

Observing The Differences in Constitutional Court Decision About the Legal Age of Marriage

Meninjau Perbedaan Putusan Mahkamah Konstitusi tentang Norma Batas Usia Minimum Perkawinan

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Abstrak

Pada tahun 2014 -2017, terjadi 2 kali pengujian norma yang sama dalam UU Perkawinan yakni Putusan MK Nomor 74/PUU-XII/2014 dan 22/PUU-XV/2017. Akan tetapi, ada perbedaan amar putusan antara satu putusan dengan putusan berikutnya. Dalam Putusan MK Nomor 22/PUU-XV/2017, MK mengubah pendirian yang sebelumnya menyatakan bahwa norma batasan usia adalah konstitusional, berganti menjadi inkonstitusional yang berujung pada tindak lanjut para pembentuk undang-undang untuk melakukan revisi terhadap UU Perkawinan. Dalam penelitian ini akan dibahas mengenai perbandingan terhadap pertimbangan hakim dalam putusan MK Nomor 74/PUU-XII/2014 dan Nomor 22/PUU-XV/2017. Akan dicari latar belakang MK mengubah pendiriannya dari satu putusan ke putusan berikutnya. Penelitian ini menggunakan metode penelitian normatif dengan pendekatan perundang-undangan secara konseptual dan filosofis. Hasil penelitian menunjukkan bahwa perbedaan yang mendasari kedua putusan tersebut adalah perbedaan penggalan sumber hukum oleh hakim dalam pertimbangan hukumnya.

Kata Kunci: Batas Usia Minimum Perkawinan; Pengujian Norma; Putusan MK.

Abstract

In 2014–2017, there were two tests of the same norms in the Marriage Law, namely the Constitutional Court Decision Number 74 / PUU-XII / 2014 and 22 / PUU-XV / 2017. However, there is a difference in the verdict between one judgment and the next. In Constitutional Court Decision Number 22/PUU-XV/2017, the Constitutional Court changed the previous stance that stated that the age limit norm was constitutional, changing it to unconstitutional, which led to the follow-up of the lawmakers to revise the Marriage Law. This study will compare judges' considerations in the decisions of Constitutional Court Number 74 / PUU-XII / 2014 and Number 22 / PUU-XV / 2017. It will be sought against the Constitutional Court's background changing its stance from one ruling to the next. This research uses normative research methods with a conceptual and philosophical approach to legislation. The results showed that the difference underlying the two rulings was in the excavation of legal sources by judges in their legal considerations.

Keywords: Minimum Age limit for Marriage; Norm Testing; The Verdict of the Constitutional Court.

A. INTRODUCTION

1. Background

Social values inspired by a society inevitably undergo evolutionary changes.¹ This value does not lie in a vacuum but rather an adjustment to sociological and anthropological conditions, place, and time.² Kingsley Davis explains that the shift in social values in society occurs with the influence of globalization and the influence of other cultures. Influence also comes from the development of cyberspace, the internet, electronic information, digital, and legal engineering.³

The evolution of value development since ancient times has directly influenced the development of law, which is also the extraction of social values adhered to by society.⁴ Social values are a source of material law⁵ that 'fills' legal policies and decisions. When

¹ Evolve or evolution is the terminology used in terms of science related to the exact/natural phenomenon. The term is used quite classically since BC by Thales and Anaximander who discusses marine life and also the evolution of life. In addition, there are several other characters. In the 18th century Charles Robert Darwin came up with a fairly controversial theory of evolution that discussed human development. The term evolution in this study refers to Lasker's opinion, namely changes in the enrichment of hereditary traits with continuous modification through gradual time stages. Lasker, G. W., *Physical Anthropology* (New York: Holt, Rinehart Winston, Inc, 1976), 76.

² The shifting process of these values does not occur spontaneously but is based on awareness and a long time leading to a better life atmosphere, while indirectly shifts or changes will happen slowly and without realizing it.

³ Davis Kingsley, *Human Society* (New York: The Macmillan Company, 1960), 29.

⁴ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan* (Bandung: Alumni, 2006), 102.

⁵ Supriyadi, "Fungsi Hukum dalam Masyarakat yang Sedang Membangun," in *Filsafat Hukum Mazhab dan Refleksinya* (Bandung: Remaja Karya, 1989), 55.

these social values evolve, the law will be affected by these values. The Law is not final, but it always makes adjustments to keep up with ongoing developments.⁶ One of the developments is the norms of the legal age for marriage which is regulated in Law Number 1 of 1974 concerning Marriage (Marriage Law). This law was enacted under the reign of President Soeharto⁷ and passed in the House of Representatives in a plenary session by acclamation on December 22, 1973. On January 2, 1974, it was ratified and promulgated simultaneously on the same day by the President.⁸ In Wawan Hermawan's notes, the Marriage Law is based on a relatively complicated political configuration where intense debates and contradictions exist between two religious camps, namely Islam and Non-Islam.⁹ One of the norms established in 1974 that was challenged and criticized during the years of reform was the limitation of the legal age for child marriage. In this condition, there was an evolution of social structures and systems from 1974, due to the previous political, legal, and social configurations that were no longer relevant to be applied in the current phase, especially in terms of the development of human rights law which was introduced in the law and obeyed by the community as social engineering norm. Due to the development of human rights law in Indonesia, social understandings and social values eventually shifted from the previous conservative mindset towards a universalist mindset by relying on international human rights law standards.¹⁰

Adjustment between social values with the law or vice versa can be made in two ways: legislative review and judicial review. Legislative review is the authority of the legislature or the law-making body to amend a statutory regulation.¹¹ These changes are made to fulfill the community's legal needs and the follow-up to the decision

⁶ Satjipto Rahardjo dan Urfan, *Negara Hukum Yang Membahagiakan Rakyatnya* (Yogyakarta: Genta Publishing, 2009), *bagian pengantar*. Apart from that book, Satjipto through his progressive legal ideas also repeatedly conveys the idea of 'law is not the final product' in several of his writings.

⁷ At the time this law was enacted, the constitutional system still gave the President the power to make laws, *au contraire* to today which authorized to the Legislative together with the President. In the original article 4 of the 1945 Constitution it is stated: *The President of the Republic of Indonesia holds the power of government according to the Constitution*.

⁸ Wawan Hermawan, "Pengaruh Konfigurasi Politik terhadap Hukum Perkawinan di Indonesia," http://file.upi.edu/Direktori/FPIPS/M_K_D_U/197402092005011-WAWAN_HERMAWAN/Pengaruh_Konfig_Politik_trhdp_Huk_Perk-Jurnal_FPIPS.pdf, diakses pada 20 Desember 2020.

⁹ Wawan Hermawan, "Pengaruh Konfigurasi."

¹⁰ Moh. Mahfud. MD. "Politik Hukum Hak Asasi Manusia di Indonesia". *Jurnal Hukum*. Vol.7 No.14 (Agustus 2000): 15.

¹¹ Muhammad Fadli Efendi. "Mekanisme Legislative Review Peraturan Pemerintah Pengganti Undang-Undang dalam Perspektif Politik Hukum". *Jurnal Veritas Et Justitia*, Vol. 7. No. 2. (2021): 408.

of the Constitutional Court,¹² where the follow-up is carried out at the law product whose nature is the primary rule.¹³

The second way to adjust social values to legal products is through the judicial review. In Indonesia, the authority is held by the Constitutional Court to examine laws against the Constitution.¹⁴ A review by the Constitutional Court is different from a legislative review. In the legislative review, the stages are 'usually' not preceded by a specific actual loss of society, and the basis for change/formation is usually done based on needs and adjustments. Meanwhile, in the judicial review mechanism, it is usually preceded by a factual losses or has already happened and suffered directly by the community due to the enactment of a norm.¹⁵ Furthermore, in the legislative review process, the relationship between the community and the legislators is the absorption of aspirations. Legislators act inclusively to accept and absorb aspirations of society.¹⁶ Meanwhile, in the case of judicial review, the judge does not absorb aspirations, but interprets the law according to the 1945 Constitution.¹⁷ In this interpretation process, the judge will see what losses were experienced, what norms caused the losses, and the basis for testing according to the 1945 Constitution.¹⁸ Judges play a role in reviving legal norms that exist in society and adapting the constitution to the current condition/*the living constitution*.¹⁹

In 1941, Justice Stone argued that in an increasingly complex society, congress/parliament would certainly not be able to perform its functions if it had to find all

¹² Indonesia, *Undang-Undang tentang Pembentukan Peraturan Perundang-undangan*, Law Number 12 of 2011, State Gazette No. 82 of 2011, TLN No. 5234, Art. 10. The stipulations in the provisions of the article contain further provisions regarding the provisions of the 1945 Constitution of the Republic of Indonesia; 2. an order for a law to be regulated by law; 3. ratification of certain international agreements; 4. follow-up on the decision of the Constitutional Court; and/or 5. fulfillment of legal needs in society.

¹³ Febriansyah Ramadhan, dkk. "Penentuan Jenis Produk Hukum dalam Pelaksanaan Putusan Mahkamah Agung tentang Hak Uji Materil". *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, vol 11, no. 1 (2022): 63. DOI: <http://dx.doi.org/10.33331/rechtsvinding.v11i1.850>.

¹⁴ Indonesia, *Undang-Undang Dasar Negara Republik Indonesia*, 1945 Constitution, Article 24C.

¹⁵ I Gede Yusa, dkk. "Gagasan Pemberian Legal Standing Bagi Warga Negara Asing dalam Constitutional Review". *Jurnal Konstitusi*, Vol. 15, No. 4. (2018): 754.

¹⁶ The absorption of public aspirations and participation is guaranteed in Article 5 letter g of the P3 Law, namely the principle of openness. In its elucidation, the principle of openness states that the formation of laws and regulations up from the preparation, drafting, discussion, ratification or signing, and enactment should be transparent and open to public. Thus, all levels of society have the widest opportunity to provide input in the formation of laws and regulations.

¹⁷ M. Yusrizal Adi Syaputra. "Penafsiran Hukum Oleh Hakim Mahkamah Konstitusi". *Jurnal Mercatoria*, Vol. 4, No. 2, (2011): 83.

¹⁸ Inna Junaenah. "Tafsir Konstitusional Pengujian Peraturan di Bawah Undang-Undang". *Jurnal Konstitusi*, Vol. 13, No. 3,(2016): 513.

¹⁹ Steilen, M. "Reason, The Common Law, And The Living Constitution". *Journal Legal Theory*, 17, No.4, (2011), 279. <https://doi.org/10.1017/S1352325211000164>.

the additional facts to produce basic conclusions that support legislative policies to be passed.²⁰ In addition to Justice Stone, Hamdan Zoelva also explained, to understand the constitution as a living constitution, it is necessary to look at two perspectives. First, the constitution as an authoritative text made by its formulators, with a spiritual condition in accordance with the ideals of the state. Constitutional change can be made through formal changes to norms or changes in meaning in line with the state administration practices in the application of the constitution. Second, when the constitution deals with the real life in the administration of the state. So that the constitution is no longer belongs to the founding fathers but belongs to all Indonesian people and all their stakeholders.²¹ This makes the constitution dynamic and alive. Furthermore, the interpretation of the law is constanly evolving. Not only the law is not final, the Constitutional Court's decision is the same. If a legal norm is declared not contradictory to the 1945 Constitution, then in the future it may become unconstitutional, or vice versa.

One of them is the examination of marriage dispensation for minors. Marriage is a very important institution in social life. The existence of this marriage institution is to legalize the relationship between a man and a woman,²² in the form of an inner and outer bond between a man and a woman as husband and wife wich aims to forming an eternally happy family (household) based on the blessing from the One Godhead.²³ In the previous regulation, Article 10 of the Marriage Law explains that marriage is permitted if the man is 19 (nineteen) years and the woman is 16 (sixteen) years. This age requirement was disputed by a group of people, namely Indry Oktaviani, and the Indonesian Women's Coalition, *et. al.* in 2014. They submitted an application to the Constitutional Court to review Article 10 of the Marriage Law. Through the decision of the Constitutional Court number 30-74/PUU-XII/2014, all of the applicants' petitions were rejected and the Constitutional Court confirmed that Article 10 is constitutional and in accordance with the spirit of the 1945 Constitution. In this decision, there is 1 dissenting opinion submitted by Her Excellency (HE) Judge Maria Farida Indrati.

In 2017, Endang Wasrinah, *et. al.* submitted an application to o re-examine the provisions of Article 10 of the Marriage Law to the Constitutional Court. Within approximately 3 years from the previous decision, through Constitutional Court

²⁰ Fakhris Lutfianto Hapsoro and Ismail, "Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan *The Living Constitution*," *Jambura Law Review* 2, no. 02 (2020): 142, DOI: <https://doi.org/10.33756/jlr.v2i2.5644>.

²¹ Hamdan Zoelva, *Mengawal Konstitusionalisme* (Jakarta: Konpress, 2016), 3.

²² Salim HS, *Pengantar Hukum Perdata Tertulis (BW)* (Jakarta: Sinar Grafika, 2005), 61.

²³ Indonesia, *Undang-Undang tentang Perkawinan*, UU No. 1 Tahun 1974, LN No.1 Tahun 1974, TLN No. 3019.

Decision number 22/PUU-XV/2017, the Constitutional Court passed down a different decision from the previous one. This decision was made unanimously by the Honorable Judges. In its decision, the Constitutional Court emphasized that the provisions of the norm that distinguishes between the minimum age of marriage for men and women are discriminatory and contrary to the 1945 Constitution. In its consideration, the Constitutional Court stated a constitutional order²⁴ as well as a time limit for legislators to immediately follow up on it no later than 3 years after the decision was declared.²⁵

Based on the explanation above, this research will examine the judge's considerations in the decisions number 30-74/PUU-XII/2014 and number 22/PUU-XV/2017. What is the basis for legal considerations in the two decisions to produce different verdicts? In addition to analyzing the judge's considerations, it is also necessary to examine the arguments used by the applicant in the two decisions. In order to obtain a complete understanding, it is also necessary to look at several previous Constitutional Court decisions, which have a similar pattern to the two decisions, particularly the review of norms related to gender discrimination. By reviewing it, we will also find to what extent judges consider the existence of other legal norms governing the legal age of children. After reviewing the entire decision, it can be found how the pattern of extracting legal sources by the judge and also the approach used in this review that results in valuable studies for the development of science in the future, both in the aspects of the Constitutional Court's procedural law, human rights law and marriage law.

²⁴ Constitutional Mandate, referred to by Peter Paczolay, which quoted by Fajar Laksono as *mandamus*, that is a *constitutional mandate to legislate*. Fajar Laksono Suroso further explained that the constitutional mandate is the mandate given by the Constitutional Court as a judicial institution by giving orders to legislators to evaluate certain legal products. Further see Fajar Laksono Suroso, *Potret Relasi MK- Legislator, Konfrontatif atau Kooperatif?* (Yogyakarta: Genta Publishing, 2018), 7.

²⁵ In its consideration, the Constitutional Court said that determining the age limit is an open legal policy so that it is the authority of the legislators to regulate it. In his consideration it was stated: "*Whereas previously stated, the determination of the minimum age limit for marriage is the legal policy of the legislators. If the Court set the minimum age for marriage, it will actually close the space for lawmakers in the future to consider more flexibly the minimum age limit for marriage in accordance with legal developments and community developments. Therefore, the Court has given no later than 3 (three) years for legislators to immediately make changes to legal policies related to the minimum age for marriage, in particular as stipulated in Article 7 paragraph (1) of Law 1/1974. Prior to the amendment, the provisions of Article 7 paragraph (1) of Law 1/1974 still apply. If within that time limit the legislators still have not made changes to the minimum age limit for marriage which currently in effect, in order to provide legal certainty and eliminate discrimination caused by these provisions, then the minimum age limit for marriage as regulated in Article 7 paragraph (1) Law 1/1974 will be synchronized with the age of child as regulated in the Child Protection Law and applies equally to boys and girls.*"

2. Research Questions

This section contains the research questions, arranged in the form of questions or paragraphs. This question is a line of thought that will be discussed in the next section. Based on the description of the background, this study will discuss a comparative analysis of the judge's considerations in Constitutional Court decision number 74/PUU-XII/2014 and Constitutional Court decision number 22/PUU-XV/2017.

3. Method

This research uses normative legal research methods. Soerjono Soekanto explained that normative legal research is research conducted by examining positive regulations/laws using library materials or secondary data.²⁶ The main object examined in this research is the decisions of the Constitutional Court in reviewing the Law regarding the age of child marriage. The position of the Constitutional Court Decision is equal to the law. Constitutional Court Decision immediately has permanent legal force from the moment it is declared, and there are no legal remedies that can be taken. The final nature of the Constitutional Court Decisions includes the final and binding legal force (Explanation of Article 10 paragraph [1] of the Constitutional Court Law). Therefore, this research is normative because the position of the Constitutional Court Decision is equivalent to the Law, so it becomes the primary legal material.²⁷ The approach used in this study was the statutory and conceptual approach.

B. DISCUSSION

1. Analysis of Judge's Considerations in Constitutional Court Decisions Number 74/PUU-XII/2014 and Number 22/PUU-XV/2017

The dynamics of the Constitutional Court since its establishment (2003) until today show that the changes in the Constitutional Court's considerations in each of its decisions is not a new thing. For example, regarding the Constitutional Court's interpretation towards the authority of regional election disputes by the Constitutional Court.²⁸ Constitutional Court Judges' interpretation towards constitution and the law is the absolute authority of the judges, not only interpreting, the judge is also required to formulate a reason to solve a problem. The problem does exist, but the

²⁶ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Rajawali Pers, 1985), 18.

²⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005), 151.

²⁸ R. Nazriyah, "Penyelesaian Sengketa Pilkada Setelah Putusan Mahkamah Konstitusi Nomor 97/PUU-XI/2013", *Jurnal Konstitusi*, No. 3 (2015): 462, DOI: <https://doi.org/10.31078/jk1232>.

approach to the problem must be chosen selectively so it can be solved with a purely constitutional approach. This is emphasized by Keith E. Whittington, in full he says:²⁹

“This was a strong claim to judicial authority over the interpretation of constitutional meaning. The judiciary “must of necessity expound and interpret that rule. It was the very essence of the judicial duty” to determine the meaning of th’e Constitution and to lay aside those statutes that contradicted that fundamental law.”

The first decision (Decision Number 74/PUU-XII/2014) rejected the applicant’s petition, and stated that the norm regarding the legal age limit for marriage was constitutional. The approach to sources of law submitted by the applicants was very nuanced in religious laws, and finally the judges took this into account (religious law). The Constitutional Court consideration of rejecting the trial is an attempt by the Court to safeguard religious freedom in Indonesia. With the condition of people with various religions and beliefs, taking several teachings from certain religions, it is feared that respect for religious freedom will fade. This was emphasized by Howard Kislowicz, in full he said:³⁰

“In liberal democracies with religiously diverse populations, it would be surprising and troubling if a judge relied on a religious text or precept to resolve a legal dispute. It would deeply offend principles of religious freedom if individuals were bound by judicial pronouncement to obey the dictates of a faith they do not share.”

Although the applicant’s arguments are the reality of early age marriage which is considered very troubling, the Constitutional Court still rejects the petition through the Constitutional Court Decision number 74/PUU-XII/2014. In the next decision, the Constitutional Court changed the decision through the Constitutional Court Decision number 22/PUU-XV/2017 and followed up in the Marriage Law with the hope of creating the family that was aspired by the Marriage Law.

The family is the smallest unit of society consisting of father, mother and children. A family can be formed if there is a bond of love between an adult man and an adult woman which formalized by marriage, in accordance with religious rules and positive law.³¹ As a legal basis for marriage, the government tries to accommodate the needs of the community by issuing a Marriage Law which states that to form a family, it must be prepared carefully. Among them, the couple who will form a family that must

²⁹ Whittington, Keith E. *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History* (Princeton University Press, 2007), 83.

³⁰ Howard Kislowicz, “Judging Religion and Judges Religions”, *Journal of Law and Religion* 33, no. 1 (2018): 42. <https://doi.org/10.1017/jlr.2018.10>.

³¹ Muachor Ali Muh, *Buku Pintar Keluarga Muslim* (Semarang: BP 4, 1982), 4.

be mature, both biologically and pedagogically, as well as being responsible, so that later it will lead to physical and spiritual bonds between men and women with the aim of forming a *sakinah mawaddah warohmah* family.³²

In order to guarantee legal certainty, everything related to marriages that occurred before this which was carried out according to existing laws were valid. Likewise if there is any matter that has not been regulated in this Law, it will regulate automatically by referring the existing provisions (retroactively). The main purpose of marriage³³ as stated in the Marriage Law is to form a happy and long-last family.

To create a happy and long-last family, husband and wife need to help and complement each other, so that each can develop their personality to help and achieve spiritual and material needs (a harmonious family).³⁴ If referring and reviewing the Marriage Law, it is stated that a marriage is valid if it is carried out according to the law or teachings of religion and belief. In addition, every marriage must be recorded according to the applicable laws and regulations and according to the adhered religion.³⁵ The recording of each marriage is the same as important events in a person's life, such as births and deaths which are stated in a certificate, which is an official certificate recorded in the registration.³⁶

Regarding marriage registration, basically, the Marriage Law adheres to the principle of monogamy.³⁷ That is, the monogamy principle is by the concern of the

³² Tarkariwan Cahyadi, *Pernak-Pernik Rumah Tangga Islam: Tatanan dan Perayaannya Dalam Masyarakat* (Solo: Inetermedia, 1997), 21.

³³ The purpose of marriage is basically to legally carry on lineage in society, by establishing a harmonious and peaceful household life. According to Law No. 1 of 1974, Article 1 formulates that: "Marriage is an physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and long live family (household) based on the One Godhead". From this formulation, it can be understood that the main purpose of marriage is to form a happy and long live family. For that, the husband and wife need to help each other so that each can develop the personality to help and achieve spiritual and material well-being. In addition, the material goals that will be fought for by a marriage agreement have a very close relationship with religion, hence it not only has an external or physical element, but the inner or spiritual element also has an important role (Explanation of Law No. 1 of 1974 concerning Marriage). Therefor marriage is an agreement made by two people, in this case an agreement between a man and a woman with a material goal, namely to form a happy and long live family (household) based on the One Godhead as the first principle in Pancasila. Further see Soedharyo Soimin, *Hukum Orang dan Keluarga* (Jakarta: Sinar Grafika, 1992), 6.

³⁴ Fuad M. Ritwan, *Membina Keluarga Harmonis* (Yogyakarta: Tuju Publisher, 2008), 8.

³⁵ Aisyah Ayu Musyafah. "Perkawinan dalam Perspektif Filosofis Hukum Islam". *Jurnal Crepido* 2. No. 02. (2020): 119.

³⁶ Bakri A. Rahman and Ahmad Sukardja, *Hukum Perkawinan Menurut Islam Undang- Undang Perkawinan dan Hukum Perdata/BW* (Jakarta: PT Hidakarya Agung, 1981), 38.

³⁷ See Indonesia, *Undang-Undang tentang Perkawinan*, Law Number 1 of 1974, State Gazette number 1 of 1974, TLN No. 3019, Art. 3 paragraph (1). The principle of monogamy is the principle that apply only if the person concerned is willing, because the law and religion of the person concerned allows it, a husband can have more than one wife. However, the marriage of a husband with more

spouse, since some law and religious teachings allow a husband to have more than one wife.³⁸ However, the marriage of a husband with more than one wife, even though it is desired by the parties concerned, can only be carried out if certain conditions are fulfilled and decided by the Court.³⁹

In addition, the Marriage Law adheres to the principle that the prospective husband and wife should have reach maturity both physically and mentally to be able to carry out the marriage, so that they can realize the purpose of marriage properly without ending in divorce and having good and healthy offspring. So as not to end up in divorce and to have good and healthy offspring, prevention must be done by avoiding early marriage. Besides, marriage at an early age has a correlation with population problems. In fact, a lower age for a woman to marry results in a higher birth rate. Therefore, the Marriage Law regulates the legal age limit for marriage for both men and women, which is 19 (nineteen) years for men and 16 (sixteen) years for women.⁴⁰

The Law explains that marriage and all its provisions have been regulated and arranged so well and neatly, so that to carry out a marriage it is better to follow the existing provisions. However, nowadays there are a lot of people in traditional society who are getting married at an early age.⁴¹ What is meant here is a marriage that occur between the prospective partners who are still under the age limit are included in early marriage, because the age of the prospective partner is a juvenile category. Pardoko stated that the factors that can make the reason for early marriage were as follows:⁴²

1. *The lack of awareness and socialization of the Marriage Law wich guarantees women's rights, partly because of the low literacy and education level, especially in rural areas that are less accessible by communication channels.*

than one wife, even though it is desired by the parties concerned, can only be carried out if certain conditions are met and decided in court. Soemiyati, *Hukum Perkawinan islam dan Undang-undang Perkawinan (Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan* (Yogyakarta: Liberty , 1982), 6.

³⁸ Sam'un, "Asas Monogami Terbuka dalam Perundang-Undangan Perkawinan Islam di Indonesia". *Jurnal Al Hukama'*, Vol. 5 No. 1(2022): 10. <https://doi.org/10.15642/al-hukama.2015.5.1.1-17>.

³⁹ Soemiyati, *Hukum Perkawinan Islam dan Undang-Undang No. 1 Tahun 1974 tentang Perkawinan* (Yogyakarta: Liberty, 1982), 6.

⁴⁰ See Indonesia, *Undang-Undang tentang Perkawinan*, Law Number 1 of 1974, State Gazette number 1 of 1974, TLN No. 3019, Art. 7 paragraph (1).

⁴¹ Anonymous, "Mengenal Tradisi Balawang Tujuh, Perkawinan Janda Duda," *Lifestyle*, 29 November, 2017, <https://lifestyle.okezone.com/read/2017/11/29/196/1822273/mengenal-tradisi-balawang-tujuh-perkawinan-janda-duda>, diakses 20 Desember 2020.

⁴² Zulfiani, "Kajian Hukum Terhadap Perkawinan Anak Dibawah Umur Menurut Undang-Undang Nomor 1 Tahun 1973," *Aceh: Jurnal Hukum Samudra Keadilan* 12, no. 2 (2017): 217-218, <https://ejournalunsam.id/index.php/jhsk/article/view/136>.

2. *The low socioeconomic capacity of the parents' also tends to be a reason to marry off their daughters at an early age.*
3. *Education also causes some people to get marriage early, because some people with lower educational background are more likely to be married off by their parents, compared to people with higher education. In the void of time without work, they end up doing unproductive things, one of which is to establishing relationship with the opposite sex, which if out of control can lead to pregnancy outside of marriage.*
4. *Teenagers in the village do not have sufficient knowledge, early marriage to teenagers is also considered as the efforts to prevent promiscuous sexual behavior.*
5. *Cultural Factors, The cause of early marriage is due to the cultural influence that develops in society that the girl must be married immediately so as not to become a spinster. Local culture believes that if their daughter does not get married soon it will be a shame for the family. Regardless of the age or the marital status, most parents accept the proposal because they think the future of their daughter will be better and is expected to reduce the burden of the parents. We often find parents in rural area marrying off their children too soon than their dating period. In rural communities, there is a tendency that families will feel ashamed to have unmarried daughter at a young age. The rural communities are very simple-minded, they prefer to see things solely from their material form.*

Besides the factors above, there are many other factors behind the phenomenon of early marriage, such as promiscuity which leads to unwed pregnancy.⁴³ And in time, empirical reality shows various negative impacts of early marriage, such as the immaturity of the emotional conditions of men and women which eventually lead to divorce, the death of women due to lack of physical strength during childbirth.⁴⁴ Based on some of these empirical realities, the community, both individually and also several groups of Non-Governmental Organizations (NGOs) tested the minimum legal age limit for marriage in the positive law to the Constitutional Court. Up to present, there are two Constitutional Court Decisions i.e. number 74/PUU-XII/2014 and number 72/PUU-XV/2017 that tried the norms for the age limit for marriage. Here's the description:

⁴³ Farida, "Pergaulan Bebas dan Hamil Pranikah". *Jurnal Analisa*, Vol. 16, No. 1. (2009): 126.

⁴⁴ dr. Dety Siti Nurdianti, MPH., PhD, SpOG (K) from Medical Faculty, Gadjah Mada University, Yogyakarta presents a number of data. The data from the study stated that there were a number of causes for the high rate of maternal mortality. About six percent of the case is due to hypertension, 37 percent due to anemia, 48 percent from early marriage and 38 percent from pregnancy under the age of 20 years. This means that early marriage accounts for a fairly high percentage in this case. Accessible via <https://www.voaindonesia.com/a/pernikahan-remaja-dan-kasus-kematian-ibu-melahirkan-di-indonesia/3653855.html>, accessed on 20 December 2020.

2. Elaboration of Judges' Consideration in Constitutional Court Decision

The amendments to the 1945 Constitution changed the basic paradigm of the state, where in the 1945 Constitution the original text stated that Indonesia is a *rechstaat* (state of law) in its explanation. After the amendment, the term *rechstaat* in the 1945 Constitution was changed to the term 'State of Law'.⁴⁵ This change in terms has major implications for the system of family law in Indonesia. Indonesia is no longer bound to the family of the *rechstaat* legal system with its derivative civil law system which is purely based on the law in making legal decisions by prioritizing certainty. Even though it has changed to the concept of a 'pure' rule of law, it does not mean that the Indonesian legal system leads to the rule of law with a derivative of the common law system that puts forward jurisprudence with the main goal of law being justice. In terms offered by Mahfud MD which also refers to the concept proposed by Fred. W Riggs, Post-reformation Indonesia leads to the concept of a prismatic rule of law that integrates various good elements from various existing systems, starting from the form of the rule of law,⁴⁶ the legal system to the relationship between the state and religion. In the post-reform Indonesian legal system, the model of extracting legal sources by judges in Article 5 of Law Number 4 of 2009 which provides an opportunity for judges to accumulate legal sources in deciding cases to be guided by 'law' which is a feature of the civil law and a 'sense of community justice' which is a feature of the common law. These two systems are integrated in the concept of the Indonesian rule of law to complement each other.

Enrico Simanjuntak said that the characteristics of the common law legal system are case-law-oriented, while the civil law system are codified-law-oriented. However, law and regulations as the basis of legality in the *rechtstaats* tradition has its own limitations. The laws and regulations never regulate in full and in detail how to fulfill the rule of law in every legal event, therefore jurisprudence, which is a derivative of common law, will complete it.⁴⁷ Shidarta said the role of jurisprudence in the development of the legal system in all legal system was felt to be getting stronger from time to time. The reason for strengthening the role of jurisprudence is easily understandable due to growing skepticism about the ability of laws and regulations to accommodate concrete events in the community. This rule-skepticism was originally

⁴⁵ Zaherman AM. "Negara Berdasarkan Hukum (Rechtstaat) Bukan Kekuasaan (Machstaat)". *Jurnal Hukum dan Peradilan*, Vol.6, No. 3, November (2017): 439. <http://dx.doi.org/10.25216/jhp.6.3.2017.421-446>.

⁴⁶ Akhmad Rudi Maswanto, "Nalar Hukum Prismatik Dalam Konteks Hukum Nasional", *Maqashid Jurnal Hukum Islam* Vol.4, No.2 (2021): 52. <http://ejournal.alqolam.ac.id/index.php/maqashid>.

⁴⁷ Enrico Simanjuntak, "Peran Yurisprudensi dalam Sistem Hukum di Indonesia," *Jurnal Konstitusi* 16, no.1 (2019): 87-89. <https://doi.org/10.31078/jk1615>.

voiced the loudest by adherents of legal realism, including realist movements that focus more on certain issues, such as the critical legal studies scholar, the critical race theorists, and the feminist studies group.⁴⁸

In the tradition of Indonesian legal system, the role of jurisprudence has never really received a special attention.⁴⁹ Normatively, judges are encouraged to explore the values that live in society (see Article 5 of Law Number 48 of 2009 concerning Judicial Power), but in practice judges have not been motivated to produce great jurisprudence in its decisions. According to Shidarta, a decision can be said to be jurisprudence if it contains new rules. By elaborating Shidarta's opinion, the author argues, a decision can be said to be jurisprudence with new rules, by looking at how the legal considerations are. Furthermore, even though there are no new rules, decisions explain in more detail the philosophical/constitutional aspects of each issue under consideration. In lexical terminology, this jurisprudential rule is included in the *ratio decidendi*, namely the rationale for the decision.⁵⁰

The role of consideration for making decisions (legal consideration) in the Indonesian legal system is as 'guiding star' for the 2 powers in determining the direction of law and policy. First, for the legislative power, all decisions, in this case the decisions of the Constitutional Court, will take on the role of guiding legislators in conducting legislative reviews. There is a moral obligation for legislators to comply with the boundaries set by the Constitutional Court,⁵¹ moreover, it is also guaranteed in Article 10 of Law Number 12 of 2011 on Legislation Making that one of the contents of the law is to follow up on the Constitutional Court's decision. The obligation to follow up is obviously accompanied by the bound of legislators to the judicial reasoning/*ratio decidendi* of the Constitutional Court's decision. The second is binding to judicial power. This bound refers to the two tops of judicial power, the Supreme Court and the Constitutional Court. In the field of the Supreme Court, judges in deciding cases are bound by all decisions of the Constitutional Court relating to the concrete cases/cases they handle. This is based on the position of the Constitutional Court's decision which is parallel to the law. While for the Constitutional Court, the judges of the Constitutional Court who decide cases are also bound by their previous decisions.⁵²

⁴⁸ Shidarta, "Mencari Jarum Kaidah di Tumpukan Jerami Yurisprudensi," *Jurnal Yudisial* 5, no. 3 (2012): 29. <https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/128>.

⁴⁹ M. Nur Alamsyah, dkk. "Kedudukan Yurisprudensi dalam Sistem Hukum Indonesia". *Qawanin Jurnal Ilmu Hukum*, Vol.1. No. 2 (2021): 72.

⁵⁰ Shidarta, "Mencari Jarum Kaidah."

⁵¹ Meirina Fajarwati. "Tindak Lanjut Putusan Mahkamah Konstitusi dalam Program Legislasi Nasional," *Jurnal Kajian*, Vol. 22. No. 3, (2017): 197. <https://doi.org/10.22212/kajian.v22i3.1512>.

⁵² Olly Viana Agustine, "Keberlakuan Yurisprudensi pada Kewenangan Pengujian Undang-Undang

This form of the bounding does not mean that the judge must guide by the previous decision, but is bound to conduct a re-discussion in his consideration of the previous decision. Because, in the consideration of the constitutional judges, there are many excerpts from discussions of previous decisions to examine the relevance of previous decisions to the object of the current application. Thus, it can be understood that the judge's consideration/*ratio decidendi* has an important meaning for the development of law in Indonesia in all lines of power.

In the two decisions of the Constitutional Court that examined the article on the minimum age for marriage, there were considerations with two different approaches, hence it is not surprising that the two decisions have different verdicts. The main argument in decision 74/PUU-XII/2014 focuses more on the approach to religious laws adopted in Indonesia. Starting from the Islamic law quoted from the Qur'an, then the Hadith of the Prophet sallallahu 'alaihi wasallam told by Abdullah Bin Mas'ud Radiallahu 'anhu about the advice to get married once when capable, up to the Hindu religious law contained in Manava Dharmasastra IX.89- 90. In this decision, the Constitutional Court gives consideration to the position of religious law and state law which are positioned side by side in reviewing this norm. In addition to religious law, there is also state law, both of which are side by side and mutually support one another. This is reflected in the opinion of the Court:

"In practice, marriage is closely related to sacred beliefs based on sacred religious rules and values that cannot be ignored. This is as emphasized in Article 28B paragraph (1) of the 1945 Constitution which states, "Everyone has the right to form a family and continue their lineage through a legal marriage." The understanding of a legal marriage must be seen from two aspects, namely legal according to religious law and legal according to state law; All religions that apply in Indonesia have their respective rules in marriage and religious law binds all adherents, while the state provides services in the implementation of marriage with state regulations including administrative records for legal certainty for married couples and their offspring."

By juxtaposing religious and state law in this decision, the Constitutional Court then provides considerations based on the values of religious law. One of them is Islamic law, where marriage is present in the context of alleviating greater harm that occurs due to the influence of social interaction, environment, association, technology and so on that can accelerate the rate of lust.

dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi*, Vol. 15, No. 3 (2018): 645. <https://doi.org/10.31078/jk1539>.

In Islamic teachings, marriage is one of the commands of Allah Subhanahuwata'ala because it is a very strong and sacred bond and cannot be compared to material things. Some of the principles in marriage are volunteerism, the consent of both parties, the husband and wife partnership, perpetually, and the personality of the spouses. From the principle of marriage, it mentions nothing about minimum age in order to prevent greater harm, partially in today's developments, for the society today, where the possibility of such harm spreads much more quickly because it is influenced by various conditions such as food, environment, association, technology, information disclosure, and so on, thereby accelerating the rate of lust. The desire for lust should be channeled through a legal marriage according to religious teachings so as not to give birth to children out of wedlock or illegitimate children.

In the course of this research, the author also conducted interviews with judges at the Religious Courts of Malang City, where this city is one of the cities with the highest divorce rate for minors.⁵³ In the interviews, there has never been a marriage dispensation application that was rejected, and one of the reasons for granting a marriage dispensation is almost the same as the Constitutional Court's considerations above, namely to prevent significant harm. It is based on one of the maxims in Islamic law, namely "*innas-sababa wal faragha wal jiddata mafsadatun lil mar'i ayya mafsadatin*" which means leisure time in youth can damage a person from any aspect. The Constitutional Court also considered the reality of early marriage, which ultimately creates a family that ends in disharmony due to the immature conditions of men and women. Constitutional Court also argued that there was no guarantee that raising the age limit will solve the problems that had happened all this time.

In this consideration, the Constitutional Court does self-restraint not to take the authority of the legislators in establishing new norms,⁵⁴ where one of the petitions requires the Constitutional Court to determine the ideal minimum legal age for marriage. Consistent with several previous decisions, the determination of quantitative matters (numbers)⁵⁵ is included as an open legal policy which is the domain of the legislators.

⁵³ Alfi Ramadana, "Angka Perceraian di Kota Malang Tinggi, Perlu Bimbingan Pranikah," *Idntimes*, 16 Oktober, 2020, <https://www.idntimes.com/news/indonesia/alfi-ramadana-1/angka-perceraian-di-kota-malang-tinggi-perlu-bimbingan-pranikah/1>.

⁵⁴ Dian Agung Wicaksono, dkk. "Mencari Jejak Konsep Judicial Restraint dalam Praktik Kekuasaan Kehakiman," *Jurnal Hukum & Pembangunan* 51 No. 1 (2021): 193.

⁵⁵ Mardian Wibowo, *Kebijakan Hukum Terbuka dalam Putusan Mahkamah Konstitusi* (Jakarta: Raja Grafindo persada, 2019), 19

If in the decision of the Constitutional Court 74/PUU-XII/2014, the approach of religious laws dominates the consideration. In that case, it is different from the decision of the Constitutional Court 22/PUU-XV/2017, which is more dominated by the approach of human rights law/international agreements, including *Transforming Our World: the 2030 Agenda for Sustainable Development Goals (SDGs)* and the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*. In the previous decision, the approach to the 1945 Constitution was relatively minimum (1 article). However, in this decision the Constitutional Court's approach to the 1945 Constitution was quite large, starting from the aspect of equality before the law to the right to education, which is contained in Article 27 paragraph (1), Article 28B paragraph (1) and (2), Article 28C paragraph (1) and Article 31 paragraph (2) of the Constitution 1945. The main arguments in this decision is regarding equal treatment or equality before the law, especially with respect to gender. Through this approach, the Constitutional Court abandoned its previous opinion about testing the minimum age of marriage.

The Court held that while setting a minimum age for marriage is a legal policy, it should not treat citizens differently solely on gender or sexual differences. It is true that due to their nature, to some extent the treatment of men and women demands a distinction, so that in such a context the distinction is not discrimination nor can it be said to violate intolerable morality, rationality, and injustice. However, when the difference in treatment between men and women has an impact or hinders the fulfillment of the fundamental rights or constitutional rights of citizens, whether for those belonging to the group of civil and political rights, as well as those belonging to economic, social and cultural rights, which should not be distinguished solely on the grounds of sex, then such a distinction is clearly discrimination.

Then, regarding the development of Indonesian human rights law configuration, the Constitutional Court gave his view that there were developments where the conditions when the Marriage Law was formed were different from today, where human rights law has progressed quite rapidly. The Court says:

"The Court does not deny that when Article 7 paragraph (1) of Law 1/1974 was drafted and discussed, the determination of the age limit was a form of national agreement that was agreed upon after careful consideration and attention to the values prevailing at the time when the a quo Law was drafted. which was later ratified in 1974. However, in the development of the Indonesian state administration which was marked by the amendment of the 1945 Constitution (1999-2002), there was a strengthening of the guarantee and protection of human rights in the constitution by the inclusion of articles on guarantees of

human rights, including the right to form a family and children's rights. The guarantee and protection of human rights is also a national agreement, in fact it is explicitly formulated in the Constitution. Strengthening the guarantee and protection of a quo human rights certainly requires the Indonesian people to make adjustments to past legal policies which are considered no longer in accordance with legal developments and community developments. In this case, including if there are legal products that contain different treatment on the basis of race, religion, ethnicity, skin color, and gender, it should also be adjusted to the will of the 1945 Constitution which is anti-discrimination."

Like the previous decision, the Constitutional Court did self-restraint by only canceling the norm of the minimum age limit for marriage. The Constitutional Court did not formulate the ideal age figure and submitted it to the legislative review mechanism by the legislators. Nevertheless, the Constitutional Court gives a constitutional mandate⁵⁶ and a time limit for legislators to immediately follow up within three years of the decision being passed,⁵⁷ and if no changes are made at that time, the minimum age that applies is as stated in the Child Protection Law.

3. Judge's Consideration towards Provision of Child Age Norm in the Legislation

In the decision of Constitutional Court 74/PUU-XII/2014, the Constitutional Court did not discuss the age of children in several regulation concerning child. However, in a subsequent decision, the Constitutional Court gave a fairly in-depth consideration to the existence of child age norms in several laws and regulations. The Court explained that there was a difference in treatment because a married woman implied her status as a child was erased and turned into an adult, while for a man whose minimum age

⁵⁶ Constitutional mandate, referred to by Peter Paczolay, which quoted by Fajar Laksono as *mandamus*, that is *a constitutional mandate to legislate*. Fajar Laksono Suroso further explained that the constitutional mandate is the mandate given by the Constitutional Court as a judicial institution by giving orders to legislators to evaluate certain legal products. Further see Fajar Laksono Suroso, *Potret Relasi MK- Legislator, Konfrontatif atau Kooperatif?* (Yogyakarta: Genta Publishing, 2018), 7.

⁵⁷ In its consideration, the Constitutional Court said that determining the age limit is an open legal policy so that it is the authority of the legislators to regulate it. In his consideration it was stated: *"Whereas previously stated, the determination of the minimum age limit for marriage is the legal policy of the legislators. If the Court set the minimum age for marriage, it will actually close the space for lawmakers in the future to consider more flexibly the minimum age limit for marriage in accordance with legal developments and community developments. Therefore, the Court has given no later than 3 (three) years for legislators to immediately make changes to legal policies related to the minimum age for marriage, in particular as stipulated in Article 7 paragraph (1) of Law 1/1974. Prior to the amendment, the provisions of Article 7 paragraph (1) of Law 1/1974 still apply. If within that time limit the legislators still have not made changes to the minimum age limit for marriage which currently in effect, in order to provide legal certainty and eliminate discrimination caused by these provisions, then the minimum age limit for marriage as regulated in Article 7 paragraph (1) Law 1/1974 will be synchronized with the age of child as regulated in the Child Protection Law and applies equally to boys and girls."*

of marriage was 19 years, he was still classified as a child. This is a form of treatment difference between men and women. The Court further emphasized:

“The constitutional rights referred to include, among others, the right to equal treatment before the law, as regulated in Article 28D paragraph (1) of the 1945 Constitution because legally a woman at the age of 16 which according to Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter written the Child Protection Act) is still classified as a child, but if she is married, her status will change become an adult. While for men such changes are only possible if they have been married at the age of 19 years; women’s rights to grow and develop as children, as regulated in Article 28B paragraph (2) of the 1945 Constitution, also receive different treatment from men where men will enjoy this right for a longer period of time than women; the right to obtain equal opportunities for education with men is also potentially hindered because by making it possible for a woman to marry at the age of 16 years, she will tend to have more limited access to education compared to men, even to fulfill basic education. In addition, the difference in the minimum age limit provides more space for boys to enjoy the fulfillment of their rights as children because the minimum marriage age limit for men exceeds the minimum age for children as stipulated in the Child Protection Law. Meanwhile, for women, the minimum age limit which is lower than the maturity age has the potential to cause the child not to fully enjoy their rights as a child at the age of a child, as forementioned.”

Norms regarding the age of children other than in the Marriage Law are an important consideration in this examination. One of them is to measure children’s rights and the implications of a change in status from a child to an adult. In this case, the Constitutional Court is guided by the principle of the best interests of children, especially regarding access to education which must also be guaranteed.

By taking into account the provisions of the norms for the age of children outside the Marriage Law, the Constitutional Court performs its function as an institution that tests the validity of both vertically/horizontally arranged norms. Ali Safa’at⁵⁸ explained that the existence of judicial review from the legal aspect, in line with the existence of the Constitutional Court in examining the law is a consequence of the principle of constitutional supremacy, which according to Hans Kelsen, requires a special court to safeguard the law to ensure compliance with the rule of law. Kelsen, as quoted by Ali Safa’at, said:⁵⁹

⁵⁸ M. Ali Safa’at, „Mahkamah Konstitusi dalam Sistem Check and Balances,” dalam *Bunga Rampai Konstitusionalisme Demokrasi: Kado Ulang Tahun untuk Prof. A Mukhtie Fadjar* (Malang: Intrans Publishing, 2010), 26.

⁵⁹ M. Ali Safa’at, *Mahkamah Konstitusi*, 27.

“The application of the constitutional rules concerning legislaion can be effectively guaranted only if an organ other than the legislative body is entrusted with the task of testing wether a llaw is constituonal and of annulling it if – accoording to the opinion of this organ – it is unconstituional. There may be a special organestablishied for this purpose, for instance, a special court, a so-called constituional court.”

This view is a consequence of the hierarchical proposition of legal norms culminating in the constitution as the supreme law of the land.⁶⁰ The hierarchy at the same time places the foundation for the validity of a legal norm is the legal norm above it and so on up to the top and up to the first constitution. The consequences of the supremacy of the constitution are not only limited to the hierarchy of norms, but also bind the actions of the state, so that none of the state’s actions may conflict with the constitution as a unified system.⁶¹ In terms of the validity of norms, Mahfud MD emphasized that one of the reasons for the birth of a judicial review is that there are many laws and regulations which are substantively considered to be contrary to higher rules, but there is no testing mechanism nor the authorized institution. In reality, many regulations were born out of political corruption but there is no legal instrument to correct them, for which a judicial review was then given to the Constitutional Court.⁶²

4. Exploration of Legal Sources in Judge’s Consideration

Sources of law are everything in the form of legal documents and/or values which are references to be explored by lawmakers or law enforcers in drafting legal decisions.⁶³ From this source of law, every lawmaker gets a foundation/anchor as the basis for the decisions/policies they make. Sources of law in the theoretical realm have quite diverse variations, at least divided into two general forms: material law sources and formal legal sources. As a source that forms the basis for policy/decision formation, material legal sources coexist with formal legal sources.⁶⁴ The pairing of these two sources of law is complementary and justifies one source of law with another. Sources of material law are in the form of guiding values, customs,

⁶⁰ Nabitatus Sa’adah, “Mahkamah Konstitusi Sebagai Pengawal Demokrasi Dan Konstitusi Khususnya Dalam Menjalankan Constitutional Review,” *Administrative Law & Governance Journal* 2 No. 2 (June 2019): 240.

⁶¹ M. Ali Safa’at, *Mahkamah Konstitusi*.

⁶² Mahfud MD, *Kekuasaan Kehakiman Pasca Amandemen UUD 1945. Dalam Buku Gagasan Amandemen UUD 1945* (Jakarta: Komisi Hukum Nasional Republik Indonesia, 2008), 15.

⁶³ Sholikul Hadi, “Eksistensi Pancasila Sebagai Sumber Segala Sumber Hukum dalam Konstitusi Indonesia,” *Indonesian Journal of Law and Islamic Law*, Vol. 3. No. 2 (2021): 110. <https://doi.org/10.35719/ijl.v3i2.128>.

⁶⁴ Theresia Ngutra. “Hukum dan Sumber-Sumber Hukum,” *Jurnal Supremasi* Vol.11 No. 2, (2016): 203. <https://doi.org/10.26858/supremasi.v11i2.2813>.

and social or religious norms.⁶⁵ his material legal source is generally not in a formal form, except for religious rules codified in certain holy books. As an abstract thing but adhered to by the community, the existence of material legal sources fills from formal legal sources. In other words, material and formal legal sources are arranged hierarchically. Formal legal sources are present in the form of legal documents, which are formal and written. Formal legal sources are present in the form of laws/other written regulations, international agreements, legal doctrines, and legal decisions made by judges.⁶⁶

The source of law is essentially a place where we can find and explore the law. According to Zevenbergen, sources of law can be divided into material legal source and formal legal source. Material legal source is the place from which the legal material is taken. Material legal source is a factor that helps the formation of law, for example: social relations, political power relations, socio-economic situation, traditions (religious views, decency), international developments, geographical conditions, etc. Formal legal sources are places or sources from which a regulation obtain its legal force. This relates to the form or manner that causes the regulation to formally apply.⁶⁷

Looking at the form of legal sources, which are all recognized in the Indonesian legal system,⁶⁸ in the judicial review process, the judge's choice of legal sources will determine how the output of the norm being tested will be. Why? Because between one source of law with other sources of law there is not always in harmony. There is a tendency between material legal sources, which are essentially aligned with formal sources. Conversely, in the discourse of human rights law, this is like a fierce battle between the two poles of universalism human rights vs. particularism human rights.⁶⁹

This condition is seen in the examination of the law regarding the norms for the age limit for child marriage. The judge's choice of the explored legal source will

⁶⁵ Fitzgerald mentions this as a source that has not received formal recognition by law, hence it cannot be directly accepted as law. Quoted from Theresia Ngutra. "Hukum dan Sumber-Sumber Hukum.": 209.

⁶⁶ Dina Sunyowati. "Hukum Internasional Sebagai Sumber Hukum dan Sumber Hukum Nasional (Dalam Perspektif Hubungan Hukum Internasional Dan Hukum Nasional Di Indonesia)". *Jurnal Hukum dan Peradilan*, Vol.2 No.1 (2013): 68.

⁶⁷ Fais Yonas Bo', "Pancasila sebagai Sumber Hukum dalam Sistem Hukum Nasional," *Jurnal Konstitusi* 15, no. 1 (2018): 32, <https://doi.org/10.31078/jk1512>.

⁶⁸ See in Indonesia, *Undang-Undang tentang Kekuasaan Kehakiman*, Law Number 48 of 2009, State Gazette number 157 of 2009, TLN No. 5076, Art. 5 paragraph (1). In the Law on Judicial Power, it is stated that judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society. Not only law (formal legal sources) that must be explored by judges, but values (material legal sources) are also references that must be explored and their position is proportional to formal legal sources.

⁶⁹ Bayu Dwiwiddy Jatmiko. "Menelisik Pengakuan dan Perlindungan Hak Asasi Manusia Pasca Perubahan UUD 1945," *Jurnal Panorama Hukum*, Vol. 3 No. 2 (2018): 220.

determine how the output of the decision will be. In the decision of the Constitutional Court 74/PUU-XII/2014, the main legal sources referred to by the judges were religious values/rules. In his consideration, it begins with a quote from the verse of the Qur'an in the Surah Ar Rum: 21 and the Hadith of the Prophet sallallaahu 'alaihi wasallam which is narrated by Abdullah Bin Mas'ud Radiallahu 'anhu about the urgency to get married as sooner: *O youths, whoever among you has been able to then get married immediately, because it makes the eyes lower and fulfill your sexual needs. Whoever is not able, then do fasting because it will restrain the lust.* Religious arguments, whether in the Qur'an or Hadith, in the Indonesian legal system are classified as material legal source. The holy book is something that is adhered by the wider community as a way of life whose nature is transcendental, intertwined between humans and God (Allah SWT), so that the nature of the scriptures is the general norm in written form. Because it is a general norm that guides the wider community, its existence is 'filling' in formal legal sources in Indonesia.

As the main source of law referred to in the decision of the Constitutional Court 74/PUU-XII/2014, the judge's interpretation of Article 28B paragraph (1) of the 1945 Constitution is also heavily influenced by values in religious law. In his opinion, the Constitutional Court said: In its implementation, marriage is closely related to sacred beliefs based on sacred religious rules and values that cannot be ignored. This is as emphasized in Article 28B paragraph (1) of the 1945 Constitution which states, "Everyone has the right to form a family and continue their lineage through a legal marriage." The understanding of a legal marriage must be seen from two aspects, namely legal according to religious law and legal according to state law. The result of this decision is to reject the applicant's application and state that the age limit for child marriage is constitutional because it is in accordance with the religious values adopted in Indonesia.

Unlike the case with the decision of the Constitutional Court number 22/PUU-XV/2017. Exploration of legal sources carried out by the judges refers to formal legal sources, namely regarding human rights legal norms regarding discrimination. In its interpretation, the Constitutional Court sees the provision on the age limit for marriage as discriminatory because it distinguishes age based on gender. One of the measures used by the Court in assessing whether it is discrimination or not is the impact approach. The resulting impact of the norm has resulted in different legal conditions between men and women. For women, if married under 16 years, it will have an impact on the change in status from children to adults, while for men this does not happen. Changes in the status of women from children to adults will eliminate

the protection of children’s rights. With this perspective, the Constitutional Court’s interpretation of the articles in the 1945 Constitution in this review is more extensive than before. Not only is the article on human rights law in the 1945 Constitution a touchstone, Law Number 39 of 1999 on Human Rights is also a touchstone as part of human rights law in Indonesia which guarantees no discrimination based on gender. The dominance of formal legal sources that influence judges in this trial is also supported by the existence of Regional Regulations (Perda). Based on the author’s observations, the existence of a regional regulation in this case is interpreted by judges as local wisdom that represents regional values related to early marriage.⁷⁰ To get a complete picture of the sources of law in the two decisions, the authors present it in the following table:

Table 1. Comparison of Sources of Law

Sources of Law	Putusan MK 74/PUU-XII/2014	Putusan MK 22/PUU-XV/2017
Universal Norms (Holy Books/ International Convention)	Al Qur’an surah Ar Rum: 21	<i>Transforming Our World: the 2030 Agenda for Sustainable Development Goals (SDGs)</i>
	Hadith of the Prophet sallallahu ‘alaihi wasallam which is narrated by Abdullah Bin Mas’ud Radiallahu ‘anhu about the urgency to get married as sooner	<i>The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)</i>
	Manava Dharmasastra IX.89-90	
1945 Constitution	Article 28B paragraph (1) of the 1945 Constitution	Article 27 paragraph (1) of the 1945 Constitution
	-	Article 28B paragraph (1) and (2) of the 1945 Constitution
	-	Article 28C paragraph (1) of the 1945 Constitution
	-	Article 31 paragraph (2) of the 1945 Constitution

⁷⁰ Constitutional Court of the Republic of Indonesia, Constitutional Court Decision Number 22/PUU-XV/2017, 56.

Sources of Law	Putusan MK 74/PUU-XII/2014	Putusan MK 22/PUU-XV/2017
	-	Article 1 Number 3 of Law number 39 of 1999 concerning Human Rights
Legislations	-	Law Number 23 of 2002 concerning Child Protection as last amended with Law Number 35 of 2014 concerning Amendment of Law Number 23 of 2002 concerning Child Protection
	-	
	Constitutional Court Decision number 12/PUU-V/2007 concerning existing Islamic teaching in marriage	Constitutional Court Decision number 74/PUU-XII/2014
Constitutional Court Decision / Jurisprudence	Constitutional Court Decision number 49/PUU-IX/2011	-
	Constitutional Court Decision number 37- 39/PUU-VIII/2010	-
	Constitutional Court Decision number 15/PUU- V/2007	-
Empirical Facts/local wisdom	-	<ul style="list-style-type: none"> a. Regulation of Gunung Kidul District Head Number 30 of 2015 concerning Prevention of Child Marriage. b. Regulation of Kulon Progo District Head Number 9 of 2016 concerning Prevention of Child Marriage. c. Regulation of Bengkulu District Head Number 33 of 2018 concerning Prevention of Child Marriage. d. Circular Letter of the Governor of West Nusa Tenggara Province Number 150/1138 of 2014 that recommend marriage age at 21 years both for man and woman.

The pattern of judicial review in the Constitutional Court Decision 22/PUU-XV/2017 is almost similar to the Constitutional Court Decision 88/PUU-XIV/2016, which examines the existence of Article 18 (1) of Law Number 13 of 2012 concerning The Distinction of the Yogyakarta Region (UU KDIY)) which reads: “*Candidates for Governor and candidates for Deputy Governor are citizens of the Republic of Indonesia who must meet the following requirements: m. Submit a curriculum vitae that includes, among other things, records on his/her education, occupation, siblings, wife, and children*”. The critical condition states a requirement for information about the wife, which in reasonable interpretation implies that the only one who can meet that condition is a man. The article explains that only men can apply, and it closes women’s opportunities.

The Constitutional Court’s decision 88/PUU-XIV/2016 also examines norms with issues regarding gender discrimination. This decision granted the petitioner’s request, and stated that the existence of a male requirement was unconstitutional. One of the considerations of the Constitutional Court is: As a state party, obviously there is an obligation based on international law (international legal obligation) for Indonesia to comply with the provisions of international law, especially in this case the observance of the prohibition of discrimination. Therefore, the Court has repeatedly affirmed its position that discrimination is against the 1945 Constitution and at the same time against international law (*see further, among others, the legal considerations of the Constitutional Court Decision Number 028-029/PUU-IV/2006*). The author’s assessment on the nature of discrimination by the Constitutional Court is consistent in the two decisions with almost similar patterns and results from almost the same composition of judges.⁷¹

The relevance between the decision on the age limit for marriage and the requirement for women to become leaders in Yogyakarta is that these two decisions implicitly discuss the fierce debate between human rights universalism and human rights particularism. In the decision of the Constitutional Court 22/PUU-XV/2017, the debate occurred between universal values regarding gender discrimination and religious values, which were the guidelines for the previous, whereas in the decision 88/PUU-XIV/2016 the values of gender discrimination were faced with the values of particularism in the form of customs/history of the palace which had never been led

⁷¹ Constitutional Court Decision Number 74/PUU-XII/2014 was decided by 8 judges: Arief Hidayat, Anwar Usman, Patrialis Akbar, Wahiduddin Adams, I Dewa Gede Palguna, Aswanto, Suhartoyo, Manahan MP Sitompul, and one dissenting opinion submitted by Maria Farida Indrati. Constitutional Court Decision Number 22/PUU-XV/2017 was decided by 9 judges, unanimously: Anwar Usman, Aswanto, Wahiduddin Adams, Saldi Isra, Arief Hidayat, Maria Farida Indrati, I Dewa Gede Palguna, Manahan MP Sitompul , and Suhartoyo.

by a woman before.⁷² The Constitutional Court is consistent in its decisions regarding gender, especially women who are discriminated, using sources of international law to examine and cancel norms that contain all forms of gender discrimination.

C. CONCLUSION

Based on the discussion in this study which examines the background of the differences between the two decisions of the Constitutional Court Number 74/PUU-XII/2014 and Number 22/PUU-XV/2017, several conclusions were found as follows: Sources of law in Indonesian legal system are divided into two major forms, namely material legal source, and formal legal source. Both complement and influence each other. The existence of these two sources of law is guaranteed in the Law on Judicial Power. Each judge (as well as constitutional judges) must explore both of them cumulatively. Based on the phrase 'and' in article 5 paragraph 1 of Law on Judicial Powers. In its development, one of the factors that influenced judges' choice of legal sources was the argument put forward by the applicants.

The Constitutional Court reviewed the legal minimum age for marriage in its dynamic decision, where the Constitutional Court Decision 74/PUU-XII/2014 stated that the norm of the age limit for marriage was constitutional. Furthermore, in the Constitutional Court's decision 22/PUU-XV/2017, the Constitutional Court changed its stance by declaring the norm unconstitutional. The difference between the two decisions is in the use of legal sources by judges in their legal considerations. The Constitutional Court's decision 74/PUU-XII/2014 builds its stance on material legal sources that refer to religious principles in several religious scriptures in Indonesia. Because the main argument is built on religious principles which essentially advocate hasty marriage, this affects the judge's interpretation of Article 28B paragraph (1) of the 1945 Constitution regarding the right to form a family, which ultimately considers the existence of a marriage age limit norm as constitutional.

Finally, through Decision 22/PUU-XV/2017, the Constitutional Court abandoned its stance on the previous decision. Due to the different sources of law explored by the judge, in this decision, the Constitutional Court was guided by universal human rights values regarding women and anti-discrimination and was no longer guided by religious principles in the holy book. The dominance of anti-gender discrimination in this decision ultimately influenced the judge's interpretation of the articles of human

⁷² Sabdacarakatama, *Sejarah Keraton Yogya* (Narasi: Yogyakarta 2009), 35

rights law in the 1945 Constitution. The Constitutional Court stated that the age limit for marriage was a form of discrimination due to differences in treatment based on sex. The discrimination assessment is based on two things, namely differences in treatment according to norms and the implications of these norms, where women are more disadvantaged if they have to marry before the age of 16 years. The Constitutional Court's stance in this decision is in line with several previous decisions related to gender, one of which is in decision 88/PUU-XIV/2016 concerning the trial of gender requirements in the nomination of the Regional Head of Yogyakarta D.I. In its decision, the Constitutional Court considered this provision to contain gender discrimination and not in line with the universal values of human rights law guaranteed in several international conventions.

REFERENCES

BOOKS

- Cahyadi, Tarkariwan. *Pernak-Pernik Rumah Tangga Islam : Tatanan dan Perayaannya Dalam Masyarakat*. Solo: Inetermedia. 1997.
- HS, Salim. *Pengantar Hukum Perdata Tertulis BW*. Jakarta: Sinar Grafika, 2005.
- Kingsley, Davis. *Human Society*. New York: The Macmillan Company, 1960.
- Kusumaatmadja, Mochtar. *Konsep-Konsep Hukum dalam Pembangunan*. Bandung: Alumni, 2006.
- Lasker. G. W. *Physical Anthropology*. New York: Holt. Rinehart Winston. Inc, 1976.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2005.
- MD, Mahfud. *Kekuasaan Kehakiman Pasca Amandemen UUD 1945. Dalam Buku Gagasan Amandemen UUD 1945*. Jakarta: Komisi Hukum Nasional Republik Indonesia, 2008.
- Muachor, Ali Muh. *Buku Pintar Keluarga Muslim*. Semarang: BP 4, 1982.
- Rahardjo, Satjipto and Urfan. *Negara Hukum Yang Membahagiakan Rakyatnya*. Yogyakarta: Genta Publishing, 2009.
- Rahman, Bakri A. dan Ahmad Sukardja. *Hukum Perkawinan Menurut Islam Undang-Undang Perkawinan dan Hukum Perdata/BW*. Jakarta: PT Hidakarya Agung, 1981.
- Ritwan, Fuad M. *Membina Keluarga Harmonis*. Yogyakarta: Tuju Publisher, 2008.
- Sabdacarakatama. *Sejarah Keraton Yogya*. Narasi: Yogyakarta, 2009.
- Safa'at, M. Ali. "Mahkamah Konstitusi dalam Sistem Check and Balances." Dalam *Bunga Rampai Konstitusionalisme Demokrasi. Kado Ulang Tahun untuk Prof. A Mukhtie Fadjar*. Malang: Intrans Publishing, 2010.

- Soekanto, Soerjono and Sri Mamudji. *Penelitian Hukum Normatif*. Jakarta: Rajawali Pers, 1985.
- Soemiyati. *Hukum Perkawinan islam dan Undang-undang Perkawinan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan*. Yogyakarta: Liberty, 1982.
- Soimin, Soedharyo. *Hukum Orang dan Keluarga*. Jakarta: Sinar Grafika, 1992.
- Supriyadi. *Buku Filsafat Hukum Mazhab dan Refleksinya*. Bandung : Remaja Karya, 1989.
- Suroso, Fajar Laksono. *Potret Relasi MK– Legislator. Konfrontatif atau Kooperatif?*. Yogyakarta: Genta Publishing, 2018.
- Whittington, Keith E. *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History*. Princeton University Press, 2007.
- Wibowo, Mardian. *Kebijakan hukum terbuka dalam putusan Mahkamah konstitusi*. Jakarta: Raja Grafindo Persada, 2019.
- Zoelva, Hamdan. *Mengawal Konstitusionalisme*. Jakarta: Konpress, 2016.

JOURNALS

- Agustine, Oly Viana. “Keberlakuan Yurisprudensi Pada Kewenangan Pengujian Undang-Undang Dalam Putusan Mahkamah Konstitusi.” *Jurnal Konstitusi* 15, no. 3 (November 19, 2018): 642–65. <https://doi.org/10.31078/jk1539>.
- Alamsyah, M. Nur. “Kedudukan Yurisprudensi Dalam Sistem Hukum Indonesia.” *Qawanin Jurnal Ilmu Hukum* 1, no. 2 (2021): 60–72.
- Bo’a, Fais Yonas. “Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional.” *Jurnal Konstitusi* 15, no. 1 (March 29, 2018): 27–49. <https://doi.org/10.31078/jk1512>.
- Efendi, Muhammad Fadli. “Mekanisme Legislative Review Peraturan Pemerintah Pengganti Undang-Undang Dalam Perspektif Politik Hukum.” *Veritas et Justitia* 7, no. 2 (2021): 406–30. <https://doi.org/10.25123/vej.v7i2.4215>.
- Fajarwati, M. “Tindak Lanjut Putusan Mahkamah Konstitusi Dalam Program Legislasi Nasional.” *Kajian* 22, no. 3 (2017): 195–204. <https://dprexternal3.dpr.go.id/index.php/kajian/article/view/1512>.
- Farida, Farida. “Pergaulan Bebas Dan Hamil Pranikah.” *Jurnal Analisa* 16, no. 1 (2009): 215–135. <https://doi.org/10.18784/analisa.v16i1.64>.
- Hapsoro, Fakhris Lutfianto, and Ismail Ismail. “Interpretasi Konstitusi Dalam Pengujian Konstitusionalitas Untuk Mewujudkan The Living Constitution.” *Jambura Law Review* 2, no. 2 (June 19, 2020): 139–60. <https://doi.org/10.33756/jlr.v2i2.5644>.

- Jatmiko, Bayu Jatmiko. "MENELISIK PENGAKUAN DAN PERLINDUNGAN HAK-HAK ASASI POLITIK PASCA PERUBAHAN UUD 1945." *Jurnal Panorama Hukum* 3, no. 2 (December 9, 2018): 217–46. <https://doi.org/10.21067/jph.v3i2.2827>.
- Junaenah, Inna. "Tafsir Konstitusional Pengujian Peraturan Di Bawah Undang-Undang." *Jurnal Konstitusi* 13, no. 3 (2016): 503–29. <https://doi.org/10.31078/jk1332>.
- Kislowicz, Howard. "JUDGING RELIGION AND JUDGES' RELIGIONS." *Journal of Law and Religion* 33, no. 1 (2018): 42–60. <https://doi.org/DOI: 10.1017/jlr.2018.10>.
- Maswanto, Akhmad Rudi, and Ahmad Khoirul Anam. "Nalar Hukum Prismatik Dalam Konteks Hukum Nasional." *Maqashid Jurnal Hukum Islam* 4, no. 2 (December 29, 2021): 49–63. <https://ejournal.alqolam.ac.id/index.php/maqashid/article/view/685>.
- MD, Moh. Mahfud. "Politik Hukum Hak Asasi Manusia Di Indonesia." *Jurnal Hukum IUS QUIA IUSTUM* 7, no. 14 (2000): 1–30. <https://doi.org/10.20885/iustum.vol7.iss14.art1>.
- Musyafah, Aisyah Ayu. "PERKAWINAN DALAM PERSPEKTIF FILOSOFIS HUKUM ISLAM." *CREPIDO* 2, no. 2 (November 29, 2020): 111–22. <https://doi.org/10.14710/crepido.2.2.111-122>.
- Nazriyah, R. "Penyelesaian Sengketa Pilkada Setelah Putusan Mahkamah Konstitusi Nomor 97/PUU-XI/2013." *Jurnal Konstitusi* 12, no. 3 (2016): 447–72. <https://doi.org/10.31078/jk1232>.
- Ngutra, Theresia. "Hukum Dan Sumber-Sumber Hukum." *Jurnal Supremasi* 11, no. 2 (2016): 193–211.
- Ramadhan, Febriansyah, Sunarto Efendi, and Ilham Dwi Rafiqi. "PENENTUAN JENIS PRODUK HUKUM DALAM PELAKSANAAN PUTUSAN MAHKAMAH AGUNG TENTANG HAK UJI MATERIL (Kajian Terhadap Tindak Lanjut Putusan Mahkamah Agung 28 P/HUM/2018)." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (2022): 55–76. <https://doi.org/http://dx.doi.org/10.33331/rechtsvinding.v11i1.850>.
- Sa'adah, Nabitatus. "Mahkamah Konstitusi Sebagai Pengawal Demokrasi Dan Konstitusi Khususnya Dalam Menjalankan Constitutional Review." *Administrative Law and Governance Journal* 2, no. 2 (2019): 235–47. <https://doi.org/10.14710/alj.v2i2.235-247>.
- Sam'un. "Asas Monogami Terbuka Dalam Perundang-Undangan Perkawinan Islam Di Indonesia." *Jurnal Al Hukama'* 5, no. 1 (2022): 1–17. <https://doi.org/https://doi.org/10.15642/al-hukama.2015.5.1.1-17>.

- Shidarta. "Mencari Jarum ' Kaidah ' Di Tumpukan Jerami 'Yurisprudensi.'" Jurnal Yudisial 5, no. 3 (2012): 331-43.
- Simanjuntak, Enrico. "Peran Yurisprudensi Dalam Sistem Hukum Di Indonesia." Jurnal Konstitusi 16, no. 1 (2019): 83-104. <https://doi.org/10.31078/jk1615>.
- Steilen, Matthew. "Reason, the Common Law, and the Living Constitution." Legal Theory 17, no. 4 (2011): 279-300. <https://doi.org/10.1017/S1352325211000164>.
- Syahputra, M. Yusrizal Adi. "Penafsiran Hukum Oleh Hakim Mahkamah Konstitusi." Mercatoria: Medan 1, no. 2 (2008): 115-29.
- Wicaksono, Dian Agung, Andi Sandi, and Antonius Tabusassa. "MENCARI JEJAK KONSEP JUDICIAL RESTRAINT DALAM PRAKTIK KEKUASAAN KEHAKIMAN DI INDONESIA Dian Agung Wicaksono*, Andi Sandi Antonius Tabusassa Tonralipu** *." Jurnal Hukum & Pembangunan 51, no. 1 (2021): 177-203. <https://doi.org/http://dx.doi.org/10.21143/jhp.vol51.no1.3014>.
- Yusa, I Gede, Komang Pradnyana Sudibya, Nyoman Mas Aryani, and Bagus Hermanto. "Gagasan Pemberian Legal Standing Bagi Warga Negara Asing Dalam Constitutional Review." Jurnal Konstitusi 15, no. 4 (2019): 752-73. <https://doi.org/10.31078/jk1544>.
- Zaherman Armandz Muabezi. "Negara Berdasarkan Hukum (Rechtstaat) Bukan Kekuasaan (Machtstaat)." Jurnal Hukum Dan Peradilan 6, no. 3 (2017): 419-21.
- Zulfiani, Z. "Kajian Hukum Terhadap Perkawinan Anak Di Bawah Umur Menurut Undang-Undang Nomor 1 Tahun 1974." Jurnal Hukum Samudra Keadilan 12, no. 2 (2017): 211-22.

COURT DECISIONS

- Mahkamah Konstitusi Republik Indonesia. Putusan MK Nomor 30-74/PUU-XII/2014. _____ . Putusan MK Nomor 22/PUU-XV/2017.

INTERNET

- Ramadana, Alfi. "Angka Perceraian di Kota Malang Tinggi. Perlu Bimbingan Pranikah." 16 Oktober, 2020. <https://www.idntimes.com/news/indonesia/alfi-ramadana-1/angka-perceraian-di-kota-malang-tinggi-perlu-bimbingan-pranikah/1>. Diakses pada 21 Desember 2020.
- Anonim. "Mengenal Tradisi Balawang Tujuh. Perkawinan Janda Duda." 29 November, 2017. <https://lifestyle.okezone.com/read/2017/11/29/196/1822273/mengenal-tradisi-balawang-tujuh-perkawinan-janda-duda>. Diakses pada 23 Januari 2019.

Hermawan, Wawan. "Pengaruh Konfigurasi Politik terhadap Hukum Perkawinan di Indonesia." http://file.upi.edu/Direktori/FPIPS/M_K_D_U/197402092005011-WAWAN_HERMAWAN/Pengaruh_Konfig_Politik_trhdp_Huk_Perk-Jurnal_FPIPS.pdf. Diakses pada 20 Desember 2020