

## Analysis of Suspended Marriages from The Perspective of Human Rights and Child Protection Laws

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**Abstract:** Early marriage by minors becomes a problem in many countries including Indonesia, with economical, educational and customary factors being the main reasons. In some areas in Indonesia where customs are still closely held, the practice of suspended marriages is very common. Suspended marriage is a condition where marriage is carried out when each partner is very young with a specific purpose and both are prohibited from living together in the same house before adulthood. This article aims to examine suspended marriage in human rights' perspective and child protection law's using normative research techniques by reviewing and deepening literature studies. The results of this study indicate that suspended marriages are included in the marriage of minors which is an act categorized as violating human rights because child marriage affects the education and growth of children and is a form of opposition to the Child Protection Law, the practice of early marriage and suspended marriages often occur in Indonesia even though the law has expressly prohibited doing so.

**Keywords:** Suspended marriage, Human Rights, Child Protection

**Abstrak:** pernikahan dini oleh anak di bawah umur menjadi suatu permasalahan di berbagai Negara termasuk di Indonesia, tidak lain faktor yang melatarbelakanginya adalah faktor ekonomi, pendidikan dan adat yang mengikat. Di beberapa daerah di Indonesia yang masih memegang erat adat istiadat kearap sekali melaukan praktik pernikahan gantung. Nikah gantung merupakan kondisi dimana pernikahan dilaksanakan pada saat masing-masing pasangan berumur masih sangat muda dengan tujuan tertentu dan keduanya dilarang tinggal serumah sebelum dewasa. Artikel ini bertujuan mengkaji nikah gantung dalam pandangan HAM dan Undang-undang Perlindungan anak menggunakan teknik penelitian normatif dengan mengkaji serta melakukan pendalaman studi kepustakaan. Hasil penelitian ini menunjukkan bahwa pernikahan gantung termasuk kedalam pernikahan anak di bawah umur yang merupakan sebuah tindakan yang dikategorikan melanggar hak asasi manusia karena pernikahan anak tersebut



berimbang pada pendidikan dan pertumbuhan anak dan termasuk bentuk penentangan terhadap Undang-undang Perlindungan Anak, praktek perkawinan dini maupun kawin gantung kerap terjadi di Indonesia meskipun Undang-undang telah secara tegas melarang melakukan hal tersebut.

**Kata Kunci: Nikah Gantung, Hak Asasi Manusia, Perlindungan Anak**

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## A. Introduction

Humans and human rights are two related words that are difficult to separate. That from the moment he is born into this world, a human being carries the right to freedom upon himself. According to Jean Jaquas Rousseau, humans in developing their potential will experience human values in an environment of natural freedom.<sup>1</sup> Pancasila, as the philosophy of the nation and state, is the basis of Indonesia's human rights. Conceptually, Pancasila accommodates aspects of humans as social and individual creatures. In the second principle of Pancasila acknowledges human rights to provide legal force in the implementation of human rights.<sup>2</sup>

Basically, human rights are fundamental rights that every individual owns since they were born.<sup>3</sup> As long as these rights do not interfere with other people's rights, they cannot be accused, even more it's guarantees protected by the laws in force in each country. The existence of human rights aims to protect each individual as a whole.<sup>4</sup> In the case of marriage, the freedom of the prospective couple to choose is a priority because it concerns the individual rights of each partner. In marriage it is important to pay attention to the goals of the prospective bride and groom because they are the ones who will build a new life and live the dynamics of

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<sup>1</sup> Zikraini Alrah, "Kontrak Sosial dalam Pandangan Rousseau," 2019.

<sup>2</sup> Sri Rahayu Wilujeng, "No Title," *Human Rights Humans : A Review of Aspects Historical and Juridical*, n.d

<sup>3</sup> Thomas Jefferson, "HAK ASASI MANUSIA;," n.d.

<sup>4</sup> Imran Siswandi and Supriadi Supriadi, "Pernikahan Di Bawah Umur Prespektif Ham," *Edu Sociata (Jurnal Pendidikan Sosiologi)* 6, no. 1 (2023): 241–49, <https://doi.org/10.33627/es.v6i1.1171>.

the household, neither their parents nor family. Apart from that, marriages based on coercion always end in divorce.<sup>5</sup>

"Marriage is explained in Article 1 of Law Number 1 of 1974 concerning Marriage which states that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming an eternal and happy family (household) based on the belief in the Almighty God." Marriage concerns the order of values and norms of human life, therefore marriage is a sacred task in developing good and useful offspring. <sup>6</sup>In social life, marriage will bring about a transition in the level of life towards a more mature condition with a greater burden of responsibility as well as building a family. <sup>7</sup>So that husband and wife can build a lasting and happy marriage in accordance with the goals of marriage and inner and outer love and affection is needed between partners. Marriage is not an easy task because it is a lifelong devotion.<sup>8</sup>

As a country rich in diverse customs and culture, Indonesia has unique characteristics in each region. Among them is the culture of suspended marriage. Suspended marriage is a wedding tradition that developed in West Java, Malay and surrounding areas. Suspended marriage is a type of marriage where a boy and girl are pre-arranged and then married off at a very young age. Suspended marriage is a type of marriage that begins with a marriage proposal to an underage girl. If it is felt that both parties have reached a mutual agreement,

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<sup>5</sup> Agus Mahfudin and Siti Musyarrofah, "Dampak Kawin Paksa Terhadap Keharmonisan Keluarga," n.d.

<sup>6</sup> Haerul Azmi and Moh Asyiq Amrulloh, "Review Sociology of Islamic Law Against Practice Sembeq Sengeteng In Wanasaba Daya Village , District Wanasaba East Lombok Regency ," tt

<sup>7</sup> Syaiful Anwar, "Rights and Obligations of Husband and Wife According to Constitution Number 1 of 1974" 1 (1974).

<sup>8</sup> Ilahi Datilah and Zein Bastian, "Tradisi Kawin Gantung Di Jawa Barat Dalam Perspektif Perlindungan Hak Anak Di Bawah Umur," *Journal of Law, Society, and Islamic Civilization* 10, no. 1 (2022): 33, <https://doi.org/10.20961/jolsic.v10i1.57538>.

then the girl being proposed to will not accept another man. Only after both of them have reached adulthood will they be remarried and the marriage will be registered by the State in accordance with existing regulations.<sup>9</sup>

Suspended marriage itself certainly relates to the issue of child protection, where at a young age a child who is still playing with his peers is required to undergo marriage. Apart from having a negative impact on children, early marriage also has an impact on the welfare of society, including exacerbating the cycle of poverty in society<sup>10</sup> and will also hinder the socio-economic development of society and the problem of gender inequality will become more frequent. In the regulations, suspended marriages do not comply with the provisions in article 7 paragraph 1 of Law Number 16 of 2019 concerning Marriage which explains that the age limit for marriage is nineteen years for each couple. In this case, the marriage is classified as the marriage of a minor. It is important to know that the family and parents have the closest relationship with the child and are responsible for providing protection so that the child can develop themselves.<sup>11</sup> Marriage to a child who is still underage will definitely have a negative impact, especially on the child's growth and development as well as the child's mental health which will not function optimally. In fact, the marriage of underage children also takes away the child's right to play, live a healthy life, education and growth and development.<sup>12</sup>

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<sup>9</sup> Datilah and Bastian.

<sup>10</sup> Dewi Puspita Ningsih, "Dampak Pernikahan Dini Di Desa Keruak Kecamatan Keruak Kabupaten Lombok Timur," . . *Oktober* 6, no. 2 (2020).

<sup>11</sup> Shofiyah Abd. Kholiq, "Protection of Children's Rights in the Family and Global Challenges in the Qur'anic Perspective," *Al-Furqan: Journal of Al-Quran Ilmu and Tafsir*, 2020.

<sup>12</sup> Kadek Devi Regina Melati and A.A Gede Oka Parwata, "Perlindungan Hukum Atas Perkawinan Anak Di Bawah Umur Dalam Perspektif Undang-Undang Hak Asasi Manusia," *Kertha Semaya : Journal Ilmu Hukum* 10, no. 9 (2022): 1994, <https://doi.org/10.24843/ks.2022.v10.i09.p03>.

There are several areas in Indonesia where suspended marriages are still widespread including Madura, Lombok, West Java, South Sulawesi, South Sumatra, and other regions in Indonesia. Suspended marriages occur according to individual customs and are different from each other. References for this research are taken from previous related research. One of them uses a journal entitled *Suspended marriage Ceremony in the Cipah Serdang Community, Gunung Kaler District, Banten* by Veralita Devana and Suswandari from Muhammadiyah University, Prof. Dr. Hamka. This journal discusses the practice of suspended marriages in Cipah Serdang Village and is researched in an analysis of the legal perspective of marriage of minors. Apart from that, this research also took references from a journal belonging to Ila Hidatilah and Zein Bastian from Sebelas Maret University entitled *The Suspended marriage Tradition in West Java in the Perspective of the Protection of Minors*. This research discusses the suspended marriage tradition in West Java and analyzes the perspective of protecting the rights of minors. In discussing this research, the author examines it in terms of law and human rights as well as child protection laws, which of course this research is different from previous research. Becomes a worthy and interesting topic to discuss.

From this kind of phenomenon, knowledge for parents is the main thing in caring for and educating their children. Parents will become a boomerang to their own children if they are wrong in educating their children.<sup>13</sup>In this case the author will explore and explain how legal regulations relate to the protection of minors and human rights views in responding to suspended marriage itself.

## **B. Method**

This research uses normative/doctrinal legal research with a normative juridical approach. This research studies by examining library materials or secondary data. In Soerjono Soekanto's opinion,

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<sup>13</sup> Fajarwati , " Responsibilities of Parents towards Children in the Perspective of Islamic Law," *Tabqiqi* 3 (nn).

the benchmark in discussing normative law is the nature and scope of law, where legal discipline is the teaching of law about existing reality, which usually includes analytical discipline and prescriptive discipline. <sup>14</sup>Normative research tends to describe law from the perspective of norms.<sup>15</sup>

The legal materials used in this research include the Universal Declaration of Human Rights (UDHR), the 1945 Constitution of the Republic of Indonesia , Law Number 35 of 2014 concerning Child Protection , Law Number 1 of 1974 concerning Marriage and Law Number 16 of 2019 concerning Marriage.

### C. Discussion

The phenomenon of suspended marriages in Indonesia still occurs frequently in several areas. This type of marriage is classified as an early age marriage, because in some areas suspended marriages are carried out when both partners are under 19 years old. There are many reasons for the practice of suspended marriages, including weak <sup>16</sup>economic conditions, making suspended marriages a tradition and lack of enlightenment about marriage. The implementation of suspended marriages will of course have consequences for the continuity of the couple's marriage, so efforts are needed to overcome the occurrence of suspended marriages. Because suspended marriages often occur in these areas, there is a need for socialization and enlightenment regarding the correct concept of marriage, both religiously and nationally. So that it can

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<sup>14</sup> Depri Liber Sonata, "METODE PENELITIAN HUKUM NORMATIF DAN EMPIRIS: KARAKTERISTIK KHAS DARI METODE MENELITI HUKUM," *FLAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 1 (November 5, 2015), <https://doi.org/10.25041/fiatjustisia.v8no1.283>.

<sup>15</sup> Depri Liber Sonata, " Normative and Empirical Legal Research Methods : Typical Characteristics of Legal Research Methods," *Fiat Justisia: Journal Legal Studies* 8, no. 1 (5 November 2015), <https://doi.org/10.25041/fiatjustisia.v8no1.283>.

<sup>16</sup> Nisa Nur Padlah, "Faktor Ekonomi Terhadap Pernikahan Dini" 16, no. 2 (2022).

minimize the practice of suspended marriages. In this case the author analyzes from two perspectives, namely suspended marriages from the perspective of human rights and suspended marriages from the perspective of the Child Protection Law.

### **1. Suspended Marriage in Human Rights' Perspective**

Marriage is a bond in a sacred relationship between a man and a woman that binds them physically and spiritually and then forms a family which is an important component of the life of society and the country.<sup>17</sup> Marriage is regulated by religion and applicable positive law. When viewed from a human rights perspective, marriage provides a guarantee that the rights of men and women in carrying out marriage can be fulfilled.<sup>18</sup> Regulations regarding marriage law apply to every citizen so they must be obeyed by all citizens. Including the Marriage Law which is the basis for providing legal supremacy from the perspective of family law, material and legal consequences of assets in a marriage bond.<sup>19</sup>

The human right to marriage is protected by the Human Rights Law. The marriage regulations amended by the Universal Declaration of Human Rights or UDHR, have been included in Law no. 29 of 1999 concerning Human Rights, which was later included in Law no. 1 of 1974 concerning Marriage in Indonesia.<sup>20</sup> Article 1

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<sup>17</sup> Torah Afiati, Ani Wafiroh, and Muhamad Saleh Sofyan, "The Efforts of Married Couples Do Not Have Heredity in Defense Household Harmony (Case Study in Siru Village, Regency West Manggarai, NTT)," tt

<sup>18</sup> Leni Marlina Nurhidayatuloh, "Perkawinan Di Bawah Umur Perspektif HAM (Studi Kasus Di Desa Bulungihit, Labuhan Batu, Sumatera Utara)," *Al-Mawardi* 9 (2011).

<sup>19</sup> Ida Ayu Putu Kristanty Mahadewi and Dewa Nyoman Rai Asmara Putra, "Legal Consequences and Settlement To Joint Property Based on Marriage Law," *Kertha Semaya: Journal of Legal Studies* 9, no. 1 (December 30, 2020): 112, <https://doi.org/10.24843/KS.2020.v09.i01.p10>.

<sup>20</sup> Salsabila Fatin Maulida Rahma, "Analisis Pernikahan Dini Atas Hak Anak Dalam Perspektif Hak Asasi Manusia (Studi Kasus: Kecamatan Pringapus

point 1 of Law Number 39 of 1999 states that human rights are every inherent right, so that its existence is a gift that must be respected and upheld by everyone.

Basically, a marriage bond is a human right, in marriage you must obey the regulations as determined, because your behavior and actions must be bound by a rule. <sup>21</sup>In a suspended marriage, the problem is the rights of the children in the marriage. In essence, every child must have a full right-to-freedom from the moment they are born into the world therefore children must go through stages of life to become better prepared to live a mature life mentally, economically and socially. <sup>22</sup>This means that if a child is allowed to marry at an immature age, the child will be prone to mental damage and the marriage may not even last long.<sup>23</sup> Child marriage is an action that can be categorized as violating human rights because child marriage has an impact on the child's education and growth, both psychologically and physically. Having education is a right for every citizen regardless gender or age. Meanwhile, parents support and prevent children from things that can harm their education.<sup>24</sup>

## **2. Suspended Marriage in The Child Protection Law's Perspective**

Before getting married, a man and a woman must understand what the purpose of having a family is. This kind of thing is for

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Kabupaten Semarang),” *Gema Keadilan* 10, no. 3 (2023): 127–37, <https://doi.org/10.14710/gk.2023.20386>.

<sup>21</sup> Zikraini Alrah, “Kontrak Sosial dalam Pandangan Rousseau,” 2019.

<sup>22</sup> Endang Sumiati, “PENDIDIKAN HAK ASASI MANUSIA DALAM ISLAM DAN IMPLEMENTASINYA DALAM PEMBELAJARAN PAI MELALUI MODEL PROBLEM BASED LEARNING” 5, no. 2 (2021).

<sup>23</sup> Rahma, “Analisis Pernikahan Dini Atas Hak Anak Dalam Perspektif Hak Asasi Manusia (Studi Kasus: Kecamatan Pringapus Kabupaten Semarang).”

<sup>24</sup> Irham Bashori Hasba Dina Tsalist Wildana, “No Title,” *Child Marriage from a Human Rights Perspective Human*, n.d



nothing other than maintaining marriage and family.<sup>25</sup> On the issue of early marriage, suspended marriage is a marriage practice that should not be justified. A child who still doesn't know what marriage is simply is married off with parental permission, without paying attention to the child's rights and can have a negative impact on the child.<sup>26</sup>

In Article 1 paragraph 1 of Law Number 35 of 2014 concerning Child Protection, amendments to Regulation Number 23 of 2002 concerning Child Protection, that what is meant by child is every person aged 18 years. Meanwhile, Article two states that children are all kinds of movements to guarantee and protect their offspring from their privileges so that they are able to live and develop throughout life. The case of marriage at an early age has relevance to the pending marriage itself, namely discussing the child's age which concerns his or her readiness to undergo marriage.

In Government Regulation Number 35 of 2014 concerning child protection, it states that the implementation of children's security and freedom depends on Pancasila and the 1945 Constitution. The 1945 Constitution states that the State protects the entire nation without exception, including protecting children from all crimes that threaten existence.<sup>27</sup>

Early marriage is a form of opposition to the Child Protection Law. The practice of early marriage and suspended marriage often occurs in Indonesia even though the law expressly prohibits this.

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<sup>25</sup> Siswandi and Supriadi, "Pernikahan Di Bawah Umur Prespektif Ham."

<sup>26</sup> Nuria Hikmah, "FAKTOR-FAKTOR YANG MENYEBABKAN TERJADINYA PERNIKAHAN DINI DI DESA MUARA WIS KECAMATAN MUARA WIS KABUPATEN KUTAI KARTANEGARA" 7 (n.d.).

<sup>27</sup> "TINJAUAN KRIMONOLOGI EKSPLOITASI SEKSUAL PADA ANAK," *BILANCLIA: JURNAL STUDI ILMU SYARIAH DAN HUKUM* 13 (n.d.), <https://sinta.kemdikbud.go.id/journals/profile/6285?page=7#!>

<sup>28</sup>Therefore, the legal consequences of carrying out underage marriages are a violation of the applicable statutory regulations. <sup>29</sup>Among them is the violation of the minimum age limit for marriage, which has been explained in Law Number 1 of 1974 concerning Marriage which requires that the minimum age for marriage is 19 years for each couple. Suspended marriages involve minors who are not at all mentally and physically ready to face marriage. Furthermore, in Law Number 23 of 2002 concerning Child Protection, amendments to Law Number 35 of 2014, article 10 concerning children's rights to express opinions, mean that suspended marriages have the potential to be carried out without the consent of the child to be married. Suspended marriages will cause serious problems for children, where children have the potential to abandon their education to prepare for household life resulting the child's future will be threatened with bleakness.

#### **D. Conclusion**

A suspended marriage is a marriage process carried out by a minor which of course does not comply with applicable/appropriate legal regulations. Review of human rights, human rights regarding suspended marriages in this case as included in Law Number 1 of 1974 concerning marriage which is of course related to Law Number 29 of 1999 concerning Human Rights. All regulations related to suspended marriage provisions which are included in early marriage give rise to legal consequences, namely violations of the relevant law. Meanwhile, in the Review of the Child Protection Law, Article 1 paragraph 1 of the Child Protection Law explains the provisions that define a child as 18 years old. Suspended

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<sup>28</sup> Jakobus Anakletus Rahajaan and Sarifa Niapele, "Kajian Yuridis Terhadap Perkawinan dibawah Umur," *PUBLIC POLICY (Jurnal Aplikasi Kebijakan Publik & Bisnis)* 2, no. 1 (March 28, 2021): 88–101, <https://doi.org/10.51135/PublicPolicy.v2.i1.p88-101>.

<sup>29</sup> Raka Gilang et al., "Undang-Undang Perkawinan Dan Undang-Undang," 2014.

marriage in this case certainly violates the law regarding these provisions. Furthermore, suspended marriages cut off children's rights to grow, develop, receive education and live like children.

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