

CHAPTER II LITERATURE REVIEW

A. Conceptual Framework

1. Implementation

The definition of implementation as stated in the dictionary of Merriam-Webster is “*an act or instance of implementing something; the process of making something active or effective.*”²⁷ While in the dictionary of Oxford, the meaning of implementation is “*the process of putting a decision or plan into effect; execution.*”²⁸ Simply said, implementation in this undergraduate project can be interpreted as an act of making Convention on the Rights of the Child effective.

2. Rights

According to the English dictionary of Collins, rights are “*those things that one is morally or legally entitled to do or have.*”²⁹ Rights are “*legal or moral recognition of choices or interests to which particular weight is attached.*”³⁰

The definitions of Rights according to experts are as follow:

- a. T. H. Green defines rights as:

²⁷ “Implementation | Definition of Implementation by Merriam-Webster,” accessed October 18, 2018, <https://www.merriam-webster.com/dictionary/implementation>.

²⁸ Oxford, “Implementation - Definition of Implementation in English | Oxford Dictionaries,” Oxford Dictionaries | English, 2016, <https://doi.org/10.1007/s00425-003-1070-z>.

²⁹ “Rights Definition and Meaning | Collins English Dictionary,” accessed November 11, 2018, <https://www.collinsdictionary.com/dictionary/english/rights>.

³⁰ “Rights: Definition, Nature and Different Aspects,” accessed November 11, 2018, <http://www.politicalsciencenotes.com/theory-of-rights/rights-definition-nature-and-different-aspects/789>.

*“ the capacity on the part of the individual of conceiving a good as the same for himself and others and of being determined to action by that conception is foundation of rights, and rights are the condition of that capacity being realized. No right is justifiable or should be a right except on the ground that directly or indirectly it serves this purpose. ”*³¹

b. Andrew Heywood, defines rights as:

*“ entitlements to act or be treated in a particular way. ”*³²

Rights are *“ the common claims of people which every civilized society recognizes as essential claims for their development, and which are therefore enforced by the state. ”*³³

c. Beni Prasad, defines rights as:

*“ rights are nothing more nor less than those social conditions which are necessary or favorable to the development of personality. ”*³⁴

3. Convention on the Rights of the Child (CRC)

a. Definition of Convention on the Rights of the Child

Convention on the Rights of the Child is the first legally binding convention that regulates children fundamental rights and

³¹ Loc. Cit.

³² Loc. Cit.

³³ K. K Ghai, “Rights: Meaning, Features and Types of Rights,” accessed November 11, 2018, <http://www.yourarticlelibrary.com/essay/law-essay/rights-meaning-features-and-types-of-rights/40373>.

³⁴ Loc. Cit.

needs.³⁵ It was signed by several countries, for example Indonesia has ratified the convention on 05 September 1990.³⁶ This convention is part of international instrument to guarantee and protect human rights, mainly children rights, and it has an obligatory force which means State that ratified the convention must respect and ensure every article must be applied in the favor and rights of the children.³⁷ Even though other conventions such as International Pacts, and the International Labor Organization Convention (ILO Convention) regulates children rights in specific aspects, only the Convention on the Rights of the Child address all aspects of fundamental children rights³⁸, such as civil, political, economic, social, and cultural rights, regardless of their religion, race, or abilities.³⁹ According to this convention that consist of 54 articles regarding children rights, there are children's basic fundamental rights which are:

- The right to life, survival, and development.
- Protection from violence, abuse or neglect.
- An education to raise the children full potential.

³⁵ "The Rights of the Child - Humanium • We Make Children's Rights Happen," accessed October 7, 2018, <https://www.humanium.org/en/child-rights/>.

³⁶ "Treaty Body Database."

³⁷ "The Rights of the Child - Humanium • We Make Children's Rights Happen," accessed October 7, 2018, <https://www.humanium.org/en/convention/definition/>.

³⁸ Loc. Cit.

³⁹ Save the Children, "UN Convention on the Rights of the Child | Save the Children UK," 2015, <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child>.

- Be raised by, and/or have relationship with their parents.
- Express their opinions and be listened to.⁴⁰

b. History of Convention on the Rights of the Child

In the ancient time, there were no protection of children because nobody had ever thought about it.

While in the Middle – Age, children were deemed as “small adults.”

The first thought to give children special protection happened in France in the middle of the 19th century. This idea enabled the dynamic advancement of “minors’ rights.” So, since 1841, the laws has started to ensure the protection of children in their working environments, and 40 years after that, the right for the children to be educated is officially included in French’s laws.

Toward the starts of 20th century, children’s protection begins to set, which include protection in medical, social and legal sections. The protection begins in France and spreads to Europe after a short while.

The international community following the creation of the League of Nations or will be known as United Nations (UN), begins to notice the importance of children protection and creates a Committee for children protection in 1919. In 16 September 1924,

⁴⁰ Loc. Cit.

the League adopts the Declaration of the Rights of the Child which is the very first international convention regulating children's rights. It consists of adults' responsibilities and children's specific rights.

In 1947, after World War II left thousands of children in a very dangerous situation, the UN Fund for Urgency for the Children was created. It soon was called UNICEF and was granted the status of a permanent international organization in 1953. Back then, mainly young European children was taken care of because they were the victims of World War II. Shortly, UNICEF received mandate to expand its actions to an international scope to various countries. Several programs were developed to help and educate children, as well for taking care of their health and their access to water and food.

Consequently, in 10th December 1948, the Universal Declaration of Human Rights recognizes that *“motherhood and childhood are entitled to special care and assistance.”*

In 1959, United Nation adopted the Declaration of the Rights of the Child, which consists of ten (10) principles of children's rights. Although the declaration has not been signed and ratified by all countries and the principles have only an expressive value, the declaration developed into Universal Declaration of

Human Rights which is more well-known now as Convention on the Rights of the Child (CRC).

After CRC was developed, Commission on Human Rights was set up by the United Nation to write a charter that would make States enforce and oblige it.

United Nation announced the year 1979 as the International Year of the Child because Poland made the proposition to make a working group within the Commission of the Human Rights, which were tasked with composing an international charter. The action taken by Poland was seen as a real change of spirit within that year.

In 20th November 1989, the General Assembly of United Nation consensually adopted the Convention on the Rights of the Child which text consists of 54 articles mainly focused on economic, social, and cultural rights of the children. It is the most speedily adopted convention and enters in force since 2nd September 1990, and has been ratified by 20 states.⁴¹

Today, the Convention on the Rights of the Child has been ratified by 195 countries⁴² out of 195 countries.⁴³

⁴¹ “Children’s Rights History - Humanium • We Make Children’s Rights Happen,” accessed October 11, 2018, <https://www.humanium.org/en/childrens-rights-history/>.

⁴² UN News, “UN Lauds Somalia as Country Ratifies Landmark Children’s Rights Treaty,” United Nations, 2015, <https://news.un.org/en/story/2015/01/488692-un-lauds-somalia-country-ratifies-landmark-childrens-rights-treaty>.

⁴³ “How Many Countries Are There in the World? (2018) - Total & List | Worldometers,” accessed October 11, 2018, <http://www.worldometers.info/geography/how-many-countries-are-there-in-the-world/>.

c. Objectives of Convention on the Rights of the Child

There are several objectives of the CRC, such as:

- To guarantee that young people and children are respected;
- To guarantee that young people and children are protected;
- To guarantee that young people and children have a chance to develop;
- To guarantee that young people and children can participate and make influences;
- To guarantee that young people and children can live peacefully and grow exponentially while the adults fight environmental degradation that could harm them.
- To ensure that children rights are not options, but rather obligations and responsibilities that all must regard with great respect.⁴⁴

d. Principles of Convention on the Rights of the Child

There are four principles⁴⁵ in governing the implementation of this convention, such as:

- Non-discrimination

⁴⁴ UNICEF, "Convention on the Rights of the Child. FAQs and Resources," 2016, https://www.unicef.org/crc/index_30225.html.

⁴⁵ "CHILD Principles of Child Rights," accessed December 26, 2018, <https://www.cyc-net.org/today2001/today011120.html>.

Children in enjoying their rights should never be subjected to discrimination.

- Best interests of the child

State in governing regulations relating children rights shall always make their rights a priority.

- Right to life, survival, and development.

State should provide a safe environment where children can grow and develop.

- Respect for the views of the child.⁴⁶

To know the best interests of the children are by listening to them.

4. Child and Child Protection

a. Definition of Child

The definition of child is often vague in dictionary. It rarely specifies the age of a child. Such as the dictionary of Oxford, it identify child as “ *a young human being below the age of puberty or below the legal age of majority.* ”⁴⁷ While in the dictionary of Merriam-Webster, the definition of child is classified as “ *an unborn or recently born person; a young person especially* ”

⁴⁶ “The Rights of the Child - Humanium • We Make Children’s Rights Happen.” Op. Cit.

⁴⁷ “Child | Definition of Child in English by Oxford Dictionaries,” accessed October 15, 2018, <https://en.oxforddictionaries.com/definition/child>.

between infancy and youth; or a person not yet of age.”⁴⁸ From the definitions above, there are no specific age to say a child is a child, because age of puberty is different for every person, and maturity age in every country is different. In several dictionaries, they give the definition of child in law’s perspective. According to Black’s Law dictionary, the word Child has two meaning in law’s perspective. First, “*in the law of the domestic relations, and as to descent and distribution, it is used strictly as the correlative of ‘parent,’ and means a son or daughter considered as in relation with the father or mother.*”⁴⁹ Another definition of child is “*in the law of negligence, and in laws for the protection of children, etc., it is used as the opposite of ‘adult,’ and means the young of the human species, (generally under the age of puberty,) without any reference to parentage and without distinction of sex.*”⁵⁰ While it is a worldwide fact that an infant is categorized as child, but the span of youth could be different in every country too. Hence, the Convention on the Rights of the Child came in handy to harmonize the definition of child. In Article 1 Convention on the Rights of the Child, it is stated “*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*

⁴⁸ “Child | Definition of Child by Merriam-Webster,” accessed October 15, 2018, <https://www.merriam-webster.com/dictionary/child>.

⁴⁹ “What Is CHILD? Definition of CHILD (Black’s Law Dictionary),” accessed October 16, 2018, <https://thelawdictionary.org/child/>.

⁵⁰ Loc. Cit.

earlier.” Since almost every country in the world signed and ratified the convention, every person below the age of eighteen is universally identified as a child. This harmonization is extremely important. For example in Indonesia, there are several laws that regulate different age of maturity.⁵¹ Article 47 of Law Number 1 Year 1974 on Marriage stated that “ *a child below the age of 18 (eighteen) years and unmarried remains in the custody of its parents in so far as they have not been divested of parental power.*”⁵² Yet, in Article 330 of Indonesia’s Civil Code stated “ *Minors are those who have not reached the full age of twenty one years and who have not previously entered into matrimony.*”⁵³ As decreed by Minister of the Home Affairs Number Dpt.7/539/7-77 dated 13th July 1977, age of 17 (seventeen) is classified as “adult” (only politically) who is able to participate in general election.⁵⁴ Hence, Convention on the Rights of the Child could acts as a convention to harmonize the age of maturity in Indonesia’s complex legal systems.

b. Child Protection

⁵¹ Letezia Tobing, “Perbedaan Batasan Usia Cakap Hukum Dalam Peraturan Perundang-Undangan - Hukumonline.Com,” accessed October 16, 2018, <https://www.hukumonline.com/klinik/detail/1t4eec5db1d36b7/perbedaan-batasan-usia-cakap-hukum-dalam-peraturan-perundang-undangan>.

⁵² “Undang-Undang Republik Indonesia No 1 Tahun 1974 Tentang an | Legal Guardian | Marriage,” accessed October 16, 2018, <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>.

⁵³ “Indonesian Civil Code,” accessed October 16, 2018, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/77113/81600/F323756734/IDN.77113.pdf>.

⁵⁴ Tobing, “Perbedaan Batasan Usia Cakap Hukum Dalam Peraturan Perundang-Undangan - Hukumonline.Com.” Op. Cit.

Indonesia has ratified the Convention on the Rights of the Child through Presidential Decree Number 36 Year 1990.⁵⁵ But the presidential decree is deemed not enough to protect children welfare. Hence in 2002, Indonesia officially made its own statute regarding protection of child, numbered 23 year 2002, to strengthen the presidential decree. The Law Number 23 Year 2002 regarding Child Protection was amended 2 (two) times. The first amendment was officially in effect on 17th October 2014 named Law of the Republic Indonesia Number 35 Year 2014 regarding the Amendment of Law Number 23 Year 2002 concerning Child Protection, and the second amendment was made on 25th May 2016 named Government Regulation in Law of the Republic Indonesia Number 1 Year 2016 regarding Second Amendment of Law Number 23 Year 2002 concerning Child Protection. According to Article 1 Number 2 of Law of Republic Indonesia Number 35 Year 2014 regarding the Amendment of Law Number 23 Year 2002 concerning Child Protection, Child Protection is all activities to guarantee and protect the Child and his rights in order for him to live, grow, develop, and participate optimally according to human's right, and get protection against violence and discrimination. United Nations Children's Fund (UNICEF) refer

⁵⁵ Raissa Lestari, "IMPLEMENTASI KONVENSI INTERNASIONAL TENTANG HAK ANAK (Convention on The Rights of The Child) DI INDONESIA (Studi Kasus : Pelanggaran Terhadap Hak Anak Di Provinsi Kepulauan Riau 2010-2015)" (Pekanbaru, 2017), <https://media.neliti.com/media/publications/200146-implementasi-konvensi-internasional-tent.pdf>.

the term Child Protection as “ *preventing and responding to violence, exploitation and abuse against children – including commercial sexual exploitation, trafficking, child labor and harmful traditional practices, such as female genital mutilation/cutting and child marriage.* ”⁵⁶

1. Objectives of Child Protection

There are several aims of Child Protection, such as:

- To keep children from experiencing violence, exploitation, abuse, and neglect;⁵⁷
- To help children who have survived such encounters;⁵⁸
- To give a chance to explore values in relation to child violence, exploitation, abuse, and neglect;⁵⁹
- To give basic child protection information;⁶⁰
- To know what to do if someone have concerns about a child or young person;⁶¹
- To consider safeguarding children and safe working practices for adults in school.⁶²

2. Principles of Child Protection

⁵⁶ Unicef, “What Is Child Protection?,” *Unicef*, 2006, 2, www.unicef.org.

⁵⁷ “Objective | Children in Adversity,” accessed October 18, 2018, <https://www.childreninadversity.gov/objectives-implementation/objective-3-protect-children/objective>.

⁵⁸ Loc. Cit.

⁵⁹ “Child Protection,” 2009, [http://education.exeter.ac.uk/pspitt/1- Child Protection Issues/Child Protection Issues.pdf](http://education.exeter.ac.uk/pspitt/1-Child%20Protection%20Issues/Child%20Protection%20Issues.pdf).

⁶⁰ Loc. Cit.

⁶¹ Loc. Cit.

⁶² Loc. Cit.

There are 10 (ten) principles of an integrated Child Protection systems,⁶³ such as:

- Every child is recognized, respected and protected as a rights holder, with non-negotiable rights to protection;
- No child is discriminated against;
- Child protection systems include prevention measures;
- Families are supported in their role as primary caregiver;
- Societies are aware and supportive of the child's rights to freedom from all forms of violence;
- protection systems ensure adequate care:
- Child protection systems have transnational and cross-border mechanisms in place;
- The child has support and protection;
- Training on identification of risks;
- There are safe, well-publicized, confidential and accessible reporting mechanisms in place.

5. Marriage

a. Definition of Marriage

The definition of marriage can be found in several dictionaries. Merriam-Webster stated marriage is “ *the state of*

⁶³ EC, “10 Principles for Integrated Child Protection Systems,” 2015, http://ec.europa.eu/justice/fundamental-rights/files/rights_child/standards_child_protection_kcsc_en.pdf.

being united as spouses in a consensual and contractual relationship recognized by law.”⁶⁴ While the dictionary of Oxford define marriage as “*the legally or formally recognized union of two people as partners in a personal relationship (historically and in some jurisdictions specifically a union between a man and a woman).*”⁶⁵ In the dictionary of Cambridge, the definition of marriage is interpreted as “*a legally accepted relationship between two people in which they live together.*”⁶⁶ The Black’s Law dictionary defined marriage as “*distinguished from the agreement to marry and from the act of becoming married, Is the civil status of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex.*”⁶⁷ 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.*”⁶⁸

⁶⁴ “Marriage | Definition of Marriage by Merriam-Webster,” accessed October 30, 2018, <https://www.merriam-webster.com/dictionary/marriage>.

⁶⁵ “Marriage | Definition of Marriage in English by Oxford Dictionaries,” accessed October 30, 2018, <https://en.oxforddictionaries.com/definition/marriage>.

⁶⁶ “MARRIAGE | Meaning in the Cambridge English Dictionary,” accessed October 30, 2018, <https://dictionary.cambridge.org/dictionary/english/marriage>.

⁶⁷ “What Is MARRIAGE? Definition of MARRIAGE (Black’s Law Dictionary),” accessed October 30, 2018, <https://thelawdictionary.org/marriage/>.

⁶⁸ “Undang-Undang Republik Indonesia No 1 Tahun 1974 Tentang an | Legal Guardian | Marriage.”

So, from the definitions above, marriage could be simply put as the union of a man and a woman legally.

b. Objectives of Marriage

According to Law of the Republic Indonesia Number 1 of The Year 1974 on Marriage, the purpose of marriage is to establish a happy and lasting family.

6. Child Marriage

a. Definition of Child Marriage

Child marriage is the formal (or informal) marriage of a (mostly) girl who are younger, below the age of 18 to a generally older man.⁶⁹ According to UNICEF, child marriage is “*defined as a marriage of a girl or boy before the age of 18 and refers to both formal marriages and informal unions in which children under the age of 18 live with a partner as if married.*”⁷⁰

b. Factors of Child Marriage

There are several reason why child marriage is still happening⁷¹, such as:

(1) Poverty

⁶⁹ Daniele Selby, “Child Marriage: Everything You Need to Know,” accessed October 30, 2018, <https://www.globalcitizen.org/en/content/child-marriage-brides-india-niger-syria/>.

⁷⁰ UNICEF, “Child Marriage,” accessed October 30, 2018, <https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage>.

⁷¹ HTS Staff, “Contributing Factors to Child Marriage in Developing Countries,” 2017, <http://humantraffickingsearch.org/2017530contributing-factors-to-child-marriage-in-developing-countries/>.

Poverty is the one of the most common factors driving young people to marry early. Parents with less income tend to marry off their children in order to ease the economic burdens. By marrying their daughter, their daughter is supported by someone else so that the parents do not need to support their daughter anymore.⁷²

(2) Tradition and Societal Pressure

Tradition is also one of the reason that drives child marriage. Tradition is a part of the community in a very long period hence normally, to practice a tradition will go unquestioned. Unfortunately, child marriage was a tradition in most areas. Traditionally, marriage was often seen as a business agreement that has been arranged by elder males of the families when the child was still a baby. Because it is a tradition, people rarely report cases to the authorities and the authorities who were a part of community have limited capability to go against the community decisions.⁷³

While societal pressure may be one of the factors child marriage is still happening too. In society, pregnancy before marriage is still a very controversial thing in Indonesia, thus parents often push their child to marry early to avoid

⁷² “Mengkaji Faktor Penyebab Pernikahan Anak Usia Dini | Fakultas Ilmu Sosial Dan Ilmu Politik - Universitas Indonesia,” accessed October 1, 2018, <http://fisip.ui.ac.id/mengkaji-faktor-penyebab-pernikahan-anak-usia-dini/>.

⁷³ UNICEF India, “Child Marriage | UNICEF” 2006 (2017): 1–3, <http://unicef.in/Whatwedo/30/Child-Marriage>.

pregnancy before marriage. Another viewpoint is in Indonesia some girls are afraid they could not get married when they get old, so it is better for them to marry early.

(3) Religion

Child marriage are often carried out with a mindset so that children may avoid adultery. Religion is also frequently used as a trigger that resulted child marriage because to avoid thing prohibited by their religion's belief such as adultery and/or pregnancy before marriage.

(4) Education

The low education of parents often causes child marriage to keep happening. If the children were married, they will automatically drop out of school, and could not get jobs with sufficient income because their knowledge is still low. It is a circle of poverty that will never end.

(5) Weak Law Enforcement⁷⁴

The law is still weak in regulating child marriage cases. In Indonesia, there are dualism in law regarding child marriage, such as Indonesia's Marriage Law contradicted Child Protection Law.

c. Impacts of Child Marriage

⁷⁴ Ibid.



The impacts of Child Marriage can be seen from the fact sheet

below:

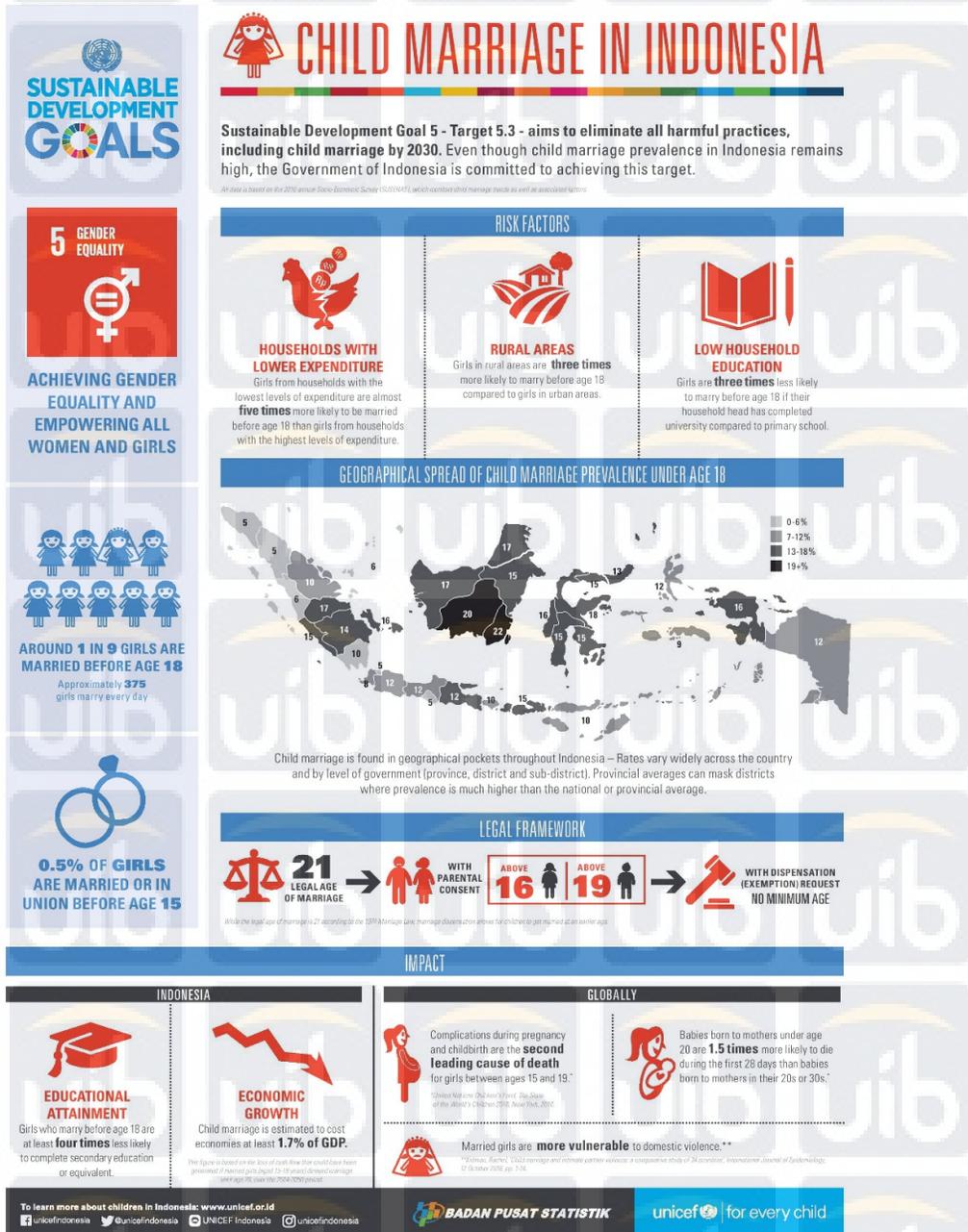


Figure 1, Child marriage fact sheet⁷⁵

⁷⁵ “Child Marriage in Indonesia.” Op. Cit.

Regarding the fact sheet from UNICEF above, the impact of child marriage in Indonesia globally affects the nation. From the education sector, child marriage leads to dropping out of school. The picture has expressed that girls are 4 (four) times less likely to complete secondary education if they were to marry before the age of 18 (eighteen). From the sector of economy, at least approximately 1.7% of Gross Domestic Product (GDP) is lost because of child marriage. Moreover, child marriage affects girls more than boys. Because the second leading cause of death is complications during pregnancy and childbirth. Girls who marry between ages 15 (fifteen) and 19 (nineteen) are more likely to experienced complications during pregnancy. Babies are also tend to die during the first 28 (twenty eight) days because of lack of knowledge of their mothers relating to pregnancy and household matters. Furthermore, the practices of child marriage make girls more vulnerable to domestic violence.

B. Legal Framework

1. The Convention on the Rights of the Child 1989 (CRC); Ratified by Indonesia in 1990, provides:

Article 1:

“ 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.”

Article 3(1):

“ In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. ”

Article 4:

“ States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation. ”

Article 6:

*“ 1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and of the child. ”*

Article 17:

“ States Parties recognize the important function performed by the mass media and shall ensure that the child has access to

information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18. ”

Article 24(3):

“ States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

Article 27:

“ 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.”

Article 28:

“ 1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.”

2. Law of the Republic of Indonesia Number 01 Year 1974 concerning Marriage⁷⁶

Article 1:

“ Marriage is a physical and spiritual bond between a man and a woman as husband and wife, having the purpose of establishing a happy and lasting family founded on the Belief in God Almighty. ”

Article 6(2):

“ Marriage of a person under the age of 21 (twenty-one) years shall require the consent of both parents. ”

Article 7:

“ (1) A marriage is only allowed when the male marriage candidate has reached the age of 19 (nineteen) years and the female marriage candidate the age of 16 (sixteen) years.

⁷⁶ Translation from <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>, accessed 20 November 2018.

(2) In deviation from the provision in paragraph (1) of this article, dispensation may be petitioned to the Court or other authority designated by the parents of both the male and female marriage candidate.”

3. Law of the Republic of Indonesia Number 35 Year 2014 Amending Law on Child Protection (No. 23/2002)

Article 1(1):

“ Anak adalah seseorang yang belum berusia 18 (delapan belas) tahun, termasuk anak yang masih dalam kandungan.”

Translation:

A child is someone that has not reach the age 18 (eighteen) years, includes child in his/her mother's womb.

Article 1(2):

“ Perlindungan Anak adalah segala kegiatan untuk menjamin dan melindungi Anak dan hak-haknya agar dapat hidup, tumbuh, berkembang, dan berpartisipasi secara optimal sesuai dengan harkat dan martabat kemanusiaan, serta mendapat perlindungan dari kekerasan dan diskriminasi.”

Translation:

Child Protection is activities to ensure and protect children and their rights so they can live, grow, develop, and participate

optimally in accordance with human rights, and to be protected from violence and discrimination.

Article 3:

“ Perlindungan anak bertujuan untuk menjamin terpenuhinya hak-hak anak agar dapat hidup, tumbuh, berkembang, dan berpartisipasi secara optimal sesuai dengan harkat dan martabat kemanusiaan, serta mendapat perlindungan dari kekerasan dan diskriminasi, demi terwujudnya anak Indonesia yang berkualitas, berakhlak mulia, dan sejahtera.”

Translation:

The purpose of Child Protection is to ensure the fulfillment of child’s rights so they can live, grow, develop, and participate in accordance with human rights, and to be protected from violence and discrimination, for the realization of qualified, noble, and prosperous Indonesia children.

Article 26(1):

“ Orang tua berkewajiban dan bertanggung jawab untuk:
a. mengasuh, memelihara, mendidik, dan melindungi anak;
c. mencegah terjadinya perkawinan pada usia Anak...”

Translation:

Parents are obliged and responsible for:

- a. Nurture, care, educate, and protect children;
- c. Prevent child marriage at the age of child....

Article 45B(1):

“ Pemerintah, Pemerintah Daerah, Masyarakat, dan Orang Tua wajib melindungi Anak dari perbuatan yang mengganggu kesehatan dan tumbuh kembang Anak.”

Translation:

Governments, Regional Governments, Communities, and Parents are obliged to protect Children from activities that interfere with the health and growth of Children.

Article 45B(2):

“ Dalam menjalankan kewajibannya sebagaimana dimaksud pada ayat (1), Pemerintah, Pemerintah Daerah, Masyarakat, dan Orang Tua harus melakukan aktivitas yang melindungi Anak.”

Translation:

In carrying out its obligations as referred to in paragraph (1), the Government, Regional Governments, Communities, and Parents must carry out activities that protect children.

C. Theory of Law Effectiveness proposed by Soerjono Soekanto.

The definition of effective is different as stated in several dictionaries but overall, it has the same meaning. In the dictionary of Cambridge, the word effective is defined as “ *successful or achieving the*

*results that you want.*⁷⁷ Meanwhile, the dictionary of Oxford, effective means “*successful in producing a desired or intended result.*”⁷⁸ Another dictionary such as Merriam-Webster stated that effective is “*producing a decided, decisive, or desired effect.*”⁷⁹ So, the meaning of effective can be concluded as to reach an expectation that has been set.

In the perspective of law, the word effective is often used to evaluate if a certain law has already do what it regulates. To measure such regulation, Soerjono Soekanto in his book “*Faktor-Faktor yang Mempengaruhi Penegakan Hukum*” has explained there are five factors in evaluating the effectiveness of law enforcement,⁸⁰ which are as listed below:

1. Factor of Law or Self-Regulation (Legal Substance)

The purpose of law is for the achievement of justice, law certainty, and expediency of the law. Often, in the process of implementation, there occur conflicts between justice and law certainty. It happened because the form of justice and law certainty is quite different. The form of justice is abstract while the form of law certainty is concrete. When a judge resolve a case by written laws, justice might not be achieved. So, in order

⁷⁷ “EFFECTIVE | Meaning in the Cambridge English Dictionary,” accessed November 27, 2018, <https://dictionary.cambridge.org/dictionary/english/effective>.

⁷⁸ “Effective | Definition of Effective in English by Oxford Dictionaries,” accessed November 27, 2018, <https://en.oxforddictionaries.com/definition/effective>.

⁷⁹ “Effective | Definition of Effective by Merriam-Webster,” accessed November 27, 2018, <https://www.merriam-webster.com/dictionary/effective>.

⁸⁰ Soerjono Soekanto, “Faktor Faktor Yang Mempengaruhi Penegakan Hukum,” PT. Raja Grafindo Persada, 2008

to oversee law related problems, justice should be in the top priority, followed by law certainty and law expediency respectively.

2. Law Enforcement Factors (Legal Structure)

In order for a law to function well, the mentality or the personality of the officers play an important role. If the law have a good regulations, but the officers do not perform well, there will be a problem. There was a strong tendency among the people to interpret law as an officer or a law enforcer, which means that law was identified with the behavior of the officer itself. Unfortunately, problems often arise when the officers are carrying their authority. Mainly and frequently, they go beyond their authority or doing things that undermined the image of a law enforcer.

3. Factor of Facilities in Supporting Law Enforcement

The facilities factor includes software or hardware. According to Soerjono Soekanto, the officers will not perform well without supporting facilities such as vehicles and communication tools. Hence, the supporting facilities also play an important role in law enforcement. Without the facilities, it would be impossible for the officers to complete their roles.

4. Community Factors (Legal Awareness)

Every citizen less or more has legal awareness. The main problem is law compliance, namely high law compliance, middle law compliance, or little law compliance. The existence of law compliance in the community indicates that the law is functioning.

5. Cultural Factors

Basically, cultures embody the values of the applicable law, which conceptions that are considered good (hence it is followed) and conceptions that are considered bad (hence should be avoided). So, the culture of Indonesia is the basis of mostly customary laws. Besides, written law is also applicable. The written law is regulations that are made by legislatives. The legislatives must consider the value of customary law in the making of written law.