

Citation: Khaidarulloh, K. (2020). PARADIGM CONTESTATION IN NATIONAL LEGAL SYSTEM: A STUDY OF UNIFICATION OF MARITAL AGE REGULATION IN INDONESIA. *JARES (Journal of Academic Research and Sciences)*, 5(1), 44-51.
<https://doi.org/10.35457/jares.v5i1.937>

**PARADIGM CONTESTATION IN NATIONAL LEGAL SYSTEM:
A STUDY OF UNIFICATION OF MARITAL AGE REGULATION IN INDONESIA**

Khaidarulloh

A Researcher and Observer of Family Law

Email. lawandscientiasacra@gmail.com

ABSTRACT

This article focuses on the study of the unification of marital age in Indonesia with the contestation of legal paradigms that occur, both on the government side through legislators and on non-government parties such as the influence of religious ideology or the role of other humanitarian activists. The issue of marital age is not a dynamic issue, either juridical or sociological problems are strongly reflected in the discourse that has developed to date. The results of the study show that even though marital age has been compared to the new rules through Law No. 16 of 2019 stating that the minimum marital age for the bride and groom is 19 years, yet the potentials of the legal paradigm contestation in the national marriage legal system will always develop along with the social dynamics of the community.

Keywords: Marital Age, Legal Paradigm Contestation, National Legal System

INTRODUCTION

Marital age regulation is an important part of the modernization project of Islamic family law in Indonesia, which until now is still being discussed, and even becomes a sensitive issue for some family observers. Development of the paradigm about the effective function of law as a tool of social engineering has made the country's efforts through prevailing marital regulations succeed in changing several matters related to existing marital practices in Indonesia, including marital age issues.

The state appears to be a unifier while changing the legal tradition. In the paradigm of Islamic law, for example, basically they do not have a strict measure of marital age: there is a difference in determining the minimum age of marriage, apart from *baligh* age. In this phase, as Ratno Lukito found, the causes of this phenomenon were: first, incomplete theoretical study of adult age between Muslims and the state that regulates the age of marriage with the practice of marriage at that time; second, the conditions of traditional gender relations that are still strongly attached in society, making it difficult for the state to apply the marital age limit. In other words, the question of determining marital age is more a matter of debating the legal paradigm between Islamic and state traditions. The

Citation: Khaidarulloh, K. (2020). PARADIGM CONTESTATION IN NATIONAL LEGAL SYSTEM: A STUDY OF UNIFICATION OF MARITAL AGE REGULATION IN INDONESIA. *JARES (Journal of Academic Research and Sciences)*, 5(1), 44-51.
<https://doi.org/10.35457/jares.v5i1.937>

government's view that assesses the standard age of marriage is one of the most plausible things in the nation's development, which according to Ratno, it does not meet the beliefs of Muslims. As a result, a debate between Muslims and the government on the issue of marital age is inevitable (Ratno Lukito, 2008: 269-270).

In the historical record, unification of minimum marital age regulation in Indonesia, at first, wanted to be regulated through the contents of article 7 paragraph (1) of the Marriage Law Draft (hereinafter referred to as RUUP) in 1973 which states that the minimum age of marriage is 21 years for men, and 18 years for women. However, since this RUU has drawn debate that is prone to conflict, it must eventually be postponed. This RUUP reads: "Marriage is only permitted if the man has reached the age of 21 (twenty one) years and the woman has reached 18 (eighteen) years."

RUU also states, "This Marriage Law determines the minimum age for marriage and it turns out that the lower age for a woman to marry has an influence on the "rate" of birth when compared with the higher age for marriage. Apart from that, the age limit is also a guarantee that the prospective husband and wife have been mature, so that they can realize the purpose of marriage properly without ending in divorce, and get good and healthy children.

The dilemma faced by the 1973 RUUP ended in the official adoption of Law No.1 of 1974 concerning Marriage (hereinafter referred to as UUP) but with a few changes, especially regarding the determination of marital age which eventually had to be lowered. Through Article 7 paragraph (1) of the 1974 UUP, the state provides regulations that marriage is only permitted if the male has reached the age of 19 years and the woman has reached the age of 16 years. In the case of deviations under the provisions, the community has the right to submit dispensation to the court or other officials concerned. However, in the latest developments, the government finally raised marital age again through Law No. 16 of 2019 concerning Amendment to Article 7 of the UUP stating that the age of 19 years applies to all brides, both men and women. Article 7 paragraph (1) in the 2019 UUP states, "Marriage is only permitted if men and women have reached the age of 19 (nineteen) years.

The history of marital age regulation above emerges the view that every independent and sovereign country must have a national law that reflects soul personality and outlook of

Citation: Khaidarulloh, K. (2020). PARADIGM CONTESTATION IN NATIONAL LEGAL SYSTEM: A STUDY OF UNIFICATION OF MARITAL AGE REGULATION IN INDONESIA. *JARES (Journal of Academic Research and Sciences)*, 5(1), 44-51.
<https://doi.org/10.35457/jares.v5i1.937>

Indonesian people. The law is directed at the realization of a national legal system that serves the common interest by implementing and applying the law as a whole which is based on Pancasila (Qodri Azizy, 2002: 142-152).

RESEARCH METHOD

This research is a qualitative study that focuses on the development and dynamics of legal paradigm in national legal system, particularly the analysis on the unification of marital age rules in Indonesia. This research is the typical of sociological legal research (Atho 'Mudzhar, 1999). This research is also supported by collecting data directly through library research and enriching it with relevant empirical data. Both of these fundamental things are intended to both solve and answer existing academic problems.

Data were collected by conducting document or library research and observation (Amiruddin and Zainal Asikin, 2004: 30). The data in this study came from literature studies in the form of books, encyclopedias, journals, magazines or other relevant references. In addition, the data were obtained from observations of marital practices, especially the issue of marriage dispensation in Religious Courts.

The nature of this research is descriptive-analytical. The procedure of this descriptive nature is based on the characteristics of research object or what actually happened in marital age issue in Indonesia (Cik Hasan Bisri, 1998: 9). Qualitative data, as mentioned before, were analyzed with by adopting deductive-inductive framework. The combination of theoretical framework and logic framework was used to parse the data, then specifically classified to select and find out the relationship between data and problem under the study (Cik Hasan Bisri, 2004: 161).

The approach used in this research was normative and socio-historical. Normative approach was used to explore and analyze data on the development of marital age discourse in Indonesia, especially at the normative level. Meanwhile, socio-historical approach was used to find out the marital age issue in the context of legal paradigm contestation in national legal system. This was traced from the conception of marital age between religion and state, history of marital age unification, and important aspects behind its dynamics.

Citation: Khaidarulloh, K. (2020). PARADIGM CONTESTATION IN NATIONAL LEGAL SYSTEM: A STUDY OF UNIFICATION OF MARITAL AGE REGULATION IN INDONESIA. *JARES (Journal of Academic Research and Sciences)*, 5(1), 44-51.
<https://doi.org/10.35457/jares.v5i1.937>

RESULT

The debate over marital age is always being discussed till the present days. After the reformation, this issue has continued to develop, and become its own anxiety for various groups, either academics, feminists, activists, or state institutions. Each of which is in its own way when criticizing this issue, both theoretically and practically, individually, and collectively.

The emergence of Counter Legal Draft Compilation of Islamic Law (CLD-KHI) in 2004, dissemination of information to community about marital age, and efforts of various parties to review marital age rules in Indonesia, for example, are proof that marital age in reality problems remains a crucial issue in Indonesia. This can also be portrayed, for example, from the dispensation phenomenon following the permissiveness of judges in a religious court environment, which has so far been lack of public attention because it tends to be a matter of discretion. Diverse kinds of arguments and reasons have been made to criticize marital age discourse, either from the perspective of ideological issue, Human Rights (HAM) enforcement, and quality improvement of families.

Looking at its journey, especially since Indonesia entered the reform era, marital age issue has begun to be discussed again. In fact, there were efforts to change it. In 2004, despite failing to be ratified, the Ministry of Religion's Gender Mainstreaming Group (Pokja PUG) with CLD-KHI, became one of the initiators of the changes on the established marital age rules. This team wanted to revise marital age in the UUP to be 19 years (male and female), due to the development of age and benefits for the future of bride and groom. CLD-KHI considered that the minimum age of marriage in the existing law was substantially vulnerable to subordination of women and not gender-oriented. For this reason, legal reform to raise it becomes more relevant to the present context (Maltuf Siroj, 2012: 5).

Marital age issue also reappeared in the National Legislation Program (Prolegnas) in 2010 which tried to issue a Draft Law on Material for the Religious Courts (RUU-HMPA). One of the main points of the material in this RUU was general explanation of RUU-HMPA on RUU-HMPA (c) which states:

"Marriage requires the bridegroom to reach the age of 21 years and the bride to reach the age of 18 years. The increase in the minimum age for marriage is with the consideration that *sakinah* condition of family life (household) requires the readiness of husband and wife to

Citation: Khaidarulloh, K. (2020). PARADIGM CONTESTATION IN NATIONAL LEGAL SYSTEM: A STUDY OF UNIFICATION OF MARITAL AGE REGULATION IN INDONESIA. *JARES (Journal of Academic Research and Sciences)*, 5(1), 44-51.
<https://doi.org/10.35457/jares.v5i1.937>

carry out increasingly demanding duties and responsibilities, including in earning a living and providing a place of residence so that maturity level is required. Therefore, underage marriages which constitute deviations from this provision must be subject to court dispensation. "

The issue of marital age also becomes the spotlight for women activists in Indonesia. According to them, marital age does not reflect justice and gender equality, even the determination of the existing marital age is not in line with the spirit of protection of children and women (LBH APIK, 2019). Furthermore, this issue is also a specific study for government institutions such as the National Population and Family Planning Agency (BKKBN). Regarding women's reproductive rights, the government through the BKKBN, for example, took part in dissemination of information regarding ideal marital age of 20 years for women and 25 years for men with the reason to improve the quality and welfare of families based on long-term needs (BKKBN, 2012: 3). One reason for this effort is that the reproductive period under 20 years of age is the recommended age for delaying marriage and pregnancy. In this age, a teenager is still considered in the process of physical and psychological development, and in a period of growth that ends at the age of 20 years. For this reason, women are encouraged to get married at the age of 20 years. Marriage before 20 years of age for women can lead to the risk of morbidity and death that arise during the process of pregnancy and childbirth. If a couple marry under the age of 20 years, it is recommended to postpone pregnancy using contraception until the wife's age is 20 years.

That's all about several discussions of the contestation of views on the issue of marital age in Indonesia. That is, the conception of marital age in this context has various interpretations according to the character and paradigm of each, as mentioned in the previous paragraphs.

DISCUSSION

It needs to be reviewed again that family becomes a place where everyone receives and gives love, puts their hearts, and cooperates. In addition, family also becomes a means to recognize law, order, security, peace, and responsibilities of rights and obligations. Besides, family as a builder of one's soul, has crucial influence on the development of individuals in each phase (Aisyah Dahlan, 1969: 85). Meanwhile, family is also the smallest social unit that humans have as social creatures. The basis of this is the fact that the family is

Citation: Khaidarulloh, K. (2020). PARADIGM CONTESTATION IN NATIONAL LEGAL SYSTEM: A STUDY OF UNIFICATION OF MARITAL AGE REGULATION IN INDONESIA. *JARES (Journal of Academic Research and Sciences)*, 5(1), 44-51.
<https://doi.org/10.35457/jares.v5i1.937>

a unit of kinship system that lives and is based on the existence of functions in family such as economy, regeneration, socialization, education, and protection (Wahyu MS, 1986: 57).

Family becomes one of the places where the relationship between men and women occurs through a marriage contract, which aims to make the relationship and resulting children legal religiously, and guaranteed legally (Aunur Rahim Faqih, 2001: 70). Based on this, it appears that the true conception of maturity is important to determine the status of one's legal actions, including when a person is going to get married.

On the one hand, family law in Indonesia is in the development of this state. On the other hand, family law is encountered with the principles of belief and modernity. The first side tends to be exclusive because it only represents its religious beliefs, while the second tends to be inclusive because the state is obliged to involve existing legal traditions as a foundation in building the legal system, including marriage law (Ratno Lukito, 2008: 285). In other words, on the one hand, the state intervenes in existing legal traditions, while on the other hand, the state is demanded to accommodate the interests of Muslim communities in the field of marriage.

This statement seems coherent if we look at several things that happened, especially since the birth of the Marriage Bill in 1973. This phase marks the occurrence of a very complex national problem from the problem of state ideology to the development of law. However, when Pancasila was agreed to be the state ideology, as mentioned earlier, automatically the source of law was the state itself, which at the same time, functioned as the glue of the legal tradition that had previously grown in Indonesia. In this way, the national legal system can be created within a diversity frame. The law, in the end, became an expression of actual nationalism through ideal concepts represented by state institutions, such as judicial institutions and legal products in the form of legislation (Ratno Lukito, 2008: 285).

The above theory also has a significant effect in Indonesia. It is represented in the regulation of marital age issues covered in the UUP. Marital age that were not initially institutionalized, for example, appeared in its new form in a regulation that had to be agreed upon nationally, even becoming a marriage requirement according to the state. As a result, a person or community cannot circumvent this regulation if later marriage is to be held in

Citation: Khaidarulloh, K. (2020). PARADIGM CONTESTATION IN NATIONAL LEGAL SYSTEM: A STUDY OF UNIFICATION OF MARITAL AGE REGULATION IN INDONESIA. *JARES (Journal of Academic Research and Sciences)*, 5(1), 44-51.
<https://doi.org/10.35457/jares.v5i1.937>

Indonesia. Moreover, if the bride and groom have not yet reached the minimum age, the marriage is determined by law. This means that the state and religion will be integrated into each other in terms of the formulation of marriage law. Granting legal exceptions to marriage dispensation requests, for example, is a form of such cooperation: bearing in mind that theoretically marital age rules in religious traditions (in Islam, for example) are varied in accordance with interpretations of religious law.

Thus, debates and polemics on the issue of marital age have appeared since the first marriage arrangements were made by the state, even till now. This certainly cannot be separated from the influence of legal uniformism on the existence of law that grows in society as part of the long-standing diversity of law in Indonesia. The state, with this understanding, tends to judge that the unification of Islamic family law is the only path that will provide greater benefits to community at large.

CONCLUSION

Looking at some of the dynamics above, it is no exaggeration to say that marital age has fundamental problems both on theoretical and practical level. On theoretical level, these problem have come to the attention of many parties, both from the legislators and non-legislators with various legal paradigms to date. Meanwhile, on practical level, the phenomenon of the provision of marriage dispensations, which represents the issue of marital age in the judicial environment, has illustrated that the issue of marital age policy in Indonesia actually becomes a mirror that, at the same time, the religious paradigm also always faces the state paradigm. Therefore, even though marital age has been compared to the new rules through Law No. 16 of 2019 concerning amendments to Article 7 of the 1974 UUP stating that the minimum marital age for prospective brides is 19 years, the potentials for legal paradigm contestation in the national marriage legal system will always develop along with the social dynamics of community.

REFERENCES

- Aisyah Dahlan, *Membina Rumah Tangga Bahagia*, Jakarta: Jamunu, 1969.
Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, PT. Raja Grafindo Persada: 2004

Citation: Khaidarulloh, K. (2020). PARADIGM CONTESTATION IN NATIONAL LEGAL SYSTEM: A STUDY OF UNIFICATION OF MARITAL AGE REGULATION IN INDONESIA. *JARES (Journal of Academic Research and Sciences)*, 5(1), 44-51.

<https://doi.org/10.35457/jares.v5i1.937>

Atho' Mudzhar, "Studi Hukum Islam dengan pendekatan Sosiologis," *makalah* disampaikan dalam pidato pengukuhan Guru Besar IAIN Sunan Kalijaga, tanggal 15 September 1999.

Aunur Rahim Faqih, *Bimbingan Dan Konseling dalam Islam*, Yogyakarta: UII press, 2001.

Cik Hasan Bisri, *Penuntun Penyusunan rencana Penelitian Bidang Ilmu agama Islam*, Jakarta: Logos, 1998.

_____, *Pilar-pilar Penelitian Hukum Islam dan Pranata Sosial*, Jakarta: PT RajaGrafindo Persada, 2004.

Direktorat Bina Ketahanan Remaja, *Materi Pegangan Kader Tentang Bimbingan Dan Pembinaan Keluarga Remaja*, Cet. II, Jakarta: Badan Kependudukan dan Keluarga Berencana Nasional (BKKBN), 2012.

Direktorat Remaja dan Hak-hak Reproduksi Remaja, *Pendewasaan Usia Perkawinan dan Perlindungan Hak-hak Reproduksi bagi Remaja Indonesia*, Cet. II, Jakarta: Badan Koordinasi Keluarga Berencana Nasional (BKKBN), 2010.

Hakim, Eli, dan Partner, "draft RUU HMPA Bidang Perkawinan," Personal Library (kim_silaban@hotmail.com).

Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam (KHI).

Lembaga Hukum untuk Perempuan (LBH APIK) dalam www.lbhapi.or.id, akses 6 Juni 2019.

Maltuf Siroj, *Pembaruan Hukum Islam di Indonesia*, Yogyakarta: Pustaka Ilmu, 2012.

Nasaruddin Umar dkk, *Amandemen Undang- Undang Perkawinan Sebagai Upaya Perlindungan Hak Perempuan dan Anak*, cet. I (Yogyakarta: Pusat Studi Wanita (PSW) UIN Sunan Kalijaga Yogyakarta).

Qodri Azizy, *Eklektisisme Hukum Nasional: Kompetisi antara Hukum Islam*, Yogyakarta: Gama Media, 2002.

Rancangan Undang-undang Hukum Materiil Pengadilan Agama (RUU-HMPA) tahun 2010.

Ratno Lukito, *Hukum Sakral dan Hukum Sekuler: Studi tentang Konflik dan Resolusi dalam Sistem Hukum Indonesia*, Jakarta: Pustaka Alvabet, 2008.

Undang-Undang No. 1 tahun 1974 tentang Perkawinan

Undang-Undang No. 16 tahun 2019 tentang perubahan Undang-Undang No. 1 tahun 1974 tentang Perkawinan

Wahyu MS, *Ilmu Sosial Dasar*, Surabaya: Usaha Nasional, 1986.