

Rethinking Early Marriages in Indonesia: Advocating for Reform to Tackle Domestic Conflict, Violence, and Rights Infringements

Ria Anggraeni Utami 

Faculty of Law, Universitas Bengkulu, Bengkulu, Indonesia

Randy Pradityo 

Faculty of Law, Universitas Bengkulu, Bengkulu, Indonesia

Lidia Br. Karo

Faculty of Law, Universitas Bengkulu, Bengkulu, Indonesia

Risna Karinda

İstanbul Üniversitesi Dil Merkezi, İstanbul, Türkiye

✉ randypradityo@unib.ac.id

Abstract

The significance of establishing an age limit for marriage cannot be overstated, as marrying at a young age often leads to heightened domestic conflicts, encompassing instances of domestic violence and an increased likelihood of divorce. This study employs an empirical juridical research method, combining field research and library materials, to delve into the factors contributing to child marriages. The findings reveal various drivers of child marriages, notably rooted in

economic hardships within families (poverty), parental-arranged marriages, influence from peer groups with a high prevalence of early marriages, cultural perspectives on marriage age, discontinued education, and instances of premarital sexual activities. The repercussions of child marriages extend beyond the act itself, jeopardizing fundamental rights that the young individuals may have otherwise enjoyed. This research underscores the vulnerability of several rights in the context of child marriages, including the right to education, the right to a sustainable livelihood, the right to holistic growth and development, and the right to live free from violence. The forms of violence stemming from child marriages are manifold, encompassing both physical and psychological abuse perpetrated by partners or individuals with familial ties, such as blood relations, marital bonds, and guardians residing in the household. Addressing these multifaceted factors is crucial for the protection and well-being of individuals ensnared in early marriages, paving the way for more informed policies and interventions.

Keywords

Violence, Rights, Early Marriage, Children, Age Limitation

A. Introduction

In Indonesia, definition of marriage is stipulated in Article 1 of Law Number 1 of 1974 on Marriage (hereinafter as *Indonesian Marriage Law*), that articulated as a sacred union encompassing both physical and spiritual aspects, uniting a man and a woman in the capacities of husband and wife. The central purpose of this marital bond is to establish a resilient and joyful family unit, grounded in a steadfast belief in the One Supreme God. In alignment with this legal framework, some Indonesian scholars expound on marriage as a consecrated covenant, involving a sacred agreement between a man and a woman, with the goal of fostering familial happiness.¹ This perspective emphasizes

¹ In the context of Indonesia, marriage is often regarded as a consecrated covenant, entailing a sacred agreement between a man and a woman. This perspective aligns with the prevalent cultural and religious values in the country, where the sanctity

marriage as a solemn and legally recognized contractual arrangement where individuals commit to living as lawful spouses, contributing to the cultivation of a fulfilled and enduring family structure.² Marriage constitutes a mutual agreement entered into by individuals, formalized through a contractual arrangement that legitimizes physical intimacy between a man and a woman. This legal contract establishes both rights and obligations for the parties involved.³

Arrangements regarding this marriage in Indonesia are regulated in Law Number 1 of 1974 concerning Marriage and Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The Marriage Law regulates the minimum age limit for children. The minimum age limit for marriage according to the Marriage Law is 21 and 16 years for girls and 19 years for boys with parental approval. Where Article 6 of Law Number 1 of 1974 states:

- 1) Marriage must be based on the consent of the two prospective bride and groom.
- 2) To enter into a marriage, a person who has not reached the age of 21 (twenty-one) years must obtain permission from both parents.

of marriage is deeply rooted in traditions and faith. Against the backdrop of the current conditions in Indonesia, the concept of marriage as a sacred covenant gains significance within a society that values family bonds and communal harmony. In a nation marked by diverse cultural and religious practices, the institution of marriage serves as a cornerstone, reflecting the shared commitment to familial happiness and stability. Amidst the socio-economic landscape and the ongoing challenges faced by communities, the idea of marriage as a consecrated covenant underscores the importance of strong family foundations. As Indonesia navigates contemporary changes, this traditional view on marriage continues to play a vital role in shaping societal values, providing a source of resilience and cohesion within the diverse fabric of the nation. Wahyu Wibisana, "Pernikahan dalam Islam." *Jurnal Pendidikan Agama Islam-Ta'lim* 14, no. 2 (2016): 185-193; Dwi Rifiani, "Pernikahan dini dalam perspektif hukum Islam." *De Jure: Jurnal Hukum dan Syar'iah* 3, no. 2 (2011); Asbar Tantu, "Arti Pentingnya Pernikahan." *Al-Hikmah Journal for Religious Studies* 14, no. 2 (2013): 199-208; Jony Eko Yulianto, et al. "The assemblage of inter-ethnic marriages in indonesia." *Journal of Community & Applied Social Psychology* 32, no. 4 (2022): 706-720.

² Moh. Idris Romulyo, *Hukum Pernikahan, Hukum Kewarisan, Hukum Acara Peradilan Agama, Dan Zakat Menurut Hukum Islam* (Jakarta: Sinar Grafika, 1995).

³ Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia* (Jakarta: kencana, 2006).

Marriages involving individuals below the statutory age of 21 are observed in Indonesia despite the legal age limit stipulated by the law. Addressing these scenarios, Article 7(1) of Law Number 16 of 2019 allows for a nuanced perspective, permitting marriage if both the man and woman have reached the age of 19, representing a slight deviation from the standard age restriction. This provision acknowledges certain circumstances wherein individuals may seek matrimony before attaining the age of 21.⁴

Furthermore, Article 7(1) details a process for cases deviating from the age requirement, allowing the parents of either party to petition the Court for dispensation. In seeking dispensation, these parents are required to present compelling and urgent reasons substantiated by sufficient evidence. Importantly, the Court, when granting dispensation, is obligated to consider the perspectives of both the prospective bride and groom, ensuring a comprehensive evaluation of the circumstances surrounding the marriage.⁵

Moreover, the legal conditions specified in Article 6, particularly those delineating the role of one or both parents, are applicable to the dispensation request outlined in Article 7(1). This implies that the considerations presented in Article 6, paragraphs (3) and (4), are pertinent to dispensation requests, while upholding the provisions detailed in Article 6, paragraph (6). This intricate legal framework reflects a conscientious effort to balance the legal requirements concerning marriage age with due consideration for exceptional circumstances warranting departure from the norms.

Furthermore, in the same context, Kartono highlighted that child marriage has the potential to experience various conflicts because of the physical, mental and social conditions of children who marry at an early

⁴ Rizky Irfano Aditya, and Lisa Waddington. "The Legal Protection Against Child Marriage in Indonesia." *Bestuur* 9, no. 1 (2021): 126-134; Sonny D. Judiasih, et al. "Efforts to eradicate child marriage practices in Indonesia: Towards sustainable development goals." *Journal of International Women's Studies* 21, no. 6 (2020): 135-149; Andi Hidayat Anugrah Ilahi, "The Evaluation of Early Marriage Law Renewal in Indonesia." *Unnes Law Journal* 7, no. 1 (2021): 129-152.

⁵ Farel Rifandanu, and Ayu Febrianti. "Early Marriage and Implications for Future Orientation in Islamic Law." *Contemporary Issues on Interfaith Law and Society* 2, no. 2 (2023): 187-214; Fadhilah Rizky Afriani Putri, "When Girl Become Wives: The Portrait of Underage Marriage in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 463-480.

age like this which are often used by certain parties to take advantage, children's rights can be abused by parties. These parties for their own personal interests. Children are also social persons who need relationships and communication with other people to humanize themselves. Children want to be loved, want to be recognized and appreciated. Also want to be counted and get a place in the group. Only in communication and relationships with other people (teachers, educators, caregivers, parents, family members, peers, groups and others) can a child develop towards maturity.⁶

Children who are vulnerable to child marriage are girls, children who live in poor families and have low education. Girl marriage occurs in 1 in 9 girls, while boy marriage is 1 in 100 boys.⁷ The age of a partner in a marriage that is too young or underage can result in an increase in domestic conflict, including cases of domestic violence (domestic violence) and even divorce cases caused by a lack of awareness and responsibility in household life, which is caused by a lack of maturity. mindset.⁸ In addition, children who marry at a young age have many rights that they should get but cannot get because of the child marriage.

B. Method

The chosen research methodology for this study is empirical legal research, which represents a departure from the conventional approach to understanding law. Instead of viewing law solely as an autonomous normative concept, as seen in the dichotomy of *ius constitutum* (established law) and *ius constituendum* (law to be established), the empirical legal research method considers law as a tangible and observable phenomenon within the fabric of society.⁹ In this context,

⁶ Kartini Kartono, *Psikologi Anak (Psikologi Perkembangan)* (Bandung: Mandar Maju, 1999).

⁷ Winda Wijayanti, *Hukum Perkawinan Dan Dinamikanya* (Depok: RajaGrafindo Persada, 2021).

⁸ Emi Wuri Wuryaningsih Putri Mareta Hertika, Lantin Sulistyorini, "Hubungan Pernikahan Usia Dini Dengan Risiko Tindak Kekerasan Oleh Ibu Pada Anak Usia Prasekolah Di Kelurahan Sumbersari Kecamatan Sumbersari Kabupaten Jember," *E-Jurnal Pustaka Kesehatan* 5, no. 3 (2017): 481–88.

⁹ Bachtiar, *Metode Penelitian Hukum* (Pamulang: Unpam Press, 2018). See also Agus Budianto, "Legal research methodology reposition in research on social science." *International Journal of Criminology and Sociology* 9, no. 1 (2020): 1339-1346; Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on

the study perceives law not merely as an abstract set of rules but as something deeply embedded in the lived experiences and behaviors of individuals within a community. By adopting an empirical lens, the research aims to unravel the practical manifestations of legal norms, specifically focusing on the complex issue of child marriages. The primary objective is to delve into the real-world scenarios where legal frameworks intersect with societal dynamics, shedding light on the various forms of violence and violations of rights that often accompany early marriages.

C. Result and Discussion

1. Factors Causing Child Marriage (Case of Bengkulu City, Indonesia)

Based on the research findings derived from interviews with eight participants involved in child marriages in Bengkulu City, it is revealed that various factors contribute to their decisions. The first informant, identified as RPS, entered into marriage at the age of 16 along with her husband (RA) in October 2020. The primary rationale behind their early marriage was their mutual readiness to establish a household and start a family. Additionally, economic hardships within their underprivileged families played a crucial role in this decision. RPS expressed a desire to alleviate the financial burden on her parents, prompting her to commit to marriage at a young age. Despite initial resistance from their parents, RPS and her husband persevered, convincing their families of the sincerity of their decision and emphasizing the avoidance of extramarital affairs and potential harm to the family's reputation.

The second informant, identified as D, entered into marriage in 2020 at the age of 16, while her husband (Y) was 17 years old. Their decision to marry was influenced by several factors, with the primary determinant being the challenging economic circumstances within their families. D's parents faced unstable employment and shouldered numerous family responsibilities, rendering financial constraints a pivotal factor in their marriage. Additionally, concerns about potential

Legal Research Methodologies." *Journal of Judicial Review* 24, no. 2 (2022): 289-304; Nicholas Mignanelli, "Critical Legal Research: Who Needs It?," *Law library journal* 112, no. 3 (2020): 327-343.

undesirable consequences prompted their families to sanction the union. The close relationship between D and her partner during their dating period, characterized by constant togetherness, further intensified family worries, ultimately leading to the agreement to proceed with the child marriage.

The third informant, known as I, entered into marriage at the age of 17 along with her husband. They initially resided in a village within the district before relocating to Bengkulu City, and both have discontinued their education. The decision to marry at a young age was primarily influenced by their circumstances, notably the cessation of their formal education. Additionally, family and community perspectives played a significant role in expediting their marriage. There existed a prevailing notion that marriage was a viable and acceptable option when individuals were no longer in school and faced a lack of employment opportunities.

Moving on to the fourth informant, DS, she married her husband (AS) at the age of 17, and their marriage took place in May 2020. The pivotal factor prompting their early marriage was an arranged union orchestrated by their parents. DS's parents, unable to meet her financial needs, arranged for her to marry AS, whose parents agreed to financially support DS. The couple, subsequently blessed with a child, unfortunately faced marital challenges, leading to their divorce in August 2021. The circumstances surrounding DS's marriage underscore the complex interplay of financial considerations and family arrangements in shaping early marriages.

The fifth informant, denoted as IB, entered into matrimony with NH at the ages of 17 and 15, respectively, in the year 2021. Their decision to engage in a child marriage was driven by a perceived state of mental and psychological readiness, unaccompanied by familial coercion. Moreover, the couple expressed a commitment to independently assist their parents in meeting educational and daily life needs. Despite their marital union, the couple has not yet experienced the blessing of parenthood.

Another informant—the sixth informant (N)— she underwent marriage at the age of 17 along with her spouse. The impetus behind their early matrimony was notably shaped by environmental factors, with a considerable number of their peers also opting for marriage prior to reaching the age of 19. Additionally, parental perspectives on their

age as adequate for initiating a household played a crucial role in influencing their decision-making process, contributing to the broader contextual framework that precipitated their early marriage.

The seventh resource person, namely HR, got married when he was only 14 years old. He got married in 2021 because he was framed by his girlfriend. He was deceived by his girlfriend which then led to sexual relations before marriage. Then they finally got married. So, HR said he got married because of the circumstances that led to the existence of the marriage. Until then the marriage only lasted 6 months and they divorced. In Addition, the eighth informant, EN, married in January 2022 when he was 15 years old. EN said that he married because of the economic factors of his parents who are single parents and do not have a permanent job. In addition, he is also no longer in school due to the Covid pandemic where his parents could no longer afford it. This later led to her getting married. From this marriage, EN became pregnant and then miscarried.

The cases provided by the eight informants who have embraced child marriage shed light on a multifaceted array of factors driving their decisions. Chief among these is the pervasive influence of economic struggles within their families, characterized by a state of poverty. The dire financial circumstances appear to act as a compelling force propelling these individuals toward early matrimony as a perceived solution to their economic challenges. Additionally, the practice is observed to be prevalent when marriages are orchestrated by parents, suggesting a lack of autonomy in the decision-making process. This underscores the intricate interplay between familial dynamics and societal expectations in shaping the trajectory of child marriages.

Furthermore, the environmental context plays a significant role, with the prevalence of friends entering into marriages serving as a compelling factor influencing the informants' choices. The influence of peer relationships highlights the social dimensions that contribute to the perpetuation of child marriages within certain communities. Moreover, cultural norms and societal perspectives regarding the perceived appropriateness of marrying at a certain age emerge as powerful determinants in these decisions. The combination of economic hardship, parental influence, social environment, and cultural

expectations underscores the complexity of the factors contributing to the persistence of child marriages among the informants.¹⁰

However, of the six factors that became the main factor in the eight interviewees, they entered into child marriages due to the economic factors of their families who could not afford it, so they thought marriage was a way out of the economic problems they faced. Economic factors (poverty) are an important reason for child marriage because parents think that by marrying off their children, their burden will be reduced, because later the responsibility will shift to their child's partner in the hope that their child's life will be better and guaranteed. This economic factor is also closely related to the low education of this child marriage couple as well as the low education of their parents. Where low education can lead to low knowledge of the impact of child marriage. Educational factors, both the education of child marriage partners and the education of their parents, affect knowledge related to child marriage.¹¹

The focal issue at hand pertains to child welfare, intricately intertwined with the underlying problems giving rise to child marriages. In Indonesia, the framework addressing child welfare finds legal

¹⁰ Waode Hamsia Aristiana Prihatining Rahayu, "Resiko Kekerasan dalam Rumah Tangga (KDRT) Pada Pernikahan Usia Anak di Kawasan Marginal Surabaya," *PEDAGOGI: Jurnal Anak Usia Dini dan Pendidikan Anak Usia Dini* 4, no. 2 (2018): 80-92. *See also* Mies Grijns, and Hoko Horii. "Child marriage in a village in West Java (Indonesia): Compromises between legal obligations and religious concerns." *Asian Journal of Law and Society* 5, no. 2 (2018): 453-466; Dian Latifiani, "The Darkest Phase for Family: Child Marriage Prevention and Its Complexity in Indonesia." *Journal of Indonesian Legal Studies* 4, no. 2 (2019): 241-258; Lauren Rumble, et al. "An empirical exploration of female child marriage determinants in Indonesia." *BMC Public Health* 18, no. 1 (2018): 1-13; Heribertus Rinto Wibowo, et al. "One household, two worlds: Differences of perception towards child marriage among adolescent children and adults in Indonesia." *The Lancet Regional Health-Western Pacific* 8 (2021); Sonny Dewi Judiasih, et al. "Women, Law and Policy: Child Marriage Practice in Indonesia." *Jurnal Notariil* 3, no. 1 (2018): 47-55; Lisa Ann Cameron, Diana Contreras Suarez, and Susan Wieczkiewicz. *The Consequences of Child Marriage in Indonesia*. (Melbourne Institute: Applied Economic & Social Research, The University of Melbourne, 2020).

¹¹ Yuliana Primawardani Penny Naluria Utami, "Upaya Pencegahan Kekerasan Terhadap Anak Indonesia," in *Prosiding Seminar Nasional Hukum, Kebijakan Publik, Hak Asasi Manusia Dan Keadilan (SEMNASKUM 2022)*, 2022, 1-6.

grounding in a distinct statute, specifically Law Number 4 of 1979 concerning Child Welfare. This legislative instrument serves as the cornerstone in addressing the multifaceted challenges faced by children, encompassing aspects directly linked to the prevalent issue of child marriage.

Moreover, the legal framework underscores the imperative for families to fulfill the essential needs of their children. This obligation is explicitly articulated in Article 9 of Law Number 4 of 1979, emphasizing the legal obligation of families to provide for the well-being and development of children. By situating the issue within the broader context of child welfare legislation, it becomes evident that addressing the root causes of child marriage necessitates a comprehensive approach that aligns with established legal principles governing the protection and welfare of children in the Indonesian legal landscape.

Article 9 stipulates that parents bear the primary responsibility for ensuring the comprehensive well-being of their children, encompassing their spiritual, physical, and social dimensions. The challenge of meeting children's needs is intricately tied to the concept of child welfare, defined as a state where all aspects of an individual's life, including physical, inner, and social well-being, are adequately addressed. As such, the fulfillment of child welfare is not merely discretionary but mandated, serving as a tangible expression of child protection. This legal provision underscores the imperative for a holistic approach to parenting, emphasizing the necessity of addressing all facets of a child's life to promote their overall well-being and ensure a conducive environment for their growth and development.

2. Child Marriage: A Breach of Children's Rights

The Marriage Law has stipulated the basis and conditions that must be fulfilled in marriage. One of them is in Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage which reads: "*Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years*". However, this provision regarding the age of marriage has been amended through Law of the Republic of Indonesia Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage where the provisions in Article 7 are amended so that it reads:

Article 7

- 1) *Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.*
- 2) *In the event of deviation from the age requirement as referred to in paragraph (1), the parents of the man and/or the parents of the woman may request dispensation from the Court with very urgent reasons accompanied by sufficient supporting evidence.*
- 3) *The court granting dispensation as referred to in paragraph (2) must listen to the opinions of both bride and groom who will enter into a marriage.*
- 4) *The provisions regarding the condition of one or both parents of the prospective bride and groom as referred to in Article 6 paragraph (3) and paragraph (4) also apply to the provisions regarding the request for dispensation as referred to in paragraph (2) without prejudice to the provisions referred to in Article 6 paragraph (6).*

The article explicitly outlines that couples below the age of 19 are prohibited from engaging in child marriages, as mandated by the amendment to the Marriage Law. This statutory provision underscores the imperative to prevent child marriages. Furthermore, Article 26, paragraph 1, point c of Law Number 23 of 2002 concerning Child Protection reinforces this commitment by assigning parents the duty and responsibility to actively prevent early-age marriages. It accentuates the significant obligation of parents in the prevention of child marriages as a pivotal means of safeguarding the fundamental rights of children. The legal framework emphasizes the crucial role parents play in ensuring the protection of children's rights, particularly by proactively averting instances of early-age marriages.

The prevention that parents can do is forbid their children from getting married or having a marriage that is not yet due. Even though they cannot afford economic life, parents still may not allow children to marry at this child's age. Parents are obliged to protect their children,

including from allowing child marriage either intentionally or negligently.¹²

The existence of provisions that lead to the prevention of child marriage is when viewed from the aspect of children's rights, it means that the existence of these provisions aims to provide protection for children and the rights they have. Therefore, the state, through laws, clearly regulates the age at which a person may enter into marriage.

The research revealed that despite the fundamental prohibition of child marriage, Article 7 introduces a provision allowing deviations from the stipulated minimum age of 19. This exception can be invoked if the parents of the prospective couple present a compelling case to the court, seeking marriage dispensation. Such requests must be accompanied by robust evidence substantiating the urgency of the situation. The term *very urgent reasons*,¹³ as specified in the regulation,

¹² Rahmat Saputra Fransiska Novita Eleanora, Anggreany Haryani Putri, "Dampak Sosial Akibat Perkawinan Anak Terhadap Kesejahteraan Masyarakat," *Kertha Semaya* 9, no. 9 (2021): 1501–1508.

¹³ Article 7 of the Indonesian Marriage Law (Law Number 1 of 1974) allows for marriage dispensation under specific circumstances. The provision states that if the parents of the prospective groom or bride wish to marry their child below the legally mandated minimum age (19 for males and 16 for females), they can submit a dispensation request to the court. This request must be accompanied by compelling reasons, and these reasons need to be supported by sufficient and credible evidence. The term "very urgent reasons" mentioned in Article 7 refers to situations where there is a lack of viable alternatives, and the individuals involved are compelled to marry due to circumstances that are extraordinary and unavoidable. This could include factors such as unforeseen family situations, health considerations, or other exceptional conditions that necessitate an exception to the standard age requirements. To gain a more comprehensive understanding of what constitutes "*very urgent reasons*" and the specific procedures for submitting a dispensation request, one can refer to Supreme Court Regulation Number 5 of 2019. This regulation provides detailed guidelines on how the court examines dispensation applications. It establishes a legal framework to address exceptional cases where marriages involving individuals below the prescribed age might be allowed, but only with the explicit approval of the court. Importantly, the regulation emphasizes the need for exceptionally strong and urgent justifications, ensuring that any deviation from the standard age requirements is thoroughly scrutinized and justified. The intention is to maintain a delicate balance between safeguarding the rights and well-being of minors and addressing exceptional circumstances that warrant special consideration. *For further discussion see some cases*, Mia Hadiati, and Olivia Brilianci. "Analisis Alasan Mendesak dalam

pertains to situations where no alternative exists, compelling the individuals into a marriage. The application process aligns with the guidelines outlined in Article 6 of Perma Number 5 of 2019, which designates the parents as the eligible party to apply for marriage dispensation. This legal framework underscores the cautious consideration and stringent criteria established for cases necessitating an exception to the standard age requirement.

Furthermore, it is said that in order to continue to carry out marriages to children of both male and female parents, they can request dispensation from the age requirement from the Court. The applicant must first submit an application to the Office of Religious Affairs (*Kantor Urusan Agama*, hereinafter as KUA) by completing the required documents. If the requirements are complete, the KUA officer will examine all the files. Then if the minimum age requirement is not met, the KUA officer will issue a marriage rejection letter. This marriage refusal letter explains that marriage cannot be carried out for children who have not reached the minimum age for marriage, namely 19 years for men and 16 years for women. This rejection letter from the Office of Religious Affairs (KUA) must be submitted when applying for a marriage dispensation to the court. The application for dispensation is submitted to the Court in accordance with the area where the applicant lives. This means that the application for dispensation is submitted to the Religious Courts for those who are Muslim and the District Court for those who are non-Muslim.

Penetapan Dispensasi Perkawinan Anak Pada Putusan Pengadilan Cilegon Nomor 32/Pdt.P/2019/Pa.Clg." *UNES Law Review* 6, no. 1 (2023): 3663-3671; Muhammad Adisyah Putra, Gisha Dilova, and Ratih Agustin Wulandari. "Akibat Hukum Penetapan Dispensasi Perkawinan Terhadap Anak di Pengadilan Agama Pulau Punjung." *Innovative: Journal of Social Science Research* 3, no. 4 (2023): 3635-3646; Ramadhita Ramadhita. "Diskresi Hakim: Pola Penyelesaian Kasus Dispensasi Perkawinan." *De Jure: Jurnal Hukum dan Syar'iah* 6, no. 1 (2014); Jessica Tiara Mai, "Tinjauan Yuridis terhadap Perkawinan Anak di Bawah Umur di Lihat dari Sudut Pandang Undang-Undang Nomor 1 Tahun 1974." *Lex Crimen* 8, no. 4 (2019); Ahmad Muqaffi, Rusdiah Rusdiah, and Diana Rahmi. "Menilik Problematika Dispensasi Nikah dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan." *Journal of Islamic and Law Studies* 5, no. 2 (2021); Allika Fadia Tasya, and Atik Winanti. "Dispensasi Perkawinan Anak Setelah Adanya Perma Nomor 5 Tahun 2019." *Wajah Hukum* 5, no.1 (2021): 241-249.

These administrative requirements must be completed when applying for a marriage dispensation to the Court. Then it is known that in the process of granting a marriage dispensation by the court, the court, in this case the Judge, is obliged to first listen to the opinion and explanation of the reasons for the two prospective bride and groom who will enter into a marriage. Then the judge also has the obligation to explain and give advice to both parents and the child about the risks of child marriage. Later, from the trial of the marriage dispensation, finally the judge will decide whether this marriage dispensation can be given to the child or not.

In the process of applying for marriage dispensation, administrative requirements are outlined in Article 5 of Supreme Court Regulation Number 5 of 2019, titled "*Guidelines for Adjudicating Applications for Marriage Dispensation*." These requirements, as specified in the regulation, encompass a comprehensive set of documents that the applicant must furnish. This includes an application letter, copies of the identity cards of both parents or guardians, a photocopy of the family card, a photocopy of the identity card or child identity card, and/or the child's birth certificate. Additionally, the prospective husband or wife is required to provide a photocopy of their national identity card or child identity card, as well as their birth certificate. Furthermore, the child's last education certificate and/or a certificate indicating ongoing schooling from the child's school must also be submitted. However, if meeting the conditions outlined in the aforementioned documents proves challenging, alternative documents explaining the child's identity, educational status, and the identity of the parent or guardian can be utilized.¹⁴

The regulatory framework, as articulated in Article 5, emphasizes the importance of these administrative requisites in ensuring a thorough

¹⁴ Syeh Sarip Hadaiyatullah, and Nurul Huda. "Praktek Hukum Acara Dispensasi Kawin." *ASAS: Jurnal Hukum Ekonomi Syariah* 12, no. 1 (2020): 150-166; Henry Nurhadi, "Pertimbangan Hakim Terhadap Permohonan Dispensasi Kawin Berdasarkan Pasal 2 Perma No. 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin (Studi Putusan Pengadilan Agama Semarang No. 98/Pdt/2022/Pa. Smg)." *Jurnal Hukum Politik dan Kekuasaan* 2, no. 2 (2022): 209-223; Ashabul Fadhl, and Arifki Budia Warman. "'Alasan Khawatir' pada Penetapan Hukum Dispensasi Kawin di Pengadilan Agama Batusangkar." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (2021): 146-158.

and well-documented dispensation application process. It recognizes the need for comprehensive information to be provided, offering flexibility by allowing alternative documents in cases where the initially specified conditions cannot be met. This approach ensures a careful consideration of the applicant's circumstances, maintaining the integrity of the dispensation process within the legal parameters set forth by the Supreme Court.¹⁵

Furthermore, the results of the trial and examination of the marriage dispensation case resulted in a decision if the marriage dispensation was granted by the court, then marriage registration was carried out at the KUA as usual marriage registration. Therefore, the decision to grant a marriage dispensation will be submitted by the couple and family along with the marriage registration application to the KUA. However, if the court decision does not grant permission for marriage dispensation, then the consequence is that the marriage cannot be carried out.¹⁶ The number of cases received and decided at the Bengkulu Religious Court regarding this marriage dispensation as shown on Table 1 and Table 2.

TABLE 1. Data on Number of Marriage Dispensation Cases Received at Bengkulu Religious Court

Year	Total
2019	41
2020	70
2021	115

Source: *Bengkulu Religious Court*

¹⁵ Efrinaldi Efrinaldi, Jayusman Jayusman, and M. Yenis. "Revealing The Dilemma of Marriage Dispensation Regulations in Indonesia." *ADHKI: Journal of Islamic Family Law* 5, no. 1 (2023): 31-46; Umi Suprptiningsih, "Pro and Cons Contestation on The Increase of Marriage Age in Indonesia." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 1 (2021): 232-251; Taufiqur Rohman, et al. "Preventing Violations of Religious and Social Norms: Judicial Interpretation of Urgent Reasons' in Marriage Dispensation at the Wonosari Religious Court, Indonesia." *Journal of Islamic Law (JIL)* 4, no. 2 (2023): 218-236.

¹⁶ Sanuri Sanuri. "Marriage dispensation in Indonesia on the perspective of maqasid al usrah." *Al Hukama: The Indonesian Journal of Islamic Family Law* 11, no. 1 (2021): 26-56; Rike Patmanasari, et al. "Marriage Dispensation from the Perspective of Women's Protection." *International Journal of Education, Information Technology, and Others* 6, no. 3 (2023): 487-496.

**TABLE 2. Data on Number of Marriage Dispensation Cases
Decided on Bengkulu Religious Court**

Year	Total
2019	37
2020	68
2021	108

Source: *Bengkulu Religious Court*

The data presented in Table 1 and Table 2 reveals a concerning prevalence of child marriages in Bengkulu City, evident in both the filings and terminations at the Bengkulu Religious Court. Notably, there has been a discernible surge in applications for marriage dispensation, particularly in 2020 and 2021, coinciding with the onset of the Covid-19 pandemic. Despite the slight decrease in 2021, with 59,709 cases compared to 64,211 in 2020, these numbers remain significantly elevated in contrast to 2019, which reported 23,126 instances of child marriages. It is noteworthy that the challenging circumstances of the Covid-19 pandemic, notably its impact on various sectors, especially the economy, might have contributed to the observed trends.

The persistence of child marriages, as underscored by the statistics from Komnas Perempuan (national women's commission), underscores the urgency of addressing this issue. The recorded cases of 59,709 child marriages granted dispensations in 2021, though slightly lower than the previous year, reflect an ongoing concern that requires comprehensive intervention.¹⁷ The juxtaposition of these figures against the backdrop of the high number of Covid-19 cases in 2020, which significantly disrupted various aspects of life, accentuates the need for targeted efforts to mitigate the impact of external crises on vulnerable populations, particularly in the context of child marriages.

Furthermore, it is highlighted that while the imperative to prevent child marriage is acknowledged, the legal framework allows for exceptions under specific conditions. However, such exceptions are subject to stringent requirements and procedures, as delineated earlier.

¹⁷ Kompas, "Kasus Pernikahan Dini di Indonesia," Kompas.com, 2022, <https://nasional.kompas.com/read/2022/10/02/000000061/kasus-pernikahan-dini-di-indonesia>.

The prevention of child marriage involves not only setting age limitations but also entails meeting specified criteria for obtaining a marriage dispensation.¹⁸ This concerted effort aims to safeguard children from becoming victims of premature marriages. It is crucial to recognize that certain rights integral to childhood cannot be reclaimed once a child is married, emphasizing the importance of robust preventive measures within the legal system.

The prevalence of child marriages has far-reaching consequences, resulting in the infringement of numerous children's rights. Child marriage itself is a blatant violation of these rights, as defined in Article 1 point 12 of Law Number 35 of 2014 concerning Child Protection. According to this definition, children's rights, integral components of human rights, must be guaranteed, protected, and fulfilled by various entities, including parents, family, community, state, government, and local government.

Allowing girls to marry before reaching the age of 18 not only compromises their fundamental rights but also undermines the state's commitment to safeguarding them from violence and discrimination. Such early marriages contribute to an increased vulnerability of women to Domestic Violence, spanning physical, psychological, sexual, and economic neglect. Economic dependence, a known factor contributing to women's susceptibility to domestic violence, underscores the urgency of robust child protection measures as a deterrent against child marriages. It is imperative to recognize the interconnectedness of child protection and the prevention of early marriages to ensure the fulfillment and preservation of children's rights.

Concerning child protection, Law Number 23 of 2022, Article 1 point 2, succinctly defines it as encompassing all endeavors aimed at ensuring and safeguarding the rights of children. The primary goal is to facilitate an environment where children can live, grow, develop, and actively participate, aligning with the principles of human dignity and values. Additionally, child protection endeavors seek to shield children from violence and discrimination, reinforcing the commitment to

¹⁸ Dinas Pemberdayaan Perempuan dan Perlindungan Anak Provinsi Sulawesi Selatan, *Kekerasan Terhadap Perempuan Dan Anak: Profil Gender Tematik* (Makassar: Dinas Pemberdayaan Perempuan dan Perlindungan Anak, Provinsi Sulawesi Selatan, 2018).

fostering an atmosphere conducive to their optimal well-being and holistic development.

In this context, Indonesia, having ratified the Convention on the Rights of the Child and enacted a dedicated Child Protection Act, underscores its commitment to safeguarding the rights and well-being of children. Central to these efforts is the paramount consideration of the principle of the best interest of the child. Regrettably, child marriage starkly contradicts this fundamental principle. Evident in the substantial incidence of maternal deaths attributable to child marriage, this practice stands as a poignant example of the severe consequences borne by individuals subjected to early unions. Furthermore, child marriage intertwines with a host of adverse outcomes, including elevated rates of unwanted pregnancies, increased incidents of abortions, a rise in abandoned children, higher divorce rates, and heightened unemployment levels. Recognizing and addressing these interconnected issues becomes imperative for upholding the overarching goal of securing the best interests of the child.

Child marriage emerges as a blatant violation of human rights, particularly in the spheres of reproductive health and education. Beyond contravening the provisions of the Marriage Law, this practice unequivocally infringes upon the principles delineated in the Child Protection Act. As articulated in Article 2 of Law Number 23 of 2022, the implementation of child protection in Indonesia is grounded in Pancasila, the 1945 Constitution, and the core tenets of the Convention on the Rights of the Child. These principles encompass non-discrimination, prioritizing the best interests of the child, upholding the right to life, survival, and development, and valuing children's opinions. By engaging in child marriage, multiple facets of these fundamental principles are compromised, accentuating the imperative to combat such practices to ensure the holistic well-being and rights of children.

In Law Number 23 of 2022, a comprehensive set of children's rights is delineated in Articles 4 to 18, covering diverse facets of their well-being and development. These rights include the fundamental entitlement to live, grow, and participate actively while being safeguarded against violence and discrimination. Additionally, children possess the right to a recognized name that serves as both identity and citizenship status, ensuring their legal recognition and inclusion in society.

The legislation underscores the freedom for children to practice their religion, emphasizing the right to worship in accordance with personal beliefs. Further, it mandates access to health services and social security to ensure the overall welfare of children. Education is recognized as an unequivocal right, emphasizing the importance of learning and development.

Children with disabilities are granted specific rights, including the entitlement to special education tailored to their unique needs. The legislation emphasizes the importance of their participation in decision-making processes, ensuring the right to express opinions and be heard. Rest and leisure are acknowledged as essential aspects of childhood, emphasizing the significance of relaxation and free time. Special protections are afforded to children under the care of parents or guardians, shielding them from mistreatment such as discrimination, exploitation, neglect, cruelty, violence, persecution, and other forms of maltreatment. Further, the law ensures protection from involvement in political activities, armed conflict, social unrest, events with violent elements, and war.

In addition, children are also guaranteed the right to freedom in accordance with the law. Those deprived of freedom have specific rights, including humane treatment, separate placement from adults, legal assistance, and the ability to defend themselves before an objective and impartial juvenile court in closed sessions. Confidentiality rights are safeguarded for children involved in sexual violence or in conflict with the law. Moreover, every child involved in a crime, whether victim or perpetrator, is entitled to receive legal assistance and other necessary support, reinforcing the commitment to ensuring justice and protection for children.

The findings from interviews with individuals engaged in child marriages reveal a stark reality where the rights of these individuals, who marry under the age of 18, are compromised. According to the Child Protection Act, individuals below the age of 18 are entitled to specific protections safeguarding their rights. The interviews highlight the vulnerability of certain rights to infringement within the context of child marriages, particularly the right to education. Many of these individuals find themselves unable to pursue or complete their education, illustrating a clear violation of their rights. In essence, the practice of child marriage unequivocally contravenes the rights of

children, underscoring the urgent need for enhanced protective measures in accordance with established legal frameworks.

Furthermore, additional rights vulnerable to violation in the context of child marriages encompass the right to a sustainable source of livelihood, the right to growth and development, and the right to be free from violence.¹⁹ The cessation of the right to education, for instance, not only impedes personal development but also hampers the right to secure a decent living. This becomes particularly evident in scenarios where the woman, often with limited education, becomes economically dependent on her husband, rendering the couple unprepared to compete in the job market. Consequently, the burden of earning a livelihood falls primarily on the husband, while the wife, who may still be in the process of learning and socializing, is tasked with managing household responsibilities. This situation places undue strain on both partners, hindering their individual growth and development within their respective roles and responsibilities.

Furthermore, the occurrence of domestic violence within the context of early marriages exacerbates the violation of the fundamental right to be free from violence. Particularly concerning for girls, early marriage gives rise to a myriad of problems, including profound psychological impacts such as anxiety, depression, and even suicidal thoughts. The adverse repercussions of child marriage, especially for women, underscore the urgency of addressing this practice.

Examining these impacts, it becomes evident that child marriage has the potential to shatter a child's future, as the protection of their rights is compromised. The legal foundation for ensuring children's rights is grounded in the 1945 Constitution of the Republic of Indonesia and the core principles outlined in the Convention on the Rights of the Child, ratified in 1990. Further reinforcement is provided by the Law of the Republic of Indonesia Number 35 of 2014, amending the Law Number 23 of 2002 concerning Child Protection. These legal frameworks collectively serve as a crucial basis for upholding and safeguarding the rights of children, emphasizing the imperative to prevent and address the adverse consequences of child marriage.

¹⁹ Bonita Mahmud, "Kekerasan Verbal Pada Anak," *An Nisa* '12, no. 2 (2019): 689–94.

3. The Manifestations of Domestic Violence Stemming from Child Marriage

The immaturity of the emotional side of the child marriage perpetrators can cause an inharmonious marriage. Even more so if it is also coupled with conditions of economic factors that are not well established. So that it is not uncommon for domestic violence to occur in child marriages, which then also causes divorce.

Domestic violence according to Article 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere. From the results of an interview with HR, who was married at the age of 14 to her ex-husband, namely ER, who was 18 years old at that time, HR said that she received domestic violence from her husband and parents-in-law. They get married because their dating style is very free and causes conjugal relations (sexual relations outside of marriage) when they are still dating. When married, HR said that it was not uncommon for her ex-husband to beat her, especially when the ex-husband had no money because he had no steady job. And this is exacerbated by verbal and emotional psychological violence from her parents-in-law who often scold her when she is unable to take care of the household. Under these conditions, they often fought, which in turn led to her suing her husband for divorce.

A similar experience was also experienced by EN, who married at the age of 15, who said she was divorced from her ex-husband who never provided a living because he was not yet working, so he often asked his family for financial assistance. Then her ex-husband often hung out with his friends because her ex-husband was still tempted by the association of friends his age. So that this became a source of commotion which led to domestic violence that she experienced, such as she received a punch or kick as well as curses and anger from her ex-husband so that she then sued her husband for divorce.

Apart from that, we can see what DS experienced when she married her husband (AS), which ended in divorce. This is because DS often gets violence when they get married, DS often gets harsh

treatment from AS when they get married. They often fight over trivial issues like US, who often comes home at night playing games with his friends. Besides that, the US also doesn't have a permanent job, so this is also often a source of their commotion.

Child marriage is susceptible to domestic violence, often serving as a catalyst for marital dissolution. Instances of domestic violence may emanate from either the husband or the parents-in-law. Economic strain further complicates the situation, as the husband's inability to secure a livelihood and the wife's challenges in managing household responsibilities can contribute to tension. Additionally, the allure of associating with peers of similar age and immature emotional control may escalate disputes, leading to confrontations such as physical altercations involving punching, hitting, and kicking, as well as verbal and emotional abuse. These conflicts, exacerbated by the unique challenges inherent in child marriages, can ultimately culminate in divorce.

Women are the most victims of domestic violence. Both in terms of quantity and level of violence experienced. This is because there is an imbalance of power between men and women in marriage. In addition to injuries caused by physical violence due to domestic violence, there is also non-physical violence whose consequences are no less severe, which can cause post-traumatic stress disorder which can lead to trauma and depression.²⁰

In Indonesia, the legal framework for addressing Domestic Violence is outlined in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This legislation plays a pivotal role in safeguarding individuals within the confines of their homes. The specific scope of households covered by this law is articulated in Article 2, encompassing three main categories.

Firstly, it includes the immediate family unit, comprising the husband, wife, and children. Secondly, the law extends its protection to individuals with familial ties, such as blood relations, marriage, and guardianship, who reside in the same household. Lastly, the scope encompasses individuals actively contributing to the household by providing assistance, who, in turn, reside within the household and are

²⁰ Aristiana Prihatining Rahayu, "Resiko Kekerasan dalam Rumah Tangga (KDRT) Pada Pernikahan Usia Anak di Kawasan Marginal Surabaya."

recognized as integral members of the family. This comprehensive delineation of the household scope ensures that the law's protective measures apply to a broad spectrum of domestic relationships, aiming to create a safer environment for all individuals within a given household.

The Article 2 elucidates that domestic violence perpetrators are not limited to husbands against wives or vice versa; it also encompasses children and individuals with family ties such as blood relations, marriage, and guardianship residing in the household. This broad inclusion extends to potential perpetrators from various familial relationships, including parents-in-law or brothers-in-law cohabiting in the same household. Consequently, child marriage couples, often residing with their parents, become particularly vulnerable to domestic violence, with the potential for abuse emanating not only from spouses but also from other family members sharing the same residence. This multifaceted perspective underscores the need for a comprehensive approach to addressing domestic violence within the unique dynamics of households formed through child marriages.

Domestic violence can manifest in several forms, including physical violence, psychological abuse, sexual assault, and household neglect, as stipulated in Article 5 of Law Number 23 of 2004. This legislation prohibits individuals from committing domestic violence within the household, encompassing acts such as physical abuse, psychological violence, sexual violence, and household abandonment.

Physical violence, defined in Article 6, involves acts leading to pain, illness, or serious injury, while psychological violence, as per Article 7, induces fear, loss of self-confidence, and severe psychological suffering. Sexual violence, as outlined in Article 8, includes coercion and forced sexual relations within the household for commercial or specific purposes. Article 9 prohibits the abandonment of individuals within the household, emphasizing the obligation to provide life, care, or support. Neglect, as detailed in this article, extends to actions resulting in economic dependence by limiting proper employment, thereby exerting control over the victim.

Interviews with three individuals revealed experiences of domestic violence, involving both physical and psychological abuse perpetrated by their partners (husbands) and in-laws. These accounts shed light on

the diverse and pervasive nature of domestic violence within familial settings.

The causes of domestic violence are dominated by psychological factors, for example, in couples who have a weak economy and also the ages of the two partners are not far apart. Gradually bickering will occur, which starts with bickering and there is verbal and emotional violence. Which will then develop into physical violence. So, it can be concluded that the triggering factors for domestic violence are, namely, there is an unequal power relationship between husband and wife, the age of marriage is too young, economic problems, work problems and also the interference of other families in the household.

Child marriage will have an impact on the sustainability of household partners. Child marriage tends to lead to rampant cases of domestic violence, one of which is directly caused by the low level of education and lack of knowledge about households.²¹ Domestic violence that occurs is a form of impact due to psychological conditions, the immaturity of the age when the marriage was carried out. Psychologically, immature children will find it difficult to control their emotions. So that girls are very vulnerable to becoming victims of domestic violence. Which was then exacerbated by unstable economic conditions and also unable to carry out responsibilities to one another. Meanwhile, the victims themselves will be prone to depression. Because as a child who still needs time to play, learn and find identity, you are required to be a wife and child. Even though child marriage is not a solution out of poverty and can even cause new socio-economic problems.

Several existing regulations are anticipated to serve as deterrents, aiming to curtail the prevalence of child marriages. In Bengkulu Province, the initiative is encapsulated in Bengkulu Governor Regulation Number 33 of 2018, specifically addressing the Prevention of Child Marriage. Further local commitment is demonstrated by Bengkulu City, which has enacted Bengkulu Mayor Regulation Number 64 of 2019, specifically targeting the Prevention of Child Marriage within the city limits. These legislative measures collectively aspire to mitigate the incidence of child marriages, reflecting a regional

²¹ Randy Pradityo, "Restorative Justice dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum dan Peradilan* 5, no. 3 (2016): 319–330.

commitment to safeguarding the well-being and rights of children in the community.

D. Conclusion

This study concluded that it is evident that various factors contribute to early marriages, including family economic struggles (poverty), parental-arranged unions, peer influence, cultural norms dictating appropriate marriage age, discontinued education, and premarital sexual encounters. These early marriages, however, pose a substantial risk of violating children's rights. Child marriage significantly jeopardizes fundamental rights, particularly the right to education, the right to a sustainable livelihood, the right to holistic growth and development, and the right to live free from violence, as domestic violence tends to be prevalent in such unions. The forms of violence encompass both physical and psychological abuse, perpetuated by spouses or individuals with familial ties, such as blood relations, marital bonds, and guardians residing in the household, including parents-in-law or brothers-in-law. In consideration of these findings, future recommendations emphasize the necessity for comprehensive prevention strategies against child marriages across all societal components. This proactive approach should involve concerted efforts from children, parents, families, communities, schools, and governmental entities to mitigate the occurrence of violence and rights violations, ensuring the comprehensive protection of children.

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