




The Under-age Marriage during the Pandemic: The Best Interest of the Child Principle

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Abstract

This article focuses on juvenile marriages that took place during the Covid-19 pandemic. In addition, the causes of child marriage, its negative consequences, and the preservation of children in the family and marriage are seen as an application of the principle of placing the child's best interests first. This research is descriptive-analytic in nature, describing the facts about child marriage that occurred in the pandemic era and analyzing why this phenomenon occurs. Several factors, including education, a lack of understanding of reproductive health in adolescents that leads to risky sexual behavior among children, economic factors (poverty), cultural factors (traditions/customs), and matchmaking, were found to influence child marriage in this study.

Keywords: Child Marriage, Pandemic, the Best Interest of Child

Abstrak

Artikel ini membahas tentang pernikahan anak secara khusus yang terjadi selama era pandemi covid-19. Kemudian faktor apa saja yang melatar belakangi terjadinya perkawinan anak, dampak-dampak negatif yang timbul serta perlindungan anak dalam keluarga dan pernikahan sebagai implementasi dari asas mengedepankan kepentingan terbaik bagi anak. Bentuk dari penelitian ini adalah deskriptif-analitik yang mendeskripsikan fakta-fakta tentang pernikahan anak yang terjadi selama era pandemi yang kemudian dianalisis mengapa fenomena ini bisa terjadi. Hasil penelitian ini menemukan bahwa ada beberapa faktor yang berpengaruh terhadap perkawinan anak, di antaranya, adalah faktor pendidikan, kurangnya pemahaman kesehatan reproduksi pada remaja sehingga menyebabkan perilaku seks berisiko di kalangan anak-anak, faktor ekonomi (kemiskinan), faktor budaya (tradisi/adat), dan perjodohan.

Katakunci: *Pernikahan anak, Pandemi, Kepentingan terbaik bagi anak*

Introduction

Marriage is a relationship between a man and a woman in which internal and external factors must be considered. The readiness of each prospective spouse, both physically and mentally, to assume household responsibilities in the future is one of the most emphasized internal aspects of marriage practice.¹ In Indonesia therefore, the law imposes a minimum age requirement for prospective brides and grooms in order to demonstrate this maturity.²

In the past, menstruation for women and the so-called 'wet dream' for men were indicators of maturity. Currently, we understand that these two conditions only signify biological maturity for reproduction. However, maturity is not merely a function of age, it is also a matter of mental and behavioral maturity. Age is required as a boundary and a concrete benchmark that can be used as a maturity standard. This is due to the fact that marriage involves more than merely erotic or biological desires. In addition, marriage conveys the vision of *sakinah*, *mawaddah*, and *Rahman*, which entails a substantial social responsibility.³

Given the weight of the accountability and responsibilities inherent in a marriage, maturity is one of the factors that has a substantial impact on the future longevity of the household. Such is the importance of maturity in marriage, Ibnu Syubrumah, Abu Bakar AL-Asham, and Uthman Al-Batti (Muhammad, 2007:94), who are classical Islamic law scholars, even issued a fatwa on the validity of underage marriages.⁴ These scholars based their views on the Quranic verse suggesting that the time of a person's marriage is contingent upon his or her age of maturity (*rushd*). The An-Nisa/4:6:

﴿ وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ ۚ

"Test the orphans until they are of marriageable age. If you believe they are intelligent (good at sustaining wealth), give them their wealth."

Existing research indicates that marriages conducted at an early or young age are more likely to end in divorce. This is logical because the young couple's mental preparedness is insufficient to navigate household responsibilities in the present. This opinion is also adopted by Marriage Law No. 1 of 1974, which states that the minimum age limit for marriage is 21 years. Marriage under the age of 21 requires parental permission and recommendation, which is 19 years old for men and 16 for women as the minimum age permissible for marriage.⁵

¹ Ahmad Rajafi, *Nalar Hukum Keluarga Islam Di Indonesia* (Yogyakarta; Istana Publishing, 2015) p. 122

² see pasal 6 ayat (2), Pasal 7 ayat (1) dan (2) Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan, dan Pasal 15 ayat (1) dan (2) Kompilasi Hukum Islam

³ Tim Penyusun, *Fondasi Keluarga Sakinah Bacaan Mandiri Bagi Calon Pengantin* (Jakarta, Subdit Bina Keluarga Sakinah Ditjen Bimnas Islam Kemenag RI, Tahun 2017), p. 32

⁴ *Ibid*, p. 33

⁵ *Ibid*, p. 33

Children are a trust and a gift from the Almighty God, who must always be cared for because they have inherent honour, dignity, and rights as human beings that must be upheld. This is because the future of a nation ultimately rests in the hands of these youngsters.

This article is based on library research, which uses books as a source. It is descriptive-analytic in nature, describing the facts of early marriage currently occurring (Pandemic Era) among families in Indonesia and then analysing the phenomenon of early marriage in the pandemic era from the perspective of the best interests of the child.⁶ This *library research* entails the use of written sources, such as books and other varied literature.⁷

Article 3, paragraph 2 of the Convention on the Rights of the Child adopts the principle of the best interests of the child as the primary consideration in all actions for children by social welfare institutions in the public and private sectors, courts, administrative authorities, and legislative bodies.

Article 3 Paragraph 1 of the KHA requires the state and government, as well as public and private bodies, to ensure the impact of all their actions on children, which ensures that the principle of the best interests of the child is the primary consideration, giving children a higher priority, and creating a society without children).⁸

Protection on Children

Children are human resources for the development of a nation, the next generation, and determinants of the future. In addition to playing an important role for the nation and the state, children are also the nation's next generation who must receive attention and love in their growth and development so that they can mature into a generation that is qualified, dependable, and patriotic.⁹

John Gray explains in "Children Are from Heaven" that children are born pure and sinless. However, we are responsible for supporting them wisely so that their potential and talents can be realized. Therefore, children's development depends on our efforts (meaning adults) to correct or improve them."¹⁰

Children who are still dependent are distinct from adults, who in general are no longer considered a vulnerable group on a theoretical and practical level. Moreover, children frequently experience various forms of economic and sexual exploitation, abuse (child abuse), and violations of other rights. This occurs not

⁶ Fal Arovah Indiani, *Perlindungan Hak Anak*. Dalam Amany Lubis dkk, *Ketahanan Keluarga Dalam Perspektif Islam* (Jakarta: Pustaka Cendekiawan, 2018) p. 43

⁷ Sutrisno, *Metodologi Penelitian*, (Yogyakarta:LkiS, 1990). P 9

⁸ PSW UIN Sunan Kalijaga, *Hak-Hak dalam Keluarga* (Yogyakarta, Pusat Studi Wanita (PSW) Universitas Islam Negeri Sunan Kalijaga, 2009) p. 193

⁹ Maulana Hasan Wadong, *Pengantar Advokasi Dan Hukum Perlindungan Anak*, (Jakarta. Gramedia Widiasarana Indonesia, 2000) p. 81

¹⁰ John Gray, *Children are from Heaven*, (Jakarta, Gramedia Pustaka Utama, 2001), p 1

only in the public sector, such as on the streets, in prisons, and in schools, but also in their own homes or living rooms.¹¹

The plight of children prompted the creation of children's rights instruments. In 1989, the United Nations Convention on the Rights of the Child (United Nations Convention on the Rights of the Child) was ratified. Indonesia, as a member of the United Nations, became legally bound by ratifying the Convention on the Rights of the Child in 1990.¹² Compared to other countries, Indonesia is one of the most progressive states that support the emergence of the Rights of the Children. This was realized through the presidential decree number 36, 1990 tentang on the ratification of the Rights of the Child.¹³

In the Convention on the Rights of the Child, there are four (four) basic principles that are then thoroughly articulated in Article 2 of Law No. 23 of 2002. Article 2 of Law No. 23 of 2002 incorporates the following general principles of the Child Rights Convention as basic principles:

- a. The non-discrimination principle
- b. The welfare of the child
- c. The right to existence, to survive, and to develop
- d. Respect for the opinions of minors

Child protection aims to ensure the fulfillment of rights to live, grow, participate, and develop optimally in accordance with human dignity, as well as protection from attempts to sexually and economically exploit children. Therefore, parents, society, and the state must participate in protecting these rights. The attempts to protect the rights of the children should be of paramount importance and the first priority in the life circle approach principle, and should be exercised continuously from the early stages of children's life circle and cross-sectoral settings.¹⁴

According to Hadjon, there are two components of legal protection for the populace:¹⁵

- a. Preventive legal protection, i.e., legal protection in the form of allowing citizens to voice objections or opinions prior to a government decision taking its definitive form.

¹¹ International Committee of the Red Cross, *Children and War*, ICRC special Brochure, Geneva, 1994 hal. 5. Lihat juga dan bandingkan dengan UNICEF, *State of the World's Children 1996*, Oxford University Press, hal. 13 dalam Melanie Gow, Kathy Vandergrift, Randini Wanduragala, *The Right to Peace – Children and Armed Conflict*, World Vision, Switzerland, p. 5

¹² Menurut catatan, Indonesia meratifikasi KHA namun melakukan reservasi melalui pernyataan (declaration) atas 7 (tujuh) pasal KHA, yakni pasal 1, 1, 16, 17, 21, 22, dan 29

¹³ Pada saat KHA diratifikasi, di Indonesia masih berlaku Surat Presiden RI Nomor 2826/HK/1960 tanggal 22 Agustus 1960 tentang pembuatan Perjanjian-Perjanjian dengan Negara Lain, yang selama ini deipergunakan sebagai pedoman dalam membuat dan mengesahkan perjanjian International.

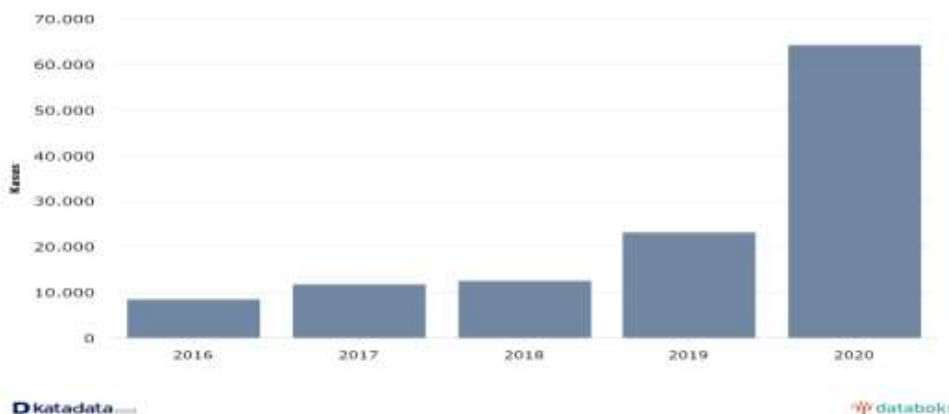
¹⁴ Muhammad Joni, *Aspek Hukum Perlindungan Anak Perspektif Konvensi Hak Anak* (Bandung: Citra Aditya Bakti, 1999) p. 106

¹⁵ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya: Bina Ilmu, 1987) p. 117

- b. Repressive legal protection, i.e., legal protection that is more concerned with settling disputes.

Child Marriage in the Era of the Pandemic and Its Triggering Factors

Data from the Religious Courts Agency recorded 64.2 thousand child marriage dispensations in 2020. This figure has increased by around three times or 177.7% from 2019 when there were 23.1 thousand marriage dispensations. Komnas Perempuan or National Commission of Women Rights noted that there were several factors that caused the increase in marriage dispensation in 2020. First, the Covid-19 corona virus pandemic meant that children could not attend face-to-face school and families experienced economic difficulties. Second, there is the possibility that children will be exposed to gadgets so that they respond more quickly to various information that they do not yet understand, resulting in unwanted pregnancies. Another factor is the uneven distribution of programs related to comprehensive understanding of sexual rights and reproductive health. Finally, there is misuse of incomplete information in some religions about sexuality. (Read: The majority of Indonesian youth get married at the age of 19-21 years) Marriage dispensation means relief given to prospective brides and grooms who are not yet 19 years old from getting married. This is regulated in Article 7 of Law (UU) Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.¹⁶



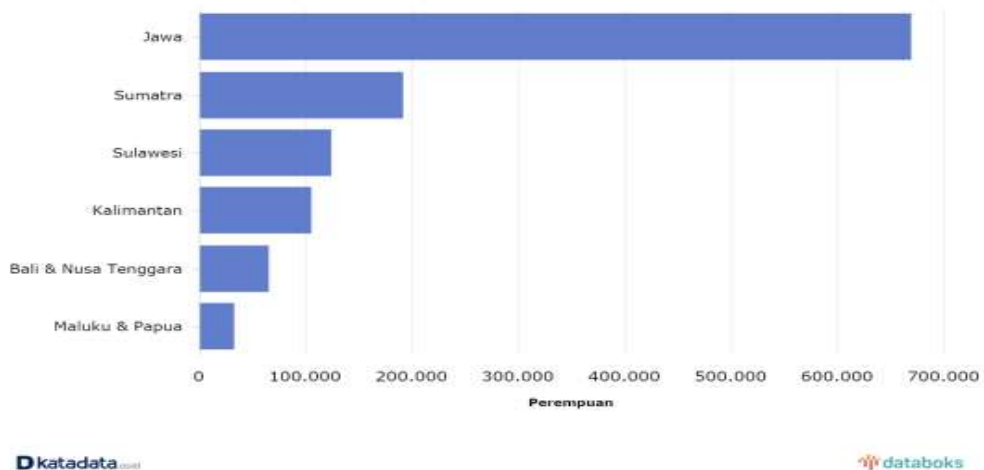
Sumber : Komnas Perempuan, 5 Maret 2021

Figure 1. Religious Courts' minor marriage dispensation statistics from 2016 to 2020.

The Covid-19 pandemic brought new problems with the rising number of early marriages in Indonesia. In January-June 2020, 34,000 requests for early marriage dispensation (under 19 years) were submitted, 97% of which were granted, according to the BBC. com. In 2019, there were only 23,700 applications. Child marriage is a problem in itself in Indonesia. Based on the 2018 data, child

¹⁶ Sumber: Komnas Perempuan , 5 Oktober 2021 melalui www.katadata.co.id

marriage was experienced throughout Indonesia. As many as 1.184.100 women at the age 20-24 were married by the age of 18. The huge number of such cases are found in Central Java, approximately 668.900 cases (Read: The Covid-19 Pandemic was predicted to increase the birth rate by four million in Indonesia), and factors driving to this phenomenon are multiple: child marriage, economic issues, religious and cultural norms, and lack of knowledge in regard with child marriage.¹⁷



Sumber : United Nations Childrens Fund (UNICEF), Juli 2019

Figure 2: Statistics depicting the rise in the number of young marriages in Indonesian regions.

Educational factors, lack of understanding of reproductive health in adolescents causing risky sexual behavior among children, economic factors (poverty), cultural factors (tradition/customs), and matchmaking were found to influence child marriage in the study's findings. The minimum age for marriage in Indonesia is 19 years, as stated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974.

In addition, the study from home policy was found to be one of the driving factors for child marriage. For example, the couple S (17) and ES (15) from Central Lombok decided to marry in October 2020 because they were tired of studying online during the Covid-19 pandemic, according to Inews.id. A similar case was reported in East Lombok Regency.

The next cause is pre-wed pregnancy. The deteriorating economy during the Covid-19 pandemic also contributed to early marriage, according to the United Nations Population Fund (UNFPA) and the United Nations Children's Fund

¹⁷ Source: United Nation Childrens Fund (UNICEF), Juli 2019 at www.katadata.co.id, diakses pada 6 Oktober 2021

(UNICEF) in a report entitled *Adapting to Covid-19: Pivoting the UN System*, which was published in May 2010, found that early marriage was a result of a number of factors.

The health, social, political, and economic effects of the COVID-19 pandemic have disproportionately impacted girls and women by exacerbating existing systemic gender disparities at all levels. This may have repercussions for the prevalence of child marriage.¹⁸ COVID-19 also has immediate and long-term implications for the implementation of the UNFPA-UNICEF Global Program on Ending Child Marriage (the so-called Global Programme). This document provides a summary of the impact of the pandemic on the program's work, the measures taken to overcome obstacles, and the opportunities available to end child marriage under current circumstances.

Eight months into the COVID-19 pandemic, it is evident that many predictions about the pandemic's impact on adolescent females and young women will likely be realized. According to global estimates by UNFPA, the COVID-19 pandemic could lead to 13 million additional child marriages in the years following the outbreak, with at least 4 million more females marrying in the next two years. As families' means of subsistence dwindle and economic crises occur, it is deleterious to children to force them to find alternative sources of income.¹⁹ As a consequence of the global pandemic, new UNICEF research indicates that the number of children living in poor households could increase by 15 percent by the end of 2020.²⁰

During the Covid-19 pandemic, the economic crisis also struck Indonesia. This nation experienced a recession during the third quarter of 2020. In March 2020, the number of poor individuals increased to 26,4 million, or 9.8 percent of the total population. The Central Statistics Agency (BPS) noted that 3.06% of Indonesian adolescents were in their first marriage. In 2020, less than 15-year-olds belonged to the lowest 40% of household expenditure groups. In contrast, only 1.85% of the middle 40% expenditure group and 0.91% of the highest 20% economic group participated.

Negative Effects of Child Marriage

The number of requests for dispensation from marriage increased in Indonesia during the Covid-19 pandemic. The Directorate General of the Religious

¹⁸ Briggs, Hannah E. and Thoai D Ngo, *'The Health, Economic, And Social Effect Of Covid-19 And Its Response On Gender And Sex: A Literature Review'*, Population Council, 3 June 2020, diakses pada 28 November 2021

¹⁹ United Nations Population Fund, *'New UNFPA Projections Predict Calamitous Impact On Women's Health As COVID-19 Pandemic Continues'*, Press release, UNFPA, 28 April 2020, diakses pada 28 November 2021.

²⁰ United Nations Children's Fund, *'COVID-19: Number of children living in household poverty to soar by up to 86 million by end of year'*, Press release, UNICEF, 27 Mei 2020, diakses pada 28 November 2021.

Courts recorded 34 thousand requests, of which 97% were granted and 60% were children under 18 years old. The negative effects of child marriage outweigh its justifications, such as protecting girls from premarital sex, sexual abuse, or poverty. However, the negative effects of child marriage outweigh its justifications, which include protecting girls from premarital sex, sexual abuse, and poverty.

Early pregnancy and early delivery when girls are not prepared to become mothers at such a young age have dire consequences. Girls under 18 are more likely to die from complications of pregnancy and childbirth than women in their 20s. Their children are also more likely to be stillborn or die within the first month of life.

Child marriage has a negative impact on girls' mental health, forces them to have children at a young age, ends their education abruptly, reduces their chances of entering the paid workforce and achieving economic independence, and exposes them to gender-based violence and sexually transmitted infections.²¹

With good intentions or under the pressure of discriminatory sociocultural norms against women and girls, many families and communities coerce children into child marriage. However, the negative effects of child marriage outweigh its justifications, such as protecting females from premarital sex and sexual abuse and allowing them to escape poverty.

A girl's health and, frequently, her life can be jeopardized by marriage at a young age. Early pregnancy and early delivery among females who are unprepared to become mothers at such a young age have devastating consequences. Girls under the age of 18 are more likely to perish from pregnancy and childbirth-related complications than women in their twenties. In addition, their offspring are more likely to be stillborn or to pass away within the first month of life.²²

Child marriage forces females to raise children while they are still children, abruptly terminates their education, harms their chances of entering the paid workforce and achieving economic independence, and exposes them to gender-based violence and sexually transmitted infections (STI). Child marriage has a negative effect on the mental health of females. All of these negative effects extend beyond the girl to perpetuate cycles of poverty and detrimental behavior within families, communities, and ultimately the nation.

²¹ Anjali Sen, United Nations Population Fund (UNFPA) Indonesia. Menanggapi viralnya postingan media sosial oleh Aisha Weddings yang mendorong wanita Muslim untuk menikah antara usia 12-21

²² Siaran pers UNFPA Indonesia dengan tema *Kita harus melindungi anak perempuan dari dampak yang sangat berbahaya dari pernikahan anak* pada tanggal 11 Februari 2021 melalui www.indonesia.unfpa.org diakses pada 29 November 2021

Conclusion

The Covid-19 pandemic has resulted in the emergence or intensification of social phenomena that are already occurring in society and have become uncontrollable, such as social factors, one of whose agents is the influence of the child's living environment. Then, one of the driving factors are health factors, specifically unmarried pregnancy. During the pandemic, family parenting practices also contribute to the increase in child marriages in Indonesia. One of the drivers of economic factors is that the parents, family, or child want to escape the family's economic burden, whereas this mindset creates new economic problems. Local cultural factors, social identities such as stigma, and community beliefs exert mental pressure on unmarried women as adults. The final one is the law. Even though there are regulations prohibiting or burdening a child from marrying, such as Law Number 16 of 2019 article 7 and Supreme Court Regulation (PERMA) Number 5 of 2019 concerning guidelines for adjudicating Marriage Dispensation Applications issued on November 21, 2019, implementation is still lacking. consistent in its implementation so that it then becomes an opportunity for someone to get married at an early age.

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