JURIDICAL ASPECTS OF UNDERAGE MARRIAGE AND CUSTOMARY LAW

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Abstract

In Mahakam Ulu Regency, underage marriages occur, where men are only 16 years old and women are 14 years old. From a positive legal perspective, underage marriage is very unusual for those who marry at a very young age, from a legal perspective, it can violate Law Number 35 of 2014 the role of parents to prevent underage marriages in this case is contrary to the Act. Child Protection Act. Throughout 2019, in Mahakam Ulu Regency in the past year, according to research recorded at the Population and Civil Registration Office in Mahakam Ulu Regency, 20 underage couples got married. The majority of couples who marry underage are pregnant out of wedlock due to promiscuity. Of the twenty couples, the village with the highest number of child marriages compared to other villages, namely six couples, occurred in Mahakam Ulu Regency. empirical juridical research, research using field data. The results showed that the Juridical Aspects of Underage Marriage according to Indonesian Positive Law can be seen in the provisions of Law Number 16 of 2019 concerning Marriage Article 7 paragraph (1) Marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 19 years. Article 6 paragraph (2) To carry out a marriage, a person who has not reached the age of 21 years must obtain permission from both parents and Law Number 23 of 2002 concerning Child Protection Article 26 (1) Parents are obliged and responsible for: caring for, maintaining, educate and protect children, develop children according to their abilities, talents and interests and; prevent child marriage.

Keywords: Underage Marriage, Child Protection, Customary Law

INTRODUCTION

Marriage is a bond that gives birth to a family through legal marriage as one of the elements in social and state life and is entitled to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia, and regulated by the Positive Law. Prior to the birth of the Marriage Law regarding marriage procedures for Indonesians, it was generally regulated according to their respective Religious Laws and Customary Laws. Mining business is an activity in the framework of mineral or coal exploitation which includes stages of general investigation activities, exploration, feasibility studies, constituencies, mining, processing and refining, transportation and sales, and post-mining.

Law Number 4 of 2009 concerning Mineral and Coal mining, which is contained in article 1 number 1 explains that "mining is part or all of the stages of activities in the context of research, management and exploitation of minerals or new coal which includes general investigation, exploration, feasibility studies, construction, mining, management and refining, transportation and sale, as well as post-mining activities."

State Law that regulates marriage matters is based on Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. However, to form a marriage in the marriage law law, conditions have been set such as regarding the age limit to be able to perform marriage (material requirements), one of which is the provision regarding the minimum age limit that has been set is contained in Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, also called the Law saying that "Marriage is only allowed when men and women have reached the age of nineteen

Throughout 2019, in Mahakam Ulu Regency in the past year, according to research recorded at the Office of Population and Civil Registration in Mahakam Ulu Regency, there were twenty underage couples who had married. The majority of underage married couples become pregnant out of wedlock due to promiscuity. Of the twenty couples, the village with the most minor marriages compared to other villages, namely six couples, occurred in Mahakam Ulu Regency.

In connection with the explanation above, the author draws the title, namely "Juridical Aspects of Underage Marriage According to Law No: 16 of 2019 and Customary Law in Mahakam Ulu Regency, Indonesia"

Based on the background description of the problem formulation as follows:

1. What are the Juridical Aspects of Underage Marriage According to Law no. 16 of 2019?
2. What is the juridical aspect of underage marriage according to customary law in Mahakan Ulu Regency, Indonesia?

Based on the background and formulation of the problem as described above, the purpose of this study is directed to answer 2 (two) things, namely:

1. What are the Juridical Aspects of Underage Marriage According to Law No. 16 of 2019?
2. What are the Juridical Aspects of Underage Marriage According to Customary Law in Mahakan Ulu Regency, Indonesia?.

RESEARCH METHOD

Normative Juridical is research conducted based on legal materials and by collecting data, studying books in libraries and laws and regulations related to this research.
"Normative legal research, which consists of:

a) Research on legal principles
b) Research on legal systematics,
c) Research on the level of legal synchronization,
d) Legal history research and
e) Legal comparative research"2

In this research, the problem approach uses normative juridical methods, namely researching normative law or library research, this is research that examines the study of documents using various secondary data such as laws and regulations. The decision of the court of legal theory, and can be the opinion of scholars.

The sources of legal materials that the author will use in this thesis are as follows: The data sources used in this study are secondary and primary data.

a) Secondary Data is data that includes primary legal materials and secondary laws.
   Primary legal materials include:
   1. Civil Code.
   2. Constitution of 1945.
   3. Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage.
   4. Law Number 35 of 2014 Amendments to Law Number 23 of 2002 concerning Child Protection.

b) Secondary Material, consisting of legal opinions on legal theories, legal principles, legal concepts, as well as the results of previous research, scientific articles, and websites related to this research.
   In order to collect the data needed in this study, the authors used 2 ways of collecting data:
   a. Literature Studies
      The author uses literature studies by reviewing legislation and documents related to the problem.
   b. The data management stages in this study include the following activities:
   1) Data identification, which is to find the data obtained to be adjusted to the discussion to be carried out
   2) by examining rules, books or articles relating to titles or issues.
   3) Data classification, which is the result of data identification which is then classified or grouped so that truly objective data is obtained.
   4) Data preparation, which is to compile data according to the systematics that have been determined in the study so as to make it easier for researchers to interpret data.

The data analysis used by the author is a descriptive analysis method of qualitative analysis, meaning that the data obtained and presented descriptively qualitative in the form of correct, complete and systematic sentences so that it cannot cause diverse interpretations and is then presented as a basis for drawing a conclusion.

Legal Theory

Legal Theory is a way of looking at law that analyzes it or conducts a critical in-depth examination of aspects of legal symptoms specifically and thoroughly both practical and theoretical by providing a thinking order on what the legal science faces, in order to understand the law itself more deeply, a clearer description, in a broader insight.

According to B. Arief Sidharta The theory of Legal Science (rechtsheorie) in general can be interpreted: "As a legal science or discipline that in an interdisciplinary and external perspective critically analyzes various aspects of legal symptoms, both in its own and in relation to the whole, both in its theoretical conception and in its practical, with the aim of obtaining a better understanding and providing as clear an explanation as possible about the presented legal material and juridical activities in the reality of society. The object of his study is a common symptom in the positive legal order which includes the analysis of legal materials, methods in law and ideological criticism of the law." The theory of law according to JJH Bruggink explains that legal theory is "the whole statement relating to the conceptual system of legal rules and legal judgments, and the system is for some important posited."

Hans Kelsen has important fundamentals of thought on the general theory of law where the purpose of legal theory is that as every science is to reduce chaos and plurality to unity, legal theory is a science of applicable law and not about the law that should be, law is a normative science and not a natural science, legal theory as a theory of norms and has nothing to do with the working power of a legal norms themselves, and that legal theory is a formal that is, a theory of how to organize and change the content in a special way.

The approach used by Hans Kelsen is called the pure theory of law, namely: "It is a positive legal theory but not the positive law of a particular legal system but rather a general legal theory. As a theory its main objective is the knowledge of its subject to answer the question of what a law is and how it is made. It is not a question of whether the law is supposed to be (what the law ought to be) or how it should be made (ought to be made). Pure legal theory is legal science, not legal policy" "According to Richard A. Posner legal theory includes the philosophy of law, but legal theory is clearly broader than that of legal philosophy, because legal theory includes the use of non-legal methods of inquiry to explain specific issues about law. It's just that legal theory doesn't include doctrinal analysis"6.

Legal Theory

The term State of Law is a translation of the term "rechtsstaaf". Another term used in the indonesian legal realm is the rule of law, which is used to mean the "State of Law". Notohamjdjojo uses the words "hence also arises the term State of Law or rechtsstaat". Djokosoetono said that "A democratic State of Law is actually a false term, because if we eliminate democratische rechtsstaat, what matters and primair is rechtsstaat."

"Meanwhile, Muhammad Yamin uses the word state of law the same as rechtsstaat or government of law, as quoted in the following opinion: "the police or military state, where the police and soldiers hold the government and justice, nor is the state of the Republic of Indonesia a state of law (rechtsstaat, government of law) where the written justice applies, not a state of power (machtsstaat) where the power of arms and the power of the body do arbitrarily (the author's seat)".

Based on the description of the explanation above, in the Indonesian Law literature, in addition to the term rechtsstaat to indicate the meaning of the State of Law, it is also known as the ruse of law. But the term the rule of law is the most widely used to date. "In Hadjon's opinion, the two terminologies, namely rechtsstaat and the rule of law, are supported by different legal system backgrounds. The term Rechtsstaat is the fruit of the idea of opposing absolutism, which is revolutionary in nature and rests on the common law legal system. However, the difference between the two is now no longer a problem, because it leads to the same goal, namely the protection of human rights".

Although there are differences in understanding between the rechtsstaat or etat de droit and the rule of law, it is undeniable that the presence of the term "State of Law" or in the terms of the Explanation of the 1945 Constitution is called the "State based on the Law (rechtsstaat)", inseparable from the influence of the two understandings. The existence of the rule of law is to prevent the abuse of discretionary power. The government is also prohibited from using privileges that are unnecessary or free from the usual rule of law. The state of law (rechtsstaat or the rule of law), which contains the principle of legality, the principle of separation (division) of powers, and the principle of independent judicial power, all aim to control the state or government from the possibility of acting arbitrarily, tyrannically, or abuse of power.

In modern times, the concept of the State of Law in Continental Europe was developed among others by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others using the German term, namely "rechtsstaat". Meanwhile, in the Anglo American tradition, the concept of the State of law was developed on the pioneering of A.V. Dicey with the title "The Rule of Law". According to Julius Stahl, the concept of the State of Law, which he called "rechtsstaat", includes four important elements, namely:

a. Protection of Human Rights.
b. Division of Power.
c. Government under the Act. Administrative Court.

Theory of Legal Evectivity

The word effective comes from the English word effectiv which means to succeed or something that is done works well. Popular scientific dictionaries define effectiveness as the accuracy of use, the result of which it is used or sustained for purpose. According to the Big Dictionary of Indonesian, effective is something that has an effect (consequently, its effect, its effect) since the commencement of the enactment of an Act or regulation, while effectiveness itself is the state in which it is played to monitor.

Legal effectivization is a process that aims to make the law effective. When we want to know the extent of the effectiveness of the law, then we must first be able to measure the extent to which the law is obeyed by most of the targets to which it is subjected, we will say that the rule of law in question is effective, nevertheless, even if it is said that the rule obeyed is effective, but we can still question further the degree of its effectiveness because a person obeys or not a rule of law depends on Significance. As previously stated, there are various kinds of interests, including compliance, identification, internalization.

Factors that measure obedience to the law in general include:

a. The relevance of the rule of law in general, to the legal needs of the people who are the targets of that general rule of law.
b. Clarity of the formulation of the substance of the rule of law, so that it is easily understood by the target of the enactment of the rule of law.
c. Optimal socialization to all the targets of the rule of law.

d. If the law in question is legislation, then the rules should be prohibitive, and not require, because prohibitive laws are easier to implement than mandatory laws
e. The sanctions threatened by the rule of law must be matched with the nature of the violated rule of law.
f. The severity of sanctions threatened in the rule of law must be proportionate and possible to implement.
g. The possibility for law enforcement to process in case of violation of such rules of law, is indeed possible, since the actions that are regulated and threatened with sanctions, are indeed concrete actions, can be seen, observed, therefore allow them to be processed in every stage (investigation, investigation, prosecution, and punishment).
h. The rule of law, which contains norms in the form of prohibition, will relatively fall more effectively than the rule of law that lasts with the values embraced by the people who are the targets of the enactment of the rule.
i. The effectiveness or ineffectiveness of a rule of law in general, also depends on the optimal and professional actions of law enforcement apparat to enforce the rule of law.
j. Whether or not a rule of law is effective in general, also requires a minimal socio-economic standard of living in society. Based on the opinion of C.G. Howard & R.S. Mummres who argued that what should be studied, is not obedience to the law in general, but rather a wording of certain rules of law only.

Achmad Ali himself argued that studies can still be carried out on both:

1. How is obedience to the law in general and what factors influence it;
2. How is the observance of a certain rule of law and what factors influence it.

If what will be studied is the effectiveness of legislation, then it can be said that about the effectiveness of a law, a lot depends on several factors, including:

1. Knowledge of the substance (content) of legislation.
2. Ways to acquire that knowledge.
3. Institutions related to the scope of legislation in society.
4. What is the process of the birth of a Legislation, which must not be born hastily for instantaneous (momentary) purposes, termed by Gunnar Myrdall as sweep legislation, which is of poor quality and does not suit the needs of society. 11th

So, Achmad Ali argues that in general, the factors that influence the effectiveness of a law are professional and optimal implementation of the roles, authorities and functions of law enforcement, both in the explanation of the duties imposed on themselves and in enforcing the legislation.

Meanwhile, Soerjono Soekanto uses the benchmark of effectiveness in law enforcement on five things, namely:

1. The Legal Factor serves for fairness, certainty and expediency. In the practice of law administration in the field there are times when there is a conflict between legal certainty and justice. Legal Certainty is concrete in tangible form, while justice is abstract so that when a judge decides a case in the application of the Act, there are times when the value of justice is not achieved. So when looking at a problem regarding the law, at least justice is the top priority. Because the law is not merely viewed from the point of view of written law alone.
2. Law Enforcement Factors In the functioning of the law, the mentality or personality of law enforcement officers plays an important role, if the regulations are good, but the quality of the officers is not good, there is a problem. So far, there has been a strong tendency among the public to interpret the law as an officer or law enforcement, meaning that the law is identified with the real behavior of officers or law enforcement. Unfortunately, in exercising their authority, problems often arise because of attitudes or treatment that are seen as exceeding authority or other actions that are considered to dilute the image and authority of law enforcement. This is due to the low quality of such law enforcement officers.
3. Factors of Supporting Facilities or Facilities Factors of supporting facilities or facilities include software and hardware, According to Soerjono Soekanto that law enforcement cannot work properly, if they are not equipped with professional vehicles and communication tools. Therefore, facilities have a very important role in law enforcement. Without these facilities or facilities, it will not be possible for law enforcement to align the role it should have with the actual role.
4. The Law Enforcement Community Factor comes from the community and aims to achieve peace within the community. Every citizen or group has more or less legal awareness. The problem that arises is the level of legal compliance, which is high, medium, or less legal compliance. The existence of a degree of legal compliance of society with the law, is one of the indicators of the functioning of the law in question.

5. Cultural Factors basically include the values underlying the applicable law, which values are abstract conceptions of what is considered good (so that it is followed) and what is considered bad (so as to be avoided). Thus, Indonesian culture is the basis or basis of applicable customary law. In addition, written law (legislation) also applies, which is formed by certain groups in society who have the power and authority to do so. The statutory law must be able to reflect the values on which customary law is based, so that the law can be actively applied.12 The five factors above are closely related, because they are the main thing in law enforcement, as well as a benchmark for the effectiveness of law enforcement.

Of the five law enforcement factors, the law enforcement factor itself is the central point. This is because both the Law is drafted by law enforcement, its application is also carried out by law enforcement and the law enforcement itself is also a role model by the wider community.

Theory of Legal Evectivity

The word effective comes from the English word effectiv which means to succeed or something that is done works well. Popular scientific dictionaries define effectiveness as the accuracy of use, the result of which it is used or sustained for purpose. According to the Big Dictionary of Indonesian, effective is something that has an effect (consequently, its effect, its effect) since the commencement of the enactment of an Act or regulation, while effectiveness itself is the state in which it is played to monitor.

But generally marriage is exclusive and recognizes the concept of infidelity as a violation of marriage. Marriages are generally lived with the intention of forming a family. Generally, marriage should be formalized by marriage. Some legal experts who provide definitions of marriage include:

a. According to Prof. Soediman Kartohadiprodjo, SH: Marriage is a relationship between a woman and a man that is eternal.
b. According to Paul Scholten defines marriage as follows : Marriage is a legal relationship between a man and a woman to live together eternally which is recognized by the State.
c. According to Prof. Subekti, S.H: defines marriage as a legal relationship between a man and a woman for a long time.
d. According to K. Wantjik Saleh, S.H: Marriage is the inner birth bond between a man and a woman as husband and wife.
e. According to Prof. Ali Afandi, S.H: Marriage is a family agreement.

From the various opinions described above, it can be understood that marriage according to law is not only concerned with the civil aspect but also alludes to other aspects such as biological aspects and religious aspects.

Marriage is something sacred, and is something that is very important to human life including religious life, and is even considered part of worship. The purpose of a marriage for religious people should be a tool to avoid bad deeds and abstain from sin. It is in this context that a good and suitable partner plays an important role. If two people of faith through marriage form a family, then their relationship provides an advantage in strengthening the mutual love and affection that exists within them. Therefore, the purpose of marriage must be sought in a spiritual context.17

Definition of Marriage According to Law

Based on Article 28B of the 1945 Constitution paragraphs (1) and (2) that "everyone has the right to form a family and continue offspring through a valid marriage and, "every child has the right to survival, growth and development and is entitled to protection from violence and discrimination", furthermore that Marriage according to the Civil Code in Article 26 explains that"The Law views the matter of marriage only in civil relations" meaning, that a marriage affirmed in the above Article is only a civil relationship, that is, a personal relationship between a man and a woman who bind themselves in a marital bond. While the purpose of a marriage is not expressly stated. In the provisions of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, that the State guarantees the right of citizens to form families and continue offspring through legal marriage, guarantees the right of children to survival, growth and development and the right to protection from violence and discrimination.

According to these provisions, several requirements are regulated as follows

1) Marriage is only permitted when the man and woman have reached the age of nineteen years.
2) In the event of a deviation from the age provision as referred to in paragraph (1), the male party's parents and/or the woman's parents may request a dispensation to the court on the grounds that it is urgent accompanied by sufficient supporting evidence.

3) The granting of dispensation by the court as referred to in paragraph (2) must listen to the opinions of both parties of the prospective bride and groom who will carry out the marriage.
4) The provisions regarding the circumstances of one or both parents of the bride and groom as referred to in Article 6 paragraphs (3) and (4) also apply to the provisions regarding the request for dispensation as referred to in paragraph (2) without prejudice to the provisions as referred to in Article 6 paragraph (6).

Definition of Customary Law

Daily life among the community in general the term customary law is very rarely encountered, in the general community we usually encounter only by mentioning the term adat which means a custom in a certain society, Etymologically (language) the word adat comes from the Arabic language, namely "Adah" Which means a habit that is a community behavior that often occurs while the word law etymologically comes from the Arabic word, "Law which means provision or order, so when combined between law and custom which means a community behavior that always occurs continuously and more precisely can be called a customary law".

Indonesian legislation so far distinguishes between the terms "Adat" and "Custom", so "Customary Law" is not the same as "Customary Law". The "Custom" recognized in the legislation is the "Customary Law", while the "Customary Law" is the customary law outside the statute. The term customary law was first proposed by Prof. Dr. Christian Snouck Hurgronye in his book entitled "De Accheers" (Acehnese People), which was later followed by Prof. Mr. Cornelis Van Vollen Hoven in his book entitled "Het Adat Recht Van Nederland Indie". With this term, the Dutch colonial government at the end of 1929 began to use it officially in Dutch legislation.

Here are some definitions of Customary Law put forward by legal experts, including the following:

1) Prof. Van Vallenhoven, who first referred to Customary Law gives a definition of customary law as: "The set of regulations on conduct applicable to indigenous peoples and foreign easterners on one sanctioned party (because it is legal) and on the other side is in a state of non-codification (due to custom)". Abdulrahman, SH emphasized that Van Vallenhoven's formulation is indeed suitable for describing the so-called Recht Custom of the era, not for the Customary Law of the present.
2) Prof. Soepomo, formulated Customary Law: Customary Law is a synomim of laws that are not written in legislative regulations (statuary law), laws that live as conventions in state legal entities (Parliament, Provincial Councils and so on), laws that live as customary rules that are maintained in living associations, both in cities and in villages.
3) Prof. Soekanto, Formulating Customary Law: This Customary Complex is mostly unscripted, not codified and coercive has sanctions (from that the law), so it has legal consequences, this complex is called Customary Law.
4) Prof. Soeripto: Customary Law is all rules or regulations, customary rules of behavior that are legal in all Indonesian lives, which are generally unwritten which the community considers appropriate and binding on members of society, which is legal in nature because there is a general awareness of justice, that the rules or regulations must be maintained by law officers and community officers with forced efforts or threats of punishment (sanctions).
5) Hardjito Notopuro: Customary Law is an unwritten law, a customary law with distinctive characteristics that are guidelines for people's lives in organizing the system of community and welfare and are familial in nature.
6) Suroyo Wignjodipuro: Customary Law is a complex of norms that originate from the ever-evolving feeling of people's justice and include the regulation of the level of human practice in everyday life in society, mostly unwritten, because it has legal consequences (sanctions).

Definition of Customary Law

Definition of Marriage According to Customary Law Marriage is one of the most important events in the life of indigenous peoples, because marriage concerns not only the bride and groom, but also the parents of both parties, their siblings, and even their respective families. In customary law marriage is not just a landmark event for those who are still alive. But marriage is also a very meaningful event and one that fully receives attention and is followed by the spirits of the ancestors of both parties.19 Marriage according to customary law is a sex relationship between a man and a woman, which brings a broader relationship between groups of male and female relatives and even between one society and another. Marriage is usually defined as a bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family based on the One True Godhead. Meanwhile, in the form of marriage that occurs based on the rules and norms that

apply in the local community.20 Traditional Marriage in Indonesia also needs to be known that there are so many customs that it has, therefore the implementation of customary marriage in Indonesia is diverse.

Statutory Conditions of Marriage

The terms of marriage are regulated in Article 6 of Law Number: 16 of 2019 on the Amendment of Law Number 1 of 1974 concerning Marriage, as follows:

1) The marriage must be based on the consent of the bride and groom.
2) To enter into marriage a person who has not reached the age of nineteen years must have the permission of both parents.

In the event that one of the two parents has passed away or is unable to declare his will, then the permission referred to in paragraph (2), this Article is sufficiently obtained from the surviving parent or from the parent who is able to declare his will.

1) In the event that both parents have passed away or are unable to declare their will, permission is obtained from the guardian, the caring person or the family who is related by blood in a straight lineage upwards as long as they are alive and in a state of being able to declare their will.
2) In the event that there is a difference of opinion between the persons referred to in paragraphs (2), (3) and (4) of this Article, or one or more of them do not express their opinion, then the Court in the jurisdiction of residence of the person who is about to enter into a marriage at the request of the person may give permission after first hearing the persons in paragraphs (2), (3) and (4) of this Article.
3) The provisions of subsections (1) to (5) of this Article apply to the extent that the laws of each religion and its beliefs from the person concerned do not specify otherwise.

Marriage is permitted only if the male side and the female side have reached the age of nineteen years. If in the event of a deviation occurring on its terms, the parents of the male party and or the female party may request a dispensation to the Court on urgent grounds accompanied by sufficient supporting evidence. The granting of dispensation by the court must listen to the opinions of both parties of the bride and groom who will enter into the marriage.

Marriage is prohibited between two persons who:

a. Blood-related in a straight lineage down or up.
b. Blood relations in sideways lineage are between siblings, between one parent and one and one's grandmother's siblings.
c. Related to semenda, namely in-laws, step-daughters-in-law and mother/stepfather
d. Related to milk, namely milk parents, milk siblings and milk aunts / uncles.
e. Related relatives to the wife or as an aunt or niece of the wife, in the case of a husband having more than one wife.
f. Have a relationship that, by their religion or other applicable regulations, is prohibited from mating.

RESULTS AND DISCUSSION

Juridical Aspects of Underage Marriage According to Law No. 16 of 2019

A young marriage is a marriage that occurs by parties whose age has not reached the as referred to in Law Number 16 of 2019 concerning Marriage, namely men have reached the age of nineteen years and women aged nineteen years but in this writing the parties have not reached the specified age. The marriage must be maintainable by both parties in order to achieve the purpose of the marriage. Thus, it is necessary to have the readiness of both parties both mentally and materially. To bridge between the needs of human nature and the attainment of the essence of a marriage.

Marriages that occur underage are of course inseparable from the various impacts that follow, considering the age of children who are mature enough to carry out marriages like adults, these impacts include:

a. The impact on the law of violations of the Law that has been established in the Republic of Indonesia is as follows:

1) Law Number 16 of 2019 concerning Marriage Article 7 paragraph (1) Marriage is only allowed if the male party has reached the age of 19 years and the female party has reached the age of 19 years. Article 6 paragraph (2) To enter into a marriage a person who has not reached the age of 21 years must obtain the permission of both parents.
2) Law Number 23 of 2002 concerning Child Protection Article 26 paragraph (1) Parents are obliged and responsible for: nurturing, maintaining, educating and protecting children,

fostering the development of children in accordance with their abilities, talents and interests and; prevent the occurrence of marriage at the age of children.

3) The impact of education that a person who marries especially at a minor age, his desire to continue school again or take a higher level of education will not be achieved or will not be realized. This can happen because the learning motivation that a person has will begin to loosen because of the many tasks they have to do after marriage. In other words, underage marriage is for women. Indeed, underage marriage is seen by some as having more negative impacts.
4) Biological Impact where the child biologically the reproductive apparatus is still in the process of reaching maturity so that it is not ready to have sex with the opposite sex, especially if until pregnancy and then giving birth. If forced, there will be trauma, extensive tearing and infections that will endanger the reproductive organs to the point of endangering the child's life.
5) Health Impacts There are several issues raised are the health risks of children who are married underage. For example, UNICEF reported in 2001 that pregnant minors tended to give birth to premature babies, complications, malnourished babies, and higher maternal and infant mortality. Mothers who give birth under 18 years old have low parenting skills or children so they often make wrong decisions about their children. Children who are mated at a young age are at greater risk of venereal disease and HIV/AIDS. Because they can't negotiate safe sex, especially for girls because their vaginas are still not perfect and the cells are not so strong, so venereal diseases can easily occur in children's brides
6) Social Impact This social phenomenon relates to socio-cultural factors in a gender-biased patriarchal society, which puts women in a low position and is considered only a complement to male sex. This condition is very contrary to the teachings of any religion including Islam which respects women very much (Rahmatan lil Alamin). This condition will only preserve a gender-biased patriarchal culture that will give birth to violence against women.

Related to Law Number 16 of 2019 and Law Number 23 of 2002 concerning Child Protection. At least the effectiveness of the application of a law is greatly influenced by several determining factors, namely:

1. The effectiveness or not of the law is made, because it is influenced by the law itself, the application of a law is seen from
2. Law enforcement, that is, the parties who form, escort and apply the law,
3. The application of the law is seen from the availability of adequate advice and infrastructure for law enforcement,
4. The needs of the community, namely the law is accepted by the community as a rule, then the community willingly obeys the rule, and finally is seen from the culture, namely the law as a cultural value in society in socializing.

Talking about Law Number 16 of 2019, we can see the basis for consideration of making Law Number 23 of 2002 concerning Child Protection. In the Act, a child is a person who is not yet eighteen years old, including a child who is still in the womb. If we understand the content of the Act, that a person who is eighteen years of age or older is considered an adult.

The child mentioned in the Act is under the age of 18. Therefore, Law Number 16 of 2019 was made to prevent child marriage, meaning that marriages carried out by prospective couples under 18 years old. Furthermore, Law Number 16 of 2019 does not provide strict sanctions regarding perpetrators who violate the provisions of Law Number 16 of 2019, thus causing opportunities to carry out child marriage and this is due to the absence of legal sanctions. So it can be said that Law Number 16 of 2019 is considered ineffective in child protection. Law Number 16 of 2019 concerning amendments to the Law

No. 1 of 1974 article 7 paragraph (1) states the age of 19 years for the bride and groom if they want to get married. If we examine more deeply the current conditions, undergraduates at the undergraduate level (S1) are usually at the age of 21 to 22 years, while at the age of 19 years applied in Law Number 16 of 2019 are people who have just graduated or finished their high school education. If we examine it more deeply, the strata one level (S1) alone is still a lot of homeless people after graduation, especially if they have just finished high school (SMA).

Law Number 16 of 2019 needs to be reviewed for its effectiveness as a legal umbrella in marriage. Meanwhile, Article 7 paragraph (2) in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 states that in the event of a deviation from the age provisions as referred to in paragraph (1), the parents of the male party and/or the parents of the female party can request a

dispensation to the Court on the grounds that it is very urgent accompanied by sufficient supporting evidence.

Paragraph (2) requires a deeper interpretation of the law, because the existence of paragraph (2) opens a loophole to perform underage marriages without being accompanied by a paragraph or article that regulates sanctions. Therefore, the importance of strictness and sanctions in this Law is for the benefit and protection of children's rights during their growth and development.

The provisions above can be concluded that the implementation of Dayak customary marriage regarding age or age when carrying out marriage is not applied or experiences a legal vacuum as stipulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, that in Article 7 paragraphs 1 and 2 confirms marriage is only permitted if the man and woman have reached the age of nineteen years and in the case of There is a deviation from the age requirement, the male parent's and/or the woman's parent's side may request a dispensation to the court on the grounds that it is urgent accompanied by sufficient supporting evidence.

The implementation of dayak traditional marriage in Mahakam Ulu Regency, based on the results of an interview with the Customary Institution with Mr. Yustino Hibu Hului as the traditional stakeholder explained where the Traditional Marriage process takes place by fulfilling the provisions. The requirements for the validity of marriage according to Dayak Customary Law in Mahakam Ulu Regency include thefollowing conditions:

1) Customary Goods for Application (Uvut Kenoco"u)

Before traditional marriage, the Customary Institution conveys Uvut Kenoco"u (Honesty) or Customary goods from the male side to the female side, whose quantity and type of Customary goods are adjusted to the social level of the community. When sending Uvut Kenoco"u (Honesty) pay attention to the state of nature or the state of the moon and sky and whether there is a dispute, it is up to the local tribal customs. At a certain time when Uvut Kenoco"u is rejected, it means that the Traditional marriage is void, but if accepted, preparations are made to the Traditional marriage ceremony taking into account the state of the sky moon (buan havuun).

2) Traditional Marriage (Besaa Adet)

1. Customary Institutions conduct personal examinations on both men and women to ensure that:
    a. If the bride-to-be is both single, then customary representation can be exercised.
    b. If one of the parties has already performed the marriage, it must be proven by a divorce letter.
    c. If one of the parties is a widow or widower and is still in mourning the death of the husband/wife and has not been one year, an Adet Kevohu Out event must be held.
    d. If one of the parties already has children, while the other does not have children or is still single, previously customary marriages were carried out, Adet Tomo Pasing Toang must be made.

3) Customary Institutions conduct personal examinations on both men and women to ensure that:

a. The order of events of customary marriage, customary goods, and ceremonies is arranged by customary administrators according to local customs.
b. Marriage ceremonies are carried out according to the social level of society, such as the descendants of nobles (Supi) or ordinary people (Kovi).
c. All completeness in the implementation of traditional marriages such as Uvut Kebesaa or Barang Jujuran, is arranged according to local tribal traditions until the closing ceremony.
d. Likewise, until such time as the couple becomes pregnant, the implementation of the Kobotohi Custom or pregnancy and its customary baranf, is determined based on the local tribal customs.
e. Whenever at the time of the implementation of the Adet kebesaa or customary marriage, one of the parties is seriously ill, and must be taken to the sick rash for treatment, the implementation of the Custom must be postponed and must not be symbolically his brother because it can be problematic in the future.
f. If in the implementation of Kebesaa Adet or Traditional marriage, one of the parties dies or becomes seriously ill and then dies, then Kebesaa Adet or Customary Marriage is annulled and is not subject to Customary Law.
g. If other tribes want Besaa Adet or Traditional Marriage with Dayak people, they must use the local Dayak Tribe Customs.
h. A person who is Muslim, Prostestan Christian, Catholic, Hindu, Buddhist or Khonghucu who wants to marry a Dayak citizen, must follow the local tribal custom, where the Kebersaa Adet or Traditional Marriage is carried out separately from religious marriage.

i. For residents in Mahakam Ulu Regency who are of other religions, and from other tribes who want to perform Adet Besaa or their tribal customary marriage, must report to the local customary institution to obtain customary ratification For Dayak tribesmen who live together in distant places and already have no customary marriage ties, if they return to the village, a symbolic customary marriage can be held, this means that all customary goods are prepared and legalized by local customs so that married couples and their children receive protection from customary institutions.
j. For residents who are pregnant outside of marriage, but there is recognition from both parties to agree to live together, then their marriage can be shortened, that is, goodsAdat are prepared, between inquiry goods (Customary goods) morning and late afternoon / evening the customary marriage ceremony can be carried out and legalized locally customary.

The implementation before the customary marriage, the Customary Institution conveys Uvut Kenoco"u (Honesty) or Customary goods from the male side to the female party, whose number and type of Customary goods are adjusted to the social level of the community. When sending Uvut Kenoco"u (Honesty) pay attention to the state of nature or the state of the moon and sky and whether there is a dispute, it is up to the local tribal customs. At a certain time when Uvut Kenoco"u is rejected, it means that the Traditional marriage is void, but if accepted, preparations are made to the Traditional marriage ceremony taking into account the state of the sky moon (buan havuun).

3) Traditional Marriage (Besaa Adet)

Customary Institutions conduct personal examinations of both men and women to ensure: If the bride-to-be is both single, then customary representation can be exercised.

a. If one of the parties has already performed the marriage, it must be proven by a divorce letter.
b. If one of the parties is a widow or widower and is still in mourning the death of the husband/wife and has not been one year, an Adet Kevohu Out event must be held.
c. If one of the parties already has children, while the other does not have children or is still single, previously customary marriages were carried out, Adet Tomo Pasing Toang must be made.

The Adet marriage ceremony is carried out by taking into account the state of the sky moon and following the provisions of the marriage ceremony of the parents of the bride-to-be:

a) The order of events of customary marriage, customary goods, and ceremonies is arranged by customary administrators according to local customs.
b) Marriage ceremonies are carried out according to the social level of society, such as the descendants of nobles (Supi) or ordinary people (Kovi).
c) All completeness in the implementation of traditional marriages such as Uvut Kebesaa or Barang jujuran, is arranged according to local tribal traditions until the closing ceremony.
d) Likewise, until such time as the couple becomes pregnant, the implementation of the Kobotohi Custom or pregnancy and its customary baranf, is determined based on the local tribal customs.
e) Whenever at the time of the implementation of the Adet kebesaa or customary marriage, one of the parties is seriously ill, and must be taken to the sick rash for treatment, the implementation of the Custom must be postponed and must not be symbolically his brother because it can be problematic in the future.
f) If in the implementation of Kebesaa Adet or Traditional marriage, one of the parties dies or becomes seriously ill and then dies, then Kebesaa Adet or Customary Marriage is annulled and is not subject to Customary Law.
g) If other tribes want Besaa Adet or Traditional Marriage with Dayak people, they must use the local Dayak tribal customs.
h) A person who is Muslim, Protestant Christian, Catholic, Hindu, Buddhist or Khonghucu who wants to marry a Dayak, must follow the local tribal custom, where Kebesaa Adet or Traditional marriage is carried out separately from religious marriage.
i) For residents in Mahakam Ulu Regency who are of other religions, and from other tribes who wish to perform Adet Besaa or their tribal customary marriage, must report to the local Customary institution for customary approval.
j) For Dayak tribesmen who live together in distant places and already have no customary marriage ties, if they return to the village, a symbolic customary marriage can be held, meaning that all customary goods are prepared and legalized locally so that married couples and their children receive protection from customary institutions.
k) For residents who are pregnant outside of marriage, but there is recognition from both parties to agree to live together, then their marriage can be shortened, that is, goodsAdat are

prepared, between inquiry goods (Customary Goods) morning and intermittent afternoon / evening customary marriage events can be carried out and legalized locally customary.

l) The procession of traditional marriage events, carried out according to the direction of the position of the male party, if the male party comes from the ulu to the rashh of the female side, as well as for those who come from ilir.

The implementation of civil marriage in the event of a violation of customary marriages such as Kela"it Mavoq, Beco"I and others, which are carried out intentionally or unintentionally, either inside the house or outside the house is subject to fines in the form of:

a.Ci Ko"ung Danang Meko

b. Citop Power Olok

c.Ci Uwong Siu

The fine is paid to the family who performs the Traditional ceremony, through the management of the local Customary Institution. 22 In relation to Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the Constitutional Court of the Republic of Indonesia has issued Constitutional Court Decision Number 22 / PUU-XV / 2017 which is one of the considerations of the Constitutional Court in the decision, namely "However, when the differentiation of treatment between men and women has an impact on or hinders the fulfillment of basic rights or constitutional rights of citizens, whether it belongs to the civil and political rights group or economic, educational, social, and cultural rights, which should not be distinguished solely on the grounds of sex, such discrimination is clearly discrimination."

The same consideration also states that the regulation of the minimum age of marriage between men and women not only gives rise to discrimination in the context of exercising the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution but has also given rise to discrimination against the protection and fulfillment of children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution. In this case, when the minimum age of marriage for women is lower than that of men, then legally women can more quickly form families, therefore, in its decision the Constitutional Court ordered the framers of the law to within a maximum period of 3 (three) years make changes to Law Number 1 of 1974 concerning Marriage.

Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage was promulgated and placed in the Statute Book of the Republic of Indonesia of 2019 Number 186. Explanation of Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage was promulgated and placed in the Supplement to the State Gazette of the Republic of Indonesia No. 6401.

Juridical Aspects of Underage Marriage According to Customary Law in Mahakam Ulu Regency, Indonesia

Customary marriage according to Soerojo Wigyodipoero, in general, customary marriage in Indonesia not only means as "civil union", but also as a "customary bond" and at the same time a "kinship and neighborly attachment".22 So the occurrence of a marriage bond does not only bring about the consequences of civil relations, such as the rights and obligations of husband and wife, common property, the position of children, the rights and obligations of parents, but it also concerns the relations of inheritance, kinship, kinship and neighborliness and concerns traditional and religious ceremonies. Marriage in a customary bond is a marriage that has legal consequences against the customary law that applies in the community concerned. The consequences of this law have existed since before the marriage occurred, for example, with the existence of a marriage relationship which is "rasan sanak" (hubugan children, bachelors) and "rasan tuha" (hubugan between the parents of the family of the prospective husband and wife). After the occurrence of marital ties, the rights and obligations of parents (including family members or relatives) arise according to local customary law, namely in the implementation of traditional ceremonies and subsequently in the participation of fostering and choosing the harmony, integrity and perpetuation of the lives of their children who are bound in marriage.

From the psychological side, psychologist Anna Surti Ariani argues that advocating or allowing early marriage is a form of violence against children. If there is a parent who allows their child to marry at an early age, then it can be said that he committed an act of violence against children. Children under the age of 19 are actually still not ready for marriage. The unpreparedness of married children can be seen from 5 aspects of child growth and development, namely:

1. Physical

   The physique of a child in adolescence is still in the process of developing. If you have sexual intercourse, you will be prone to various diseases, especially for women.

2. Cognitive
   In children and adolescents, insights are not too broad, problem solving and decision-making skills have not yet developed maturely. When there are problems in marriage, they tend to have difficulty resolving them.
3. Language
   Children and adolescents are not always able to communicate their thoughts clearly. This can be a big problem in marriage.
4. Social
   If married in adolescence, the child's social life will tend to be limited and lack support in their environment.
5. Emotional
   Adolescent emotions are usually labile. If you get into trouble, it will be easier to get depressed and this risks him as a teenager, and a child born in marriage. In addition, with unstable emotions, married children/teenagers quarrel more often, so the marriage is unhappy. 24

CONCLUSION

Juridical aspects of underage marriage according to Indonesian Positive Law can be seen in the provisions of Law Number 16 of 2019 concerning Marriage Article 7 paragraph (1) Marriage is only permitted if the male party has reached the age of 19 years and the female party has reached the age of 19 years. Article 6 paragraph (2) To carry out a marriage a person who has not reached the age of 21 years must obtain the permission of both parents and Law Number 23 of 2002 concerning Child Protection Article 26 (1) Parents are obliged and responsible for: nurturing, maintaining, educating and protecting children, fostering the development of children in accordance with their abilities, talents and interests and; prevents the occurrence of mating at the age of children.

Juridical Aspects of Underage Marriage According to Customary Law in Mahakan Ulu Regency are seen in the provisions in the Dayak Mahakam Ulu Customary Law Book Page 73 Chapter II Marriage Article 5 paragraph 1 point a namely, Besaa Adet or Dayak Traditional Marriage, where the Customary Institution holds an examination to the male and female parties to ensure that the bride and groom are both "bachelor", then after that the traditional Dayak marriage in Mahakam Ulu Regency can be carried out. The provisions refer to the implementation of Dayak customary marriage regarding the age or age when carrying out the marriage can be seen after he is single or has ended his return.

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