

Legal Politics of the Constitutional Court Decision Number 22/Puu-XV/2017 Concerning The Minimum Age Limit for Marriage

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ARTICLE INFO

Keywords:

Legal Politics;
Constitutional Court Decisions;
Minimum Marriage Age Limit;
Divorce;
Marriage Registration

Article history:

Received 2025-05-12

Revised 2026-06-15

Accepted 2026-07-20

ABSTRACT

This research reviews 2 problem formulations, First, how is the history of the regulation of the minimum age limit for marriage before the Constitutional Court Decision No. 22 / PUU- XV / 2017? Second, how is the legal policy of the minimum age limit for marriage after the Constitutional Court Decision No. 22 / PUU- XV / 2017? To be able to review the case, this research procedure is used with a normative legal study that uses a historical approach and laws, where the data sources used are secondary information sources. Based on the research and reviews conducted, the following results were obtained: Initially, the history of setting minimum marriage age limits in Indonesia began before the Dutch colonial era. At that time, the applicable marriage law was based on each individual's religious law. Later, during the Dutch occupation, ethnicity-based classifications were implemented, with each group having its own specific rules. During the Old Order, Law No. 22 of 1946 concerning Marriage Registration, Divorce, and Reconciliation (hereinafter referred to as NTR) was enacted. During the New Order, Law No. 1 of 1974 concerning Marriage was enacted, followed by its first revision during the reform era, Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. Second, the political will of the state government is a determining factor in the direction of the law, including the determination of minimum marriage age limits.

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1. INTRODUCTION

One of the functions and authorities of the Constitutional Court is to issue a decision regarding the judicial review of the Law against the 1945 Constitution. This means that if there are parties who submit a Judicial Review Application and fulfill the existing requirements, then the Constitutional Court is obliged to conduct a review of the law that is being requested for judicial review, whether it is really contrary to the 1945 Constitution. One of the laws that has been tried for judicial review by the Constitutional Court is the Marriage Law where a judicial review has been tried for the Article that

regulates the minimum age limit for marriage in Indonesia. Where previously the minimum age limit permitted by law to enter into marriage was nineteen years for men and sixteen years for women, then based on the results of the Constitutional Court's verdict it was changed to 19 years for both men and women.

Marriage is fundamentally a human right and must be guaranteed and protected by the state. The state should protect the fundamental and natural rights of every individual, including those related to marriage. Marriage is a fundamental human need, and no one should be prevented from doing so as long as it is conducted in accordance with state law and applicable Sharia law. However, in reality, numerous issues arise related to marriage, one of which is a seemingly unresolved phenomenon: early marriage, often referred to as underage marriage.

Information shows that Indonesia has a very high rate of early marriage compared to other countries in the world. According to UNICEF, Indonesia has the seventh-highest number of early marriages in the world, with 457,600 women aged 20 to 24 marrying before the age of 15. (Kementerian Pemberdayaan & (KPPPA), 2018). Based on the information presented in the table above, it appears that Indonesia ranks among the top 10 countries worldwide for early marriage rates. India also ranks first. Incidents of early marriage also occur in various countries worldwide, as many countries still set lower marriage age limits for girls.

In Indonesia, the marriage age limit is formalized in legislation, specifically in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. In this latest Marriage Law, Article 7 paragraph (1) states that: "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years." As is commonly known, Article 7 paragraph (1) of Law No. 1 of 1974 concerning Marriage stipulates that the marriage age limit applicable to Indonesian citizens is 19 years for men and 16 years for women. This requirement was formalized by the government, of course, with various considerations, including applicable religious law, customary law, health, and others, which are indeed factors that influence many matters related to the marriage age limit.

There is also the birth of Law No. 16 of 2019 concerning the Amendment to Law No. 1 of 1974 concerning Marriage which changes the requirements in Article 7 paragraph (1) regarding the age limit for marriage is based on the Constitutional Court Decision Number 22 / PUU-XV / 2017. The background of this change in the age limit for marriage is a lawsuit by a group of citizens who feel disadvantaged by the existence of differences in the age limit for marriage for men and women, where in Law No. 1 of 1974 it was formalized that the minimum age limit for marriage in Indonesia is 16 years for women and 19 years for men. This requirement has brought these plaintiffs into married life at a very early age. This has caused many disadvantages for women ranging from worsening reproductive health conditions due to having and giving birth when the reproductive organs have not yet fully developed, the formation of domestic violence in the household and so on. This matter became the basis for challenging the marriage age limit requirements in Law No. 1 of 1974 concerning Marriage and was subsequently replaced by Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. (Indah Melania Sitorus dan Tamsil, 2020a).

The political and legal dynamics surrounding the age limit for marriage have not subsided since the enactment of Law No. 16 of 2019. The purpose of changing the requirements for the age limit for marriage seems unanswered for many reasons, one of which is the law's content, which primarily regulates marriage dispensations. Article 7 paragraph (2) of Law No. 16 of 2019 also states that couples who do not meet the legal age requirements for marriage can apply for a dispensation to a legal council or other designated official. The existence of these requirements for marriage dispensations actually hinders the achievement of the goal of limiting the age limit for marriage. (Itok Dwi Kurniawan, 2022).

In Indonesia, the number of marriage dispensation cases filed each year remains extremely high. According to information obtained by the author, no fewer than fifty thousand marriage dispensation applications are decided annually in various Indonesian courts. The proliferation of marriage dispensations, used by some as a solution to legalize marriage at a young age, will undoubtedly hinder

the achievement of the goal of revising the minimum age for marriage in Indonesia. (Edi Mudjaidi Amin Dan, 2021)

The legal age requirement for marriage in Indonesia has actually been the subject of a long and complex legal and political process. Various factors, including religious issues and socio-cultural considerations, health concerns, and gender equality, have influenced the legal and political landscape of determining the legal age limit for marriage in Indonesia. (Yusuf Ridho Billah, 2021). Legal policy itself is a method that will be used to achieve a social goal with certain laws in society that has a scope in the form of various answers to several basic questions such as what goals are to be achieved with the existing system, what mechanisms and how are considered the best mechanisms to be used in order to achieve the stated goals, when is the best time to implement it and by what method the law can be changed, have a standard and established pattern formulated to help in deciding the process of selecting goals and ways to achieve those goals well. (Satjipto Rahardjo, 1991).

There are also provisions related to the age limit for marriage in Indonesia which until now has undergone such changes, where it was originally set for men at least 19 years old and women 16 years old to 19 years old for both, of course facing long legal political dynamics until it can reach the provisions that exist today especially after the enactment of the Constitutional Court Decision Number 22 / PUU- XV / 2017. Due to this, the author is interested in learning more about how legal politics affects the age limit for marriage in Indonesia especially after the enactment of the Constitutional Court Decision No. 22 / PUU- XV / 2017.

2. METHODS

In this study, the author used a normative legal research method. This type of research is essentially a legal study of a library nature, conducted through the analysis of various literature or secondary information. (Soerjono Soekanto, 2023). The research approach used in this study is a historical approach. In addition to the historical approach, this study also combines a case study approach and a statute approach. This research is descriptive in nature. The information collection method used in this study is a literature search, searching for materials related to the research title. The information obtained will be analyzed using qualitative information analysis procedures.

3. FINDINGS AND DISCUSSION

After Law No. 1 of 1974 was passed and applied to all levels of society, various cases began to arise, including those concerning the irrelevance between the regulation of the minimum age limit for marriage and several other laws, which stimulated the formation of various complaints from various groups of society, including the following: (Ufiq Ashfiyatul Chusna Dan, 2023)

1. The Emergence of Comparative Roles of Law and Discrimination in the Right to Education. The irrelevance that can be found in the regulation regarding the minimum age limit for marriage as stipulated in Article 7 paragraph (1) of Law No. 1 of 1974 is related to children's right to education, which was subsequently displaced by this provision.
2. The Emergence of Comparative Roles of Law and Discrimination in Health Rights. The next irrelevance concerns health. Referring to Article 7 paragraph (1), it is emphasized that the consideration in regulating the minimum age for marriage is health. Based on medical facts, women under 16 years of age are at high risk of health problems if they become pregnant after marriage.
3. Risk of divorce. Research conducted by Octaviani and Nurwati found that 50% of marriages initiated at an early age end in divorce, and divorce is generally initiated after only one to two years of marriage. (Cindy Mutia Nur, n.d.).

4. Psychological maturity, where psychological maturity is very much needed in building a household with all its problems, if marriage is carried out at an age that is not yet psychologically mature enough, it will certainly cause various problems in the household.

Based on the above matters, the issue of the minimum age limit for marriage has encouraged several community groups to file a judicial review lawsuit against Article 7(1) of Law No. 1 of 1974 at the Constitutional Court so that the article becomes conditionally constitutional, namely as long as it is read as 18 (eighteen) years. The lawsuit against Article 7 paragraph (1) of Law No. 1 of 1974 with the constitutional basis of Article 28 of the 1945 Constitution of the Republic of Indonesia in the Constitutional Court Decision No. 30-74/PUU-XII/2014 to increase the minimum age limit for marriage for women is motivated by the high number of divorce cases and the presence of various health and social problems for women due to the formation of early marriage. (Rizky Fitriyani, 2021).

The Constitutional Court then issued Decision Number. 30-74/PUU-XII/2014 on June 18, 2015, the essence of which was to reject the petition from the plaintiff completely. After the rejection of Petition Number. 30-74/PUU-XII/2014, in 2017, precisely on May 18, 2017, Rasminah, Maryanti, and Endang Wasrinah filed a petition for a judicial review of the Marriage Law against the 1945 Constitution at the Constitutional Court. The petitioners submitted the requirements of Article 7 paragraph (1) of the Marriage Law against Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. For the next, it was stated that the basis or object for conducting a judicial review of the Law against the 1945 Constitution. The petitioners submitted a request for a judicial review of Article 7 paragraph (1) of the Marriage Law for a period of sixteen years, which was aimed at recognizing, protecting and fulfilling the human rights of children, especially Indonesian female children and providing legal certainty that was fair between men and women. As mandated by the 1945 Constitution, if we look at the current articles, it is clearly in conflict with the principle contained in Article 27 paragraph (1) of the 1945 Constitution which states that "All citizens have an equal role in the law." (Indah Melania Sitorus dan Tamsil, 2020b).

The petitioners' petition states that the requirements of Article 7 paragraph (1) of the Marriage Law are a real and concrete form of the failure to fulfill equal standing before the law, namely the comparison of the age limit for marriage between men and women. This inequality is apparent from the age of women who are below the age limit for children in the Child Protection Law, which is eighteen years old. This means that if a woman who has married at the age of under eighteen years old is no longer considered a child, then the child's rights that should still be attached to her are taken away. This requirement gives rise to privileges based on gender being given to the son, whose rights are absolute because of the nineteen years old marriage age in Article 7 paragraph (1) of the Marriage Law. (Indah Melania Sitorus dan Tamsil, 2020c).

In this petition, the applicants have assured that a policy product is open to the public so that it can be tested by the Constitutional Court. The requirements of Article 7 paragraph (1) of the Marriage Law clearly violate rationality, morality and intolerable imbalance. The applicants, who are victims of the implementation of the current article, have shown the legal role for the request to test Article 7 paragraph (1) of the Marriage Law. The next aspect, which is in the judge's legal reasons, is the substance of the request submitted by the applicants. The Constitutional Court Judges commented that a legitimate policy cannot be tested against the norm against the Constitution, unless the legitimate policy product is proven to be inconsistent with the rules of morality and rationality and gives rise to injustice that cannot be justified, contrary to the sovereignty of the people, political rights and as long as the policy does not violate the authority of the law maker and does not exceed authority, and does not concretely contradict the 1945 Constitution. In terms of the requirements of Article 7 paragraph (1) of the Marriage Law, the Constitutional Court Judges commented if there is a comparison of roles based on gender or sex. The Constitutional Court Judges reported that if the differentiation of roles between men and women results in the realization of fundamental rights or rights protected by the constitution

as citizens being differentiated based on gender, then this differentiation is clearly proven to be discrimination.(Indah Melania Sitorus dan Tamsil, 2020b).

In connection with the above case, the Constitutional Court Panel of Judges examined and decided in Constitutional Court Decision No. 22/PUU-XV/2017 as follows::

- a. "Granting part of the applicants' requests;"
- b. "Reporting Article 7 paragraph (1) during the phrase "age sixteen years" of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia 1974 No. 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have valid legal force;"
- c. "Reporting that the requirements of Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 No. 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019) are still valid until changes are made within the time period as determined in this decision;"
- d. "Instructing the law makers to make changes to Law Number 1 of 1974 concerning Marriage at the latest within a specified period of three years (State Gazette of the Republic of Indonesia 1974 No. 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019), specifically regarding the minimum age limit for marriage for women;
- e. "Ordering the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate;"
- f. "Reject the applicant's request for more than just that."

The Constitutional Court has indeed determined in Decision Number. 22 PUU-XV 2017 that Article 7 paragraph (1) of Law No. 1 of 1974, regarding the phrase age 16 (sixteen) years is indeed contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, but Article 7 paragraph (1) remains valid until it is amended by the legislature. The time period given by the Constitutional Court for the legislature to amend the norm is 3 (three) years into the future. If within 3 (three) years the legislators still have not implemented changes to the minimum age limit for marriage, then in order to continue to provide legal certainty and eliminate discrimination arising from the requirements in Article 7 paragraph (1) of Law No. 1 of 1974, the minimum age limit for marriage is harmonized with the age of children as regulated in Law No. 35 of 2014 and applied equally to men and women. This means that if the law makers do not change the minimum age limit for marriage within 3(3) years, then the minimum age for women and men to marry will be 18 years.(Xavier Nugraha, Risdiana Izzaty, 2019). On September 16, 2019, the House of Representatives (DPR) and the government formally ratified the bill amending Law No. 1 of 1974 concerning Marriage, which was then ratified by President Joko Widodo on October 14, 2019, as Law of the Republic of Indonesia No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. Article 7 was amended to Article 7 paragraph (1): "Marriage is only permitted if the man and woman have reached the age of 19."

Not only that, the matter that needs to be highlighted and analyzed further is related to the provisions regarding marriage dispensation as regulated in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage which states: Article 7 paragraph (1), "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen years)." Paragraph (2) adds, "In the event of a deviation from the age provisions as defined in paragraph (1), the parents of the man and/or the parents of the woman can request a dispensation to the legal council with a very compelling reason accompanied by sufficient supporting evidence." If we look closely at the conditions for marriage dispensation above, it is clear that this condition is explicitly contrary to the noble purpose of the revision of the Marriage Law in the article that regulates the minimum age limit for marriage. It is very contradictory, when the regulation of the minimum age limit for marriage is increased, but the opportunity to carry out early marriage is still open for pressing reasons. Meanwhile, the pressure may

be driven by parents who believe daughters are a burden, don't need a good education, and should marry as soon as possible. Data from DataIndonesia.id found a significant increase in child marriage dispensations from 2016 to 2020. In 2016, child marriage dispensations issued by Religious Courts in Indonesia reached 11,488, this number increased to 12,557 in 2017, 13,489 in 2018, 23,145 in 2019, and reached a peak of 63,382 in 2020.(Dimas Bayu, n.d.). Based on this fact, it can be concluded that the existence of regulations regarding marriage dispensations in the Marriage Law has actually given rise to legal politics that have prevented the regulation of the minimum age limit for marriage, which has been attempted through a long and winding path from being achieved.

This is the long journey of regulating the marriage age limit in Indonesia. Further analysis reveals that even before the enactment of Law No. 1 of 1974 concerning Marriage, a tug-of-war of political interests had already developed, ultimately limiting the process of establishing the Marriage Law. This tug-of-war appears to have arisen between the political interests of those in power and those of Muslims, which are indeed divergent. On the one hand, the government's motivation in the legal field is to create policies that emphasize unification values and accommodate pluralism as a reflection of the reality of the diversity of Indonesian society. Consequently, the government's legal policy tends to diminish the role of religious law in the lives of citizens. Meanwhile, Muslims in Indonesia view Islamic law and the judiciary as part of their religious obligations, which are *fardhu kifayah* (obligatory duty) to be implemented and upheld.(Hardani, 2015)

Based on the historical facts outlined above, it is understandable that the dynamics of the application of Islamic law, particularly in the field of marriage in Indonesia, are closely linked to social and political conditions, and cannot be separated from policies made by the government as the holder of the highest political power. During the Dutch colonial period, the implementation of legal plurality known as intergroup law and tended to use a conflict approach proved to be a failure. There are also marriage legal materials that emerged during the New Order era with the government's efforts to unify the law through certain policies giving rise to a tug of war of interests between parties.

Therefore, it can be concluded that the political will of state authorities is a determining factor in the direction of legal development, as reflected in the issue of establishing minimum marriage age limits. This can be seen from the development of marriage law in Indonesia, which shows that this legal trajectory spans the Dutch colonial period, the post-independence era, and the New Order period, during which marriage law was heavily influenced by the interests of those in power. During the Dutch colonial period, a policy of *receptie* was implemented regarding Islamic law, recognizing the existence of Islamic law only after it was adapted and incorporated into customary law, particularly in the area of marriage.

4. CONCLUSION

The regulation of the minimum age limit for marriage in Indonesia has been in place since the pre-Dutch colonial era, where at that time the applicable marriage law was the law of each respective religion. After that, during the Dutch occupation, classifications were implemented based on ethnicity and each group had its own specific rules. In the old order era, Law No. 22 of 1946 concerning Marriage Registration, Divorce and Reconciliation (hereinafter referred to as NTR) was born which only provided guidance not to marry children under the age as a prediction of child marriage, whereas in the new order era, Law No. 1 of 1974 concerning Marriage was born which regulated the age limit for marriage, namely the age of 19 years for men and the age of 16 years for women who faced many problems so that it was followed by the initial improvement of Law No. 1 of 1974 concerning Marriage in the reform era to Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage which changed the regulations regarding the age limit for marriage to the same age of 19

years for men and women, but on the way there were several problems, including those related to Marriage Dispensation which had also been regulated in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage which made The legal policy regarding changing the minimum age for marriage has not been achieved. The political will of the state government is the determining factor in which the law will be directed, including the issue of setting a minimum age for marriage. The issuance of the Constitutional Court Decision regarding the minimum age for marriage, which was intended to prevent early marriages that can have a negative impact on families, especially for women. However, by still allowing early marriage through marriage dispensation requirements as stipulated in Article 7 paragraph (2) of the Marriage Law, the legal policy regarding the minimum age for marriage has not been achieved

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