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## Meta-Juridical Analysis on the Legal Arguments beyond Changes in Indonesian's Marriage Age Rule

**Ahmad Dakhoir**

*State Institute of Islamic Studies (IAIN), Palangka Raya, Indonesia*  
Email: [ahmad.dakhoir@iain-palangkaraya.ac.id](mailto:ahmad.dakhoir@iain-palangkaraya.ac.id)

**Sri Lumatus Sa'adah**

*State Islamic University (UIN), Jember, Indonesia*  
Email: [srilumatus.iainjember@gmail.com](mailto:srilumatus.iainjember@gmail.com)

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### **Abstract:**

This paper examines then criticizes legal arguments beyond the change in marriage age minimum limit in Indonesian case then proposing a new insight for future regularization. It is a normative research with a meta-juridical approach. The primary data is Law Number 16 of 2019 and the SIPP (*Sistem Informasi Penelusuran Perkara*) report of the Supreme Court of the Republic of Indonesia analyzed using content analysis techniques. The results suggest that the legal argument for changing the minimum age limit for marriage as referred to in Article 7 of Law Number 16 of 2019 was motivated by assumption on the loss of women's rights, the increasing number of child marriage cases, and global pressures. From the perspective of a meta-juridical approach, the three factors are not appropriate arguments for changing the minimum age limit for marriage. On the contrary to the purpose beyond the change, the Article 7 of Law Number 16 of 2019 has rather caused the increasing child marriage after its issuance. Therefore, it is suggested that the standard for determining

Author correspondence email: [ahmad.dakhoir@iain-palangkaraya.ac.id](mailto:ahmad.dakhoir@iain-palangkaraya.ac.id)

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marriage age limit in the future regulation also considers the concept of *bâ'ah*, *'âqil*, and *bâligh* which combine biological maturity and social responsibility.

**Keywords:**

Legal Arguments; Change; Minimum Marriage Age Limit; Meta-Juridic

**Introduction**

In the Indonesian marriage law context, regulation on the minimum age limit was previously determined as 19 years for men and 16 years for women. However, it is deemed contradictory with other regulations, such as the Child Protection Act stipulating that a child is someone aged 0 to 18 years, the 1945 Constitution and international standards of child rights.<sup>1</sup> The limit therefore politically and socially reaped pressure from various parties both from within and outside the country.

Domestically, pressure comes from observers of the protection of children's rights, survivors of women's emancipation and gender equality, education observers and family planning practitioners.<sup>2</sup> According to Islam & Rahman,<sup>3</sup> getting married at the age of 16 will trigger various problems,<sup>4</sup> like an astonishing young marriage practice among many Middle Easterners such as Saudi Arabia whose

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<sup>1</sup> Megan Arthur et al., "Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities," *Journal of Women, Politics and Policy* 39, no. 1 (January 2018): 51-74, <https://doi.org/10.1080/1554477X.2017.1375786>.

<sup>2</sup> Adesegun Benedict Titus, Adekunle Babatunde Dada, and Emmanuel O. Adu, "Effects of Social Habits and Girl-Child Marriage on Students Academic Performance in Social Studies," *Journal of Sociology and Social Anthropology* 7, no. 4 (October 2016): 250-55, <https://doi.org/10.1080/09766634.2016.11885723>.

<sup>3</sup> Md Akhtarul Islam and Abdur Rahman, "Age at First Marriage and Fertility in Developing Countries: A Meta Analytical View of 15 Demographic and Health Surveys," *Clinical Epidemiology and Global Health* 8, no. 3 (September 2020): 775-79, <https://doi.org/10.1016/j.cegh.2020.01.018>.

<sup>4</sup> Quentin Wodon, Chata Malé, and Adenike Onagoruwa, "A Simple Approach to Measuring the Share of Early Childbirths Likely Due to Child Marriage in Developing Countries," *Forum for Social Economics* 49, no. 2 (April 2020): 166-79, <https://doi.org/10.1080/07360932.2017.1311799>.

average marriage age is under 18 with the data calculation that 1 in 25 women are married under 15.<sup>5</sup>

This phenomenon also attracted attention from outside Indonesia. Among others, this was expressed in a collaborative project from AIPJ (Australia-Indonesia Partnership for Justice) which resulted in suggestion to the change of minimum age limit for marriage.<sup>6</sup> It seems to make sense considering that in most European countries,<sup>7</sup> the marriage minimum age limit for a man is 30 years old, while for a woman is 28 years old. Meanwhile, America determines the minimum age for marriage which is 29 years old for men and 28 years old for women. In parts of Asia such as India, men marry at 21 years while women marry at 18 years. Then, the average age of marriage in China is 22 for men and 20 for women while Japan limits the age of marriage to a minimum of 30 years.<sup>8</sup> The oldest age of marriage has been practiced by Egyptian men who are 34 years old and women 27 years old for each minimum age limit. Moreover, children's marriage under 18 is furthermore widely recognized in international human rights treaties as global discrimination; a practice that hinders the development and well-being of girls worldwide.<sup>9</sup>

On the other hand, the age is still considered too old for some communities. In East Java, for example, child marriage often occurs in almost all districts in Madura. Sumenep Regency has the highest number of child marriages in Madura, which reaches 60 percent of its total population. In that area, there is still tradition of marrying off children at early age whose ages are in the range of 13 years old for

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<sup>5</sup> R. El Arab and M. Sagbakken, "Child Marriage of Female Syrian Refugees in Jordan and Lebanon: A Literature Review," *Global Health Action* (Taylor and Francis Ltd., January 2019), <https://doi.org/10.1080/16549716.2019.1585709>.

<sup>6</sup> J. Dinsdale, "Independent Progress Review Report" (AUSTRALIA, n.d.).

<sup>7</sup> Elwood E. Mather and Michael M. Sheehan, "Marriage, Family, and Law in Medieval Europe: Collected Studies," *Sixteenth Century Journal*, 1997, <https://doi.org/10.2307/2543116>.

<sup>8</sup> Pamela J. Smock, "Alone Together: How Marriage in America Is Changing," *Contemporary Sociology: A Journal of Reviews*, 2008, <https://doi.org/10.1177/009430610803700116>.

<sup>9</sup> Hoda Rashad, Magued Osman, and Farzaneh Roudi-Fahimi, "Marriage in the Arab World," *Population Reference Bureau (MENA Policy Briefs)*, 2005; Jewel Gausman et al., "Child Marriage in the Arab World," *The Lancet*, 2019, [https://doi.org/10.1016/S0140-6736\(19\)31287-5](https://doi.org/10.1016/S0140-6736(19)31287-5).

girls or elementary school age and 15 years old for boys or junior high school age. This early marriage tradition has been going on since ancient times until now although in recent years, the number has decreased.<sup>10</sup> It represents some Indonesian people who tend to decide the minimum age limit for marriage regardless of the law. The minimum age limit of marriage before Law Number 1 of 1974 was partly ignored by young couples and those under 19 and 16 years respectively for men and women.

Despite the pro and contra, after 45 years of surviving with the previous law, based on constitutional demands and pressure from various parties, the Indonesian government and the House of Representatives (DPR) finally changed the minimum age limit for marriage through Law Number 16 of 2019. In accordance with Article 7 paragraph (1) of the Law, men and women who want to get married must be at least 19 years old. However, the Article which provides tolerance for women under the age of 19 years old for applying marriage dispensation rather becomes a legal basis for violating the law itself.

Although the change has taken place, it turns out that marriages under the age of 19 still occur a lot either through legal procedures or unregistered marriage. For the former case, the future couple must obtain a decision from the judiciary through a marriage dispensation. Until now, there are high number of applications for marriage dispensation. SIPP data from the Supreme Court of the Republic of Indonesia even showed that applications for marriage dispensation in 2021 were 65.000, and in 2022, there were 55,000 cases.<sup>11</sup> The number was far higher than those of previous years, such 2018 with 13.822 and 2019 with 24.864. When the COVID-19 pandemic occurred in Indonesia in February 2020, it turned out that the number

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<sup>10</sup> Sulaiman Sulaiman, "Domination of Tradition in Under Age Marriage," *Analisa*, 2012, <https://doi.org/10.18784/analisa.v19i1.152>.

<sup>11</sup> Hari Disemadi, Sholahuddin Al-Fatih, and Mochammad Yusro, "Indonesian Children Protection against Commercial Sexual Exploitation through Siri Marriage Practices in Maqashid Al-Shariah Perspective," *Brawijaya Law Journal*, 2020, <https://doi.org/10.21776/ub.blj.2020.007.02.04>; M.R.R Razak et al., "The Effect of Siri ' s Marriage on Government Administration International Journal of Sciences : The Effect of Siri ' s Marriage on Government Administration," *International Journal of Sciences: Basic and Applied Research (IJSBAR)*, 2019.

of applications for marriage dispensation had increased drastically by 140% to 64.192 applications. The COVID-19 pandemic which has shaped changes in social lifestyles has also not been able to reduce the rate of marriage dispensation applications. The number seems to be in line with the Commission for the Protection of Children and Women data stating that the online era had an impact on the high number of children dropping out of school and child marriage.<sup>12</sup> While for the later case, unregistered marriage, it is mentioned that in 2020, the number of child-unregistered marriages reached about 180.000 cases.<sup>13</sup>

This legal phenomenon implies that the change in the minimum age limit of marriage has sparked a dilemma and has many legal loopholes in its implementation. Two of them are sociological and biological impacts. On the one hand, the change is oriented toward improving the quality of marriage and protecting basic rights of those eligible for marriage. However, on the other hand, it has reduced the right of those eligible, for instance to build a family, to have biological protection, to maintain the lineage, and has the potential to increase the number of unregistered marriages while curbing reproductive rights. This made the theme interesting for many researchers to investigate the phenomenon using various perspective; some are mentioned as below.

A normative research was done by Nur Fadhilah and Khairiyati Rahmah.<sup>14</sup> The result suggested that ideally, the concept of age in national marriage law should be the same to realize law enforcement in Indonesia. The importance of being 19 years and over for marriage is because at that age, in general, a woman has completed high school education, biological, psychological, and socio-cultural maturity. Another research with a gender approach was

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<sup>12</sup> Friski Riana, "KPAI Calls Distance Learning a Trigger for Drop Outs and Child Marriage," *Tempo*, 2021.

<sup>13</sup> Aidil Alfin and Busyro Busyro, "Nikah Siri Dalam Tinjauan Hukum Teoritis Dan Sosiologi Hukum Islam Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam*, 2017, <https://doi.org/10.24090/mnh.v11i1.1268>.

<sup>14</sup> Nur Fadhilah, Khairiyati Rahmah, "Rekonstruksi Batas Usia Perkawinan Anak Dalam Hukum Nasional Indonesia," *De Jure: Jurnal Hukum Dan Syar'iah*, 2012, <https://doi.org/10.18860/j-fsh.v4i1.2151>.

conducted by Afrianty<sup>15</sup> which concluded that the revision of the minimum age limit for marriage is the aspiration of a community group holding progressive values. However, it also stressed that changing the minimum age must be supported by rules that prohibit free sex.

Additionally, the factor beyond the change of the minimum age limit for marriage was studied by Utomo.<sup>16</sup> He found that the loss of schooling opportunities for women is the reason for changing the age of marriage in the Indonesian context. However, he also mentioned that the changes in age should not only be in the field of marriage, but also in other aspects. Utomo explained that the current development of gender equality shows that post-reform gender relations actually create a lot of uncertainty.<sup>17</sup> Almost all of those mentioned studies use normative, statutory, or gender quality-based research which are different from this current article. The change in the minimum age for marriage in this paper is elaborated more on other aspects of legal factors, namely meta-juridical approach.

It is deemed that the meta-juridical perspective is relevant for a legal phenomenon like this. In legal terminology, rules are formed into two forms of defects, namely juridical and meta-juridical defects. The former happens when a legal product is considered contradictory to one another. Meanwhile, the later exists when laws or norms show the connection with factors beyond juridical issues such as politics, economics, religion, socio-culture, and even criminogenic. In other word, rule which actually has "good" intentions can turn into giving the opposite effect when enforced. The law which should have been an instrument to facilitate people's aspirations as the subject of law users rather turned into suppressing them. The meta-juridical one actually suggests the possibility of having hidden flaws in the rule of

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<sup>15</sup> Dina Afrianty, "Indonesia's Fight for a Law against Sexual Violence Needs to Involve a Discussion of Islamic Values," *Melbourne Asia Review*, 2021, <https://doi.org/10.37839/mar2652-550x8.23>.

<sup>16</sup> Ariane Utomo, "Marrying Young in Indonesia: Voices, Laws, Practices," *South East Asia Research* 28, no. 4 (October 2020): 491-93, <https://doi.org/10.1080/0967828x.2020.1827857>.

<sup>17</sup> Ariane Utomo and Peter McDonald, "Who Marries Whom?: Ethnicity and Marriage Pairing Patterns in Indonesia," *Asian Population Studies* 12, no. 1 (January 2016): 28-49, <https://doi.org/10.1080/17441730.2015.1130327>.

law produced through a non-democratic-participatory legislative process.<sup>18</sup> In this context and material object, the meta-juridical approach reviews legal issue, namely the change of age limit for marriage more comprehensively by not ignoring the values of living in society, religious, social, humanity, and Indonesian cultural values.

### **Method**

This paper is normative research with a meta-juridical approach. Meta-juridical analyses are useful for detecting meta-juridical defects in a text of legal norms. The target norm is Article 7 of Law No. 16 of 2019. Defective norms often occur in the formulation of a norm in legislation. This will bring criminal legal products. This approach begins by tracing the philosophy of the formulation of Article 7, fully uncovering the considerations and basis for the formulation of Article 7, and examining the effectiveness of Article 7 in terms of social facts. This is the technique used in this paper to demonstrate the possibility of hidden faults in administrative laws produced through the legislative process of Law Number 16/2019. The primary data is Law Number 16 of 2019, and the SIPP (*Sistem Informasi Penelusuran Perkara*) report of the Supreme Court of the Republic of Indonesia which are then analyzed using the content analysis technique. Content analysis is a systemic technique for analyzing the meaning, message, and way of expressing something's message. The content that will be analyzed in this paper is the Article 7, namely the meaning and message of the norm.

### **Result and Discussion**

#### **Legal Arguments for Changing the Minimum Age Limit of Marriage**

Every year, no less than 400.000 child marriages occur in Indonesia.<sup>19</sup> Indonesia is one of the countries with the highest cases of

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<sup>18</sup> Rusjdi Ali Muhammad, *Konsepsi Qanun Aceh Sebagai Manifestasi Keragaman Hukum Indonesia Guna Antisipasi Disintegrasi Nasional dalam Rangka Memperkuat NKRI Negara*, 1st ed. (Jakarta: Lembaga Ketahanan Nasional RI, 2014). p. 42.

<sup>19</sup> Zendy Wulan Ayu Widhi Prameswari and Erni Agustin, "Indonesian Marriage Law Reform: The Way To Strengthen The Protection of Children's Rights Against Child Marriage," *Journal of Southeast Asian Human Rights*, 2018, <https://doi.org/10.19184/jseahr.v2i1.5353>.

child marriage in East Asia and the Pacific region along with the weak protection of children's rights. According to Wibowo, Indonesia is the 8th country with the highest number of child marriages in Asia.<sup>20</sup> In 2019, Indonesia was the second highest country in cases of child marriage among ASEAN countries. Muchomba said<sup>21</sup> that various efforts have been taken to reduce the rate of child marriage including in Indonesia. It ranges from the "Stop child marriage" campaign to the policy of breaking the chain of child marriage from the villages. Meanwhile, Sumamphow's research revealed a very gruesome finding that various cases of violence in child marriages lead to criminal matters.<sup>22</sup> Of the 179 cases in Indonesia (Jakarta, Bogor, Depok, Tangerang, Bekasi) for example, only 32% or 58 cases went through marital dispensation application and approval process in religious courts. Of course, these cases were only those reported to investigators.

In early 2023, a number of media reported that hundreds of junior high school and high school students in Ponorogo Regency, East Java, applied for marriage dispensation to the Ponorogo Religious Court.<sup>23</sup> Their reasons were getting pregnant before getting legally married. In several areas, the permissive attitude of society has contributed to perpetuating child marriage and the dispensation of marriage.<sup>24</sup> Child marriage has not been considered something that

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<sup>20</sup> Heribertus Rinto Wibowo et al., "One Household, Two Worlds: Differences of Perception towards Child Marriage among Adolescent Children and Adults in Indonesia," *The Lancet Regional Health - Western Pacific* 8 (March 2021), <https://doi.org/10.1016/j.lanwpc.2021.100103>.

<sup>21</sup> Felix M. Muchomba, "Parents' Assets and Child Marriage: Are Mother's Assets More Protective than Father's Assets?," *World Development*, 2021, <https://doi.org/10.1016/j.worlddev.2020.105226>.

<sup>22</sup> Nathanael Sumampouw, Henry Otgaar, and Corine de Ruiter, "The Relevance of Certain Case Characteristics in the Successful Prosecution of Child Sexual Abuse Cases in Indonesia," *Journal of Child Sexual Abuse* 29, no. 8 (2020): 984-1003, <https://doi.org/10.1080/10538712.2020.1801930>.

<sup>23</sup> Dwi Astuti Furi, "PANDANGAN ULAMA KABUPATEN PONOROGO TERHADAP PERNIKAHAN DINI: Studi Kasus Pernikahan Dini Di Kecamatan Badegan Kabupaten Ponorogo," *Al-Adabiya: Jurnal Kebudayaan Dan Keagamaan*, 2020, <https://doi.org/10.37680/adabiya.v14i02.205>.

<sup>24</sup> Fakhruddin Fakhruddin, "Menelisik Perkawinan Tidak Tercatat dan di Bawah Umur di Kota Yogyakarta," *HARMONI: Jurnal Multikultural & Multireligius* 14



worries children, so parents encourage their children to marry even though applying for marriage dispensation.

The requests for marriage dispensation directly affect the high number of child marriages with the permission of the court. For the judiciary, granting marriage dispensation applications is the best solution to prevent potential further legal problems. This is because rejection of the marriage dispensation application typically leads to mal-administration marriage like unregistered marriage and even other biological deviations such as adultery. On average, refusal of marriage dispensation will lead the prospective bride and groom to take an unregistered marriage contract, as happened in West Java, West Sumatra, South Sulawesi, South Kalimantan, East Java, and almost all regions in Indonesia.<sup>25</sup> This phenomenon becomes a public secret that has never been obsolete over time. The trend of unregistered marriage is always stable and even continues to show its existence from year to year,<sup>26</sup> although there is no definite data on its number.

Various efforts have been made to prevent child marriage. This has been done not only through education and social awareness but also through a review of relevant legislation. In 2019, the minimum age limit for marriage in Law Number 1 of 1974 was reviewed and it succeeded in amending Law Number 1 of 1974 by changing 19 years old for both men and women; this is quite different from the previous one which set 16 for women and 19 for men. This change has brought major changes to the development of marriage law in society. One of the impacts is the increasing number of submissions for marriage dispensation in all regions of Indonesia. Of the 64.192 applications for marriage dispensation in 2020, it turns out that 90% of applications have been granted.<sup>27</sup>

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(2015):144-57,

<https://jurnalharmoni.kemenag.go.id/index.php/harmoni/article/view/105>.

<sup>25</sup> Masnun Tahir, "Meredam Kemelut Kontroversi Nikah Sirri (Perspektif Masalah)," *Al-Mawarid*, 2011, <https://doi.org/10.20885/almawarid.vol11.iss2.art8>.

<sup>26</sup> Cheng-Tong Lir Wang, "Global Culture and the Changing Family: World Society, Local Context, and Cross-National Trends in Divorce and Child Marriage," *ProQuest Dissertations and Theses*, 2017.

<sup>27</sup> Muchomba, "Parents' Assets and Child Marriage: Are Mother's Assets More Protective than Father's Assets?"

Apart of the impact, it is evident that among other factors, child marriage high rate is the most driving factor beyond consideration and decision to change or rise the minimum age limit for marriage. Other factors are still derivation of the major one, such as assumption of less fulfillment of women's right because of early marriage, such as education and reproductive right. Another one is global pressure on Indonesian's high number of child marriage.

### **Criticism of Legal Arguments in Article 7 of Law Number 16 of 2019**

The legal substance becoming the source of consideration beyond the minimum age limit of marriage problem lies in the age limit and adult standards. Age and adult standards are two legal concepts that require consideration of multi-perspective<sup>28</sup> knowledge. This is because the legal provisions setting the adult standard for marriage is solely based on the age. The age of 19 in the Marriage Law, from a meta-juridical perspective, has actually ignored the natural principles of humans and underestimated the importance of properly implementing biological rights.

A good rule in this context requires to consider a diversity of maturity levels based on natural maturity, not just age. The indicators of natural maturity consist of mental maturity, social maturity, logical-thinking maturity, physical maturity,<sup>29</sup> and sexual abilities. So far, the current rules regarding the minimum age limit for marriage in the Indonesian context are still only politically motivated by age unification in the dialectic of male and female relations.<sup>29</sup> The diversity of different levels of maturity does not get any attention. In fact, it is the condition of *bâ'ah* (sexual intercourse and breadwingging ability), *'âqil* (psychologically mature), and *bâligh* (biologically meure) that should be the main consideration in setting the minimum age limit for marriage. This is mainly because in the explanation of adult standards in Arabic literacy, the maturity of each

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<sup>28</sup> Suci Ramadhan and J. M. Muslimin, "Indonesian Religious Court Decisions on Child Custody Cases: Between Positivism and Progressive Legal Thought," *Juris: Jurnal Ilmiah Syariah*, 2022, 93, <https://doi.org/10.31958/juris.v21i1.5723>.

<sup>29</sup> Elizabeth Kristi Poerwandari, Ratna Batara Munti, and Jackie Viemilawati, "Pro-Women's Policy Advocacy Movements in Indonesia: Struggles and Reflections," *Asian Journal of Women's Studies* 24, no. 4 (October 2018): 489-509, <https://doi.org/10.1080/12259276.2018.1538646>.

person varies depending on nature, environment, literacy, and human hormones.<sup>30</sup>

Every human inherits genetics from their parents. A person has different development process both physically and psychologically. Physically, women tend to mature earlier than men. Another natural factor, which cannot be forgotten, is the hormone. If a person's hormone levels are unbalanced, various bodily functions can be hampered which can lead to abnormality in the person. Education, both at school and in the family, plays an important role in supporting a person's hormones.<sup>31</sup> Therefore, the age standard is not the only indicator in marriage. This can be seen in marriages aged 21 – 38 that occur in various countries, such as in America. It turns out that the marriage age of 21 – 38 years does not absolutely affect the strength of the commitment and the quality of the husband-and-wife relationship.<sup>32</sup> In other word, maturity based on age as a reason for marriage does not guarantee complete harmony. Regarding with this, Fauzi stated that household harmony in Islam is based on the level of quality of love and responsibility based on religious teaching, not age.<sup>33</sup>

In terms of fulfilling human rights, the Article is therefore a portrait of the unbalanced implementation of the human rights of children and women and does not capture all aspects. Meanwhile in the spirit of legal protection, the Article is considered to have succeeded in reducing child marriage, the potential for free sex and unregistered marriages. However, in fulfilling the human rights of children and women, the Article actually minimizes respect for the values of biological purity and curbs reproductive and family-forming rights. Normatively, Article 7 of Law Number 16 of 2019 appears to be

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<sup>30</sup> Ahmad Munawar Ismail, Wan Kamal Mujani, and Zaizul Ab Rahman, "An Overview of Human Nature (Fitrah) and Liberalisme in Islamic Perspective," *International Journal of Civil Engineering and Technology*, 2018.

<sup>31</sup> Jill B. Becker, Michele L. McClellan, and Beth Glover Reed, "Sex Differences, Gender and Addiction," *Journal of Neuroscience Research*, 2017, <https://doi.org/10.1002/jnr.23963>.

<sup>32</sup> Maria J. Kefalas et al., "'Marriage Is More Than Being Together': The Meaning of Marriage for Young Adults," *Journal of Family Issues*, 2011, <https://doi.org/10.1177/0192513X10397277>.

<sup>33</sup> Imron Fauzi, *RAHASIA DI BALIK CINTA RASULULLAH SAW*, Pertama (Jember: IAIN Jember Press, 2019). p. 41.

hiding behind a marriage dispensation. The legal loophole for the dispensation of marriage will actually be used by the community to legalize their marriage. In fact, the idea of dispensation for marriage is actually only a solution to legal problems, not a futuristic idea in establishing an ideal marriage from various perspectives. As a result, instead of decreasing, the application for marriage dispensation increases every year. Based on the meta-juridical approach, the marital dispensation is the norm of asylum for the practice of pregnancy out of marriage. Another sociological issue that will actually go against the new rule is that many regions in Indonesia still adhere to the tradition of marrying off children before 19 years.

The high potential for child marriage cases, unregistered marriage, and even free sex has actually been detected by the government through the affirmation of marriage dispensation in the Article 7. The legal logic of marriage dispensation in Law Number 16 of 2019 increasingly shows that the independence of judicial power which is the core character of a judicial institution has been dominated by decisions with pseudo *ratio decidendi*,<sup>34</sup> and leads judges as mere mouthpieces of law. The quality of legal findings in *ratio decidendi* is more dominant in containing normative considerations of administrative maturity and so does the independence of judges who currently follow more material law. This puts them having no opportunity to think and invent new laws based on their knowledge and beliefs.

### **The Alternative Standard Minimum Age for Marriage in Future Regulations**

Biological holiness for some people is not an important thing to maintain, because they deem that one's honor does not lie in that most private sanctity.<sup>35</sup> However, for religious societies, the values of biological holiness are very valuable. Sex behavior and the status of biological chastity, in the era of globalization, are one of the objects

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<sup>34</sup> *Ratio decidendi* is the term that refers to a key factual point or chain of reasoning in a case that drives the final judgment. A. L. GOODHART, "THE RATIO DECIDENDI OF A CASE," *The Modern Law Review*, 1959, <https://doi.org/10.1111/j.1468-2230.1959.tb02164.x>.

<sup>35</sup> Momin Rahman, *Sexuality and Democracy, Sexuality and Democracy*, 2021, <https://doi.org/10.1515/9781474471855>.

that have received a response from religious societies such as Indonesian. According to Muhadjir Effendi, free sex behavior is not a part of Indonesian culture and is very contrary to the nation's moral values and norms. This behavior is rather a Western culture that conflicts with Eastern values and norms adhered to by the Indonesian people.<sup>36</sup>

Theoretically, Robertson<sup>37</sup> mentioned 3 ways for individuals to assess the current global reality, such as sexual behavior, namely through the process of selection, adaptation, and resistance. In the process of selection and resistance, religion and ethnicity are the strongest institutions to maintain and filter the global transformation process. This is mainly because global culture, into some extent, is a threat that not everything on it can be accepted by individuals and society, particularly when ethnicity and religion already have their character and national spirit.

In the Indonesian context, Parker stated<sup>38</sup> that its young men and women have high religious adherence in marriage. Of the 3000 samples of high school teenagers interviewed, he revealed the fact that they did not agree with the existence of interfaith marriages, but in social life, they were very close and had emotional closeness in friendship. In terms of interfaith marriages, it turns out that they have a taboo view and are prohibited by religion. Therefore, the prevention of free sex should receive much more attention for those at the crucial age, including from the government.

On the other hand, due to the importance of maintaining biological sanctity, Islamic law positions marriage as an ideal institution for Muslims. Marriage is a system of social institutions that indirectly becomes the right place to express biological desires to the opposite sex. On the other hand, sexual intercourse without a legal

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<sup>36</sup> Menko PMK, "Seks Bebas Bertentangan Dengan Budaya Bangsa Indonesia" (Jakarta, 2019).

<sup>37</sup> Roland Robertson and JoAnn Chirico, "Humanity, Globalization, and Worldwide Religious Resurgence: A Theoretical Exploration," *Sociological Analysis*, 1985, <https://doi.org/10.2307/3710691>.

<sup>38</sup> Lyn Parker, Chang Yau Hoon, and Raihani, "Young People's Attitudes towards Inter-Ethnic and Inter-Religious Socializing, Courtship and Marriage in Indonesia," *South East Asia Research* 22, no. 4 (December 2014): 467-86, <https://doi.org/10.5367/sear.2014.0230>.

marriage or adultery is a serious religious violation impacting on the moral decay of society. This concern about religious violations is one of the basic reasons why the number of marriages claimed to be child marriages is increasing. Various studies found that about one in four parents or adolescents have a strong perception of supporting child marriage rather than letting their daughters and sons fall into adultery or such because sexual drive usually occurs when in the puberty period. According to Wibowo, at least 25.8% of parents and 26.0% of adolescents agree that girls who have menstruated are ready to get married. Therefore, safeguarding the sanctity of biological organs is deemed as a form of one's obedience to the religion (*hiŕđ al-dīn*).<sup>39</sup>

Based on the above phenomenon, it is proposed that minimum age limit of marriage can also consider the standard of *bâ'ah*, *'âqil* and *bâligh*. These biological standards are scientifically unquestionable because the values of maturity at the age of *bâ'ah*, *'âqil* and *bâligh* are comprehensive reached.<sup>40</sup> When someone has reached that age of *bâ'ah*, *'âqil* and *bâligh*, he/she already has the abilities and maturity expected in an ideal marriage. However, governments and lawmakers seem to ignore this natural standard and prefer in favor of age-based standards only, so maturity becomes ambiguous. This is an alternative standard of maturity that forms the basis of marriage standards based on criteria of sexual ability, emotional maturity, psychological maturity, and responsibility.

In addition to the concept of *bâ'ah*, *'âqil* and *bâligh*, from the perspective of human development psychology, the intermediate status bridging the age of children and adults is the status of *mumayyiz* (distinguishing). In this phase, children are able to distinguish between good and bad based on their reasoning as basic education in Islamic law. Az-Zarqa mentioned *mumayyiz* as a phase of

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<sup>39</sup> Heribertus Rinto Wibowo, Muliani Ratnaningsih, Nicholas J Goodwin, Derry Fahrizal Ulum, & Emille Minnick, "One household, two worlds: Differences of perception towards child marriage among adolescent children and adults in Indonesia," *The Lancet Regional Health - Western Pacific*, 2021.

<sup>40</sup> Yudho Bawono and Suryanto Suryanto, "Does Early Marriage Make Women Happy?: A Phenomenological Finding from Madurese Women," *Journal of Educational, Health and Community Psychology*, 2019, <https://doi.org/10.12928/jehcp.v8i1.12197>.

age from 7-10 years until puberty which is marked by menstruation for daughters and dreams (*ihtilâm*) for sons. There are other opinions about puberty such as some scholars setting the minimum limit for women as 9 years, and for men is 12 years old. After the *mumayyiz* phase, the child will reach puberty (*bâligh*).<sup>41</sup>

At the age of *mumayyiz*, the libido has begun to develop. This phase of biological development matured and peaked when children reached the age of *amrad* (young teens). *Amrad* is the phase in that the child begins to develop his potential to become an adult and can take full responsibility. The *amrad* phase is usually 10-14 years old/before puberty, also known as the *murâhaqah* phase (transition period). Some experts mentioned it as the phase of *'âqil*, which is characterized by becoming more proficient in using reasons. One of the signs of *amrad*'s phase is the increasing ability in managing assets which begins with the ability to set a budget for selves. The last phase of the child reaches maturity is called the *taklif* or *mukallaf* phase. At this stage, the child has reached the point of complete responsibility. They will have the burden of duty and responsibility in carrying out Islamic requirements completely. All the functions of the mind, senses, and understanding of responsibility for both self and family or society have been perfect.<sup>42</sup>

In the biological context, the reproductive development of children at the *taklif* phase is the desire to have a family.<sup>43</sup> This is a crucial point and a vulnerable period that needs the attention of all parties, including the government. Himawan gave a warning against this vulnerable situation by stating that the management of sexuality for adults with high religious beliefs (*ṣâliḥ* or pious) is the most difficult and full of internal pressure management.<sup>44</sup> This is because biological needs and liking the opposite sex are natural. Even though

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<sup>41</sup> F. N. Ancok, D., & Suroso, "Psikologi Islami Solusi Islam Atas Problem-Problem Psikologi," *Pustaka Pelajar*, 2011.

<sup>42</sup> Mohd Hilmi Ramli, "Al-Taftâzânî's Sources of Knowledge in Sharḥ Al-Talwîḥ 'alâ Al-Tawḍîḥ Li Matn Al-Tanqîḥ Fî Uṣûl Al-Fiqh," *Afkar*, 2020, <https://doi.org/10.22452/afkar.vol22no2.5>.

<sup>43</sup> Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, Terj. Abdul Hayyie Al-Kattani, *Dkk*, 5, 2011.

<sup>44</sup> Karel Karsten Himawan, "Singleness, Sex, and Spirituality: How Religion Affects the Experience of Being Single in Indonesia," *Mental Health, Religion and Culture*, 2020, 204-15, <https://doi.org/10.1080/13674676.2020.1767555>.

it is hard to manage sexuality, maintaining the sanctity of sex is considered a positive character.

Another insight comes from Ali bin Abi Talib who divided the psychological development of children into three clusters of phases, namely the phase as a king, as a prisoner and as a friend.<sup>45</sup> At the first level, children aged 0-7 years. In this phase, the child is like a king. All his/her needs must be provided by parents and society environment. In the second phase, the child is like a prisoner, ranging in age from 7-14 years. At this age, the child has the right to be escorted as a prisoner. Children must acquire knowledge about the good to do and the bad that must be abandoned. At the third level, children must be treated like good friends. At this stage, the child is between 15-21 years. In this phase, the child should not be treated like a king or prisoner. Children should be treated like good friends with the right to get attention like partners, colleagues in thinking of something, planning something and being responsible for something. Treatment as a friend proves that the child has the ability to negotiate, communicate, and be completely independent in all matters, including for building a family in a marriage institution.

Some believe that marriage builds a noble, solid, and happy agreement in the household and shared responsibility for all actions between husband and wife.<sup>46</sup> This character is inherent in the soul of its plural society. In the end, it is clear that the separation of emotional maturity and social responsibility with the puberty age which is considered behind the marriage minimum age limit-based changes will only leave new problems. Therefore, based on meta-juridical approaches, the puberty standards that lead to administrative maturity must be changed based on biological maturity with characters of *bâ'ah*, *'âqil* and *bâligh*.

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<sup>45</sup> Syarifan Nurjan, *Tantangan Dan Peluang Islam Dalam Menghadapi Era New Normal Dan Era Digitalisasi*, Calina Media, 2021.

<sup>46</sup> Alison M. Bittenheim and Jenna Nobles, "Ethnic Diversity, Traditional Norms, and Marriage Behaviour in Indonesia," *Population Studies* 63, no. 3 (2009): 277-94, <https://doi.org/10.1080/00324720903137224>.



## Conclusion

The legal argument for changing the minimum age limit for marriage as referred to in The Article 7 of Law Number 16 of 2019 is motivated by the loss of women's rights, increasing cases of child marriage, and global pressures. However, this change prefers administrative maturity rather than maturity based on *bâ'ah*, *'âqil*, and *bâligh*. The meta-juridical approach finds that the mentioned factors are not sufficient to change the minimum age limit for marriage because it rather increases child marriage through the dispensation of the marriage age procedure. It is suggested that changes should also consider non-legal factors such as the importance of maintaining women's chastity through preventing free sex, religious, social and cultural factors as well as Indonesian character values. This paper is limited to analyzing legal arguments and logic among legislators using a meta-juridical approach. It does not yet provide a comprehensive insight into the arguments obtained from the perspective of legal prescription. Due to these limitations, this study suggests the need for further research that accommodates aspects of the integration of intrinsic and extrinsic values of law relying on more varied data, so that a more comprehensive understanding can be obtained.

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