

REGULATION AND VALIDITY OF UNDERAGE MARRIAGE IN THE PERSPECTIVE OF INDONESIAN CIVIL LAW

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Abstract

Underage marriage is a legal issue that still frequently occurs in Indonesia despite the existence of regulations on the minimum age for marriage. This study aims to analyze the regulation and validity of underage marriage in the perspective of Indonesian civil law and its legal implications for child protection. The research method used is normative empirical legal research with a regulatory and conceptual approach. The results of the study show that Law Number 16 of 2019 has set a minimum age for marriage for men and women, but the existence of a marriage dispensation mechanism provides legal space for underage marriage to occur. From a civil law perspective, such marriages are still considered valid if they obtain court permission and have the same civil law consequences as marriages in general. However, the practice of marriage dispensation still shows the weak application of the principles of child protection and substantive justice. Therefore, it is necessary to strengthen legal regulations and consider the best interests of the child in every marriage dispensation decision. Keywords: underage marriage; civil law; marriage dispensation.

Keyword : *Contract Validity, Banking Credit Agreement, Mortgage Right, Unauthorized Part*

A. INTRODUCTION

Marriage is a legal institution that has an important position in the Indonesian civil law system because it forms the basis for the establishment of a family and gives rise to legal consequences for the personal status, property, and civil relations of the parties.¹ In the context of a state based on the rule of law, marriage is not only viewed as a social and religious event, but also as a legal act that is subject to the provisions of laws and regulations. Therefore, it is in the state's interest to regulate the requirements and procedures for marriage in order to ensure legal certainty and protect the rights of the legal subjects involved.

One of the crucial issues in marriage regulations in Indonesia is the practice of underage marriage. Although a minimum age for marriage has been set, child marriage still often occurs for various reasons, including social, economic, cultural, and moral reasons. This situation raises legal issues, particularly regarding the validity of marriage and legal protection for children as legal subjects who are not yet psychologically and legally competent to act.

¹ Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2014), pp. 23–25.

The protection of children is emphasized in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "Every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination."² This provision serves as the normative basis for the state to prevent the practice of underage marriage, which has the potential to hinder children's growth and development and violate their constitutional rights.

More specific regulations on the age of marriage are contained in Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, which stipulates that the minimum age for marriage for men and women is 19 (nineteen) years, as regulated in Article 7 paragraph (1).³ This amendment is a legal response to Constitutional Court Decision Number 22/PUU-XV/2017, which ruled that the previous difference in the minimum age for marriage was discriminatory and contrary to the principle of child protection.⁴

Positive law in Indonesia still allows for underage marriage through the mechanism of marriage dispensation as stipulated in Article 7 paragraph (2) of the Marriage Law. This provision gives the court the authority to grant marriage permission to prospective brides and grooms who have not reached the minimum age limit for urgent reasons and with sufficient evidence. The existence of this dispensation has sparked debate regarding the consistency of child protection and legal certainty in the civil law system.

From a civil law perspective, underage marriage is also related to the concept of legal capacity (*handelingsbekwaamheid*). The Civil Law (KUHPerdata) basically stipulates that minors are under guardianship and have limitations in performing legal actions. Therefore, marriages conducted by legally incompetent subjects raise fundamental questions regarding the validity of such legal actions and their legal consequences on the rights and obligations of the parties.

The issue of the validity of underage marriage not only affects the status of the marriage itself, but also has implications for other civil aspects, such as the status of children, the rights and obligations of husband and wife, and the management of joint property. Uncertainty or

² 1945 Constitution of the Republic of Indonesia, Article 28B paragraph (2).

³ Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 2019 Number 186)

⁴ Constitutional Court of the Republic of Indonesia, Decision Number 22/PUU-XV/2017.

inconsistency in the application of legal norms can lead to legal uncertainty and potentially harm the most vulnerable parties, namely children.

Based on this description, this study aims to examine in depth the regulation and validity of underage marriage from the perspective of Indonesian civil law, by examining the applicable legal norms, civil law principles, and their relevance to the principles of child protection and legal certainty. This study is expected to contribute academically to the development of family law and serve as a consideration in the formulation of more equitable legal policies.

B. METHODOLOGY

This study uses a normative-empirical legal research method with a socio-legal approach and qualitative analysis. The normative approach is carried out through a review of laws and regulations governing marriage and the protection of children's rights, particularly Law Number 16 of 2019, the Child Protection Law. The empirical approach is carried out through field data collection and document studies involving relevant interests. Primary and secondary data were analyzed qualitatively using comparative norms and practices to identify regulatory gaps and factors causing child rights protection issues in underage marriage practices.

C. ANALYSIS AND DISCUSSION

1. Regulations on Underage Marriage in the Indonesian Civil Law System

The regulation of underage marriage in Indonesia's civil law system shows the interconnection between civil law, family law, and the principle of child protection. Normatively, the state sets a minimum age for marriage as a condition for a valid marriage to ensure the physical, mental, and legal readiness of the prospective bride and groom. This provision emphasizes that marriage is not merely a private relationship, but a legal act that has long-term civil law consequences.

Law Number 16 of 2019, as an amendment to Law Number 1 of 1974, reinforces the minimum age for marriage for men and women, which is 19 years. This provision is a form of harmonization of national law with the principles of non-discrimination and child protection as mandated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Thus, Indonesian civil law places age as an important element in determining legal capacity in marriage.

This regulation is not absolute due to the existence of a marriage dispensation mechanism granted by the court.⁵ Normatively, this dispensation is intended as a solution in urgent circumstances, but in practice it has opened up opportunities for widespread underage marriage. This condition shows the tension between the norm of restricting the age of marriage and the legal flexibility provided by the judicial system.

From a civil law perspective, the regulation of underage marriage must also be linked to the concept of legal competence as defined in the Civil Code. In principle, minors do not yet have full legal competence to perform legal acts, so their involvement in marriage raises legal issues related to the protection of legal interests and civil liability.

Based on analysis normative, results show that regulations Underage marriage in Indonesian civil law remains ambiguous. On the one hand, the state is trying to tighten the age limit for marriage, but on the other hand, it still allows for dispensations that could potentially undermine the objectives of child protection and legal certainty.

2. The Validity of Underage Marriage in the Perspective of Civil Law

The validity of underage marriage in the perspective of civil law is determined by the fulfillment of the requirements for marriage as stipulated in the legislation. Marriage conducted by prospective spouses who have not reached the minimum age limit is basically contrary to the material requirements for marriage. However, with a court dispensation, the marriage can be considered legally valid.

In civil law, a legal action is considered valid if it is carried out by a legally competent subject and meets the requirements specified by law.⁶ Underage marriage raises issues because children are not yet fully legally competent. Therefore, a marriage dispensation serves as legal legitimization to cover this incompetence through state intervention.

The validity of underage marriages legalized through dispensation carries the same civil law consequences as marriages in general. These legal consequences include the rights and obligations of husband and wife, the status of children born to the marriage, and the

⁵ Sri Yuliani, et al., "Strategies for Preventing Child Marriage in Indonesia: Stakeholder Analysis," *Spirit Publik: Journal of Public Policy and Administration* 17, no. 1 (2022): pp. 75–92.

⁶ *Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Requests.*

management of marital property. Thus, even if performed underage, the marriage still has full legal consequences.

The legalization of underage marriages is often not followed by careful consideration of the best interests of the child. This has the potential to cause negative impacts, such as unpreparedness to carry out household responsibilities, economic vulnerability, and the potential for civil conflicts in the future, including divorce and child custody disputes.

Therefore, the validity of underage marriage in Indonesian civil law is formal- juridical in nature, but does not fully reflect justice.

Table 1. Analysis of the Regulation and Validity of Underage Marriage in Indonesian Civil Law

Legal Aspect	Normative Regulation	Civil Implications
Age Limit Marriage	Article 7 paragraph (1) Law No. 16 of 2019	Determines the capacity to act for prospective spouses
Dispensation Marriage	Article 7 paragraph (2) of the Law Marriage	Legalizing marriage in minors
Competence Law	Principles of the Civil Code	Children are considered legally incompetent to act
Validity of Marriage	Valid if in accordance with legal procedures the law	Rights and obligations arise husband and wife
Protection Children	Article 28B paragraph (2) of the 1945 Constitution of 1945	Forms the basis for restrictions on the age of marriage

This table shows that although Indonesian civil law has clearly regulated the minimum age for marriage, the existence of marriage dispensations remains a legal loophole that affects the validity and protection of children in underage marriages.

3. Marriage Dispensation as a Legal Instrument in Underage Marriage

Marriage dispensation is a legal instrument that is normatively granted by the state to accommodate certain conditions that are considered urgent in the implementation of underage

marriage.⁷ This provision is regulated in Article 7 paragraph (2) of Law Number 16 of 2019, which gives the court the authority to allow marriage if there are urgent reasons and sufficient evidence. The existence of this dispensation shows that Indonesian civil law takes a flexible approach in applying the age limit for marriage.

In judicial practice, the reasons often cited in marriage dispensation requests include factors such as pregnancy outside of marriage, social pressure, and Customary and cultural considerations. However, these reasons often place more emphasis on short-term social interests than on long-term legal protection for children. This raises legal issues regarding the consistency of the objectives of marriage age restrictions.

From a civil law perspective, marriage dispensation serves as legal legitimization of legal acts that do not fundamentally meet material requirements. With a court decision, the legal incompetence of the prospective bride and groom is considered to be "covered" by state authority. As a result, the marriage acquires the same legal force as a normal marriage, including civil law consequences.⁸

The results of the study show that although marriage dispensation has a clear legal basis, its application still faces substantive weaknesses. The lack of objective parameters in assessing "the best interests of the child" has the potential to make marriage dispensation a legal loophole that actually perpetuates the practice of underage marriage.

Table 2. Analysis of Marriage Dispensation from a Civil Law Perspective

Aspect	Legal Provisions	Analysis Findings
Legal Basis	Article 7 paragraph (2) of Law No. 16 of 2019	Dispensations are legal in nature
Authority	Court	The state legitimizes marriage
Reasons Application	Social & moral factors	Lack of focus on children
Impact Civil	Marriage is considered valid	Full legal consequences arise

⁷ Law Number 16 of 2019, Article 7 paragraph (2).

⁸ Lestari Rahmadani, "Bridging the Normative–Empirical Gap in Child Protection Regulation," *Journal of Law and Human Rights* (2023).

4. Legal Consequences of Underage Marriage on the Civil Status of Children and

Marriage under the age of majority that is declared valid through a court dispensation has various civil law consequences, especially for the status of children born within the marriage. In civil law, children born from a valid marriage have full legal status, including inheritance rights and civil relations with both parents. Thus, the formal validity of the marriage is a determining factor in the child's legal status.⁹

In addition to the status of children, underage marriage also has implications for the management of marital property. Based on civil law principles and the Marriage Law, once a marriage is solemnized, joint property arises unless otherwise specified in the marriage agreement. This situation becomes problematic if the parties do not yet have sufficient economic maturity and legal understanding. In the context of civil liability, couples who marry underage are still burdened with legal obligations as husband and wife. This includes obligations of financial support, child maintenance, and responsibility in the event of divorce. Age immaturity often leads to domestic conflicts that result in civil disputes in court.

Although underage marriage is legally valid, the legal consequences often do not align with the principles of child protection and substantive justice. Therefore, the formal validity of marriage needs to be balanced with considerations of protecting the civil rights of children and family stability.

Table 3. Legal Consequences of Underage Marriage in Civil Law

Aspect	Legal Consequences	Potential Problems
Child Status	Legally recognized child	Vulnerability in care
Marital Property	Acquisition of joint property	Economic unpreparedness
Rights & Obligations	Fully applicable	Heavy legal burden
Divorce	Custody & alimony	Civil disputes

5. Underage Marriage and the Principle of Child Protection in Civil Law

⁹ Law Number 1 of 1974 concerning Marriage, Article 42.

The principle of child protection is one of the fundamental principles in the Indonesian legal system that must be reflected in every legal policy, including civil law.¹⁰ This protection places children as legal subjects who have the right to grow and develop optimally. In the context of underage marriage, this principle should be a primary consideration in determining legal validity and policy.

The application of the principle of child protection in civil law is still normative and not yet fully operational. Marriage dispensations often emphasize the resolution of social problems rather than the comprehensive protection of children's interests. This creates a discrepancy between legal norms and legal practice.

From a civil law perspective, children who marry underage are still positioned as parties who must carry out the roles and responsibilities of adults. This condition has the potential to neglect children's rights to education, health, and psychological development. Thus, civil law faces challenges in balancing legal validity and child protection.

Based on this analysis, it can be concluded that child protection in the context of underage marriage has not been fully internalized in civil law practice. It is necessary to strengthen the principle of the best interests of the child as the basis for legal considerations in every decision related to marriage dispensation.

Table 4. Principles of Child Protection in Underage Marriage

Principle	Legal Basis	Implementation
Interests of the Child	Article 28B paragraph (2) of the 1945 Constitution	Not yet optimal
Age Restrictions	Marriage Law	Often overlooked
Child Welfare	Child Protection Law	Not prioritized
Legal certainty	Civil Law	More formal in nature

D. CONCLUSION

Based on the results of research and discussion regarding the regulation and validity of underage marriage from the perspective of Indonesian civil law, it can be concluded that the state has set a minimum age for marriage as a legal instrument to ensure child protection and legal certainty. This provision is reflected in Law Number 16 of 2019, which stipulates that the

¹⁰ UNICEF, *Child Marriage: Latest Trends and Future Prospects* (New York: UNICEF, 2021).

minimum age for marriage for men and women is 19 years, as a form of harmonization with the principles of non-discrimination and protection of children's rights as mandated by the 1945 Constitution of the Republic of Indonesia.

However, the existence of a marriage dispensation mechanism granted by the court shows that this regulation is not absolute. Marriage dispensation legally legitimizes underage marriage, so that marriages that do not meet the age requirement can still be declared legally valid. This condition creates ambivalence in the civil law system because, on the one hand, it limits the age of marriage, but on the other hand, it opens up quite broad exceptions.

From a civil law perspective, the validity of underage marriages legalized through dispensation has the same civil law consequences as marriages in general. These legal consequences include the rights and obligations of husband and wife, the status of legitimate children, and the regulation of marital property. However, the full application of legal consequences to legal subjects who are not yet fully capable of acting has the potential to cause legal and social problems in the future.

The application of the principle of child protection in civil law practice related to underage marriage has not been optimal. Marriage dispensation decisions tend to focus on formal aspects and urgent reasons, while considerations of the best interests of the child are often not used as the main basis. As a result, the formal validity of marriage is not always in line with substantive justice and the protection of children's rights.

E. RECOMMENDATIONS

Lawmakers are expected to review the provisions on marriage dispensation in the Marriage Law by clarifying the criteria and imposing stricter restrictions. Strengthening legal norms is necessary to ensure that marriage dispensation is truly exceptional and does not become a legal loophole that undermines the purpose of restricting the age of marriage.

Judicial institutions, particularly judges reviewing marriage dispensation requests, are advised to prioritize the principle of the best interests of the child as the main consideration in every decision. Judges need to assess not only procedural aspects and urgent reasons, but also consider the long-term impact on the physical, psychological, and social development of the child.

There is a need for synergy between civil law and child protection policies by strengthening the role of relevant institutions, such as social services and child protection agencies, in providing recommendations before marriage dispensations are granted. This multidisciplinary approach is expected to prevent underage marriage practices that are only oriented towards solving immediate problems.

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