

ANALYSIS OF SOCIO-JURIDIC OF UNDER-AGE MARRIAGE TO CAUSE THE PREGNANCY OUTSIDE OF MARRIAGE (A STUDY IN BULAGI DISTRICT)

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Abstract

This paper aims to investigate the analysis socio-juridic of under-age marriage caused to pregnancy outside of marriage (study in Bulagi district, banggai islands). This study was qualitatif approach with case study. The results showed that underage marriages have legal consequences for husband and wife relations, children's position, and assets. However, on the other hand, it is necessary to solve the problem and prevent child marriage, among others, by making strategic policies in various fields. Prevention of underage marriage can be achieved through changing the way people are aware of their legal behavior, socializing sex education and reproductive health, and providing access to affordable education.

Keywords: socio-juridical, underage marriage, and religious court.

Introduction

Marriage is a very humanizing aspect, because marriage is actually in accordance with human nature which is in line with the Qur'an and the sunnah of the Prophet¹. The definition of fitrah here is actually Allah has provided every human being with the desire that tend to like and love the opposite gender. Islam assesses and determines that marriage is a way of perfecting the implementation of religious

¹ Abdullah Nasikh'Ulwan, "Perkawinan (Masalah Orang Muda, Orang Tua Dan Negara)" (Jakarta: Gema Insani Press, 1992).

teachings.²In the Qur'an, marriage is seen as one of the signs of Allah's power. Just like the creator of the heavens and the earth, and the creation of man as Allah says in the QS. Ar-Rum, [30]:21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ

لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ﴿٢١﴾

The translation:

"And among the signs of His power is that He has created for you wives of your own kind, so that you may tend to and find peace in them, and He has created between you love and compassion. Verily in that there are indeed signs for a people who think." (Surat AL-Rum [30]: 21).³

The limited age problems to carry out a marriage has actually been determined in Law no. 1 of 1974 article 7 paragraph (1), that marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years. This age limit provision, as stated in the compilation of Article 15 paragraph (1), is based on considerations of the benefit of the family and the marriage household. This is in line with the principles laid down by the Marriage Law, that the prospective husband and wife must be physically and mentally ready, in order to realize the goal. good marriage without ending in divorce and get good and healthy offspring. As there has been a revision on the issue of the age limit for marriage, initially the man had reached the age of 19 years and the woman had reached the age of 16 years. In the Law No. 16 of 2019 concerning Amendments to Law 1 of 1974 concerning Marriage in article 7 states that:

1. Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.
2. In the event of a deviation from the age provisions as referred to in paragraph (1), the parents of the male and/or female parents may request a dispensation from the Court on the grounds that it is very urgent, accompanied by sufficient supporting evidence.
3. The provision of dispensation by the Court as referred to in paragraph (2) must listen to the opinions of the two prospective brides who will carry out the marriage.
4. The provisions regarding the condition of one or both parents of the prospective bride and groom as referred to in Article 6 paragraph (3) and paragraph (4) shall also apply to the provisions regarding the request for dispensation as referred to in paragraph (2) without prejudice to the provisions as referred to in Article 6 paragraph (6).⁴

²Mahali A. Madjab. "Marry You Be Rich (Wedding Gifts For Young Couples)". (Yogyakarta: PT Mitra Pustaka, 2006), p. 6.

³Ministry of Religion RI. "The Qur'an and its translation" (Bandung: Mizan Pustaka, 2009), p. 407.

⁴Law No. 16 of 2019 concerning Amendments to Law 1 of 1974 concerning Marriage in article 7.

This immaturity factor is more evident in underage marriages. In terms of developmental psychology, with increasing age a person is expected to be more mature, psychologically more mature.⁵ Indeed, if we look at the level of personal maturity of a person does not depend on age, but adolescence is a period of transition from childhood to adulthood. During this period, adolescents generally do not have a steady personality and maturity of thought. Underage marriage is not profitable and even clearly harms women, at a young age, young women are required to take care of the household, serve their husbands, have to conceive and give birth, then care for and raise them. Whereas pregnant and giving birth at a young age are very high risk for health, for young mothers it can cause cervical cancer and are prone to miscarriage. Marriage that is still young also invites many unexpected problems because the psychological aspect is not yet mature, especially for women.⁶

According to Basri in his book entitled *Caring for Love*, it is said that physically, biologically, a normal young man or woman has been able to produce offspring, but from a psychological point of view, teenagers are still very green and unable to control the household ark in the ocean of life. How many families and marriages are forced to suffer the unfortunate fate and don't even last long because of agetoo young of the perpetrators, either one or both.⁷ And marriage that is too young can also cause depressive neuritis because of a protracted process of disappointment and because there are feelings of stress that are very excessive. Social and economic maturity in marriage is very necessary because it is a buffer in turning the family wheel as a result of marriage. In general, young people do not have a handle on social and economic matters. Though each individual is required to meet the needs of the family.

The definition of pregnant out of wedlock marriage is a woman who is pregnant before the marriage contract, then married by the man who impregnated her.⁸ Any intercourse between a man and a woman outside of marriage is adultery. Islam forbids adultery and considers it a vile and hated act Allah SWT. This is confirmed in the Qur'an Surah Al-Israa verse 32:

وَلَا تَقْرَبُوا الزَّوْجَاتِ إِيَّاهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

The translation:

And do not approach adultery; Indeed, adultery is an abominable act, and a bad way.⁹

In essence, marriage is a sense of love, obligation, fulfillment of sexual desires and produce offspring legally. For Islam, love is a motivation in marriage.¹⁰

Pregnant marriage is marrying a woman who is pregnant out of wedlock, either married by a man who impregnates her or by a man who does not impregnate

⁵Walgito, Bimo. "Marriage Guidance and Counseling". (Yogyakarta: Publishing Foundation Faculty of Psychology. UGM, 2000), p. 28.

⁶Ibid. h. 20.

⁷Hasan Basri. "Caring for Love". h. 76.

⁸Zainuddin Ali. "Islamic Civil Law in Indonesia". (Jakarta: Sinar Graphic, 2006), p. 45.

⁹Ministry of Religion of the Republic of Indonesia, "The Qur'an". h. 253.

¹⁰Al-Tahir Al-hadad. "Women in Shari'a and Society". trans. M. Adib Bisri (Jakarta: Pustaka Firdaus, 1993), p. 59.

her. Therefore, the problem of marrying a pregnant woman requires careful and thoughtful attention, especially by marriage registrar employees. This means that a pregnant marriage is marriage with a woman who is pregnant out of wedlock, either married by a man who impregnates her or by a man who does not impregnate her.¹¹Therefore, the issue of marrying a pregnant woman requires careful and wise attention, especially by marriage registrar employees. This means that there is a social phenomenon regarding the lack of awareness of the Muslim community towards the moral, religious and ethical principles of the occurrence a man who did not impregnate her but married her.¹². The marriage of a pregnant woman outside of marriage is related to several things in Islamic law, including:

1. The marriage contract with the woman is valid or not according to Islamic law.
2. Is it permissible or not to collect them like husband and wife.
3. The position of nasab (descendants) of children born.¹³

It's really heartbreaking, the phenomenon of promiscuity that causes adultery is also common among teenagers today so that many teenagers are pregnant out of wedlock, and get married when they are pregnant. So not infrequently we see a wedding reception with a couple who are young or not old enough, side by side on the aisle as a result of their promiscuity. This condition is often associated with pregnant out of wedlock marriages. The term marriage of pregnant women outside of marriage is marriage a woman who is pregnant is caused by a man, while the woman is not in a married status with the man who caused her pregnancy. Usually the incident is shocking after pregnancy which is difficult to cover up. To realize the desired marriage, physical and spiritual maturity in marriage is the basis for achieving the goals and ideals of marriage, although many people are not aware of this due to environmental influences and inadequate social development.

Basically, marriage is an engagement agreement between a man and a woman. Although this marriage is a form of engagement agreement, this agreement is different from other civil agreements.¹⁴Similar to other worship, in marriage there are also conditions and pillars that must be fulfilled which are called the terms and pillars of marriage. Broadly speaking, there are 2 requirements for a valid marriage, namely the prospective groom and the bride there is no obstacle to getting married and the marriage contract is attended by witnesses.¹⁵While the majority of scholars agree that the pillars of marriage consist of:

1. There are prospective husbands and wives who are about to get married.
2. There is a guardian from the bride's side.
3. Two witnesses.
4. Ijab is done by the guardian and qabul is done by the husband.

¹¹Abdur Rahman Ghazali. "Fiqh Munakahat". (Bogor: Kencana, 2003), p. 124.

¹²Ali. "Law". h. 45

¹³Mahjudin. "Masailul Fiqhiyah". (Jakarta: Kalam Mulia, 2003), p. 36-37.

¹⁴Abidin Aminuddin. "Fiqh Munakahat 1". (Bandung: CV Librarian Setia., 1999), p. 63.

¹⁵Ibid.,

Children are an inseparable part of human survival and the sustainability of a nation and state. In order to be able to be responsible for the sustainability of the nation and state, every child needs to have the widest opportunity to grow and develop optimally, physically, mentally and socially. It is necessary to make efforts to realize the legal protection of children by providing guarantees for the fulfillment of their rights without discriminatory treatment¹⁶.

Among the people there are pros and cons for various reasons, there are some people who think that underage marriage is a natural thing, on the grounds that there is no big concern as a result of underage marriage, the rejection of underage marriage seems to deny religion or other reasons. On the other hand, the rejection of underage marriage is also for various reasons, for example, experiencing problems in terms of education such as dropping out of school or not being able to become good parents, if you are not mentally prepared it will be the cause of easy divorce¹⁷.

The phenomenon of underage marriage may occur in various regions. Likewise in the village of Uluno, Bulagi District, Banggai Islands Regency Underage marriage is no longer a strange thing but has become a common thing¹⁸. The marriage dispensation provided by the law gives more or less the perception of the community to marry off their children even though they have not reached the age set by the law itself. In fact, people have even ignored the fact that divorce cases in court are dominated by marriage dispensations.

Basically the rules in the Act aim to create benefits for the community. Apart from the controversy over underage marriage, which is the reason for the author in bringing up this title, apart from the factors of underage marriage, there are things that are of major concern, namely the perception among the public to marry off their children at an early age.

Research methods

The type of research that researchers use in this study is qualitative research. Researchers go directly to the field trying to find and get data about the object of research study and then try to answer the research problem formulation based on the data obtained, by describing it in narrative form. "This research is a descriptive research, which is a study that seeks to observe problems systematically and accurately regarding the facts and properties of certain objects".¹⁹The method used for the analysis of this research is a qualitative method.

The data collection techniques used in this research are:

1. Observation

Observation is direct observation and recording of the symptoms that appear on the object of research using the five senses. Observation technique is a method of collecting data by observing the research under study

¹⁶ Muhammad Hamsah, "Membangun Karakter Bangsa" (Universitas Islam Indonesia, 2018).

¹⁷ Ali Miftakhu Rosyad and Muhammad Anas Maarif, "PARADIGMA PENDIDIKAN DEMOKRASI DAN PENDIDIKAN ISLAM DALAM MENGHADAPI TANTANGAN GLOBALISASI DI INDONESIA," *Nazhruna: Jurnal Pendidikan Islam* 3, no. 1 (2020): 75–99.

¹⁸ Nasrun Haroen, *Fiqih Muamalah* (Jakarta: Gaya Media Pratama, 2007).

¹⁹ Mahmud. "Educational Research Methods". (Bandung: Setia Pustaka, 2011), p. 100.

2. Interview(interview)

Interview (interview) is a method of collecting data by asking questions directly by interviewers (data collectors) to informants, then the results of interviews or answers from informants are recorded by researchers to be used as material for processing data.

3. Documentation

Documents are records of past events. Documents can be in the form of writing, pictures, or monumental works of someone. Documents in the form of writing such as diaries, life histories, biographies, regulations, policies. Documents in the form of images, such as photos, live images, sketches, and others. Document studies are complementary to the use of observation and interview methods in qualitative research.²⁰

Data analysis is the process of systematically searching and compiling data obtained from interviews, field notes, and documentation by organizing the data into categories, breaking them down into units, arranging them into patterns, choosing what is important and what will be studied, and draw conclusions so that they are easily understood by themselves and others.

Results and Discussion

Perception of Islamic Society at Bulagi District in Banggai Regency toward marriage Underage

People have different overviews on early/underage marriage depending on what is behind the marriage. This is in accordance with the following interview:

Early/underage marriage is a marriage that is considered by some people as a marriage that should not occur because there is no readiness to carry out the marriage. The community considers early/underage marriage to be a disgrace that occurs in the community if the marriage is motivated by promiscuity among teenagers, either because (arrested by the community) for having marital relations outside of marriage or because of pregnancy out of wedlock.²¹

each of society considers that early/underage marriage is a natural thing if a marriage occurs because of family economic factors and others except because of promiscuity²². The implementation of a marriage can help the family economy if the marriage occurs after the agreement by both parties and creates benefits for both parties.

There are also informants who consider early/underage marriages both good and bad at the same time, depending on the benefits and harms of the marriage and depending on the situation, namely RN's mother, who is a community member as well as a teacher, who thinks early marriage is both good and bad.

²⁰Ibid.,

²¹Initials Y, Resident of Bulagi District, "Interview" on January 14, 2022

²² Muhammad Hamsah, Nurhamidah Nurhamidah, and Rasimin Rasimin, "PEMIKIRAN PENDIDIKAN KH AHMAD DAHLAN DAN RELEVANSINYA DENGAN DUNIA PENDIDIKAN MODERN," *Risâlah, Jurnal Pendidikan Dan Studi Islam* 7, no. 2 (2021): 378–90.

"Early/underage marriage is good to do if the aim is to avoid adultery, then for women who are unable to improve the family economy, and are expected to be more mature and more independent after marriage. However, early marriage is not good because the impact caused by the marriage tends towards divorce, delays in the education of perpetrators of early marriage, lack of knowledge in educating children and not being able to bear heavy responsibilities."²³

Negative Overview of Society at Bulagi District, Banggai Regency toward Early/Underage Marriage

Most of the society considers early/underage marriage to be a bad thing or an inappropriate marriage to occur²⁴. Early marriage / underage mostly occurs because of promiscuity. This is what underlies many people who think that early/underage marriage is not good because the marriage occurs because it violates norms, both customary norms and religious norms that apply in society. As the following interview results:

"I considered early/underage marriages to be bad marriages because most of the early/underage marriages that currently occur are due to promiscuity among teenagers, but even though these early/underage marriages occur due to other reasons, such as the economy, in my opinion, these marriages are not should have happened because of more harm."²⁵

The early statement is the opinion of Mr. W, who is one of the community members as well as an informant in this research. Mother also said the same opinion that it was RS who said:

"Early marriage/underage marriages are not good to do because the women and men who are getting married are not ready to do the marriage, the two have not been able to carry out big responsibilities, they still want to play, they still want to hang out with friends. Women are not ready to take care of children and men still want to enjoy their bachelor years with their friends, so it is very likely that the marriage will eventually end in divorce."²⁶

The negative overview of the community regarding early/underage marriage is also due to the negative impact of early marriage, such as delays in education for perpetrators of early/underage marriages. The perpetrators of early/underage marriages mostly do not continue their education because they already have the

²³Initials RN, Resident of Bulagi District, "Interview" January 14, 2022

²⁴ Implementasi Nilai-Nilai and Ali Miftakhu Rosyad, "Ali Miftakhu Rosyad IMPLEMENTASI NILAI-NILAI MULTIKULTURALISME MELALUI PEMBELAJARAN PENDIDIKAN AGAMA ISLAM THE IMPLEMENTATION OF MULTICULTURALISM VALUES THROUGH LEARNING OF ISLAMIC RELIGION EDUCATION" 5, no. 1 (2019), <https://doi.org/10.5281/zenodo.2607388>.

²⁵Initials W, Resident of Bulagi District, "Interview" January 15, 2022

²⁶Initials of RS, Resident of Bulagi District, "Interview" January 15, 2022

burden and responsibility of being a wife or husband who will later become a father or mother. There was also another response from a resident with the initial D he said that: "After getting married, my wife and I did not continue school because I had to work for the needs of the family, especially now that I have a child and have to fulfill my obligations as the head of the family".²⁷

HaThis was said by Inisial D. Same with Inisial D and his wife, Inisial S, who did not continue their education due to early marriage, Inisial E and her husband, Inial A, also did not continue their education. The inhibition of education caused by early marriage makes people have a bad opinion about early marriage. Another opinion that says early marriage is bad is the opinion of Mr. M who says that:

"Early/underage marriages should not occur because at a young age they have not been able to carry out the responsibilities of building a family. Young people still want to be with friends to do things like friends their age"²⁸

The caused of early/underage marriages used to be a natural thing in society because not many continue their education and prefer to help their parents, but currently the factor that causes early marriage is promiscuity.

Positive Overviews of the community at Bulagi District, Banggai Regency toward Early/Underage Marriage

Another overview from the community is that it is considered normal for early/underage marriages depending on the cause of the marriage. as Ms L said:

"There is nothing wrong with early/underage marriage if the marriage occurs because of parental orders and it is of their own volition, and the marriage did not occur because of pregnancy out of wedlock."²⁹

The same opinion was also expressed by Mr. E who said that:

"Early marriage/underage marriage is not bad if the marriage has fulfilled the terms and conditions in carrying out marriage, in Islam there is also no prohibition on early marriage."³⁰

According to the two informants, early/underage marriages can be carried out if the marriage is approved by parents and of their own accord, and the conditions for marriage in Islam are sufficient. Usually, early marriage can be carried out after going through processes, starting from making a statement to the local Office of Religious Affairs (KUA), then conducting a trial to the prosecutor's office, so that if

²⁷Initials D, Resident of Bulagi District, "Interview" on January 16, 2022

²⁸Initials M, Resident of Bulagi District, "Interview" on January 16, 2022

²⁹Initials L, Resident of Bulagi District, "Interview" on January 16, 2022

³⁰Initials L, Resident of Bulagi District, "Interview" January 18, 2022

the application for early marriage occurs in the community it does not go through the KUA and its implementation is not reported to the KUA so that the marriage not legally valid because there is no marriage book but it is religiously valid. People consider marriages that occur without the knowledge of the KUA to be a problem because what is more important is religiously valid.

Community overviews are a form of community concern about early/underage marriages which basically have impacts on the person carrying out the marriage. The view of the community that considers early marriage to be bad cannot be separated from what is happening in society. Another view of some people who think that early/underage marriage is a normal marriage is also inseparable from what is happening in society³¹.

The impacted on early/underage marriages that make people have different views, such as promiscuity factors, barriers to education and economic factors that make people differ in their assessment of early/underage marriages. Likewise, the impact caused by early marriage also makes early marriage considered good or bad. some think it's good to help the family economy and some think it's bad if the impact of early/underage marriage ends in divorce and so on.

Conclusion

The early marriage/underage happened in the district Bulagi was various factors, namely promiscuity, economy, lack of education and knowledge, the occurrence of matchmaking, and social factors. The main factors for early marriage are:/ under age in the district Bulagi are promiscuity among teenagers and economic factors. Free sex and economic factors also affect people's views on early marriage/under age. People tend to think of early marriage/ underage is a negative thing and is a disgrace to the family and society due to the occurrence of early marriage/ under age This is due to the free association that results in pregnancy out of wedlock which necessitates early marriage/under age. Apart from promiscuity, the public's bad view of early marriage is also due to the many negative impacts of early marriage/ underage such as obstructed education and harmful to health early marriage/under age. Some people think marriage is a natural thing because it has benefits as well as helping the economy family.

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³¹ Wahbah Az-Zuhaili, "Al-Fiqh Al-Islam Wa Adillatuhu, Cet. Ke-3," *Damaskus: Dar Al-Fikr*, 1989.

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