides who are not yet 19 (nineteen) years old to enter into marriage, which is often called marriage dispensation. Dispensation is the granting of rights to a person to marry even though they have not reached the minimum age of marriage. The number of child marriage dispensations in Indonesia is high, as presented in Figure 1.

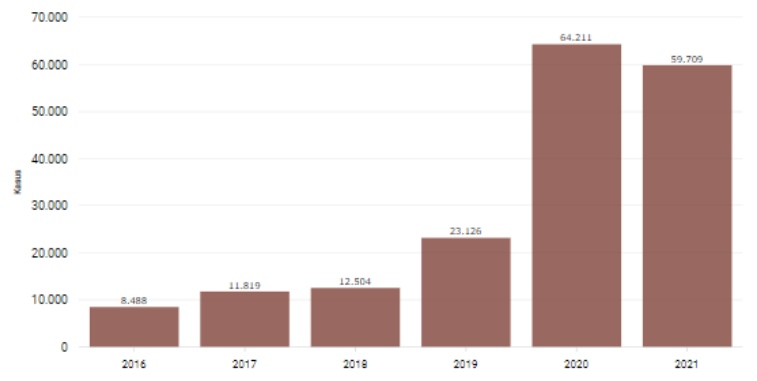


Figure 1: Child Marriage Dispensation Rates in Indonesia
Source: Databoks.com (2022)

The National Commission on Violence Against Women (Komnas Perempuan) reported that the number of child marriage dispensations granted by the Religious Courts was 59,709 cases in 2021. This figure has decreased by 7.01% from 64,211 cases in 2020. Despite the decline, the number of child marriages in 2021 remains high. However, the decrease in dispensation can be a start for preventing child marriage. If you look at the trend, since 2016, the number of child marriage dispensations has tended to increase. The highest increase occurred in 2020. Child dispensations reached 64,211 cases, a threefold increase compared to 2019.

The increase was due to the ease in granting requests for marriage dispensation. This ease can be caused by several things, namely between urgent situations such as a pregnant girl, a child who is at risk or has had sexual intercourse, and the child and partner already love each other. In addition, the parents' assumption that the child is at risk of violating religious and social norms to avoid adultery does suspect as the reason for requesting dispensation from child marriage.

Maturity does define as full responsibility for oneself, destiny, and formation. Maturity is not just a mature age; mind and mentality are the most important things in running a household ark. With maturity, husband and wife will have a sense of responsibility and respect. A prosperous family will produce children who are intelligent and have noble personalities. The marriage law only explains the minimum age for marriage or can be said explicitly that a person is an adult.

A husband and wife must be mentally and physically mature to achieve their goals of having a happy marriage that does not end in divorce and having good and healthy children (Latifiani, 2019). Maintaining a peaceful, loving, and affectionate family environment is difficult. It relates to maturity and family well-being. As a result, it is critical to examine the age limit for marriage from a sociological and psychological standpoint (Badi, 2014).

Emotional maturity must be considered, so it is necessary to clarify the concept of maturity in Indonesian marriage law. With the idea of maturity in marriage law, it does hope that the benefit of marriage will be achieved, not redundant or harmful. Hence, it is necessary to clarify the concept of maturity in Indonesian marriage law. This study aims to examine legal certainty from the idea of maturity.

Methods of Research

This research is normative because the legal materials that form the basis of policies on marital issues are mostly formulated in laws and regulations and expert opinions, which are formulated in various references, journals, and research results. Then this study uses a philosophical, statutory, and conceptual approach. Analysis of legal materials uses various ways of interpretation, namely: grammatical, systematic, historical, and futuristic interpretations. In analyzing legal materials, researchers use a deductive way of thinking. In carrying out this interpretation, the researcher uses a technique of analyzing legal material, which is carried out in stages called SQ-3, namely survey, question, read, recite/recall, and review.

Results and Discussion

1. Maturity in Sociological Perspective

Generally, traditional societies view a person as an adult if they can look after their interests. This definition was put forward by several customary law experts, among others: Ter Haar, the adult is capable (*volwassen*), married and living separately, leaving his parents; Soepomo, the adult is *kuwat gawe*, capable of taking care of his property; Djodjodigoeno, the adult is by birth, *mentas*, *kuwat gawe*, *mencar* (Sungkuwula, 2009).

Wayan P. Windia, an expert on Balinese customary law from the Faculty of Law, stated that in Balinese customary law, if a person can *negen* (*nyuun*) according to the burden tested, they are declared *Loba* as adults. For example, if a person can *negen* eight coconuts or *nyuun* six coconuts, he is automatically stated as an adult (Jusuf, 2004)

In the customary view, maturity is independent of age, so there is no uniformity. According to psychology, a person can do considered an adult depending on each individual, although there is still a link with adulthood. Psychology sees adulthood as a phase in human life that illustrates the achievement of mental balance and thought patterns in every word and action. Someone who has been able to work (*kuwat gawe*) to make a living can think and be responsible for the necessities of life, even though the process of early maturation in society does not include this category (Sugiyem, 2010). According to Nursadi, maturity in the concept of adat is based on: 1. Community assessment, 2. Ability to hunt and find food, 3. Ability to lead friends 4. Seeing one's physical condition (Sugiyem, 2010).

Based on this explanation, the considerations put forward by customary aspects are also very likely to influence the Marriage Law (UU No. 1 of 1974), especially regarding the age limit for marriage. There are indeed no specific definitive provisions regarding maturity in marriage age. Even so, with an age limit in carrying out marriages, socially, the purpose of the age limit is so that the parties/or the bride and groom fully understand social responsibility, namely the ability to guide the family to goodness and responsibility to society at large by maintaining peace through the household.

2. Maturity in Philosophical Perspective

Mature thinking is the substance of the philosophy of life because an adult person can take lessons from every problem in his life. Thinking in an adult way means rationally. Rationality itself is the synchronization between reason and reality. That means that adults will accept something or issue something because it is accurate and makes sense, does not conflict between theory and reality, and words are in harmony with actions. So that it is not confusing and can be accepted as a form of truth, not a misleading form of misguidance so that his words are not deceptive and always bring good to many people (Sherrat, 2002). People will easily understand his every word and advice because someone who uses rationality speaks and practices it.

Maturity of thinking focuses on the formation of an adult mindset. An adult mindset consists of several essential points, including subjectivity. Subjectivity is a form of error in maturing thinking. The definition of subjectivity is to conclude an absolute truth from only one side. The mistake of subjectivity is not in the substance of the problem but in the point of view of seeing the problem so that the information obtained and issued is only limited to one particular side (Sherrat, 2002).

Therefore, the view of subjectivity alone is not fair enough to reveal the mature truth but also needs other views, namely the view of objectivity. Objectivity is a view that does not just look from one angle but must be from various angles so that the truth can be touched it can solve the problem. Discussing maturity in marriage through philosophical aspects is so that the bride and groom can become a whole person in facing the challenges of domestic life, both apparent and real. In addition, the wisdom that comes from maturity an expected to help illuminate and make everything in life a lesson for every action that will take in the future. In the case of marriage, everyone knows how the bond should be created and maintained. Thinking and acting is the primary benchmark for how a person lives and brings his household to goodness and happiness. In solving life's problems, especially in the family, material resources do need, and maturity in acting and solving existing problems is required. So that makes good come.

3. Maturity from a Biological Perspective

Both male and female sex organs reach maturity at the end of adolescence, approximately 21 or 22 years. Therefore, marriages conducted in their teens are not a healthy reproductive period because the sex organs have not yet matured. Women in their teens can physiologically become pregnant and give birth, but they are not medically and psychologically grown enough to care for children at that age (Hurlock, 1999).

Maturity does divide into three stages, among others:

- a. Early adulthood (young adult)
- b. Intermediate adulthood (middle adulthood)
- c. Older adult

The three stages of maturity cannot always determine based on a specific age level. For some people, the age of 17 has begun to enter the young adult phase. Still, it is unnecessary for others, so apart from age and marital acts, maturity can also do seen in behavior and biological and physical growth. Maturity is always associated with mental maturity, personality, mindset, and social behavior, but on the other hand, maturity is also closely related to physical growth and age. Maturity is sometimes associated with a person's sexual condition, even though age does not always determine human reproductive ability.

Meanwhile, psychological maturity means that the parties have good mental health and have a sense of responsibility as husband and wife, especially in educating their children reasonably and

honorably. In psychological terms, maturity is the peak physical limit of a perfectly normal child. Boys are around 21-24 years old, and girls are about 19-21 (Mappiare, 2012).

Psychologically, a person is said to be psychologically mature because he can direct himself, is not bound to other people, can be responsible for all his actions, is independent, and can make his own decisions (Sucipto, 2014).

4. Legal Certainty in the Maturity Arrangement in the Marriage Law

The opinion regarding legal certainty was also expressed by Jan M. Otto, that legal confidence in certain situations requires, among others, the availability of clean, clear, consistent, and easily obtainable legal rules issued by the State power (Bernard, 2010). While Gustav Radbruch gave the opinion that certainty in law does achieve if the law is as much as possible in the form of rules, there are no conflicting provisions (Law based on a logical and practical system. Make the law based on "*rechtsleer kelijheid*" (real legal justice), and no legal terms can interpretation differently (Utrecht, 1957).

Conditioning the value system in the relationship between people in society that can provide a "legal certainty," according to Satjipto Rahardjo, must first create certainty within its own body. This latter demand brings a formal burden that must accomplish, namely the arrangement of consistent rules. The same opinion conveys by M. Isnaeni, who revealed that a legal device that pays great attention to consistency would be able to give birth to legal certainty as expected by the wider community (Utrecht, 1957). Conversely, the legislation needs to flow with thickness. In that case, it means the image itself is never certain, so it is complicated to expect the birth of legal certainty from the womb of such rules. The opinion regarding legal certainty was also expressed by Jan M. Otto, as quoted by Sidharta, that legal certainty in certain situations requires, among others, the availability of transparent, clear, consistent, and easily accessible legal rules issued by the State power (Utrecht, 1957). Legal certainty in certain situations requires, among other things, the availability of legal rules that are obvious, clear, consistent, and easily obtained (accessible) and issued by the State power. Nurhasan Ismail argues that the creation of legal certainty in legislation requires requirements relating to the internal structure of the legal norms themselves (Rosalinda et al., 2013) These internal requirements are clarity of concepts used, legal norms containing descriptions of certain behaviors, which are then incorporated into the particular concept as well, then clarity of the hierarchy of authority of the legislative body. The clarity of this hierarchy is important because it concerns whether or not the laws and regulations are valid and binding. Legal certainty can do interpreted as the clarity of the law itself. The law does not cause doubts/multiple interpretations. Law enforcement laws need that do not create or result in contradictions.

Herowati Poesoko's opinion related to legal practice does often found to be a legal vacuum (*leemten in het recht*), inconsistencies in legislation, conflicts of norms (antinomy), and vague rules (*vage normen*) (Poesoko, 2018). Regarding the limitation of the minimum age of Marriage in the Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Article 7 paragraph (1) States that Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. The provisions of this article contain conflicts of norms, vague norms, and inconsistencies with Article 7 paragraph (2), Article 7 paragraph (3) Article 7 paragraph (4) Of the law by still providing leeway to provide dispensation for the age of marriage. Article 7, paragraph 2 of the Law of the Republic of Indonesia Number 16 of 2019 discusses Amendments to Law Number 1 of 1974. The article concerns marriage which states that: "in the event of a deviation from the age requirement as referred to in paragraph (1), the person's parents from the male or female side can apply for a dispensation to the court with very urgent reasons accompanied by sufficient supporting evidence. The parents of the male or female party may request dispensation to the court on very critical grounds accompanied by enough supporting evidence. Article 7, paragraph (3) states that the granting of dispensation by the court, as referred to in paragraph (2), must hear the opinions of both parties. Based on

this provision, there needs to be more consistency in the legislation's rule of law (conflict of norms), providing a minimum age limit for marriage of 19 years. However, it is still possible to be less than 19 years old if you have a marriage dispensation letter from the court.

Marriage dispensation is the granting of rights to a person to marry even though they have not reached the minimum age of marriage, meaning that a person may make a match outside of this provision if a situation "requires" it. There are no other options (*ultimum remedium*). The new Marriage Law provides an opportunity for "deviation" by applying for marriage dispensation, which can submit to the court, the Religious Courts for followers of Islam, and the District Court for those of other religions. Urgent circumstances are a consideration for the continuation of the marriage, but there needs to be an explanation of the scope of the pressing circumstances in the law (vague norms). Of course, this is problematic in itself. On the one hand, requiring a minimum age limit for marriage of 19 years; on the other hand, it is still possible to deviate from this provision as long as you have a marriage dispensation from the court.

In connection with this marriage dispensation, there is a Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. Based on Article 2 of the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, Judges hear applications for marriage dispensation based on the principles of the best interests of the child, the right to life and growth of the child, respect for the opinion of the child, respect for human dignity, gender equality, non-discrimination, justice, expediency, legal certainty, and equality before the public.

Among the reasons often put forward for dispensation from marriage is that the relationship between the prospective groom and the bride is already very close. Hence, parents worry about falling into actions contrary to Islamic law. In adjudicating cases of marriage dispensation, the Religious Courts often consider two losses, namely losses arising from child marriage (early marriage) and losses in the event of rejection of the marriage dispensation (Satria, 2019).

Indeed, under certain conditions, it is complicated to refuse an application for marriage dispensation, especially if the prospective bride is already pregnant. Surely parents will try to obtain marriage dispensation for their children. Suppose there is evidence and reasons to prove it, including a certificate of age for the bride and groom, which is still under the provisions of the law, and a statement from a health worker supporting the parents' argument that marriage is necessary. In addition, the judge is also obliged to hear the testimony of the bride and groom, namely the applicant, and the prospective *besan's affidavit*. So that when viewed from the value of legal certainty related to the minimum age limit of marriage cannot be implemented perfectly (open to inconsistencies) because it is still possible to deviate from these limits by allowing marriage dispensation for prospective brides under the age specified by law.

If this dispensation does grant, a psychological test should be required first because age does not guarantee a person's maturity and emotional maturity. The measure of maturity depends on each individual. However, it still links with the definition of adulthood according to Psychology, where maturity is a phase in human life that describes achieving mental balance and thought patterns in every word and action. Someone who has been able to work (*kuwat gawe*) to earn a living, then actually he has been able to think and be responsible for his life needs. One of the factors of maturity stages is a certain age level. Some people believe that the age of 17 has entered the adult phase, but for some people, it is not. So regardless of age and marriage, behavior and physical and biological growth affect maturity. Maturity is always associated with mental maturity, personality, mindset, and social behavior, but on the other hand, maturity is also closely related to physical growth and age. Maturity is sometimes associated with a person's sexual condition, even though age does not always determine human reproductive ability.

Meanwhile, psychological maturity means that the parties have good mental health and have a sense of responsibility as husband and wife, especially in educating their children reasonably and honorably (Sucipto, 2014). Maturity is essential as a provision to assume responsibility in Marriage (Ummah, 2012). Maturity plays a significant role in the success or failure of the relationship. Therefore, marriage and relationship practitioners must understand how maturity affects one's ability to understand the concepts and apply the skills necessary to form and maintain healthy relationships.

Conclusion

The discussion results show that when viewed from the value of legal certainty regarding the minimum age limit for marriage, it cannot implement perfectly (opening opportunities for inconsistency). Due to the possibility of deviation from the age limit, a marriage dispensation obtain for prospective brides under the age determined by law. If granting dispensation for specific reasons, follow-up is necessary to ensure the emotional maturity of the party concerned. In addition, marriage law in Indonesia only regulates maturity through an age limit. Therefore, it needs to hold the concept of maturity from another point of view to guarantee legal certain.

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