

# The Legal Consciousness and Social Impacts of the Change in the Minimum Age for Marriage in the Indonesian Marriage Act: The Experience of Hulu Sungai Tengah, Kalimantan Selatan

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**Abstract:** Child marriage is still a controversial and big challenge that Indonesia has always faced, with Kalimantan Selatan as one of the Big Five Provinces with the highest number of child marriages. The Indonesian government has taken various preventive steps, one of which is revising the age limit for brides from 16 to 19 years old, enacted right before Covid-19 hit the country. However, the revision still begs questions about whether the age limit is practical due to the highest number of unregistered marriages, especially during the pandemic. This study employed the Qualitative method with a Socio- Legal approach and found that the perception and legal consciousness of the respondents were undisputed towards child marriage and disregarded the age limit and the pandemic situation.

**Keywords:** Age Limit; Child Marriage; Covid-19.

## 1. INTRODUCTION

The data shows that girls in Indonesia are 7,5 times more likely to become victims of child marriage than boys. 1 out of 9 girls in Indonesia was married in 2018 (UI, 2020). In this case, marriages involving adult men or even the elderly with underage girls are also quite common in Indonesia. This is exacerbated by society's tolerance towards this than if the opposite were true. Marrying a girl for some people is a pride, as is often found in media reports or memes on social media. Without realizing that this early marriage will

long impact the children. Many studies have shown that child marriage is not a good thing. On the other hand, child marriage is Pandora's box that opens up various problem that lurks behind it (Djamilah, Kartikawati: 2018).

Child marriage means a marriage in which both or one of the groom or brides are still classified as children. Law of The Republic Indonesia Number 23 Of 2002 concerning Child Protection defines children as those who are not yet 18 years old, including foetus. According to Indonesian Civil Law, children are considered incapable of performing legal action, so they do not meet the requirements to engage in a contract. The children is considered imperfect to act for and on their behalf, so if they want to do some legal action, they must be represented by adults. In this case, these adults have to be one or both of their parents or guardians. These things happen because the children have not fully developed as human beings, whether physically or psychologically. This law even stipulates that children who have not yet reached 21 years old and are not get married. This adult status because of the marriage is permanent, so even if their marriage dissolved before they reached 21 years old, they are still classified as adults (see article 330 of the Civil Code).

Based on the description above, the researcher was interested in further studying child marriage in Hulu Sungai Tengah District with a feminist study approach. This study places women as the primary point in the study using a theoretical framework of power relations in a society which is the object of study. It is because the problem of child marriage was a part of family issues which Gelles defines as a complex and challenging social institution to research. Moreover, family interactions occurred behind closed doors and hidden from society and researchers (Gelles:1978).

## 2. METHODS

This research was conducted using a qualitative research approach, namely research procedures that produce descriptive data in the form of written or spoken words from people, and their behaviour can be observed. The research is placed within a socio-legal framework that uses an interdisciplinary approach between aspects of normative research and a sociological approach but still uses a qualitative analysis method that focuses on normative aspects of social life. The respondents are grooms and brides, Parents, Religious Affairs Officers, Religious Courts Officers, Village Officials, Religious Leaders, Community Leaders, and Traditional Leaders.

## 3. RESULTS AND DISCUSSION

Law of The Republic Indonesia Number 1 of 1974 concerning Marriage then came up with a new marriage age limit, namely 16 years old for women and 19 years old for men, but still with the exact provisions; approval from their parents/guardians if they are not yet in 21 years old. This unequal age limit resulted in the increase of child marriage in Indonesia. In 2019, there was a glimmer of hope when the Law of The Republic of Indonesia Number 16 of 2019 was issued and changed the marriage age limit for women

to 19 years old, the same as men. However, this still provides a law hole for children to marry by applying for a dispensation.

Meanwhile, the problem of child marriage has always been one of the main problems faced by the local government and the people of Kalimantan Selatan. The 2015 data showed that Kalimantan Selatan was one of the top five provinces with the highest prevalence of child marriage in Indonesia, reaching 33,68%. Only slightly better than 34,22% of Sulawesi Barat (Susenas, 2015). If we look back at 10 years, Basic Health Research (Riskeddas) in 2010 showed Kalimantan Selatan has the highest percentage of child marriages aged less than 15 years in Indonesia (Riskesdas, 2010). Statistics show that Kalimantan Selatan is always in the top 5 positions in the number of child marriages. The number of child marriages did not decrease when the pandemic hit. Bappenas noted that the number of child marriages in Kalimantan Selatan increased. The highest contributors to child marriage rates in Kalimantan Selatan 2020 are Banjar districts with 221 cases, Tanah Bumbu districts with 199 cases, Tanah Laut districts with 174 cases, Banjarmasin city with 167 cases, and Hulu Sungai Utara, with 174 cases.

The other districts/cities in Kalimantan Selatan also contributed a significant number of cases to this increase of child marriage cases. One of them is the Hulu Sungai Tengah district which shows an increase in the granting of marriage dispensations. Even though the government has tried to prevent child marriage by increasing the minimum age of marriage for girls from previously 16 years old become 19 years old, the data shows otherwise. The report from the religious court of Hulu Sungai Tengah district noted that throughout 2021, there were 63 marriage dispensations given to couples under the age of 19 who want to get married. An increase from 202, which only had 58 dispensations, and 2019 that only had 19 dispensations.

Kalimantan Selatan is one of the provinces in Indonesia which is dominated by Muslim, there is 96,78% (BPS: 2011). This is dominated by the Banjar ethnicity (82.4%) and the Dayak ethnicity of 1.2%, the rest is a mixture of other tribes from all over Indonesia such as Javanese, Sundanese, Batak, Minang, and others. Ethnic Banjar call themselves "urang Banjar," and identify themselves as devout Muslims (Daud: 1997). Urang Banjar has very firm to their Islam. Islamic identity was the center of development in Kalimantan Selatan, even forming a discourse against the center of government in java that they consider not very religious (Tsing: 1993). This has influenced society's legal awareness towards laws and regulations, which are considered products of the centre located in java. One of them is related to the Law of Marriage.

Therefore, understanding the legal awareness of the people of Hulu Sungai Tengah district about child marriage was very important in determining regulation strategies in term of preventing child marriage in the area. Especially, if we remember that one of the goals of law is to lead people to a fair, safe life and makes people happy (Rahardjo: 2009). That goals is almost impossible to achieve if child marriage is considered a red flag in effort to advance Indonesia's human resources, still going on (Hanifah: 2021). Komnas Perempuan's annual record describes child marriage as part of the spectrum of violence against women which has increased 3 times, in the midst of the Covid-19 Pandemic (Komnas Perempuan: 2020). The categorization of child marriage into violence against

women caused by the high rate of violence that occurs in child marriage cases (Hertika, et.al: 2017) and (Rahayu: 2018).

However, it should be noted that the child marriage data was sometimes an iceberg phenomenon considering that marriage can be carried out in two ways: registered and unregistered. Hulu Sungai Tengah District is one of the districts with a fairly high phenomena of unregistered marriage, also known as *nikah siri*. In contrast, registered child marriage is a child marriage that has been submitted a dispensation by the guardians/ family authorized to do that. If we use the iceberg perspective mentioned above, it can be assumed that there are certainly more unregistered child marriages, especially when the Covid-19 pandemic hit. The phenomenon of child marriages has the potential to be one of the reasons for the low quality of human resources, considering that married girls will stop going to school. This is contrary to government policies related to empowering women and children at the central and regional levels.

The reasons for child marriage are various. There is a growing assumption that child marriages occur because the poor, but the data shows otherwise. Kalimantan Selatan, which has a low poor rate, turns out to be a province with a high rate of child marriage. Indeed, as found in several districts, including Hulu Sungai Tengah district, some married children came from families with a high economy or wealthy families. This situation asks a question regarding the real reason behind child marriage at an insufficient age. Marriage is a reflection of the existence of legal pluralism in Indonesia, which is not only one law regulating it but also several laws; national law, religious law, and customary law which are intertwined with each other. These laws build a relation that tries to be adopted in positive national law through Law of The Republic Indonesia Number 1 of 1974 concerning marriage, which is amended by Law of The Republic Indonesia Number 16 of 2019 concerning amendments to Law of The Republic Indonesia Number 1 of 1974 concerning Marriage. The most interesting when it turns out that child marriage is still going on, even increasing during the pandemic. This is undoubtedly a challenge for all of the law makers.

#### 4. CONCLUSIONS

Hulu Sungai Tengah District was chosen as the location of this research because it is one of the districts affiliated with the name "Banua Anam", where the child marriage rate tends to be high. In addition, Hulu Sungai Tengah District is one of the districts with a high number of unregistered marriages, so it can be assumed that unregistered child marriage was higher than that are registered. For this reason, it was essential to identify the perceptions of the people of Hulu Sungai Tengah Regency on child marriage, especially girls, given the above. The phenomenon of child marriage is still mainly carried out in private, so it is difficult to get an exact number.

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