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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Analysis of Constitutional Authority and Responsibility on the Role of State Institutions in the Protection of Women and Children

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Abstract. *The protection of women and children constitutes a constitutional obligation of the state as explicitly mandated by the 1945 Constitution of the Republic of Indonesia and its implementing regulations. However, in practice, the effectiveness of state policies in ensuring the protection of these vulnerable groups still faces various challenges, including weak regulatory implementation, limited inter-agency coordination, and persistently high levels of violence and discrimination against women and children. This study aims to analyze the state's constitutional obligations from the perspective of constitutional law regarding the effectiveness of state policies in protecting women and children in Indonesia, as well as to identify the factors influencing the success of their implementation. This research employs a normative legal method with statutory, conceptual, and constitutional philosophical approaches. Data are collected through library research, including constitutional provisions, legislation, constitutional law literature, academic journals, and reports from national and international institutions related to the protection of women and children. The findings indicate that although constitutional obligations have been comprehensively formulated, the effectiveness of protection policies remains suboptimal due to a gap between constitutional norms and policy implementation in practice. Therefore, strengthening the state policy system is necessary through regulatory harmonization, enhancement of implementing institutions' capacity, and strengthening of oversight mechanisms to ensure more effective, just, and sustainable protection.*

Keywords: *Constitutional Law; Constitutional Obligation; Legal Effectiveness; Protection of Women and Children; State Policy.*

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1. Introduction

Humans are social creatures, and all living things on this earth are created in pairs, which are then united in a bond known as marriage. Marriage is expected to create a peaceful, loving, and compassionate family. According to Islam, marriage is one of the most important institutions in the lives of Muslims. Islamic belief holds that marriage is a sacred bond between a man and a woman who want to start a life together based on love. Many people marry because they believe that everyone's dream is to spend their life and old age with the person they desire. As a result, almost all couples desire a marriage where both partners can live together. Furthermore, having children will make a marriage happier.

One of the commendable and good human deeds designed by Allah SWT with the aim of improving human life is marriage. Furthermore, a happy marriage can lead to a more harmonious relationship between husband and wife. Basically, marriage has several purposes, beyond simply bringing a man and a woman together to create a peaceful household, where they can live side by side and grow old together. One of these is to prevent adultery. The rate of underage marriage in Indonesia is still quite high, and there are several examples of marriages performed on minors, also known as early marriage. Early marriage is caused by various factors, including culture, education, and economics. According to UNICEF data, Indonesia has the second-highest rate of early marriage in ASEAN and the eighth-highest worldwide. Low educational achievement, the risk of domestic violence, and deteriorating physical and mental health can all be influenced by the phenomenon of early marriage.¹

Civil law often considers factors such as the validity of marriage when defending the rights of victims. Is it legal to marry someone who is still a minor? Civil law typically sets a minimum age requirement for a marriage to be considered valid. How can civil law protect the interests of children in situations involving early marriage, from a child protection perspective? This includes issues of custody, guardianship, and maintenance commitments. Furthermore, it addresses law enforcement and prevention. What is the role of civil law in preventing child marriage and enforcing the law against violations? This requires lobbying for human rights, police enforcement, and legislative initiatives. Furthermore, in the context of early marriage that can result in divorce, how does civil law regulate the division of assets and financial obligations? This background demonstrates the complexity of addressing early marriage from a civil law perspective, with an

¹N. Azizah, "The Problem of Early Marriage Which is Widespread in Indonesia According to Civil Law," *Journal of Social, Political, and Legal Sciences* 2, no. 1 (2024): 9–16

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emphasis on initiatives to protect the rights of all parties involved, particularly those most at risk, such as children involved in early marriage.²

Early marriage is an issue that continues to receive attention in various parts of the world, including Indonesia. Legally, early marriage can be defined as marriage that occurs before an individual reaches the age of 18 for women and 19 for men, as regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Despite this regulation, the practice of early marriage still occurs in various regions, including Magelang City. Early marriage is a sociological phenomenon that occurs when people marry relatively early, often before they are emotionally and physically mature. Early marriage remains a common occurrence in many regions of the world, including Indonesia, often caused by social, economic, or cultural pressures. In Indonesia, early marriage is quite common, especially in rural areas and communities that continue to adhere to customs and social norms that encourage this practice. Early marriage has many complex effects, most of which are detrimental to its victims. Early marriage increases the likelihood of early pregnancy and birth abnormalities, among other major health problems for both mother and child. Because individuals are unprepared to handle the responsibilities of being a married couple and a parent, early marriage can result in significant psychological and emotional stress. Furthermore, because they must set aside their personal goals to fulfill their role at home, early marriage can also hinder a person's educational and career development. In the context of Indonesian civil law, early marriage, defined as a union in which one or both partners are under the age of 19, has become a common topic of discussion.

2. Research Methods

1. Types of research

This research is a normative legal research that focuses on the study of constitutional legal norms that regulate:

- 1) Constitutional obligations of the government
- 2) Protection of women and children

²CPB Laapen, S Lie, and V Kasslim, "A Civil Law Review of Early Marriage: Implications and Protection of the Rights of the Victims," *Journal of Citizenship* 8, no. 1 (2024): 867–72



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3) State policy from the perspective of the 1945 Constitution

2. Research Approach

This research uses a normative legal approach with a combination of several legal approaches (doctrinal approaches) which are analytical, evaluative and prescriptive.

3. Data source

a. Primary Legal Materials

- a) The 1945 Constitution of the Republic of Indonesia as the main basis for the government's constitutional obligations
- b) MPR decrees regarding human rights and the direction of state policy

b. Secondary Legal Materials

- 1) Literature and Law Books
- 2) Scientific work
- 3) Expert Opinion

4. Analysis Method

This research uses qualitative legal analysis with a normative-analytical approach combined with socio-legal analysis (normative-empirical), which is evaluative, interpretative, and prescriptive-reconstructive.

3. Results and Discussion

Early marriage is a contract that occurs and is carried out by a couple who are still considered to be in the age of youth or puberty, according to civil law, early marriage is when the prospective husband or wife is under nineteen years old and is basically not permitted to marry in the law, however, early marriage in civil law can be carried out by obtaining permission from both parents and requesting a marriage dispensation from the religious court with reasons and evidence as well

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as appropriate conditions.³ Early marriage is a complex phenomenon that disrupts Indonesia's legal and social order, presenting fundamental challenges in upholding human rights, particularly the protection of women and children. The state's legal construction, manifested through Law Number 16 of 2019 concerning Marriage and Law Number 35 of 2014 concerning Child Protection, has attempted to establish a legal barrier to prevent the practice of marginalizing children's fundamental rights. Magelang, as a geographical entity with dynamic socio-cultural complexity, represents a microcosm of the problem of early marriage.

Structural factors such as poverty, limited access to education, patriarchal social construction, and rigid religious interpretations contribute to creating an ecosystem conducive to child marriage. The legal implications of early marriage are multidimensional. Legally, this practice has the potential to violate children's constitutional rights, such as the right to education, health, and psychosocial development. Early marriage creates a reproductive cycle of legal vulnerability that can weaken women's capacity to access spaces of equality and justice. A human rights perspective emphasizes that every legal intervention must consider the principle of the best interests of the child. The complexity of this issue requires a holistic approach that goes beyond normative formulations, but also develops comprehensive prevention, protection, and empowerment mechanisms.

A factsheet published by UNICEF outlines three main reasons for early marriage in Indonesia: families with lower incomes, those living in rural areas, and those who do not pursue higher education (UNICEF). Meanwhile, the Central Statistics Agency (BPS) in its catalog explains that the reasons behind the high rate of early marriage in Indonesia include gender and cultural inequality, the marriage law that states 16 as the minimum age, and economic factors, namely poverty, which is a pressing factor.⁴

A health perspective adds a critical dimension to the analysis of early marriage. The correlation between early marriage and high stunting rates presents a multidimensional challenge to the fulfillment of children's basic rights. This is not simply a medical issue, but rather a reflection of systemic failures in legal and social protection for women and children. This comprehensive research in Magelang requires a thorough deconstruction of the reproductive mechanisms of early marriage practices. Legal intervention is not sufficient through a repressive approach; it requires a transformative strategy that can uncover the roots of

³Azizah, "The Problem of Early Marriage Which is Widespread in Indonesia According to Civil Law."

⁴Soleman and Elindawati, "EARLY MARRIAGE IN INDONESIA Novianti Soeleman Rifki Elindawati."

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structural problems, empower communities, and provide a just and equitable legal protection paradigm.

Law Number 16 of 2019 represents a paradigmatic transformation in the construction of marriage law in Indonesia, fundamentally introducing significant changes regarding the minimum age for marriage. This regulation signifies a progressive legal response to the practice of early marriage that has perpetuated the marginalization of women's and children's rights. The crucial substance of this law lies in harmonizing the minimum age for marriage to 19 for women and men, which previously held a discriminatory distinction. This legal construction is not merely a numerical change, but represents an affirmation of equal rights and legal protection. This indicates the state's commitment to guaranteeing the fulfillment of constitutional rights, particularly the rights to education, reproductive health, and psychosocial development.

Law Number 35 of 2014 presents a revolutionary legal construction in the child protection paradigm, which goes beyond the conventional boundaries of legal interpretation. This regulation is not merely a normative instrument, but rather a philosophical manifesto of upholding the fundamental rights of children as legal subjects who have absolute sovereignty over their own existence. The legal epistemology constructed by this law is based on the holistic principle of child protection, which crosses the juridical, social, psychological, and humanitarian dimensions. This progressive legal construction transforms the traditional paradigm that positions children as legal objects into legal subjects who have a space for emancipation and comprehensive protection. The philosophical substance of this law lies in the multidimensional recognition of children's rights, which include: 1. The right to optimal development 2. The right to protection from all forms of violence 3. The right to quality education 4. The right to reproductive and physical health 5. The right to participation and self-development 6. The right to protection from exploitation and marginalization

Rawls's theory of social justice provides a fundamental analytical framework for understanding the complexities of early marriage in Magelang Regency. The concept of the veil of ignorance offers a critical perspective that deconstructs the systemic mechanisms that perpetuate the marginalization of women and children. In the context of empirical data showing 406 cases of marriage dispensations in

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2023, Rawls's theory allows for an in-depth investigation of the social structures that create inequality.⁵

Giddens' theoretical construct allows for a multidimensional analysis that goes beyond structural determinism. Factors such as the influence of social media, family economic conditions, and cultural stereotypes are understood as dynamic elements that interact to shape the practice of early marriage. This theory provides a conceptual framework for understanding how individual agents negotiate existing social structures, while simultaneously potentially transforming social practices that harm women and children.⁶

4. Conclusion

The declining trend in the number of marriage dispensations in Magelang Regency demonstrates the positive impact of legal policies and efforts to prevent early marriage. The decline in the number of marriage dispensations from 2021 to 2023, recorded from 580 cases to 406 cases, indicates that legal policies and outreach related to early marriage prevention are beginning to have a positive impact. However, despite the decline, the practice of early marriage continues, reflecting structural resistance to expected legal changes. Structural factors such as poverty, limited access to education, and patriarchal social constructs continue to contribute to the high rate of early marriage. Data shows that although the number of adolescents in an area does not directly influence the rate of early marriage, economic and cultural factors are key determinants of the practice. A human rights perspective emphasizes that any legal intervention must prioritize the principle of the best interests of the child. In this context, a holistic approach is needed that focuses not only on normative regulations but also on comprehensive prevention, protection, and empowerment mechanisms. John Rawls's theory of social justice and Anthony Giddens's theory of structuration provide useful analytical frameworks for understanding the dynamics of early marriage. Rawls's theory highlights the importance of equality and justice in protecting the rights of women and children, while Giddens's theory allows for an analysis of the interaction between social structures and individual agency in the practice of early marriage. Therefore, to effectively address early marriage, collaborative efforts are needed between the government, communities, and educational institutions to raise awareness of the importance of education and child protection. A comprehensive, responsive, and inclusive approach must be

⁵Iqbal Hasanuddin, "Social Justice: An Examination of John Rawls' Political Philosophy," *Reflections* 17, no. 2 (2018): 193–204

⁶Zainal Abidin Achmad, "Anatomy of Structuration Theory and Ideology of The," *Translitera Journal* 9, no. 2 (2020): 45–62.

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implemented to address the root causes of early marriage and create an environment that supports the fundamental rights of children and women. The high prevalence of early marriage in Magelang City requires efforts involving all stakeholders. To prevent abuse, the government must more strictly monitor the issuance of marriage dispensations and enforce laws regarding marriage age restrictions. Furthermore, to raise awareness of the importance of education and mental preparedness for marriage, broader educational programs on the negative impacts of early marriage must be implemented, especially among parents, adolescents, and the general public. Early marriage is also largely driven by economic issues, so high-risk families need to be economically empowered through initiatives such as access to business capital and skills training programs. By offering forums for discussion and support to children at risk of child marriage, educational institutions and neighborhood associations (RT/RW) can also actively participate. By offering forums for discussion and support to children at risk of child marriage, educational institutions and neighborhood associations (RT/RW) can also actively participate.

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