

Contestation of Legal and Social Norms in Early Marriage

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Abstract. *This research discusses the phenomenon of early marriage that occurs in Pinayungan Village, Karawang Regency, by highlighting the imbalance between legal norms and social norms prevailing in the community. Although legal regulations, such as Law No. 16 of 2019 and PERMA No. 5 of 2019, have regulated the minimum age of marriage and marriage dispensation procedures for the protection of children's rights, the practice of early marriage is still rampant. Through a juridical-sociological approach and qualitative method, this study explores the sociocultural factors behind early marriage, including the belief in the "itung-itungan" tradition and parents' concerns about promiscuity. Interviews with the Religious Affairs Office and one of the children who married early show that social norms in the community take precedence over formal state legal norms. This phenomenon reinforces the concept of "living law" proposed by Eugen Ehrlich. In addition to violating positive law, the practice of early marriage also causes violations of various children's rights guaranteed by the Child Protection Law and the Convention on the Rights of the Child, such as the right to education, health, decent work, and the right to grow and develop optimally. This study recommends the need for a culture-based legal approach to encourage the effective implementation of child protection and prevention of early marriage.*

Keywords: *Early Marriage, Social Norms vs Legal Norms, Protection of Children's Rights*

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INTRODUCTION

Indonesia is a state of law, the law treats all Indonesian citizens without distinction, referring to Article 27 paragraph (1) of the 1945 Constitution. However, the fact is that there are still regulations that discriminate, besides that there are also rules that harm the rights of its citizens, one of which is women's rights. According to Kania (2015), the Constitution guarantees that women's rights are included in human rights. There is a concrete example of the discrimination of women's rights is Law Number 1 of 1974 concerning Marriage, in Article 7 stipulates the minimum age for marriage, the minimum age of marriage for women is 16 years, while for men it is 19 years. Then, there was a decision of the Constitutional Court Number 22 / PUU-XV / 2017 because this provision was considered unfair, in the article there were differences related to the age limit for marriage for men and women (Syifa, 2022). This is not in line with the provisions of Law Number 35 of 2014 concerning Child Protection, in which the importance of children receiving equal treatment without discrimination in any form is emphasized (Christian & Edenela, 2019).

Align with research from Wafiq & Santoso (2017), the government took the step of setting the minimum age of marriage to function as a legal step to prevent problems from arising in marriage ties, especially cases of early marriage. Article 7 Paragraph (2) of Law Number 16 of 2019 explains that if there are special conditions that are not in accordance with the provisions

in Article 1 Paragraph (1), the party concerned may submit an application for marriage dispensation to the religious court in their area. As a follow-up to this change in the law, the Supreme Court issued Supreme Court Regulation (PERMA) No.5 of 2019 as a basis for judges to give permission for children who are about to get married, to formally process requests for marriage dispensation in court (Dewi, 2023). Although there have been significant changes in regulations regarding the age limit for women to marry, the fact is that early marriages still occur. Based on data from UNICEF in 2023, Indonesia is ranked fourth in the world in terms of the prevalence of early marriage, with a child population of 25.53 million (Samsuni et al., 2024). Komnas Perempuan in 2021 has recorded 59,709 children married at an early age who have been resolved by the court (Anwar et al., 2024).

Then the number of children who married early and applied for marriage dispensation in Karawang Regency was recorded at 128 people throughout 2023. One of the areas in Karawang district, there are villages where some of the residents marry at an early age. According to Perkasa & Hkim (2024), the community in the village is more concerned with existing social norms than the legal norms that apply in Indonesia, early marriage is a solution to parents' concerns about promiscuity, which will result in pregnancy outside of marriage. As an example of a case that occurred in case decision 526/Pdt.P/2024/PA.Krw.

This research differs from the three previous studies that are referenced. Research conducted by Alvina Rivini Trulia Mokolensang focuses on analyzing Law Number 35 of 2014 and its implications for the protection of children's rights in the context of early marriage. Then Ahmad Tang's research focuses on children's rights in general without explaining their direct relationship with the practice of early marriage in a particular area and does not discuss the relationship between social and legal norms. Trisia Putri's research examines the impact of early marriage on children's health and development and relates it to legal protection based on international conventions. Although it has similarities, namely examining children's rights, the research is more general. If the research I am researching has the aim of generating insight into the contestation between social norms and legal norms in Pinayungan village which affects the practice of early marriage and violations of children's rights due to early marriage in Pinayungan village.

METHODS

This research was conducted qualitatively using a juridical-sociological approach. The juridical-sociological approach is to analyze social norms and legal norms that run in society, the subject of this research is the head of the Religious Affairs Office (KUA) and children who marry underage. The data used are primary data and secondary data. Primary data from this research is data sourced from the head of the Religious Affairs Office (KUA) and children who are married underage. While the secondary data of this study are religious court decisions 526/Pdt.P/2024/PA.Krw, Law Number 1 of 1974 jo Law Number 16 of 2019 concerning marriage, Law number 35 of 2014 concerning child protection. Data collection techniques were carried out by interviewing the Head of the KUA and children involved in early marriage. The duration of the interview with the Head of the KUA was 1 hour with the child involved lasting 1 hour. Interviews were conducted in a semi-structured manner so that the information obtained could be deeper and more open. The data analysis technique uses the analytical descriptive method because this research describes the facts and social realities in the field. After the data is collected, it is analyzed by means of thematic analysis, namely by looking for important themes from the interview results, important themes taken such as the influence of the "itung-itungan" tradition and parental anxiety that causes early marriage to occur. After the data is collected and formed, it is then connected to the applicable regulations.

RESULTS AND DISCUSSION

Social Norms in Pinayungan Village that Influence Early Marriage Practices

Based on the results of interviews with religious affairs office officials "the factor in early marriage is only because of calculation, for example he is old enough in December if according to calculation his marriage must be in September, then get married in September" it has been found that there are local community traditions that have a big influence on the implementation of young marriage. Namely, one of the traditions of the community believes in "itung-itungan" to determine the date of marriage. Because in that way the local community believes that the date that is in accordance with the calculation will bring luck and harmony to the couple. Because of this belief, the community overrides the age requirements for marriage, even though the bride and groom are still underage, the wedding will still take place to adjust the right date according to "itung-itungan". Then the community will think otherwise if marriage is not in accordance with itung-itungan the community believes it can bring bad luck such as the occurrence of conflict in the household, economic instability, and health problems. People's belief in "itung-itungan" is evidence that people are more obedient to local social and cultural norms.

Furthermore, parental anxiety is one of the factors in the practice of early marriage "because children are often together with the opposite sex, they are afraid of unwanted things happening, so they just marry them". Parents consider marrying off their children at a young age as a protection measure for them from unwanted events, such as getting pregnant outside of marriage (Triyono, 2022). Parents have a fear of irresponsible men if something untoward happens, then it will damage the family's reputation. So, parents encourage their children to get married to ensure security for the family. In line with research Gamal (2010), the child's too close relationship with the opposite sex is one of the factors that makes parents anxious, then this anxiety will encourage parents to marry off their children even though the child is not old enough to get married. In this context, early marriage becomes a family shield to protect the family image. This happened to one of the children in Pinayungan village with a request for dispensation of decision case 526/Pdt.P/2024/PA.Krw.

The child married early because the parents were worried that unwanted things would happen to the child and his partner, even though the child did not feel it was a compulsion for him (Leckman et al., 1999). This action shows that parents prioritize social values in society rather than formal rules from the state. This is in line with one of the theories of social action put forward by Max Weber, namely rational social action where values in society are the basis. The assessment of the positive or negative practice of early marriage depends on the system adopted by the local community (Wafiq, 2024). If there are young couples who like each other or have a relationship with the opposite sex, then parents are more likely to marry them off early to avoid unwanted things, such as pregnancy outside of marriage. Even though the girl is still underage, this is usually done in order to maintain social norms. In this context, early marriages that occur are not due to coercion or the result of pregnancy, but to maintain respected values in the community (Betaubun, 2024).

The practice of early marriage is an illustration of the contestation between legal norms and social norms. According to Maggalatung (2014) and Aditya (2019), who discovered related to "living law" that legal norms apply in society, namely the law is not because the law is made by the state, judges, or jurists but the law develops in the community, namely the law that comes from the community itself. Where the law cannot be separated from community life. The living law is a rule that actually applies and affects the daily life of the community even though the law has not been officially written or has not been recognized as a valid state law (Neununy, 2021). Although there is Law Number 16 of 2019 which regulates the minimum age of marriage. However, the fact that there is positive law is often overruled by society when it coexists with social norms. The tradition will take precedence over positive law. The social norms that prevail in society will eventually lead to violations of positive law, and become an obstacle to the effectiveness of

positive law as a state effort in preventing early marriage from running optimally (Adhyputra et al., 2024).

Therefore, early marriage occurs due to cultural factors, such as traditions that conflict with applicable regulations. Even though the government has in such a way formed regulations so that people do not marry at an early age, because early marriage according to BKKBN will cause health problems in women such as the risk of developing cervical cancer (cervical cancer) this is due to sexual intercourse that occurs under the age of 20 years. Then giving birth under the age of 20 years will cause complications in the form of obstructed labor and obstetric fistula (Mokolensang et al., 2023). There are other health problems that will occur in women who marry underage if giving birth will risk giving birth prematurely. BKKBN states that marriage is considered ideal when the man has reached the age of 25 years and the woman is 20 years old.

The consideration is for the readiness and importance of the reproductive system in marriage (Arikhman et al., 2019) addition, there are other reasons, namely mental readiness which will affect the marriage relationship and parenting of children who will be present. If children marry early, divorce often occurs due to economic difficulties because children who marry young are still lacking in financial readiness (Matondang, 2014). It can be concluded that the state makes these rules to consider so that these things do not happen and the state hopes to improve the welfare of the people in Indonesia. The phenomenon of early marriage can violate the basic rights of children that have been recognized internationally (Apriani & Fikriana, 2023).

Violation of Children's Rights Due to Early Marriage in Pinayungan Village

Article 54 of the Child Protection Law explains how the government is responsible for ensuring child protection, an obligation that must be fulfilled by parents, guardians, or other persons responsible for the care of children. Children under their care must receive all the rights to which they are entitled, be protected from discrimination, exploitation (both economic and social), neglect, and all forms of child abuse, including cruelty, corporal punishment, and injustice to children (Tang, 2020). In addition to Article 54, there are several other articles that outline children's rights. One of the articles stipulates that children must receive proper education, as stated in Article 9 paragraph 1 of the Child Protection Law. Another article ensures that children have the right to a decent life and adequate health services, as stipulated in Article 44 of the Child Protection Law. There is also an article that gives children the right to determine their own lives, such as their future, Article 56 of the Child Protection Law (Mokolensang et al., 2023).

In addition, an explanation of children's rights in the Child Protection Law is outlined, such as the right to play, entertainment, participation, religious activities, meetings, socializing, living with both parents, and the right to live, grow, and develop. In addition, children also have the right to self-identification such as name, religion, citizenship, education, information, health services of the highest standard, a good lifestyle, and protection from arbitrary action, deprivation of liberty, cruel treatment, punishment, and inhuman treatment, both in the form of physical and non-physical abuse, abduction, sale of children, sexual exploitation, exploitation of drug abuse, exploitation of child labor, exploitation of isolated minority groups or indigenous peoples, and exploitation in situations that are not appropriate to the child and his/her age, especially in critical or emergency situations, neglected individuals, especially in cases involving legal complications, especially in the context of armed conflict or social conflict. The establishment of the regulation has the aim of national development (Tang, 2020).

The United Nations Convention on the Rights of the Child (UNCRC) is a human rights treaty for the protection of children with the aim of universally protecting and improving the conditions of children. The Convention was adopted by the United Nations General Assembly on November 20, 1989. The CRC aims to protect and ensure the fulfillment of children's rights in various fields such as political, economic, social, health, and cultural (Kalangi et al., 2023). The CRC categorizes these rights into four groups: the first category is the right to life for children, which includes the right to life and quality health care; the second category is the right to protection, which protects children from discrimination, exploitation, and violence; the third

category is the right to development, which includes the right to education and an adequate standard of living; and the last category is the right to participation, which gives children the opportunity to voice their opinions (What is the Convention on the Rights of the Child?, n.d.)

Children's rights are regulated in the Child Protection Law, which explains what rights must be fulfilled for children. In the case of early marriage, there are children's rights that are not fulfilled. Based on an interview with a child from Pinayungan village, Karawang, there are rights that are not fulfilled because they are not in accordance with the contents of Article 26 paragraph 1 letter c which states that parents are obliged to prevent children from entering into early marriage. However, the fact is that the parents of the child applied or registered their child at the Office of Religious Affairs (KUA) to have their marriage registered, even though the child was not old enough to marry according to the Marriage Law. Because in the marriage law a person is allowed to marry if he is 19 years old for both men and women. There is an existing fact that parents are worried that their children will engage in behavior prohibited by religion if they do not get married immediately even though the child is still 18 years old. This has been proven by a study conducted by the 18+ coalition (MENKO PMK) which states that 98% of parents marry off their children because they are already dating or engaged, then there are 89% of judges who reveal that there is a granting of marriage dispensation applications due to parental concerns (MUI Needs to Issue Fatwa to Prevent Child Marriage, n.d.).

If parents marry off their children before the child is old enough, it might lead to detrimental effects on the child's health, which indirectly jeopardizes the child's health. Children have a right to health, but early marriage poses significant risks to children's health because their reproductive organs and physical maturity are not yet adequate to reproduce. This can lead to child and infant mortality, and even if no death occurs, it can lead to infant disability and increase the risk of child stunting. Due to the immaturity of the reproductive organs, cancer, especially cervical cancer, may occur. In addition, children who give birth at a young age are more likely to suffer from anemia which can be dangerous during pregnancy and high risk during childbirth (Indriani et al., 2023).

There is a failure in the fulfillment of the right to obtain decent work and in accordance with the provisions, the child actually works for wages below the standard District / City Minimum Wage (UMK) set by the government. This condition is caused by the age of children who have not met the minimum requirements to be officially employed in companies according to the provisions of Law No. 13 of 2003 concerning Manpower. Children cannot work in formal companies that can pay in accordance with the minimum wage set by the government. This violates the provisions of Article 27 paragraph 2 of the 1945 Constitution which reads that every citizen has the right to work and a livelihood worthy of humanity. Then usually in companies in Karawang rarely accept a job applicant if he already has a married status. This is evidenced in <https://id.jooble.org/lowongan-kerja-untuk-wanita-sudah-menikah/Karawang>, more job vacancies that prefer unmarried applicants. One example of a job vacancy for administrative staff filling, in which the criteria is mentioned "singles are highly sought after". Indirectly, the existence of early marriage takes away children's rights that children must be protected from discrimination.

CONCLUSION

The practice of early marriage in Pinayungan Village is strongly influenced by local social and cultural norms that are still rooted, especially the belief in the tradition of "itung-itungan" in determining the date of marriage. This tradition is considered capable of bringing good luck and harmony, so it often ignores the minimum age limit for marriage set by law. In addition, parents' anxiety about the potential for promiscuity and the possibility of pregnancy outside marriage is also a strong driver of early marriage, which they see as a form of protection for children and the family image. This phenomenon shows a conflict between social norms and legal norms. People obey the unwritten law that lives among them (living law), as described by Eugen Ehrlich, rather than the positive law regulated by the state, such as Law No. 16/2019 on the minimum age of

marriage. As a result, the state's efforts to reduce the number of early marriages are less effective. In addition to violating formal law, the practice of early marriage also has a serious impact on children's rights, as guaranteed by the Child Protection Law and the Convention on the Rights of the Child (CRC). Children who marry at an early age are less likely to receive their full rights, including the rights to education, health, protection, decent work, and the right to determine their future. Health-wise, early marriage increases the risk of pregnancy complications, maternal and infant mortality, as well as stunting and serious diseases such as cervical cancer. On the other hand, children are also mentally and economically immature, which often leads to divorce and poverty. Thus, the practice of early marriage in Pinayungan Village not only demonstrates the ineffectiveness of positive law amidst strong social norms, but also reveals serious violations of children's basic rights, both in terms of national law and international human rights standards. A more integrative and culturally-based approach to counseling and law enforcement is needed so that social norms can be aligned with the values of child protection promoted by the state.

SUGGESTION

The government must hold a routine counseling program related to early marriage which will have a negative impact, which is a participant in counseling not only young people but needs to be followed by parents. Because digitalization is now developing rapidly, counseling regarding the dangers of early marriage can be carried out through popular social media, such as TikTok, Instagram, and YouTube. The Supreme Court needs to conduct an indepth evaluation regarding the practice of granting marriage dispensation permits carried out by Religious Courts.

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