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## Child Marriage in Indonesia: Challenges and Prevention Efforts in the **Context of Children's Rights**

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#### **Abstract**

Child marriage poses a serious problem in many countries, including Indonesia, with millions of girls under the age of 18 getting married every year. This research aims to explore the factors related to child marriage in Indonesia and analyze the prevention efforts undertaken by the government. The research method used is normative legal research with a normative juridical approach, referring to the analysis of legislation and relevant documents. Data were collected from secondary sources and analyzed qualitatively using the IRAC method (Issue, Rule, Analysis/Application, Conclusion). The results show that child marriage is influenced by complex factors such as economics, education, culture, religion, and law. Although there has been a decrease in the number of child marriages in Indonesia, challenges in prevention still exist, especially regarding marriage dispensations that the court can grant. Preventing child marriage requires a comprehensive approach through increasing awareness, education, cultural change, and strengthening consistent legal regulations.

**Keywords**: Human Rights, Child Marriage, Children's Rights, Prevention, SDGs.

#### Introduction

The Convention on the Rights of the Child (CRC) was approved by the United Nations General Assembly through Resolution 44/25 on November 20, 1989, and was scheduled to take effect on September 2, 1990(Fayyazuddin et al., 1998). The CRC offers legal assurances and has mandatory legal authority for the involved parties(O'Halloran, 2024). As a signatory to the agreement, Indonesia is required to enforce its regulations. Indonesia must implement suitable legislative and administrative measures to ensure the safety and care of children.

Indonesia is involved in achieving the global development agenda focused on international human prosperity, including dignified individuals and equality in a healthy environment. The agenda is referred to as the Sustainable Development Goals (SDGs)(Rassanjani, 2018). The United Nations General Assembly endorsed

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the SDGs in resolution A/RES/70/1 on September 25, 2015. Indonesia is strongly dedicated to the Sustainable Development Goals (SDGs). This is supported by the enactment of Presidential Regulation No. 59 of 2017 for the Execution of Achieving Sustainable Development Goals on July 4, 2017. This Presidential Regulation aims to implement the commitments made in the "Transforming our World: the 2030 Agenda for Sustainable Development" to eradicate poverty, enhance public health, advance healthcare, and address climate change (Urata et al., 2023).

SDGs are a worldwide agenda established as a global strategy endorsed by international leaders, including Indonesia. The SDGs aim to promote sustainable development rooted in human rights for all, achieve gender equality, and empower women and girls, as outlined in the third paragraph of the Preamble of Resolution A/RES/70/1 titled "Transforming our world: the 2030 Agenda for Sustainable Development" (Rudolf, 2020). The three components are interconnected and inseparable to maintain equilibrium among the three aspects of sustainable development: social, economic, and environmental. The SDGs consist of 17 goals and 169 targets intended to be accomplished by 2030.

Goal 5 pertains to gender equality. Goal 5 aims to attain gender equality and empower women and girls. Target 5.3 aims to eradicate harmful practices like child, early, and forced marriage, as well as female genital mutilation (Dodds et al., 2016).

Understanding the definition of a child is essential when discussing child marriage. According to Article 1 of the CRC, a child is defined as any individual under eighteen unless they reach a majority earlier under the relevant law. Article 1(5) of the Human Rights Law describes a child as any individual under the age of 18 who is unmarried, including a child in the womb, if it is deemed to be in their best interests (Horii, 2020). According to Article 1(1) of Law No. 35 of 2014, a kid is defined as anyone who is under the age of 18, including an unborn child. As a signatory to the CRC, Indonesia shall recognise that every child has fundamental rights to life and guarantee the highest level of protection and growth for children as outlined in Article 6 of the CRC (Prameswari & Kristianti, 2018).

Marriage by individuals under 18 years old may be seen as a breach of children's rights, according to the articles mentioned. Indonesia, as a signatory of the CRC, is obligated to address child marriage to uphold children's rights proactively. Indonesia is committed to attaining SDG Target 5.3 by eradicating harmful practices, such as child marriage, by 2030 (Susanti, 2021).

The Indonesian government is taking steps to discourage child marriage by adjusting the legal marriage age. The initial marriage age for women was 16 years,

and for men, it was 19 years, according to Article 7 paragraph (1) of Law No. 1 of 1974 concerning marriage. This was later changed to set the marriage age at 19 years for both women and men, as stated in Article 7 paragraph (1) of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 (referred to as the Marriage Law)(Hasoloan & Rozzaqi, 2022). The marriage age restriction has been increased to 19 years. The same year, the Supreme Court issued Regulation No. 5 of 2019 regarding Guidelines for Adjudicating Marriage Dispensation Applications. While the state has increased the legal marriage age, it also allows for the possibility of applying for marriage dispensation under Article 7, paragraph 2 of the Marriage Law. Research is performed to develop solutions to avoid child marriage, as it is a violation of children's rights.

## Methodology

This research involves normative legal research identifying principles and doctrines within positive law or doctrinal studies. The methodology employed is normative juridical, which entails analysing laws about the specific legal matter under investigation, specifically child marriage.

Information about child marriage is gathered from secondary sources and then analysed using qualitative methods. The research utilised the IRAC technique involving the Issue, Rule, Analysis/Application, and Conclusion phases. This technique entails recognising the topic of child marriage and analysing the laws that govern it. Next, the study will focus on resolving the researched difficulties and drawing conclusions on how Indonesia prevents child marriage to uphold children's rights.

# **Ensuring Child Rights and Legal Protection: Insights From Indonesian Marriage Law and Human Rights Legislation**

Every person in Indonesia is granted the freedom to marry by the Constitution of Indonesia. Article 28B paragraph (1) of the Constitution of the Republic of Indonesia from 1945 stipulates that "Every person has the right to form a family and continue their lineage through a lawful marriage" (Hamidin & Alfitri, 2021). This provision is the basis for the regulation of this matter. The Human Rights Law further specifies in Article 10 that "Every person has the right to form a family and continue their lineage through a lawful marriage". This right is guaranteed to every individual. For a marriage to be considered lawful, it must be based on the prospective husband or wife's free will and must be carried out in compliance with the terms of the laws and regulations. Therefore, a marriage that is lawful is one that is carried out in accordance with the provisions of the rules and regulations, and the term "free will" refers to a will that originates from pure intention and does not involve any form of coercion, deceit, or pressure from any

third party towards the prospective husband and wife (Explanation of Article 10 of the Human Rights Law). Specifically, this is by Article 16 of the Universal Declaration of Human Rights (UDHR) and Article 23 of the International Covenant on Civil and Political Rights (ICCPR).

The UDHR stipulates in paragraph one of Article 16 that all individuals who have reached the age of majority have the right to marry and start a family, regardless of their race, country, or religious beliefs. As far as marriage, marriage itself, and the dissolution of the marriage are concerned, they are entitled to equal rights. According to the ICCPR, Article 23, paragraph 2 stipulates that the right of men and women of marriageable age to marry and establish a family must be acknowledged. Additionally, it is important to mention that Indonesia has ratified the ICCPR using Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights. This law was signed on October 28, 2005, and published in State Gazette Number 119 of 2005. As a result, the ICCPR has been incorporated into the national legal system (Article 7 paragraph (2) of the Human Rights Law)(Allagan et al., 2018).

According to the aforementioned legal regulations, everyone has the right to get married. According to Article 1 of the Marriage Law, marriage is "the spiritual and physical union between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on belief in the One Supreme God" (Pomahiya et al., 2022; Pujiono et al., 2021). This definition establishes a family or household that may last forever. Additionally, according to the provisions of Article 7, paragraph (1) of the Marriage Law, a person is permitted to enter into a marriage relationship after both the man and the woman are nineteen (nineteen) years old. Therefore, a marriage between a man and a woman who is less than eighteen years old at the time of the marriage might be termed a child marriage. The term "child marriage" can also refer to marriages that take place before the age of eighteen (eighteen) years old, whether they are formal or informal. Although this is true for both boys and girls, the proportion of girls who are affected is far higher.

There are two ways to understand human rights: natural and universal rights. Because of the fundamental characteristics that define humans as human beings, human rights are inherently a part of the human condition. Human rights can also be understood as intrinsically associated with humans. This is because the very essence of humans is to be human. No authority or power can revoke or remove these human rights since they are organically tied to humans and cannot be taken away by any authority or force. Respecting, protecting, and ensuring that human rights are met is a responsibility that falls on the state. Considering that this

commitment is a component of the state's obligation to defend humanity (also known as the obligation erga omnes), the state cannot deny this obligation.

Article 1 of the Universal Declaration of Human Rights clarifies that "all human beings are born free and equal in dignity and rights" (Schmidt, 2007). Freedom, equality, and dignity are the three pillars of human rights, and this article contains all three. For a person to be considered free, their rights must be kept freely, they must not be altered, they must be experienced in the same manner, and they must not be removed, relinquished, or transferred by anyone. Being born free and equal is what we mean when discussing equality. Article 52, paragraph (2) of the Human Rights Law states that "the rights of children are human rights, and for their benefit, children's rights are recognised and protected by law, even before birth". In the meantime, dignity refers to the respect accorded to every human being, regardless of ethnicity, race, gender, beliefs, culture, social status, wealth, or birth. This is also stated in Article 6 of the Convention on the Rights of the Child (CRC), which declares that every child has intrinsic rights and that the state is obligated to safeguard the child's resilience and development to the greatest extent feasible.

It is stated in Article 1 of the Convention on the Rights of the Child that "a child is every person under the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" (Lansdown & Vaghri, 2022). All children are considered to be children. In the meantime, the Human Rights Law states that "a child is every human being under the age of eighteen years and unmarried, including children still in the womb if it is for their benefit". This definition applies to all individuals who are under the age of eighteen without having been married. "A child is a person who is under the age of eighteen years old, including children who are still in the womb", states Article 1 point (1) of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. And this definition applies to children who are still in the womb (Fernando, 2020).

According to Article 24 of the ICCPR, every child has the right to be safeguarded by society and the state without being subjected to discrimination based on their race, skin colour, gender, language, national or social origin, wealth, or birth status. Regarding the right to protection, Article 3 of the Convention on the Rights of the Child stipulates that all State Parties to the Convention on the Rights of the Child, which includes Indonesia, are obligated to provide the protection and care of children, taking into consideration what is in the child's best interests, in social welfare programmes, courts, administrative affairs, and legislative activities. When making decisions involving children, the major issue must be considered is the child's best interests rather than any other factor.

By the provisions of Article 2 of Law No. 23 of 2002 concerning Child Protection, the meaning of the phrase "best interests of the child" is as follows: "In all actions concerning children undertaken by the government, society, legislative bodies, and judicial bodies, the best interests of the child must be the primary consideration" (Rasyid, 2018). In the meantime, the Supreme Court Regulation No. 5 of 2019 states that "the best interests of the child are all actions that must be considered to ensure the protection, care, welfare, survival, and development of the child". This is stated in Article 1 point (6) of the regulation.

The second paragraph of Article 7 of the Marriage Law specifically stated that "In the event of deviation from the age provisions as referred to in paragraph (1), the parents of the prospective husband and the parents of the prospective wife may request dispensation from the Court on urgent grounds supported by sufficient evidence" (Jannah & Kadir, 2021). The Supreme Court Regulation No. 5 of 2019 defines marriage dispensation as "the granting of permission to marry by the court to prospective husbands/wives who are under 19 years old to enter into marriage". This definition can be found in Article 1 point (5) of the regulation. Furthermore, Article 2 of the Regulation stipulates that judges are required to base their decisions on the principles of the best interests of the child, the right to life and development of the child, respect for the child's opinions, respect for human dignity, non-discrimination, gender equality, equality before the law, justice, utility, and legal certainty when they are deciding whether or not to agree to a dispensation request.

Because this Regulation is in place, judges ought to consider the principle of what is in the child's best interests. As an illustration, a marriage dispensation should be granted if the prospective husband or wife is at least eighteen years old, indicating that they are no longer deemed minors. Because children are human beings, it is a fundamental human right to respect, honour, and safeguard children's rights. In light of this, the vulnerability of children's lives needs to be the major focus of attention while attempting to place children as the most important component of human life. As a result of the significant responsibilities that the government, society, and families play in fostering the enhancement of the growth and development of Indonesian children, they must have the ability to prohibit the practice of child marriage.

## Protecting Children's Rights: Combating Child Marriage in Indonesia

Article 28B, paragraph (1) of the Constitution of the Republic of Indonesia from 1945 states that the state ensures the rights of its citizens to build legitimate families and maintain their lineage through authorised marriages. This right is made available to citizens by the state. When a marriage is carried out in

conformity with the provisions of the laws and regulations associated with marriage (Explanation of Article 10 of the Human Rights Law), it is considered a lawful marriage. Marriages that take place between a man and a woman who is younger than eighteen years old are sometimes referred to as child marriages (Chaerani & Sarono, 2022).

In Indonesia, the development strategy for women's empowerment and child protection includes child marriage as one of the key concerns to be addressed from a developmental perspective. Eliminating marriages between minors is one of the SDGs. The government of Indonesia is dedicated to reaching the SDGs by the year 2030. Because child marriage will have a detrimental influence on children's growth and development, it will lead to the violation of children's rights such as civil rights, rights to education, health rights, and so on. Therefore, the state (in this case, the government) must undertake steps to protect children. Considering that children's rights are human rights, these rights must be acknowledged and safeguarded for the children's sake.

The term "child protection" refers to all activities carried out to guarantee and safeguard children and their rights. This is done to allow children to live, grow, and develop in a manner that is by their dignity as human beings while also being protected from any kind of discrimination and instances of violence. Children can receive legal and socioeconomic protection to empower them economically (Fitri et al., 2015).

Legal safeguards can be implemented at any level, from national to village. To ensure that children's rights are respected, it is necessary to enact legislative and regulatory frameworks, ranging from federal legislation to regional rules. Changes have been made to Law No. 1 of 1974 governing Marriage in Indonesia, specifically those changes that pertain to the age of marriage. The age of marriage has been equalised, with both women and men being 19 years old. This is by the provisions of Article 7 paragraph (1) of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, which states that "Marriage is only allowed if the man and woman have reached the age of 19 (nineteen) years". The previous age of marriage for women was 16 years, and the age of marriage for men was 19 years.

Additionally, legal protection for children must be implemented at the level of the village or sub-district. Several communities have Village Regulations or Circulars (SE) in place to prohibit child marriage. These regulations are in place to prevent child marriage. For example, Village Regulation Pematung, Sakra Sub-district, East Lombok Regency, West Nusa Tenggara Number 07 of 2021 concerning Prevention of Child Marriage; Village Regulation Ngasinan Kragan Sub-district, Rembang Regency, Central Java Number 06 of 2018 concerning Prevention of

Child Marriage; Circular Number: 474.2/84 concerning Prevention of Child Marriage in Warungkiara Village, Warungkiara Sub-district, Sukabumi Regency, West Java; and Circular No.09/SE/LBRS/I/2020 concerning Maturity of Marriage Age in Lembar Selatan Village, West Lombok Regency, West Nusa Tenggara (Hadiati & Ramadhan, 2022).

Increasing public awareness of the risks associated with child marriage and enhancing children's ability to reject marriage firmly are two additional ways that efforts can be made to avoid child marriage. To combat individuals who coerce children into marriage, it is essential to increase community-based monitoring and law enforcement. Additionally, to prevent child marriage, it is necessary to strengthen parental obligations (Article 3 (c) of Supreme Court Regulation No. 5 of 2019 and Article 26 paragraph (1)(c) of Law No. 35 of 2014). As stated in Article 18, paragraph (1) of the Convention on the Rights of the Child, parents have the primary duty to develop their children by putting their best interests first. This is also within the framework of meeting international commitments (Detrick, 1999).

By the provisions of Article 27, paragraph (1) of the Convention on the Rights of the Child, every child has the right to a standard of living sufficient for their physical, mental, spiritual, moral, and social development. Because of this, it is extremely important to apply the principle of respecting the child's viewpoints while considering their age and degree of maturity. The application of the best interests of the child is also very important. It is necessary to use these two ideas in a manner that is complementary to one another. The perspectives of the child must be respected, in addition to taking into account what is in the child's best interests. Article 12 of the Convention on the Rights of the Child states that children have the right to express their opinions freely on any issues that concern them and that they should be heard in court proceedings and administrative affairs that affect them. In this context, if a request for marriage dispensation is made about child marriage, the judge is obligated to give priority to the principles of children's rights, particularly the child's best interests, and to respect the kid's point of view.

#### Conclusion

Child marriage is a complex phenomenon influenced by elements such as poverty, education, culture, religion, and law. Girls are especially susceptible to its adverse effects. The main factors contributing to this occurrence include lack of education, poverty, and societal standards that encourage early marriage. Constraints in educational access, particularly in rural regions, and societal attitudes that regard girls primarily as household labourers also have a role in the

prevalence of child marriage. Women with higher levels of education are less likely to marry early, emphasising the role of education in preventing early marriage. Cultural elements and traditions influence the acceptance of child marriage, which may be viewed as a matter of honour or governed by particular conventions. Attitudes that perceive women as liabilities or commodities to be exchanged between households also impact this tradition.

Religion can prevent child marriage, yet a limited comprehension of religious principles might sometimes support the practice. Discrepancies in law enforcement, uncertainty in marriage age limits, and marriage exemptions exacerbate the situation. Collaborative and organised efforts from governments, religious organisations, civic society, and local communities are required to tackle this issue. Actions including raising awareness, providing education, enforcing strict legal requirements, and altering detrimental cultural and traditional practices are crucial.

This study is limited by its focus on the Indonesian setting and potential data constraints that could impact the generalizability of the results. Additional research could broaden the geographical range and further investigate particular factors that influence child marriage.

Researchers could enhance this research by undertaking cross-country studies to compare child marriage practices across different cultural contexts. Researchers might assess the efficacy of varying child marriage prevention programs and pinpoint elements contributing to their implementation.

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