



# *Socio Legal Perspective on Causal Factors for Child Forced Marriages*

**Arina Silviana**

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia  
Kentingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126  
Arina.silviana91@gmail.com

**Hartiwiningsih Hartiwiningsih**

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia  
Kentingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126  
[hartiwiningsih@staff.uns.ac.id](mailto:hartiwiningsih@staff.uns.ac.id)

**Pujiyono Suwadi**

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia  
Kentingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126  
[pujifhuns@staff.uns.ac.id](mailto:pujifhuns@staff.uns.ac.id)

**Abstract**—A marriage is a tie that unites two people into a home. The fundamental tenet of a marriage is the consent of the two people getting married to join their values and future household management obligations. Children are gifts from God, given to both parents to raise and educate in accordance with the laws that are in force. Children's rights to life, a decent life, and an education are safeguarded by the state in Indonesia through laws and regulations. Over its history, forced weddings have resulted in a great number of occurrences of child marriages underage. Everyone is focusing on finding a solution to the issue of forced marriage at a young age, including the government and society. The realization of children's fundamental rights is threatened by the high rate of child marriages. A legal sociological methodology is used with a normative research method to conduct the study. There are a number of reasons why young people are coerced into marriage, including cultural norms, parental wishes, ignorance of Indonesian legal system, instances of immoral behavior, and financial constraints. The survival of the child may be impacted by any of the variables that lead to early forced marriage.

**Keywords**— Forced Marriage; Child marriage; Child Rights.

## I. INTRODUCTION

Marriage is a human connection that unites two people into a single family (Pratiwi et al., 2021). The fundamental tenets of marriage are an agreement between the two people getting married to combine their values and future household management obligations. Marriage is a spiritual and physical relationship between a man and a woman as husband and wife to build a joyful and eternal family (home) based on the belief in the Almighty God, according to Law Number 16 of 2019 concerning revisions to Law Number 1 of 1974. Additionally, this marriage law stipulates that a person must be nine years old in order to be married.[1]

Numerous tribes can be found in the Indonesian region. Certain Indonesian communities governed by customary law nevertheless hold their customs in the highest regard. Marriage is one of the few enduring traditions in traditional cultures, and it requires a girl to have gone through her menstrual cycle to perform the marriage. Instead of being granted a respectable upbringing and an education, indigenous children are forced to marry when they reach adulthood without taking into account their age.[2]

Data from the Ministry of Women's and Children's Empowerment indicate that child marriage incidents are now considered concerning. 65 thousand cases of requests for a dispensation from child marriage were registered in 2021, according to data from the Religious Courts. Fifty-five thousand instances were reported annually in 2022 for a variety of causes. The realization of children's fundamental rights is endangered by the high rate of child marriage. Article 6 of the Marriage Law states that "marriage must be based on the written consent of both parties or the prospective bride and groom," which is ratified by the marriage registrar. After that, the contents also apply to third parties as long as the third party is involved. Article 7 section (1) of the Marriage Law states that a man and woman can only get married if they are 19 (nineteen) years old. Given that marriage is a sacred event that requires careful preparation, the high rate of forced marriages of underage

children in Indonesia calls for special attention from the state. Accordingly, the author is interested in examining the factors that lead to a forced marriage of minors.[3]

## II. LITERATUR REVIEW

### A. Definition of Forced Marriage

Marriage is a general sunnah that applies to all creatures, humans, animals, or plants. This is a method chosen by Allah SWT as a way for his creatures to reproduce and preserve their life. Marriage is the first step to forming a family. In all social groups, marriage is not only an individual matter between a man and a woman. They have both agreed to live together as a family. Marriage combines many aspects, namely values, culture, and religion. Cultural differences in society cause the marriage process and partner selection to differ between one community group and another. The definition of "force," according to the Big Indonesian Dictionary, is doing something that is required even if you don't want to. According to the term, it is an act carried out without any consent between the parties. The term forced marriage is also known as bar marriage, while bar marriage originates from the words *ajbara-yujbiru* Jimbaran. Regarding forced marriage (bar) itself, it means a marriage carried out by force or marrying someone off by force and force without any willingness between the two parties.

### B. Forced Marriage From a Legal Pperspective

According to the law, an enforced marriage takes place without the prospective bride and groom's agreement, which is obviously against Marriage Law Article 6 (1): The prospective bride and groom's permission is a prerequisite for marriage. In addition, KHI governs the bride and groom's approval under Article 16: (1) The consent of both the prospective bride and groom is required for marriage; (2) The prospective bride's consent can take the shape of an explicit, concise written declaration, spoken vocally or under condition, or it can take the form of silence, provided that there isn't a definite rejection. The Marriage Registrar asks the prospective bride and groom for their approval before the wedding occurs to verify their agreement. According to the guidelines in Article 17 of the Islamic Law Compilation: (1) The prospective bride and groom are asked for their approval in front of two marriage witnesses before the marriage can officially take place. (2) The marriage cannot occur if *it* turns out that one of the prospective bride and groom disapproves of the union.

## III. METHOD

The research method that the author uses is empirical to obtain accurate results about what factors cause forced marriages of children. Research carried out examines how the law works. Research takes social facts that exist in society and local community leaders. This research uses a legal sociology approach: the effectiveness of legal rules, compliance with legal regulations, the role of institutions or law enforcement agencies, implementation of legal authorities, and the influence of legal restrictions on social problems. This research data uses primary data and secondary data. Preliminary data is a source of authoritative legal material (has authority). Meanwhile, secondary data is published data, which is not an official document obtained from literature studies or previously published references. Data collection techniques are carried out by reading, studying, reviewing, and analyzing legal materials (primary legal materials and secondary legal materials) by adapting to the problems studied by the author. This is intended to obtain a theoretical basis related to the legal research reviewed by the author.

## IV. FINDINGS AND DISCUSSION

In certain indigenous communities, girls are not allowed to continue their education because they are expected to take care of the household and bear children; instead, they are thought to be adults who should be married off. This is one of the factors contributing to the high number of cases of forced marriage of underage children in Indonesia. Some indigenous peoples believe that children who have gone through the menstrual cycle are ready for marriage. The customs only apply to most girls.[4] Because of local cultural myths, early marriage is common in Indonesia. For example, in Rembang, if a girl wants to be proposed to by a man, he must be accepted; if he is not accepted, the myth is that it will not sell until he is old. These kinds of traditions can be very strong and force children, especially girls, to marry young because they cannot refuse the customs that are followed in their community. Therefore, it is not surprising that we frequently find widowed girls because their parents do not care.[5]

Early marriage is still generally accepted as normal in rural areas, particularly in areas with strong customs or cultures that still support early marriage. In these areas, parents still arrange many of their child marriages;

geographical locations that are difficult to access, if possible to socialize the negative impacts of early marriage, and low levels of education are the causes of early marriage in rural areas; in addition, low-paying jobs can contribute to the victimization of children in young marriages, so parents believe that marrying off their children at a young age is a way to lessen their financial burden.[6] Every culture in different places has a significant impact on the customs that exist in the surrounding area. The myths that are believed by the local community and have been passed down through the generations can indoctrinate the community to carry out daily activities regardless of whether or not those actions are morally right or could negatively affect society as a whole.

Forced marriages are frequently the result of parents facing unstable financial conditions, leading to situations where children are compelled to marry due to their parents' debts. Some parents marry off their children to maintain family ties. The second factor contributing to forced child marriages is the parents' will. Some parents perceive their children as a financial burden that must be married off promptly to enable them to live independently.[7] Positive views about early marriages can also come from the cultural belief in some communities that it is a source of pride and achievement for their daughters to marry early (Rafidah, Erni Yuliastuti: 2015). Some parents' supportive stance on their children's marriages is influenced by their experiences, learning processes, knowledge, education, and socio-cultural backgrounds. Indonesia's cultures and lifestyles have changed dramatically in response to the times. Western-influenced promiscuities have proliferated throughout the country's cities, and the lack of emphasis placed on religious education by some parents has removed the last line of defense against their children becoming promiscuous.[8]

Some communities marry off their children because they are unaware of the legal marriage age; however, the law has already specified the legal marriage age and the penalties for forcing marriages. Apart from being governed by Article 7, section (1) of the Marriage Law, there are other regulations in place to safeguard children from forced marriages, such as amending Law Number 23 of 2002 on Child Protection is Law Number 35 of 2014. This legislation stipulates that a child's maximum age is eighteen years old. While this provision applies to all, it does specify that marriages must take place after the age of eighteen. Additionally, Article 26 of this legislation mandates that parents must work to prevent child marriages. Nurture, look after, instruct, and safeguard their child; encourage the youngster based on their skills, interests, and abilities; stop child marriages; also instill moral principles and character education in the child.[9]

Additionally, Article 45 requires parents to provide the best possible care and education for their children from the moment of birth until the youngster marries or starts a family on their own. The Sexual Violence Crimes Law Number 12 of 2022 (TPKS Law). Forced marriage is illegal and can be classified as a criminal act of sexual violence, according to Article 4, section (1) of the Sexual Violence Eradication Law (TPKS Law), which was passed. The criminal crimes of sexual violence are described in this article and include non-violent harassment of sex, physical abuse for sex, coercion for contraception, coercion for sterilization, forced union, torture sexually, sexual mistreatment, slavery for sexual purposes, sexual violence based on electronics.[10]

Furthermore, forced marriage is defined as a criminal offense under Article 10, Section (1), which carries a maximum nine-year prison sentence as well as a fine of up to Rp200,000,000 (two hundred million Indonesian Rupiahs). The following are the acts listed in Article 10, section (2) that constitute forced marriage include child marriage, forced unions carried out in the name of cultural customs, and forcing a rape survivor to get married.

The general lack of knowledge about relevant regulations is one of the factors that leads to forced marriages between minors in Indonesia. The laws No. 16 of 2019 regarding the minimum age for marriage, No. 35 of 2014 amending No. 23 of 2002 on child protection, and No. 12 of 2022 on Criminal Acts of Sexual Violence—which classifies forced marriage as a form of sexual violence—are not well known to a sizable portion of the populace. Forced marriage situations continue to occur as a result of this ignorance and lack of knowledge. A common mistake made by the community is to overlook the fact that forced marriage is illegal. Economic factors frequently result in forced marriages. Parents tend to believe that marrying off their child to someone else will solve their financial problems, rather than lessening the financial load on the family. They believe that their husband now bears the burden for their child's living expenses when they are married.[11]

However, there are a lot of drawbacks to young marriage, including detrimental impacts on kids. The disturbance of reproductive health and the child's lack of educational chances are the two biggest effects. In addition, the negative consequences may end in divorce, financial neglect, and domestic abuse, leaving the child with no parental support.[12] Regarding the educational consequences, there are many examples of youngsters who are forced to drop out of school after getting married. This is because of the psychological weight of shame and the fact that education takes a backseat when family duties take precedence. Furthermore, a lot of kids who are the victims of young marriages have trouble getting jobs. In the end, it is incorrect for the parents to believe that marrying off their child at an early age will relieve their financial burden. The parents will be financially impacted if the youngster has trouble finding work law in Indonesia's dynamic society to ensure certainty and uphold order. Legislation is expected to transform into a tool utilized for social engineering. The bill's primary

objective is to efficiently regulate and oversee human actions to correspond with progress and rejuvenation goals.

## V. CONCLUSION

The author concludes that the following variables contribute to forced marriages between minors and their parents: First, customary practices: certain native peoples consider children who have gone through the menstrual cycle to be suitable for weddings. The second consideration is the parents' will; in certain situations, parents who do not want to break family ties also play a role and marry off their kids. Third, Ignorance: A few people are not aware of the laws that are in effect in Indonesia. Fourth, Economic Factors: Parents hope that marrying off their child to someone else will ease their financial burden and ease their child's transition into adulthood.

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