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The Development of Indonesian Marriage Law in Contemporary Era

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Abstract:

Family law is part of the legal system that applies in Indonesia, which has developed along with social developments in society. This paper provides an overview of how the development of family law in Indonesia uses a normative approach and describes the development of family law in Indonesia these days. The development of family law in Indonesia is influenced by several factors, ranging from the historical aspect of law to today's social developments. The development of family law develops according to the community's needs for legal certainty and aspects related to family relations, starting from age limits for prospective husbands and prospective wives, child status, and marriage agreements to a marital status that is not administratively registered.

Keywords: family law; marriage; society.

Introduction

Family law refers to the general provisions governing legal relations between blood relatives and families resulting from marriage. Important aspects of family law include marriage, parental authority, guardianship, pardon, absenteeism, and marriage.¹ A family is the smallest community in a legal society formed by marriage.² Through a legal marriage, a nuclear family is formed and consists of a father, a mother, and their children.³ Marriage is not solely intended to satisfy the libido.⁴ Traditionally, negotiations about marriage conceived as a union between two families could take place when the children concerned were still young.⁵ Marriage law is the heart of family law; therefore, all those who have met the legal requirements to build a joyful, eternal family based on God almighty must adhere to the stipulations of Law No. 1 of 1974. Marriage is an alliance between families and typically caste endogamous. Child and early marriage is a means of ensuring girls' adjustment to the marital home and limiting the perceived risk in which girls may elope or make independent choices.⁶ In another perspective, within-kin-group marriages can be explained with the hope to keep accumulated property within the family.⁷

Legal conditions in Indonesia before the enforcement of Law No.1 of 1974 were still pluralistic.⁸ This was due to the existence of several marriage laws triggered by the presence of several population groups, religious and ethnic influences⁹, and colonialisms, especially Dutch colonialism in Indonesia. Not only did the Dutch take control over the nation politically and economically, but they

¹ Syarifah Lisa Andriati dan Tri Murti Lubis, "Penyuluhan Hukum Poligami Dan Nikah Siri Menurut Undang-Undang Perkawinan," *ABDIMAS TALENTA: Jurnal Pengabdian Kepada Masyarakat* 2, no. 2 (13 Desember 2017): 120–24, <https://doi.org/10.32734/abdimestalenta.v2i2.2302>.

² Lestari Nurhajati dan Damayanti Wardyaningrum, "Komunikasi Keluarga Dalam Pengambilan Keputusan Perkawinan Di Usia Remaja," *JURNAL AL-AZHAR INDONESIA SERI PRANATA SOSIAL* 1, no. 4 (28 Januari 2014): 236–48.

³ Meivy R. Tumengkol, "Eksplorasi Anak Pada Keluarga Miskin Di Kelurahan Tona I Kecamatan Tahuna Timur Kabupaten Kepulauan Sangihe," *HOLISTIK, Journal of Social and Culture*, 5 Februari 2016, <https://ejournal.unsrat.ac.id/v3/index.php/holistik/article/view/10707>.

⁴ Safrin Salam, "Dispensasi Perkawinan Anak di Bawah Umur: Perspektif Hukum Adat, Hukum Negara & Hukum Islam," *Pagaruyuang Law Journal* 1, no. 1 (29 Juli 2017): 110–24, <https://doi.org/10.31869/plj.v1i1.273>.

⁵ Catherine Guiringer, Jérémie Gross, dan Jean-Philippe Platteau, "Are Women Emancipating? Evidence from Marriage, Divorce and Remarriage in Rural Northern Burkina Faso☆," *World Development* 146 (1 Oktober 2021): 105512, <https://doi.org/10.1016/j.worlddev.2021.105512>.

⁶ Shireen J. Jejeebhoy dan Mukesh Ravi Raushan, "Marriage Without Meaningful Consent and Compromised Agency in Married Life: Evidence From Married Girls in Jharkhand, India," *Journal of Adolescent Health* 70, no. 3 (Maret 2022): S78–85, <https://doi.org/10.1016/j.jadohealth.2021.07.005>.

⁷ Rozenn Hotte dan Karine Marazyan, "Demand for insurance and within-kin-group marriages: Evidence from a West-African country," *Journal of Development Economics* 146, no. April (September 2020): 102489, <https://doi.org/10.1016/j.jdeveco.2020.102489>.

⁸ Supriyadi Supriyadi, "Pilihan Hukum Kewarisan Dalam Masyarakat Pluralistik (studi Komparasi Hukum Islam Dan Hukum Perdata)," *Al-'Adalah* 12, no. 1 (2015): 553–68, <https://doi.org/10.24042/adalah.v12i1.235>.

⁹ Detty Tangkudung, "Sebab-Sebab Perceraian dan Akibat-Akibat Hukumnya dalam Praktek sejak UU Perkawinan 1974," *Jurnal Hukum & Pembangunan* 9 (2 Februari 1979): 45, <https://doi.org/10.21143/jhp.vol9.no1.726>.



also colonized the legal system.¹⁰ This legal colonization can be seen from its legal politics which divided the Indonesian population groups based on Article 131 IS, and its enforcement is based on Article 131 IS. Article 131 IS distinguishes 3 groups of residents, namely the first group: European groups, the Second: Foreign Eastern groups such as Chinese, Indian, and Arabian populations, third: indigenous groups (native Indonesian residents).¹¹ Prior to the stipulation of Law No. 1 of 1974, there were several marriage laws for each societal group in Indonesia according to Article 163 jo 131 IS. Besides, there are also customary law and Islamic law implying that such sociodemographic transformations will in turn change cultural values, learning environments, and human development.¹²

In general, a marriage involves a physical and spiritual bond between a man and a woman as husband and wife forming a happy and eternal family based on Belief in the One and Only God.¹³ The definition of marriage according to BW (Burgerlijk wetboek) is regulated in Article 50 jo 81 of the Indonesian Civil Code which states that a marriage must be registered by a civil registry, and religious marriage ceremonies may be carried out after the registration is made; this definition is viewed from the Marriage Law. Customary law describes a marriage not only as an important event for those who are still alive but it is also deemed to be a very meaningful event that receives full attention and is followed by the spirits of the dead ancestors of both parties.¹⁴ The enactment of Law No. 1 of 1974 is a juridical step to make changes and reforms to the pattern of marriages in Indonesia. The validity of the Marriage Law in accordance with the mandate of the constitution is a major milestone that ends the era of pluralism of marriage law which has been in effect for so long in the country and towards the era of unification of marriage law in the country so that marriage matters in Indonesia are subject to the same rule of law, namely the Marriage Law.¹⁵

¹⁰ Zaka Firma Aditya, "Romantisme Sistem Hukum Di Indonesia: Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (15 Mei 2019): 37–54, <https://doi.org/10.33331/rechtsvinding.v8i1.305>.

¹¹ Pebi Ariansyah, "Tinjauan Hukum Pidana Islam Terhadap Pasal 4 Huruf B Angka 2 Undang-Undang Nomor 40 Tahun 2008 Tentang Penghapusan Diskriminasi Ras Dan Etnis" (Undergraduate Thesis, Palembang, UIN Raden Fatah Palembang, 2020), <http://repository.radenfatah.ac.id/7693/>.

¹² Fitria Agustin, "Kedudukan Anak Dari Perkawinan Berbeda Agama Menurut Hukum Perkawinan Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 2, no. 1 (20 Juli 2018): 43–54, <https://doi.org/10.30656/ajudikasi.v2i1.574>; Jessica McKenzie dan Kajai C. Xiong, "Fated for Foreigners: Ecological Realities Shape Perspectives of Transnational Marriage in Northern Thailand," *International Journal of Intercultural Relations* 82 (1 Mei 2021): 121–34, <https://doi.org/10.1016/j.ijintrel.2021.03.010>.

¹³ Ridwan Arifin, Rodyah Rodyah, dan Fadhilah Rizky Afriani Putri, "The Legal and Social Aspect for Underage Marriage Women's Education Rights in the Perspective of Human Rights: Contemporary Issues and Problems," *Sawwa: Jurnal Studi Gender* 15, no. 2 (31 Oktober 2020): 219–40, <https://doi.org/10.21580/sa.v15i2.5165>; Agustin Hanapi dan Edy Yuhermansyah, "Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (28 Desember 2020): 528–44, <https://doi.org/10.22373/sjhk.v4i2.7942>; Imam Sujono, "Legal Education about Marriage of Women without Divorce Certificate and Previously Unregistered Marriage," *International Journal of Law Society Services* 2, no. 2 (24 Oktober 2022): 48–65, <https://doi.org/10.26532/ijlss.v2i2.22410>.

¹⁴ Laksanto Utomo, *Hukum Adat* (Depok: Rajawali Press, 2019), 89.

¹⁵ Moch. Isnaeni, *Hukum Perkawinan Indonesia* (Bandung: Refika Aditama, 2016), 18.



The Civil Code as a source of civil law emphasizes that marriage is only a civil relationship and marriage is only seen as a civil matter, which means marriage is only valid if it fulfills the conditions set out in the civil code. Marriage is not a religious act that must involve God. As in the Marriage Law, a marriage is an embodiment of Indonesia as a legal state as contained in Article 1 paragraph (3) of the 1945 Constitution, and a state based on belief in one and only God as contained in Article 29 paragraph (1) of the 1945 Constitution. Before the issuance of the Marriage Law Number 1 of 1974, interfaith marriages were first regulated in the *Regeling op de Gemengde Huwelijken (GHR) Koninklijk Besluit van 29 December 1896 No.23, Staatblad 1898 No. 158*—the Mixed Marriage Ordinance (PPC). The PPC issued specifically by the Dutch Colonial Government mentions several provisions regarding mixed marriages, one of which is in Article 7 paragraph (2) which stipulates that: Differences in religion, class, population, or origin cannot constitute an obstacle to the continuation of marriage. Mixed marriage, involving an Indonesian citizen and a foreigner as a couple, complies with the Marriage Law. The notion of marriage in Western countries has shifted not just in terms of a man and a woman or a husband and wife being united in marriage.¹⁶ In European countries, particularly the Netherlands, same-sex marriages are permitted.¹⁷ Basically, European countries already have marriage laws.¹⁸ In contrast, the Indonesia Law No. 1 of 1974 which is the unification of legal norms regarding marriage, under the provisions of Article 1 of Law No. 1 of 1974, "marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family based on the One Godhead".¹⁹

Although some provisions in the Marriage Law have been amended, some of their provisions have been revoked and replaced by the latest provisions. Some of these reforms have been occasioned by global developments such as SDGs, family reforms activism, lower and Supreme court decisions as well as Constitutional Court rulings regarding Marriage Law signifying a shift toward a contemporary form of marriage law in Indonesia. What follows is a normative survey of the current developments in family law, describing the associated problems that have occurred as a result of the reforms in family law in Indonesia today. Legal issues are growing in line with technology and information, as well as marriage law in

¹⁶ R. Steven Daniels, "The Evolution of Attitudes on Same-Sex Marriage in the United States, 1988–2014," *Social Science Quarterly* 100, no. 5 (2019): 1651–63, <https://doi.org/10.1111/ssqu.12673>; Christopher S. Carpenter dkk., "Effects of Access to Legal Same-Sex Marriage on Marriage and Health," *Journal of Policy Analysis and Management* 40, no. 2 (2021): 376–411, <https://doi.org/10.1002/pam.22286>; Jean M. Twenge dan Andrew B. Blake, "Increased Support for Same-sex Marriage in the US: Disentangling Age, Period, and Cohort Effects," *Journal of Homosexuality* 68, no. 11 (19 September 2021): 1774–84, <https://doi.org/10.1080/00918369.2019.1705672>.

¹⁷ Shuai Chen dan Jan C. van Ours, "Symbolism Matters: The Effect of Same-Sex Marriage Legalization on Partnership Stability," *Journal of Economic Behavior & Organization* 178 (1 Oktober 2020): 44–58, <https://doi.org/10.1016/j.jebo.2020.07.021>.

¹⁸ Jennifer L. Bratter dan Heather A. O'Connell, "Multiracial identities, single race history: Contemporary consequences of historical race and marriage laws for racial classification," *Social Science Research* 68 (November 2017): 102–16, <https://doi.org/10.1016/j.ssresearch.2017.08.010>.

¹⁹ Muhammad Irfan dkk., "Reflection of a Decade of Pre-Marriage Guidance on Family Resilience in Indonesia," *SMART: Journal of Sharia, Traditon, and Modernity* 1, no. 2 (28 Desember 2021): 188–201, <https://doi.org/10.24042/smart.v1i2.11353>.



Indonesia which cannot be separated from several problems. This tendency is caused by the development of the times and modernization, but the legal norms contained in the Marriage Law can still survive and can be accepted along with developments. Although some provisions in the Marriage Law have been amended, some of their provisions have been revoked and replaced by the latest provisions. Several court decisions up to the decision of the Constitutional Court regarding Marriage Law signify a contemporary form of marriage law in Indonesia. This paper is categorized as a normative study that aims to describe the current development of family law and the problems that occur related to family law in Indonesia today.

Result and Discussion

Human resource development is the main target of development goals because implicitly humans are both the subject and the object of development.²⁰ As referred to Adam and Eve, human nature is to live in pairs because humans as social creatures are positioned the highest above other creatures created by God.²¹ Human beings are created to live in a social environment and mingle with other social groups in society.²² As social beings, one of the necessities of human life is the biological need that a husband and wife can take and give to produce offspring and build a complete family consisting of a father, a mother, and children.²³ A family in the narrow sense is the smallest community unit consisting of a husband, a wife, and children in it who live under the same roof.²⁴ The family in the broadest sense is a group of members of the family community consisting of people who are related by marriage and blood ties.²⁵ Much research finds that one key aspect, education, plays an important role in assortative mating.²⁶

Marriage is a significant event in human existence, and marriage cannot be separated from the law since, via legal marriage, the relationship between a man and a woman is formed in accordance with their standing as honorable beings.²⁷ Marriage is another means to foster trust. In this respect, matrimonial unions are particularly effective because they create bonds made of sons and daughters, of

²⁰ Stevi Loho, "Hak Waris Anak Di Luar Perkawinan Sah Berdasarkan Putusan Mahkamah Konstitusi Nmor 46/Puu-Viii-2010," *LEX CRIMEN* 6, no. 3 (21 April 2017), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/15613>.

²¹ Mahbub Junadi, "Manusia dalam berbagai Perspektif," *El-Ilmi : Jurnal Studi Keagamaan, Pendidikan dan Humaniora* 4, no. 1 (2017): 35–55.

²² Asrul Muslim, "Interaksi sosial dalam masyarakat multietnis," *Jurnal Diskursus Islam* 1, no. 3 (2013): 483–94.

²³ Andi Syahraeni, "Tanggung Jawab Keluarga dalam Pendidikan Anak," *Allrsyad Al-Nafs: Jurnal Bimbingan dan Penyuluhan Islam* 2, no. 1 (2015).

²⁴ Nurhimmi Falahiyati, "Anak Luar Kawin, Terkait Hak Waris Yang Dimilikinya Berdasarkan Kitab Undang-Undang Hukum," *Kalam Keadilan* 6, no. 1 (2018).

²⁵ Agustina Nurhayati, "Politik Hukum (Legislasi) Hukum Keluarga Di Saudi Arabia," *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 7, no. 1 (2014): 67–82.

²⁶ Long Xing dkk., "Education, Class and Assortative Marriage in Rural Shanxi, China in the Mid-Twentieth Century," *Research in Social Stratification and Mobility* 66 (1 April 2020): 100460, <https://doi.org/10.1016/j.rssm.2019.100460>.

²⁷ Mukran H. Usman dkk., "Tinjauan Hukum Islam Terhadap Pernikahan Dengan Wali Hakim (Studi Kasus Di KUA Kecamatan Bulu, Kabupaten Polman):," *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam* 2, no. 2 (20 Agustus 2021): 301–13, <https://doi.org/10.36701/bustanul.v2i2.365>.



brothers and sisters rather than of legal clauses.²⁸ The majority of Law No. 1 of 1974 and Government Regulation No. 9 of 1975 stem from Islamic religious law. The Marriage Law is a concrete embodiment of the growth of national law as the execution of Pancasila and the 1945 Constitution-based legal policy in Indonesia. Article 1 stipulates that the bride-to-be and groom-to-be are divine in nature and that a man and a woman share an inner and outer tie. Since laws concerned with marriage patterns have a special significance in a country from a demographic and developmental view, the authorities are in view of proposing to increase the minimum age at marriage perhaps due to women's & child's health and women's empowerment perspective.²⁹ A further factor is that marriage is a personal commitment with no external coercion since both couples seek to create a happy and lasting family. 'Happy' is described in the sense of the desire to form a family so that the family formed achieves happiness, not an ordeal. Eternal Happy Marriage means that the prospective husband and wife have the aim to ensure that the marriage fostered can last a lifetime and should not be simply decided or dissolved according to the wishes of the parties. Marriage must also be based on God Almighty, meaning that a marriage should not only follow the wishes of the prospective bride and groom but it should also be taken as a gift from God to humans as civilized beings. Therefore, marriage must be carried out in a civilized manner according to religious teachings revealed by God to humans.³⁰

Article 2(1) of the Marriage Law states that "a marriage is valid when contracted in conformity with the law of every religion and belief," so it is evident that Law No. 1 of 1974 portrays religious law as the most essential law in determining whether or not a marriage is legal. This is because the impact of the legality or invalidity of a marriage can have an impact on the legality or invalidity of the legal relationship between children born as a result of the marriage of the mother and father which also affects the marriage law and inheritance law.³¹ The development of legal age limits for marriage: Article 7(1) of the Marriage Law stipulates: "Marriage is only permitted if the male spouse has attained the age of 19 (nineteen) and the female partner has attained the age of 16." (sixteen) The rule mandates a minimum age requirement for spouses.

In Case No. 22/PUUXV/2017, gender activists are reviewing the law in light of a modification in the minimum age requirement for prospective partners. The judge determined that the age difference in marriage law was not supported by clear scientific evidence and was based simply on sex. The misconception that women mature faster in society cannot be utilized to determine the minimum age for marriage. To effectively fulfill the aim of marriage without resulting in divorce, the

²⁸ Maurizio Catino, Sara Rocchi, dan Giuseppe Vittucci Marzetti, "The network of interfamily marriages in 'Ndrangheta," *Social Networks* 68, no. September 2021 (Januari 2022): 318–29, <https://doi.org/10.1016/j.socnet.2021.08.012>.

²⁹ Mayank Singh, Chander Shekhar, dan Neha Shri, "Patterns in age at first marriage and its determinants in India: A historical perspective of last 30 years (1992–2021)," *SSM - Population Health* 22, no. November 2022 (2023), <https://doi.org/10.1016/j.ssmph.2023.101363>.

³⁰ Hubertus Shakti Bagaskara Oratmangun, "Perkawinan Beda Agama Di Indonesia (Studi Kasus: Penetapan Pn Jakarta Selatan Nomor 1139/Pdt. P/2018/Pn.Jkt.Sel)," *Indonesian Notary* 3, no. 2 (2021).

³¹ Beby Sendy, "Hak Yang Diperoleh Anak Dari Perkawinan Tidak Dicatat," *Jurnal Hukum Responsif* 7, no. 7 (2019): 1–10.



Constitutional Court also considered the protection of children's rights.³² Husband and wife must be psychologically and emotionally mature to engage in marriage and serve its purpose.³³

The motivation for Law No. 16 of 2019 is Constitutional Court Conclusion No. 22/PUU-XV/2017, which was one of the factors considered by the Constitutional Court (MK) in its decision: "...when the difference in treatment between men and women has an impact on or hinders the fulfillment of the basic rights or constitutional rights of citizens, both those belonging to the group of civil and political rights as well as economic, educational, social and culture, which should not be distinguished solely on the grounds of sex, then such a distinction is clearly discrimination."

In accordance with the same line of reasoning, it is also asserted that imposing a different minimum age for marriage between men and women constitutes discrimination in the light of Article 28B (1 application) of the right to establish a family as in the 1945 Constitution. In this case, when the minimum age of marriage for women is lower than for men, legally women can form a family earlier than men. Some capability deprivations are experienced by married girls across all settings, which undermine their well-being and threaten to truncate their future access to opportunities. These include high rates of having responsibility for at least one child, lower rates of household wealth, and severely constrained access to schooling.³⁴ The Constitutional Court's ruling required parliamentarians to alter Law No. 1 of 1974 immediately or within a maximum of three years, and this mandate was followed by the legislators issuing Law Number 16 of 2019.

Changes in conventions in the new marriage law include the marriage age limit, in which the minimum age for marriage for women is changed to 19 (nineteen) equal to that of men. Moreover, a couple must be physically and psychologically mature to be able to marry, fulfill the purpose of marriage without divorcing, and produce healthy, high-quality children. One of the goals of the Marriage Law Revision is to reduce the number of child marriages, which impedes the improvement of the Human Resource Index, one of the Sustainable Development Goals (SDGs), which set a global duty.

Marriage registration in Indonesia: In addition, since the implementation of Marriage Law No. 1 of 1974, there are numerous additional marriage-related legal standards, one of which also applies to unregistered marriages. According to the provisions of Section 2 (1), the validity of a marriage is determined by the religious law and philosophy of each spouse. So that the expert opinion concurs that the registration of a marriage is merely an administrative act and not a determinant of a marriage's validity. According to Article 2 (1) of the Marriage Law, marriage under the law of any faith is a legal process. Legal events cannot be negated by the

³² Ulfi Azizah dan Nur Wahid, "Historisitas dan Tujuan Aturan Umur Minimal Perkawinan dalam Perundang-Undangan Keluarga Islam di Indonesia," *Jurnal Hukum Volkgeist* 2, no. 2 (2019): 163–77.

³³ Imam Subchi dkk., "Legal Policy of Child Marriage In the Covid-19 Pandemic Period," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (2021): 846–66.

³⁴ Sarah Baird dkk., "Intersecting Disadvantages for Married Adolescents: Life After Marriage Pre- and Post-COVID-19 in Contexts of Displacement," *Journal of Adolescent Health* 70, no. 3 (2022): S86–96, <https://doi.org/10.1016/j.jadohealth.2021.12.001>.



occurrence of "important events" within the sense of Article 2 (2) implying that any marriage is registered according to existing laws and regulations.

Neng Djubaidah emphasized that, for Muslims, a marriage is valid only if performed in accordance with Islamic law, whereas marriage registration is merely an administrative requirement.³⁵ The decision of the Supreme Court of the Republic of Indonesia No. 1776 K/PDT/2007 is one of the cases in which a lawsuit of the wife of an unregistered marriage was successful, specifically the unregistered marriage shared by Yulianto aka Liong Tjoeng Tjen and Mimi aka Tjia Mie Joeng. Yulianto and Mimi held a traditional Chinese wedding on Tuesday, September 26, 1996, followed by a formal ceremony at New Hong Kong Restaurant Malang.³⁶ After holding a traditional Chinese wedding ceremony, the husband and wife then lived and started a household. After several years of marriage and forming a family, on December 31, 2004, Yulianto alian Liong Tjoe Tjen died, leaving his legal wife Mimi without children. Following Yulianto's death, it turned out that there was a problem with the distribution of inheritance between Mimi as the widow of Yulianto and Yulianto's own family. The District Court Decision of Malang, in favor of Mimi as the widow of Yulianto, issued the Supreme Court Decision No. 1776 K/PDT/2007 declaring that Tjie Mie Joeng's marriage to Liong Tjoeng Tjen was carried out by custom, and was not recorded in civil registration, and this marriage was deemed valid and the claimant was declared the widow of Liong Tjoeng Tjen. This decision is considered a fair decision, as relevant to the provisions of Article 1 of the Marriage Law implying that marriage is legal if it is carried out according to each religion and belief.

This case of marriage registration does not only have an impact on the inheritance and inheritance of the spouse but also causes problems for children born to married couples without being recorded. The author takes the example of the case of unregistered marriages won by a tv star named Machicha Mochtar. Machicha Mochtar filed a lawsuit against the child who was born. As a result of an unregistered marriage with the former Minister of State Secretary Moerdiono on December 20, 1993, a son was born. The two were separated in 1998.³⁷ To fight for the rights to their child, Machicha requested a Judicial Review to the Constitutional Court, by examining Article 2 paragraph (2) with Article 43 paragraph (1) of Law No. 1 of 1974, where the article states that children born outside of marriage will only have a civil relationship with the mother and the mother's family. Finally, the panel of judges of the Constitutional Court granted the application for judicial review of Machicha Mochtar so that all children in Indonesia were declared to have civil relations with their biological fathers. The Chief Justice of the Panel of Judges, Mahfud MD, stated that a child born out of wedlock still has a relationship with

³⁵ Neng Djubaedah, *Pencatatan perkawinan & perkawinan tidak dicatat : menurut hukum tertulis di Indonesia dan hukum Islam* (Jakarta: Sinar Grafika, 2010), 213.

³⁶ Prihatining Tyas Okta, "Gugatan Perceraian Atas Perkawinan Yang Belum Didaftarkan Di Kantor Catatan Sipil Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (Studi Putusan Mahkamah Agung Nomor 3057 K/Pdt/2014)" (undergraduate, Universitas Bhayangkara Jakarta Raya, 2018), <http://repository.ubharajaya.ac.id/1175/>.

³⁷ Zulviani Syam, "Status Penetapan Ahli Waris dari Pihak yang tidak Memiliki Akta Nikah Analisis Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010" (Universitas Islam Negeri Alauddin Makassar, 2019).



their father. Furthermore, A child born out of wedlock has a civil relationship with his mother and his mother's family as well as with a man as his father which can be proven based on science and technology and/or other evidence to find out whether the child concern has blood relations, including civil relations with his father's family.

Several decisions of the Constitutional Court demonstrate the numerous controversies that occurred following the introduction of the Marriage Code, which led to the repeal or annulment of some provisions. The decision of the Constitutional Court, which was also included in the issuance of the marriage contract, where Article 29 paragraph (1) of the Marriage Law No. 1 of 1974 was determined, differed from the decision of the Constitutional Court No. 69/PUU-XIII of 2005, stating that a marriage contract is no longer interpreted as a contract concluded with a marriage contract.³⁸ Although the Constitutional Court ruling 69/PUU-XIII/2015 was requested by a couple in a mixed marriage, it also applies to couples of fellow Indonesian nationals.

Another most discussed issue is the ownership of a Family Card, where a married couple does not have a Marriage Certificate or a married couple is not recorded. In this case, the Ministry of Home Affairs points out that a married couple whose marriage is unregistered is eligible to make a family card (KK). Article 34 of Presidential Decree No. 96 of 2018 allows the public to attach a Letter of Absolute Responsibility (STJM) for two reasons: absence of a birth certificate, marriage book/certificate, or other appropriate documents. However, the relationship status on a family card indicates that a couple is married. These provisions provide space for married couples who are married serially to have a family card on the condition that there is a special note listed on the family card that the marriage performed is not recorded. Granting a couple a family card with their marriage unregistered actually has a positive impact because a birth certificate cannot be issued without a family card. On the other hand, giving a family card will actually cause some problems for women and children. In addition, the function inherent in the science of law, in conjunction with the establishment of the science of law as a science, is the humanization of humans.³⁹ The leniency that favors couples under an unregistered marriage contravenes the agenda set by the legislators to ensure that all marriages are registered. This regulation is counterproductive resulting in ineffective marriage registration in the future. This is due to the leeway given by obtaining a marriage book after siri (unregistered) marriage takes place.

The recommendations for fulfilling the population management rights of unregistered marriages are in sharp contrast to Indonesia's current laws and regulations. Under Law No. 1 of 1974, a marriage is valid if it is done in accordance with the laws of each religion and belief, and each marriage must also be registered in compliance with applicable laws and regulations. The regulation

³⁸ Yudiana Dewi Prihandini, "Perlindungan Hukum Terhadap Pihak Ketiga Atas Perjanjian Perkawinan Yang Dibuat Setelah Perkawinan," *Lex Renaissance* 4, no. 2 (2019): 354–66.

³⁹ Safrin Salam, "Rekonstruksi Paradigma Filsafat Ilmu: Studi Kritis terhadap Ilmu Hukum sebagai Ilmu," *Ekspose: Jurnal Penelitian Hukum dan Pendidikan* 18, no. 2 (2020): 885–96, <https://doi.org/10.30863/ekspose.v18i2.511>.



explains that marriages will only have formal legality before the law if they are recorded by a marriage registrar (PPN) appointed by the state, while those that are not registered are considered illegal. The marriage certificate issued through the marriage registration allows for easier access for husband and wife to the processes of other legal needs.

Conclusion

The evolution of family law in Indonesia is affected by both legal historical factors and contemporary societal changes. Family law develops according to the community's needs for legal certainty and aspects related to family relations, starting from setting age limits for prospective husbands and wives, child status, and marriage agreements to a marital status that is not administratively registered. There are several changes in Indonesian marriage law, including those related to changes in the age limit for marriage, related to marriage agreements and most recently the new breakthrough of unregistered marriage which was also included in a family card

Bibliography:

- Aditya, Zaka Firma. "Romantisme Sistem Hukum Di Indonesia: Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (15 Mei 2019): 37–54. <https://doi.org/10.33331/rechtsvinding.v8i1.305>.
- Agustin, Fitria. "Kedudukan Anak Dari Perkawinan Berbeda Agama Menurut Hukum Perkawinan Indonesia." *Ajudikasi: Jurnal Ilmu Hukum* 2, no. 1 (20 Juli 2018): 43–54. <https://doi.org/10.30656/ajudikasi.v2i1.574>.
- Andriati, Syarifah Lisa, dan Tri Murti Lubis. "Penyuluhan Hukum Poligami Dan Nikah Siri Menurut Undang-Undang Perkawinan." *ABDIMAS TALENTA: Jurnal Pengabdian Kepada Masyarakat* 2, no. 2 (13 Desember 2017): 120–24. <https://doi.org/10.32734/abdimestalenta.v2i2.2302>.
- Ariansyah, Pebi. "Tinjauan Hukum Pidana Islam Terhadap Pasal 4 Huruf B Angka 2 Undang-Undang Nomor 40 Tahun 2008 Tentang Penghapusan Diskriminasi Ras Dan Etnis." Undergraduate Thesis, UIN Raden Fatah Palembang, 2020. <http://repository.radenfatah.ac.id/7693/>.
- Arifin, Ridwan, Rodiyah Rodiyah, dan Fadhilah Rizky Afriani Putri. "The Legal and Social Aspect for Underage Marriage Women's Education Rights in the Perspective of Human Rights: Contemporary Issues and Problems." *Sawwa: Jurnal Studi Gender* 15, no. 2 (31 Oktober 2020): 219–40. <https://doi.org/10.21580/sa.v15i2.5165>.
- Azizah, Ulfi, dan Nur Wahid. "Historisitas dan Tujuan Aturan Umur Minimal Perkawinan dalam Perundang-Undangan Keluarga Islam di Indonesia." *Jurnal Hukum Volkgeist* 2, no. 2 (2019): 163–77.
- Baird, Sarah, Maureen Murphy, Jennifer Seager, Nicola Jones, Anju Malhotra, Sarah Alheiwidi, Guday Emirie, Sabina Rashid, dan Maheen Sultan. "Intersecting Disadvantages for Married Adolescents: Life After Marriage Pre- and Post-COVID-19 in Contexts of Displacement." *Journal of Adolescent*



- Health* 70, no. 3 (2022): S86–96.
<https://doi.org/10.1016/j.jadohealth.2021.12.001>.
- Bratter, Jenifer L., dan Heather A. O’Connell. “Multiracial identities, single race history: Contemporary consequences of historical race and marriage laws for racial classification.” *Social Science Research* 68 (November 2017): 102–16.
<https://doi.org/10.1016/j.ssresearch.2017.08.010>.
- Carpenter, Christopher S., Samuel T. Eppink, Gilbert Gonzales, dan Tara McKay. “Effects of Access to Legal Same-Sex Marriage on Marriage and Health.” *Journal of Policy Analysis and Management* 40, no. 2 (2021): 376–411.
<https://doi.org/10.1002/pam.22286>.
- Catino, Maurizio, Sara Rocchi, dan Giuseppe Vittucci Marzetti. “The network of interfamily marriages in ’Ndrangheta.” *Social Networks* 68, no. September 2021 (Januari 2022): 318–29. <https://doi.org/10.1016/j.socnet.2021.08.012>.
- Chen, Shuai, dan Jan C. van Ours. “Symbolism Matters: The Effect of Same-Sex Marriage Legalization on Partnership Stability.” *Journal of Economic Behavior & Organization* 178 (1 Oktober 2020): 44–58.
<https://doi.org/10.1016/j.jebo.2020.07.021>.
- Daniels, R. Steven. “The Evolution of Attitudes on Same-Sex Marriage in the United States, 1988–2014.” *Social Science Quarterly* 100, no. 5 (2019): 1651–63. <https://doi.org/10.1111/ssqu.12673>.
- Djubaedah, Neng. *Pencatatan perkawinan & perkawinan tidak dicatat : menurut hukum tertulis di Indonesia dan hukum Islam*. Jakarta: Sinar Grafika, 2010.
- Falahiyati, Nurhimm. “Anak Luar Kawin, Terkait Hak Waris Yang Dimilikinya Berdasarkan Kitab Undang-Undang Hukum.” *Kalam Keadilan* 6, no. 1 (2018).
- Guirkinger, Catherine, Jérémie Gross, dan Jean-Philippe Platteau. “Are Women Emancipating? Evidence from Marriage, Divorce and Remarriage in Rural Northern Burkina Faso☆.” *World Development* 146 (1 Oktober 2021): 105512. <https://doi.org/10.1016/j.worlddev.2021.105512>.
- Hanapi, Agustin, dan Edy Yuhermansyah. “Urgency of Marriage Registration for Women and Child Protection in Gayo Lues District.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (28 Desember 2020): 528–44.
<https://doi.org/10.22373/sjhk.v4i2.7942>.
- Hotte, Rozenn, dan Karine Marazyan. “Demand for insurance and within-kin-group marriages: Evidence from a West-African country.” *Journal of Development Economics* 146, no. April (September 2020): 102489.
<https://doi.org/10.1016/j.jdeveco.2020.102489>.
- Irfan, Muhammad, Damrah Khair, Habib Shulton Asnawi, dan Linda Firdawaty. “Reflection of a Decade of Pre-Marriage Guidance on Family Resilience in Indonesia.” *SMART: Journal of Sharia, Traditon, and Modernity* 1, no. 2 (28 Desember 2021): 188–201. <https://doi.org/10.24042/smart.v1i2.11353>.
- Jejeebhoy, Shireen J., dan Mukesh Ravi Raushan. “Marriage Without Meaningful Consent and Compromised Agency in Married Life: Evidence From Married Girls in Jharkhand, India.” *Journal of Adolescent Health* 70, no. 3 (Maret 2022): S78–85. <https://doi.org/10.1016/j.jadohealth.2021.07.005>.



- Junadi, Mahbub. "Manusia dalam berbagai Perspektif." *El-Ilmi: Jurnal Studi Keagamaan, Pendidikan dan Humaniora* 4, no. 1 (2017): 35–55.
- Laksanto Utomo. *Hukum Adat*. Depok: Rajawali Press, 2019.
- Loho, Stevi. "Hak Waris Anak Di Luar Perkawinan Sah Berdasarkan Putusan Mahkamah Konstitusi Nmor 46/Puu-Viii-2010." *LEX CRIMEN* 6, no. 3 (21 April 2017).
<https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/15613>.
- McKenzie, Jessica, dan Kajai C. Xiong. "Fated for Foreigners: Ecological Realities Shape Perspectives of Transnational Marriage in Northern Thailand." *International Journal of Intercultural Relations* 82 (1 Mei 2021): 121–34.
<https://doi.org/10.1016/j.ijintrel.2021.03.010>.
- Moch. Isnaeni. *Hukum Perkawinan Indonesia*. Bandung: Refika Aditama, 2016.
- Muslim, Asrul. "Interaksi sosial dalam masyarakat multietnis." *Jurnal Diskursus Islam* 1, no. 3 (2013): 483–94.
- Nurhajati, Lestari, dan Damayanti Wardyaningrum. "Komunikasi Keluarga Dalam Pengambilan Keputusan Perkawinan Di Usia Remaja." *JURNAL AL-AZHAR INDONESIA SERI PRANATA SOSIAL* 1, no. 4 (28 Januari 2014): 236–48.
- Nurhayati, Agustina. "Politik Hukum (Legislasi) Hukum Keluarga Di Saudi Arabia." *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 7, no. 1 (2014): 67–82.
- Okta, Prihatining Tyas. "Gugatan Perceraian Atas Perkawinan Yang Belum Didaftarkan Di Kantor Catatan Sipil Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (Studi Putusan Mahkamah Agung Nomor 3057 K/Pdt/2014)." Undergraduate, Universitas Bhayangkara Jakarta Raya, 2018. <http://repository.ubharajaya.ac.id/1175/>.
- Oratmangun, Hubertus Shakti Bagaskara. "Perkawinan Beda Agama Di Indonesia (Studi Kasus: Penetapan Pn Jakarta Selatan Nomor 1139/Pdt. P/2018/Pn.Jkt.Sel)." *Indonesian Notary* 3, no. 2 (2021).
- Prihandini, Yudiana Dewi. "Perlindungan Hukum Terhadap Pihak Ketiga Atas Perjanjian Perkawinan Yang Dibuat Setelah Perkawinan." *Lex Renaissance* 4, no. 2 (2019): 354–66.
- Salam, Safrin. "Dispensasi Perkawinan Anak di Bawah Umur: Perspektif Hukum Adat, Hukum Negara & Hukum Islam." *Pagaruyuang Law Journal* 1, no. 1 (29 Juli 2017): 110–24. <https://doi.org/10.31869/plj.v1i1.273>.
- . "Rekonstruksi Paradigma Filsafat Ilmu: Studi Kritis terhadap Ilmu Hukum sebagai Ilmu." *Ekspose: Jurnal Penelitian Hukum dan Pendidikan* 18, no. 2 (2020): 885–96. <https://doi.org/10.30863/ekspose.v18i2.511>.
- Sendy, Beby. "Hak Yang Diperoleh Anak Dari Perkawinan Tidak Dicatat." *Jurnal Hukum Responsif* 7, no. 7 (2019): 1–10.
- Singh, Mayank, Chander Shekhar, dan Neha Shri. "Patterns in age at first marriage and its determinants in India: A historical perspective of last 30 years (1992–2021)." *SSM - Population Health* 22, no. November 2022 (2023).
<https://doi.org/10.1016/j.ssmph.2023.101363>.



- Subchi, Imam, Qosim Arsadani, Muhammad Ishar Helmi, dan Efin Faridho. "Legal Policy of Child Marriage In the Covid-19 Pandemic Period." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (2021): 846–66.
- Sujono, Imam. "Legal Education about Marriage of Women without Divorce Certificate and Previously Unregistered Marriage." *International Journal of Law Society Services* 2, no. 2 (24 Oktober 2022): 48–65. <https://doi.org/10.26532/ijlss.v2i2.22410>.
- Supriyadi, Supriyadi. "Pilihan Hukum Kewarisan Dalam Masyarakat Pluralistik (studi Komparasi Hukum Islam Dan Hukum Perdata)." *Al-Adalah* 12, no. 1 (2015): 553–68. <https://doi.org/10.24042/adalah.v12i1.235>.
- Syahraeni, Andi. "Tanggung Jawab Keluarga dalam Pendidikan Anak." *Allrsyad Al-Nafs: Jurnal Bimbingan dan Penyuluhan Islam* 2, no. 1 (2015).
- Syam, Zulviani. "Status Penetapan Ahli Waris dari Pihak yang tidak Memiliki Akta Nikah Analisis Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010." Universitas Islam Negeri Alauddin Makassar, 2019.
- Tangkudung, Detty. "Sebab-Sebab Perceraian dan Akibat-Akibat Hukumnya dalam Praktek sejak UU Perkawinan 1974." *Jurnal Hukum & Pembangunan* 9 (2 Februari 1979): 45. <https://doi.org/10.21143/jhp.vol9.no1.726>.
- Tumengkol, Meivy R. "Eksploitasi Anak Pada Keluarga Miskin Di Kelurahan Tona I Kecamatan Tahuna Timur Kabupaten Kepulauan Sangihe." *HOLISTIK, Journal of Social and Culture*, 5 Februari 2016. <https://ejournal.unsrat.ac.id/v3/index.php/holistik/article/view/10707>.
- Twenge, Jean M., dan Andrew B. Blake. "Increased Support for Same-sex Marriage in the US: Disentangling Age, Period, and Cohort Effects." *Journal of Homosexuality* 68, no. 11 (19 September 2021): 1774–84. <https://doi.org/10.1080/00918369.2019.1705672>.
- Usman, Mukran H., A. Hawariah, Rosmita Rosmita, dan Nurfatimah Muh Tahir. "Tinjauan Hukum Islam Terhadap Pernikahan Dengan Wali Hakim (Studi Kasus Di KUA Kecamatan Bulu, Kabupaten Polman)." *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam* 2, no. 2 (20 Agustus 2021): 301–13. <https://doi.org/10.36701/bustanul.v2i2.365>.
- Xing, Long, Cameron Campbell, Xiangning Li, Matthew Noellert, dan James Lee. "Education, Class and Assortative Marriage in Rural Shanxi, China in the Mid-Twentieth Century." *Research in Social Stratification and Mobility* 66 (1 April 2020): 100460. <https://doi.org/10.1016/j.rssm.2019.100460>.

