

CHAPTER I

INTRODUCTION

A. Background

Indonesia is an archipelagic state¹ that consist of around 17.504 islands². It is the world's 4th largest country ranked by population and 3rd biggest democracy and Muslim nation.³ Even though a majority of the population is Muslim with the percentage of 87.2% followers, other religions do exist in Indonesia, namely Protestant (6.9%), Catholic (2.9%), Hindu (1.7%), Buddhist (0.7%), and Confucian (0.05%).⁴ Indonesia is also a country of high diversity. More than 300 ethnicities can be found in Indonesia.⁵ Although Indonesia's national motto is "Unity in Diversity," there are still plenty undiscovered rural islands with their own cultures. The sheer numbers of islands in Indonesia make it challenging for the government to develop each area evenly. Some islands are better developed, others, left unattended. In Indonesia, where civil law legal system is adopted, not one but several legal systems are worked. These systems are called *adat* or customary law and

¹ Amber Pariona, "How Many Islands Are There in Indonesia? - WorldAtlas.Com," accessed September 1, 2018, <https://www.worldatlas.com/articles/how-many-islands-does-indonesia-have.html>.

² Tri Setiya, "The Number of How Many of Indonesia's Islands Are Inhabited - Facts of Indonesia," accessed September 1, 2018, <https://factsofindonesia.com/number-many-indonesias-islands-inhabited>.

³ "Indonesia - Country Profile, Facts, News and Original Articles," accessed September 1, 2018, <http://globalsherpa.org/indonesia/>.

⁴ Indonesia Investments, "Religion in Indonesia," www.indonesia-investments.com, 2017, <https://www.indonesia-investments.com/culture/religion/item69?>

⁵ "Indonesia Guide: Diversity, Religion and Values, An Introduction to the Cultural Variety of Indonesia:," accessed September 1, 2018, <https://www.justlanded.com/english/Indonesia/Indonesia-Guide/Culture/Diversity-religion-and-values>.

Islamic law.⁶ While better-developed islands have already enforced the civil law legal system, in most rural islands the traditional and custom practices still run deep, rendering the civil law legal system ineffective. The clash between the legal systems is especially common in marriage cases.

Marriage is the procedure by which two individuals make their relationship open, official, and meant to last for eternity.⁷ It is the joining of two individuals in a bond that will keep going forever until death.⁸ In Article 1 (one) Law of the Republic Indonesia Number 1 of The Year 1974 on Marriage, it is stated that “ *marriage is a relationship of body and soul between a man and a woman as husband and wife with the purpose of establishing a happy and lasting family (household) founded on belief in God Almighty.* ” Even if it is meant to last for eternity, the case of divorce in Indonesia has been steadily increasing.⁹ It is not clear why¹⁰, but in Indonesia, child marriage could be one of the factors determining so. Child marriage is a bonding of a man and a woman under the age 18¹¹ and though it is discouraged, child marriage is still happening in Indonesia. This practice is often driven by socioeconomic factors surrounding the children, especially girls, including financial incentives, poverty, dowry practices, lack of

⁶ “Indonesia Legal System - Government,” accessed September 10, 2018, https://www.indexmundi.com/indonesia/legal_system.html.

⁷ “Marriage | Psychology Today,” accessed September 1, 2018, <https://www.psychologytoday.com/us/basics/marriage>.

⁸ Loc. Cit.

⁹ Mark Cammack and Tim Heaton, “Explaining the Recent Upturn in Divorce in Indonesia: Developmental Idealism and the Effect of Political Change,” *Asian Journal of Social Science* 39, no. 6 (2011): 776–96, <https://doi.org/10.1163/156853111X619229>.

¹⁰ Ibid., Page. 784.

¹¹ UNICEF, “Child Marriage: Child Protection from Violence, Exploitation and Abuse | UNICEF,” *Unicef*, 2016, https://www.unicef.org/protection/57929_58008.html.

education access and health services, and economic dependency.¹² President of Indonesia Joko Widodo has been committing to ban child marriage and preparing to amend the Marriage Law by presidential decree with the help of Coordinating Ministry for Human Development and Cultural Affairs and the Ministry of Women Empowerment and Child Protection.¹³ The commitment is necessary because child marriage has many disadvantages that could affect a nation's economics. Child marriage is estimated to cost economies at least 1.7% of Gross Domestic Product.¹⁴ Recently, an underage boy and girl got married in Bantaeng District, South Sulawesi. The boy is named Rezki (13) while the girl is named Sarmila (17).¹⁵ According to the report, one of the reasons they were married was because they are in love and have been in a relationship for quite some time. To avoid adultery that could cost both families' their reputation, the parents agreed to marry them, even while they are obviously minors.¹⁶ That aside, the huge amount of dowry, and the fact that marrying their children are considered a prideful thing in their community also added to the many reasons they decided to marry their children.¹⁷ This marked the customary practices still exist and hence, rendered the civil law legal system barely effective. According to Law of the Republic Indonesia Number 1 of The Year 1974 on Marriage, the legal minimum age of marriage

¹² "Indonesia - Child Marriage Around The World. Girls Not Brides," accessed September 11, 2018, <https://www.girlsnotbrides.org/child-marriage/indonesia/>.

¹³ Andreas Harsono, "Indonesian President Jokowi to Ban Child Marriage," Human Rights Watch, 2018, <https://www.hrw.org/news/2018/04/23/indonesian-president-jokowi-ban-child-marriage>.

¹⁴ "Child Marriage in Indonesia," accessed September 3, 2018, https://www.unicef.org/indonesia/Child_Marriage_SDG_Factsheet_english.pdf.

¹⁵ Herman Amiruddin, "Pernikahan Bocah SD Dan Siswi SMK Di Bantaeng Tidak Tercatat Di KUA," 2018, https://today.line.me/ID/pc/article/DGLBzV?utm_source=keepshare.

¹⁶ Loc. Cit.

¹⁷ Loc. Cit.

is 21 (twenty one). With parental consent the minimum age can be set lower: 19 (nineteen) for man, and 16 (sixteen) for woman, but even this can be altered so that there are no minimum age requirements with parents' dispensation request to District Court or Religion Court.¹⁸ Studies show 95% of marriage dispensation are approved by court in District of Mamuju, Tuban, and Bogor.¹⁹ Due to the high percentage of dispensation approval, the Marriage Law 1974 has sparked some critics within Indonesia's community. That is because Marriage Law contradicts with Indonesia's own regulation on Child Protection Number 35 Year 2014 in which marriage between two young people under the age of 18 (eighteen) is forbidden in any circumstances.²⁰ The Marriage Law 1974 also set the minimum marriage age for girls as lower than boys even though girls are more disadvantageous in child marriage.²¹ Impacts from child marriage prove to be more harmful for girls because girls are more likely to experience domestic violence, and babies are 1.5 times more likely to die within the 28 days of birth due to the lack of knowledge as child marriage often leads to dropping out of school.²²

Indonesia has ratified the Convention on the Rights of the Child (CRC) on 05 September 1990.²³ Convention on the Rights of the Child is “*legally-*

¹⁸ “Child Marriage in Indonesia,” Op. Cit.

¹⁹ “CHILD MARRIAGE IN INDONESIA: PROGRESS ON PAUSE UNICEF INDONESIA: RESEARCH BRIEF,” accessed September 11, 2018, https://www.unicef.org/indonesia/UNICEF_Indonesia_Child_Marriage_Reserach_Brief_.pdf.

²⁰ Loc. Cit.

²¹ Loc. Cit.

²² Widya Nandini, “Perkawinan Anak Di Indonesia Mengkhawatirkan - Katadata News,” accessed September 17, 2018, <https://katadata.co.id/infografik/2018/08/09/perkawinan-anak-di-indonesia-mengkhawatirkan>.

²³ “Treaty Body Database,” accessed September 17, 2018, https://tinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN.

binding international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities.”²⁴ The terms of the convention is to acknowledge that every child has basic fundamental rights and every government must help every child in fulfilling their basic needs and to reach their maximum potentials.²⁵ As stated in Article 1 (one) of CRC, “*For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*” This indicates that the Marriage Law 1974 has failed to meet the minimum age 18 for marriage recommended by the convention.²⁶ Hence, the title of this research is

“The Implementation of Convention on the Rights of the Child Against Child Marriage in Indonesia.”

B. Research Questions

Based on the background above, the author has identified some major problems regarding child marriage. The research questions are:

1. Are the practices of child marriage in Indonesia against the CRC?
2. Have the Indonesia Law No. 1 of 1974 concerning Marriage and Law No. 35 of 2014 concerning Child Protection prevented child marriage?

²⁴ Save the Children, “UN Convention on the Rights of the Child | Save the Children UK,” accessed September 17, 2018, <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child>.

²⁵ Loc. Cit.

²⁶ “CHILD MARRIAGE IN INDONESIA: PROGRESS ON PAUSE UNICEF INDONESIA: RESEARCH BRIEF.” Op. Cit.

3. What are the legal and non-legal approaches to be done to prevent and minimize the practices of child marriage in Indonesia?

C. Research Objectives and Benefits

Research Objectives

There are several objectives that the author wish to obtain, the objectives are as follows:

1. To analyze if the practices of child marriage in Indonesia are in accordance with the CRC.
2. To analyze if Indonesia Law No. 1 of 1974 concerning Marriage and Law No. 35 of 2014 concerning Child Protection have prevented child marriage.
3. To analyze the legal and non-legal approaches to be done to prevent and minimize the practices of child marriage in Indonesia.

Research Benefits

There are several benefits that the author wish to obtain, the benefits are as follows:

1. To Office of Religious Affairs - *Kantor Urusan Agama* (KUA) in understanding the disadvantages of child marriage and hence rejecting child marriage dispensation request.

2. To Indonesia Children Komisi Perlindungan Anak Indonesia (KPAI) to actively socialize the disadvantages of child marriage to parents, governments, Non-Governmental Organizations (NGO), and society.
3. To Dewan Perwakilan Rakyat (DPR) to create regulations that discourage the practices of child marriage and amend regulations that encourage the practices of child marriage.
4. To Kementerian Pemberdayaan Perempuan dan Perlindungan Anak (PPPA) in monitoring the children activities in Indonesia in accordance with child marriage.
5. To the Parents in always putting their children's education first rather than marrying them off to lessen the economic burdens.
6. To the Academician in understanding the disadvantages of child marriage and help in reducing its practices.