

POLICY OF LIMITATION OF MARRIAGE MINIMUM AGE ON MARRIAGE LAW REVISION BASED ON SOCIOLOGICAL AND ANTHROPOLOGICAL APPROACHES

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Abstract

The policy of limitation of marriage minimum age is regulated by the government through the Marriage Law and have been revised. The struggle to determine the marriage minimum age has basically been debated for quite a long and time even each country determines these limits differently depending on problem needs and social realities that develop in the community. Therefore, this research is very important to do based on a sociological and anthropological approaches. The research purpose is to analisyst the minimum marriage age policy in the Marriage Law revision based on a sociological and anthropological approaches. The research method used socio-legal research. According to research, the minimum marriage age policy on the revision of the Marriage Law based on a sociological and anthropological approaches is not support the new norm and difficult to be effective and even cause a new impact, which is increasing marriage dispensation, depriving the right to continue marriage, and being criminogen factor.

Keywords: *Marriage Minimum Age; Policy; Sociological and Anthropological*

1. Introduction

The development of the era is delivering the law penetrated into all lines of life. Almost all of aspects of life are governed by law. The rules are not only public law but also in private law, such as marriage. This is necessary to create an order which ultimately has implications for the welfare of society. Therefore, holders of power make laws in the form of legislation as legitimacy so that everyone obeys them.

Lawmakers create laws as social controls to maintain the desired conditions or social engineering to create the behavior of the community in accordance with what is desired. "The society (or the state) sets minimum standards for marriage in the interest of order and stability."¹ However, judging from the theory of the operation of the law according to Chamblis and Robert B. Seidman that both from the rule makers, the application of the rules, and the role holders are influenced by other social and personal factors so that it becomes common place between *das solen* and *das sein* that there is often a mismatch.² Especially, when legislators or creating new

¹ Frank D. Cox, *Human Intimacy: Marriage, The Family, and Its Meaning*, Research U (USA: Wadsworth, 2019), p. 103.

² Satjipto Rahardjo, *Hukum Dan Masyarakat* (Bandung: Penerbit Angkasa Bandung, 1980), p. 26-28.

norms will certainly be faced with established norms in society so that it will not be easy in the institutionalization process. According to the theory of Soerjono Soekanto's institutionalization process, the effectiveness of instilling new norm is confronted with opposing forces from the community and also influenced by the speed of instilling this new norm.³

Similarly, the limitation of minimum marriage age is regulated in the Act of the Republic of Indonesia Number 1 of 1974 concerning Marriage (Act Number 1 of 1974) as amended by the Law of the Republic of Indonesia Number 16 of 2019 (Act Number 16 of 2019) hereinafter abbreviated as Marriage Law. The limitation of marriage age is the minimum age that person can get married based on regulation in the area.

In Indonesia, this is still a controversy in society. The age limit of marriage as stipulated in the Marriage Law is different from the Civil Code (*Burgelijk Wetboek*) (hereinafter abbreviated as *KUHPer*) and also different from the Compilation of Islamic Law (hereinafter abbreviated as *KHI*). In addition, this limitation is always associated with the age limit of children becoming adults where Indonesia it self is still confusion at the level of substance that creates legal uncertainty.

Referring to the age limit in marriage in some countries, such as in Nigeria, which is 18 years.⁴ Muslim population countries range from 15-19 years, except Algeria and Bangladesh over the age of 21 years but only applies to men. And almost all of Islamic countries, place the age limit of men higher than women. Iraq and Somalia are between men and women who are both 18 years old.⁵

So, the age limit in marriage varies for each country. This is adjusted to the problem of the needs and social realities that develop in the community. Some are based on social conditions, religious law, traditions and culture of society, political interests and ideological of the people, interests of national development, population and so on.⁶ Similar to Indonesia, the application of the law will be different from other nations. Indonesia, which has the *Pancasila* with the characteristics of a country that is diverse in culture, ethnicity, race, religion, and so on, creates a situation where it will not be easy for the law to be widely accepted by all Indonesian people.

³ *Ibid.*, p. 120.

⁴ Ukwuoma Arsmstring Esq, *Child Marriage in Negeria: The Health Hazards and Socio-Legal Implication (X-Raying The Human Rights & Development Issues in Girl-Child Early Marriage)* (USA: Lulu Press Inc, 2014), p. 53.

⁵ Syahrul Mustofa, *Hukum Pencegahan Pernikahan Dini* (Bogor: Guepedia, 2019), p. 103.

⁶ *Ibid.*, p. 104.

Therefore, it is very interesting to discuss the minimum age limit for marriage based on sociological and anthropological aspects.

In addition, to be accepted and effective in organizing societies must see from the basic types of power and legal development according to Max Webber's theory divides into charismatic power, traditional power, and rational power.⁷

Several studies discuss case studies of underage marriages⁸, in addition to examining the same thing but the difference in this case is the reconstruction of marital age limits in Indonesian national law fiqh perspective.⁹ Inayati examines the marriage of minors in the perspectives of law, human rights, and health.¹⁰ Another study discusses the relevance of the legal age of minimum marriage with the protection of the exploitation of girls in 12 Sub-Shahara African countries¹¹, Gaffney examines international law as an instrument to combat child marriage¹². In addition, Hussain discusses child marriage in Islamic law¹³ so that in this article focuses on the policy of limitation of marriage minimum age based on sociological and anthropological approaches.

The purpose of this study is to analyze the policy of minimum marriage age on the revision of the Marriage Law based on a sociological and anthropological approaches.

2. Methods

The research method used is socio-legal research. In this research method, the object of research is the law but the law is placed as a social phenomenon. Law as the dependent variable and non-legal factors as variables. Law as a phenomenon that has meaning so this research understands the law of the subject under study. The approach method in this research is the hermeneutic approach method. This approach is used to interpret texts, namely historical texts

⁷ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bakti, 2012), p. 225.

⁸ Rahmatiah, "Studi Kasus Perkawinan Di Bawah Umur," *Al-Daulah* 5, no. 1 (2016): 144–66.

⁹ Nur Fadhilah and Khairiyati Rahmah, "Rekonstruksi Batas Usia Perkawinan Anak Dalam Hukum Nasional Indonesia," *De Jure, Jurnal Syariah Dan Hukum* 4, no. 1 (2006): 49–61.

¹⁰ Inna Noor Inayati, "Perkawinan Anak Di Bawah Umur Dalam Perspektif Hukum, HAM Dan Kesehatan," *Midwife Journal* 1, no. 1 (2015): 46–53.

¹¹ Belinda Maswikwa et al., "Minimum Marriage Age Laws and the Prevalence Of Child Marriage and Adolescent Birth : Evidence from Sub-Saharan Africa," *International Perspectives on Sexual and Reproductive Health* 41, no. 2 (2015): 58–68, <https://doi.org/10.1363/4105815>.

¹² Ruth Gaffney-Rhys, "International Law as an Instrument to Combat Child Marriage," *The International Journal of Human Rights* 15, no. 3 (2011): 359–73.

¹³ Mohammed Subhan Hussain, "Islamic Law on Child Marriages," *NILS UK Law Review* 1 (2018): 163–74.

(constitution, judicial review Results, Marriage Law) and legal texts that live (the living law) in the reality of society.¹⁴

Research specification is analytic discription. Result of research will be described and then analyzed. The data used are primary data and secondary data. Technique of primary data collection are indepht interview and observation. Researchers conducted observations on Indonesia about practice of early marriage, especially in Demak District (border area of Semarang City). Researchers also conducted interviews with several parties, namely Office of Religious Affairs (Office of Mranggen Religious Affairs, Demak District); psicologist (Prof. Hardani Widiastuti – professor of psychology from Semarang University), islamic jurist (Dr. Akhmad Khisni, S.H., M.Kn. – lecturer from University of Sultan Agung and now serves as chairman of the notary master’s study program), islamic psicologist (Darosy Endah Hyoscyamina, Sp.D, M. - lecturer from Diponegoro University and concentrations in the field of child development). While, technique of secondary data collection are documentation techniques and library techniques. Then, the data is analyzed with qualitative.

3. Results and Discussion

The policy of minimum marriage age is initially regulated in Article 29 of KUHPer, which is 18 years for men and 15 years for women. Furthermore, both Act Number 1 of 1974 and KHI regulate these limits, namely 16 years for women and 19 years for men. Historically, the marriage minimum age in Law Number 1 of 1974, its formation faced a problem, namely the unification of marriage law for the unity of Indonesia and fullfil the demands of modernity as did other countries. Indonesia adheres to a civil law system, not a religious state. Thus, marriage law, especially the marriage minimum age becomes an important element for the development of the legal system and the development of future generations, moreover to smooth the state project to bring society towards a modern, cultured nation. These rules represent a cohesive relationship between the interests of the state and religion. The marriage minimum age was initially not institutionalized, then it appeared in a new form of regulations that had to be agreed on nationally, even becoming a requirement of marriage according to the state.¹⁵ And recently, Act Number 1 of 1974 is revised with Act Number 16 of 2019.

¹⁴ Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori, Dan Praktik)* (Depok: Rajawali Pers, 2018) p. 371.

¹⁵ Ahmad Masfuful Fuad, “Ketentuan Batas Minimal Usia Kawin: Sejarah, Implikasi Penetapan Undang-Undang Perkawinan,” *Petita* 1, no. 1 (2016): 32–47, <http://jurnal.ar-raniry.ac.id/index.php/petita/index>.

Based on Article 7 paragraph (1) of Act Number 16 of 2019, the limitation of marriage minimum age are stated be 19 the same for women and men. In addition, in paragraph (2), can ask marriage dispensation to court on the grounds of very urgent accompanied by sufficient supporting evidence. Urgent means that there is no other choice and it is very forced to have a marriage. And sufficient supporting evidence means a certificate regarding the bride's age is underage and a certificate of health personnel supporting the parents' statement that the marriage is very urgent to do. So, dispensation can only be submitted for very urgent reasons ie there is no other choice and force to get married with supported evidence. In this case the researchers assume that these conditions are only intended for the incidence of pregnancy out of wedlock

In the operation of the law, it is starting from the legislation stage, namely by the House of Representatives. Legislators with a professional background are different from the society as role holders who already have their own legal culture. Stakeholder responses will give negative results if the norms given are contrary to what has been firmly rooted and conceptualized since childhood. Changes that depart from the mandate of the Constitutional Court Decision of the Republic of Indonesia Number 22 / PUU-XV / 2017. Based on the judge's consideration that the limitation of marriage minimum age to women is contrary to the Child Protection Law. Then the verdict issued on December 13, 2018, states that Article 7 paragraph (1) no longer has permanent legal force and gives the legislature three years to formulate a new norm. If it has passed the time period, the minimum age of marriage will be harmonized with the age limit of children in the Child Protection Law.¹⁶

Based on this, it is known that the Constitutional Court has stated that Article 7 paragraph (1) of the Marriage Law is against the Constitution and has no binding legal force. The decision model used is that the enforcement is postponed (limited constitutional). In this model, the Constitutional Court tolerates the enactment of rules that are actually contrary to the constitution to a certain time limit to provide space for transitional rules that are contrary to the constitution to remain valid and have binding legal force until a certain time because they are based on considerations of benefit. This model contains orders to legislators to update the constitutional foundation which is limited by time.

In line with this, the Constitutional Court stated that this provision was still in effect until the change was made in which the Constitutional Court ordered legislators for a maximum period of three years to make amendments to the Marriage Law, particularly with regard to the

¹⁶ Xavier Nugraha, Risdiana Izzaty, and Annida Aqila Putri, "Rekonstruksi Batas Usia Minimal Perkawinan Sebagai Bentuk Perlindungan Hukum," *Lex Scientia Law Review* 3, no. 1 (2019): 40–54.

minimum age of marriage for women. Furthermore, the Constitutional Court's decision has been followed up by the legislators through Act Number 16 of 2019, where the age limit of marriage is 19 years for men and women.

In its consideration, the Constitutional Court considered the previous decision, namely Decision Number 3074 / PUU-XII / 2014 on June 18, 2015 which basically stated that it did not contradict constitution. However, the court make contrary, the court stated that the age limit for marriage was against constitution. The court is of the opinion that when the legislators determine the minimum age for marriage, they do not automatically judge that the legal policy is contrary to constitution, but at the same time ignoring the fact that the minimum age limit is one of the causes of problems such as divorce, and so on. The constitutionality of a legal policy which is clearly contrary to the guarantee and protection of human rights guaranteed by the constitution can be tested through a judicial review process.

Furthermore, based on several reasons as stated in the General Explanation of the Marriage Law, namely discrimination between women and men in the exercise of the right to form a family and fulfillment of children's rights where children according to the Child Protection Law is not yet 18 years old.

Meanwhile, talking related the definition of a child is not only regulated in the Child Protection Law, for example, being called an adult when they are 21 years old (KUHP), 18 years (Act Number 1 of 1974), 17 years old or has been married (Act of the Republic of Indonesia Number 23 of 2006 concerning Administration Population hereinafter abbreviated as Population Administration Law), and so on so that there is confusion and inconsistency. In addition, if the adult age limit is 18 years under the Child Protection Law then why is the age limit for marriage being 19 years old?

According to the General Explanation on the revision of the Marriage Law, this norm change is considered to have matured body and soul to be able to carry out the marriage in order to be able to realize the purpose of marriage properly without ending divorce and get a quality that is healthy and quality. It is also expected to result in lower birth rates and reduce the risk of maternal and child mortality. And also the fulfillment of children's rights so as to optimize the growth and development of children including parental assistance and provide children access to education as high as possible. However, whether the new policy can achieve the desired goals. In the opinion of researchers, the risk of pregnancy at a young age is indeed vulnerable, but it also applies to pregnancies in old age. In fact, many of our ancestors were married at a young age and

successfully married. And marriage is not a hindrance to an education. Moreover, the age limit for marriage is 19 years based on revised of Marriage Law, at that time, on average, in terms of the age of a child graduating from high school is around 15-18 years so it has been one year to four years since graduation from high school. So, that is not only about right to get education. Even this policy can make new problem cause someone who supposed to get married but can't get married.

Based on the latest education level of brides in Mranggen, Demak Distrik as of October 2019, the majority of school graduates (elementary school/ junior high school/ senior high school), which is around 85.9% men women 84.5%. Many of these brides and grooms get married after graduating from school and become a culture as well as someone who has graduated from school is considered capable of marriage.¹⁷ We can make conclusion by ourself about how the right to marriage is reduced.

Marriage is basically a form of worship guaranteed by the constitution. As a godly nation, everyone has the right to embrace and worship according to his religion as Article 28E paragraph (1) of the Constitution of the Republic of Indonesia of 1945, hereinafter abbreviated to the Constitution of 1945. Everyone is also given the right to form a family and continue his descendants as Article 28B paragraph (1) of the Constitution of 1945. This is emphasized in Article 2 of the Marriage Law, which reads: "Marriage is legal if it is carried out according to the law of each religion and belief." So, marriage is a private problem and his affairs to God

Furthermore, the operation of the law also depends on how the implementation of the revised Marriage Law results including its socialization by the central government to the Office of Religious Affairs and other law enforcement officials. According to Akhmad Taufik, research informant from Office of Mranggen Religious Affairs, Demak District, at the level of application of the Marriage Law, the Office of Religious Affairs institute implements policies in accordance with juridical provisions. So far the briefing from the center (Ministry of Religion of the Republic of Indonesia) to the Office of Religious Affairs as a law enforcement agency was held on September 31, 2019 after the revision of the Marriage Law was ratified by the Parliament on September 16, 2019 and in the form of a Circular Letter Number B-4345 / DJ.III / HK .001.1 / 10 / 2019 on October 28, 2019 after the revision was promulgated on October 15, 2019. While in its application in the community after the revision of the Marriage Law was promulgated,

¹⁷ Ibid.

socialization has been carried out through the distribution of information such as the use of whatsapp media and informed when marital activities.¹⁸

The operation of the law is also influenced by the community as a role holder. Communities with diverse social structures, ethnicities, cultures, religions, and so on with various streams embraced in marriage, namely patrilineal, matrilineal, parental, and mixed have their own legal culture that can affect the implementation of the new policy.

If it is viewed from the flow adopted and forms of marriage that have become a community tradition, including: honest marriage (Gayo, Batak, Nias, Lampung, Timor-Sawu, Maluku), semanda marriage (Minangkabau), free or independent marriage (Java, Sundanese, Acehnese, Malay, Kalimantan, Sulawesi), mixed marriages (Batak), and run marriages (Batak, Lampung, Bali, Bugis / Makassar, Maluku) we can see the diversity of this Indonesian society. Honest marriage (patrilineal flow) is a marriage by giving honest money given to relatives of prospective husbands to relatives of prospective wives who are different from dowry which is a religious obligation. After marriage, the position of the wife is under the authority of the husband's relatives. Semanda marriage (matrilineal flow) customary marriage applies from the woman to the man. Free marriage (parental flow) belongs to the category of modern society where the family no longer interferes with the household. The position and rights of husband and wife are balanced, the husband as the head of the family and the wife as the housewife.¹⁹ This gives the conclusion that women are valued even in some regions occupying higher positions than men and are not in a vulnerable position even though there is no denying the rampant crime against children and women.

Seen from the sociological aspect, the majority of Indonesian people flow a religion of Islam so that Islamic law and culture colors the rule of law in society. Meanwhile, Islam does not provide definitive limits and includes the issue of *ijtihad*. However, it is important to know that age or maturity is not included in the terms of marriage. According to QS. al-Nisa: 6, reads: "And test your orphans by you so that they are old enough to marry, then if according to your judgment they are intelligent then hand over their property to them."²⁰ The word *bulugh al-nikah* in the verse is interpreted by different scholars. The model of marriage at the age before *baligh* is practiced by the Prophet of Muhammad who married Aisha when she was six years old and

¹⁸ Akhmad Taufik, "Interview" (Semarang, 16 Oktober 2019).

¹⁹ A. Suriyaman Mustari Pide, *Hukum Adat: Dahulu, Kini, Dan Akan Datang* (Jakarta: Prenadamedia Group, 2015), p. 25-33..

²⁰ Moh. Ali Wafa, "Telaah Kritis Terhadap Perkawinan Usia Muda Menurut Hukum Islam," *AHKAM Jurnal Ilmu Syariah* 17, no. 2 (2017): 389-412.

fondle her at the age of nine.²¹ According to Hanafi, boys are considered *baligh* if they reach 18 years of age and 17 years old girls. Syafi'i School, 15-year-old male and 9-year-old female. Hambali, both male and female 15 years. While Maliki scholars mark maturity with the growth of hair in several places / limbs. This difference results in the policies of a number of Islamic countries differing from one another.²²

So, the problem of determining the marriage minimum age is *ijtihad* and is basically not a requirement for marriage. In Islam, there is no prohibition on marriage at what age. Regarding marriage law for muslims, the jurists classify the marriage law into five categories which pass away to the conditions, namely: 1) Obligatory, for those who are able and passionate to have urged, and afraid of falling into the valley of adultery; 2) *Sunnah*, for people who want to get married and have a strong lust, but are able to control themselves from adultery; 3) *Mubah*, for people who have no reason that urges / requires immediate marriage and / or reasons that forbid marriage; 4) *Makruh*, for a person who is impotent and unable to provide for his wife even if it does not harm him because he is rich and does not have strong lust; 5) *Haram*, for those who do not wish because they are unable to provide for their inner or outer livelihood for their wives and their desires are not urgent, or he has the belief that if he marries he will leave Islam.²³ So, there are conditions that influence someone to get married, namely lust and ability.

When examined, the maturity of a person is different even between men and women are also different. Women show the conditions more quickly mature and ready to marry than men, so the minimum age of marriage for women and men cannot be compared. This also matches the social reality that women are biologically more mature. Especially now where the development of increasingly sophisticated technology with easy internet access and even easy access to viewing porn. In addition, the influence of food intake with nutritional content also affects a person faster biologically mature. This is proven by many elementary school class III children getting menstruation. So, between men and women cannot be equated. So, islamic law is true. Similarly, the nature of a man as a husband and the nature of a woman as a wife that cannot be equated. A man generally marries when he is well established remembering his obligation as a husband to earn a living and act as the head of the family. Similarly, the nature of a woman as a

²¹ Fadhilah, loc. cit.

²² Achmad Asrori, "Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Islam," *Al-'Adalah* XII, no. 4 (2015): 807–26.

²³ Syahraeni, "Tinjauan Sosiologis Terhadap Faktor-Faktor Yang Menyebabkan Tingginya Jumlah Pernikahan Dini, Di Desa Gattareng, Kecamatan Marioriwawo, Kabupaten Soppeng" (UIN Alauddin Makassar, 2017).

wife who gives birth to offspring is not possible by men. This is one of the strong reasons why men marry at old age while women marry at a young age.

According to Akhmad Khisni, Islamic law consists of three sources, namely sharia (law created by God), fiqh (law created by humans), and syariah syar'iah (legal politics created by the government for the benefit and order of the community as government authority so that it does not become a problem if the government provides an age limit even though in Islam there is also no prohibition on marriage at what age).²⁴ However, researchers assumed that this can only be justified if the policy is indeed right for the benefit of society that will be known from this research result. Authors argue that if there is an age limit then it is a policy for the common good but that does not mean that it can deviate from religion because religion has been imprinted before national law. And national laws should also adopt from laws that live in society. Religion does not prohibit marriage at that age, even if he is capable, especially those who have unstoppable lust, but it becomes his legal obligation to marry.

Judging from the style of the Indonesian nation has a variety of cultures where these values have been deeply rooted and are still practiced in today's life. Each region has its own tradition, there are even many regions that maintain the sultanate or kingdom, such as Yogyakarta, Solo, and so on. As examples of marital traditions in Indonesia: mass marriages in Pengotan Village in Bangli Regency²⁵, early marriages (age categories of children according to positive law) in Dungkek District, Sumenep Madura District²⁶, early marriage traditions in Bangkalan Madura District²⁷, early marriage traditions among Deli-Deli Serdang Javanese women²⁸, hanging marriage traditions in West Java²⁹, and so on.

There are several reasons why underage marriages are enforced in the community are to maintain or maintain kinship relations between the parties concerned³⁰; negative stigma of

²⁴ Taufik, "Interview" (Demak, 16 Oktober 2019).

²⁵ Putu Santhy Devi, "Perkawinan Usia Dini: Kajian Sosiologis Tentang Struktur Sosial Di Desa Pengotan Kabupaten Bangli," *Jurnal Ilmiah Sosiologi (SOROT)* 1, no. 1 (2012).

²⁶ Sulaiman, "Domination of Tradition in Under Age Marriage," *Jurnal Analisa* 19, no. 01 (2012): 15–26.

²⁷ Esmi Warassih Pujirahayu, *Pranata Hukum: Sebuah Telaah Sosilogis* (Semarang: PT Suryandaru Utama, 2005), p. 100-1102.

²⁸ Rosramadhana and Nofriani Taufan, "Fenomena Perkawinan Dini Di Kalangan Perempuan Jawa Deli – Deli Serdang," *ANTHROPOS: Jurnal Antropologi Sosial Dan Budaya* 2, no. 1 (2016): 62–75.

²⁹ Sita Thamar ven Bemmelen and Mies Grijns, "Relevansi Kajian Hukum Adat: Kasus Perkawinan Anak Dari Masa Ke Masa," *Mimbar Hukum* 30, no. 3 (2018): 516–43.

³⁰ Made Adriawan Restu Ningrat, "Perkawinan Anak Dibawah Umur Ditinjau Dari Sudut Pandang Hukum Adat," *Lex Privatum* VI, no. 8 (2018): 78–89.

spinster³¹; own will³²; economic factors³³; education factors³⁴; pregnant out of wedlock due to promiscuity³⁵, and so on.

The new norm certainly clashes in society, especially in terms of culture. There are still many cases of underage marriages for example some time ago there was a lively discussion of marriages aged 12 years and 14 years in NTT and Irian. From a cultural point of view it cannot be resisted because it has been hereditary especially in the interior. We can see a model of marriage in India where the tradition of early marriage is still applied but does not take the child's right to get an education.³⁶ Hardani Widiastuti states that psychology supports the new norm in terms of physical and mental maturity. However, according to the researcher, based on the mental theory that women are two years older adults over men and Hardani Widiastuti also emphasized that the emotional maturity of a person other than the age factor still has environmental and innate factors. So, in fact in terms of psychology itself does not support to be equated between men and women.

This is supported by Darosy Endah Hyoscyamina, that age is one of the measurements of emotional maturity. And another measure is when religious is kept and in the family there is a positive habituation regarding the good morality so that it is conditioned to organize themselves and amar ma'ruf nahi mungkar. Judging from the marriage of the ancestors of the Indonesian people, the marriage was successful despite marriage at a young age. So, age does not necessarily become the cause of divorce. There must be a basic revamping, namely spiritual religious, building positive habits. Preparation of self-habits both mental and religious maturity. Even adults can be fragile if not fortified with spiritual religious. So, from the point of view of Islamic psychology it is totally disagree with the existence of this new norm.³⁷

Based on sociological and anthropological aspects, it is known that the types of power in majority of organizing Indonesian society can be classified as charismatic or traditional power. Meanwhile, the form of government is in rational power where the law is carried out in a professional manner so that positive law that has consequences applied uniformly to all Indonesian people is not suitable when applied especially in the interior which is very thick in

³¹ Ibid.

³² Devi, loc. cit.

³³ Rahmatiah, loc. cit.

³⁴ Qibtiyah, loc. cit.

³⁵ Dhorifah Hafidhotul Hikmah, Agung Basuki Prasetyo, and Triyono, "Pengaruh Batas Usia Kawin Dalam Undang-Undang Nomor 1 Tahun 1974 Terhadap Jumlah Perkawinan Di Bawah Umur Di Kabupaten Rembang Provinsi Jawa Tengah," *Diponegoro Law Journal* 6, no. 1 (2017): 1–18.

³⁶ Hardani Widiastuti, "Interview" (Semarang, 21 October 2019).

³⁷ Darosy Endah Hyoscyamina, "Interview" (Semarang, 31 October 2019).

tradition. This policy is clearly not supported by the configuration of the Indonesian people. The purpose of law is people's welfare. The policy can't be forced without seeing the people's will. This gives the impact of the emergence of pessimism whether the policy can be accepted and implemented in society because of the form of society that does not support the policy itself. Even this policy is also contrary to the culture that lives in society.

Policy can be accepted and apply in all walks of life which in fact is diverse influenced by the effectiveness of instilling new norm. In planting the new norm, referring to Akhmad Taufik, it has been carried out through the distribution of information such as the use of whatsapp media and is informed during marital activities. This is done after the legislation is enacted as well as enforced. Judging from the speed of inculcation of the elements themselves, it can be seen that when the new norms are made and passed by the Parliament on September 16, 2019, then they are enacted to apply to the community generally on October 15, 2019.

Based on the information we know that the institutionalization process is very fast in planting new norms. Though legal socialization and communication takes a long time because this new norm confronts with certainly dealing with existing norms what is already established in society. New norm can be made for social engineering, but, it need a long time to planting new norms.

Moreover, the percentage of marriages ≤ 19 years is also often done. Based on data in the Office of Mranggen Religious Affairs for marriages aged ≤ 19 years for women around 13.8% in 2017 and 11.8% in 2018. This also becomes an obstacle to the enforcement of the new norms. The process of institutionalizing new norms will always be confronted with opposing forces from the community. These strengths can be seen from the social and cultural conditions of the community that have been described previously for example the still strong tradition of young marriage in several regions in Indonesia.

On the other hand, the application of the Marriage Law before revision has visible obstacles from the marriage dispensation that still colors the case in court. Then how are the new norms applied? In the opinion of researcher, this new norm is difficult to apply effectively.

The revision of the Marriage Law meant that there would be no discrimination between men and women, fulfillment of children's rights, and prevent births and reduce maternal and child mortality would have a new impact. As for the intended impact, among them: First, requests for marriage dispensation will increase. If seen from the reality that existed before the revision of the Marriage Law was enacted, requests for marriage dispensation have often

occurred especially with the marriage age limit being raised which certainly has an impact on increasing requests for marriage dispensation. This was also predicted by Akhmad Taufik, one of the employees of Office of Mranggen Religious Affairs, Demak District.

Second, snatch the right to marry and continue the descent. In terms of the age of a child graduating from high school is around 15-18 years, he should be able to get married. Especially for rural communities, especially those with low levels of education and economic standards who want their children to get married quickly. At that age many also assume it is appropriate and appropriate for marriage. So, new norms are born so that no more irregularities in discrimination will lead to other deviations of rights.

Third, criminogen factor. In this case there are several things that support the statement that the age limit of marriage is actually a criminogen factor. First, the rise of lesbian, gay, bisexual, transgender (LGBT). According to Darosy Endah H., LGBT members are looking for prey so as to make how normal people can get trapped then marriage delays actually cause great concern about the dangers of LGBT. Ease of access to viewing porn and lust someone, while for marriage there is no mental. Then there is a tendency for people to love one another and what for marry if they can change. So, the reason someone becomes an LGBT, namely: will not get pregnant, more enjoyable, and easy to change.³⁸ Second, the rise of promiscuity. This is influenced by the times with the sophistication of technology and the absence of filtering. Especially if there is no communication at home and the lack of religious strongholds so that the postponement of marriage actually makes promiscuity rampant. Third, supporting pregnancy out of wedlock. The view of the community to marry off their children at a young age is to protect and maintain honor. Promiscuity causes pregnancy outside of marriage. Based on data that an increase in marriage dispensation before the revision of the Marriage Law was promulgated in Indonesia mostly due to pregnancy outside marriage, for example in Cianjur³⁹; Semarang⁴⁰; Blitar⁴¹; and so forth. Especially with the revision of this law which is likely to increase marriage dispensation in line with the increasing incidence of pregnancy out of wedlock. In addition, when viewed from the revision of the Marriage Law in Article 7 paragraph (2), this dispensation can be submitted on very urgent grounds with sufficient evidence both age and health

³⁸ Ibid.

³⁹ Benny Bastiandy and Budi Kansil, "Permohonan Dispensasi Pernikahan Dini Di Cianjur Meningkat," 2019, <https://mediaindonesia.com/read/detail/261378-permohonan-dispensasi-pernikahan-dini-di-cianjur-meningkat>.

⁴⁰ Rahmat Wibisono, "Permohonan Dispensasi Kawin Di Semarang Naik Setahun Terakhir," 2019, <https://www.solopos.com/permohonan-dispensasi-kawin-di-semarang-naik-setahun-terakhir-960284>.

⁴¹ Erliana Riady, "90 Persen Daispensasi Nikah Di Blitar Karena Faktor Ini," 2018, <https://news.detik.com/berita-jawa-timur/d-4256781/90-persen-dispensasi-nikah-di-blitar-karena-faktor-ini>.

information so that information in paragraph (2) indicates that dispensation is allowed for example if pregnant out of wedlock. So, if the age limit is raised, then indirectly getting pregnant out of wedlock is legalized.

4. Conclusions

Based on the explanation above, right of marriage is basically a form of worship guaranteed by the constitution and it will be legal if it is carried out according to the law of each religion and belief. So, marriage is private problem and his affairs to God. In Islam as religion of the majority population of Indonesia stated that age is not requirement of marriage. Islam only stated *baligh* and categories. So, government can make rule of limitation of marriage minimum age if the policy is indeed right for the benefit of society. But, the fact, based on a sociological and anthropological approaches, it is not support of the new norms. To make new norm, especially those that are contrary to existing norm in society, it need a long time to planting new norms. But, this policy just do with short time. So, this policy will make pessimistic to be implemented effectively. On the other hand, there are new effects, namely: increased marriage dispensation, depriving the right of marriage and continuing offspring, and instead become a criminal factor.

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