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Pro and Cons Contestation on The Increase of Marriage Age In Indonesia

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Abstract: The age of marriage enhancement as mandated by Law no. 16 of 2019 is increasing the minimum age for marriage from 16 years for women and 19 years for men to 19 years for both women and men. However, this rule has not been accepted wholeheartedly by the community, so there are pros and cons. This study focuses on answering three questions: 1) Why are there pros and cons in the provisions of Law no. 16 in 2019 within a society? 2) What steps are taken by the community in violating the provisions of Law no. 16 of 2019? 3) What steps have been taken by the KUA and the Religious Courts in implementing the provisions of Law Number 16 of 2019? This research uses qualitative research with discourse analysis method. The researcher uses Pierre Bourdieu's theory to see the dynamics of the pros and cons contestation in increasing the age of marriage. With the genetic structuralism approach, to unite the origins of the individual mental structure, which is the product of the unification of the social structure that surrounds it. There are groups of people who agree to increase the age of marriage, and there are groups against it. The importance of mature marriage is to reduce divorce rates, poverty rates, children dropping out of school, maternal and child mortality rates. On the other hand, some people still prioritize the legal requirements of marriage by fulfilling the provisions of Islamic law (alternative options) not cumulative as required in the conditions for a valid marriage in the UUP. The arguments of people against the increase of marriageable age are based on the background of community culture, economic conditions, and free lifestyle of teenager. Unregistered marriage (*nikah siri*), legalization of marriage procedure and marriage dispensation are alternative steps taken by people who are against the increase of marriage age. KUA (religious affairs office) and the Religious Courts as the frontline in maintaining the mandate of Law no. 16 of 2019 using legal norms, still tightening the provisions on the age limit for marriage, marriage dispensation and legalization of marriage.

Keyword: Contestation, Pro and contra, marriage age

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Abstrak: *Pendewasaan usia perkawinan sebagaimana amanah UU No. 16 Tahun 2019, yaitu menaikkan usia minimal menikah dari 16 tahun bagi perempuan dan 19 tahun bagi laki-laki menjadi 19 tahun baik bagi perempuan maupun laki-laki. Namun aturan tersebut belum dapat diterima dengan sepenuh hati oleh masyarakat, sehingga terjadi pro dan kontra. Penelitian ini fokus untuk menjawab tiga persoalan: 1) Mengapa ketentuan UU No. 16 Tahun 2019 terjadi Pro dan Kontra di masyarakat? 2) Langkah apa saja yang dilakukan oleh masyarakat dalam menyimpangi ketentuan UU No. 16 Tahun 2019 ? 3) Langkah apa saja yang dilakukan KUA dan Peradilan Agama dalam menerapkan ketentuan UU Nomor 16 Tahun 2019?. Penelitian ini menggunakan penelitian kualitatif dengan metode analisis wacana. Peneliti menggunakan teori Pierre Bourdieu untuk melihat dinamika kontestasi pro kontra dalam pendewasaan usia perkawinan. Dengan pendekatan strukturalisme genetic, dalam upaya menyatukan asal-usul struktur mental individu yang merupakan produk penyatuan dari struktur sosial yang mengelilinginya. Ada kelompok masyarakat yang pro terhadap pendewasaan usia perkawinan dan ada kelompok yang kontra. Pentingnya pendewasaan perkawinan dalam rangka menurunkan tingkat perceraian, mengurangi angka kemiskinan, menurunkan anak-anak drop out dari sekolah, menurunkan tingkat kematian ibu dan anak. Namun disisi lain sebagian masyarakat masih menomor satukan syarat sahnya perkawinan dengan mencukupkan ketentuan hukum Islam (pilihan alternatif) bukan komulatif sebagaimana disyaratkan dalam syarat sahnya perkawinan dalam UUP. Argumentasi masyarakat yang kontra pendewasaan usia perkawinan dilatar belakangi kultur masyarakat, kondisi ekonomi, pergaulan remaja yang mengkhawatirkan. Perkawinan sirri, Istbat nikah dan Dispensasi nikah merupakan langkah alternatif yang dilakukan oleh masyarakat yang kontra. KUA dan Peradilan Agama sebagai garda terdepan dalam mempertahankan amanah UU No. 16 Tahun 2019 dengan menggunakan norma hukum tetap memperketat ketentuan Batasan usia perkawinan, dispensasi kawin dan Istbat nikah.*

Kata Kunci: *Kontestasi, Pro dan Kontra, Usia perkawinan*

Introduction

According to the 2018 data on child marriage in Indonesia, 1 out of 9 girls in Indonesia was married. It was estimated to reach 1,220,900, and this figure has positioned Indonesia as one of 10 countries with the highest child marriage in the world. The data were girls aged 20-24 years who were married

before 15 and 18 years, including boy's marriage. The data on boys were only available for only four years, 2015-2018, so it is not considered high.¹

The stipulation of Law no. 16 of 2019 concerning amendments to Law no. 1 of 1974 concerning marriage is a significant event because, with this law, the state has given a firm stance on marriage age. Increasing the age of marriage has always been a discussion that never ends, through seminars, workshops, gatherings, and many academics research this topic. Since the promulgation of Article 7 paragraph (1) of Law no. 1 of 1974 concerning marriage to the Constitutional Court (MK) regarding the age for marriage. The Constitutional Court's decision stated that the minimum age for women to marry was 16 years, but it was not legally binding. The court gave lawmakers three years to amend and include it in the State Gazette of the Republic of Indonesia, which can be used as the primary reference for judges who adjudicate women's cases in the case of submitting a marriage dispensation.² Furthermore, the DPR (House of Representatives) raised and equalized the marriage age for men and women from 16 to 19.

In the end, the government changes the UUP (Marriage Laws) with Law no. 16 of 2019, which explains that the minimum age for marriage for both men and women is nineteen years old. The increase in the age limit for marriage has become a new problem in society. On the one hand, formally, the community must meet the provisions of the age limit for a marriage to become legal, both by state law and religious law. However, on the other hand, people's understanding of the new age marriage for both men and women is a problem in itself. Public concerns over the promiscuity among teenagers, which is increasingly worrying, concerns about being a spinster, and become the subject of gossip from the neighborhood that no one wants to marry their child are seen as problems with the enactment of Law no. 16 of 2019 in the community. This study aims to provide education to people who have a dualistic understanding of the new age of marriage. On the one hand, the importance of increasing the age limit for marriage is to provide maturity in resolving household conflicts which lead to reducing the divorce rate, to reduce the poverty rate (because without pre-marital preparation newly married couple do not have enough budget and supply to meet household needs which in turn become a burden on parents), to reduce school dropout rates, and maternal and child mortality. On the other hand, the strong culture

¹ Badan Pusat Statistik, *Pencegahan Perkawinan Anak Percepatan Yang Tidak Bisa Ditunda*, Badan Pusat Statistik, 2020.

² There are six points for the decision taken by the Constitutional Court in deciding the case for judicial review, the minimum age for marriage for women.

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and traditions of the community are still implemented without violating the provisions of Law no. 16 of 2019. For this reason, this article discusses the pros and cons of contestation in increasing the age of marriage.

The age limit for marriage has been widely studied by researchers, including the Effect of Young Marriage on Family Resilience (2020)³; this study stated that marriage at a young age is still happening. Child marriage occurs without any proper preparation, the emotions are still unstable, and it causes the infirm household. As a result of child marriage, education for children is stopped, so it impacts the lack of knowledge. This research hopes to provide education about the relationship between young marriage and family resilience and its effects.

Another study conducted by Elsa Rulistyana (2017) on Adolescent Knowledge about the Marriage Age Maturation Program (PUP),⁴ PUP is a Family Planning (KB) program that increases the age of marriage, 21 years for women and 25 years for boys. PUP program hopes to reduce the Total Fertility Rate (TFR); this study aims to see the understanding of adolescents about PUP activities. Many researchers have written studies on increasing the age of marriage. However, there is no research related to the debate on pros and cons, so in this article, it is vital to know the views and foundations of groups that are pro and contra on the increase of the age of marriage.

Based on the facts and problems that have been described above, marriage at a young age or what is often referred as child marriage has many problems. Marriage's problems are resulting from the ill-prepared partners unable to find solutions to the problems that occur in the household, the lack of reproductive and sexual health education leading to many problems occurring in childbirth that cause maternal and child deaths, the understanding of society on the increase in age of marriage is still low, economic difficulties of the household, and divorce rate. The age limit for marriage in Islam is not clearly regulated, but Islam states that the couple must be of mature age and the marriage agreed upon for their benefit.

Based on the arguments above, this article focuses on examining three main points: 1) Why are the provisions of Law No. 16 In 2019 resulting in the debate of pros and cons in society? 2) What steps are taken by the community in violating Law No. 16 Year 2019 ? 3) What steps have been taken by the

³ Farah Tri Apriliani and Nunung Nurwati, "Pengaruh Perkawinan Muda Terhadap Ketahanan Keluarga," *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat*, 2020, <https://doi.org/10.24198/jppm.v7i1.28141>.

⁴ Elsa Rulistyana, "Adolescent's Knowledge About Age Marriage Maturation Program (PUP)," *Jurnal Ners Dan Kebidanan (Journal of Ners and Midwifery)* 4, no. 1 (2017), p. 079–084, <https://doi.org/10.26699/jnk.v4i1.art.p079-084>.
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KUA and the Religious Courts in implementing the provisions of Law Number 16 of 2019?

This study uses a qualitative approach with the discourse analysis method. The researcher uses Pierre Bourdieu's theory with a genetic structuralism approach to unify the mental structure of individuals as a composite product of the social structure that surrounds them. Genetic structuralism is defined as an analysis of the structure of objects that are always related to matters of individual mental structures. It is a combined product of social structures because the structuralism approach in observing the reality of society is not appropriate and only produces a separate analysis of the object.⁵ Pierre Bourdieu also explains how the practical attention of everyday life influences the transmission and the function of society or culture.

Positive Legal Perspective on Marriageable Age

Law No. 1 of 1974 concerning marriage (hereinafter abbreviated as UUP), provides rules in article 7 paragraph (1) "that marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years.

The UUP providing a minimum age limit for marriage needs reviewing because it is not in line with the essence of Law No. 23 of 2002, which has further been amended by Law No. 35 of 2014 concerning Child Protection. The mature age limit in the Child Protection Law is 18 years of age, as stated in article 1 paragraph (1), which reads, "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb". If we observe the Child Protection Law, then marriages carried out based on the provisions of Article 7 paragraph (1) UUP, in which female candidates have not reached 18 years, even though it has met the marriage age requirements set by the Marriage Law would still be classified as child marriage.

In addition to the UUP and the Constitutional Court's decision as the basis for positive legal provisions in setting the age limit for marriage, the Child Protection Law has very firmly taken precautions in the case of child marriages. Article 26 paragraph (1c) clearly states that parents must prevent child marriage, and if the parents commit or encourage child marriage, they can be subject to legal sanctions.

Law no. 16 of 2019 regulates the minimum age limit for marriage is 19 years for both men and women, so the amendment to the UUP is in line

⁵ Pierre Bourdieu, *The Logic of Practice*, New York: St. Martin's Press, 1990, <https://doi.org/10.1007/BF00680104>.
<http://jurnal.arraniry.ac.id/index.php/samarah>

with the expectations of the Child Protection Law, so there will no longer be the term child marriage. There are several philosophical bases for the enactment of Law no. 16 of 2019. In the discussion of the bill, there are several considerations that are also new steps, in addition to changing the provisions of article 7 of the UUP concerning the age limit for marriage, it also tightens the granting of marriage dispensation which has been the way to child marriage.⁶ In addition, it also adds one paragraph in the provisions of Article 7, from three paragraphs to four. Paragraph (4) reinforces Article 6 of the UUP which states that the application for dispensation is only submitted to the court (before it was submitted to a court or authorized official) and must be for urgent reasons and supported by sufficient supporting evidence.⁷

Islamic Law Perspective on Marriageable Age

Based on some literature on marriage, there is no comprehensive age limit provision because the limit used refers to the age of puberty. Someone must be mature if he/she wants to get married. This is discussed in Surah an-Nisa 'verse 6, which states that the recommendation to test the competence of orphans if they have met the marriageable age, and if there is a sign of maturity and competence in them, then return their property (Surah al-Nisa', 4 : [6]).⁸

In line with the verse above, Allah SWT also gives orders to parents/guardians to immediately marry off their children when they reach maturity and are ready. As the Quran in the surah of An Nuur verse 32 says that "And marry those who are alone, among you and those who are worthy (to marry) from your male slaves and your female slaves. if they are poor, Allah will enable them with His gift, and Allah is Extensive (His gift) and All-Knowing."⁹

Aisha was six years old when she married the Prophet, while the Prophet was 36 years old. The age difference shows that Islam does not have a fixed age of marriage. As the hadith of the Prophet:

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، وَإِسْحَاقُ بْنُ إِبْرَاهِيمَ، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَأَبُو كُرَيْبٍ، قَالَ
يَحْيَى، وَإِسْحَاقُ: أَخْبَرَنَا، وَقَالَ الْأَحْزَانُ: حَدَّثَنَا أَبُو مُعَاوِيَةَ، عَنِ الْأَعْمَشِ، عَنِ إِبْرَاهِيمَ،

⁶ Kompas, "Pengajuan Dispensasi Perkawinan Diperketat – Free acces," 2019.

⁷ Kompas. "Pengajuan Dispensasi Perkawinan Diperketat – Free acces," 2019.

⁸ Kementerian Agama Republik Indonesia, *Al-Qur'an Dan Terjemahnya, Al-Qur'an Dan Terjemahnya*, 2010.

⁹ Al-Qur'an, An-Nuur. (24): 32

عَنِ الْأَسْوَدِ، عَنِ عَائِشَةَ، قَالَتْ: تَزَوَّجَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا بِنْتُ سِتٍّ، وَبَنِي بِي وَأَنَا بِنْتُ تِسْعٍ، وَمَاتَ عَنِّي وَأَنَا بِنْتُ ثَمَانَ عَشْرَةَ¹⁰

Meaning: "It has been told to me Yahya bin Yahya, Ishaq bin Ibrahim, Abu Bakr bin Abi Syaibah and Abu Karib. Yahya and Ishaq have said: It has been told to us and al-Akhrani said: Abu Mu'awiyah from al A'masyi from al Aswad from 'Aisha RA has been told to me that: Rasulullah SAW married me when I was six years old and lived with me when I was nine years old, and the Prophet died when I was 18 years old". (Hadits by Muslim).

Sayyidatina Aisyah, the beloved wife of the Prophet SAW. Through her noble speech, the Ummah (People/community) of the Prophet Muhammad SAW could know the holy instructions of the Prophet. There are 2,210 hadiths narrated by imams from Ayesha *radhiyallahu 'anha* and it is countless how many clues we get through the daughter of Abu Bakr ash-Siddiq. Behind her gentleness, she did not hesitate to give a stern rebuke or even stand on the front lines of war.

The hadith about the marriage of the Prophet Muhammad with Siti 'Aisyah becomes the basis for teenagers to get married even though they do not consummate or live together. This helps to add to a sense of responsibility for the couples who have initially been just waiting for their parents to fulfill their daily needs. By having a spouse, they have to be persistent to get what they want to prepare for their happy life in the future.¹¹

In the literature of Islamic jurisprudence of Imam Shafi'I school of thought (Mazhab), the *Kitab* (book) of Al-Taqrīb by Ahmad Bin Husein (Abu Syuja') and in the *syarah* (explanation), the *Kitab* (book) of Fathul Qorib al-Mujib, by Sheikh Muhammad bin Qosim, it is emphasized that marriage according to Islamic law is a *sunnah*, men are allowed to married 4 women with various strict requirements, and the conditions for marriage are *baligh* (this is a non-negotiable age limit in Islamic law), sane, Muslim and independent.

Marriage is not only seen in terms of age; the *sadud dariah* (medium to achieve something) perspective certainly needs to be studied in depth. It also must be seen in its consequences. Lack of mental and economical preparation of a married couple can end in divorce. Based on religion or sharia, child marriage is allowed because the constitution is built on the spirit of

¹⁰ Husain bin Muslim Hajjaj, *Shahih Muslim*, Juz I, Bandung: Dahlan, t.th,

¹¹ Fauzil Mohammad Adhim, *Mencapai Pernikahan Barakah*, Yogyakarta: Pustaka Pelajar, 1998.

religion. Although ideally, it should be subject to the Marriage Law, which sees contextual benefits, with an age limit of 25 years for men and 20 years for women¹². The interpretation perspective of the classical Ulema, which follows the Prophet Muhammad, SAW, states that men are 25 years old and women below him with a difference between 5 years to 6 years. At the age of 25 years, men are expected to be independent to provide for the family (actually, the mature age for men is 40 years, intellectually). The age difference between men and women exists because men as heads of families must be more mature than women to lead in the household. The men must protect, nurture, give a sense of peace to the family. If the wife misbehaves, the husband is obliged to give advice, but they can win an argument for themselves if they are the same age. Looking at the texts (sources), Islam does not have an age limit for marriage, but there is a limit to determine the signs of puberty in Indonesia. At the age of 15, the woman must have reached puberty. In the *fiqh* (Islamic jurisprudence), there is a discussion on women who get menstruation at 12 years old.¹³

Al-Qur'an does not explicitly explain the age limit for marriage, but it does not mean that Islam allows child marriage. There is a standard on maturity and *baligh* (puberty) in Islam. Maturity is when the couple is ready to carry out their respective duties in the family. Surah an-Nisa 'verse 6,¹⁴ has explained that a person who marries must be of the age of puberty, a person who is of age is categorized as being able to navigate the household. In addition, the person should be competent in spending wealth. It is all shown in the history of Siti Aisyah, who married the Prophet at the age of 6 years and moved her residence at the age of 9 years.¹⁵

Problems in society for parents who continue to set aside Law no. 16 of 2019 are that they use Islamic law's pretext to justify their actions. By fulfilling the provisions of Article 2 paragraph (1) of the UUP, which is by using the legal requirements of marriage under religious provisions.

¹² Umi Supraptiningsih and Erie Hariyanto, "Perkawinan Anak: Pandangan Ulama Dan Tokoh Masyarakat Pamekasan," *Jurnal Harkat : Media Komunikasi Gender*, (2019), p. 100–101, <https://doi.org/10.15408/harkat.v15i2.13466>.

¹³ Umi Supraptiningsih and Erie Hariyanto, "Perkawinan Anak: Pandangan Ulama Dan Tokoh Masyarakat Pamekasan," *Jurnal Harkat : Media Komunikasi Gender*, (2019), p. 100–101, <https://doi.org/10.15408/harkat.v15i2.13466>.

¹⁴ Sri Rahmawati, "Batas Usia Minimal Pernikahan (Studi Komparatif Hukum Islam Dan Hukum Positif)," *Syakhsia : Jurnal Hukum Perdata Islam*, (2020), <https://doi.org/10.37035/syakhsia.v22i1.2918>.

¹⁵ Sri Rahmawati, "Batas Usia Minimal Pernikahan (Studi Komparatif Hukum Islam Dan Hukum Positif)," *Syakhsia : Jurnal Hukum Perdata Islam*, (2020), <https://doi.org/10.37035/syakhsia.v22i1.2918>, <http://jurnal.arraniry.ac.id/index.php/samarah>

Increase of Marriage Age

Increasing the age of marriage certainly has a very noble goal: to create a *sakinah, mawaddah warohmah* (happy, loving, and supportive), and have well-educated and healthy children. Increasing the age limit of marriage is important because of several factors:

1. Sexual and Reproductive Health

Sexuality and reproductive health are defined as a healthy physical and psychological condition of a teenager. It also means that the person is not having an unexpected or unplanned pregnancy, risky abortions, venereal diseases (STDs) including HIV/AIDS, and all forms of sexual violence and coercion.¹⁶ The needs of adolescents are different than adults. Risks that may occur to adolescents are pregnancy, forced abortion, sexually transmitted diseases, sexual violence, and lack of information and health services. This happens because several things that cannot be separated, including young marriage and sexual intercourse, lifestyles influenced by social media. Young girls do not have enough knowledge of sexual intercourse. The level of education and working environment is still deficient. According to Hanum, as quoted by Nuzliati Tahir Djama, for young women in rural areas, the first menstruation will usually be immediately followed by marriage which puts them at risk of pregnancy and early labor (delivery).¹⁷

Reproductive health understanding is about efforts to maintain the health of adolescent reproductive organs, prevention of free sex, and the consequences of child marriage. Therefore, it takes appropriate communication information education to raise awareness, good knowledge, willingness, and well-cultured behavior.¹⁸

Child marriage is not only a problem in Indonesia but also a concern for the international world.¹⁹ In Indonesia, girls prefer to be concerned about not being a virgin, getting pregnant before marriage, which is becoming a subject of bullying by the community over sexual health conditions related to

¹⁶ Nuzliati Tahir Djama, "Kesehatan Reproduksi Remaja," *Jurnal Kesehatan Poltekkes Ternate*, (2017), <https://doi.org/10.32763/juke.v10i1.15>.

¹⁷ Nuzliati Tahir Djama, "Kesehatan Reproduksi Remaja," *Jurnal Kesehatan Poltekkes Ternate*, (2017), <https://doi.org/10.32763/juke.v10i1.1>.

¹⁸ Sri Madinah, M. Zen Rahfiludin, and Sri Achadi Nugraheni, "Pengaruh Pendidikan Kesehatan Reproduksi Terhadap Tingkat Pengetahuan Tentang Pendewasaan Usia Perkawinan (Studi Pada Remaja Di SMP Nu 06 Kedungsuren Kabupaten Kendal)," *Jurnal Kesehatan Masyarakat (e-Journal)* 5, no. 1 (2017), p. 332.

¹⁹ "Pernikahan Anak Berdampak Pada Kesehatan Reproduksi, Universitas Gadjah Mada."

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reproductive health and sexual health²⁰. The point is that the knowledge about reproductive health is essential for health service providers and the government and essential for stakeholders to participate in suppressing female adolescent reproductive health issues.²¹

2. Economic Factors

It is often the reason that parents rush to marry off their children because they want to solve economic problems or alleviate poverty. Parents assume that having children married reduces the family's economic burden, the task of parents will be reduced from an economic point of view. This reason is wrong because child marriage results in the opposite outcome. In fact, ill-prepared marriages and the lack of maturity in the household cause poverty. The results of research at the Center for Population and Policy Studies UGM, Basilica Dyah Putranti, states that child marriage in Indonesia is influenced by the marriage tradition of the local community. Although there have been many changes in social value, the extended family still has a vital role in decision-making. The factor that causes child marriage is poverty. Girls are often considered as an economic burden in the household. So that by marrying a daughter, it is hoped that it ease the parents economically. Parents immediately marry off their daughters after their first menstruation. Hastening to marry off their daughters actually creates new poverty because they continue to depend on their partners and parents for their lives. Especially if they have children, it burdens the family's economy even more.²²

3. Domestic Violence

Maturity in thinking and the ability to solve household problems are the main factors for the family's success. The ability of a partner to solve problems that occur in the household is influenced by the maturity of the marriage itself. Husband and wife understand and perform their rights and obligations so that there is a balance in the family. Once children are born into the family, husband and wife also work hand in hand in educating, supervising and providing the best education for their children's future.

The couple is unable to build a household if they get married without mental preparation and maturity. If it happens, the couples will be blaming

²⁰ Ika Harni Lestyoningsih, "Implementasi Model Kesehatan Reproduksi Berbasis Masalah Pada Remaja Putri Di Indonesia Tahun 2018," *Jurnal Berkala Kesehatan*, (2018), <https://doi.org/10.20527/jbk.v4i2.5659>.

²¹ Ika Harni Lestyoningsih, "Implementasi Model Kesehatan Reproduksi Berbasis Masalah Pada Remaja Putri Di Indonesia Tahun 2018," *Jurnal Berkala Kesehatan*, (2018), <https://doi.org/10.20527/jbk.v4i2.5659>.

²² "Pernikahan Anak Berdampak Pada Kesehatan Reproduksi, Universitas Gadjah Mada."

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each other, judging each other, and looking for their justification. Husbands who feel their self-esteem is being underestimated do not hesitate to commit violence and even leave their wives and children (abandonment). Marriage requires the partner's readiness both physically and non-physically to have a perfect household; also, the position of husband and wife is equal. There are several causes of domestic violence against wives in the family including: 1. The level of religious understanding (Islam), 2. The influence of patriarchal culture, some call it paternalistic culture, 3. The influence of deep-rooted habituation, sticking to tradition, 4. The wife does not report the violence to the authorities, 5. Perceptions that violence in the household should not be exposed because it is a family problem, not a social problem.²³

Having marriage creates a relationship of responsibility between the spouses, their respective extended families, and their offspring. The risk of child marriage: As a result of ill-prepared marriages and the spouses who do not understand their respective duties, physically and mentally immature and tend to have high selfishness.²⁴

Domestic violence is more common in the household in various forms such as physical, psychological, economic violence, etc. There is a stereotype in a society where men are only proven to be the women's leaders in the family when they can show their superiority. Their superiority is often shown and executed in the form of violence. Therefore, it is not surprising that violence against women in the household continues to increase. This phenomenon shows the increasing number of causes of divorce in Indonesia, one of which is caused by domestic violence committed by husbands to wives.²⁵

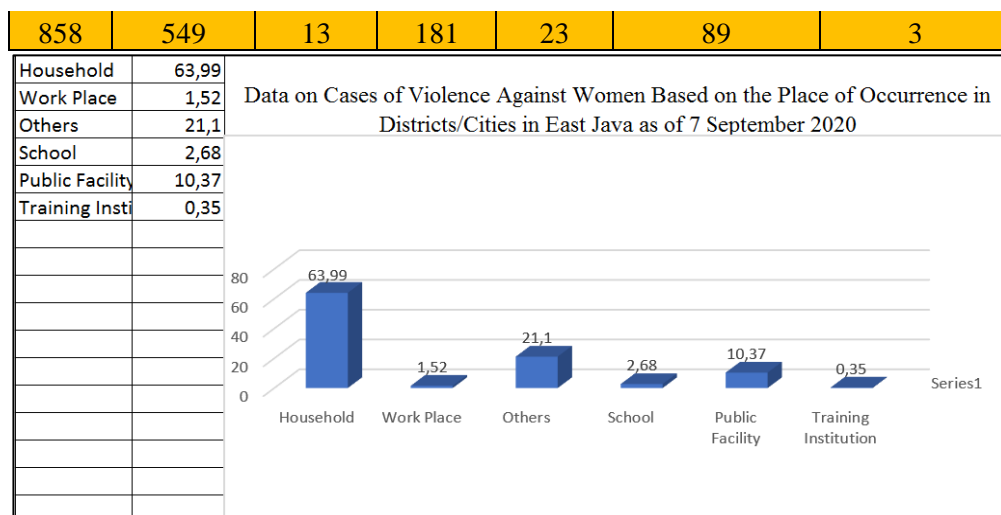
Table 1: Data on Cases of Violence Against Women Based on the Place of Occurrence in Districts/Cities in East Java as of 7 September 2020

Cases	Household	Workplace	Place			
			Others	School	Public Facility	Training Institution

²³ Khoiruddin Nasution, "Menghapus Kekerasan Dalam Rumah Tangga Dengan Kajian Normatif-Yuridis: Analisis Interdisipliner Dengan Pembedaan Nash Objektif Dan Temporal," *JURIS (Jurnal Ilmiah Syariah)*, (2018), <https://doi.org/10.31958/juris.v17i1.1000>.

²⁴ Rina Yulianti, "Dampak Yang Ditimbulkan Akibat Perkawinan Usia Dini," *Jurnal Pamarator: Jurnal Ilmiah Universitas Trunojoyo* 3, no. 1 (2010), p. 4–5.

²⁵ St. Rahmawati, "Mainstreaming of Gender Equality in Islamic Family Law: Opportunities and Challenges," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, (2020), 372, <https://doi.org/10.22373/sjhk.v4i2.8110>. <http://jurnal.arraniry.ac.id/index.php/samarah>



4. Education Continuity

By increasing the age of marriage, it is hoped that children's education can be completed even to the university level. At least with higher education, the maturity in managing the household can be achieved. Marriage preparations will also be more well-prepared, especially in providing education and care for children. Recently, the trigger for child marriage, among others, is the low education of children and parents. If the child has dropped out of school, their parents marry them off because they have no activities. In Lombok, West Nusa Tenggara, parents usually do not know about their child's marriage plans and refuse to marry them off. If it happens, the child then does *merarik* (elopement), in the end, the parents approve the marriage. Another incident occurred when the child was already preparing for marriage, by parents' approval, but the child had dropped out of junior high school due to economic factors, so the parents decided to approve their marriage.²⁶

Once education becomes the primary indicator, it affects many things. Education creates a more mature person, and marriage is always be planned so that management of the family also becomes more prepared. Education is essential not only for children or couples who get married but also for parents. It often happens to parents who are not or less educated. They do not want too much for their children in terms of education. It is pretty simple for less-educated parents; they assume that the child, especially girls, is going to go

²⁶ Siti Nurul Khaerani, "Faktor Ekonomi Dalam Pernikahan Dini Pada Masyarakat Sasak Lombok," *Jurnal Qawwam*, (2019), <https://doi.org/10.20414/qawwam.v13i1.1619>. <http://jurnal.arraniry.ac.id/index.php/samarah>

back to the *kitchen*, *the well*, and *the bed* (back to take care the household). After graduating from elementary school or *Madrasah Ibtidaiah* (Islamic elementary school) or Islamic boarding school, women tend to just wait to get married, this is because they have no more activities. In fact, there are many suggestions that after leaving Islamic boarding school, the child should get married immediately in order to maintain chastity after leaving the boarding school.

According to the local community's culture, especially in rural areas, the first proposal must be accepted to avoid being "sangkal (denied)." If the woman has been proposed, then men have various reasons to ask for marriage. The women are afraid of failure, and the women are usually being "*nadheh*" (Madurese: given up) and do what men say. The women must obey. This is also the cause of child marriage. In addition, it is very taboo to have a daughter that no one proposes, so less educated parents immediately marry off their children, regardless of the impact for the children's future. There is another interesting tradition, where child marriage occurs because of the will of parents or grandfather. To maintain family relations, with the term "rather than guarding someone else's yard it is better to take care of one's own"; Likewise, child marriages happen because of remuneration. The boy is sent to school and his tuition is paid but he is betrothed to the child of or nephew of the donor.²⁷

Academicians argues that there are some reasons for child marriage. One reason child marries are still rife is that *Madrasah Tsanawiah*, *Madrasah Aliyah* (Islamic Junior and Senior high school), and and Islamic boarding schools still only teach classical *fiqh*. Likewise, there are differences in the age limit of children according to *fiqh*, the Marriage Law, and the law on population. People prefer *fiqh* because of the legitimacy of the Quran and Hadith, and there is no age limit.²⁸

The youth's social life is getting further away from religious norms, so parents are worried. Cases of sexual violence, sexual intercourse both among adults and children are widespread. This is one indicator of why child marriage occurs.

Some argue that the most dominant factor causing child marriage in rural communities is local community leaders. They oversee the marriage

²⁷ Umi Supraptiningsih and Erie Hariyanto, "Perkawinan Anak: Pandangan Ulama Dan Tokoh Masyarakat Pamekasan," *Jurnal Harkat: Media Komunikasi Gender* 15, no. 2 (2019), p. 96–105.

²⁸ Supraptiningsih and Hariyanto, "Perkawinan Anak: Pandangan Ulama Dan Tokoh Masyarakat Pamekasan."

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contract both formally and unofficially (*sirri*). Of course, parents' will in all of this is more dominant, and some have even been paired since their children were small. Moreover, this has become a habit in rural communities.²⁹

The responsibility of parents in terms of education is pivotal. Parents can provide the proper education, psychological education, and spiritual guidance because children are gift from God that parents need to be responsible for.³⁰

5. The Contestation in The Increase of Marriageable Age

The debate on the increase of the age of marriage has been going on for quite a long time, based on Article 7 of the UUP (marriage law), which states that the age of marriage is 16 years for women and 19 years for men. Moreover, the enactment of Law no. 16 of 2019 concerning amendments to the UUP raises the marriage age for both men and women to 19 years. Violation of the age limit for marriage has been long before Law no. 16 of 2019 was stipulated. The couple can get married through *nikah sirri* (unregistered marriages). By having *nikah siri*, they do not think of long-term effects. What if in their marriage they have a child. For them, the answer is easy; they can apply for *isbat* (marriage legalization) without thinking whether the marriage *isbat* is granted or not. The legal consequences of unregistered marriages have never been a concern. They do not consider protecting the wife and children in a legal event (husband dies or abandonment). The basis for groups who are against maturing the age of marriage, first, they are purely based on Islamic law and UUP on the provisions of article 2 paragraph (1) alternatively. The Qur'an never mentions the age limit for marriage. As emphasized in QS. An Nuur verse 32, Qur'an asserts that someone must be ready and capable if he is going to get married. Islam does not have an age limit, but in Indonesia, there is signs to determine the puberty. At the age of 15, the woman must have reached puberty, even the case where the woman who is menstruating at the age of 12 is found in *fiqh* books. Second, the concerns on the social life of teenagers are also the background of the rejection of the new marriageable age. The use of social media during the COVID-19 pandemic, from various reports in the regions, showed that juvenile delinquency is increasing and even cases of sexual

²⁹ Supraptiningsih and Hariyanto, "Perkawinan Anak: Pandangan Ulama Dan Tokoh Masyarakat Pamekasan."

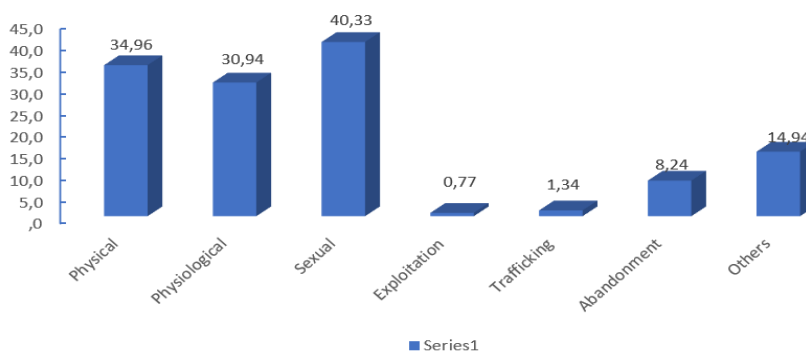
³⁰ Asman Asman, "Parental Rights and Obligations to Children in the Era of Industrial Revolution 4.0 (Islamic Family Law Perspective)," *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam*, (2020, 248–49), <https://doi.org/10.22373/sjkh.v4i1.6899>.
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violence are recorded at the top of the list.³¹ These things are used as a basis in opposing the new marriageable age.

Table 2: Data of Violence Against Women and Children By Type of Violence In East Java Per 7 September 2020

Cases	Type of Violence						
	Physical	Physiological	Sexual	Exploitation	Trafficking	Abandonment	Others
1.044	365	323	421	8	14	86	156

DATA OF VIOLENCE AGAINST WOMEN AND CHILDREN BY TYPE OF VIOLENCE IN EAST JAVA PER 7 SEPTEMBER 2020



The group that supports the increase of marriageable age-based their opinion on several impacts that occur after marriage. *First*, immaturity, not having enough knowledge or religious knowledge for both husband and wife about rights and obligations, causing fights and domestic violence can lead to divorce. They do not have the knowledge to resolve conflicts within the household. Educating and raising children in their immature marriage is also a contention source. Parental intervention in marriage is also a trigger for quarrels, all of which can lead to divorce..

Second, education is neglected, and drop out of school. For various reasons, they do not continue their education; because of economic factors, they do not have the money to go to school. It also because they are lazy to continue their education, so instead of being unemployed or not having activities, it is better for them to get married

Third, the economic factor of parents. Parents think that by marrying off their children, their economic responsibility is reduced because their daughter is taken care of by her husband. As it turned out, the husband does

³¹ “Pandemi Covid-19 Picu Lonjakan Kasus Kekerasan Terhadap Perempuan Di Seluruh Dunia - Tribunnews,” n.d. <http://jurnal.arraniry.ac.id/index.php/samarah>

not have a job or source of income, so that in the end, it becomes an additional burden for parents.

Fourth, lack of knowledge on sexual and reproductive health. In society, it is a shame if their child gets pregnant out of wedlock, becomes an old virgin, while on the other hand, they have never been given a sufficient understanding of reproductive health. Even discussing reproductive health is considered taboo. With more sophisticated social media, teenagers get information about sexuality and reproductive health issues through mass media or from their friends.³²

As a result, ill-prepared marriages and lack of knowledge cause high maternal and child mortality and children born in a state of *stunting*.³³ Some of the causes of stunting: lack of balanced nutritional intake during the golden period. Poverty, sanitation, and the environment are also factors causing stunting in children under five years. Mother's education and knowledge, which is still minimal, greatly contribute to stunting in toddlers. The socio-economy of the community, the lifestyle of pregnant women, parenting and environmental conditions, and geographical conditions (crowded houses, weather conditions, and inadequate sanitation), are among the triggers for stunting.³⁴

In analyzing the pros and cons of the new marriageable age in Indonesia, the author uses the theory from Pierre Bourdieu with the method of discourse analysis. The contestation described by Bourdieu usually expresses the contradiction between "civilized" and "primitive." Facts about the relationship between anthropologists and their object of study. To combine structuralism with existentialism in the social and cultural sciences, Bourdieu developed an approach called genetic structuralism. The major themes of contestation in the analysis of this study can be related to habitus, capital, and arena. Operationally, Pierre Bourdieu's theory can be directed in analyzing the practice of everyday life without ignoring the structure and subject. Likewise, by observing directly the opposition that comes from outside in culture, including observing the phenomenon of contestation in taking a pro and con stance on products issued by the government.³⁵

³² Yessi Harnani, Hastuti Marlina, and Elmia Kursani, *Teori Kesehatan Reproduksi*, Yogyakarta: Deepublish, 2019.

³³ *Stunting* or fail to grow

³⁴ Mohammad Teja, "Stunting Balita Indonesia Dan Penanggulangannya," *Pusat Penelitian Badan Keahlian DPR RI*, 2019.

³⁵ Mohammad Adib, "Agen dan Struktur dalam Pandangan Piere Bourdieu" I, no. 2 (2012), p. 102-104.

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In social contestation, the pros and cons are unavoidable. Those who have a balanced capital and habitus continue to take positions and defend themselves individually or make structural changes with groups that do not have capital.³⁶ Understanding and action-taking of the community against the increase in the age of marriage are still strong. They still vigorously defend their argument with various justifications.

6. The KUA and the Religious Courts' Standpoint

Responding to the pros and cons of contestation in the increase of marriageable age, the Office of Religious Affairs (KUA) and the Religious Courts indeed take action in accordance with the law as the basis in deciding the application for Dispensation for Marriage. Article 7 paragraph (4) of Law no. 16 of 2019 states that "The provisions regarding the condition of a person or both parents of the prospective bride and groom as referred to in Article 6 paragraph (3) and paragraph (4) shall also apply to the provisions regarding the request for dispensation as referred to in Article 6 paragraph (6)".

Couples who have not reached the minimum age of marriage can get married if the Judicial Institution grants them marriage dispensation according to the regulations. There are no detailed and technical regulations regarding the procedure for adjudicating marriage dispensation. However, to accommodate judicial duties, the Indonesian Supreme Court issued PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation. The objectives are: 1) the principle of the best interest of the child, the principle of the right to life and growth of the child, the principle of respect for the opinion of the child, the principle of respect for human dignity, the principle of non-discrimination, gender equality, the principle of equality before the law, the principle of justice, the principle of benefit. and the principle of legal certainty (Article 2); 2) Ensuring the implementation of a justice system that protects children's rights; 3) Increasing parental responsibility in the context of preventing child marriage; 4) Identifying whether or not there is coercion behind the submission of a marriage dispensation application; and 5) Realizing the standardization of the process of adjudicating applications for dispensation for marriage in court. The function of the marriage dispensation is to give permission to the parents of the prospective bride and groom to marry off their children even if they are

³⁶ Adib, Mohammad Adib, "Agen dan Struktur dalam Pandangan Piere Bourdieu" I, no. 2 (2012), p. 102-104..
<http://jurnal.arraniry.ac.id/index.php/samarah>

not 19 years old yet.³⁷ Marriage dispensation can only be granted if it is based on legal facts and proven in court after considering various aspects, both sharia, juridical, sociological, psychological, and health. The marriage is urgent to take place in order to achieve the goals of Islamic law which is to maintain the safety of offspring (*hifzhu al-nasi*), without endangering the safety and lives of children who are given a marriage dispensation (*hifzhu al-nafs*) and the continuity of their education (*hifzhu al-aql*).³⁸

The Supreme Court is committed to achieving the target of reducing child marriage from 11.2% in 2018 to 8.74% in 2024 and 6.9% in 2030.³⁹ In PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Cases, the judiciary acts as the last door for the prevention of child marriage by applying the principles of the best interests of the child, respect for children's opinions, non-discrimination, gender equality and equality before the law in resolving marriage dispensation cases. The Supreme Court recorded an increase in the number of marriage dispensation cases decided by the Court from 23,126 cases (2019) to 35,441 (2020)⁴⁰.

Conclusion

From the discussions above, it can be concluded, as follows: The new limit for marriageable age after the enactment of Law no. 16 of 2019 raises the contestation of pros and cons among the public. For those who are against, they base their opinion on the validity of the marriage based on the provisions of Article 2 paragraph (1) of the UUP only, and Islam does not regulate the age limit for marriage but only mentions maturity. Maturity here means puberty, this is also supported by scholars who are willing to marry off couples who have not met the age of marriage, on the grounds of avoiding promiscuity (adultery). As for the pro new marriage age group, they base their justifications on the risks that the couples face due to their lack of maturity in the household, resulting in divorce, economic problems/poverty, neglected education resulting in dropout and reproductive health, which causes maternal and child deaths. There The group takes several steps against the new regulation on the age of marriage. First, by committing unregistered marriage at the beginning and when they meet the requirements for marriage, then

³⁷ H. Hambali and Nil Khairi, "Dispensasi Kawin Menurut Perma No. 5 Tahun 2019 Di Pengadilan Agama," (2019).

³⁸ Rio Satria, "Dispensasi Kawin Di Pengadilan Agama Pasca Revisi Undang-Undang Perkawinan," *Journal of Chemical Information and Modeling*, (2019). p. 18.

³⁹ Humas Mahkamah Agung RI, "Komitmen Mahkamah Agung Mencegah Perkawinan Anak," Humas Mahkamah Agung RI, n.d.

⁴⁰ H PR of the Supreme Court of the Republic of Indonesia.

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legally marry or register their marriage in the KUA. If they already have children, then submit an application for marriage *istbat* at the Religious Court. The second way, in accordance with the provisions of the Marriage Law, is by applying for a marriage dispensation to the Religious Court. The KUA and the Religious Courts are at the forefront in implementing the provisions of Law Number 16 of 2019. Surely, there are opportunities to accept applications for marriage dispensations based on Perma No. 5 of 2019 and *Istbat* marriage with strict conditions or greatly emergency conditions.

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