

## The Phenomenon Of Child Marriage During The Covid-19 Pandemic From A Legal Sociological Perspective In The Kota Timur Sub-District, Gorontalo City

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### ABSTRACT

The purpose of this study is to analyze the phenomenon of child marriage during the Covid-19 pandemic from the legal sociological perspective and to find out how the KUA (Religious Affairs Office) handles cases of child marriage during the Covid-19 pandemic in Gorontalo City and to find out the factors that lead to child marriages during the Covid-19 pandemic. The Ministry of PPPA (Women Empowerment and Child Protection) reported that during the Covid-19 pandemic the number of child marriages increased, especially in Kota Timur Sub-District. So, this needs to be considered by the local authorities, namely the KUA, because the KUA plays an important role in minimizing the number of child marriages. Based on these problems, the authors were encouraged to research to find out the picture of child marriage in the KUA of Kota Timur Sub-District, what efforts have been made by the KUA of Kota Timur Sub-District in handling the number of child marriages during the Covid-19 pandemic, what obstacles are the KUA of Kota Timur Sub-District encounters in handling with child marriages. Factors that caused child marriages were habit factors, economic factors, matchmaking factors, and low education factors. The reason was media freedom, weak parental supervision so an undesirable situation occurred, namely pregnancy out of wedlock. In this case, it has an impact on being forced to marry so that there is a request for dispensation to be able to marry at an early age.

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## I. INTRODUCTION

### A. Background

The Republic of Indonesia as a country based on the belief in the Almighty God, marriage is considered to have a very close relationship with religion or spirituality, so marriage does not only contain physical elements, but also mental or spiritual elements that have a crucial role.<sup>1</sup>

Marriage as a way for women and men to create a family or household is one of the worships in Islam and is something sacred, therefore it is expected to only happen once in a lifetime. Marriage is generally carried out by a woman or a man who is quite mature to marry, such as the provision of the age limit in Article 7 paragraph I of Law Number 16 of 2019 which explains that marriage can be carried out if the man is 19 years old while the woman is 19 years old. If one of the parties or both of them is less than the provision, then it is declared to have child marriage.

In Indonesia, the provisions relating to marriage have been regulated in state laws and regulations that specifically apply to Indonesian citizens. The marriage rules in question are in the form of laws, namely Law Number 16 of 2019 and its implementing regulations in the form of government regulation Number 9 of 1975. This law is the material law of marriage, while the formal law is stipulated in Law Number 50 of 2009.<sup>2</sup>

The Indonesian people experienced difficulties at the beginning of 2020 with the shock of unprecedented incidents. Coronavirus is a new pandemic with a very fast spread among humans. The spread of Coronavirus Disease-19, which originated in China, spread rapidly to almost all corners of the world and caused a high death rate. The degree of disease can vary from upper respiratory tract infection to ARDS. The current classification of Covid-19 infections in Indonesia is based on the guidebook for the management of COVID-19 pneumonia from the Ministry of Health of the Republic of Indonesia (Kemenkes RI). Coronavirus is a very deadly outbreak. The spread of Covid-19 has an impact on aspects of social life, especially the implementation of marriage during the Covid-19 pandemic. Among the very great instructions of the Qur'an is that a servant will not be afflicted with a calamity except by the will of Allah SWT who wrote and predestined the calamity.<sup>3</sup>

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<sup>1</sup> Zaeni Asyhadie, "Hukum Keperdataan (Dalam Perspektif Hukum Nasional, Hukum Islam Dan Hukum Adat)", Depok, Pt Raja Grafindo, 2018, Hal. 127 - 128.

<sup>2</sup> Amir Syarifudin, 2014, Hukum perkawinan islam di Indonesia, Jakarta, Hal. 1

<sup>3</sup> Diah Handayani, dkk, "Penyakit Virus Corona 2019", *Jurnal Respirologi Indonesia* 40, No. 2 (2020), h. 120. <http://www.jurnalrespirologi.ssorg> (2 April 2020).

The wedding ceremony amid the Covid-19 pandemic takes place in April 2020 until the present especially in the Kota Timur Sub-District, Gorontalo City. The implementation of the covenant of marriage takes place at the Religious Affairs Office which is given the authority to regulate and control the implementation of the covenant of marriage under government policies during the Covid-19 pandemic emergency, namely social restrictions, prohibition of presenting entertainment or performances that cause mass gatherings, prohibition of shaking hands and still complying with Covid-19 health protocol.

Seeing the reality of what was happening now, there were many cases of child marriages during this COVID-19 pandemic. The occurrence of child marriage was caused by several factors. Cases like this were events that were most frequently filed in the work area of the Religious Affairs Office (KUA) of Kota Timur Sub-District, Gorontalo City.

## **B. Problem Formulation**

What caused the phenomenon of a large number of child marriages during the COVID-19 pandemic in Gorontalo City?

## **C. Research Method**

This research was qualitative, namely, research that goes directly to the field supported by-laws and related books. This study revealed the laws that live in a society in their daily lives.<sup>4</sup> So that the priority data was primary data, to find data on the civil justice system in protecting children's rights.

## **II. DISCUSSION**

### **2.1 Definition of Marriage**

Marriage is one of the *sunnatullah* that applies to all of His creatures namely humans, animals, and plants. This is the nature and needs of creatures for their survival. In the Indonesian dictionary, marriage was derived from the word "*Kawin*" which according to the language means forming a family with the opposite sex, having sex, or having intercourse.

Another term for marriage is *pernikahan*. The term marriage is more often used in Indonesian laws and regulations. Marriage in Arabic is *nikah*. According to the *syarah*, the essence of marriage is a covenant between a prospective husband and wife to allow the two to get along as husband and wife.

### **2.2 Marriage Law**

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<sup>4</sup>Mukti Fajar. *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta, Pustaka Pelajar: 2017. Hal. 192.

When viewed in terms of the conditions of carrying out and the purpose of carrying it out, then in carrying out marriage there are those which are obligatory, *Sunnah*, *haram*, *makruh*, or *mubah*.<sup>5</sup>

1. Carrying out an obligatory marriage

For a person who has the desire and capability to marry and is worried that if he does not marry and commits adultery, then the law of marriage for that person is obligatory.<sup>6</sup>

2. Carrying out a *sunnah* marriage

For those who already want to get married because they are worthy and already have the equipment to carry out the marriage, the law for them to marry is *Sunnah*.<sup>7</sup>

3. Carrying out a *haram* marriage

For people who do not have the desire, capability, and responsibility to fulfill the obligations that exist in the household and if married he and his wife will be ignored, then the law of marriage for him is *haram*.

4. Carrying out a *makruh* marriage

The law of marriage is *makruh* for those who can marry, can fulfill the obligations of husband and wife but also have the capability to restrain themselves so that they do not allow themselves to commit adultery if they are not married, just because they do not have a strong desire to get married.<sup>8</sup>

3. Carrying out a *mubah* marriage

A legally *mubah* marriage is a marriage that is only based on fulfilling pleasure, not maintaining the honor of one's religion, and fostering a prosperous family.

### 2.3 Impact of Child Marriage

Every incident must have an impact on something, both positive and negative, as well as the occurrence of child marriages. In modern times like today, most of today's youth mature faster than previous generations, but emotionally, they take much longer to develop to maturity. The gap between early physical maturity and late emotional maturity causes psychological and social problems.<sup>9</sup>

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<sup>5</sup> Depag RI, *Ilmu fiqih II*, Hal.59

<sup>6</sup> Asjmuni A. Rahman, *Metode Penetapan Hukum Islam* (Cet, 3 ; Jakarta : PT Bulan Bintang, 2017), Hal. 52

<sup>7</sup> Ibid, Hal.53

<sup>8</sup> Ibid, Hal.53

<sup>9</sup> Fauzia Shufiyah, "Pernikahan Dan Menurut dan Dampaknya", *Jurnal Living Hadis*, Vol 3, Nomor 1, Mei 2018, h.63.

When analyzed the negative impact of early marriage is more than the positive impact. Therefore it is necessary to have a commitment rather than a positive impact. Therefore, it is necessary to commit the family, community, and government to reduce the number of child marriages. Because child marriage can reduce Indonesian human resources because they are dropout from getting an education.<sup>10</sup>

## 2.4 Prohibition of Marriage

The provisions regarding the above are regulated in Article 8 of Law Number 16 of 2019 concerning marriage, which is almost identical to the provisions applicable in marriage law in Islam.

The prohibition for carrying out marriages is regulated in Articles 8 to 12 of Law Number 16 of 2019. There are 8 prohibitions on marriage between men and women, namely:

1. Blood-related in straight lineage down or up;
2. Blood-related in a sideline lineage, namely between siblings, between parents' siblings, and between a person and his or her grandmother's siblings;
3. Related by marriage, namely parents-in-law, stepchildren, daughter-in-law, and stepmother/stepfather;
4. Breastfeeding, namely nursing parents, nursing siblings, and nursing aunts/uncles;
5. Having a relationship with the wife or as an aunt or niece of the wife, if a husband has more than one wife;<sup>11</sup>
6. Having a relationship whose religion or other applicable regulations are prohibited from marrying;
7. Still bound by marriage with another person;
8. Between husband and wife who are divorced, remarry one another, and are divorced for the second time, they can't get married anymore, as long as the laws of their respective religions and beliefs do not stipulate otherwise.

## 2.5 Pillars and Terms of Marriage

The pillars and terms determine a legal action, especially concerning whether or not the act is legal from a legal point of view. The two words have the same meaning in that they are something that must be held. In a wedding ceremony, the pillars and terms must not be left behind, in the sense that the marriage is not valid if both are absent or incomplete.<sup>12</sup> The terms for holding a wedding are

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<sup>10</sup> Syahrul Mustofa, *Hukum Pencegahan.*, hal. 155.

<sup>11</sup> Moch Isnaeni, *Hukum Perkawinan Indonesia*, (Bandung: rafika ditama,2016), hal.38

<sup>12</sup> Amir Syarifuddin, *Op.cit.,hlm.59*

regulated in Articles 6 to 7 of Law Number 16 of 2019. In this provision, two internal and external terms are specified.<sup>13</sup>

The Marriage Law does not talk about the pillars of marriage at all. The marriage law only discusses the terms of marriage, where these terms are more related to the elements or pillars of marriage.<sup>14</sup> The pillars of marriage are indeed not explained in Law Number 16 of 2019 concerning Marriage, but in the KHI or Complications of Islamic Law, marriage is contained in Article 14.<sup>15</sup>

## 2.6 Social Change

### Definition of Social Change

Community during their life of course experience changes. Changes for the community concerned or for outsiders who study it are in the form of unattractive changes with less conspicuous meanings. Changes in the community are related to social values, organizations, social institutions, layers in the community, patterns of behavior, authority, power, and others.<sup>16</sup>

## 2.7 Characteristics of Social Change

The process of social change can be seen from the presence of certain characteristics, namely as follows:

- a) No community stops its development because every community experiences changes that occur quickly or slowly.<sup>17</sup>
- b) Rapid social change usually results in temporary disorganization because it is in the process of adjustment. The disorganization is followed by a reorganization which includes the establishment of new rules and values.
- c) Changes that occur in social institutions will be followed by changes in other social institutions.

Changes cannot be limited to the material or spiritual fields, because these two fields have a very strong reciprocal bond.<sup>18</sup>

## 2.8 Marriage Service Policy during the Covid-19 Pandemic

The Ministry of Religion (Kemenag) through the Directorate General of Islamic Community Guidance issued the latest policies related to marriage services during the Covid-19 pandemic, namely:

- a. Marriage registration can be carried out online, including through: [simkah.kemenag.go.id](http://simkah.kemenag.go.id) website, telephone, e-mail, or directly to the KUA of Sub-District.

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<sup>13</sup> Salim, HS, *Op.cit*, hlm. 62

<sup>14</sup> *Ibid.*, hlm. 61

<sup>15</sup> Pasal 14 KHI berbunyi : "Untuk melaksanakan perkawinan harus ada: a. Calon suami; b. Calon istreri; c. Wali nikah; d. Dua orang saksi dan; e. Ijab dan Qabul"

<sup>16</sup> Soerjono Soekanto, *Sosiologi Suatu Pengantar*, Hlm. 259.

<sup>17</sup> Ankie M Hoogvelt, *The Sociology Of Developing Societies*, (London: The Macmillan Press, 1976), Hlm. 9.

<sup>18</sup> Soerjono Soekanto, *Sosiologi Suatu Pengantar*, Hlm. 266.

- b. The implementation of the covenant of marriage can be held at the KUA or outside the KUA
- c. Participants in the covenant of marriage procession carried out at the KUA or the house are followed by a maximum of 10 (ten) people
- d. Participants in the procession of the covenant of marriage held at the mosque or meeting hall are attended by a maximum of 20% of the room capacity and may not be more than 30 (thirty) people.
- e. The Head of the Sub-District KUA coordinates the implementation plan for the new normal order of marriage services to the Head of the Sub-District Task Force.<sup>19</sup>

#### **a. Covid-19 Pandemic**

The term pandemic according to the KBBI (Indonesia Dictionary) is interpreted as an outbreak that spreads simultaneously everywhere covering a wide geographical area. A pandemic is generally classified as an epidemic in which the disease spreads rapidly from one area to a certain area. Coronavirus disease 2019 (Covid-19) is an infectious disease caused by acute respiratory syndrome coronavirus 2 (SARS-coV). The disease started in Wuhan in December 2019, the capital of China's Hubei province, and since then spread globally, resulting in the coronavirus pandemic. Common symptoms that appear are fever, cough, shortness of breath. Other common symptoms include muscle pain, phlegm production, diarrhea, loss of smell, stomach pain, and sore throat. The World Health Organization (WHO) has declared the global COVID-19 pandemic status as a dangerous virus that has spread to most areas of the world. The number of people who are exposed and the number of people who die are increasing day by day, while an effective treatment path has not been found.

#### **b. The Covid-19 Disease Outbreak in the View of Islam**

In the view of Islam, the coronavirus outbreak is a test for a people to always draw closer to Allah. Islam teaches the terms lockdown and physical distancing to prevent disease transmission, some scholars say the term of this disease is called *Tho'un*, namely an outbreak that causes people to get sick and is at risk of infection.<sup>20</sup>

III. Factors that caused the phenomenon of the number of child marriages during the covid-19 pandemic in the Gorontalo city

IV. Child marriages did not only occur in villages but can also occur in big cities and on average have the same reason, namely getting pregnant out of wedlock or in today's society, an "accident". Then what are the factors that encourage the occurrence of child marriages in the Kota Timur Sub-District?

<sup>19</sup><https://setkab.go.id/pelaksanaan-akad-nikah-saat-pandemi/>

<sup>20</sup> Buana, Dana Riksa, "Analisis Prilaku Masyarakat Indonesia dalam Menghadapi

Pandemi Corona Virus (Covid-19)" Salam: Jurnal Sosial dan Budaya Syar-i, Volume 7, No 3 (2020)

The factors for the occurrence of child marriages were caused by several factors, namely:

### 1. Habit Factor

The internal factors that the author means were related to their understanding and desires of themselves, based on a sense of love and match, they felt that they were mentally ready. So they decided to get married and sail the household ark.

As the reason from SB who got married on August 30<sup>th</sup>, 2020 he stated: "I got married because I felt ready, it was matched, my wife is also an adult even though she is still young, basically I avoid things that are not good because it's been quite a while we are dating". When married, SB was 19 years old while his wife was 16 years old, legally SB has fulfilled the requirements for marriage, and according to Islamic law, SB has met the requirements of the *ahliyyah*, namely, the nature that shows a person has matured perfectly in body and mind so that all his actions can be judged and accounted for by *syara'*.<sup>21</sup> While his wife NA did not meet the requirements stated in the marriage law, NA applied for a marriage dispensation at the Gorontalo Religious Court so that her marriage could be recorded at the KUA.

### 2. Matchmaking Factor

Family, especially parents, was one of the factors in the occurrence of child marriage. Parents did matchmaking and urged their children to get married immediately because parents wanted their children to be protected from forbidden acts and avoid being exposed to disgrace that embarrass the family's good name. Like couple A and RA, they both got married because their parents arranged matchmaking through the *taaruf* process. So, the law of marriage for them is *mubah*, because the marriage they carry out was not under pressure by reasons that require them to get married immediately or because of reasons that forbid them to marry.

Talking about matchmaking, in Article 26 of Law Number 35 of 2014 concerning child protection, this article already states that parents are obliged to maintain, grow and develop children, and protect children. Judging from the law, parents have no right to match and choose a partner for their child except at the child's own will. If the child must be matched by his/her parents, then this is included in violence against the child, because the rights of the child are not fulfilled.<sup>22</sup>

### 3. Low Education Factor

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<sup>21</sup> Ali Imron, *Pertanggung Jawaban Hukum: Konsep Hukum Islam dan Relevansinya dengan Cita Hukum Indonesia*, (Semarang:Walisongo Press,2009), hal. 136.

<sup>22</sup> Desyi Wahna Sari, "Perjodohan dalam Undang-Undang Nomor 35 Tahun 2004 Menurut Hukum Islam" (Skripsi S-1 Fakultas Syariah, Universitas Islam Negeri Sultan Thaha Saifuddin Jambi, 2020), hal.57.



By the results of the author's interview, external factors also caused child marriages, including the dropout of children's education, promiscuity, economics, and the couple's lack of understanding regarding the contents of the marriage law. As the authors found that the perpetrators of child marriage practices, the average level of education was still relatively low, namely between Elementary and Junior High Schools. On this basis, the Head of KUA of Kota Timur Sub-District agreed that one of the factors behind the occurrence of child marriage was due to low education.

#### **4. Economic Factor**

The economic difficulty was one of the factors causing early marriage, families experiencing economic difficulties would tend to marry off their children at a young age to marry early.

This marriage was expected to be a solution to the family's economic difficulties, by getting married it is hoped that it would reduce the family's economic burden so that it would be able to slightly overcome economic difficulties. In addition, low economic problems and poverty caused parents to be unable to provide for their children's needs and unable to pay for schooling, so they decided to marry off their children in the hope that they are free of responsibility to pay for their children's lives or in the hope that their children can get a better life.<sup>23</sup>

As for the information obtained from the Religious Affairs Office (KUA) which was strengthened through an interview with the Head of the Religious Affairs Office, Mr. HM Fahrie Hioda, S.Ag, he said that before the enactment of the new law, the old law is still valid and applied.

In this case, it has an impact on being forced to marry so that there is a request for dispensation so that they can get married at an early age. The Head of KUA of the Kota Timur, Gorontalo City also said that there are no parents who want their children to marry at an early age, every parent wants their children to have a bright and good future.<sup>24</sup>

Economic factors that worsened during the Covid-19 pandemic also contributed to encouraging early marriage. As mentioned by the United Nations Population Fund (UNFPA) and the United Nations Children's Fund (UNICEF) in a report entitled *Adapting to Covid-19: Pivoting The UNFPA-UNICEF Global Program to End Child Marriage to Respond to The Pandemic* predicts, 4 million child marriages in women occur in the next two years in the world because of the economic crisis. Then about 13 million early marriages will occur within the

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<sup>23</sup> Mubasyaroh, "Analisis Faktor Penyebab Pernikahan Dini Dan Dampaknya Bagi Pelakunya", *Jurnal Pemikiran dan Penelitian Sosial Keagamaan*, Vol. 7, No. 2, Desember 2016, Hal. 400.

<sup>24</sup> Bapak H.M Fahrie Hioda, S.Ag (Kepala Kantor Urusan Agama Kota Timur Kota Gorontalo), Wawancara, Rabu Tanggal 10 November 2021.

period 2020-2030 in the world. The economic crisis also hit Indonesia during the Covid-19 pandemic.<sup>25</sup>

Of the several factors of child marriage listed above, what happened in Kota Timur Sub-District was due to low education factors, media freedom, the lack of parental supervision, so that an undesirable situation occurred, namely pregnant out of wedlock, most of them married because already pregnant, to strengthen the statement regarding the main factor of child marriage that occurred in the Kota Timur Sub-District due to an accident, the authors sought strengthening information by interviewing the head of the KUA in the Kota Timur Sub-District. This was indeed true of the statement from the Head of KUA, Kota Timur Sub-District, namely "So those who carried out child marriage were mostly due to women are already pregnant".<sup>26</sup>

And from the statement of the two parents of a married child, it was clear that their child was forced to marry because the women are already pregnant. "Yes, they have to get married because the women are already pregnant, so what can we do as parents have to find a way out, namely by marrying them off," said one of the parents who got married in Kota Timur Sub-District, Gorontalo City.<sup>27</sup>

So it was clear that the reason for the large number of child marriages in the Kota Timur Sub-District was not due to economic factors, matchmaking factors, but tended to be due to lack of supervision from parents. Because parents were busy working, as for those who become Indonesian Migrant Workers, parents were divorced, there were even parents who were sick so they could not supervise the interactions of their children.

## V. Conclusion

Based on the results of research and discussions that have been compiled by researchers, it could be concluded that in 2020 the implementation of the covenant of marriage during the Covid-19 pandemic in the Kota Timur Sub-District of Gorontalo City was carried out at the Religious Affairs Office (KUS) by limiting the family.

KUA's efforts, in this case, the wedding officiant, had held socialization and counseling long before the Covid-19 pandemic. During the Covid-19 pandemic, the KUA of Gunung Putri Sub-District and the village head of Bojong Kulur as well as his staff worked together to provide counseling and socialization through the Zoom application. The KUA of Gunung Putri Sub-District also carried out socialization and marriage guidance for prospective couples online using the

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<sup>25</sup> Asep Deni Adnan Bumaeri "Fenomena Pernikahan Di Bawah Umur Oleh Masyarakat", Jurnal Mahabahits, Vol. 01, No. 02 2020.

<sup>26</sup> Bapak H.M Fahrie Hioda, S.Ag (Kepala Kantor Urusan Agama Kota Timur Kota Gorontalo), Wawancara, senin, Tanggal 10 November 2021.

<sup>27</sup> Orang Tua Nadya Dwi Ahaliki, Wawancara, Rabu, 13 Oktober 2021.

Zoom application, which was attended by 20 prospective couples. KUA's obstacles in handling child marriages before and after the Covid-19 pandemic were activities that were not programmed, parents did not play an active role in preventing child marriages, minimal public interest, community limitations on internet networks, and Large-Scale Restrictions (PSBB) due to the increasing number of Covid-19 cases. Factors that cause child marriage are Internal Factors, Low Education Factors, Economic Factors, and External Factors.

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### Constitution

Pasal 14 KHI berbunyi : “Untuk melaksanakan perkawinan harus ada: a. Calon suami; b. Calon istreri; c. Wali nikah; d. Dua orang saksi dan; e. Ijab dan Qabul”