

FULFILLING EDUCATION RIGHTS FOR GIRLS IN CHILD MARRIAGE TO ACHIEVE SDGs GENDER EQUALITY

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ABSTRAC

The age minimum for marriage in Indonesia is 19 years old for both men and women, but those who are underage can still marry legally by applying for marriage dispensation through a religious court or district court depending on the child's religion. Child marriage can lead to school dropout since formal school doesn't accept students who are married so these children will be returned to their parent, most child marriage cases involve girls more than boys which can lead to gender inequality. This research is conducted by a normative juridical method which utilized secondary data resources such as primary, secondary, and tertiary legal materials. Applicable law regarding the right to education for children is studied by referencing marriage law and national educational system law. The method used in this research is descriptive-analytical data including factual behavior in society and verbal respondent's statement. There are few regulations regarding the right to education for children but in practice, these regulations are difficult to be applied since the school has its authority. In cases like this, there are alternative ways to fulfill the right to education for girls in child marriage as participating in open schools and learning centers held by the community. Gender equality and education are deeply connected and can not be achieved without one another.

Keywords: *child marriage; gender equality; right to education.*

INTRODUCTION

Marriage is one of the most important life events and is considered sacred between men and women. The explanation for Article 7 Verse 1 of marriage law states that the age minimum for marriage as one of the conditions is regulated to protect the wellbeing and health of husband, wife, and possibly future descendants. One's age is deeply connected to one's body readiness to carry children and connected to emotional maturity, which both are needed in marriage.

Even though there are regulations regarding the minimum age for marriage, underage marriage can still happen with the help of marriage dispensation. Depending on the child's religion, the district court and religious court can request marriage dispensation. Despite several controversies caused by marriage dispensation, this practice is needed to protect the child's

marriage so it will be considered legal and, therefore, protected by law. The age minimum for marriage was important, for underage children are not physically and mentally prepared to keep a household. A marriage that needs marriage dispensation to be legal is often called child marriage; child marriage is a marriage between a man and a woman where one or both are under 19 years old. There is a chance that each couple is not mentally and financially ready.¹

According to research conducted by Australia-Indonesia Partnership for Justice, girls marry earlier than boys. Several factors cause child marriage. Those include religious norms and customs. Based on religious norms, child marriage can happen once children reach *akil baligh* or the state where children are considered adults based on religious rules. There is a stigma around child marriage; some believe it is better for girls to marry early to avoid *Zina*. One's economic state also contributes to child marriage; families with low income tend to marry their daughters as they see daughters as economic burdens.

Indonesia's government took several steps in battling child marriage, including changing the age minimum for marriage from 19 for men and 16 for women to 19 for both men and women in Article 7 Verse 1 of Law No. 16 of 2019 regarding Marriage. Moreover, regarding marriage dispensation is regulated in Article 7 Verse 2 of Law No. 16 of 2019, it is stated that if there is a deviation regarding the age minimum for marriage, parents of the underage bride or groom could ask for marriage dispensation to court with urgent reason and supporting evidence. The number of marriage dispensations in 2020 alone reached 34.000 cases, with 97% of those applications granted by religious courts.²

It is worrisome seeing the high numbers of granted marriage dispensations, for child marriage is done by children under 19 years old and are still students. Child marriage is deeply connected with the number of school dropouts, especially for girls. With many girls involved in child marriage, generations of women and girls can be trapped in poverty. Only through education can one gain the opportunity to have a better life. Access to education will gain the knowledge, confidence, and skills needed to adapt. The higher the education level, the higher girls' chance to gain higher income so later in life, they can participate in making decisions affecting their lives and building better futures for themselves and their families.

Education in Indonesia is generally regulated within Law No. 20 of 2003 regarding educational system law. The implementation of education in Indonesia is carried out through compulsory education programs. This program was created to provide broader educational opportunities for citizens, hoping that there would be an escalation in population quality needed to support economic growth and boost social politic and welfare.³ Article 1 Verse 18 of the National Educational System Law defined compulsory education as a mandatory program for citizens, and it is Government's responsibility. Since 2016, the Ministry of Education and Culture has improved the compulsory education program from 9 years to 12 years which is implemented through Program Indonesia Pintar regulated through Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 19 of 2016 concerning Program Indonesia Pintar. Program Indonesia Pintar aims to increase education access for children aged 6 to 21 to attain education services until they graduate from middle school.

Even though there is compulsory education, many students still drop out of school due to child marriage. Based on data from the Central Bureau of Statistics through the National

¹Sonny Dewi Judiasih, et. al.. (2022). *Aspek Hukum Perkawinan Bawah Umur Tanpa Dispensasi Kawin dalam Perspektif Hukum Indonesia*, Jatinangor: Unpad Press, p. 24

²Dwi Hadya Jayani. (2021). "Wabah Pernikahan Dini di Tengah Pandemi dan Dampak Buruknya". <<https://katadata.co.id/wabah-pernikahan-dini-di-tengah-pandemi-dan-dampak-buruknya>> [26/08/2021].

³Yuli Setiawan. (2014). "Kemdikbud Upayakan Wajib Belajar 12 Tahun Melalui PIP". <<http://smk.kemdikbud.go.id/konten/1906/kemdikbud-upayakan-wajib-belajar-12-tahun-melalui-pip>> [26/5/2022].

Socio-Economic Survey in 2017, 12,27% of girls dropped out of school due to child marriage; this number is much higher than boys with 0,37%.⁴

Difficult access to education for married girls is supported by school policy prohibiting students from getting married in the first place. Married students will be returned to their parents and cannot participate further in school. Patriarchy also took part in enabling girls to get married underage. Aside from patriarchy, the social construct surrounding child marriage that considers women's gender roles as housewives causes limitations. Consequently, they lose the chance to further their education once they get married. Families with economic difficulties tend to prioritize their son's education over their daughters because they believe girls will marry early and do not need education.⁵

In 2020, 42.437 girls married underage; meanwhile, 8.239 boys got involved in child marriage.⁶ This phenomenon created gender inequality between girls and boys. Child marriage often ends up in school dropout; hence there is inequality in access to education for girls with the high number of girls involved in child marriage. Out of concern regarding the high numbers of underage marriages, the United Nations appealed to every member state to abolish the practice of underage marriage. United Nations has goals to improve the lives and prospects of everyone, everywhere, in a 15-year plan to achieve them through Sustainable Development Goals (SDGs). There are 17 goals, one of which is gender equality, with the primary goal to end all forms of discrimination against all women and girls everywhere. Fulfilling the right to education for married girls has a significant effect on not only the achievement of SDGs Gender Equality but also SDGs in general, broader access to education benefits economic growth. It helps eradicate poverty by raising girls' potential income and socio-economic status.

With the significant role of education in achieving gender equality, it is essential for us to know the regulations for the right to education and its appliance in society and the means to fulfill the right to education for girls in child marriage.

METHOD

This research is conducted by normative juridical method, utilizing secondary data sources such as primary legal materials, secondary legal material, and tertiary legal materials.⁷ Applicable laws concerning the fulfillment of the right to education for girls involved in child marriage are studied by referencing from marriage law and national educational system law. The method used in this research is descriptive-analytical, which gives descriptive analytical results. Descriptive analytical data includes factual behavior in society and verbal respondents' statements.

ANALYSIS AND DISCUSSION

Legal Protection for Children Involved in Child Marriage

Children are often seen as the future of the nation, hence why there is legal protection surrounding their rights. Children's rights are part of human rights and are protected as stated in Article 28B Verse 2 of the 1945 Constitution of the Republic of Indonesia; each child has

⁴Noah Yarrow dan Rythia Afkar. (2020), "*Gender and education in Indonesia: Progress with more work to be done*", <<https://blogs.worldbank.org/eastasiapacific/gender-and-education-indonesia-progress-more-work-be-done>> [22/10/2021].

⁵Ade Irma Sakina dan Dessy Hasanah Siti A. (2017). "Menyoroti Budaya Patriarki di Indonesia". *Social Work Journal*, 7(1), p. 74.

⁶JawaPos, (14 Februari 2021), "Tahun Lalu, Ada 46 Ribu Perempuan Menikah di bawah umur", <<https://www.jawapos.com/nasional/politik/14/02/2021/tahun-lalu-ada-46-ribu-perempuan-menikah-di-bawah-umur/>> [26/05/2022].

⁷Soerjono Soekanto dan Sri Pamudji. (2007). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: Rajawali Press, p.12-15.

the right to live, grow up, and develop, as well as the right to be protected from violence or discrimination. Protection of children's rights is valid for every child without exception, and therefore girls in child marriage have the same right to education as every other child. The right to education for children is regulated as below:

1. The 1945 Constitution of the Republic of Indonesia

The right to education is regulated within Article 31 of the Constitution. Article 31 Verse 1 regulates that each citizen has the right to education. Moreover, the State's responsibility towards it is regulated in Article 31 Verse 3 of the Constitution; State is responsible for striving and implementing a national educational system that increases faith and piety as well as a noble character in order to enrich the life of a nation which is regulated further in the enactment. The State's seriousness in prioritizing education is shown in Article 31 Verse 4, which regulates that at least twenty percent of the state budget goes to implementing national education.

2. Law Number 35 of 2014 concerning Child Protection

A child's right to education is regulated in Article 9 Verse 1 of Children's Protection Law; each child is entitled to education and teaching to improve oneself and one's level of intelligence suited to one's interest and talent. The right to education for children needs to be sought by many therefore, as stated in Article 49, the State, the Government, the local government, and parents are responsible for providing the broadest possible opportunity for children to attain education.

Fulfilling a child's right to education is one of many factors supporting a child's welfare. The General Explanation of Child Protection mentions the importance of a child's education as the key to survival. The child is entitled and needs to obtain the broad opportunity to grow and thrive optimally, whether it is physically, mentally, or socially; hence why, a child's rights protection, including the right to education in order to achieve welfare by providing guarantees for the fulfillment of their rights without discrimination.

3. Law Number 20 of 2003 concerning National Educational System

National Educational System Law regulates the general implementation of education in Indonesia. There are few principles on implementing education; Article 4 Verse 1 regulates that education has to be implemented democratically, fairly, and non-discriminatively and uphold human rights, religious values, cultural values, and diversity. Meanwhile, the right to education is stated in Article 5 Verse 1 of the National Educational System Law; each citizen has an equal opportunity to attain quality education.

A child's participation in education is regulated by Article 6 Verse 1; each citizen aged 7 to 15 is required to attend basic education. Parents of the child are also required to participate in their child's education; Article 7 Verse 2 states that parents of children required to attend basic education are required to provide basic education to their child.

4. Law Number 39 of 1999 concerning Human Rights

Article 52 Verse 1 of Human Rights Law regulates that every child is entitled to protection from parents, family, community, and the State. A child's right is part of human rights, and in the child's best interest, their right is recognized and protected by law even since the child is still in the womb. Section X of Human Rights Law explicitly regulates a child's rights.

Furthermore, Article 53 Verse 1 of Human Rights Law mentioned that education to children is an effort for them to improve their standard of living and therefore, the right to education is protected; it is formulated that every child, since they are still in the womb, entitled to live, survive, and improve their life.

Specifically, the right to education for children is regulated in Article 60 Verse 1, which reads, “Each child is entitled to attain education and teaching to improve themselves suited to their interest, talent, and level of intelligence.”

5. Convention on the Rights of the Child

United Nations Convention on the Rights of the Child focuses on child protection so children can have a better life. As a United Nations member, Indonesia ratified Convention on the Rights on the Rights of the Child in 1996 through Presidential Decree No. 1990 concerning the Ratification of the Convention on the Rights of the Child. Article 28 states that each party has to recognize a child’s right to education and to be done step by step to realize this right based on equal opportunity.

6. Regulation of Supreme Court No. 5 of 2019 concerning Guidelines for Adjudicating for Marriage Dispensation

Based on this guideline, judges can make sure the parents of the underaged child participate in the child’s life regarding economic, social, health, and educational matters. In guaranteeing that the marriage is consensual, the child must be brought to court, and the judge is given the freedom to hear the child’s statement without the presence of the parents, once again, to ensure that there is no threat or coercion in the marriage.

Even though there are regulations that protect a child’s right to education, it is hard for girls in child marriage to pursue education. Implementing education in Indonesia uses school-based management, which means the school has full authority to manage activities, including conducting school rules. Even though it is found in most middle schools, there are no school rules regarding a student’s marital status, but if and when a case like those happens, most middle schools would not accept and would instead return the married student to her parents. Between four public middle schools and one private middle school, only one public middle school would consider the child’s grade before returning the child to their parents.

Meanwhile, there are prohibitions of students from marrying stated in school rules of most high schools. It is because most high schoolers are between 15-19 years old and are likelier to get married than middle schoolers. When cases like girls marrying underage happened, most high schools would also return the said child to their parents. The child tends to resign from school when they decide to get married, but in some cases, when they are returned to their parents, they will also sign a resignation letter. This practice may lead to coercion from schools to children involved in child marriage; said children should have a choice whether to continue their education or not.

Through field research done in ten schools, there are reasons why it is hard for them to continue their education. Most schools are worried that if children who get married keep going to school, it will influence other students to get married and affect their own studies since their focus will be split between being a student and a wife. Former Minister of Education and Culture Muhadjir Effendy stated in 2018, even when students get married, they are still entitled to education. However, in all schools where this research was conducted, it is hard to apply said statement since there are no official regulations from the Minister of Education and Culture and the education authorities.

Means to Fulfill Right to Education for Girls in Child Marriage in Order to Achieve SDGs Gender Equality

SDGs are a series of 17 goals fixed by the United Nations, which were adopted by 193 countries in 2015. Through sustainable economic, environmental, and social development, we will be able to create a better world and life for all by 2030. The SDGs emphasize interconnected

aspects of sustainable development by putting sustainability at their center.⁸ One of the goals is gender equality, a necessary foundation for a peaceful, prosperous, and sustainable world. Gender is a social relationship between boys and girls, men and women, and how this social relationship is constructed. Gender is a concept shaped, socialized, strengthened, and legitimized socially and culturally.⁹ Gender roles are not standalone. They are connected to identity and various characteristics of society's assumption of every aspect of social and cultural values for men and women. The first target of SDGs Gender Equality is to end all forms of discrimination against all women and girls everywhere, including those in education.

Even though the SDGs are not legally binding, countries are expected to take ownership and establish a national framework for achieving the 17 goals. All countries are primarily responsible for follow-up, and review, at the national, regional, and global levels, concerning the progress made in implementing the goals and targets by 2030.

Few means have and can be made to fulfill the right to education for girls in child marriage. Changing the age minimum for marriage through Law No. 16 of 2019 concerning the Change of Law No. 1 of 1974 concerning marriage to 19 years old for both men and women is one of them.

Table 1. Comparison of Article 7 of Marriage Law Before and After Revision

Law No. 1 of 1974 concerning Marriage	Law No. 16 of 2019 concerning The Change of Law No. 1 of 1974 concerning Marriage
<p>Article 7 Verse (1): Marriage is only allowed when the male has reached the age of 19 years old, and the female has reached 16 years old.</p> <p>Article 7 Verse (2): In the event of deviation from Verse (1), a dispensation from the Court or other officials appointed by both the male and female parents may be requested.</p>	<p>Article 7 Verse (1): Marriage is only allowed when both males and females reach the age of 19.</p> <p>Article 7 Verse (2): In the event of deviation toward age requirement as stated in Verse (1), male and/or female parents may request a dispensation from the Court with urgent reasons accompanied by sufficient supporting evidence.</p>

By doing so, the hoped result is reducing the cases of child marriage and means to provide broader opportunities for children to attain higher education. The difference in age minimum for men and women causes discrimination since it will affect the fulfillment of their fundamental rights, such as economic rights, right to education, and social rights, and will form a culture that causes gender discrimination.

Verse 2 shows that underage marriage can still be done through marriage dispensation. Dispensation is often seen as condoning the practice of child marriage by giving a gap to do so. However, on a larger scale, marriage dispensation gives legal protection for the child involved. But even so, judges of the court are expected to analyze the urgent reasons before granting marriage dispensation to prevent child marriage from happening.¹⁰

As girls get married, they are treated and considered adults. This condition can be challenging for those girls since they are practically a child and still need guidance from parents, hence why Article 16 letter j of Regulation of Supreme Court No. 5 of 2019 concerning Guidelines for Adjudicating for Marriage Dispensation regulates judges can advise parents to commit and be responsible towards economic, social, health, and education matters for their child. Even though in practice, these things are hardly done by the parents since when daughters get married, they are often considered adults and are no longer the parent's responsibilities but their husbands.

Another means that has been done is by implementing the compulsory education program thoroughly, each citizen aged 7 to 15 years old is required to attend primary education, and their parents are obligated to provide basic education to their children. In fact, in some areas, parents' domination in deciding the child's marriage is still intense, and some daughters marry in order to uplift the economic status of the family.¹¹

The problem occurs when schools would not accept girls in child marriage to continue their education in formal schools; these girls would be returned to their parents and sign resignation letters. This practice can lead to coercion by the school. There are a few educational alternatives that can be chosen in this matter. Such as joining an open school as one non-formal education, the results are the same as a formal school since open school is based on public school. Although open schools have fixed schedules, the school rules are more flexible than public ones. Open school is one of the Government's strategies to broaden education implementation. Hence, each citizen can pursue education as long as they live, as stated in Article 4 Verse 3 of the National Educational System Law.

Another alternative that can be chosen is participating in learning centers or Pusat Kegiatan Belajar Masyarakat, which the community holds as a non-formal education. It is recognized by law and is mentioned in Article 26 Verse 5 of the National Educational System Law. The results of the learning center can be valued equally as those in public schools by going through an equalization appraisal process by a government or local government-appointed agency.

By the end of field research, it was found that there are no standard rules regarding what action should be taken in cases like girls in child marriage. Although there are no standard rules or regulations, most schools would not accept those girls to continue their education in formal schools and will return those children to their parents.

The United Nations has recognized education's role in pursuing gender equality through Sustainable Development Goals (SDGs) Gender Equality. The main goal of SDGs Gender Equality is to end all kinds of discrimination, violence, and various dangerous practice towards women and girls in public and private. Gender equality is deeply connected with access to education since accessible education makes participating in quality jobs and income possible. Education is also the tool to eradicate child marriage which is one of the goals of SDGs Gender Equality. There are many benefits to providing broad access to education for girls in child marriage; participating in education can significantly increase mother's health, reduce infant death and natal numbers, improvement in HIV and AIDS prevention, and also improvement of opportunities for both women and girls.¹²

CONCLUSION

Although there are regulations regarding education rights for children in child marriages, in practice, it is hard to be applied since the school has its authority regarding the implementation of education. Even with the Former Minister of Education and Culture's statement in his terms, this statement cannot be applied since there are no legal regulations to further the action hence why there are still girls in child marriage whose right to education is not fulfilled. A few means have been made to achieve gender equality, such as changing the age minimum for both men and women to 19 years old so children can at least graduate from high school. Another means is implementing the compulsory education program and participating in open schools or

¹¹Siti Nurul Khaerani. (2017). "Faktor Ekonomi dalam Pernikahan Dini pada Masyarakat Sasak Lombok", *Jurnal Qawwan*, 13(1). p. 2.

¹²Anushna Jha and Mehrin Shah, "Leveraging Education as a Tool to Achieve Gender Equality – Strategies and Signposts", <<https://blogs.lse.ac.uk/gender/2020/04/08/leveraging-education-as-a-tool-to-achieve-gender-equality-strategies-and-signposts/>> [09/06/2022].

learning centers as alternatives when formal schools would not accept. Education and gender equality are deeply connected and cannot be achieved without one another.

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