



Causes of the Non-fulfilment of Article 1 of the Marriage Law in Underage Marriage

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Abstract

Article 1 of Law Number 1 of 1974 on Marriage defines marriage as a physical and spiritual bond intended to form a happy and lasting family, yet underage marriages in Batudaa District frequently end in divorce. This article identifies the factors that cause the purpose set out in Article 1 not to be attained in underage marriages. The study uses normative-empirical legal research with statutory and case approaches; secondary legal materials are combined with field data obtained from parties to underage marriages, and the materials are analysed deductively. The study finds that the purpose of marriage under Article 1 has not been realised in Batudaa District because of three recurring factors: poor communication between spouses, the failure of husband and wife to discharge their respective rights and obligations, and interference by parents or parents-in-law. These factors are aggravated by the emotional immaturity of spouses who married below the minimum age set by Law Number 16 of 2019, which indicates that the raising of the marriageable age must be accompanied by pre-marital guidance if the objective of Article 1 is to be met.

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1. Introduction

The constitution is the highest agreement of the founders of the state. Although it was tested when the 1945 Constitution was replaced by the Constitution of the Republic of the United States of Indonesia in 1949, recognition of the territories under the auspices of the Indonesian State was maintained.¹ An absolute requirement for state sovereignty is the existence of a society that obeys the constitution and its government.² Because the essence of the constitution is the conception of the state which is the basis and limitation of the constellation of the state administration system.³ Therefore, in legal politics, a legal discovery and new law-making that is in accordance with the goals of the State is a value that must be implemented in order to achieve legal supremacy and justice.⁴

In our daily lives, even in society, in order to make ends meet, there are often crimes and violations committed by certain people and people who threaten some members of society, which in law are known as criminal acts.⁵ At present, not only the crime rate or quantity of crime is increasing but also the type of crime or quality has developed rapidly in Indonesia. Criminal sanctions are seen as an effective solution in tackling this problem. Criminal sanctions are a manifestation of the state's responsibility to maintain security and order as well as efforts to protect the law for its citizens. This is a logical consequence of the concept of forming a state which, according to J. J. Rousseau, is based on community agreements. Furthermore, the people agreed to enter into a noble agreement (*modus vivendi*) which was set forth in a basic law in the form of the state constitution.⁶ Legal protection is really needed because of efforts to integrate various needs in associations so that there are no conflicts between needs and can enjoy all the rights granted by law.⁷ The state is firmly obliged to try to fulfill the rights of every citizen.⁸

¹ Novendri M. Nggilu, "TINJAUAN YURIDIS PENGATURAN SANKSI PIDANA DALAM PERATURAN DAERAH PROVINSI GORONTALO," *Lambung Mangkurat Law Journal* 5, no. 2 (2020): 109–21, 110.

² Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China ' s Policy towards Uighurs and Its Implications by International Law Aspects," *Jambura Law Review* 3, no. 01 (2021): 55–71.

³ Ahmad dan Novendri M. Nggilu Fakultas, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution of the Constitution Through the the Principle of the Guardian of the Constitution," *Jurnal Konstitusi* 16, no. 4 (2019): 785–808.

⁴ Mohamad Hidayat Muhtar, "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum," *Jambura Law Review* 1, no. 1 (2019): 68–93, <https://doi.org/10.33756/jalrev.v1i1.1988>.

⁵ Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57–76, <https://doi.org/10.33756/jlr.v3i0.10984>.

⁶ Ramdan Kasim, "Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (Overspanning van Het Strafrecht)," *Jambura Law Review* 2, no. 1 (2020): 1–29, <https://doi.org/10.33756/jalrev.v2i1.2402>.

⁷ Jufryanto Puluhulawa et al, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site / Japanese Cargo Wreck Abstract Laut Mempunyai Makna Besar Bagi Indonesia, Sebagaimana Dijelaskan Shanti Dwi Kartika Bahwasannya : " Laut Se," *Jurnal Reformasi Hukum* 24, no. 2 (2020): 189–208.

⁸ Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations," *Jambura Law Review* 3, no. 02 (2021): 365–77.

According to the report of Statistics Indonesia, the number of divorce cases in the country reached 447,743 cases in 2021, an increase of 53.50% compared to 2020 which reached 291,677 cases. This report shows that wives are more likely to file for divorce than husbands. A total of 337,343 cases or 75.34% of divorces occurred due to contested divorce, namely cases where the lawsuit was filed by the wife which had been decided by the Court. Meanwhile, as many as 110,440 cases or 24.66% of divorces occurred because of talak divorce, namely cases whose petition was filed by the husband which had been decided by the Court. The data above makes us concerned how many married couples end their relationship by divorce. Divorce is the only way out of an answer when a family can no longer make a place to get peace, warmth and harmony. Even though there may still be other ways to solve it so that there is no divorce. Because of that Mubarok said that throughout the journey of family life there are always deficiencies that are found and problems that are faced. Family life is not a mathematical problem that is completely certain but a social problem that is always changing.⁹

Harmony and happiness in marriage are not obtained in a short time, but through a process during which it lasts. Umberson said the relationship in marriage is not static, but changes and develops throughout life. Individuals who are happy with their marriage show higher life satisfaction.¹⁰ Therefore, everyone has the right to have a happy marriage. The number of divorces which continues to show an increase from year to year really needs to be watched out for, but the percentage is still greater for those who are not divorced. Based on this assumption, it means that there are still families who can maintain their marriage and find happiness. In other words, the divorce itself could have been avoided.

Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in One Almighty God. Thus reads the provisions of Article 1 of Law 1 of 1974 concerning Marriage. Law 1 of 1974 concerning Marriage has the consideration that in accordance with the philosophy of Pancasila and the ideals for fostering national law, it is necessary to have a Law concerning Marriage which applies to all citizens. Marriages that are carried out in accordance with religious regulations and laws and regulations, it is certain that good families will be formed, and the country will also be good.¹¹ Marriage is not only a very noble way to regulate household life and offspring, but to love one another from both sides and to all families so that they become one in all matters, help each other in doing good and preventing all kinds of things. crime, other than that by marriage a person will be preserved from the destruction of his lust.

The view that is understood by most of the opinions of the marriage jurists is a bond that aims to justify promiscuity and justify the relationship between husband and wife in order to have children. And marriage can also be said to be a sacred agreement between a man

⁹ Achmad Mubarok, *Psikologi Keluarga* (Bina Rena Pariwisata, Cetakan 6. Jakarta, 2005).

¹⁰ Barbara A. Mitchell, "Midlife Marital Happiness and Ethnic Culture: A Life Course Perspective. *Journal of Comparative Family Studies*," *Proquest Sociology* 41, no. 1 (2010): 167.

¹¹ Abd. Shomad, *Hukum Islam Penormaan Prinsip Syariah Dalam Hukum Indonesia* (, Kencana Prenada Media Group, Jakarta, 2010).

and a woman to form a happy family. The agreement is stated in the form of consent and consent is said in an assembly, both directly by those concerned, namely the prospective husband and prospective wife, if both are fully entitled to themselves according to law or by those who are authorized to do so. If this is not the case, for example in a state of insanity or underage, their legal guardians may act for them.

The purpose of marriage is to form a family that is eternally happy and prosperous, therefore this law adheres to the principle of making it difficult for divorce to occur. To allow for a divorce, there must be certain reasons and must be done before the court hearing. The rights and position of the wife are in balance with the rights and position of the husband both in domestic life and in social relations, so that in this way everything in the family can be negotiated and decided jointly by the husband and wife.¹²

In Article 2 of the Compilation of Islamic Law (KHI) it is stated that marriage according to Islamic law is a marriage, namely a very strong contract or *mitsaqan ghalidzan* to obey Allah's commands and carrying it out is worship. Every marriage agreed upon by two people must be able to form a happy family in the afterlife because that is the dream of every person who is born in this world.

The principles of marriage¹³ contained in Law Number 16 of 2019 concerning Amendments to Law number 1 of 1974 concerning Marriage are as follows:

1. Voluntary principle.
2. The principle of family participation.
3. The principle of divorce is complicated.
4. The principle of monogamy (polygamy is limited and tightened).
5. The principle of maturity of the bride and groom (age of marriage).
6. The principle of improving and increasing the degree of women.

Based on the principles contained in the Marriage Law above, the author will focus on discussing the principle of maturity of the prospective bride and groom who will carry out their marriage regarding the age limit in marriage which is one of the important principles, because the marriage law has regulated and clear It is mentioned regarding the age limit for marriage which explains that every prospective husband and wife who wants to enter into a marriage contract must be physically and psychologically mature or physically and spiritually ready.¹⁴

So that marriage towards a prosperous family requires not only physical and psychological preparation but also the maturity of the female reproductive organs to have sexual intercourse, get pregnant, give birth and breastfeed. In addition, it also requires social, economic, emotional and responsibility readiness, thoughts and values of life as

¹² Beni Ahmad Saebani, *Perkawinan Dalam Hukum Islam Dan Undang-Undang: Perspektif Fiqh Munakahat Dan UU No.1 Tahun 1974 Tentang Poligami Dan Problematikanya* (Pustaka Setia,Bandung, 2008).

¹³ Undang-Undang, "Perkawinan No.1 Tahun 1974," preprint, n.d.

¹⁴ Hilman Hadikusuma, *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama* (Mandar Maju, Bandung, 1990).

well as beliefs or religion will cause families formed in such circumstances to have quite large and convincing shares to achieve a level of happiness and prosperity in life in their family, not just love. trapped by the cradle of romantic love which resulted in them being forced to marry at a young age.

Realizing a prosperous marriage, namely a peaceful and happy family, the husband and wife need to play a major role in creating a prosperous family, including increasing knowledge about how to foster family life in accordance with religious demands and the provisions of social life so that the husband and wife are able to create full stability of household life. with peace and quiet.¹⁵

Based on the information above, especially based on article 1 of Law Number 1 of 1974 concerning marriage, it is clear that marriage is a physical and spiritual bond that is meant to get happiness. A true marriage aims to form a *sakinah*, *mawadah* and *warahmah* family, and can strengthen relations between the families of the two parties, because those who are married are not just the bride and groom, but also the families of both parties who are married. So the inability of the bride and groom to maintain household harmony caused by the economy also has an impact on the family, especially parents.

2. Method

This type of research is empirical normative research, using a statutory approach and a case approach. This study uses data analysis techniques with deductive logic, deductive logic or processing legal material in a deductive way, namely explaining something that is general in nature and then drawing it into a more specific conclusion.

3. Factors Causing the Non-fulfilment of Article 1 of the Marriage Law in Underage Marriage

Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in One Almighty God. That is according to Law Number 1 of 1974 concerning Marriage. When viewed from the maturity age of the bride and groom, it is enough to build a happy family (household). Even though the age of the bride has not yet reached the maximum limit determined by law, there is still a husband who can guide her and a family who can advise if there are disputes between the two. Because older age cannot be used as a guarantee of the maturity of age itself for the realization of a happy household.¹⁶

Marriage is an agreement between a man and a woman. The agreement here is not just any agreement such as buying and selling or leasing. But the agreement in marriage is a sacred agreement to form a family between a man and a woman, which is sacred from the religious point of view of a marriage. By carrying out the marriage, the bride and groom aim to maintain the sanctity of religion regarding the relationship between a man and a woman with a sacred bond, namely by marriage so that they are not too long with a relationship of love that can lead to things that are prohibited by religion. Marriage

¹⁵ Hasan Basri, *Keluarga Sakinah Tinjauan Psikologi Dan Agama* (PustakaPelajar, Yogyakarta, 2008).

¹⁶ Takariawan. Cahyadi, *Pernikahan-Pernikahan Rumah Tangga Islam* (Intermedia, Solo, 2001).

contains aspects of legal consequences. After the marriage, the husband and wife get mutual rights and obligations, as well as by establishing social relations based on mutual assistance. Because marriage includes the implementation of religion, then it contains the intention of hoping for the pleasure of Allah SWT.¹⁷

Husband and wife bear a noble obligation to uphold a prosperous household. A husband is obliged to protect his wife and provide everything necessary for household life according to his means. Each party has the right to take legal action, the husband is the head of the household and the wife is the housewife so that all household affairs are managed as well as possible. In Law Number 1 of 1974 concerning Marriage, principles are determined regarding marriage and everything related to marriage which are adapted to the developments and demands of the times.

Factors that cause the Marriage Law to be not fulfilled in the problems of household life that often occur are:

Internal factors are one of the factors that influence the destruction in a household. The internal factors referred to here come from the individuals within the family itself, namely each of these partners. Here are the factors that cause disharmony in the family,

The communication relationship between husband and wife must be well maintained, because communication is the most important part in many ways, especially in household relations, if the communication relationship is not well established between husband and wife then it is difficult to understand and complement each other between the two, the husband and the wife must be open to each other in carrying out household life so that in dealing with existing problems it does not cause quarrels.

In dealing with the problems of domestic life, these problems are often buried, without good discussion or communication between husband and wife to find a solution to the problems they are facing, the more they are kept silent the more they cannot be resolved, causing the household relationship to crack. Poor communication and the age of a spouse who is still under nineteen years of age can be seen in the following account. Informant J stated:

*"I got married by asking for a dispensation from marriage to the KUA because I was not old enough, the reason was that there was an act that could not be done outside of marriage, so that required me to marry her, during our household trip there were lots of disagreements and prioritizing each other's ego so that almost every day it happened quarrel, on that basis we decided to divorce."*¹⁸

From this statement, underage marriages are still prone to problems with communication between spouses because there is still a lack of maturity in managing unstable emotions and this is marked by their respective egos, different from those who are married adults who are already able to manage their emotions well.

¹⁷ Didik Priyana, "Dampak Perceraian Terhadap Kondisi Psikologis Dan Ekonomis Anak (Studi Kasus Pada Keluarga Yang Bercerai Di Desa Logede Kecamatan Sumber Kabupaten Rembang)." (Universitas Negeri Semarang, 2011).

¹⁸ Wawancara Dengan A.J. Pada 15, Agustus, 2022, Pukul 15.00, WITA.

Then there were also interviews with other parties who were married underage but until now were still united, on behalf of BI, he said:

"I married at the age of 18 and at first many disagreed, including from the groom's family because they were afraid that later they would not be able to live in a good household because the age was not fixed enough. After deliberation and a convincing process between the two parties, we finally got married, and until currently we are living in 7 years of marriage, our household is still fine even though sometimes there are problems but I as the head of the family usually give in to the wife more if she is temporarily angry and after her anger subsides then I give her good advice"¹⁹

Based on the information from b above, it turns out that not all those who marry underage will result in an inharmonious family as stated in Article 1 of the 1974 Marriage Law. But there are also those who marry underage but can become an eternal household. So what happens to the family above is that poor communication between husband and wife in living a household life can result in quarrels between husband and wife and even lead to divorce.²⁰

Rights and obligations are an act that must be carried out by a husband and wife, the rights and obligations of the husband to the wife, the rights and obligations of the wife to the husband and the rights and obligations between the two of them, if this has not been carried out properly it will cause problems in the household, namely conflict and lead to divorce.

For example, in household S, where he married when he was 16 years old, his husband often went out at night and wandered around with young children without telling his wife in advance where he was going, so that his obligations as a husband towards his wife were not fulfilled properly, no there is clarity by the husband towards the wife, many matters of household life become neglected.

As happened to married couples I and as a wife said that there were frequent fights with her husband.

"The quarrels that occurred in my household life were caused by my husband's non-disclosure regarding where he wanted to go, just without clarity, sometimes he disappeared from the house all day and often went out at night too, without any clarity. What should be for me is that the husband has to take more care of his wife and children what is the needs of me and their children, but that is not the case if he travels for work but this is not what there is just hanging out with young children, the proof is that the economy in my household has become completely lack, it makes me fight with my husband."²¹

So the problem in household life is that the husband often goes out with his friends as if he has not been able to forget life like when he was young, this causes the obligations as a husband to his wife and children to be neglected. Economic conditions are thought to affect the harmony of a family. A low socioeconomic level often causes problems in the

¹⁹ Wawancara dengan B.I, Pada 12, Agustus, 2022, Pukul 16.05 WITA.

²⁰ fiqh as-sunnah Sayyid sabiq, *Terjemahan Bagian Perkawinan Dan Perceraian* (Pena Publishing, Jakarta, 2011).

²¹ Wawancara Dengan J. Pada 13, Agustus, 2022, Pukul 08.00, WITA.

family due to the many problems faced and the inadequate financial condition of the family

External factors or causes that come from outside can also make a family fall apart. External causes may come from the family itself, such as in-laws or parents, siblings, or cousins. The following are factors that cause disharmony in the family:

The intervention of parents-in-law or parents-in-law in managing their married children is of course natural, but there are certain limitations, because if the child is married then he will bear his own responsibilities as husband and wife. The attitude of parents who are too excessive to interfere in children's household life such as in terms of children's finances, how husbands and wives fulfill their rights and obligations are all regulated by parents

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*"My household life is almost always interfered with by my parents-in-law, for example there is a small fight between my husband so he will defend his son and will scold me even though he doesn't know the problems we are facing, this makes me even more depressed. Once I scolded my wife for playing too much on my cellphone. instead of taking care of me and my children and my parents-in-law heard that. Suddenly he intervened and scolded me saying that the child is your responsibility and not only the wife's business, even though it should not be done by the in-laws. Even if you want to rebuke, it should be done in a good way."*²²

With this information, it turns out that the involvement of parents in children's problems is a big problem that will have fatal consequences for household harmony. Because indeed parents should not interfere in the household affairs of their children because in fact a child who is married means that he already has his own path for life, although that does not mean that he does not have to completely close his eyes to what is happening to his married child.

Judging from the results of the interviews above that were conducted from two opinions, namely the non-fulfillment of the concept of Article 1 of the Marriage Law as much as 3.75% and the fulfillment of the concept of Article 1 of the Marriage Law in a marriage carried out underage is 2.5% of the total data as many as 25 cases of marriage 3 last year.

4. Conclusion

Based on the results of the analysis and discussion that have been described above, it can be concluded that the position of Article 1 of Law Number 1 of 1974 concerning Marriage in Batudaa District, namely, the purpose of marriage is physical and spiritual bonds between a man and a woman as husband and wife with the aim of forming a family

²² Wawancara Dengan A.P. Pada 17, Agustus, 2022, Pukul 17.00, WITA.

(home). ladder) who are happy and eternal based on Belief in the One and Only God. It has not materialized properly due to household problems that ended in divorce, while the problems in the household can be underlined as; 1, poor communication relations, 2, rights and obligations according to the wife who are not good, 3, interference from parents or in-laws.

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