

Juridical Analysis of Child Marriage

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Abstract. This research is normative-empirical, located in Gowa and Takalar (South Sulawesi). The focus of the research is, public understanding about child marriage, legal arrangements regarding child marriage and legal implications for child marriage. This study uses a qualitative descriptive method that describes and describes the data obtained in the form of a percentage. Data collection techniques used are library research and interviews. The data analysis technique used is descriptive qualitative analysis, namely analyzing and interpreting factual data in relation to child marriage. Some people's knowledge about child marriage is still limited to the lawful ties in religion, while the legal and biological consequences are not well understood. A child can marry if it is the child's will without coercion with the permission of the child's parent/guardian by submitting a marriage dispensation to the court. Prior to the introduction of the child protection law, married children were considered adults. However, currently married children are still considered children until they are 18 years old, while in civil activities children are considered adults if they are legally married.

Keywords: Child marriage, Child civil status, Child married status

1 Introduction

Number 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law, that marriage is legal if it is carried out according to the laws of each religion and belief. Furthermore, according to Ter Har, marriage is a matter of relatives, family affairs, community affairs, matters of dignity and personal affairs. Furthermore, each marriage is recorded according to the applicable laws and regulations. The recording of each marriage is the same as important events in a person's life, such as births, deaths which are stated in certificates, an official deed which is also included in the registration.

The Criminal Code (KUHP) also stipulates rules regarding crimes committed against children, including marital affairs which are categorized as violence against children. More specifically, it is regulated in the Child Protection Act which emphasizes the crime of sexual violence against children.

In carrying out marriage / marriage there is a minimum age that has been set. But in reality, marriages carried out under the age that have been set are still rife. Regarding the practice of early marriage, it is widely practiced in Africa and Southeast Asia. Child marriage in Africa is estimated to have been experienced by 42% of the entire child population there. Child marriage in Africa is mostly experienced by girls, while the groom is already in adulthood. Based on data from the National

Family Planning Coordinating Board (BKKBN) In 2019, Indonesia was one of the ten countries with the highest child marriages in the world. Indonesia is in seventh place with absolute numbers and the second highest in ASEAN after Cambodia. Specifically for the Province of South Sulawesi, about 30.5% of the marriages that occur are child marriages. This figure places South Sulawesi Province at number 5 in Indonesia for the number of marriages under 15 years. In this study will be studied and analyzed regarding child marriage both from a civil point of view and from a criminal point of view. Starting from the background that has been stated previously, the problem is formulated as follows:

1. What is the extent of public knowledge about child marriage?
2. What are the legal rules regarding child marriage?
3. What are the legal implications of child marriage?

2 Research Methods

This research is normative-empirical, located in Gowa and Takalar. The focus of the research is, public understanding about child marriage, legal arrangements regarding child marriage and legal implications for child marriage. This study uses a qualitative descriptive method that describes and describes the data obtained in the form of a percentage. Data collection techniques used are library research and interviews. The data

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analysis technique used is descriptive qualitative analysis, namely analyzing and interpreting factual data in relation to child marriage.

3 Result And Discussion

The Religious Courts in adjudicating cases of application for dispensation for marriage often consider two disadvantages, the harm that occurs as a result of marriage at the age of children (early marriage) and the harm that will occur if the marriage dispensation is rejected. The Panel of Judges often accepts applications for dispensation for marriage because they view that the harm that will occur if the dispensation of marriage is rejected is greater than the harm that occurs due to early marriage, where it is likely that the offspring (al-nasl) and honor (al-'irdl) of both candidates will be damaged. the bride and groom.

Another problem that can occur is if a child who is under the age of marriage then gets divorced (widow/widower) and wants to remarry a second time before reaching the minimum age limit for marriage. This needs attention because the consequence of divorce according to the provisions of the Burgerlijk Wetboek (BW) is that the wife regains her status as an unmarried woman. Based on the results of previous research, information was obtained that most of the Office of Religious Affairs Officers refused to grant the application for a marriage dispensation on the grounds that the widow/widower was before reaching the minimum age for marriage.

3.1 Public Knowledge Regarding Child Marriage

Child marriage, is one type of violence against children, both psychological, physical and sexual violence. Based on data from the United Nations Children's Fund (UNICEF), the highest child marriage in the world occurs in Niger with a percentage of more than half of girls in Niger ever married, even in 2021 76% of Niger girls are married. Likewise with countries around Niger (Republic of Africa, Chad, Mali and others) which have a percentage of child marriages above 50%. Children aged 10 years to 14 years have a very large risk of dying during pregnancy or childbirth as well as physical and psychological unpreparedness to raise children. And for the age of 15-19 years of sexual activity is very risky several times for the possibility of pregnancy.

1. Based on PUSKAPA data, child marriages are very common in Sulawesi and Kalimantan based on data from the National Statistics Agency. Child marriages on the island of Sulawesi ranged from 14-19%, with the location of most child marriages being in West Sulawesi at 19.43%, while South Sulawesi had a retaining of 14.10%, followed by East Kalimantan with 11.54% and Central Kalimantan by percentage is 19,13% [1]
2. Indonesia is the second largest contributor to child marriage in ASEAN. Based on Baker's opinion [2] Indonesian people, especially those who live in villages, are still strong enough to hold socio-

religious values that justify the tradition of young marriage. In addition, the customs/customs of the community, especially in villages in South Sulawesi, marrying children who have reached puberty is one way to avoid the possibility of embarrassment and bad stories from the community if the child has entered puberty.

3. Child marriage is caused by the economic condition of the family and the views of parents/guardians about education which is not so important for women so that children follow the wishes of their parents/guardians to get married, most children who drop out of school because of child marriage are experienced by many girls because of a patriarchal mindset who think that women's education will be in vain, because women will only take care of the household and children, so what is needed is not formal education at school, but skills in taking care of the house.
4. The patriarchal pattern that is still entrenched in several parts of Indonesia, according to the author, is one of the reasons why child marriages are still rampant. Children who are the target of child marriage lose their rights as children from an early age. Her mindset is infiltrated about the many responsibilities as a woman so that she must prepare herself early to be able to take care of the household.
5. Low education provides less understanding for children and their families. Education is not considered so important that children after entering the marriage period will also experience problems in conflict management, so that not only marriage dispensations and isbat courts (marriage recognition) are developing, but divorce registration is also increasing every year.

In addition to the influence of people's mindsets, the development of child marriage is also contributed as a result of promiscuity (free sex) carried out by children. As the data previously described, children who have sex at the age of 14-16 years have a very large chance of getting pregnant, given their biologically active and fertile conditions. So that children who have sex activities have a great chance of getting pregnant so that the possibility of child marriage will also occur. Child marriage due to pregnancy has quite bad psychological pressure considering the stigmatization of society and unpreparedness with the risks that will be faced by the child. This type of child marriage will also cause pressure from the family environment, in contrast to child marriage which is carried out because of the child's willingness and family support.

The development of child marriage in the top 5 (Marriage Dispensation) in South Sulawesi, the highest occurred in the areas of Wajo, Sengkang, then Soppeng, Gowa, Jennepono, and Takalar. Based on the data, the Wajo Region received a very large number of marriage dispensations. In 2019 requests for marriage dispensation were 399, and a very significant increase in 2020 with requests for marriage dispensation as many as 634, and again in 2021 with requests for marriage dispensation as many as 760. This is very concerning considering the number of children who do not enjoy

their childhood. as it should be. As well as responsibilities and the future of both education and the economy that must get a lot of attention.

Furthermore, the Soppeng Territory received an increasing number of marriage dispensations. In 2019 there were 106 requests for marriage dispensation, and a very significant increase of more than 50% in 2020 with 314 requests for marriage dispensation. Likewise, for the Gowa region which in 2019 received 86 marriage dispensations, in 2020 as many as 56, and in 2021 75. Following Jennepono Regency in 2019 it received 26 marriage dispensations, in 2020 as many as 30, and in 2021 as many as 52. Takalar Regency in 2019 received 10 marriage dispensations, in 2020 as many as 10, and in 2021 as many as 15. Data- The data on the request for dispensation for child marriage is officially registered data, the exact number of child marriages carried out in a serial/religious manner is unknown.

3.2 Legal Rules Regarding Child Marriage

Forcing children to marry is part of violence. Science related to violence is not only material criminal law, but also violence is closely related to criminology. As Michael and Adler argue:

“criminology is the overall description of the conduct and nature of criminals, their environment, and the way they are officially treated”[3].

Crime is also not only from a legal point of view. But it also talks about the community's point of view [1]. From a legal perspective (a crime from the legal point of view), in this perspective, crime is seen as any act that violates criminal law. This means that at worst an act if it does not violate the criminal law, it has not been said to be a crime. b) Community perspective (a crime from the sociological point of view), in the community perspective, crime is seen as every act that violates the norms that are still alive in society.

Talking about this point of view, not all things that are considered bad are crimes. And not all perpetrators of unpleasant acts are said to be perpetrators as the opinion of positivist criminology awakens to the basic assumption that criminals are different from non-criminals. The difference lies in the biological, psychological, or socio-cultural aspects. Therefore, in searching for the causes of crimes committed against prisoners or ex-convicts by looking at their biological characteristics (biological determinism) and cultural aspects (cultural determinants) [4].

One of the most common crimes is sexual violence. One of the deviant sexual practices is sexual violence, namely sexual relations carried out by means of violence, outside the legal marriage bond, contrary to the teachings of the Islamic religion which can harm the victim and destroy peace in society [5]. . This is also as stated by Irsyad Thamrin and M Farid, sexual violence is sexual contact that is not desired by either party. The essence of sexual violence is the existence of "threats" (verbal) and "coercion" (actions)[6].

Children are the most vulnerable to violence. The definition of children nationally is based on the age limit of children according to criminal law, civil law, customary law and Islamic law. Internationally, the

definition of a child is contained in the United Nations Convention on the Rights of the Child in 1989, and the Universal Declaration of Human Rights in 1948.[7]

Marriage Law Number 1 of 1974 if carefully examined does provide leeway for the possibility of child marriage, because even though the minimum age for child marriage has been determined, but if there is a child who is going to marry, the parent or guardian of the child can request a marriage dispensation to the court. religion or other authorized official provided that:

1. Marriage is based on the agreement of the two prospective brides.
2. In order to get married, both parents have to get permission.
3. In the event that one of both parents dies or is in a state of being unable to express his or her will, it is sufficient that the said permission is obtained from the parent who is still alive or from a parent who is able to express his/her will.
4. If both parents have died or are in a state of inability to express their will, then permission is obtained from the guardian of the person who maintains or family who has blood relations in a straight line of descent as long as they are still alive and in a state of expressing their will.
5. In the event that there is a difference between the persons in question who have the authority to give permission or one or more of them do not express their opinion, then the Court in the area where the person who is going to hold the marriage at the request of that person may give permission after first hearing the other person. direct parent or who has legal or legal guardianship.
6. The provisions apply according to the religion and beliefs of the person concerned.

Seeing the widespread condition of child marriage, then a revision of the Marriage Law Number 1 of 1974 became Law Number 16 of 2019 concerning Amendments to the Marriage Law Number 1 of 1974 by setting a minimum marriage age of 19 years for both men and women, if there is a deviation regarding the age provisions of the prospective bride and groom, the parents or guardians of the child can request a marriage dispensation to the court on the grounds that it is very urgent, accompanied by sufficient supporting evidence. The intended deviation is that it can only be done through submitting a request for dispensation by the parents of one or both parties of the prospective bride and groom to the Religious Courts for those who are Muslim and the District Courts for others, if the men and women are under 19 (nine years of age). twelve) years.

Supporting evidence that is a mandatory requirement for submitting a marriage dispensation is a certificate proving that the age of the bride and groom is still under the provisions of the law and a certificate from a health worker that supports the parents' statement that the marriage is very urgent to be carried out. Marriage dispensation can be done if it is in a very urgent situation and marriage must be carried out. Based on the opinion of Syansul Bahri, the application for dispensation for marriage in general is:

1. The bride and groom have been together for a long time and are committed to being together

2. Avoiding free sex because the bride and groom are already dating
3. Follow traditional norms in society
4. Avoid violating religious norms that explicitly regulate interactions of the opposite sex
5. The bride and groom have/have had sexual relations without marriage ties
6. The bride-to-be is pregnant
7. The bride and groom are orphans or neglected children (based on Law Number 4 of 1979 concerning Child Welfare, neglected children are children who for some reason their parents neglect their obligations so that the child's needs cannot be met properly, both spiritually, physically and socially), so that the family/ The guardian is no longer able to take care of it so they are married so that the responsibility shifts

After the amendment to the Marriage Law, the space for marriage dispensation was increasingly narrowed by the affirmation "could be for very urgent reasons", but if you look at the reasons that arise as a request for a marriage dispensation, then everything cannot be said to be non-urgent, because of the religious norms and customs of the community. which is appropriate. However, by providing education and providing understanding to the public about the risks of child marriage and the importance of education, it is hoped that this can be a matter of consideration so that child marriage does not occur.

3.3 Legal Implications for Child Marriage

Law on the Juvenile Criminal Justice System, Children in Conflict with the Law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime. Children who become victims of criminal acts are children who are not yet 18 (eighteen) years old who experience physical, mental, and/or economic losses caused by criminal acts. A child who is a witness to a crime is a child who is not yet 18 (eighteen) years old who can provide information for the purposes of investigation, prosecution and examination in court regarding a criminal case that he has heard, seen, and/or experienced himself. In the Criminal Code (KUHP) a child is someone who is not yet 16 years old, but with the presence of the Child Protection Act, the Child Criminal Justice System Act, and other child-related laws, the legal age limit for children is 18 (eighth). twelve years and under. So that in criminal law, children who are involved in criminal acts, both as perpetrators, witnesses and victims are still considered as children as long as they are still under 18 years of age. So that even if they have or have had a marriage as stipulated in the Marriage Law, if the child is involved as a criminal, the child will be subject to the Child Criminal Justice System Law, and if the child involved in a criminal act is a victim, the Child Protection Law will be enforced.

Whereas in civil activities, children are considered adults if they are legally married. Article 330 of the Civil Code stipulates that children or minor are those who have not reached the age of 21 (twenty-one) years and have never been married. So that even though he is still

under the age of 21 years, but has already performed a legal marriage according to religion and state, then the child has been declared an adult and has the right to carry out civil activities. Based on the Manpower Law, the age of the child is before reaching the age of 18 (eighteen) years, it is not regulated regarding the status of being married or having been married. So that children aged 13 (thirteen) to the age of 15 (fifteen) years are allowed to work in the light work category as long as they do not interfere with their physical, mental and social development and health. However, if the child works for a family or family member, then there is no need for administrative requirements as child labor.

Marriage is also an indicator of a person's maturity if it is based on the paradigm of the Compilation of Islamic Law Article 98(1) which confirms that the age limit of a child who is able to stand alone or is an adult is 21 years, as long as the child is not physically or mentally disabled or has never married. So that married children are considered to have the same responsibilities as adults, both male and female

4 Conclusion

The very significant increase in child marriages which reached hundreds or even thousands of cases (South Sulawesi in total) in the last three years is very concerning. The data on requests for dispensation for child marriage are officially registered data, the exact number of child marriages carried out in a serial/religious manner has not been reported. The paradigm of parents in rural areas and the patriarchal pattern are one of the causes. Next is the influence of the economy and promiscuity (free sex) by children. So that children who have sex activities have a great chance of getting pregnant so that the possibility of child marriage will also occur.

Seeing the widespread condition of child marriage, then a revision of the Marriage Law Number 1 of 1974 became Law Number 16 of 2019 concerning Amendments to the Marriage Law Number 1 of 1974 by setting a minimum marriage age of 19 years for both men and women, if there is a deviation regarding the age provisions of the prospective bride and groom, the parents or guardians of the child can request a marriage dispensation to the court on the grounds that it is very urgent, accompanied by sufficient supporting evidence. The intended deviation is that it can only be done through submitting a request for dispensation by the parents of one or both parties of the prospective bride and groom to the Religious Courts for those who are Muslim and the District Courts for others, if the men and women are under 19 (nine years of age). twelve years. Marriage dispensation can be done if it is in a very urgent situation and marriage must be carried out.

The legal implications that occur after child marriages are carried out are related to civil law, criminal law and other legal instruments. Even if you have or have had a marriage as stipulated in the Marriage Law, the criminal law does not change the status of a child to become an adult. Whereas in civil activities, children are considered adults if they are

legally married and are considered capable of carrying out civil activities. Marriage is also an indicator of a person's maturity if it is based on the paradigm of the Compilation of Islamic Law Article 98(1).

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