



Legal Age for Marriage: SDGs and *Maslahah* Perspectives in Legal Policy Change in Indonesia

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Abstract: This research aims to identify the impact of the change in legal policy on the protection of human rights and gender equality. This research analyzes the relationship between the aspects influencing legal changes regarding the legal age of marriage in Indonesia from a gender perspective and the SDGs. This study employed a qualitative approach that is based on library research to identify the impact of changes in legal policy. This study also used a juridical approach to capture an overview of Indonesian family law policies as stipulated in the Law Number 16 of 2019 with *maslahah* theory and Philipus M. Hadjon's theory of legal protection as the analytical framework. The research results: First, it was found that the issue of the minimum legal age of marriage is part of the legal discovery area, which resulted in the emergence of Law Number 16 of 2019. Second, the gender movement in Indonesia has played a significant role in changing the paradigm of family law towards a more progressive view and a more protective to women's rights. The integration of Hadjon's theory of legal protection strengthens the analysis of the impact of changing legal policies on individual rights and gender equality.

Keywords: gender, legal policy, legal development, legal age of marriage, *maslahah*.

Abstrak: Penelitian ini bertujuan untuk mengidentifikasi dampak perubahan kebijakan hukum terhadap perlindungan hak asasi manusia dan kesetaraan gender. Penelitian ini menganalisis hubungan antara aspek-aspek yang mempengaruhi perubahan hukum mengenai batasan usia minimal untuk perkawinan di Indonesia dalam perspektif gender dan SDGs. Penelitian ini menggunakan pendekatan kualitatif yang disandarkan pada penelitian kepustakaan untuk mengidentifikasi dampak perubahan kebijakan hukum. Penelitian ini juga menggunakan pendekatan yuridis untuk menangkap gambaran kebijakan hukum keluarga Indonesia yang tertuang dalam Undang-Undang Nomor 16 Tahun 2019 dengan teori *maslahah* dan teori perlindungan hukum Philipus M. Hadjon sebagai kerangka analisis. Hasil penelitian mengungkapkan: Pertama, ditemukan

bahwa isu batasan usia minimal untuk perkawinan merupakan bagian dari wilayah penemuan hukum, yang mengakibatkan lahirnya Undang-Undang Nomor 16 Tahun 2019. Kedua, gerakan gender di Indonesia memiliki peran signifikan dalam mengubah paradigma hukum keluarga menuju pandangan yang lebih progresif dan melindungi hak-hak wanita. Integrasi teori perlindungan hukum Hadjon memperkuat analisis terhadap dampak perubahan kebijakan hukum terhadap hak-hak individu dan kesetaraan gender.

Kata kunci: gender, kebijakan hukum, pembangunan hukum, pembatasan usia perkawinan, masalah.

Introduction

Marriage in Indonesia has a fundamental role in the social structure of a society, not only in personal dimension, but also in social dynamic and national development. In article 1 of Law Number 1 of 1974 concerning Marriage, it is emphasized that marriage has a noble goal of forming a happy and long lasting family. This article aims to organize the wheels of human life in a family context and in relationship with others in order to pursue happiness and eternal harmony in life.

However, currently Law Number 1 of 1974 concerning Marriage has been amended to become Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which specifically aims to regulate that marriage is only permitted if the man and women have reached the age of 19 years.¹ The age of 19 years for obtaining marriage permits for men and women is considered fair, so it can minimize the impact of high maternal and child mortality rates, as well as provide a sense of justice in the context of implementing the right to form a family.

By setting the marriage age limit to 19 years for men and women who, this is considered a breakthrough or a further step towards eliminating discrimination in the family law system.² Therefore, changes to the legal provisions regarding the permitted age for marriage to 19 years according to Law Number 16 of 2019 is a form of family law policy reform which aim to achieve good law in accordance with the demands and developments of the times, which include gender equality and women's empowerment.³

In recent decades, Indonesia has experienced significant social changes, including shifts in views of gender role and changes in family dynamic. Women's involvement in the world of education, economics and politics is increasing, bringing implications for the dynamics of marriage and limiting the legal age of marriage. Moreover, limiting the legal age of marriage has become an issue that is increasingly being discussed at various levels of Indonesian society, especially in line with the development of the gender paradigm and commitment to achieve the targets of the Sustainable Development Goals (SDGs) which have been recognized globally,⁴ including the fifth SDGs which emphasizes the importance of gender equality and women's empowerment.⁵ Thus, new challenges arise in the context of limiting the legal age of marriage in Indonesia.

¹ Rini Heryanti, "Implementasi Perubahan Kebijakan Batas Usia Perkawinan," *Jurnal Ius Constituendum* 6, no. 1 (2021): 120–43, <https://doi.org/http://dx.doi.org/10.26623/jic.v6i1.3190>.

² Christa Rautenbach, "Gender Equality, Constitutional Values and Religious Family Laws in South Africa," *International Journal of Discrimination and the Law* 5, no. 2–3 (September 2001): 103–17, <https://doi.org/https://doi.org/10.1177/135822910100500302>.

³ Neha Kumar and Agnes R. Quisumbing, "Policy Reform toward Gender Equality in Ethiopia: Little by Little the Egg Begins to Walk," *World Development* 67 (March 2015): 406–23, <https://doi.org/https://doi.org/10.1016/j.worlddev.2014.10.029>.

⁴ Zawawi Zawawi et al., "Waqf and Sustainable Development Law: Models of Waqf Institutions in the Kingdom of Saudi Arabia and Indonesian," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 93–114, <https://doi.org/https://doi.org/10.18326/ijtihad.v23i1.93-114>.

⁵ Pratiksha Tiwari and Nittala Malati, "Role of Training in Women Empowerment: An Empirical Analysis: Women Empowerment," *Journal of Technical Education and Training* 15, no. 1 (2023): 234–45, <https://doi.org/https://doi.org/10.30880/jtet.2023.15.01.020>.

Consensus among professionals regarding the necessity of law in society needs to be improved by the diversity and relativity of law. Law is independent, according to some jurists; therefore, external factors cannot alter its existence. However, some jurists believe that law should be treated on par with other social factors so that interactions might develop that impact one another.

The information above is consistent with Sudjana's viewpoint,⁶ which highlights that legislation can serve two primary functions that can be tools for social change: social control and social engineering. Law serves as an instrument for social control,⁷ which means that its presence is a norm that manages social behavior and patterns. In the meantime, the function of law as social engineering means that law is responsible for achieving social equality to bring about order.

When dealing with global challenges, such as the formation of the Sustainable Development Goals, which have a broader and universal outlook,⁸ this becomes interesting. The Millennium Development Goals (MDGs) of 2015 are carried over into the Sustainable Development Goals (SDGs).⁹ As a result, President Jokowi signed Presidential Regulation Number 59 of 2017 concerning the Implementation and Achievement of SDGs as a demonstration of the government's political commitment to achieving SDGs by incorporating all parties.

The SDGs agenda is a series of goals set by the United Nations to encourage inclusion,¹⁰ Sustainable,¹¹ and balanced global development by 2030.¹² SDGs summarize global aspirations and determination to overcome the world's various social, economic, and environmental challenges today.¹³ SDGs have 17 goals, which are broken down into 169 achievement indicators.¹⁴ These goals include the goals of eradicating poverty and hunger,¹⁵ improving health,¹⁶ improving the quality and

⁶ Sudjana Sudjana, "Pelindungan Paten Dalam Perspektif Fungsi Hukum Sebagai Kontrol Sosial Dan Rekayasa Sosial," *Dialogia Iuridica* 13, no. 1 (2021): 61–78, <https://doi.org/https://doi.org/10.28932/di.v13i1.3757>.

⁷ Fajri M Kasim et al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Jurnal Ilmu Syariah* 22, no. 2 (2022), <https://doi.org/https://doi.org/10.15408/ajis.v22i2.28747>.

⁸ Wahyuningsih Wahyuningsih, "Millenium Developpment Goals (Mdgs) Dan Sustainable Development Goals (Sdgs) Dalam Kesejahteraan Sosial," *BISMA: Jurnal Bisnis Dan Manajemen* 11, no. 3 (2018): 390–99, <https://doi.org/https://doi.org/10.19184/bisma.v11i3.6479>.

⁹ E Mulya Syamsul and Adang Kuswaya, "Expert Wakaf, Wakif Family Social Security in The Achievment of Sustainable Development Goals," *Journal of International Conference Proceedings* 6, no. 3 (July 2023): 35–49, <https://doi.org/https://doi.org/10.32535/jicp.v6i3.2379>.

¹⁰ Javier Delgado-Ceballos et al., "Connecting the Sustainable Development Goals to Firm-Level Sustainability and ESG Factors: The Need for Double Materiality," *BRQ Business Research Quarterly* 26, no. 1 (January 2023): 2–10, <https://doi.org/https://doi.org/10.1177/234094442211409>.

¹¹ Mohammed Basheer et al., "Balancing National Economic Policy Outcomes for Sustainable Development," *Nature Communications* 13, no. 1 (August 2022), <https://doi.org/https://doi.org/10.1038/s41467-022-32415-9>.

¹² Samuel Olorunfemi Adams and Chima Paul, "E-Government Development Indices and the Attainment of United Nations Sustainable Development Goals in Africa: A Cross-Sectional Data Analysis," *European Journal of Sustainable Development Research* 7, no. 4 (2023), <https://doi.org/10.29333/ejosdr/13576>. secondary data were collected on EDGI, online service delivery index (OSI)

¹³ Ifra Bashir and Ishtiaq Hussain Qureshi, "A Systematic Literature Review on Personal Financial Well-Being: The Link to Key Sustainable Development Goals 2030," *FIIB Business Review* 12, no. 1 (June 2023): 31–48, <https://doi.org/https://doi.org/10.1177/23197145221106862>.

¹⁴ Philipp Pattberg and Karin Bäckstrand, "Enhancing the Achievement of the SDGs: Lessons Learned at the Half-Way Point of the 2030 Agenda," *International Environmental Agreements: Politics, Law and Economics* 23, no. 2 (June 2023): 107–14, <https://doi.org/https://doi.org/10.1007/s10784-023-09615-9>.

¹⁵ José L López, Macarena Espinilla, and Ángeles Verdejo, "Evaluation of the Impact of the Sustainable Development Goals on an Activity Recognition Platform for Healthcare Systems," *Sensors* 23, no. 7 (2023), <https://doi.org/https://doi.org/10.3390/s23073563>.

¹⁶ Salvador Baena-Morales and Sixto González-Víllora, "Physical Education for Sustainable Development Goals: Reflections and Comments for Contribution in the Educational Framework," *Sport, Education, and Society* 28, no. 6 (2023): 697–713, <https://doi.org/https://doi.org/10.1080/17549507.2022.2140828>.

quality of education,¹⁷ gender equality,¹⁸ clean water, and proper sanitation,¹⁹ clean and affordable energy,²⁰ decent work, and economic growth,²¹ adequate industry and infrastructure,²² minimizing inequality,²³ cities and sustainable settlements,²⁴ anticipating climate change,²⁵ protecting land and sea ecosystems,²⁶ peace justice,²⁷ and strong institutions,²⁸ as well as partnerships to achieve goals.²⁹ In August 2015, 193 countries, including Indonesia, agreed to these 17 goals.³⁰ The seventeen SDGs goals are expected to be able to overcome lagging development problems.

This is particularly intriguing when compared to Islamic law,³¹ which is included in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 regarding marriage, which specifically

¹⁷ Dev Raj Adhikari and Prakash Shrestha, "Knowledge Management Initiatives for Achieving Sustainable Development Goal 4.7: Higher Education Institutions' Stakeholder Perspectives," *Journal of Knowledge Management* 27, no. 4 (March 2023): 1109–39, <https://doi.org/https://doi.org/10.1108/JKM-03-2022-0172>. this paper provides a practical perspective of KM initiatives for higher education for sustainable development (HESD)

¹⁸ Carmen Pilar Martí-Ballester, "Mutual Funds and Gender Equality in Portfolio Firms: Toward the Sustainable Development Goals," *Corporate Social Responsibility and Environmental Management* 30, no. 2 (March 2023): 905–26, <https://doi.org/https://doi.org/10.1002/csr.2396>. stakeholders are pressuring firms worldwide to adopt diversity goals and to implement practices to promote gender diversity. These gender-related practices could influence corporate financial performance and, consequently, the financial performance of funds investing in them. However, this effect could differ across sectors related to the Sustainable Development Goals (SDGs)

¹⁹ Annisa, "Assistance in Planning and Implementing Educational Activities for Elementary School Students and The Community about Adequate Villages for Clean Water And Sanitation of Stunting Prevention According to Sustainable Development Goals (SDGs) in Pindahan Bar," *BCD Journal (Borneo Community Development)* 2, no. 2 (2023): 1–8, <https://doi.org/https://doi.org/10.35747/bcdj.v2i2.658>. "http://www.mendeley.com/documents/?uuid=06e06bcf-2f06-41b8-937f-c126a99c97a9"]], "mendeley": {"formattedCitation": "Annisa, "Assistance in Planning and Implementing Educational Activities for Elementary School Students and The Community about Adequate Villages for Clean Water And Sanitation of Stunting Prevention According to Sustainable Development Goals (SDGs)

²⁰ Andrew Ng Kay Lup et al., "Sustainable Energy Technologies for the Global South: Challenges and Solutions toward Achieving SDG 7," *Environmental Science: Advances* 2, no. 4 (April 2023): 570–85, <https://doi.org/10.1039/D2VA00247G>.

²¹ Pina Puntillo, "Circular Economy Business Models: Towards Achieving Sustainable Development Goals in the Waste Management Sector—Empirical Evidence and Theoretical Implications," *Corporate Social Responsibility and Environmental Management* 30, no. 2 (March 2023): 941–54, <https://doi.org/https://doi.org/10.1002/csr.2398>. potentially, can contribute directly to achieving a significant number of SDGs. The strongest relationships are between the CE business model and the targets of SDG4 (Quality education)

²² Stella Ofor-Douglas, "Managing Innovative University Education for the Attainment of Sustainable Development Goals in Nigeria," *East African Journal of Arts and Social Sciences* 6, no. 1 (May 2023): 282–92, <https://doi.org/https://doi.org/10.37284/eajass.6.1.1201>.

²³ Sergio Manuel Madero-Gómez et al., "Companies Could Benefit When They Focus on Employee Wellbeing and the Environment: A Systematic Review of Sustainable Human Resource Management," *Sustainability* 15, no. 6 (March 2023), <https://doi.org/https://doi.org/10.3390/su15065435>.

²⁴ Laksni Sedyowati, Sari Yuniarti, and Sufiyanto Sufiyanto, "Is Local Wisdom Able to Build Sustainable Communities in Informal Flood-Prone Settlements? Evidence from Glintung Kampong, Malang City, Indonesia," *Local Wisdom: Jurnal Ilmiah Kajian Kearifan Lokal* 15, no. 1 (2023): 41–52, <https://doi.org/10.26905/lw.v15i1.9008>.

²⁵ Atreyi Pramanik et al., "Second-Generation Bio-Fuels: Strategies for Employing Degraded Land for Climate Change Mitigation Meeting United Nation-Sustainable Development Goals," *Sustainability* 2023, Vol. 15, Page 7578 15, no. 9 (May 2023), <https://doi.org/https://doi.org/10.3390/su15097578>.

²⁶ APRIZON Putra et al., "Sustainable Development-Based Coastal Management Policy Development: A Literature Review," *Journal of Sustainability Science and Management* 18, no. 1 (2023): 238–46, <https://doi.org/http://doi.org/10.46754/jssm.2023.01.015>.

²⁷ Helen Barrett and Julie Marshall, "Participation, Equality, and Justice in Rwanda for People Who Experience Communication Disability: Achieving Sustainable Development Goal 16," *International Journal of Speech-Language Pathology* 25, no. 1 (2023): 136–40, <https://doi.org/https://doi.org/10.1080/17549507.2022.2140828>.

²⁸ Vahid Mohamad Taghvaei et al., "Sustainable Development Goals: Transportation, Health and Public Policy," *Review of Economics and Political Science* 8, no. 2 (April 2023): 134–61, <https://doi.org/https://doi.org/10.1108/REPS-12-2019-0168>.

²⁹ Jose Ignacio Galan and Jose Angel Zuñiga-Vicente, "Discovering the Key Factors behind Multi-Stakeholder Partnerships for Contributing to the Achievement of Sustainable Development Goals: Insights around the Electric Vehicle in Spain," *Corporate Social Responsibility and Environmental Management* 30, no. 2 (March 2023): 829–45, <https://doi.org/10.1002/CSR.2391>.

³⁰ Arief Anshory Yusuf et al., *Menyongsong SDGs: Kesiapan Daerah-Daerah Di Indonesia* (Unpad Press, 2017).

³¹ Moh. Zahid, "Sharia and Local Wisdom in Indonesia: A Criticism of Jāhiliyyah Law Misinterpretation," *Ahkam: Jurnal Ilmu Syariah* 22, no. 2 (2022), <https://doi.org/https://doi.org/10.15408/ajis.v22i2.25100>.

aims to regulate that marriage is only permitted if the man and woman have reached the age of 19 years.³² From a legal perspective, policy modifications relating to marriage age restrictions pose difficult difficulties. It is important to consider the social, cultural, and economic ramifications of these changes and the legal considerations involved in establishing acceptable marriage age restrictions for the Indonesian setting. It's also important to consider how SDGs objectives, particularly gender equality will be incorporated into new laws and policies.

Previous research has revealed the complexity of the impact of limiting the age of marriage on gender perspectives in Indonesia. Analysis of these policies shows that while the main aim is to protect children's and women's rights, their implementation often presents challenges. A study by Elycia Feronia Salim, Sonny Dewi Judiasih, and Deviana Yuanitasari shows that although there has been an increase in the minimum marriage age, there is still a gender power imbalance that impacts inequality in marriage.³³ Besides that, a study by Nur Laela Kusna revealed that local social and cultural aspects also play a role in influencing the effectiveness of this policy.³⁴ Meanwhile, the integration of the Sustainable Development Goals or SDGs in changes to legal policies regarding marriage age still needs to be further strengthened. Research by Darania Anisa shows that despite efforts to link these policies to SDG goals, implementation, and impact measurement challenges still occur.³⁵

Therefore, further studies that combine a gender approach with the integration of SDGs in the context of legal policy changes in Indonesia are important to address the complexity of this issue more holistically. Moreover, undermarriage in Indonesia has received widespread attention so that important steps are needed to protect children's rights and gender equality.

Departing from the main problem above, then this research uses a qualitative approach to capture and understand social and humanitarian issues,³⁶ namely the issue of changing laws regarding the minimum age limit for marriage in Indonesia from a gender perspective and the SDGs in changing legal policies in Indonesia. Therefore, the qualitative approach here will be based on literature research³⁷ so that it is expected to be able to identify the impact of the change in legal policy on the protection of human rights and gender equality.

Furthermore, this research uses a juridical approach,³⁸ namely, an approach to capture an overview of Indonesian family law policies regarding marriage age restrictions as stated in Law Number 16 of 2019.³⁹ Thus, this research departs from normative research, which discusses positive legal regulations and Islamic law that apply in Indonesia, so it needs to be analyzed further using *maslahah* theory and Philipus M. Hadjon's theory of legal protection as an analytical framework.

³² Heryanti, "Implementasi Perubahan Kebijakan Batas Usia Perkawinan."

³³ Elycia Feronia Salim, Sonny Dewi Judiasih, and Deviana Yuanitasari, "Persamaan Syarat Usia Perkawinan Sebagai Wujud Kesetaraan Gender Dalam Meminimalisir Perkawinan Bawah Umur Di Indonesia," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 5, no. 1 (2021): 1–19, <https://doi.org/https://doi.org/10.23920/acta.v5i1.519>.

³⁴ Nur Laela Kusna, "Analisis Efektivitas Hukum Atas Penanganan Dispensasi Kawin Pasca Berlakunya Undang-Undang No. 16 Tahun 2019 (Studi Pada Pengadilan Agama Ponorogo)" (IAIN Ponorogo, 2023).

³⁵ Darania Anisa, "Perubahan Batas Usia Minimum Perkawinan Sebagai Upaya Mencegah Diskriminasi Gender Terhadap Perempuan," *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan Dan Keperdataan* 9, no. 1 (2023): 149–63, <https://doi.org/https://doi.org/10.24952/almaqasid.v9i1.7861>.

³⁶ John W Creswell, *Research Design: Pendekatan Kualitatif, Kuantitatif Dan Mixed*, Terj. Achmad Fawaid. Yogyakarta: Pustaka Pelajar, 3rd ed. (Yogyakarta: Pustaka Pelajar, 2009).

³⁷ Mestika Zed, *Metode Penelitian Kepustakaan*, 5th ed. (Jakarta: Yayasan Pustaka Obor Indonesia, 2004).

³⁸ Zulfi Diane Zaini, "Implementasi Pendekatan Yuridis Normatif Dan Pendekatan Normatif Sosiologis Dalam Penelitian Ilmu Hukum," *Pranata Hukum*, 2011.

³⁹ Mohammad Nazir, *Metode Penelitian* (Bogor: Ghalia Indonesia, 2009).

This research is based on primary and secondary data.⁴⁰ The primary data taken is legal material that is directly related to the topic discussed, namely Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Article 7 paragraph (1) of Law Number 1 of 1974 sets the minimum age for marriage for men at 19 years and women at 16 years. The determination of the marriage age limit in this article is considered to be inappropriate for the current Indonesian context. It has an impact on high maternal and child mortality rates so it is contradict to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Moreover, it and gives rise to discrimination in rights between women and men in forming a family, as regulated in article 28B paragraph (1) of the 1945 Constitution. Therefore, Law Number 16 of 2019 was issued which sets the minimum age limit for marriage for men and women to be 19 years. Meanwhile, secondary data was obtained from articles, books, encyclopedias, dictionaries, magazines and past research reports related to marriage age restrictions in Indonesia, gender discourse and SDGs.

Aspects Influencing Changes in the Age Limit for Marriage in Indonesia

Changes in the age limit for marriage in Indonesia are a complex phenomenon influenced by various multidimensional social, cultural, economic, and legal factors. In the last few decades, the Indonesian state has experienced significant changes in society's view of the age of marriage, in line with developments in social norms and values that have changed over time.

Max Weber contributed his thoughts on the rationality of the development of the legal system because law follows stages of development, starting from a simple form based on charisma to the most advanced stage, namely systematically structured.⁴¹ The development of this law led to a formal form of law, which in primitive societies was known as an integration of magical and irrational formalism in its solution.⁴² The next development is a logical, rational, and systematic special strategy to resolve the existence of law through material legal stages of legal development, characterized by increasing logical sublimation and strict deduction.⁴³

Another theory was put forward by Maine, as quoted by Soekanto⁴⁴ that from the status of the contract, the law changed according to a more advanced, heterogeneous, and complex society. This determines a person's position when carrying out legal actions. However, a person can make certain contracts related to his interests among more complex societies.

Moreover, Luhmann's idea of autopoiesis, a system's replication, creates new elements distinct from other settings. This notion gives rise to the fundamental components that define borders and internal organization.⁴⁵ Moreover, Luhmann states this also holds for forming the law, which Luhmann claims happens due to reciprocal subsystem connections in society. Because the existence of the law is rooted in the same conflict and arena as other external factors, the law can alter as a result of external factors, proving that it is not autonomous.

On the other hand, Manan said that legal changes can occur due to several factors, namely social

⁴⁰ Rikke Ørngreen and Karin Levinsen, "Workshops as a Research Methodology.," *Electronic Journal of E-Learning* 15, no. 1 (2017): 70–81.

⁴¹ Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: RajaGrafindo Persada, 2010).

⁴² Doyle Paul Johnson, *Teori Sosiologi Klasik Dan Modern*, ed. Robert M.Z. Lawang, 2nd ed. (Jakarta: Gramedia Pustaka Utama, 1990).

⁴³ Roger Cotterrell, "The Sociology of Law: An Introduction," *Australian Journal of Law and Society* 2, no. 2 (1985).

⁴⁴ Soekanto, *Pokok-Pokok Sosiologi Hukum*.

⁴⁵ Johnson, *Teori Sosiologi Klasik Dan Modern*.

stratification, external cultural influences, dissatisfaction, and reduced levels of public trust in the legal system.⁴⁶ These three aspects, sooner or later, can lead to legal changes in society.

In connection with changes in legal policy regarding the permitted age limits for marriage in Indonesia, some factors influence legal changes to become a reference for analysis. First, legal changes are closely related to the social stratification that exists in society. Initially, the rules regarding the minimum age limit permitted to enter into marriage were regulated in Article 7 paragraph (1) of Law Number 1 of 1974 concerning marriage, which states that “Marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years”. In the elucidation of Article 7 paragraph (1) of Law Number 1 of 1974 concerning marriage, this article is based on considerations of the benefit of the family and household.

The presence of the State through legal policies contained in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage which sets the minimum age permitted for marriage for men and women to be 19 years is a form of Government concern. This form of government concern is an interesting discussion if it is reviewed in Islamic legal epistemology from a *maslahah* theory point of view

Explicitly, religious texts, both al-Qur’an and Hadith, do not discuss age limits for prospective brides and grooms. Therefore, the change in the minimum age limit for marriage above is a form of renewal of Islamic law in the formulation of positive law in Indonesia which embodies *maslahah* values and aligned with one of the topics of *maqasid as-Syari’ah*, namely looking after or nurturing offspring.⁴⁷

Furthermore, Syarifuddin revealed that *maslahah* is something beneficial and acceptable to common sense.⁴⁸ This means that common sense plays a role in gaining clear knowledge of a subject or context. Therefore, in order to maintain the benefit of all parties, especially for the prospective bride and groom, it is very feasible to make changes to the minimum age for marriage even though according to the parameters of Islamic law there is no definite marriage age limit provision. The fundamental reasons for changes in the minimum age restrictions for marriage, namely *first*, physical or biological readiness, such as protecting women’s reproductive rights and controlling the number of births. *Second*, the mental or psychological readiness of the prospective bride and groom in creating a happy and prosperous family.

The minimum age requirement for getting authorization to carry out the marriage process is concentrated on physical or biological readiness. Still, it needs to consider the significance of the prospective bride and groom’s mental or psychological preparedness. In actuality, in addition to the prospective bride and groom’s physical or biological fitness, their mental readiness is also crucial when beginning a married life. Marriages that are entered into without taking mental preparation into account can lead to troubles,⁴⁹ In the marriage and even result in divorce.⁵⁰ Therefore, apart from physical or biological readiness, the mental readiness of the prospective bride and groom is also a very important point when starting married life.

⁴⁶ Abdul Manan, *Aspek-Aspek Pengubah Hukum* (Jakarta: Kencana, 2005).

⁴⁷ Abu Ishaq al-Syatibi, *Al-Muwafaqat fi Ushul al-Syari’ah*, Jilid II, (Beirut: Dar al-Kutub al-Alamiyah, tt.), 4.

⁴⁸ Amir Syarifuddin, *Ushul Fiqh*, Jilid II (Jakarta: Kencana, 2009), 220.

⁴⁹ Joar Svanemyr et al., “Preventing Child Marriages: First International Day of the Girl Child ‘My Life, My Right, End Child Marriage,’” *Reproductive Health* 9, no. 1 (November 2012): 1–3, <https://doi.org/https://doi.org/10.1186/1742-4755-9-3>.

⁵⁰ Andi Mappiare, *Psikologi Orang Dewasa* (Surabaya: Usaha Nasional, 1983).

Second, the factor of influence from outside culture. External culture refers to cultural influences or elements outside a particular community or region. This can include aspects such as values, norms, traditions, customs, and world views that come from other cultures. External cultural influences can appear in various ways, including global interaction, migration, trade, mass media, technology, and intercultural contact. The emergence of the Sustainable Development Goals or SDGs, which carry a big and universal vision, sets 17 goals with 169 achievement indicators, one of which is the goal of gender equality. Gender equality rejects racial, ethnic, religious, or national differences. Gender equality is the desire to respect and appreciate human values without discriminating between men and women. In addition, gender equality also means that it is inherent in every human being and, therefore, is natural so that men and women in Indonesia have equal basic rights, such as civil, political, economic, and educational rights.⁵¹

Referring to Hadjon, the formation of legislative regulations in Indonesia must refer to the technicalities of legislative regulations and legal substance,⁵² in order to create harmony in laws and regulations that contain the substance of gender equality. With the harmonization of statutory regulations, the legal system will accommodate requests for certainty, justice and legal benefits as explained by Gustav Radbruch.⁵³ Legal harmonization is also helpful in removing overlap between judicial organizations and other government entities permitted to perform judicial duties per applicable legislation.

Third, dissatisfaction and reduced levels of public trust in the legal system. Meaning of elucidation of Article 7 paragraph (1) Law Number 1 of 1974 concerning marriage above cannot be used as a benchmark for maintaining the benefit of the family because, at a practical level in society, it is inversely proportional. Therefore, on March 5, 2014, a request for judicial review was submitted to the Constitutional Court regarding Article 7 paragraphs (1) and (2) of Law Number 1 of 1974 concerning marriage by the Executive Board of the Women's Health Foundation with several institutions and activists for the protection of women and children, which can be seen in a copy of the Constitutional Court Decision No. 30-74/PUU-XII/2014. The main opinion of the applicant is that the article has caused many underage marriages to occur in the community, especially brides of women. Underage marriage deprives the rights of children who are still growing and developing. Therefore, the application is made to protect and fulfill children's human rights and provide a fair form of legal certainty for every citizen as guaranteed in Article 28B paragraph (1) of the 1945 Constitution.

In reviewing laws, the Constitutional Court will not only look at the law in writing but will also look at the spirit contained in the law. The Constitutional Court must also examine the content of legal values based on the 1945 Constitution and the value of justice in society.⁵⁴ Therefore, the Constitutional Court will declare a law contrary to the 1945 Constitution. If the law triggers conflict, the useful value of the law has yet to be achieved. The law is deemed unable to create legal certainty, even if The law does not provide justice for all levels of society.

⁵¹ Ewa Batyra and Luca Maria Pesando, "Trends in Child Marriage and New Evidence on the Selective Impact of Changes in Age-at-Marriage Laws on Early Marriage," *SSM - Population Health* 14 (June 2021): 100811, <https://doi.org/https://doi.org/10.1016/j.ssmph.2021.100811>.

⁵² Philipus M Hadjon, "Pengkajian Ilmu Hukum Dogmatik (Normatif)," *Yuridika* 8, no. 1 (1994): 2.

⁵³ Ariefulloh Ariefulloh et al., "Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023): 19–36.

⁵⁴ Abdul Kadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004).

Additionally, suppose a law is discovered that is not aligned with the relevant ideals (Indonesian cosmology). In that case, legislation must revoke it as it is no longer relevant or in line with society's reality.⁵⁵ In light of this, the Constitutional Court decided on December 13, 2018, to allow a portion of the case for judicial review addressing the different marriage age in Law Number 1 of 1974 regulating marriage. The Constitutional Court declared that the legal distinction between the minimum age for marriage for men and women results in discrimination.

Thus, the issue of the minimum age limit is included in the area of legal discovery, so this issue is always open to changes when there are demands from the conditions of society, time, and place. This gave birth to Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning marriage, ratified by the DPR RI in 2019. Article 7, paragraph (1) of Law Number 16 of 2019 mandates that marriage is only permitted if the man and woman have reached the age of 19 years. Men are considered to have reached maturity to act and be responsible when they reach the age of 19. Likewise, when they reach the age of 19, women are considered to be adults and capable of running a household.⁵⁶

Provisions on Marriage Age Limits in Indonesia from a Gender Perspective

The legal rules that apply in Indonesia cannot be separated from the existence of social structures and legal culture.⁵⁷ The legal structure and culture in Indonesia are also influenced by many sources of values, such as Islamic law, which applies quite strongly in Indonesia.⁵⁸ Therefore, the law in Indonesia integrates various legal sources to form a unified norm in national law. In addition to the factors mentioned above, the rise of the globalization period, characterized by the simplicity of information exchange, has now also impacted the makeup of Indonesian society. Any knowledge that enters society, whether customary, cultural, or legal norms, becomes an action that establishes a norm. A strong external cultural or societal impact may result in modifications to the legislation.⁵⁹ In Indonesia, family law has assimilated with the regional culture. Nevertheless, family law in Indonesia started to change as new influences emerged and altered how society perceived things.⁶⁰

In the 20th century, the rise of the gender movement led to a push to change society's perception of equality between men and women.⁶¹ This gender movement is becoming increasingly widespread because many Islamic legal experts in Indonesia have studied in Western countries, which promotes gender equality, which is highly respected. After that, women's rights began to be expressed, so the feminist movement emerged in Muslim society. The gender equality movement gained momentum when discriminatory practices against women were widely found in Islamic communities. In the Qur'an, Allah privileges men by being leaders for women, as stated in Surah an-Nisa (4) verse 34.⁶²

⁵⁵ Tanto Lailam, "Konstruksi Pertentangan Norma Hukum Dalam Skema Pengujian Undang-Undang," *Jurnal Konstitusi* 11, no. 1 (2014): 18–42, <https://doi.org/https://doi.org/10.31078/jk1112>.

⁵⁶ Catherine E Ross, "Marriage and the Sense of Control," *Journal of Marriage and the Family*, 1991, 831–38.

⁵⁷ Hadjon, "Pengkajian Ilmu Hukum Dogmatik (Normatif)."

⁵⁸ Kurnia Warman, Saldi Isra, and Hilaire Tegnau, "Enhancing Legal Pluralism: The Role of Adat and Islamic Laws within the Indonesian Legal System," *J. Legal Ethical & Regul. Issues* 21 (2018): 1.

⁵⁹ Achmad Irwan Hamzani, "Legal Culture and the Influence on Law Enforcement In Indonesia," *International Journal of Education Humanities and Social Science* 2, no. 5 (2019): 79–93.

⁶⁰ Manan, *Aspek-Aspek Pengubah Hukum*.

⁶¹ Verta Taylor, "Gender and Social Movements: Gender Processes in Women's Self-Help Movements," *Gender & Society* 13, no. 1 (1999): 8–33.

⁶² Muhammad Ibn Jarir ibn Yazid ibn Katsir ibn Ghalib al-Amili Abu Ja'far Al-Thabari, *Jami' Al-Bayan Fi Tafsir Al-Qur'an* (Kairo: Dar al-Salam, 2009).

Other privileges for men are in Al-Baqarah (2): 233 regarding the obligation to support his wife and children and in An-Nisa' (4): 4 regarding polygamy.⁶³ and so on.

Referring to Nazeem Goolam, gender discourse can influence the paradigm and content of changes in family law that discriminates against women in Muslim countries.⁶⁴ Perubahan hukum keluarga ditandai dengan proses reformasi hukum keluarga pada akhir abad ke-20 menjadi area penting bagi aspek advokasi dan reformasi wanita untuk dimasukkan ke dalam hukum keluarga, seperti di Negara Turki, Tunisia, Bahrain, Maroko, Malaysia, Aljazair, Yordania, Pakistan, Bangladesh, dan juga Indonesia.⁶⁵ The rise of pressure to renew family law in Indonesia, the influence of Western education and gender activists who voiced the formulation of a new law on family law to protect women from discriminatory practices resulted in the birth of Law Number 16 of 2019 concerning Amendments to Law Number 1 1974 concerning marriage which was ratified by the DPR RI in 2019.

Law Number 16 of 2019 emerged as a result of encouragement from women's groups who wanted reform in the field of family law, which specifically aims to regulate permits for the marriage process if the man and woman are 19 years old. As is known, in the explanation of Article 7 paragraph (1) of Law Number 1 of 1974 concerning marriage, which states that marriage permits for male candidates who have reached the age of 19 years and women who have reached the age of 16 years. This discriminates against women because it deprives children of the right to grow and develop, so the state must be present to provide fair legal certainty.

In contrast to the provisions on marriage permits in Law Number 1 of 1974 concerning marriage, the rules regarding limitations on marriage permits in Law Number 16 of 2019 offer a very different perspective and paradigm regarding gender equality. Comparing the two legal regulations above, the limitations on marriage permits in Law Number 16 of 2019, which uniforms the age of men and women who are allowed to get married to 19 years, means that the state is here to humanize humans and provide guarantees of current and future problems or happiness.

Therefore, legislation or changes in family law in Indonesia may be influenced by the political structure of modern Indonesian society and changes in sociocultural conditions supported by gender movements. By presenting a progressive and protective vision of women's rights, such as the uniform age of 19 for marriage licenses for men and women as stipulated in Article 7 paragraph (1) of Law Number 16 of 2019.

Conclusion

This research suggests that the issue of the minimum age limit for marriage is an issue that lies within the realm of legal discovery. The fact that supports this conclusion is that before Law Number 16 of 2019, Indonesia needed consistent provisions regarding marriage age limits, both at the national level and in various provinces. This research shows that before this regulation was implemented, several provinces in Indonesia permitted marriages under 16 with special permission. With the new law, namely Law Number 16 of 2019, the minimum age for marriage is set uniformly

⁶³ Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu* (Jakarta: Gema Insani, 2011).

⁶⁴ Nazeem Goolam, "Gender Equality in Islamic Family Law: Dispelling Common Misconceptions and Misunderstandings," *Stellenbosch L. Rev.* 12 (2001): 199.

⁶⁵ Zainah Anwar, "CEDAW and Muslim Family Laws: In Search of Common Ground" (Selangor, Malaysia, 2011).

at 19 years for men and women. Furthermore, research also shows that the gender movement in Indonesia has had a strong influence on changing views of family law and more progressive policies. One example is how the gender movement has shaped more inclusive thinking about women's rights in marriage. This research shows that along with increasing awareness of women's rights, society is increasingly supporting the idea that the minimum marriage age must be increased to protect the rights of children and women. Then, integrating the SDGs also impacts changes in legal policy in Indonesia. The data shows that SDG number 5, namely gender equality and women's empowerment, has become the main driver in changing family law policies. The integration built on the enactment of Law Number 16 of 2019 reflects Indonesia's commitment to achieving SDG target number 5 by setting a higher minimum age of marriage and in line with the principle of gender equality.

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