

Marriage Law Reform: Efforts in Achieving Gender Equality

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Abstract

The elimination of child marriage as a social problem in modern Indonesia was a primary motivation for the passage of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 on Marriage. This law came into effect on January 1, 2019. The purpose of this study is to investigate issues of gender equality between male and female candidates for the roles of bride and groom, which led to the change in the law. The concepts of non-discrimination, equality, and justice all serve as the foundation for various components of the concept of equality. This study is a form of literature review in which the primary data is gathered from secondary sources, particularly legal documents, books, journals, and articles that are linked to the subject matter of this research. According to the findings of the study, the efforts of the government to protect children's rights and ensure that men and women have equal rights, particularly those linked to the minimum age limit for entering into marriage, are a major factor in the modifications that have been made to the Marriage Law. The minimum age limit for entering into marriage is currently set at 18 years old. Therefore, according to the most recent law governing marriage, the minimum age requirement for marriage is 19 years old for both men and women. According to the former Marriage Law, there is therefore no change to the minimum age requirement, which remains the same.

Keywords: *Gender Equality; Indonesia; Justice and Marriage Law.*

Abstrak

Penghapusan perkawinan anak sebagai masalah sosial di Indonesia modern menjadi motivasi utama pengesahan Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Undang-undang ini mulai berlaku pada tanggal 1 Januari 2019. Tujuan dari penelitian ini adalah untuk menyelidiki masalah kesetaraan gender antara calon pria dan wanita, yang menyebabkan perubahan undang-undang tersebut. Konsep non-diskriminasi, kesetaraan, dan keadilan semuanya menjadi dasar bagi berbagai komponen konsep kesetaraan. Studi ini merupakan studi literatur dimana data primer dikumpulkan dari sumber sekunder, terutama dokumen



hukum, buku, jurnal, dan artikel yang terkait dengan pokok bahasan penelitian ini. Menurut temuan penelitian, upaya pemerintah untuk melindungi hak-hak anak dan memastikan bahwa laki-laki dan perempuan memiliki hak yang sama, terutama yang terkait dengan batas usia minimum untuk menikah, merupakan faktor utama dalam perubahan yang dilakukan terhadap UU Perkawinan. Batas usia minimum untuk menikah saat ini ditetapkan pada usia 18 tahun. Oleh karena itu, menurut UU Perkawinan hasil perubahan, syarat minimal untuk menikah adalah 19 tahun baik bagi laki-laki maupun perempuan. Menurut UU Perkawinan yang lama, maka tidak ada perubahan syarat usia minimal yang tetap sama.

Keywords: *Hukum Perkawinan; Indonesia; Keadilan dan Kesetaraan Gender.*

INTRODUCTION

Indonesia is a state of law, the law aims to create a more equal and fair order in the lives of the nation and society (Hidayat, 2017). One of the state policies in realizing this aim is passing Law No. 16 of 2019, amending Law No. 1 of 1974 concerning Marriage. The amendments to the 1974 Marriage Law specifically related to the minimum age limit for prospective brides-to-be, where in the old law, the age of prospective brides was 16 years, while for perspective grooms was 19 years (Holijah & Manaf, 2019). This difference in terms of age is felt to be a form of discrimination, as well as depriving women of their rights, where the age of 16 is an early age, and contrary to a number of other law norms, in particular the Child Protection Law (Judiasih et al., 2018). In addition, Article 27 paragraph 1 of the 1945 Constitution recognizes the existence of equal rights before the law, so that in the context of marriage, realizing equal rights at the age of marriage is a realization of the constitution of the Republic of Indonesia.

Besides that, the amendment to Law No. 1 of 1974 concerning Marriage to Law No. 16 of 2019 is also part of a follow-up to the Constitutional Court (MK) Decision Number 22/PUU-XV/2017 concerning the judicial review of Law No. 1 of 1974, specifically related to Article 7 paragraph 1. This article states that "(1) Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years". So the Constitutional Court's decision to revoke this article has encouraged the government to adapt the decision to the latest law. Provisions regarding the age limit for brides are also related to the age limit for a person who is considered an adult, where according to Article 330 of the Civil Code, an adult is considered if he is 21 years old. Similar to the provisions of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, that adulthood begins at the age of 18 years. Nonetheless, the latest Marriage Law stipulates a minimum age for marriage starting at 19 years old, as the age of adulthood or the age of maturity to enter into marriage. Psychologically, the maturity of a child or the early adult phase that can be categorized as ready to get married is 19 years old (Simatupang, 2021). This provision is equivalent to completing high school. Psychologically, physically, and spiritually, this phase is considered

ready to undergo marriage (Holijah & Manaf, 2019). So that the ideals of a marriage, which to create a happy and long-lasting family, will be realized. This can also reduce the divorce rate due to the mental and psychological instability of the newlyweds (Salim et al., 2021).

These various aspects, both constitutionally and in terms of human rights and psychological aspects, are part of the formation of the latest marriage law in Indonesia (Murni, 2020). Apart from that, this change is also a legal political intervention made by the government in realizing a policy that aims to make Indonesian society better (Heryanti, 2021). This is in accordance with the authority of the state, where the state has the authority to determine policies to answer problems that occur in society in order to achieve the ideals and goals of the nation, namely realizing justice and prosperity for all Indonesian people (Humanity & Khasna, 2021). This research was conducted to examine the aspects that influenced the amendment of Law No.1 of 1974 to Law No. 16 of 2019 concerning Marriage. One of them is related to the government's efforts to equalize the minimum age for prospective brides and grooms. There are several aspects behind this provision, including constitutional provisions regarding equality before the law, human rights concerning justice and equality, along psychological aspect where the minimum age of 19 years is considered the minimum age for the parties to become more established in realizing an ideal family.

This research is a type of qualitative research using a doctrinal approach, also known as the black-letter method (McConville, 2007). The black-letter method aims to understand the existence of existing laws through the process of interpreting texts and other legal doctrines (Musson & Stebbings, 2012). The concept of legal doctrine will be used to analyze phenomena arising from the implementation of the law as well as to test various contestations in the process of its realization. Meanwhile, the main data is obtained from laws and judges' decisions, which become jurisprudence. The author will also use secondary data sources, mainly books, journals, articles, and other sources relevant to this article. All data will be analyzed using descriptive methods for all legal materials and other materials to support the hypothesis.

DISCUSSION

The History of Marriage Law in Indonesia

The development of family law in Indonesia has started since the enactment of Law No. 22 of 1946 concerning Registration of Marriage, Divorce, and Reconciliation, which at that time only applied to the regions of Java and Madura (Gouwgioksiong, 1964). Then the Minister of Religion of the Republic of Indonesia issued Instruction No. 4 of 1974, which contained Marriage Registrars. This instruction was related to the prevention of underage marriages (Rifai et al., 2015). In 1954, the government passed Law No. 32 of 1954, amending Law No. 22 of 1946 concerning Registration of Marriage, Divorce, and Referrals, and the latest law applies to all regions of Indonesia (Yasin, 2015).

However, the ratification of the law received reactions from a number of circles. One of them is the Women's Front, which filed a demand for a review of the law. Instead, this group demanded the government pass the marriage law in Indonesia. In 1950, the Minister of Religion of the Republic of Indonesia issued an Order of the Minister of Religion Number B/2/4299 and instructed the formation of a Committee to Investigate Marriage, Divorce, and Reconciliation Laws (Ahmad, 2016; Erwinsyahbana & Syahbana, 2022; Sosroatmodjo & Aulawi (H.), 1975). In 1952, a team formed by the Minister of Religion formulated the Marriage Law, which contained specific regulations and general regulations. While special regulations refer to regulating specific groups, special regulations also refer to regulating all groups. In addition, this draft also aims to promulgate and unify laws to manage the condition of society, one of which is regarding the minimum age for marriage for men, which is 18 years, and for women, it is 15 years. The draft law regarding the age limit for marriage has the goal of preventing the exploitation of children. Even though the draft marriage law had been successfully drafted and submitted by the Minister of Religion of the Republic of Indonesia to the President at a cabinet meeting, unfortunately, there was no good response from the President to the draft marriage law until the end of the Old Order government (Salim et al., 2021).

In 1973, the New Order regime resubmitted the draft Marriage Law, in which the age limit for marriage was set at 21 for men and 18 for women (Rifai et al., 2015). This provision was later included in Article 7, paragraph 1, of the 1973 Draft Marriage Law. After going through a discussion process, the draft law has ultimately been officially approved, leading to the revision of Article 7 paragraph 1 concerning the minimum age limit for marriage were revised to 18 years for men and 16 years for women. In addition, it is worth noting that there exist articles that provide opportunities for prospective brides who are not yet of age, as stipulated in Article 7, by submitting a marriage dispensation to the religious court or an authorized official. In 1974, the draft Marriage Law was finally approved by the People's Representative Council of the Republic of Indonesia (DPR-RI) and entered into the state gazette No. 1 of 1974, additional state gazette No. 3019/1974, which became known as Law No. 1 of 1974 concerning Marriage. In addition, in 1991, the government also issued Presidential Instruction No. 1 of 1991 concerning the Implementation of the Compilation of Islamic Law (KHI) as a guideline for Religious Court judges in deciding a case, including in cases of marital disputes (Haryanti, 2017).

The issue of the minimum age for marriage in Indonesia has had its ups and downs because it is also related to issues of child protection, maternal and child reproductive health, women's empowerment, and gender equality (Hermanto, 2021). This has created polemics and new problems within society, so that in 2010, various elements, both the government and civil society, attempted to change the provisions contained in the Marriage Law, particularly regarding the minimum age limit for

marriage. Several groups have demanded that the minimum age limit be revised, including the Indonesian Ministry of Religion, the National Population and Family Planning Agency (BKKBN), and a number of Non-Governmental Organizations (ORNOP). Following up on this, in 2010, the Indonesian Ministry of Religion drafted a Law on the Material Law of the Religious Courts in the Field of Marriage (RUU HMPA on Marriage). The BKKBN also carried out the same thing by conducting various studies on women's protection issues. One of them is by publishing a book entitled "Maturity of Marriage Age and Protection of Reproductive Rights for Indonesian Teenagers". It aims to increase the minimum age for marriage to 25 years for men and 20 years for women (Oktalita, 2020).

In 2017, a number of people submitted a Judicial Review (JR) against Law No. 1 of 1974 concerning Marriage to the Constitutional Court (MK). One of the petitioners based their lawsuit on the negative effects they experienced after being forced into marriage at the age of 14 by their families. This coercion was caused by economic factors, but as a result, the woman could no longer carry out the education process (dropped out of school) and experienced an infection in the reproductive organs. The second applicant experienced the same thing, where the woman was forced to marry when she was 14 years old by her family due to debt problems. The second applicant also dropped out of school and often suffered miscarriages because her reproductive organs were still unstable.

Based on JR's request, the MK panel of judges assessed and considered the provisions of Article 7 paragraph 1 of the 1974 Marriage Law, which, according to the panel of judges, are discriminatory, particularly regarding the age limit for marriage, which distinguishes between men and women. Based on the consideration that the article contradicts Article 27 paragraph 1 of the 1945 Constitution, the Constitutional Court issued Constitutional Court Decision Number 22/PUU-XV/2017. There are two points contained in the Decision, namely: First, the age of 16 is unconstitutional and a violation of Human Rights, as well as exploitation of girls. Second, the decision orders legislators to immediately make changes to the marriage law, especially regarding the minimum age for marriage, within a maximum period of three years (Sitorus, 2020).

However, this decision has not set an ideal age limit for marriage, only stating that the age of 16 for women is a discriminatory and unconstitutional provision because it contradicts Article 27 paragraph 1 of the 1945 Constitution, which reads: "All citizens have the same position before the law and that government without exception." Thus, the Constitutional Court's decision ordered the government to ratify a legal product in which there were provisions that equalized the position of both men and women. This is an embodiment of the principles of equality and justice before the law: equal access and being able to enjoy the same benefits from a policy, including setting the same age limit for marriage between men and women.

As a follow-up to the Constitutional Court's decision, the Indonesian Parliament discussed the proposal to amend the Marriage Law, and on September 16, 2019, the Parliament and the Government agreed to pass the new Marriage Law and amend the provisions of Article 7 Paragraph 1 of the old Marriage Law with the provision that the minimum age limit for marriage is that a marriage is only permitted if both men and women have reached the age of 19 years (Siplawfi, 2019)

Equality in Amending the Indonesian Marriage Law

As previously elucidated, endeavors to formally adopt the Marriage Law have been undertaken since 1973. Even so, the initial draft of the 1974 Marriage Law proposed that the age of marriage for men be 21 years and for women 18 years. However, when it was legalized, the age for boys was 19 years, and for women, it was 16 years (Syahuri, 2013). The age difference between men and women in the 1974 Marriage Law is based on the idea that the prospective groom must be more mature, both physically and mentally, than the prospective bride. On the other hand, culturally, the Indonesian people still think that the husband is the head of the household, responsible for all aspects of the household, especially in terms of economic needs as well as in aspects of caring for his wife and children. Based on these thoughts, the government at that time set the age limit for getting married both for men (19 years) and for women (16 years).

However, after the reformation and various efforts to demand gender and age equality in laws and regulations, including in matters of marriage, the government has legalized changes to the 1974 Marriage Law to become Law No. 16 of 2019 concerning Marriage, where the age of the bride or groom can be used to get married if they are 19 years old, both for men and for women. There are several principles that are taken into consideration in the revision of the minimum age limit for entering into marriage, including: first, it is the principle of non-discrimination. This principle is the most basic and fundamental principle for a person. This right is recognized constitutionally. This principle focuses more on the prohibition of treating someone differently or limiting their rights due to aspects of skin color, gender, language, religion, politics, or other views (Tirmidzi, 2020). Provisions regarding the prohibition of treating a person differently because of the differences in the matters mentioned above have also been stipulated in Article 28i, paragraph 2, of the 1945 Constitution, which states that "Everyone is free from discriminatory treatment..." In addition, Law No. 39 of 1999 concerning Human Rights, Article 1, Paragraph 3, states that:

"Discrimination is any restriction, harassment, or exclusion that is directly or indirectly based on human differentiation on the basis of religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, political beliefs, which results in on 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".

Provisions regarding the prohibition of discrimination, especially in relation to gender differences, have also been stipulated in Article 16 paragraph 1 of the Convention on the Rights of Women (CEDAW), which states that "The equality of women and men will be guaranteed for rights and responsibilities in family relations and all matters regarding marriage." This explains explicitly that this article regulates how equal rights between men and women before the law are included in the field of the minimum age limit for marriage. Thus, the provisions of Article 7 paragraph 1 of Law No. 1 of 1974 concerning Marriage which regulates a different minimum age for marriage between men and women, is a form of discrimination, and this is contrary to the constitution and human rights provisions (Ahmad, 2016).

Second, there is the principle of equality, justice, and equity. This principle recognizes the existence of equality before the law for both men and women (Rhona, 2008). That is, when men and women carry out a legal act (marriage), then they, as legal subjects, have the same position. The same position can also be understood as a form in which both have equal access and equal opportunities, and this equality must be recognized and protected by the state through the ratification of laws. So thus, the ratification of the 2019 Marriage Law, which no longer differentiates the minimum age of men and women, is a form of state policy that has recognized equality and justice for all parties. In addition, this equality reflects the equality of men and women, as well as equal opportunities to enjoy family resilience.

Third, there is the best principle and the interests of the child. The existence of this principle is part of efforts to protect children, where the interests of the child must take precedence over the wishes or wishes of their parents. This is based on 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 children must be the most important consideration. Based on this principle, all decisions and actions taken and carried out must be impartial in order to protect the best interests of the child (Huda, 2021). The principle of the best interests of the child must be taken into consideration in the preparation of the academic text of a law, especially in this case, the Marriage Law. Therefore, all parties, both the government and society, must make efforts so that the basic rights of children can be fully and maximally fulfilled.

Fourth, it is the principle of state obligations. This principle implies that the state has a positive obligation (in forming a policy) to actively protect and ensure the fulfillment of human rights and freedoms. In this case, the state has an obligation to stop all forms of discrimination against women through the formation of laws and various policies, as well as administrative efforts and concrete actions to prevent discrimination against various parties. In terms of marriage, discrimination and violations of women's rights are often carried out by parents, and in practice, many

marry women who are still children (underage) using a dispensation mechanism (Tiswarni, Jayusman, & Rohilati, 2020). From an Indonesian cultural standpoint, it is evident that a large percentage of individuals continue to perceive underage marriages as socially acceptable. This issue is inherently intertwined with several underlying assumptions. For instance, there exists a societal expectation that parents may experience shame if their daughters are unable to promptly secure a marital partner. Additionally, women are often not regarded as important contributors to the pursuit of higher education. Furthermore, a culture of child exploitation persists, alongside prevalent societal myths. One such myth suggests that a man who expresses interest in marriage must be immediately accepted, as failure to do so may result in prolonged difficulties in finding a suitable partner for the woman (Sebyar, 2022).

Fifth, it is the principle of the right to life, survival, and development of life. This principle guarantees that every child has the right to live, develop, and live his life, and the state is obliged to guarantee this right and fulfill these children's rights (Supriyadi, Eddyono, & Ajeng, 2016). Children's rights are included in human rights as formulated in Article 52, paragraph 2, of Law No. 39 of 1999 concerning Human Rights, which reads "Children's rights are human rights, and for the sake of the child's rights, they 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, such as regulating policies related to this matter, but the community also participates in protecting children. Then, protection for children means that since the child is still in the womb, the child has the right to live and develop their life.

Sixth, it is the principle of order and legal certainty. This principle provides an understanding that "Every material contained in laws and regulations must be able to create order in society through guaranteed certainty". Thus, the decision of the Constitutional Court No. 22/PUU-XV/2017, which orders the legislators to make changes to Article 7 paragraph 1 of Law No. 1 of 1974 concerning Marriage, particularly with regard to the minimum age limit for marriage for women and for men. This has been confirmed by the provision that the new marriage age limit is the minimum age limit for marriage so that the principles of order and legal certainty are fulfilled.

Finally, it is the principle of respect for children's opinions. This principle is based on Article 12 paragraph 1 of the Convention on the Rights of the Child, which states that "Children's opinions, especially when it comes to matters that affect their lives, need to be considered in every decision-making process." This principle provides opportunities for children to be involved in various interests that concern their lives, although it is realized that children are not always considered capable of making decisions about themselves. Children need to be prepared to be able to participate and make decisions for them. This principle was later ratified by the state through the ratification of the Convention on the Rights of the Child as well as the enactment of Child Protection Law No. 35 of 2014, amending Law No. 23 of 2002.

Protecting the rights and interests of children, especially from attempts at early marriage, is also a post-reform state policy and becomes part of the government's legal politics. Legal politics is a policy regarding law that is made for the realization of state goals, one of which is formulating new laws or replacing old laws. This legal policy has a scope regarding the law that will be enforced until the law is deleted and replaced according to the legal objectives of each country (MD, 2009). Mahfud MD divides three legal political groups, including: first, the official direction regarding the rules that will then be enforced (legal policy), which aims to achieve state goals that include replacing old laws and establishing new rules altogether; second, the political background and other societal sub-systems behind the creation of the law, including the official direction of the discourse on regulations that will or will not be enforced; and third, the problem of sitting cases around the enforcement of rules, especially the implementation of legal politics that has been outlined. Rahardjo (2006) states that legal politics is an activity to choose certain social goals or methods that will be used to achieve the goals of society and the state as the ideals of the constitution.

Related to the minimum age limit for requirement marriage, several fundamental principles come into play, including the principle of non-discrimination, gender equality and justice, the best interests of children, the state's obligation to actively protect and ensure the fulfillment of human rights and freedoms, the right to life which guarantees that every child has the right to live, develops and continues its life and the state is obliged to guarantee it and fulfill the child's rights, order, and legal certainty, as well as respect for the child's opinion. The author posits that the legislative history of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage is a manifestation of the aspirations and wishes of the public and organizational thinking, which considered that the minimum age limit for marriage in the old Marriage Law did not reflect the values of benefit and equality, but discrimination occurred for prospective brides in terms of the minimum age limit for marriage. On the other hand, the ratification of Law No. 16 of 2019 has reflected that this legal product has provided the same and equal rights for both men and women to be able to get married at the same minimum age.

In addition, the provision regarding the age limit for marriage has the objective of maintaining the health of the husband and wife and their offspring. Therefore, it is important for Indonesian people to be able to understand the current social conditions of society, especially regarding underage child marriage. With the setting of an age limit, it can be used as a consideration for parents and teenagers who plan to marry but are still categorized as underage children who still really need preparation and maturity both mentally, physically, and financially (economically).

Strengthening the terms and conditions regarding marriage dispensation in the latest marriage law

In addition to governing the minimum age equality in carrying out marriages, Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage also regulates the dispensation of marriage. Actually, the dispensation of marriage has been known since the formation of Law No. 1 of 1974 concerning Marriage. However, this provision still exists and is attached to Law No. 16 of 2019 (Usanti et al., 2021). In regards to this matter, there exists a legal adage that states “*Ad Recte docendum oportet primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet*”. The aforementioned adage conveys the notion that in order to understand a legal concept in depth, it is imperative to gain comprehensive understanding of its definition (Hiariej, 2015). Therefore, to delve into the matter of the dispensation of marriage, it is necessary to grasp the fundamental concept of the dispensation. In general, dispensation is part of licensing (*vergunning*), this refers to situations in which legislators do not intend to establish exceptions in principle, yet exceptions are made from general legislation. (Sutedi, 2010). Within the framework of legal norms, there exist various component, among which is the dispensation norm. This norm entails a special permissibility whereby individuals are granted the authority to deviate from the general obligations imposed upon them (Usanti et al., 2021). C.S.T. Kansil, as referenced by Ishaq, concurred that dispensation refers to a provision that exempts a regulatory requirement from being applicable to a case initiated by an applicant (Ishaq, 2022).

The granting of a marriage dispensation in marriage law is the granting of permission by a court or other officials appointed by parents to a candidate who will enter into a marriage at the age specified by law as stipulated in Article 7 paragraph 1 of Law No. 1 of 1974 concerning Marriage. In that article, it has been regulated that marriage can be permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years. According to the elucidation of Article 7 paragraph 1, this provision aims to protect the health of the husband and wife and their offspring, so that the existence of the marriage dispensation can be used as a legal remedy for anyone wishing to marry below the minimum age limit for marriage (Usanti et al., 2021). In addition, setting the minimum age limit for marriage also aims to make the prospective groom and bride not only physically mature but also mentally and psychologically so that the goal of marriage can be achieved without ending in divorce.

Marriage dispensation in Law No. 1 of 1974 concerning Marriage still provides a great opportunity for judges to issue marriage dispensation stipulations. This is also one of the first steps to carry out legal politics against Law No. 1 of 1974 concerning Marriage, especially in terms of marriage dispensation. In general, the basic and fundamental changes in Law No. 16 of 2019 are related to the minimum age for marriage which was previously 16 years for women and 19 years for men to be equally 19 years, for both men and women. It is feared that the increase in the minimum age

for marriage to 3 (three) years for women will lead to more widespread and increased applications for dispensation of marriage in the future. This concern is very reasonable, considering that at the age of 16 for women, many marriage dispensations are proposed, especially if the minimum age for marriage is increased to 19 years for both men and women. This also could allow for more marriage dispensations to be proposed.

In Article 7 paragraph 2 of Law No. 1 of 1974 concerning Marriage, it is explained that a marriage dispensation can be applied for by parents of both men and women who have not met the minimum age requirements to enter into a marriage. When the court grants the request for marriage dispensation, a marriage dispensation stipulation will be issued, which can then be used as a conditional copy of the stipulation to enter into a marriage. Therefore, for couples who do not meet the minimum age limit for marriage, a marriage dispensation issued by the court is an additional formal requirement that must be owned by the couple in order to carry out their marriage. Regarding the issue of granting marriage dispensation under Law No. 1 of 1974 concerning Marriage, there persist legal challenges due to the absence of explicit regulation establishing clear and definite reasons or indicators that may serve as reasons for a marriage dispensation to be granted. In fact, Government Regulation (PP) No. 9 of 1975 concerning Implementing Regulations for Law No. 1 of 1974 concerning Marriage (hereinafter referred to as PP No. 9/1975), which is a technical regulation from the Marriage Law, also does not discuss marriage dispensation. Based on the provisions of Law No. 1 of 1974 on Marriage and Government Regulation No. 9 of 1975 on the Implementation of Law No. 1 of 1974 on Marriage, it can be argued that there is a lack of clear guidelines regarding the requirements for obtaining a marriage dispensation.

Then, besides the fact that there are no indicators related to the reasons for filing a marriage dispensation, another issue that may arise is concerning the minimum age limit for submitting the marriage dispensation. The two sources of law do not specifically stipulate provisions related to the minimum age limit for marriage dispensation to be submitted, so this can lead to a legal vacuum in this matter. Because of this, legal intervention is needed in response to the marriage law. The latest Law on Marriage was passed to make it harder to use marriage dispensation as a legal loophole. This is done by making the requirements for marriage dispensation stricter. If previously the legal politics of marriage dispensation contained in Law No. 1 of 1974 provided great authority for judges in determining the granting of marriage dispensation, then in Law No. 16 of 2019 there are additional conditions in the process of granting the dispensation. This can be seen in the provisions of Article 7 paragraph 2 of Law No. 16 of 2019, namely, "In the event of a deviation from the age requirement as referred to in paragraph 1, the male and/or female parents may request dispensation from the Court with very urgent reasons supported by sufficient evidence.

In granting marriage dispensation, judges are also required to take into account the imperative of preventing child marriage, where judges are required to be careful in

granting dispensation for men and women who are under the age of 18. In addition, judges are also required to consider moral, religious, customary and cultural aspects, psychological, health, and other impacts that arise after the dispensation of marriage is granted. This shows that the legal politics of marriage dispensation in Law No. 16 of 2019 is stricter than Law No. 1 of 1974 and also exhibits a resolute stance against granting marriage to individuals seeking to enter into underage marriages. In fact, in the elucidation of Article 7 of Law No. 16 of 2019, it is stated that "The government is obliged to conduct outreach and guidance to the public regarding the prevention of early marriage, the dangers of free sex, and unregistered marriages for the sake of creating a more advanced and superior nation generation". In accordance with this stipulation, the government's responsibility extends beyond simply the enactment of laws, encompassing the crucial task of familiarizing the populace with the legal tenets pertaining to marriage in Indonesia.

CONCLUSION

The ratification of the new Marriage Law in 2019 as a revision to the 1974 Marriage Law is part of the government's efforts to eliminate aspects of discrimination, injustice, and inequality in the aspect of determining the minimum age required for a marriage to take place. This policy is also part of upholding the norms of the country's constitution as well as universal human rights values in an effort to protect women and prioritize the interests of children. Provisions regarding the application of the principles of non-discrimination, justice, and equality have been mentioned in the constitution of the Republic of Indonesia, Article 27 paragraph 1 of the 1945 Constitution. In addition, a number of international human rights conventions, particularly the conventions on women's and children's rights, have been ratified by the Indonesian government. Thus, the ratification of the revision of the Marriage Law is a manifestation of the state's efforts to create a marriage that upholds the principles of non-discrimination, equality, justice, and the best interests of the child. So it is the duty of the state to actively protect and ensure the fulfillment of human rights and freedoms, such as the right to life, which guarantees that every child has the right to live, develop and live his life, and the state is obliged to guarantee this and fulfill these children's rights, order and legal certainty, and respect for children's opinions.

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