

Research article

Legal Age of Marriage: A Socio-Science Review

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Abstract.

The purpose of this paper was to examine the importance of the marriage law from various disciplines, in terms of the legal age of marriage. Data were collected by examining journals, books and other documents deemed relevant to the study. The findings indicated that the minimum age of marriage for girls, which was originally regulated in Law number 1 of 1974 concerning marriage, was 16 years. The Constitutional Court stated that this was unconstitutional and a violation of human rights, as well as a form of exploitation of children. Therefore, based on this decision, the Constitutional Court ordered legislators within a period of three years to make amendments to the Marriage Law, particularly with regard to the minimum age of marriage. In 2019, the issuance of a new rule of Article 7 paragraph (1) of Law number 16 of 2019 concerning amendments to Law number 1 of 1974 concerning marriage states that marriage is only permitted if the man and woman are a minimum of 19 years old. In adolescence, cervical cells have not yet grown in maturity. Sexual intercourse during adolescence increases the risk of being exposed to the human papilloma virus, the virus that causes cervical cancer. Another impact is that babies born to mothers who are under 18 years of age are more likely to have health issues. According to the BKKBN, the normal age for marriage is 25 years for men and 21 years for women. Early marriage not only has an impact on health, but also on the psychological survival of marriage. In addition, as a country where the majority of the population is Muslim, the age of marriage is also discussed in terms of religion and psychology.

1. Introduction

Keywords: legal competent, marriage, socio-science

Legal disciplines pose different views on the age measurement when a person is declared an adult. The in question adult refers to the age at which the person is declared legal competent (legal capacity). Every person constitutes a right bearer, something with rights and obligations and called a legal subject. According to law, however, everyone, without exception, may have rights, but under the law, not everyone is allowed to act independently in exercising these rights. Several groups of people have been declared "incompetent" or "less competent" by law to act independently in carrying out legal

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actions (*handelingsonbekwaam*) and shall be represented or assisted by someone else. In other words, legal competence is a person's ability to carry out and be accountable for each of the actions before the law. Such understanding, then, implies that the urgency for someone to understand legal competence is to see whether someone can be held accountable or not regarding what is right and wrong against what has been done.

Adults, as the Article 330 of the Civil Code underlines, are people who are 21 years of age or are married before the age of 21. Article 7 Paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law, states that marriage is only permissible if a man and a woman have reached the age of 19 (nineteen) years. The Criminal Code and the Child Protection Law underline that children who are not yet 18 years of age are still categorized as children. The legal competence referred to in the constitutional law order is 17 years of age, in which a person can be entitled executive, legislative, and judicial rights. Legal competence, from the viewpoint of constitutional law, can also be seen in Article 63 of Law Number 23 of 2006 concerning Population Administration that: "Residents of Indonesian citizens and foreigners with permanent residence permits who are 17 (seventeen) years old or are married or ever married, shall have a Residential ID Card [*KTP*]".

From the above various legal competence stipulations, this article will focus on Article 7 Paragraph (1) of the Marriage Law, stating that marriage is permissible if the man and woman have reached the age of 19. On the contrary, the National Family Planning Coordinating Agency (BKKBN) determines the legal competence of marriage is 21 years. The determination of legal competence by the National Family Planning Coordinating Agency (BKKBN) conforms the Civil Code. One of the legal objectives is to provide legal certainty. However, the result of the emergence of the dualism of maturity age standards in the marriage regulations stipulated by the Marriage Law and the National Family Planning Coordinating Agency (BKKBN) has resulted in the emergence of legal uncertainty. Another arising legal uncertainty is the provision of dispensation to marriage for children who have not reached the age of 19. One of the consequences to be borne by couples who marry at young age is the low opportunity, in particular, for women to continue their education which may cause economic problems in the family/household. Such economic problem has become one of the triggers for household disharmony. Not to mention other problems arising in terms of health and psychology which are no less important and cannot be ruled out.

This article points out such dualism in terms of biology, psychology, Islamic law, and education regarding the determination of the ideal legal competence to answer the

question of legal uncertainty. The results of the analysis of the various sciences will then result in the determination of how old a person is really fit and physically and psychologically ready, so he/she can be categorized as a legal competent person.

2. Research Method

This research uses Library Research. The nature of this research is descriptive. The method of collecting data is through documentary study (library research) to collect a number of data including library materials from books to review data related to various disciplines that discuss the legal competence of marriage. The data collection tools used are written materials in the form of laws and regulations, journals, books and articles related to the issue.

3. Results and Discussion

Legal Competent

Biological Review

Female reproductive organs at the age of 20 years or below are deemed not ready to carry out one of the reproductive tasks, namely pregnancy and childbirth. Various complications of pregnancy and childbirth are more at risk of occurring at an early age. Women having sexual intercourse under the age of 20 are at risk of developing cervical cancer, because in adolescence, the cervical cells have not grown mature. Sexual intercourse at the age aforesaid increases the risk of being exposed to the Human Papilloma Virus (HPV), the virus causing cervical cancer. Currently, cervical cancer is the first cancer that attacks Indonesian women, and the current incidence rate is 23% among other cancers [1]

Early sexual intercourse has always been associated with increased health risks in women. Young women engaged in sexual activity are vulnerable to health problem namely Sexually Transmitted Infections (STIs), which may cause cervical cancer and the risk of premature delivery.

The bodies of teenage girls (under 20 years old), anatomically, are neither ready for the process of having pregnancy or the process of giving birth. Misconceivedly, however, many people believe that puberty is a measure of a woman's readiness to get pregnant. OMNI Hospitals Alam Sutera's Handojo Tjandra, a specialist in Obstetrics and Gynecology, stated that someone who has experienced puberty cannot yet be called an adult because puberty only indicates an entry of a child into adolescence. At this

time, the reproductive organs begin to grow and develop into adulthood; therefore, it shall not be used for either sexual intercourse or reproduction. The size of the uterus in adolescent girls is not ready for pregnancy, and the size of the pelvis is not fully ready for delivery. As a result, delivery during adolescence may increase the risk of a cesarean delivery as well as its complications.

The uterus in a child younger than 8 years is about half the length of the vagina, while at the age of more than 8 years, the uterus is roughly the same size as that of the vagina. This continues to the age of 14 years approximately (the age of menstrual period) when the uterus is slightly larger than the size of the vagina, and this size persists until the pregnancy occurs. At the age of 14-18 years, the development of the uterine muscles is not yet good; therefore, a pregnancy may result in the rupture of the uterus. Moreover, the uterine cantilever is either not strong enough to support the pregnancy, which may result in another risk to occur, namely uterine prolapse during the delivery. On the other hand, at the age of 14-19 years, the hormonal system is not stable. This can be viewed from the irregular menstrual cycle and which may have an impact when a pregnancy occurs, including: unstable pregnancy, easy bleeding, abortion, or fetal death. Too early gestational age from delivery prolongs the susceptibility to active reproductive life, which can increase the risk of cervical cancer in the future [2]

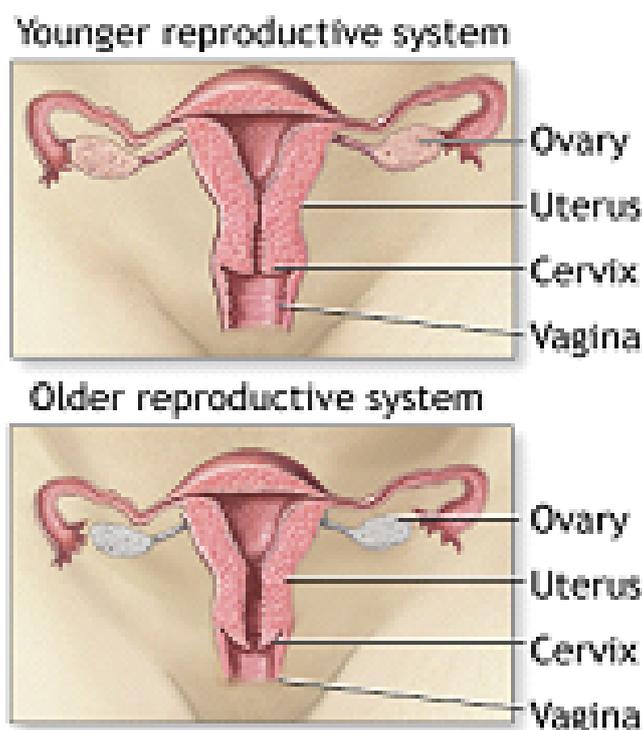


Figure 1: Source : Adam (2019).

From the picture, the differences between adolescent reproductive organs and adult reproductive organs are visible in the cervix, uterus, and ovaries. An adult woman's uterus is larger than the uterus in adolescents, and the cervix as the place of birth of the fetus is wider in adults than that of in adolescents. This is why the high number of abortions or miscarriages in adolescent women is greater than that of adult women. In addition, the ovaries in adolescents appear reddish in color which indicates that they produce immature ovum cells or eggs, in contrast to the ovaries in gray-colored in adult women which can produce mature ovum cells.

1. *Psychological Review*

Adolescents, psychologically, are still in the stage of looking for identity, unable to take responsibility for others, and without exception, to become parents. This increases the risk of domestic conflicts to arise. Mental illness possibly caused by early marriage is depression and, in the social environment, it causes low self-esteem or inferiority.

According to some experts, the adolescent age ranges from 10 to 21 years. The phase of adolescence constitutes a transitional phase from the childhood to adulthood. The characteristics that can be seen is that there are many changes, both physical and psychological, that occur. The visibly physical changes are changes in sexual characteristics such as enlarged breasts or waist for girls; while for boys, the growth of mustaches or beards, and deeper voice changes. On the other hand, the mental changes also develop. In this phase, the achievement of self-identity is very prominent, while thinking becomes more logical, abstract, and idealistic. This period is called the puberty phase, a period in which the maturity of the body, such as body proportions, changes in weight and height, and a loss of sexual function which occurs rapidly, in particular, during early adolescence.¹

Furthermore, the youth phase is preceded by the emergence of strong self-esteem, expressions of joy, excessive courage. Those who are in this phase, thereby, tend to make noise, or often disturbing noise. The tendency to be in a noisy and excessive atmosphere, which is physical, is more in boys. While in girls, a similar tendency manifested in expressions of bitchiness, irritability, and sulking. Strength and physical prowess are increasingly becoming a major concern, so many pubes want to become a racer star, who is adored and appreciated. In women, such desire for respect and attention manifests in a tendency to excessive grooming. These women easily fall into an atmosphere of competition. That is the picture of youth.

From the explanation aforesaid, adolescents are not mentally ready to go through household rules, which is tough and needs a strong commitment, once considering that

teenagers' personalities are still far from being mature. Occasionally, this results in a high divorce rate.

1. Islamic Law Review

Article 1 of the Marriage Law states that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or a household based on the Almighty God. To meet a covenant with legal consequences on the husband and wife, shall be met the requirements as follows:

1. both bride and groom are already *baligh* (in a maturity) and *tamyiz* (able to distinguish between good and bad).
2. the *ijab qabul* (marriage contract in Islam) is in one assembly, that is, saying *ijab qabul* should not be interrupted by other words or, according to customs, considered to be a distraction hindering the events of *ijab qabul*.

From the explanation above, it can be seen clearly the requirements that must be possessed by either the bride and the groom. Both must be *baligh* or in the sense of sensible mature and able to bear the burdens imposed on. By such burdens, they can be called *mukallaf*. Upon reaching *baligh* period, a person, then, can be responsible for the deeds being conducted.

Beside *baligh*, another term to be a condition for the bridegroom is namely *tamyiz* or *mumayiz*. *Mumayiz* is a term used for a child who is able to distinguish between good and bad. In this case, religious knowledge is very essential to be the second provision for the bridegroom to navigate a married life. Islam does not limit the age of a person to marry, as long as he/she meets the requirements, which is the *akil baligh* (puberty) and *mumayiz*, and the marriage can be carried out.

Islam poses its own uniqueness in relation with the marriage law which varies pursuant to the context and circumstances, including;

1. it is *wajib* (compulsory) for the able people to get married, in terms of these people's desire has urged them to an intercourse feared to lead them to fall into the practice of adultery;
2. it is *haram* (prohibited by law of Islam) for people deemed unable to fulfill the needs of their future wife, either physically or mentally, and their desire is not in urgency;
3. it is *sunah* for people with an urgent desire and an ability to marry, yet, they can still restrain themselves;

4. it is *makruh* for weak and unable people to provide for their wives;
5. it is *mubah* for a person pressured by reasons that require marriage immediately or for reasons that prohibit marriage.

By viewing from the marriage of law which may have different *taklif*, it makes us more aware that the law of marriage can be *haram* when we are not really ready to enter a married life, so that it leads to despoting our partners. Marriage is a very sacred relationship, is the longest and longest worship, and will give birth to new relationships such as father-mother and children relationships, so it needs mature, mental, and healthy readiness to be burdened with such a large mandate.

1. Educational Review

Marriage, in general, is believed as one of the most valuable moments in adult life. In many parts of the world, however, there are marriages which cause some serious problems due to the involvement of children as brides. Child marriage, in this case, is often called early marriage. Worldwide, based on 2014 statistics, more than 700 million women were married before the age of 18, and about 250 million entered into marriage before the age of 15. As a matter of fact, child brides will not only lose their childhood but also result in isolation in social life with limited opportunities to access education, work, and health facilities.

Marriage before the age of 18 can undermine a girl's autonomous rights to lead a life free from violence and coercion as well as to attain education. This happens because the husband often expects her to give birth to children soon after marriage. Child marriage also allows sexual exploitation that is risky to their daily lives. The practice of under-aged marriage in Indonesia is inseparable from the growing and developing socio-economic, cultural, and religious conditions in society. In fact, to have the opportunity to gain education has a strong influence on the implementation of child marriage in Indonesia, which usually happens when the law accommodates religious practices free from general rules that must be obeyed.

Transition to sexual activity is an important event in this stage of adolescent life. Adolescents, however, in their early teens, do not yet have the physical, mental, and emotional development necessary to make sensible decisions concerning sexual activity. Early sexual debut has many short-term and long-term physical and mental health implications. Adolescents who start having sex before the age of 18 have a higher likelihood of risky sexual behavior and related outcomes such as sexually transmitted infections (STIs). Beside sexual related outcomes, early sexual intercourse is also

associated with other unhealthy behaviors including alcohol use, delinquency, and violence. Early sexual intercourse also affects intergenerational health through contact with unwanted pregnancies. Children born to teenage mothers are at higher risk for a number of negative physical and emotional health outcomes. This association suggests opportunities to prevent important negative health outcomes, including teen pregnancy, sexually transmitted infections (STIs), and alcohol use problems, both in adolescents and young adults. Early sexual education for adolescents is important, however, successful interventions to delay the age of sexual intercourse also need to include positive adolescent development to empower them to make informed decisions on sexual activity.

1. *Legal Competent Age of Marriage*

This section will discuss the age determination at which a person is truly fit and physically and psychologically ready, so he/she can be categorized as a legal competent person by looking at the results of the above analysis. From the results of the above explanation, the authors recommend that age 21 is the ideal age for marriage.

A person at 21 years of age is physically and psychologically ready and has gone through the educational process currently instructed by the President of the Republic of Indonesia in his Nawacita mission, regarding the 12-year compulsory study. The Ministry of Education and Culture, in accordance with its duties and authorities, aims at implementing the Smart Indonesia Program aiming at increasing access for children aged 6 to 21 years.

Physical readiness is indicated by the readiness of the uterus to carry out reproductive tasks, so it can reduce the risk of premature pregnancy, miscarriages, and cervical cancer. Psychologically, the needs of a person age 10-21 years, other than the family, are peers, who are very important for adolescents to get to know the world outside the family.

Young men's orientation is still centered on getting adoration and giving awards, while, on the other hand, that of the young women is still oriented towards gaining awards and manifestation of appearance. In other words, adolescence is still unstable and is still looking for identity and interests.

In the law of Islam, there are no definite provisions regarding the age of marriage, as long as the people are *baligh* and *mumayyiz*. *Baligh* is evidenced by a nocturnal emission or wet dream for men and menstruation for women. A person can be said a *mumayyiz* when he/she can distinguish the right from the wrong. This principle is in accordance with what is stipulated in positive law as outlined in the Civil Code.

The fulfillment of needed is expected to provide readiness so that humans can be physically and spiritually ready to be burdened with an obligation (legally competent). Readiness can be seen from several factors, namely:

1. Physical Readiness

Allah created man in the best form (at - Tiin / 95: 4). Allah showed His power by creating humans to stand upright, so that they could eat their food by hand, and Allah created the ability to understand, speak, organize, and act so that it was possible to become a caliph on earth. This verse shows that humans have the initial provisions to be said to be physically ready. The growth process which then makes humans physically ready. Starting from babies, children, adolescents, to adults.

1. Mental Readiness

Mental is a way of thinking or the concept of human thought to be able to learn and respond to something. In children and adolescents, immature mental readiness is characterized by emotional instability and the inability to fulfill their needs independently. Children and adolescents are still in the phase of needing adult direction to meet their needs. The mental needs children and adolescents need are love, affection, spiritual care, and attention. Adolescents are still trying to find self-identity in order to be strong, the expression of ideas and feelings, the beginning of emotional and mental development.

1. Emotional Readiness

The emotional need that is needed is to let the adolescent go to find their identity. Teenagers have their own opinions and begin to map their lives and want to independently voice their opinions. In adolescence, the need for friends becomes more influential than parents, but that doesn't mean parents have to let go. Parents can connect with their children by providing support from behind and paying attention. Do not force children to fulfill their parents' ambitions. Things like that are still effective in children but not in adolescents. To provide emotional health, paying attention is far more sufficient than trying to intrude on a child's privacy.

1. Knowledge Readiness

The need for knowledge and knowledge can be supported by providing access to early education and fulfilling literacy. Knowledge needs can be met when they are physically, mentally, and emotionally balanced. Releasing children to explore and seek more experiences can help develop children's knowledge.

4. Conclusion

Viewed from health perspective, women experiencing sexual intercourse under the age of 20 are at risk of developing cervical cancer because, in adolescence, the cervical cells have not yet grown mature. Sexual intercourse during adolescence increases the risk of being exposed to the Human Papilloma Virus (HPV), the virus that causes cervical cancer. Another impact that can arise according to psychology is that adolescents are not mentally ready, which may lead to a divorce. Early marriage can also affect opportunities to attain education.

The recommended age to be said legally competent in marriage is 21 years. This marriage legal competence is in accordance with the provisions regulated by the National Family Planning Coordinating Agency (BKKBN) explaining the normal ages to conduct marriage for men is 25 years and 21 years for women.

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