

# TINJAUAN YURIDIS HAK SUARA MASYARAKAT DALAM PEMILIHAN UMUM INDONESIA YANG BELUM UMUR 17 TAPI SUDAH KAWIN

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## TINJAUAN YURIDIS HAK SUARA MASYARAKAT DALAM PEMILIHAN UMUM INDONESIA YANG BELUM UMUR 17 TAPI SUDAH KAWIN

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### Abstract

The purpose of this study is to find out about the provisions of the people's right to vote in general elections in Indonesia, and how the legal certainty about the right to vote in general elections for persons under the age of 17 but married is in Indonesia, the methodologically empirical legal research concludes: 1. Every citizen's right to vote is guaranteed by various legal instruments in national laws, including Law No. 12 of 2005 ratifying the International Covenant on Civil and Political Rights, Indonesian Law Number. 39 of 1999 on Human Rights and 1945 Constitution of the Republic of Indonesia. 2. For a person who is under the age of 17 but is married, the person may be declared an adult under the Marriage Act No. 16 of 2019, except for age derogation under section 7(2).

**Keywords :** General Elections, Marriage, Underage Marriage.

### Abstrak

Tujuan dari penelitian ini adalah untuk mengetahui tentang ketentuan hak pilih rakyat dalam pemilihan umum Indonesia. Dan bagaimana kepastian hukum tentang hak pilih dalam pemilihan umum bagi orang yang berusia di bawah 17 tahun tetapi telah menikah di Indonesia, hukum empiris secara metodologis penelitian telah menyimpulkan : 1. Hak pilih setiap warga negara dijamin oleh berbagai instrumen hukum dalam undang-undang nasional, antara lain Undang-Undang Nomor 12 Tahun 2005 yang meratifikasi Konvenan Internasional Hak Sipil dan Politik, Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. 2. Bagi seseorang yang berusia di bawah 17 tahun tetapi telah menikah, orang tersebut dapat dinyatakan dewasa berdasarkan Undang-Undang Perkawinan Nomor 16 Tahun 2019, kecuali pengurangan usia berdasarkan pasal 7 ayat (2).

**Kata kunci :** Pemilihan Umum, Perkawinan, Pernikahan dibawah umur.

### Introduction

There are different types of government systems in this world and one of them is the democratic system of government. Indonesia is one of the countries that adhere to the democratic system. The state power is in the hands of the people. All actions of the country are determined by the will of the state. The people hold the highest state power. This is affirmed by the Fourth Principle of Pancasila and Article 1, Paragraph 2 of the Constitution of the Republic of Indonesia in 1945, which states: "Sovereignty is in the hands of the people and shall be exercised in accordance with the Constitution". The concept of democracy itself is a system of government that gives citizens the right and freedom to express their opinions and participate in government decision-making. There is no democratic country that does

not hold elections for public office with the participation of voting (eligible) citizens, the so-called universal suffrage. General elections, hereinafter referred to as elections, are a mechanism for electing people's representatives to the executive and legislative bodies, including the Council of People's Representatives (DPR), the Council of District Representatives (DPD), the President and Vice President, and the Council of Regional People's Representatives (DPRD). In Indonesia itself, elections are held simultaneously in every region at the same time every five years. Voting must be private, public, free and confidential. This is emphasized in the General Electoral Law, which states that elections within the United Republic of Indonesia (NKRI) must be direct, open, free, confidential, honest and fair. The 1945 Constitution or the Constitution of the Republic of Indonesia (NRI) clearly regulates the conduct of elections.

1. Elections shall be direct, open, free, confidential, honest and fair, every five years.
2. Elections are held to elect the DPR, DPD, President, Vice President and members of the DPRD.
3. Candidates for election of DPR and DPRD members are political parties.
4. A candidate for election as a DPD member is a natural person.
5. Elections shall be conducted by a permanent and independent National Electoral Commission.
6. Other provisions regarding elections are provided by law.

Under these provisions, voting rights are an important factor in elections. The right to vote is itself the most important political right that must be granted to every citizen, as it is the right to participate in the formation of the will of the state conducted through democratic elections based on Pancasila. Voting rights give Indonesian citizens the right to vote or be elected in state elections. Voting rights basically consist of two things:

1. Active Suffrage (Suffrage)
2. Passive Suffrage (Suffrage)

Election voters must be Indonesian citizens and be at least 17 years of age. However, if the voter is married, there is no age limit. Affected people can vote in general elections regardless of age, as stipulated in the Decree replacing Republic of Indonesia Law Number 1 of 2022 on Amending Decree Variant 7 of 2017 on Priority Elections. Of course, this rule raises debate about whether people under the age of 17 who are already married have the right to vote in general elections. The Marriage Act, i.e. Marriage Act Number 16 of 2019, raised the age limit for marriage. Originally, women were 16 and men were 19, but now both men and women are 19. Changing the age of marriage to allow early remarriage. This is explained in Article 7 (2) of Law Number 16 Year 2019 on Marriage, which states that the parents/guardians should very urgently apply for exemption from the age limit to the court. Marriages with deviating ceremonies can still take place. Reason, strong evidence. As such, there may be cases where people are still married but are under the age of 17.

### Research Methods

This study uses normative research methods, which carry out several approaches, namely the statutory approach (*statue approach*), conceptual (*conceptual approach*), and cases (*case approach*). The data used in this study is divided into 2, namely primary and secondary data. Legal material collection techniques in this study were carried out through data collection and recording of primary data, as well as conducting literature studies on secondary data using descriptive and prescriptive legal material analysis techniques.

### Results and Discussion

#### Regulations On People's Voting Rights In Indonesian General Elections

The right to vote is one of the basic requirements for countries belonging to democratic regimes. The Indonesian state is a constitutional state that adheres to democracy and upholds the values of popular sovereignty. The right to vote is the most important political right given to all citizens by the legal system. That is, the right to vote in elections to elect members of executive and legislative branches at the central and local levels. One of the indicators of a successful general election is how high or low public participation is in exercising the right to vote. In other words, it can be said that the general election was held successfully because democracy can capture the will of the people through democratic elections if the people actively participate in the general election campaign. Voting rights are basically divided into two categories:

a. **Active suffrage (*right to vote*)**

Active suffrage is the right of citizens to vote to elect their representatives in elections. The 1945 Constitution of the Republic of Indonesia states that "the right to vote is a right whose existence is guaranteed and recognized in the Constitution of the Republic of Indonesia". This is contained in Sections 27 (1), 28D (3) and 28E (3). The right to vote also complies with Article 43(1) of Law Number 39 of 1999 on Human Rights.

b. **Passive Voting Rights (*Right to Vote*)**

The right to stand as a candidate is the right to be elected. Anyone who satisfies all the requirements for appointment as a civil servant established by the state has the right to stand for election as a civil servant. This is guaranteed by Article 21 (2) of the Universal Declaration of Human Rights (UDHR).

The right to vote for all citizens is guaranteed by various legal instruments, both domestic and international. Below are some international and domestic legal arrangements related to voting rights applicable in Indonesia:

1. **Right to vote in the universal declaration of human rights**

The Universal Declaration of Human Rights (UDHR), or in English the Universal Declaration of Human Rights, is a charter for human rights proclaimed on December 10, 1948, containing the Declaration or General Declaration of Fundamental Freedoms, which are the rights of all human beings. Issued by the United Nations (UN), it can be said to be the culmination of human civilization after the disaster caused by the atrocities of the Fascist countries and Nazi Germany in World War II. The UDHR is a universal human standard for all people, regardless of social class or

background, wherever they live on the planet. The UDHR asserts that all human beings are equal and all values apply to all, as stated in the preamble to the UDHR. , in view of this Declaration, that all individuals and organizations in society promote respect for these rights and freedoms through education and instruction, and promote respect for these rights and freedoms through progressive national and international measures. It is intended to seek to ensure awareness and effective compliance. among the peoples of the Member States themselves and the peoples of the territories<sup>38</sup> under their control".

## 2. Suffrage in the Covenant of Civil and Political Rights

After drafting the Universal Declaration of Human Rights, the United Nations entered a second phase. That is, drafting in the form of what we consider to be broader than just a declaration (and slightly more legally binding than another declaration): an agreement. (contract). After lengthy debate, the United Nations General Assembly, at its 1951 session, asked the United Nations Commission on Human Rights to draft a Covenant on Civil and Political Rights, containing as many articles as possible establishing the rights of all people. . self determination. The International Covenant on Civil and Political Rights, or commonly abbreviated as ICCPR, reinforces the core civil and political human rights contained in DUHAM to make and draft legally binding provisions. is considered an executive order to the text for the purpose of Other relevant key points are included. The Agreement consists of a Preamble and Articles consisting of 6 Chapters and 53 Articles. The International Convention on Civil and Political Rights (ICCPR) divides the civil and political rights contained in the ICCPR into two parts: absolute rights and restrictable rights. First, the right to life, the right not to be tortured, the right to be released from slavery, the right to be released from imprisonment for breach of contract (debt), the right to impunity, the right to freedom of thought, etc. Second, rights that may be restricted by the state. B. Right to Freedom of Peaceful Assembly, Right to Freedom of Opinion and Expression, Right to Freedom of Association, Right to Obtain and Communicate Information. Freedom from political and civil rights includes the right to enable citizens to participate in political life. Political rights include the right to participate in government and to vote in regular elections through universal suffrage and equal suffrage. Civil rights are the rights of citizens to enjoy freedom in various matters, such as the right to life, the right to education, the right to property, the right to conduct business, the right to express opinions orally or in writing, and human rights freedom of religion, etc.

## 3. Voting Rights in Indonesian Domestic Jurisdiction

Human rights in Indonesia are better known by the term "hak HAM" as a translation of Fundamental Rights (English) and Groundrechte (Dutch). We can also talk about basic rights (citizenship). As a member of the UN body, Indonesia must abide by, respect, respect and uphold the principles and objectives of the UN Charter and the Universal Declaration of Human Rights (UDHR). As the Universal Declaration of Human Rights contains the most important points of human rights and fundamental freedoms, they are used as a reference for the protection and respect of human rights both for the member states of the United Nations themselves and for those subject to



human rights. their jurisdiction. The Government of Indonesia, as a member of the United Nations, has attempted to ratify the Covenant on Civil and Political Rights through the enactment of Law Number 12 of 2005 to fulfill its responsibility to realize the civil and political rights of all citizens. I came. By legally ratifying the Covenant on Civil and Political Rights, it not only binds the countries that ratify it, but also contributes to the global struggle for human rights. Another form of government accountability to guarantee the political rights of citizens is to declare them in the 1945 Constitution of the Republic of Indonesia and to statutory rules under the 1945 Constitution of the Republic of Indonesia, i.e. Law Number 39 of 1999. The right to vote and the right to vote are fundamental rights of Indonesian citizens and their existence is recognized as a legitimate right by being regulated by law.

### **Legal Certainty Regarding Voting Rights Of Married Persons Under 17 In Indonesian General Elections**

The right to vote is the most important political right that must be granted to every citizen. This right is the right to participate in the formation of the will of the state through democratic elections based on Pancasila. However, not all citizens receive this right to vote, and only those who meet all requirements are eligible to vote.

According to General Election Commission Regulation Number 4 of 2015, in order to register as a voter, citizens who are already eligible to vote must:

1. is not currently mentally/memory disturbed;
2. persons not currently disenfranchised by a permanent final court decision;
3. that he has resided in the constituency for at least six months before the DPS is ratified; This is evidenced by an ID card (KTP) or a residence document such as from the competent authority.
4. Currently not a member of the Indonesian Armed Forces or the Indonesian National Police.

Some countries have only one age limit for general elections, for example Finland stipulates that only people over the age of 18 can vote in general elections. The same is true for Switzerland, which stipulates that she must be at least 18 to vote in general elections. Certainly the single-age rule gives certainty about who can vote in general elections. Only persons of legal age in accordance with the regulations are eligible to participate in elections. Unlike these countries, Indonesia has multiple rules governing who can vote in general elections. This means that in addition to the minimum age of 17, married people can also participate in federal elections. Of course this creates a gap. This leads to the question of what happens when there is someone who is married but she is under 17 years old. This leads to the question of whether a person under the age of 17 or married but under the age of 17 has the right to vote in a general election. Because the requirements are not stated explicitly or in detail for the words "over 17 or married/was". have the same voting rights, i.e., equal treatment, as other persons in the Company. Her one of the hallmarks of being a good citizen is the right to take responsibility (a must) and participate in the creation of life's wealth. This is in line with the 5th Commandment Pakansila, which aims to achieve social justice for all Indonesians. One of his ways to achieve this goal is by participating in the general election. Because general elections are the best and most dignified way to elect

national leaders who are expected to bring justice and prosperity to all Indonesian people through direct participation. Members of the President/Vice President, People's Representative Council (DPR), Provincial and Regency/Municipal People's Representative Councils (DPRD), and Local Representative Councils (DPD). The 4th Commandment also explicitly states that Indonesian democracy is guided by political wisdom in deliberation/expression. The meaning of this principle is the essence of true democracy, symbolizing that government is by the people, by the people, for the people, and that supreme power is in the hands of the people. This is consistent with the purpose of the general election, which is democracy itself, and it is clear that participation in the general election plays an important role in determining the direction of the country. As good citizens, we are responsible for electing the President/Vice President, DPR, DPD, members of her DPRD in States and Regency/Municipality, advocating Pancasila and unity of diversity, social welfare and inclusiveness. create a better community life. If you don't exercise your right to vote (white class), the opportunity to elect a leader is actually used by other people/party. If those exercising this right are in fact individuals/organizations who are not responsible for the survival of the Pancasila, the unity of diversity and the well-being of society and uphold the principle of inclusive tolerance, it is very dangerous. Law Number 7 of 2017 on General Elections stipulates that married or married persons over the age of 17 may vote in general elections. By law, married/married people may already have the right to vote in general elections, even if they have not reached the minimum age to be considered an adult. I am in a relationship. Many of them are not considered old enough under the law but are already pregnant with illegitimate children, so they marry early to avoid stigma. Even so, the custom of getting married still exists. Due to these factors, cases of early marriage are increasing in Indonesia. Law Number 16 of 2019 on Marriage also provides a loophole for early remarriage. In other words, Article 7 (2) allows deviations from the rules regarding the age limit for marriage, so long as they are approved by the parents/guardians. There are very good reasons and strong supporting evidence. As a result, a minor but married person is considered legal and mature enough to vote in a general election.

Article 330 of the Civil Code states:

"A person is considered an adult when they are 21 years old or have never been married (never been married)." Married people can also be considered capable of acting.

Basically, a person's maturity can often be judged by their age. In general, age is often a measure of a person's maturity, and the older you are, the more mature you are in the eyes of others. Because people get wiser as they get older. This makes a person more mentally and psychologically stable, allowing them to think more maturely and take responsibility for the decision-making process when faced with it. In this letter the author focuses on the marital/unmarried status of those seeking the right to vote in general elections. Whether the status was married/married can be used as a parameter by which the data subject is an adult and can be held responsible for decisions even if the data subject is still a minor, thus granting the person the right to vote. Below are some views and regulations that discuss age limits as adults.

#### 1. AN ADULT UNDER LAW NUMBER 16 YEAR 2019 ON MARRIAGE AS AN AMENDMENT TO LAW NUMBER 1 YEAR 1974 ON MARRIAGE

Before the amendment, Law Number 1 of 1974 on Marriage set the minimum age for marriage at 16 for women and 19 for men. In relation to the unequal treatment of women and men, it impacts obstacles to the fulfillment of basic or constitutional rights of citizens belonging to civil and political rights groups, but also financial, educational, So that there is no clear distinction that constitutes rights discrimination affecting social and cultural rights, they should not be differentiated on the basis of gender alone. In its ruling, the Constitutional Court instructed members of the National Assembly to amend Law Number 1 of 1974 on Marriage within a maximum of three years so that Law No. 16 of 2019 on Amendment of Law Number 1 of 1974 on Marriage would come into being. I asked you to Amendments to the Code of Law Number 1 of 1974 on Marriage have reached an age limit for marriage, and improvements to the Code have resulted in an increase in the minimum age limit for marriage for women.

**2. Adults according to the Civil Code**

Age-based maturity is one of the parameters by which data subjects are considered competent and qualified and is governed by statutory provisions in accordance with the laws and regulations in force in Indonesia. Article 330 of the Indonesian Civil Code states:

“A minor is someone who is under the age of 21 and has never been married. , being able to correctly formulate one's will and recognize the legal consequences of one's actions: being able to act within the law thereafter does not necessarily correspond to reality. The stated age of majority may not correspond to reality: some are already 21 and may not yet have properly drafted their will and legal consequences. Certainty is sized 21 years according to the German Civil Code (BGB) so that the individual's capacity to act is not in doubt.

**3. Adults form a psychological point of view**

You can determine if a person is an adult by looking at the following maturity traits: First, the primary indicator for determining legal maturity is an individual's authority to take legal action alone without the help of a parent or guardian. Second, adults can be held responsible for legal acts they have committed. Third, age limits should be the rule for claims in general, not just for specific claims. From a psychological point of view, adulthood can be interpreted as a period of life characterized by characteristics of maturity or Psychologists generally set the age of 21 as the limit for someone entering the realm of maturity. According to Elizabeth B. Hurlock, it is this legal maturity that marks a person starting to enter early adulthood, as she stated as follows:

“Early adulthood is the longest period of life. It begins with early adulthood, from legal adulthood (age 18) to around age 40, and goes through around age 20, with a median age of 40. It begins, ends at age 60, again about 20 years of experience, and finally old age, from the end of middle age until the person dies Unlike Elizabeth Lee Vincent, she places a limit on young adults from the age of 21 to their early forties Zakiah Daradjat said that adolescence ends when a person reaches the age of 21, but for religious maturity he extends it to 24 or 25 years In line with Zakiyah Daradjat, Singgih D. Gunarsa, Kartini Kartono, and Andi Mapiare argue that a person enters



adulthood and leaves his youth when he is 21 or 22 years old. Meanwhile, Muhammad al Hadi al Afifi reinforced the lines drawn by Elizabeth B. Harlock. In timing child development, he limited late adolescence or early adulthood to his eighteen years. His Law Number 16 of 2019 on Marriage stipulates the minimum age for marriage to be 19 for her. Married/was married status cannot be used as a parameter that the data subject is of legal age and therefore entitled to be given the right to vote.

### Conclusion

Indonesia is a country that abides by the principles of democracy, the power of the state is in the hands of the people, and all state actions are determined by the will of the state, so the people exercise the power of the people as defined by law. has the highest national authority over One of the means of realizing democratization in Indonesia is the general elections held at the same time in each region every five years. Voting right is the right to participate in holding general elections electing members of the executive and legislative branches at the central and local levels. Articles 330 (1) and (2) of the Civil Code state that a married person may be declared legally entitled even if the marriage was dissolved before the age of 21. This means that anyone under the age of 17 who is married is considered an adult and can vote in general elections. But as far as age is concerned, this is also wrong because the status of married/was married cannot be used as a parameter that the person is of legal age and therefore eligible to vote is considered.

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### Ucapan Terima Kasih

Puji dan syukur saya panjatkan kepada Tuhan Yang Maha Esa, karena atas berkat dan rahmat-Nya, saya dapat menyelesaikan karya tulis ilmiah ini. Penulis<sup>27</sup> karya tulis ilmiah ini dilakukan dalam rangka memenuhi salah satu syarat kelulusan pada Fakultas Ilmu Hukum, Universitas 17 Agustus 1945 Surabaya.

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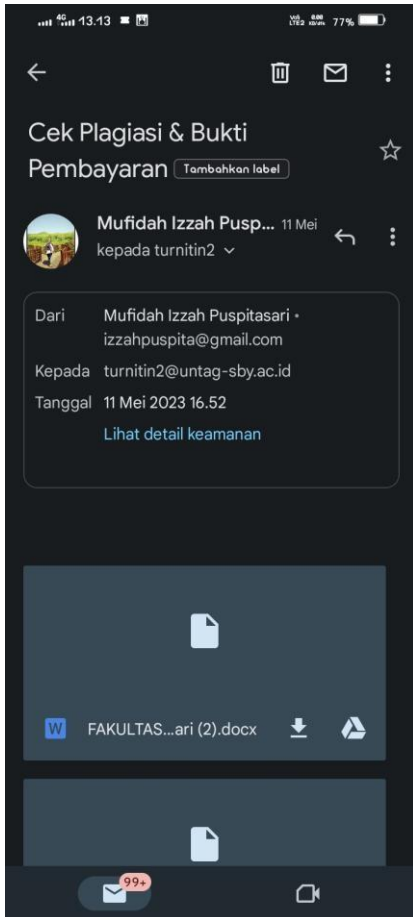
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