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A Constitutional Review of Indonesia's Marriage Law: Legal Reconstruction and Human Rights Considerations in Law No. 1 of 1974

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Abstract
Law No. 1 of 1974 represents the unification of national laws in the field of marriage, deriving from Islamic law, civil law, and customary law. As society has progressed in the era of modernization and digitalization, this law has presented numerous legal issues, underscoring the need for legal reform to address legal voids and conflicts. Over its 50-year history, at least seven judicial reviews have been initiated, challenging provisions that conflict with the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), particularly those that are inconsistent with principles of justice and human rights for all citizens. This study utilizes normative (doctrinal) legal research methods, incorporating three approaches: statutory, comparative law, and analytical methods. The analysis highlights the necessity of reconstructing Law No. 1 of 1974 on Marriage to ensure it aligns with principles of justice and human rights, focusing especially on Article 2(1) (regarding interfaith marriages), Article 7 (marriageable age), Article 43(1) (status of children born outside of lawful marriage), Article 57 (mixed marriages), and provisions related to child rights post-divorce. One of them relates to the right to financial support that continues to be received by a child from their father, categorized as delayed maintenance, as well as caregiving support.

I. Introduction

Indonesia, as a rule of law state (Rechtsstaat), is founded upon legal principles, not mere power (Machtsstaat). [1] This implies that the conduct of all state affairs must be grounded in prevailing laws and/or referenced to the UUD NRI 1945, further elaborated in

[1] Eduardus Marius Bo, *Teori Negara Hukum Dan Kedaulatan Rakyat* (Malang: Setara Press, 2019).

subsequent legislation.[2] In essence, a state governed by the rule of law ensures that all individuals, both those who govern and those governed, are equally subject to the law. In such a state, the law must be just, meaning that compliance with the law equates to compliance with a just law.[3]

The Indonesian legal framewor[4] provides citizens with protection through the establishment of independent and impartial judicial institutions and guarantees the protection of human rights. Law regulates the relationship between citizens and the state, ensuring a peaceful, orderly, and just society. The scope and authority of the state to regulate social order are bound by legal structures,[5] as illustrated in marriage law. The extent to which marriage matters should be regulated by state law, and which should be left unregulated, is a key question.[6]

While this framework is robust in principle, its practical application often sparks critical debates, particularly regarding the extent of state intervention in personal and private matters. For instance, in the realm of marriage, there exists a tension between the need for regulation to protect individuals—such as women and children in marital disputes—and the preservation of personal autonomy. This issue reflects a broader question: to what extent should the state govern personal matters, and where should the boundary of state jurisdiction lie?

Analyzing Indonesia's stance, it becomes evident that the legal framework attempts to strike a balance between protecting individual rights and upholding social order. Yet, the inherent complexities of applying these principles in diverse and culturally rich communities often lead to disparities in interpretation and enforcement. Therefore, ongoing reforms and judicial oversight are crucial to ensure that state interventions remain aligned with both justice and the protection of individual freedoms.

Article 29 of the UUD NRI 1945 guarantees citizens the freedom to practice their religion and beliefs.[7] Article 28B also affirms that every individual has the right to form a family and continue their lineage through a lawful marriage, and that the state guarantees children's rights to life, growth, development, and protection from violence and discrimination.[8] Additionally, Indonesia is obligated to protect and enforce human rights for its citizens,[9] having ratified several international human rights agreements, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) via Law No. 11 of 2005 and

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[2] Muhammad Fauzan Encik, *Dasar-Dasar Perundang-Undanagan Di Indonesia* (Malang: Setara Press, 2020).
[3] Munir Fuady, *Teori Negara Hukum Modern (Rechstaat)*, 2nd ed. (Bandung: Refika Aditama, 2011).
[4] Marius Bo, *Teori Negara Hukum Dan Kedaulatan Rakyat*.
[5] Marius Bo.
[6] Candra Mardi, *Pembaruan Hukum Dispensasi Kawin, Dalam System Hukum Di Indonesia* (Jakarta: Kencana, 2021).
[7] Novita Lestari, "PROBLEMATIKA HUKUM PERKAWINAN DI INDONESIA," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 4, no. 1 (July 7, 2018), https://doi.org/10.29300/mzn.v4i1.1009.
[8] "Undang Dasar Negara Republik Indonesia Tahun 1945.," n.d.
[9] Serlika Aprita and Yonani Hasyim, *Hukum Dan Hak Asasi Manusia* (Jakarta: Mitra Wacana Media, 2020).

Law No. 12 of 2005, respectively.[10]

One of the significant legislative achievements[11] of the New Order era under President Soeharto was the enactment of Law No. 1 of 1974 concerning Marriage. This law, enacted 29 years after Indonesia's independence, became effective on October 1, 1975, following the issuance of Government Regulation No. 9 of 1975. The Marriage Law draws upon the Indonesian Civil Code (Burgelijk Wetboek), a legacy of colonial Dutch law, as well as Islamic legal principles (fiqh al-munakahat) as found in the Qur'an, Hadith, and classical and contemporary Islamic jurisprudence, all incorporated into the national legal system as binding and enforceable law.[12] If marriages are not regulated by the state, it may lead to injustice for certain parties, particularly women and the children born from such marriages. This, in turn, will have broader consequences, affecting families, communities, and eventually becoming a national issue.[13]

Although the Marriage Law has been in force for 50 years, numerous issues persist concerning its application. Entering its fifth decade, the law continues to face opposition and challenges,[14] both in terms of its substantive provisions and their implementation. Among the most prominent issues are:[15]

1. The widespread practice of 'Itsbat Nikah' (retrospective marriage validation),
2. The requirement for marriage consent for individuals under the age of 21, particularly when there is disagreement between parents or guardians,
3. Custody and guardianship of children (hadhanah),
4. Financial maintenance obligations of the husband toward the ex-wife (mut'ah),
5. Adoption under Islamic law,
6. Interfaith and international mixed marriages,
7. Divorce, and
8. Polygamy.

Similarly, the issues of marriage registration, the delineation of the rights and obligations of husband and wife, and the highly debated and controversial issue of the minimum marriageable age, concerning whether a marriage between a man and a woman may proceed, as stipulated in Article 7(1) of Law No. 1 of 1974, remain unresolved.

Marriage, for humans, is not merely a physical bond or a simple agreement to fulfill biological needs and procreation. Rather, marriage is a Sunnah of the Prophet Muhammad (peace be upon him) with spiritual value, governed by legal provisions. It is a union of both body and soul between a man and a woman as husband and wife, with

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[10] Bambang Waluyo, *Penegakan Hukum Di Indonesia* (Jakarta: Sinar Grafika, 2017).

[11] Moh. Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: Rajagrafindo Persada, 2014).

[12] Kaharudin, *Nilai-Nilai Filosofi Perkawinan Menurut Perkawinan Islam Dan Undang-Undang RI Nomor 1 Tahun 1974 Tentang Perkawinan* (Jakarta: Mitra Wacana Media, 2015).

[13] Mardi, *Pembaruan Hukum Dispensasi Kawin, Dalam System Hukum Di Indonesia.*

[14] Aristoni Aristoni, "4 DEKADE HUKUM PERKAWINAN DI INDONESIA: MENELISIK PROBLEMATIKA HUKUM DALAM PERKAWINAN DI ERA MODERNISASI," *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam* 7, no. 1 (2016): 1–24, http://dx.doi.org/10.21043/yudisia.v7i1.2133.

[15] Habiburrahman, "Permasalahan Hukum Perkawinan Dalam Praktek Pengadilan Agama" (Mahkamah Agung, Jakarta, September 18, 2021).

the purpose of establishing a happy family based on belief in the Almighty God.[16] Marriage, in addition to being a form of worship and a means to avoid sinful behavior such as adultery, is also understood as a way to elevate an individual's social status in society, reduce the financial burden on parents, and foster independence in children.

The three primary legal systems religious law, state law, and customary law—share a common goal of promoting human welfare. However, law, in its essence, is a set of normative guidelines that regulate societal conduct. In the context of marriage, legal frameworks must address the complex challenges faced by society. To remain relevant, these laws must evolve to incorporate societal values, including cultural, religious, and traditional norms, while being open to reforms that reflect collective needs and welfare.[17]

This need for adaptability is particularly critical in a pluralistic society like Indonesia, where diverse cultural and religious perspectives coexist. The legal system must function as a unifying mechanism that balances these differences, ensuring that no single perspective dominates at the expense of others. By doing so, laws can foster inclusivity while maintaining social harmony.

From a theoretical perspective, ideal laws should uphold justice, human rights, welfare, pluralism, and gender equality. While these principles provide a vision for an equitable legal framework, Ahmad Ali's concept of "legal disease" highlights the systemic issues that often hinder laws from achieving their intended objectives. According to Ali, this "disease" manifests in three key areas: the structure of the law (e.g., overlapping or contradictory regulations), its substance (e.g., ambiguous or outdated provisions), and its cultural application (e.g., bias or resistance to enforcement).[18] Ahmad Ali's concept of 'legal disease' critiques the systemic issues that hinder laws from functioning effectively. This 'disease' can manifest in the structure, substance, or cultural application of the law, impeding its intended objectives[19]

Law No. 12 of 2011 stipulates that in order to meet society's need for sound legislation, regulations must be established concerning the formation of laws, which should be implemented in a certain, standardized, and binding manner for all institutions authorized to create legislation.[20]

With regard to the substance of the law, it still falls far short of the objectives of the law, namely: Justice, Legal Certainty, and Utility.[21] In Law No. 1 of 1974 in conjunction with

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[16] Habiburrahman.

[17] Regarding the norms regulating the age limit, in several decisions (Decision No. 49/PUU-IX/2011, Decision No. 37-39/PUU-VIII/2010, and Decision No. 15/PUU-V/2007), the Constitutional Court has considered that the minimum age limit is an open legal policy that can be amended by lawmakers at any time, depending on the needs and developments of the time. This matter is fully within the authority of the legislators, and whatever their choice, it is not prohibited as long as it does not conflict with the 1945 Constitution. (Undang-undang 2011).

[18] Aristoni, "4 DEKADE HUKUM PERKAWINAN DI INDONESIA: MENELISIK PROBLEMATIKA HUKUM DALAM PERKAWINAN DI ERA MODERNISASI."

[19] Ahmad Ali, *Menguak Teori Hukum (Legal Theory), Dan Teori Peradilan (Judicialprudence), Termasuk Interpretasi Undang-Undang (Legisprudence)* (Jakarta: Kecana, 2017).

[20] Jazim Hamidi, *Pedoman Praktis Pembentukan Peraturan Daerah Partisipatif* (Jakarta: Prestasi Pustaka Publiser, 2008).

[21] Ali, *Menguak Teori Hukum (Legal Theory), Dan Teori Peradilan (Judicialprudence), Termasuk Interpretasi Undang-Undang (Legisprudence)*.

Law No. 16 of 2019 and its implementing regulations, there is a need for legal reconstruction to avoid conflicts, ambiguities, and legal vacuums stemming from the legal issues mentioned above. One of the weaknesses in the Marriage Law is the absence of specified sanctions (administrative and criminal), particularly for violations of provisions that have significant consequences and impact on the continuity of a fair and prosperous life for citizens.

2. Research Methodology

This research uses normative legal research (doctrinal law), which is a scientific method of study aimed at discovering truth through logical reasoning from a normative perspective.[22] Normative legal research positions the system of norms as its object of study. This research applies the following approaches: (1) Statute Approach, (2) Comparative Approach, (3) Historical Approach, and (4) Analytical Approach.

1. The statutory Approach

   This approach examines the relevant legal provisions, including laws, regulations, and policies, to establish a clear understanding of the legal framework governing marriage, religious law, state law, and customary law in Indonesia. By analyzing the statutory texts, this research identifies the legal principles and norms that guide societal conduct and the extent to which these laws address the challenges in marital issues, including justice, gender equality, and pluralism. This approach ensures that the study is rooted in the existing legal context and provides a solid foundation for further analysis.
2. The Comparative Approach

   This approach explores how other jurisdictions manage similar issues within their legal frameworks. For instance, it examines how other pluralistic societies balance religious, state, and customary laws in regulating marriage and personal matters. This comparison not only highlights best practices that could be adopted in Indonesia but also identifies gaps or weaknesses in Indonesia's current legal framework. By contrasting these systems, this research develops recommendations for reform that are both practical and culturally sensitive.
3. The Historical Approach

   The historical approach traces the evolution of legal systems in Indonesia, particularly how religious, state, and customary laws have interacted and influenced each other over time. This analysis uncovers the origins of certain legal provisions, societal attitudes, and systemic issues that persist today, such as Ahmad Ali's concept of "legal disease." Understanding the historical development of these systems provides critical insights into why certain challenges exist and how they can be addressed within their historical and cultural context.
4. Analytical Approach

   The analytical approach critically evaluates the findings from the other three approaches to provide a cohesive understanding of the research problem. For instance, it examines how the statutory, comparative, and historical findings align or conflict with the theoretical principles of justice, human rights, welfare, and gender equality. This approach allows the

[22] Jhonny Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif* (Malang: Bayumedia, 2006).

research to assess the effectiveness of Indonesia's legal system in achieving its stated goals and propose actionable recommendations based on evidence and analysis.

3. Results and Discussion

3.1 Problems of the Marriage Law in Indonesia

In examining marriage law in Indonesia, its implementation cannot be separated from the provisions of the Marriage Law. All related issues must continue to refer to the applicable positive law, even when carried out by citizens of the Islamic faith. Therefore, the examination of marriage law in this research will focus on the problems of marriage law, based on Law No. 1 of 1974 in conjunction with Law No. 16 of 2019, Government Regulation No. 9 of 1975, and the Compilation of Islamic Law, which will then be supplemented with a study of contemporary Islamic marriage.

The enactment of Law No. 1 of 1974 on Marriage, with State Gazette of 1974 No. 1 and Supplement to the State Gazette No. 3019, represents a form of national legal unification,[23] The law applies to all groups within Indonesian society and ends the pluralism of laws in marriage legislation in Indonesia. The drafting and enactment of Law No. 1 of 1974 on Marriage was a process that did not proceed smoothly.[24] However, the enactment of Law No. 1 of 1974 does not mean that it has regulated all aspects related to marriage. In reality, many issues have continued to evolve within society in line with its changing conditions. Based on an analysis of the problems in Law No. 1 of 1974, among them: First, it still accommodates the pluralism of marriage laws, as mentioned in Article 2(1) concerning interfaith marriages, Article 2(2) regarding marriage registration, which is also regulated in Law No. 22 of 1946 in conjunction with Law No. 32 of 1954, and Article 66, which does not comprehensively regulate the substance of marriage law.[25]

Second, there are no legal rules (recht vacuum), for example, regarding the limits of reasons for divorce, regarding the meaning of "dispute" and "quarrel", which measure "continuously".[26] Third, the provisions between Articles 6 and 7 are related to the minimum age for marriage. On one hand, the law establishes the age of adulthood, but on the other hand, it provides room for individuals under the age of 19, both men and women, to marry by submitting a request for a dispensation.[27] In court. On the other hand, there is still a lack of consistency in the legal provisions concerning the age limit for children in the field of law applicable in Indonesia, which follows the national legal system derived from Western civil law (Burgelijk Wetboek), national law (ius constitutum), Islamic law, and customary law. Fourth, Article 64 regulates the validation of marriages that occurred prior to the Marriage Law, through the implementation of

[23] See K. Wantjik Saleh, *Hukum Perkawinan Indonesia*, 8th ed. (Jakarta: Ghalia Indonesia, 1987).
[24] Winda Wijayanti, *Hukum Perkawinan Dan Dinamikanya*, 1st ed. (Depok: Rajagrafindo Persada, 2021).
[25] R. Soetojo Prawirohamidjojo and Soebijono Tjitrowinoto, *Pluralisme Dalam Perundang-Undangan Perkawinan Di Indonesia*, 5th ed. (Surabaya: Pusat Penerbitan dan Pencetakan Unair, 2012).
[26] Wijayanti, *Hukum Perkawinan Dan Dinamikanya*.
[27] "Dispensasi /Dis·pen·sa·si/ /Dispénsasi/ Artinya Pengecualian Dari Aturan Karena Adanya Pertimbangan Yang Khusus; Pembebasan Dari Suatu Kewajiban Atau Larangan, Kamus Besar Bahasa Indonesia (KBBI) Online.," n.d.

'*Itsbat Nikah*,' which is still commonly practiced. Fifth, custody of children (hadhanah), and the determination of adoption based on Islamic law. Sixth, the obligation of the husband to provide financial support (nafkah) to the ex-wife (mut'ah). Seventh, the regulations related to mixed marriages in Articles 57 to 62. Eighth, the issue of divorce. Ninth, the issue of polygamy.[28] Tenth, the proof of a child's lineage, as stipulated in Article 55. Eleventh, the provisions of Article 63 are ineffective because every decision of the Religious Court is final (inkracht) without the need for further confirmation from the general court. Twelfth, there are no sanctions in place for violations of provisions that have broad implications.

3.2 Comparative Study of Marriage Laws in Other Countries

A. Marriage Law in Malaysia

Cultural relativism holds that human rights, laws, and norms are shaped by the cultural, historical, and social contexts of a specific society. This theory challenges the idea of universalism in human rights, arguing that legal and moral principles should respect local traditions and values.[29]

Islamic legal reform (fiqh) in Malaysia is broadly divided into two schools of thought: traditional and modern. The main characteristic of traditional fiqh thought in Malaysia is its adherence to the Ahlus Sunnah wal-Jamaah, particularly the Shafi'i school of thought.[30] In Malaysia, there is no single family law system applicable throughout the country. There are two different family law systems: one for Muslims and another for non-Muslims. The Law Reform (Marriage and Divorce) Act 1976, which came into force throughout Malaysia on March 1, 1982, also applies to the Chinese, Hindus, and other religions.[31] Most states have the prerogative (authority) to choose their legal jurisdiction, with all agreeing to implement the same Code, though with very minor differences. This includes areas such as marriage, marriage registration, dissolution of marriage, maintenance, guardianship, custody, and others. Islamic Family Law in the Federal Territories came into effect in April 1987.[32]

Malaysian Family Law can be categorized into two major groups. First, the law that follows the Federal Law, which includes Selangor, Negeri Sembilan, Penang, Pahang, Perlis, Terengganu, Sarawak, and Sabah, with some adjustments. Second, in Kelantan, Johor, Melaka, and Kedah, although there are still many similarities with the Federal Law, there are significant differences. Before the enactment of new marriage laws in Malaysia, only the State of Johor had provisions regarding the minimum age for marriage. According to Johor's marriage law, the minimum age for women is 16 years,

[28] Habiburrahman, "Permasalahan Hukum Perkawinan Dalam Praktek Pengadilan Agama."
[29] Binder, G. (1999). Cultural relativism and cultural imperialism in human rights law. *Buff. Hum. Rts. L. Rev.*, *5*, 211.
[30] Dedi Supriyadi and Mustofa, *Perbandingan Hukum Perkawinan Islam Di Dunia Islam* (Bandung: Pustaka Al-Fikriis, 2009).
[31] Raihana Abdullah, "A Study of Islamic Family Law in Malaysia: A Select Bibliography," *International Journal of Legal Information* 35, no. 3 (2007): 514–36, https://doi.org/10.1017/S0731126500002481.
[32] Yusuf Abdul Azeez and et. al., "Codification Of Islamic Family Law In Malaysia: The Contending Legal Intricacies," *Lahore*, n.d., 1574.

and for men, it is 18 years.[33]

The Age of Majority Act 1971 stipulates that a person is considered an adult upon reaching the age of 18, for both females and males. However, Section 4 states that matters related to marriage, dowry, divorce, adoption, or other matters that are governed by other written laws which specify a different age of majority cannot be addressed. Article 2 of the Children's Act 2001 defines a child as a person aged 18 years or younger. This provision is consistent with Section 88(4) of the Islamic Family Law Act (Act 303), which provides that a child under the age of 18 still requires guardianship over their person and property, without distinction between males and females. Such individuals are also considered not yet mature enough to determine whether certain actions will be beneficial or harmful to them.[34]

Malaysia imposes criminal sanctions if the law is not adhered to. The criminal provisions of the Marriage Law in Malaysia are clearly regulated in its legislation, particularly in several issues, including determining[35] Section 8. The minimum age for marriage cannot be officiated under this provision if the man is under 18 years of age or the woman is under 16 years of age, unless the Syariah Judge has given written consent in certain circumstances. In relation to this, underage marriages without the permission of the Syariah Judge are considered an offense and may be subject to a fine not exceeding one thousand ringgit or imprisonment not exceeding six months, or both, as stipulated in Section 40(2) of the Islamic Family Law (State of Selangor) 2003: 'Anyone who marries or performs any act of officiating a marriage or who carries out any form of marriage ceremony with two persons of opposite gender contrary to any provision of Part II has committed an offense and shall be punished with a fine not exceeding 1,000 ringgit or imprisonment not exceeding six months, or both.[36]

B. Marriage Law in Singapore

Singaporean law adopts English law (Common Law) as stated in the Application of the English Law Act, which establishes that English Common Law, to the extent that it was still part of Singaporean law before November 12, 1993, continues to be part of Singaporean law. Section 3 of the Act provides that Common Law will continue to apply in Singapore as long as it is relevantto the circumstances in Singapore and must be modified if special circumstances in Singapore require it.[37]

Similar to other countries with a majority Muslim population, Muslims in Singapore have their own written Islamic family law—particularly concerning marriage—which is

[33] Ibnu Radwan Siddik Turnip, Zainul Fuad, and Nurhayati Nurhayati, "The Current Development of Marriage Age Provisions in Indonesia and Malaysia: A Socio-Historical Approach," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (June 30, 2022): 105, https://doi.org/10.30984/jis.v20i1.1813.

[34] Nik Rahim Nik Wajis et al., "PERKAHWINAN KANAK-KANAK DI MALAYSIA: HAD UMUR MINIMUM DAN IMPLIKASINYA: CHILDREN'S MARRIAGE IN MALAYSIA: MINIMUM AGE LIMIT AND ITS IMPLICATIONS," *Malaysian Journal of Syariah and Law* 8, no. 2 (December 7, 2020): 15–30, https://doi.org/10.33102/mjsl.vol8no2.252.

[35] Moh Khusen, *Pembaharuan Hukum Keluarga Di Negara Muslim* (Salatiga: Jawa Tengah: STAIN Salatiga Press, 2012).

[36] Khusen.

[37] Supriyadi and Mustofa, *Perbandingan Hukum Perkawinan Islam Di Dunia Islam*.

contained in the *Administration of Muslim Law Act* (AMLA) (Chapter 3) as an inseparable part of *The Statutes of the Republic of Singapore*. This law has undergone several revisions, the most recent being in early August 1999. In addition to having a written marriage law, Singapore also has a Syariah Court, which specifically handles judicial matters, particularly in the field of marriage, submitted by Singaporean citizens who are Muslim[38] There are three types of marriage laws in effect in Singapore, based on religious status, namely: (a) Civil marriages conducted by non-Muslims. Before the marriage can take place, they must obtain a certificate from religious leaders; (b) Marriages between Muslims, where both the marriage and divorce procedures are based on Islamic law; and (c) Interfaith marriages, which are actually classified as civil marriages, including those between Muslims and non-Muslims.[39]

Referring to interfaith marriages, which may be conducted in Singapore, the Islamic Religious Council of Singapore (Majlis Ugama Islam Singapura) has issued a fatwa advising Muslims against performing interfaith marriages. According to AMLA, the requirements for a valid marriage in Singapore are as follows: (1) notifying the competent authority of the intention to marry; (2) obtaining marriage consent from the parents/guardians or the court; (3) the prospective bride and groom must be at least 21 years old; (4) the marriage must be conducted in the presence of a registered solemnizer; and (5) the marriage must be witnessed by two individuals who are at least 21 years old.[40]

Based on the aforementioned conditions, the minimum permissible age for marriage is that both the prospective groom and bride must be at least 21 years old. Marriage is not permitted if either party is under 18 years old. Article 96(4) of AMLA emphasizes: 'No marriage may be solemnized under this Act if at the date of the marriage either party is below 18 years of age.' A judge may grant permission for marriage if the prospective bride or groom has reached puberty, as mentioned in subsection (5): 'Despite subsection (4), a Kadi may, in special circumstances, solemnize the marriage of a girl who is below 18 years of age but has attained the age of puberty.[41]

C. Marriage Law in England

England is one of the most advanced countries in terms of legal development, particularly regarding marriage. The country has enacted eight Acts that regulate marriage, including matters related to its requirements, registration, the rights and obligations of spouses and children, the annulment of marriages, divorce, and the resolution of marital disputes. These eight Acts include: the Marriage Act 1949; the Marriage Regulation 1963; the Family Law Reform Act 1969; the Marriage Act 1983; the Family Law Act 1996; the Forced Marriage (Civil Protection) Act 2007; the Church of England Marriage (Amendment) Measure 2012; and the Marriage (Same-Sex Couples) Act 2013.[42]

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[38] Muhammad Amin Summa, *Hukum Keluarga Islam Di Dunia Islam* (Jakarta: Rajagrafindo Persada, 2004).

[39] Wijayanti, *Hukum Perkawinan Dan Dinamikanya*.

[40] Wijayanti.

[41] Administration of Muslim Law Act 1966, This revised edition incorporates all amendments up to and including 1 December 2021 and comes into operation on 31 December 2021 (Administration of Muslim Law Act 1966 December 31, 2021).

[42] Erlies Septiana Nurbani Salim, *Perbandingan Hukum Perdata, Comparative Civil Law* (Depok: Rajagrafindo Persada, 2022).

Basic marriage requirements are the fundamental conditions for entering into a marriage, including:[43] (1) The parties intending to marry must be of opposite genders, i.e., male and female; (2) They must be at least 18 years old; (3) The prospective groom must not be related within close kinship; (4) If the prospective groom is under 18 years old (between 16 and 18 years),[44] he must obtain written consent from his parents or guardians; and (5) The marriage must be witnessed by two officials, either a notary or a consular officer.

3.3 Efforts to Reconstruct Law No. 1 of 1974 Based on Justice and Human Rights

The essence of law is rooted in the idea of justice and moral authority. The idea of justice is always intertwined with the concept of law because any discussion about law, either explicitly or implicitly, is always a discussion about justice.[45] Justice based on Pancasila must be realized, elaborated, and implemented in Indonesia's legal norms in order to create a manifestation of justice that can protect the rights and obligations of all Indonesian citizens through legislation.[46]

In the context of justice in marriage, justice provides space for women to continue imagining and creating in order to improve their standard of living. Justice guarantees a balanced and proportional protection for women, no longer restricted by patriarchal norms but rather by norms of humanity itself. Justice for women is not about removing the role of men from social life or making men subservient; the justice being sought is the equal opportunity to have access to the same chances or choices regarding an individual's rights[47] urthermore, when linked to the constitutional mandate of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) concerning Human Rights (HAM) in Articles 28A-28J and the enactment of Law No. 39 of 1999 on Human Rights, the increasingly complex societal life today demands the need for legal reconstruction of the norms in Law No. 1 of 1974 to uphold the principles of justice, dignity, and the worth of every citizen.

First, the right to adhere to religion and belief. The provisions of Article 2(1) relate to the stipulation that marriage can only take place if the couple shares the same religion and belief. Law No. 1 of 1974 does not recognize interfaith marriages, resulting in forced conversion for one party (either the prospective husband or wife) to adhere to the religion and belief of the other. In many cases of interfaith marriages, this requirement is merely a formality to meet the conditions of Article 2(1), as many of them later revert to their original faiths.

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[43] Salim.

[44] Section 1 ayat (1) Family law Reform Act, "Section 1 Ayat (1) Family Law Reform Act" (yang berbunyi : As from the date on which this section comes into force a person shall attain full age on attaining the age of eighteen instead of on attaining the age of twenty-one; and a person shall attain full age on that date if he has then already attained the age of eighteen but not the age of twenty-one, 1969), https://www.legislation.gov.uk/ukpga/1969/46/section/1.

[45] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Alumni, 1982).

[46] Dicky Eko Prasetio and et.al., *Filsafat Hukum Pancasila (Kajian Filsafat, Hukum, Dan Politik)* (Jakarta: Kreasi Cendekia Pustaka (KCP), 2020).

[47] Ahmad Syahrus Sikti, *Hukum Perlindungan Perempuan Konsep Dan Teori*, 1st ed. (Yogyakarta: UII Press, 2020).

Second, the equality of rights and obligations between husband and wife. Article 31(3): 'The husband is the head of the family and the wife is a housewife.' The provision in this article requires a more concrete formulation that reflects equality between husband and wife within the family, so as to avoid differing interpretations. The diversity of the Indonesian nation, in terms of social structure (customs), includes patrilineal societies where women are placed in a subordinate position to men. Men are more dominant and decision-makers compared to women. Conversely, in matrilineal societies, women play a more dominant role in managing family affairs than men.

Third, the rights of husband and wife over marital property. The provision of Article 36(1) of Law No. 1 of 1974 states: 'Regarding joint property, the husband or wife may act with the consent of both parties.' The word 'may' in this article, if interpreted grammatically, means 'may' or 'may not.' This implies that a husband may act concerning joint property with or without the consent of the wife, or vice versa. This interpretation contradicts the decision of the Supreme Court of the Republic of Indonesia, No. 443 K/Pdt/1984, dated September 26, 1985, and the decision of the Supreme Court of the Republic of Indonesia, No. 3272 K/Pdt/1987, dated June 29, 1989.[48] These two Supreme Court decisions stipulate that: both in the case of encumbrance and the sale of jointly owned property, the consent of the wife must be obtained. Furthermore, a grammatical interpretation of Article 36(1) of Law No. 1 of 1974 contradicts the principle of utility for society and Article 51(1) and (3) of Law No. 39 of 1999. According to Djaja, the interpretation should use a sociological (teleological) approach, as can be seen from the two aforementioned Supreme Court decisions.[49] This is in line with Article 92 of the Compilation of Islamic Law, which states: 'Neither the husband nor the wife may sell or transfer joint property without the consent of the other party.'

Fourth, the rights of children after the divorce of their parents. Article 41 states that upon the dissolution of marriage due to divorce, both the mother and father remain obligated to care for and educate their children, solely based on the best interests of the child. If there is a dispute regarding child custody, the court will decide. This provision is still very general and does not provide specific details about the rights of the child, which can be provided by both the father and the mother based on their respective capacities. Since the conditions of the father and mother are not always the same, sometimes the mother may have far greater capability than the father, meaning the mother cannot forgo her obligations even if the child is in the father's custody.

Fifth, the rights of children born outside of lawful marriage. Article 43(1) governs the status of children born outside of lawful marriage, following the Constitutional Court's Decision No. 46/PUU-VIII/2010. Children born outside of lawful marriage have a civil relationship with their mother and her family, as well as with the man recognized as the father, which can be proven through science and technology or other evidence according to law, establishing a blood relationship, including civil relations with the father's family.[50]

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[48] Syahrus Sikti.

[49] "The Decision of the Supreme Court of the Republic of Indonesia, Concerning the Civil Case Appeal Regarding the Joint Property (Gono Gini) Lawsuit Filed by Andi Laerang against the Respondent, Raga Daeng Kule. The Supreme Court Rejected the Appeal and Upheld the Previous Court Decision (Tarakan)." (n.d.).

[50] "In Accordance with Constitutional Court Decision No. 46/PUU-VIII/2010, Which Stated That

Article 43(2) presents a dilemma in addressing the status of children born outside of marriage. This issue has proven difficult for the government to handle, as even after several decades—more than half a century—no regulations have been issued as promised, likely due to hesitation. It must be acknowledged that it is indeed complicated to clearly determine the legal status of children born out of wedlock, primarily because the Marriage Law is strongly influenced by religious elements. Many interests must be considered so that no parties are harmed by the presence of children born out of wedlock, who are often unwanted by moral standards or religious teachings.

However, the birth of a child out of wedlock is not the fault of the child, as it is the result of the actions of a couple who engaged in sexual relations outside of marriage or due to an illegitimate marriage. It seems unfair to place all the blame on the child, who has no knowledge of why they were born. It is also inhumane to allow the father who caused the pregnancy to be absolved of his responsibility for the child's well-being.

Sixth, the right of the child to receive protection from the state. Article 49(1) stipulates that one or both parents may have their authority over one or more children revoked for a certain period of time upon the request of the other parent, the child's direct family members in the upward line, adult siblings, or a competent official, with a court decision, in cases where: (a) the parent severely neglects their duties toward the child; and (b) the parent behaves in an extremely inappropriate manner. This provision not only returns child protection to the state but also allows custody to be granted to other family members related by blood to both parents.

Seventh, the right to marry outside of Indonesia. Article 56(1) of Law No. 1 of 1974 states that 'marriages in Indonesia between two Indonesian citizens or between an Indonesian citizen and a foreign citizen are valid if conducted according to the law in force in the country where the marriage is performed.' Thus, there is no need for Indonesian citizens to be bound by the provisions of Law No. 1 of 1974, as it allows marriages to be conducted according to the laws of other countries.

Eighth, the right to marry between citizens of different nationalities. Mixed marriages, as defined in Article 57 of Law No. 1 of 1974, refer to marriages between a man and a woman who are subject to different laws in Indonesia due to differences in nationality, where one party is an Indonesian citizen. Law No. 1 of 1974 does not regulate interfaith marriages; it only mentions mixed marriages, which are defined by differences in nationality. Therefore, interfaith marriage remains a topic of debate. This issue becomes even more contentious when considered in the context of human rights, particularly after the enactment of Law No. 39 of 1999 and the affirmation of Articles 16(1) and (2) of the Universal Declaration of Human Rights (UDHR).

Ninth, the right to protection for women and children. In terms of its implementation, despite the existence of various laws regarding children, the issues surrounding children have not been fully resolved, leading to the conclusion that children's rights are still not entirely protected. Problems persist regarding education, street children, malnutrition,

Article 43(1) 'a Child Born Outside of Marriage Only Has a Civil Relationship with Their Mother and the Mother's Family' Is in Contradiction with the 1945 Constitution. This Can Be Applied as Long as It Is Understood That It Does Not Eliminate the Civil Relationship with the Man Who Can Be Proven, Based on Science and Technology and/or Other Legal Evidence, to Have a Blood Relationship as the Father." (n.d.).

child labor, child abduction, child trafficking, child abuse, and child marriage.

Tenth, the provision of Article 16(2)[51] relates to the appointment of officials to prevent marriages that do not meet the requirements. The designation of officials responsible for preventing marriages that do not meet the requirements, particularly at the lower levels, should be emphasized. Meanwhile, Government Regulation No. 9 of 1975 does not clearly regulate which officials are authorized to prevent such marriages, resulting in a legal vacuum. As an organic regulation, it should have provided detailed rules regarding the issues mentioned in the law.

Eleventh, regulations concerning sanctions for legal violations. The most important aspect of the law is that the law created by authorized institutions must be accompanied by sanctions. These sanctions should be firm, whether criminal or administrative in nature. The importance of sanction provisions in legislation is to ensure its effective implementation. Indonesian law follows the paradigm of 'legalistic positivism,' which holds that law must consist of three elements: commands, duties, and sanctions. The legalistic paradigm assumes that people comply with the law primarily because they fear sanctions.[52]

4. Conclusion

Law No. 1 of 1974 has been in effect for quite a long time, approaching five decades (1974–2024). However, it is very possible to review and reconstruct its substance and norms in a way that reflects an ideal reform from philosophical, juridical, sociological, and cultural perspectives. The amendments introduced by Law No. 16 of 2019 only revised Article 7, while there remain ambiguities, contradictions, and substantive legal vacuums in the law's norms.

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[51] "The Wording of Article 16(2): The Officials Designated as Referred to in Paragraph (1) of This Article Shall Be Further Regulated by Legislation" (n.d.).

[52] Ali, *Menguak Teori Hukum (Legal Theory), Dan Teori Peradilan (Judicialprudence), Termasuk Interpretasi Undang-Undang (Legisprudence)*.

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