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## Underage marriage in the context of local culture and tradition: Protection through customary law

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### Abstract

This research analyzes customary law on underage marriage in the context of local culture and tradition. Underage marriage is a phenomenon that still occurs in various countries, including Indonesia. Although the Marriage Law has set a minimum age limit for marriage, the practice still continues in many communities. Therefore, this study aims to understand the cultural factors and local traditions that influence the practice, as well as identify ways in which the legal protection of the children involved can be strengthened. Using a customary law approach, the results show that regulation through customary law instruments by including provisions prohibiting underage marriage provides an answer that living law is adhered to as a living part of the local traditions of the community.

**Keywords:** Underage marriage, customary law, local culture and tradition

### 1. Introduction

Marriage is a milestone in human life that produces far-reaching effects, both physically and emotionally. When a man and a woman unite in matrimony, not only is a close relationship created between the two individuals, but also a deep attachment to their family and joint property is formed <sup>[1]</sup>. In Indonesia, marriage is not just a legal transaction, but also reflects rich cultural values and deep traditions. Every individual has the right to continue their lineage through the institution of marriage, which becomes one of the main pillars in maintaining cultural heritage and family traditions. In this context, marriage becomes a bridge that connects the past, present and future, providing a solid foundation for spiritual survival and growth <sup>[2]</sup>.

Marriage in the context of Customary Law is not only an important event for living individuals, but also a moment that is considered sacred and honored by the spirits of the ancestors of both parties <sup>[3]</sup>. The marriage process is also subject to various rules and norms that have been regulated in Customary Law, covering various aspects such as proposal procedures, marriage ceremonies, and marriage annulment procedures in Indonesia. These rules vary from region to region as they are influenced by social factors, customs, religion and the beliefs of the local community. Customary law does not set an absolute age limit for marriage, thus there is no definite minimum or maximum age for tying the knot <sup>[4]</sup>.

According to Article 1 of Law Number 1 of 1974, marriage is a bond that includes physical and spiritual dimensions between a man and a woman as husband and wife, aiming to form a happy and lasting family based on faith in God Almighty <sup>[5]</sup>. To ensure that Indonesian citizens can create sustainable and happy marriages, the Marriage Law sets out the basis and requirements that must be met. One of them is the provision in Article 7 paragraph (1) of Law Number 16 of 2019 Amendment to Law Number 1 of 1974 concerning Marriage which emphasizes that marriage is only permitted if both parties have reached the age of 19 years. The presence of this age limit aims to harmonize natural human needs with the essence contained in a marriage bond.

<sup>1</sup> Imron, A. (2013). Anak dalam Perkawinan di Bawah Umur. *At Tahrir*, 13, 253–272.

<sup>2</sup> Safitri, A. Z. (2023). *Dampak pernikahan usia muda terhadap sosial ekonomi keluarga*. 8(4), 150–155.

<sup>3</sup> Umiroh, S., Sofah, J., & Ujang, W. (2020). Pengaruh Sosial Budaya Terhadap Pernikahan Di Bawah Umur Di Kecamatan Jatibarang Kabupaten Indramayu. *INKLUSIF: Jurnal Pengkajian Penelitian Ekonomi Dan Hukum Islam*, 5(2), 185–203.

<sup>4</sup> Basuki, U. (2021). Cakrawala Hukum Cakrawala Hukum. *Cakrawala Hukum*, 12(1), 95–110. <https://ejournal.unwiku.ac.id/hukum/index.php/CH/article/view/171>

<sup>5</sup> Undang-Undang Nomor 1 Tahun 1974

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Underage marriage is a phenomenon that still occurs in various countries around the world. Underage marriage is defined as a marriage in which one or both partners involved are below the legal age of marriage. The 2021 Indonesian Demographic and Health Survey (IDHS) stated that 10.2% of women aged 15-49 had married before reaching the age of 18. This proportion tends to be higher in rural areas (14.1%) compared to urban areas (6.8%). Furthermore, the lowest proportion of underage marriage was recorded in Bali (3.1%), while the highest was in East Nusa Tenggara (21.4%). BPS 2020 data states that 29.7% of girls aged 10-14 years have been married or arranged marriages. This figure shows an increase from 27.1% in 2015. Cases of early marriage in Indonesia are widespread in various provinces with varying prevalence. Provinces with the highest prevalence include East Nusa Tenggara (21.4%), West Sulawesi (18.4%), South Kalimantan (17.2%), North Maluku (16.8%), and Gorontalo (16.2%). On the other hand, provinces that recorded the lowest prevalence of early marriage include Bali (3.1%), Special Region of Yogyakarta (4.1%), West Java (4.7%), Central Java (5.1%), and Riau (5.2%). This variation reflects the diverse challenges faced by different regions in Indonesia in addressing the issue of early marriage. The practice involves children who are not yet physically, emotionally and psychologically ready to marry and face the responsibilities of marriage<sup>[6]</sup>.

Cultural factors and local traditions are often the main drivers behind the practice of underage marriage. Some communities still maintain beliefs and norms that support marriage at a young age, such as the belief that marrying at a young age is a tradition that must be maintained or that early marriage can protect family honor and reputation<sup>[7]</sup>.

However, it is important to remember that the protection of children involved in underage marriage is also recognized internationally. Several regulations and legal instruments have been issued to strengthen the legal protection of children and stop the practice of underage marriage<sup>[8]</sup>.

One of the legal instruments supporting the protection of children is the United Nations Convention on the Rights of the Child (UNCRC) which has been ratified by most countries in the world. The UNCRC affirms the fundamental rights of children, including the right to grow and develop in a healthy and safe manner, as well as the right to enjoy their childhood without inappropriate interference.

Some countries have adopted national laws that strictly prohibit marriage below a certain age. For example, in Indonesia, Marriage Law No. 1/1974 has set the minimum age for marriage at 19 years for men and 16 years for women. Although the Marriage Law in Indonesia sets a minimum age limit of 19 years for men and 16 years for women, there are still some issues that need to be addressed:

1. Minimum age mismatch between men and women.
2. Weak law enforcement which leads to many cases of

early marriage under the age limit.

3. Social norms in some areas that support early marriage, limiting girls' choices and opportunities for education and full development.
4. As a result, early marriage remains a serious problem in Indonesia, with girls who marry early at risk of negative impacts such as poor health, school dropout, and domestic violence. Solutions require improved regulations, stricter law enforcement, and changes in social norms that support early marriage.

The purpose of this law is to protect children from the risks and negative impacts that may arise from marrying at too young an age. Marriage Law Number 1 Year 1974 regulates various aspects related to marriage in Indonesia. Some of the relevant articles include:

1. **Article 64:** Affirms that marriages and everything related to marriages before the entry into force of this law remain valid.
2. **Article 66:** Stipulates that marriage and matters related to marriage must be in accordance with the provisions of this law, unless otherwise regulated by the government.
3. **Article 67:** States that marriage between two individuals under the age of 16 is prohibited.
4. **Article 68:** Prohibits marriage between two individuals under the age of 18, unless there is consent from both parties concerned.

Articles 67 and 68 confirm the minimum age requirement for marriage, which is 16 years for men and 18 years for women. Article 68 also emphasizes that marriage is not valid if one of the parties has not reached the age of 18, unless there is consent from both parties concerned.

Meanwhile, Articles 64 and 66 explain that marriages that occurred before the enactment of this Law are still considered valid, and marriages that are in accordance with the provisions of this Law are also recognized as valid, unless otherwise regulated by the government.

For example, Article 64 explains that marriages entered into prior to the entry into force of this Law are still considered valid, including marriages based on the principles of religion or belief, as stipulated in Article 2 paragraphs (1) and (2).

Article 66 also explains that marriages conducted in accordance with this Law, unless otherwise regulated by the government, are considered valid. For example, marriages based on the principles of religion or belief, as stipulated in Article 2 paragraphs (1) and (2), are recognized as valid.

However, despite these regulations and legal instruments, the practice of underage marriage still continues in many communities, as explained in a study conducted by Judiasih (2023) analyzing the controversy of underage marriage in Indonesia in the context of family law. The results showed that underage marriage is still rampant and has various negative impacts on children, such as (1) Impaired reproductive health, (2) Increased maternal and infant mortality, (3) Obstacles to education and economic opportunities, and (4) Increased risk of domestic violence. Therefore, there is a need to analyze customary law on underage marriage in the context of local culture and traditions to understand the factors that influence this practice and to identify ways to strengthen the legal protection of children involved.

The purpose and objective of this study is to analyze the legal protection of children involved in the practice of underage

<sup>6</sup> Fardina, S. K. B. (2020). *Perlindungan Hak Anak terhadap Pernikahan Dini dalam Perspektif Konvensi Hak Anak*. 2017(1), 1-9. <http://190.119.145.154/handle/20.500.12773/11756>

<sup>7</sup> Palulungan, L., Ramli, M. T., & Ghufuran, M. (2020). Perempuan, Masyarakat Patriarki & Kesetaraan Gender. In *BAKTI: bursa pengetahuan kawasan timur Indonesia*

<sup>8</sup> Haslan, M. M., Dahlan, D., & Fauzan, A. (2022). Faktor-Faktor Yang Mempengaruhi Terjadinya Merariq Pada Masyarakat Suku Sasak. *CIVICUS: Pendidikan-Penelitian-Pengabdian Pendidikan Pancasila Dan Kewarganegaraan*, 9(2), 15. <https://doi.org/10.31764/civicus.v9i2.6835>

marriage can be improved within the framework of culture and tradition and identify the factors of local culture and tradition that affect the sustainability of the practice of underage marriage.

## 2. Research Methods

This research uses a normative research method that focuses on the phenomenon of underage marriage. The approach used in the research is a statutory and conceptual approach that relies on primary and secondary legal materials such as laws, literature, articles, and scientific journals. The main focus of this research is on legal norms relating to the protection of children's rights related to early marriage. The method applied is qualitative research, in which the analysis is carried out descriptively by describing the content of the legal materials found. The research approach is based on statutory analysis to examine regulations related to the topic. In addition, a conceptual approach is also used to analyze solutions to existing problems in the context of early marriage, thereby producing descriptive data. The data analysis process is carried out inductively, starting from the observation of the facts collected towards the formation of relevant theories.

## 3. Results and Discussion

### 3.1 Legal Protection of Children Involved in the Practice of Underage Marriage

The legal protection of children involved in the practice of underage marriage is part of the legal protection consisting of several articles that prohibit and regulate the practice. In Indonesia, the practice of child marriage is a violation of the Child Protection Law<sup>[9]</sup>.

Article 26 paragraph (1) of the Child Protection Law states that parents are obliged to prevent child marriage.

The Marriage Law also contains articles that prohibit and regulate the practice of underage marriage. Marriage Law No. 1 of 1974 prohibits the practice of marriage under the age of 16 years for women and 19 years for men<sup>[10]</sup>.

Marriage Law No. 35 of 2014 regulates the amendment of Marriage Law No. 1 of 1974, which regulates the minimum age of marriage supervision for women is 19 years and men 16 years.

In addition, the Child Protection Law also provides legal protection for children who marry underage. Article 78, Article 82, and Article 88 of the Child Protection Law provide legal protection to children who enter into underage marriages.

The Religious Court also has an important role in granting dispensation permits for child marriage. However, at this time, there are still gaps in the legal protection of children who enter into underage marriages, as mentioned in Article 16 of Marriage Law No. 1 of 1974, which states that the driving party of underage marriages is the parents.

Article 446 of the Criminal Code (Draft May 2018) criminalizes any form of sexual intercourse outside of marriage with a maximum penalty of 2 years imprisonment.

The practice of underage marriage is a practice carried out by individuals who are still young, usually under 18 years old, to follow the finances, interests, or wishes of the family or

community<sup>[11]</sup>. This practice is not allowed in many countries, including Indonesia, as it can have serious negative impacts on children.

Physical and psychological health risks: Children in underage marriages are more likely to experience poor physical and psychological health, such as impaired education, stress, and unhealthy behaviors.

1. **Discontinuation of education:** The practice of underage marriage may cause children to discontinue their education, as they must become housewives or work to support the family.
2. **Limited economic opportunities:** Children in underage marriages may experience limited economic opportunities, as they are deprived of education and employment opportunities.

**To prevent these impacts, strong legal protection can help. These legal protections may include**

1. **Law:** The law that regulates the full age of compulsory marriage and regulates the offense of underage marriage practices is Law No. 16 of 2019 on the Amendment of Law No. 1 of 1974 on Marriage. Article 7 of this Law stipulates that marriage is only permitted if the man and woman have reached the age of 19, unless they apply for marriage dispensation at the Religious Court first.
2. **Education programs:** Education programs that provide information on the impacts of underage marriage practices and encourage children to protect their human rights.
3. **Economic development:** Economic development that helps children in underage marriages to obtain good education and employment opportunities.
4. **Monitoring:** Oversight that ensures that the practice of underage marriage is discouraged and even eliminated.
5. **Counseling:** Counseling that helps children in underage marriages to cope with the stress and educational disruptions that may occur.

Good economic opportunities, education, and physical and psychological health are human rights of all children. Strong legal protections can help ensure that all children have these opportunities and do not suffer serious impacts from the practice of underage marriage<sup>[12]</sup>.

The Universal Declaration of Human Rights (UUDHAM) and the Convention on the Rights of the Child (KHA) are two international legal instruments that emphasize the need to protect children. (KHA) are two international legal instruments that emphasize the need for the protection of children<sup>[13]</sup>. Here are details on each of these legal instruments:

#### 1. Universal Declaration of Human Rights (UDHAM)

- The Bill of Rights is an international convention

<sup>11</sup> Nurfaiza, F. (2021). *Dampak Pernikahan Usia Dini Terhadap Ekonomi Keluarga Di Tinjau Dari Sudut Pandang Islam (Studi Pada Pasangan Keluarga Muda Di Desa Je'nemading Kab. Gowa)* (Vol. 7, Issue 3). [Skripsi Fakultas Ekonomi Dan Bisnis Islam 2021].

<sup>12</sup> UNICEF. (2018). *Perlindungan anak di Indonesia - mengembangkan kebijakan dan peraturan yang kuat untuk setiap anak*. In *Unicef*. <https://www.unicef.org/indonesia/media/5651/file/Perlindungan-Anak-di-Indonesia.pdf>

<sup>13</sup> Undang-Undang Hak Asasi Manusia Universal (UUDHAM) dan Konvensi Hak Anak (KHA)

<sup>9</sup> Choirunnisa, W. S., Erlina, D., & Khusna, N. (2022). Analisis Perkawinan di Bawah Umur Menurut Hukum Adat dan Hukum Perkawinan Indonesia. *Al-Hakam: Islamic Law & Contemporary Issues*, 3(1), 1–8.

<sup>10</sup> Undang-Undang Perkawinan No. 1 tahun 1974

published in 1948 by the Organization of International Legislation (OPUI).

- It regulates human rights, including the rights of children, such as the right to life, the right to liberty, the right to health, the right to education, and the right to welfare.
  - It has been approved by 172 countries, including Indonesia.
- 2. Convention on the Rights of the Child (KHA)**
- The KHA is an international convention published in 1989 by the OPUI.
  - It regulates children's rights, including the right to life, the right to health, the right to education, the right to welfare, and the right to well-being.
  - The KHA has been acceded to by 196 countries, including Indonesia.

In addition, many countries have adopted laws that prohibit underage marriage and provide legal sanctions for violations. For example, in Indonesia, Law No. 23/2002 on the Protection of Children's Human Rights stipulates that marriage under the age of 18 is invalid and not accountable<sup>[14]</sup>. These offenses are punishable by legal sanctions, including fines and imprisonment.

Enhancing legal protection may involve further improvement and enforcement of existing laws. For example, improvements could be made to the laws governing underage marriage, such as increasing the minimum age of marriage or increasing the legal sanctions for such violations.

In addition, public education and awareness campaigns about the risks and consequences of underage marriage practices can also help change cultural attitudes and actions, such as Madurese underage marriage, which is carried out with cultural motives, religious motives, and economic motives. Cultural motives and customs are very strong in Madurese society, and these marriages are conducted through *nikah sirri*, so many people do not get a marriage certificate. For example, this campaign could include community education on children's rights, the risks and consequences of underage marriage, and how to overcome the practice of underage marriage.

### 3.2 Cultural Factors and Local Traditions Affecting the Continuation of Underage Marriage Practices

The practice of underage marriage is a complex and multi-dimensional phenomenon that continues to be of serious concern in Indonesia. Despite efforts to reduce the prevalence of marriage at such a young age, the practice persists in many regions, often influenced by strong cultural factors and local traditions<sup>[15]</sup>. This phenomenon not only reflects complex social dynamics, but also has a significant impact on the well-being of children and the future of future generations.

The Indonesian government has regulated legislation governing the age of marriage, which is now 16 years for women and 19 years for men. Research conducted by Muntamah states that in Indonesia underage marriages occur

<sup>[16]</sup>. This is due to factors such as:

- 1. Cultural Habits:** One of the main factors is cultural customs that view marriage at a young age as normal. Some local traditions and norms often encourage early marriage as a form of cultural continuity or as a means of maintaining family honor.
- 2. Family Factors:** The role of the family is also very influential in the occurrence of underage marriage. In some cases, families may force girls to marry at a very young age due to economic factors, a desire to control sexual behavior, or to protect the family image.
- 3. Religious Views:** Certain religious views can also be a factor in underage marriage. Religious interpretations that permit marriage at a very young age or the view that marriage at a young age is a form of worship may encourage the practice.
- 4. Economic Factors:** Economic issues also play a role in early marriage. Families living in poverty often see marriage as a solution to alleviate economic burdens or as a way to gain financial benefits through dowries or royalties.

Research conducted by Dewi *et al.*, (2022), from the Mataram College of Administration, stated that in the Gapuk Village area, West Lombok Regency, underage marriage occurs. This is due to educational, parenting, poverty, and cultural factors that influence the trend of child marriage. These factors are the cause of child marriage and have an impact on the perpetrators of marriage, their parents and their offspring. To address this issue, West Lombok Regency implemented a Regional Regulation on Maturing the Age of Marriage through Perda No. 19/2019. This policy is considered logical and realistic, supported by various parties, and in line with other provisions governing marriage. The purpose of this policy is to solve the problem of child marriage in order to create quality human resources in an effort to achieve the vision and mission of regional development. However, the implementation of the policy still needs to be evaluated in order to optimally minimize the occurrence of child marriage<sup>[17]</sup>.

In some cultures, such as the Biak culture, the tradition of marriage is carried out in a way that is not formalistic and does not meet official legal requirements, such as in the case of Carkawawin. However, in customary law, there are no provisions that explicitly regulate underage marriage and fulfill the official legal requirements applied in national law, such as in Law Number 1 Year 1974 concerning Marriage. The legal protection of children involved in the practice of underage marriage can be improved through various efforts that are integrated with the cultural framework and traditions<sup>[18]</sup>. Here are some ways in which you can achieve this:

<sup>16</sup> Muntamah, A. L., Latifiani, D., & Arifin, R. (2019). Pernikahan Dini Di Indonesia: Faktor Dan Peran Pemerintah (Perspektif Penegakan Dan Perlindungan Hukum Bagi Anak). *Widya Yuridika*, 2(1), 1. <https://doi.org/10.31328/wy.v2i1.823>

<sup>17</sup> Dewi, D. C., & Jumaah, S. H. (2022). Trend dan Kebijakan Pernikahan Usia Anak: Studi pada Desa Gapuk Kabupaten Lombok Barat, Nusa Tenggara Barat. *Resolusi: Jurnal Sosial Politik*, 5(2), 143–159. <https://doi.org/10.32699/resolusi.v5i2.3651>

<sup>18</sup> Rofika, A. M., & Hariastuti, I. (2020). Social-Cultural Factors Affecting Child Marriage in Sumenep. *Jurnal PROMKES*, 8(1), 12. <https://doi.org/10.20473/jpk.v8.i1.2020.12-20>

<sup>14</sup> Undang-Undang Nomor 23 Tahun 2002

<sup>15</sup> Loresta Cahyaning Lintang, & Wicaksono, R. P. (2019). *Perkawinan Di Bawah Umur Dalam Hukum Adat Bali Ditinjau Dari Uu No. 1 Tahun 1974 Tentang Perkawinan Dan Uu No. 35 Tahun 2014 Tentang Perlindungananak*. 3(1), 37–56. <http://www.springer.com/series/15440%0Apapers://ae99785b-2213-416d-aa7e-3a12880cc9b9/Paper/p18311>

1. **Improvement of Strong Policies and Regulations:** Governments and communities need to come together to develop strong policies and regulations to protect children from underage marriage. This could include revising or creating stricter laws regarding the minimum age for marriage and sanctions for violators.
2. **Improved Access to Health Services, Law Enforcement, Education and Birth Registration:** An integrated approach such as that of the Indonesian Children's Integrated Social Welfare Program (PKSAI) can be an effective model for addressing child protection issues in Indonesia. This involves ensuring children and their families have adequate access to health, education, law enforcement and birth registration services.
3. **Capacity building of service personnel:** Village community organizations can play an important role by providing input to the village head and the Village Consultative Body (BPD) in the development of Village Regulations governing the prevention of child marriage, prevention of violence against children, child protection, and child-friendly villages.
4. **Building Theological Legitimacy for Child Protection:** Religion also has a role in providing theological legitimacy to child protection. Deep religious education can emphasize to its followers to protect children from violence and other harmful acts.
5. **Improved Child Care and Protection:** Building a healthy family and community environment and protecting children's rights are important foundations for the development of physically, mentally and emotionally healthy children.
6. **Improved Institutionalization:** Village regulations can provide clear direction regarding the implementation of child protection, including prevention efforts, capacity building of service personnel, and victim handling.
7. **Improved Education and Health:** Improving children's well-being, including when they are out of care, needs to be an evolving focus. This also involves child protection during disasters, adding dimensions of risk reduction, preparation and response.
8. **Improved Coordination among Service Providers:** Better coordination between health, education and social service providers will ensure that every child is legally registered and protected from various forms of abuse.
9. **Improving Understanding and Recognition of Children's Rights:** Increased awareness of children's rights in local cultures and traditions can help reduce the practice of underage marriage by empowering children to resist oppression.
10. **Increased Supervision and Empowerment:** Through strict supervision and empowerment of children, the practice of underage marriage can be minimized. This involves establishing strong community networks to support children and prevent them from risky situations.

In Bali, there is a set of traditional rules known as awig-awig, which govern marriage and various other aspects of social life. Some examples of awig-awig in Bali are:

1. Awig-awig Mekar Dewa prohibits marriage under the age of 16 for women and 18 for men.
2. Awig-awig Mekar Sari prohibits marriage for women who have not experienced menstruation
3. Awig-awig Mekar Ayu prohibits marriage for women

who have not reached puberty.

4. These rules reflect Bali's strong cultural values and traditions, and aim to protect children and safeguard their well-being in marriage.

#### 4. Conclusion

Legal protection of children involved in the practice of underage marriage and the factors of local culture and tradition that influence the sustainability of the practice, it can be concluded that Legal protection of children involved in the practice of underage marriage can be improved through strong policies, improved access to health and education services, capacity building of service personnel, and approaches that strengthen legal protection through cultural and traditional frameworks. In Bali, there is a set of traditional rules known as awig-awig, which govern marriage and other aspects of social life. Some examples of awig-awig in Bali are Awig-awig Mekar Dewa prohibits marriage under the age of 16 for women and 18 for men, Awig-awig Mekar Sari prohibits marriage for women who have not menstruated, and Awig-awig Mekar Ayu prohibits marriage for women who have not reached puberty. These rules reflect strong cultural values and traditions in Bali, and aim to protect children and safeguard their welfare in marriage. Local cultural factors and traditions that influence the practice of underage marriage include cultural customs that view marriage at a young age as normal, family roles that force girls to marry at a very young age, certain religious views that permit marriage at a very young age, and economic issues that encourage early marriage as a solution to reduce economic burden. Thus, efforts to improve the legal protection of children involved in the practice of underage marriage must pay attention to cultural factors and local traditions that cause and influence the practice. A holistic and integrated approach between legal, social, cultural and economic aspects is needed to effectively address the practice of underage marriage.

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