


Civil Law Aspects of Child Protection Due to Early Marriage

Wahdaniah Baharuddin

Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

 wahdaniah2804@gmail.com

Corresponding Author*



Abstract

Early marriage remains a concerning phenomenon in West Sulawesi Province despite the minimum age requirement of 19 years as stipulated in Law Number 16 of 2019 on Marriage. The frequent granting of marriage dispensation by the courts weakens the principle of child protection as mandated by Law Number 35 of 2014 on Child Protection. This study aims to analyze the civil law consequences arising from early marriage and to assess the extent to which Indonesia's positive legal instruments provide effective protection for children in West Sulawesi. This research employs a normative juridical method with statutory and conceptual approaches. Data were obtained through library research involving primary, secondary, and tertiary legal materials, which were analyzed using a qualitative descriptive method. Early marriage results in uncertainty regarding the civil status of the child, weak parental responsibilities, and violations of the principle of legal capacity. The implementation of civil law norms in West Sulawesi remains ineffective due to cultural, economic, and educational factors. Strengthening substantive and humanistic civil law mechanisms is therefore necessary to ensure fair and effective child protection.

Keywords: Civil Law; Child Protection; Child Marriage.

INTRODUCTION

Developments in the phenomenon that occur in society in problems about children and the protection of children's rights are important. Various conditions of children show that it turns out that children are still in a worrying condition.¹ Article 28 D Paragraph 1 of the 1945 Constitution of the Republic of Indonesia states "Everyone has the right to fair legal recognition, guarantee, protection and certainty as well as equal treatment before the law". This means that every community activity must be based on the norms and regulations that apply in the community without exception and including children.

The protection of children in a nation society is a benchmark of the nation's civilization therefore it must be tried according to the capabilities of the nation and the nation to be in accordance with the ideals of the nation itself.² Children are legal subjects who have rights and positions that are protected by laws and regulations. Children in civil law, are seen as individuals who have a legal interest to grow and develop properly, both physically and mentally,³ In the legal system in Indonesia, especially according to the Child Protection Law, a child is defined as "a person who is not yet 18 (eighteen) years old, including a child who is still in the womb". Child protection is considered important because based on Article 28B paragraph 2 of the 1945 Constitution states, "Every child has the right to survival, growth, and development and has the right to self-protection from violence and discrimination" The article guarantees the basic right of every child to live, develop, and not experience violence

¹ Ratri Novita Erdianti, *Hukum Perlindungan Anaka Di Indonesia* (Malang: Universitas Muhammadiyah Malang, 2020).

² Zetria Erma, *Perlindungan Terhadap Hak Anak Dalam Pelaksanaan Dispensasi Perkawinan Di Pengadilan Agama* (Jawa Tengah: Zahira Media Publisher, 2023).

³ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000).

and discrimination.⁴ However, there are still many phenomena that occur in society related to children, including early marriage which is still a serious problem that threatens the fulfillment of children's rights in various regions, including in West Sulawesi.

Early marriage is a marriage carried out by a person who has not reached the minimum age limit as stipulated in the law, which is 19 years for men and women. Marriage is an important aspect for humans to meet the basic needs of their lives.⁵ Although the age limit has been expressly regulated in Law Number 16 of 2019 concerning Marriage, the practice of early marriage still occurs a lot. The practice of marriage at the age of children still continues to this day, even though their age has not met the provisions in Article 7 paragraph 1, and there is a possibility to obtain a marriage dispensation from the Religious Court.⁶ Therefore, the protection of children who commit early marriage is urgently needed, early marriage or underage marriage, of course, will affect and hinder the fulfillment of children's rights.⁷ Legal protection of children due to early marriage can be done in two ways, namely preventive and repressive legal protection. Preventive protection includes policies and legal measures to prevent early marriage, while repressive protection is related to the restoration of children's rights after early marriage occurs.⁸ so that children as legal subjects get a guarantee of justice and legal certainty. Early marriage in civil law, has various legal consequences, especially on the status of the child born, civil rights, and parental responsibilities, any legal action in civil law, involving minors must pay attention to the principle of legal protection (*rechtsbescherming*) for children.⁹

The gap between regulation and the reality on the ground arises because although the Marriage Law and the Child Protection Law have established minimum age limits and child protection principles, the implementation of civil law at the praxis level has not been effective. The high rate of early marriage in West Sulawesi shows that the existence of regulations is not automatically proportional to prevention. One of the main factors is the provision of marriage dispensation which is relatively easy to grant, so that the minimum age limit loses its function as an instrument of child protection. This means that civil law that should be preventive has become loose because exceptions are widely practiced. In addition, limited supervision, lack of public understanding of the legal and social risks of early marriage, and strong cultural factors also hinder the effectiveness of civil law. Regulations provide norms and limits, but are not followed by enforcement mechanisms that are strict, consistent, and sensitive to *the best interests of the child*. This causes the child protection promised by the law not to be substantively realized.

Based on data from the Central Statistics Agency, West Sulawesi Province is still among the top three provinces with the highest rate of child or early marriage in Indonesia in 2024, with a percentage of more than 10.71. So it can be concluded that early marriage in West Sulawesi is not only a social problem, but also has a direct impact on the legal protection of

⁴https://www.google.com/search?q=pasal+28+b+ayat+2+uu+1945&client=firefox-b-d&sca_esv=bc0aa39c15f4c826&xsrf=AE3TifObjELeuewcAssM03dRPSarC76HRQ%3A1761872364199&ei=7AkEaa_6C4WRseMPxp7d4Ak&ved=0ahUKEwivoKGDns2QAxWFSGwGHUZPF5wQ4dUDCBA&uact=5&oq=pasal+28+b+aya.

⁵ emmilia Rusdiana Tiara Dewi Prabawati, "Kajian Yuridis Mengenai Alasan Pengajuan Dispensasi Kawin Dikaitkan Dengan Asas-Asas Perlindungan Anak," *Novum : Jurnal Hukum* 6 (2019): 57.

⁶ Dul Jalil, "Dilema Hukum :Dampak Kontradiksi Antara Dispensasi Nikah Dan Perlindungan Anak Di Indonesia," *Yustisi Jurnal Hukum Dan Hukum Islam* 12 (2025): 225.

⁷ Muh Abizar Qiffari, "Dispensasi Kawin Terhadap Perkawinan Di Bawah Umur Dalam Perspektif Undang - Undang Perlindungan Anak Di Pengadilan Agama Kelas 1 A Makassar" 2 (2021): 210.

⁸ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2019).

⁹ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana Prenadamedia Group, 2016).

children in civil terms. Therefore, this study aims to analyze the consequences of civil law arising from early marriage and assess the extent to which positive legal instruments in Indonesia are able to provide effective protection for children in the legal context so that children as legal subjects get justice in the legal process.

METHODS OF THE RESEARCH

This study uses a normative legal method that focuses on the analysis of written legal norms, legal principles, and doctrines related to child protection due to early marriage. The approaches used include a statutory approach (*Statute Approach*) and a conceptual approach (Conceptual Approach) to examine the compatibility between civil law theory and child protection in West Sulawesi. Data was obtained through a literature study that included primary legal materials, namely Law Number 1 of 1974 concerning Marriage, Law Number 23 of 2002 concerning Child Protection, and the Perdat Law Book. Secondary, namely law books, scientific journals and research articles, documents of the Central Statistics Agency and tertiary, namely legal dictionaries, are then analyzed qualitatively by descriptive-analytical methods to describe and assess the effectiveness of civil law norms in providing protection for children as a result of early marriage.

RESULTS AND DISCUSSION

Child marriage is defined as marriage when the child is still under 18 years old who is considered not to have the qualified physical, physiological and psychological maturity to be able to account for the marriage and the children to be produced.¹⁰ Early marriage is a problem that is considered crucial because it involves multidimensional problems that can cause several aspects such as social, economic, health, cultural and legal that are still emerging such as in West Sulawesi Province. Based on data from the Central Statistics Agency in 2024, West Sulawesi is a province with a relatively high rate of child marriage in Indonesia. This condition indicates that there are still serious problems in the legal protection of children, especially women who are vulnerable to early marriage. Marriage or early marriage that occurs is not without cause.¹¹ Although Law Number 16 of 2019 and Law Number 35 of 2014 have been enacted, illustrating that civil law norms have not been effective in carrying out their preventive functions. This condition is exacerbated by the high level of marriage dispensation granted by the Religious Court, so that the minimum age limit that should be an instrument of protection is easily overlooked. Thus, the empirical data strengthens the conclusion that the implementation of civil law in protecting children from the risk of early marriage in West Sulawesi is still weak and has not been able to significantly reduce the rate of child marriage.

The phenomenon of early marriage in West Sulawesi is motivated by various factors, namely culture which is a tradition in the village of parents who immediately want to marry their children, and economic factors, said Hamzih. In addition, there are also accidents or pregnancy factors outside of marriage and finally due to education. Based on these problems from a civil law perspective, early marriage poses problems in terms of the legal competence

¹⁰ Asma Amin et al., "Factor Analysis of The High Prevalence of Child Marriage in West Sulawesi Asma," *AL-MAIYYAH* 17, no. 2 (2024): 56–66, <https://doi.org/https://doi.org/10.35905/al-maiyyah.v17i1.8728>.

¹¹ Nur Rohmah Mutiah, Ishmatul Zulfa, and Widodo Hami, "Analisis Penyebab Dan Dampak Pernikahan Dini (Studi Kasus Di Desa Rejosari, Kecamatan Bojong)," *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 7, no. 1 (2024): 29–38, <https://doi.org/10.24853/ma.7.1.29-38>.

of the parties. In article 7 paragraph 1 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974, it is stipulated that the minimum age of marriage is 19 years for men and the same for women. Violation of this provision has implications for the legal invalidity of the marriage. However, normatively, if the marriage is carried out below the age limit set by law, it is necessary to have a marriage dispensation from the religious court. However, according to the author, the impact caused by the existence of marriage dispensation for children under the age of 19 makes there a legal loophole provided by the state against violations of the marriage age limit. Marriage dispensation, according to Hilman Hadikusuma, is a marriage that occurs where the bride and groom or one of them has not reached the age indicated by the applicable law.¹² The provisions of Article 7 paragraph 2 of Law Number 16 of 2019 do open opportunities for judges to grant dispensation with urgent reasons, but substantively this actually creates a contradiction to the spirit of child protection.

The granting of marriage dispensation is often used as a tool to legitimize the practice of early marriage in society, especially in areas such as West Sulawesi which are still strongly influenced by culture and social pressures. As a result, the regulation of the marriage age restriction that should *be imperative* becomes *discretionary*, depending on the judge's subjective judgment and the parents' request.

Normatively, the marriage dispensation should be *lex specialis* which is used only in exceptional circumstances, but in practice the marriage dispensation is granted with weak reasons, such as family economic factors. This condition shows that the legal system still provides loopholes against violations of the basic principles of civil law regarding the ability to act, this in the long run, can weaken the legal function that actually wants to protect children from social, health, and legal risks due to early childhood marriage. The impact felt from this early marriage includes in terms of social dropouts, in terms of health, namely high divorce, stunting, complications of maternal and child health.

From the perspective of customary law in West Sulawesi, the practice of young marriage is still partially justified as long as it meets customary social norms. However, this is often contrary to the principle of child protection as stipulated in Law Number 35 of 2014 concerning Child Protection, which emphasizes the best interests of the child so as to show that there is a gap between positive law and customary law. Customary law that still tolerates early marriage is a challenge for the implementation of national laws that prohibit it. From the point of view of civil law, this disharmony gives rise to dualism in the application of law, where some people consider customary marriage to be valid even though it is not registered by state law. In fact, the legality of marriage according to national law must meet the provisions of the law so as not to hinder the effectiveness of the implementation of the law.

From a normative juridical perspective, this condition can weaken the state's function in providing preventive legal protection. In fact, the main purpose of family law in the context of civil law is to create certainty, benefit, and justice for every family member. Another impact that arises from early marriage is on children. In the context of civil law, this affects their civil rights such as alimony, inheritance rights, and guardianship status. This ambiguity can lead to legal conflicts in the future. Therefore, local governments are expected to take a

¹² Levana Safira, Sonny Dewi Judiasih, and Deviana Yunitasari, "Perlindungan Hukum Terhadap Anak Yang Melakukan Perkawinan Bawah Umur Tanpa Dispensasi Kawin Dari Pengadilan," *Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad* 4 (2021): 212.

legal approach based on local wisdom to reduce the rate of early marriage. In addition, it is also hoped that the role of educational institutions and religious leaders is very important in building public legal awareness. When religious and legal norms go hand in hand, the practice of early marriage can be significantly suppressed.

Although juridically, the state has provided an adequate legal framework through the Marriage Act, the Child Protection Act, and the Population Administration Act. However, its effectiveness at the regional level such as West Sulawesi is still considered to be relatively low, so this shows that the legal approach cannot be solely normative, but must be accompanied by adequate education and socio-cultural approaches so that legal reform must pay attention to local values.

Civil law as a system that regulates relationships between individuals demands a balance between private interests and public interests. In the case of early marriage, this imbalance occurs because the child does not have the full legal capacity to make decisions. Therefore, legal protection of children in early marriage in West Sulawesi must be placed within the framework of substantive justice, not just procedural justice. The state must guarantee children's right to education and social protection. The analysis shows that some people consider state law to be too rigid in assessing early marriage. However, legal firmness is needed to prevent practices that are detrimental to children's future.

The role of religious court judges is very important. Judges are not only law enforcers, but also as moral protectors of society through fair decisions for children. The practice of early marriage from a normative perspective in West Sulawesi is a form of violation of the principle of legal protection of children. The state is obliged to protect children from practices that can interfere with their physical and mental development. Child protection also concerns the certainty of civil status. Failure of young parents in fulfilling their civil obligations can result in the abandonment of children, both physically and emotionally, this in civil law is a form of neglect of parental obligations that can give rise to legal liability. This condition also shows that early marriage is not only a moral or customary issue, but is a violation of the principle of family legal responsibility. The state has an obligation to intervene through policies and regulations that strengthen child protection. However, in early marriage, the legal consequences often cannot be carried out due to the unpreparedness and inability of the parties.

The approach in modern civil law can also be criticized for not being in accordance with the principle of equality before the law. Girls who are married at a young age often lose the right to the legal protections that should be inherent from birth. This can be categorized as moral coercion that reduces voluntariness in a marriage agreement. This can have implications for a defect of will that affects the validity of the legal obligation. Therefore, it is necessary to affirm the law on the validity of early marriage that occurs without free will. The judge must be able to objectively assess whether the marriage is carried out with full awareness and meets the requirements of legal proficiency. Therefore, it is hoped that efforts to protect children's laws will not only stop at the prevention of early marriage, but also must ensure the restoration of the rights of children who have already become victims of early marriage. This recovery mechanism includes the provision of legal aid, the fulfillment of education, and social security for children born of unregistered marriages. All of this is part of the shared responsibility of the community and the state as the protector of citizens. Lastly, the Indonesian legal system has actually provided adequate protection for children, but its

implementation in areas such as West Sulawesi still requires a more humane and participatory approach. Overall, efforts to protect children in early marriage in West Sulawesi must be directed at creating a balance between national legal norms and local values, so that the law truly exists as an instrument of social justice for Indonesian children.

CONCLUSION

Early marriage in West Sulawesi shows that the existence of national regulations such as the Marriage Law and civil law provisions on acting skills have not been able to provide effective legal protection for children. The high rate of child marriage that is not optimal tolerates young marriage, causing dualism between customary law and positive law. From a civil law perspective, it also has the potential to cause legal uncertainty regarding the validity of the marriage contract, the civil status of the child, and the legal responsibility between husband and wife, so that this practice creates uncertainty, weakens the principle of child protection, and ignores the principle of legal competence as the basis for the validity of the marriage contract. Thus, child protection in West Sulawesi requires a firmer, more comprehensive, and substantive legal approach through strengthening the role of judges, increasing community legal literacy, and harmonizing between local values and national law so that the function of civil law as an instrument of child protection can be realized optimally. Therefore, it is necessary to strengthen the application of the law that is not only formal but also substantive, by emphasizing the function of civil law as a means of protection for parties who are not legally competent. This approach needs to be balanced with legal education, public awareness raising, and the active role of judicial institutions and local governments so that the legal goals, namely creating justice, certainty, and benefits for children and women, are truly realized in social and legal practices in the community.

REFERENCES

- Amin, Asma, Andi Nur, Fiqi Utami, Dian Pertiwi, Ervi Alfryanti, and Universitas Sulawesi Barat. "Factor Analysis of The High Prevalence of Child Marriage in West Sulawesi Asma." *AL-MAIYYAH* 17, no. 2 (2024): 56-66. <https://doi.org/https://doi.org/10.35905/al-maiyyah.v17i1.8728>.
- Erdianti, Ratri Novita. *Hukum Perlindungan Anaka Di Indonesia*. Malang: Universitas Muhammadiyah Malang, 2020.
- Erma, Zetria. *Perlindungan Terhadap Hak Anak Dalam Pelaksanaan Dispensasi Perkawinan Di Pengadilan Agama*. Jawa Tengah: Zahira Media Publisher, 2023.
- Jalil, Dul. "Dilema Hukum :Dampak Kontradiksi Antara Dispensasi Nikah Dan Perlindungan Anak Di Indonesia." *Yustisi Jurnal Hukum Dan Hukum Islam* 12 (2025): 225.
- Mamudji, Soerjono Soekanto & Sri. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: RajaGrafindo Persada, 2019.
- Marzuki, Peter Mahmud. *Pengantar Ilmu Hukum*. Jakarta: Kencana Prenadamedia Group, 2016.
- Mutiah, Nur Rohmah, Ishmatul Zulfa, and Widodo Hami. "Analisis Penyebab Dan Dampak Pernikahan Dini (Studi Kasus Di Desa Rejosari, Kecamatan Bojong)." *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 7, no. 1 (2024): 29-38.

<https://doi.org/10.24853/ma.7.1.29-38>.

Qiffari, Muh Abizar. "Dispensasi Kawin Terhadap Perkawinan Di Bawah Umur Dalam Perspektif Undang - Undang Perlindungan Anak Di Pengadilan Agama Kelas 1 A Makassar" 2 (2021): 210.

Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: Citra Aditya Bakti, 2000.

Safira, Levana, Sonny Dewi Judiasih, and Deviana Yuanitasari. "Perlindungan Hukum Terhadap Anak Yang Melakukan Perkawinan Bawah Umur Tanpa Dispensasi Kawin Dari Pengadilan." *Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad* 4 (2021): 212.

Tiara Dewi Prabawati, Emmilia Rusdiana. "Kajian Yuridis Mengenai Alasan Pengajuan Dispensasi Kawin Dikaitkan Dengan Asas-Asas Perlindungan Anak." *Novum : Jurnal Hukum* 6 (2019): 57.