

Indonesian Marriage Law Reform: A Doctrinal Research to Find the Way to Strengthen Children's Rights against Child Marriage

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Abstract : The Law Number 1 Year 1974 on Marriage was issued by Indonesian Government to replace the old marriage law stipulated in Burgerlijk Wetboek inherited from the Dutch colonial. The Law defines marriage as both physical and mental bond between a man and a woman as husband and wife with the purpose to form a harmonious family based on deity. Marriage shall be conducted when determined requirements are met based on the Law. Article 7 of the Law Number 1 Year 1974 stipulates the minimum age requirement to enter into marriage, which is 19 years for men and 16 years for women. This stipulation is made to make the marriage achieve the true goal to form a happy, eternal and prosperous family. It is expected at that age, each party has a mature soul and physic. However, it is possible for those who have not reached the age to enter into marriage if there is a dispensation granted by the courts or other official designated by the parents of each party in the marriage. As many other countries in the world, Indonesia has serious problems linked with the child or underage marriage. Indonesia is one of the countries with the highest absolute numbers of child marriage. In 2012, a judicial review was filed to the Constitutional Court against the provisions of the minimum age limit in the Law Number 1 Year 1974 on Marriage. The appeal was filed in order to raise the limit of minimum age for women from 16 years to be 18 years. However, the Constitutional Court considered that the provisions on the minimum age in the Law Number 1 Year 1974 on Marriage is constitutional. At the international level, Indonesia has participated in the formulation of variety of international human rights instrument which have an impact on children, and is a party to a number of them. Indonesia ratified the CRC through Presidential Decree of the Republic of Indonesia Number 36 Year 1990 on 5 September 1990. This paper attempts to analyze three main issues. Firstly, it will scrutinize the ratio legis of the stipulation on minimum age requirement to enter into marriage in the Law Number 1 Year 1974 on Marriage. Secondly, it will discuss the conformity of Indonesian marriage law to the principles and provisions on the CRC. Last, this paper will elaborate the legal measures shall be taken to strengthen the legal protection for children against child marriage. This paper is a doctrinal research using statute, conceptual and historical approaches. This study argues that The Law-making of Indonesian marriage law influenced by religious values that live in Indonesia. With regard to the conformity of Indonesian marriage law with the CRC, Indonesia is facing the issue of the compatibility of its respective national law with the CRC. Therefore, the legal measures that have to be taken are to review and amend the Indonesian Marriage Law to provide better protection for the children against underage marriage.

Keywords : child marriage, children's rights, indonesian marriage law, underage marriage

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