

CHILD MARRIAGE SANCTIONS: STUDY OF LEGISLATION IN MUSLIM COUNTRIES

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Abstract

Marriage under the minimum age that is legally permitted by dispensation through a court permit should not be recognized as valid under the law, and there must be penalties (both civil and criminal sanctions) for parents and guardians. All of these policies can maintain the acceptance of child-age marriages and violate children's rights. As a result, underage marriages still occur and the implementation of penalties tends to be low so it does not cause a deterrent effect to the community. This study uses a comparative study of law in Muslim countries, namely Indonesia, Bangladesh, Pakistan, and Egypt. Based on that, this research is juridical research. So the main focus of this research is how the form of sanctions (both civil and criminal) for those who do underage marriages based on the law in the Muslim country. To change the situation of the child for the better by discussing legal issues regarding sanctions for those who marry underage.

Keywords: *Child marriage sanction, age limit of marriage, muslim country*

Abstrak

Perkawinan di bawah usia minimum yang diperbolehkan secara hukum dengan dispensasi melalui izin pengadilan seharusnya tidak dikenali sebagai sah berdasarkan undang-undang, dan harus ada hukuman (sanksi perdata maupun pidana) untuk orang tua dan wali. Semua kebijakan ini dapat mempertahankan penerimaan perkawinan usia anak dan melanggar hak anak. Akibatnya perkawinan dibawah umur masih banyak terjadi dan pelaksanaan hukuman cenderung rendah sehingga tidak menimbulkan efek jera kepada masyarakat. Penelitian ini menggunakan penelitian perbandingan hukum di negara muslim yaitu Indonesia, Bangladesh, Pakistan dan Mesir. Berdasarkan hal itu, maka penelitian ini merupakan penelitian yuridis normatif. Maka menjadi fokus utama dari penelitian ini adalah bagaimana bentuk sanksi (perdata maupun pidana) bagi yang melakukan perkawinan di bawah umur berdasarkan undang-undang di negara muslim tersebut. Dengan tujuan mengubah situasi anak ke arah yang lebih baik dengan membahas masalah hukum mengenai sanksi bagi yang melakukan perkawinan di bawah umur.

Kata Kunci: Sanksi perkawinan anak, batas usia perkawinan, negara muslim

Introduction

Family law is a legal issue that is always interesting and up to date to be discussed. Every human being born in this world will certainly intersect with the values set out in family law. In the history and development of Islamic law in Muslim countries, it appears that family law receives a sizable portion of attention. The majority of Islamic countries or at least countries with the largest Muslim population, recognize and apply Islamic law in

the realm of family law, of course with renewal and adjustment (Wijayati, 2012).

This young marriage is closely related to the right of parents or guardians to marry off their children, without the child's will being accompanied. In some cases in the community, for reasons of family relationships or maintaining the social status of parents often match or even marry their children to the children of their siblings who are still young (Al-Siba'iy, 1996). Girls who marry young face

severe consequences for their health as a result of early childbirth, an increased risk of domestic violence, malnutrition, and sexual and reproductive health disorders. They experience poor conditions for all social and economic indicators compared to girls who postpone marriage age, including lower levels of education and higher levels of poverty. These adverse effects will also be experienced by their children and can continue in future generations (Burn and Evenhuis, 2014).

In the Convention on the Rights of the Child does not explicitly define child age marriage, but the child is clearly defined as someone under the age of 18 ('Convention on the Rights of the Child', 1989). The United Nations Convention on consent for marriage, the minimum age for marriage, and registration of marriage have been in force since 1964. This convention stresses that marriage can only take place if both partners have given their consent freely and fully.

In the case of underage marriages (child marriage or early marriage) for example, although the victims are also boys, the majority of children who marry at an early age are girls. Also, although the practice of underage marriages globally has decreased dramatically in the past 30 years, the cases still often occur in poor communities, both underdeveloped and developing countries (Hanafi, 2011).

The number of girls under the age of 18 (eighteen) who gets married every year is still large (Loaiza and Wong, 2012). More than 700 (seven hundred) million women living today are married before reaching adulthood, namely the age of 18 (eighteen) years, and one third or about 250 (two hundred and fifty) million children marry before the age of 15 (fifteen) years (Unicef, 2014). The number of girls affected by child marriages is disproportionate compared to boys. Globally, 720 (seven hundred twenty) million girls marry before the age of 18 (eighteen) years, compared with 156 (one hundred fifty-six) million boys (Unicef, 2014). This allows women to marry earlier than men, who do not have a marriage age limit or allows dispensation for child age marriages. All of these policies can maintain the acceptance of child-age marriages and violate children's rights (Burn and Evenhuis, 2014). In some regions of the country, people are more accepting of practices and younger marriage

ages for girls than people in other regions (Jain and Kurz, 2007).

Regarding marriages under the legal minimum age should not be recognized as valid under the law, and there must be penalties (both civil and criminal sanctions) for parents and guardians. It is important to enforce the law and impose serious sanctions on those who have violated the minimum age for marriage. So exceptions that allow minimum age marriages must be strictly restricted.

By allowing the court to make exceptions to allow minors to get married, this can be called "pseudo law" because the law cannot be applied, meaning that minors may be punished, but underage marriages still exist and are legally valid. Although the issue of the minimum age of marriage in Islam is not about numbers, it tries to put something in its place, namely the quality of one's readiness to marry.

The controversy in responding to a marriage law is a very natural thing, especially in several Muslim countries with diverse tribes and cultures as well as diverse beliefs or sects so that some different understandings arise, only from what angle do they review them. However, the law must be wise in dealing with cases, especially regarding the minimum age of marriage and the form of deviations for marriage under the minimum age that has been set.

Research Methods

This research uses comparative law research (Ali, 2010), in the form of a legal study in the form of sanctions that are given when conducting underage marriages that have been determined in positive law by taking comparative law in Muslim countries namely Indonesia, Bangladesh, Pakistan, and Egypt. Based on that, this research is a qualitative normative juridical study that refers to the norms of marriage law in force in these Muslim countries. This normative juridical research refers to legal protection relating to age restrictions on marriage. The method of collecting material is done by library research. Later, we will explore the approaches that are carried out using the law approach and conceptual approach. Then a certain analysis in legislation is done by searching for concepts, the main terminology in the text.

The main focus of this study is how the form of sanctions (both civil and criminal) for those who do underage marriages based on the law in the Muslim country. To change the situation of the child for the better by discussing legal issues regarding sanctions for those who marry underage.

Results and Discussion

Every human being has basic rights that must be fulfilled during his lifetime. No exception a child who is counted from birth to 18 years old also has special rights that must be protected. These rights have been formulated in a regulation by the world institution, the United Nations (UN), then ratified on November 20, 1989. These rights were formulated in the Convention of Rights of the Child.

There are four points of recognition by the international community of the rights possessed by children, namely: (a) the right to children's survival (survival rights), (b) the right to protection (protection rights); (c) the right to development (development rights) and (d) the right to participate (participation rights) The inclusion of that right explicitly shows that children have certain life characteristics, while making it a logical basis for the protection of their interests. the world then agreed that in the success of these steps, all policies must always lead to the best interests of the child (the best interest of the child shall be primary consideration) (article 3 paragraph 2 CRC) (Hanafi, 2011).

On September 2, 1990, this convention began to have the force to force each State participating in the United Nations to sign and ratify the convention. On November 26, 2008, the latest data was released regarding the countries that had signed and ratified it. There are 191 (One Hundred Ninety-one) participating countries that have signed and ratified the convention (Child Right Information Network, 2008). Of the number of countries, several Muslim countries have participated in ratifying the convention, such as Indonesia, Bangladesh, Pakistan and Egypt, and other countries. This journal will discuss sanctions for those who engage in child marriages in these Muslim countries.

Indonesia

Indonesia has ratified the CRC into legislation through Presidential Decree Number 36 of 1990. In its preamble, the CRC also stressed, due to its physical and mental immaturity, children need special protection and care, including proper legal protection, both before and after birth. More reads: Bearing in main that, as indicated in the Declaration of the Rights of the Child, "The Child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth This statement shows that children are human beings who need human rights promotion and protection (Hanafi, 2011).

In Indonesia, child marriage has declined more than doubled in the last three decades but is still one of the highest in the East Asia and Pacific region (Unicef, 2014). Child marriage in Indonesia has not only remained high (with more than one-sixth of girls getting married before reaching adulthood (age 18) or around 340,000 girls each year) but the prevalence has also increased again (Indonesia, 2012). Furthermore, although the marriage of girls under the age of 15 (fifteen) has decreased, the prevalence of girls aged 16 (sixteen) and 17 (seventeen) years is still increasing continuously, which shows that the protection of children girls decline when they reach the age of 16 (sixteen) years. It should also be noted that marriages of children under 15 (fifteen) years may not reflect the true prevalence because many of these marriages are disguised as marriages of girls over the age of 16 (sixteen) years or are not registered (Burn and Evenhuis, 2014).

In Indonesia, the age of one-sided marriage sets the normal limits, while the other side, there is an age limit exceeding the age limit set by law. Provisions on the upper age of marriage according to Law Number 16 concerning Marriage of 2019 concerning Amendment to Law Number 1 concerning Marriage of 1974 concerning Marriage are explained in Article 7 paragraph (1): Marriage is only permitted if men and women have reached age 19 (nineteen years. While the provisions for marriage below the minimum age, the law still provides a way out by way of being able to apply for marriage dispensation to the court and parental consent. This can be seen

from Article 7 paragraph (2): In the event of a deviation from the age requirement as referred to in paragraph (1), male and/or female parents may request a dispensation from the Court because it is very urgent accompanied by evidence sufficient supporting evidence. So in this case, the marriage law not only fails to meet the age limit of 18 years for marriage recommended by the Convention on the Rights of the Child (CRC) ratified by Indonesia, but also contradicts the 2002 Law on Child Protection, which requires people age to prevent child age marriages (Article 26, 1c) and define children as anyone under the age of 18 (Article 1 paragraph 1). Likewise, the marriage law also stipulates that the age of child marriage is still permitted with court permission without sanctions (civil or criminal) for perpetrators and parents who allow child marriage.

Regarding marital law, it also does not guide proving the age of marriage applicants or legal or religious officials, making it difficult to protect girls from marriages that are too young. Distortion of marriage age in Indonesia in the form of parents of children under the age of 19 (nineteen) can marry their children even though they are very young by applying to the Religious Court to provide marriage dispensation. Courts that provide dispensations are similar to not allowing children to have an opinion of themselves. The existence of a dispensation that was officially applied in Indonesia concerning the minimum age for marriage was reviewed by the International Committee on the Rights of the Child in its Final Comment in 2014 (Statistik and UNICEF, 2016).

Bangladesh

According to the Childhood Restraint Act (1929), later amended in 1984), the minimum age is 18 years for women and 21 years for men and exceptions are not permitted (Rumminger, Moussa and Anwar, 2012). Punishment for child marriage according to this act is jailed for one month or a fine of up to 1000 *taka* or both.

Despite national laws and international treaties, early marriage remains a widespread problem especially in developing countries like Bangladesh. This is an obstacle to the health and future opportunities of millions of

girls (Jisun, 2016). But marriages under this age are valid and not null and void to maintain family consistency and ensure that children's legitimacy is not impeded. But parents and/or adults (groom or bride) will be punished according to the law if any of them are under the age limit.

Pakistan

In 1929, the Child Marriage Restraint Act established a minimum age of marriage: 16 for girls and 18 years for boys. The law also provides penalties for men over the age of 21 who marry a child or parent or guardian who "promotes, allows, or fails to prevent" such marriages. The court was also empowered to issue an order against such a marriage (Haider, 2000). The act also introduced criminal sanctions to contract child marriages.

Efforts are being made to reform marital age in Pakistan, regarding the Law on Muslim Family Law and the Marriage Law on Children, Marriage says that it is a violation of parents marry their children under legal age (16-year-old girls and boys 18 years). This indeed led to a very drastic minimum age. As a result, currently, the minimum age for marriage in Pakistan at the national level is 21 years. However, that does not mean that all countries will marry on average at the age of 21 because previously the average age of marriage in Pakistan was 15 (Nemat, 2006).

For more details regarding matters related to the minimum age for marriage, it is regulated in Law No. 29 of 1929 concerning the prohibition of child marriage (Child Marriage Restraint Act) as amended by Ordinance No. 8 of 1961 MFLO (Muslim Family Law Ordinance) stipulates that a man over 18 years of age who enters into a marriage agreement with a woman under the age of 16, is threatened with a maximum jail term of one month or a maximum of one thousand rupees or both, unless he has evidence that convinces him that what he is doing is not a minor marriage. Then if someone in the category of less than 18 years of age enters into a marriage contract with someone under the age, then the parent or guardian, who encourages the marriage, or because of their negligence, is threatened with a maximum of one month imprisonment, or a maximum fine 1000 Rupees, or both, with the exception that women are not sentenced to

prison. Although the prohibition of underage marriages has been enforced by threatening both the perpetrators or the parents or whoever encourages child marriages, their marriages are not canceled and are still considered valid. As a result, marriages still occur a lot and the implementation of penalties tends to be low so it does not cause a deterrent effect to the community (Mudzhar, 2014).

Egypt

In 2000 marriage registration again became the focus of public attention in the context of a series of reforms in Egyptian divorce law enforcement. In many cases, the new law resembles its predecessor, mainly because it also rejects court access to claims arising from unregistered marriages. However, the most important difference between the new law and its predecessor in 1931 lies in the fact that the new law permits judicial admissibility of divorce claims relating to unregistered marriages, provided there is some sort of marriage documentation that has occurred (Büchler and Schlatter, 2013).

In addition to the provisions on marriage registration, the new law also stipulates a minimum age of marriage of 16 years for women and 18 years for men originally set in 1931. Except for the minimum age of marriage for women, as a result of a more recent reform promulgated in 2008, raised to 18 years, 2000 regulations remain in force and have recently been supplemented by a ministerial decree that limits the age gap between partners to a maximum of 25 years. The 2008 reform also led to a tightening of criminal law which made it a criminal offense for guardians and archives office officials to allow underage marriages to take place (Büchler and Schlatter, 2013).

Marriages under the minimum age of marriage that have been established are not recognized in the marriage register. Therefore, there is no exception to the age of marriage in Egypt. Marriages under the age of standard marriages that have been determined, even though religiously valid, are not recognized by the court. In this case, the court does not guarantee the rights of women as wives due to the age of marriage under the normal age.

Conclusion

The comparable Muslim countries lie inequality with the existence of marriage dispensations in the form of misappropriation of marriages under the age of children, where laws have been established in each country (marriages under the minimum age) are still permitted, but depend on court authorization (judges) and permits given by parents / guardians if there is a valid reason for the occurrence of a marriage. While the difference lies a lot of inclusion of the threat of punishment and fines in the laws of each of these Muslim countries. Even though there is a threat of punishment, marriages under the age determined by each country are not canceled and are still considered valid for various reasons and opinions.

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