
REGULATORY FACILITATION AS AN EFFORT FOR LEGAL PROTECTION OF CHILD RIGHTS RELATED TO CHILD MARRIAGE

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ABSTRACT

Observing the norms that live in society in the State of Indonesia, it becomes a matter of pride for the noble values contained in these norms, which are called: habits in society. All aspects of community life are well regulated and accompanied by agreement as well as adherence to these values, especially regarding values in forming a prosperous family and upholding respect for elders in carrying out activities and actions for the continuity of the family. Therefore, as an effort to maintain the continuity of the family, both girls and boys are prepared to form a new family. Based on the results of research using normative juridical methods supported by interviews with several tribes, surprising data was obtained, that forming a new family was prioritized for carrying out marriages at a young age (children) without regard to their physical and mental readiness. Because the State of Indonesia is a constitutional state, and marriage is also regulated in a law which has stipulated the conditions for a marriage which include the age requirement to be ready to form a new family, it is necessary for the government to intervene strictly. as one of the government's efforts to prevent child marriage. Laws that have existed so far can be considered not fully complied with and ineffective in their implementation, so it is necessary to involve the community, among other things, by facilitating arrangements in legal reform, particularly the marriage law. It is hoped that the facilitation of this regulation can prevent the occurrence of young marriages (children) in the community, so that the continuity of the family which is also the Indonesian nation can improve the quality of Indonesian people evenly, so that various efforts are needed to be made so that this goal can be achieved. This government effort is carried out by involving the community through community leaders (traditional leaders, religious leaders, other leaders), with effective and efficient outreach to the community.

Keywords: Regulatory Facilitation, Young (Child) Marriage.

INTRODUCTION

Child marriage in Indonesia according to the culture of the tribes in Indonesia has been carried out long before the founding of the Indonesian State with the Proclamation of Indonesia. The word 'married' according to language, is forming a family with the opposite sex, having a husband or wife, getting married; Marriage which comes from the word 'marriage' implies a marriage bond (akad) which is carried out in accordance with legal and religious provisions¹. The ideal concept that one aspires to takes place in harmonious conditions reflecting the fulfillment of family and marital needs, namely needs relating to: personal, social, and God². Marriage is not balanced with family affairs, household affairs, social affairs, position matters, and personal affairs; because Indonesia consists of various customs and traditions that vary from one region to another, this affects marriages in Indonesia³. In Indonesia, each ethnic group has its own customs, so that the inauguration of a traditional marriage lasts for some time, it is not certain when they will become husband and wife. Therefore, marriage matters are often a family matter, but their personal roles are directly opposite. with them too⁴. In 1974, Indonesia succeeded in making regulations regarding marriage: UU no. 1 of 1974, which has a religious meaning in Article 1 namely that marriage is an agreement based on Belief in the One and Only God, this means that in a marriage there are strong (religious) values of faith, that there can be no marriage without

¹ H.M.Anwar Rachman,dkk, 2020, *Hukum Perkawinan Indonesia*, Jakarta, Prenadamedia Group, h. 5.

² Ibid, h.9

³ Ibid,h.13-14.

⁴ Piet Go, O Carm, 2016, *Hukum Perkawinan- Hukum Gereja-Hukum Sipil-Hukum Adat*, Malang, Dioma, h,169.

being based on the Belief in the Almighty. One⁵. However, as an agreement or joint agreement between two different sexes, marriage has legal consequences that are recognized, confirmed and protected by law (state law)⁶. Law is a normative rule that regulates patterns of human behavior that are not born from empty space, but emerge from people's awareness that requires order in life. -cultural and religious values⁷.

These values are still maintained in the community structure in the regions, including carrying out marriages that are permitted according to custom from various aspects with the aim of repairing the 'damaged' existing order in the local community, among other things, preventing violations of habits. Therefore, be prepared for boys and girls who have not yet reached puberty to be immediately matched with other types of marriage.

Even Undang Undang No 1 Tahun 1974 stipulates that marriage is permitted if the man is 19 years old and the woman is 16 years old, which has been amended by Law Number 16 of 2019 which regulates that the age limit for men and women is the same 19 years old.

Meanwhile, child marriages are still carried out by parents, especially in some parts of the archipelago due to the influence of local customs. Children who are immature physically and spiritually, are then arranged for by their parents, without them knowing the meaning and significance of the marriage they are living in.⁸

Therefore it is necessary to understand the meaning of marriage, so that it can renew the customs/habits of child marriage at the will of the parents, it can be prevented, or at least reduced.

METHOD

This writing study was carried out using empirical juridical methods, by looking at the customs of several tribes in Indonesia, due to the application of customary law to customary law communities in the 1945 Constitution of the Republic of Indonesia (1945 Constitution). Republic of Indonesia.

DISCUSSION

MARRIAGE ACCORDING TO UU NO. 01 of 1974 juncto UU no. 16 of 2019

Marriage is an agreement between two people of different sexes, which is legalized in religious law and/or customary law. This was stated in Law Number 1 of 1945 which was then given an age limit. This legal age limit is the result of paying attention to the norms that live in society.

Marriage that aims to form a prosperous and happy family will not be achieved if the husband and wife are immature both in behavior and in making decisions. Therefore, an age limit is set in the hope that the country's goals can be achieved, namely educating the nation's life through a 12-year education program, namely having completed education up to the upper secondary level.

As for Law Number 16 of 2019, which is a change from Law Number 1 of 1974, it only regulates the age limit for male and female candidates.

If customary law still allows child marriage, then national law will not be effective and the ideals of the state will not be achieved.

CHILD RIGHTS ACCORDING TO UU NO. 39 of 1999

UU No. 39 Of 1999, Article 57 stipulates that every child has the right to be cared for, cared for, and guided in his life by his parents or guardians until he reaches maturity. In addition, in Article 60, children also have the right to receive education according to their level of intelligence. Even in Article 66 paragraph (3) every child has the right not to be freed from his freedom as a child who is deprived, so that child marriage is a form of deprivation of his freedom as a child that must be protected by his parents or guardians.

⁵ Kaharuddin, 2015, *Nilai-Nilai Filosofi Perkawinan*, Jakarta, Mitra Wacana Media, h.137.

⁶ Khaeron Sirin, 2016, *Perkawinan Mazhab Indonesia*, Yogyakarta, Deepublish, h. vii.

⁷ Ibid.

⁸ Moch. Isaneni, 2016, *Hukum Perkawinan Indonesia*, Bandung, PT Refika Aditama, h. 53.

According to Jimly in his book Nurul Qamar, said that Human Rights must receive respect and appreciation and proper protection, because Human Rights are a concept of humanity and social relations that arise from the norms that live in society⁹.

Child marriage or underage marriage is a marriage performed by someone who has not reached the age specified by law, this child marriage is a form of violence against children and violates children's human rights¹⁰.

Child marriage will have a negative impact on children's education. Especially in the intellectual life of the nation. Children's rights are also recognized in the 1924 Geneva Declaration, which guarantees special protection and care for children, including their growth after birth, and that growth includes their physical and psychological growth. The existence of protection for children confirms that child marriage is a violation of children's rights in their development, especially continuing their education. There is protection and maintenance of the child's welfare by paying attention to the obligations of the child's parents, legal guardians, or other people who are legally responsible for the child, so that legislative and administrative steps need to be taken in accordance with nationally applicable laws and regulations. Even in Indonesia there is Law Number 35 of 2014 concerning Child Protection which is emphasized in Article 2 number 12, that Children's Rights are part of Human Rights which must be protected, so that children can grow and participate in society.

There are laws that protect children as human beings who are still in their infancy, their freedom cannot be taken away by imposing customary law or what is more striking is customary law, namely marrying off children at the age of their development which means breaking up. maintenance of children as independent human beings, so that they cannot participate in building the country.

Therefore, child/young age marriages that can be prevented are increasing, especially in a rare era that facilitates diverse entertainment.

Technological advances and community development do not stop local customs/customs which must be preserved so that young/child marriage continues.

REGULATION BASED ON NORM IN PUBLIC

The decision of the Constitutional Court of the Republic of Indonesia Number 22/PUU-XV/2017 is a legal policy that can be changed at any time by legislators in accordance with the demands of existing development needs¹¹.

The authority of the Constitutional Court of the Republic of Indonesia only emphasizes that the policy that differentiates the minimum age limit for marriage between men and women is a discriminatory policy, but setting the age limit for marriage remains the domain of lawmakers' legal policies¹². Determination of the minimum age limit for marriage is a legal policy of the legislators, but legislators must be careful so that legal uncertainty does not arise regarding the difference in determining the age limit for children between the child's age limit in the Child Protection Law and the marriage age limit in the Marriage Law. this goes too far to prevent child marriage¹³. Regarding the age limit for marriage, customary law does not regulate it, therefore it is permissible to marry children who are underage, although in this case the two of them can only live together as husband and wife after they reach puberty or have reached puberty¹⁴. Child marriage in this customary law is preceded by an application, with the intention of tying the marriage rope of the children which is then followed by an engagement; with the engagement, customary law comes into effect, including the approval of the conditions put forward to continue the marriage. If at a later date there is a dispute or dispute, the injured party has the right to claim back the property that has been given. This can be done peacefully by traditional leaders.

⁹ Nurul Qamar, 2013, *Hak Asasi Manusia Dalam Negara Hukum Demokrasi*, Jakarta, Sinar Grafika, h 20.

¹⁰ Winda Wijayanti, 2012, *Hukum Perkawinan dan Dinamikanya*, Jakarta, PT RjaGrafindo, h.149.

¹¹ Ibid.

¹² Ibid, h.138.

¹³ Ibid.

¹⁴ Taufiqurrohman Syahuri, 2013, *Legislasi Hukum Perkawinan Di Indonesia*, Jakarta, Kencana Prenada Media Group, h.65.

SUPPORTING ELEMENTS OF REGULATORY REFORM THROUGH PROLEGNAS

Based on de jure facts, Indonesia has established regulations that facilitate the protection of human rights, especially for 'children', because children are one of the supporting components for the survival of the Indonesian nation. But along with the times, it is necessary to have regulations that can adapt to developments that occur in society. Recognition of the norms adhered to by indigenous peoples cannot be separated from local culture, even though the word 'culture' is not explicitly used in Article 18B paragraph (2), the content of the material relates to customary law community units and other legal community units. the custom. can be said to be very closely related to the notion of culture, therefore it needs to be included in the constitutional culture and constitutional culture, providing protection for customary law which should not become an obstacle to achieving the goals of the state, namely: educating the nation. Regulatory reform can be carried out with the support of elements in society¹⁵

There are several elements that can support regulatory renewal through the National Legislation Program (Prolegnas), namely:

- a) National agreement between the Head of Customary Law and local officials, to determine which customary law must be preserved, and which customary law may be applied.
- b) The performance of the House of Representatives which has been established to pay attention to the needs of the Indonesian people
- c) Codification of customary law (various tribes) as a guide
- d) Local wisdom is the basis for solving problems peacefully.

SUGGESTION

Based on the results of the study by taking into account the applicable regulations, steps can be taken to minimize child marriage, namely:

- A. Facilitate regulation of the prohibition of marriage as the main agenda of the National Legislation Program
- B. Conduct outreach to indigenous peoples who are still practicing child marriage, with an understanding of the minimum age related to physical and psychological readiness from a health perspective
- C. Conduct interesting and easy-to-understand counseling through social media with display material that follows the latest trends.
- D. Involve elements of the community to become spokespersons on the issue of young marriage in an active and massive manner.

CONCLUSION

Paying close attention to studies on child protection and child rights is an action that needs to be supported massively, so as to soften the 'friction' that occurs between customary law and applicable national law.

Children's rights include child protection, proper education with the interests and talents of children, and has been determined by the rules refer to and follow our constitution which guarantees the recognition of tribal cultural customs. Because our constitution also respects culture and customs, Jimly published the book because it is very closely related to culture, namely: UUD Culture and UUD Culture is very helpful in understanding culture to be harmonized with applicable regulations, especially in children's traditions. wedding. young, and immature both physically and psychologically. This is a form of deprivation of children's freedom in growth and development, which should be the obligation of parents to protect the rights of these children. The existence of the Marriage Law, Human Rights Law, Child Protection Act, and also the 1945 Constitution of the Republic of Indonesia, makes it mandatory for children's rights to be protected by parents, including not regulating child marriage even at a young age. even though they are already puberty.

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