



The Character of Legal Products in Indonesia: A Study of Changes to the Marriage Law from a Political-Law Perspective

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Abstract: Politics and law are two variables that can influence each other in a legal system. Legal politics is a form of state policy carried out through authorized state institutions to establish the desired regulations, which are expected to be used to express what is contained in society and to achieve the desired goals. This research aims to examine the character of statutory legal products, namely the character of legal products of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. This research is normative legal research which makes norms the object of study using a legal approach analyzed using legal political theory. The data collection technique used is literature study. Research findings show that in general the character of the legal product of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is responsive in view of the birth of the law. However, the provisions of Article 7 paragraph (2) of Law Number 16 of 2019 do not show a responsive or conservative character. The provisions in this article are not in accordance with the spirit of change based on Constitutional Court Decision Number 22/PUU-XV/2017 and seem ahistorical. Theoretically, the conservative character in legal politics is a legal product that is not democratic, different from responsive legal products, namely legal products that accommodate a variety of opinions. Other findings show that there is no judicial institution that has the authority to check the consistency between the provisions of one article or paragraph and another in one form of legal product.

Keywords: Character of legal products, responsive-conservative law, marriage law, legal politics

Abstrak: Politik dan hukum merupakan dua variabel yang dapat saling mempengaruhi dalam suatu sistem hukum. Politik hukum merupakan suatu bentuk kebijakan negara yang dilakukan melalui lembaga negara yang berwenang untuk menetapkan peraturan yang diinginkan, yang diharapkan dapat digunakan untuk mengungkapkan apa yang terkandung dalam masyarakat dan untuk mencapai tujuan yang diinginkan. Penelitian ini bertujuan untuk mengkaji karakter produk hukum undang-undang yaitu karakter produk hukum Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Kajian ini merupakan penelitian hukum normatif yang menjadikan norma sebagai objek kajian dengan menggunakan pendekatan undang-undang yang dianalisis dengan teori politik hukum. Teknik pengumpulan data yang digunakan adalah studi literatur. Temuan penelitian menunjukkan bahwa secara umum karakter produk hukum Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan adalah responsif ditinjau dari lahirnya undang-undang tersebut. Namun ketentuan Pasal 7 ayat (2) UU Nomor 16 Tahun 2019 kurang menunjukkan karakter responsif atau konservatif. Ketentuan dalam pasal tersebut tidak sesuai dengan semangat perubahan berdasarkan Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 dan terkesan ahistoris. Secara teoritis, karakter konservatif dalam politik hukum merupakan produk hukum yang tidak demokratis, berbeda dengan produk hukum yang responsif yaitu produk hukum yang mengakomodasi berbagai pendapat. Temuan lain menunjukkan bahwa tidak ada lembaga peradilan yang berwenang memeriksa konsistensi antara ketentuan pasal atau ayat yang satu dengan pasal atau ayat lainnya dalam satu bentuk produk hukum.

Kata Kunci: Karakter produk hukum, hukum responsif-konservatif, hukum perkawinan, politik hukum

Introduction

Universally, it can be said that politics is an effort to ensure that regulations can be well received by the majority of society and can lead society towards a harmonious coexistence. Meanwhile, legal politics is a form of state policy made through authorized state agencies to establish the desired regulations, which can be expected to be used to express what is contained in society and to achieve the desired goals (*ius constitutum*). Politics and law are two variables that can influence each other in a legal system.¹

¹Ahmad Imam Mawardi and A. Kemal Riza, "Why Did Kompilasi Hukum Islam Succeed While Its Counter Legal Draft Failed? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia," *Journal of Indonesian Islam* 13,

There are several forms of legal systems in the world which are then used as a model by a country. However, Indonesia has its own legal system, namely the Pancasila legal system.² The Pancasila state is not a religious state, because a religious state is only based on one particular religion. Nevertheless, the Pancasila state is also not a secular state, because a secular state in general does not want to participate in religious matters at all. The Pancasila state is called a religious nation state, a state that protects and facilitates all religions.³

Compromise attitude in the application of law in Indonesia provides an opportunity for Muslims to fight for shariah content to be put into law. In the context of implementing Islamic law in Indonesia for its believers based on the current political system, Muslims can fight within the framework of legal politics so that Islamic values can color and even become material in legal products, especially in private law.⁴

As a manifestation of the compromise attitude referred to above, the state has established religious courts as a forum for enforcing Islamic law, which has been institutionalized. This religious court is intended for Muslims who seek justice, namely those who comply with the provisions of Islamic law in certain cases, such as marriage. Marriage in Indonesia is regulated by Law No. 1 of 1974. In Islam, marriage is a sacred bond (*mitsaqan ghalizhan*), a civil law act that unites a man and a woman who have fulfilled the pillars and conditions that have been determined, one of which is the age of the prospective bride, namely 19 years for men and 16 years for women, as emphasized in Article 7 paragraph (1) of the Marriage Law.

There are many violations in the practice of marriage in Indonesia, especially those performed by Muslims for example violation of the age of marriage. There are many problems behind this violation, among them socio-economic and social problems. However, the Marriage Law provides a way out of this problem through a request for a marriage dispensation, as emphasized in Article 7 paragraph (2) of Law No. 1 of 1974, so that child marriages, with various arguments before the court, can be carried out.

The existence of a marriage dispensation in the marriage law can contribute to boosting the level of child marriage in Indonesia. As evidence shows, the rate of child marriage in Indonesia in 2015 was 23 percent. This

No. 2 (2019). Sudarto, *Hukum Pidana dan Perkembangan Masyarakat* (Bandung: Sinar Baru, 1986), p. 151.

²Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism*, UK: Edinburgh University Press, 2015. Jeje Zaenudin, *Politik Hukum Islam: Konsep, Teori dan Praktik di Indonesia* (Bandung: Mega Rancage & Persis Pers, 2019), p. 236.

³Moh. Mahfud MD, *Membangun Politik, Menegakkan Kostitusi* (Jakarta: Rajawali Pers, 2011), p. 20.

⁴Moh. Mahfud MD, *Membangun Politik...*, p. 281.

means that one in five women who have ever married had their first marriage before they were 18 years old. The prevalence of child marriage is higher in rural areas than in urban areas.⁵ This kind of early marriage causes a lot of new problems, from health problems caused by unready reproductive organs to household and financial problems due to unready mental conditions.

Based on the facts above, enforcing the stipulation on the marriage age in the marriage law is a dilemma because, on the one hand, the law regulates it, but, on the other hand, it provides dispensation for child marriages. At first glance, the provisions contained in Article 1 paragraphs (1) and (2) seem inconsistent. These provisions appear to be only optional, have no binding power, and have no juridical consequences for perpetrators of child marriage. Therefore, a review of the contents of the article regarding the marriage age needs to be carried out.

Law No. 1 of 1974, which was passed in 1974, underwent changes in 2019, namely the passing of Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. From 1974 to 2019, it can be seen that the progress of marriage law in Indonesia is very slow. In fact, the decision of the Constitutional Court No. 22/PUU-XV/2017 ordered the legislators to adjust the provisions on marriage age to the law on child protection, and these changes must be made no later than three years. In fact, changes were made in 2019, namely with the enactment of Law No. 16 of 2019.⁶

However, there were no significant changes from the changes to Law No. 1 of 1974, which became Law No. 16 of 2019. Changes only occur in Article 7 paragraph (1) concerning marriage age, which was originally 16 years to 19 years for women, which means that marriage age for women and men is the same. Meanwhile, the next paragraph has not changed, still providing the option of a marriage dispensation for those who wish to marry underage. It is clear that there has been no substantial regulatory change to prevent child marriage, and this does not seem to provide legal certainty due to the existence of a marriage dispensation that provides an opportunity for people to legally enter into child marriages.

⁵Badan Pusat Statistik, *Perkawinan Usia Anak di Indonesia 2013 dan 2015* (Jakarta: Badan Pusat Statistik, 2017), p. 7. Shella Oetharry Gunawan and Syamsul Bahri, "Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023).

⁶Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 22/PUU-XV/2017 tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan" (2017), p. 60. Erfaniah Zuhriah and Imam Sukadi, "Strategi Penanggulangan Perkawinan Anak Pasca Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 Perspektif Teori Masalah," *De Jure: Jurnal Hukum dan Syariah* 14, No. 2 (2022).

Laws are legal products, the result of the legislation process with all the mechanisms and provisions that have been regulated, which are also inseparable from the political process in parliament. As a result, law can be a result of politics. Given that law is a political product, the existence of a law is undoubtedly influenced by the political interests of those who create it.⁷ Even so, its formation must comply with the principles or theory of forming statutory regulations in order to provide legal certainty and realize justice and benefit, including in the formation of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. Therefore, a study of the legal products of Law No. 16 of 2019 needs to be done to test its character. This was done as part of a political study of Islamic law in Indonesia.

There are several previous articles related to this one, including those written by Oly Viana Agustine, Kasmuddin Harahap, Yusuf Ridho Billah, and Abd. Qohar, and articles written by Jantarda Mauli Hutagalung and Tantri Gloriawati. Agustine concluded that prior to the Constitutional Court's decision as intended, the marriage agreement could only take effect from the time the marriage took place. The *a quo* decision, on the other hand, allows for extensification or time flexibility in making a marriage agreement. This creates new legal politics and has a positive impact on marriage actors who did not or did not have a marriage agreement at the beginning of their marriage; through this decision, they can make a marriage agreement after the marriage takes place or while still in a marriage bond.⁸ Even though both of Agustine's and the author's articles discuss the field of legal politics, the focus of their studies is different. The author's article focuses on the constitutional court's decision as a legal and political breakthrough that forms a new legal norm through an order to change a law -- a law to legislators.

Meanwhile, Harahap, focuses on regulating child marriages based on Law No. 1 of 1974, current deficiencies in child marriage arrangements, and the reconstruction of child marriage arrangements based on the values of justice. Harahap emphasized that the child marriage arrangements in Law No. 1 of 1974 are no longer relevant for regulating and resolving various legal issues in today's modern life, and therefore it is necessary to carry out a reconstruction. Legal construction based on needs, which refers to the existing situation and conditions, is carried out by changing the marriage age, which was originally 16 years, to 15 years for prospective brides and from 19 years to 17 years for prospective grooms (by way of revising the provisions of Article 7 paragraph

⁷Moh. Mahfud MD, *Membangun Politik*, p. 37.

⁸Oly Viana Agustine, "Politik Hukum Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Dalam Menciptakan Keharmonisan Perkawinan," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017), p. 53–67.

(1), which states the age of 19 years for men and 16 years for women, and also the removal of permits or dispensations in the next paragraph, since there is no need for dispensation as stipulated in Article 7 paragraph (2)).⁹ Harahap's article focused on the reconstruction of Article 7 paragraph (2), which was considered irrelevant because marriage age was too high and needed to be lowered. Meanwhile, apart from discussing marriage age, the focus of the author's study in this article is on the character of the legal products of Law No. 16 of 2019, which was born as a result of a constitutional court decision.

The article written by Helmiadi et al basically wants to explain the relationship between legal political configuration and determining the character of legal products by making Law Number 16 of 2019 an indicator of legal products born in the reform era because they are considered democratic. However, the discussion is not described in a structured manner.¹⁰ Therefore, the study of Helmi's article is different from the study of the author's article because in this article, the author does not correlate the existing political configuration with the character of legal products.

Yusuf Ridho Billah and Abd Qohar, emphasized that the legal politics of Law No. 16 of 2019 is divided into two dimensions, namely subjective and objective dimensions. The subjective dimension means that the legal product is democratic because it absorbs the aspirations of the people and is considered responsive, while the objective dimension is based on justice, which equates marriage age, while on the other hand, there are provisions on dispensation for marriage that do not seem to provide legal certainty.¹¹ At first glance, it seems that the findings of Billah's article and the author's article have something in common, namely the responsive nature of legal products. The difference is, the author describes that, although Law No. 16 of 2019 is a legal product that is responsive in nature, that is not the case with the articles contained in it, especially Article 7 paragraph (2).

Jantarda Mauli Hutagalung and Tantri Gloriawati, emphasized that one of the inherent characteristics of the Indonesian legal tradition is a legal product that accommodates laws that live in society (living law) as an expression of appreciation. Therefore, the construction of the legal system in Indonesia

⁹ Kasmuddin Harahap, "Rekonstruksi Pengaturan Perkawinan Anak Di Bawah Umur Berbasis Keadilan", *Jurnal Hukum Kaidah* (2019), p. 58.

¹⁰ Helmiadi, et.al., "Konfigurasi Politik Pemerintahan Pada Masa Reformasi dan Karakter Produk Hukumnya:" *Istishab: Journal of Islamic Law* 2, no. 01 (2021), p. 13–20.

¹¹Yusuf Ridho Billah and Abd Qohar., "Politik Hukum Penetapan Batas Usia Perkawinan Dalam UU Perkawinan No.16 Tahun 2019." *AL MAQASHIDI* 4, no. 2 (2021), p. 65–76.

generally has a commitment to respect existing religious and cultural differences.¹²

Mahfud MD, a political expert and politician, concluded that there is an influence of political configuration on legal products in Indonesia. Almost all legal political studies in Indonesia refer to Mahfud MD's opinion. Mahfud concluded that the character of legal products is divided into two, namely responsive and conservative. The two forms of character of the legal product are highly dependent on the socio-political conditions, or what is referred to as the "existing political configuration." If the ongoing political configuration is democratic, then the character of the legal product is responsive; conversely, if the political configuration is authoritarian, the character of the legal product is conservative.¹³

Next, Benny K Harman's article explains that there is a political configuration in judicial power in Indonesia. In this article, Harman's focus is on the character of judicial power which is influenced by socio-political conditions or political configurations.¹⁴ The difference between Mahfud and Harman's study of legal politics and this article is that the authors do not correlate the character of legal products to existing socio-political conditions or political configurations.

Based on the description above, it can be concluded that the study of legal politics regarding the character of legal products in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage is very relevant and interesting to study. This study is a manifestation of the development of legal theory in legal politics regarding the character of existing legal products, which are developed in a different study focus to enrich the knowledge.

This study is normative legal research which makes norms the object of study using a legal approach analyzed using legal political theory.¹⁵ The data collection technique used is a literature study that analyzes Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage using legal political theory. Legal politics is a form of state policy carried out

¹² Euis Nurlaelawati and Stijn Cornelis van Huis, "The Status of Children Born Out of Wedlock and Adopted Children in Indonesia: Interactions Between Islamic, Adat, and Human Rights Norms," *Journal of law and religion* 34, No. 3 (2019). p. 356-382. Jantarda Mauli Hutagalung and Tantri Gloriawati, "Tradisi Hukum Indonesia: Sejarah, Produk Hukum Dan Kebijaksanaan di Masa Orde Baru." *Jurnal Hukum Sasana* 8, no. 2 (2022), p. 219.

¹³ Moh. Mahfud MD, *Politik Hukum Indonesia* (Yogyakarta: LP3ES, 1998), p. 24.

¹⁴ Benny K. Harman, *Konfigurasi Politik dan Kekuasaan Kehakiman di Indonesia* (Jakarta: Elsam, 1997), p. 450.

¹⁵ Munir Fuady, *Teori-Teori Besar Hukum (Grand Theory)*, Jakarta: Prenada Media, 2014. Moh. Mahfud, MD., *Politik Hukum Indonesia*, (Yogyakarta: LP3ES, 1998).

through state institutions as the authority to establish regulations as state policy is implemented in society.

Political Development of Islamic Law in Indonesia

The struggle for Islam in Indonesia began after the massive spread of Islam through trade routes, which was marked by the arrival of Arab traders around the 7th century AD.¹⁶ As a result of the interaction between Arab traders and indigenous people, the development of Islam in Indonesia has slowly spread to various corners. This became the forerunner of the Unitary State of the Republic of Indonesia. According to the political history of Islamic law in Indonesia, there are three historical theories of the application of Islamic law since the colonial period, namely the *Receptio in Complexu* theory, the *Receptie theory*, and the *Receptie Exit/Receptie a Contrario* theory.¹⁷

The *Receptio in Complexu* theory was coined by Vanden Berg. According to this theory, the law that applies to indigenous people is the law of their religion. Based on the reality at the time, Islamic law was accepted by the Muslim community. Traces of the application of the theory of *receptio in complexu* to Muslims indigenous people can be traced from the enactment of several regulations by the colonial government in the context of implementing Islamic law for native people, including the enactment of the Batavia Statute 1642, which emphasized that "inheritance disputes between Muslim indigenous people must be resolved according to Islamic law, the law used by the people every day." The peak of the application of this theory is the emergence of a religious court based on Stbl. 1882 No. 152 with the term "*priestraad*," which is established in each *landraad* area or district court whose authority covers cases among Muslims that are resolved according to Islamic law. *Priesterraad* is the forerunner of the religious courts in Indonesia. The original meaning of "*priestraad*" is "court of priests." However, the priesthood envisioned by the colonial government was the Religious Court for Muslims indigenous. At that time, the development of the study of Islamic law experienced a significant increase as a result of the flexibility granted by the colonial government in terms of implementing certain Islamic religious laws, especially in areas related to family law.

Because the development of Islamic law was considered quite rapid, the colonial government looked for ways to stem the progress of its application, which was accompanied by an increase in religious studies because it became a political doctrine in everyday life and eventually gave rise to an anti-colonial

¹⁶Uka Tjandrasasmita, *Sejarah Nasional Indonesia III* (Jakarta: Balai Pustaka, 1984), p. 200.

¹⁷Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: RajaGrafindo Persada, 2003), p. 20.

attitude. It is feared that this would have an impact on the existence of the colonial government in Indonesia. Therefore, the colonial government changed the direction of legal political policy from the theory of *receptie in coplexu* to the theory of *receptie*.

The *receptie* theory emerged as a result of the colonial government's temporary suspicion of the development of Islamic law, which then brought criticism from the colonial government. The colonial government's criticism of the *receptie* theory first came from Cornelis van Vollenhoven (1874–1933), which was then continued by Cristian Snouck Hurgronje (1857–1936). In this *receptie* theory, the colonial government began to introduce *Het Indische adat recht* or what can be called Dutch East Indies customary law, as a form of colonial government interference in religious affairs. The *receptie* theory emphasizes that the law that applies to Muslims is their respective customary law, while Islamic law can only be enforced if it has been prescribed by customary law.¹⁸

The change in strategy for implementing Islamic law in Indonesia had brought Indonesia to the peak of the struggle for independence, which was marked by the formation of several bodies that formulated the basis for the Indonesian independence with all the legal systems that would be enforced in the Unitary State of the Republic of Indonesia. In the historical record of the struggle of Indonesia, there were two important bodies that became forums for deliberation and national dialogue for the founding people to realize the Indonesian independence, namely the Investigative Agency for Preparatory Work for Independence (BPUPK) or *Dokuritsu Junbi Coosakai*, known as BPUPK, and the Independence Preparatory Committee (PPK) or *Dokuritsu Junbi Inkai*, hereinafter known as PPKI. In various historical works, it is explained that BPUPKI had 63 members. The first opening trial began on May 28, 1945, with Radjiman Widyodiningrat as chairman.¹⁹ There are differences of opinion regarding the date of establishment of the BPUPK. In other references, it is said that the BPUPK was formed by the Japanese government on April 29, 1945, and not on March 1, 1945, as mentioned in various literature on the history of independence in Indonesia.²⁰ Throughout its history, the BPUPK had conducted two trials to formulate the basis for the Indonesian independence. Session I was held on May 29–June 1, 1945, to establish the basis of the

¹⁸Ahmad Rofiq, *Hukum Islam...*, p. 16.

¹⁹C. S. T. Kansil and Christine S. T. Kansil, *Empat Pilar Berbangsa dan Bernegara* (Jakarta: Rineka Cipta, 2011), p. 4.

²⁰Moh. Mahfud MD, *Konstitusi dan Hukum dalam Kontroversi Isu* (Jakarta: Raja Grafindo, 2010), p. 13.

Indonesian independence. Session II was held on July 10–16, 1945, to determine the draft basic constitution, or the 1945 Constitution.²¹

As is well known, at its first trial, the BPUPK failed to reach an agreement on the basis for the Indonesian independence because there was debate and quite significant different opinions among national leaders at that time. As a result, the BPUPK formed a committee led by Soekarno to take inventory of the members' proposals, make compromises, and formulate the foundation of the country and constitution. The composition of Committee 8 consists of: 1) Soekarno as chairman and concurrent member; 2) Otto Iskandar Dinata; 3) Hatta; 4) Sutardjo Kartohadikusumo; 5) Yamin; 6) Ki Bagoes Hadikoesoemo; 7) Maramis; and 8) KH Wahid Hasyim. Furthermore, at the Cuo Sangi In VIII meeting which was attended by 38 members in Jakarta on 18-21 June 1945, Soekarno appointed 9 of the 38 people to formulate the Preamble to the Constitution by taking into account and seeking ways to compromise on various existing opinions.²² The nine people later became known as "Committee 9," namely: 1) Soekarno, 2) Mohammad Hatta, 3) Sir A.A. Maramis, 4) Sir Achmad Soebardjo, 5) Sir Muhammad Yamin, 6) Abikoesno Tjokrosjojoso, 7) Abdul Kahar Muzakir, 8) H. Agus Salim, and 9) KH Wahid Hasyim.

The composition of the membership of the two committees that had been formed, especially Committee 9, whose task was to draft the ideological foundation of the Indonesian independence and consisted of nationalists and Muslims, indirectly influenced the rhythm of the debate in the dialogue forum, which was quite fierce about the foundation of the Indonesian independence. Committee 9 made an inventory of the various suggestions that emerged at the First Session of the BPUPK and from all national figures. These suggestions were then discussed in the Committee 9 forum to generalize the various opinions that existed. In the end, Committee 9 succeeded in designing and establishing the five precepts (Pancasila) as the basis for the Indonesian independence on June 22, 1945, known as the "Jakarta Charter", which reads as follows: 1) Belief in God and the duty to follow Islamic law for those who follow it; 2) Just and civilized humanity; 3) Unity of Indonesia; 4) Democracy, led by the wisdom of the representatives of the people; 5) Social justice for all Indonesians. The result of Committee 9's work, called the Jakarta Charter on June 22, 1945, was presented by Soekarno at the BPUPK II meeting on July 10, 1945, approved on July 11, and ratified on July 14, 1945, as the foundation for the independent state of Indonesia.²³

²¹Kansil and Kansil, *Empat Pilar Berbangsa dan Bernegara*, p. 5.

²²Moh. Mahfud MD, *Konstitusi dan Hukum dalam Kontroversi Isu*, p. 5.

²³Moh. Mahfud MD, *Konstitusi dan Hukum dalam Kontroversi Isu*, p. 5.

On the afternoon of August 17, 1945, Hatta received a call from Nishijama, Assistant Admiral Moeda of Japan, who declared himself to represent East Indonesia. In essence, he expressed his objection to the first precept of Pancasila. On August 18, 1945, the morning before the PPKI session began, Hatta invited (1) Ki Bagus Hadi Kusumo, (2) Wahid Hasyim, (3) Mr. Kasman Singodimedjo, and (4) Teuku Muhmaad Hasan to a brief meeting to discuss Pancasila's first Precept and Article 6 paragraph (1) relating to the president being a Muslim. The final result was a change in the 1st Precepts of Pancasila and changes to Article 6 paragraph (1) and Article 29 paragraph (1) of the 1945 Constitution.²⁴

After the enactment of the 1945 Constitution on August 18, 1945, the debate about the Jakarta Charter resurfaced during a constituent assembly in 1959 because some parties wanted to make the first precepts of the Jakarta Charter the first precepts of Pancasila. The debate stopped when Soekarno issued a Presidential Decree of July 5, 1959, which stated that the Jakarta Charter had inspired the body of the 1945 Constitution and became a unit within it; therefore, the first precepts contained in the Jakarta Charter did not need to be spelled out explicitly. Even with various narratives and arguments, the debate around the Jakarta Charter had not been carried out completely.²⁵

The model for the application of religious law, especially Islamic law in Indonesia, can become a role model for the application of religious law in the world. There is a typology of the application of religious law in Indonesia, with one of the typological theories of the application of religious law referred to by JND Anderson, namely the integral or pure theory, the secular theory, and the compromise theory.²⁶ A compromise or symbiotic application of religious law is a form of application of law because there is material content in religious laws or syariah provisions set forth in laws and regulations through the legislative process. With this concept, religious law is only considered a source of law in one country and can only be used as law when it has been set forth in the form of legislation. The most representative example of this form of law in a third country is Indonesia, although in Anderson's work Indonesia is not explicitly mentioned as an example of this type of country. However, when referring to the construction of the theory of the application of religious law with a compromise pattern, Indonesia can be categorized as the third type of country as meant by Anderson.

²⁴Kansil and Kansil, *Empat Pilar Berbangsa dan Bernegara*, p. 7.

²⁵Winardi and Sirajudin, *Politik Hukum* (Malang: Setara Press, 2019), p. 78.

²⁶J.N.D. Anderson, *Islamic law in the Modern World*, translation by Makhnun Husein (Surabaya: Ammar Press, 1991), p. 25.

The system of implementing Islamic law in Indonesia is based on the aspect of need by looking at the socio-political conditions to maintain the existence of the Unitary State of the Republic of Indonesia (NKRI) with the Pancasila ideology as a foundation that is in accordance with Islamic values. There is no definite order regarding the form of state systems or institutions in the provisions of Islamic law. Therefore, there are various political thoughts, or scholars' *ijtihad*, about the political system that suits their situation and condition. This also means that there are varieties and even differences in ideas and practices between classical and contemporary political systems. The caliphate system, which is often campaigned for, does not have a definite (*qat'ī*) and clear (*ṣarḥ*) regulatory basis but is the result of the *ijtihad* of scholars based on *maṣlahah* (*benefits*), which is the main theory in Islamic political thought (*fiqh al-siyasah*).²⁷

Existence and Changes in the Marriage Law

In Dutch, the rule of law is called *rechtstaat* as opposed to *machtstaat* (state of power).²⁸ On the one hand, in the common law system, the concept of a rule of law is referred to as "the rule of law" and not "the rule of man," which means that real leadership in government lies in the law, not in the people.²⁹ Indonesia is a country based on law, as emphasized in Article 1 paragraph (3) of the 1945 Constitution. A state based on law is a country that aims to maintain order in society based on law (the rule of law), based on the provisions of the applicable laws and regulations, including in the field of marriage law. According to the provisions of Article 1 Number 3 of Law No. 12 of 2011, it is emphasized that what is meant by "law" is "legislation established by the House of Representatives with the joint approval of the President."

After the ratification of Marriage Law No. 1 of 1974 on January 2, 1974, the law officially became a reference for the implementation of marriage in Indonesia, which is binding for all citizens, whether Muslims or non-Muslims. This affirmation of Muslims and non-Muslims is important because there are several assumptions that the existence of Law No. 1 of 1974 is intended for those who are Muslim because, in general, those who are known to experience cases involving marriage are Muslims, even though this assumption is not sufficiently based on law.

²⁷Masykuri Abdillah, "Sharia and Politics in The Context of Globalization and Society 5.0," *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (2022), p. 263–286.

²⁸Mukti Fadjar, *Tipe Negara Hukum* (Malang: Bayu Media, 2004), p. 6.

²⁹Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2010), p. 299.

Marriage cases, which are a form of material civil law, can be upheld through two courts, namely general courts or district courts for non-Muslims and religious courts for Muslims, with all the enforcement mechanisms stipulated in civil procedural law (formal civil law). This is in accordance with the provisions contained in Article 63 paragraph (1) letters a and b of Law No. 1 of 1974 concerning Marriage, which emphasize that religious courts are reserved for those who are Muslim and general courts for others.

The existence of religious courts as one of the executors of judicial power in Indonesia are intended for Muslims to resolve certain cases, including marriage, as regulated in Article 49 of Law No. 7 of 1989 concerning the Religious Court, which has been amended by Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989, which states that "The religious court has the duty and authority to examine, decide, and settle cases at the first level between people who are Muslims including marriage; inheritance; will; grant; *waqf*; *zakat*; *infaq*; *sadaqah*; and sharia economy."³⁰

In addition to the marriage law, marriage regulations in Indonesia are strengthened by the Compilation of Islamic Law (KHI) based on Presidential Instruction No. 1 of 1991, which is specifically intended for people who are Muslim. The existence of KHI is used as an important reference for the implementation of several provisions of Islamic law in Indonesia that have been institutionalized. Moreover, the KHI is also one of the substantial references in the judicial process at religious courts in Indonesia because it is used as a basis for legal considerations by judges in making decisions.

There are several things behind the birth of Law Number 1 of 1974, namely: (1) to provide limits and prevent the practice of child marriages; (2) to limit the practice of polygamy; (3) to limit the practice of unilateral rights of *talaq* (*talaq* done arbitrarily); and (4) to construct equal rights between husband and wife. Law No. 1 of 1974 consists of 14 chapters and 67 articles that accommodate the needs and problems of the family.³¹

Among the legal provisions that have undergone adjustments is the age of marriage in Article 7 paragraph (1) of Law No. 1 of 1974, which states that "Marriage is only permitted if the man is 19 (nineteen) years old and the woman

³⁰ Ismail, et.al., "The Contribution of 'Urf to the Reform of Islamic Inheritance Law in Indonesia," *Al-Risalah: Forum Kajian Hukum dan Pranata Sosial* 22, No. 2 (2022). Husin Bafadhah, "Zakat on Legal Entities: Towards Concept Perfection and its Regulations in Indonesia," *Al-Risalah: Forum Kajian Hukum dan Pranata Sosial* 21, No. 1 (2021).

³¹ Encep Abdul Rojak, "Hukum Keluarga di Dunia Islam (Perbandingan Kitab Majjalatul Ahkam di Turki dan Kompilasi Hukum Islam di Indonesia)," *Tahkim: Jurnal Peradaban dan Hukum Islam* 2, no. 1 (2019), p. 15. Nurunnisa Nurunnisa, "Implications of Annulment of Marriage on the Distribution of Joint Assets according to the Compilation of Islamic Law and National Law," *Syariah: Jurnal Hukum dan Pemikiran* 23, No. 1 (2023).

is 16 (sixteen) years old." The adjustment to the marriage age referred to is stated in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. The birth of Law No. 16 of 2019 as referred to above is motivated by the Constitutional Court Decision (PMK) Number 22/PUU-XV/2017 as a result of the Request for Judicial Review of Article 7 Paragraph (1) of Law No. 1 of 1974 filed by three housewives, namely Endang Wasrinah (petitioner I), Maryanti (petitioner II), and Rasminah (petitioner III). In the description of the Constitutional Court's decision, the three applicants were married when they were children.

In the description submitted by the petitioners, there are several reasons postulated. Petitioner I got married at the age of 14 (fourteen) when she was still in grade 2 (two) of junior high school with a 37-year-old man with poor socio-economic conditions." It was with great compulsion that the petitioner quit school and became a housewife at a young age, taking care of her stepchildren. Under these conditions, she could not complete the nine-year compulsory education program that has been proclaimed by the government. In addition, she experienced health problems, namely infection of the reproductive organs. Therefore, she felt that her constitutional rights guaranteed by the 1945 Constitution had been violated, namely the rights to education, health, and to grow and develop.³²

Petitioner II stated that she was married at the age of 14 (fourteen) years to a man aged 33 (thirty-three) years. The petitioner was also married on the grounds of poor socioeconomic conditions; moreover, her father owed the prospective husband. In her statement, she said the marriage took place not because of her will but because of coercion and the will of his father. At that time, she ran away from home and was about to commit suicide, but her father threatened that if she did not get married, she and her mother would go to jail; therefore, she was forced to follow her father's will because she felt sorry for her mother. Due to the marriage, she was unable to complete her studies. As a result, she had a miscarriage when she was pregnant with her first child and her second child at the ages of 15 (fifteen) and 16 (sixteen) years, respectively. She could only have children when she was 19 years old, although the child died at the age of 4 months. In the end, she also felt that her constitutional rights had been violated, namely the rights to education, health, and to grow and develop.³³

Petitioner III stated in the description of the Constitutional Court decision that she was married at the age of 13 (thirteen) years. At that time, she had just completed his elementary school education. She married a 25-year-old man. The marriage took place at the request of the parents for economic reasons.

³²Mahkamah Konstitusi Republik Indonesia, p. 5–7.

³³Mahkamah Konstitusi Republik Indonesia, p. 7–9.

After the marriage, she was also no longer able to continue her education like Petitioners I and II. Therefore, she also felt that her constitutional rights had been violated.³⁴

In paragraph 1 of Decision of the Constitutional Court (PMK) Number 22/PUU-XV/2017, the court decides to "partially grant the applicants' request." Furthermore, in number (2) the decision confirms that "stating Article 7 paragraph (1) along the phrase "age 16 (sixteen) years" in Law No. 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974, Number 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019 is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force."³⁵

Number 4 of the decision states, "Order the legislators, within a maximum period of three years, to amend Law No 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 No. 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019), especially with regard to the minimum marriage age for women."³⁶ Based on the Decision of the Constitutional Court (PMK) number 4, Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 2019 Number 186) was ratified on October 14, 2019 and promulgated on October 15, 2019. The birth of Law No. 16 of 2019 is strengthened by consideration of Law No. 16 of 2019, letter c, which states that "as an implementation of the decision of the Constitutional Court of the Republic of Indonesia No. 22/PUU-XV12017, it is necessary to amend the provisions of Article 7 of Law No. 1 of 1974 concerning marriage."

Marriage Law No. 16 of 2019 amended the provisions of Article 7 of Law No. 1 of 1974 concerning marriage age. If previously the marriage age was 19 (nineteen) years for men and 16 (sixteen) years for women, in Article 7 paragraph (1), the marriage age for women is 19 (nineteen) years, the same as that for men. This change is expected to reduce the age of child marriage in Indonesia, which has a negative impact. This is in accordance with the preamble letter b of Law No. 16 of 2019: "that marriage at a young age has a negative impact on children's development and will result in the non-fulfillment of children's basic rights such as the right to protection from violence and discrimination, children's civil rights, health rights, education rights, and children's social rights." These considerations are in accordance with the

³⁴Mahkamah Konstitusi Republik Indonesia, p. 9–10.

³⁵Mahkamah Konstitusi Republik Indonesia, p. 59.

³⁶Mahkamah Konstitusi Republik Indonesia, p. 60.

characteristics possessed by a rule of law, namely the recognition and protection of human rights.³⁷

Character of Legal Products of Law No. 16 of 2019

The existence of and changes to the marriage law are closely related to the strategy of law enforcement policies. Legal politics is a legal policy that will be or has been implemented in a country and includes legal development, which refers to the making and/or updating of legal materials to suit the needs of the country, and implementation of existing legal provisions, including affirming the functions of institutions and coaching existing law enforcers.³⁸

Legal politics is a tool and method that can be used by the government to create the desired national legal system, and with this legal system, the aspirations of the nation will be realized. To create a good legal system, a legal system must fulfill several elements. As identified by Lawrence Friedman, there are several elements that must be met to build a legal system, namely legal structure, legal substance, and legal culture. Of these three elements, legal culture is the main one that has a significant effect on the development of the legal system. Without a good law-abiding culture, the legal system cannot run freely, as likened by Fiedman to a fish that has been caught and placed in a basket.³⁹

Legal substance is the result (output) of a legal system in the form of laws and regulations, which are legal policies in the form of regulations (*regeling*) and administrative decisions (*beschking*). Legal substance is closely related to the focus of this paper, namely the legal substance contained in the marriage law, in particular the changes to the law. Amendments to the marriage law are a form of perfecting the legal substance to support the operation of the marriage law system in Indonesia.

On the other hand, legal culture is also a significant aspect as an indicator of success in the proper functioning of the legal system. Violation of the legal age for marriage in Indonesia is an indicator of a weak culture of law-abiding adherence to the marriage age requirement. In the legal system in Indonesia, the religious court, which is one of the executors of judicial power and part of the legal structure, also has a role in legalizing child marriages. This is in accordance with the provisions of Article 7 paragraph (2) of Law No. 16 of 2019, which states that "In the event of a deviation from the age requirement as referred to in paragraph (1), the parents of the male and/or the parents of the female may request dispensation from the Court with very urgent reasons accompanied by sufficient supporting evidence."

³⁷Iriyanto A. Baso Ence, *Negara Hukum dan Hak Uji Konstitusionalitas Mahkamah Konstitusi* (Bandung: Alumni, 2008), p. 49.

³⁸Moh. Mahfud MD, *Politik Hukum Indonesia* (Yogyakarta: LP3ES, 1998), p. 9.

³⁹Lawrence Friedman, *American Law* (London: W.W. Norton & Company, 1984), p. 7.

Article 7 paragraph (2) seems to be an anomaly in law enforcement regarding the minimum marriage age in Indonesia. On the other hand, changes to the marriage law are expected to reduce the number of child marriages in order to guarantee human rights protected by the constitution and obtain their constitutional rights, which include the rights to education, health, and to grow and develop. Referring to the Constitutional Court Decision No. 22/PUU-XV/2017, which is the basis for changing the minimum age for marriage in Law No. 1 of 1974 concerning Marriage, deviations from the minimum marriage age in the form of granting dispensation through the judicial process as contained in 7 paragraph (2) appear to be inconsistent with the spirit of the history of the birth of the change in the minimum age for marriage stipulated in Article 7 paragraph (1) of Law No. 16 of 2019.

The existence of Article 7 paragraph (2) in Law No. 16 of 2019 does not change the substance of the marriage age to prevent child marriage because previously, Article 7 paragraph (2) of Law No. 1 of 1974 also provided dispensation to marry through a judicial process. Therefore, according to the author, the granting of a marriage dispensation violates the hierarchical provisions of laws and regulations so that the material content of one article becomes inconsistent with another.

Regarding legal ranking, there is a legal theory known as *Stufenbau des Recht*, which, according to Hans Kelsen, says that law is hierarchical. That is, the provisions of one law may not conflict with the provisions of the law above. Legal ranking in Indonesia can refer to the hierarchy determined under Article 7 Paragraph (1) of Law No. 12 of 2011, namely the types and hierarchies of statutory regulations starting from the 1945 Constitution to regional regulations. Legal provisions that may not be violated in a hierarchical manner include not only violating the provisions of higher legal products, such as constitutional laws, but also violating one article against another article above or below it, such as Article 7 paragraphs (1) and (2) of Law No. 16 of 2019.

In more detail, Hans Kelsen describes the need for consistency among legal norms through a hierarchy of norms. Kelsen calls it superior and inferior norms, the existence of a norm that regulates the formation of other norms, and then these other norms can be referred to as superordinate and subordinate relations in a spatial context. One norm that determines the formation of other norms is called a superior norm, while the norm that is formed is an inferior norm. Kelsen's theory is one of the important foundations for the existence of a judicial legal theory of *paranata review* in the form of a judicial review of the provisions of a legal product of laws and regulations through the judicial process. In Indonesia, the judicial review authority belongs to the Supreme Court and the Constitutional Court, as stipulated in Articles 24A and 24C of the 1945.

Currently, testing the hierarchy of legal norms with judicial review institutions conducted through the judiciary is still limited to testing the level of classification or qualification material between the contents or provisions of articles contained in a certain form of legal product whose form has a higher degree and the provisions of an article of a legal product whose form has a lower degree and which can be seen or identified through the mechanism of making a legal product. In Indonesia, the authority for this review is given to the Supreme Court, which reviews laws and regulations under the law, and the Constitutional Court, which reviews laws against the Constitution.

The authority possessed by the Court is divided into two, namely a formal test and a judicial review. A formal test is an examination of the mechanism for forming a particular law which is deemed to have violated the procedure or mechanism for forming a law in accordance with the provisions of the applicable laws and regulations. While the judicial review is a review of the provisions of the content of a certain article related to the legal norms contained in the Act which are considered contrary to the provisions of certain articles contained in the 1945 Constitution.⁴⁰ As for the review of Article 7 paragraph (1) of Law No. 1 of 1974 concerning marriage, which later resulted in Constitutional Court Decision Number 22/PUU-XV/2017, it is part of the judicial review.

As for testing the hierarchy of norms to assess the consistency of legal norms between one article and another in the form of the same legal product through judicial procedures, there is still no regulation governing it. For example, between paragraphs (1) and (2) of Article 7. For now, there is only one way to make corrections to the consistency of the content of one article with another in one law, namely through a legislative review process. Legislative review is a review of the contents of a law by the House of Representatives (legislature), which is then corrected through amendments to the law or the establishment of a new law as a replacement. However, this is certainly not easy to do because the institution is a political institution whose all activities must be completed through a fairly long political process in parliament, which of course is also based on the orientation of political interests. Furthermore, law is a political product that is influenced by the political interests of the members of the institution that creates it.⁴¹

In the author's opinion, the existence of Article 7 paragraph (2) of Law No. 16 of 2019 violates the provisions of Article 5 letter c of Law No. 12 of 2011 concerning the formation of legislation, which states that "the formation of

⁴⁰Maruar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (Jakarta: Sinar Grafika, 2020), p. 15–21.

⁴¹Moh. Mahfud MD, *Membangun Politik*, p. 37.

legislation must be based on the principle of forming good legislation, which includes a. clarity of purpose; b. proper formation of institutions or officials; c. suitability between types, hierarchies, and payload materials; d. ability to be implemented; e. usability and effectiveness; f. clarity of formulation; and g. openness."

From a perspective of consistency, the existence of Article 7 paragraph (2) of Law No. 16 of 2019 is, according to the author, inconsistent with Article 7 paragraph (1). The inconsistencies that occur lead to ambiguity in the implementation of the age limit for marriage. This is not in accordance with the spirit and history of the birth of Law No. 12 of 2011 concerning the Formation of Legislation, which replaced the previous law, namely Law No. 10 of 2004, concerning the Formation of Legislation, as emphasized in the Elucidation of Law No. 12 of 2011 in the General Section Letters a and b, which state that "a. Much of the material in Law Number 10 of 2004 causes confusion or multiple interpretations so that it does not provide legal certainty; b. many inconsistent formula article techniques...."

The minimum marriage age as referred to in Law No. 16 of 2019 can, in the end, lead to confusion and multiple interpretations in its implementation, which can result in disruption of the reflection of order and legal certainty in a legal product as stipulated in Article 6 paragraph (1) letter i of Law No. 12 of 2011, which confirms that "the contents of laws and regulations must reflect the principles of: ... c. order and legal certainty;..." From the point of view of legal and political studies, changes to the marriage law are a form of response to the Constitutional Court Decision Number 22/PUU-XV/2017 as a result of a review of the provisions of Article 7 paragraph (1) of Law No. 1 of 1974.

Regarding the response to material changes in a provision in a legal product, there is a previous legal-political study that is very relevant to be used as a follow-up theory to examine changes to marriage laws, namely the articles of Mahfud MD. In his articles, Mahfud identified the character of a legal product with the prevailing political climate as a benchmark, making the character of a legal product an affected variable in the form of political configuration. Mahfud explained that there are two forms of political configuration, namely, democratic and authoritarian political configurations. Democratic Political Configuration is a type of political system arrangement that allows citizens to optimally participate in determining public policy. While the authoritarian political configuration is a political system arrangement that places the government in a very dominant position to play an active role in taking almost all initiatives in making state policies.⁴²

⁴²Moh. Mahfud MD, *Politik Hukum*, p. 24.

A democratic political configuration will give birth to a responsive character for legal products. This legal product has a character that reflects the fulfillment of the demands and expectations of individuals or various social groups in society. This legal product is considered to provide a sense of justice in society. Responsive law-formation procedures are carried out by openly inviting the participation and aspirations of the community and the judiciary. The form of the formulation contained in responsive legal products is usually quite detailed. Therefore, there is no opportunity for close interpretation based on the will and vision of the government itself. Meanwhile, the authoritarian political configuration will give birth to conservative or Orthodox legal products. Conservative legal products are legal products whose character puts forward the political vision of very dominant power holders, which gives the impression of making people's representative bodies and political parties not function properly and optimally and gives the impression of being a rubber stamp for the will of the authorities. Therefore, the process of making this product does not really provide space for participation and aspirations for the community; even if there is participation, it is usually only a formality. The form of the formulation in this legal product is not detailed enough so that the legal provisions in it provide a lot of space for interpretation by the government according to its will (open interpretive).⁴³

According to Mahfud, a democratic political configuration is one in which there is freedom of the press, which must be quite objective in conveying informational narratives in the media without any pressure from the authorities or the government. Conversely, in an authoritarian political configuration, there is no freedom of the press. The press cannot objectively and independently convey information narratives through the media. On the other hand, they often receive pressure from the government through their power.⁴⁴

The legal-political configuration of judicial power in Indonesia by Benny K. Harman is described in the form of the independence of the judiciary, which is also associated with the current political configuration or pattern in Indonesia. At first glance, Benny's article appears to be a development of a legal-political study conducted by Mahfud, which makes political configuration an important indicator that determines the character of both legal products and the character of judicial power as the variable that is affected. In his articles, Benny emphasized that a democratic political configuration will give birth to the character of an independent judiciary, while an authoritarian political configuration will give birth to the character of a judicial power that is not

⁴³Moh. Mahfud MD, *Membangun Politik*, p. 67.

⁴⁴Moh. Mahfud MD, *Membangun Politik*, p. 68.

independent or dependent and is often influenced by government power or interests.⁴⁵

In relation to the study of the character of legal products, which is the focus of this paper, Mahfud's article can be used as a measuring tool in changing marriage laws in Indonesia, as stated in Law No. 16 of 2019. It's just that this paper does not start the study with the form of authoritarian and democratic political configurations because this is irrelevant considering that, post-reform, the spirit that is promoted is the spirit of democracy or people's sovereignty, which eliminates authoritarianism. Moreover, the study of legal politics by Mahfud and Benny was born from the process of studying power practices carried out in the New Order era, which, according to some, was very strong with an authoritarian atmosphere in various aspects with all the arguments and narratives that were built. If we refer to the discussion at the beginning of this article, it can be seen that at first glance, the changes to Law No. 16 of 2019 are responsive. The change in marriage law was prompted by Constitutional Court Decision Number 22/PUU-XV/2017, which was issued in response to a judicial review of the provisions of Article 7 paragraph (1) of Law No. 1 of 1974.

The birth of the Constitutional Court Decision, as referred to above, is inseparable from the practices of social life that occur in the midst of society, as contained in the description of the decision referred to regarding the practice of underage marriages determined by the marriage law. As a response, the Constitutional Court ordered the legislators to make changes to Law Number 1 of 1974 concerning marriage within a period of 3 (three) years, "especially regarding the minimum marriage age for women," as stated in the decision in Number 4 (four) MK Decision No. 22/PUU-XV/2017. As a result, Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 Concerning Marriage was ratified in 2019.

Constitutional Court Decision No. 22/PUU-XV/2017 seems to have had a breakthrough in Indonesian legal politics, especially marriage law, which, in its decision in number 4 (four), ordered legislators to make changes to the marriage age provisions contained in Law No. 1 of 1974 concerning marriage within a maximum period of 3 years, which was then followed by the passing of Law No. 16 of 2019. This decision is different and was not found in the previous Constitutional Court decision when conducting a judicial review of Article 29 of Law No. 1 of 1974 relating to marriage agreements, which later gave birth to Constitutional Court Decision Number 69/PUU-XIII/2015. In it, there is no strict order for legislators to make changes to the provisions of the marriage agreement in Article 29 of Law No. 1 of 1974. This resulted in a proposal to make changes to the provisions of Article 29 of Law No. 1 of 1974, as referred

⁴⁵Benny K Harman, *Konfigurasi Politik*, p. 450.

to in the closing of Agustine's articles. Therefore, until now, the provisions contained in Constitutional Court Decision No. 69/PUU-XIII/2015 have not been included in the provisions of the marriage law through amendments to Law No. 1 of 1974.

Based on the explanation above, the legal products of Law No. 16 of 2019 by the author are considered a form of legal product with a responsive character because the formation of responsive law is carried out by openly inviting the participation and aspirations of the community and the judiciary. The judicial process at the Constitutional Court, which has given rise to Constitutional Court Decisions, is a means for the people to participate in correcting and determining legal norms in a democratic country that carries the idea of people's sovereignty as stated in the fourth paragraph of the Preamble to the Law. The 1945 Constitution, along with the articles in it, and by making Pancasila the main source of law as emphasized in Article 2 of Law No. 12 of 2011, "Pancasila is the source of all sources of state law."

The principles of democracy and people's sovereignty are also reflected in all procedures and mechanisms regulated in the 1945 Constitution, such as mechanisms for political recruitment, policy formulation as a function of legislation, procedures for legislative oversight of the executors of power, and so on. The notion of democracy implemented by referring to the rule of law that forms a rule of law (nomocracy) is one of the important elements for controlling all forms of state administration policies, including in the formation of laws and regulations, so that all legal products made can represent the interests of the people at large to produce legal products with responsive characteristics that lead to positive and dynamic changes.

The importance of a responsive character in a legal product is to prevent people from mistaking the law for a command from the authorities, as Austin has stated, "Law is a command of the Lawgiver." As an antithesis to this expression, Rescoe Pound and his friends belonging to the sociological jurisprudence school revealed that "good law is a law that is in accordance with the laws that live in society" with a well-known phrase, namely "Law is a tool of social engineering," that law is a tool to control social life.

Based on all the descriptions above, the authors conclude that the legal products of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 Concerning Marriage, from the point of view of its formation or from the point of view of the birth of the law, have a responsive character. This is because the law was born as a result of Constitutional Court Decision Number 22/PUU-XV/2017, which ordered the legislators to make changes to the minimum age requirement for marriage for women as contained in Article 7 paragraph (1) UU No. 1 of 1974. Moreover, the decision of the Constitutional Court arose as a result of a request for judicial review filed by three Indonesian citizens as a

response to the realities of socio-economic and social life related to child marriage, including those experienced by the applicant. In addition, the decision of the Constitutional Court is the legislator's response to the reality of socio-economic and social life related to the practice of child marriage, which can have a negative impact on the growth and development of children and result in the non-fulfillment of children's rights in the form of the right to health, education, protection from violence, and other rights as stated in the preamble to Law No. 16 of 2019 letters a and b.

Although the author believes that the legal product of Law No. 16 of 2019 has a responsive character based on its form, this is not the case with all of the provisions in the articles contained in the law because Article 7 paragraph (2) provides dispensation to enter into underage marriages to legalize age deviations or at least marry through the Court with urgent reasons. This is an anomaly in law enforcement regarding the minimum age for marriage as stipulated in Article 7 paragraph (1) and seems to legalize the practice of underage marriages through the judicial process.

The existence of Article 7 paragraph (2) becomes historical against the backdrop of the establishment of Law No. 16 of 2019, which aims to prevent the practice of child marriage by increasing the minimum age for marriage for women. The provisions of Article 7 paragraph (2) seem to degrade the provisions of Article 7 paragraph (1). Particularly when referring to the description of the Constitutional Court Decision, it can be found that the applicants' marriage can be classified as very urgent, as stated in their argument. There is a dispensation that is regulated again in Article 7 Paragraph (2) of Law No. 16 of 2019 that renders the law insubstantial.

Against the provisions of Article 7 paragraph (2) of Law No. 16 of 2019, according to the author, the content provisions contained in this article are unresponsive in nature. Nevertheless, the author does not say that the character of these legal products is orthodox or elitist, which reflects the vision of the authorities as emphasized in Mahfud's article, which are more inclined to discuss the symptoms of power in political science because for the time being the author has not yet found a vision of power or political power relations. against the provisions of Article 7 paragraph (2). It could be that there are problems in the process of formulating Law No. 16 of 2019 carried out by legislators. On the one hand, there is no regulation that explicitly regulates, being able to examine contradictions or inconsistencies between one article and another in the same form of law in the judicial process, as is the case with the review of the 1945 Constitution.

Conclusion

In general, the legal products of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage have a responsive character that can be seen since the law's inception. However, Article 7 paragraph (2) of Law No. 16 of 2019. Based on the explanation described in the previous section, the provisions in this article are not in accordance with the spirit of change based on Constitutional Court Decision No. 16 of 2019 (PUU-XV/2017) and look historical. On the other hand, this article finds that setting up a judicial review mechanism between one article or paragraph and another article or paragraph in the form of a legal product of laws and regulations needs to be carried out as described by the author in this article, and the provisions of Article 7 paragraphs (1) and (2) must be studied more deeply. The provisions in this article are not in accordance with the spirit of change based on Constitutional Court Decision Number 22/PUU-XV/2017 and seem ahistorical. Theoretically, the conservative character in legal politics is an undemocratic legal product, different from responsive legal products, namely legal products that accommodate various opinions. Other findings show that there is no judicial institution that has the authority to check the consistency between the provisions of one article or paragraph and another in one form of legal product.

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