



Legal Politics of Affidavit Prohibited Marriage for Junior High School Student

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Abstrak

Latar belakang penelitian ini adalah adanya surat pernyataan larangan menikah bagi siswa SMP di kota Surakarta-Solo yang kemudian dicabut oleh pihak sekolah. Aturan tersebut sudah berlaku selama lima tahun, pencabutan dilatarbelakangi oleh keinginan orang tua. Faktanya banyak anak SMP yang sekarang sudah menikah. Melalui metode penelitian hukum normatif mengkaji permasalahan tentang larangan perkawinan kemudian melihat alur kebijakan politik hukum yang melahirkan kebijakan tentang batas usia perkawinan. Pembahasan menitikberatkan pada politik hukum nasional mengenai batas usia perkawinan bagi laki-laki dan perempuan dengan melihat fenomena di dunia pendidikan. Dilihat dari usia minimal tersebut, maka seperti keresahan pemerintah terhadap dunia pendidikan, keluarnya putusan Mahkamah Konstitusi ini disambut dengan keluarnya undang-undang yang membatasi usia perkawinan hingga sembilan belas tahun. Peraturan berupa undang-undang tentang pembatasan usia minimum untuk menikah pada dasarnya bukanlah undang-undang. Jika ada yang nampaknya tidak setuju dengan aturan tersebut maka dilarang menikah di jenjang SMP yang pada dasarnya memiliki tujuan yang sama yaitu mengantisipasi pernikahan dini.

Kata kunci: *Politik Hukum; Surat sumpah; Pernikahan yang Dilarang; Sekolah Menengah Pertama; Siswa*

Abstract

The background of the research was the existence of a statement letter prohibiting marriage for junior high school students in the city of Surakarta-Solo, which was later withdrawn by the school. The rules have been in effect for five years, the revocation is motivated by the wishes of the parents. The fact is that many junior high school children are now married. Through normative legal research methods, it examines problems regarding marriage prohibitions and then looks at the flow of legal politics policies that give birth to policies on the age limit for marriage. The discussion focuses on national legal politics regarding the age limit for marriage for men and women by looking at phenomena in the world of education. Judging from the minimum age, then like the government's anxiety regarding the world of education, the issuance of the Constitutional Court's decision was greeted by the issuance of a law to limit the age of marriage to nineteen years. Regulations in the form of laws regarding the limitation of the minimum age for marriage are basically not laws. If anyone seems to disagree with the rules, it is forbidden to marry at the junior high school level, which basically has the same goal, namely to anticipate early marriage.

Keywords: Legal Politics; Affidavit; Prohibited Marriage; Junior High School; Student

Introduction

On July 10, 2019, the world of education was shocked by a statement issued by SMPN 7 Surakarta-Solo. One of its contents is a prohibition for prospective students not to marry while attending school.¹ Siti Latifah, confirmed the statement that she was prohibited from marrying while attending junior high school education, junior high school students.² Siti Latifah as the principal of the school, denied that the letter came from her, but that it was made by the previous principal. On the other hand, the Ministry of Education and Culture (Kemendikbud), married children can still go to school.³ The right to education is guaranteed in the 1945 Constitution, especially Article 31 paragraph (1) that every citizen has the right to education. Indicating that basically there is no prohibition for citizens to get an education, and it is the vision and mission of the Indonesian legal state.⁴ Then in the context of developing national law, it must begin with views of various sides and goals to be achieved and can provide better services.⁵

The Solo City Education Office basically doesn't question the school's policy regarding the prohibition on marriage, which is attached to the online re-registration of New Student Admissions (PPDB) at SMPN 7 Solo, this situation has actually been going on for five years. If there is a school principal who abolishes the rule, basically it is also not a problem.⁶ The statement regarding the prohibition on marriage for junior high school students seems very trivial.⁷ The assumption that parents of prospective students contain the statement letter regarding the prohibition of marriage for junior high school students is very unreasonable.⁸ This situation indicates the prevention efforts made by the school, in order to reform the law in the school. What he did as a legal reform can also be said as legal politics in the context of preventing or anticipating schools to suppress early marriage.⁹ As legal politics that is carried

¹ Liputan6.com, "Ribut-Ribut Syarat Larangan Menikah Saat Masuk SMPN 7 Surakarta," LIPUTAN 6, 2019, <https://www.liputan6.com/regional/read/4009539/ribut-ribut-syarat-larangan-menikah-saat-masuk-smpn-7-surakarta>.

² Suhadi, Baidhowi, and Cahya Wulandari, "Artikel Pencegahan Meningkatnya Angka Pernikahan Dini Dengan Inisiasi Pembentukan Kadarkum Di Dusun Cemanggal Desa Munding Kecamatan Bergas," *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal of Legal Community Engagement)* 1, no. 1 (2018).

³ Biro Komunikasi dan Layanan Masyarakat and Kementerian Pendidikan dan Kebudayaan, "Tentang Pernikahan Siswa SMP, Mendikbud: Pendidikannya Tidak Boleh Berhenti," Kementerian Pendidikan dan Kebudayaan, 2018, <https://www.kemdikbud.go.id/main/blog/2018/04/tentang-pernikahan-siswa-smp-mendidikannya-tidak-boleh-berhenti>.

⁴ Sarip Arip Arip, "KEMAJEMUKAN VISI NEGARA HUKUM PANCASILA DALAM MISI HUKUM NEGARA INDONESIA," *Refleksi Hukum: Jurnal Ilmu Hukum* 2, no. 2 (2018), <https://doi.org/10.24246/jrh.2018.v2.i2.p109-124>.

⁵ Bagir Manan, Ali Abdurahman, and Mei Susanto, "Pembangunan Hukum Nasional Yang Religius: Konsepsi Dan Tantangan Dalam Negara Berdasarkan Pancasila," *Jurnal Bina Mulia Hukum* 5, no. 2 (2021): 176–95.

⁶ Budi Ardi Isnanto, "Kepala SMPN 7 Solo Anulir Syarat 'Dilarang Menikah,'" detikNews, 2019, <https://news.detik.com/berita-jawa-tengah/d-4618765/kepala-smpn-7-solo-anulir-syarat-dilarang-menikah>.

⁷ Erwinsyah Erwinsyah, Argyo Demartoto, and Supriyadi, "Persepsi Masyarakat Terhadap Pernikahan Usia Dini Di Kelurahan Jebres Kecamatan Jebres Kota Surakarta," *Jurnal Analisa Sosiologi* 7, no. April (2018).

⁸ Retno Putri, "PERSEPSI PERKAWINAN USIA DINI DAN PEMBERDAYAAN GENDER (STUDI KASUS DESA PANCAWATI KECAMATAN CARINGIN KABUPATEN BOGOR)," *SosioGlobal: Jurnal Pemikiran Dan Penelitian Sosiologi* 3, no. 1 (2018), <https://doi.org/10.24198/jsg.v3i1.18148>.

⁹ Kiki Endah, "PENYELENGGARAAN PEMERINTAHAN DESA MENURUT UNDANG-UNDANG NOMOR 6 TAHUN 2014 TENTANG DESA," *Dinamika: Jurnal Ilmiah Ilmu Administrasi Negara* 5, no. 1 (2018): 76–82, <https://jurnal.unigal.ac.id/index.php/dinamika/article/view/1224>.

out by schools, basically it will not change constitutional rights, but is more of a mere effort, the Law No. 16 of 2019.¹⁰

According to Article 7 paragraph (1) of Law no. 1 of 1974 concerning Marriage, the minimum age for marriage for women is 16 (sixteen) years and for men 19 (nineteen) years. On the other hand, the government issued a 12 (twelve) year compulsory education program starting in June 2015.¹¹ The 12 year compulsory education program, the average elementary school (SD) is seven years. So seven years (elementary school age) + six years of elementary school + three years of junior high school + three years of high school/equivalent = 19 (nineteen) years. The average age of children in grade 3 of junior high school is 16 (sixteen) years.¹² It is possible for girls in third grade of junior high school to 'can' get married and cannot be prevented by the school. The school must carry out the constitutional mandate, namely with regard to the intellectual life of the nation and the 12-year compulsory education program.¹³ Finally, with the change in the age limit for marriage, which opened up the space, the minimum age of marriage for both men and women was born, namely 19 years.¹⁴

The existence of the same age of marriage for both men and women and the rejection of the junior high school policy from the family brings the possibilities that will occur in the future. The possibilities that will occur will try to be seen from the political side of law in strengthening the development of national law in advancing the world of education and preventing early marriage, which is often the case, then the problem is (1) How is the prohibition letter for marriage issued by the school from the point of view of Indonesian legal politics? (2) What should be done by the government regarding the phenomenon of the prohibition letter not to marry in carrying out legal reforms in the world of education?¹⁵

Research Method

The research in this paper uses a normative juridical approach. A normative juridical approach method that focuses on research on secondary data consisting of primary legal

¹⁰ Republik Indonesia, "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 16 TAHUN 2019 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN," 2019, <https://peraturan.go.id/common/dokumen/ln/2019/uu16-2019bt.pdf>.

¹¹ Yenny Merinatul Hasanah and Cepi Safruddin Abdul Jabar, "Evaluasi Program Wajib Belajar 12 Tahun Pemerintah Daerah Kota Yogyakarta," *Jurnal Akuntabilitas Manajemen Pendidikan* 5, no. 2 (2017), <https://doi.org/10.21831/amp.v5i2.8546>.

¹² Rian Rosita Sulaeman, "Hak Pendidikan Anak Dan Kesadaran Hukum Masyarakat Mengenai Larangan Pernikahan Di Bawah Umur," *DIKTUM: Jurnal Syariah Dan Hukum* 17, no. 2 (2019), <https://doi.org/10.35905/diktum.v17i2.814>.

¹³ N I Ayuningthya, M A Imanullah, and ..., "Tanggung Jawab Pemerintah Dalam Pemenuhan Hak Konstitusional Atas Hak Pendidikan Di Masa Pandemi Covid-19," *Seminar Nasional ...* 7, no. 1 (2021): 208, <https://proceeding.unnes.ac.id/index.php/snh/article/view/712>.

¹⁴ Imam Sujono, "Legal Review of Marriage for Divorced Women Outside the Religious Courts," *International Journal of Islamic Thought and Humanities* 1, no. 1 (March 1, 2022): 1–16, <https://doi.org/10.54298/ijith.v1i1.10>.

¹⁵ Imam Sujono, "Legal Education about Marriage of Women without Divorce Certificate and Previously Unregistered Marriage," *International Journal of Law Society Services* 2, no. 2 (October 24, 2022): 48, <https://doi.org/10.26532/ijlss.v2i2.22410>.

materials, secondary legal materials and tertiary legal materials.¹⁶ Secondary data have a space that includes statutory regulations, literature books, legal journals, newspapers, magazines, to official documents issued by the government. The research specifications used in analytical, descriptive research aim to solve the actual problems currently being faced by collecting data or information to be compiled, explained, and analyzed. Although this study uses interview techniques, its position is only to strengthen the data obtained and does not eliminate normative values as the basis of the research. Of course, describing the prohibition letter for marriage for junior high school students seems unreasonable. These data were collected and analyzed related to the problems to be studied, namely the legal politics of prohibition against marriage for junior high school students in Indonesia.

Result and Discussion

Political Law Minimum Age of Marriage and National Education

In this paper, the use of legal politics is somewhat different from the notions of legal politics, which are always identified with statutory regulations. Rather, its application to the conditions or responses that occur in society, although it seems that it cannot be seen from the political side of the law, but basically it can strengthen the laws and regulations in Indonesia. Legal politics are meant, namely *ius constituendum* as an activity to achieve social goals and legal ideas. The legal politics to be applied is mainly related to the minimum age of marriage and the application of twelve years of basic education.¹⁷ The basic objective of Indonesian education is "...to educate the life of the nation (*mencerdaskan kehidupan bangsa*)...".¹⁸ As *ius constituendum*, which legal policy is maintained, replaced, revised, and eliminated which must be harmonized with other legal products.¹⁹ The point is to emphasize the citizens on the application of legal products, regarding the minimum limit for marriage and education in Indonesia.²⁰ There is an imbalance between the government's efforts to educate the nation's life and the minimum age of marriage (*das sollen*), with the reality of the intellectual life of the nation and the minimum age limit for marriage (*das sein*) in Indonesia.²¹

With regard to positive law in Indonesia,²² the minimum age for marriage, according to Article 7 paragraph (1) of Law no. 1 of 1974 concerning Marriage, states " *Marriage is only*

¹⁶ Nun Harrieti and Lastuti Abubakar, "PEMBARUAN REGULASI SEKTOR JASA KEUANGAN DALAM PEMBENTUKAN BANK WAKAF DI INDONESIA," *Jurnal Bina Mulia Hukum* 5, no. 1 (2020), <https://doi.org/10.23920/jbmh.v5i1.31>.

¹⁷ Arfa'i Arfa'i, Bahder Johan Nasution, and Febrian Febrian, "Aktualisasi Pancasila Sebagai Sumber Hukum Dalam Pembentukan Undang-Undang," *Undang: Jurnal Hukum* 3, no. 2 (2020), <https://doi.org/10.22437/ujh.3.2.377-407>.

¹⁸ Jawade Hafids, "KARAKTERISTIK KEBIJAKAN PENDIDIKAN TINGGI HUKUM INDONESIA BERDASARKAN PANCASILA DAN UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945," *KERTHA WICAKSANA* 12, no. 1 (2018), <https://doi.org/10.22225/kw.12.1.420.22-37>.

¹⁹ Ida Ayu Dyah Permata Dewi, Ida Ayu Putu Widiati, and I Ketut Sukadana, "Peranan Perancang Peraturan Perundang-Undangan Dalam Pembentukan Peraturan Daerah," *Jurnal Analogi Hukum* 2, no. 1 (2020), <https://doi.org/10.22225/ah.2.1.1620.109-113>.

²⁰ Sarip Sarip, "Pemikiran the King Can Do Not Wrong Dalam Politik Hukum Ketatanegaraan Indonesia," *Kanun Jurnal Ilmu Hukum* 20, no. 2 (2018), <https://doi.org/10.24815/kanun.v20i2.10157>.

²¹ Sarip Sarip, "The Manifestation of Indonesian Democracy; Between Pancasila State of Law and Islamic Nomocracy," *Jurnal Hukum Novelty* 9, no. 2 (2018), <https://doi.org/10.26555/novelty.v9i2.a11517>.

²² Arip, "KEMAJEMUKAN VISI NEGARA HUKUM PANCASILA DALAM MISI HUKUM NEGARA INDONESIA."

permitted if the man is 19 years old and the woman has reached 16 years ". There are still notes in Article 7 paragraph (2) of Law no. 1 of 1974 concerning Marriage "Those who have not reached the age of 21 years must obtain the permission of both parents ".²³ Adult limit Law no. 23 of 2002 concerning Child Protection Article 1 paragraph (1) reaches the age of 18 years without discriminating against gender.²⁴ Likewise, the adult requirement in the Identity Card (KTP) is 17 years without discriminating gender.²⁵ The limit for being able to be elected in the election is if they have reached the age of 21 without discriminating against sex.²⁶ If we consider the requirements for being an adult as a child, having an ID card, and having the right to be elected, there is no gender difference when compared to the requirements contained in marriage.

The state has a role to play in the intellectual life of the nation in order to achieve this goal, educational regulations are made. Sometimes the rules that have been made without the support of various components will be impossible to achieve. One of the ways to achieve legal politics is proven, one of which is the prohibition of marriage for junior high school children. One of the evidences of the strengthening of legal politics was carried out in Solo, in practice reaping the pros and cons. According to Achmad Asrori, in Islamic law itself, there is not a single verse in the Qur'an which states that the age limit for marriage only states that they have reached puberty (adult).²⁷ The adult age limit itself is different, some say that men have dreams and menstruation for women.²⁸ If you don't show these signs, then in Islam you can see some of the opinions of the great scholars as for the benchmarks, namely:

1. Imam Hanafi can use the number of years, namely 18 years for men and 17 years for women;²⁹
2. Imam Malik with the sign of absolute discharge of semen in a state of imagining, or marked by the growth of some hair on the body, in addition to the adult age for both men and women, namely 18 years;³⁰
3. Imam Safi'i stated that the adult limit for men has reached 15 years and for women 9 years;

²³ DEPDIBUD, "Pernikahan Menurut Hukum Islam Dan Hukum Positif," *Angewandte Chemie International Edition*, 6(11), 951–952., 2000.

²⁴ Bani Syarif Maula, "Perlindungan Perempuan Dalam Hukum Perkawinan Di Indonesia : Wacana Pembaharuan Undang-Undang Perkawinan Dalam Masalah Batas Usia Perkawinan," *Jurnal Studi Islam, Gender Dan Anak* 14, no. 1 (2019).

²⁵ Riska Yunitasari, "Dinamika Pembaharuan Batas Usia Perkawinan (Analisis Batas Umur Melaksanakan Pernikahan Dalam Hukum Nasional Indonesia)," *Doktrina: Journal of Law* 3(1) (2020): 9–21.

²⁶ Irwansyah Irwansyah, Yuslim Yuslim, and Asrinaldi Asrinaldi, "Pola Penetapan Tim Seleksi Anggota KPU Kabupaten/Kota Dalam Rekrutment Anggota KPU," *NUSANTARA : Jurnal Ilmu Pengetahuan Sosial* 6, no. 2 (October 1, 2019): 329, <https://doi.org/10.31604/jips.v6i2.2019.329-343>.

²⁷ Achmad Asrori, "Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Islam," *Al-Adalah* XII, no. 4 (2015).

²⁸ Mimin Mintarsih and Pirotu Ssa'adah, "Batas Usia Minimal Perkawinan Menurut Perspektif Hukum Positif Di Indonesia Dan Hukum Islam," *Muttaqien; Indonesian Journal of Multidisciplinary Islamic Studies* 1, no. 1 (June 30, 2020): 74–84, <https://doi.org/10.52593/mtq.01.1.05>.

²⁹ Dzulfikar Rodafi Nur Hikmah, "Batas Usia Perkawinan Dalam Perspektif Hukum Islam Dan Hukum Positif," *Jurnal Ilmiah Hukum Keluarga Islam* 2, no. 3 (2020).

³⁰ Ahmad Supandi Patampari, "KONSEKUENSI HUKUM PEMBATALAN PERKAWINAN MENURUT HUKUM ISLAM," *AL-SYAKHSHIYYAH Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 2, no. 2 (2020), <https://doi.org/10.35673/as-hki.v2i2.894>.

4. Imam Hambali stated that for men it was 15 years old and for women it was marked by *menstruation*.³¹

In Indonesia, it is also possible to request a Fatwa from the Indonesian Ulema Council, even though it is said to be binding as a consideration for those who want it or ask for it.³² Both from a legal perspective and from an Islamic perspective, it turns out that there are differences in the age of adulthood. The government itself has declared 12 years of basic education, it is likely that the average adult will be 19 years old without distinguishing between men and women. The calculation is that the average child enters elementary school for seven years. This is also of course in line with the opinion of Moh. Ali Wafa stated "*according to current conditions in Indonesia, the right age for a person to get married is at least 25 years for men and 25 years for women because before that age prospective husbands and wives need to prepare themselves as well as possible, so that at that age a person has physically mature, intellectually perfect, and can be accepted as a member of society as a whole.*"³³ What is stated, regarding the 12-year basic education program, is of course very reasonable, the government's plan can be implemented. However, looking at the equality of age at marriage between men and women, there is still inequality in terms of age limit.

The government itself seems to be less consistent in implementing the 12-year compulsory education program. It can be seen from Muhajir Efendi's statement as the minister that he has allowed those who are married to continue their education. This statement clearly shows the inconsistency between the programs themselves. Muhajir's own move apparently got a response from the head of the Cipinang Besar Utara village by issuing a circular letter to prevent child marriage at school age.³⁴ Sri Sundari as the village head issued a circular letter No.986/SE/2018 concerning Prevention of Child Marriage. Even though in terms of legal politics, it is only at the level of the Constitution or the law as in the opinion of Bagir Manan, at least the preventive measures taken are a way to carry out legal politics in the sense of supporting legal reform. Thus, such efforts will strengthen policies related to the direction of the country's goals.³⁵

What the school does by issuing rules is basically steps to support the legal policies themselves. To facilitate understanding of legal politics, it is important to understand fundamentally what and how legal politics are. According to Mochtar Kusumaadmadja, legal politics is a policy of law and legislation on legal reform with legal politics instruments carried

³¹ M. Taufiq, "Konsep Dan Sumber Hukum: Analisis Perbandingan Sistem Hukum Islam Dan Sistem Hukum Positif," *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 5, no. 2 (2021), <https://doi.org/10.35316/istidlal.v5i2.348>.

³² Elya Kusuma Dewi sarip, Diana Fitriana, "MENDUDUKKAN FATWA MAJELIS ULAMA INDONESIA SEBAGAI DOKTRIN PERUNDANG-UNDANGAN," *Legislasi Indonesia* 16, no. 3 (2019).

³³ Moh. Ali Wafa, "Telaah Kritis Terhadap Perkawinan Usia Muda Menurut Hukum Islam," *AHKAM : Jurnal Ilmu Syariah* 17, no. 2 (2017), <https://doi.org/10.15408/ajis.v17i2.6232>.

³⁴ Jurnal Perempuan, "Lurah Cipinang Besar Utara Keluarkan Surat Edaran Pencegahan Perkawinan Anak," Yayasan Jurnal Perempuan, 2018, <https://www.jurnalperempuan.org/warta-feminis/lurah-cipinang-besar-utara-keluarkan-surat-edaran-pencegahan-perkawinan-anak?>

³⁵ M. Zulfa Aulia, "Friedrich Carl von Savigny Tentang Hukum: Hukum Sebagai Manifestasi Jiwa Bangsa," *Undang: Jurnal Hukum* 3, no. 1 (2020), <https://doi.org/10.22437/ujh.3.1.201-236>.

out through laws, and which laws need to be maintained so that the country's goals can gradually be realized.³⁶

What was different was what the Principal of SMPN 7 Solo did in his smart steps, he encountered problems which eventually had to revoke the contents of the ban on marriage for junior high school students. Even though the results of research in Surakarta itself conducted by Erwinsyah, Argyo Demartoto, and Supriyadi in 2016-2017 showed the number of children who were married in the age range of 14-18 years,³⁷ children marry between the ages of 14-15 years.³⁸ In addition, research conducted in 2016 in Sukabumi, one of the factors causing child marriage is the low education factor. Politically, the Constitutional Court also lacks the courage to determine the minimum age limit numerically for marriage as in granting *a judicial review* regarding case No.30-74/PUU-XII/2014.

The age limit for marriage is clearly seen that the age of marriage is 19 years, for both women and men. The 19 year limit applies to both men and women who are then ratified in order to be able to legally marry. As stated in Article 7 paragraph (1) of the Marriage Law states, "*Marriage is only permitted if the man and woman have reached the age of 19 years*". The reason is that the age of 19 has exceeded the age of the child according to Law no. 23 of 2012 concerning Child Protection is set up to 18 years. However, the DPR has not yet officially knocked the hammer on the age limit for marriage itself. The reason for the minimum age limit for marriage, which is 19 years, is basically very realistic, namely the harmonization of the law between the minimum age limit for marriage and the age limit for children. Actually, the academic argument is that if you look at the government's 12-year compulsory education program, there is a possibility that the ideal age for marriage for both men and women will be above 19 years.³⁹

Even the National Population and Family Planning Agency (BKKBN) provides recommendations based on reproductive health for women who are ideally married for 21 years and men 25 years.⁴⁰ In addition, when referring to the Marriage Law, those aged over 21 do not need parental consent and politically they can also run for election to be elected in politics. The legal politics of the minimum limit of marriage and national education itself is basically a legal politics, which are the category of operational basis.⁴¹ The operational basis intended is that between the minimum age of marriage and basic education, it must run in harmony. With

³⁶ M. Zulfa Aulia, "Hukum Pembangunan Dari Mochtar Kusuma-Atmadja: Mengarahkan Pembangunan Atau Mengabdikan Pada Pembangunan?," *Undang: Jurnal Hukum* 1, no. 2 (2019), <https://doi.org/10.22437/ujh.1.2.363-392>.

³⁷ Erwinsyah, Demartoto, and Supriyadi, "Persepsi Masyarakat Terhadap Pernikahan Usia Dini Di Kelurahan Jebres Kecamatan Jebres Kota Surakarta."

³⁸ Nilam Arita Putri, Burhanuddin Masy'ud, and Hendra Gunawan, "PERSEPSI MASYARAKAT TERHADAP TAMAN RUSA BUMI PATRA INDRAMAYU, JAWA BARAT," *Jurnal Penelitian Hutan Dan Konservasi Alam* 16, no. 1 (2019), <https://doi.org/10.20886/jphka.2019.16.1.13-24>.

³⁹ Moh. Zeinudin and Oos Ariyanto, "REKONSTRUKSI HUKUM PERKAWINAN BEDA AGAMA BERBASIS HAK ASASI MANUSIA DI INDONESIA," *Jurnal Jendela Hukum* 8, no. 2 (2021), <https://doi.org/10.24929/fh.v8i2.1575>.

⁴⁰ Suci Ramadhan, "ISLAMIC LAW, POLITICS AND LEGISLATION: DEVELOPMENT OF ISLAMIC LAW REFORM IN POLITICAL LEGISLATION OF INDONESIA," *ADHKI: Journal of Islamic Family Law* 2, no. 1 (2020), <https://doi.org/10.37876/adhki.v2i1.35>.

⁴¹ Fathorrahman Fathorrahman, "Politik Hukum Hierarki Peraturan Perundang-Undangan Indonesia," *HUKMY: Jurnal Hukum* 1, no. 1 (2021), <https://doi.org/10.35316/hukmy.2021.v1i1.73-90>.

regard to Law no. 35 of 2014 concerning Child Protection, a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.⁴²

The government's policy that was less daring was finally carried out by one of the senior high schools in Cirebon Regency, namely by forbidding children who were married and pregnant to attend school lessons, but when the National Examination was allowed to take it.⁴³ If the Indonesian people want to carry out the education program 12 years, of course, taking into account the similarities between men and women, the ideal age for marriage for both men and women is 21 years. In addition, when referring to the age of a child who is 18 years old, the ideal step to choose is not 17 years but 19 years. The reason is that the age of 17-18 years is still a category of children.⁴⁴

Legal Consequences of Government and Education for Marriage

The government's inconsistency in terms of education and marriage, of course, has logical consequences that must be carried out by the government itself, including schools. In principle, what is being done by the government in responding to problems in the legal field, especially regarding the age limit for marriage as a form of prevention for many early marriages? Through the decision of the Constitutional Court, of course, what is expected by the government is basically to prevent what is said that the government has a legal basis and will not be blamed by all parties in determining subsequent policies.⁴⁵ This consequence is a way to avoid what is called the politicization of legal politics in Indonesia.⁴⁶ This consequence is basically a way to protect the provisions that have been the subject of debate regarding the minimum age for marriage.

The government in solving the adult age limit in marriage gets a breath of fresh air through the decision of the Constitutional Court Number. 22/PUU-XV/2017, 13 December 2018.⁴⁷ It is the basis for the Government to change the minimum age for marriage in Article 7 paragraph (1) of Law no. 1 of 1974 concerning Marriage.⁴⁸ Then after going through various processes, on September 16, 2019, the DPR and the Government, Law no. 16 of 2019 concerning Amendments to Law Number 1 of 1974. In the explanation of Law No. 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage that the factors that influence changes in the age limit for marriage in Indonesia in general are: Article 28B of the 1945 Constitution basically everyone has the right to form a family and continue offspring

⁴² Mesta Limbong and Evi Deliviana, "Penyuluhan Dampak Pernikahan Dini Bagi Perempuan," *JURNAL Komunitas Servizio : Jurnal Terkait Kegiatan Pengabdian Kepada Masyarakat, Terkhusus Bidang Teknologi, Kewirausahaan Dan Sosial Kemasyarakatan* 2, no. 1 (2020), <https://doi.org/10.33541/cs.v2i1.1655>.

⁴³ Moch Ribkhan Syakuro, "Penghentian Studi Bagi Siswa Yang Sudah Menikah Ditinjau Dari Masalah Mursalah (Studi Kasus Di SMA Islam Al-Maarif Singosari)," *Sakina: Journal of Family Studies* 3, no. 3 (2019).

⁴⁴ Imam Sujono, "Implementation of Chemical Castration Punishment for Sexual Violence against Children Perpetrator," *Journal of Law and Policy Transformation* 7, no. 1 (2022): 67–84, <https://doi.org/10.37253/jlpt.v7i1.6561>.

⁴⁵ Arip, "KEMAJEMUKAN VISI NEGARA HUKUM PANCASILA DALAM MISI HUKUM NEGARA INDONESIA."

⁴⁶ Sarip Sarip, "POLITIK HUKUM DAN POLITISASI HUKUM DESA DALAM SISTEM KETATANEGARAAN INDONESIA," *Jurnal Bina Mulia Hukum* 4, no. 2 (2020), <https://doi.org/10.23920/jbmh.v4i2.207>.

⁴⁷ Mahkamah Konstitusi Republik Indonesia, "Putusan Mahkamah Konstitusi Republik Indonesia Nomor 22/PUU/UU-XV/2017," 22 Kepeniteraan Mahkamah Konstitusi Republik Indonesia § (2017).

⁴⁸ Ahmad, "KETENTUAN BATAS MINIMAL USIA KAWIN: SEJARAH, IMPLIKASI PENETAPAN UNDANG-UNDANG PERKAWINAN," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 1, no. 1 (2016), <https://doi.org/10.22373/petita.v1i1.77>.

through legal marriage and The state guarantees children's rights to survival, growth and development, and the right to protection from violence and discrimination.

Article 7 paragraph (1) of Law Number 1 of 1974 concerning marriage states that marriage can only be permitted if the man reaches the age of 19 years and the woman has reached 16 years. 1 paragraph (1) of Law no. 35 of 2014 concerning amendments to Law no. 23 of 2002 concerning Child Protection defines that a child is someone who is 18 years old, including a child who is still in the womb.⁴⁹ The Constitutional Court issued a decision Number 22/PUUXV/2017 one of the considerations of the Constitutional Court in the decision, namely, However, when the difference in treatment between men and women have an impact on or hinder the fulfillment of basic rights or constitutional rights of citizens, both those included in the group of civil and political rights as well as economic, educational, social and cultural rights, which should not be distinguished solely on the basis of reasons of sex, then such a distinction is clearly discrimination.⁵⁰

In the same consideration, it is also stated that setting a different minimum age for marriage between men and women not only creates discrimination in the context of implementing the right to form a family as guaranteed in Article 28 B, paragraph (1) of the 1945 Constitution, but also creates discrimination against the protection of children's rights, as guaranteed in Article 28 B paragraph (2) of the 1945 Constitution.⁵¹ In this case when the minimum age of marriage for women is lower than that for men, legally women can form a family faster. Because of this, in its ruling, the Constitutional Court ordered the legislators within a period of 3 years to make changes to Law Number 1 of 1974 concerning Marriage to reach the age limit for marriage, for women. In this case, the minimum age for marriage for women is the same as the minimum age for marriage for men, which is 19 (nineteen) years.

One of the considerations of the Constitutional Court in the decision is "However, when the difference in treatment between men and women has an impact on or hinders the fulfillment of the basic rights or constitutional rights of citizens, both those included in the group of civil and political rights as well as "Economic, educational, social and cultural rights, which should not be distinguished solely on the grounds of sex, then such a distinction is clearly discrimination." In the same consideration, it is also stated that the regulation of the minimum age limit for marriage that differs between men and women not only creates discrimination in the context of the implementation of the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution, but also creates discrimination against the protection and fulfillment of rights, children as guaranteed in Article 28B paragraph (2) of the 1945 Constitution. In this case, when the minimum age of marriage for women is lower than for men, legally women can form a family faster.⁵²

⁴⁹ Dian Ety Mayasari, "Perlindungan Hak Anak Kategori Juvenile Delinquency," *Kanun Jurnal Ilmu Hukum* 20, no. 3 (2018), <https://doi.org/10.24815/kanun.v20i3.11837>.

⁵⁰ Nur Rahman and Sarip Sarip, "Child Protection Policy for Victims of Sexual Crimes," *Varia Justicia* 16, no. 1 (2020), <https://doi.org/10.31603/variajusticia.v16i1.3057>.

⁵¹ Imam Sujono, "URGENCY OF RECHTSVINDING AND JURISPRUDENCE IN THE CONSTITUTIONAL COURT AUTHORITY: URGENSI PENEMUAN HUKUM DAN YURISPRUDENSI DALAM KEWENANGAN MAHKAMAH KONSTITUSI," *Constitutional Law Society* 1, no. 2 (2022): 161–78.

⁵² Imam Sujono, "Urgensi Penemuan Hukum Dan Penggunaan Yurisprudensi Dalam Kewenangan Mahkamah Konstitusi," *Jurnal Konstitusi* 18, no. 3 (February 15, 2022): 585, <https://doi.org/10.31078/jk1835>.

In its decision the Court ordered the legislators to make changes to Law Number 1 of 1974 concerning Marriage within a maximum period of 3 (three) years.⁵³ Law No. 1 of 1974 concerning Marriage, after 45 years there has been absolutely no change. And on October 14, 2019 Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage was officially ratified by President Joko Widodo in Jakarta.⁵⁴

If you pay attention to the birth of the marriage age limit contained in Law no. 16 of 2019, is a consequence of the Court's decision and is a way to avoid conflicts that have occurred in society. Through the new regulation regarding the existence of a marriage limit, it is possible that what is being debated about a marriage ban for junior high school students is basically a way to prevent early marriage. However, sometimes people's mindsets that think they are excessive finally encourage schools to revoke these rules, this has resulted in equality for schools.⁵⁵ Although it must be realized when looking at the law regarding the age limit for marriage and the prohibition on schools not to allow their students to marry before completing their education, it must be appreciated.

This effort is actually to anticipate, not to force children not to marry while receiving an education, but the most important thing is that it is contained in Article 31 (1) of the 1945 Constitution of the Republic of Indonesia which affirms that "every citizen has the right to education". This means that what the school does in the statement letter is prohibited from marrying and in Law no. 16 of 2019, is a great idea. In other words, basically to improve student behavior and protect children.⁵⁶ The constitution of this country also gives very serious attention to the protection of children in order to avoid violence and discrimination in their lives, as stated in Article 28 B, paragraph (2) "Every child the right to survival, growth and development and the right to protection from violence and discrimination". The constitution signifies that the state has ensured that no child in the land of this motherland is left without an education or being subjected to acts of violence and discrimination regardless of their background.

Conclusion

Schools as a place to get educated, sometimes have policies that are not in line with the community or parents and guardians of students. First; The statement letter was prohibited from marrying in junior high school, which for five years was finally revoked for irrational arguments. Even though the rules regarding self-marriage in Indonesia is very clearly experiencing differences both in terms of religion and national law relating to adulthood, the government itself carries out what is called marriage law politics to obtain legal certainty regarding the age limit for marriage. *Second*; In order to anticipate the thoughts and

⁵³ Mahkamah Konstitusi Republik Indonesia, Putusan Mahkamah Konstitusi Republik Indonesia Nomor 22/PUU-UU-XV/2017.

⁵⁴ Imam Sujono et al., "Efforts to Strengthen Islamic Moderation of Islamic Religious Universities in Indonesia," in *Proceedings of the 6th Batusangkar International Conference, BIC 2021, 11 - 12 October, 2021, Batusangkar-West Sumatra, Indonesia* (EAI, 2022), <https://doi.org/10.4108/eai.11-10-2021.2319459>.

⁵⁵ Meinita Fitriana Sari and Budi Andayani, "Efektivitas Pengasuhan Positif Untuk Menurunkan Stres Pengasuhan Ibu Bekerja Dengan Anak Usia Prasekolah," *Gajah Mada Journal of Professional Psychology (GamaJPP)* 7, no. 2 (October 30, 2021): 174, <https://doi.org/10.22146/gamajpp.68877>.

⁵⁶ Amanda Tikha Santriati, "PERLINDUNGAN HAK PENDIDIKAN ANAK TERLANTAR MENURUT UNDANG UNDANG PERLINDUNGAN ANAK," *El-Wahdah: Jurnal Pendidikan* 1, no. 1 (2020).

development of children today, the government also appreciates the court's decision to issue a marriage age limit to nineteen years, basically increasing the age of marriage itself is the government's way of suppressing the level of early marriage or its legal force is not coercive but is only anticipatory, in child development.

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